

## FOUNTAIN MUNICIPAL CODE

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## **TITLE 1**

### **Chapter 1.01**

#### **CODE ADOPTION**

##### Sections:

- 1.01.010 Title - Citation
- 1.01.020 Numbering System
- 1.01.030 Acceptance of Code
- 1.01.040 Title, Chapter and Section Headings
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- 1.01.080 Offenses Punishable Under Different Ordinances, Election to Proceed

1.01.010 Title - Citation.<sup>1</sup> The ordinances contained in these chapters shall constitute and shall be designated the "Fountain Municipal Code", and may be so called in any prosecution for the violation of any provision thereof or in any proceeding at law or equity. Further reference may be made to titles, chapters, sections and subsections of the "Fountain Municipal Code," and such references shall apply to that numbered title, chapter, section or subsection as it appears in the Code. (Ord. 56 §1, 1987)

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<sup>1</sup> See City Charter, Article VI, Section 6.7

1.01.020 Numbering System.

A. Each section number shall consist of three (3) component parts separated by decimal points. The first figure shall refer to the title number, the second figure shall refer to the chapter number and the third figure shall refer to the section number

B. Any reference made to the number of any section contained herein shall be understood to refer to the position of the same under the appropriate title and chapter heading, and to the general penalty clause relating thereto, as well as the section itself, when reference is made to this Code by title in any legal document. (Ord. 756 §1, 1987)

1.01.030 Acceptance of Code. This Code, as hereby presented in printed form, shall hereafter be received without further proof in all courts and in all administrative tribunals of this State as the ordinances of general and permanent effect of the City. (Ord. 756 §1, 1987)

1.01.040 Title, Chapter and Section Headings. Title, chapter and section headings contained herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any title, chapter or section hereof. (Ord. 756 §1, 1987)

1.01.050 Reference Applies to All Amendments. Whenever a reference is made to this Code as the "Fountain Municipal Code" or to any portion thereof, or to any ordinance of the City of Fountain, Colorado, the reference shall apply to all amendments, corrections and additions heretofore, now or hereafter made. (Ord. 756 §1, 1987)

1.01.060 Severability of Parts of Code. It is hereby declared to be the intention of the City Council that each and every part of this Code is severable, and if any term, phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional or invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code, since the same would have been enacted by the City Council without the incorporation in this Code of any such unconstitutional or invalid term, phrase, clause, sentence, paragraph or section. (Ord. 756 §1, 1987)

1.01.070 Effect of Repeal of Ordinances.

A. Whenever any ordinance or part of any ordinance shall be repealed or modified by subsequent ordinance, the ordinance or part of the ordinance thus repealed or modified shall continue in force until the ordinance repealing or modifying the same shall take effect, unless therein otherwise expressly provided.

B. When any ordinance repealing any former ordinance, clause or provision shall itself be repealed, such last repeal shall not be construed to revive the former original ordinance, clause or provision, unless therein so expressly provided.

C. The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, provision or proceeding pending at the time of the repeal for any offense committed under the ordinance repealed. If any penalty, forfeiture or punishment be mitigated by the provisions of anew ordinance, such provision may, by the consent of the party affected, be applied to any judgment pronounced after the new ordinance takes effect. (Ord. 756 §1, 1987)

1.01.080 Offenses Punishable Under Different Ordinances - Election To Proceed. In all cases when the same act or offense may be punishable under different ordinances or different clauses of the same ordinance, the Attorney may elect under which of said ordinances or clauses to proceed, but not more than one recovery shall be had against the same person for the same offense. (Ord. 756 §1, 1987)

## **Chapter 1.04**

### **GENERAL PROVISIONS**

#### Sections:

- |          |                       |
|----------|-----------------------|
| 1.04.010 | Rules of Construction |
| 1.04.020 | Computation of Time   |
| 1.04.030 | Definitions           |

1.04.010 Rules of Construction. In the construction of phrases and terms used in this Code, the following rules shall be observed, unless such construction is excluded by express provision, or is inconsistent with the intent of the council.

A. All general terms, phrases and expressions shall be liberally construed in order that the true meaning and intent of the Council may be implemented.

B. Words in the present tense include the future tense.

C. Words importing the singular number may extend to several persons and things, and words importing the plural number may include the singular number.

D. Words importing the masculine gender may be applied to females as well as males, and to associations and bodies corporate as well as individuals.

E. Catch lines, captions, historical notes and source notes are intended as aids in reference and shall not be deemed to be part of this Code or any ordinance constituting a part thereof. (Ord. 756 §1, 1987)

1.04.020 Computation of Time. Except when otherwise provided, the time within which an act is to be done shall be computed by excluding the first and including the last day; provided,

however, that if the last day is a Saturday, Sunday or City-recognized legal holiday, it shall be excluded. (Ord. 756 §1, 1987)

1.04.030 Definitions. The following terms, as used in this Code and in all ordinances of the City, shall have the meanings hereinafter designated, unless the context specifically indicates otherwise, or unless such meaning is excluded by express provision:

- A. "Attorney". The City Attorney.
- B. "Charter". The Charter of the City.
- C. "City". The City of Fountain, Colorado.
- D. "City Council" or "Council". The elected legislative body of the City.
- E. "Clerk". The City Clerk.
- F. "Code" or "This Code". The Code of general ordinances of the City.
- G. "County". The County of El Paso, Colorado.
- H. "Court". The Municipal Court.
- I. "C.R.S." Colorado Revised Statutes, including all supplements, amendments and replacement volumes, as well as any subsequent recodification, revision or recompilation of the laws of the State of Colorado.
- J. "Hereafter". Any time after the effective date of this Code.
- K. "Heretofore". Any time previous to the day when this Code shall take effect.
- L. "Includes" or "Including". Including but not limited to; it in no way means to exclude.
- M. "Laws And Ordinances Now In Force". Laws and ordinance sin force at the time that the ordinance containing the words takes effect.
- N. "Manager". The City Manager, Acting City Manager, or Deputy City Manager.
- O. "May". Permissive.
- P. "Must" and "Shall". Mandatory.
- Q. "Mayor". The Mayor or Mayor Pro Tem.
- R. "Month". A calendar month.

S. "Oath". Includes an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, in which case the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed".

T. "Office, Officer, Employee, Board, Commission" or "Department". An office, officer, employee, board, commission or department of the City.

U. "Person". Any individual, firm, company, partnership, association, group or society, including the United States and the State of Colorado, and any agencies, districts, commissions and political subdivisions created by or pursuant to State or Federal law.

V. "State". The State of Colorado.

W. "Treasurer". The City Treasurer.

X. "Writing". Any mode of representing words or letters, including printing.

Y. "Year". A calendar year.  
(Ord. 756 §1, 1987)

## Chapter 1.08

### GENERAL PENALTY

#### Sections:

1.08.010	General Penalty
1.08.020	Minor Offenders
1.08.030	Contempt of Court

#### 1.08.010 General Penalty.

A. Any person who performs or fails to perform an act where such performance or failure to perform is declared in any provisions of this Code or any rule or regulation promulgated thereunder to be unlawful or an offense or misdemeanor, or any person who performs an act which is prohibited or fails to perform an act which is required by any provision of this Code or any rule or regulation promulgated thereunder, or any person who fails to meet a standard of conduct or behavior prescribed in any provision of this Code for which no specific penalty is provided, upon conviction thereof shall be punished as provided in subsection B of this section.

B. Any person convicted for the violation of any provision of this Code or any rule or regulation promulgated thereunder shall be punished by a fine of not more than One Thousand



Dollars (\$1,000.00) by imprisonment in jail for a period not exceeding one year or by both such fine and imprisonment, unless otherwise provided.<sup>2</sup>

C. A separate and distinct offense shall be deemed to have been committed for each day on which any violation of this Code or of any rule or regulation promulgated thereunder shall continue. (Ord. 756 §1, 1987; Ord. 920 §1, 1991)

#### 1.08.020 Minor Offenders.

A. For the purposes of this section, a "Minor Offender" shall be defined as any person accused of an offense contrary to this Code who, on the date of the alleged offense, was at least ten (10) years of age, but had not yet attained the age of eighteen (18) years.

B. Except as to alleged violations of Chapter 10.04 of this Code (Model Traffic Code), any minor offender convicted of a violation of this Code, or any rule or regulation promulgated thereunder, shall be punished by a fine of not more than three hundred dollars (\$300.00), unless provided otherwise by the specific section alleged to have been violated. As to minor offenders alleged to have violated any provision of Chapter 10.04 of this Code, such persons shall, upon conviction, remain subject to the general penalty provided in section 1.08.010 of this Code as to any violation of this Code.

C. The Presiding Judge of the Municipal Court may promulgate such rules or orders regarding the procedural processing of minor offenders appearing before the Municipal Court as he may from time to time, deem appropriate. (Ord. 756 §1, 1987)

1.08.030 Contempt of Court. Nothing contained within this chapter shall be construed to abrogate, abolish or otherwise limit the power of the Municipal Court to punish any person before it for "Contempt of Court", whether by failure to obey a summons, subpoena or other lawful order of the Court, or by personal conduct before the Court. Any person found guilty of such contempt, whether a minor offender or adult, shall be punished as provided in section 1.08.010 of this Code. (Ord 756 §1, 1987)

### **Chapter 1.12**

#### **FISCAL YEAR\***

##### Sections:

1.12.010 Designated

1.12.010 Designated. From and after the passage and publication of the ordinance codified in this chapter, according to law, the fiscal year for the City shall commence on the first day of January in each year. (Ord. 97 §1, 1917)

\* For charter provisions on the fiscal year, see Charter S9.1.

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<sup>2</sup> City Charter, Article II, section 2.1(b).

## Chapter 1.16

### ADOPTION OF FEES OR OTHER CHARGES

#### Sections:

- 1.16.010 Adoption of Fees or Other Charges
- 1.16.020 Delegate the Authority

1.16.010 Adoption of Fees. The City Council of the City is authorized to adopt or amend fees or other charges including electric tariffs either by resolution or ordinance. (Ord. 1411 §3, 2008)

1.16.020 Delegate the Authority. The City Council of the City may delegate the authority to waive or reduce fees or other charges including electric tariffs as set forth in a resolution or resolutions adopted by City Council.

## TITLE 2

### Chapter 2.02

#### COUNCIL MEETINGS

#### Sections:

- 2.02.010 Regular Meetings
- 2.02.020 Place
- 2.02.030 Special Meetings
- 2.02.040 Agenda
- 2.02.050 The Presiding Officer
- 2.02.060 Call To Order - Presiding Officer
- 2.02.070 Roll Call
- 2.02.080 Quorum
- 2.02.090 Order of Business
- 2.02.100 Reading of Minutes
- 2.02.110 Rules of Debate
- 2.02.120 Addressing the Council
- 2.02.130 Addressing the Council After Motion Made
- 2.02.140 Manner of Addressing Council - Time Limit
- 2.02.150 Silence
- 2.02.160 Decorum
- 2.02.170 Enforcement of Decorum
- 2.02.180 Members May File Protests

- 2.02.190 Ordinances
- 2.02.200 Reports and Resolutions to be Filed
- 2.02.210 Rules and Regulations

2.02.010 Regular Meetings. The City Council shall hold regular meetings on the second and fourth Tuesdays of each month at an hour set by resolution of the City Council, provided, however, that when the day fixed for any regular meeting of the Council falls upon a day designated by law as a legal or national holiday, such meeting shall be held on a day designated by the City Council which is not a legal or national holiday. (Ord. 681 §1, 1985) (Ord. 1398 §1, 2007)

2.02.020 Place. All regular meetings of the Council shall be held in the Council Chambers of the City of Fountain, Colorado, at 116 South Main Street, Fountain, Colorado, or at such other place as may be designated by unanimous vote of the Council. (Ord. 548 §2, 1980)

2.02.030 Special Meetings. Special meetings shall be called at such times and on such conditions as are set forth in the Charter. (Ord. 548 §3, 1980)

2.02.040 Agenda. All reports, communications, ordinances, resolutions, contract documents, or any other matters to be submitted to the Council shall, before 5:00 o'clock p.m. on the Wednesday prior to each regular meeting, and at least twenty-six hours before each special meeting, be delivered to the City Clerk whereupon the City Clerk shall arrange a list of such matters according to the order of business and furnish each member of the Council and the City Attorney with a copy of the same prior to the Council meeting, and as far in advance of the meeting as time for preparation will permit. (Ord. 548 §1, 1980)

2.02.050 The Presiding Officer. The Presiding Officer of the Council is the Mayor, elected pursuant to the terms of the Charter. The Presiding Officer shall preserve and at all regular and special meetings he shall state every question coming before the Council, announce the decision of the Council on all subjects and decide all questions of order, subject, however, to an appeal to the Council, in which event a majority vote of the Council shall govern and conclusively determine such question of order. He shall vote on all questions, and shall sign ordinances and resolutions adopted by the Council and perform all other duties required under the Charter of the City of Fountain or by ordinance. In the event of the absence of the mayor or Vice-Mayor shall act as Presiding Officer. (Ord. 548 §5, 1980)

2.02.060 Call to Order - Presiding Officer. The Mayor, or in his absence the Vice-Mayor, shall take the chair precisely at the hour appointed for the meeting, and shall immediately call the Council to order. In the absence of the Mayor or Vice-Mayor, the City Clerk or Assistant City Clerk shall call the Council to order, whereupon a temporary chairman shall be elected by the members of the Council present. Upon the arrival of the Mayor or Vice-Mayor, the temporary chairman shall immediately relinquish the chair upon the conclusion of the business immediately before the Council. (Ord. 548 §6, 180)

2.02.070 Roll Call. After the pledge of allegiance and before proceeding with the business of the Council, the City Clerk or Assistant City Clerk shall call the roll of the members and the names of those present shall be entered into the minutes. (Ord. 548 §7, 1980)

2.02.080 Quorum. A majority of the members elected to the Council shall constitute a quorum at any regular or special meeting of the Council. In the absence for a quorum, the Presiding Officer shall, at the instance of all members present, compel the attendance of any members absent without excuse. (Ord. 548 §8, 1980)

2.02.090 Order of Business. All meetings of the Council, except executive sessions, shall be open to the public. Promptly at the hour set by law on the day of each regular or special meeting, the members of the Council, the City Clerk, City Attorney, and City Manager shall take their regular stations in the Council Chambers, and the business of the Council shall be taken up for consideration in the following order:

- A. Pledge of Allegiance
- B. Roll call
- C. Special Presentations & Declarations
- D. Public to be Heard
- E. Consent Items
- F. Old Business
- G. New Business
- H. Correspondence, Comments and Ex-Officio Reports
- I. Announcement of Executive Sessions
- J. Adjournment

(Ord. 548 §9, 1980) (Ord. 1433 §1, 2008)

2.02.100 Reading of Minutes. Unless a reading of the minutes of the Council meeting is requested by a member of the Council, such minutes may be approved without reading if the City Clerk has previously furnished each member with a copy thereof. (Ord. 548 §9, 1980)

2.02.110 Rules of Debate.

A. The Presiding Officer May Debate. The Mayor or Vice-Mayor or such other member of the Council as may be presiding may move, second and debate from the chair, subject only to such limitations of debate as are by these rules imposed on all members and shall not be deprived of any of the rights and privileges of the Councilman by reason of his acting as Presiding Officer.

B. Getting the Floor. Every member desiring to speak shall address the chair, and upon recognition by the Presiding Officer, shall confine himself to the question under debate, avoiding all personalities and decorous language.

C. Interruptions. A member, once recognized, shall not be interrupted when speaking unless it be to call him to order, or as herein otherwise provided. If a member, while speaking, be called to order, he shall cease speaking until the question of order be determined, and, if in order, he shall be permitted to proceed.

D. Privilege of Closing Debate. The Councilman moving the adoption of an ordinance or resolution shall have the privilege of being the last one to speak on the motion.

E. Motion to Reconsider. A motion to reconsider any action taken by the Council may be made on the day such action was taken or at any subsequent regular or special meeting, provided that at the special meeting such motion shall have been included in the notice. It may be made either immediately during the same session, or at a recessed or adjourned session thereof. Such motion must be made by one of the prevailing side, but may be seconded by any member, and may be made at any time and have precedence over all other motions or while a member has the floor; it shall be debatable.

F. Remarks of Councilman Entered in the Minutes. A Councilman may request, through the Presiding Officer, the privilege of having an abstract of his statement on any subject under consideration by the Council entered in the minutes. If the Council consents thereto, such statement shall be entered in the minutes.

G. Synopsis of Debate. The City Clerk may be directed by the Presiding Officer, with consent of the Council, to enter in the minutes, a synopsis of the discussion on any question coming regularly before the Council. (Ord. 548 §11, 1980)

2.02.120 Addressing the Council. Any person desiring to address the Council shall first secure the permission of the Presiding Officer so to do, provided, however, that under the following headings of business, unless the Presiding Officer rules otherwise, any qualified person may address the Council without securing such prior permission.

A. Written Communications. Interested parties or their authorized representatives may address the Council by written communications in regard to matters then under discussion.

B. Oral Communications. Taxpayers or residents of the City, or their authorized representatives, may address the Council by oral communications on any matter concerning the City's business, or any matter over which the Council has control, provided, however, that preference shall be given to those persons who may have notified the City Clerk in advance of their desire to speak and order that the same may appear on the agenda of the Council.

C. Reading of Protests. Interested persons or their authorized representatives may address the Council by reading of protest, petitions, or communications relating to zoning, subdivisions, hearings on protests, appeals and petitions, or similar matters, in regard to matters then under consideration. (Ord. 548 §12, 1980)

2.02.130 Addressing the Council After Motion Made. After a motion is made by the Council, no person shall address the Council without first securing the permission of the Council so to do. (Ord. 548 §13, 1980)

2.02.140 Manner of Addressing Council - Time Limit. Each person wishing to address the City Council at the Public to be Heard section to express opinions about issues not on the agenda shall sign up in person at the City Council Chambers, beginning fifteen (15) minutes prior to the scheduled time on the day of the meeting with the City Clerk or the Deputy City Clerk. Each person addressing the Council shall step to the microphone, shall give his or her name and address in an audible tone of voice for the records, and unless further time is granted by the Presiding Officer, shall limit the address to three (3) minutes. The total limit for public input is thirty (30) minutes unless further time is granted by the Presiding Officer. All remarks shall be addressed to the Council as a body and not to any member thereof. No person, other than the Council and the person having the floor, shall be permitted to enter into any discussion, either directly or through a member of the Council, without the permission of the Presiding Officer. No question shall be asked of a Council Member except through the Presiding Officer. (Ord. 548 §14, 1980) (Ord. 1433 §1, 2008)

2.02.150 Silence. Unless a member of the Council states that he is abstaining from voting pursuant to the Charter, his silence shall be recorded as an affirmative vote. (Ord. 548 §15, 1980)

2.02.160 Decorum.

A. By Council Members. While the Council is in session, the members must preserve order and decorum, and the members shall neither, by conversation or otherwise, delay or interrupt the proceedings or the peace of the Council nor disturb any member while speaking or refuse to obey the orders of the Council or its Presiding Officer, except as otherwise herein provided.

B. Persons Addressing Council. Any person making personal, impertinent, slanderous, or profane remarks or who willfully utters loud, threatening or abusive language, or engages in any disorderly conduct which would impede, disrupt or disturb the orderly conduct of any meeting, hearing or other proceeding, shall be called to order by the Presiding Officer and, if such conduct continues, may at the discretion of the Presiding Officer be ordered barred from further audience before the Council during that meeting.

C. Members of the Audience. No person in the audience shall engage in disorderly conduct such as hand clapping, stamping of feet, whistling, using profane language, yelling, and any similar demonstrations, which conduct disturbs the peace and good order of the meeting. (Ord. 548 §16, 1980)

2.02.170 Enforcement of Decorum.

A. Warning. All persons shall, at the request of the Presiding Officer, be silent. If, after receiving a warning from the Presiding Officer, a person persists in disturbing the meetings, said

Officer may order him to remove himself from the meeting. If he does not remove himself, the Presiding Officer may order the Sergeant-at-Arms to remove him.

B. Removal. The Chief of Police, or such member or members of the Police Department as the Presiding Officer may designate, shall be the Sergeant-at-Arms of the Council meetings. He, or they, shall carry out all orders and instructions given by the Presiding Officer for the purpose of maintaining order and decorum at the Council meeting. Upon instruction of the Presiding Officer, it shall be the duty of the Sergeant-at-Arms to remove from the meeting any person who intentionally disturbs the proceedings of the Council.

C. Resisting Removal. Any person who resists removal by the Sergeant-at-Arms, shall be charged with violation of the applicable ordinance of the City of Fountain or statute of the State of Colorado.

D. Motions to Enforce. Any Councilmember may move to require the Presiding Officer to enforce these rules and the affirmative vote of a majority of the Council shall require him to do so. (Ord. 548 §17, 1980)

2.02.180 Members May File Protests. Any member shall have the right to have the reasons for his dissent from, or protest against, any action of the Council entered on the minutes. (Ord. 548 §18, 1980)

2.02.190 Ordinances.

A. Preparation of Ordinances. All ordinances shall be prepared by the City Attorney. No ordinance shall be prepared for presentation to the Council unless ordered by a majority vote of the Council, or requested in writing by the Mayor or the City Manager, or prepared by the City Attorney on his own initiative.

B. Prior Approval by Administrative Staff. All ordinances, resolutions and contract documents shall, before presentation to the Council, have been approved as to form and legality by the City Attorney or his authorized representative, and shall have been examined and approved for administration by the Mayor or City Manager or his authorized representative, where there are substantive matters of administration involved. All such instruments shall have first been referred to the head of the department under whose jurisdiction the administration of the subject matter of the ordinance, resolution or contract document would devolve and be approved by said department head. Provided, however, that if the approval is not given, then the same shall be returned to the Mayor or City Manager with a written memorandum of the reasons why such approval is withheld. In the event the questioned instrument is not redrafted to meet a department head objection, or objection is not withdrawn and approval in writing given, then the Mayor or City Manager shall so advise the Council and give the reasons advanced by the department head for withholding approval. Ordinances, resolutions and other matters shall be adopted pursuant to the provisions of the City Charter. (Ord. 548 §19, 1980)

2.02.200 Reports and Resolutions to be Filed. All reports and resolutions shall be filed with the City Clerk and entered on the minutes. Resolutions shall be filed and indexed numerically by the City Clerk. (Ord. 548 §20, 1980)

2.02.210 Rules and Regulations. Any member of the Council, to include the Mayor, and any member of a Board or Commission, may be censured or expelled from his or her position on the Council (Board or Commission) when it is determined after notice and an opportunity for a hearing, by a majority vote of the council (Board or Commission) members present, exclusive of the member under consideration, that the member has committed the following violations of the Rules and Regulations:

- A. Repeated failure to preserve order and decorum at Council (Board or Commission) meetings;
- B. Two or more consecutive absences from two or more regularly scheduled meetings without providing notification with a reasonable basis for the absence;
- C. Interference with the job performance of a City employee(s);
- D. Inability, even after reasonable accommodation, to discharge the duties and obligations of his or her elected or appointed position by reason of illness, disability, abuse of drugs, or abuse of alcohol;
- E. Conviction of a felony, the factual basis for which occurred during the time the person was serving in his or her elected or appointed position;
- F. Failure to maintain a qualification for the office to which the person was elected or appointed;
- G. Violation of any express prohibition or requirement of the Charter.  
(Ord. 1007 §1, 1994)

## Chapter 2.04

### CODE OF ETHICS FOR CITY OFFICIALS

#### Chapters:

- 2.04.010 Title
- 2.04.020 Definitions
- 2.04.030 Declaration of Purpose
- 2.04.040 Finding of Local Concern
- 2.04.050 Responsibilities of Public Office
- 2.04.060 Preparation for Meetings and Education
- 2.04.070 Dedicated Services
- 2.04.080 Fair and Equal Treatment



- 2.04.090 Conflict of Interest
- 2.04.100 Reporting of Improper Conduct by City Officials
- 2.04.110 Interpretation of the Code
- 2.04.120 Sanctions
- 2.04.130 Severability

2.04.010 Title. This Code shall be known and may be cited as the City of Fountain Code of Ethics for City Officials. (Ord. 1133 §1, 2001)

2.04.020 Definitions. The following definitions shall apply to all sections of this Code of Ethics:

A. "*Appointee*" shall include those persons appointed by the City Council or the City Manager to act on boards or commissions or those appointed by such boards or commissions. It does not include or cover any compensated full-time or part-time City employee unless such person is also a board or commission member.

B. "*City*" shall mean the City of Fountain, County of El Paso, State of Colorado.

C. "*City Official*" shall mean City Council Members including the Mayor and all Appointees. (Ord, 1133 §2, 2001)

2.04.030 Declaration of Purpose. Proper democratic government requires that government officials and their appointees be independent, impartial and responsible to the people; that decisions and policies be made through proper government channels; that public office not be used for personal gains; and that the public have confidence in the integrity of its government. Recognizing these requirements, this Code of Ethics for City Officials sets forth standards of ethical conduct for all City Officials. It identifies actions incompatible with the City's best interests and calls for disclosures by City Officials and of private, judicial or other interests affecting the City. (Ord, 1133 §3, 2001)

2.04.040 Finding of Local Concern. The City of Fountain City Council hereby finds and determines that the matter of ethical municipal government is a matter of local concern upon which Colorado home rule municipalities are empowered to legislate and to supersede conflicting State statutes and common law. (Ord, 1133 §4, 2001)

2.04.050 Responsibilities of Public Office. City Officials are agents of public purpose and hold office for the benefit of the people. They are bound to uphold the Constitution and the laws of the United States and the State of Colorado, and to uphold the Home Rule Charter and laws of the City of Fountain. They are bound to observe the highest standards of integrity and fairness. They must discharge the duties of office faithfully, regardless of personal considerations. Their conduct on the job must be above reproach, and they should avoid even the appearance of impropriety, conflict of interest or improper influence in the performance of official duties. (Ord, 1133 §5, 2001)

2.04.060 Preparation for Meetings and Education. City Officials will come properly prepared for all meetings. They will also assure they are familiar with the pertinent laws that govern their activities including, but not limited to this Code of Ethics, the City Charter and the Open Meeting Laws of the State of Colorado. They will follow applicable City Ordinances pertaining to meetings and assure meetings maintain proper decorum and dignity. (Ord, 1133 §6, 2001)

2.04.070 Dedicated Services. All City Officials should be loyal to the political objectives expressed by the electorate while keeping the best interests of the City of Fountain, as a whole, in mind. City Officials have the right to express and support contrary or dissenting opinions provided that their expression or support is not intended to subvert or undermine any such objectives, the City's programs or the democratic process. When they do so, their comments should be made with integrity, respect for others and their opinions and for the democratic process. They shall not breach the law nor ask others to do so nor exceed their authority. They should work in cooperation with other public officials, unless prohibited by law, confidentially or the provision of this Code or the City Charter. In all actions they should avoid even the appearance of impropriety. (Ord, 1133 §7, 2001)

2.04.080 Fair and Equal Treatment. No City Official shall engage in any ex-parte communication if such communication is intended or may be reasonably expected to influence decisions or conduct in order to obtain favored treatment, special consideration or to advance personal or private interest involving quasi-judicial matters under consideration by such City Official, to the end that interested parties are denied equal opportunity to express and represent their interest. Ex-parte communication can be written or oral and are those that take place without notice to other interested parties and at a time and place other than a public meeting. Any ex-parte communication received by a City Official shall be entered into the record of any proceeding to which it relates by the recipient. Any City Official who has engaged in ex-parte communication shall not, automatically, be deemed disqualified with respect to any proceeding to which the communication relates unless the official feels that the ex-parte communication has made it impossible for him or her to act objectively or if the other associated members determine by majority vote that such communication would reasonably appear to prevent that official from acting objectively. (Ord, 1133 §8, 2001)

2.04.090 Conflict of Interest.

A. All City Officials shall be familiar and comply with the requirements of the City Charter regarding Conflict of Interest as specifically set out in Section 2.14(c) of the City of Fountain Charter.

B. Any City Official who believes he or she may have a conflict of interest shall disclose the potential conflict to the board or commission upon which the person serves, or, if none, to the City Council or the board or commission that appointed him or her. Further, if any member of the City Council or such board or commission believes that another City Official on his or her board has a conflict, he or she shall bring the matter to the attention of the relevant board, commission or City Council prior to consideration of the pertinent issue. The City Council or appointing board or commission shall determine, by majority vote, whether a conflict of interest

exists. If it determines that an actual conflict of interest exists, unless otherwise permitted by law, the City Official shall leave the board or commission panel until the next agenda item is taken up, shall not attempt to influence any other member regarding the issue, and shall not vote upon such matter.

C. The following conflicts of interest and potential conflicts of interest are given for purposes of example, but not limitation.

1. General Conflicts of Interest. No City Official shall engage in any business or financial transaction or have other personal interest, direct or indirect, vested or contingent, which is incompatible with the proper discharge of official duties or which would tend to impair independent judgment in the performance of such official duties. Personal interests include, but are not limited to, those arising from blood or family relationship or close business or political association.

2. Disclosure of Confidential Information. No City Official shall disclose confidential information concerning the property, government, or affairs of the City, without proper legal authorization, or use such information to advance personal, financial or private interest. This provision is not intended to impair or limit public access to information that is in fact public.

3. Gifts and Favors. No City Official shall accept any valuable gift, service, loan, favor, thing, promise or other consideration from any person or group directly or indirectly interested in the business dealings with the City which may tend to influence or appear to influence the discharge of duties or give the appearance of such influence. Nor shall any City Official grant any improper gift, favor, service or thing of value in the discharge of official duties.

4. Representation of Private Interest. No City Official shall appear on behalf of private interests before any agency of the City, other than in matters in front of Municipal Court where that City Official is a Defendant, without prior approval of the City Council, nor shall any City Official represent private interests in any action or proceeding against the City or accept any compensation contingent upon any specific action by any City agency. Not with standing, a City Council member may appear before City agencies on behalf of constituents in performing his duties and public obligations or on behalf of other public or quasi-public organizations.

5. Contracts with the City. All contracts with the City by the Mayor and City Council Members are governed by Section 2.14 of the City Charter. Appointees shall be treated as City Council Members are in Section 2.14(c).

6. Disclosure of Interest in Legislation or Judicial Matters. Any City Official with a financial or private interest in any legislation or matter pending before the municipal court shall disclose that interest to the City Clerk and refrain from voting on and participating in the matter.

7. Incompatible Employment. No City Official shall engage in any private employment or render any private services, where such employment or service is incompatible with official duties or which would tend to impair independence in performing official duties. (Ord, 1133 §9, 2001)

2.04.100 Reporting of Improper Conduct by City Officials. If an individual City Official believes another City Official is acting improperly or violating provisions of this Ethics, the matter shall be discussed and decided by the City Council. Individual City Officials shall not take any action or make any statement that would tend to lead the public or media to have the impression that other City Officials are acting improperly in their reporting, hearing or deciding upon whether or not there has been a violation of this Code except as may be reasonably necessary to protect that person's Constitutional Rights. (Ord, 1133 §10, 2001)

2.04.110 Interpretation of the Code. In case of doubt about the applicability or interpretation of any provision of this Code, application in writing should be made to the City Council for an advisory opinion. The City Official shall have the opportunity to present any interpretation of the facts of applicable provisions before advice is rendered. Upon receipt of such written request for advice, the City Council shall appoint an Ethics Committee composed of three (3) persons: one council member, one member of a standing City Board or Commission, and one City Appointee. Neither the City Attorney nor City Manager may act on the Ethics Committee. Thereafter, the Ethics Committee shall hear the petitioning City Official and shall render its opinion to both the petitioner and the City Council within ten (10) days of such hearing. (Ord, 1133 §11, 2001)

2.04.120 Sanctions.

A. Violation of any provision of this Code should raise conscientious questions for City Officials concerning the need for voluntary resignation.

B. Any City Official who violates any of the provisions of this Code of Ethics shall be subject to the following penalties:

1. In all cases, the determination of the City Council as to whether there has been a violation shall be final;

2. In the case of a City Council Member, if a violation is established to the satisfaction of a majority of the City Council, such violation shall be grounds for an official reprimand or censure by the City Council, pursuant to Section 2.15(b) of the City of Fountain Charter;

3. In the case of an Appointee, if a violation is established to the satisfaction of a majority of the council, such violation shall be grounds for an official reprimand by the City Council and grounds for termination of such person's appointment to any board or commission of which he or she is a member. If the City Council votes to terminate the appointment of such Appointee upon such grounds, the City Council may appoint another person to fulfill the term of the individual removed from office; and

4. The City Council may caution or reprimand the City Official responsible or take such other action as it deems to be in the best interests of the City of Fountain. (Ord, 1133 §12, 2001)

2.04.130 Severability. If any provision of this Code of Ethics or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Code of Ethics which can be given effect without the invalid provision or application, and to this end the provisions of this Code of Ethics article are declared to be severable. (Ord, 1133 §13, 2001)

## Chapter 2.08

### RESERVE POLICE

#### Sections:

2.08.010	Reserve Police Created
2.08.020	Appointment, Compensation
2.08.030	Authority
2.08.040	Supervision
2.08.050	Oath of Office
2.08.060	Resignation and Removal
2.08.070	Uniforms and Equipment
2.08.080	Insurance and Liability

2.08.010: Reserve Police Created: There is hereby created the reserve police, which shall consist of a number of persons determined by the Chief of Police. (Ord. 1216 §2, 2004)

2.08.020: Appointment, Compensation: The members of the reserve police shall be appointed by the Chief of Police and shall meet the requirements for a reserve police officer under section 16-2.5-110 C.R.S. Each member shall be designated a reserve police officer and shall serve without pay. (Ord. 1216 §2, 2004)

2.08.030: Authority: In case of need, the Chief of Police is authorized to call into duty any or all reserve police officers. Reserve police officers are authorized and empowered to perform these duties as deemed necessary by the Chief of Police and governed by the provisions of section 16-2.5-110 C.R.S. (Ord. 1216 §2, 2004)

#### 2.08.040: Supervision:

A. When called into duty, reserve police officers shall be under the direction of the Chief of Police and other officers of the Police Department and shall be subject to all discipline, rules and regulations applicable to paid regular police officers and all special rules and regulations and policies and procedures for reserve police established by the Chief of Police.

B. No reserve police officer shall, while on duty, willfully disobey any rules or regulations, concerning the unit, or any proper order of the Chief of Police or any other police officer having authority over the reserve police officer. (Ord. 1216 §2, 2004)

2.08.050: Oath of Office: Upon issuance of a State of Colorado P.O.S.T. certification, each reserve police officer shall take an oath to support the Constitution of the United States and the Constitution of the State of Colorado, the Charter of the City of Fountain and City Codes, and to faithfully perform the duties and assignments of a reserve police officer. (Ord. 1216 §2, 2004)

2.08.060: Resignation and Removal: Any reserve police officer may resign upon giving the Chief of Police notice, preferably, in writing of the reserve officer's intention, and the Chief of Police may remove any reserve police officer at any time without cause, without notice, and without appeal. (Ord. 1216 §2, 2004)

2.08.070: Uniforms and Equipment: Uniforms and equipment deemed necessary by the Chief of Police to fulfill the duties and responsibility of a reserve police officer shall be required. Equipment not provided by the Police Department will be purchased and maintained at the reserve police officer's own expense. In addition, each reserve police officer shall wear a badge and patches signifying the fact that the officer is a reserve police officer. All badges, patches, identification cards and issued uniforms and equipment shall remain the property of the Police Department. (Ord. 1216 §2, 2004)

2.08.080: Insurance and Liability: All reserve police officers shall be covered under the City's general liability and police professional liability insurance policies along with the City's Worker's Compensation policy. (Ord. 1216 §2, 2004)

## Chapter 2.09

### VOLUNTARY PARKING ENFORCEMENT UNIT

#### Sections:

2.09.010	Voluntary Parking Enforcement Unit Created
2.09.020	Appointment, Compensation
2.09.030	Authority
2.09.040	Supervision
2.09.050	Oath of Office
2.09.060	Resignation and Removal
2.09.070	Uniforms and Equipment

2.09.010: Voluntary Parking Enforcement Unit Created: There is hereby created a voluntary parking enforcement unit, which shall consist of a number of persons determined by the Chief of Police. (Ord. 1217 §1, 2004)

2.09.020: Appointment, Compensation: The members of the voluntary parking enforcement unit shall be appointed by the Chief of Police. Each member shall be designated a voluntary parking enforcement officer and shall serve without pay. (Ord. 1217 §1, 2004)

2.09.030: Authority: The members of the voluntary parking enforcement unit shall possess only those powers, privileges, and duties as specified by the Chief of Police. (Ord. 1217 §1, 2004)

2.09.040: Supervision:

C. When called into duty, the members of the voluntary parking enforcement unit shall be under the direction of the Chief of Police and other officers of the Police Department and shall be subject to all discipline, rules and regulations applicable to paid regular police officers and all special rules and regulations and policies and procedures for the voluntary parking enforcement unit established by the Chief of Police.

D. No parking enforcement volunteer shall, while on duty, willfully disobey any rules or regulations, concerning the unit, or any proper order of the Chief of Police or any other police officer having authority over the parking enforcement volunteer. (Ord. 1217 §1, 2004)

2.09.050: Oath of Office: Before becoming a member of the volunteer parking enforcement unit, parking enforcement volunteer shall take an oath to support the Constitution of the United States and the Constitution of the State of Colorado, the Charter of the City of Fountain and City Codes, and to faithfully perform the duties and assignments of a parking enforcement volunteer. (Ord. 1217 §1, 2004)

2.09.060: Resignation and Removal: Any parking enforcement volunteer may resign upon giving the Chief of Police notice, preferably, in writing of the parking enforcement volunteer's intention, and the Chief of Police may remove any parking enforcement volunteer at any time without cause, without notice, and without appeal. (Ord. 1217 §1, 2004)

2.09.070: Uniforms and Equipment: Uniforms and equipment deemed necessary by the Chief of Police to fulfill the duties and responsibility of a parking enforcement volunteer shall be required. Equipment not provided by the Police Department will be purchased and maintained at the parking enforcement volunteer's own expense. All badges, patches, identification cards and issued uniforms and equipment shall remain the property of the Police Department. (Ord. 1217 §1, 2004)

## **Chapter 2.10**

### **FIRE DEPARTMENT**

Sections:

- 2.10.010 Fire Department Establishment
- 2.10.020 Management
- 2.10.030 Rules and Regulations
- 2.10.040 Incident Command
- 2.10.050 Membership
- 2.10.060 Training
- 2.10.070 Compensation for Volunteers
- 2.10.080 Discrimination
- 2.10.090 Best Qualified
- 2.10.100 Records and Reports
- 2.10.110 Duties
- 2.10.120 Obedience to Orders
- 2.10.130 Authority to Enforce Laws; Powers of Arrest
- 2.10.140 Entering Fire Stations
- 2.10.150 Service Outside Corporate City Limits
- 2.10.160 Investigation of Applicants
- 2.10.170 Volunteer Fire Fighters Compensation, Rules and Regulations
- 2.10.180 Powers of the Fire Department
- 2.10.190 Right of Way
- 2.10.200 Require Aid of Persons Present at Fires
- 2.10.210 Assume Medical Control at Scenes of Accidents or Medical Emergencies
- 2.10.220 Right of Entry
- 2.10.230 Authority Over Fire or Emergency Scenes
- 2.10.240 Penalties
- 2.10.250 Savings Clause

2.10.010 Fire Department Establishment. There is hereby created and established a fire department, under the jurisdiction of the City of Fountain. (Ord. 1152 §1, 2001)

2.10.020 Management: The fire department, all fire apparatus and equipment, and all fire stations and personal property associated therewith shall be under the general supervision of the Fire Chief. The Fire Chief shall manage, control and establish rules and regulations regarding the operation of the fire department. (Ord. 1152 §1, 2001)

2.10.030 Rules and Regulations: The rules and regulations include, but are not limited to, those set forth in the City Personnel Policy and Procedures regarding conduct of the employee, fire department by-laws and standard operating procedures and shall include the following:

- A. Qualifications of Personnel;
- B. Probationary training period;
- C. Compensation and other benefits;
- D. Requirement of training and testing in accordance with accepted standards;
- E. Attendance requirements;
- F. Appointment, removal and discipline of fire department personnel;



- G. Operations, maintenance and care of all fire apparatus, equipment, stations and personal property associated therewith, and such other as the Fire Chief determines appropriate. (Ord. 1152 §1, 2001)

2.10.040 Incident Command: In case of emergency, the first officer or Fire Fighter to arrive on the scene may take command of and direct the fire department as necessary for the suppression of the fire, for the duration of the emergency unless relieved by a higher authority within the Fountain Fire Department, in the best manner possible and as may be necessary for the protection of other property and to prevent the spread of the conflagration. (Ord. 1152 §1, 2001)

2.10.050 Membership: The City Manager shall appoint the Fire Chief. The City Manager and the Fire Chief as he or she is directed by the City Manager, shall appoint all other paid and volunteer fire department staff. Paid Fire Fighters are of superior rank to all volunteers. (Ord. 1152 §1, 2001)

2.10.060 Training: No person shall be appointed to the position of Volunteer Fire Fighter until that person has successfully completed the Fire Department's training course by written and practical examination indicating adequate knowledge of matters, such as fire department by-laws and standard operating procedures, methods of fire fighting, building construction, operation of fire apparatus and equipment, emergency medical care, CPR, hazardous materials, and such other relevant items as shall be directed by the Fire Chief. (Ord. 1152 §1, 2001)

2.10.070 Volunteer Fire Fighters Compensation, Rules and Regulations: Volunteer Fire Fighters shall be compensated as provided in the Rules and Regulations promulgated pursuant to Sections 2.10.020 and 030 of this Ordinance. Such compensation shall include but not necessarily be limited to Workers Compensation. Further, Volunteer Fire Fighters shall be governed by the rules and regulations promulgated pursuant to Sections 2.10.020 and 030 of this Ordinance. Except as expressly stated in such Rules and Regulations, they shall not be subject and/or entitled to any of the provisions of the Personnel Manual of the City of Fountain. Notwithstanding, any provision in such Rules and Regulations to the contrary, Volunteer Fire Fighters shall be deemed to serve the City of Fountain at the will and discretion of the City Manager and Fire Chief. As such, no Volunteer Fire Fighter shall be entitled to enforce any provision of the Personnel Manual of the City of Fountain that pertains in any way to hiring, discipline or firing. (Ord. 1152 §1, 2001)

2.10.080 Discrimination: No person within the department shall be dealt with in any special or different way because of a person's race, color, sex religion, marital status, or national origin. The department prohibits harassment of persons within the department on the basis of the person's race, color, sex, religion, marital status or national origin. Personnel who believe they have been harassed should refer to the City Personnel Manual and notify the Fire Chief or the City Human Resource Director immediately. (Ord. 1152 §1, 2001)

2.10.090 Best Qualified: The volunteer fire fighters are appointed for the purpose of fulfilling a need of the municipality, and shall be done on the basis of appointing the best-qualified person in the positions of volunteer Fire Fighters. (Ord. 1152 §1, 2001)

2.10.100 Records and Reports: The Fire Chief shall keep or cause to be kept a record of all business and training meetings of the department, the attendance of the members, a record of all emergency responses, members response to emergencies, all fire inspection reports and all fire cause and determination reports. A report of the fire department activities for each month shall be filed with the City Clerk monthly. (Ord. 1152 §1, 2001)

2.10.110 Duties: It shall be the function and duty of the fire department and its members to extinguish accidental or destructive fires and prevent the occurrence or spread of such fires, to render appropriate medical care to people or animals, rescue people or animals, to stop, contain or clean up the release of hazardous materials and to enforce applicable Local, State and Federal fire, life safety and hazardous material codes. All members of the fire department shall perform such duties as may be required of them by the Fire Chief and they shall wear such uniforms, caps and badges and other insignia as the Fire Chief may direct. All fire department staff shall abide by all rules and regulations of the Personnel Manual of the City of Fountain, the Fire Department By-Laws and the Fire department standard Operating Procedures Manual. (Ord. 1152 §1, 2001)

2.10.120 Obedience to Orders: No fire department staff member who is on the scene of an incident shall neglect or refuse to obey the lawful orders of the incident commander, his/her sector officer, or the on-scene safety officer. (Ord. 1152 §1, 2001)

2.10.130 Authority to Enforce Laws; Powers to Arrest: The Fire Chief and his designated representatives shall have the authority to enforce, within the city, all Federal, State and Local laws pertaining to fire, life, safety and hazardous materials. The Fire Chief and his designated representatives shall see that the provisions of Federal, State and Local law are enforced and shall arrest or caused to be arrested any person found violating such laws or who shall hinder, resist or refuse to obey any such officer in the discharge of his/her duty. All paid staff personnel are hereby vested with the usual power and authority of police officers as related to these matters. (Ord. 1152 §1, 2001)

2.10.140 Entering Fire Stations: It shall be and hereby is declared unlawful for any person or persons to enter or be in a fire department station or anyplace where the equipment and apparatus or the fire department is stored, at any time, except on business pertaining to the fire department or other city business as determined by the paid staff personnel. (Ord. 1152 §1, 2001)

2.10.150 Service Outside Corporate Limits: While it is general policy of the City of Fountain that the Fire Department will not respond with fire or medical service outside the City limits, there are exceptions such as mutual aid and special circumstances as may be authorized by the City Council, Mayor, City Manager, or Fire Chief. (Ord. 1152 §1, 2001)

2.10.160 Investigation of Applicants:

A. The Chief of Police, and members of the police department acting in his name, are hereby authorized to conduct a field investigation and hereby directed to conduct criminal records checks, drivers license checks and drivers history checks on each applicant for full time or volunteer employment by the fire department.

B. The Chief of Police or a member of the police department acting on his behalf shall prepare a factual summary of the background investigation and criminal records check of each applicant and transmit such summary to the Fire Chief for the purpose of determining the fitness of any applicant.

C. Applicants may be asked to furnish a classifiable set of fingerprints to the Chief of Police, should the preliminary background check warrant further investigation, as determined by the Chief of Police or a member of the police department acting on his behalf. Failure to render such fingerprints may be cause for denial of employment as a full-time or volunteer member of the fire department.

D. Any applicant for membership in the fire department who is denied full-time or volunteer employment on the basis of the investigation summary referred to in this section may inspect that summary for the purpose of clarifying, explaining or denying the accuracy of its content. (Ord. 1152 §1, 2001)

2.10.170 Classification of Fire Fighters: The Fire Chief may classify, upon the basis of education, experience and efficiency, the members of the Fountain Fire Department. All fire department staff shall abide by all rules and regulations of the personnel manual of the City of Fountain. (Ord. 1152 §1, 2001)

2.10.180 Powers of the Fire Department:

A. The Chief of the fire department or incident commander may prescribe limits in the vicinity of any incident under their jurisdiction within which no person, including those who reside therein, excepting necessary fire department personnel, police officers and those admitted by order of the Fire Chief, his assistant or the incident commander shall be permitted to come.

B. No person shall be entitled to take any property in possession of the fire department saved from any incident until that person shall make satisfactory proof of ownership thereof, and approval of fire and police department personnel investigating the incident.

C. No person shall impersonate a fire fighter or officer of the fire department

D. The Chief of his designated representative shall have full power to cause the removal of any property, whenever it shall become necessary to protect such property from fire, or to prevent a spreading of fire, or to protect adjoining property.

E. When a fire is in progress, the Chief of the fire department or his designated representative may order any building or buildings that are in close proximity to such fire to be torn down, blown up or otherwise disposed of for the purpose of checking the conflagration; but

neither the Chief nor any officer or member of the fire department shall unnecessarily or recklessly destroy or damage any building or other property. (Ord. 1152 §1, 2001)

2.10.190 Right of Way: It shall be unlawful for any person to fail to yield the right of way on any street, avenue, lane, alley, or other public or private place inside the city to any vehicle or apparatus of the fire department and to the officers in charge thereof in all cases when in the line of duty. It shall be unlawful for any person to impede or obstruct in any manner the progress of the vehicles of the fire department or the officers in charge thereof. (Ord. 1152 §1, 2001)

2.10.200 Require Aid of Persons Present at Fires:

- A. The Fire Chief and his designated representative are hereby authorized to order any person present at a fire to aid in the extinguishments of such fire and in the removal and protection of personal property there from.
- B. It shall be unlawful for any person to fail or refuse to obey any such order or to otherwise hinder the Fire Chief or his designated representative in the performance of his/her duties; provided, however that no person shall be deemed to be in violation of this section if the identity of the Fire Chief or his designated representative is not made to such person. (Ord. 1152 §1, 2001)

2.10.210 Assume Medical Control at Scenes of Accidents or Medical Emergencies: Medical control at the scene of an accident or emergency in the City of Fountain, or any area designated as the first medical responder for the City of Fountain Fire Department, shall be assumed by the fire department upon arrival. The fire department may transfer medical control from the fire department to an ambulance service with due regard for the welfare to the patient. If in the opinion of the fire department officer in charge, an injured person should be transported to a particular medical facility within El Paso County, the fire department officer in charge may direct the ambulance service to transport the injured person to that facility. It shall be unlawful for any person to fail or refuse to obey any such order of the fire department officer in charge. (Ord. 1152 §1, 2001)

2.10.220 Right of Entry: The Fire Chief or his duly authorized representative shall have the authority to enter any building or premises for the purpose of extinguishing or controlling any fire, performing any rescue operation, rendering medical care, investigating the existence of suspected or reported fires, gas leaks or other hazardous conditions or taking any other action necessary and reasonable in the performance of their duties. (Ord. 1152 §1, 2001)

2.10.230 Authority Over Fire or Emergency Scenes: The Fire Chief and his designated representatives shall have control over fire or emergency scenes. The fire department officer in charge at a fire scene or emergency scene, in the city limits of Fountain, or for which the City of Fountain Fire Department has responsibility, shall have the authority to order the scene cleared of persons or property so that the fire department shall not be hampered or obstructed in the

performance of their duties. It shall be unlawful for any person to fail or refuse to obey such order of the fire department officer in charge. (Ord. 1152 §1, 2001)

2.10.240 Penalties: Any person in violation of any of the provisions of this ordinance shall, upon conviction, be punished by a fine not exceeding one thousand dollars (\$1,000.00) or by imprisonment for a term not exceeding ninety (90) days or both such fine and imprisonment. (Ord. 1152 §1, 2001)

2.10.250 Savings Clause: The City of Fountain hereby declares that should any section, paragraph or word of this ordinance as adopted and amended herein be declared for any reason to be invalid, it is the intent of the City of Fountain that it would have passed all other portions of this ordinance independent of the elimination here from any such portion as may be declared void. (Ord. 1152 §1, 2001)

## Chapter 2.12

### PERSONNEL BOARD

#### Sections:

2.12.010	Creation and Purpose
2.12.020	Membership
2.12.030	Members - Term of Office - Removal
2.12.040	Meetings and Procedures
2.12.050	Jurisdiction
2.12.060	Appellate Hearing Authority
2.12.070	Quorum
2.12.080	Vacancies
2.12.090	Conflict of Interest

2.12.010 Creation and Purpose. The City of Fountain Personnel Board is hereby created to hear all grievances and appeals of City employees pursuant to the City Charter and personnel policies and procedures adopted by the City Council.<sup>3</sup> (Ord. 795 §1, 1988)

2.12.020 Membership. The Personnel Board shall consist of three members and three alternate members, who, prior to appointment shall be in compliance with all applicable eligibility requirements as set forth in the City charter. If any member ceases to reside within the City, his membership shall automatically be terminated. All members shall serve without compensation and shall not hold any elective municipal office. Nor shall any member be an employee of the City. Alternate members shall act in place of regular members who are incapacitated, absent or otherwise unable to act or who have a conflict of interest. (Ord. 795 §1, 1988)

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<sup>3</sup> For Charter provisions on personnel matters, see section 11.1; see also Chapter 2.14 of this Code.

2.12.030 Members - Term of Office - Removal. A member and an alternate member shall be appointed by the City Council from each of the three wards of the City for a term of three years. Initial terms of members shall be one, two and three years respectively, and thereafter as terms expire all appointments shall be made for three years. Both regular and alternate members shall be subject to removal from office for just cause by a majority vote of the City Council. (Ord. 795 §1, 1988)

2.12.040 Meetings and Procedures. The Personnel Board shall promulgate its own rules of procedure; provided, however, that such procedures shall not be in conflict with the City's personnel policies and procedures. All official meetings shall be recorded and minutes thereof prepared by the City Clerk's Office. The Personnel Board shall select from its membership a chairman and such other officers as deemed necessary. (Ord. 795 §1, 1988)

2.12.050 Jurisdiction. The Personnel Board shall have jurisdiction and final authority to hear and determine employees' grievances and appeals of suspensions, demotions or dismissals, pursuant to the personnel policies and procedures adopted by the City Council. (Ord. 795 §1, 1988)

2.12.060 Appellate Hearing Authority. The Personnel Board is authorized to review appeals of employees properly filed pursuant to the personnel manual. The Personnel Board shall review the merits of any appeal and upon conclusion of the hearing, shall issue findings of fact and shall sustain, mitigate or reverse the disciplinary action in question. In carrying out its function of conducting appellate hearings, the Personnel Board shall have access to all City documents it deems necessary as well as the authority to compel the appearance of and to question witnesses. (Ord. 795 §1, 1988)

2.12.070 Quorum. A majority of the authorized members shall constitute a quorum of the personnel board. (Ord. 795 §1, 1988)

2.12.080 Vacancies. Vacancies shall be appointed for the remainder of the unexpired term. In the event an unexpired term is for a period of less than six months, the Council may appoint a replacement for the regular term plus the unexpired portion of the vacated term. (Ord. 795 §1, 1988)

2.12.090 Conflict of Interest. Any member of the Personnel Board having a conflict of interest shall disqualify himself from voting on such matter. The alternate for that member shall replace the disqualified member in the appeal under review. If the alternate for that member is unavailable, then one of the other alternate members may replace the disqualified member. (Ord. 795 §1, 1988)

## **Chapter 2.14**

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## I. PURPOSE AND AUTHORITY

### 2.14.010 Purpose.

A. The personnel policies and procedures contained in this chapter have been adopted in order to insure equal application of personnel policies, to assist supervisors in

personnel management and to make employees aware of not only their rights and benefits, but the rules by which they must abide while in City service. This chapter is intended to provide guidelines, which may not address every situation. Management must interpret and apply these policies on a case-by-case basis.

B. The personnel policies and procedures contained in this chapter do not and are not intended to create a contract between the City of Fountain and any employee. Policy statements within this chapter are not to be construed as promises of specific treatment but are merely general statements of City policy and, thus, not binding. The policies and procedures contained herein may be changed, altered or otherwise amended at any time in the discretion of the City, and such modifications may apply to then current as well as future employees. This chapter supersedes any other personnel policies and shall take precedence over any department policies in the event of a conflict. (Ord. 801 §1, 1988)

2.14.020 Equal Employment Opportunity. The City of Fountain is an equal opportunity employer. No applicant or employee shall be discriminated against because of race, color, creed, ethnic heritage, sex, national origin, age, religion, handicap or political affiliation. (Ord. 801 §1, 1988)

2.14.030 Management Authority. The City Manager shall be responsible for the effective administration of these policies and procedure and may delegate such functions as he deems necessary. The City Manager may establish, adopt, amend or rescind other administrative policies and procedures consistent with the applicable provisions of the charter, ordinances and resolutions. (Ord. 801 §1, 1988)

## II. DEFINITIONS

2.14.040 Definitions. As used in this chapter unless the context clearly indicates or requires otherwise, certain words and terms are defined as follows:

A. Appeal and Grievance. A request by an employee for review or reconsideration of disciplinary action taken by management against a regular, full-time employee. Such appeals and grievances shall be limited to dismissals, demotions or suspensions.

B. Compensation Plan. A compilation of job titles grouped according to similar value and with each job title assigned to a salary grade. In each salary grade there is a range from a minimum to a maximum rate.

C. Complaint. A non-appealable complaint to management involving work conditions, work relationships, or the interpretation of rules or policies concerning personnel policies and employment.

D. Demotion. Disciplinary action, for cause, whereby a regular, full-time employee is moved from a position in one salary grade to a position in a lower salary grade.

E. Department Head. A department head or supervisor in charge of a department.

F. Disciplinary Action. A verbal warning, written warning, suspension, demotion or dismissal. This term does not include a transfer, change in assignment, change in working hours, layoff, or other terms and conditions of employment.

G. Dismissal. The involuntary separation of an employee from City employment for cause.

H. Employee Advisory Group. A group comprised of one primary and one alternate person (other than department head) from each department. The primary purpose of the group is to establish an ongoing process for providing input regarding employee relations to City management, identify and evaluate employee issues, and provide objective recommendations to the department heads or City Manager.

I. Exempt Position. An employee who is exempt from overtime compensation in accordance with the Fair Labor Standards Act.

J. Immediate Family. Immediate members of the family means spouse, parent, parent-in-law, guardian, child, son-in-law, daughter-in-law, brother, brother-in-law, sister, sister-in-law, grandparents or any family member residing in an employee's household.

K. Layoff. Separation due to a budget cut, curtailment of work, change in operations or organizational structure, or reclassification of a position.

L. Non-exempt Position. An employee who is subject to overtime pay and compensatory time in accordance with the Fair Labor Standards Act.

M. Personnel Board. A board appointed by the City Council and whose function is to review all appeals and grievances filed pursuant to the personnel manual. Employee complaints shall not be reviewed by this board.

N. Probation. The time period following the date of hire to determine the employee's fitness for a particular position.

O. Probationary Employee. An employee who is terminable at will.

P. Promoted Employee. An employee who accepts a promotion to a new position in a higher salary grade. Promoted employees are subject to being placed back in their previous position and salary grade without cause during the first three months in their new position.

Q. Reclassification. The assignment of a position to a different class involving a change in duties and responsibilities and a change in salary grade designation.

R. Regular Full-time Employee. A person employed on a regular basis, working an average of 40 hours per week. Paid Fire Department employees, including the Chief of the Fire

Department, are intended to be included within the definition of Regular full-time Employee for the purposes of this Ordinance even though they might also be considered shift employees.

S. Shift Employee. Any employee appointed to a position whereby the nature of the position requires that the employee will work hours other than normal work hours and on weekends and designated holidays.

T. Suspension. A temporary separation from City service for disciplinary purposes, without pay and not to exceed ten (10) working days.

U. Transfer. The movement of an employee from one position to another position of the same grade classification, in most cases across departmental lines. A transferring employee maintains his accrued City benefits and service time.

V. Vacancy. A duly created position which is not occupied and for which funds have been budgeted. (Ord. 801 §1, 1988; Ord. 1016 §1, 1995; Ord. 1016 §2, 1995; Ord. 1016 §3, 1995; Ord. 1031 §1, 1996; Ord. 1076 §1, 1998)

### **III. RECRUITMENT AND SELECTION OF EMPLOYEES**

2.14.050 Application Procedure. The City only accepts applications for open positions. Applications of non-selected applicants shall be retained for a period of six (6) months. (Ord. 801 §1, 1988)

2.14.060 Employment Process. It is the policy of the City of Fountain to provide adequate notice of vacant positions to prospective applicants. Such notice of vacancy shall be posted in each department for a period of five (5) business days. Each vacancy notice shall specify the title, salary and nature of job; the required minimum specifications; and the deadline for receipt of application. Each notice shall also contain a statement affirming the City's commitment to a policy of equal employment opportunity. An advertisement approved by the City Manager may also be placed in local and/or metropolitan newspapers, newsletters, professional publications, trade journals and such other similar types of publications. The Police and Fire Departments may modify the hiring procedures contained in this part provided such procedures are in writing and have been approved by the City Manager. (Ord. 801 §1, 1988)

2.14.070 Posting of Job Announcements. The City Manager shall have the following options in seeking to fill a job vacancy with a regular, full-time employee:

- A. Post the vacant position as open only to those employees within that department;
- or
- B. Post the vacant position as open only to City employees; or
  - C. Post the vacant position as a regular position announcement. (Ord. 801 §1, 1988)

2.14.080 Selection Procedure.

A. The City Manager shall review all applications with the Department Head. The City Manager or department head shall notify acceptable applicants for interview. At least three candidates will be interviewed for the position when possible. Applicants who do not meet the minimum qualifications of the vacant position shall not be eligible for employment in that position. If the City Manager determines that none of the applicants are acceptable, then the position may be re-opened for additional applicants.

B. The City Manager, upon recommendation of the department head, where applicable, shall make the final selection of the person to hire. (Ord. 801 §1, 1988)

2.14.090 Hiring Above the Minimum. Newly appointed employees shall be hired at the first step of the salary grade appropriate for their job classification, except for the following:

A. Recruitment Difficulties. If severe recruitment difficulties exist in finding qualified applicants for a particular position, an applicant may be hired at a higher step and salary.

B. Exceptional Qualifications. In certain instances, an applicant may be hired above the first step based on qualifications or experience that exceed the entry-level qualifications. An applicant hired above the first step may be granted an end-of-probation increase with the City Manager's approval, unless such employee was hired at the maximum rate of pay for that position.

C. Reclassification. A department head who believes that a particular position requires a higher classification and salary may submit a recommendation to the City Manager that such position be reclassified. (Ord. 801 §1, 1988)

2.14.100 Relocation Expenses. It is the City's general policy not to pay the relocation expenses of any City employee. However, the City Council may, in its discretion, approve payment of such expenses. (Ord. 801 §1, 1988)

2.14.110 In-Processing and Briefing. On or before the first day of employment, new employees shall report to the Finance Department for in-processing and briefing. (Ord. 801 §1, 1988)

2.14.120 Types of Employees.

A. Regular Full-Time Employees. An employee who has been appointed to a regular full-time position and has successfully completed the probationary period shall become a regular, full-time employee. Such employees are normally required to work at least 40 hours per week for the entire year. Such employees are entitled to all of the employee fringe benefits set forth in this chapter.

B. Temporary Employees. Employees who are appointed to a temporary position are considered temporary employees and are not entitled to employee fringe benefits.

C. Probationary Employees. Except for sworn law enforcement personnel who are subject to a twelve-month probationary period, all new employees hired for a regular, full-time position shall serve a probationary period of six months. The purpose of the probationary period is to provide an ongoing evaluation of the employee's ability to perform the duties of the position. Each employee shall receive a written review at the end of the probationary period. At any time during or at the end of the probationary period, the department head, at his or her pleasure, may recommend to the City Manager immediate termination of a probationary employee. Although such employees may file complaints as set forth in Part VI, they shall have no right to appeal any disciplinary action taken against them.

Upon recommendation of the supervisor or department head a probationary period may be extended for an additional six (6) months by the City Manager. At the completion of the probationary period, the employee shall either be made a regular full-time employee or shall be terminated.

The promotion or transfer of an employee from one department to another does not necessarily mandate a new or extended probationary period. However, if and when the head of the receiving department determines that the situation reasonably and appropriately deserves a period of probation, the department head may condition the transfer or promotion into the department upon the employee's agreement to accept probationary status for any period not to exceed the normal probationary period for that department. If the employee elects not to accept the transfer or promotion because of the requirement for probation, the employee may not be disciplined for refusing to accept the probation, and may stay in the current employment position subject to the normal employment conditions as set forth in this manual. (Ord. 801 §1, 1988; Ord. 1016 §4, 1995)

D. Contractual Employees. Individuals who are hired on a full or part-time basis to complete a specific task within a specified time frame. Such contractors are not eligible for employee fringe benefits, except as specifically set forth in the individual's contract. (Ord. 801 §1, 1988)

#### **IV. CONDITIONS OF EMPLOYMENT**

2.14.130 Personnel Files. Personnel files, with the exception of applications and performance ratings are of a confidential nature and in accordance with Colorado law, shall not be released to the public. The Finance Department will maintain the official personnel file. An employee may review his or her personnel file in the company of the Finance Director or designee. An employee's personnel file may be used by the City to defend any litigation, grievance or appeal, unemployment claim or workmen's compensation claim involving the employee. (Ord. 801 §1, 1988)

#### 2.14.140 Use of City Property.

A. Property or equipment owned by the City of Fountain shall not be used for any purpose other than official business unless previously approved by Council.

B. City employees using City property are responsible for its use and safe return. (Ord. 801 §1, 1988; Ord. 1086 §1, 1998)

2.14.150 Nepotism.

A. Applicants or employees shall not receive preferential treatment because of relationship to another employee. No member of the immediate family or the household shall be hired as an employee within the same department, which already employs a member of the immediate family or household.

B. If any employees within the same department become members of the immediate family or household subsequent to their date of hire, then the City Manager shall have the discretion to permit such employees to continue employment within the same department. However, in no event shall members of the immediate family or household work in departments in which they would be supervised by another member of the immediate family or household. The City Manager may consider the following factors in allowing such members to continue within the same department: whether job performance of any employee is affected by the relationship; whether the relationship is contrary to department morale or disruptive to the operation of that department; whether there are any actual or potential conflicts of interest resulting from the relationship; and whether it is in the best interests of the City to continue the employment of members of the immediate family or household within the same department. (Ord. 801 §1, 1988)

2.14.160 Political Activity.

A. No employee or applicant for employment with the City shall be required to divulge personal information concerning political affiliation, activities or belief as a condition of present or future employment.

B. No employee or official of the City, whether elected or appointed, shall attempt to direct or coerce any City employee to contribute to or participate in any political campaign, party or organization. No employee's pay, personnel status or promotion shall be made dependent upon such activities.

C. No political campaigning by City employees shall take place in City buildings during working hours or in the performance of official job-related duties.

D. No petitions for nominations or recall shall be circulated in any City building or while an employee is working on City time. (Ord. 801 §1, 1988)

2.14.170 Falsification or Misrepresentation of Applications. Falsification or misrepresentation of information for employment or promotion by an applicant shall be grounds for disqualification or discharge. (Ord. 801 §1, 1988)

2.14.180 Public Office. Any City employee who has filed an acceptance of a petition for nomination as a candidate of an elective office of Fountain shall immediately resign from such job by submitting a written resignation to the City Manager. (Ord. 801 §1, 1988)

2.14.190 Citizen Contact. City employees are employees of the public. City employees shall try to avoid confrontations with the public. If a City employee does come into contact with abusive or belligerent persons, the employee shall first attempt to placate such person and if unsuccessful, the employee shall refer such person to the immediate supervisor in a courteous and tactful manner. (Ord. 801 §1, 1988)

2.14.200 Outside Employment. If the City Manager determines that any employee's outside employment interferes with or affects the performance of duties or results in a conflict of interest, such employee shall be required to either give up the other job or be terminated. Any employee shall obtain prior written approval of the department head and City Manager for outside employment. (Ord. 801 §1, 1988)

2.14.210 Bribes. Any attempt to bribe, give special favors to, request special consideration from a City employee shall be reported immediately to the department head who shall report the matter to the City Manager for investigation. (Ord. 801 §1, 1988)

2.14.220 Work Hours. Standard working hours for City employees, except for shift personnel, shall be 8:00 a.m. to 5:00 p.m., Monday through Friday, with a one-hour lunch break and fifteen (15) minute morning and afternoon breaks. To meet the needs of the public, the City Manager or department head may adjust the eight (8) hour workday schedule, establish lunch and break periods and authorize flexible working hours for their employees.

A. Fire Protection Employees - Work Hours and Compensation. The City Fire Chief shall recommend to the City Manager, and upon receiving prior written approval from the City Manager, the City Fire Chief shall establish the standard working hours and maximum hours for purposes of calculating overtime compensation for fire protection employees, provided, however, that such standard working hours and maximum hours are consistent with the Fair Labor Standards Act, 29 U.S.C. § 207 (k), and the regulations governing fire protection employees. Fire protection employees shall be paid a salary as compensation for all hours worked up to the maximum hours established by the City Fire Chief. Each employee's salary shall be equal to the employee's applicable hourly rate multiplied by 80 for each two-week pay period. The City Fire Chief may establish other compensation and personnel policies for fire protection employees regarding sleep time, meal time, early relief and other issues unique to fire protection employees, provided, however, that such policies are consistent with the Fair Labor Standards Act and the regulations governing fire protection employees. This provision, and any policy or procedure established for fire protection employees pursuant to this provision, shall take precedence over any other inconsistent provision in the Personnel Policies and Procedures ordinance with regard to fire protection employees. (Ord. 801 §1, 1988; Ord. 1031 §1, 1996; Ord. 1086 §2, 1998)

2.14.230 Employee Medical Examinations. Any new employee may be required to submit to a medical examination when the department head or supervisor has determined that



such employee's ability to perform may be impaired. Such medical examination shall be conducted by a City appointed physician and shall be at the City's expense. (Ord. 801 §1, 1988)

2.14.240 Sexual Harassment Policy. It is the policy of the City of Fountain to provide a work environment that is free from harassment of individuals because of their sex and to prohibit sexual harassment by all employees at all levels. Sexual harassment includes, but is not limited to, physical contact, innuendo, propositioning, sexual comments or jokes, display of sexually-explicit materials and job threats or requests in return for sexual favors. If an employee feels that he or she has been the victim of sexual harassment, then that employee should contact the supervisor, department head, or City Manager. These reports will remain confidential to the extent possible. All such reports will be investigated immediately. If such a report is found to be valid, disciplinary action will be taken against the offending party. (Ord. 801 §1, 1988)

## **V. DISCIPLINARY PROCEDURES**

2.14.250 Purpose. City employees are expected to exhibit minimum standards of good conduct. Those who do not shall be subject to disciplinary action. It is a privilege to work for the City and that privilege may be withdrawn if an employee fails to comply with minimum standards of good conduct. This part is not intended to specify minimum standards of good conduct in every context or to cover every situation in which an employee maybe subject to disciplinary action. (Ord. 801 §1, 1988)

### 2.14.250 Drug Free Workplace.

A. The unlawful manufacture, distribution, dispensing, possession or use of a controlled substance (unauthorized or illegal), or the misuse of any legal drugs on City premises or while on City business by any City employee, to include permanent, full-time, part-time, temporary, volunteer, public service, Summer Youth Program, etc., will subject said employee to discipline, including termination or rehabilitation.

B. As a condition of employment with the City of Fountain, employees must abide by the terms of the Drug Free Workplace Policy statement and must notify the City of Fountain in writing of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.

C. Within ten (10) days of receipt of notice from an employee or otherwise having received actual notice of such conviction, the City must notify the appropriate federal or state agency in writing of said employee notice or receipt of actual notice.

D. Within thirty (30) days of receipt of notice that an employee has been convicted of any violation of a criminal drug statute that occurred in the workplace, the City will:

1. Take appropriate personnel action against such an employee, up to and including termination; or

2. Require such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purpose by a federal, state, or local health, law enforcement, or other appropriate agency.

E. The City has a number of jobs, which present special safety considerations to employees. These include all positions in the City of Fountain Police Department, the City of Fountain Fire Department and all positions under public works involving the use of vehicles, equipment and moving machinery. The City may require that all employees on jobs which involve such special safety considerations be tested periodically for the use of drugs and may require other employees in sensitive areas to be so tested. An employee with positive test results may be found disqualified to work in such a job and will be subject to discipline, including termination or rehabilitation.

F. Department heads in such sensitive areas may require that new employees be tested for the use of drugs as part of their pre-employment medical examinations. Positive test results will be considered in employment decisions and may result in a decision that the applicant is medically unqualified for employment.

G. Each employee is responsible for promptly reporting to his supervisor any use of prescribed medication which may affect the employee's judgment, performance or behavior. In addition, each employee is required to notify his or her immediate supervisor of any conviction for any drug related criminal offense.

H. The City shall maintain an employee assistance referral program through the Fountain Police Department. It strongly urges employees to use the program for help with alcohol or drug problems. It is each employee's responsibility to seek assistance from the employee assistance program before the problem affects the employee's judgment, performance or behavior. (Ord. 993 §1, 1993)

2.14.260 Causes for Disciplinary Action. Causes for disciplinary action shall include, but shall not be limited to, the following:

- A. Engaging in offensive, threatening, discourteous or abusive behavior toward the public, co-workers or supervisors.
- B. Deliberate or careless conduct endangering the safety of any person.
- C. Carelessness, negligence, misuse, intentional destruction or theft of city property.
- D. Reporting for work under the influence of alcohol or illegal drugs.
- E. Consuming alcohol or illegal drugs during working hours.
- F. Refusal or failure to comply with proper instruction of the supervisor.
- G. Incompetence, inefficiency or neglect in the performance of job duties.

- H. Failure to establish and maintain effective working relationships with employees, supervisors, other public agencies or the public.
- I. Failure to perform required job duties because of inadequate knowledge, skills or ability.
- J. Unauthorized absence from work or unauthorized tardiness.
- K. Horseplay, loafing or sleeping on the job.
- L. Violation of a safety rule or practice.
- M. Misrepresentation or falsification of information in an application form, personnel record time report, or other city report or record, or in a verbal statement.
- N. Sexual harassment of an employee or the public.
- O. Failure to comply with department policies, procedures or directives.
- P. Using, threatening or attempting to use personal or political influence in an effort to secure special consideration as a city employee.
- Q. Disclosing to unauthorized persons any confidential information gained through employment with the city.
- R. Violation of personnel policies and procedures.
- S. Felony conviction. (Ord. 801 §1, 1988)

2.14.270 Determining Disciplinary Action. Proper disciplinary action has to be determined on a case-by-case basis, taking into consideration the severity of the offense, frequency of the occurrence, the attitude, honesty or sincerity of the employee charged with a violation of good conduct, extenuating circumstances, if any, the individual's past record and any other relevant factors. The selection of a particular action is within the discretion of the person taking the disciplinary action. There is no express or implied right on the part of the employee to receive disciplinary action in a progressive order. For example, an employee may be demoted or discharged for a first-time offense. When disciplinary action is indicated, these guidelines should be followed:

- A. Primary responsibility for individual discipline is that of the individual's immediate supervisor or department head. The City Manager shall be directly responsible for disciplinary action taken in regard to department heads or employees directly under his control.

B. The City Manager or his designee shall be consulted prior to any disciplinary suspension, demotion or discharge action. The City Attorney may also be consulted if there is a question about proper disciplinary action taken. (Ord. 801 §1, 1988)

2.14.280 Disciplinary Actions. City employees may be subject to the disciplinary actions as set forth below:

A. A verbal warning may be given by the department head or supervisor except in cases where the nature of the offense is considered serious enough to warrant a written warning, suspension, demotion or discharge. Verbal warnings should be documented in departmental personnel files noting the date of the warning, the offense, and other relevant information.

B. A written warning may be given by the department head or supervisor in an effort to improve employee performance. The individual should sign this warning and a copy should be given to him/her. The original shall be placed in the employee's personnel file. If the disciplined individual refuses to sign the warning, a witness should be secured to note the refusal by signing in the appropriate place on the form. The department head or supervisor is required to explain the disciplined individual's right to file a complaint at the time the warning is given. A written warning should include a statement indicating that if the offense is repeated or any other offense occurs, the employee may be subject to additional disciplinary action, including discharge.

C. Suspension of three to ten working days without pay may be given for cause in an effort to improve employee performance. The department head or supervisor is required to explain the disciplined individual's right to file an appeal and grievance at the time the notice of suspension is given and the reasons for the suspension.

D. Demotion may occur when the department head or supervisor reduces for cause the classification of a permanent full-time employee to a lower position. The department head or supervisor is required to explain the disciplined individual's right to file an appeal and grievance at the time the notice of demotion is given and the reasons for the demotion.

E. Discharge may occur for cause at the discretion of the department head or supervisor. The department head or supervisor is required to explain to the employee the right to file an appeal and grievance at the time of the notice of termination is given and the reasons for the discharge. (Ord. 801 §1, 1988)

Section 2.14.290 Probationary Employees. Probationary employees are terminable at will and are not entitled to any of the disciplinary actions of Section 2.14.280. While probationary employees are not entitled to any of the disciplinary action(s), probationary employees may receive disciplinary action(s) in the event a supervisor or department head determines that it would be appropriate. Probationary employees have no right to file an appeal or grievance in response to the application of any disciplinary action. (Ord. 1016 §5, 1995)

## **VI. COMPLAINTS, GRIEVANCES AND APPEALS**

2.14.300 Purpose. All employees, whose employment relation is not otherwise covered by the City Charter, shall have a formal procedure whereby they can seek redress of complaints as defined herein, and they shall be able to do so without fear of recrimination. All permanent, full-time employees, whose employment relation is not otherwise covered by the City Charter, will also have a formal appeals and grievance procedure whereby dismissals, demotions or suspensions may be reviewed. (Ord. 801 §1, 1988)

2.14.310 Complaint Procedure. A complaint is a disagreement between a department head or supervisor and an employee. It is a non-appealable complaint regarding interpretations of policies and procedures, work conditions or work relationships and shall not be heard by the Personnel Board. An employee with a complaint will attempt to settle the matter with the immediate supervisor or department head. If the employee is not satisfied with the decision of the supervisor or department head, then the employee may obtain further review from the City Manager. The City Manager shall make a written determination of the complaint within ten (10) calendar days of the request. The City Manager's decision shall be final. (Ord. 801 §1, 1988)

2.14.320 Appeals and Grievances. An appeal and grievance is a request for review or reconsideration of certain forms of disciplinary action taken against a regular, full-time employee. Such appeals and grievances shall be limited to discharge, demotion or suspension. The Personnel Board shall hear such requests for review and the steps below shall be followed:

A. The employee shall submit his request for review by the City Manager and the justification therefor in writing to the City Clerk within ten (10) calendar days of the date of the notice of the action adversely affecting the employee. Failure to request review by the City Manager shall be considered a waiver of the employee's appeal and grievance rights, and the notice of suspension, demotion or discharge shall be final.

B. The City Manager shall attempt to resolve the matter informally and will notify the employee in writing of his decision within fifteen (15) calendar days. The employee may continue the appeals and grievance process after receiving the City Manager's decision by submitting a written request to the City Clerk for a hearing before the Personnel Board within twelve (12) calendar days or the employee shall be considered to have forfeited his/her appeal and grievance rights and the decision of the City Manager shall be final. Such request for hearing must state the reasons for the appeal and grievance. The hearing shall be held within twenty (20) calendar days of submission of the written appeal or grievance to the Personnel Board, unless the hearing date has been continued by the Personnel Board for good cause. A notice of hearing shall be sent by the City Clerk to all interested parties.

C. The hearing before the Personnel Board shall be as informal as is compatible with the requirements of justice, and the Personnel Board shall not be bound by formal rules of evidence.

D. The Personnel Board shall issue a written decision within five (5) calendar days after the conclusion of the hearing. This decision shall be final and binding for all parties involved.

E. All employees who file appeals or grievances and their witnesses shall be free from restraint, coercion, discrimination or reprisal at any stage in the presentation and the processing of an appeal or any time thereafter. The City Manager shall review any allegation of such action in connection with the presentation of an appeal or grievance and take appropriate timely remedial action. (Ord. 801 §1, 1988; Ord. 1086 §3, 1998)

2.14.330 Effective Date of Management Action. Any notice of suspension, demotion or dismissal decision shall not be effective until the appeals and grievance process, as specified herein, has concluded. (Ord. 801 §1, 1988)

2.14.340 Layoffs Due to Reclassification, Reorganization or Budget Cuts. The appeals and grievance process, as provided herein, shall not be applicable to layoffs necessitated by a budget cut, reclassification of a position or reorganization. (Ord. 801 §1, 1988)

## **VII. COMPENSATION**

2.14.350 Pay Plan. Compensation for all City of Fountain employees shall be based upon a pay plan adopted by the City Council. Pay grades shall relate to specific position classifications, and in no case shall an employee be paid outside the pay grade for his or her classification. The pay plan shall establish minimum and maximum rates of pay for each position classification. (Ord. 801 §1, 1988)

2.14.360 Classification Plan. Each City position shall be contained in a classification plan. The City Manager shall be responsible for the administration of such plan and shall have the authority to classify any new positions or to reclassify existing positions. The City Manager may also eliminate any position in such plan; provided, however, that if such action results in the consolidation, abolishment, division, or restructuring of any of the City departments, the advise and consent of the City Council shall be required. (Ord. 801 §1, 1988)

2.14.370 Determining Pay Levels. In establishing pay ranges for specific position classifications, the City Council may consider prevailing rates of pay for comparable public and private agencies in the surrounding area, cost of living increases, the financial condition of the City, and such other factors warranting pay plan adjustments. (Ord. 801 §1, 1988)

### 2.14.380 Salary Increases.

A. End of Probation Increase. A one-step increase for satisfactory performance of duties shall be granted upon completion of the employee's probationary period of six months.

B. First Year Anniversary. Employees may also be eligible for a one-step increase at the conclusion of their first year of employment upon satisfactory completion of their duties during this period and with the recommendation of the supervisor or department head.

C. Merit Increases. With the approval of the City Manager, a one-step merit pay increase may be given to an employee, who has demonstrated greater productivity or increased effectiveness in job performance. A merit pay increase may be granted no sooner than six (6)

months after the employee's first year anniversary and no more often than one merit pay increase each six-month period thereafter, not to exceed the maximum rate of pay authorized for a position. (Ord. 801 §1, 1988; Ord. 1086 §4, 5, and 6, 1998)

#### 2.14.390 Payroll Information.

A. The City of Fountain has a semi-monthly payroll system with payroll checks being issued on the 15th and the last day of each month. If the payroll date falls on a holiday or a weekend, then checks will be issued on the preceding workday.

B. Payroll Deduction Authorization. Employees shall submit any change in dependents, marital status, insurance coverage or deferred compensation to the Finance Department. (Ord. 801 §1, 1988; Ord. 1070 §1, 1997)

2.14.400 Pay Advances. Employees may receive pay advances on accrued vacation time for vacations taken during the pay period for which the advance is being requested. Any other pay advance requests shall be only on an emergency basis. The entire amount of the pay advance shall be deducted from the employee's next regular payroll check. No more than one (1) pay advance shall be permitted in any one month. All pay advance requests shall be in writing and must be approved by the department head or supervisor and the Finance Department. (Ord. 801 §1, 1988; Ord. 1086 §7, 1998)

2.14.410 - Overtime Compensation. All employees shall be classified in accordance with the Fair Labor Standards Act. Exempt employees, as defined in 2.14.420A, are not eligible for overtime pay. All other non-exempt employees are eligible for overtime pay. Overtime, in general, is discouraged and must be authorized prior to the performance of such work. Any employee who works unauthorized overtime shall be subject to disciplinary action, including discharge. City holidays, vacation leave, sick leave or compensatory time do count towards computation of overtime. Employees will not be released from work for the sole purpose of avoiding overtime. (Ord. 801 §1, 1988, Ord. 993, §, 1993; Ord. 1086 §8, 1998))

#### 2.14.420 - Compensatory Time for Exempt Employees.

A. The following personnel are exempt employees and shall not be eligible for overtime: City Manager, Public Works Supervisor, Electric Department Supervisor, Water Department Supervisor, Director of Public Utilities, City Clerk, Director of Finance, Director of Community Development, Police Chief, Deputy Police Chief, Fire Chief, Deputy Fire Chief, Utility Supervisor, and any other supervisory, administrative or professional positions as designated by the City Manager. Exempt employees shall receive compensatory time off in lieu of overtime except in exceptional cases when an exempt employee performs work usually performed by an employee within the department and the work is done under circumstances, which would normally justify overtime pay for an employee. When an exempt employee requests overtime pay, the request must be approved by the City Manager. If the request for overtime pay is denied, compensatory time shall be granted as long as the circumstances justify the granting of compensatory time.

B. Compensatory time shall accrue at the rate of one hour for each hour worked in excess of forty (40) hours per week. Although compensatory time may be used at the employee's discretion, any such time used in excess of forty (40) hours at any one period shall be approved by the City Manager. Any such time used in excess of eighty (80) hours during any one period of time shall be approved by the City Council. Upon separation of employment with the City, such employees shall not be paid for any accumulated compensatory time. (Ord 801 §1, 1988; Ord. 993, §1, 1993; Ord. 1086 §9, 1998))

2.14.430 Compensatory Time for Non-Exempt Employees. A non-exempt employee who is eligible for overtime compensation may be granted compensatory time off in lieu of payment of overtime worked. Compensatory time for non-exempt employees shall be calculated on a time and one-half basis, as overtime compensation is earned. Compensatory time off must have approval of the department head or supervisor and must be taken no later than six months from the end of the pay period in which the overtime is worked. Although the Fair Labor Standards Act does allow more compensatory time to be accumulated by certain public employees engaged in public safety activity, emergency response activity or seasonal activity, all non-exempt employees shall be allowed to accumulate compensatory time up to a maximum of 240 hours. Overtime not taken as compensatory time off shall be paid. (Ord. 801 §1, 1988)

2.14.440 Overtime Distribution. The department head or supervisor shall equally distribute the opportunity to work overtime among qualified employees. (Ord. 801 §1, 1988)

2.14.450 Overtime Refusal. An employee who is required to work overtime and refuses to do so may be subject to disciplinary action. (Ord. 801 §1, 1988)

2.14.460 Emergency Call-Out. All employees are subject to emergency call-out for unscheduled overtime. Non-exempt employees called out shall be compensated for hours worked at the appropriate overtime rate. Employees on emergency call-out of 4 hours or more may be provided meals at the City's expense. (Ord. 801 §1, 1988)

2.14.470 Weekend Standby. Employees who are scheduled for weekend standby shall be paid at the rate of six (6) hours of straight time. Weekend standby personnel shall also receive overtime compensation when called out. Weekend standby personnel are those employees who must be immediately available for call-out and capable of performing assigned duties from 5:00 p.m. Friday until 8:00 a.m. Monday with the exception of a holiday weekend. A weekend standby employee who is unavailable for call-out or is incapable of performing assigned duties may be subject to disciplinary action. (Ord. 801 §1, 1988)

2.14.480 Lunch and Break Periods. Policies concerning lunch breaks may be established by department heads. Employees will be granted a minimum of 30 minutes time off for lunch. For certain designated shift workers, the lunch period is a paid part of the workday. Employees will be granted one, 15-minute paid break period during each 4-hour work period. (Ord. 801 §1, 1988)

2.14.490 Adverse Weather. Except for essential services, the City Manager shall have the authority to decide whether to close City offices or to delay opening, because of adverse



weather conditions. When weather conditions do not warrant closing City offices, a department head or supervisor may grant additional time, up to a maximum of one (1) hour, without a reduction in pay, to those employees who, because of weather conditions, are unable to arrive at work on time. Regular, full-time employees who are excused from work under adverse weather conditions shall receive their normal rate of pay. Those essential employees who are required to remain on the job shall receive their normal rate of pay. (Ord. 801 §1, 1988)

#### 2.14.500 Other Compensation.

##### A. Travel Expenses.

1. Mileage allowance. If an employee is required and authorized to use a personal vehicle in the course of official City business, such employee shall be reimbursed for mileage at the rate allowed by the City Council.

2. Travel advances. Travel advances may be made to cover meals, lodging, registration fees and other expenses while on official City business upon approval of the City Manager. Advances shall be accounted for on a voucher or travel expense report with receipts attached.

3. Meals and lodging expense. The City shall reimburse employees for reasonable and necessary lodging and meal expenses incurred while traveling on official City business. Unreasonable expenses will not be reimbursed. The employee shall submit a travel expense report with receipts.

B. Reimbursement for Business-Related Expenses. An employee may be reimbursed for reasonable and necessary out-of-pocket expenses incurred in connection with City business. Such reimbursement shall require a dated receipt and such other documentation as required by the City Manager. (Ord. 801 §1, 1988)

## VIII. LEAVE

#### 2.14.510 Holidays.

##### A. The City of Fountain recognizes the following holidays:

New Year's Day	January 1st
Martin Luther King, Jr. Day	January, 3rd Monday
Presidents Day	February, 3rd Monday
Memorial Day	May, last Monday
Independence Day	July 4th
Labor Day	September, 1st Monday
Veterans Day	November 11th
Thanksgiving Day	November, 4th Thursday
Day After Thanksgiving Day	November, 4th Friday
Christmas Eve	December 24, half day

Christmas Day  
New Year's Eve

December 25  
December 31, half day

B. These days are designated paid holidays for all regular, full-time employees with the exception of those employees designated as shift personnel. Holidays which fall on a Saturday will be observed on the preceding Friday. Holidays which fall on a Sunday shall be observed the following Monday. When Christmas and New Year's Day fall on a Saturday or Sunday, no additional allowance shall be made for Christmas Eve or New Year's Eve.

C. Designated holidays occurring during a vacation period shall not be counted as vacation days taken. (Ord. 1315 §1, 2006) (Ord. 1363 §1, 2007)

2.14.520 Personal Days. All permanent, full-time employees shall receive two (2) days or 16 hours for personal leave. Personal leave days shall not be carried over to the following year. To be eligible for such personal leave days, an employee must have successfully completed his or her probationary period and worked the entire calendar year. Employees who have successfully completed their probationary period and who have worked at least six (6) months of the calendar year shall receive one personal day. (Ord. 801 §1, 1988)

2.14.530 Shift Personnel. If a holiday falls on a Saturday or Sunday, the actual holiday will be used to determine pay for shift personnel and not the Friday or Monday received off by non-shift personnel. (Ord. 801 §1, 1988)

2.14.540 Holiday Pay. If any employee is required to work on a holiday, such employee shall receive overtime pay for hours worked on the holiday, in addition to eight (8) hours of regular pay. The employee may be allowed to taken compensatory time off at the overtime rate if approved by the employee's department head or supervisor. (Ord. 801 §1, 1988; Ord. 818 §1, 1988)

2.14.550 Vacation.

A. Only regular full-time employees may accrue vacation time and be granted vacation leave. Probationary employees may accrue vacation time and be granted vacation leave after six (6) months of continuous active employment based on the month in which the employee is hired or rehired. Part-time and temporary employees are not eligible for vacation. Vacation time should be scheduled in advance and approved by the employee's supervisor or department head. Approval and timing of vacations shall be determined by the department head, with regard to the needs of the department. Department heads shall have their vacation requests approved by the City Manager.

B. Accrual. Regular full-time employees shall be awarded vacation days off, with pay, based upon specified length of service:

1. less than 5 years of service, seven (7) hours per month or 84 hours per year.
2. for 5 years - less than 10 years of service, 10 hours per month or 120 hours per year.

3. for 10 years or more of service, 14 hours per month or 168 hours per year.

C. Vacation may be used in no less than one hour increments.

D. Mandatory Vacation Leave. Employees employed for one year or more shall take a vacation of at least forty (40) vacation hours each calendar year. Forty (40) consecutive vacation hours are required in certain departments.

E. Employees hired or rehired on or before February 28, 2006 shall be allowed to accumulate a maximum of 320 hours of vacation time. Employees who accrue more than the maximum allowable vacation time as of December 31 of each year shall forfeit the excess amount. Payment shall not be made in lieu of vacation time, except that employees who separate from City employment after completing their probationary period shall be paid for the unused balance of their accrued vacation leave up to a maximum of 320 hours.

F. Employees hired or rehired on or after March 1, 2006 shall be allowed to accumulate a maximum of 240 hours of vacation time. Employees who accrue more than the maximum allowable vacation time as of December 31 of each year shall forfeit the excess amount. Payment shall not be made in lieu of vacation time, except that employees who separate from City employment after completing their probationary period shall be paid for the unused balance of their accrued vacation leave up to a maximum of 240 hours.

G. If an employee changes status from full-time to part-time or full-time to temporary, the employee will not be eligible to accrue vacation. The employee will be eligible to use vacation hours accrued while on full-time status after the part-time or temporary status commences.

H. If an employee changes status from part-time to full-time, the employee will be eligible to accrue vacation when the full-time status commences based on total years of service. (Ord. 1315 §2, 2006)

#### 2.14.560 Sick Leave.

A. Accrual. Regular full-time employees and probationary employees hired or rehired on or before February 28, 2006 shall accrue sick leave at the rate of 8 hours per month or 96 hours per year with no limit on maximum accumulation.

B. Accrual. Regular full-time employees and probationary employees hired or rehired on or after March 1, 2006 shall accrue sick leave at the rate of 8 hours per month or 96 hours per year and shall be allowed to accumulate a maximum of 720 hours of sick leave.

C. Part-time and temporary employees regardless of the date of hire or rehire are not eligible for sick leave.

D. Use. Sick leave may be used in half hour increments for the following reasons:

1. As a result of an employee being incapacitated by non-work related illness or injury;
2. For medical, dental or optical examinations or treatment;
3. When a member of the employee's immediate family is incapacitated by sickness or injury. Immediate family is defined as spouse, natural, adopted and/or step children, and children for whom the employee has assumed legal guardianship.
4. A department head or supervisor may send an employee home on sick leave when an employee has a contagious disease.

E. Notification. In the event of an unexpected absence because of illness or injury, the employee shall notify his or her department head or supervisor prior to the start of the employee's work day on the first day of any absence.

F. If an employee changes status from full-time to part-time or full-time to temporary, the employee will not be eligible to accrue sick leave.

G. If an employee changes status from part-time to full-time, the employee will be eligible to accrue sick leave when the full-time status commences.

H. Employees hired or rehired on or before February 28, 2006 shall be eligible to convert three (3) days of sick leave for one (1) day of vacation. Converted hours may not exceed the maximum accumulation of 320 hours of vacation time. Hours must be converted thirty (30) days before they are taken.

I. Employees hired or rehired on or after March 1, 2006 shall be eligible to convert three (3) days of sick leave for one (1) day of vacation. Converted hours may not exceed the maximum accumulation of 240 hours of vacation time. Hours must be converted thirty (30) days before they are taken.

J. For absences due to non-work related illness or injury which exceed fourteen (14) consecutive calendar days may be eligible for the City of Fountain Short-term Disability coverage.

K. Separation of Service. Upon separation of service with the City, an employee hired or rehired on or before February 28, 2006 shall be paid for accumulated sick leave up to a maximum of 720 hours as follows:

<u>Years of Service</u>	<u>Paid Sick Leave</u>
less than 5 years	0%
5 years - less than 10 years	40%
10 years - less than 15 years	50%
15 years - less than 20 years	60%

20 years - less than 25 years	70%
25 years - less than 30 years	80%
30 years or more	100% hours

L. Separation of Service. Upon separation of service with the City, an employee hired or rehired on or after March 1, 2006 shall be paid for accumulated sick leave up to a maximum of 360 hours as follows:

<u>Years of Service</u>	<u>Paid Sick Leave</u>
less than 5 years	0%
5 years - less than 10 years	40%
10 years - less than 15 years	50%
15 years - less than 20 years	60%
20 years - less than 25 years	70%
25 years - less than 30 years	80%
30 years or more	100% hours
(Ord. 1315 §3, 2006)	

2.14.570 Monitoring of Sick Leave. Sick leave use shall be monitored by department heads and supervisors to insure that sick leave is not misused. Misuse of sick leave is cause for disciplinary action. The department head or supervisor may require a doctor's statement that the employee is, or was, unable to work due to an illness or injury. (Ord. 801 §1, 1988)

2.14.580 Extended Illness or Treatment. An employee who is incapacitated by sickness or injury for an extended period of time or is restricted by prolonged medical treatment, and who has exhausted all accrued sick and vacation leave, may be granted leave without pay at the discretion of the City Manager. Prior to approving leave without pay, verification of the nature of the illness or treatment must be obtained from a doctor. If the City Manager determines that it is not in the best interest of the City to grant leave without pay, the employee shall be terminated. (Ord. 801 §1, 1988)

2.14.590 Resignation or Retirement. An employee who has given notice of termination of service with the City may not use sick leave during the last two weeks of employment unless a doctor's statement is provided. (Ord. 801 §1, 1988)

2.14.600 Emergency Leave. Paid emergency leave, up to a maximum of three (3) working days may be granted to permanent, full-time employees in the event of the death of a member of their immediate family or because of other unexpected emergencies. Immediate members of the family include spouse, children, parents, grandparents, brothers, sisters, brothers or sisters-in-law, sons or daughters-in-law. The department head shall have discretion in determining what situation constitutes an emergency. (Ord. 801 §1, 1988)

2.14.610 Maternity Leave. Maternity leave is treated as any other sick or disability leave. (Ord. 801 §1, 1988)

#### 2.14.620 Court Leave.

A. Employees who are required to serve as a juror in a Federal, State, County or Municipal Court shall be granted Court Leave with pay on the condition that any compensation received for such services during working days shall be turned over to the City, except for verified parking expenses and mileage allowance.

B. Employees who are required to appear as witnesses in cases that relate directly to their City duties shall be granted Court leave with pay on the condition that any compensation received for such services during working days shall be turned over to the City, except for verified parking expenses and mileage allowance.

C. Employees who are required to appear in Court on matters that do not relate directly to their City duties, except for jury duty, shall not be granted Court Leave. They shall be allowed to use accrued compensatory time or will be granted vacation leave or leave without pay.

D. Employees must immediately notify the department head or supervisor when they receive a notice to appear in court as a witness or for jury duty. (Ord. 801 §1, 1988)

#### 2.14.630 Military Leave.

A. **Active Duty for Training.** Permanent full-time employees who are members of the National Guard, Air National Guard, or Armed Forces Reserve shall be granted leave with pay for the period of their annual field training exercises (Summer Camp), not to exceed 15 days per calendar year. The employee shall submit a request for absence to the Department Head or Supervisor at least two (2) weeks prior to the starting date of the absence. The appropriate military orders will be attached to the request for absence.

B. **Emergency Call-Up.** Permanent full-time employees who are members of the Colorado National Guard or Air National Guard who are ordered to active duty by the Governor for disaster control will be granted leave with pay for the period of the call-up. As soon as practical after the call-up, the employee will submit a request for absence to the Department Head or Supervisor for approval.

C. **Extended Active Duty.** Permanent full-time employees who enter the Armed Forces will be terminated from City employment, but they do have certain re-employment rights. Employees who:

1. leave City employment to enter the Armed Forces;
2. do not serve more than four (4) years plus one (1) additional year at the request of the U. S. Government or for any involuntary service, and;
3. request reinstatement to City employment within 90 days of separation from the Armed Forces.

Employees shall be reinstated to a position that is similar in status and pay to the position they held before they went into the Armed Forces, provided they are physically able to perform the duties of the position and that they satisfactorily performed the military service. The time spent in military service will count in computing seniority with the City but no other City benefits will accrue. (Ord. 801 §1, 1988)

2.14.640 Leave Without Pay. Leave without pay for up to six (6) months may be granted to an employee for special situations when approved by the Department Head and City Manager. Sick and vacation credits shall not be accrued while an employee is on leave without pay. Failure to return to work at the end of the leave period shall be considered a resignation. (Ord. 801 §1, 1988)

2.14.650 Unauthorized Leave. City employees shall not be absent from work without the permission of the Department Head or Supervisor. Any unauthorized absence of an employee constitutes grounds for dismissal or other disciplinary action. Any employee who is absent for three (3) or more consecutive days without authorization is considered to have resigned. (Ord. 801 §1, 1988)

2.14.660 Non-Disciplinary Suspension. During investigation, hearing, or trial of an employee for any civil or criminal charge or pending any hearing or investigation scheduled pursuant to this chapter, an employee may be suspended by the Department Head or City Manager for the duration of that investigation, hearing, or trial. Any suspension made pursuant to this section may be made with full pay and benefits. The non-disciplinary suspension shall identify the specific investigation, hearing, or trial and shall terminate upon the completion of that investigation, hearing, or trial. (Ord. 801 §1, 1988)

## **IX. EMPLOYEE BENEFITS**

2.14.670 Medical, Dental and Life Insurance Benefits. The City of Fountain provides all regular, full-time employees, probationary employees, probationary employees and such employees' dependents group medical, group dental and group term life insurance. The City of Fountain shall pay 100% of the group dental and group term life insurance benefits. The City of Fountain shall pay 85% of the cost of each employee and his/her dependants medical benefits. The employee shall pay the remaining 15% for such medical benefits. (Ord. 1184 §1, 2002)

2.14.680 Retiree Insurance Benefits. A City employee is eligible to receive health and life insurance coverage upon retirement if the retiree has at least 20 years of service with the City and is at least 55 years of age upon the retirement date. The eligibility for this benefit expires when the retiree reaches age 65, thereby making the maximum eligibility period 10 years. The City will pay 100 percent of the retiree's cost for the benefit for the retiring employee only. Dependent coverage will be available to retiree solely at the retiree's expense. This benefit does not include disability insurance, dental insurance or vision insurance. (Ord. 888 §1, 1990)

2.14.690 Deferred Compensation. The City has established a deferred compensation plan based on employee contributions. (Ord. 801 §1, 1988)

2.14.695 Retirement Plan for Employees. All full-time City employees, to include civilian employees of the police and fire departments, shall be required to participate in the City's retirement plan. Paid firefighters and police may participate in the City's retirement plan if they elect to do so. (Ord. 1086 §10, 1998)

2.14.700 Retirement Plan for Police and Paid Firefighters. Police and paid Firefighters are members of the City of Fountain Police and Paid Firefighter Retirement Plan. (Ord. 801 §1, 1988)

2.14.710 Disability Income Insurance. The City of Fountain provides all permanent, full-time employees and probationary employees with disability income insurance. (Ord. 801 §1, 1988)

2.14.720 Credit Union. City employees are eligible to join the Colorado Springs City Employees Credit Union. Employees may authorize payroll deductions for account deposits or loan payments. (Ord. 801 §1, 1988)

2.14.730 - Workmen's Compensation. All City employees are covered by the Workmen's Compensation Act of Colorado, which provides compensation to employees who are injured while they are on the job. In order to receive these benefits, any employee who sustains an occupational disease or job-related injury must report such matter to the Finance Department and file the appropriate Workmen's Compensation forms within four (4) days of the incident. (Ord. 801 §1, 1988). In the event an employee is determined to be eligible for and does start to receive Workmen's Compensation benefits, the employee shall continue to receive full pay in return for giving the City all Workmen's Compensation benefits paid. The employee shall not be charged sick leave for time off which is taken as a result of the work related injury, and shall receive all benefits as full-time, non-probationary, permanent employees up to a maximum period of time of one year from the date of injury. (Ord. 801 §1, 1988; Ord. 993 §1, 1993)

2.17.740 Longevity Pay. Permanent, full-time employees shall be eligible to receive longevity pay, a percentage of the employee's regular pay based upon the number of years of service with the City of Fountain. Each eligible employee shall receive 50% of his or her longevity pay the first payroll in June and 50% of his or her longevity pay the first payroll in December. Employees who have separated from service with the City between these dates shall receive a pro rata share of their longevity pay in the final check. The number of years of service shall be determined as of the employee's anniversary date. Any and all employees hired or rehired after January 1, 1998 shall not be eligible to receive longevity pay.

<u>Years of Service</u>	<u>Annual Longevity</u>
5 - less than 10 years	2 1/2%
10 - less than 15 years	5%
15 - less than 20 years	7 1/2%
20 and over	10%

(Ord. 801 §1, 1988; Ord. 1072 §1, 1997)



2.14.745 Employee Advisory Group. The Employee Advisory Group, as defined in Section 2.14.040, is intended to provide an additional forum for employees to provide management with input and objective recommendations regarding employee relations, working conditions, and employment issues. The group may meet once per month for a reasonable period of time to discuss items of concern, evaluate, and reach a consensus for making an objective recommendation to management. All recommendations shall be made in written form, which is dated and directed to the appropriate department head(s) with a copy to the City Manager. (Ord. 1076 §2, 1998)

## **X. SEPARATION FROM CITY SERVICE**

2.14.750 Separation from City Employment Shall Be Designated as One of the Following:

- A. End of temporary position.
  - B. Layoff.
  - C. Resignation.
  - D. Retirement.
  - E. Dismissal.
  - F. Death.
- (Ord. 801 §1, 1988)

2.14.760 End of Temporary Position. When an employee has completed a temporary assignment, such employee shall be terminated from City employment. (Ord. 801 §1, 1988)

2.14.770 Layoff. City positions may be eliminated by the City Manager, due to reorganization, reclassification or a budget cut. Such employees who are laid off will normally be given 15 calendar days notice prior to the effective date of the layoff. (Ord. 801 §1, 1988)

2.14.780 Resignation. Employees who wish to voluntarily terminate their employment with the City shall submit a letter of resignation to their supervisor or department head at least 15 calendar days prior to the effective date of their resignation. (Ord. 801 §1, 1988)

2.14.790 Retirement. There is no mandatory retirement age at the City of Fountain. (Ord. 801 §1, 1988)

2.14.800 Dismissal. An employee may be dismissed from City employment subject to the procedures set forth in Part V. (Ord. 801 §1, 1988)

2.14.810 Death. When an employee dies, the next of kin or estate shall be entitled to all pay due. The Finance Department shall coordinate all formal claims for death benefits and life insurance proceeds. (Ord. 801 §1, 1988)

2.14.820 Continuation of Insurance Benefits. Insurance coverage shall continue for the terminating employee through the last day of the month in which employment with the City is terminated. Terminating employees may continue medical and dental insurance coverage up to eighteen months from the date of termination. The former employee shall be responsible for paying the total premium payments plus an administrative charge. The employee at his or her expense may also continue life insurance coverage. (Ord. 801 §1, 1988)

### **RECEIPT OF PERSONNEL POLICIES AND PROCEDURES MANUAL**

I have received a copy of the Personnel Policies and Procedures Manual of the City of Fountain; I further acknowledge and understand that the Personnel Policies and Procedures Manual of the City of Fountain is not a contract of employment between me and the City of Fountain, that it can be changed at any time by the City of Fountain and that those changes apply to me. I acknowledge that I have had an opportunity to ask questions about the meaning of this manual. I have read it and understand its terms.

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Signature

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## **Chapter 2.15**

### **BOARD OF ADJUSTMENT**

Section:

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2.15.010 Board of Adjustment Created. There shall be and is hereby created a Board of Adjustment referred to hereafter as the Board. (Ord. 1160, §1, 2001)

2.15.020 Membership, Term.

A. The Board shall consist of three (3) permanent members and two (2) alternate members (collectively referred to as “members”) appointed by the City Council. The members shall be qualified by experience and/or training to knowledgeably consider technical matters related to zoning and building construction, and shall be residents of the City of Fountain. All members shall be compensated in an amount to be determined by the City Council and paid any actual expenses they shall accrue in carrying out their duties.

B. The first permanent panel member selected shall have a term of four (4) years. The second permanent panel member selected shall have a term of two (2) years. The third permanent panel member shall have a term of three (3) years. Thereafter, all permanent panel members shall serve for such terms as are approved by City Council. Each alternate member shall be appointed for a term not to exceed four (4) years. However, any member may be removed, at will by the City Council.

C. Alternate members may be called to serve in lieu of permanent members when a permanent member is not serving as a Board member at a Board meeting. While serving as a Board member at a Board meeting, an alternate member shall have the same authority as a permanent member. Service by alternate members on the Board at Board meetings shall rotate between the two alternate members except when the alternate member whose turn it is to serve is not available or both alternate members are called to serve on the Board at a Board meeting.

D. Should any Board member be unable to serve for any reason, the City Council shall appoint a new member as quickly as reasonably possible. That new member shall serve out the full term of the leaving member. The new member may then be eligible to be appointed thereafter.

E. The Board shall meet as necessary. Meetings may be rescheduled as necessary to accommodate the Board’s business. (Ord. 1160, §1, 2001) (Ord. 1434, §2, 2008)

2.15.030 Functions. The Board shall have the following functions:

A. To hear and decide upon all appeals from Chapter 8.14 (Property Maintenance Code) of the Fountain Municipal Code.

B. To hear and decide upon all appeals pursuant to Chapter 17.593 (A) Appeals from Administrative Decisions to the Board of Adjustment.

C. To hear and decide upon all applications for Variances under the Zoning Code, pursuant to Chapter 17.594 Variances.

D. To hear and decide upon all appeals pursuant to the *International Fire Code* as adopted by Chapter 15.16 of the Fountain Municipal Code. (Ord. 1302, §2, 2005)

2.15.040 Minutes.

A. The Board shall keep minutes of its proceedings showing the vote of each member upon each decision. (Ord. 1160, §1, 2001)

2.15.050 Form of Appeal. Appeals pursuant to Chapter 8.14 Property Maintenance Code and Chapter 17.593 Appeals from Administrative Decisions to the Board of Adjustment.

A. Any person entitled to service under Chapter 8.14 of the Fountain Municipal Code may appeal from any notice and to any action of the Code Enforcement Officer and any person appealing any decision pursuant to Chapter 17.593 (A) Appeals from Administrative Decisions to the Board of Adjustment, and any person appealing for modifications of the requirements of the *International Fire Code* as adopted by Chapter 15.16 of the Fountain Municipal Code may appeal such decision by filing at the office of the Clerk of the City of Fountain within thirty (30) days from the date of the service of such order or administrative decision a written appeal containing:

1. A heading in the words: Before the Fountain Board of Adjustment.
2. A caption reading: Appeal of giving the names of all appellants participating in the appeal.
3. A brief statement setting forth the legal interest of each of the appellants in the building or the land involved in the notice and order or administrative decision.
4. A brief statement, in ordinary and concise language, of the specific order, action or decision protested, together with any material facts claimed to support the contentions of the appellant.
5. A brief statement, in ordinary and concise language, of the relief sought and the reasons why it is claimed the protested order, action or decision should be reversed, modified or otherwise set aside.
6. The signature of all parties named as appellants, and that, in ordinary and concise language, of the specific order or action protested, together with any material facts claimed to support the contentions of the appellants.
7. The signature of all parties named as appellants, and their official mailing addresses.
8. The verification (by declaration under penalty or perjury) of at least one appellant as to the truth of the matters stated in the appeal.
9. The appeal form shall be accompanied by a non-refundable fee as set by City Council.

B. The party shall pay a nonrefundable application fee as set by City Council. In the event that the party filing the appeal anticipates that the time required for the hearing, including the review of all evidence by the Board will require more than two (2) hours, the party shall pay an additional twenty-five dollars (\$25.00) per one half hour exceeding two (2) hours of public hearing time. If the appealing party fails to deposit funds sufficient to pay for the time used during the hearing, he or she or it shall then be liable for a fee per hour as set by the City Council for each hour the hearing takes over thirty (30) minutes which was not prepaid. Should the

appealing party fail to pay the assessed costs within five (5) days of any final judgment, he or she or it shall also be liable for all costs of collecting said monies, including reasonable attorney's fees. Such deposit will be refundable in full if the appealing party is fully successful.

C. The payment of fees or lack there of for extra time shall not be considered in the Board's determination as to whether to allow more time for the hearing. (Ord. 1302, §3, 2005)

2.15.060 Effect of Failure to Appeal.

A. Failure of any person to file an appeal in accordance with the provisions of this Chapter and Chapter 8.14 of the Fountain Municipal Code, Section 17.593(A) Appeals from Administrative Decisions to the Board of Adjustment, or the *International Fire Code* as adopted by Chapter 15.16 of the Fountain Municipal Code shall constitute a waiver of any right to an administrative hearing and adjudication of the notice, order, decisions, or determinations or any portion thereof or any modification of the requirements *International Fire Code* as adopted by Chapter 15.16 of the Fountain Municipal Code. (Ord. 1302, §4, 2005)

2.15.070 Staying of Order Under Appeal.

A. Except for emergency orders or notices issued pursuant to Chapter 8.14 (Property Maintenance Code) or the *International Fire Code* as adopted pursuant to Chapter 15.16 of the Fountain Municipal Code, enforcement of any notice and order of the Code Enforcement Officer issued under Chapter 8.14 or any decision appealed pursuant to Chapter 15.593(A) (Appeals from Administrative Decisions to the Board of Adjustment) or any order decisions made the Fire Code Official relative to the application and interpretation of the *International Fire Code* as adopted by Chapter 15.16 of the Fountain Municipal Code, shall be stayed during the pendency of an appeal therefrom that is properly and timely filed. (Ord. 1302, §5, 2005)

2.15.080 Processing Appeal.

A. Upon receipt of any appeal filed pursuant to this Section, the appeal shall be presented at the next regular or special meeting of the Board.

B. As soon as practicable, after receiving the written appeal, the Board shall fix a date, time and place for the hearing of the appeal by the Board. Such date shall be not be less than ten (10) days or more than sixty (60) days from the date the appeal was filed with the Clerk of the City of Fountain. Written notice of the time and place of the hearing shall be given at least ten (10) days prior to the date of the hearing to each appellant by the Clerk of the City of Fountain either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at his address shown on the appeal or application. (Ord. 1160, §1, 2001)

2.15.090 Scope of Hearing on Appeal.

A. Only those matters or issues specifically raised by the appellant shall be considered in the hearing of the appeal. (Ord. 1160, §1, 2001)

### 2.15.100 Procedure for Hearing Appeals.

A. Hearings. The Fountain Board of Adjustment shall conduct hearings and exercise all powers relating to the conduct of hearings.

B. Records and Reports. A record of the entire proceedings shall be made by tape recording determined to be appropriate by the Board and as may be required by Colorado Law. The proceedings at the hearing shall also be reported by stenographic, or other reporting system, if requested by any party thereto and such arraignments are made for payment of such reporting system by the appellant. A transcript of the proceeding shall be made available to all parties upon request and upon payment of the fee prescribed therefor. Such fees may be established by the Board, but shall in no event be greater than the cost involved.

C. Continuances. The Board may grant a continuance for good cause shown.

D. Oaths, Certification. In any proceedings under this Chapter, the Board has the power to administer oaths and affirmations and to certify to official acts.

E. Reasonable Dispatch. The Board shall proceed with reasonable dispatch to conclude any matter before it. Due regard shall be shown for the convenience and necessity of any parties or their representatives.

F. Form of Notice of Hearing. The notice to appellant shall be substantially in the following form, but may include other information:

You are hereby notified that a hearing will be held before The Fountain Board of Adjustment at place on the date day of month, year, at the hour upon the notice and order served upon you. You may be present at the hearing. You may be, but need not be, represented by counsel. You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You may request the issuance of subpoenas to compel the attendance of witnesses, and the production of books, documents or other things by filing an affidavit therefore with The Fountain Board of Adjustment.

G. Subpoenas, Filing of Affidavit. The Chairman of the Board may obtain the issuance and service of a subpoena for attendance of witnesses or the production of other evidence at a hearing upon the request of a member of the Board or upon the written demand of any party. The issuance and service of such subpoena shall be obtained upon the filing of an affidavit therefore that states the name and address of the proposed witness, specifies the exact things sought to be produced and the materiality thereof in detail to the issues involved; and states that the witness has the desired things in his possession or under his control. A subpoena need not be issued when the affidavit is defective in any particular.

H. Penalties. Any person who refuses, without lawful excuse, to attend any hearing or to produce material evidence in his possession or under his control as required by any subpoena

served upon such person as provided for herein, shall be guilty of a misdemeanor. (Ord. 1160, §1, 2001)

2.15.110 Conduct of Hearings for Appeals. All appeals taken pursuant to Chapter 8.14 and Chapter 17.593 (A), and the *International Fire Code* as adopted by Chapter 15.16 of the Fountain Municipal Code hearings shall be conducted as follows:

A. Chairman to preside. The Chairman of the Board shall preside over the hearing and shall make all evidentiary and procedural rulings.

B. Rules. Hearings need not be conducted according to the technical rules relating to evidence and witnesses.

C. Time of hearing. Except for good cause, hearings shall be limited to two (2) hours.

D. Oral Evidence. Oral evidence shall be taken only on oath or affirmation.

E. Hearsay Evidence. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in the State of Colorado.

F. Admissibility of Evidence. Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in the State of Colorado.

G. Exclusion of Evidence. Irrelevant and unduly repetitious evidence shall be excluded.

H. Rights of Parties. Each party shall have these rights among others:

1. To call and examine witnesses on any matter relevant to the issues of the hearing.
2. To introduce documentary and physical evidence.
3. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing.
4. To impeach any witness regardless of which party first called him to testify.
5. To rebut the evidence against him.
6. To represent himself or to be represented by anyone of his choice who is lawfully permitted to do so.

I. Official Notice.

1. What May be Noticed: In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact that may be judicially noticed by the courts of the State, or of official records of the Board or Departments

and ordinances of the City of Fountain, or rules and regulations of the Board.

2. Parties to be Notified. Parties present at the hearing shall be informed of the matters to be noticed, and these matters shall be noted in the record, referred to therein, or appended thereto.
3. Opportunity to Refute. Parties present at the hearing shall be given a reasonable opportunity, on request, to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the Board.

J. Inspection of the Premises. The Board may inspect any building or premises involved in the appeal during the course of the hearing provided that:

1. Notice of such inspection shall be given to the parties before the inspection is made.
2. The parties are given an opportunity to be present during the inspection.
3. The Board shall state for the record upon completion of the inspection the material facts observed and the conclusions drawn therefrom. Each party then shall have a right to rebut or explain the matters so stated by the Board.

K. Standard of Review.

1. Appeals of 8.14 Property Maintenance Code and Chapter 15.593 Appeals from Administrative Decisions. The Board may modify or reverse the Code Enforcement Officer's Order if it finds that the facts supporting the Order is/are not supported by the preponderance of the evidence. The burden of proof is upon the City.
2. Appeals pursuant to Chapter 17.593 (A). The Board may affirm, modify or reverse the decision of the Zoning Administrator if it finds that the Zoning Administrator acted contrary to local, state or Federal law or abused his or her discretion.
3. Appeals pursuant to the *International Fire Code* as adopted by Chapter 15.16 of the Fountain Municipal Code. The Board may affirm, modify or reverse orders, decisions, or determination made by the Fire Code Official relative to the application and interpretation of the *International Fire Code* as adopted by Chapter 15.16 of the Fountain Municipal Code.

L. Treble Damages. Treble damages may only be awarded if the elements for such damages are proved by the City beyond a reasonable doubt. (Ord. 1302, §6, 2005)

#### 2.15.115 Variances.

A. An application for approval of a variance may be initiated only by the fee owner of the property for which the variance is requested, or his duly authorized agent. The application shall be submitted to the Zoning Administrator on forms provided by the City. At a minimum, the application shall contain the following:



1. Name, address and telephone number of the applicant.
2. Legal description of the property and the street address, if applicable.
3. A plot plan of the property as described in Chapter 17.52 or site development plan as described in Chapter 17.54, which ever is applicable to the property and use.
4. The names and addresses of all adjoining property owners of record.
5. The nature of the variance and under which section of this Title the variance is sought.
6. A statement of facts, which the applicant believes justifies the variance.

B. The application shall be accompanied by a non-refundable fee as determined by the City Council to cover costs related to the application. An application shall not be considered filed until all required information is submitted.

C. The Zoning Administrator shall study the application and shall make a report of his findings to the Board of Adjustment.

D. Notice of the public hearing shall be mailed and posted in the manner set forth in section 17.612.

E. The public hearing shall be held. An applicant may appear in person or by authorized representative or attorney.

F. Records and Reports. A record of the entire proceedings shall be made by tape recording determined to be appropriate by the Board and as may be required by applicable Colorado Law. (Ord. 1160, §1, 2001)

#### 2.15.120 Method and Form of Decision for Appeals and Variances.

A. Decision. Decisions of the Board shall be made by a majority of the Board.

B. Form of Decision. The decision shall be in writing and shall contain findings of fact, a determination of the issues presented, and the requirements to be complied with. A copy of the decision shall be delivered to the appellant personally or sent to him at the address set forth in the appeal by certified mail, postage prepaid, return receipt requested.

C. Time of Decision. The Board shall issue its findings within thirty (30) days of the completion of the hearing.

D. Effective Date of Decision. The effective date of the decision shall be as stated therein. (Ord. 1160, §1, 2001)

2.15.130 Enforcement of Orders on Appeals of Chapter 8.14. After any order of the Code Enforcement Officer or the Board made pursuant to this Chapter shall have become final, no person to whom any such order is directed shall fail, neglect or refuse to obey any such order.

Any such person who fails to comply with any such order is guilty of a misdemeanor. (Ord. 1160, §1, 2001)

2.15.140 Failure to Obey Orders on Appeals of Chapter 8.14.

A. If, after any order of the Code Enforcement Officer or the Board made pursuant to Chapter 8.14 (Property Maintenance Code) has become final, the person to whom such order is directed shall fail, neglect or refuse to obey such order, the Code Enforcement Officer may, in addition to any other remedy herein provided, cause the building to be repaired to the extent necessary to correct the conditions that render the building dangerous as set forth in the notice and order, or, if the notice and order required demolition, to cause the building to be sold and demolished or demolished and the materials, rubble and debris there from removed and the lot cleaned. Any such repair or demolition work shall be accomplished and the cost thereof paid and recovered in the manner hereinafter provided in this Chapter. Any surplus realized from the sale of any such building, or from the demolition thereof, over and above the cost of demolition and of cleaning the lot, shall be paid over to the person or persons lawfully entitled thereto.

B. Notwithstanding any lease provision to the contrary, in the event that such structure is regulated by Chapter 8.14 (Property Maintenance Code) and it is found, that the tenant is not, in whole or in part, responsible for the condition of the structure that is in violation of Chapter 8.14 (Property Maintenance Code) and the tenant did not nor could have reasonably discovered the condition prior to taking possession of the premises, the tenant's rent shall abate and owner shall be liable to the tenant for an amount equal to three (treble) times the difference in rent between the rent the tenant was paying the owner and the amount the tenant is required to pay to obtain similar housing that complies with Chapter 8.14 (Property Maintenance Code) for up to six (6) months proceeding the tenants vacation of the premises, and for the actual costs the tenant incurs moving. Such remedy may be enforced in any competent court and shall be in addition to any other legal rights the tenant may have. Further, the successful party in such enforcement action shall be entitled to his reasonable attorney fees and costs.

C. Extension of Time. Upon receipt of an application from the person required to conform to the order and an agreement by such person that he will comply with the order if allowed additional time, the Code Enforcement Officer may, in his discretion, grant an extension of time, not to exceed an additional sixty (60) days within which to complete said repair, rehabilitation, or demolition, if the Code Enforcement Officer determines that such an extension of time will not create or perpetuate a situation imminently dangerous to life or property. The Code Enforcement Officer's authority to extend time is limited to the physical repair, rehabilitation, or demolition of the premises and will not in any way affect or extend the time to appeal his notice and order from the Board. (Ord. 1160, §1, 2001)

2.15.150 Work Performance or Repair Demolition Pursuant to Chapter 2.15.140.

A. Procedure. When any work or repair demolition is to be done, the Code Enforcement Officer shall issue his order therefore to the City Engineer, and the work shall be accomplished by private contract under the direction of the City Engineer. Plans and specifications therefore may be prepared by the City Engineer, or he may employ such architectural and engineering

assistance on a contract basis, as he may deem reasonably necessary following standard contractual procedures.

B. Cost. The cost of such work shall be paid from the General Fund.

C. Interference with Repair or Demolition. No persons shall obstruct, impede or interfere with any person who owns or holds any estate or interest in any building that has been ordered repaired, vacated or demolished under the provisions of this Chapter, or with any person to whom such building has been lawfully sold pursuant to the provisions hereof whenever such officer, employee, contractor or authorized representative of the City, person having an interest or estate in such building or structure, or purchaser is engaged in the work of repairing, vacating, and repairing, or demolishing of such building, pursuant to the provisions of this Chapter, or in performing any necessary act preliminary or incidental to such work or authorized or directed pursuant to this Chapter.

D. Report Account of Expenses.

1. The City Engineer shall keep an itemized account of the expenses incurred by the City in the repair or demolition of any building pursuant to the provisions of this Chapter. Upon the completion of the work, repair or demolition, the City Engineer shall prepare and file with the City Clerk a report specifying the work done, the itemized and total cost of the work, a description of the real property upon which the building or structure is or was located, and the names and addresses of the person entitled to notice pursuant to Chapter 8.14 (Property Maintenance Code).
2. Upon receipt of said report, the City Clerk shall fix a time, date and place for hearing said report, and any protest of objections thereto in front of the Board. The City Clerk shall cause notice of said hearing to be posted upon the property involved, published once in a newspaper of general circulation in the City, and served by certified mail, postage prepaid, addressed to the owner of the property as his name and address appears on the assessment roll of the County Assessor, if such appears or is known to the Clerk. Such notice shall be given at least ten (10) days prior to the date set for hearing, and shall specify the day, hour, and place when the Council will hear and pass upon the City Engineer's report, together with any objections or protests that may be filed as hereinafter provided by any person interested in or affected by the proposed charge.

E. Protest and Objections. Any person interested in or affected by the proposed charge may file written protests or objections with the City Clerk at any time prior to the time set for the hearing on the report of the City Engineer. Each such protest or objection must contain a description of the property in which the signer thereof is interested and the grounds of such protest or objection. The City Clerk shall endorse on every such protest or objection the date it was received by him and shall present such protests or objections to the Board at the time set for the hearing. No other protests or objections shall be considered.

F. Hearing on Report, Protests. Upon the day and hour fixed for the hearing, the Board shall hear and pass upon the report of the City Engineer together with any such objections or

protests. The Board may make such revision, correction, or modification in the report or the charge as it may deem just; and when the Board is satisfied with the correctness of the charge, the report as submitted or as revised, corrected or modified, together with the charge shall be confirmed or rejected. The decision of the Board on the report and the charge, and on protests or objections, shall be final and conclusive.

G. Personal Obligation Special Assessment. The Board may thereupon order that said charge shall be made a personal obligation of the property owner, or assess said charge against the property involved.

H. Personal Obligation. The assessment shall be a personal obligation of the property owner, and the City Attorney shall collect the same on behalf of the City by use of all appropriate legal remedies.

I. Special Assessment. If the Board orders that the charge shall be assessed against the property, it shall confirm the assessment roll, and thereafter said assessment shall constitute a special assessment against and a lien upon the property, and shall be collected in the same manner as other special assessments of the City.

J. Filing of Assessment. Within thirty (30) days after the assessment or the personal obligation is ordered by the Board, the application for relief shall be filed with the City Clerk.

K. Authority for Installment Payments. Persons who are determined to have such a marginal income that they cannot pay an assessment or personal obligation levied under this Chapter, either against the property on which they reside or against themselves personally, may be afforded relief as hereinafter provided.

L. Review of Application. The Board, shall review the application for the relief from the assessment or personal order.

M. Payment. If it is determined that the applicant would probably default on the assessment, the Board may authorize the execution with the applicant of an installment note for the payment of the assessment or personal obligation. The note shall be secured by a deed of trust, or if not available, by such other security reasonably available or appropriate. If no security is reasonably available or appropriate, then none shall be required. The installment note shall provide that the property owner shall make monthly payments to the City Treasurer; that such payments shall not be less than five dollars (\$5.00) and shall be sufficient to repay the amount within a period of not more than twenty-five (25) years; that interest shall be charged at the rate of three percent (3%) per annum on the unpaid balance; that the entire outstanding balance shall become due and payable upon the death of the obligor or the sale or transfer of the property; that if at any time the City determines that the obligor is financially able to pay the outstanding balance, or that he has willfully misrepresented his financial condition on this application, it may upon sixty (60) days notice declare the entire balance due and payable.

N. Contest Assessment. The validity of any assessment made under the provisions of this Chapter shall not be contested in any action or proceeding unless the same is commenced

within thirty (30) days after the assessment is placed upon the assessment roll as provided herein. Any appeal from a final judgment in such action or proceeding must be perfected within thirty (30) days after the entry of such judgment.

O. Repayment of Repair and Demolition Fund. All money recovered by payment of the charge or assessment or from the sale of property at foreclosure sale shall be paid to the City Treasurer, who shall credit the same to the Repair and Demolition Fund. (Ord. 1160, §1, 2001)

## **Chapter 2.16**

### **PLANNING COMMISSION<sup>4</sup>**

#### Sections:

2.16.010	Creation
2.16.020	Purpose
2.16.030	Powers and Duties
2.16.040	Organization
2.16.050	Procedural Rules
2.16.060	Staff and Finances

2.16.010 Creation. There is hereby created, pursuant to City Charter, a Planning Commission for the City of Fountain with the powers and duties specified herein. (Ord. 786 §1, 1988)

2.16.020 Purpose. The purpose of the Planning Commission shall be to review and advise the City Council on all public and private activities involving the physical development of the City. It further is the purpose of the Planning Commission to review and advise the City Council on matters concerning long-range planning for the City and such areas outside its corporate boundaries, which affect the orderly development of the City. (Ord. 786 §1, 1988)

2.16.030 Powers and Duties. The Planning Commission shall have the power and duty to prepare and promulgate regulations concerning the subdivision of land; shall prepare, adopt, and enforce compliance with a master street plan for the City and its environs; shall prepare, amend, and submit a comprehensive development plan for the City and its environs to the City Council for adoption; and shall review all subdivision plats, zoning requests and other development applications, and make recommendations prior to submitting same to the City Council for action. The Planning Commission shall also have the responsibility to make careful and comprehensive surveys and studies of present and future growth of the City with due regard to its relationship to neighboring territories. The Planning Commission shall further have the powers, perform the functions and follow the procedures set forth in the statutes and laws of the State of Colorado or of the United States. The City Council may increase, reduce, or alter any or

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<sup>4</sup> See Article IV of the City Charter

all of the duties and procedures of the Planning Commission. From time to time the Planning Commission may pass resolutions endorsing issues and organizations or indicating support or opposition to particular courses of action taken by interested agencies. (Ord. 786 §1, 1988)

2.16.040 Organization. The Planning Commission shall be organized as follows:

A. **Membership.** The Planning Commission shall consist of not less than five (5) nor more than nine (9) members and two (2) alternate members (collectively referred to as “members”) to be selected and appointed by the City Council. The Council shall not appoint members of its own body to the Planning Commission. All members shall serve without compensation, but shall be reimbursed for authorized expenses actually incurred in the discharge of their official duties.

B. **Terms of Office.** The term of each regular appointed member shall be four (4) years. The term of each alternate appointed member shall be four (4) years; provided that one (1) of the two (2) alternate members initially appointed by City Council shall be appointed for a term of four (4) years and the other alternate member shall be appointed for a term of two (2) years.

C. **Service of Alternate Members.** Alternate members may be called to serve in lieu of regular members when a regular member is not serving as a Planning commission member at a Planning Commission meeting. While serving as a Planning Commission member at a Planning Commission meeting, an alternate member shall have the same authority as a regular member. Service by alternate members on the Planning commission at Planning commission meetings shall rotate between the two alternate members except when the alternate member whose turn it is to serve is not available or both alternate members are called to serve on the Planning Commission at a Planning Commission meeting.

D. **Qualifications of Members.** All members of the Planning Commission shall have attained the age of eighteen (18) years, be bona fide residents of the City for at least one (1) year immediately preceding their appointment and be registered voters. If any member ceases to reside in the City, his or her membership shall terminate. Any person who has been a resident of any area annexed to or consolidated with the City for the requisite period of time prior to annexation or consolidation and who is otherwise qualified shall be eligible for membership on the Planning Commission. The membership should be representative of the City and should typify a balance between different interest groups.

E. **Vacancy Filling of Members.** Vacancies of the Planning Commission shall be filled for the remainder of the unexpired term by the appointment of the City Council. In the event that an unexpired term is for a period of less than six (6) months, the City Council may appoint a replacement for the next term plus the unexpired portion of the vacated term.

F. **Attendance-Removal of Members for Just Cause.** When any regular member is absent for three (3) consecutive regular meetings of the Planning Commission or when any alternate member when requested to serve is unable or unwilling to serve after three (3) consecutive requests to serve at a regular meeting of the Planning Commission, the Planning

commission shall notify the City Council. Said member is subject to removal by the City Council unless it is determined that exceptional circumstances exist and that there are sound reasons to believe the member's attendance will improve. The City Council may replace a member at any time for conviction of a felony crime, conflict of interest, or if it is determined that the performance of the member in serving on the Planning Commission is not in the best interest of the public, or for other just cause as determined by the City Council.

G. Officers. The members of the Planning Commission shall elect from among their number a chairperson, who shall be a regular member of the Planning commission and create and fill such other of its offices as it may determine with regular members. The term of the chairperson shall be one (1) year, with eligibility for re-election. (Ord. 786 §1, 1988) (Ord. 1448 §2, 2009)

#### 2.16.050 Procedural Rules.

A. Meetings. All meetings and hearings shall be open to the general public. The Planning Commission shall meet in regular session at least once each month and at other such times as may be decided by the Planning Commission or as the chairperson may direct. All meetings and hearings of the Planning Commission shall be open to the public. Special meetings may be called by the chairperson. Notice of the special meeting shall be provided to each member of the Planning Commission.

B. Rules and Records. The Planning Commission shall adopt rules for the transaction of its business and for carrying out the powers granted to it by the provisions of this chapter and the City Charter. The Planning Commission shall keep minutes of its proceedings showing the vote of each member upon each decision, or if absent, or failing to vote, indicating that. The Planning Commission shall also keep a record of its resolutions, transactions, findings and other official actions, which record shall be a public record.

C. Quorum. A quorum shall consist of not less than a majority of all members of the Planning Commission. No action or opinion shall be rendered by members of the Planning Commission at any meeting unless a quorum is present, except that the Planning Commission may adjourn any meeting to a date when a quorum is certain to be present.

D. Voting. A majority of votes cast at any meeting shall be required to adopt any matter before the Planning Commission. All votes shall be cast in person by the voting member. (Ord. 786 §1, 1988)

2.16.060 Staff and Finances. The City Council or City Manager may assign staff members in its employ to assist the Planning Commission. The Planning Commission may also, with the approval of the City Council, seek the services of city planners, engineers, architects or other consultants as it may require. The expenditures of the Planning Commission, exclusive of gifts, shall be within the amounts appropriated by the City Council, which shall provide the funds, equipment, and accommodations necessary for the Planning Commission's work. (Ord. 786 §1, 1988)

## Chapter 2.17

### ECONOMIC DEVELOPMENT COMMITTEE

Sections:

2.17.010	Purpose
2.17.020	Members - Number
2.17.030	Eligibility for Appointment - Qualifications
2.17.040	Members - Term of Office - Removal
2.17.050	Variances
2.17.060	Organization - Meetings - Rules
2.17.070	Duties

2.17.010 Purpose. The purpose of the economic development committee is to work for the orderly, progressive and diversified growth of the economic base of the City of Fountain.<sup>5</sup> (Ord. 751 §1, 1987)

2.17.020 Members - Number. The economic development committee shall be composed of not less than three nor more than seven members appointed by City Council. The Council may also appoint ex-officio, non-voting members who possess specific skills or knowledge required for the proper functioning of the committee but who are not otherwise eligible to serve as regular members of the committee. (Ord. 751 §1, 1987)

2.17.030 Eligibility for Appointment - Qualifications. All members, prior to appointment, shall be in compliance with all applicable eligibility requirements as set forth in the City Charter. If any regular member ceases to reside within the City, his membership shall automatically be terminated. All members shall serve without compensation and shall not hold any elective municipal office. Nor shall any member be an employee of the City. (Ord. 751 §1, 1987)

2.17.040 Members- Term of Office - Removal. Initial appointments by the Council shall specify the term of office of each regular member in a manner, which will insure the overlapping of terms. Ex-officio, non-voting members shall be appointed for three-year terms. Both regular and ex-officio members of the Committee shall be subject to removal from office for just cause by a majority vote of the City Council.

2.17.050 Vacancies. Vacancies shall be appointed for the remainder of the unexpired term. In the event that an unexpired term is for a period of less than six months, the Council may appoint a replacement for the regular term plus the unexpired portion of the vacated term. (Ord. 751 §1, 1987)

2.17.060 Organization - Meetings - Rules. The economic development committee shall elect a chairman from among its regular members, whose term shall be one year, with eligibility for

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<sup>5</sup> See City Charter, Article IV, section 4.5.



re-election. The committee shall meet at least once annually, at which time a chairman shall be selected. Other meetings shall be called by the chairman as often as needed to conduct official business. A quorum shall consist of a majority of the regular members of the committee. The order of business at meetings shall be determined by the chairman or in his absence, the vice-chairman. All meetings of the committee shall be open to the public. The committee shall also have the authority to promulgate necessary procedural rules in order to carry out its purposes. The committee shall report at least once each month to the City Council at a regular Council meeting. A copy of minutes and any other records of meetings shall be filed with the City Clerk. (Ord. 751 §1, 1987)

2.17.070 Duties. The committee shall have the responsibility to make recommendations to the City Council concerning the following:

- A. Formulation of economic development goals and objectives; and
  - B. Adoption of an economic development plan and implementation of the plan through economic development strategies; and
  - C. Promotion of economic development in the City of Fountain; and
  - D. Encouragement of development providing employment opportunities for existing and future residents and also providing for a diverse and stable economic base; and
  - E. Fundraising for economic development purposes; and
  - F. Any other activities related to economic development.
- (Ord. 751 §1, 1987)

## **Chapter 2.18**

### **PARK AND RECREATION ADVISORY BOARD**

Sections:

2.18.010	Creation
2.18.020	Purpose
2.18.030	Powers and Duties
2.18.040	Organization
2.18.050	Procedural Rules
2.18.060	Staff and Finances

2.18.010 Creation. There is hereby created, pursuant to City Charter, a Park and Recreation Advisory Board for the City of Fountain with the powers and duties specified herein.<sup>6</sup> (Ord. 824 §1, 1988)

2.18.020 Purpose. The purpose of the Park and Recreation Advisory Board shall be to advise the City Council regarding the development of park and recreation facilities. (Ord. 824 §1, 1988)

2.18.030 Powers and Duties. The Board shall act in an advisory capacity to the City Council and shall provide recommendations pertaining to the planning, development, improvement, beautification and maintenance of public parks, open space, trails, green belts and recreational facilities of the City. Said Board shall have the following duties:

A. Submit to the City Manager and City Council suggestions and recommendations for the Park and Recreation budget of the City for each budget year. Such review and recommendations shall be submitted to the City Manager prior to the preparation of the City budget by the City Manager.

B. Submit to the City Manager and City Council recommendations regarding the development of City parks and recreational facilities and the improvement priorities for each City park and recreational facility.

C. Review master plans and subdivision plats and make recommendations to the City Council and Planning Commission regarding the provision of parks, recreational facilities and open space.

D. Recommend to City Council regarding the adoption of rules, regulations and ordinances for the use of park and recreation facilities of the City and the names of City parks. (Ord. 824 §1, 1988)

2.18.040 Organization. The Park and Recreation Advisory Board shall be organized as follows:

A. Membership. The Park and Recreation Advisory Board shall consist of no less than three and no more than five (5) members appointed by the City Council. The Council shall not appoint members of its own body to the Park and Recreation Advisory Committee. All members shall serve without compensation, but shall be reimbursed for authorized expenses actually incurred in the discharge of their official duties.

B. Terms of Office. The terms of each appointed member shall be for a period of four (4) years and membership shall be appointed on a staggered term basis to ensure overlapping of the terms of the members.

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<sup>6</sup> City Charter §4.6

C. **Qualifications of Members.** All members of the Park and Recreation Advisory Committee shall have attained the age of eighteen (18) years, be bona fide residents of the City for at least one (1) year immediately preceding the date of their appointment and be registered voters. If any member ceases to reside in the City, his membership shall immediately terminate. Any person who has been a resident of any area annexed to or consolidated with the City for the requisite period of time prior to annexation or consolidation and who is otherwise qualified shall be eligible for membership on the Park and Recreation Advisory Board. The membership should be representative of the City and should typify a balance between different interest groups.

D. **Vacancy Filing of Members.** Vacancies of the Park and Recreation Advisory Board shall be filled for the remainder of the unexpired term by the appointment of the City Council. In the event that an unexpired term is for a period of less than six (6) months, the City Council may appoint a replacement for the regular term plus the unexpired portion of the vacated term.

E. **Attendance-Removal of Members for Just Cause.** When any member is absent for three (3) consecutive regular meetings without good cause, the Park and Recreation Advisory Board shall notify the City Council. Said member may be subject to removal by the City Council unless it is determined that exceptional circumstances exist and that there are sound reasons to believe the member's attendance will improve. The City Council may replace a member at any time for conviction of a felony crime, conflict of interest, lack of performance of duties, if it is determined that the performance of the member in serving on the Park and Recreation Advisory Board is not in the best interests of the public, or for other just cause as determined by the City Council.

F. **Officers.** The members of the Park and Recreation Advisory Board shall elect from among their number a chairperson and create and fill such other of its offices as it may determine. The term of the chairperson shall be one (1) year, with eligibility for re-election. (Ord. 824 §1, 1988)

2.18.050 Procedural Rules. The procedural rules of the Park and Recreation Advisory Board shall be as follows:

A. **Meetings.** All meetings shall be open to the general public. The Park and Recreation Advisory Board shall meet in regular session at least once each month and at other such times as may be decided by the Park and Recreation Advisory Board or as the chairperson may direct. Notice of the special meeting shall be provided to each member of the Park and Recreation Advisory Board.

B. **Rules and Records.** The Park and Recreation Advisory Board shall adopt rules for the transaction of its business and for carrying out the powers granted to it by the provisions of this chapter and the City Charter. The Park and Recreation Advisory Board shall keep minutes of its proceedings showing the vote of each member upon each decision, or if absent, or failing to vote, indicating that. The Park and Recreation Advisory Board shall also keep a record of its transactions, findings and other actions which record shall be a public record.

C. **Quorum.** A quorum shall consist of not less than a majority of all members of the Park and Recreation Advisory Board. No action or opinion shall be rendered by members of the

Park and Recreation Advisory board at any meeting unless a quorum is present, except that the Park and Recreation Advisory Board may adjourn any meeting to a date when a quorum is certain to be present.

D. Voting. A majority of votes cast at any meeting shall be required to adopt any matter before the Park and Recreation Advisory Board. All votes shall be cast in person by the voting member. (Ord. 824 §1, 1988)

2.18.060 Staff and Finances. The City Council or City Manager may assign staff members in its employ to assist the Park and Recreation Advisory Board. The Park and Recreation Advisory Board may also, with the approval of the City Council, seek the services of city planners, engineers, architects or other consultants as it may require. The expenditures of the Park and Recreation Advisory Board, exclusive of gifts, shall be within the amounts appropriated by the City Council, which shall provide the funds, equipment, and accommodations necessary for the Park and Recreation Advisory Board's work. (Ord. 824 §1, 1988)

## Chapter 2.20

### SOCIAL SECURITY SYSTEM<sup>7</sup>

#### Sections:

- 2.20.010 Extension of Coverage to City Employees
- 2.20.020 Employment Tax - Authorized - Payment into State Fund
- 2.20.030 Appropriation of City Funds

#### 2.20.010 Extension of Coverage to City Employees.

A. It is the considered opinion of the City trustees that the extension of the Social Security System to employees of the City will be of great benefit, not only to the employees of the City y providing that said employees may participate in the provisions of the Old-Age and Survivor's Insurance System, and will also be of great benefit to the City by enabling it to attract and retain in employment the best of personnel and thus increase the efficiency of its government.

B. Chapter 111-7 of the Colorado Revised Statutes, 1953, designates the Department of Employment Security, State of Colorado, to act as the department to implement the coverage of employees and officers under the Old-Age and Survivor's Insurance Department of Employment Security, State of Colorado, a plan, or plans, and agreement, required under Section 5 of said enabling Act and the Social Security Act, to extend coverage to employees and officers of the City and do all other necessary things to effectuate coverage of employees under the Old-Age and Survivors' Insurance System. (Ord. 240 (part), 1955)

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<sup>7</sup> For statutory provisions authorizing municipalities to extend Social Security coverage to municipal employees, see CRS 1973 §24-51-704.

2.20.020 Employment Tax - Authorized - Payment Into State Fund. The clerk is authorized to establish a system of payroll deduction to be matched by payments by the City to be paid into the Contribution Fund of the State through the Department of Employment Security, and to make charges of this tax to the fund, or funds, from which wage or salary payments are issued to employees of the City. Such payments are to be made in accordance with the provisions of Sections 1400 and 1410 of the Federal Insurance Contribution Act on all services which constitute employment within the meaning of that Act. Payments made to the Department of Employment Security, State of Colorado, shall be due and payable on or before the eighteenth day of the month immediately following the completed calendar quarter, and such payments which are delinquent shall bear interest at the rate of one-half of one percent per month until such time as payments are made. (Ord. 240 (part), 1955)

2.20/030 Appropriation of City Funds. Appropriation is made from the property fund, or funds, of the City in the necessary amount to pay into the Contribution Fund as provided in Section 5(c)(1) of the enabling Act and in accordance with the plan, or plans, and agreement. Authority is given to the mayor and the clerk of the City to enter into an agreement with the Department of Employment Security, State of Colorado, which agreement shall be in accordance with Chapter 111-7 of the Colorado Revised Statutes, 1953, and with paragraph 218 of the Social Security Act. Such plan and agreement shall provide that the participation of the City in the Old-Age and Survivors' Insurance System shall be in effect as of January 1, 1955. (Ord 240 (part), 1955)

## **Chapter 2.24**

### **CEMETERY**

#### Sections:

2.24.010	Location – Use Required
2.24.020	Administrative Duties-City Clerk-Duties-Annual Reports
2.24.025	Operations-Maintenance of the Cemetery Facility
2.24.030	Superintendent-Record Keeping of Internments
2.24.040	Superintendent-Preparation of Rules and Regulations
2.24.050	Superintendent-Supervision of Burial Permits
2.24.060	Superintendent-Landscaping Duty
2.24.070	Physician's Certificate of Death-Permit for Internment
2.24.080	Purchase of Cemetery Lots
2.24.085	Abandonment of Burial Spaces
2.24.090	Monuments-Size and Materials
2.24.100	Monuments-Supervision of Placement or Removal
2.24.120	Monuments-Work Prohibited on Sunday
2.24.140	Monumental Firms-Responsible for Damages
2.24.150	Opening of Graves
2.24.170	Changes-Designated by City Council
2.24.180	Responsibility for Cleaning up Debris

- 2.24.190 Penalty for Violation of Sections 2.24.010 through 2.24.040, 2.24.070, 2.24.080 and 2.24.170
- 2.24.200 Disinterment

2.24.010 Location – Use Required. The City of Fountain hereby designates the Fairview Cemetery (hereinafter The Cemetery) situated in El Paso County, State of Colorado as the sole location, within the city limits where any body of any person may be interred. The Cemetery is described as follows:

Two and one-quarter acres of land lying in the Southeast corner of the Southwest Quarter of the Southeast Quarter of Section 7 in Township 16 South, Range 65 West (it being in a square, 19 poles on each side), and all additions thereto in the County of El Paso, State of Colorado. It shall be unlawful to inter the body of any Person within the City limits except in the city cemetery, or such other place of Sepulcher to be set apart by the City Council. (Ord. 1196, §1, 2003)

2.24.020 Administrative Duties – Annual Reports – City Clerk. The City Clerk of the City shall be the administrator of the cemetery and the custodian of the cemetery books and records. The City Clerk shall make annual reports to the City Council showing all the internments and the general status of the cemetery involving usage and vacancy. (Ord. 1196, §1, 2003)

2.24.025 Operations – Maintenance of the Cemetery Facility. The cemetery shall be operated generally as a park and, as such shall be maintained and operated by the Public Works Department. The General Rules and Regulations promulgated for purposes of use, maintenance and operation of parks shall apply to the cemetery except to the extent modified by the City Council and Public Works Director of the Public Works Department. (Ord. 1196, §1, 2003)

2.24.030 Record Keeping of Internments. It shall be the duty of the City Clerk to keep an accurate record of all lots in the cemetery, or any such other place of sepulcher as the City Council may provide or establish showing the name of the purchaser, with the number of lot or lots purchased, in a book provided by the City of that purpose. In the same book shall be kept a diagram showing the location of each interment upon each lot. (Ord. 1196, §1, 2003)

2.24.040 Preparation of Rules and Regulations. The City Clerk shall formulate and prepare the rules and regulations not inconsistent with the provisions of Sections 2.24.010 through 2.24.040, 2.24.070, 2.24.080 and 2.24.170, and in furtherance thereof, for the control and management of said cemetery and additions thereto. (Ord. 1196, §1, 2003)

2.24.050 Burial Permits. No person's body shall be interred until a permit is issued. Such permits shall be granted by the City Clerk under the rules and regulations adopted pursuant to 2.24.040. (Ord. 1196, §1, 2003)

2.24.060 Landscaping Duty. The Public Works Department shall have entire charge of the planting of trees and shrubs for the ornamentation of the grounds. Planting by the proprietors of lots is invited, especially with reference to flowering shrubs and evergreens; provided, that

approval of such trees and shrubs to be planted and the location of the same is granted by the Public Works Department. The City will not maintain or be responsible for any such shrubs, bushes and plants installed by the proprietors. (Ord. 1196, §1, 2003)

2.24.070 Physician's Certificate of Death – Burial or Exhumation. It shall be the duty of the attending physician of deceased, to make out and deliver to the family or friends of such deceased person, a certificate of the death, which shall state the name, age and sex of the deceased, to enter with the cause of death. No body shall be exhumed from said City for internment, or shall be interred with the cemetery, until the certificate required by this section and by the State Board of Health has been presented at the office of the City Clerk, and the permit of said officer granted for such removal or internment. (Ord. 1196, §1, 2003)

2.24.080 – Purchase of Cemetery Lots. All applications for the purchase of lots in the City cemetery shall be made to the City Clerk. The City Clerk shall sell said lots at such prices as may be specified or designated by the City Council at any regular meeting, which prices shall be provided for and set forth in 2.24.170. The City Clerk shall give a certificate of purchase to the purchaser of any lots or lot or parts thereof purchased, specifying the number of the lot and block, and enter the same upon his records, and such certificate shall be signed by Mayor and attested by the City Clerk under the seal of the City. (Ord. 1196, §1, 2003)

2.24.085 Abandonment of Burial Spaces.

A. Reversion. The ownership or right in or to any unoccupied cemetery burial space shall, upon abandonment, revert to the City.

B. Presumption. Failure to inter in any burial space(s) after one hundred (100) years from purchase, transfer, or internment in adjacent spaces commonly owned whichever is later in time, shall create and establish a presumption that the same has been abandoned. This presumption shall not apply when a letter of intent is filed by the owner or heir in title upon certified mail request to the City Clerk stating the intention to keep specified spaces vacant.

C. Notice Required. Prior to the property reverting to the City due to abandonment, the City Clerk shall send written notice to the registered owner(s) or their heirs or assigns to the last known address. In the event that a last known address of the owner or owner's heirs cannot be ascertained, then the notice of such abandonment shall be published in a newspaper of general circulation in El Paso County at least once a week for five (5) consecutive weeks.

D. Failure to Reply. If the registered owner or the owner's heirs or assigns fail to inform the City Clerk within sixty (60) calendar days after such notice of abandonment has been mailed by the City Clerk or after final publication of such notice of an intention to retain the burial spaces remaining, then abandonment, shall become final and the City shall thereafter be the owner of such lot. The funds derived from any sale of an abandoned space shall be considered as a new grave space sale with no reimbursement to the previous owner. (Ord. 1196, §1, 2003)

2.24.090 Monuments – Size and Material. Foundations for monuments and gravestones must be a minimum of 3 ½ inches thick or larger approved by the Public Works Department. (Ord. 1196, §1, 2003)

2.24.120 Monuments – Supervision of Placement or Removal. All monuments, tablets, headstones or markers, must be put up or removed under the supervision of the Public Works Department and to its satisfaction. (Ord. 1196, §1, 2003)

2.24.140 Monumental Firms – Responsible for Damages. All persons and all monumental firms will be held responsible for any damage done by them to monuments, grass, trees, fences or any other object whatsoever in the cemetery. Monumental firms are subject to the control and direction of the Public Works Department. (Ord. 1196, §1, 2003)

2.24.150 Opening and Exhuming of Graves. All graves shall be opened only by the Public Works Department or under the direct supervision of the Public Works Department. The person or entity requesting exhumation shall be responsible for all costs of exhumation, however the Public Works Department will be responsible for the digging and restoration of gravesite for the requested exhuming of the individual or opening of graves. The City will estimate time and equipment costs for the work and all such costs shall be paid prior to exhumation based upon the city's estimate of such costs. If any such estimate is above the actual cost, the City will refund such excess within thirty (30) days of payment of such costs. If such estimate is below the actual cost the property owner shall remit the balance within thirty (30) days of the City's advisement of payment of the charges. (Ord. 1196, §1, 2003)

2.24.170 Charges for Digging and Filling Graves – Designated by City Council. All charges for the digging and filling of graves and exhumation, including services of the Public Works Department at the grave, shall be designated by the City Council at a regular fee, which charges shall be provided for and set forth in the rules and regulations relating thereto. (Ord. 1196, §1, 2003)

2.24.180 Responsibility for Cleaning up Debris. The cleaning of any debris outside of that caused by the digging, filling or exhuming of graves shall be the responsibility of the individual owning the specific lot. (Ord. 1196, §1, 2003)

2.24.190 Penalty for Violation of Section 2.24.010 Through 2.24.040, 2.24.070, 2.24.080 and 2.24.170. Any person who violates any of the provisions of Section 2.24.010 through 2.24.040, 2.24.070, 2.24.080 and 2.24.170, or any of the rules and regulations referred to , is guilty of an offense, and shall be fined per City Ordinances. (Ord. 1196, §1, 2003)

2.24.200 Disinterment. The lot of any body, which has been disinterred, shall be deemed abandoned as defined in Section 2.24.085. No notice of abandonment shall be required. (Ord. 1196, §1, 2003)

## **Chapter 2.28**



## FAIR HOUSING

### Sections:

2.28.010	Title
2.28.020	Definitions
2.28.030	Fair Housing Coordinator - Office Established - Powers and Duties
2.28.040	Prohibitions
2.28.050	Complaints - Confidentiality of Filing
2.28.060	Complaints - Filing Procedure - Investigation - Redress

2.28.010 Title. The ordinance codified in this chapter shall be known as the "fair housing ordinance of the city". (Ord. 517 §, 1979)

2.28.020 Definitions. As used in this chapter, the following definitions shall apply:

- A. "City Council" means the City Council of Fountain, Colorado.
- B. "Coordinator" means the coordinator of the City.
- C. "Discriminate" means both segregate and separate.
- D. "Housing" means any building, structure, vacant land, or part thereof, during the period it is advertised, listed or publicly advertised for sale, lease, rent or transfer of ownership; except that housing does not include any room offered for rent or lease in a single-family dwelling maintained and accepted in part by the owner or lessee of said dwelling as his household.
- E. "Person" means one or more individuals, partnerships, associates, corporations, legal representatives, trustees or receivers; any owner, lessee, proprietor, manager, employee, or any agent of such person, but include any nonprofit, fraternal, educational, or social organization or club, unless such nonprofit, fraternal, educational, or social organization or club has the purpose of promoting discrimination in the matter of housing against any person because of race, creed, color, national origin, or ancestry.
- F. "Probable Cause" exists if upon all the facts and circumstances a person of reasonable prudence and caution would be warranted in a belief that the transaction would have proceeded to completion, except that an unfair housing practice of refusal to sell, transfer, rent, or lease had been committed. As to all unfair housing practices, probable cause shall exist if upon all the facts and circumstances a person of reasonable prudence and caution would be warranted in a belief that an unfair housing practice has been committed.
- G. "Restrictive Covenants" means any specification limiting transfer, rental, or lease of any housing because of race, creed, color, sex, national origin, or ancestry.

H. "Transfer", used in this chapter, shall not apply to transfer of property by will or by gift.

I. "Unfair Housing Practices" means those practices specified in subsection D of this section. (Ord. 517 §2, 1979)

#### 2.28.030 Fair Housing Coordinator - Office Established - Powers and Duties.

A. The office of fair housing coordinator is established. The City Council shall appoint a fair housing coordinator for such period of time and on such terms as it deems appropriate.

B. The powers and duties of such coordinator are as follows:

1. To receive, investigate, and pass upon complaints alleging an unfair housing practice as defined in this chapter;
2. To investigate and study the existence, character, causes, and extent of unfair housing practices by any person and to formulate plans for the elimination thereof by educational or other means.
3. To issue such publications and reports of studies and research that will tend to promote good will among the various racial, religious, and ethnic groups in the City and which will tend to reduce or eliminate unfair housing practices because of race, creed, color, sex, national origin or ancestry;
4. To make recommendations for such further legislation concerning unfair housing practices because of race, color, creed, sex, or national origin or ancestry;
5. To cooperate with other agencies or organizations, both public and private, whose purposes are consistent with those of this chapter in the planning and conducting of educational programs designed to eliminate social, religious, cultural and inter-group tensions. (Ord. 517 §3, 1979)

#### 2.28.040 Prohibitions.

A. It shall be an unfair housing practice and unlawful and prohibited:

1. For any person having the right of ownership or possession or the right of transfer, sale, rental or lease of any housing, as defined in this section, or any agent of such person, to refuse to show, sell, transfer, rent or lease, or to refuse to receive and transmit any bona fide offer to buy, sell, rent or lease, or otherwise to deny to or withhold from any person such housing because of race, creed, color, sex, marital status, religion, national origin or ancestry in the terms, conditions, or privileges pertaining to any housing or the transfer, sale, rental, or lease thereof or in the furnishing of facilities or services in connection therewith; or to cause to be made any written or oral inquiry or record concerning the race, creed, color, sex, religion, national origin, or ancestry of a person seeking to purchase, rent, or lease any housing;

2. For any person to whom application is made for financial assistance for the acquisition, construction, rehabilitation, repair, or maintenance of any housing to make or cause to be made any written or oral inquiry concerning the race, creed, color, sex, religion, national origin, or ancestry of any person seeking such financial assistance or concerning the race, creed, color, sex, religion, national origin, or ancestry of prospective occupants or tenants of such housing or to discriminate against any person because of race, creed, color, sex, marital status, religion, national origin, or ancestry of such person, or prospective occupants or tenants in the terms, conditions, or privileges relating to the obtaining or use of any such financial assistance;
3. For any person to include in any transfer, sale, rental, or lease of housing any restrictive covenants, or for any person to honor or exercise or attempt to honor or exercise any restrictive covenant pertaining to housing.
4. For any person to print or publish or cause to be printed or published any notice of advertisement relating to the sale, transfer, rental, or lease of any housing which indicates any preference, limitations, specification, or discrimination based on race, creed, color, sex, national origin, or ancestry;
5. For any person to aid, abet, incite, compel, or coerce the doing of any act defined in this section as an unfair housing practice, or to obstruct or prevent any person from complying with the provisions of this chapter or any order issued thereunder or to attempt either directly or indirectly to commit any act defined in this section to be an unfair housing practice;
6. For any person to discharge, demote, or discriminate in matters of compensation against any employee or agent because of said employee's or agent's obedience to the provisions of this chapter.

B. Nothing contained in this chapter shall be construed to bar any religious or denominational institution or organization which is operated or supervised or controlled by or is operated in connection with a religious or denominational organization from limiting admission to or giving preference to persons of the same religion or denomination or from making such selections of buyers, lessees, or tenants as are calculated by such organization or denomination to promote the religious or denominational principles for which it is established or maintained.

C. Nothing in this chapter shall be construed to bar any person from leasing premises only to members of one sex. (Ord. 517 §4, 1970)

2.28.050 Complaints - Confidentiality of Filing. Neither the coordinator nor members of his staff shall disclose the filing of any complaint, or the information gathered during investigation or the endeavors to eliminate such unfair housing practice, by conference, conciliation, and persuasion, unless such disclosures are made in connection with the conduct of such investigation or unless such disclosures are made in connection with the filing of a petition seeking appropriate relief against the person named in the complaints. (Ord. 517 §5, 1979)

2.28.060 Complaints - Filing Procedure - Investigation - Redress.

A. Any person claiming to be aggrieved by an unfair housing practice may, by himself or by his attorney at law, make, sign and file with the coordinator a verified written complaint in duplicate which shall state the name and address of the person alleged to have committed the unfair housing practice complained of and which shall set forth the particulars thereof and contain such other information as may be required by the coordinator.

B. After the filing of the complaint, the coordinator shall make a prompt investigation to determine whether probable cause exists for crediting the allegations of the complaint. If the coordinator determines that probable cause does not exist he shall promptly advise the complainant in writing. If probable case exists for crediting the allegations of the complaint, the coordinator may immediately endeavor to eliminate the unfair housing practice by conference, conciliation and persuasion and shall advise the complainant that the coordinator has no enforcement authority in the event such efforts are fruitless. Upon filing of the complaint, the coordinator must also advise the complainant that effective redress can only be had by filing a complaint within ninety days from the date of the alleged unfair housing practice with the Colorado Civil Rights Commission. (Ord. 517 §6, 1979)

**Chapter 2.32**

**CITY COUNCIL COMPENSATION\***

Sections:

- |          |  |
|----------|--|
| 2.32.010 | Compensation of Members of Council                             |
| 2.32.020 | Compensation Not to Increase or Decrease During Term of Office |
| 2.32.030 | When Effective   |

2.32.010 Compensation of Members of Council. For attendance at Council Meetings. Each member of the Council, including the Mayor and the Mayor Pro Tem, shall receive \$25.00 for each regular or special meeting attended. (Ord. 759 §1, 1987) (Ord. 1390 §1, 2007)

2.32.020 Compensation Not to Increase or Decrease During Term of Office. The amount of compensation shall not be increased or decreased during the term of office to which any Council Member including the Mayor and the Mayor Pro Tem has been elected or appointed and shall remain at \$25.00 for any such Council Member for each regular or special meeting attended. (Ord. 759 §1, 1987) (Ord. 1390 §1, 2007)

2.32.030 Compensation for Attendance at Council Meetings When Effective. The compensation provided for in section 2.32.010 shall take effect at the start of the term of the Mayor, Mayor Pro Tem, and any Council Member elected or appointed on or after November 3, 1987. (Ord. 759 §1, 1987) (Ord. 1390 §1, 2007)

\* For Charter provisions on City Council Compensation, see City Charter, Section 2.6.

### Chapter 2.34

#### CITY COUNCIL STIPEND

##### Sections:

2.34.010	Stipend, When Effective
2.34.020	Stipend of Mayor
2.34.030	Stipend of Mayor Pro Tem
2.34.040	Stipend of Council Members
2.34.050	Stipend Not to Increase or Decrease During the Term of Office for the Mayor, Mayor Pro Tem, or Council Members Elected or Appointed
2.34.060	Apportionment of Stipend at Start or End of Term of Office
2.34.070	Attendance Requirements

2.34.010 Stipend, When Effective. The stipend provided for in this Chapter 2.34 shall take effect at the start of the term of office of the mayor, Mayor Pro Tem, and any Council Member who is elected or appointed to that office on or after December 15, 2007. (Ord. 1390 §2, 2007)

2.34.020 Stipend of Mayor. The Mayor shall receive a \$400.00 stipend for each full month in office during the Mayor's term of office, which shall include the compensation paid to the Mayor under Chapter 2.32 of this Title. (Ord. 1390 §2, 2007)

2.34.030 Stipend of Mayor Pro Tem. The Mayor Pro Tem shall receive a \$325.00 stipend for each full month in office during the Mayor Pro Tem's term of office, which shall include the compensation paid to the Mayor Pro tem under Chapter 2.32 of this Title. (Ord. 1390 §2, 2007)

2.34.040 Stipend of Council Members. City Council Members, excluding the Mayor and the Mayor Pro Tem, shall receive a \$300.00 stipend for each full month in office during the City Council Member's term of office, which shall include the compensation paid to the City Council Member under Chapter 2.32 of this Title. (Ord. 1390 §2, 2007)

2.34.050 Stipend Not to Increase or Decrease During the Term of Office for the Mayor, Mayor Pro Tem, or Council Members Elected or Appointed. The amount of stipend for the Mayor, the Mayor Pro Tem, and Council Members shall not be increased or decreased during the term of office to which the Mayor, Mayor Pro Tem, or Council Member has been elected or appointed but shall include compensation paid to the Mayor, Mayor Pro Tem or Council Member under Chapter 2.32 of this Title. (Ord. 1390 §2, 2007)

2.34.060 Apportionment of Stipend at Start or End of Term of Office. Whenever the term of office of the Mayor, Mayor Pro Tem, or other City Council Member starts or ends, other than on

the first day of the calendar month, the stipend shall be prorated based upon the number of days of the month during which the term of the Mayor, Mayor Pro Tem, or Council Member was in office. (Ord. 1390 §2, 2007)

2.34.070 Attendance Requirements. The stipend under this Chapter shall only be paid to the Mayor, Mayor Pro Tem or Council Members who have attended at least one regular Council meeting the preceding month. If, during the month preceding the payment of the stipend, the Mayor, Mayor Pro Tem, or Council Member has not attended at least one regular Council meeting, the stipend shall not be paid for that month. (Ord. 1390 §2, 2007)

\* For Charter provisions on City Council Compensation, see City Charter, Section 2.6.

## **Chapter 2.36**

### **DISASTER EMERGENCY**

#### Sections:

2.36.010	Intent and Purpose
2.36.020	Definitions
2.36.030	Organization and Appointments
2.36.040	Duties and Responsibilities of the Office of Disaster Emergency Services
2.36.050	Disaster Plan
2.36.060	Disaster Powers and Authority
2.36.070	Emergency
2.36.080	Line of Succession of Mayor
2.36.090	Applicability of State Law in Disaster Situations
2.36.100	Violation of Regulations

#### 2.36.010 Intent and Purpose.

A. It is the intent of the City Council to insure that the basic government functions of maintaining the public peace, health and safety are provided and to effectively deal with any disaster that may occur within Fountain by insuring the readiness and the complete and efficient utilization of all available resources.

B. This chapter hereby establishes the Office of Disaster Emergency Services, which is the coordinating agency for all disaster planning and is the instrument through which the City Manager may exercise his authority and discharge the responsibilities vested in him by the City Charter and City ordinances. (Ord. 660 §2, 1984)

#### 2.36.020 Definitions.

A. "Disaster Emergency Services" are services designed to carry out the basic essential government functions of maintaining public peace, health and safety during a disaster.

B. "Disaster" means an occurrence or imminent threat of widespread or severe damage, injury and loss of life or property resulting from any natural or man-made cause, including but not limited to: fire, flood, earthquake, wind, storm, nuclear incident, epidemic, blight, drought, infestation, explosion, aircraft crash, riot, chemical or oil spill, or other contamination of air or water, requiring immediate action to avert danger or damage, or an other declared disaster that requires the aid and assistance of outside, local, state or federal agencies.

C. "Disaster Forces" means the employees, equipment and facilities of the City Departments, Boards and Commissions, and in addition it shall include mutual aid agencies, state and federal agencies, public entities, private enterprises, volunteer personnel, equipment and facilities contributed by anyone or requested by the City.

D. "Volunteer" means anyone contributing a service, equipment or facilities to the disaster emergency services of the City without remuneration.

E. "Disaster Volunteer" means any person duly registered, identified and appointed by the Director of the Office of Disaster Emergency Services assigned and authorized to participate in disaster emergency operations of the City without remuneration.

F. "Director of Disaster Emergency Services" means the person appointed by the City Manager to head the office of Disaster Emergency Services.

G. "Regulations" means proclamations, rules, standard operating procedures and other disaster and emergency procedures deemed essential to disaster planning and coordination of disaster emergency services.

H. "Emergency" means a threat to the health, safety or welfare of an area of the City or a group of citizens but not of such magnitude and severity as to constitute a disaster and shall include but not limited to fire, flood, water and power shortages, explosions, contaminations and civil disturbances involving three or more persons acting together accompanied by violence or threat of imminent force.

I. "City" means the City of Fountain. (Ord. 660 §3, 1984)

#### 2.36.030 Organization and Appointments.

A. City Manager. The City Manager is hereby authorized and directed to establish an organization for disaster emergency services utilizing to the fullest extent the services and resources of existing departments within the City. The City Manager shall be the coordinator of the Office of Disaster Emergency Services and shall be responsible for its organization, administration and operations.

B. Appointment of Director. The City Manager shall appoint a Director of the Office of Disaster Emergency Services who shall serve in such capacity at the pleasure of the City Manager, and he may be otherwise employed by the City. The Director shall be under the

supervision and control of the City Manager, and shall be charged with the duties, responsibilities and authority contained in this ordinance.

C. Cooperation. The employees, equipment and facilities of all City Departments, Boards and Commissions shall participate in disaster planning activities. Responsibilities assigned to a City Department shall be similar to the normal duties for the Department. (Ord. 660 §4, 1984)

2.36.040 Duties and Responsibilities of the Office of Disaster Emergency Services. The City Manager is responsible for the planning, coordination and operation of the disaster activities in the City and shall ensure that the Director performs the following duties:

A. Develops a comprehensive plan delineating measures to be implemented by the City to prevent a disaster or to be used by the City during a disaster or to direct relief and recovery efforts after a disaster has occurred.

B. Coordinates municipal functions, including but not limited to fire fighting, police, medical, health, rescue, engineering, warning, communications, radiological monitoring services, evacuation of persons from stricken areas, emergency welfare, temporary shelter, emergency transportation, debris removal, temporary restoration of public utility services and other functions related to public protection, together with all activities necessary or incidental to the preparation for and delivery of disaster services.

C. Coordinates the activities of City Departments with private and other public agencies cooperating in the disaster emergency program.

D. Sponsors and carries out instructions and training of municipal and private support groups in order to secure a unified, balanced and coordinated program.

E. Negotiates on behalf of the City with other municipalities and governmental entities to work out mutual aid agreements for reciprocal assistance in disaster situations.

F. Negotiates on behalf of the City with owners or persons in control of buildings or other property for the use of such buildings or other property for the disaster operations and designating suitable buildings as public shelters.

G. Develops a shelter plan, appoints and trains shelter managers.

H. Identified, registers, appoints, trans and supervises volunteers who may be called upon from time to time to assist and supplement City Departments.

I. Conducts exercises to ensure the efficient operation of the disaster plan.

J. Submits to the City Manager and the City Council an annual report which shall include a summary of the past year's activities.



K. Ensures that current copies of the disaster plan are routinely provided to affected City employees and officials.

L. Assumes such authority and conducts such activity as the City Manager may direct to promote and execute the disaster plan. (Ord. 60 §5, 1984)

#### 2.36.050 Disaster Plan.

A. A comprehensive disaster plan shall be adopted and maintained by ordinance of the City Council upon the recommendation of the City Manager. When approved it shall be the duty of all City departments to perform the functions assigned by the plan and to maintain their portion of the plan in a current state of readiness at all times. The disaster plan shall be considered supplementary to this chapter, and have the effect of law whenever a disaster, as defined in this ordinance, has been declared.

B. The City Manager shall prescribe in the disaster plan those positions within the disaster organization, in addition to his own, for which lines of succession are necessary. In each instance the responsible person will designate and keep on file with the Director a current list of three (3) persons as successors to his position. The list will be in order of succession and will as nearly as possible designate the persons best capable of carrying out all assigned duties and functions.

C. Each department head assigned responsibility in the disaster plan shall be responsible for carrying out all duties and functions assigned. Duties will include the organization and training of assigned City employees and volunteers. Each department head shall formulate the operational plan for this service which, when approved by City Council, shall be an annex to and part of the disaster plan.

D. Amendments for the disaster plan may be submitted to the city Manager. If approved, the City Manager will submit the amendments to the City Council with recommendations for their approval.

E. When a required competency or skill for a disaster function is not available within the City government, the Director is authorized to seek assistance from persons outside of government. The assignment of duties, when of a supervisory nature, shall also grant authority for the persons so assigned to carry out such duties prior to, during and after the occurrence of a disaster. Such services from persons outside of government may be accepted by the City on a volunteer basis. Such citizens shall be enrolled as volunteers in cooperation with heads of the City departments affected.

F. Some of the duties described in this section will ordinarily be handled as a matter of routine by the Director, but the responsibility and authority stems from and remains with the City Manager. (Ord. 660 §6, 1984)

#### 2.36.060 Disaster Powers and Authority.

A. Powers of the Mayor. The Mayor shall have the power to declare that a state of disaster exists, when in his opinion a disaster has occurred or the threat of a disaster is imminent.

B. Duration of State of Disaster. The state of disaster shall continue until the Mayor finds that the threat of danger has passed or the disaster has been dealt with to the extent that disaster condition no longer exist and terminates the state of disaster by proclamation. No state of disaster may continue for longer than seven (7) days, unless renewed by the consent of the majority of City Council.

The City Council may terminate by motion a disaster at any time, whereupon the Mayor must issue a proclamation ending the state of disaster.

C. Proclamation of a State of Disaster. The proclamation of disaster shall be prepared in written form and shall describe the nature of the disaster, the area threatened, the conditions which have brought it about and the conditions that would make possible the termination of the state of disaster.

1. Such proclamation shall be delivered to the City Manager, who shall ensure proper publication and dissemination of information to the public, as to the nature and extent of the disaster.
2. The issuance of a proclamation declaring a state of disaster shall automatically empower the City Manager to exercise any and all of the disaster powers contained in this ordinance and shall activate all relevant portions of the disaster emergency plan.
3. The City Council may convene to perform its legislative powers as the situation demands and shall receive reports relative to disaster operations. Nothing in this chapter shall abridge or curtail the powers of the City Council.

D. Disaster Powers. During any period when a disaster proclamation is in effect, the City Manager may promulgate such regulations as he deems necessary to protect life and property and preserve critical resources. Such regulations may include, but shall not be limited to the following:

1. Regulations prohibiting or restricting the movement of vehicles in order to facilitate the work of disaster forces, or to facilitate the mass movement of persons from critical areas within or without the City.
2. Regulations pertaining to the movement of persons from areas deemed to be hazardous or vulnerable to disaster.
3. To declare a public curfew.
4. To temporarily seize any non-resident building for the purpose of providing temporary shelter for displaced disaster victims.
5. To close or regulate the business hours of any commercial establishment in the City, when such closing or regulation is in the public interest.
6. To prohibit the sale and distribution of any product, item or material when such prohibition is in the public interest.
7. To seize any food, clothing, water or medical supplies necessary to sustain displaced disaster victims.

8. Such other regulations necessary to preserve public peace, health and safety.
9. Regulations promulgated in accordance with the authority above will be given widespread circulation, disseminating same to newspaper, radio and television media. Violation of these regulations will be subject to the penalties provided for herein. (Ord. 660 §7, 1980)

2.36.070 Emergency. An emergency may be declared by the Mayor in accordance with the following conditions:

A. The emergency shall be declared by written proclamation of the Mayor which shall be delivered to the City Manager, who shall then be charged with the duty and responsibility of putting said emergency measures into effect, including the proper publication and dissemination of information of the powers invoked by the Mayor in said proclamation.

B. The emergency and proclamation shall remain in effect only so long as in the opinion of the Mayor emergency powers are necessary to be invoked for the health, safety, or welfare of the residents, or of property in the City of Fountain.

C. The emergency shall be terminated by the Mayor by a written proclamation stating that the emergency situation theretofore found to exist is no longer a condition that threatens the health, safety or welfare of residents or of property in the City.

D. The emergency proclamation may activate in writing any relevant provisions of the disaster emergency plan, except that the disaster emergency powers shall not be invoked for an emergency.

E. In addition to any other extraordinary powers the Mayor may have to deal with the emergency, the Mayor may exercise the following powers by the emergency proclamation:

1. Order the closing of all retail malt, vinous and spirituous liquor outlets and all fermented malt beverage outlets and order the closing of all private clubs wherein the consumption of intoxicating liquor or beer is permitted.
2. Order the discontinuance of selling, distributing or giving away of any gasoline or other liquid flammable or combustible products in any container other than a gasoline tank property affixed to a motor vehicle.
3. Order the closing of gasoline stations and other establishments whose principal business activity is the sale or distribution and dispensing of liquid flammable or combustible materials.
4. Order the discontinuance of selling, distributing, dispensing or giving away of any firearms or ammunition of any character whatsoever and to order the closing of any or all establishments or portions thereof which engage in the sale, distribution, dispensing or giving away of firearms or ammunition.
5. Designate certain areas of the City as being restricted against entry therein by any unauthorized persons, except bona fide residents living or working within said restricted area.

6. Declare a public curfew during such hours as set forth in the proclamation prohibiting all persons, except those expressly authorized, from being upon the public streets or on any public or private place in the City.
7. Establish a communications headquarters for the dissemination of all public information, which shall be the official headquarters for any public report relating to the emergency.
8. The powers herein enumerated shall be in addition to any other power or authority existing by virtue of the Charter or ordinances of the City of Fountain. (Ord. 660 §8, 1984)

2.36.080 Line of Succession of Mayor. If the Mayor is unable to declare an emergency or disaster or perform any other functions relevant to this ordinance due to illness, absence from the City, inability, or any other reason, then the powers and duties herein conferred upon the Mayor shall be exercised by the Mayor Pro-Tem, but, if that is not possible, then by the senior Council Member in length of service as a Council Member, and if that is not possible, then by a Council Member in the order of alphabetical sequence of the initial of the last name. (Ord. 660 §9, 1984)

2.36.090 Applicability of State Law in Disaster Situations. The Colorado Disaster Emergency Act of 1973, as amended, shall govern the implementation of the duties, powers, immunities and other provisions set forth herein to the extent applicable. (Ord. 660 §12, 1984)

2.36.100 Violation of Regulations. It shall be unlawful for any person to violate any of the provisions of this ordinance or of the regulations or plans issued pursuant to the authority contained herein, or to willfully obstruct, hinder or delay any person performing services during the enforcement of the provisions of this chapter or any regulation or plan issued thereunder. (Ord. 660 §13, 1984)

## Chapter 2.40

### PROPERTY DISPOSITION

#### Sections:

2.40.010	Records
2.40.020	Custody and Release
2.40.030	Notice of Sale
2.40.040	Return to Finder
2.40.050	Sale and Disposition of Property
2.40.060	Perishable Property and Dangerous Property

2.40.010 Records. The Police Chief shall hereafter keep record of any and all property taken into possession of the Police Department. Such records shall, whenever possible, include: an identification of the property; the date when such property came into the possession of the Police Department; the name and address of the person who turned that property into the Police Department; the date that the property was released; the name of the person to whom it was

released; the date of publication of notice, if published in the local newspaper; the date when the property was actually sold at public auction; the amount received at such public auction; the cost for storage, advertising and selling the particular property; the amount of net proceeds from the sale of the property and an indication that the net proceeds were placed in the General Fund. (Ord. 539 §1, 1980)

#### 2.40.020 Custody and Release.

A. “Unclaimed Property” means any tangible or intangible property, including any income or increment derived therefrom, less any lawful charges, that is held by or under the control of the City of Fountain and which has not been claimed by its owner for a period of more than one year after it became payable or distributable.

B. The Police Department shall be the custodian of all property coming into its possession, and is authorized to release such property to its rightful owner upon presentation of proof of ownership to the satisfaction of the Chief of Police. (Ord. 539 §2, 1980; Ord. 1166, §1, 2002)

2.40.030 Notice of Sale. If the owner of the property does not make a claim or cannot be determined within a period of three months from the date the property came into the possession of the Police Department, the department shall publish a notice of proposed sale of the property in some newspaper of general local circulation. The notice is to include a description of the property, the date and time when the property is to be sold, and a warning that the owner must claim the property within ten (10) days from the publication of the notice to preserve his right thereto. If the owner does not make a claim within such ten (10) day period, the property will be sold at public sale. The sale date shall not be later than three weeks from the date of the notice published in some newspaper of general local circulation. (Ord. 539 §3, 1980)

2.40.040 Return to Finder. The person or persons who delivered the property to the Police Department may claim the property any time after the three month period from the date of such delivery. If the Police Department may claim the property any time after the three month period from the date of such delivery. If the Police Department has not released the property to the rightful owner within that three month period, the property will be released to the person who initially delivered the property to the Police Department as long as request therefor is made before the expiration of the ten day period provided in the sale notice published in some newspaper of general local circulation. (Ord. 539 §4, 1980)

2.40.050 Sale and Disposition of Property. The method and procedure of public sale shall be designated by the Police Chief and the proceeds after costs of storage, advertising and selling are deducted, will be place din to the general fund. (Ord. 539 §5, 1980)

2.40.060 Perishable Property and Dangerous Property. In the event any property is determined to be perishable by the Chief of Police so as to make it difficult to preserve this property for the three month period or if the Police Chief determines that the property would be dangerous to

store, the Police Department is authorized to advertise public sale as soon as possible, and may sell such property at public sale after three days' notice. (Ord. 539 §6, 1980)

### **TITLE 3**

#### **Chapter 3.04**

#### **POLICE AND PAID FIREFIGHTERS RETIREMENT PLAN\***

##### Sections:

- 3.04.010 Board of Trustees Established - Duties  
3.04.020 Sources of Revenue

3.04.010 Adoption. That the City Council of the City of Fountain hereby adopts the City of Fountain Police and Paid Firefighters Retirement Plan, a copy of which is available from the city clerk, effective on the effective date of this ordinance. That such plan be exempt from the appropriate provisions under C.R.S. Title 31, Article 30, as amended. (Ord. 607 §1, 1982)

3.04.020 Withdrawal. That the Police and Paid Firefighters of the City of Fountain, who are presently under the plans authorized by statutes of the State of Colorado, C.R.S. Title 31, Article 30, as amended, be authorized to withdraw therefrom. (Ord. 607 §2, 1982)

\* For statutory provisions on policeman's pension funds, see sections 31-30-304 and 31-30-305 C.R.S. 1973. For charter provisions on funds, see Charter 9.13 - 9.15.

#### **Chapter 3.08**

#### **CONSERVATION TRUST FUND\***

##### Sections:

- 3.08.010 Creation  
3.08.020 Deposition and Expenditure of Moneys  
3.08.030 Certification to State

3.08.010 Creation. There is hereby created a special fund to be known as the Conservation Trust Fund of the City. (Ord. 830 §1, 1988)

3.08.020 Deposit and Expenditure of Moneys. All conservation trust fund moneys received from the State shall be deposited in the conservation trust fund of the City and shall be expended only as permitted by law. (Ord. 830 §1, 1988)

3.08.030 Certification of Fund to State. The City Clerk shall certify to the appropriate state department that the City has created a conservation trust fund. (Ord. 830 §1, 1988)

\* For statutory provisions on conservation trust funds see sections 29-21-101 and 31-25-219, C.R.S., as amended. For the charter provision on special funds, see section 9.15 of the City Charter.

## **Chapter 3.12**

### **ELECTRIC DEPARTMENT PAYMENT**

Sections:

- 3.12.010 Definitions
- 3.12.020 Establishment of In Lieu of Franchise Fee Obligation
- 3.12.030 Amount of Obligation
- 3.12.040 Timing and Manner of Payment Transfer

3.12.010 Definitions.

A. “Grant” means any direct cash subsidy, payment or other direct contribution of money from the Federal, State or any local government in Colorado which is not required to be repaid.

B. “Gross Revenues” means all operating revenues obtained by the Electric Department through the rendition of electric utility services through electric facilities owned by the City with the exception of the following: revenues obtained through line extension, distribution plant, or similar tap fees; interest income; non-operating revenue; revenues received through federal, state or local grants; and revenues received through federal or state emergency assistance programs.

C. “Electric Department” means that division of the Utility Enterprise responsible for providing electric utility services to customers of the Utility Enterprise.

D. “Electric Facilities” means any one or more works and improvements used in and as a part of the receipt, transmission, and distribution of electricity for the beneficial uses and purposes for which the electricity is produced or acquired.

E. “Electric Fund” means the financial and accounting funds maintained by the City for the operations of the Electric Department. (Ord. 1436, §2, 2008)

3.12.020 Establishment of In Lieu of Franchise Fee Obligation. There is hereby established an in-lieu of franchise fee obligation payable out of the Gross Revenues of the Electric Fund for transfer to the City’s General Fund in the form and manner set forth below. (Ord. 1436, §2, 2008)

3.12.030 Amount of Obligation. The amount of the in-lieu of franchise fee obligation effective as of January 1, 2009 shall be five percent (5%) of the Gross Revenues of the Electric Fund. Subsequently, any change in the amount of the in-lieu of franchise fee obligation shall be as established annually by the City Council in its budget approval and appropriation ordinance. (Ord. 1436, §2, 2008)

3.12.040 Timing and Manner of Payment Transfer.

A. The payment transfers from the Electric Fund to the General Fund for the in-lieu of franchise fee obligation shall be calculated and made on a quarterly basis pursuant to the following schedule: April 15 (for the three month period January through March); July 15 (for the three month period April through June); October 15 (for the three month period July through September); and January 15 (for the three month period October through December).

B. The payment transfers shall be effectuated by a journal entry made at the instruction of the Director of Finance or the authorized delegee of the Director of Finance. (Ord. 1436, §2, 2008)

**Chapter 3.16**

**UTILITIES OCCUPATION TAX\***

Sections:

3.16.010	Telephone Utilities - Levy of Tax
3.16.020	Telephone Utilities - Payment of Tax
3.16.030	Telephone Utilities - Inspection of Records
3.16.040	Telephone Utilities - Local Purpose
3.16.050	Telephone Utilities - Failure to Pay
3.16.060	Telephone Utilities - Tax in Lieu of Other Occupation Taxes
3.16.070	Gas Utilities - Levy of Tax
3.16.080	Gas Utilities - Payment of Tax
3.16.090	Gas Utilities - Inspection of Records
3.16.100	Gas Utilities - Local Purpose
3.16.110	Gas Utilities - Failure to Pay
3.16.120	Gas Utilities - Tax in Lieu of Other Occupation Taxes
3.16.130	Water Utilities - Levy of Tax
3.16.140	Water Utilities - Payment of Tax
3.16.150	Water Utilities - Inspection of Records
3.16.160	Water Utilities - Local Purpose
3.16.170	Water Utilities - Failure to Pay
3.16.180	Water Utilities - Tax in Lieu of Other Occupation Taxes
3.16.190	Cable Television Utilities - Levy of Tax
3.16.200	Cable Television Utilities - Payment of Tax
3.16.210	Cable Television Utilities - Inspection of Records



- 3.16.220 Cable Television Utilities - Local Purpose
- 3.16.230 Cable Television Utilities - Failure to Pay
- 3.16.240 Cable Television Utilities - Tax in Lieu of Other Occupation Taxes

3.16.010 Telephone Utilities - Levy of Tax. There is levied against every telephone utility which is engaged in the business of furnishing local exchange telephone services within the City, a tax on the occupation and business of maintaining and supplying local telephone service to the inhabitants of the City. The amount of tax for 1987 shall be \$18,000.00 and \$18,000.00 for each subsequent year. Each July, every local exchange telephone service within the City shall provide such information as the city clerk may find necessary so as to determine the appropriateness of the annual levy. Recommendations of the city clerk for amendment, if any, of the levy for the succeeding year shall be submitted to Council at the first meeting in August. (Ord. 467 §1, 1976; Ord. 774 §1, 1987)

\* For statutory provisions authorizing cities to tax any lawful occupation or business place, see C.R.S. 1973 31-15-501(c). For charger provisions on taxes, see Charter 9.3.

3.16.020 Telephone Utilities - Payment of Tax.

A. The tax levied by section 3.16.010 shall be due on the first day of January of each year except the year 1976. The tax shall be payable for years subsequent to 1976 in twelve equal monthly installments, each installment to be paid on the last business day of each calendar month. The tax due for the year 1976 under section 3.16.010 through 3.16.060 shall be payable on November 30, 1976.

B. Credit shall be given for tax installments validly paid in 1976, pursuant to Fountain Ordinance No. 339. After credit is given, the balance for the remainder of the year 1976 shall be reduced so that no more than seven thousand dollars shall have been paid as a total tax for the year 1976.

C. Tax liabilities incurred prior to the effective date of the ordinance codified in sections 2.16.010 through 3.16.060 shall be treated as though all prior 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 liabilities. All taxes and penalties, the liability for which has been accrued under the terms and provisions of the Fountain Ordinance No. 339, shall be and remain due and payable, and shall constitute a debt to the City, payable in conformity with the terms and provision of Fountain Ordinance No. 339; and all of the terms and provisions of Fountain Ordinance No. 339 shall be and remain in full force and effect for the purpose of the collection and payment of any and all such taxes and penalties due and payable thereunder, notwithstanding the amendments set forth in sections 3.16.010 through 3.16.060. (Ord. 467 §3, 1976)

3.16.030 Telephone Utilities - Inspection of Records. The City, its officers, agents or representatives, shall have the right at any reasonable time, to examine the books and records of any telephone utility which is subject to the tax imposed by section 3.16.010 through 3.16.060, and to make copies of the entries or contents thereof. (Ord. 467 §3, 1976)

3.16.040 Telephone Utilities - Local Purpose. The tax provided in sections 3.16.010 through 3.16.060 is upon the affected business in their performance of local functions and is not a tax upon those functions relating to interstate commerce. (Ord. 467 §4, 1976)

3.16.050 Telephone Utilities - Failure to Pay.

A. If any telephone utility subject to sections 3.16.010 through 3.16.060 fails to pay the taxes as provided in sections 3.16.010 through 3.16.060, the full amount thereof shall be due and collected from such company, and the taxes shall be a debt due and owing from such utility to the City. The city attorney, upon the direction of the City Council, shall commence and prosecute to final action in any court of competent jurisdiction an action in law to collect said debt.

B. If any officer, agent or manager of a telephone utility company, which is subject to the provisions of sections 3.16.010 through 3.16.060, fails, neglects, or refuses to make or file any statement, in the manner herein prescribed, the said officer, agent, manager, or person shall, on conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than three hundred dollars; provided, that each day after said statement becomes delinquent during which the said officer, agent, manager, or person so fails, neglects, or refuses to make and file such statement shall be considered a separate and distinct offense. (Ord. 467 §5, 1976)

3.16.060 Telephone Utilities - Tax in Lieu of Other Occupation Taxes.

3.16.070 Gas Utilities - Levy of Tax. There is levied against every natural gas utility which is engaged in the business of furnishing local natural gas service within the City, a tax on the occupation of business of furnishing local natural gas service within the City, a tax on the occupation and business of maintaining and supplying local natural gas service to the inhabitants of the City. The amount of the tax for 1987 shall be \$39,000.00 and \$39,000.00 annually for each subsequent year. Each July, every local natural gas service utility within the City shall provide such information as the city clerk may find necessary so as to determine the appropriateness of the annual levy. Recommendations of the city clerk for amendment, if any, of the levy for the succeeding year shall be submitted to Council at the first meeting in August. (Ord. 468 §1, 1976; Ord. 773 §1, 1987)

3.16.080 Gas Utilities - Payment of Tax.

A. The tax levied by section 3.16.070 shall be due on the first day of January of each year except the year 1976. The tax shall be payable for years subsequent to 1976 in twelve equal monthly installments, each installment to be paid on the last business day of each calendar month. The tax due for 1976 under sections 3.16.070 through 3.16.120 shall be payable on November 30, 1976.

B. Credit shall be given for tax installments validly paid in 1976, pursuant to Fountain Ordinance No. 339. After credit is given, the balance for the remainder of the year

1976 shall be reduced so that no more than fifteen thousand dollars shall have been paid as a total tax for the year 1976.

C. Tax liabilities incurred prior to the effective date of the ordinance codified in sections 3.16.070 through 3.16.120 shall be treated as though all prior 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 liabilities. All taxes and penalties, the liability for which has been accrued under the terms and provisions of Fountain Ordinance No. 339, shall be and remain due and payable in conformity with the terms and provisions of Fountain Ordinance No. 339; and all of the terms and provisions of Fountain Ordinance 339 shall be and remain in full force and effect for the purpose of the collection and payment of any and all such taxes and penalties due and payable thereunder, notwithstanding the amendments set forth in sections 3.16.070 through 3.16.120. (Ord. 468 §2, 1976)

3.16.090 Gas Utilities - Inspection of Records. The City, its officers, agents or representatives, shall have the right at any reasonable time, to examine the books and records of any natural gas utility which is subject to the tax imposed by sections 3.16.070 through 3.16.120, and to make copies of the entries or contents thereof. (Ord. 468 §3, 1976)

3.16.100 Gas Utilities - Local Purpose. The tax provided in sections 3.16.070 through 3.16.120 is upon the affected businesses in their performance of local functions and is not a tax upon those functions relating to interstate commerce. (Ord. 468 §4, 1976)

3.16.110 Gas Utilities - Failure to Pay.

A. If any natural gas utility subject to sections 3.16.070 through 3.16.120 fails to pay the taxes as provided in sections 3.16.070 through 3.16.120, the full amount thereof shall be due and collected from such company, and the taxes shall be a debt due and owing from such utility to the City. The city attorney, upon the direction of the City Council, shall commence and prosecute to final action in any court of competent jurisdiction an action in law to collect said debt.

B. If any officer, agent or manager of a natural gas utility company, which is subject to the provisions of sections 3.16.070 through 3.16.120, fails, neglects, or refuses to make or file any statement, in the manner herein prescribed, the said officer agent, manager, or person shall, on conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than three hundred dollars; provided, that each day after said statement becomes delinquent during which the said officer, agent, manager, or person so fails, neglects, or refuses to make and file such statement shall be considered a separate and distinct offense. (Ord. 468 §5, 1976)

3.16.120 Gas Utilities - Tax in Lieu of Other Occupation Taxes. The tax provided in sections 3.16.070 through 3.16.110 shall be in lieu of all other occupation taxes, or taxes on the privilege of doing business within the City, on any natural gas utility subject to the provisions of sections 3.16.070 through 3.16.110. (Ord. 468 §6, 1976)

3.16.130 Water Utilities - Levy of Tax. There is levied against every water utility which is engaged in the business of furnishing local water service within the City, a tax on the

occupation and business of maintaining and supplying local water service to the inhabitants of the City. The amount of such tax for 1979 shall be two thousand five hundred dollars and two thousand five hundred dollars annually for each subsequent year. Each July, every local water service utility within the city shall provide such information as the city clerk may find necessary so as to determine the appropriateness of the annual levy. Recommendations of the city clerk for amendment, if any, of the levy for the succeeding year shall be submitted to Council at the first meeting in August. (Ord. 469 §1, 1976; Ord. 525 §2, 1978)

#### 3.16.140 Water Utilities - Payment of Tax.

A. The tax levied by section 3.16.130 shall be due on the first day of January of each year except the year 1976. The tax shall be payable for years subsequent to 1976 in twelve equal monthly installments, each installment to be paid on the last business day of each calendar month. The tax due for the year 1976 under sections 3.16.130 through 3.16.180 shall be payable on November 30, 1976.

B. Credit shall be given for tax installments validly paid in 1976, pursuant to Fountain Ordinance No. 339. After credit is given, the balance for the remainder of the year 1976 shall be reduced so that no more than one thousand seven hundred fifty dollars shall have been paid as a total tax for the year 1976.

C. Tax liabilities incurred prior to the effective date of sections 3.16.130 through 3.16.180 shall be treated as though all prior 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 liabilities. All taxes and penalties, the liability for which has been accrued under the terms and provisions of Fountain Ordinance No. 339, shall be and remain due and payable, and shall constitute a debt to the City, payable in conformity with the terms and provisions of Fountain Ordinance No. 339; and all of the terms and provisions of Fountain Ordinance No. 339 shall be and remain in full force and effect for the purpose of the collection and payment of any and all such taxes and penalties due and payable thereunder, notwithstanding the amendments set forth in sections 3.16.130 through 3.16.180. (Ord. 469 §2, 1976)

3.16.150 Water Utilities - Inspection of Records. The City, its officers, agents or representatives, shall have the right at any reasonable time, to examine the books and records of any water utility which is subject to the tax imposed by sections 3.16.130 through 3.16.180, and to make copies of the entries or contents thereof. (Ord. 469 §3, 1979)

3.16.160 Water Utilities - Local Purpose. The tax provided in sections 3.16.130 through 3.16.180 is upon the affected businesses in their performance of local functions and is not a tax upon those functions relating to interstate commerce. (Ord. 469 §4, 1976)

#### 3.16.170 Water Utilities - Failure to Pay.

A. If any water utility subject to sections 3.16.130 through 3.16.180 fails to pay the taxes as provided in sections 3.16.130 through 3.16.180, the full amount thereof shall be due and collected from such company, and the taxes shall be a debt due and owing from such utility to

the City. The city attorney, upon the direction of the city council, shall commence and prosecute to final action in any court of competent jurisdiction an action in law to collect said debt.

B. If any officer, agent or manager of a water utility company, which is subject to the provisions of sections 3.16.130 through 3.16.180, fails, neglects, or refuses to make or file any statement, in the manner herein prescribed, the said officer, agent, manager, or person shall, on conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than three hundred dollars; provided, that each day after said statement becomes delinquent during which the said officer, agent, manager, or person so fails, neglects, or refuses to make and file such statement shall be considered a separate and distinct offence. (Ord. 469 §5, 1976)

3.16.180 Water Utilities - Tax in Lieu of Other Occupation Taxes. The tax provided in section 3.16.130 through 3.16.170 shall be in lieu of all other occupation taxes, or taxes on the privilege of doing business within the City, on any water utility subject to the provisions of sections 3.16.130 through 3.16.170. (Ord. 469 §6, 1976)

3.16.190 Levy of Tax. There is hereby levied against every cablevision company which is engaged in the business of furnishing cablevision within the City of Fountain, a tax on the occupation and business of maintaining and supplying cablevision service to the inhabitants of the City. The amount of such tax for 1986 shall be \$9,000.00 and \$9,000.00 annually for each subsequent year. Each July, every cablevision company operating within the City of Fountain shall provide such information as the city clerk may find necessary so as to determine the appropriateness of the annual levy. Recommendations of the city clerk for amendment, if any, of the levy for the succeeding year shall be submitted to Council at the first meeting in August. (Ord. 560 §1, 1980; Ord. 775 §1, 1987)

3.16.200 Payment of Tax. The tax levied by this chapter shall be due on the first day of January of each year. The tax shall be payable in twelve equal monthly installments, each installment to be paid on the last business day of each calendar month. (Ord. 560 §2, 1980)

3.16.210 Inspection of Records. The City, its officers, agents or representatives, shall have the right, at any reasonable time, to examine the books and records of any cablevision company which is subject to the tax imposed by this chapter, and to make copies of the entries or contents thereof. (Ord. 560 §3, 1980)

3.16.220 Local Purpose. The tax provided herein is upon the affected business in their performance of local functions and is not a tax upon those functions relating to interstate commerce. (Ord. 560 §4, 1980)

3.16.230 Failure to Pay. If any officer, agent or manager of a cablevision company, which is subject to the provisions of this chapter, shall fail, neglect, or refuse to make or file any statement, in the manner herein prescribed, the said officer, agent, manager, or persons shall on conviction thereof, be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300.00), provided that each day after said statement becomes delinquent, during which the 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 offence. (Ord. 560 §5, 1980)

3.16.240 Tax in Lieu of Other Occupation Taxes. The tax herein provided shall be lieu of all other occupation taxes, or taxes on the privilege of doing business within the City, on any cablevision service subject to the provisions of this ordinance. (Ord. 560 §6, 1980)

### **Chapter 3.20**

#### **SERVICE EXPANSION FEE**

**Sections:**

- 3.20.010      Payment of Service Expansion Fee
- 3.20.020      Definition of Floor Area
- 3.20.030      Applicability of Service Expansion Fee
- 3.20.040      Special Fund

3.20.010 Payment of Service Expansion Fee. No building permit shall be issued to any owner, architect, contractor or other person applying for a building permit until and unless a service expansion fee of twenty-five cents (\$.25) per square foot of total floor area for residential development, including, but not limited to, single-family detached, single-family attached, mobile homes, townhomes, condominiums, and apartments, as provided herein, has been paid to the City of Fountain. (Ord. 718 §1, 1986; Ord. 905 §1, 1990)

3.20.020 Definition of Floor Area. The area of each floor and basement included within the surrounding exterior walls of a building or portion thereof, measured from the inside of all exterior walls, excluding parking areas or garages. (Ord. 718 §2, 1986)

3.20.030 Applicability of Service Expansion Fee. The service expansion fee shall apply to any new residential construction and also residential additions resulting in a fifty percent (50%) or greater increase in the total floor area of any existing structure. (Ord. 718 §3, 1986)

3.20.040 Special Fund. All service expansion fees paid and collected shall be segregated, credited and deposited in a special fund or funds and shall not be transferred to any other account of the City, except to pay primarily for police and fire protection and secondarily for land use planning and engineering services. At least ten percent (10%) of the service expansion fees collected by the City shall be utilized for land use planning and engineering services. (Ord. 718 §4, 1986)

### **Chapter 3.24**

#### **WATER DEPARTMENT PAYMENT**

Sections:

- 3.24.010 Definitions
- 3.24.020 Establishment of In Lieu of Franchise Fee Obligation
- 3.24.030 Amount of Obligation
- 3.24.040 Timing and Manner of Payment Transfer

3.24.010 Definitions.

A. “Grant” means any direct cash subsidy, payment or other direct contribution of money from the Federal, State or any local government in Colorado which is not required to be repaid.

B. “Gross Revenues” means all operating revenues obtained by the Water Department through the rendition of water utility services through water facilities owned by the City with the exception of the following: revenues obtained through tap fees; interest income; non-operating revenue; revenues received through federal, state or local grants; and revenues received through federal or state emergency assistance program.

C. “Water Department” means that division of the Utility Enterprise responsible for providing water utility services to customers of the Utility Enterprise.

D. “Water Facilities” means any one or more works and improvements used in and as a part of the collection, treatment, or distribution of water for the beneficial uses and purposes for which the water has been or may be appropriated.

E. “Water fund” means the financial and accounting funds maintained by the City for the operations of the Water Department. (Ord. 1435, §2, 2008)

3.24.020 Establishment of In Lieu of Franchise Fee Obligation. There is hereby established an in-lieu of franchise fee obligation payable out of the Gross Revenues of the Water Fund for transfer to the City’s General Fund in the form and manner set forth below. (Ord. 1435, §2, 2008)

3.24.030 Amount of Obligation. The amount of the in-lieu of franchise fee obligation effective as of January 1, 2009 shall be four percent (4%) of the Gross Revenues of the Water Fund. Subsequently, any change in the amount of the in-lieu of franchise fee obligation shall be as established annually by the City Council in its budget approval and appropriation ordinance. (Ord. 1435, §2, 2008)

3.24.040 Timing and Manner of Payment Transfer.

A. The payment transfers from the Water Fund to the General Fund for the in-lieu of franchise fee obligation shall be calculated and made on a quarterly basis pursuant to the following schedule: April 15 (for the three month period January through March); July 15 (for the three month period April through June); October 15 (for the three month period July through September); and January 15 (for the three month period October through December).

B. The payment transfers shall be effectuated by a journal entry made at the instruction of the Director of Finance or the authorized delegee of the Director of Finance. (Ord. 1435, §2, 2008)

## **TITLE 5**

### **Chapter 5.06**

#### **SALES AND USE TAX**

**Sections:**

5.06.010	Purpose
5.06.020	Legislative Intent
5.06.030	Definitions
5.06.040	Imposition of Tax
5.06.041	General Imposition
5.06.042	Distinction Between Sales and Use Tax
5.06.043	Construction Equipment
5.06.044	Construction Materials
5.06.045	Bad Debts Collection
5.06.046	Cost of Goods Used
5.06.047	Exchanged Property
5.06.048	Food and Drink
5.06.049	Gas and Electric Services
5.06.0410	Manufactured Articles
5.06.0411	Personal Property Rentals
5.06.0412	Rooms and Accommodations
5.06.0413	Sales Made Outside City
5.06.0414	Tangible Personal Property
5.06.0415	Vending Machines
5.06.0416	Wholesalers, Retail Sales
5.06.050	Exemptions From Tax
5.06.051	Charitable Organizations
5.06.052	Cigarettes
5.06.053	Constitutional Prohibition
5.06.054	Construction Materials – Sales Tax Only Exemption
5.06.055	Containers, Labels
5.06.056	Deliveries to Non-Residents Outside City
5.06.057	Direct Taxes
5.06.058	Discounts
5.06.059	Feed, Seeds and Orchard Trees
5.06.0510	Finance Charges



5.06.0511	Food
5.06.0512	Garage Sales
5.06.0513	Governmental Organizations
5.06.0514	Internet Access Services
5.06.0515	Livestock
5.06.0516	Livestock and Poultry Bedding
5.06.0517	Manufactured Products; Component Parts, Ingredients
5.06.0518	Medical Exemptions
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5.06.0520	New Resident
5.06.0521	Newspapers and Printer's Ink
5.06.0522	Previous Use or Sales Tax in State
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5.06.0525	Property Subject to Specific Ownership Taxes
5.06.0526	Rebates
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5.06.0529	Sales of Construction Materials to the State, Charitable Organizations, and Schools
5.06.0530	Sales Tax - Nonapplicability
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5.06.0532	Special Fuel
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5.06.0536	Vehicles
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5.06.061	Assessments, Collections and Liens
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5.06.072	Purchases Outside the City by a Resident
5.06.073	Payment of Tax Before Registration
5.06.074	Restrictions on Registration and Transfer of Title
5.06.075	Failure to Register Vehicles as Resident
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5.06.077	Registration of Vehicles
5.06.078	Registration, Where Made
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5.06.082	Application; Contents

- 5.06.083 Form of License; Transfer
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- 5.06.101 Recomputation
- 5.06.102 Overpayment
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- 5.06.120 Penalties and Interest
- 5.06.121 Interest on Underpayment, Nonpayment, or Extensions of Time for Payment of Tax
- 5.06.122 Rate of Interest
- 5.06.123 Negligent Deficiency
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- 5.06.125 Additional Corporate and Partnership Penalty
- 5.06.130 Duties and Powers of City Treasurer
- 5.06.131 Administration by City Treasurer
- 5.06.132 Promulgate Rules and Regulations
- 5.06.133 City Treasurer to Examine Returns
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5.06.190	Severability and Savings Clauses
5.06.191	Severability Clause
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5.06.010 Purpose. The purpose of this Chapter is to raise revenue through imposition of a sales and use tax. (Ord. 1136 §1, 2001)

5.06.020 Legislative Intent. It is hereby declared to be the legislative intent of the City Council to revise the current sales and use tax imposed on every person which purchases, uses, distributes, stores, leases, or consumes tangible personal property in the City of Fountain to clarify latent and patent ambiguities in the ordinance, not raise taxes. (Ord. 1136 §1, 2001)

5.06.030 Definitions. As used in these rules, unless the context otherwise clearly requires, the following terms shall have the following meanings:

A. Auction. Any sale where tangible personal property is sold by an auctioneer who is either the agent for the owner of such property or is in fact the owner thereof.

B. Business. All activities engaged in or caused to be engaged in with the object of gain, benefit or advantage, direct or indirect.

C. Charitable Organization. Any entity which (a) has been certified as a not-for-profit organization under section 501(c)(3) of the Internal Revenue Code and remains in compliance therewith, and (b) is operated for religious, charitable, scientific, testing for public safety, and educational purposes.

D. Check. A written, unconditional order to pay a sum certain in money, drawn on a bank, payable on demand, and signed by the drawer. A check also includes a negotiable order of withdrawal or a share draft.

E. City. The Municipality of Fountain.

F. City Treasurer. The treasurer of the City.

G. Construction Materials. Tangible personal property which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a completed structure or project, including public and private improvements. Construction materials include, but are not limited to, such things as asphalt, bricks, builders' hardware,

caulking material, cement, concrete, conduit, electric wiring, and connections, fireplace inserts, electrical heating and cooling equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam, mill work, mortar, oil, paint, piping, pipe valves and pipe fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal, site lighting, steel, stone, stucco, tile, trees, shrubs and other landscaping materials, wall board, wall coping, wall paper, weather stripping, wire netting and screen, water mains and meters, and wood preserver. The above materials, when used for forms, or other items, which do not remain as an integral or inseparable part of a completed structure or project are not construction materials.

H. Consumer. Any individual person or person engaged in business in the City who uses, stores, distributes or otherwise consumes in the City tangible personal property purchased from sources inside or outside the City.

I. Consumption. The act or process of consuming; it includes waste, destruction, or use of tangible personal property for the purpose for which it was intended.

J. Deficiency Notice. Deficiency Notice includes a written notice of determination, assessment and demand for payment, jeopardy assessment, and notice that the taxpayer has the right to elect a hearing on the deficiency pursuant to C.R.S. § 29-2-106.1(3).

K. Discount. A reduction in the price of personal property by the Retailer, which reduction is passed on to the Consumer.

L. Dishonor. A Check is Dishonored when the drawee of that instrument refuses payment thereon on the basis that the drawer has insufficient funds on deposit with the drawee, or for any other reason whatsoever other than an error by the drawee.

M. Distribution. The act of distributing in the City any Tangible Personal Property purchased for Use or Consumption which may include, but shall not be limited to, the distribution of advertising, gifts, shoppers guides, catalogues, directories, or other property given as prizes, premiums or for good will or in conjunction with the Sale of other commodities or services.

N. Drawee. The bank upon which a Check is drawn or a bank, savings and loan association, industrial bank, or credit union on which a Negotiable Order of Withdrawal or a share draft is drawn.

O. Drawer. A person, either real or fictitious, whose name appears on a Check as the primary obligor, whether the actual signature be that of himself or of a person authorized to draw the Check on himself.

P. Engaged in Business in the City. Selling, leasing, renting, delivering, or installing Tangible Personal Property for Storage, Use or Consumption within the City. Engaged in Business in the City includes, but is not limited to, any one of the following activities by a person:

1. Directly, indirectly or by a subsidiary maintains a building, store, office, salesroom, warehouse or other place of Business within the taxing jurisdiction;
2. Sends one or more employees, agents or commissioned salespersons into the taxing jurisdiction to install, assemble, or repair its products;
3. Maintains one or more employees, agents or commissioned salespersons on duty at a location within the taxing jurisdiction;
4. Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction; or
5. Makes more than one delivery into the taxing jurisdiction within a twelve-(12) month period.

Q. Exempt Commercial Packaging Materials. Containers, labels and shipping cases sold to a person engaged in manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling for Sale, profit or Use that meets all of the following conditions: (1) is used by the manufacturer, compounder, Wholesaler, jobber, Retailer, packager, distributor or bottler to contain or label the finished product; (2) is transferred by said person along with and as a part of the finished product to the Consumer; and (3) is not returnable to said person for reuse.

R. Hearing Officer. The City Treasurer or any person designated by the City Treasurer to conduct hearings.

S. Insufficient Funds. A Drawer has Insufficient Funds with the Drawee to pay a Check when the Drawer has no checking account, Negotiable Order of Withdrawal account, or Share Draft Account with the Drawee or has funds in such an account with the Drawee in an amount less than the amount of the Check plus the amount of all other Checks outstanding at the time of issuance; and a Check Dishonored for "No Account" shall also be deemed to be Dishonored by Insufficient Funds.

T. Lodging Service. The furnishing of rooms or accommodations by any person, partnership, limited liability company, association, corporation, estate, receiver, trustee, assignee, lessee, or person acting in a representative capacity or any other combination of individuals by whatever name known to a person who for a consideration Uses, possesses, or has the right to Use or possess any room in a hotel, inn, bed and breakfast residence, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, or trailer court and park, or similar establishment, for a period of less than thirty (30) days under any concession, permit, right of access, license to Use, or other agreement, or otherwise.

U. Machinery. Any apparatus consisting of interrelated parts used to produce an article of Tangible Personal Property. The term includes both the basic unit and any adjunct or attachment necessary for the basic unit to accomplish its intended function.

V. Manufacture. The operation of producing, in an industrial use, an item of Tangible Personal Property different from and having a distinctive name, character, or Use from raw or prepared materials and which raw or prepared materials.

W. Negotiable Order of Withdrawal or Share Draft. Negotiable or transferable instruments drawn on a Negotiable Order of Withdrawal Account or Share Draft Account, as the case may be, for the purpose of making payments to third persons or otherwise.

X. Newspaper. A publication, printed on newsprint, intended for general circulation, and published regularly at short intervals, containing information and editorials on current events and news of general interest. "Newspaper" does not include magazines, trade publications or journals, credit bulletins, advertising inserts, circulars, directories, maps, racing programs, reprints, newspaper clipping and mailing services or listings, publications that include an updating or revision service, or books or pocket editions of books.

Y. Penalty Assessment. A written notice of the determination of the City Treasurer that a violation of C.R.S. § 42-6-137(2) has occurred and Tax and, potentially, civil penalties and interest are owing.

Z. Person. Any individual, firm, partnership, limited liability partnership, joint venture, corporation, limited liability corporation, estate or trust, receiver, trustee, assignee, lessee or any individual acting in a fiduciary or representative capacity, whether appointed by court or otherwise, or any group or combination acting as a unit.

AA. Price or Purchase Price. The retail price paid for Tangible Personal Property or a lease, exclusive of any tax imposed by the Federal government, as recorded in the bill of sale, invoice, or agreement, provided the valuation is not less than the fair market value of the Tangible Personal Property or lease at the time of the transaction.

BB. Purchase or Sale. The acquisition for any consideration by any Person of Tangible Personal Property, which is purchased, leased, sold, used, stored, distributed or consumed in the City, but excludes a bona fide gift of property or services. These terms include capital leases, installment and credit sales, and property acquired by:

1. Transfer, either conditionally or absolutely, of title or possession or both to Tangible Personal Property;
2. A lease, lease-purchase agreement, rental or grant of a license, including royalty agreements, to use Tangible Personal Property;
3. Barter or exchange for other property or services including coupons.

Purchase and Sale do not include:

1. A division of partnership assets among the partners according to their interests in the partnership;

2. The formation of a corporation by the owners of a Business and the transfer of their Business assets to the corporation in exchange for all the corporation's outstanding stock, except qualifying shares, in proportion to the assets contributed;

3. The transfer of assets of shareholders in the formation or dissolution of professional corporations;

4. The dissolution and the pro rata distribution of the corporation's assets to its stockholders;

5. A transfer of a partnership interest;

6. The transfer in a reorganization qualifying under Section 368(a)(1) of the Internal Revenue Code of 1954, as amended;

7. The formation of a partnership by the transfer of assets to the partnership, or transfer to a partnership in exchange for proportionate interests in the partnership;

8. The repossession of personal property by a mortgage holder or foreclosure by a lienholder.

CC. Rebate. Payment to a Consumer by a manufacturer or a manufacturer's representative who is not acting as a Retailer.

DD. Resident. Person who resides or maintains domicile within the City or one or more places of Business within the City at the time of a taxable transaction. The Person may have dual residency, other places of residence or domicile, or places of Business outside the City prior to, during, or after the occurrence of the taxable transaction and still be a Resident.

EE. Retailer. Person selling, leasing or renting Tangible Personal Property at retail. Retailer shall include without limitation any:

1. Auctioneer;

2. Salesperson, representative, peddler or canvasser, who makes sales as a direct or indirect agent of or obtains such property from a dealer, distributor, supervisor or employer;

3. Charitable Organization or governmental entity which makes sales of Tangible Personal Property to the public, notwithstanding the fact that the merchandise sold may have been acquired by gift or donation or that the proceeds are to be used for charitable or governmental purposes.

FF. Return. Tax reporting form.

GG. Sales Tax. The tax to be collected and remitted by a retailer on sales taxed under this code.

HH. Share Draft Account. An account in a credit union, on which payment of interest or dividends may be made on a deposit with respect to which the bank, savings and loan association, or industrial bank or the credit union, as the case may be, may require the depositor to give notice of an intended withdrawal not less than thirty (30) days before the withdrawal is made, even though in practice such notice is not required and the depositor is allowed to make withdrawal by Negotiable Order of Withdrawal or Share Draft.

II. State. The State of Colorado.

JJ. Storage. Any keeping or retention of, or exercise of dominion or control over, or possession, for any length of time, of Tangible Personal Property when leased or Purchased at retail from sources either within or without the City from any Person.

KK. Successor. Person who purchases, inherits, or otherwise comes into possession of a for-profit Business or substantially all of the assets of a for-profit Business.

LL. Tangible Personal Property. Corporeal personal property.

MM. Tax. Monies due from Taxpayers under this chapter.

NN. Tax Deficiency. Any amount of Tax that is not reported or not paid on or before the due date.

OO. Taxpayer. Person obligated to collect and/or pay Tax under the terms of this chapter.

PP. Use. The exercise, for any length of time, by any Person within the City of any right, power or dominion over Tangible Personal Property or any transaction whereby Tangible Personal Property together with the services of an operator thereof is furnished for another Person, irrespective of the fact that during all times that the said property is so furnished the control of the operation of the same remains in the Person providing the property.

QQ. Use Tax. The tax paid or required to be paid by a consumer for leasing, Storing, Using, Consuming, or Distributing Tangible Personal Property or taxable services inside the City.

RR. Vehicle. Any vehicle or device in, upon or by which any Person or property is or may be transported or drawn upon a public highway, or any device used or designed for aviation or flight in the air. Vehicle includes, but is not limited to, automobiles, trucks, recreational vehicles, trailers, semi-trailers, mobile homes, watercraft, and aircraft. Vehicle shall not include devices moved by human power or used exclusively upon stationary rails or tracks.



SS. Wholesale Sales. Sales to licensed Retailers, jobbers, dealers or Wholesalers for resale. Sales by Wholesalers to Consumers are not wholesale sales. Sales by Wholesalers to non-licensed Retailers are not Wholesale Sales.

TT. Wholesaler. Person selling to Retailers, jobbers, dealers, or other wholesalers, for resale, and not for storage, use, consumption, or distribution. (Ord. 1136 §1, 2001)

5.06.040 Imposition of Tax.

5.06.041 General Imposition. There is hereby levied and shall be collected and paid a Sales Tax in the amount of three percent (3%) on the Purchase Price paid or charged for Tangible Personal Property at retail or the furnishing of services in the City, and Use Tax in the amount of two percent (2%) on the Purchase Price for lease, Storage, Use, Consumption, or Distribution of Tangible Personal Property.

5.06.042 Distinction Between Sales and Use Tax. Whereas the Sales Tax is collected by Persons Engaged in Business in this City from the Consumer and then paid to the City, the Use Tax is levied directly upon the person who leases, Purchases, Uses, Stores, Consumes or Distributes Tangible Personal Property, either within or without the City, and Uses the same in the City. The Sales Tax and Use Tax complement each other in the City revenue plan, and together provide a uniform tax of five percent (5%) upon the Sale, lease, Purchase, Use, Storage, Distribution and Consumption of Tangible Personal Property and taxable services.

5.06.043 Construction Equipment.

A. Construction equipment which is located within the boundaries of the City for a period of more than thirty (30) consecutive days shall be subjected to the full applicable Use Tax of the City.

B. Construction equipment which is located within the boundaries of the City for a period of thirty (30) consecutive days or less shall be subject to the City's Use Tax in an amount calculated as follows: the Purchase Price of the equipment shall be multiplied by a fraction, the numerator of which is one and the denominator of which is twelve (12), and the result shall be multiplied by two percent (2%). A credit of up to two percent (2%) for Taxes lawfully paid to and collected by another municipality organized under the laws of this State shall be permitted.

C. In order to avail itself of the provisions of subsection B. of this Section, the taxpayer shall comply with the following procedure:

1. Prior to or on the date the equipment is located within the boundaries of the City, Taxpayer shall file with the City Treasurer an equipment declaration on a form provided by the City. Such declaration shall declare the dates on which Taxpayer anticipates the equipment will be located within and removed from the boundaries of the City, shall include a description of each such anticipated piece of equipment, shall state the actual or anticipated Purchase Price of each such anticipated piece of equipment, and shall include such other information as reasonably deemed necessary by the City.

2. Taxpayer shall file with the City an amended equipment declaration reflecting any changes in the information contained in any previous equipment declaration no less than once every ninety (90) days after the equipment is brought into the boundaries of the City or, for equipment which is brought into the boundaries of the City for a project of less than ninety (90) days' duration, no later than ten (10) days after substantial completion of the project.

3. Taxpayer need not report on any equipment declaration any equipment for which the Purchase Price was under two thousand five hundred dollars (\$2,500.00).

D. If the equipment declaration is given as provided in Subsection C, then as to any item of construction equipment for which the customary Purchase Price is under two thousand five hundred dollars (\$2,500.00), which was brought into the boundaries of the City temporarily for Use on a construction project, it shall be presumed that the item was purchased in a jurisdiction having a Use Tax as high as two percent (2%) and that the local use tax was previously paid. In such case the burden of proof in any proceeding before the City Treasurer or the District Court shall be on the City to prove the local Use Tax was not paid.

E. If Taxpayer fails to comply with the provisions of subsection C, Taxpayer may not avail himself of the provisions of Subsection B and shall be subject to the provisions of Subsection A. However, substantial compliance with the provisions of Subsection C shall allow Taxpayer to avail itself of the provisions of Subsection B.

5.06.044 Construction Materials. Use Tax is due on the Purchase Price of Construction Materials only when a construction permit listing them is necessary.

5.06.045 Bad Debts Collection. The Sales or Use Tax is imposed on the amount of collection, during the current taxable period, of bad debts that had, during a previous taxable period, been deducted.

5.06.046 Cost of Goods Used. The Sales or Use Tax is imposed on the cost of goods or Tangible Personal Property purchased without payment of the City Sales Tax and Used, Stored, Distributed or Consumed either personally or in conjunction with the rendering of services.

5.06.047 Exchanged Property. In the case of retail sales involving the exchange of property, the sales or use tax is imposed on the Purchase Price paid or charged, including the fair market value of the property exchanged at the time and place of the exchange.

5.06.048 Food and Drink. The sales or use tax is imposed upon the amount paid for food or drink served or furnished in or by restaurants, cafes, lunch counters, cafeterias, hotels, drug stores, social clubs, nightclubs, cabarets, resorts, snack bars, caterers, carry out shops and other like places of business at which prepared food or drink, prepared salads in salad bars, cold sandwiches, and deli trays are regularly sold, including sales from pushcarts, motor vehicles and other mobile facilities and vending machines. Cover charges shall be included as a part of the amount paid for such food or drink.

5.06.049 Gas and Electric Services. The sales or use tax is imposed upon the amount charged for gas and electric services whether furnished by municipal, public or private corporations or enterprises, for gas and electricity furnished and sold for commercial consumption and not for resale.

5.06.0410 Manufactured Articles. The sales or use tax is imposed on the full purchase price of articles sold after manufacture or after having been made to order and includes the full purchase price of materials used and services performed in connection therewith, excluding, however, articles exempted under this Chapter.

5.06.0411 Personal Property Rentals. The sales or use tax is imposed on the Purchase Price paid or charged or for any consideration for the furnishing of Tangible Personal Property, irrespective of the fact that during all times that the property is so furnished, the control of the operation of the same remains in the person providing the property.

5.06.0412 Rooms and Accommodations. The sales or use tax is imposed on the entire price paid or charged on the transaction of furnishing lodging services for a consideration.

5.06.0413 Sales Made Outside City. Every retailer required or permitted to collect the tax shall collect it, notwithstanding the following:

A. Solicitation by Retailer. The consumer's order or the contract sale is delivered, mailed or otherwise transmitted by the consumer to the retailer at a point outside of the City, as a result of solicitation by the retailer through the medium of a catalog or other written advertisement or by any other means; or

B. Closing Contract Outside City. The consumer's order or contract of sale is made or closed by acceptance or approval outside the City or before the tangible personal property enters the City; or

C. Procurement or Manufacture Outside City. The Consumer's order or contract of Sale provides that the property shall be, or it is in fact procured or manufactured at a point outside of the City and shipped directly to the consumer from the point of origin; or

D. Transportation Costs. The property is mailed to the consumer in the City from a point outside of the City or delivered to a carrier, F.O.B., or otherwise, and directed to the retailer in the City, regardless of whether the cost of transportation is paid by the retailer or by the consumer; or

E. Deliver Outside City. The property is delivered directly to the consumer at a point outside the City; provided, however, that in subsections A through E, the property is intended to be brought into the City for use, storage, or consumption in the City.

5.06.0414 Tangible Personal Property. The sales or use tax is imposed on the purchase price paid or charged upon the sale, purchase, lease, rental or grant of license to use, or on the use, storage, distribution or consumption of tangible personal property purchased pursuant to a

sale, and on the subsequent lease, rental or sale of tangible personal property by any person to every consumer, notwithstanding that the person so purchasing and subsequently leasing, renting or selling that personal property paid the tax on his initial purchase and use of the property so acquired which is subsequently leased, rented or sold.

5.06.0415 Vending Machines. Every vendor selling individual items of personal property through coin-operated vending machines shall pay a sales tax on the personal property sold in excess of fifteen cents (\$0.15) through the coin-operated machines:

A. Unless:

1. The vendor is licensed under C.R.S. § 39-26-103.
2. The vendor maintains a record of the identification number, ownership, location, and disposition of every coin-operated vending machine used by him in his operation as a vendor.
3. The vendor makes application to the City Treasurer for identification numbers to be affixed to every coin-operated vending machine, in accordance with rules and regulations promulgated by the City Treasurer, and remits a fee of ten cents (\$0.10) per machine with the application unless the City Treasurer reduces this amount.
4. Within sixty (60) days after commencing a business as a vendor, the vendor submits to the City Treasurer an accurate list containing the information required under subsections A. through C. and submits the list annually on January 1.

B. Any unregistered coin-operated vending machine used for sales at any place in this State without the prescribed identification number affixed to it, may be seized without warrant by the City Treasurer or by any peace officer when directed or requested by the City Treasurer. At the time of seizure, written notice of seizure shall be given to the proprietor or person in charge of the business, or to the agents or employees of the proprietor or Person in charge of the business where the vending machine is seized. The City Treasurer shall also give notice by first-class mail, as set forth in C.R.S. § 39-21-105.5, to the person whose name and mailing address appears on the machine. The City Treasurer shall not be required to seize and confiscate any unregistered vending machine or assess a penalty, where there is reason to believe that the owner is not intentionally evading tax.

C. In addition to any other penalty provided by law, the City Treasurer is authorized to assess and collect a penalty of twenty-five dollars (\$25) for each unregistered vending machine operated in the City.

D. Upon proof of ownership, the City Treasurer shall deliver to the owner any vending machine seized under subsection B. following payment as required under subsection C. and payment of seizure costs and upon registration of the machine. At the expiration of sixty (60) days after the date of notice, any unregistered vending machine and its contents may be sold at public sale to the highest bidder, but prior to any sale, ten days' notice of the sale shall be given by first-class mail as set forth in C.R.S. § 39-21-105.5 to those entitled to notice.

5.06.0416 Wholesalers, Retail Sales. Sales of goods by Wholesalers to Consumers, Users or customers not for resale, shall be deemed retail sales and shall be subject to Tax. These Sales shall not be included within the term “Wholesale Sales.” (Ord. 1136 §1, 2001)

5.06.050 Exemptions From Tax. The following list of exemptions from tax is comprehensive and cannot be increased by implication or similarity, except that any additional exemption recognized in C.R.S. § 39-26-114 shall also apply to the Tax. Where a dispute arises between the Consumer and seller as to whether any Sale is exempt from Tax under this Chapter, the seller shall collect and the Consumer shall pay the Tax. The seller shall thereupon issue to the Consumer a receipt or certificate on forms prescribed by the City Treasurer, showing the names of the seller and Consumer, the item purchased, the date, the Price, the Tax paid, and a brief statement of the claim of exemption. The Consumer may thereafter apply to the City Treasurer for a refund of such taxes. It shall be the duty of the City Treasurer to determine the question of exemption, subject to review as set forth in this Chapter. In all cases, the burden of proof is upon the seller or Taxpayer to establish an exemption from Tax.

5.06.051 Charitable Organizations. The Purchase Price paid or charged on direct Sales to and direct Purchase by a Charitable Organization in the conduct of its religious and charitable functions and activities is exempt from Tax, provided that a letter of exemption from the City is possessed by such organization and provided that the organization is required to collect Sales Tax when taxable Sales are made by them.

5.06.052 Cigarettes. The Sale or Purchase of cigarettes is exempt from Tax.

5.06.053 Constitutional Prohibition. Any transaction which the City is prohibited from taxing under the Constitution and laws of the United States of America, or under the Constitution of the State shall be exempt from Tax.

5.06.054 Construction Materials — Sales Tax Only Exemption. The Sales Tax shall not apply to the Sale of Construction Materials if they are picked up by the Purchaser and if the Purchaser presents to the Retailer a building permit or other documentation acceptable to the City, evidencing that a local Use Tax has been paid or is required to be paid.

5.06.055 Containers, Labels. Sales and Purchases of Tangible Personal Property for Use as Exempt Commercial Packaging Materials are exempt from Tax.

5.06.056 Deliveries to Non-Residents Outside City. The Sale of Tangible Personal Property shall be exempt from Tax if both of the following conditions are satisfied:

- A. The Sale is to a Person who resides or does Business outside the City; and
- B. The Tangible Personal Property is delivered to the Consumer outside the City for Use, Storage, Distribution, or Consumption outside the City.

5.06.057 Direct Taxes. Tax imposed by this Chapter, the Federal government, or the State is exempt from Tax.

5.06.058 Discounts. A Discount granted to the Consumer is exempt from Tax if the Discount is not a cash Discount allowed for payment on or before a given date.

5.06.059 Feed, Seeds and Orchard Trees. All Sales and Purchases of feed for livestock or poultry, all Sales and Purchases of seeds, and all Sales and Purchases of orchard trees are exempt from Tax.

5.06.0510 Finance Charges. Charges imposed by a seller, such as for interest, carrying charges and insurance on a conditional or installment Sale, are exempt from Tax, except when the charges are not specifically identified, but are included in the sales contract. In the latter event, they shall be considered part of the Purchase Price.

5.06.0511 Food. All sales of food are exempt from Tax.

A. For purposes of this provision, “food” shall include items identified as such in the following provisions:

1. 7 U.S.C. § 2012(g), as amended, for purposes of the Federal food stamp program, as defined in 7 U.S.C. § 2012(h), as amended.
2. 42 U.S.C. § 1786, as amended, for purposes of the Special Supplemental Food Program for Women, Infants, and Children.

B. Food shall not include carbonated water marketed in containers, chewing gum, seeds and plants to grow food, prepared salads and salad bars, cold sandwiches, deli trays, and food or drink vended by or through machines or non-coin-operated coin-collecting food and snack devices on behalf of a Retailer.

C. Food purchased with food stamps or funds provided by the Special Supplemental Food Program for Women, Infants and Children shall be exempt from Tax.

5.06.0512 Garage Sales. The Purchase or Sale of Tangible Personal Property at a garage sale is exempt from Tax, provided that:

A. The exemption shall apply only to the first five hundred dollars (\$500) of Tangible Personal Property at a garage sale during any calendar year.

B. The garage sale is one of no more than four (4) sponsored by the same Person during the calendar year.

C. The garage sale does not last more than two (2) consecutive days.

5.06.0513 Governmental Organizations. The Purchase Price paid or charged on direct Sales to and Purchases by the U. S. Government, the State, its departments or institutions, and

the political subdivisions thereof, in their governmental capacity only; and the Sales to or Purchases by the City are exempt hereunder; providing, however, that no commercial, industrial or any other banking institution, organized or chartered by the U. S. Government, or by the State, shall be considered a governmental institution for the purpose of this exemption.

5.06.0514 Internet Access Services. Internet access services, as defined in C.R.S. § 24-79-102(2), are exempt from Tax.

5.06.0515 Livestock. The Sale, Purchase, Consumption, Storage and Use of livestock (including meat cattle, sheep, lambs, swine and goats and purchases of mares and stallions for breeding purposes) and live fish for stocking purposes, and all farm close-out Sales shall be exempt from Tax.

5.06.0516 Livestock and Poultry Bedding. All Sales and Purchases of straw and other bedding for use in the care of livestock and poultry are exempt from Tax.

5.06.0517 Manufactured Products; Component Parts, Ingredients. The Purchase Price paid or charged on the Sales to and Purchase of Tangible Personal Property by a Person engaged in Manufacture or compounding for Use, profit or Sale, shall be deemed a Wholesale Sale, which is exempt from Tax, when all of the following conditions are satisfied:

- A. The Tangible Personal Property is transformed by the process of Manufacture;
- B. The Tangible Personal Property becomes by the manufacturing processes a necessary and recognized ingredient, component and constituent part of the finished product; and
- C. The physical presence of the Tangible Personal Property in the finished product is essential to its Use by the ultimate Consumer.

5.06.0518 Medical Exemptions. All sales of the following are exempt from Tax:

- A. Drugs dispensed in accordance with a prescription.
- B. Insulin in all its forms dispensed pursuant to the direction of a licensed physician, glucose useable for treatment of insulin reactions, urine- and blood-testing kits and materials, and insulin measuring and injecting devices, including hypodermic syringes and needles.
- C. Medical supplies, drugs, and materials when furnished by a doctor as part of professional services provided to a patient.
- D. Prosthetic devices, oxygen, wheelchairs and hospital beds.
- E. Orthopedic and therapeutic appliances, devices, and related accessories with a retail value of more than one-hundred dollars (\$100) when sold in accordance with a written recommendation for a licensed doctor and to correct or treat a human physical disability or surgically created abnormality.

F. Orthopedic and therapeutic appliances, devices and related accessories with a retail value of less than one-hundred dollars (\$100) when sold to correct or treat a human physical disability or surgically created abnormality.

G. Corrective eyeglasses, contact lenses, and hearing aids.

5.06.0519 Mobile Home and Factory-Built Housing. Forty-eight percent (48%) of the Purchase Price of factory-built housing, as defined in C.R.S. § 24-32-703(3) (including mobile homes), is exempt from Tax, except that the entire Purchase Price of factory-built housing lived in for at least six (6) months is exempt from Tax.

5.06.0520 New Resident. Storage, Use or Consumption of Tangible Personal Property and household effects acquired outside of the City and brought into the City by a nonresident acquiring residency is exempt from Tax

5.06.0521 Newspapers and Printer's Ink. Newspapers are exempt from Tax. Sales and Purchases of newsprint and printer's ink for use by publishers of Newspapers and commercial printers shall be deemed Wholesale Sales

5.06.0522 Previous Use or Sales Tax in State. Exempt from Tax is the Use, Storage, Distribution or Consumption in the City of Tangible Personal Property and upon the Sale or Use of which a retail sales or use tax at a rate equal to or greater than the City's rate has been previously lawfully imposed, collected and remitted to a municipality in this State. If the rate of sales tax or use tax paid to such State municipality is less than the City's rate, the net difference between the tax due under this Chapter and the tax paid to the other municipal corporation shall be paid to the City. This exemption shall be denied if the tax paid to another municipality was not legally due under the laws of this State or the municipality. This exemption shall be denied for subsequent transactions within the City, including, but not limited to, rentals and leases.

5.06.0523 Purchase of Machinery or Equipment Located Directly and Exclusively in the City.

A buyer of Machinery is exempt from Tax up to \$500,000 if the following conditions are satisfied:

- A. The Machinery remains exclusively located in the City;
- B. The Machinery is used exclusively for the Manufacture of Tangible Personal Property for a period of two (2) years (730 days) from the Purchase date;
- C. The Purchase of the Machinery qualifies for an investment tax credit against Federal income tax provided by Section 38 of the Internal Revenue Code of 1954, as amended; and
- D. By the twentieth (20<sup>th</sup>) day of the month following its Purchase, buyer files a notice of intent to claim the exemption with the City. The notice must include the following information:



1. The proposed Manufacturing Use and location of the Machinery;
2. The Price of the Machinery;
3. The amount of Tax which would be due and payable, but for an exemption;
4. Evidence that the Purchase of the Machinery qualifies for an investment tax credit against Federal income tax provided by Section 38 of the Internal Revenue Code of 1954, as amended.

5.06.0524 Power for Residences and Manufacture. The Sales and Purchases of electricity, gas (meaning natural, manufactured and liquefied petroleum gas), coal, fuel oil or coke sold, but not for resale, to the following shall be exempt from Tax:

A. Occupants of residences, whether owned, leased, or rented by said occupants, for the purpose of operating residential fixtures and appliances, which provide light, heat, and power.

B. Persons for use in processing, Manufacturing, mining, refining, irrigation, construction, telegraph, telephone and radio communication, street and railroad transportation services and all industrial uses.

5.06.0525 Property Subject to Specific Ownership Taxes. All Sales of personal property on which a specific ownership tax has been paid, or is payable, shall be exempt from the Sales Tax if the following conditions are met:

A. The Purchaser is a non-resident of, or has his principal place of business outside of the corporate limits of the City; and

B. The personal property is registered or is required to be registered outside the corporate limits of the City under the laws of the State.

5.06.0526 Rebates. A Rebate which has been assigned by a Consumer to the Retailer and which is used in payment for Tangible Personal Property is exempt from Tax if the Rebate is for \$100 or more.

5.06.0527 Room Rentals by the Month. The Sales and Purchases of commodities and services under Section 5.06.0413 to any occupant who is a permanent resident of any Lodging Service and who enters into or has entered into a written agreement for occupancy of a room or rooms or accommodations for a period of at least thirty (30) consecutive days during the calendar year or preceding year are exempt from Tax. The exemption shall not apply to the Sale or Sales of any goods, services or commodities other than the furnishing of rooms and accommodations, unless such goods, services, or commodities are otherwise exempt from Tax.

5.06.0528 Sales and Use Tax Paid to Another State. The Use, Storage, Distribution or Consumption in the City of Tangible Personal Property upon the Sale or Use of which any other state or any other state in combination with any political subdivisions thereof has previously imposed and collected a retail sales or use tax at a rate equal to or greater than the City's combined Use and Sales Tax rate is exempt from Tax. If the rate of retail sales or use tax paid

the other state and/or its political subdivision is less than the City's combined Use and Sales Tax, then the City Tax will be the net difference between the tax paid and the City Tax. This exemption shall be denied if a tax paid another state and/or its subdivisions was not legally due under the laws of the other state and/or its subdivisions. This exemption shall also be denied for subsequent transactions within the City, including, but not limited to, rentals and leases.

5.06.0529 Sales of Construction Materials to the State, Charitable Organizations, and Schools. All Sales of Construction Materials to contractors and subcontractors for use in the building, erection, alteration or repair of structures, highways, roads, streets, and other public works owned and used by:

A. The U. S. government, the State, its departments and institutions, and the political subdivisions thereof in their governmental capacities only.

B. Charitable organizations in the conduct of their regular charitable functions and activities; or

C. Schools, other than schools held or conducted for private or corporate profit.

Contractors and subcontractors must obtain a certificate of exemption from the City Treasurer for this purpose.

5.06.0530 Sales Tax - Nonapplicability. City's Sales Tax shall not apply to the Sale of Construction Materials if such materials are picked up by the Consumer and if the Consumer of such materials presents to the Retailer a building permit or other documentation acceptable to the City, evidencing that a local Use Tax has been paid or is required to be paid.

5.06.0531 Schools. The Purchase Price paid or charged on direct Sales to and direct Purchases by a school other than a school held or conducted for private or corporate profit in the conduct of its educational functions and activities only are exempt from Tax, provided that a letter of exemption from the City is possessed by the school. Schools are required to collect Sales Tax when taxable Sales are made by them.

5.06.0532 Special Fuel. The sale of fuel and other commodities taxed under the provisions of C.R.S. § 39-27-101 et seq. (whether or not refunded); sale of special fuel, defined in C.R.S. § 39-27-101(6.3), used for the operation of farm vehicles when such vehicles are being used on farms and ranches are exempt from Tax.

5.06.0533 Storage of Certain Property; Use Tax Exemption. Tangible Personal Property purchased from a nonresident Retailer by a resident common carrier, resident public utility, or resident construction company, or Construction Materials purchased from a nonresident Retailer by any person, which Tangible Personal Property or Construction Materials are stored in the City, but not used or consumed in the City, are exempt from Use Tax.

5.06.0534 Temporary Resident. Tangible Personal Property brought into the City by a non-Resident for his own Use, Storage, Distribution or Consumption while temporarily within the City is exempt from Tax.

5.06.0535 Use More Than Three Years After Purchase; Use Tax Exemption. The City Use Tax shall not be imposed with respect to the Use or Consumption of Tangible Personal Property within the City which occurs more than three (3) years after the most recent Sale of the property if, within the three years following such Sale, the property has been significantly used outside of the City for the principal purpose for which it was Purchased.

5.06.0536 Vehicles. Vehicles legally registered outside the City are exempt from Tax.

5.06.0537 Wholesale Sales. The Sale by Wholesalers or Retailers to a licensed Retailer, jobber, dealer or other Wholesaler for purposes of taxable resale, and not for the Retailer's, jobber's, dealer's or Wholesaler's own Consumption, Use, Storage or Distribution, shall be deemed to be a Wholesale Sale, which is exempt from Tax. (Ord. 1136 §1, 2001)

5.06.060 Statute of Limitations.

5.06.061 Assessments, Collections and Liens.

A. Return Filed. If a Return has been filed, Tax, interest, and penalties shall not be assessed nor shall any notice of lien be filed, distraint warrant issued, suit for collection instituted, or any other action to collect commenced, more than three (3) years after the date on which the Tax was or is payable. No lien shall continue after this period either, except for Tax assessed before the expiration of the period, and notice of lien with respect to which has been filed prior to the expiration of this period, in which case the lien shall continue only for one (1) year after the filing of the notice.

B. No Return Filed. In the case of a failure to file a Return, Tax may be assessed and collected at any time.

5.06.062 False or Fraudulent Returns. In the case of a false or fraudulent Return with intent to evade tax, the Tax together with interest and penalties thereon, may be assessed, or proceedings for the collection of the Tax may be begun at any time.

5.06.063 Extensions. Before the expiration of the period of limitation, the Taxpayer and the City Treasurer may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing.

5.06.064 Refund.

A. Exemption Claimed. Application for refund of Tax paid under dispute by a Purchaser or User who claims an exemption pursuant to Section 5.06.050 shall be made within sixty (60) days after the Purchase, Storage, Use, or Consumption of the goods or services whereon an exemption is claimed.

B. Paid by Mistake. Application for refund of Tax paid in error or by mistake shall be made within three (3) years after the date of Purchase, Storage, Use or Consumption of the goods for which the refund is claimed. (Ord. 1136, §1, 2001)

5.06.070 Vehicle Tax Collection.

5.06.071 Purchases in the City by a Resident. The Purchase of a Vehicle in the City by a Resident for Use within the City shall be subject to Tax. Tax shall be collected by the Retailer selling the Vehicle and shall be paid by the Consumer. Where the seller does not collect the Tax, the Consumer shall pay it to the City or its agent prior to or at the time the registration certificate is issued by the County Clerk and Recorder of El Paso County.

5.06.072 Purchases Outside City by a Resident. The Purchase of any Vehicle outside the City by a Resident for Use or Storage in the City shall be subject Tax. The Tax shall be payable to the City or its agent prior to or at the time the registration certificate is issued by the County Clerk and Recorder of El Paso County.

5.06.073 Payment of Tax Before Registration. A Resident who Purchases a Vehicle, whether new or used, from sources within or without this City, for Use within the City shall, prior to or at the same time of registering within El Paso County and obtaining the license therefor, either pay to El Paso County Clerk and Recorder as agent of the City or make a Return showing such transaction to the City Treasurer and thereupon pay the Tax.

5.06.074 Restrictions on Registration and Transfer of Title. No Vehicle purchased or acquired by a Resident for Use in the City shall be registered in El Paso County, nor shall title thereto be transferred within El Paso County, nor shall a license or registration for the Use thereof in the State be issued by the County Clerk of El Paso County, if the Tax imposed by this Chapter upon the Purchase, or Use, Storage, Distribution or Consumption of the same has not been paid to the City or its agent.

5.06.075 Failure to Register Vehicles as Resident. A Resident who registers a Vehicle, whether new or used, outside the corporate limits of the City for Use within the City, shall immediately, and prior to registering and obtaining a license therefor, make a Return, showing such transaction to the City Treasurer and thereupon pay the Tax.

5.06.076 Registration to Evade Taxation. It shall be unlawful for a Resident to evade the collection or payment of Tax, or the payment of any interest or penalty due the City under this Chapter by registering a Vehicle, except in conformity with the provisions of this Chapter.

5.06.077 Registration of Vehicles. Any Person who causes a Vehicle to be registered in violation of the provisions of C.R.S. § 42-6-137(2) shall be assessed a five hundred dollar (\$500.00) civil penalty pursuant to the authority granted in C.R.S. § 42-6-137(4). The procedure for the assessment of the civil penalty shall be as follows:

A. Penalty Assessment. When the City Treasurer determines that a Person has caused a Vehicle to be registered in violation of the provisions of C.R.S. § 42-6-137(2), the City Treasurer

shall issue to the Person a Penalty Assessment. If the City Treasurer also has determined, pursuant to Sections 5.06.110 or 5.06.182, that Taxes are due on the Purchase of the Vehicle, the Penalty Assessment may be included in a Deficiency Notice.

B. Time for Payment. The Person shall pay a Penalty Assessment within the time period provided pursuant to Section 5.06.110 or 5.06.182 for payment of any amount due pursuant to a Deficiency Notice, unless the Person requests a hearing in the manner provided in Section 5.06.077(c).

C. Protest. If a Person desires to protest a Penalty Assessment, the Person shall request in writing a hearing before a Hearing Officer as provided in Section 5.06.151 in the twenty (20) day time period permitted therein. The request for a hearing shall set forth the facts that show that a violation of C.R.S. § 42-6-137(2) did not occur. The Hearing Officer shall issue a written decision affirming or withdrawing the Penalty Assessment within the same time period and in the same manner as provided pursuant to Section 5.06.151 after hearing on a Deficiency Notice. If the decision affirms the Penalty Assessment, the Person shall pay the civil penalty within thirty (30) days after the decision, unless the Taxpayer seeks judicial review and satisfies any bond requirements.

D. Judicial Review. A Person may seek judicial review of the decision by the City Treasurer under the provisions of Section 5.06.154 under Rule 106(a)(4) of the Colorado Rules of Civil Procedure as the same provide or may hereinafter be amended.

E. Enforcement. The City Treasurer may enforce collection of a Penalty Assessment in the same manner as provided for the collection of Taxes, penalties, or interest.

#### 5.06.078 Registration, Where Made.

A. Residence. For purposes of Section 5.06.077, an individual Person's residence shall be his principal or primary home or place of abode to be determined in the same manner as residency for voter registration purposes, as provided in C.R.S. §§ 1-2-102 and 31-10-201, except that "voter registration" shall be substituted for "motor vehicle registration" as a circumstance to be taken into account in determining such principal or primary home or place of abode.

B. Location of Registration. Except as may be otherwise provided by rule or regulation of the Director of Revenue, it is unlawful for any Person who is a resident of this State to register any Vehicle owned by him or to obtain a license therefor or to procure a certificate of title thereto at any address other than:

1. For a Vehicle which is owned by a Business and operated primarily for Business purposes, the address from which the Vehicle is principally operated and maintained.

2. For any Vehicle for which the provisions of paragraph 1 of this Subsection B do not apply, the address of the owner's residence; except that, if a Vehicle is permanently operated and maintained at an address other than the address of the owner's residence, the Vehicle shall

be registered at the address from which the Vehicle is permanently operated and maintained.  
(Ord. 1136 §1, 2001)

5.06.080 Licenses.

5.06.081 Licenses Required.

A. Retailer. It shall be unlawful for any Person to engage in the business of selling at retail Tangible Personal Property and services subject to the Tax imposed by this Chapter, without first obtaining a license.

B. Retail Establishment. In case business is transacted at two (2) or more separate places by one person, a separate license for each place of Business shall be required.

C. Sale or Transfer of Business Interest. Any Sale, transfer or Purchase of an interest in a Business by any Persons, where the respective interest of the Person purchasing or selling as a result of the transaction has changed in any degree, requires, in the case of a Retailer or other person required to be licensed under this Chapter, the issuance of a new license. In all cases where any of the assets of any Business are within the City, the payment of the Use Tax shall also be made on transfer of title or possession or both of the Tangible Personal Property taxable herein whether involving a retail establishment or any other type of Business.

D. When License Not Required. No license shall be required for any Person engaged exclusively in the business of selling commodities which are exempt from Tax.

5.06.082 Application; Contents. Temporary and permanent Sales and Use Tax licenses shall be granted by the State on such forms and terms not inconsistent with this Chapter. Any Person doing Business as a Wholesaler shall obtain a Retailer's license if any Sales are made at retail.

5.06.083 Form of License; Transfer. Each license shall be posted in a conspicuous place in the place of Business for which it is issued. No license shall be transferable.

5.06.084 Revocation of License; Appeal. The City Treasurer may, on reasonable notice and after full hearing, revoke the license of any Person found by the City Treasurer to have violated any provision of this Chapter. Any finding and order of the City Treasurer revoking the license of any Person shall be subject to review by the El Paso County District Court upon application of the aggrieved party. The procedure for review shall be in accordance with Rule 106(a)(4) of the Colorado Rules of Civil Procedure. (Ord. 1136, §1, 2001)

5.06.090 Taxpayer Liability.

5.06.091 Responsibility for Sales Tax Payments.

A. Remittance of Tax. Every Retailer engaged in Business and selling at Retail shall file a Return with the City Treasurer on or before the twentieth (20<sup>th</sup>) day of the month for the preceding month or months under report and remit the Sales Tax and any excessive tax

collections, as provided in Section 5.06.102 of this Chapter. The Retailer shall add the Sales Tax as a separate and distinct item and the Sales Tax shall be a debt from the Consumer to the Retailer and shall be recoverable at law in the same manner as other debts.

B. Tax on Credit Sales. In the case of a sale on credit, rental purchase agreement, or a conditional contract sale, whereby the seller retains title as security for all or part of the Purchase Price, or whenever the seller takes a security interest in the goods or commodities to secure all or part of the Purchase Price, the total Sales Tax based on the total selling price shall become immediately due and payable. This Sales Tax shall be charged and collected by the seller.

No refund or credit shall be allowed by either party to the transaction in case of repossession.

#### 5.06.092 Responsibility for Use Tax Payments.

##### A. Residents.

1. Residents who Purchase or lease Tangible Personal Property for Use, Storage or Consumption in the City from sources within or without the City and taxable hereunder and who has not paid the Tax to a Retailer required or authorized to collect the same, shall file a Return and pay the Tax within thirty (30) days from the Purchase or lease of the Tangible Personal Property.

2. The Return shall show the value of the Tangible Personal Property purchased or the rental or cost of leasing the property by the Person.

##### B. City Businesses.

1. Persons who (or which) operate or maintain a Business in the City and who (or which) Purchase or lease Tangible Personal Property for Use, Storage, Distribution, or Consumption in the City, from sources within or without the City, and who (or which) have not paid the Use Tax to a Retailer required or authorized to collect the same, shall, monthly, make a Return and pay the Use Tax, on or before the twentieth (20<sup>th</sup>) day of the month following the Purchase or lease.

2. Returns shall show the value of the Tangible Personal Property Purchased or the rental or cost of leasing the property by the Person.

5.06.093 Contractors, Owners or Lessees of Realty. Every Purchase by a contractor shall be taxable as a Purchase at retail unless the Purchase is for taxable resale or otherwise exempt under this Chapter. Every contractor (general and sub-contractor), which shall build, construct, reconstruct, alter, expand, modify or improve any building, dwelling or other structure, or make improvement to real property, shall pay the Use Tax by making a monthly Return on or before the twentieth (20<sup>th</sup>) day of the month. Every owner or lessee of realty situated in the City on which Tangible Personal Property acquired from sources within or without the City are attached or affixed and on which no Use Tax has been paid must also pay the Use Tax by making a monthly Return on or before the twentieth (20<sup>th</sup>) day of the month.

A. Contents of Return. Returns shall show the Purchase Price of the Tangible Personal Property or the rental or cost of leasing the property by the Person.

B. Books and Records. Persons who build, construct, reconstruct, alter, expand, modify or improve any building, dwelling or other structure or who contract the aforesaid and who Purchase lumber, fixtures or any other Construction Materials and supplies used therefor, or who contract for the Purchase of the aforesaid, shall keep and preserve all invoices, statements and other records showing such Purchases.

C. Preservation of Books and Records. Any failure to preserve such invoices, statements and records shall cause all estimate and assessments of the Use Tax, pursuant to Section 5.06.110, to be the only evidence of the Tax.

D. Furnishing of Information. It shall be the duty of the Regional Building Official and the contractors and subcontractors to furnish the City Treasurer the information that he or she may require as to any Purchases of lumber, fixtures or any other Construction Materials.

E. Building Inspections. An inspection, including a periodic or final inspection, shall not be made by the Regional Building Official, nor shall a certificate of occupancy, whether temporary or final, be issued, unless all Taxes on Construction Materials have been paid or arrangements have been made with the City Treasurer to pay them.

#### 5.06.094 New Business Purchases; Sellers and Consumers.

A. Acquisition of Business. Tax shall be remitted on the Price paid for Tangible Personal Property which is acquired with the Purchase of a Business, and for use in the operation of the Business. Tax shall be based on the price paid for such chattels as recorded in the bill of sale or agreement and constituting a part of the total transaction at the time of the Sale or transfer, provided the valuation is as great or greater than the fair market value of the merchandise or chattels. Taxes shall be remitted on the Purchase Price for Tangible Personal Property which is acquired with the Sale of a Business. Where the transfer of ownership is via a lump sum transaction, the City Treasurer may base the Tax on either the book value set up by the Consumer for income tax depreciation purposes or the fair market value, whichever is greater. When a Business is taken over, by foreclosure or otherwise, in return for the assumption of outstanding indebtedness owned by former owners, the Tax shall be paid on the fair market value of all taxable Tangible Personal Property acquired by the Consumer.

B. Successor Liable for Prior Owner's Unpaid Tax. Successors shall be liable for any unpaid Tax of a prior Business owner. Retailers or Consumers having outstanding accrual accounts on which Tax has not been remitted must compute and pay the Tax at the time of the Sale of the Business.

C. Agent of Seller and Seller Liable for Tax. The seller or his agent shall be held liable for Tax remittance on the Sale of a Business, in the event the Consumer fails to remit the Tax due on the Purchase. The seller or his agent has a duty to report Taxes owing upon the Sale of a Business.



D. Return and Withholding Taxes. Persons who sell their Business or stock of goods or quit their Business must make out a Return within ten (10) days after the date of the Sale of the Business or stock of goods or after they quit the Business. Successors in Business, if any, must withhold a sufficient amount of the purchase money to cover the amount of the Tax due and unpaid until such time as the former owner shall produce a receipt from the City Treasurer showing that the Tax has been paid, or a certificate that no Tax is due.

5.06.095 Liability of Fiduciaries.

A. Satisfaction of Liability. For the purpose of facilitating the settlement and distribution of estates, trusts, receiverships, other fiduciary relationships, and corporations in the process of dissolution or which have been dissolved, the City Treasurer may agree with the Fiduciary or surviving directors upon the amount of Tax due from the decedent, decedent's estate, trust, receivership, or other fiduciary relationship or corporation, and, except upon a showing of fraud, malfeasance, or misrepresentation of a material fact, payment in accordance with the agreement shall be full satisfaction of the Tax due.

B. Personal Liability. Except as provided in Subsection D, any personal representative of a decedent or of the estate of a decedent or any trustee, receiver, or other Person acting in a fiduciary capacity, or any director of a corporation in the process of dissolution or which has been dissolved, who distributes the estate or fund in his control without first paying Tax due from such decedent, decedent's estate, trust estate, receivership, or corporation, and which may be assessed within the time limited by this Section, shall be personally liable to the extent of the property so distributed, for any unpaid taxes of the decedent, decedent's estate, trust estate, receivership, or corporation, covered by this Section.

C. Notification of Liability. The distributee of a decedent's estate, or a trust estate or fund, or the stockholder of any dissolved corporation who receives any of the property of such decedent's estate, trust estate, fund, or corporation, shall be liable to the extent of the property received which may be assessed within the time limited by this Section. Notice to the distributee or stockholder shall be given in the same manner and within the time limit which would have been applicable had there been no distribution.

D. Limitation of Liability.

1. In the event tax covered by this Section is due from a decedent, his estate, or a corporation, and in order for a personal liability under Subsection B to remain in effect, determination of the Tax due shall be made and notice and demand therefor shall issue within eighteen (18) months after written request for the determination by any personal representative of the decedent or by the corporation. However, a request under this provision shall not extend the period of limitation otherwise applicable.

2. This Subsection D will not apply in the case of a corporation unless:

- a. The request notifies the City Treasurer that the corporation contemplates dissolution at or before the expiration of the eighteen-(18) month period.
- b. The dissolution is begun in good faith before the expiration of the eighteen (18) month period; and
- c. The dissolution is completed.

3. Upon the expiration of the eighteen (18) month period, without determination being made and notice and demand being issued, the personal representative or representatives of the decedent, and the directors of the corporation no longer will be liable under the provisions of Subsection B.

5.06.096 Sales by Auction. The auctioneer at any Sale, except when acting as an agent for a Retailer licensed to sell the commodities or articles under auction, or when selling only Tangible Personal Property which is exempt from Tax, is a Retailer and the Business conducted by him in accomplishing the Sale is the transaction of a Business.

5.06.097 Trust Status of Tax.

A. City Property in Trust. All sums of money paid by the Consumer to the Retailer as Tax shall be and remain public money and the property of the City in the hands of the Retailer. The Retailer shall hold the same in trust for the sole use and benefit of the City until paid to the City Treasurer as herein provided.

B. Segregated Account. If a licensee is suffering financial difficulty or is delinquent in making payment of Sales Tax collected, or is apparently using tax money collected for his own purposes, the City Treasurer may require the trust funds to be kept segregated in a special account at a bank or other financial institution. Withdrawals from the account shall only be payable to the City Treasurer, and the City Treasurer shall be authorized to make withdrawals from the account. Where the account is not kept as required herein, all the property of the Taxpayer shall be considered trust property of the City. (Ord. 1136, §1, 2001)

5.06.100 Examination of Returns. As soon as practicable after a Return is filed, the City Treasurer will examine it.

5.06.101 Recomputation. If it appears that the correct amount of Tax to be remitted is greater or less than that shown in the Return, the Tax shall be recomputed by the City Treasurer. The Tax shall be increased or decreased as appropriate.

5.06.102 Overpayment. If the amount paid exceeds that which is due, the excess shall be refunded or credited against any subsequent remittance from the Person upon Taxpayer's application for refund and according to the following procedure:

A. Application for Refund Form. The application for refund must be made on forms prescribed and furnished by the City Treasurer, which forms shall contain the information the City Treasurer prescribes.

B. Examination of Application. Upon receipt of an application for refund, the City Treasurer will examine it and give notice in writing to the Taxpayer of his or her decision on recomputation.

C. Proceeds of Claims. The proceeds of any claim for an overpayment refund shall first be applied by the City Treasurer to any Tax Deficiency or liabilities existing against the claimant before allowance of the claim.

D. False Statement. It shall be unlawful for a Person to make any false statement in connection with an application for refund of any Tax. If proven, a false statement shall be prima facie evidence that all refunds received by the Person during the preceding three (3) years were obtained unlawfully and the City Treasurer is empowered to bring appropriate action for the recovery of such refunds.

5.06.103 Underpayment. If the amount paid is less than the amount due, the difference, together with interest thereon at the rate specified in Section 5.06.122 from the time the Return was due, shall be paid by the Taxpayer within twenty (20) days after written notice and demand to it from the City Treasurer. (Ord. 1136, §1, 2001)

5.06.110 Failure to File Return.

A. If a Taxpayer neglects or refuses to make a Return, pay Tax, or collect Tax required in full, then the City Treasurer, on such information as is available, shall make an estimate of the Tax due and send by certified mail or deliver personally a Deficiency Notice including penalties and interest. The penalty shall be equal to the sum of fifteen dollars (\$15) or ten percent (10%) of the delinquent Tax, whichever is greater, and interest on the delinquent Tax at the rate imposed under Section 5.06.122 plus one-half percent (1/2%) per month from the date when due, not exceeding eighteen percent (18%) in the aggregate.

B. If the Tax Deficiency, penalty and interest is not paid within twenty (20) days of service and no request for hearing under Section 5.06.151 has been made, Taxpayer shall waive the right to protest the amount and the assessment will be final. If Taxpayer requests a hearing under Section 5.06.151 and provides additional information leading the City to amend its Deficiency Notice by either increasing or decreasing the estimate of Tax owing, the amendment will relate back to the date of the original Deficiency Notice and not entitle Taxpayer to additional hearing or procedural rights beyond those applicable to the original Deficiency Notice. (Ord. 1136, §1, 2001)

5.06.120 Penalties and Interest.

5.06.121 Interest on Underpayment, Nonpayment, or Extensions of Time for Payment of Tax.

A. If any amount of Tax is not paid on or before the last date prescribed, interest on such amount at the rate imposed under Section 5.06.122 shall be paid for the period from the date due to the date paid. The last date prescribed for payment shall be determined without regard to any extension of time for payment and without regard to any notice and demand for payment issued by the City Treasurer. In the case of a Tax in which the last date for payment is not prescribed, the last date for payment shall be deemed to be the date the liability for the Tax arises.

B. Interest prescribed under this section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as the Tax to which it is applicable.

C. If any portion of Tax is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the Tax so satisfied, for any period during which, if the credit had not been made, interest would have been allowed with respect to the overpayment.

D. Interest prescribed under this section on any Tax may be assessed and collected at any time during the period within which the Tax to which such interest relates may be assessed and collected.

5.06.122 Rate of Interest. When interest is required or permitted to be charged under this chapter, the annual rate of interest shall be that established by the State Commissioner of Banking, pursuant to C.R.S. § 39-21-110.5.

5.06.123 Negligent Deficiency. If any part of a Tax deficiency is due to negligence, but without intent to defraud, there shall be added ten percent (10%) of the total amount of the deficiency; and in such case, interest shall be collected at the rate as specified in Section 5.06.122 on the amount of the deficiency (not including penalty) from the time the Return was due, from the Person required to file the Return, which interest and addition shall become due and payable within ten (10) days after written notice and demand by the City Treasurer.

5.06.124 Fraudulent Deficiency. If any part of a Tax deficiency is due to fraud with the intent by the Taxpayer to evade the Tax, then there shall be added one hundred percent (100%) of the total amount of the deficiency, and in such case the whole amount of the Tax unpaid, including the additions, shall become due and payable ten (10) days after written notice and demand by the City Treasurer and an additional three percent (3%) per month of the deficiency (not including penalty) shall be added from the date the Return was due until paid.

5.06.125 Additional Corporate and Partnership Penalty. In addition to the personal liability provided for in Section 5.06.095, all officers of a corporation and all members of a partnership required to collect, account for, and pay over Tax who willfully fail to collect, account for, or pay over Tax or who willfully attempt in any manner to evade or defeat the Tax, or the payment thereof, are subject to, in addition to other penalties provided by law, a penalty equal to one hundred fifty percent (150%) of the total amount of the Tax not collected, accounted for, paid over, or otherwise evaded. An officer of a corporation or a member of a partnership shall be deemed to be subject to this Section if the corporation or partnership is subject to filing returns or paying Tax and if such officers of corporations or members of partnerships voluntarily

or at the direction of their superiors assume the duties or responsibilities of complying with the provisions of any Tax on behalf of the corporation or partnership. (Ord. 1136, §1, 2001)

5.06.130 Duties and Powers of City Treasurer.

5.06.131 Administration by City Treasurer. The administration of the Tax is vested in and shall be exercised by the City Treasurer.

5.06.132 Promulgate Rules and Regulations. The City Treasurer shall prescribe forms and shall, with the approval of the City Manager and after hearing, promulgate appropriate rules and regulations to effectuate the purpose of this Chapter, in conformity with this Chapter and subject to other provisions of law relating thereto, for the making of Returns, for the ascertainment, assessment and collection of the Tax, and for the proper administration and enforcement thereof. The City Treasurer will also provide uniform methods of adding the Tax, or the average equivalent thereof, to the Purchase Price. The City Treasurer shall have power and authority to amend and rescind the rules and regulations, consistent with the provisions of this Chapter. Regulations adopted, amended or rescinded by the City Treasurer shall be effective in the manner and at the time prescribed by the City Treasurer, subject to the provisions of this Chapter.

5.06.133 City Treasurer to Examine Returns. For the purpose of ascertaining the correctness of a Return or of making an estimate of the Tax due from any Taxpayer, the City Treasurer shall have power to examine or cause to be examined by any employee, agent or representative designated by the City Treasurer, any books, papers, records or memoranda bearing upon the matters required to be included in the Return. Subject to the provisions of this Chapter, the City Treasurer is authorized to prescribe the duties and powers of employees, accountants, experts, and other individuals necessary in the performance of the duties of the City Treasurer. The City Treasurer may delegate to any Person such power and authority as the City Treasurer deems reasonable and proper for the effective administration of this Chapter.

5.06.134 Discovery Authority.

A. Investigation of Books and Records. For the purpose of ascertaining the correctness of a Return or of determining the amount of Tax due from a Person, the City Treasurer may hold investigations, examinations, audits and hearings concerning any matters covered by this Chapter; investigate, examine, and audit any relevant books, papers, records, or memoranda of a Person; require the attendance of the Person or any officer or employee of the Person, or of any Person having knowledge of such Sales; and take testimony and require proof of his information. The City Treasurer shall have power and authority to administer oaths to Persons.

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

C. Subpoena. If any Taxpayer shall refuse voluntarily to furnish any of the foregoing information when requested by the City Treasurer or the City Treasurer's employee, agent, or representative, the City Treasurer, may issue subpoenas to require the attendance and production by the Taxpayer of any of the foregoing information in the Taxpayer's possession, and may administer oaths and take testimony. Compliance with any subpoena issued may be enforced by application of the City Treasurer to the Municipal Court of the City, where enforcement may be in the same manner as contempt of court is enforced pursuant to Section \_\_\_\_\_ of this Code.

D. Judicial Subpoena. If the City Treasurer is unable to secure from the Taxpayer information relating to the correctness of the Taxpayer's Return or the amount of Tax due from the Taxpayer, the City Treasurer may apply to any judge of the Municipal Court of the City for the issuance of subpoenas to Persons the City Treasurer believes may have relevant information. In the event a Person so served with subpoena shall fail to respond thereto, the judge may proceed against the Person as in cases of contempt.

E. Issuance of Subpoenas and Witness Fees. All subpoenas issued under the terms of this Chapter may be served by any individual over the age of eighteen (18) years. The fees of witnesses for attendance and trial 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 insistence of the City Treasurer, the fees shall be paid in the same manner as other expenses under the terms of this Chapter, and when a witness is subpoenaed at the instance of any party to any such proceeding, the City Treasurer 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 this case, the City Treasurer may require a deposit to cover the cost of 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.

5.06.135 Municipal Boundaries. The City Treasurer shall make available to any requesting party a location guide showing the boundaries of the City. The requesting party may rely on the location guide and any amendments thereto in determining whether to collect a Tax. No penalty shall be imposed or action for deficiency maintained against any Taxpayer who in good faith complies with the most recent location guide available to it.

5.06.136 Standard Reporting Form. The City Treasurer shall use the standard municipal Tax reporting form and any subsequent revisions thereto adopted by the executive director of the department of revenue by the first full month commencing one hundred twenty (120) days after the effective date of the regulation adopting or revising the standard form.

5.06.137 Authority To Waive Penalties. The City Treasurer is authorized to waive, for good cause shown, any penalty assessed under this Chapter, but not the accrual of interest.

5.06.138 Payment by Guaranteed Funds. When a Taxpayer liable for the payment of Tax has issued to the City two or more Checks Dishonored by the Drawee on account of Insufficient Funds or for any reason whatsoever, then the City Treasurer may require the Taxpayer to pay any Tax, penalty, or interest by cash or funds in another form that will in the

discretion of the City Treasurer guarantee payment of the Tax, penalty and/or interest to the City. Failure to submit payment in this form shall be deemed failure to submit any payment. (Ord. 1136, §1, 2001)

5.06.140 Recordkeeping.

5.06.141 Taxpayer Obligations.

A. Duty to Preserve. It shall be the duty of every Person Engaged in Business in the City, for the transaction of which a license is required, and of every Person purchasing Tangible Personal Property who has not paid the Tax, to keep and preserve, for a period of four (4) years, suitable records of all Sales or Purchases made by the Person and other such books and supporting documents as may be necessary to determine the amount of Tax owing.

B. Examination. All records and other receipts, invoices and documents required to be kept hereunder shall be open for examination by the City Treasurer upon demand.

C. Maintaining Records Outside City. If the Retailer or other Person keeps or maintains books, invoices, accounts or other records outside of the City, upon demand by the City Treasurer the Person shall make them available at a suitable place within the City, to be designated by the City Treasurer, for examination, inspection and audit. Alternatively, at the sole discretion of the City Treasurer, he or she may consent for the Retailer to pay all of the expenses of the City auditor (including travel, lodging, food, and professional expenses) to travel to the place where the records are stored to review them.

5.06.142 City Obligations. All reports of taxes and Returns received by the City shall be preserved for four (4) years. (Ord. 1136, §1, 2001)

5.06.150 Appeals.

5.06.151 First Administrative Hearing Before City.

A. Request for Hearing.

1. Notice of Assessment. An appeal of a Deficiency Notice issued to a Taxpayer for failure to file a Return, underpayment of the Tax or as a result of an audit shall be submitted in writing to the City Treasurer within twenty (20) calendar days from the date of the Deficiency Notice. The City Treasurer may not extend this deadline.

2. Denial of Refund. An appeal of the denial of refund shall be submitted in writing to the City Treasurer within twenty (20) calendar days from the date of the denial of refund and shall identify the amount of the refund requested and the basis for the appeal. The City Treasurer may not extend this deadline.

B. Contents of Appeal. An appeal shall include the following typed information:

1. The amount of tax disputed and the time during which it accrued;
2. The date of the Return or payment or the date of receipt by the Taxpayer of the Deficiency Notice;
3. A plain, concise statement of all claims asserted by the Taxpayer as the basis for the appeal, all facts supporting each claim, and all points of law the Taxpayer relies upon in support of each claim (citing pertinent statutes, ordinances, regulations, cases and other authority).
4. The name, address and telephone number of the Taxpayer and any legal representative.
5. The notarized signature of the Taxpayer or its corporate agent.
6. Applicant's Use and/or Sales Tax license number.

Failure to include each of the above elements in the appeal shall be grounds for dismissal or any other sanction a Hearing Officer deems appropriate.

C. Informal Conference. Upon receipt of an appeal under Subsection B, the City Treasurer will contact the Taxpayer or the Taxpayer's legal representative to schedule an informal conference to clarify the relevant issues and facts and explore the possibility of resolving the case in a mutually agreeable manner. Participation in the informal conference does not waive any of the Taxpayer's or the City's rights under this Chapter, and information shared shall be deemed inadmissible under C.R.E. 408.

D. First Hearing.

1. Hearing Officer. Unless the City and Taxpayer resolve the appeal informally within thirty (30) days from the date of the appeal (or longer if by mutual written consent), the City Treasurer shall appoint a Hearing Officer. The Hearing Officer shall not be the one who previously mediated or ruled on the tax problem under appeal.

2. Time and Place of Hearing. The Hearing Officer shall notify the Taxpayer of the time and place for the hearing at least ten (10) days prior thereto.

3. Rules of Procedure. The hearing shall be informal and no transcript, rules of evidence, or filing of briefs shall be required, but the Taxpayer may elect to submit a brief, in which case the City may submit a brief. The City shall hold the hearing and issue a final decision within ninety (90) days after the City's receipt of the Taxpayer's written appeal, except the City may extend such period if a delay in holding a hearing or issuing a decision was occasioned by the Taxpayer, but, in any such event, the City shall hold the hearing and issue the decision within 180 days of the Taxpayer's written appeal.



4. The Hearing Officer May Adjust the Tax Under Question. Based on the evidence presented at the hearing and filed in support of Taxpayer's contentions, the Hearing Officer may modify or abate in full the Tax, penalty and interest or may approve a refund.

5. Standard of Review. Review of the Deficiency Notice shall be *de novo*.

6. Hearing Determination Notice. The Hearing Officer shall mail a hearing determination notice to the Taxpayer setting forth the amount of claim for refund allowed or denied or the amount of Tax Deficiency found due, stating the grounds for allowance or rejection of the petition. The decision of the Hearing Officer shall be mailed to the Taxpayer within twenty (20) days following the hearing, but, in any event, within the time limits prescribed in subsection (D)(3).

#### 5.06.152 Second Administrative Hearing Before City.

A. Appeal of First Hearing. An appeal of a hearing determination mailed pursuant to Section 5.06.151(D)(6) shall be commenced within thirty (30) days of the decision, and shall include each of the items specified in Section 5.06.151(B).

B. Time and Place of Hearing. The City Treasurer shall notify the Taxpayer in writing of the time and place for the hearing at least ten (10) days prior thereto.

C. Rules of Procedure. The hearing shall be formal and both sides shall submit a brief to the Hearing Officer. Unless the Hearing Officer orders otherwise, mailing, notices, computations of time, time limitations, service and filings shall conform to the requirements of the Colorado Rules of Civil Procedure. Except upon mutual agreement, the City shall hold the hearing and issue a final decision within ninety (90) days after the City's receipt of the Taxpayer's appeal of first hearing.

D. Hearing Officer. The Hearing Officer shall not be the one who previously mediated or ruled on the tax problem under appeal. Based on the evidence presented at the hearing or filed in support of the Taxpayer's contentions at the hearing, the Hearing Officer may modify or abate in full the Tax, penalty and interest questioned at the hearing or may approve a refund. The Hearing Officer may perform such functions necessary and incidental to deciding a matter including, but not limited to, issuing subpoenas, issuing orders, authorizing depositions, hearing all evidence, examining all documents, ruling on evidentiary questions and generally conducting as a hearing tribunal the quasi-judicial proceedings in conformance with any procedures and time limitations set forth in the applicable ordinance, having and exercising all powers given to the City Treasurer therein. No *ex parte* communication with the Hearing Officer shall take place except in accordance with accepted practice in State courts of general jurisdiction.

E. Order of Proceeding. The order of proceeding in hearings shall be as follows:

1. Docket call by the Hearing Officer;

2. Opening statement by Taxpayer and City unless waived by either party or reserved by City until the opening of the City's case.

3. Presentation of evidence by Taxpayer, allowing cross-examination by City (exhibits shall be lettered for identification). The Hearing Officer may at any time address questions to any witness for the purpose of clarification.

4. Rebuttal and surrebutal evidence, if any.

5. Closing argument by Taxpayer followed by answering argument from the City with opportunity to reply to answering argument by Taxpayer. Taxpayer or the City may elect to submit written briefs in addition to or in lieu of closing argument. If Taxpayer elects to submit a brief, then the City shall be permitted to file an answer brief. The schedule for filing such briefs shall be set by the Hearing Officer.

F. Burden of Proof. Taxpayer shall have the burden of proof to show by a preponderance of evidence the correctness of the Taxpayer's position.

G. Rules of Evidence. The rules of evidence shall conform loosely with those in civil, non-jury cases in the District Court for the State. The Hearing Officer shall be guided in receiving evidence by the provisions of the State Administrative Procedure Act. All testimony in proceedings before the Hearing Officer shall be given under oath administered by the Hearing Officer. Carbon copies, photographic copies, and copies made by duplication machines may be admitted into evidence or substituted in evidence in place of original documents. Witnesses intended to give opinion testimony as experts must be qualified as such, and their qualifications should be submitted in advance of the hearing to the Hearing Officer.

H. Representation of Taxpayer. A Taxpayer who is a natural individual may appear personally to represent himself or be represented by an attorney admitted to practice law in the State. A corporate Taxpayer must be represented by an attorney admitted to practice law in the State.

I. Transcription. The proceedings of the hearing shall be recorded by electronic means or transcribed by a certified court reporter. Transcripts of hearing records shall be made at the expense of the party requesting the transcript.

J. Dismissal. Whenever it appears that a petition is not filed within the time permitted, the City lacks jurisdiction, or the petitioner fails to state a claim for relief, the case may be dismissed by the Hearing Officer after having provided the Taxpayer the opportunity to show otherwise.

K. Standard of Review. Review of the prior Hearing Officer's determination shall be *de novo*.

L. Hearing Determination Notice. The Hearing Officer shall mail a hearing determination notice within twenty (20) days of the second hearing to the Taxpayer, setting forth

the amount of claim for refund allowed or denied or the amount of Tax Deficiency found due and stating therein the grounds for allowance or rejection of the petition.

5.06.153 Final Assessment. After the expiration of twenty (20) days from the mailing or personal service of the Deficiency Notice, denial of refund, or hearing determination, if the Tax has not been paid and if no timely request for hearing has been made, then the Deficiency Notice or hearing determination previously mailed or served shall constitute a final assessment of the amount of Tax, together with interest and penalties, or the uncontested denial of refund shall constitute a final denial of refund, as the case may be.

5.06.154 Judicial Review of Hearings. The District Court within and for the County of El Paso shall review all determinations of the City Treasurer made under the provisions of Section 5.06.152 under Rule 106(a)(4) of the Colorado Rules of Civil Procedure as the same now provides or may be hereinafter amended.

5.06.155 Bond.

A. Posting Bond. Within fifteen (15) days after filing for judicial review as provided in section 5.06.154, Taxpayer shall file with the District Court a surety bond in twice the amount of the Tax, interest, and other charges stated in the final decision by the City Treasurer which is contested on appeal. The Taxpayer may satisfy the surety bond requirement by a savings account or deposit in or a certificate of deposit issued by a state or national bank or by a state or federal savings and loan association, in accordance with the provisions of C.R.S. § 11-35-101(1), equal to twice the amount of the Tax, interest and other charges stated in the final decision by the City Treasurer.

B. Money In Lieu of Bond. Taxpayer may deposit the disputed amount with the City Treasurer in lieu of posting a surety bond. If such amount is so deposited, no further interest shall accrue on the deficiency contested during the pendency of the action. At the conclusion of the action, after appeal to the Supreme Court or the Court of Appeals or after the time for the appeal has expired, the funds deposited shall be, at the direction of the court, either retained by the City Treasurer and applied against the deficiency or returned in whole or in part to the Taxpayer with interest at the rate imposed pursuant to Section 5.06.122. No claim for refund of amounts deposited with the City Treasurer need be made by the Taxpayer in order for such amounts to be repaid in accordance with the direction of the Court.

5.06.156 Administrative Hearing before State. In lieu of the procedure provided for in Section 5.06.152, the Taxpayer may elect a State hearing on the decision of the Hearing Officer appointed pursuant to Section 5.06.151 pursuant to the procedures set forth below:

A. For purposes of this section, “State hearing” means a hearing before the Executive Director of the Department of Revenue of the State or delegate thereof as provided in C.R.S. § 29-2-106.1(3).

B. When the City asserts that Tax is due in an amount greater than the amount paid by Taxpayer, City shall mail a Deficiency Notice to Taxpayer by certified mail. The Deficiency

Notice shall state the additional Tax due and shall contain notification, in clear and conspicuous type, that Taxpayer has the right to elect a State hearing on the deficiency pursuant to C.R.S. § 29-2-106.1(3). Taxpayer shall also have the right to elect a State hearing on the City's denial of Taxpayer's claim for a refund of Tax paid.

C. Taxpayer shall request the State hearing within thirty (30) days after Taxpayer's exhaustion of local remedies. Taxpayer shall have no right to such hearing if he has not exhausted local remedies or if he fails to request the hearing within the time period provided in this subsection. For purposes of this subsection, "exhaustion of local remedies" means:

1. Taxpayer has timely requested in writing an administrative hearing as provided in 5.06.151 and the hearing has been held in conformity with its provisions, or

2. Taxpayer has timely requested in writing a hearing before the City and the City has failed to hold the hearing or has failed to issue a final decision on it within the time period prescribed in 5.06.151(D)(6).

D. If Taxpayer has exhausted his local remedies as provided in Subsection C, Taxpayer may request a State hearing on the Deficiency Notice or claim for refund, and the request shall be made and the hearing shall be conducted in the same manner as set forth in C.R.S. § 29-2-106.1(3)-(7).

E. If the Deficiency Notice or claim for refund involves only the City, in lieu of requesting a State hearing, Taxpayer may appeal such Deficiency Notice or denial of a claim for refund to the District Court of the County of El Paso, as provided in C.R.S. § 29-2-106.1(8), provided the Taxpayer complies with the procedures set forth in Subsection C.

5.06.157 Notices; Manner of Delivery. All notices required to be given to any Person under this Article shall be in writing and, if mailed, shall be postpaid by certified or registered mail, "return receipt requested," directed to him at his last known address. This mailing shall be sufficient for the purpose of this Article. (Ord. 1136, §1, 2001)

5.06.160 Inter-City Claims for Recovery. The intent of this Section is to streamline and standardize procedures related to situations where Tax has been remitted to the incorrect municipality. It is not intended to reduce or eliminate the responsibilities of the Taxpayer or Retailer to correctly pay, collect, and remit Tax to the City.

A. As used herein, "claim for recovery" means a claim for reimbursement of Tax paid to the wrong taxing jurisdiction.

B. When it is determined by the City Treasurer that Tax owed to the City has been reported and paid to another municipality, the City shall promptly notify the Retailer that taxes are being improperly collected and remitted, and that, as of the date of the notice, the Retailer must cease improper Tax collections and remittances.

C. The City may make a written claim for recovery directly to the municipality that received the Tax and/or penalty and interest owed to the City, or, in the alternative, may institute procedures for collection of the Tax from the Taxpayer or Retailer. The decision to make a claim for a recovery lies in the sole discretion of the City. Any claim for recovery shall include a properly executed release of claim from the Taxpayer and/or Retailer releasing its claim to the taxes paid to the wrong municipality, evidence to substantiate the claim, and a request that the municipality approve or deny in whole or in part, the claim within ninety (90) days of its receipt. The municipality to which the City submits a claim for recovery may, for good cause, request an extension of time to investigate the claim, and approval of such extension by the City shall not be unreasonably withheld.

D. Within ninety (90) days after receipt of a claim for recovery, the City shall verify to its satisfaction whether or not all or a portion of the Tax claimed was improperly received, and shall notify the municipality submitting the claim in writing that the claim is either approved or denied in whole or in part, including the reasons for the decision. If the claim is approved in whole or in part, the City shall remit the undisputed amount to the municipality, submitting the claim within thirty (30) days of approval. If a claim is submitted jointly by a municipality and a Retailer or Taxpayer, the Check shall be made to the parties jointly. Denial of a claim for recovery may only be made for good cause.

E. The City may deny a claim on the grounds that it has previously paid a claim for recovery arising out of an audit of the same Taxpayer.

F. The period subject to a claim for recovery shall be limited to the thirty-six (36) month period prior to the date the municipality that was wrongly paid the Tax receives the claim for recovery. (Ord. 1136, §1, 2001)

#### 5.06.170 Lien on Property.

5.06.171 Tax Constitutes Lien. The Tax, 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 upon the Tangible Personal Property sold, Purchased, Stored, Used, Distributed or Consumed, as well as upon the goods, merchandise, furniture and fixtures, tools, equipment, cash, bank accounts and accounts receivable, of any Retailer, or used by any Retailer in conducting his Business. The lien shall be subject only to a valid mortgage or other liens of record on and prior to the recording of notice as required herein.

A. Construction Materials. The full amount of the Tax due and not paid for lumber, fixtures or any other Construction Materials, together with penalties and interest thereon as herein provided, shall constitute a lien upon the real property benefitted by such work. The City Treasurer is hereby authorized to file a notice of the lien with the County Clerk and Recorder of El Paso County.

B. Personal Property Affixed to Real Property. The full amount of unpaid Tax arising from and required to be reported on personal property affixed to real property under this Chapter, together with interest and penalties, shall constitute a first and prior lien on the real property and

any proceeds therefrom, which lien shall have precedence over all other liens of whatsoever kind and nature, except as to liens for general taxes created by State law and except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor or Consumer whose rights shall have attached prior to the filing of the notice of tax lien on the property of the Taxpayer other than on the goods, stock in trade and Business fixtures of the Taxpayer.

C. Status of Unpaid Tax in Bankruptcy and Receivership. When the Business or property of any Taxpayer subject to this Chapter shall be placed in a receivership, bankruptcy or assignment for the benefit of creditors or seized under distraint for property or State taxes, penalties and interest imposed by this Chapter shall constitute a first, prior and preferred lien against all the property of the Taxpayer, except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor, or Consumer whose rights shall have attached prior to the filing of the notice on the property of the Taxpayer. However, the goods, stock in trade, cash, deposits, accounts receivable, and Business fixtures of the Taxpayer shall not be subject to the above-stated exception and the Tax, penalties and interest shall be and remain a first, prior and preferred lien against the property of Taxpayer. No sheriff, receiver, assignee, or other officer shall sell the property of any Person subject to this Chapter under process or order of any court, when that property is subject to a prior recorded City tax lien, except after notice of the Sale date is given to the City. If a Tax is due, owing and unpaid, it shall be the duty of the officer to first pay the amount of the Tax out of the proceeds of the Sale before making payment of any moneys to any judgment creditor or any other claimants of whatsoever kind or nature, except the costs of the proceedings and other preexisting claims or liens.

5.06.172 Notice of Tax Lien. If the Tax and any penalty or interest is not paid within five (5) days after it is due, the City Treasurer shall issue a notice, setting forth the name of the Taxpayer, the amount of the Tax, penalties and interest, and the date of the accrual thereof. The notice shall also state that the City claims a first and prior lien on the Tangible Personal Property of the Taxpayer. Such notice shall be on forms prepared by the City Treasurer and shall be verified by him or her (or authorized agent) and may be filed in the office of the clerk and recorder of any county in this State in which the Taxpayer owns Tangible Personal Property, and the filing of the notice shall create a lien on the property in that county and constitute notice of it. After the notice has been filed or concurrently therewith or at any time when Tax due is unpaid, whether such notice be filed or not, the City Treasurer may issue a distraint warrant as provided herein.

5.06.173 City a Party to Title Actions For Determination of Liens. In any action affecting the title to real estate or the ownership or rights to possession of personal property the City may be made a party for the purpose of obtaining a judgment or determination of its lien upon the property involved.

5.06.174 Filing and Release of Liens. Any employee, agent or representative of the City Treasurer to whom a warrant has been issued, pursuant to Section 5.06.181, may serve a notice of lien in such form as the City Treasurer may prescribe upon the Person in possession of any personal property or rights on property belonging to the Taxpayer and if not previously recorded the lien shall be effective as to the property or interest from the date of the service. The City

Treasurer may release the lien as to all or any part of the property or any interest subject to the lien upon such terms as he may deem proper.

5.06.175 Certificate of Discharge.

A. Conditions Precedent. If any property, real or personal, shall be subject to a lien for payment of Tax, the City Treasurer may issue a certificate of discharge of any part of the property subject to the lien if (1) he or she finds that the fair market value of that part of the property remaining subject to the lien is at least double the amount of the liability remaining unsatisfied in respect to the Tax and the amount of prior liens upon the property or (2) the City Treasurer receives in part satisfaction of the Tax liability an amount not less than the value of the interest of the City in the part to be discharged, as determined by the City Treasurer.

B. How Value is Determined. In determining values, the City Treasurer shall give consideration to the fair market value of the part to be discharged and to such lien or liens thereon as shall have priority over the lien of the City.

C. Certificate of Release Conclusive. A certificate of release or of partial discharge issued under this part shall be held conclusive that the lien of the City upon the property released therein is extinguished, but shall not extinguish nor release any portion of the lien property not specified in the release. (Ord. 1136, §1, 2001)

5.06.180 Methods of Enforcing Collection.

5.06.181 Foreclosure by Distraint. Liens created hereunder may be foreclosed by seizing under distraint warrant and selling so much of the merchandise, furniture and fixtures, tools and equipment, or other property not otherwise excluded as may be necessary to discharge the liens.

A. Warrant by City Treasurer. When any of the subparagraphs of this subsection are met, the City Treasurer may issue a warrant directed to any employee, agent, or representative of the City Treasurer, sometimes in this section referred to collectively as “agent” or “revenue collector,” commanding him to distraint, seize, and sell the personal property of the Taxpayer, except such personal property as is exempt from execution and Sale by any statute of this State for the payment of the Tax, together with penalties and interest accrued thereon and costs of execution.

1. When any Tax Deficiency is not paid within twenty (20) days from the mailing or service of notice of determination, assessment and demand for payment therefor and no hearing has been requested and no appeal from the deficiency assessment has been docketed with any District Court of this State within the period;

2. When any other amount of Tax, penalty or interest is not paid within twenty (20) days from the mailing or service of assessment and demand for payment thereof; or

3. Immediately upon making of a jeopardy assessment or of the issuance of a demand for payment, as provided in Section 5.06.182.

B. Warrant by Municipal Court. The City Treasurer may apply to any judge of the Municipal Court for a warrant authorizing the City Treasurer to search for and seize property located within the City limits for the purpose of enforcing collection of the Tax. Municipal Court Judges shall issue the warrant after the City Treasurer demonstrates the following:

1. The premises to which entry is sought contain property that is subject to levy and Sale to pay the Tax; and

2. At least one of the preconditions of the subparagraph A of this Section has been satisfied, provided that if the City Treasurer has declared a jeopardy assessment under Section 5.06.182, he sets forth the reasons that collection of the Tax will be jeopardized.

C. Procedure for Warrant by Municipal Court. The procedures to be followed in issuing and executing a warrant pursuant to Subsection B shall comply with Rule 241© and (D) of the Colorado Municipal Court Rules of Procedure, provided that an officer authorized by law under Rule 241© and (B) shall include the City Treasurer.

D. Contesting Warrant. The Taxpayer may contest a warrant previously issued under the procedure provided by Rule 241(E) of the Colorado Municipal Court Rules of Procedure, except that no proceeding to contest such warrant may be brought after five (5) days prior to the date fixed for Sale of the distrained property.

E. Notice of Distrainment Seizure. The agent charged with the collection shall make or cause to be made an account of the goods or effects distrained, a copy of which, signed by the agent making such distraint, shall be left with the owner or possessor, at his usual place of abode with some member of his family over the age of eighteen (18) years, or at his usual place of Business with his stenographer, bookkeeper, or chief clerk, or if the Taxpayer is a corporation, shall be left with any officer, manager, general agent or agent for process, with a note of the sum demanded and the time and place of Sale; and shall forthwith cause to be published a notice of the time and place of Sale, together with a description of the property to be sold, in a Newspaper within the county where distraint is made or, in lieu thereof and in the discretion of the City Treasurer, the agent shall cause such notice to be publicly posted at the courthouse of the county where the distraint is made and copies to be posted in at least two (2) other public places within the county.

F. Procedure for Sale. The time fixed for the Sale shall be not less than ten (10) days nor more than sixty (60) days from the date of such notification to the owner or possessor of the property and the publication or posting of the notices. The Sale may be adjourned from time to time by the agent if he deems it advisable, but not for a time to exceed ninety (90) days from the date first fixed for the Sale. When any personal property is advertised for Sale under distraint as aforesaid, the agent making the seizure shall proceed to sell such property at public Auction, offering the same at not less than a fair minimum Price, including the expenses of making the seizure and of advertising the Sale, and if the amount bid for the property at the Sale is not equal to the fair minimum Price so fixed, the agent conducting the Sale may declare the same to be



purchased by him for the City. The property purchased may be sold by the agent under such regulations as may be prescribed by the City Treasurer.

G. Recovery of Property by Owner. In any case of distraint for the payment of taxes, the Tangible Personal Property distrained shall be restored to the owner or possessor if, prior to the Sale, the amount due is paid together with the fees and other charges, or may be redeemed by a Person holding a security interest or other evidence of right of possession.

H. Certificate of Sale; Evidence of Purchase. In all cases of Sale, the agent making the Sale shall issue a certificate of Sale to each Consumer. The certificate shall be prima facie evidence of the right of the agent to make the Sale and conclusive evidence of the regularity of his proceedings in making the Sale; and shall transfer to the Consumer all right, title and interest of the delinquent Taxpayer in and to the property sold. Where the property consists of a certificate of stock in the possession of the agent, the certificate of Sale shall be notice when received, to any corporation, company or association of said transfer, and the certificate of sale shall be authority for the corporation, company or association to record the transfer on its books and records. Where the subject of Sale is securities or other evidences of debt, in the possession of the agent, the certificate of Sale shall be good and valid evidence of title in the Person holding it. Any surplus remaining above the Tax, penalties, interest, costs and expenses of making the seizure and of advertising the Sale, shall be returned to the owner or another Person having a legal right thereto, and, on demand, the City Treasurer shall render an account in writing of the Sale.

#### 5.06.182 Jeopardy Assessment.

A. Jeopardy Enforcement. If the City Treasurer finds that collection of the Tax will be jeopardized by delay, he or she may declare the taxable period immediately terminated, determine the Tax, and issue notice and demand for payment of it; and, having done so, the Tax shall be due and payable forthwith and the City Treasurer may proceed immediately to collect the Tax.

B. Immediate Enforcement Action. In any other case where it appears that the revenue is in jeopardy, the City Treasurer may immediately issue demand for payment. The Tax shall be due and payable forthwith and the City Treasurer may proceed immediately to collect the Tax.

C. Security for Payment. Collection under either Subsection A or B of this Section may be stayed if the Taxpayer gives such security for payment as shall be satisfactory to the City Treasurer.

#### 5.06.183 Recovery of Unpaid Tax.

A. The City Treasurer may also treat any Tax, penalties or interest due and payable as a debt due the City from the Taxpayer.

B. In case of failure to pay when due the Tax or any portion thereof, or penalty or interest thereon, the City Treasurer may recover at law the amount of the Tax, penalties and

interest in any County or District Court of the county wherein the Taxpayer resides or has his place of Business, or in the courts in El Paso County.

C. The Return of the Taxpayer or the assessment made by the City Treasurer, as herein provided, shall be prima facie proof of the amount due.

D. The City Attorney is hereby authorized upon request by the City Treasurer to commence any legal action or suit for the recovery of Tax.

#### 5.06.184 Compromise.

A. Compromise Limitation. The City Treasurer may compromise any civil or criminal case arising under this Chapter, prior to reference to the City Attorney's office for prosecution or defense; and the City Attorney or his delegate shall, upon the written direction of the City Treasurer, compromise any such case after reference to the City Attorney's office for prosecution or defense.

B. Compromise Record. Whenever a compromise is made by the City Treasurer, there shall be placed on file in the office of the City Treasurer the following:

1. The amount of Tax;
2. The amount of interest and penalty;
3. The opinion of the City Treasurer (including the reason for the compromise, which may include financial inability of the Taxpayer to pay a greater sum); and
4. The amount paid in accordance with the terms of the compromise. (Ord. 1136, §1, 2001)

#### 5.06.190 Severability and Savings Clauses.

5.06.191 Severability Clause. It is hereby declared to be the intention of the City Council that each and every part of this ordinance is severable, and if any term, phrase, clause, sentence, paragraph, or section of this ordinance shall be declared unconstitutional or invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this ordinance, because the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional or invalid term, phrase, clause, sentence, paragraph or section.

5.06.192 Savings Clause. Nothing in this ordinance shall be construed to affect any right, duty or liability under any ordinances in effect prior to the effective date of this ordinance, and the same shall be continued and concluded under such prior ordinances. (Ord. 1136, §1, 2001)

## Chapter 5.08

### PAWNBROKERS

#### Sections:

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#### 5.08.010 Purpose.

A. The purpose of this part is to provide for the licensing and regulation of pawnbrokers in conformity with the provisions of Article 56 of Title 12, C.R.S. The City hereby finds and determines that it is necessary to regulate and license the business of pawnbroking as provided in Section 12-56-102, C.R.S. and that certain regulations more restrictive than provided in Article 56 of Title 12, C.R.S. are appropriate.

B. The City hereby finds and determines that law enforcement officers are hindered in the identification and recovery of articles which may be subject to a contract for purchase unless there is provided a record keeping system by pawnbrokers for tangible personal property purchased by a pawnbroker or subject to a contract for purchase. Furthermore, the requirement of a retention

period by persons engaged in the business of pawnbroking is necessary to assist the police department in the recovery of such articles on behalf of the rightful owner.

C. Accordingly, in the interest of safeguarding the public health, safety and welfare, it is the intent of the City, by enacting this Chapter, to aid law enforcement officers in the discovery and identification of sellers of stolen tangible personal property, which is the subject of a contract for purchase or purchased by a pawnbroker, by requiring the licensing of person engaged in the business of pawnbroking, by providing a mandatory record keeping and reporting system by such businesses, and by providing a retention period during which such tangible personal property may not be altered or disposed of. (Ord. 834 §1, 1989)

#### 5.08.020 Definitions.

A. **Contract for Purchase.** Commonly known as a "Pawn" transaction, is a contract entered into between a pawnbroker and a customer pursuant to which money is paid to the customer by the pawnbroker on the delivery of tangible personal property by the customer to the pawnbroker, on the condition that the customer, for a fixed price and within a fixed period of time, not to exceed ninety (90) days, has the option to cancel said contract. (This is not the same as "Purchase Transaction" as defined herein.)

B. **Declaration of Ownership.** A document which shall contain a detailed description of the item(s) subject of a contract for purchase or purchase transaction, a statement that the item(s) is (are) totally owned by the customer, how long the customer has owned said item(s), whether the customer or a third person found the item(s) and if so, the details of the finding, and signed by the customer.

C. **Fixed Price.** The amount agreed upon to cancel a contract for purchase during the option period. Said fixed price shall not exceed:

1. One-tenth (1/10) of the original purchase price for each month plus the original purchase price on amounts of fifty dollars (\$50.00) or over; or,
2. One-fifth (1/5) of the original purchase price for each month plus the original purchase price on amounts under fifty dollars (\$50.00).

D. **Fixed Time.** That period of time, not to exceed ninety (90) days, as set forth in a contract for purchase, during which an option to cancel said contract exists.

E. **Identification Number.** A serial or motor number placed by the manufacturer upon tangible personal property as a permanent, individual identifying mark.

F. **Legible.** Writing or typewriting which is easily capable of being read.

G. **Local Law Enforcement Agency.** The Fountain Police Department, the El Paso County Sheriff's office or any other law enforcement agency having jurisdiction in the locality in which the customer enters into a contract for purchase or a purchase transaction.

H. **Local Licensing Authority.** The City Council of the City of Fountain.

I. **Obscure.** To deliberately destroy, remove, alter, conceal or deface so as to render illegible by ordinary means of inspection.

J. **Option.** The payment during the fixed time, of the fixed price agreed upon by the customer and the pawnbroker, which allows the customer to rescind the contract for purchase, following which, the customer is entitled to receive from the pawnbroker the tangible personal property subject to the contract for purchase.

K. **Owner's Identification Number.** A number, letters or other distinguishing symbol, placed by the owner of the tangible personal property on the tangible personal property for purposes of identification.

L. **Pawnbroker.** A person regularly engaged in the business of making contracts for purchase or purchase transactions in the course of his business.

M. **Peace Officer.** Any sheriff, deputy sheriff, police officer or other law enforcing authority or officer except privately-employed security personnel.

N. **Purchase Transaction.** The purchase by a pawnbroker in the course of his business of tangible personal property for resale, other than newly manufactured tangible personal property which has not previously been sold at retail, when such purchase does not constitute a contract for purchase, as defined herein.

O. **Tangible Personal Property.** All personal property, other than choses in action, securities, or printed evidence of indebtedness, which property is deposited with or otherwise actually delivered into the possession of a pawnbroker in the course of his business in connection with a contract for purchase or purchase transaction.

P. **Totally Owned.** Held free and clear from all economic or financial encumbrance; not subject to lien, security interest or mortgage. (Ord. 834 §1, 1989)

5.08.030 License Required. It shall be unlawful for any person to do business as a pawnbroker, within the limits of the City, without first obtaining a license therefor. The licensing requirements of this chapter shall be in addition to any other provisions of this code requiring a general business permit.<sup>8</sup> (Ord. 834 §1, 1989)

5.08.040 Bond Required. An applicant or licensee shall file with the City Clerk a bond in the penal sum of five thousand dollars (\$5,000.00) with a corporate surety, to be approved by the City Clerk, conditioned on the due observance of all City ordinances at any time during the continuance of such license and for the safekeeping and return of all tangible personal property held pursuant to a contract for purchase by such pawnbroker in accordance with the provisions of this chapter. (Ord. 834 §1, 1989)

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<sup>8</sup> See chapter 5.12 of this Code.

5.08.050 Required Acts of Pawnbrokers.

A. A pawnbroker shall keep a numerical register in which he shall record the following information: the name, address and date of birth of the customer, and his driver's license number or other identification which is allowed for sale of valuable articles pursuant to section 18-16-103, C.R.S., or for the sale of secondhand property pursuant to section 18-13-114, C.R.S., the date, time and place of the contract for purchase or purchase transaction, and an accurate and detailed account and description of each item of tangible personal property, including, but not limited to, any and all trademarks, identification numbers, serial numbers, model numbers, brand names, owner's identification numbers, and other identifying marks on such property. The pawnbroker shall also obtain a written declaration of the customer's ownership which shall state whether the tangible personal property is totally owned by the customer, how long the customer has owned the property, whether the customer or someone else found the property, and, if the property was found, the details of the finding.

B. If the contract for purchase or the purchase transaction involves more than one item, each item shall be recorded on the pawnbroker's register and on the customer's declaration of ownership.

C. The customer shall sign his name in such register and on the declaration of ownership and receive a copy of the contract for purchase or a receipt of the purchase transaction.

D. Such register shall be made available to any local law enforcement agency for inspection upon request at any reasonable time.

E. The pawnbroker shall keep each register for at least three (3) years after the date of the last transaction entered in the register.

F. A pawnbroker shall hold all contracted goods, (meaning goods obtained pursuant to a contract for purchase) upon the licensed premises for a period of ten (10) days following the expiration of the fixed time of the contract for purchase, during which time such goods shall be held separate and apart from any other tangible personal property and shall not be changed in form or altered in any way.

G. A pawnbroker shall hold all property purchased by him through a purchase transaction for thirty (30) days following the date of purchase, during which time such property shall be held separate and apart from any other tangible personal property, shall not be displayed to the public and shall not be changed in form or altered in any way.

H. A pawnbroker shall hold all property purchased by him through a purchase transaction for thirty (30) days following the date of purchase, during which time such property shall be held separate and apart from any other tangible personal property, shall not be displayed to the public and shall not be changed in form or altered in any way.

I. Every pawnbroker shall provide the local law enforcement agency, on a weekly basis, with two (2) copies of the records, on a form to be approved by the local law enforcement

agency, of all tangible personal property accepted during the preceding week and one copy of the customer's declaration of ownership. The form shall contain the same information required to be recorded in the pawnbroker's register pursuant to subsection A of this section. The local law enforcement agency shall designate the day of the week on which the records and declarations shall be submitted.

J. Every pawnbroker shall provide a safe place for keeping the tangible personal property of the customers and shall have sufficient insurance on tangible personal property held by him pursuant to a contract for purchase for the benefit of the customers involved in the pawn transaction. The amount of insurance carried by the licensee, as a minimum requirement of this chapter, shall be equal to the annual average amount of money loaned on pawn.

5.08.060 Identification Acceptable. As provided for in section 18-16-103, C.R.S., and in section 18-13-114, C.R.S, no licensee, pursuant to this chapter, or any principal, employee, agent or servant of such licensee shall engage in a purchase transaction or shall enter into a contract for purchase with any customer without securing one of the following kinds of current and valid identification:

- A. Colorado driver's license;
- B. Identification card issued in accordance with section 42-2-402, C.R.S., which is an identification card issued by the State of Colorado;
- C. A driver's license containing a picture issued by another state;
- D. An identification card containing a picture issued by another state;
- E. A military identification card;
- F. A passport;
- G. An alien registration card;
- H. A non-picture identification document issued by a state or Federal government entity, if the purchaser also obtains a clear imprint of the seller's right index finger or photo of seller at the time of the transaction.

5.08.070 Inspection-Surrender.

A. A peace officer, acting within the course and scope of his employment, shall have the authority to inspect, without warrant and during normal business hours, all records required to be maintained by this chapter.

B. A peace officer acting within the course and scope of his employment, shall have the authority to inspect without warrant and during normal business hours, those portions of licensee's business premises open to the public.

C. Upon request, the pawnbroker shall surrender to a peace officer, acting within the scope of his employment, any tangible personal property the subject of a purchase transaction or contract for purchase which the officer has probable cause to believe to be stolen property. (Ord. 834 §1, 1989)

5.08.080 Hours of Operation. No person shall keep open a pawn shop or any part of the premises designated as the place of business on any pawnbroker license or engage in or carry on the business of pawnbroker on Sunday or between the hours of eight p.m. and eight a.m. on any other day. (Ord. 834 §1, 1989)

5.08.090 Display of Firearms. During the hours which the pawn shop is required to be closed, no firearms shall be displayed, exhibited or visible from outside the premises. (Ord. 834 §1, 1989)

5.08.100 Prohibited Acts by a Pawnbroker in the Course of His Business.

A. No pawnbroker, employee, or agent of the pawnbroker shall enter into a contract for purchase or purchase transaction with any individual under the age of eighteen (18) years or with any person under the influence of alcoholic beverages or drugs.

B. With respect to a contract for purchase, no pawnbroker, employee or agent of a pawnbroker may permit any customer to become obligated on the same day in any way under more than one contract for purchase agreement with the pawnbroker which would result in the pawnbroker obtaining a greater amount of money than would be permitted if pawnbroker and customer had entered into only one contract for purchase covering the same tangible personal property.

C. No pawnbroker, employee or agent of a pawnbroker shall violate the terms of the contract for purchase.

D. No pawnbroker, agent or employee of a pawnbroker shall enter into a contract for purchase or purchase transaction for any tangible personal property wherein the identification number, serial number, model number, brand name, owner's identification number or other identifying marks on such property have been totally or partially obscured.

E. No pawnbroker, employee or agent of a pawnbroker shall enter into a contract for purchase or a purchase transaction when the property which is the subject to the contract for purchase or purchase transaction is other than tangible personal property as defined in section 5.08.020 of this chapter.

F. The violation of this chapter by an agent or employee of a pawnbroker shall be deemed to be a violation of this chapter by the pawnbroker. (Ord. 834 §1, 1989)

5.08.110 Acts Proscribed. Acts defined as a Class 5 Felony under the provisions of section 12-56-104(4) and section 12-56-104 (5), C.R.S., shall not be a criminal offense under the provisions



of this chapter; provided, however, that such violation shall still constitute a basis for suspension or license revocation as provided in this chapter. (Ord. 834 §1, 1989)

5.08.120 Unlawful to Make False Entries. It shall be unlawful for any pawnbroker, either by himself or his clerk or employee to make a false entry in his numerical register or to make any false report to the city clerk or police department.

5.08.130 Loss of Contract. A customer may cancel the contract for purchase without presenting the original contract for purchase by showing ownership through proper identification pursuant to section 5.08.060. (Ord. 834 §1, 1989)

5.08.140 Display of License Required. Every person to whom a license to do business as a pawnbroker has been issued shall prominently exhibit such license in his or her place of business at all times. (Ord. 834 §1, 1989)

5.08.150 Delegation of Authority. The City Council hereby delegates to the city clerk such authority as necessary for the implementation and enforcement of this chapter. (Ord. 834 §1, 1989)

5.08.160 License - Granting and Requirements.

A. An applicant for a pawnbroker license shall file an application and fee of fifty dollars (\$50.00) with the city licensing officer who is and will be referred to in this chapter as the City Clerk, on such forms as the City Clerk may provide. Such forms shall, as a minimum, indicate:

1. The name of the person desiring the license;
2. The trade name of the pawnbroker or establishment, if any;
3. The local street address where such business is to be carried on;
4. The residence address, date of birth, social security number and telephone number of each owner and employee, if an individual, of each of the individual members of such firm, if a partnership or association, and of each of the directors and officers, if a corporation.

B. The Chief of Police shall provide for the investigation into the background of all persons associated with the application for a pawnbroker license as may be necessary for the determination of the good character of the applicant. No license shall be granted to or held by any person who is not of good moral character, any corporation, any of whose officers, directors or stockholders holding over ten percent of the outstanding and issued capital stock thereof are not of good moral character and any partnership, association or company, any of whose officers, or any of whose members holding more than ten percent interest therein, are not of good moral character.

C. The license application shall be granted or denied within sixty days from the date of submittal to the City Clerk. The City Clerk may grant a new license to any applicant who has satisfactorily met all the requirements of this section. The license shall be valid for the twelve-month period immediately succeeding the date of the license. If the application is denied, the City Clerk shall send written notice of denial to the applicant. The applicant shall have ten days from receipt of the notice of denial in which to request in writing a hearing before the City Council. Such request shall be delivered to the City Clerk who shall forthwith submit the request to the City

Council for action at the next regularly scheduled council meeting occurring not less than seven (7) days following receipt of the appeal. At such meeting, a hearing shall be held and the City Clerk will submit a report outlining the reasons for denying the application to the City Council. The Council will also hear evidence of the applicant. If the Council affirms the City Clerk's decision, the application fee shall be retained in the city treasury. If the Council reverses the decision, the City Clerk shall issue the license as directed.

E. The license shall specify the person to whom it is issued, the date of issue, the expiration date, the amount paid for the license, and the place, street and number, where the business is carried on. The license is not assignable and is only valid for the single business designated on it. (Ord. 834 §1, 1989)

5.08.170 Renewal of License.

A. The City Clerk may renew a license for a pawnbroker on the annual anniversary date of the original license. A license fee of twenty-five dollars (\$25.00) shall be submitted with the renewal application.

B. The City Clerk may elect not to renew a license pursuant to the procedures set forth in this chapter for suspension and revocation of a license. (Ord. 834 §1, 1989)

5.08.180 Grounds for Suspension or Revocation. The City Clerk may suspend for a period not to exceed six (6) months or revoke any license issued by the City if it is determined that:

A. The licensee has failed to file required reports or to furnish such other information as may be reasonably required by the City Clerk or police department under the authority vested in them by the terms of the provisions relating to this license; or

B. The licensee or any agent or employee of such licensee has violated any provisions of this chapter pertaining to his license or any regulation or order lawfully made under and within the authority of this chapter relating to the license; or

C. The licensee has made false statements in the application for license as to any of the facts required to be stated in such application; or

D. The licensee or any agent or employee of such licensee has violated any ordinance of the City, state or federal law on the premises or has permitted such violation on the premises by any other person; or

E. The licensee, either knowingly or without the exercise of due care, has violated any terms of the provisions pertaining to the license or any regulation lawfully made under and within the authority of the terms of the provisions relating to such license. (Ord. 834 §1, 1989)

5.08.190 Hearing Procedure for Suspension or Revocation.

A. Upon commencement of suspension or revocation proceedings, the City Clerk shall set a time and place for a hearing on the matter.

B. The City Clerk shall give the licensee reasonable notice of the time and place of the hearing and the violations asserted. Such notice shall be served personally or by mailing by first-class mail to the last address furnished to the City Clerk by the licensee, at least ten (10) days, including Saturdays, Sundays and legal holidays prior to the hearing. In lieu of such service, or in addition thereto, a copy of such notice may be affixed to the principal entrance of the licensed premises which shall be deemed to be the principal place of business or main office or may be affixed to some prominent structure on such premises.

C. In any such action, a hearing shall be granted at which the licensee shall be afforded an opportunity to be heard, present evidence, cross-examine witnesses, and offer evidence in mitigation of any violations.

D. All evidence shall be recorded stenographically or by electronic recording device. (Ord. 834 §1, 1989)

5.08.200 Hearings. The City Clerk or his designee shall conduct hearings for suspension or revocation of licenses granted pursuant to this chapter. The City Clerk shall make findings of fact and conclusions concerning the revocation or suspension of a license. In the event the City Clerk has designated another to conduct license revocation or suspension hearing, said designee shall recommend in writing to the City Clerk findings of fact and a conclusion for disposition of the hearing, a recommendation to be made within fifteen (15) days after the close of the hearing. The City Clerk shall transmit a copy of the final findings of fact and conclusion to the licensee as provided hereafter. (Ord. 834 §1, 1989)

5.08.210 Notice of Suspension or Revocation.

A. Upon suspension or revocation of any license required by this chapter, notice of such suspension or revocation shall be given by personally serving the licensee with the order or suspension or revocation or by mailing such order to such person by certified or registered mail at the business address of the licensee as shown on the license or at the address of the designated agent. In lieu of such service, or in addition thereto, a copy of such order may be affixed to the principal entrance of the licensed premises which shall be deemed to be the principal place of business or mail office, or may be affixed to some prominent structure on such premises.

B. The order shall be effective immediately upon service of notice thereof unless the order provides otherwise. Service of such order shall be complete upon mailing or posting. (Ord. 834 §1, 1989)

5.08.220 Effect of Suspension or Revocation. Upon the effective date of suspension or revocation of a pawnbroker's license, the licensee of such licensed business or activity shall cease and desist from further operation or activity. (Ord. 834 §1, 1989)

5.08.230 Appeals. Any person aggrieved by any decision of the City Clerk after hearing shall have the right to appeal to the City Council by filing a written appeal with the City Clerk within ten (10) days following the effective date of the action or order complained of, and such appeal shall have the effect of staying execution of such final order pending appeal.

A. An appeal shall be in writing and shall include a statement of the facts relied upon.

B. The City Clerk shall fix a time and place for hearing the appeal which shall be at the next regular meeting of the City Council occurring not less than seven (7) days following receipt of the notice of appeal. The City Council shall conduct a hearing to consider suspension or revocation of the license. Based upon the evidence presented at such hearing, the City Council may, in its discretion, suspend or revoke the license or elect to take no action in regard to such license. (Ord. 834 ·1, 1989)

5.08.240 Summary Suspension. When the conduct of any licensee, agent or employee is so inimical to the public health, safety and general welfare as to constitute a nuisance or hazard and thus give rise to an emergency, the City Clerk shall have the authority to summarily order the cessation of business and the close of premises pending a hearing on the question of whether to suspend or revoke the license. Unless waived by the licensee in writing, the City Council within fifteen (15) days after the City Clerk has acted shall conduct a hearing upon the summary order and the activity giving rise to such order. The order shall state the grounds for its issuance and shall give notice of the hearing and shall be served upon the affected person in the manner prescribed in section 5.08.190. At such hearing the licensee shall show cause why the summary suspension should not be made a final order of suspension or revocation. (Ord. 834 ·1, 1989)

5.08.250 Council Decision - Effect of.

A. The decision of the City Council in all cases shall be final and conclusive and shall be served upon the licensee by personal service, by registered or certified mail, or by posting as provided in section 5.08.210 of this chapter.

B. A decision of City Council is reviewable only by court under Colo. R. Div. P. 106(a)(4). There shall be no stay of execution pending a review by the court except by court order. (Ord. 834 §1, 1989)

## **Chapter 5.12**

### **BUSINESS PERMITS**

Sections:

5.12.010	Definitions
5.12.020	Applications of Regulations
5.12.030	City Clerk
5.12.040	Procedure for Issuance of Permit

5.12.050	Duties of Permittee
5.12.060	Determination of License Fee
5.12.070	Transfer of Permit
5.12.080	Enforcement
5.12.090	Reasonableness of Fees
5.12.100	Severability
5.12.110	Usage of Fees
5.12.120	Penalty

5.12.010 Definitions. For the purposes of this chapter, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

A. “Business” is meant to include all kinds of vocations, occupations, professions, (excluding teachers, clergy, church officers and all persons salaried and working and a person holding one garage sale, exceeding not more than two (2) days in length, once each calendar year) enterprises, establishments, and persons renting houses and all other kinds of activities and matters, including real estate and insurance together with all devices, machines, vehicles, and appurtenances used therein, any of which are conducted for private profit, or benefit, either directly or indirectly, in this City, or anywhere else within its jurisdiction.

B. “City” is the City of Fountain.

C. “City Council” is the City Council of the City of Fountain.

D. “Insignia”, or its singular number “Insigne” is any tag, plate, badge, emblem, sticker, or any other kind of device which may be required for any use in connection with any permit.

E. “License” or “Licensee” as used generally herein, shall mean respectively the “permit” or “Permittee” or the holder for any use of period of time of any similar privilege, wherever relevant to any provision of this chapter or other law or ordinance.

F. “Person” includes individuals, partnerships, joint ventures, societies, associations, clubs, trustee, trusts, or corporations; or any officers, agents, employees, factors, or any kind of personal representatives of any thereof, in any capacity, acting either for himself, or for any other person, under either personal appointment or pursuant to law.

G. “Premises” includes all lands, structures, places, and also the equipment and appurtenances connected or used therewith in any business, and also any personal property which is either affixed to, or is otherwise used in connection with any such business conducted on such premises. (Ord. 541, §2, 1980) (Ord. 634, §3, 1983)

5.12.020 Application of Regulations.

A. Compliance Required. It shall be unlawful for any person, either directly or indirectly, to conduct any business or non-profit enterprise, or to use in connection therewith any vehicle, premises, machine, or device, in whole or in part, for which a license or permit is required by any law or ordinance of this City, without a license or permit therefore being first procured and kept in effect at all such times as required by this chapter or other law or ordinance of this City.

B. Special Sales. This chapter shall apply to all business in the nature of special sales for which a license is required by any law or ordinance of this City and it shall be unlawful for any person, either directly or indirectly, to conduct any such sale except in conformity with the provisions of this chapter.

C. One Act Constitutes Doing Business. For the purpose of this chapter, any person shall be deemed to be in business or engaging in a non-profit enterprise, and thus subject to the requirements of subsections A and B of this section when he does one act of:

1. Selling any goods or services.
2. Soliciting business or offering goods or service for sale or hire.
3. Acquiring or using any vehicle or any premises in the City for business purposes.

D. Agents Responsible for Obtaining Permit. The agents or other representatives of non-residents who are doing business in this City shall be personally responsible for the compliance of their principals and of the businesses they represent with this chapter.

E. Separate Permit for Branch Establishments. A license shall be obtained in the manner prescribed herein for each branch establishment or location of the business engaged in, as if each such branch establishment or location were a separate business; provided that warehouses and distributing plants used in connection with and incidental to a business license permitted under the provisions of this chapter shall not be deemed to be separate places of business or branch establishments.

F. Joint License. A person engaged in two or more businesses at the same location shall not be required to obtain separate permits for conducting each of such businesses, but when eligible, shall be issued one permit which shall specify on its face all such businesses.

G. No License Required for Mere Delivery. No permit shall be required of any person for any service call or any delivery in the City of any property purchased or acquired in good faith from such person at his regular place of business outside the City where no intent by such person is shown to exist to evade the provisions of this chapter.

H. Special Permits to Non-Profit Enterprises. The City Clerk shall issue special licenses, without the payment of any fees or other charges therefore, to any person or organization for the conduct or operation of a non-profit enterprise either regularly or temporarily, when the City Clerk finds that the applicant operates without private profit, for a public, charitable, educational, literary, fraternal, or religious purpose.

1. Application for special license. An applicant for a special license shall submit an application therefore to the City Clerk, upon forms prescribed by the City Clerk,

and shall furnish such additional information and make such affidavits as the City Clerk shall require.

2. Special licensees must conform. A person or organization operating under a special license shall operate his non-profit enterprise in compliance with this ordinance and all other applicable rules and regulations except as provided herein. (Ord. 541, §2, 1980) (Ord. 634, §3, 1983)

#### 5.12.030 City Clerk.

A. Issue License. The City Clerk shall collect licenses in the name of the City to all persons qualified under the provisions of this chapter and shall, subject to approval of the Council:

1. Make rules. Promulgate and enforce all reasonable rules and regulations necessary to the operation and enforcement of this chapter, subject to the review authority under the Charter of the City of Fountain;
2. Adopted forms. Adopt all forms and prescribe the information to be given therein as to character and other relevant matter for all necessary papers;
3. Require affidavits. Require applicants to submit all affidavits and oaths necessary to the administration of this chapter. (Ord. 634, §5, 1983)

#### 5.12.050 Duties of Permittee.

A. General Standards of Conduct. Every permittee under this section shall:

1. Comply with governing law. Ascertain and at all times comply with all laws and regulations applicable to such business;
2. Operate properly. Avoid all forbidden, proper or unnecessary practices or conditions which do or may affect the public health, morals or welfare;
3. Cease business. Refrain from operating the permitted businesses on premises after expiration of his permit and during the period his permit is revoked or suspended.

B. Display of Permit. Every permittee under this ordinance shall post and maintain such permit upon the business premises in a place where it may be seen at all times.

C. New Location Desired. A permittee shall have the right to change the location of the business provided he shall:

1. Approval of City Clerk. Obtain written permission from the City Clerk for such change of location.
2. Payment of fee. Pay a removal fee of seven dollars and fifty cents to the City Clerk. (Ord. 541, §6, 1980)

#### 5.12.060 Determination of License Fee.

A. Fee Established. An annual license fee will be adopted by resolution and shall be collected beginning with the calendar year of 1984. (Ord. 634, §7, 1983)

### 5.12.070 Transfer of Permit.

A. When Authorized. A permittee hereunder shall have the right to transfer his permit to another person provided he shall:

1. Approval of City Clerk. Obtain written permission from the City Clerk for such transfer
2. Method of transfer. Execute the transfer in the form and under the conditions required by law and as prescribed by the City Clerk.
3. Notification. Promptly report the completed act of transfer to the City Clerk.
4. Surrender permit. Promptly surrender any permit to the City Clerk.

B. New Permit Issued. Upon the completion of a transfer of permit in compliance with subsection A above, the City Clerk shall issue a new permit to the transferee for unexpired term of the old permit.

1. Effect of New Permit. The new permit issued hereunder shall authorize the transferee to engage in the same business at the same location or at such other place as shall be approved by the City Clerk and named in the new permit.
2. Transfer fee. The City Clerk shall collect a transfer fee of seven dollars and fifty cents from the transferee prior to the issuance of the new permit. (Ord. 541, §7, 1980)

### 5.12.080 Enforcement.

A. Inspection.

1. Persons authorized. The following persons are authorized to conduct inspections in the manner prescribed herein:
  - a. City Clerk. The City Clerk shall make all investigations reasonably necessary to the enforcement of this section.
  - b. Officials having duties. The City Clerk shall have the authority to order the inspection of permittees, their businesses and premises, by all City officials having duties to perform with reference to such permittees or businesses.
  - c. Police officers. All police officers shall inspect and examine businesses located within their respective jurisdictions or beats to enforce compliance with this section
2. Authority of inspectors. All persons authorized herein to inspect permittees and businesses shall have the authority to enter, with or without search warrant, at all reasonable times, the following premises:
  - a. those for which a permit is required
  - b. those for which a permit was issued and which, at the time of inspection, are operating under such permit;
  - c. those for which the permit has been revoked or suspended.
3. Reports by inspectors. Persons inspecting permittees, their businesses, or premises as herein authorized shall report all violations of this chapter or of other



laws or ordinances to the City Clerk and shall submit such other reports as the City Clerk shall order.

B. **Summary Action.** When the conduct of any permittee, agent or employees is so inimicable to the public health, safety and general welfare as to constitute a nuisance and thus give rise to an emergency, the City Clerk shall have the authority to summarily order the cessation of business and the close of premises or to suspend or revoke the permit.

1. Special hearing. Unless waived in writing, within ten (10) days after he has acted summarily, the City Clerk shall conduct a special hearing for such action in respect to the summary order as may be therein determined. Notice of such hearing shall be given the affected person in the manner prescribed herein.

C. **Right of Appeal.** Any person aggrieved by any decision of the City Clerk after hearing shall have the right to appeal to the City Council of the City by filing a written appeal within ten (10) days following the effective date of the action or decision complained of.

1. Contents of appeal. Such appeal shall set out a copy of the order or decisions appealed from and shall include a statement of the facts relied upon to avoid such order.
2. Notification of City Clerk. At the time of filing any such appeal a copy thereof shall be filed by the appellant with the City Clerk.
3. Hearing. The City Council shall fix a time and place for hearing the appeal and shall personally serve a written notice, as provided herein, upon the appellant informing him thereof. The City Council shall also give such notice to the City Clerk and such officer shall be entitled to appear and defend such order.
4. Effect of decision. The findings of the City Council shall be final and conclusive and shall be personally served upon the appellant as required herein. (Ord. 541, §8, 1980)

5.12.090 Reasonableness of Fees. The City Council of the City of Fountain hereby finds, determines and declares that, considering the businesses and occupations in the City of Fountain, Colorado, and the relation of such businesses and occupations to municipal welfare, as well as the relation thereof to the expenditures required by the City and proper, just and equitable distribution of the tax burdens within the City, the fees hereinafter imposed by resolution on each business above mentioned are reasonable, proper, uniform and nondiscriminatory taxes on occupations, businesses and other enterprise covered hereunder. (Ord. 634, §9, 1983)

5.12.100 Severability. If any section of this chapter or the application of any section thereof to any particular class of business or persons or circumstances, for any reason, be held invalid, such invalidity shall not affect the remaining portions of this ordinance, and that said chapter and the various provisions thereof are declared to be separable. (Ord. 634, §10, 1983)

5.12.110 Usage of Fees. That all license fees received by the City of Fountain under this chapter shall be used for economic development and administration of this chapter. (Ord. 634, §11, 1983)

5.12.120 Violation – Penalty. Every person violating any of the provisions of this chapter shall, upon conviction, be punished by a fine in a sum of not less than twenty-five dollars (\$25.00) nor more than one thousand dollars (\$1,000.00), or by imprisonment for not more than one year or both such fine and imprisonment. (Ord. 924, §1, 1991)

## **Chapter 5.16**

### **MASSAGE PARLORS**

#### Sections:

- 5.16.010 Purpose
- 5.16.020 State Law Applicable
- 5.16.030 Licensing Authority Established
- 5.16.040 License Required, Displayed
- 5.16.050 Application Fee, License Application
- 5.16.060 Public Notice, Posting, Publication
- 5.16.070 Investigation
- 5.16.080 Results of Investigation, Decision of Authority, Change of Financial Interest
- 5.16.090 Renewals
- 5.16.100 Transfer of Ownership
- 5.16.110 Location of Massage Parlors
- 5.16.120 License Term, Fees
- 5.16.130 Identification Cards
- 5.16.140 Suspension, Revocation, Denial of Identification Card, Hearings
- 5.16.150 Persons Prohibited as Licensees
- 5.16.160 Unlawful Acts
- 5.16.170 Hours of Operation
- 5.16.180 Records of Massage Treatment
- 5.16.190 Employee Apparel
- 5.16.200 Right of Entry
- 5.16.210 Exemptions
- 5.16.220 Severability
- 5.16.230 Penalty
- 5.16.240 Definitions

5.16.010 Purpose. This Chapter is enacted for the purpose of promoting the health, safety, and welfare of the citizens by regulating and licensing massage parlors. (Ord. 1122, §1, 2000)

5.16.020 State Law Applicable. All provisions under this Chapter shall be construed in accordance with Title 12, Article 48.5 of the Colorado Revised Statutes. (Ord. 1122, §1, 2000)

5.16.030 Licensing Authority Established.

A. There is established a licensing authority for massage parlors, which shall have and is vested with the authority to grant or refuse licenses for massage parlors based upon the criteria set forth herein and state law, to conduct investigations, and to suspend or revoke the licenses for good cause in the manner provided by this Chapter.

B. Herein after, the members of the authority shall be the members that comprise the City Council and the term of each member of the authority shall be the same as each member's term on the City Council.

C. The authority shall meet as needed and the chairperson of the authority shall be the Mayor. The chairperson shall preside over all hearings and proceedings of the authority. In the absence of the chairperson, the Mayor Pro Tem shall preside. A quorum shall consist of a majority of the members in office at the time, and a decision of the majority of the quorum present shall control all actions of the authority. The qualifications and appointment of members to fill vacancies and removal by City Council shall be governed by the City Charter.

D. The City Clerk shall receive all applications for licenses, and shall issue all licenses granted by the authority, upon receipt of all fees as are required by this Chapter. The City Clerk shall serve as the official secretary of the authority and shall designate a person or persons to provide the necessary secretarial and reporting services for the authority. All public notices, as required by this Chapter, shall be accomplished by the City Clerk or his or her designee.

E. The police department shall be responsible for routine periodic inspections of the licensed premises and the other duties as the massage parlor licensing authority may reasonably direct. (Ord. 1122, §1, 2000)

#### 5.16.040 License Required, Displayed.

A. It is unlawful for any person to operate a massage parlor within this City unless the person shall have first obtained a massage parlor license from the City.

B. The license shall be prominently displayed at all times upon the premises for which the license was issued. (Ord. 1122, §1, 2000)

#### 5.16.050 Application Fee, License Application.

A. Each person, as defined herein, applying for a massage parlor license, shall pay an application fee of \$500.00 at the time of filing an application. The application fee shall be nonrefundable.

B. Applications for a license under the provisions of this Chapter shall be on forms furnished by the City Clerk which shall set forth the information as the licensing authority requires to enable the authority to determine whether a license should be granted. Each applicant, and holder of ten percent or more of the interest of the corporation, company or association, and all managers, shall be named in each application form, and each of them shall be photographed and fingerprinted by the Fountain Police Department. Each applicant shall also furnish evidence

that the proposed establishment meets the requirements of the City of Fountain zoning ordinance, proof of the applicant's right to possession of the premises, complete plans and specifications for the premises, and background investigation report, and consent to release other information necessary to complete the investigation of the applicant. Each corporate and limited liability company applicant shall furnish evidence that it is in good standing under the statutes of the State of Colorado, or in the case of a foreign corporation, evidence that it is currently authorized to do business in the State of Colorado.

C. The City Clerk shall not accept any application that is not complete in every detail. If an omission or error is discovered by the City Clerk, the application shall be rejected and returned to the applicant for completion or correction without further action by the City Clerk. All fees shall be returned with the application. For purposes of this Chapter, the date the City Clerk accepts an application, which is complete in every detail, shall be the filing date.

D. Upon receipt of a complete application for a license to operate a massage parlor and upon a completed background investigation by the police department, the licensing authority shall set, at its next regular meeting, the boundaries of the neighborhood to be considered pursuant to section 5.16.060 of this Chapter in determining whether or not to grant a license. (Ord. 1122, §1, 2000)

#### 5.16.060 Public Notice, Posting, Publication.

A. Upon receipt of a complete application for issuance of a new license, the licensing authority shall schedule a public hearing upon the application not less than 30 days after the filing date of the application and shall order the posting and publication of the public notice, not less than ten days prior to the public hearing. Public notice shall be given by two methods:

1. The posting of a sign in a conspicuous place on the premises, for which application has been made.
2. By publication in a newspaper of general circulation in the municipality or county in which the premises are located.

B. Notice given by posting shall include a sign of suitable material, stating the type of license applied for, the date of the application, the date of the hearing, the name and address of the applicant, and the other information as may be required to fully apprise the public of the nature of the application. If the applicant is a partnership, the sign shall contain the names and addresses of all partners holding ten percent of more interest, and, if the applicant is a corporation, limited liability company, or association, the sign shall contain the names and addresses of the president, vice-president, secretary, and manager.

C. If the building in which the massage parlor is to be operated is in existence at the time of the filing of an application, any sign posted as required above shall be placed so as to be conspicuous and plainly visible to the general public. If the building is not constructed at the time of the application, the applicant shall post the premises upon which the building is to be constructed in the a manner that the notice shall be conspicuous and plainly visible to the general public.

D. Notice given by publication shall contain the same information, as that required for signs.

E. At the public hearing held pursuant to this section, any party in interest, a resident of the neighborhood under consideration, or the owner or manager of a business located in the neighborhood under consideration, shall be allowed to present evidence and cross-examine witnesses.

F. The licensing authority, in its discretion, may limit the presentation of evidence and cross-examination so as to prevent repetitive and cumulative evidence or examination. (Ord. 1122, §1, 2000)

#### 5.16.070 Investigation.

A. When a complete application has been accepted for filing, the required individuals have been fingerprinted, photographed, and the license fee has been paid, the City Clerk shall transmit the application to the Fountain Police Department for investigation of the background of each individual applicant, each partner holding ten percent or more interest of a partnership, each officer, director, and holder of ten percent or more of the stock of a corporation, limited liability company, or association of a proposed massage parlor establishment. Each applicant shall pay a nonrefundable investigation fee at the time the application is filed in the amount then charged by the Colorado Bureau of Investigations for each person who will be investigated.

B. The investigation conducted by the Fountain Police Department shall be sufficient to verify the accuracy of all of the information submitted as part of the application. The Fountain Police Department shall make a recommendation to the licensing authority to approve or deny the license based on its investigation. In investigating the qualifications of any applicant, licensee, or employee or agent of the licensee or applicant, the licensing authority may have access to criminal history record information furnished by criminal justice agencies subject to any restrictions imposed by the agencies. In the event the licensing authority takes into consideration information concerning the applicant's criminal history record, the licensing authority shall also consider any information provided by the applicant regarding the 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 his or her application for a license.

C. No application for a massage parlor license at a particular location by or on behalf of the same person shall be received or acted upon if the location is the same as or within 500 feet of a location for which, within two years preceding, the local licensing authority has refused to approve a license on the ground, in whole or in part, that the license already granted for the particular locality was adequate for the reasonable requirements of the neighborhood and the desires of the inhabitants at the time of the refusal. (Ord. 1122, §1, 2000)

#### 5.16.080 Results of Investigation, Decision of Authority, Change of Financial Interest.

A. Not less than five days prior to the date of the hearing, the City shall make known its findings based upon its investigation, in writing, to the applicant and other parties in interest who are known to the City prior to the hearing. The licensing authority has authority to refuse to issue any license, for good cause, and subject to judicial review.

B. Before entering any decision approving or denying the application, the licensing authority shall consider, except where this Chapter specifically provides otherwise, the facts and evidence produced as a result of the investigation, including the reasonable requirements of the neighborhood for the license for which application has been made, the desires of the inhabitants, the number, type, and availability of other massage parlors located in or near the neighborhood under consideration, and any other pertinent matters affecting qualifications of the applicant for the conduct of the business proposed.

C. Any decision of the licensing authority approving or denying an application shall in writing stating the reasons therefore, and shall be made within 30 days after the date of the public hearing, and a copy of the decision shall be sent by certified mail to the applicant at the address shown in the application.

D. No license shall be issued by the licensing authority after approval of an application until the building in which the business is to be conducted is ready for occupancy with the furniture, fixtures, and equipment in place as are necessary to comply with the provisions of this Chapter, and then only after inspection of the premises has been made by the licensing authority to determine that the applicant has complied with the plans and specifications submitted upon the application. If the building has not been constructed or placed in operation within one year after approval of the license application, or construction of the building has not been commenced within one year after the approval, the licensing authority, in its discretion, may revoke or elect not to renew the license.

E. Any change in the partners holding ten percent or more in interest of a partnership or any change in the officers, directors, or holders of ten percent or more of the interest of a corporation, limited liability company or association holding a massage parlor license shall result in termination of the license of the partnership, corporation, limited liability company, or association unless the licensee within 30 days after the change, files a written notice of the change with the City Clerk on forms provided by the City Clerk, together with payment of the required fees, fingerprints, and photographs. The Fountain Police Department shall then conduct an investigation and make a recommendation as set out in section 5.16.070.

F. Each license issued under this Chapter is separate and distinct, and no person shall exercise any of the privileges granted under any license other than that which he or she holds. A separate license shall be issued for each specific business or business entity and each geographical location. (Ord. 1122, §1, 2000)

#### 5.16.090 Renewals.

A. Application for the renewal of an existing license shall be made to the licensing authority not less than 45 days prior to the date of expiration.

B. The City Clerk or his or her designee may renew an existing license without a hearing if no good cause for a hearing exists. The licensing authority may cause a hearing on the application for renewal to be held. No renewal hearing shall be held by the licensing authority until public notice has been given as provided in section 5.16.060 herein and written notice of the hearing has been provided to the applicant at least ten days prior to the hearing. The licensing authority, in its discretion, may revoke or elect not to renew a license if it determines that the licensed premises have been inactive for at least three months. The licensing authority may also refuse to renew any license for good cause, subject to judicial review. (Ord. 1122, §1, 2000)

#### 5.16.100 Transfer of Ownership.

A. Application shall be made to the licensing authority prior to any transfer of ownership on forms prepared and furnished by the City Clerk. In determining whether to permit a transfer of ownership, the licensing authority shall consider the requirements of section 5.16.050. The licensing authority may cause a hearing on the application for transfer of ownership to be held. No hearing shall be held by the licensing authority until public notice has been given as provided in section 5.16.060 herein and written notice of the hearing has been provided to applicant at least ten days prior to the hearing.

B. When a license has been issued to a husband and wife or to general or limited partners, the death of a spouse or partner shall not require the surviving spouse or partner to obtain a new license. All rights and privileges granted under the original license shall continue in full force and effect as to the survivors until the license is transferred, revoked or otherwise cancelled.

C. A licensee shall report each transfer or change of financial interest in the license to the licensing authority within 30 days after the transfer or change. A report shall be required for transfers of capital stock of a public corporation; except that a report shall not be required for transfers of stock totaling less than ten percent on one year, but any transfer of controlling interest shall be reported, regardless of size. (Ord. 1122, §1, 2000)

#### 5.16.110 Location of Massage Parlors.

A. It shall be unlawful to operate or cause to be operated a massage parlor, which is in violation of the Fountain zoning ordinance.

B. It shall be unlawful to operate or to be operated a massage parlor within 750 feet of:

1. A place of worship, as defined in Title 17 (Zoning) of the Fountain Municipal Code.
2. A school or child cares facility, as defined in Title 17 (Zoning) of the Fountain Municipal Code.
3. A public park, as defined in Chapter 12.28 of the Fountain Municipal Code.
4. The property line of a lot devoted to residential use.
5. The boundary of residential property, as defined in Title 17 (Zoning) of the

## Fountain Municipal Code.

C. It is unlawful to cause to permit the operation of a massage parlor within 1,000 feet of another massage parlor or an adult business licensed under Title 17 (Zoning) of the Fountain Municipal Code.

D. It is unlawful to cause or permit the operation, or maintenance of more than one massage parlor in the same building, structure, or portion thereof.

E. For the purpose of subsection C., above, the distance between any two massage parlors shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located. The distance between a massage parlor and the uses listed in subsection B., above shall be measured in a straight line, without regard to intervening structures or objects, from the closest point of the property line of the use to the closest exterior wall of the structure in which the massage parlor is located.

F. Any massage parlor lawfully operating on the effective date of this Chapter that is in violation of subsections B. through D. of this section shall be allowed to continue operating for an amortization period of six months. Six months after this Chapter becomes effective, all massage parlors must comply with subsections B. through D. this section and all other provisions of this Chapter.

G. A massage parlor lawfully operating is not rendered a nonconforming use by the subsequent location of a church, a school, or child care facility, public park, residential property, adult business, or another massage parlor, within the prescribed distances set forth in subsections B. and C.; however, if the massage parlor ceases operation for a period of 30 days or more regardless of any intent to resume operation, it may not recommence operation in that location.

H. No changes of location for a licensed massage parlor shall be allowed.

I. Expansion or alteration of the building or other place of business of the massage parlor or establishment shall require an inspection and shall require compliance with this Chapter. (Ord. 1122, §1, 2000)

5.16.120 License Term, Fees.

A. All licenses granted pursuant to this Chapter shall be for a term of one year. Said terms shall commence on the date the license is issued or renewed.

B. The license fee for a new license shall be \$150.00 and the annual license renewal shall be \$150.00.

C. In the event of a suspension, revocation, or cessation of business, no portion of the license fee shall be refunded. (Ord. 1122, §1, 2000)



#### 5.16.130 Identification Cards.

A. Every applicant, licensee, agent, or employee of said applicant or licensee who administers massages shall, prior to commencing work in or upon the licensed premises, obtain an identification card from the City Clerk and shall carry said identification card at all times while in or upon the licensed premises.

B. The identification card shall include the location of the massage parlor, the name, signature, and photograph of the individual. A fee of \$50.00 shall be charged for each card, said fee to be collected by the City Clerk and used to defray the expenses of providing the identification cards. A separate identification card shall be required for each person for each place of employment.

C. Each applicant for an identification card shall be photographed and fingerprinted by the Fountain Police Department and must submit an application form, background investigation report, a copy of a valid picture driver's license or other form of acceptable picture identification, and the required identification card and investigation fees to the City Clerk. Upon receipt of a properly completed application form, acceptable form of identification, and fee, the City Clerk shall transmit the application to the Fountain Police Department for investigation of the applicant's background. The City Clerk shall reject any application that is not complete in every detail.

D. Within 60 days after filing of a properly completed application for an identification card, the City Clerk must either issue the requested identification card or notify the applicant that the Fountain Police Department has recommended denial of the identification card. The Fountain Police Department may request a reasonable extension of time from the City Clerk if the extension of time is necessary in order to complete its investigation. Notice of denial of an identification card setting out the grounds for denial shall be sent by certified mail to the applicant at the address provided by the applicant. The grounds for denial shall be those set out in this section. In the event of a denial, an applicant shall have the right to a hearing before the licensing authority as set forth in section 5.16.140.

E. If an identification card is lost, stolen, or otherwise missing, the person to whom the identification card was issued shall report the missing card to the City Clerk within 48 hours of discovery that the identification card is missing. Replacement cards shall be issued within five business days of receipt of an application for a replacement identification card. The fee for a replacement card shall be \$10.00. (Ord. 1122, §1, 2000)

#### 5.16.140 Suspension, Revocation, Denial of Identification Card, Hearings.

A. The licensing authority may suspend or revoke any license granted pursuant to this Chapter upon a finding of the following:

1. That at least two disturbances of the public peace within a twelve-month period involving patrons, agents, or employees, or the licensee of the establishment have occurred on the licensed premises.

2. That the licensee or any agents or employees thereof have illegally offered for sale or illegally and knowingly allowed to be sold or consumed upon the licensed premises fermented malt beverages, or malt, vinous, or spirituous liquors, unlawful controlled substances, including marijuana, as defined in Article 18 of Title 18, C.R.S., as amended.

3. That the licensee or any agents or employees thereof permitted patrons to engage in public displays of indecency prohibited by section 5.16.170 of this Chapter, or permitted patrons or employees to engage in acts of prostitution or negotiations for acts of prostitution on the licensed premises when the licensee or agent or employee knew or should have known the displays or acts were taking place.

4. That the licensee made a false statement or gave false information in connection with an application for or renewal of a massage parlor license.

5. That the licensee violated or permitted a violation of any provision of this Chapter.

6. That the licensee or any agents or employees thereof is under the age of 18 years.

7. That the licensee, in the case of a corporation or limited liability company, is not in good standing or authorized to do business on the State of Colorado.

8. That the licensee or any employee knowingly operated the massage parlor during a period of time when the massage parlor was suspended.

9. That the licensee is delinquent in payment to the City or state for any taxes or fees past due.

10. That the licensee or any employee has allowed any act of sexual intercourse, sodomy, oral copulation, or masturbation to occur on the licensed premises.

11. That the licensee is determined to be a person prohibited as a licensee, pursuant to section 5.16.150.

B. Nothing in this Chapter shall prohibit the City from taking any other enforcement action provided for by the Fountain Municipal Code, the laws of the state, or the laws of the United States.

C. A licensee shall be entitled to a hearing before the licensing authority if the City seeks to suspend or revoke a license.

D. When there is probable cause to believe that a licensee has committed or has allowed to be committed acts which are grounds for suspension or revocation under this Chapter, a written complaint shall be filed setting forth the circumstances of the acts.

E. The licensing authority shall provide a copy of the complaint to the licensee, together with notice to appear before the licensing authority for the purpose of a hearing on a specified date to show cause why the licensee's license should not be suspended or revoked. The hearing shall be held within 60 days of the date of violation alleged in the complaint, unless licensee waives the time period.

F. At the hearing, the licensing authority shall hear and consider relevant evidence from any witness. Evidence in support of the charges shall be given first, followed by cross-examination of those testifying thereto. The licensee, in person or through counsel, shall then be permitted to give evidence in defense and in explanation, and shall be allowed to give evidence and statements in mitigation of the charges. In the event the licensee is found to have committed

the violation charged, evidence and statements in mitigation's and in aggravation of the offense shall also be permitted. The licensing authority shall make findings of fact and conclusions of law from the evidence as to whether a violation has occurred. If the licensing authority determines that a violation did occur, it shall issue an order within 30 days after the hearing suspending or revoking the licensee's license based on its findings of facts. No suspension shall be for a longer period than six months. A copy of the findings and order shall be mailed by certified mail to or served on the licensee at the address on the license.

G. The order of the licensing authority made pursuant to subsection F. above shall be a final decision and may be appealed to the district court to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. Failure of a licensee to appeal said order on a timely manner shall constitute a waiver of any right a licensee may otherwise have to contest the suspension or revocation of his or her license.

H. When a license has been revoked, the revocation shall continue for one year, and the licensee shall not be issued a massage parlor license for one year from the date on which revocation became effective.

I. The licensing authority has the power to administer oaths and issue subpoenas to require the presence of persons and production of papers, books, and records necessary to the determination of any hearing, which the licensing authority conducts. It is unlawful for any person to fail to comply with any subpoena issued by the licensing authority. The subpoena shall be served in the same manner as a subpoena issued by the District Court of the State. Upon failure of any witness to comply with such order, the City attorney shall:

1. Petition any judge of the Municipal Court of the City, setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, that the court after hearing evidence in support of, or contrary to, the petition, enter its order compelling the witness to attend and testify or produce books, records or other evidence, under penalty of punishment for contempt in case of willful failure to comply with such order of court; or

2. Petition the District Court in an for the county, setting forth that due notice had been given of the time and place of attendance of the witness and the service of the subpoena, that the court after hearing evidence in support of or contrary to the petition, enter its order as in other civil action, compelling the witness to testify or produce books, records or other evidence, under penalty of punishment for contempt in case of willful failure to comply with such order of the court.

J. The City Attorney may act on behalf of the City during hearings before the licensing authority.

K. All hearings held before the licensing authority under this Chapter 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 City Clerk, and shall pay all costs of preparing such record. (Ord. 1122, §1, 2000)

5.16.150 Persons Prohibited as Licensees.

A. No license provided by this Chapter shall be issued to or held by:

1. Any corporation, any of whose officers, directors, or stockholders holding ten percent or more of the stock thereof, are not of good moral character.

2. Any partnership, association, or limited liability company, and of whose officers, or any of whose members holding ten percent or more interest are not of good character and reputation satisfactory to the licensing authority.

3. Any person employing, assisted by, or financed in whole or in part by any person who is not of good character and reputation satisfactory to the licensing authority.

4. Any sheriff, deputy sheriff, police officer, or prosecuting officer or any of the licensing authority's inspectors or employees.

5. Any person unless he or she is, with respect to his or her character, record, and reputation, satisfactory to the licensing authority. (Ord. 1122, §1, 2000)

5.16.160 Unlawful Acts. It is unlawful for any person:

A. To operate a massage parlor anywhere within the City without holding a valid Fountain massage parlor license.

B. To work in or upon the licensed premises of a massage parlor administering massages without obtaining and displaying a valid identification card pursuant to section 5.16.130 of this Chapter.

C. To be in or upon the premises of a massage parlor or to obtain the services provided in a massage parlor by misrepresentation of age or by any other method in any place where massage is practiced when the person is under 18 years of age, unless the person is accompanied by his or her parent or legal guardian, or has a physician's prescription for the massage services.

D. To allow the sale, giving, or procuring of any massage services to any person under the age of 18 years, unless the person is accompanied by his or her parent or legal guardian, or has a physician's prescription for the massage services.

E. To employ any person under the age of 18 years in a massage parlor; however, if any person who is not 18 years of age exhibits a fraudulent proof of age that he or she is 18 years of age or older, any action relying on the fraudulent proof of age shall not constitute grounds for the revocation or suspension of any license issued under this Chapter for violation of sections C. and D., above, unless the person inspecting the proof of age knew or should have known that the proof of age was fraudulent or that the employed individual was under the age of 18.

F. To fail to display at all times in a prominent place on the licensed premises a printed card with a minimum height of 14 inches and a width of 11 inches with each letter a minimum of one-half inch in height, which shall read as follows:

WARNING

IT IS ILLEGAL FOR ANY PERSON UNDER EIGHTEEN (18) YEARS OF AGE TO BE IN OR UPON THESE PREMISES AT ANY TIME UNLESS HE OR SHE IS ACCOMPANIED BY HIS OR HER PARENT OR LEGAL GUARDIAN, OR HAS A PHYSICIAN'S PRESCRIPTION FOR THE MASSAGE SERVICES.

IT IS ILLEGAL FOR ANY PERSON TO ALLOW A PERSON UNDER EIGHTEEN (18) YEARS OF AGE TO BE IN OR UPON THE PREMISES AT ANY TIME, UNLESS HE OR SHE IS ACCOMPANIED BY HIS OR HER PARENT OR LEGAL GUARDIAN, OR HAS A PHYSICIAN'S PRESCRIPTION FOR THE MASSAGE SERVICES.

FINES OR IMPRISONMENT MAY BE IMPOSED BY THE COURTS FOR VIOLATION OF THESE PROVISIONS UNDER THE FOUNTAIN MUNICIPAL CODE AND ARTICLE 48.5 OF TITLE 12, COLORADO REVISED STATUTES.

G. To permit, on the licensed premises, any unlawful controlled substance, including marijuana, as defined in Article 18 of Title 18, C.R.S., as amended.

H. To permit any fermented malt beverages, or malt, vinous, or spirituous liquors on the licensed premises.

I. To administer a massage or permit any massage to be administered to a patron whose genitals, anus, or female breasts are exposed during the massage treatment; and no patron of a massage parlor shall knowingly expose his or her genitals, anus, or female breasts during a massage.

J. To intentionally touch or permit any other person to touch the genitals, anus, or female breasts of any other person while on the licensed premises.

K. To engage in, encourage, or request, or to permit any person to engage in, encourage, or request acts of masturbation while on the licensed premises.

L. To interfere with or refuse to permit any inspection of the licensed premises by the Fountain Police Department, Code Enforcement Officers, or other agent of the City. (Ord. 1122, §1, 2000)

5.16.170 Hours of Operation. No massage parlor shall be open for business between the hours of 12:00 midnight and 6:00 a.m. (Ord. 1122, §1, 2000)

5.16.180 Records of Massage Treatment. Every person operating a massage parlor under a license issued pursuant to this Chapter shall keep a record of the date and hour of each treatment, the name and address of the patron and the name of the employee administering such treatment. The record shall be open to inspection by the Police Department, upon demand, or any City Officials charged with the enforcement of these provisions for the purposes of law enforcement and for no other purpose. The information furnished or secured as a result of any

such inspection shall be confidential. The records shall be maintained for a period of two years. (Ord. 1122, §1, 2000)

5.16.190 Employee Apparel. All employees shall wear clothing that covers the pubic area, perineum, buttocks, cleft of the buttocks, and entire chest to four inches below the collarbone and legs not exposed more than six inches above the knee. No transparent clothing shall be permitted. (Ord. 1122, §1, 2000)

5.16.200 Right of Entry. The application for a massage parlor license shall constitute consent of the licensee and his or her agents or employees to permit the Fountain Police Department, Code Enforcement Officers, or any other agent of the City to conduct routine inspections of any licensed massage parlor during the hours the establishment is conducting business and at other times during which activity on the premises is in evidence. (Ord. 1122, §1, 2000)

5.16.210 Exemptions. The following classes of persons and establishments are exempted from this Chapter:

A. Physicians, osteopaths, physical therapists, chiropodists, chiropractors, or podiatrists licensed or registered to practice in this state while performing the services in the practice of their respective professions.

B. Registered nurses and licensed practical nurses who are licensed to practice in this state while performing the services in their usual nursing duties.

C. Barbers and cosmetologists duly licensed under the laws of this state in the course of practice of their usual and ordinary licensed vocation and profession, as defined in C.R.S. § 12-8-101, et seq.

D. Hospitals, clinics, nursing, and convalescent homes and other similar institutions dedicated to medical or nursing practices licensed under the laws of the state where massage and baths may be given

E. Massage practiced in an institution of learning established for the instruction under C.R.S., Title 12, Article 59.

F. Training rooms of public and private schools accredited by the state board of education or approved by the state board for community colleges and occupational education, and training rooms of recognized professional or amateur athletic teams.

G. Health care facilities licensed by the State of Colorado, and not specified in this Chapter.

H. Massage therapists as defined herein.  
(Ord. 1122, §1, 2000)

5.16.220 Severability. If any paragraph or subparagraph of this Chapter is held invalid or unconstitutional by a court of competent jurisdiction, the decision shall not invalidate the remainder of this Chapter and, to this end, the provision of this Chapter are declared to be severable. (Ord. 1122, §1, 2000)

5.16.230 Penalty.

A. Any person violating any provision of this Chapter may be punished by a fine of not more than more than \$1,000.00 or by imprisonment of not more than one year or both.

B. The penalties provided in this section shall not be affected by the penalties provided in any other section of this Chapter but shall be construed to be in addition to any other penalties. (Ord. 1122, §1, 2000)

5.16.240 Definitions. As used in this Chapter, unless the context otherwise requires, the following words and terms shall be defined as follows:

A. *Criminal Justice Agency* - means any federal, state, or municipal court or any governmental agency or sub-unit of the an agency which performs the administration of criminal justice pursuant to a statute or executive order and which allocates a substantial part of its annual budget to the administration of criminal justice.

B. *Good cause*, for purposes of refusing or denying a license renewal or initial license issuance, means:

1. The licensee or applicant has violated, does not meet, or has failed to comply with any terms, conditions or provisions of this Chapter.

2. The licensee or applicant has failed to comply with any special terms or conditions that were placed on its license in prior disciplinary proceedings or arose in the context of potential disciplinary proceedings.

3. In the case of a new license, the applicant has not established the reasonable requirements of the neighborhood or the desires of the adult inhabitants as provided in section 5.16.060. Evidence that the licensed premises have been operated in a manner that adversely effects the public health, welfare, or safety of the immediate neighborhood in which the establishment is located, which evidence must include a continuing pattern of flights, violent activity, or disorderly conduct.

C. *License* – means a grant of licensee to operate a massage parlor.

D. *Licensed Premises* – means the premises specified in an approved application for a license under this Chapter which are owned or in the possession of the licensee and within which the licensee is authorized to carry on the practice of massage.

E. *Licensing Authority* – means the massage parlor licensing authority of the City.

F. *Licensing Officer* – means the City Clerk or designee.

*G. Location* – means a particular parcel of land that may be identified by an address or by other descriptive means.

*H. Massage* – means a method of treating the body of another for medical, remedial, or hygienic purposes, including, but not limited to, rubbing, stroking, kneading, or tapping with the hand and/or an instrument.

*I. Massage Parlor* – means an establishment providing massage, but it does not include the following:

1. Public or private schools accredited by the State Board of Education or approved by the Division charged with the responsibility of approving private occupation schools, training rooms of recognized professional or amateur athletic teams.

2. Licensed health care facilities.

3. Barbershops, beauty salons, and other facilities at which barber and cosmetologists licensed by the state provide massage services to the public in the ordinary course of their professions.

4. Physicians, osteopaths, physical therapists, chiropractors, or podiatrists licensed to practice in this state.

5. Hospitals, clinics, nursing and convalescent homes and other similar institutions dedicated to medical or nursing practices licensed under the laws of this state where massages may be given

6. Massage practiced in an institution of learning established for such instruction under the Private Occupational Education Act of 1981 (C.R.S. 12-8-101 et seq., as amended).

7. A facility, which is operated for the purpose of massage therapy performed by a massage therapist, is not a massage parlor.

*J. Massage Therapist* – means a person who has graduated from a massage therapy school accredited by the State of Colorado educational board or division charged with the responsibility of approving private occupational schools, or from a school with comparable approval or accreditation from another state, with transcripts indicating completion of at least 500 hours of training in massage therapy upon approval by the state education board. For purposes of this subsection, a massage therapy school may include an equivalency program approved by the state educational board or division charged with the responsibility of approving private occupational schools.

*K. Nudity or state of nudity* – means the appearance of a human bare buttock, anus, male genitals, female genitals, or the areola or nipple of the female breast; or a state of dress which fails to opaquely and fully cover a human buttock, anus, male or female genitals, or areola or nipple of the female breast.

*L. Person* – means a natural person, joint venture, joint stock company, partnership, association, cub, company, corporation, business, trust, organization, or the manger, lessee, agent, officer, or employee of any of them.



*M. Premises* – means a distinct and definite location which may include a building, a portion of a building, a room, or any other definitive area that is contiguous. (Ord. 1122, §1, 2000)

## Chapter 5.20

### FRANCHISE REQUIREMENTS

#### Sections:

5.20.010	Application for Franchise Required
5.20.020	Application to Cable Service
5.20.030	Reimbursement of City’s Negotiation Costs – Security - Waiver
5.20.040	City Account of Expenses
5.20.050	Billing Procedures
5.20.060	Applicant’s Duty to Pay City’s Expenses
5.20.070	Protest - Hearing
5.20.080	Hearing Officer
5.20.090	Hearing Procedures
5.20.100	City Council Action
5.20.110	Release of Security
5.20.120	Reimbursement of Costs if Legal Challenge Unsuccessful
5.20.130	Severability

5.20.010 Application for Franchise Required. Any entity which proposes to utilize or continue utilizing City streets, alleys, easements, right-of-ways and other public ways through the construction or placement of facilities, pipes, wires, poles or other objects of a fixed or permanent nature, shall be required to give notice in writing to the City Manager of the City of Fountain of its intention to seek an initial award of a franchise or the renewal of an existing franchise. Said notice shall be deemed an “application for franchise.” Notice of intention shall set forth, the date by which the applicant desires the franchise to become effective and shall be delivered to the City Manager not less than three months prior to the date the applicant desires the franchise or renewal of franchise to become effective. The submission date may be waived by the City Manager if the City Manager determines that such waiver serves the interest of the City. The application shall be accompanied by payment to the City of the sum of one thousand dollars (\$1000) as an application fee to reimburse the city for administrative costs for processing application. (Ord. 1385, §2, 2007)

5.20.020 Application to Cable Service. Except for Section 5.20.010 of this Chapter, the requirements set forth in this Chapter shall apply to an applicant for authorization to operate a cable system only to the extent that these requirements are consistent with the Cable Communications Policy Act of 1984, as amended 47 U.S.C.521 et seq., Federal Communications Commission rules, regulations, and decisions and applicable court decisions. Upon submission of an application for authorization of a cable system, the City shall determine which requirements, if any, are legally applicable. (Ord. 1385, §2, 2007)

5.20.030 Reimbursement of City's Negotiation Costs – Security – Waiver.

A. Each franchise applicant shall be responsible for reimbursing the City all of the City's expenses incurred in negotiating the initial grant or any renewal of a franchise, including costs related to preparation of an initial draft franchise agreement. At the time that the applicant files its application, the applicant shall post with the City a cash bond, irrevocable letter of credit, or other form of security acceptable to the City Manager as security for payment of the City's negotiating costs.

B. An applicant shall post a bond in an amount to be determined by the City, based upon the nature of the operation for which the franchise is sought and estimated costs of negotiation. Failure to post the required security bond shall result in the denial of the franchise.

C. The City shall retain the discretion to waive the requirement of the applicant to post security or to reimburse the City's expenses incurred in negotiating a franchise if the City determines that such a waiver serves the interest of the City. (Ord. 1385, §2, 2007)

5.20.040 City Account of Expenses. During franchise negotiations, the City shall maintain an account of all of its expenses incurred in negotiating the franchise, including, but not limited to, staff costs, consulting fees, legal fees and administrative and other expenses. (Ord. 1385, §2, 2007)

5.20.050 Billing Procedures. The City shall mail to the applicant one or more billing statements for all costs incurred during franchise negotiations. Said statements shall be billed to an address designated by applicant in its notice of intention. Said billing statement may be mailed to the applicant at thirty (30) day intervals and will itemize all costs incurred by the City in negotiating the franchise, including, but not limited to, City staff expenses (including overtime), expert consulting fees, legal fees and related expenses and costs. Failure of the City to mail to applicant a billing statement at any thirty (30) day interval shall not be deemed a waiver by the City of the right to reimbursement of any portion of the negotiating costs incurred by the City.  
(Ord. 1385, §2, 2007)

5.20.060 Applicant's Duty to Pay City's Expenses. The applicant shall pay the City's negotiating costs within thirty (30) days of the date the City mails the billing statement. Failure to pay the costs set forth in any billing statement within thirty (30) days of mailing may result in denial of the franchise, discontinuance of franchise negotiations and forfeiture of that amount of applicant's security bond equal to the costs set forth in the billing statement. The applicant shall remain responsible for all negotiating expenses incurred by the City that exceed the amount of the bond. (Ord. 1385, §2, 2007)

5.20.070 Protest – Hearing. If the applicant disputes the reasonableness of the City's negotiating costs, it may pay under protest and seek review of the billing statement by filing a protest with the City Council within thirty (30) days of the mailing of the billing statement. If such a protest is filed, the City Manager or his designee and the applicant shall appear before a

City staff member specifically designated to hear this matter by the City Council at a date specified. The applicant shall be notified of hearing date by certified mail. At the hearing, the applicant may present evidence regarding the reasonableness of the charges. The applicant shall bear the burden of proof at the hearing. The City Manager or his designee may respond to any allegations of unreasonableness. (Ord. 1385, §2, 2007)

5.20.080 Hearing Officer. Said hearing shall be for the sole purpose of determining the reasonableness of the negotiating expenses incurred by the City. The hearing officer is not authorized to consider evidence challenging the City's decision to incur the expenses charged. (Ord. 1385, §2, 2007)

5.20.090 Hearing Procedures. At the hearing designated for this purpose, evidence may be received in the form of documents, exhibits and witness testimony. The hearing officer shall have all powers necessary to ensure the fair and efficient conduct of the hearing, but shall not be bound by the Colorado Rules of Evidence. The hearing shall be open to the public. (Ord. 1385, §2, 2007)

5.20.100 City Council Action. The hearing officer may recommend approval of the charges or make alterations based upon the evidence presented. The City Council, at its next regularly scheduled meeting for which the City Council agenda has not been set, unless another date is agreed to by the applicant and the City, after the hearing officer's written recommendation, shall either approve or reject the recommendation. The City Council may receive additional evidence if the City Council determines that such evidence was not presented to the hearing officer and such evidence is reasonably related to its decision to accept or reject the hearing officer's recommendation. Any action of the City Council is final. Payment by the applicant based upon the City Council's final action shall be made within seven (7) days of the City Council's decision. (Ord. 1385, §2, 2007)

5.20.110 Release of Security. Within thirty (30) days after full payment by the applicant of the City's negotiating costs, the City shall return applicant's security bond. (Ord. 1385, §2, 2007)

5.20.120 Reimbursement of Costs if Legal Challenge Unsuccessful. Any applicant challenging the validity, legality or constitutionality of this ordinance, if unsuccessful, shall reimburse the City for all costs incurred by the City in such litigation, including reasonable attorneys' fees. (Ord. 1385, §2, 2007)

5.20.130 Severability. If any portion of this ordinance is held to be invalid for any reason, the remaining sections shall be severable and enforceable. (Ord. 1385, §2, 2007)

## **Chapter 5.24**

### **OPTIONAL PREMISES**

#### **Sections:**

5.24.010	Adoption of Standards
5.24.020	Eligible Facilities
5.24.030	Number of Optional Premises
5.24.040	Submittal Requirements
5.24.050	Advance Notification

5.24.010 Adoption of Standards. The following standards for the issuance of an optional premises license or for optional premises for a hotel and restaurant license are hereby adopted pursuant to the provisions of Section 12-47-135.5, C.R.S. The standards set forth herein shall be considered in addition to all other standards applicable to the issuance of licenses under the Colorado Liquor Code for an optional premises license or for optional premises for a hotel and restaurant license. These two types of licenses for optional premises will collectively be referred to as “optional premises” in these standards unless otherwise provided. (Ord. 851 §1, 1989)

5.24.020 Eligible Facilities.

A. an optional premises license may only be approved when such premises are located on or adjacent to an outdoor sports and recreational facility as defined in Section 12-47-103(13.5)(c), C.R.S. The types of outdoor sports and recreational facilities which may be considered for an optional premises license include the following:

1. Country club;
2. Golf courses and driving ranges;
3. Ice skating areas;
4. Swimming pools;
5. Outdoor tennis courts and clubs;
6. Equestrian centers; and
7. Racetracks and related improvements

B. There are no restrictions on the minimum size of the outdoor sports and recreational facilities which may be eligible for the approval of an optional premises license. However, the City Council may consider the size of the particular outdoor sports and recreational facility in relationship to the number of optional premises requested for the facility, and may deny any optional premises application if the City Council considers the related facility to be too small for an optional premises license. (Ord. 851 §1, 1989) (Ord. 1058 §1, 1997)

5.24.030 Number of Optional Premises. The City Council, in its discretion, may restrict the number of optional premises which any one licensee may have. Any licensee requesting approval of more than one optional premises shall:

- A. Explain the reason for each optional premises requested;
- B. Demonstrate how the optional premises relate to each other from an operational standpoint;

C. Demonstrate to the satisfaction of the City Council the need for each optional premises in relationship to the outdoor sports and recreational facility and its guests; and

D. Demonstrate that the optional premises will not adversely affect the neighborhood in which it is located. (Ord. 851 §1, 1989)

5.24.040 Submittal Requirements. When submitting a request for the approval of an optional premises license, an applicant shall also submit the following information:

A. An applicant for an optional premises license shall submit a complete application similar in content to an application for a liquor license. If the optional premises is for a new hotel and restaurant license, the applicant may identify the optional premises location(s) as part of the hotel and restaurant license application.

B. An applicant for optional premises shall submit with the application an application fee of one hundred dollars (\$100.00) per optional premises and the local and state license fees.

C. A map or other drawing illustrating the outdoor sports and recreational facility boundaries and the approximate location of each optional premises requested.

D. A legal description of the approximate area within which the optional premises shall be located.

E. A description of the method which shall be used to identify the boundaries of the optional premises when it is in use.

F. A description of the provisions which have been made for storing malt, vinous and spirituous liquors in a secured area on or off the optional premises for the future use on the optional premises.

G. All applicants shall submit a description of the method which will be used to identify and control the optional premises when it is in use. For example, the applicant may describe the types of sign, fencing or other notices or barriers to be used in order to control the optional premises. (Ord. 851 §1, 1989)

5.24.050 Advance Notification. Pursuant to Section 12-47-135(6) and (7), C.R.S., no alcoholic beverages may be served on an optional premises without the licensee having provided written notice to the state and local liquor licensing authorities forty-eight (48) hours prior to serving alcoholic beverages on the optional premises. The notice must contain the specific days and hours during which the optional premises is to be used. In this regard, there is no limitation on the number of days which a licensee may specify in each notice. However, no notice may specify any date of use which is more than one hundred eighty (180) days from the notice date. All notices to the Fountain City Clerk and the State Department of Revenue must be received by the State Department of Revenue and City Clerk's office at least forty-eight (48) hours prior to serving alcoholic beverages on the optional premises. If a notice is mailed to the City Clerk or state, it shall be mailed by certified mail and must be received by the State Department of

Revenue or City Clerk's office at least forty-eight (48) hours prior to serving alcoholic beverages on the optional premises. In computing the forty-eight (48) hour advance notice requirement, it is sufficient if the notice is delivered to or received by the State Department of Revenue and City Clerk's office at least two (2) business days before the date upon which alcoholic beverages are to be served on the optional premises. Business days do not include Saturday, Sundays, or any other day upon which the State or City Clerk's office is closed for business. (Ord. 851 §1, 1989)

5.24.060 Notice and Hearing Procedures. An application for an optional premises license, or an application for optional premises for a new hotel and restaurant license, shall be scheduled in the same manner as any other new liquor license application and the posting, publication and hearing requirements of Section 12-47-136, C.R.S., shall apply. An application for an optional premises for an existing hotel and restaurant license shall be scheduled for public hearing not less than thirty (30) days from the date of the application, and public notice shall be given by posting and publishing in accordance with Section 12-47-136, C.R.S. At the public hearing on any optional premises application, the City Council shall consider the criteria of Section 12-47-137(2)(a), C.R.S., and make findings as to whether the applicant has complied with said criteria and the standards contained in this chapter. (Ord. 851 §1, 1989)

## Chapter 5.28

### GOLF COURSE ADMISSION TAX

#### Sections:

5.28.010	Title
5.28.020	Purpose
5.28.030	Definitions
5.28.040	Levy of Tax
5.28.050	Exclusions and Exemptions
5.28.060	Refund – Complementary Admissions
5.28.070	Responsibility for Collection and Remittance of Tax and Licensing
5.28.080	Reports and Remittance
5.28.090	Penalty and Interest for Failure to Collect or Remit Tax
5.28.100	Rules and Regulations
5.28.110	Unlawful Acts

5.28.010 Title. This Chapter may be known and cited as the Golf Course Admissions Tax Ordinance. (Ord. 885 §1, 1990)

5.28.020 Purpose. It is hereby declared to be the intent of the City Council that on and after the effective date of this Chapter, every person who pays to gain admission or access to a golf course in the City that is open to the public is exercising a taxable privilege and shall pay the tax imposed by this Chapter, and every person, whether owner, lessee, or operator who charges or

causes to be charged admission to any such golf course shall collect the tax imposed by this Chapter. (Ord. 885 §1, 1990)

5.28.030 Definitions. When no clearly otherwise indicated by the context, the following terms, words and phrases as used in this Chapter shall have the following meanings:

A. Admission. The right of a person to entrance upon a golf course and to utilize golf course facilities for an admission charge or fee.

B. Admissions Tax. The tax imposed by Section 5.28.040 of this Chapter.

C. Open to the Public. Any golf course which is open to members of the public upon payment of a charge or fee.

D. Golf Course Operator. Any person, whether owner, operator lessee or any other person who charges or causes to be charged admission to a golf course open to the public. (Ord. 885 §1, 1990)

5.28.040 Levy of Tax. Commencing June 1, 2990, there is hereby imposed and levied upon every person who pays a charge to gain access to play golf on any golf course which is open to the public in the City of Fountain an excise tax in the following amounts:

A. Eighteen hole round: Fifty cents (\$.50)

B. Nine hole round: Twenty-five cents (\$.25)

C. All membership categories: Five percent (5%) of membership fee

Said excise taxes are in addition to any other tax imposed by law. The excise taxes shall be imposed each and every time a charge is made for a person to play golf and upon the sale of each membership. (Ord. 885 §1, 1990)

5.28.050 Exclusions and Exemptions. The admissions tax shall not apply to any admission charge:

A. For any event sponsored or conducted by the United States, the State of Colorado, the City of Fountain, or any department, institution or political subdivision thereof; or

B. Which the City is prohibited from taxing under the Constitution or laws of the United States or the State of Colorado. (Ord. 885 §1, 1990)

5.28.060 Refund – Complimentary Admissions.

A. In the event that an admission price is refunded for any reason either before or after an event has taken place, the tax is not applicable and shall be refunded along with the admission price.

B. The providing of free passes, complimentary admission tickets or otherwise where no admission price is charged or paid shall exempt said person from payment of the admission tax; however, in the event that a reduced charge for admission is made, whether for a pass, complimentary admission or otherwise, the tax imposed in this Chapter is applicable to the amount of such charge.

C. Admission charges characterized as donations or contributions, or by any other name, shall be taxable unless expressly exempted herein. (Ord. 885 §1, 1990)

#### 5.28.070 Responsibility for Collection and Remittance of Tax and Licensing.

A. Any golf course operator who has obtained a sales tax license from the State shall not be required to obtain separate admissions tax license. The sales tax license obtained by said golf course operator shall be a license to collect the admissions tax under the provisions of this Chapter. If no sales tax license is obtained by said golf course, then a separate license shall be issued by the City for the collection of admissions tax by the golf course operator.

B. Every golf course operator shall be liable for the collection and remittance of the tax provided for in Section 5.28.040 of this Chapter. Every person receiving a taxable admission charge, whether directly or through an agent or employee, shall collect the amount of tax imposed from the person paying the admission charge at the time it is paid. Said tax shall be deemed to be held in trust by the person required to collect it, for the use and benefit of the City, until it is remitted to the Director of Finance as provided herein.

C. Every golf course operator shall file a return as prescribed herein with the Director of Finance on or before the twentieth day of the month for the preceding month or months on the report, and remit the amount provided for in Section 5.28.040 of this Chapter. Along with the submission of the return every golf course operator shall also file a copy of that month's log which shall contain a daily record of every person who has played golf during that month.

D. Persons collecting admissions tax may either add the tax to the admission charge as a separate and distinct item or may include the tax in the admission price without separately identifying it as tax, but no person shall represent directly or indirectly that the tax is not included in the admission price or that it will be assumed, absorbed or refunded, and inclusion of the tax in the admission price shall not relieve any person collecting tax from liability for payment of the full amount of the tax levied hereunder. (Ord. 885 §1, 1990)

#### 5.28.080 Reports and Remittances.

A. The Director of Finance may require any person subject to this Chapter to maintain and furnish such returns, statements and records as the Director deems necessary to a determination of the admissions tax liability of such person. If such records are not maintained



or furnished, the Director shall estimate and determine the tax liability of such person from the best information reasonably available to him.

B. Every person required to collect admissions tax hereunder shall remit the full amount of such tax to the City within five calendar days after the date such tax was collected, provided that the Director of Finance may authorize persons collecting admissions tax on a regularly continuing or recurring basis to file monthly reports and remittances, which shall be due on the 20<sup>th</sup> day of the month following each month in which admissions taxes were collected. (Ord. 885 §1, 1990)

#### 5.28.090 Penalty and Interest for Failure to Collect or Remit Tax.

A. Any person required to collect or remit admissions tax who fails to collect or remit the tax shall be personally liable to the City of Fountain for the amount of the tax.

B. Any person required to collect and remit admissions tax who fails to pay the full amount of the tax when due shall be assessed interest on the amount of deficiency from the date due to the date paid at a rate equal to the current annual adjusted rate of interest determined under Section 39-21-110.5, C.R.S., as amended.

C. If failure to collect or remit tax when due is attributable in whole or in part to negligence or intentional disregard of authorized rules or regulations but without intent to defraud, there shall be added ten percent of the amount of the deficiency, and interest on the amount of the deficiency shall be assessed from the date due to the date paid at a rate equal to the current annual adjusted rate of interest determined under Section 39-21-110.5, C.R.S., as amended.

D. If the failure to collect or remit tax when due is attributable in whole or in part to fraud or intent to evade the tax, there shall be added fifty percent of the amount of the deficiency, and interest on the amount of the deficiency shall be assessed from the date due to the date paid at a rate equal to twice the current annual adjusted rate of interest determined under Section 39-21-110.5, C.R.S., as amended.

E. The Director of Finance is hereby authorized to waive, for good cause shown, any penalty assessed, and any interest in excess of the current annual adjusted rate of interest determined under Section 39-21-110.5, C.R.S., as amended, shall be deemed a penalty. (Ord. 885 §1, 1990)

5.28.100 Rules and Regulations. The Director of Finance is hereby authorized to adopt rules and regulations not inconsistent with the provisions of this Chapter, regarding the payment, collection and remittance of the admissions tax. A copy of all such rules and regulations shall be available for public inspection in the office of the Director of Finance. Failure or refusal to

comply with any such rules or regulations shall constitute a violation of this Chapter. (Ord. 885 §1, 1990)

5.28.110 Unlawful Acts. It shall be unlawful for any golf course operator or other person subject to the tax levied by this Chapter to:

- A. Fail to make any required return by the due date;
- B. Make any false or fraudulent return;
- C. Make any false statements in any return;
- D. Fail to make payment to the Director of Finance by the due date of the taxes collected or due the City, or any interest or penalty due the City;
- E. Evade the collection or payment of the tax collected or due the City, or the payment of interest or penalty due the City;
- F. Fail to pay by the due date such tax, interest or penalty; or
- G. Aid or abet another in any attempt to evade payment of such tax, interest or penalty. (Ord. 885 §1, 1990)

## **TITLE 6**

### **Chapter 6.02**

#### **GENERAL PROVISIONS**

Sections:

6.02.010	Construction
6.02.020	Nonconforming Uses
6.02.030	City Animal Shelter
6.02.040	Animals Kept on Premises, Sanitary Requirements
6.02.050	Duty to Restrain Animals
6.02.060	Dangerous Animals
6.02.070	Dangerous Animal License
6.02.080	Rabid Pets or Animals
6.02.090	Specific Animals Prohibited
6.02.100	Exotic Animals, Permit Required
6.02.110	Exotic Animals, Application for Permit
6.02.120	Exotic Animals, Denial, Revocation of Permit

6.02.130	Exotic Animals, Failure to Obtain Permit, Impoundment
6.02.140	Noisy Pets or Animals Prohibited
6.02.150	Animal Fights Prohibited
6.02.160	Cruelty to Animals Prohibited
6.02.170	Unlawful Sale or Display
6.02.180	Definitions
6.02.190	Penalties

6.02.010 Construction. In the event of any inconsistency or conflict between any requirement of this Chapter and the requirements of Title 17 or any other provision of the Fountain Municipal Code, the more restrictive provisions shall apply. (Ord. 1125, §1, 2000)

6.02.020 Nonconforming Uses. Existing uses not in conformance with the provisions of this Title are hereby declared a legal nonconforming use and may continue to exist without increase in number of animals or type of animal, in violation of Sections 6.02.040 and 6.02.090, unless such nonconforming use constitutes a nuisance or is otherwise dangerous to the public health. In such event, the Code Enforcement Officer or the Health Department may initiate and pursue to completion proceedings to abate such nonconforming use as provided in this Code, or in any other manner as may be provided by law. A nonconforming use described in this section shall not be a defense to a criminal violation of this Chapter, excluding Sections 6.02.040 and 6.02.090. (Ord. 1125, §1, 2000)

6.02.030 City Animal Shelter. The City shall provide and maintain an animal shelter in a suitable location within or near the City for the impoundment of animals as provided in this Title. The City may provide by contract with any public agency, private society or association, which is interested in the humane care and treatment of animals, for the establishment, maintenance and operation of such animal shelter. (Ord. 1125, §1, 2000)

6.02.040 Animals Kept on Premises, Sanitary Requirements. Animals may be kept within the City upon compliance with the following requirements:

A. All fecal waste shall be removed as necessary from the premises to prevent it from becoming a nuisance and transported to an approved sanitary waste disposal facility.

B. The premises upon which animals are kept shall be maintained in a clean and sanitary condition and shall be subject to inspection at all reasonable hours by representatives of the City, the Humane Society, or the Health Department.

C. The premises upon which an animal is kept shall be fenced or the animal tied so that the animal while unattended is securely contained thereon and is not a danger to itself, persons or property.

D. Any shelter provided for rabbits or fowl shall contain an area of at least four (4) square feet for each rabbit or fowl. An area outside the shelter must be provided for any rabbits or fowl, which shall contain adequate space for such animals. The maximum number of rabbits

or fowl maintained on a premises shall not exceed ten (10) each of the age of six (6) months or older, as permitted in Title 17 of the Fountain Municipal Code.

E. Variance from the provisions of subsection D., pertaining to the number of rabbits or fowl, shall be considered a nonuse variance as defined in Title 17 and shall be governed by the procedures set forth in this Chapter.

F. The maximum number of dogs or cats over the age of four (4) months that may be owned, possessed or kept on the premises shall not exceed a combined total of six (6), of which only four (4) may be dogs, except in properly zoned and licensed kennels. In the case of multiple dwelling units, or in any unit sharing a common wall, such as an apartment building, the maximum number of dogs and cats over the age of four (4) months that may be owned possessed, or kept in each unit shall not exceed a combined total of two (2). (Ord. 1125, §1, 2000) (Ord. 1410, §2, 2008)

#### 6.02.050 Duty to Restrain.

A. It shall be the duty of any owner or keeper of any dog or hoofed animal or fowl to restrain such dog or hoofed animal by means of confinement, collar and leash, or halter from running at large upon the streets, sidewalks, alleys, parks or that other public places in the City, and to prevent such dog or hoofed animal from becoming a danger to persons or property, or from trespassing upon the property of another. Such animal is hereby declared a nuisance and may be taken up and impounded or confined, as provided in Chapter 6.08 of this Title.

B. It shall be unlawful for an owner or keeper to allow any dog or hoofed animal to trespass on another's property or to run at large.

C. It shall be unlawful for an owner or keeper to allow any dog or hoofed animal, while trespassing, running at large or physically restrained, to attack or fight with another domestic animal.

D. It shall be unlawful for any person to fail or refuse to comply with the duties set out in this Section. In imposing sentence, the court may consider other relevant factors, which in its determination provide the court with sufficient mitigation of the animal's action.

E. This Section shall not apply to any dog, horse or other animal used or owned by any law enforcement agency in the performance of its duties.

F. The City Manager may ban or otherwise restrict the presence of cats, dogs, and other animals at any special event, celebration, gathering, rally, or similar event which occurs upon the property or rights of way of the City, however, this authority shall not apply to licensed assistance dogs for the sight impaired, hearing impaired or other disabled persons.

G. The City Manager may prohibit or otherwise restrict the presence of cats, dogs, and other animals upon any city-owned park or property, however, this authority shall not apply to

licensed assistance dogs for the sight impaired, hearing impaired or other disabled persons.  
(Ord. 1125, §1, 2000)

6.02.060 Dangerous Animals.

A. No person who owns, keeps or exercises control over any animal shall allow the animal to do the following:

1. To attack or threaten to attack or bite any person or domestic animal not on the premises of such owner or keeper.

2. To attack or threaten to attack or bite any person or domestic animal upon the premises of the residence of such owner or keeper or upon the premises of any business establishment. It is an affirmative defense to this subsection that:

a. The attack, threat of attack or bite by the animal was necessary to prevent or apprehend a person engaged in a criminal act upon the property. A criminal act is any act that could be prosecuted as a violation of any City, County, State or Federal criminal statute;

b. The attack, threat of attack or bite by the animal was in response to the animal being provoked or assaulted; or

c. The attack, threat of attack or bite by the animal occurred in an area where the animal was being properly contained in an enclosure which may include, but is not limited to, a fenced area, a kennel or inside the home.

B. The provisions of this Section shall not apply to any law enforcement officer who uses an animal while engaged in law enforcement activities.

C. It shall be the duty of the humane or law enforcement officer to impound any animal whose owner or keeper has been cited for a violation of this Section if the animal presents a clear and present danger to the public health or safety. Nothing in this Chapter shall be construed to prevent the Humane Society or any law enforcement officer from taking whatever action is reasonably necessary to protect said officer's person or members of the public from injury or damage, or injury to any other animals in the community, including immediate destruction of any dangerous animal without notice to the owner or keeper.

D. If a complaint has been filed in the Municipal Court of the City against the owner or keeper of an impounded animal for a charge under this Section, the animal shall not be released except on the order of the Municipal Judge, who may direct the owner or keeper to pay all impounding fees. Any animal, which remains unclaimed for five (5) days after its release as authorized by the Municipal Judge, may be disposed of at the discretion of the Director of the animal shelter.

E. If reasonable efforts have been made to notify the owner or keeper of any proceeding regarding the disposition of their animal and the owner or keeper of such animal fails to appear for any proceeding regarding the disposition of the animal, then the Court is empowered to proceed without the owner or keeper. Some examples of reasonable efforts to notify the owner or keeper of a pending court proceeding are:

1. Personal service on the owner or keeper;
2. Notice delivered by regular mail to the last known address of the owner or keeper of such animal;
3. Posting notice at the last known residence of the owner or keeper of such animal;
4. Any notice given to the owner or keeper by the Court;
5. A promise to appear by the owner or keeper.

F. If the owner or keeper fails to appear after such efforts to notify the owner or keeper have been made, then the Municipal Judge is empowered to hold ex parte hearings to determine the disposition of the animal. If the Court finds that reasonable grounds exist to believe that an animal may constitute a danger to any person or persons or to any other animals in the community, the Court may order it destroyed or held pending trial. If the Court finds that the animal is not a danger, the Court may order it released.

G. Surrender of any animal by the owner or keeper to the animal control officer or Humane Society does not relieve the owner or keeper from prosecution or liability for the fees and fines imposed by this Section. (Ord. 1125, §1, 2000)

#### 6.02.070 Dangerous Animal License.

A. Any animal declared to be dangerous pursuant to the provisions of Section 6.02.060 of this Chapter shall be required to be licensed, as provided herein, by the Humane Society. It shall be unlawful for the owner of a dangerous animal to fail to notify the Humane Society of any transfer of a dangerous animal licensed pursuant to this Section.

B. All applications for a license for a dangerous animal shall be made to the Director of the Humane Society on a form prescribed by the Director. A fee of twenty-five dollars (\$25.00) shall accompany the application, five dollars (\$5.00) of which shall be considered an application fee and nonrefundable. If the licensed dangerous animal is sold or disposed of during the period of the license, the owner shall be refunded a pro rata portion of the license fee as determined by the Director.

C. Any dangerous animal license issued pursuant to this Section shall be in addition to any other license required by this Title and shall be valid for one year and must be renewed annually by the owner or keeper. (Ord. 1125, §1, 2000)

#### 6.02.080 Rabid Pets or Animals.

A. Where the Director of the Humane Society or the Director of Health or their designee has reasonable cause to believe that an animal is rabid or has bitten a person or other animal, such animal shall be confined in accordance with Section C.R.S. §25-4-604.

B. Whenever in the opinion of the Directors or either of their designees the danger to the public safety from rabid animals is imminent, the City shall publish in a daily newspaper a proclamation requiring all persons owning, keeping or having any dog, cat or other animal to

confine the same by good and sufficient means to the house, yard or building within the owner's premises for such time as the City shall in such proclamation declare. During the time period of the proclamation, such dog, cat or other animal shall only be allowed away from the owner's house, yard or building upon a leash accompanied by the owner other responsible person. (Ord. 1125, §1, 2000)

6.02.090 Specific Animals Prohibited.

A. It shall be unlawful for any person to own or keep any rooster, cock, peacock or guinea fowl within the City.

B. It shall be unlawful for any person to own or keep any hogs or pigs within the City, except as permitted in Title 17. (Ord. 1125, §1, 2000)

6.02.100 Exotic Animals, Permit Required.

A. Except as provided in Subsection B. of this Section, no person shall own or keep within the City any animal which is not commonly domesticated, which is not common to North America or which, irrespective of geographic origin, is of a wild or predatory nature, without having first obtained a permit for such animal issued by the Humane Society.

B. The provisions of Subsection A. of this Section shall not apply to the owning or keeping of birds, small rodents or small nonpoisonous reptiles not exceeding six feet (6') in length commonly used for educational or experimental purposes or for pets, nor shall such provisions apply to the owning or keeping of exotic animals by zoos, circuses or recognized institutions of learning or scientific research or facility approved by the Humane Society. (Ord. 1125, §1, 2000)

6.02.110 Exotic Animals, Application for Permit.

A. All applications for a permit required by Section 6.02.100 shall be made to the Director of the Humane Society on the prescribed form. A fee of twenty-five dollars (\$25.00) shall accompany the application, five dollars (\$5.00) of which shall be considered an application fee and shall not be refunded if the permit is denied.

B. After determining that the animal will be treated humanely and will not endanger the health or safety of the surrounding neighborhood or cause a nuisance, the Director of the Humane Society shall issue to the applicant an exotic animal permit. In making such determination the Director may inspect the premises on which the animal is to be kept.

C. Any exotic animal permit issued pursuant to this Section shall be valid for one year and must be renewed annually by the owner or applicant. Such permit shall be nontransferable. (Ord. 1125, §1, 2000)

6.02.120 Exotic Animals, Denial, Revocation of Permit.

A. The Director of the Humane Society may deny an application for an exotic animal permit if:

1. The applicant has made any materially false or misleading statement in the application or has concealed relevant information;
2. The applicant has obtained the exotic animal through illegal means;
3. The applicant is not qualified to possess such exotic animal, does not have adequate facilities to keep such animal or proposes to keep the animal in an unsuitable location;  
or
4. The public health, safety and welfare justifies the denial of the application.
5. The animal has been found to be neglected or abused.

B. The Director of the Humane Society may revoke any exotic animal permit for any Reason set forth in Subsection A of this Section or if the Director determines that the exotic animal has become a nuisance or is otherwise in violation of this Chapter or any other provision of this Code or state statute.

C. The Director of the Humane Society shall notify in writing any person whose application has been denied or whose permit has been revoked. Such notice shall be mailed to such person at the address given in the application for the exotic animal permit and shall state the grounds for denial or revocation. Any person whose application has been denied or permit revoked may not again apply for an exotic animal permit until six (6) months have elapsed from the date of such denial or revocation.

D. Any person aggrieved by an action of the Director of the Humane Society pursuant to this Section may appeal such action to the City Council by filing with the City Clerk within ten (10) days after the date of such action a written notice of appeal briefly stating the reasons upon which such appeal is based. The City Clerk shall notify the appealing party, the Director and the applicant or permittee, if other than the appealing party, of the date on which the matter will be heard by the city Council. The applicant may keep the animal pending the outcome of the appeal. (Ord. 1125, §1, 2000)

#### 6.02.130 Exotic Animals, Failure to Obtain Permit, Impoundment.

A. It shall be unlawful for any person to own or keep an exotic animal as defined in Section 6.02.180 of this Chapter without obtaining a permit therefore or for any person whose exotic animal permit has been revoked to continue to own or keep such exotic animal. Any person violating this subsection upon conviction thereof may be punished as provided in Section 6.02.190 of this Code. In addition, the Humane Society may impound any exotic animal held in violation of this subsection.

B. Any exotic animal impounded pursuant to this Subsection A. may be redeemed upon payment of the applicable redemption fee pursuant to Section 6.08.050 of this Title; provided, however, that no exotic animal which has been impounded may be redeemed until an exotic animal permit therefore has first been obtained. The right to redeem granted herein shall not



apply to persons whose application for an exotic animal permit has been denied or whose permit has been revoked.

C. Any exotic animal which has been impounded pursuant to this Section and which has not been redeemed within ten (10) days from the date of impoundment may be adopted by any person provided such person pays all applicable redemption fees and provided further that such person first obtains an exotic animal permit for such animal. In the event that an impounded animal is not redeemed or adopted within such time as the Director of the Humane Society may designate, the animal may in the Director's discretion be sold or donated to a zoo or other qualified organization or may be humanely destroyed, but may not be used for scientific research. (Ord. 1125, §1, 2000)

#### 6.02.140 Noisy Pets or Animals Prohibited.

A. It shall be unlawful for any person to own or keep any pet or hoofed animal which by Any unreasonably loud and persistent barking, howling, baying, braying, yelping, crowing, crying or other utterance disturbs the peace and quiet of the neighborhood.

B. It shall be a defense to the violation of this Section that the complainant provoked the pet or hoofed animal whose noise is complained of by the complainant.

C. In the event a humane or law enforcement officer determines that a violation of this Section has occurred, the humane or law enforcement officer shall give the owner or keeper of the animal a written warning of the violation pursuant to this Chapter. The owner or keeper shall be entitled to a period of three (3) days after the date on which the written warning is given to correct the violation. If the violation persists or recurs for any pet or hoofed animal at the same residence cited in the warning after the three (3) day period, the owner or keeper shall be subject to enforcement action under this Chapter. No enforcement action for a violation of this Section shall be taken more than six (6) calendar months after the date on which a written warning for that violation is given hereunder. Only one warning per residence, per enforcement period, regardless if served on the owner or keeper, will be given.

D. The warning process to be employed by the humane or law enforcement officer shall be as follows:

1. A written warning pursuant to this Section will be issued by the humane or law enforcement officer if, upon investigation, the officer establishes that there is one witness to the unreasonably loud and persistent nature of the noise. The officer or the complaining witness may be relied upon as a witness in meeting this requirement.
2. Such warning shall be sufficient if it cites this Section, states that a complaint has been received, that the person's pet or hoofed animal is disturbing the peace of another in the neighborhood, identifies the date and time of the disturbance, identifies the animal disturbing the peace, identifies the witness to the disturbance and is identified as coming from the humane or law enforcement agency.
3. A warning is given under this Section if it is posted on the owner's or keeper's premises.

4. The humane or law enforcement agency shall keep records of all warnings given and such records shall be prima facie evidence that such warnings were given.

E. No person shall be convicted at trial of violating this Section unless some testimonial Or demonstrative evidence is presented corroborating the complaining witness' allegation of the unreasonably loud and persistent nature of the noise and a warning was issued pursuant to subsection D. of this Section A corroborating witness shall not include the complainant or a member of the complainant's household.

F. Upon a second conviction entered and in addition to any other penalties that may be imposed, the Court may order the owner or keeper of such pet to abate such nuisance within five (5) days. Failure to abate such nuisance within five (5) days shall constitute a contempt of court.

G. For the purpose of this Section, *neighborhood* means the area within five hundred feet (500') of the exterior boundaries of the premises where the pet resides. *Disturb* means to unreasonably annoy, perturb or interfere with the quiet enjoyment of another's premises.

H. Among the circumstances which may be considered in determining whether reasonable grounds for belief have arisen that such pet or hooved animal is in violation of this Section are:

1. The time of day;
2. The location of the noise;
3. The frequency of the noise; and
4. The length of time for which the noise persists. (Ord. 1125, §1, 2000)

6.02.150 Animal Fights Prohibited. It shall be unlawful for any person to allow or promote any fight between animals or fowl, or to allow or permit any such fight in any house or upon any premises in his/her possession or under his/her control, or to keep or train animals for fighting. (Ord. 1125, §1, 2000)

6.02.160 Cruelty to Animals Prohibited.

A. It shall be unlawful for any person:

1. To overload, overwork, torture, beat, mutilate, needlessly kill or otherwise treat any animal in a cruel and inhumane manner;
2. To fail to provide any animal owned or kept by him/her with adequate and proper food or drink or protection from the weather, or with adequate space, consistent with the normal requirements and habits of the animal's size, species and breed;
3. To abandon any animal; or
4. To intentionally poison any animal;
5. To keep any animal confined in any enclosure or on any premises in unsanitary conditions.

B. Where there is reasonable cause to believe that an animal is being mistreated or is

Suffering from malnutrition, the Humane Society or law enforcement agency may impound such animal for treatment. For the purpose of carrying out the provisions of this subsection, the duly authorized employees of the Humane Society or law enforcement agency may enter onto private property.

C. In the event an animal is removed from private property pursuant to Subsection B. of this Section, a reasonable attempt shall be made to notify the owner or keeper of such animal.

D. In the event an animal has been impounded under the procedures as set out in Subsection B of this Title, then the following procedures shall be followed by the Court in order to reach a final disposition of the animal. The Court is hereby given the additional authority to determine that if it is in the best interest of the animal not to be returned to the owner or keeper, then the Court may order that the act of cruelty relinquishes ownership in that owner or keeper. If the Court orders ownership relinquished, then the Court may further authorize the release of the animal to the care and custody of the Director of the animal shelter. (Ord. 1125, §1, 2000) (Ord. 1147, §1, 2001)

6.02.170 Unlawful Sale or Display. It shall be unlawful for any person to sell, offer for sale, barter or give away any baby chicken, rabbit, duckling or other fowl, under eight (8) weeks of age, as a pet, toy, premium or novelty or to color, dye, stain or otherwise change the color of any such baby chicken, rabbit, duckling or other fowl; provided, however, that this Section shall not be construed to prohibit the sale or display of such baby chickens, rabbits, ducklings or other fowl in proper facilities by breeders or stores engaged in the business of selling such animals for the purpose of commercial breeding and raising. (Ord. 1125, §1, 2000)

6.02.180 Definitions. The following terms, as used in this Title, shall have the meaning hereinafter designated unless the context specifically indicates otherwise or unless such meaning is excluded by express provision:

- A. *Animal.* Any animal, hoofed or otherwise, including any cat, dog, fowl or rabbit.
- B. *At Large.* Off the premises of the owner or keeper, and not under direct physical restraint.
- C. *Attack.* To bite, gore or any violent or aggressive physical contact with a person or domestic animal.
- D. *Cat.* Any member of the feline family, including the domestic cat.
- E. *Code Enforcement Officer.* The Code Enforcement Officer of the City of Fountain or his/her designee.
- F. *Dangerous Animal.* Any animal that attacks, threatens to attack or injures any person or domestic animal without provocation.
- G. *Director of Health.* The Medical Director of the El Paso County Health Department or the Director's designee.

H. *Director of Humane Society.* The Executive Director of the Humane Society of the Pikes Peak Region or the Director's designee.

I. *Dog.* Any dog, bitch or pup.

J. *Enclosure of a Dangerous Animal.* While on the owner's property, a dangerous animal shall be confined indoors or in a securely enclosed and locked pen, structure or fenced area suitable to prevent the animal from escaping.

K. *Exotic Animal.* Any animal which is not commonly domesticated or which is not common to North America or which, irrespective of geographic origin, is of a wild or predatory nature.

L. *Fowl.* Any fowl, including any chicken, duck, goose, turkey, pigeon or other fowl.

M. *Health Department.* The El Paso County Department of Health and Environment.

N. *Hoofed Animal.* Any hoofed animal, including, but not limited to, any cattle, sheep, goat, horse or mule.

O. *Humane Officer.* Any authorized agent or representative of the Humane Society.

P. *Humane Society.* The Humane Society of the Pikes Peak Region.

Q. *Owner or Keeper.* Any person, firm, corporation, organization, or department possessing, harboring, keeping, having an interest in, or having control or custody, either permanently or temporarily, of an animal.

R. *Pet.* Any domesticated or wild animal which is fed, watered, harbored or allowed to remain at or in the vicinity of a residence in the City by any person, excluding:

1. Any hoofed animal;
2. Any animal held for sale by a dealer in animals;
3. Any animal in a zoo, exhibition or fair authorized by the City; and
4. Any animal which is held for use in bona fide scientific research.

S. *Provoke.* To incite, aggravate, tempt, agitate, taunt, tease, torment, or abuse.

T. *Rooster or Cock.* Male domestic fowl of the gallinaceous kind, to include peacock or peafowl.

U. *Severe Injury.* Any injury caused by an animal wherein at a minimum the skin is broken, exterior bleeding occurs, or medical treatment by a licensed physician is necessary.

V. *Shelter.* A structure beneath, behind or within which an animal is protected from the weather or any adverse conditions.

W. *Threaten to Attack.* Any obvious attitude of attack to include, but not be limited to, approaching in a menacing fashion such as growling, snapping or charging at a person or domestic animal on property other than the owner's. (Ord. 1125, §1, 2000)

6.02.190 Penalties. Every person convicted of the violation of any provision stated or adopted in this Chapter shall be punished by a fine of a minimum of fifty dollars (\$50) and up to one thousand dollars (\$1,000) and up to one year in jail or both such fine and imprisonment, or in accordance with an appropriate order of a Judge of the Municipal Court. (Ord. 1125, §1, 2000)

**CHAPTER 6.04**  
**Effective 01-01-07**  
**REGULATION OF DOGS AND CATS**

**Sections:**

6.04.010	Current Inoculation Required for Dogs and Cats
6.04.020	License Required for Dogs
6.04.030	Dog License, Application
6.04.040	Dog License, Fee
6.04.050	License Permitted for Cats
6.04.060	Licenses, Expiration and Transferability
6.04.070	City Clerk, Authority to Designate Representative
6.04.080	License Tags to be Attached to Collar

6.04.010 Current Inoculation Required for Dogs and Cats.

A. It shall be the duty of every person who owns or keeps within the City any dog or cat to have a current anti-rabies vaccine administered by a licensed veterinarian.

B. When any dog or cat owned or kept by any person residing within the City becomes four (4) months old, the owner or keeper of such dog or cat shall have it inoculated within thirty (30) days of that date.

C. Within thirty (30) days after a person brings a dog or cat into the City, that person shall have it inoculated unless proof can be shown that such dog or cat is currently inoculated with anti-rabies vaccine within the previous thirty-six (36) months, in which case the inoculation may be omitted.

D. It shall be unlawful for any person owning or keeping a dog or cat to fail or refuse to have said animal(s) inoculated as herein provided. (Ord. 1125, §1, 2000) (Ord. 1147, §2, §3, §4 2001)

#### 6.04.020 License Required for Dogs.

A. It shall be unlawful for any person to own or keep any dog over the age of four (4) months without obtaining a license.

B. When any dog owned or kept by any person residing within the City becomes four (4) months old, the owner or keeper of such dog shall have it licensed within thirty (30) days of that date. (Ord. 1125, §1, 2000) (Ord. 1147, §5, 2000)

6.04.030 Dog License, Application. The application for a dog license shall consist of a certificate issued and signed by the veterinarian who performed the inoculation as set out in Section 6.04.010 of this Chapter. The license receipt shall state the name and address of the owner of the dog, the name, breed and color of the dog, the inoculation certificate number issued by the veterinarian, and for a guide dog for the disabled, the animal's identification number. Upon presentation of the inoculation certificate to the City Clerk, or a veterinarian designated in writing either by the City Clerk, or pursuant to Section 6.04.070 of this Chapter, and upon payment of the appropriate fee, a license for such dog and a tag bearing a number corresponding to that of the license shall be issued. Veterinarians issuing a license under this provision shall retain one dollar (\$1.00) of the fee for each license issued by that veterinarian and shall surrender all other funds as the City Clerk may direct. (Ord. 1125, §1, 2000)

6.04.040 Dog License Fee. The yearly license fee shall be twenty-five dollars (\$25.00) for each nonneutered male and nonspayed female dog, and for each neutered male and spayed female dog the fee shall be twelve dollars (\$12.00). The three-year license fee shall be sixty-five dollars (\$65.00) for each non-neutered male and nonspayed female dog, and for each neutered male and spayed female dog the fee shall be thirty-three dollars (\$33.00). No license fee shall be required for guide dogs used by the blind or partially blind, or the deaf or partially deaf. Persons sixty-five (65) years of age or older shall pay a yearly license fee of eighteen dollars and fifty cents (\$18.50) for each non-neutered dog and nonspayed female dog and eight dollars (\$8.00) for each neutered male and spayed female dog. The three (3) year license fee for persons sixty-five (65) years of age or older shall be fifty-two dollars (\$52.00) for each nonneutered male and nonspayed female dog, and for each neutered male and spayed female dog, the fee shall be twenty-five dollars (\$25.00). The license for spayed or neutered dogs may be issued only upon presentation to the City Clerk of an inoculation certificate, a certificate signed by a veterinarian stating that the dog has been spayed or neutered, and payment of the appropriate fee. (Ord. 1125, §1, 2000) (Ord. 1147, §6, 2001) (Ord. 1358, §1, 2006)

6.04.050 License Permitted for Cats. Any person desiring to license a cat may do so upon payment of a fee of five dollars (\$5.00) and proof of compliance with the inoculation requirements of this Chapter. Upon request, the City Clerk or a veterinarian designated in writing either by the City Clerk or pursuant to Section 6.04.070 of this Chapter shall register the cat and shall issue a license. (Ord. 1125, §1, 2000)

#### 6.04.060 Licenses, Expiration and Transferability.

A. All dog or cat licenses shall be valid for a period of one or three years from the date of issuance, with no credit other than that authorized in Subsection C. of this Section to be given for a license required for less than said period. Further, the owner of any dog which will remain within the City after the date of which the license expires shall make application to the City Clerk or to a veterinarian designated in writing either by the City Clerk or pursuant to Section 6.04.070 of this Chapter for the issuance of a new license pursuant to Section 6.04.030 of this Chapter. The owner of a dog shall have thirty (30) days after the expiration of said license to make application for a new license. Any such application received after such date shall be considered delinquent and, in addition to the basic fee established in Section 6.04.040 of this Chapter, shall be subject to a penalty of twenty-five percent (25%) of said basic fee prior to the issuance of a new license.

B. All cat licenses shall expire in accordance with Subsection A. of this Section except that no penalty shall apply.

C. No dog or cat license shall be transferred from one owner to another; provided, however, that the license may be transferred to another animal of the same type upon presentation of an inoculation certificate and a showing of disposition of the dog or cat previously issued the license. (Ord. 1125, §1, 2000) (Ord. 1147, §7, 2001)

6.04.070 City Clerk, Authority to Designate Representative. The City Clerk is hereby authorized to appoint the Director of the Humane Society of the Pikes Peak Region as the Clerk's designated representative for the performance of any or all duties required by Sections 6.04.020 through 6.04.070 of this Chapter, inclusive. (Ord. 1125, §1, 2000)

6.04.080 License Tags to be Attached to Collar. It shall be unlawful for any person to fail to provide a dog owned or kept by said person with a suitable collar made of leather, metal or other substantial material to which shall be attached to the license tag issued by the Clerk or a veterinarian designated in writing either by the City Clerk or pursuant to Section 6.04.070 of this Chapter and a current rabies vaccination tag, where such dog is required to be licensed and inoculated. In the event any dog is found not wearing such collar with tags attached, the owner or keeper of such dog shall be deemed to be in violation of this Section. (Ord. 1125, §1, 2000)

## **CHAPTER 6.06**

### **REGULATION OF HOOFED ANIMALS**

#### **Sections:**

6.06.010	Hoofed Animals Kept on Premises, Sanitary Requirements
6.06.020	Hoofed Animals Kept on Premises, Zoning Requirements
6.06.030	Requirements for Keeping Hoofed Animals, Failure to Comply Prohibited
6.06.040	Requirements for Keeping Hoofed Animals, Exception
6.06.050	Variance Application

6.06.010 Hoofed Animals Kept on Premises, Sanitary Requirements.

A. Premises within the City upon which hoofed animals are kept shall be maintained in such a condition as not to be foul, dangerous or ground for rodents, animals or insects capable of transmitting disease to humans. Said premises shall be subject to inspection at all reasonable hours by representatives of the health Department or Code Enforcement Division.

B. Conditions upon any premises not in compliance with this requirement are hereby declared to be a public nuisance, if so finally determined in each case by the Health Department or Code Enforcement Division, and such conditions may be abated in the manner provided by Chapter 8.12 (Nuisances) of the Fountain Municipal Code, or in any other manner as may be provided by law.

C. Every person who occupies or controls the premises wherein hoofed animals are kept shall be responsible for the proper handling of the manure or excrement, and straw, hay, shavings, grass, weeds or leaves which have been used as bedding for such animals. Said manure or excrement and bedding as described herein shall be kept and temporarily stored at the farthest possible and reasonable point from any private dwelling or natural water course and shall be removed at least once every ten (10) days to an appropriate dump or disposal area; provided, however, this Section shall not be construed to apply to manure spread as fertilizer upon cultivated ground or lawns, unless any of the conditions as set forth in Subsection A. hereof shall develop.

D. Drinking facilities with adequate overflow drainage to prevent continuous saturation of surrounding soil shall be provided for hoofed animals. (Ord. 1125, §1, 2000)

6.06.020 Hoofed Animals Kept on Premises, Zoning Requirements.

A. Hoofed animals may be kept only upon compliance with the provisions of Title 17 of the Fountain Municipal Code.

B. The number of hoofed animals shall not exceed the maximum provided in Title 17 of the Fountain Municipal Code without a variance granted in compliance with Title 17.

C. The shed, shelter, pen, or enclosure or grazing area for hoofed animals shall be located as provided in Title 17 of the Fountain Municipal Code. (Ord. 1125, §1, 2000)

6.06.030 Requirements for Keeping Hoofed Animals, Failure to Comply Prohibited. It shall be unlawful for any person to keep any hoofed animal within the City except in compliance with the foregoing requirements, as set out in Sections 6.06.010 and 6.06.020 of this Chapter. (Ord. 1125, §1, 2000)

6.06.040 Requirements for Keeping Hoofed Animals, Exceptions. The provisions of this Chapter shall not be applicable to any person engaged in operating a packing house or slaughter house governed by Colorado Department of Agriculture regulations, nor to any person keeping hoofed animals for a temporary period of time, not to exceed seventy-two (72) hours, in



connection with the operation of such business, except that such persons must comply with Section 6.02.160 (Cruelty to Animals Prohibited) of this Title. (Ord. 1125, §1, 2000)

6.06.050 Variance Application. Any variance from the provisions of Section 6.06.020 shall be considered a nonuse variance as defined in Title 17 and shall be governed by the procedures set forth in Title 17 of the Fountain Municipal Code. (Ord. 1125, §1, 2000)

**Chapter 6.08**  
**Effective 01-01-07**

**IMPOUNDMENT, REDEMPTION AND DISPOSAL OF ANIMALS**

**Sections:**

6.08.010	Impoundment
6.08.020	Duty to Impound
6.08.030	Unlawful Taking or Release
6.08.040	Powers and Authority
6.08.050	Redemption, Animals Other Than Hoofed Animals
6.08.060	Redemption, Hoofed Animals
6.08.070	Unredeemed Animals, Disposition
6.08.080	Dead Animal, Removal
6.08.090	Dead Animals, Leaving in Public Places Prohibited
6.08.100	Dead Animals, Burial within City

6.08.010 Impoundment. Any animal found at any place within the City other than upon the premises of its owner or keeper, and not under direct physical control as provided elsewhere herein, may be picked up and impounded in the shelter as provided in Section 6.08.020 of this Chapter. The foregoing shall apply regardless of whether or not said animal shall have identification, and whether or not the owner or keeper of such animal shall be readily ascertainable. (Ord. 1125, §1, 2000)

6.08.020 Duty to Impound.

A. It shall be the duty of the duly authorized employees of the Humane Society to take up any animal trespassing or running at large contrary to the provisions of this Chapter. For the purpose of performing such duty, any such employee may enter onto private property in pursuit of any animal trespassing or running at large. Any animal picked up pursuant to the provisions of this Section shall be delivered to the shelter, where such animal shall be received and safely kept therein until redeemed or disposed of as provided by law.

B. In the event an animal is picked up by any person other than a duly authorized employee of the Humane Society, it shall be the duty of such person to notify the Humane Society within reasonable time after such action, or to deliver the same to the shelter, where such animal shall be received and safely kept therein until redeemed or disposed of as provided by law. (Ord. 1125, §1, 2000)

6.08.030 Unlawful Taking or Release.

A. It shall be unlawful for any person to take and deliver to the shelter any animal from any enclosed lot or premises, or from any stable or other building unless given permission by the owner of said animal or as otherwise authorized by this Chapter.

B. It shall be unlawful for any person to open or cause to be opened any enclosed lot or premises thereby allowing any animal to run at large upon the streets, sidewalks, alleys, parks or other public places of the City. (Ord. 1125, §1, 2000)

6.08.040 Powers and Authority.

A. The City Manager may, by his/her authority, or in conjunction with approval by the City Council, enter into an agreement with any person or agency for the enforcement of animal control ordinances of the City and matters related thereto.

B. Pursuant to such agreement, the City Manager may appoint or the agreement may provide for the appointment of such person or agency, or their employees or agents, as humane officers.

C. The agreement shall specify the authority to enforce animal control ordinances of the City, investigate City animal control ordinance violations, issue summons and complaints for animal control ordinance violations, impoundment of animals, and such other authority and limitations as the City determines are necessary pursuant to such agreement.

D. Any person appointed pursuant to such agreement shall constitute a Humane Officer with such powers as are set forth in the agreement and the powers conferred by this Section.

E. In addition to the powers conferred by this Section and set forth in such agreement, a Humane Officer shall have such powers as are provided for in C.R.S. §§30-15-104 and 30-15-105.

F. It shall be unlawful for any person to hinder, impede or obstruct any Humane Officer in performance of the officer's duties. (Ord. 1125, §1, 2000)

6.08.050 Redemption, Animals Other Than Hoofed Animals.

A. The redemption fee payable by the owner or keeper of any animal, other than a hoofed animal, impounded for a period of five (5) days or less shall be thirty dollars (\$30.00) for licensed animals for a first offense and fifty dollars (\$50.00) for a second offense within a twelve (12) month period. The fee for unlicensed animals shall be forty dollars (\$40.00) for the first offense and sixty dollars (\$60.00) for the second offense within a twelve (12) month period. For a period of impoundment beginning day two (2), the fee shall include an additional charge for board of ten dollars (\$10.00) per day or any part thereof in excess of one (1) day. Payment of impounding fees shall not be in lieu of any fine, penalty or license fee.

B. No pet or animal required to be licensed or inoculated under Sections 6.04.010 and 6.04.020 of this Title may be redeemed until provision for such licensing and inoculation shall have been accomplished. (Ord. 1125, §1, 2000) (Ord. 1147, §8, 2001) (Ord. 1358, §2, 2006)

6.08.060 Redemption, Hoofed Animals.

A. The redemption fee payable by the owner or keeper for a hoofed animal impounded for a period of ten (10) days or less shall be fifty dollars (\$50.00) and an additional charge for board of ten dollars (\$10.00) per day or any part thereof, commencing with the first day of impoundment. Payment of impounding fees shall not be in lieu of any fine, penalty or license fee.

B. Any owner or keeper of a pet who does not claim and redeem such pet within the said five (5) day impounding period, shall forfeit all right, title and interest therein. Any pet not redeemed within five (5) days from the time of such impounding, may at once be put up for adoption in accordance with the normal procedure of the Humane Society. Any pet, which has been impounded for five (5) days and has not been redeemed or adopted as herein provided, may be humanely destroyed and thereafter cremated, or removed from the City and buried.

C. No pet shall be put up for adoption or destroyed, if the identity and whereabouts of the owner of such pet can be readily ascertained from a rabies vaccination tag, license tag or other identification tag worn by the pet, until a reasonable effort has been made to notify the owner.

D. Disposition of unredeemed hoofed animals shall be accordance with C.R.S. §35-44-101 *et seq.* (Ord. 1125, §1, 2000) (Ord. 1147, §9, 2001)

6.08.070 Unredeemed Animals, Disposition.

A. Any owner or keeper of a pet who does not claim and redeem such pet within the said five (5) day impounding period shall forfeit all right, title and interest therein. Any pet not redeemed within five (5) days from the time of such impounding may at once be put up for adoption in accordance with the normal procedure of the Humane Society. Any pet which has been impounded for five (5) days and has not been redeemed or adopted as herein provided may be humanely destroyed and thereafter cremated, or removed from the City and buried.

B. No pet shall be put up for adoption or destroyed if the identity and whereabouts of the owner of such pet can be readily ascertained from a rabies vaccination tag, license tag or other identification tag worn by the pet, until a reasonable effort has been made to notify the owner. (Ord. 1125, §1, 2000)

6.08.080 Dead Animals, Removal.

A. The City shall provide, by contract or otherwise, for the removal and disposition of carcasses from the street, avenues, alleys and other public places of the City.

B. The City may provide for the removal and disposal of carcasses from private property. The fee shall be \$25.00. (Ord. 1125, §1, 2000)

6.08.090 Dead Animals, Leaving in Public Places Prohibited. It shall be unlawful for any person to throw or place any dead or injured pet, animal or fowl or part thereof, in or upon any of the streets, alleys or other places within or belonging to the City. (Ord. 1125, §1, 2000)

6.08.100 Dead Animals, Burial Within City.

A. It shall be unlawful for any person to bury or cause to be buried within the City any dead animal, except as provided herein. Any person having in his possession or upon his premises any dead animal shall immediately dispose of it in any one of the following manners;

1. By removal from the City for appropriate disposition;
2. By cremation at a licensed facility;
3. By disposal at a site or facility certified to accept putrescible wastes; or
4. By burial on said person's private property at a depth greater than two feet (2') below ground level.

B. The carcass of any dead animal shall be disposed of at the expense of the person having the same in his/her possession or upon his/her premises and any such disposal shall be in accordance with the applicable regulations of the Health Department. . (Ord. 1125, §1, 2000)

## **TITLE 8**

### **Chapter 8.04**

#### **WEEDS AND REFUSE**

**Sections:**

8.04.010	Purpose
8.04.020	Definitions
8.04.030	Overgrown Weeds
8.04.040	Storage of Debris
8.04.050	Duty to Trim Trees
8.04.060	Exemptions
8.04.070	Investigation
8.04.080	Right of Entry
8.04.090	Notice of Violation, Extension of Time to Remove or Correct the Violation, and Right to Appeal.
8.04.100	Issuance of Summons and Complaint.

- 8.04.110 Right of City to Enter Property, Cut and Remove Weeds, Trees, Vegetation, or Debris and Bill the Owner for Same.
- 8.04.120 Violation – Penalty - Suit

8.04.010 Purpose. The City Council declares that the purpose of this Chapter is to provide for the control and removal of weeds and refuse within the City. (Ord. 1451 §2, 2009)

8.04.020 Definitions.

A. “Business day” is each day of the week excluding Saturdays, Sundays, and holidays recognized by the City under section 2.14.510 of the Fountain Municipal Code. Half day holidays shall be treated as a full day holiday.

B. “Compost” means decomposed or decomposing organic material intended as a soil amendment for garden or landscaped areas to improve the physical properties of the soil, such as water retention, permeability, drainage, aeration, and structure and to provide a better environment for roots.

C. “Debris” means waste, rubbish, refuse, and rejected matter and material, manufactured or natural, and also includes, without limitation, cut or dead growth, weeds, grass, brush, tree limbs, or branches.

D. “Enforcement Officer” means a duly appointed City of Fountain Code Enforcement Officer, the City Manager or his designated representative.

E. “Herb” (adj. “herbaceous”) means any seed plant whose stem withers away to the ground after each season’s growth as distinguished from a tree, shrub or bush, whose woody stem lives from year to year.

F. “Native Grasses” means grasses, including but not limited to, prairie grasses and flowering broad leaf plants which are indigenous to the State of Colorado.

G. “Ornamental Grasses” means grasses and groundcovers not indigenous to the State of Colorado but excludes turf grasses.

H. “Owner, Lessee or Occupant” means one who owns, leases or occupies any lot or parcel of land in the city, or any agent, manager, tenant, representative, or employee of such owner, lessee or occupant, having control of any occupied or unoccupied lot or parcel of land in the city, including, without limitation, public and utility easements and drainage ways within such property.

I. “Property” in reference to real property means any occupied or unoccupied lot or parcel of land in the City including, without limitation, public and utility easements and drainage ways located within any lot or parcel of land in the City. Property in reference to real property does not include any house, building, or other structure located within any lot or parcel of land in the City.

J. “Public View” means visible from the street or other public right-of-way. Upon complaint by an owner, occupant or lessee of a lot or parcel, public view includes being visible from that owner’s, occupant’s or lessee’s lot or parcel of land.

K. “Turf Grass” means any of a variety or combination of varieties of perennial grasses, such as Kentucky bluegrass or rye, historically used for residential lawns and maintained at a height not exceeding nine (9) inches.

L. “Weeds” mean any unsightly, useless, troublesome, herbaceous plants, which:

1. Ordinarily grow without cultivation; and
2. Are not grown for the purpose of landscaping, slope stabilization, drainage control or food production; and
3. Attain a growth of not less than nine (9) inches in height; and
4. Include, but are not limited to those plants or parts thereof that have been declared a “noxious weed” by the State of Colorado.

(Ord. 1451 §2, 2009) (Ord. 1458 §2, 2009)

#### 8.04.030 Overgrown Weeds.

A. Except as otherwise contained in this Chapter, it shall be unlawful for any person who is an owner, lessee or occupant, or any agent, servant or representative or employee of such owner, lessee or occupant, having control of any occupied or unoccupied lot or any parcel of land in the city, including, without limitation, public and utility easements and drainage ways within such property, to:

1. allow, permit or maintain weeds on such property, on alleys abutting the property to the middle of the alley, or on or along the sidewalk, street or parking areas abutting the property, except that an owner, lessee or occupant shall not have an obligation to cut or remove weeds on an alley abutting the property if direct or reasonable access to such alley is not available from the property.
2. allow, permit or maintain any grasses or other herbaceous plants over nine (9) inches in height unless the same are grown for the purpose of landscaping, slope stabilization, drainage control, or food production.

B. It shall be unlawful for the owner, agent or occupant of any lot or parcel of land larger than one acre, to permit weeds to grow to a height in excess of nine (9) inches for that portion of such property located within a distance of thirty (30) feet from:

1. Any dedicated street or public right-of-way; or
2. Any lot or parcel of land one (1) acre or less in size.

(Ord. 1451 §2, 2009)

8.04.040 Storage of Debris. It shall be unlawful for any owner, lessee or occupant of any lot or parcel of land to store, keep or place debris on public or private property. Material to be utilized for mulch or landscaping may be stored for a reasonable time, but only if it does not cause a condition dangerous to the public health, safety or welfare. Compost shall be reasonably

contained so as not to cause a condition dangerous to the public health, safety or welfare. (Ord. 1451 §2, 2009)

8.04.050 Duty to Trim Trees.

A. The owner, lessee or occupant of any lot or parcel of land shall remove any dead, dying or otherwise hazardous trees which are located on such property and create a danger to persons or property.

B. The owner, lessee or occupant of any lot or parcel of land shall remove any tree branches or other vegetation which extend onto or over or otherwise overhang public property or rights-of-way and which present a hazard to pedestrians or traffic or block or impair the view of any traffic sign or device.

(Ord. 1451 §2, 2009)

8.04.060 Exemptions. The Enforcement Officer may exempt certain areas of the City, whether publicly or privately owned, from the requirements of Section 8.04.030 if such areas are natural open spaces, natural parks, conservation areas, erosion control areas or irrigation ditch rights-of-way. In so exempting said areas, the Enforcement Officer may impose other criteria for maintenance of said areas in a manner protecting the public health, safety and welfare. A list of such exempt areas shall be available in the Planning Department of the City. (Ord. 1451 §2, 2009)

8.04.070 Investigation. The Enforcement Officer is hereby authorized to investigate any matter at any place within the City and which reasonably appears to be in violation of the provisions of this Chapter. Except upon a citizen complaint, the Enforcement Officer shall have no obligation to investigate violations which are not in public view as defined in this Chapter. (Ord. 1451 §2, 2009)

8.04.080 Right of Entry.

A. Whenever necessary to make an inspection to enforce any of the provisions of this Chapter or whenever the Enforcement Officer has reasonable cause to believe that there exists upon any property any condition or violation which makes such property unsafe, dangerous, hazardous, unsanitary, or constitutes a nuisance, such Enforcement Officer may enter such property at all reasonable times to inspect it or to perform any duty imposed upon the Enforcement Officer by this Chapter. If such property is occupied, the Enforcement Officer shall first present proper credentials and request entry. If such property is unoccupied, the Enforcement Officer shall first make a reasonable effort to locate the owner, lessee or occupant and request entry. If such entry is refused, the Enforcement Officer shall give the owner, lessee or occupant written notice of intent to inspect not sooner than twenty-four (24) hours after the time specified in the notice. If the owner, lessee or occupant cannot be located after a reasonable effort, the Enforcement Officer shall post upon a conspicuous place upon the property written notice of intent to inspect not sooner than twenty-four (24) hours after the time specified in the notice. The notice shall state that the owner, lessee or occupant has the right to refuse entry prior

to the date and time of inspection and that in the event such entry is refused, inspection of the property may be made only upon issuance of a search warrant by a municipal judge of the City.

B. The Enforcement Officer may appear before the municipal judge and, upon a showing to the judge that grounds for the search warrant exist or that there is probable cause to believe that they exist, shall obtain a search warrant entitling such Enforcement Officer to enter upon the property, using such reasonable force as may be necessary to gain entry. Such search warrant may, but is not required to, authorize the Enforcement Officer to search for and seize property. The Enforcement Officer applying for such warrant shall not be required to demonstrate specific knowledge of the condition of the property 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. Any municipal judge of the municipal court of the city shall have the power to issue search warrants pursuant to Rule 241 of the Colorado Municipal Court Rules of Procedure.

C. When the Enforcement Officer shall have first obtained a search warrant or other remedy provided by law to secure entry to the property, no owner, lessee or occupant shall fail or neglect, after proper request is made, to promptly permit entry by the Enforcement Officer for the purpose of inspection and examination pursuant to this Chapter.

D. Whenever an emergency situation exists in relation to the enforcement of any of the provisions of this Chapter, an Enforcement Officer may enter upon the property, using such reasonable force as may be necessary. An emergency situation includes any situation of imminent danger of loss of, or injury or damage to, life, limb, property, or threat to public safety. It is unlawful for any owner, lessee or occupant of the property to deny entry to any Enforcement Officer or to resist reasonable force used by any Enforcement Officer acting pursuant to this Chapter. (Ord. 1451 §2, 2009) (Ord. 1458 §, 2009)

#### 8.04.090 Notice of Violation, Extension of Time to Remove or Correct the Violation, and Right to Appeal.

A. If, after investigation, the Enforcement Officer has reason to believe that a lot or parcel of land is being maintained in violation of this Chapter, the Enforcement Officer has the discretion to issue a verbal warning or a written notice of violation. A written notice shall either be served personally or be sent by first class mail to the owner, lessee or occupant of the property. Service by mail shall be deemed complete upon mailing. If the written notice is sent by mail, the Enforcement Officer shall also cause the property where the violation of this Chapter is located to be posted in a conspicuous place visible from an adjacent public right-of-way. Such notice of violation shall state the date issued, the name of the person to whom the notice is issued, the address of the property, the violation(s) cited, a time limit of ten (10) business days given to remove or correct the cause of such violation, the right to appeal the notice and to request an administrative hearing by making a written demand to the City for a hearing within seven (7) business days of service or posting of the notice, and be signed by the issuing officer.

B. If the Enforcement Officer determines that good cause exists, the Enforcement Officer may extend the time period for removing or correcting the violation for an additional



time as determined necessary by the Enforcement Officer to remove or correct the cause of the violation. Good cause may include, but shall not be limited to, additional time needed because of the practical difficulty of removing or correcting the cause of the violation, the age, financial condition, or health of the owner, lessee, or occupant of the property, the availability of volunteers to assist the owner, lessee, or occupant of the property in removing or correcting the cause of the violation, and other extenuating circumstances. As a condition of determining that good cause exists for extending the time for compliance, the Enforcement Officer may obtain information to determine if good cause exists to grant the extension of time to remove or correct the cause of the violation.

C. Such posted notice of violation need not contain the name of the person to whom the notice is issued.

D. The person who has been served with a notice pursuant to this Chapter may, within seven (7) business days after service or posting of the notice, make a written demand to the City for an administrative hearing on the question of whether a violation in fact exists on the subject property.

1. Such written demand must be filed with the City Clerk on a form provided for such a hearing by the Clerk. The City may impose a reasonable fee for the hearing and to defray the costs of processing the written demand for a hearing.
2. Once a demand for a hearing has been filed, the obligation to abate is stayed until completion of the hearing.
3. An administrative hearing should be held if possible within seven (7) business days following receipt by the City of the written demand, or as soon thereafter as possible, and at least two (2) business days notice of the hearing shall be given to the person who made the written demand for the hearing.
4. The administrative hearing shall be conducted by a Hearing Officer who shall be designated by the City Manager. The sole issue before the Hearing Officer shall be whether the condition(s) described in the notice constitutes a violation of this Chapter. If the Hearing Officer finds that a violation exists, the Hearing Officer shall confirm the order that the violation be abated. If the time for abatement set forth in the Notice of Violation has expired, the Hearing Officer shall impose a reasonable time for abatement to be accomplished. If the Hearing Officer finds that no violation exists, the Hearing Officer has the authority to vacate the notice.
5. Failure of the responsible party to request a hearing within the stated time period, or failure to appear for the scheduled hearing, shall be deemed a waiver of the right to such hearing.
6. The Hearing Officer shall conduct the hearing in an informal manner and shall not be bound by technical rules of evidence. Such hearing shall be recorded. The responsible party, if any, for the subject property shall be given the opportunity to present evidence during the course of the hearing. In addition, members of the public and the City enforcement personnel shall also be given an opportunity to present evidence.

7. At the conclusion of the hearing, the Hearing Officer shall prepare a written decision. A copy of such decision shall be provided to the person requesting the hearing and the enforcement personnel.
8. The decision of the Hearing Officer is final.
9. An appeal of the hearing Officer's order pursuant to Colorado Rules of Civil Procedure 106(a)(4), by either the responsible party or the City, shall be made to a court of competent jurisdiction. If the Hearing Officer has confirmed the abatement order, the time for abatement shall be as determined by the Hearing Officer.

(Ord. 1451 §2, 2009)

#### 8.04.100 Issuance of Summons and Complaint.

A. If, after ten (10) business days from the date of issuance of the notice of violation of this Chapter, the weeds, trees, vegetation, or debris maintained in violation of this Chapter have not been cut and removed from the property, and if an administrative hearing is not pending, a summons and complaint may be issued to the person or persons named in the notice of violation unless satisfactory arrangements for an extension of time have been made with the Enforcement Officer.

B. If, after the expiration of any extension of time authorized by the by the Enforcement Officer, if an administrative hearing is not pending, and if the cause of such violation has not been removed or corrected, a summons and complaint may be issued to the person or persons named in the notice of violation

C. If, after an administrative hearing, the Hearing Officer finds that a violation exists, if any time authorized by the Hearing Officer for abatement of the violation has expired, and if the cause of such violation has not been removed or corrected, a summons and complaint may be issued to the person or persons named in the notice of violation.

(Ord. 1451 §2, 2009)

#### 8.04.110 Right of City to Enter Property, Cut and Remove Weeds, Trees, Vegetation, or Debris and Bill the Owner for Same.

A. Upon the failure, neglect or refusal of the owner, lessee or occupant to cut and remove any weeds, trees, vegetation, or debris being maintained in violation of this Chapter, the Enforcement Officer or his designated representative is hereby authorized to enter such property, after giving proper notice pursuant to Section 8.04.090, and to cause the cutting and removal of such weeds, trees, vegetation or debris.. The cost of cutting and removal plus an administrative fee as set forth in the City Fee Schedule shall be collected from the record owner of such property and shall apply independently and in addition to the penalty provided for the violation of this Chapter.

B. In the event owner, lessee or occupant of such property fails to pay such costs of cutting and removal of the weeds, trees, vegetation, or debris within fifteen (15) business days after billing, a lien may be assessed against the property for such costs. The lien hereby created

shall be superior and prior to other liens regardless of date, except for liens for general property taxes and special assessments. The City Clerk shall certify to the County Treasurer the assessments which are not paid within fifteen (15) business days after billing. Ten (10) percent of the amount shall be added to the assessments to pay the cost of collection.

C. The owner of property subject to the lien may appeal the amount or validity of the lien by requesting an administrative hearing in writing within (15) business days of the date of billing.

1. Such written demand must be filed with the City Clerk on a form provided for such a hearing by the Clerk. The City may impose a reasonable fee for the hearing and to defray the costs of processing the written demand for a hearing.
2. The hearing shall be conducted by a Hearing Officer designated by the City Manager. If the Hearing Officer finds that the amount of the lien is valid, the Hearing Officer shall confirm the lien. If the Hearing Officer finds that the amount of the lien is not correct, the Hearing Officer shall correct the amount of the lien or, if no lien is appropriate, order that the lien be removed.
3. Failure of the owner to request a hearing within the stated time period, or failure to appear for the scheduled hearing, shall be deemed a waiver of the right to such hearing.
4. The Hearing Officer shall conduct the hearing in an informal manner and shall not be bound by technical rules of evidence. Such hearing shall be recorded. The responsible party, if any, for the subject property shall be given the opportunity to present evidence during the course of the hearing. In addition, the City enforcement personnel shall also be given an opportunity to present evidence.
5. At the conclusion of the hearing, the Hearing Officer shall prepare a written decision. A copy of such decision shall be provided to the person requesting the hearing and the enforcement personnel.
6. The decision of the Hearing Officer is final.
7. The City may impose a reasonable fee for the hearing and to defray the costs of processing the written demand for a hearing.
8. An appeal of the Hearing Officer's order pursuant to Colorado Rules of Civil Procedure 106 (a)(4), by either the responsible party or the City, shall be made to a court of competent jurisdiction.

(Ord. 1451 §2, 2009)

#### 8.04.120 Violation – Penalty - Suit

A. Except for minor offenders under section 1.08.020 of the Fountain Municipal Code, any person convicted for the violation of this Chapter shall be punished by a fine of not more than one thousand dollars (\$1,000.00), by imprisonment in jail for a period not exceeding one (1) year or by both such fine and imprisonment, unless otherwise provided.

B. A separate and distinct offense shall be deemed to have been committed for each day on which any violation of this Chapter or of any rule or regulation promulgated there under shall continue after the date of conviction for such violation.

C. The City may collect by suit the costs and fees assessed pursuant to this Chapter or may obtain an injunction prohibiting a violation of this Chapter or any injunction to enforce the abatement of any violation set forth in this Chapter by suit in a court of competent jurisdiction. (Ord. 1451 §2, 2009)

## Section 8.12

### NUISANCES

#### Sections:

8.12.005	Definitions
8.12.010	Unsanitary Animal and Fowl Enclosures
8.12.020	Offensive, Unsanitary or Hazardous Conditions of Building or Premises
8.12.030	Applicability of State Statute Provisions
8.12.040	Applicability of Chapter 8.14 of the Fountain Municipal Code
8.12.050	Investigation
8.12.060	Right of Entry.
8.12.070	Abatement – Authority – Notice – Action by City – Cost Assessment, Extension of Time and Right to Appeal
8.12.080	Summons and Complaint
8.12.090	Lien and Hearing on Lien
8.12.100	Violation – Penalty – Suit

8.12.005 Definitions. For the purposes of this Chapter, the following words shall have the following meanings:

A. “Business day” is each day of the week excluding Saturdays, Sundays, and holidays recognized by the City under section 2.14.510 of the Fountain Municipal Code. Half day holidays shall be treated as a full day holiday.

B. “Enforcement Officer” means a duly appointed City of Fountain Code Enforcement Officer, the City Manager or his designated representative.

C. “Owner, Lessee or Occupant” means one who owns, leases or occupies any lot or parcel of land in the city, or any agent, manager, tenant, representative, or employee of such owner, lessee or occupant, having control of any occupied or unoccupied lot or parcel of land in the city, including, without limitation, public and utility easements and drainage ways within such property.

D. “Property” in reference to real property means any occupied or unoccupied lot or parcel of land in the City including, without limitation, public and utility easements and drainage ways located within any lot or parcel of land in the City. Property in reference to real property

does not include any house, building, or other structure located within any lot or parcel of land in the City.

E. "Public View" means visible from the street or other public right-of-way. Upon complaint by an owner, occupant or lessee of a lot or parcel, public view includes being visible from that owner's, occupant's or lessee's lot or parcel of land. (Ord. 1452 §2, 2009) (Ord. 1459 §2, 2009)

8.12.010 Unsanitary Animal and Fowl Enclosures. Any animal or fowl enclosure or appurtenance thereto in which any animal or fowl is kept, or any other place within the City in which manure or liquid discharges of such animals or fowl accumulates, or which is maintained in an unsanitary condition, allowing an offensive odor to escape therefrom, or providing an insect or rodent attractant, shall be a nuisance. (Ord. 1452 §2, 2009)

8.12.020 Offensive, Unsanitary or Hazardous Conditions of Building or Premises. It is unlawful and constitutes a nuisance for any owner, lessee, or occupant to allow any building or premises or appurtenance thereof to become offensive in odor, or to create an unsanitary or hazardous health condition. (Ord. 1452 §2, 2009)

8.12.030 Applicability of State Statute Provisions. In all cases where no provision is made in this Chapter defining what are nuisances, those offenses which are known to the common law as it exists in the State, or as provided by the Statutes of Colorado as nuisances, shall in case the same exists within the City, be treated as a nuisance or nuisances and proceeded against as provided in this Chapter. (Ord. 1452 §2, 2009)

8.12.040 Applicability of Chapter 8.14 of the Fountain Municipal Code. Nuisances, including all buildings and the portions thereof and including the lot, tract or parcel of land on which the same is located which are determined to be substandard as defined in section 8.14.050 of the Fountain Municipal Code are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedures set forth in this Chapter. If Chapter 8.14 is applicable, abatement proceedings may be taken pursuant to Chapter 8.14 instead of this Chapter. (Ord. 1452 §2, 2009)

8.12.050 Investigation. The Enforcement Officer is hereby authorized to investigate any matter at any place within the City and which reasonably appears to be in violation of the provisions of this Chapter. Except upon a citizen complaint, the Enforcement Officer shall have no obligation to investigate violations which are not in public view as defined in this Chapter. (Ord. 1452 §2, 2009)

8.12.060 Right of Entry.

A. Whenever necessary to make an inspection to enforce any of the provisions of this Chapter or whenever the Enforcement Officer has reasonable cause to believe that there exists upon any property any condition or violation which makes such property unsafe, dangerous, hazardous, unsanitary, or constitutes a nuisance, such Enforcement Officer may enter such property at all reasonable times to inspect it or to perform any duty imposed upon the

Enforcement Officer by this Chapter. If such property is occupied, the Enforcement Officer shall first present proper credentials and request entry. If such property is unoccupied, the Enforcement Officer shall first make a reasonable effort to locate the owner, lessee or occupant and request entry. If such entry is refused, the Enforcement Officer shall give the owner, lessee or occupant written notice of intent to inspect not sooner than twenty-four (24) hours after the time specified in the notice. If the owner, lessee or occupant cannot be located after a reasonable effort, the Enforcement Officer shall post upon a conspicuous place upon the property written notice of intent to inspect not sooner than twenty-four (24) hours after the time specified in the notice. The notice shall state that the owner, lessee or occupant has the right to refuse entry prior to the date and time of inspection and that in the event such entry is refused, inspection of the property may be made only upon issuance of a search warrant by a municipal judge of the City.

B. The Enforcement Officer may appear before the municipal judge and, upon a showing to the judge that grounds for the search warrant exist or that there is probable cause to believe that they exist, shall obtain a search warrant entitling such Enforcement Officer to enter upon the property, using such reasonable force as may be necessary to gain entry. Such search warrant may, but is not required to, authorize the Enforcement Officer to search for and seize property. The Enforcement Officer applying for such warrant shall not be required to demonstrate specific knowledge of the condition of the property 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. Any municipal judge of the municipal court of the City shall have the power to issue search warrants pursuant to Rule 241 of the Colorado Municipal Court Rules of Procedure.

C. When the Enforcement Officer shall have first obtained a search warrant or other remedy provided by law to secure entry to the property, no owner, lessee or occupant shall fail or neglect, after proper request is made, to promptly permit entry by the Enforcement Officer for the purpose of inspection and examination pursuant to this Chapter.

D. Whenever an emergency situation exists in relation to the enforcement of any of the provisions of this Chapter, an Enforcement Officer may enter upon the property, using such reasonable force as may be necessary. An emergency situation includes any situation of imminent danger of loss of, or injury or damage to, life, limb, property, or threat to public safety. It is unlawful for any owner, lessee or occupant of the property to deny entry to any Enforcement Officer or to resist reasonable force used by any Enforcement Officer acting pursuant to this Chapter.

(Ord. 1452 §2, 2009) (Ord. 1459 §3, 2009)

8.12.070 Abatement – Authority – Notice – Action by City – Cost Assessment, Extension of Time and Right to Appeal. In addition to the penalties provided in Section 8.12.090 for maintaining a nuisance if, after an investigation, the Enforcement Officer has reason to believe that a building or premises is being maintained in violation of this Chapter, the Enforcement Officer has the discretion to issue a verbal warning or a written notice of violation and is empowered to abate nuisances in the City as follows:

A. Whenever any nuisance is found on any premises in the City reasonably believed to constitute an imminent hazard or an emergency situation exists, the Enforcement Officer is

empowered to immediately cause the same to be summarily abated in such manner as the Enforcement Officer may direct. The owner, lessee or occupant of the premises upon which the summary abatement occurs may appeal the same, pursuant to the procedures for appeal set forth in section 8.12.070 E. of this Chapter.

B. As to all other nuisances found in any building, or upon any ground or other premises within the City, a twenty-four (24) hour notice, or other reasonable amount of time as determined by the Enforcement Officer considering the type of violation and the time necessary to correct the violation, not to exceed ten (10) business days, shall be given in writing to the owner, lessee or occupant or persons in possession or in charge or in control of any vehicle, or such building or other premises, to remove and abate such nuisances. A written notice shall either be served personally or be sent by first class mail to the owner, lessee or occupant of such real property or record owner of the vehicle. Service by mail shall be deemed complete upon mailing. If the written notice is sent by mail, the Enforcement Officer shall also cause the property where the violation of this Chapter is located to be posted in a conspicuous place visible from an adjacent public right-of-way. Such notice of violation shall state the date issued, the name of the person to whom the notice is issued, the address of the property, the violation(s) cited, a time limit given to remove or correct the cause of such violation, the right to appeal the notice and to request an administrative hearing by making a written demand to the City for a hearing within seven (7) business days of service or posting of the notice, and be signed by the issuing Officer. Such posted notice of violation need not contain the name of the person to whom the notice is issued.

C. If the Enforcement Officer determines that good cause exists, the Enforcement Officer may extend the time period for removing or correcting the cause of the violation for an additional time as determined necessary by the Enforcement Officer to remove or correct the cause of the violation. Good cause may include, but shall not be limited to, additional time needed because of the practical difficulty of removing or correcting the cause of the violation, the age, financial condition, or health of the owner, lessee, or occupants of the property, the availability of volunteers to assist the owner, lessee, or occupant of the property in removing or correcting the cause of the violation, and other extenuating circumstances. As a condition of determining that good cause exists for extending the time for compliance, the Enforcement Officer may obtain information to determine if good cause exists to grant the extension of time to remove or correct the cause of the violation.

D. If any owner, lessee or occupant neglects or refuses to abate the nuisance in accordance with such notice as provided in this subsection, the Enforcement Officer may summarily abate said nuisance and assess costs and fees of such abatement against the property upon which the nuisance was maintained or against the owner thereof, provided that no fees or costs of abatement shall be assessed against the owner prior to notification of the owner as provided in this Chapter. The cost of abatement plus an administrative fee as set forth in the City Fee Schedule shall be collected from the record owner of such property and shall apply independently and in addition to the penalty provided for in section 8.12.090 E. of this Chapter. The owner, lessee or occupant of the premises upon which the abatement occurs may appeal the same, pursuant to the procedures for appeal set forth in section 8.04.070 E. of this Chapter.

E. If the owner, occupant, or person or persons in possession or in charge or in control of any such vehicle, building or other premises, as specified in Subsection B of this section, is unknown, or cannot be found, then said notice provided in Subsection B of this section shall be posted in a conspicuous place on the premises visible from an adjacent public right-of-way. Such notice of violation shall state the date issued, the address of the property, the violation(s) cited, the time limit given to remove or correct the cause of such violation, the right to appeal the notice and to request an administrative hearing by making a written demand to the City for a hearing within seven (7) business days of service or posting of the notice, and be signed by the issuing Officer. At the expiration of the time for abatement of the nuisance as provided in the notice, the Enforcement Officer may then summarily abate said nuisance and assess the costs of such abatement as provided in Subsection B of this section.

F. The person who has been served with a notice pursuant to this Chapter may, within seven (7) business days after service or posting of the notice, make a written demand to the City for an administrative hearing on the question of whether a violation in fact exists on the subject property.

1. Such written demand must be filed with the City Clerk on a form provided for such a hearing by the Clerk. The City may impose a reasonable fee for the hearing and to defray the costs of processing the written demand for a hearing.
2. Unless any nuisance found upon the premises is reasonably believed to constitute an eminent hazard or an emergency situation, once a demand for a hearing has been filed, the obligation to abate is stayed until completion of the hearing.
3. An administrative hearing shall be held within seven (7) business days following receipt by the City of the written demand and at least two (2) business days notice of the hearing shall be given to the person who made the written demand for the hearing.
4. The administrative hearing shall be conducted by a Hearing Officer who shall be designated by the City Manager. The sole issue before the Hearing Officer shall be whether the condition(s) described in the notice constitutes a violation of this Chapter. If the Hearing Officer finds that a violation exists, the Hearing Officer shall confirm the order that the violation be abated. If the time for abatement set forth in the Notice of Violation has expired the Hearing Officer shall impose a reasonable time for abatement to be accomplished. If the Hearing Officer finds that no violation exists, the Hearing Officer has the authority to vacate the notice.
5. Failure of the responsible party to request a hearing within the stated time period, or failure to appear for the scheduled hearing, shall be deemed a waiver of the right to such hearing.
6. The Hearing Officer shall conduct the hearing in an informal manner and shall not be bound by technical rules of evidence. Such hearing shall be recorded. The responsible party, if any, for the subject property shall be given the opportunity to present evidence during the course of the hearing. In addition, members of the public and the City enforcement personnel shall also be given an opportunity to present evidence.



7. At the conclusion of the hearing, the Hearing Officer shall prepare a written decision. A copy of such decision shall be provided to the person requesting the hearing and the enforcement personnel.
8. The decision of the Hearing Officer is final.
9. An appeal of the Hearing Officer's order, pursuant to Colorado Rules of Civil Procedure 106 (a)(4), by either the responsible party or the City, shall be made to a court of competent jurisdiction. If the Hearing Officer confirms the abatement order, the date for abatement set forth in the notice and order shall apply unless a stay is ordered by the court, to which an appeal is made.

(Ord. 1452 §2, 2009)

#### 8.12.080 Summons and Complaint.

A. If, after ten (10) business days from the date of serving a notice of violation of this Chapter, the cause of such violation has not been removed or corrected, and if an administrative hearing is not pending, a Summons and Complaint may be issued to the person or persons named in the notice of violation was served unless satisfactory arrangements for an extension of time have been made with the Enforcement Officer.

B. If, after the expiration of any extension of time authorized by the by the Enforcement Officer, if an administrative hearing is not pending, and if the cause of such violation has not been removed or corrected, a summons and complaint may be issued to the person or persons named in the notice of violation

C. If, after an administrative hearing, the Hearing Officer finds that a violation exists, if any time authorized by the Hearing Officer for abatement of the violation has expired, and if the cause of such violation has not been removed or corrected, a summons and complaint may be issued to the person or persons named in the notice of violation.

(Ord. 1452 §2, 2009)

#### 8.12.090 Lien and Hearing on Lien.

A. In the event the record owner or agent of the owner of such property fails to pay such costs of abatement within fifteen (15) business days after billing, a lien may be assessed against the property for such costs. The lien hereby created shall be superior and prior to other liens regardless of date, except for liens for general taxes and special assessments. The City Clerk shall certify to the County Treasurer the assessments, which are not paid within fifteen (15) business days after billing. Ten (10) percent of the amount shall be added to the assessments to pay the cost of collection

B. The owner of property subject to the lien may appeal the amount or validity of the lien by requesting an administrative hearing in writing within fifteen (business days of the date of billing.

1. Such written demand must be filed with the City Clerk on a form provided for such a hearing by the Clerk.

2. The hearing shall be conducted by a Hearing Officer designated by the City Manager. If the Hearing Officer finds that the amount of the lien is valid, the Hearing Officer shall confirm the lien. If the Hearing Officer finds that the amount of the lien is not correct, the Hearing Officer shall correct the amount of the lien or, if no lien is appropriate, order that the lien be removed.
3. Failure of the owner to request a hearing within the stated time period, or failure to appear for the scheduled hearing, shall be deemed a waiver of the right to such hearing.
4. The Hearing Officer shall conduct the hearing in an informal manner and shall not be bound by technical rules of evidence. Such hearing shall be recorded. The responsible party for the subject property shall be given the opportunity to present evidence during the course of the hearing. In addition, the City enforcement personnel shall also be given an opportunity to present evidence.
5. At the conclusion of the hearing, the Hearing Officer shall prepare a written decision. A copy of such decision shall be provided to the person requesting the hearing and the enforcement personnel.
6. The decision of the Hearing Officer is final.
7. The City may impose a reasonable fee for the hearing and to defray the costs of processing the written demand for a hearing.
8. An appeal of the Hearing Officer's order pursuant to Colorado Rules of Civil Procedure 106 (a)(4), by either the responsible party or the City, shall be made to a court of competent jurisdiction.

(Ord. 1452 §2, 2009)

#### 8.12.100 Violation – Penalty - Suit

A. Except for minor offenders under section 1.08.020 of the Fountain Municipal Code, any person convicted for the violation of this Chapter shall be punished by a fine of not more than one thousand dollars (\$1,000.00), by imprisonment in jail for a period not exceeding one (1) year or by both such fine and imprisonment, unless otherwise provided.

B. A separate and distinct offense shall be deemed to have been committed for each day on which any violation of this Chapter or of any rule or regulation promulgated there under shall continue after the date of conviction for such violation.

C. The City may collect by suit the costs and fees assessed pursuant to this Chapter or may obtain an injunction prohibiting a violation of this Chapter or an injunction to enforce the abatement of any violation set forth in this Chapter by suit in a court of competent jurisdiction.

(Ord. 1452 §2, 2009)

### Chapter 8.14

## PROPERTY MAINTENANCE CODE FOR NON-OWNER OCCUPIED HOUSING AND LEASED NON-RESIDENTIAL ESTABLISHMENTS

Sections:

8.14.010	Purpose
8.14.020	Applicability
8.14.030	Compliance Required
8.14.040	Substandard Dwellings and Non-residential Structures Declared Nuisances
8.14.050	Designated Substandard Buildings and Property
8.14.060	Enforcement
8.14.070	Inspection
8.14.080	Maintenance of Premises
8.14.090	Appeals from Administrative Decisions
8.14.100	Standards for Order to Repair, Vacate, or Demolish
8.14.110	Repair of Substandard Buildings Required
8.14.120	Notice for Repair of Substandard Buildings.
8.14.130	Service of Notice and Order for Repair of Substandard Buildings or Property
8.14.140	Violation - Penalty
8.14.150	Definitions

8.14.010 Purpose. The purpose of this Chapter is to provide minimum standards to safeguard life, health, property and the public's welfare by regulating and controlling the use and occupancy, location and maintenance of all non-owner occupied housing and leased nonresidential establishments, including the lot, tract, or parcel of land on which the same is located. This includes any dwelling unit, guest room or hotel; and any mobile home as defined in Chapter 17 of the Fountain Municipal Code, or any other similar place intended for human habitation or non-residential use, which is leased, rented, or otherwise occupied by a person who is not the fee owner of record of said building, mobile home or portion thereof establishments within the City of Fountain. (Ord. 1107, §1, 2000)

8.14.020 Applicability.

A. The provisions of this Chapter shall apply to all buildings or portions of buildings used or designed to be used for human habitation of non-owner occupied housing or leased non-residential establishments as defined in Section 8.14.140.

B. Any new work or construction shall comply with the Uniform Building Code. (Ord. 1107, §1, 2000)

8.14.030 Compliance Required. It shall be unlawful for any person to erect, construct, enlarge, alter, repair, move, improve, remove, convert, demolish, equip, use, occupy or maintain any building or structure including the lot, tract, or parcel of land on which the same is located or cause or permit the occupancy in violation of this Chapter. (Ord. 1107, §1, 2000)

8.14.040 Substandard Dwellings and Non-residential Structures Declared Nuisances. All buildings or portions thereof including the lot, tract, or parcel of land on which the same is located which are determined to be substandard as defined in this Chapter are hereby declared to

be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedures specified in Section 8.14.100 through Section 8.14.130. (Ord. 1107, §1, 2000)

8.14.050 Designated Substandard Buildings and Property. Any building or portion including any leased or rented dwelling unit, guestroom or suite of rooms, non-residential structure or the premises which the same is located in which there exists any of the following listed conditions to an extent that endangers life, health, safety, property or welfare of the public or the occupant shall be deemed and hereby declared to be a substandard building:

A. The premises are so defective, unsightly, or in such condition of disrepair that they substantially diminish the value of surrounding property or are otherwise substantially detrimental to surrounding properties. Manifestation of this condition shall include, but shall not be limited to, the keeping or disposing of, or the scattering over the premises, of any of the following:

1. Junk, trash, or debris as controlled in Chapter 8.04 (Weeds and Refuse), Chapter 8.12 (Nuisances), Chapter 8.20 (Junk, Junkyards and Junk Vehicles), Chapter 9.20 II. (Litter), and Chapter 12.12 (Sidewalks) of the Fountain Municipal Code.
2. Abandoned, discarded, or unusable appliances or equipment such as furniture, stoves, water heaters, refrigerators, or freezers, or other objects of similar nature.
3. Stagnant water or an excavation.
4. Any device, decoration, design, fence, or structure which is unsightly by reason of its condition or its inappropriate location, of which is no longer in its original or upright position, or which has deteriorated due to lack of maintenance.

B. The premises are so out of harmony or conformity with the maintenance standard of adjacent properties and the neighborhood as to cause substantial diminution of the enjoyment, use, or property values of adjacent properties and the neighborhood.

C. The premises are abandoned, boarded-up, partially destroyed, or left unreasonably in a state of partial construction.

D. Buildings have dry rot, warping, animal or insect infestation.

E. The premises have broken doors, broken windows or other broken attachments such as gutters, garage doors, siding or roofing that cause hazardous conditions and invite trespassers and malicious mischief.

F. The landscaping on premises has not been maintained as follows:

1. The majority of plant materials have not been adequately irrigated and maintained and are dead or dying.
2. Trees or shrubs have not been trimmed and are overhanging public rights-of-way or other properties.
3. Weeds as defined in Section 8.04.020 of the Fountain Municipal Code have grown over nine inches and have not been removed.
4. Dead or diseased plantings have not been removed or replaced.

G. The exterior of the building has not been maintained so as to present a neat and orderly appearance, which is compatible with the neighborhood as follows:

1. Windows are cracked or broken.
2. Painted surfaces are substantially cracked or peeling or the paint has deteriorated to the point where the bare surface is substantially exposed.
3. The building has otherwise not been substantially maintained as evidenced by missing exterior wall coverings.

H. Off-street parking areas are characterized by pavement deterioration, chuckholes, pavement failure, or cave-in.

I. Inadequate sanitation including but not limited to the following is found on the premises:

1. Lack of improper water closet, lavatory, bathtub or shower in a dwelling unit as defined in the City adopted Uniform Building Code.
2. Lack of hot and cold running water to plumbing fixtures in any habitable unit as defined in the City adopted Uniform Building Code.
3. Lack of adequate heating facilities as defined in the City adopted Uniform Building Code.
4. Lack of light and ventilation as defined in the City adopted Uniform Building Code.
5. Lack of required electric lighting as defined in the City adopted Uniform Building Code.
6. Lack of connection to required sewage disposal system as defined in the City adopted Uniform Building Code.

J. Missing, inoperable, improperly installed or improperly operating appliances.

K. Any building or portion, device, apparatus, equipment, combustible waste or vegetation which, in the opinion of the Fire Chief, is in such a condition to cause a fire or explosion or provide ready fuel to augment the spread and intensity of fire or explosion arising from any cause.

L. Any other condition of a building or premises that may be considered a nuisance, safety or health problem in the opinion of the Code Enforcement Officer based upon adopted El Paso County or State health requirements, adopted Uniform Building, Plumbing, Electrical or Fire Codes. (Ord. 1107, §1, 2000)

#### 8.14.060 Enforcement.

A. It shall be the duty of the City Manager or his authorized representative herein referred to as the Code Enforcement Officer to administer and enforce the provisions of this Chapter.

B. Any occupant of a dwelling unit or leased non-residential establishment, or any resident of the City of Fountain may file a complaint with the Code Enforcement Officer stating that the provisions of this Chapter are in violation. The Code Enforcement Officer may in the course of his daily duties find that the provisions of this Chapter are being violated

C. If the Code Enforcement Officer finds that any of the provisions of this Chapter are being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. For such purposes, the Code Enforcement Officer shall have the powers of a law enforcement officer as enumerated in Chapter 2.14 (Personnel Policies and Procedures) of the Fountain Municipal Code.

D. No oversight or dereliction or error on the part of the Code Enforcement Officer or on the part of any other official or employee of the City of Fountain shall legalize, authorize, or excuse the violation of any provisions of this Chapter. (Ord. 1107, §1, 2000)

#### 8.14.070 Inspection.

A. Whenever necessary to make an inspection to enforce any of the provisions of this Chapter or whenever the Code Enforcement Officer has reasonable cause to believe that there exists in any building or upon any premises any condition or violation which makes such buildings or premises unsafe, dangerous, hazardous, unsanitary or unkempt, the Code Enforcement Officer may enter such building or premises at all reasonable times to inspect it or to perform any duty imposed upon the Code Enforcement Officer by this Chapter. If such building or a premise is occupied, the Code Enforcement Officer shall first present proper credentials and request entry. If such building or premises is unoccupied, the Code Enforcement Officer shall first make a reasonable effort to locate the owner of record or other persons having charge or control of the building or premises and request entry. If such entry is refused, the Code Enforcement Officer shall have recourse to every remedy provided by law to secure entry.

B. When the Code Enforcement Officer shall have first obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or any other persons having charge, care, or control of any building or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the Code Enforcement Officer for the purpose of inspection and examination pursuant to this Chapter.

C. Complaint based inspections shall apply to all non-owner occupied housing or leased non-residential establishments. The Code Enforcement Officer shall be responsible for developing administrative policies and procedures in order to administer this code. (Ord. 1107, §1, 2000)

#### 8.14.080. Maintenance of Premises.

A. Every owner remains liable for violations of duties imposed by this Chapter even though an obligation is imposed on the occupants of the building and even through the owner has by agreement imposed on the occupant the duty of furnishing required equipment or of complying with this Chapter. Nothing herein shall be construed as limiting or interfering in any way, the right of any persons to establish by written contract specific responsibilities or owners and occupants for the purpose of leasing or renting non-owner occupied housing or leased non-residential property. Every owner or agent, in addition to being responsible for maintaining the building in a sound structural condition, shall be responsible for keeping that part of the building

or premises which the owner occupies or controls in a safe and sanitary condition including the shared or public area in a building containing two (2) or more dwelling units.

B. Every occupant of a dwelling unit or leased non-residential property, in addition to being responsible for keeping it in a clean, sanitary, and safe condition that part of the unit or premises which said occupant controls, shall dispose of all rubbish, garbage, and other organic waste in a manner required by Chapter 8.04 (Weeds and Refuse), Chapter 8.12 (Nuisances), Chapter 8.20 (Junk, Junkyards and Junk Vehicles), Chapter 9.20 II. (Litter), and Chapter 12.12 (Sidewalks) of the Fountain Municipal Code.

C. Every occupant shall, when required by this Chapter, other provisions of the Fountain Municipal Code, or the El Paso County Health Department, furnish and maintain approved devices, equipment of facilities necessary to keep the premises safe and sanitary. (Ord. 1107, §1, 2000)

8.14.090. Appeals from Administrative Decisions. Any person or persons, firm or corporation, or any board, taxpayer, department or bureau of the City aggrieved by any decision of the Code Enforcement Officer may seek review pursuant to Chapter 2.15 of the Fountain Municipal Code. A petition for such review shall be filed within thirty (30) days after any Order is issued by the Code Enforcement Officer. It shall not be a condition precedent to judicial review that the Code Enforcement Officer reconsiders his decision. (Ord. 1107, §1, 2000)

8.14.100 Standards for Order to Repair, Vacate, or Demolish. The Code Enforcement Officer shall follow the following standards if an appeal is taken in ordering the repair, vacation, or demolition of any substandard building or structure:

A. If any building is declared a substandard building under this Chapter, it shall either be repaired in accordance with the City adopted Uniform Building Code, except as provided herein, or shall be demolished at the option of the building owner.

B. If the building or structure is in such condition as to make it immediately dangerous to the life, limb, property or safety of the public or of the occupants, it shall be ordered to be vacated. (Ord. 1107, §1, 2000)

8.14.110 Repair of Substandard Buildings Required. Whenever the Code Enforcement Officer has inspected or caused to be inspected any building and has found and determined that such building is a substandard building, the Officer shall commence proceedings to cause the repair, rehabilitation, vacation, or demolition of the building. (Ord. 1107, §1, 2000)

8.14.120 Notice for Repair of Substandard Buildings. The Code Enforcement Officer shall issue a notice and order directed to the record owner of the property. The notice and order shall contain:

A. The street address or legal description of the premises upon which the building is located.

B. A statement that the Code Enforcement Officer has found the building to be substandard with a brief and concise description of the conditions found to render the building dangerous under the provision of 8.14.050.

C. A statement of the action required to be taken as determined by the Code Enforcement Officer, which shall state one (1) or more of the following:

1. The Code Enforcement Officer has determined that the building or structure must be repaired, the order shall require that all required permits be secured and the work physically commenced within such time not to exceed sixty (60) days from the date of the order and completed within such time as the Code Enforcement Officer shall determine is reasonable under all of the circumstances.

2. The Code Enforcement Officer has determined that the building or structure must be vacated within a reasonable time from the date of the order as specified under Chapter 16 of the Fountain Municipal Code.

3. The Code Enforcement Officer has determined that the building or structure must be demolished. The order shall require that the building be vacated within such time as the Code Enforcement Officer shall determine reasonable not to exceed sixty (60) days from the date of the order, that all required permits be secured within sixty (60) days from the date of the order and that the demolition be completed within such time as the Officer shall determine is reasonable.

D. Statements advising that if any required repair or demolition work without vacation also being required is not commenced within such time specified, the Officer will order the building vacated and posted to prevent further occupancy until the work is completed.

E. Statements advising that any person having any record title or legal interest in the building may appeal from the notice and order or any action of the Code Enforcement Officer to the Fountain Board of Adjustment, provided that the appeal is made in writing as provided in this Chapter, and filed within thirty (30) days from the date of service of such notice and order; and that failure to appeal will constitute a waiver of all right to administrative hearing and determination of the matter. (Ord. 1107, §1, 2000)

#### 8.14.130 Service of Notice and Order for Repair of Substandard Buildings or Property.

A. The notice, order, and any amended or supplemental notice and order shall be served upon the record owner and posted on the property. One (1) copy shall be served on each of the following if known to the Code Enforcement Officer or disclosed from official public records: the holder of any mortgage or deed of trust or other lien or encumbrance of record, the owner or holder of any lease of record and the holder in or to the building or the land on which it is located. The failure of the Code Enforcement Officer to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any person duly served or relieve any such person from any duty or obligation imposed on the Officer by the provision of the Chapter.



B. Service of the notice and order shall be made upon all person entitled thereto either personally or by mailing a copy of such notice and order by certified mail, postage prepaid, return receipt requested, to each such person at the address as it appears on the last equalized assessment roll of El Paso County or as known to the Code Enforcement Officer. If no address of any such person so appears or is known to the Officer, then a copy of the notice and order shall be mailed, addressed to such person, at the address of the building involved in the proceedings. The failure of any such person to receive such notice shall not affect the validity of any proceedings taken under this Chapter. Service by certified mail in the manner herein provided shall be effective on the date of mailing.

C. Proof of service of the notice and order shall be certified to at the time of service by a written declaration under penalty of perjury executed by the person effecting service, declaring the time, date, and manner in which service was made. The declaration, together with any receipt card returned in acknowledgement of receipt by certified mail shall affix to the copy of the notice and order retained by the Code Enforcement Officer.

D. Immediate and imminent hazards to the public health and safety, determined by the Code Enforcement Officer, Fire Department, or El Paso County Health Department, found to exist in any dwelling, guestroom, or in any building containing such, or upon any premises containing such building thereon may be subject to immediate abatement as specified in this Chapter. (Ord. 1107, §1, 2000)

8.14.140 Violation – Penalty. Any person, partnership or corporation who is in violation of this Chapter, shall, on conviction thereof, be punished by a fine of not less than Two Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars (\$1,000.00), or by imprisonment for not more than one year, or both such fine and imprisonment; provided, that each day that such violation is maintained shall be considered a separate and distinct offense. (Ord. 1107, §1, 2000)

8.14.150 Definitions. For the purposes of this Chapter, certain terms, phrases, works, and their derivatives shall be construed as specified in either this Chapter or as specified in the City adopted Uniform Building Code. Where terms are not defined, they shall have their ordinary accepted meaning within the context with which they are used. Webster’s Dictionary of the English Language, Unabridged, copyright 1999, shall be considered as providing ordinary accepted meanings. As used in this Chapter, the following terms shall have the meaning indicated:

A. *City or Uniform Building Code* shall mean the latest edition of the Uniform Building Code as adopted by the City.

B. *City or Uniform Electrical Code* shall mean the latest edition of the Uniform Electric Code.

C. *City or Uniform Mechanical Code* shall mean the latest edition of the Uniform Mechanical Code.

D. *City or Uniform Plumbing Code* shall mean the latest edition of the Uniform Plumbing Code or other recognized standard as adopted by the City.

E. *Habitable room* shall mean a room or enclosed floor space used or intended to be used or designed to be used for living, sleeping, eating, or cooking, excluding bathrooms, toilet compartments, closets, laundry rooms, halls, and storage or utility spaces.

F. *Health Officer* shall mean the legally designated head of the County Department of Health or the Health Officers' authorized agent.

G. *Hot water* shall mean hot water supplied to plumbing fixtures at a temperature of not less than one hundred ten-- (110) degree Fahrenheit.

H. *Leased non-residential establishment* shall mean any building or portion thereof, including the lot, tract, or parcel of land on which the same is located, containing any non-residential enterprise unit intended to house a business establishment, which is leased, rented, or otherwise occupied by a person who is not the fee owner of record of said building, structure or portion thereof.

I. *Non-owner occupied housing* shall mean any building or portion thereof, including the lot, tract, or parcel of land on which the same is located, containing any dwelling unit, guest room or hotel; and any mobile home as defined in Chapter 17 of the Fountain Municipal Code, or any other similar place intended for human habitation, which is leased, rented, or otherwise occupied by a person who is not the fee owner of record of said building, mobile home or portion thereof. (Ord. 1107, §1, 2000)

## Chapter 8.16

### HAZARDOUS MATERIAL INCIDENTS

#### Sections:

8.16.010	Purpose
8.16.020	Definitions
8.16.030	Jurisdiction of Emergency Response Authority
8.16.040	Duties and Authority of the Emergency Response Authority
8.16.050	Right of Entry
8.16.060	Responsibilities of City Departments
8.16.070	Hazardous Material Incidents on Private Property
8.16.080	Responsibility for Residue Cleanup and Disposal
8.16.090	Reimbursement of Costs and Expenses
8.16.100	Violations

8.16.010 Purpose. The purpose of this Chapter is to designate an emergency response authority for hazardous material incidents occurring within the corporate limits of the City, and within all areas outside the corporate limits of the City the use of which the City has jurisdiction and authority to regulate, as required by section 29-22-102(3), C.R.S., as amended, and to establish the duties and authority of the emergency response authority. This Chapter shall also establish the responsibilities of any person who owns or has control of a hazardous material which is involved in a hazardous material incident, and provide for reimbursement of costs to the City incidental to hazardous material incidents. (Ord. 752 §1, 1987)

8.16.020 Definitions. The following terms, as used in this Chapter, shall have the meanings hereinafter designated, unless the context specifically indicates otherwise or unless such meaning is excluded by express provision.

A. "Hazardous Material". Any substance or material designated as a hazardous material by the United States Department of Transportation according to 49 CFR Part 172, as amended; or, any waste material which constitutes a hazardous waste according to 40 CFR Part 261, as amended; or, any other substance or material including but not limited to petroleum products which, in the judgment of the emergency response authority, poses an imminent danger to the public health and safety when involved in a hazardous material incident.

B. "Hazardous Material Incident". Any emergency circumstance involving the sudden discharge or imminent discharge of hazardous material which, in the judgment of the emergency response authority, threatens immediate and irreparable harm the environment or the health and safety of any person other than persons exposed to the risks associated with hazardous materials in the normal course of their employment. "Hazardous Material Incident" does not include any discharge of a hazardous material authorized pursuant to any Federal, State or local law or regulation.

C. "Private Property". Any property under the control, management or operation of any person other than a governmental entity.

D. "Emergency Response Authority". The Chief of the Fire Department of the City or his designee(s).

E. "Emergency Response to a Hazardous Material Incident". Taking the initial emergency action necessary to minimize the effects of a hazardous material incident and exercising continuing supervisory authority over all further efforts to eliminate the threat of immediate and irreparable harm to the environment of the public health and safety.

F. "Residue of the Hazardous Material Incident". The hazardous material itself and the soil, pavement, stone, water, debris or any other matter which is contaminated by such hazardous material. (Ord. 752 §1, 1987)

8.16.030 Jurisdiction of Emergency Response Authority. The emergency response authority shall have jurisdiction for hazardous material incidents occurring within the corporate limits of the City, and within all areas outside the corporate limits of the City over which the City has jurisdiction

and authority to regulate, and on any private property for which the owner or operator thereof has an arrangement with the City for fire protection service, except that such arrangement shall not include a mutual support agreement. (Ord. 752 §1, 1987)

8.16.040 Duties and Authority of the Emergency Response Authority. The emergency response authority shall have the following duties and authority:

A. Provide twenty-four (24) hour response capability to reported or suspected hazardous waste incidents.

B. Take initial emergency action necessary to minimize the effects of a hazardous material incident and exercise continuing supervisory authority over all further efforts to eliminate the threat of immediate and irreparable harm to the environment or the public health and safety.

C. Request assistance of personnel and equipment at the scene and immediate vicinity of a hazardous material incident from any City department including, but not limited to, the Fire Department, the Police Department, the Department of Public Works and the Department of Public Utilities, and generally direct, supervise and coordinate the activities of such persons and the use of such equipment.

D. Request assistance from the nearest available fire department or other public agency possessing such equipment, personnel or expertise which, in the judgment of the emergency response authority, may be necessary to handle a particular hazardous material incident when such equipment, personnel or expertise is not reasonably available on a timely basis from the various City departments.

E. Contract, as an emergency measure without the necessity of bids, for services and material from any person for the purpose of minimizing the effects of a hazardous material incident and for eliminating the threat of immediate and irreparable harm to the environment or to public health and safety if such services or material is not reasonably available on a timely basis from the various City departments or other fire department or public agencies.

F. Notify the Disaster Emergency Service Agency, the United States Coast Guard, the United States Environmental Protection Agency, the Colorado State Department of Health, and any other Federal or State agency of hazardous material incidents as required by any Federal or State law or regulation. The emergency response authority may request the Disaster Emergency Service Agency to assist in making the required notifications and for any other assistance which is deemed appropriate. (Ord. 752 §1, 1987)

8.16.050 Right of Entry. Whenever the emergency response authority has reasonable cause to believe that a discharge of hazardous materials has occurred or that a discharge of hazardous material is imminent, which discharge or imminent discharge threatens immediate and irreparable harm to the environment or the health and safety of any person other than persons exposed to the risks associated with hazardous materials in the normal course of their employment, and which discharge or imminent discharge is not authorized pursuant to any Federal, State or local law or regulation, the emergency response authority may enter any private property in the interest of public

safety at all reasonable times to inspect the same or to perform any duty imposed by this Chapter. If such private property is occupied, the emergency response authority shall first identify himself by name and position and demand entry; and, if such private property is unoccupied, the emergency response authority shall first make a reasonable effort to locate the owner or other person having charge or control of such private property and demand entry. If entry is refused, the emergency response authority may apply for a search warrant or search warrant for inspection pursuant to the Colorado Municipal Court Rules of Procedure, or as otherwise provided by law. This section shall not be construed to require the issuance of a warrant in any case where warrants are not required by law. (Ord. 752 §1, 1987)

8.16.060 Responsibilities of City Departments. Upon request of the emergency response authority, all City departments shall provide any personnel, equipment and expertise as may be reasonably available, to assist at the scene or immediate vicinity of a hazardous material incident taking into account the serious and immediate danger posed by hazardous material incidents. All personnel and equipment from each department at a hazardous material incident scene or vicinity shall be under the direct supervision of the senior person from that department or as otherwise provided by departmental policy, except that the emergency response authority shall provide general supervisory control and authority at a hazardous material incident scene or vicinity and all City departments and personnel shall cooperate with the emergency response authority accordingly. (Ord. 752 §1, 1987)

8.16.070 Hazardous Material Incidents on Private Property. If a hazardous material incident occurs on private property within the corporate limits of the City or on private property for which the owner or operator thereof has an agreement with the City for fire protection service, the owner or operator thereof may undertake the emergency response to such hazardous material incident and shall immediately notify and coordinate such response with the emergency response authority. If the owner or operator does not undertake such emergency response, or if in the judgment of the emergency response authority there exists an imminent danger to the public health and safety beyond such private property and the emergency response by the owner or operator thereof is inadequate or insufficient to alleviate such imminent danger, the emergency response authority shall be responsible for the emergency response to such hazardous material incident as provided in this Chapter. (Ord. 752 §1, 1987)

8.16.080 Responsibility for Residue Cleanup and Disposal. The owner of a hazardous material and the operator of any vehicle or other conveyance by which a hazardous material is moved or transported, in the case where a hazardous material incident occurs during movement or transport, shall be jointly and severally responsible for properly cleaning up, transporting and disposing of the residue of the hazardous material incident. Proper cleanup, transport and disposal shall mean actions in compliance with all Federal and State laws and regulations pertaining to the particular hazardous material or residue thereof, as the case may be. All such owners and operators shall cooperate with the emergency response authority and shall provide all reasonably available means, personnel and equipment to effect the proper cleanup, transport and disposal of the residue of the hazardous material incident. Proper cleanup, transport and disposal shall mean actions in compliance with all Federal and State laws and regulations pertaining to the particular hazardous material or residue thereof, as the case may be. All such owners and operators shall cooperate with the emergency response authority and shall provide all reasonably available means, personnel and

equipment to effect the proper cleanup, transport and disposal of the residue of the hazardous material incident. (Ord. 752 §1, 1987)

8.16.090 Reimbursement of Costs and Expenses. Each City department shall develop criteria to govern those costs and expenses incurred by such department as a result of assistance at hazardous material incidents which shall be reimbursable. Each City department shall submit an itemized account of all reimbursable costs and expenses incurred as a result of such department's assistance at a hazardous material incident to the City Manager within thirty (30) days following such incident. Thereafter, the City Clerk shall bill the owner of the hazardous material involved in the hazardous material incident, or other person proximately causing the hazardous material incident, for the total costs and expenses incurred by all the City departments as a result hereof, which bill shall be due and payable within thirty (30) days after mailing. Such owner or other person proximately causing a hazardous material incident shall be jointly and severally liable for reimbursement of all City costs and expenses incurred as a result of assistance or emergency response to a hazardous material incident. Upon the failure or refusal of any person to reimburse the City as provided herein, the City Manager shall refer the matter to the office of the City Attorney for collection or other disposition as deemed appropriate. (Ord 752 §1, 1987)

8.16.100 Violations.

A. The driver of any vehicle involved in an accident resulting in a discharge of any hazardous material upon any public or private property shall immediately stop such vehicle at the scene of the accident, or as close thereto as possible, in which latter case he shall immediately return to the scene of the accident, and in any event he shall remain at the scene of the accident until he has fulfilled the requirements of section 8.16.100(B).

B. The driver of any vehicle involved in an accident resulting in a discharge of any hazardous material shall immediately notify the emergency response authority or a police officer of the discharge and shall give his name, address and the registration number of the vehicle he is driving to the emergency response authority or police officer. The driver shall also give the emergency response authority the name, address and telephone number of the owner of the hazardous material, if known to him.

C. It shall be unlawful for the driver of any vehicle involved in the discharge of any hazardous material to leave the scene of a hazardous material incident until such material is cleaned up pursuant to the requirements of section 8.16.080 of this Chapter, unless authorized to leave prior thereto by the emergency response authority.

D. It shall be unlawful for any person to intentionally, knowingly or recklessly discharge any hazardous material into or upon any public or private property, unless such discharge is authorized pursuant to Federal, State or local law or regulation. (Ord. 752 §1, 1987)

**Chapter 8.20**

**JUNK, JUNKYARDS AND JUNK VEHICLES**

Sections:

8.20.010	Purpose and Intent
8.20.020	Definitions
8.20.030	Outdoor Storage of Inoperable Vehicles
8.20.040	Junk and Junkyards
8.20.050	Exceptions
8.20.060	Investigation
8.20.070	Right of Entry
8.20.080	Notice of Violation and Right to Appeal
8.20.090	Summons and Complaint
8.20.100	Abatement of Violations Involving Outdoor Storage of Junk Material, Except Inoperable Vehicles
8.20.110	Abatement of Violations Involving Inoperable Vehicles
8.20.115	Hearing on Lien
8.20.120	Violation – Penalty – Suit

8.20.010 Purpose and Intent. The purpose of this Chapter is to promote the health, safety, and general welfare of the public; enhance the quality of life and economic development of the community; preserve the attractive appearance of neighborhoods; and enhance the image of the City. This Chapter provides for the regulation and control of outside storage of junk and junk vehicles, guidelines for storage, notification of violations, abatement procedures, and penalties for noncompliance. (Ord. 1453 §2, 2009)

8.20.020 Definitions. For the purposes of this Chapter, the following words shall the following meanings:

A. “Business day” is each day of the week excluding Saturdays Sundays, and holidays recognized by the City under section 2.14.510 of the Fountain Municipal Code. Half day holidays shall be treated as a full day holiday.

B. “Enforcement Officer” means a duly appointed City of Fountain Code Enforcement Officer, the City Manager or his designated representative.

C. “Inoperable vehicle” means a vehicle incapable of being started upon request of the Enforcement Officer or lawfully or mechanically operated on public roadways.

D. “Junk” means any broken, discarded or abandoned materials or material not used for its intended purpose. This term shall include, but is not be limited to, wood, paper, glass, rags, rubber, metal, concrete, machinery, inoperable vehicles, appliances, refuse or other personal property.

E. “Junkyard” means real property used for the sale, storage, display, dismantling, demolition and abandonment or discarding of junk not within an enclosed building.

F. "Owner, Lessee or Occupant" means one who owns, leases or occupies any lot or parcel of land in the City, or any agent, manager, tenant, representative, or employee of such owner, lessee or occupant, having control of any occupied or unoccupied lot or parcel of land in the City, including, without limitation, public and utility easements and drainage ways within such property.

G. "Property" in reference to real property means any occupied or unoccupied lot or parcel of land in the City including, without limitation, public and utility easements and drainage ways located within any lot or parcel of land in the city. Property in reference to real property does not include any house, building, or other structure located within any lot or parcel of land in the City.

H. "Public view" means visible from the street or other public right-of-way. Upon complaint to the Enforcement Officer by an owner, occupant or lessee of a lot or parcel, public view includes being visible from that owner's, occupant's, or lessee's lot or parcel of land.

I. "Vehicle" means every vehicle that is self-propelled and every vehicle which is not driven or propelled by its own power, but which is designed to be attached to or become a part of or to be drawn by a self-propelled vehicle, including farm tractors and other machines and tools used in the production, harvesting and care of farm products. By example but not limitation, "vehicle" includes automobiles, airplanes, trucks, trailers, mobile homes, recreational vehicles, motorcycles, all-terrain vehicles, motor scooters, dune buggies, snowmobiles, tractors and wagons.

(Ord. 1453 §2, 2009) (Ord. 1460 §2, 2009)

8.20.030 Outdoor Storage of Inoperable Vehicles. It shall be unlawful for any owner, lessee, or occupant of any lot or parcel located within the City to permit the keeping of or storage of any vehicle which is inoperable except as permitted in this section.

A. It shall be unlawful for any owner, lessee or occupant of any lot or parcel of five thousand (5,000) square feet or smaller within the City to keep, store, allow, or permit the keeping or storage of any vehicle which is inoperable unless said vehicle is located within an enclosed building.

B. On lots or parcels greater than five thousand (5,000) square feet but less than one (1) acre, one (1) inoperable vehicle located outside of an enclosed building may be kept or stored but shall be maintained in such a manner that it does not constitute a health hazard, safety hazard, or a fire hazard and is screened from public view by means of a solid fence, a vehicle cover designed for such purpose, or other appropriate means. In the event more than one (1) vehicle is screened from public view as described in this section, the Enforcement Officer shall be permitted to inspect such vehicles pursuant to the procedures in this Chapter in order to determine whether they are inoperable.

C. On lots or parcels one (1) acre or greater, not more than two (2) inoperable vehicles located outside of an enclosed building may be kept or stored but shall be maintained in such a manner that they do not constitute a health hazard, safety hazard, or a fire hazard and are



screened from public view by means of a solid fence, a vehicle cover designed for such purpose, or other appropriate means. In the event more than two (2) vehicles are screened from public view as described in this section, the Enforcement Officer shall be permitted to inspect such vehicles pursuant to the procedures in this Chapter in order to determine whether they are inoperable.

(Ord. 1453 §2, 2009)

8.20.040 Junk and Junkyards. It shall be unlawful for any owner, lessee or occupant of any real property within the City to keep or store junk, unless said junk is located within an enclosed building, or to otherwise maintain, allow or permit a junkyard. (Ord. 1453 §2, 2009)

8.20.050 Exceptions. The following are specific exceptions to the restrictions of this Chapter.

A. A vehicle defined as a collector's item in the Colorado Revised Statutes (C.R.S.) Title 42, Article 12, Motor Vehicles as Collectors' Items or any vehicle not primarily intended for use on the public streets and highways provided such vehicle is maintained in such a manner that does not constitute a health hazard, safety hazard, or a fire hazard and is screened from public view by means of a solid fence, stored in an enclosed building, or other appropriate means. Such storage area shall be kept free of weeds, trash, debris, and junk.

B. An inoperable vehicle or junk kept or stored in any junkyard approved pursuant to Title 17 Zoning of the Fountain Municipal Code.

C. A vehicle stored in an approved vehicle storage facility pursuant to Title 17 Zoning of the Fountain Municipal Code, which may be inoperable but is neither wrecked nor dismantled.

D. A vehicle stored in an approved towing and impound facility pursuant to Title 17 Zoning of the Fountain Municipal Code and which is subject to and in compliance with the provisions of C.R.S. Title 40, Article 13, Towing Carriers – Motor Vehicles.

E. An inoperable vehicle being repaired or awaiting repair at a motor vehicle repair facility approved pursuant to Title 17 Zoning of the Fountain Municipal Code and which is subject to and in compliance with the provisions of C.R.S. Title 42, Article 9, Motor Vehicle Repair Act.

F. An inoperable vehicle or junk kept or stored on such other parcel within the City pursuant to a conditional use for such purpose in such zones in which conditional uses are permitted pursuant to Title 17 Zoning of The Fountain Municipal Code.

(Ord. 1453 §2, 2009)

8.20.060 Investigation. The Enforcement Officer is hereby authorized to investigate any matter at any place within the City and which reasonably appears to be in violation of the provisions of this Chapter. Except upon a citizen complaint, the Enforcement Officer shall have no obligation to investigate violations which are not in public view as defined in this Chapter. (Ord. 1453 §2, 2009)

#### 8.20.070 Right of Entry.

A. Whenever necessary to make an inspection to enforce any of the provisions of this Chapter or whenever the Enforcement Officer has reasonable cause to believe that there exists upon any property any condition or violation which makes such property unsafe, dangerous, hazardous, unsanitary, or constitutes a nuisance, such Enforcement Officer may enter such property at all reasonable times to inspect it or to perform any duty imposed upon the Enforcement Officer by this Chapter. If such property is occupied, the Enforcement Officer shall first present proper credentials and request entry. If such property is unoccupied, the Enforcement Officer shall first make a reasonable effort to locate the owner, lessee or occupant and request entry. If such entry is refused, the Enforcement Officer shall give the owner, lessee or occupant written notice of intent to inspect not sooner than twenty-four (24) hours after the time specified in the notice. If the owner, lessee or occupant cannot be located after a reasonable effort, the Enforcement Officer shall post upon a conspicuous place upon the property written notice of intent to inspect not sooner than twenty-four (24) hours after the time specified in the notice. The notice shall state that the owner, lessee or occupant has the right to refuse entry prior to the date and time of inspection and that in the event such entry is refused, inspection of the property may be made only upon issuance of a search warrant by a municipal judge of the City.

B. The Enforcement Officer may appear before the municipal judge and, upon a showing to the judge that grounds for the search warrant exist or that there is probable cause to believe that they exist, shall obtain a search warrant entitling such Enforcement Officer to enter upon the property, using such reasonable force as may be necessary to gain entry. Such search warrant may, but is not required to, authorize the Enforcement Officer to search for and seize property. The Enforcement Officer applying for such warrant shall not be required to demonstrate specific knowledge of the condition of the property 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. Any municipal judge of the municipal court of the city shall have the power to issue search warrants pursuant to Rule 241 of the Colorado Municipal Court Rules of Procedure.

C. When the Enforcement Officer shall have first obtained a search warrant or other remedy provided by law to secure entry to the property, no owner, lessee or occupant shall fail or neglect, after proper request is made, to promptly permit entry by the Enforcement Officer for the purpose of inspection and examination pursuant to this Chapter.

D. Whenever an emergency situation exists in relation to the enforcement of any of the provisions of this Chapter, an Enforcement Officer may enter upon the property, using such reasonable force as may be necessary. An emergency situation includes any situation of imminent danger of loss of, or injury or damage to, life, limb, property, or threat to public safety. It is unlawful for any owner, lessee, or occupant of the property to deny entry to any Enforcement Officer or to resist reasonable force used by any Enforcement Officer acting pursuant to this Chapter.

(Ord. 1453 §2, 2009) (Ord. 1460 §3, 2009)

#### 8.20.080 Notice of Violation and Right to Appeal.

A. If, after an investigation, the Enforcement Officer has reason to believe that real property or a vehicle is being maintained in violation of this Chapter, the Enforcement Officer has the discretion to issue a verbal warning or a written notice of violation. A written notice shall either be served personally or be sent by first class mail to the owner, lessee or occupant of such real property or record owner of the vehicle. Service by mail shall be deemed complete upon mailing. If the written notice is sent by mail, the Enforcement Officer shall also cause the property where the violation of this Chapter is located to be posted in a conspicuous place visible from an adjacent public right-of-way. Such notice of violation shall state the date issued, the name of the person to whom the notice is issued, the address of the property, the violation(s) cited, a time limit of ten (10) business days given to remove or correct the cause of such violation, the right to appeal the notice and to request an administrative hearing by making a written demand to the City for a hearing within seven (7) business days of service or posting of the notice, and be signed by the Enforcement Officer. Such posted notice of violation need not contain the name of the person to whom the notice is issued.

B. If the Enforcement Officer determines that good cause exists, the Enforcement Officer may extend the time period for removing or correcting the violation for an additional time as determined necessary by the Enforcement Officer to remove or correct the cause of the violation. Good cause may include, but shall not be limited to, additional time needed because of the practical difficulty of removing or correcting the cause of the violation, the age, financial condition, or health of the owner, lessee, or occupant of the property, the availability of volunteers to assist the owner, lessee, or occupant of the property in removing or correcting the cause of the violation, and other extenuating circumstances. As a condition of determining that good cause exists for extending the time for compliance, the Enforcement Officer may obtain information to determine if good cause exists to grant the extension of time to remove or correct the cause of the violation.

C. The person who has been served with a notice pursuant to this Chapter may, within seven (7) business days after service or posting of the notice, make a written demand to the City for an administrative hearing on the question of whether a violation in fact exists on the subject property.

1. Such written demand must be filed with the City Clerk on a form provided for such a hearing by the Clerk. The City may impose a reasonable fee for the hearing and to defray the costs of processing the written demand for a hearing.
2. Once a demand for a hearing has been filed, the obligation to abate is stayed until completion of the hearing.
3. An administrative hearing shall be held within seven (7) business days, if possible, following receipt by the City of the written demand, or if not possible then as soon thereafter as possible, and at least two (2) business days notice of the hearing shall be given to the person who made the written demand for the hearing.
4. The administrative hearing shall be conducted by a Hearing Officer who shall be designated by the City Manager. The sole issue before the Hearing Officer shall be whether the condition(s) described in the notice constitutes a violation of this Chapter. If the Hearing Officer finds that a violation exists, the

Hearing Officer shall confirm the order that the violation be abated. If the time for abatement set forth in the Notice of Violation has expired, the Hearing Officer shall impose a reasonable time for abatement to be accomplished. If the Hearing Officer finds that no violation exists, the Hearing Officer has the authority to vacate the notice.

5. Failure of the responsible party to request a hearing within the stated time period, or failure to appear for the scheduled hearing, shall be deemed a waiver of the right to such hearing.
6. The Hearing Officer shall conduct the hearing in an informal manner and shall not be bound by technical rules of evidence. Such hearing shall be recorded. The responsible party, if any, of the subject property shall be given the opportunity to present evidence during the course of the hearing. In addition, members of the public and the City enforcement personnel shall also be given an opportunity to present evidence.
7. At the conclusion of the hearing, the Hearing Officer shall prepare a written decision. A copy of such decision shall be provided to the person requesting the hearing and the enforcement personnel.
8. The decision of the Hearing Officer is final.
9. An appeal of the Hearing Officer's order pursuant to Colorado Rules of Civil Procedure 106 (a)(4), by either the responsible party or the City, shall be made to a court of competent jurisdiction. If the Hearing Officer has confirmed the abatement order, the time for abatement shall be as determined by the Hearing Officer.

(Ord. 1453 §2, 2009)

#### 8.20.090 Summons and Complaint.

A. If, after ten (10) business days from the date of serving a notice of violation of this Chapter, the cause of such violation has not been removed or corrected, and if an administrative hearing is not pending, a Summons and Complaint may be issued to the person or persons named in the notice of violation, unless satisfactory arrangements for an extension of time have been made with the Enforcement Officer.

B. If, after the expiration of any extension of time authorized by the by the Enforcement Officer, if an administrative hearing is not pending, and if the cause of such violation has not been removed or corrected, a summons and complaint may be issued to the person or persons named in the notice of violation

C. If, after an administrative hearing, the Hearing Officer finds that a violation exists, if any time authorized by the Hearing Officer for abatement of the violation has expired, and if the cause of such violation has not been removed or corrected, a summons and complaint may be issued to the person or persons named in the notice of violation.

(Ord. 1453 §2, 2009)

#### 8.20.100 Abatement of Violations Involving Outdoor Storage of Junk Material, Except Inoperable Vehicles.

A. Upon the failure, neglect or refusal of the owner, lessee or occupant of such real property or record owner of the vehicle to correct or remove the cause of the violation within the time limits herein set forth, the Enforcement Officer is authorized to have the violation(s) abated by private contractor. The cost of abatement plus an administrative fee as set forth in the City Fee Schedule shall be collected from the record owner of such property and shall apply independently and in addition to the penalty provided for in Section 8.20.120 of this Chapter.

B. In the event the record owner or agent of the owner of such property fails to pay such costs of abatement within fifteen (15) business days after billing, a lien may be assessed against the property for such costs. The lien hereby created shall be superior and prior to other liens regardless of date, except for liens for general taxes and special assessments. The City Clerk shall certify to the County Treasurer the assessments, which are not paid within fifteen (15) business days after billing. Ten (10) percent of the amount shall be added to the assessments to pay the cost of collection.

(Ord. 1453 §2, 2009)

#### 8.20.110 Abatement of Violations Involving Inoperable Vehicles.

A. In the event that an inoperable vehicle is being kept or stored on property in violation of this Chapter and such violation has not been corrected or removed within the time limits herein set forth, the Enforcement Officer may have the vehicle removed from the premises by private contractor. Said contractor shall be subject to the provisions of C.R.S. Title 40, Article 13, Towing Carriers – Motor Vehicles.

B. In the event the record owner or agent of the owner of such property fails to pay for the costs of removal of the vehicle within fifteen (15) business days after billing, a lien may be assessed against the property for such costs. The lien hereby created shall be superior and prior to other liens regardless of date, except for liens for general taxes and special assessments. The City Clerk shall certify to the County Treasurer the assessments that are not paid within fifteen (15) business days after billing. Ten (10) percent of the amount shall be added to the assessments to pay the cost of collection.

(Ord. 1453 §2, 2009)

8.20.115 Hearing on Lien. The owner of property subject to the lien may appeal the amount or validity of the lien by requesting an administrative hearing in writing within fifteen (15) business days of the date of billing.

1. Such written demand must be filed with the City Clerk on a form provided for such a hearing by the Clerk.
2. The hearing shall be conducted by a Hearing Officer designated by the City Manager. If the Hearing Officer finds that the amount of the lien is valid, the Hearing Officer shall confirm the lien. If the Hearing Officer finds that the amount of the lien is not correct, the Hearing Officer shall correct the amount of the lien or, if no lien is appropriate, order that the lien be removed.

3. Failure of the owner to request a hearing within the stated time period, or failure to appear for the scheduled hearing, shall be deemed a waiver of the right to such hearing.
4. The Hearing Officer shall conduct the hearing in an informal manner and shall not be bound by technical rules of evidence. Such hearing shall be recorded. The responsible party, if any, for the subject property shall be given the opportunity to present evidence during the course of the hearing. In addition, the City enforcement personnel shall also be given an opportunity to present evidence.
5. At the conclusion of the hearing, the Hearing Officer shall prepare a written decision. A copy of such decision shall be provided to the person requesting the hearing and the enforcement personnel.
6. The decision of the Hearing Officer is final.
7. The City may impose a reasonable fee for the hearing and to defray the costs of processing the written demand for a hearing.
8. An appeal of the Hearing Officer's order pursuant to Colorado Rules of Civil Procedure 106 (a)(4), by either the responsible party or the City, shall be made to a court of competent jurisdiction.

(Ord. 1453 §2, 2009)

#### 8.20.120 Violation – Penalty – Suit.

A. Except for minor offenders under section 1.08.020 of the Fountain Municipal Code, any person convicted for the violation of this Chapter shall be punished by a fine of not more than one thousand dollars (\$1,000.00), by imprisonment in jail for a period not exceeding one (1) year or by both such fine and imprisonment, unless otherwise provided.

B. A separate and distinct offense shall be deemed to have been committed for each day on which any violation of this Chapter or of any rule or regulation promulgated there under shall continue after the date of conviction for such violation.

C. The City may collect by suit the costs and fees assessed pursuant to this Chapter or may obtain an injunction prohibiting a violation of this Chapter or an injunction to enforce the abatement of any violation set forth in this Chapter by suit in a court of competent jurisdiction.

(Ord. 1453 §2, 2009)

### **Chapter 8.24**

#### **ALARMS**

##### Sections:

8.24.010	Definitions
8.24.020	Service Charge
8.24.030	Notice of Name of Service Personnel
8.24.040	Audibility

8.24.050	Compliance
8.24.060	Public Nuisance
8.24.070	Automatic Dialing Prohibited
8.24.080	Violation of Ordinance

#### 8.24.010 Definitions.

A. "Alarm". Alarm means any device designed for the detection of unauthorized entry on or into any building, place or premises, or for alerting others of the commission of an unlawful act, or both, or of fire or other emergency, and when activated causes an audible or visual signal, or both, or transmits a signal or message to which police officers are expected to respond or which would imply to a reasonable person that police officers are needed at the source of the alarm to investigate a criminal (or unlawful, unauthorized) activity or emergency, or transmits a signal or message to which fire fighters are expected to respond.

B. "False Alarm". False alarm means the activation of an alarm resulting in a response by police officers or fire fighters to the building, place or premises on or in which the alarm is located where a response is not needed. False alarm does not include an alarm caused by lightning, storm, or violent act of nature, or by a sudden surge or loss of electric power.

C. "Alarm User". Alarm user means any person, firm, partnership, company, association, or corporation acting as owner, tenant, lessee or their authorized agent or representative of a building, place or premises on or in which an alarm is installed, maintained, used or utilized. (Ord. 664 §1, 1984)

#### 8.24.020 Service Charge.

A. A service charge of \$50.00 shall be assessed upon any alarm user for each police or fire response to more than one false alarm in any consecutive forty-five day period, except that such service charge shall not be assessed upon any alarm user for police or fire response for up to three false alarms after the installation of a new, substantially improved, or replaced alarm.

B. All service charges for false alarms shall be paid to the City within twenty (20) days from the date of billing by the City. (Ord. 664 §1, 1984)

#### 8.24.030 Notice of Name of Service Personnel.

A. Every alarm user shall furnish to the Police Department of the City of Fountain the name, address and telephone number of the person to be notified to render service to the alarm system during any hour of the day or night when such alarm is activated, together with the name, address and telephone number of the occupant of the building, place or premises in or on which the alarm is located.

B. The person so notified shall proceed immediately to the location of the activated alarm and shall render service necessary to restore alarm to normal operating condition. The

occupant of the building, place or premises may, by authority of the alarm user, assume the obligation to respond. (Ord. 664 §1, 1984)

8.24.040 Audibility. It is unlawful to install, maintain, use, or utilize an alarm, which upon activation emits any sound which is audible outside of the building, premises or place on which it is installed due to amplification or the alarm signal being located outside of the building. (Ord. 664 §1, 1984)

8.24.050 Compliance. All alarms installed on or prior to the effective date of this ordinance shall be made to conform with the provision of this ordinance within ninety (90) days after the effective date of this ordinance. (Ord. 664 §1, 1984)

8.24.060 Public Nuisance. All alarms which do not comply with the provisions of this ordinance are unlawful and a public nuisance and may be abated as such. (Ord. 664 §1, 1984)

8.24.070 Automatic Dialing Prohibited. It shall be unlawful for any person to use or cause to be used any telephone device, telephone attachment, or mechanical device, using telephone lines, that automatically selects a public primary telephone trunk line of the City, or its police or fire departments, or the 911 emergency response center, and then reproduce a pre-recorded message to report an alarm or other emergency. No installation of radio activated alarm receivers shall be authorized at either the police or fire alarm centers. (Ord. 664 §1, 1984)

8.24.080 Violation of Ordinance. It is unlawful for any alarm user or any person to violate or fail to comply with any provision of this ordinance. (Ord. 664 §1, 1984)

## **TITLE 9**

### **Chapter 9.01**

#### **ADMINISTRATION AND ENFORCEMENT**

Sections:

9.01.010	Application of Chapter
9.01.020	Definitions
9.01.030	Corporations and Criminal Liability
9.01.040	Defenses of Intoxication
9.01.050	Accessory
9.01.060	Conspiracy
9.01.070	Criminal Attempt
9.01.080	Penalties



9.01.010 Application of Chapter. Except where specifically limited, this Title shall apply to all areas within the corporate limits of the City and to all other areas, the use of which the City has jurisdiction and authority to regulate pursuant to ordinance, statute or agreement. (Ord. 762 §1, 1987)

9.01.020 Definitions.<sup>9</sup> The following terms as used in this Chapter shall have the meanings hereinafter designated, unless the context specifically indicates otherwise, or unless such meaning is excluded by express provision.

- A. "Act". Includes a bodily movement, words, or possession of property.
- B. "Aid" or "Assist". Includes knowingly to make possible or available, or to further the activity aided or assisted.
- C. "Assault". An unlawful attempt coupled with a present ability to commit a bodily injury on the person of another.
- D. "Benefit". Any gain or advantage to the beneficiary including any gain or advantage to another person pursuant to the desire or consent of the beneficiary.
- E. "Bodily Injury". Physical pain, illness or any impairment of physical or mental condition, and unlawful touching.
- F. "Carelessly". A person acts carelessly with respect to a result or to a circumstance which is defined as an offense when he fails to perceive a substantial or unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that failure to perceive it constitutes deviation from the standard of care that a reasonable and prudent person, having regard to the actual and potential hazards and conditions then existing, would observe in that situation.
- G. "Conduct". An act or omission and its accompanying state of mind or where relevant, a series of acts or omissions.
- H. "Deface". To alter the appearance of something by removing, distorting, adding to or covering all or a part of the thing.
- I. "Dwelling". A building which is used, intended to be used, or usually used by a person for habitation.
- J. "Intentionally". A person acts intentionally with respect to a result or to conduct described by an ordinance defining a violation, when his conscious object is to cause that result or to

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<sup>9</sup> For definitions of general application, see section 1.04.030 of this Code.

engage in that conduct or when his actions are such as to give rise to a substantial certainty that such results will be produced.

K. "Knowingly". A person acts knowingly with respect to conduct or to a circumstance described by an ordinance defining a violation when he is aware, or reasonably should be aware, that his conduct is of that nature or that the circumstance exists.

L. "Omission". A failure to perform an act as to which a duty of performance is imposed by law.

M. "On". When used in conjunction with public places such as streets, includes contact with, or within or upon, a vehicle or other thing or structure which is in contact with the public place or street.

N. "Peace Officer". Any sheriff, deputy sheriff, police officer or other law enforcing authority or officer except privately-employed security personnel.

O. "Place Within Public View". Any place where conduct by a person reasonably may be expected to be open to view by members of the public.

P. "Premises". Includes vehicles or boats.

Q. "Public Place". A place to which the public or a substantial number of the public has access, and includes highways, transportation facilities, parking lots, schools, places of amusement, parks, playgrounds and the common areas of public and private buildings and facilities.

R. "Public Servant". Any officer or employee of government, whether elected or appointed, and any person participating as an advisor, consultant, process server, or otherwise in performing a governmental function, but the term does not include witnesses.

S. "Recklessly". A person acts recklessly with respect to a result or to a circumstance described by an ordinance defining a violation when he is aware or reasonably should be aware of and consciously disregards a substantial or unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the disregard thereof constitutes a willful or wanton deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates a risk but is unaware thereof solely by reason of self-induced intoxication as defined elsewhere herein acts recklessly with respect thereto. (Ord. 762 §1, 1987)

#### 9.01.030 Corporations and Criminal Liability.

- A. A corporation is guilty of an offense if:
1. The conduct constituting the offense consists of an omission to discharge a specific duty or affirmative performance imposed on corporations by law; or
  2. The conduct constituting the offense is engaged in, authorized, solicited, requested, commanded, or knowingly tolerated by the board of directors or

by a high managerial agent acting within the scope of his employment or in behalf of the corporation.

3. As used in this Title, "agent" means any director, officer or employee of a corporation, or any other person who is authorized to act in behalf of the corporation, and "high managerial agent" means an officer of a corporation or any other agent in a position of comparable authority with respect to the formulation of corporate policy or the supervision in a managerial capacity of subordinate employees.

B. A person is liable criminally for conduct constituting a violation which he performs or causes to occur in the name of or on behalf of a corporation to the same extent as if such conduct were performed or caused by him in his own name or behalf. (Ord. 762 §1, 1987)

#### 9.01.040 Defenses of Intoxication.

A. Intoxication of the accused is not a defense to a criminal charge, except as provided in subsection (B) hereof, but in any prosecution for a violation, evidence of intoxication of the defendant may be offered by the defendant whenever it is relevant to negate the existence of a specific intent if such intent is an element of the crime charged.

B. A person is not responsible criminally for his conduct if, by reason of intoxication that is not self-induced at the time he acts, he lacks capacity to conform his conduct to the requirements of the law.

C. "Intoxication" as used in this section means a disturbance of mental or physical capacities resulting from the introduction of any substance into the body.

D. "Self-induced intoxication" means intoxication caused by substances which the defendant knows or ought to know have the tendency to cause intoxication and which he knowingly introduced or allowed to be introduced into his body, unless they were introduced pursuant to medical advice or under circumstances that would afford a defense to a charge of crime.

E. The issue of intoxication is an affirmative defense. (Ord. 762 §1, 1987)

#### 9.01.050 Accessory. It shall be unlawful for any person to be an accessory.

A. A person is an accessory if, with intent to hinder, delay or prevent the discovery, detection, apprehension, prosecution, conviction or punishment of another for a violation of this Code, he renders assistance to such person.

B. "Render assistance" means to:

1. Harbor or conceal the other; or
2. Warn such person of impending discovery or apprehension, except that this does not apply to a warning given in an effort to bring such person into compliance with the law; or

3. Provide such person with money, transportation, weapon, disguise or other things to be used in avoiding discovery or apprehension; or
4. Conceal, destroy or alter any physical evidence.

(Ord. 762 §1, 1987)

9.01.060 Conspiracy. It shall be unlawful for any person to conspire with another to commit a violation of this Code.

A. A person conspired to commit a violation of this Code, if, with the intent to promote or facilitate its commission, he agrees with another person or persons that they, or one or more of will engage in conduct which constitutes such a violation or an attempt to commit such violation, or he agrees to aid such an attempt to commit such violation, or he agrees to aid such other person or persons in the planning or commission of such a violation or of an attempt to commit such a violation.

- B.
  1. No person may be convicted of conspiracy, unless an overt act in pursuance of such conspiracy is proved to have been done by him or by a person with whom he conspired.
  2. If a person knows that one with whom he conspires to commit a violation has conspired with another person or persons to commit the same violation, he is guilty of conspiring to commit the same violation with such other person or persons, whether or not he knows their identity.
  3. If a person conspires to commit a number of violations, he is guilty of only one conspiracy so long as such multiple violations are part of a single criminal episode. (Ord. 762 §1, 1987)

9.01.070 Criminal Attempt. It shall be unlawful to commit a criminal attempt as set out hereafter:

A. A person commits criminal attempt if, acting with the kind of culpability otherwise required for commission of an offense, he intentionally engages in conduct constituting a substantial step toward commission of a violation of this Code. A substantial step is any conduct, whether act, omission or possession which strongly corroborates the firmness of the actor's intent to complete the commission of the violation. Factual or legal impossibility of committing the violation is not a defense if the violation could have been committed had the attendant circumstances been as the actor believed them to be, nor is it a defense that the violation attempted was actually perpetrated by the accused.

B. A person who engages in conduct intending to aid another to commit a violation commits criminal attempt if the conduct would establish his complicity were the violation committed by the other person, even if the other is not guilty of committing or attempting the violation. For purposes of this section, complicity means that a person legally is accountable as principal for the behavior of another constituting a violation if, with the intent to promote or facilitate the commission of the violation, he aids, abets or advises such other person in planning or committing the violation.

C. It is an affirmative defense to a charge under this section that the defendant abandon his effort to commit the violation or otherwise prevented its commission, under circumstances manifesting the complete and voluntary renunciation of his criminal intent. (Ord. 762 §1, 1987)

9.01.080 Penalties. Whenever in this Title any act is prohibited or is made or declared to be unlawful, an offense, violation or misdemeanor, or the doing of any act is required, or the failure to do any act is declared to be unlawful or an offense, violation, or misdemeanor, any person who shall be convicted of the violation of any such provisions of this title shall be punished as provided in section 1.08.010 of this Code. (Ord. 762 §1, 1987)

## Chapter 9.04

### OFFENSES AFFECTING THE PUBLIC PEACE AND SAFETY

#### Sections:

9.04.010	Loitering
9.04.020	Failure to Desist or Disperse
9.04.030	Disturb Lawful Assemblies
9.04.040	Unlawful Use of Telephone
9.04.050	Leaving Cellar Doors and Other Openings Uncovered or Unsafe
9.04.060	Storage of Unsafe Icebox and Similar Items
9.04.070	Harassment
9.04.080	Expectorating on Sidewalks
9.04.090	Mandatory Use of Safety Belt Systems
9.04.100	Unlawful to Maintain Vehicles in Dangerous Manner

#### 9.04.010 Loitering.

A. Definition. The word "loiter" shall mean to be dilatory, to stand idly around, to linger, delay, wander about, to remain, abide or tarry in a public place.

#### B. Acts Prohibited:

1. It shall be unlawful for any person to loiter so as to warrant alarm for the safety of persons of property in the vicinity.
2. Loitering on School Ground: It shall be unlawful to loiter on school grounds. A persons loiters on school grounds if:
  - a. At a time when the school is in session or when persons under the age of eighteen (18) are otherwise present in the school building or on the grounds;
  - b. Having been asked to leave by a school administrator or his representative or a peace officer;
  - c. He loiters in the school building, on the school grounds, or within one hundred feet (100') of the school grounds;

- d. Without having any reason related to custody of or responsibility of a pupil attending that school, or any other specific, legitimate reason for his presence;
  - e. Under no circumstances in which his continued presence interferes with or disrupts the school program or interferes with or endangers school children or personnel present in the school building or on its grounds.
3. It shall be unlawful for any person to beg or to loiter with the intent to beg in any public place.

C. Reasonable Grounds, Duty of Officer. For purposes of a prosecution under subsection (B) (1), the following applies:

- 1. Among the circumstances which may be considered in determining whether reasonable grounds for belief have arisen that such person is loitering is the fact that such person:
  - a. Takes flight upon appearance of a peace officer; or
  - b. Refuses to identify himself; or
  - c. Manifestly endeavors to conceal himself or any object; or
  - d. Systematically checks the means or access to buildings or vehicles; or
  - e. Maintains a continuous presence in close proximity to a place when his activity manifests a high probability of unlawful activity.
- 2. Unless flight by the person or other circumstances make it impractical, a peace officer shall, prior to any arrest for an offense under this section, afford the person an opportunity to dispel any alarm otherwise warranted, or explain any circumstances giving rise to reasonable grounds for belief that such person is loitering by requesting him to:
  - a. Identify himself; and
  - b. Explain his presence and conduct.

D. Standard for Conviction. No person shall be convicted of an offense under subsection (B)(1), if the peace officer did not comply with subsections (C)(2)(a) and (b) of this section, or if at trial, that the explanation of presence and conduct given by the defendant was true and, if believed by the peace officer at the time, would have dispelled any alarm or would have disclosed a lawful purpose. (Ord. 762 §1, 1987)

9.04.020 Failure to Desist or Disperse. It shall be unlawful for any person to intentionally, knowingly or recklessly fail or refuse to obey an order which:

- A. Is made by a peace officer while in the discharge or apparent discharge of his duties; and
- B. Directs that person or a group of which that person is a member, to desist from conduct or disperse from an area; and

C. Is given at a time when that person individually or with others is participating in a course of conduct or is present in an area where such conduct or presence creates, maintains or aggravates an immediate substantial danger of damage or injury to persons or property or substantially obstructs the performance of any governmental function. (Ord. 762 §1, 1987)

9.04.030 Disturbing Lawful Assemblies.

A. It shall be unlawful for any person, by his conduct in, on or near the premises, property or facilities of the City or any public place, institution, office or buildings or any school, congregation or assembly meeting for religious worship or any other lawful meeting or assembly to intentionally, knowingly or recklessly:

1. Obstruct a street, highway, sidewalk, railway, waterway, building entrance, elevator, aisle, stairway or hallway to which the public or a substantial group of the public has access, or any other place used for the passage of persons, vehicles or conveyances, whether this obstruction arises from his acts alone or from his acts and the acts of others; or
2. Disobey a reasonable request or order to move issued by a person he knows to be a peace officer, a fireman, or a person with authority to control the use of the premises, to prevent obstruction of a highway, passageway or of the premises or facilities, or to maintain public safety by dispersing those gathered in dangerous proximity to a fire, riot or other hazard.
3. Substantially to disrupt, obstruct or interfere with any lawful meeting, procession or gathering in or on such premises by intentional physical action, verbal utterance or any other means.
4. Deny any public servant, official, employee, invitee or student:
  - a. Lawful freedom of movement on the premises;
  - b. Lawful use of the property, premises or facilities;
  - c. The right of lawful ingress and egress to such property.
5. Impede any public servant, official, employee, invitee or student in the lawful performance of his duties or activities through the use of restraint, coercion, or intimidation or when force and violence are present or threatened.
6. Fail or refuse to leave such premises, property or facilities or the immediate vicinity thereof, upon being reasonably requested to do so by a peace officer, chief administrative officer, or his designee, dean of an educational institution, or other individual or public servant with authority to control the use of the premises if such person is committing, threatens to commit, or incites others to commit, any act which would obstruct, disrupt, restrict or impeded the lawful missions, processes, procedures or functions in or on such premises, property or facilities.

B. For the purposes of this section, "obstruct" means to render impassable or to render passage unreasonably inconvenient or hazardous.

C. Nothing in this section shall be construed to prevent lawful assembly and peaceful and orderly petition for the redress of grievances. (Ord. 762 §1, 1987)

9.04.040 Unlawful Use of Telephone.

A. It shall be unlawful for any person, by means or use of a telephone, to intentionally, knowingly or recklessly disturb or tend to disturb the peace, quiet or right of privacy of any person or family, or harass any person or family by:

1. Making a telephone call or causing the telephone to ring repeatedly whether or not a conversation ensues, with no purpose of legitimate conversation; or
2. Making a single or repeated communications at inconvenient hours or in offensively coarse, obscene or profane language; or
3. Attempting to extort money or other things of value; or
4. Threatening any physical harm or violence.

B. As used in section (A)(2) above, unless the context otherwise requires, "obscene" means a patently offensive description of ultimate sexual acts or solicitation to commit ultimate sexual acts, whether or not said ultimate sexual acts are normal or perverted, actual or simulated, including masturbation, cunnilingus, fellation, anilingus, or excretory functions.

C. An act prohibited by subsection (A) 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.

9.04.050 Leaving Cellar Doors and Other Openings Uncovered or Unsafe. It shall be unlawful for any person to leave open, uncovered, unguarded or in unsafe condition, any cellar door, hatchway, pit, vault or excavation upon any sidewalk, street, alley or public place or so near thereto as to constitute a hazard. (Ord. 762 §1, 1987)

9.04.060 Storage of Unsafe Icebox and Similar Items.

A. It shall be unlawful for any person to store, maintain, abandon, discard or place any icebox, refrigerator or freezer which is not being used for refrigeration purposes in any public or private place accessible to children without first doing one or more of the following to any such icebox, refrigerator or freezer:

1. Removing the door or doors; or
2. Removing the latches and affixing a block or wedge or other device to the inner door surface in such a manner that the door or doors cannot shut to form a tight seal; or
3. Padlocking the door or doors shut; or
4. Securing the door or doors shut with metal strapping.

B. It shall be unlawful for any person to abandon or discard in any public or private place accessible to children, or for the owner, lessee or manager of any property to knowingly permit to remain abandoned or discarded in any place under his control which is accessible to children, any chest, closet, piece of furniture or other article having a compartment of a capacity of one and one-half cubic feet or more and having a door or lid which, when closed, cannot be opened easily from the inside. (Ord. 762 §1, 1987)



9.04.070 Harassment. It shall be unlawful for any person to commit harassment. A person commits harassment if, with intent to harass, annoy or alarm another person, he:

1. Strikes, shoves, kicks or otherwise touches a person or subjects him to physical contact; or
2. Follows a person in or about a public place; or
3. Repeatedly insults, taunts, or challenges another in a manner likely to provoke a violent or disorderly response. (Ord. 762 §1, 1987)

9.04.080 Expectorating on Sidewalks, or in a Public Building Prohibited. It is unlawful for any person to expectorate or spit upon any sidewalk, or upon the floor of any public building or public place. (Ord. 762 §1, 1987)

9.04.090 Mandatory Use of Safety Belt Systems.

A. As used in this section:

1. "Motor vehicle" means a self-propelled vehicle intended primarily for use and operation on the public streets and highways including passenger cars, station wagons, vans, taxicabs, ambulances, motor homes, and pickups. The term does not include motorcycles, motorscooters, motorbicycles, motorized bicycles, passenger buses, school buses, and farm tractors and implements of husbandry designed primarily or exclusively for use in agricultural operations.
2. "Safety belt system" means a system utilizing a lap belt, a shoulder belt, or any other belt or combination of belts installed in a motor vehicle to restrain drivers and passengers, which system conforms to federal motor vehicle safety standards.

B. Unless exempted pursuant to subsection (C) of this section, every driver of and every front seat passenger in a motor vehicle equipped with a safety belt system shall wear a fastened safety belt while the motor vehicle is being operated on a street or highway within the City.

C. The requirement of subsection (B) of this section shall not apply to:

1. A child required by section 42-4-235, C.R.S. to be restrained by a child restraint system;
2. A member of an ambulance team, other than the driver, while involved in patient care;
3. A peace officer, as defined in section 18-1-901 (3)(1)(I), C.R.S., while performing official duties so long as the performance of said duties is in accordance with rules and regulations applicable to said officer which are at least as restrictive as subsection (B) of this section and which only provide exceptions necessary to protect the officer;
4. A person with a physically or psychologically disabling condition whose physical or psychological disability prevents appropriate restraint by a safety belt system if such person possesses a written statement by a physician certifying the condition, as well as stating the reason why such restraint is inappropriate;

5. A person driving or riding in a motor vehicle not equipped with a safety belt system due to the fact that federal law does not require such vehicle to be equipped with a safety belt system;
6. A rural letter carrier of the United States postal service while performing duties as a rural letter carrier; and
7. A person operating a motor vehicle for commercial or residential delivery or pickup service; except that such person shall be required to wear a fastened safety belt during the time period prior to the first delivery or pickup of the day and during the time period following the last delivery or pickup of the day.

D. No driver or passenger in a motor vehicle shall be cited for a violation of subsection (B) of this section unless the driver was stopped by a law enforcement officer for an alleged traffic violation, other than a violation of this section. (Ord. 762 §1, 1987)

9.04.100 Unlawful to Maintain Vehicles in Dangerous Manner. It shall be unlawful for any person to maintain and leave unattended on public or private property any motor vehicle in a position elevated above the ground by means of jacks, ramps, blocks or such other similar devices. (Ord. 762 §1, 1987)

## **Chapter 9.08**

### **OFFENSES AGAINST PUBLIC OFFICIALS AND JUSTICE**

#### Sections:

- |          |  |
|----------|--|
| 9.08.010 | Resisting, Interference With Public Official |
| 9.08.020 | Duty to Aid Police Officers                  |
| 9.08.030 | Impersonating an Officer                     |
| 9.08.040 | False Information                            |

#### 9.08.010 Resisting, Interference With Public Official.

- A. Resisting, Assaulting an Officer.
1. It shall be unlawful for any person to knowingly, intentionally or recklessly resist any peace officer, any member of the Police Department, or any person duly empowered with police authority, while such official is in the discharge of apparent discharge of his duty.
  2. It shall be unlawful for any person to knowingly, intentionally or recklessly assault in any manner any peace officer, any member of the Police Department, or any person duly empowered with police authority, while such official is in the discharge or apparent discharge of his duty. For purposes of this section, an assault is an unlawful attempt coupled with a present ability to commit a bodily injury on the person of another.

B. Interference. It shall be unlawful for any person to intentionally, knowingly or recklessly, by use or threatened use (with the present ability to carry out such threat) of violence, force or physical interference or obstacle, to obstruct, interfere with, or impair any member of the Police Department, or any person duly empowered with police authority, while such official is in the discharge or apparent discharge of his duty.

C. Defenses to Prosecution. In a prosecution under subsections (A) and (B) hereof, it is no defense that the peace officer was attempting to make an arrest which in fact was unlawful, if he was acting under color of his official authority, and in attempting to make the arrest he was not resorting to unreasonable or excessive force giving rise to the right of self defense. A peace officer acts “under color of his official authority” when, in the regular course of assigned duties, he is called upon to make, and does make, a judgment in good faith based upon surrounding facts and circumstances that an arrest should be made by him.

D. Definition of Peace Officer. The term “peace officer”, as used in this section, means a police officer in uniform, or if out of uniform, one who properly has identified himself to the person whose arrest is attempted. When reasonable under the circumstances, the “peace officer” shall attempt to apprise any third person of his identity. (Ord. 762 §1, 1987)

9.08.020 Duty to Aid Police Officers. It shall be unlawful for any person eighteen (18) years of age or older when called upon by any peace officer or member of the Police Department, unreasonably to fail or refuse to promptly aid and assist any peace officer or member of the Police Department while such official is in the discharge of his duty. (Ord. 762 §1, 1987)

9.08.030 Impersonating an Officer.

A. It shall be unlawful for any person other than an official peace officer of the City to wear the uniform, apparel or any other insignia of office like or similar to, or a colorable imitation of that adopted and worn by the official peace officer, or to use any kind of police whistle like or similar to that adopted by the Police Department.

B. It shall be unlawful for any person to counterfeit, imitate, or colorably imitate, or cause to be counterfeited, imitated or colorably imitated, the uniform, apparel or insignia of office used by the Police Department of the City.

C. It shall be unlawful for any person, without due authority, to exercise or attempt to exercise the authority of any peace officer, sheriff, deputy sheriff, marshal, public officer or investigator, inspector, deputy or clerk in any City department, or any other law enforcement officer for any purpose or for any person to falsely assume, pretend to be or hold himself out to be such officer for any purpose.

D. It shall be unlawful for any person not a member of the Fire Department to impersonate a firefighter or officer of such Department. (Ord. 762 §1, 1987)

9.08.040 False Information.

A. It shall be unlawful for any person to intentionally, knowingly or recklessly give false or misleading information to any peace officer or other employee of the City who is acting in his official capacity and within the scope of his employment.

B. It shall be unlawful for any person to intentionally, recklessly, knowingly or carelessly make, turn in or give a false alarm or false information concerning fire, the need for police or ambulance, or of injury or disaster which causes aid or other rescue efforts to needlessly launched. (Ord. 762 §1, 1987)

**Chapter 9.12**

**OFFENSES AGAINST MORALS AND DECENCY<sup>1</sup>**

Sections:

- |          |                         |
|----------|-------------------------|
| 9.12.010 | Prostitution            |
| 9.12.020 | Public Indecency        |
| 9.12.030 | Urination or Defecation |

9.12.010 Prostitution.

A. Prostitution Unlawful. It shall be unlawful for any person to engage in prostitution.

B. Soliciting. It shall be unlawful for any person to solicit for prostitution. A person solicits for prostitution if he:

1. Asks, proposes or otherwise seeks to engage another for the purpose of prostitution; or
2. Arranges or offers to arrange a meeting of persons for the purpose of prostitution;
3. Directs another to a place knowing such direction is for the purpose of prostitution.

C. Pandering. It shall be unlawful for any person to pander. A person panders when, in exchange for money or other thing of value, he knowingly arranges or offers to arrange a situation in which a person may engage in prostitution.

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<sup>1</sup> Article 7 of Title 18 of the Colorado Revised Statutes controls offenses relating to morals.

D. Keeping a Place of Prostitution. It shall be unlawful for any person to keep a place of prostitution. Any person who has control or exercises control over the use of any premises which offers seclusion or shelter for the practice of prostitution keeps a place of prostitution if he performs any one or more of the following:

1. Knowingly grants or permits the use of such place for the purpose of prostitution; or
2. Permits the continued use of such place for the purpose of prostitution after becoming aware of facts or circumstances from which he should reasonably know that such place is being used for the purposes of prostitution.

E. Patronizing a Prostitute. It shall be unlawful for any person to patronize a prostitute. Any person who performs any one or more of the following acts with a person not his spouse patronizes a prostitute:

1. Engages in sexual conduct or activity with a prostitute; or
2. Enters or remains in a place of prostitution with intent to engage in sexual conduct or activity with a prostitute.

F. Loitering for the Purposes of Prostitution. It shall be unlawful for any person to loiter for the purpose of prostitution.

1. A person loiters for the purpose of prostitution if he loiters in a manner and under circumstances manifesting the purpose of inducing, enticing, soliciting or procuring another to engage in prostitution. Among the circumstances which may be considered in determining whether the purpose of prostitution is manifested are the following.
  - a. Such person is a known prostitute or panderer or, if such person is now a known prostitute or panderer, such person maintains a presence in an area which, within the knowledge of the arresting officer, is frequented by known prostitutes or panderers; and,
  - b. Such person either:
    - (1) Repeatedly beckons to, stops or attempts to stop passersby, or engages or attempts to engage passersby in conversation; or
    - (2) Repeatedly stops or attempts to stop motor vehicle operators by hailing, waving of arms or any other gesture or action.
2. Any person suspected of loitering for the purpose of prostitution shall be afforded an opportunity to explain his presence and conduct prior to his arrest.
3. No person shall be convicted of loitering for the purpose of prostitution if it appears at trial that such person was not afforded an opportunity to explain his presence and conduct prior to arrest or if it appears at trial that the explanation given by such person was true and disclosed a lawful purpose.

G. Definitions. For the purposes of this section, the following definitions shall apply:

1. "Prostitution" means engaging, offering to engage or agreeing to engage in sexual conduct or activity with any person except one's spouse where one or more of the parties is to receive money or any other thing of value in exchange for performing such sexual conduct or activity.
2. "Prostitute" means any person who engages in prostitution.
3. "Sexual Conduct or Activity" means any act involving contact between the genitals of one person and the mouth, hand, anus or genitals of another person, including genital intercourse, fellatio, cunnilingus, masturbation or anal intercourse.
4. "Loiter" means to be dilatory, to stand idly around, to linger, delay, remain, abide, tarry or wander about in a public place.
5. "Known Prostitute or Panderer" means a person who, within one year prior to the date of arrest for violation of subsection (F) hereof, has been convicted of prostitution, soliciting, pandering or loitering for the purpose of prostitution, and such conviction is within the knowledge or information of the arresting officer. (Ord. 762 §1, 1987)

9.12.020 Public Indecency. It shall be unlawful for any person to knowingly perform any of the following acts in a public place or a place within public view:

A. An act involving sexual conduct or activity. For the purposes of this section, the term "sexual conduct or activity: shall mean any act involving contact between the genitals of one person and the mouth, hand, anus or genitals of either that person or another person, including genital intercourse, fellation, cunnilingus, masturbation or anal intercourse.

B. A Lewd Act. For the purposes of this section, any of the following shall constitute a lewd act:

1. Exposure of the breasts of the female or the pubic hair, anus, vulva, genitals or buttocks of either sex, done with the intent to arouse or satisfy the sexual desire of either the person committing the act or any other person.
2. Exposure of the breasts of the female or the pubic hair, anus, vulva, genitals or buttocks of either sex under circumstances in which such conduct is reasonable likely to cause affront or alarm to another person.
3. Caressing or fondling of the breasts of the female or the pubic hair, anus, vulva, genitals or buttocks of either sex, either on the person or that person performing the act or on the person of another, whether or not the person being caressed or fondled is clothed. (Ord. 762 §1, 1987)

9.12.030 Urination or Defecation. It shall be unlawful for any person to urinate or defecate upon any public place or place within public view other than in a toilet facility provided for such purpose. (Ord. 762 §1, 1987)

## Chapter 9.16

### GAMBLING

#### Sections:

- 9.16.010 Definitions
- 9.16.020 Gambling Offenses
- 9.16.030 Seizure of Gambling Devices, Proceeds

9.16.010 Definitions.<sup>10</sup> The following terms, as used in this Chapter, shall have the meanings hereinafter designated, unless the context specifically indicates otherwise, or unless such meaning is excluded by express provision.

- A. "Gain". The direct realization of winnings.
- B. "Profit". Any other realized or unrealized benefit, direct or indirect, including benefits from proprietorship, management or unequal advantage in a series of transactions.
- C. "Gambling". Risking any money, credit, deposit or other thing of value for gain contingent in whole or in part upon lot, chance, the operation of a gambling device, or the happening or outcome of an event, including a sporting event over which the person taking a risk has no control, but does not include:
  - 1. Bona fide contests of skill, speed, strength or endurance in which awards are made only to entrants or the owners of entries;
  - 2. Bona fide business transactions which are valid under the law of contracts; or such purpose;
  - 3. Other acts or transactions now or hereafter expressly authorized by law;
  - 4. Any game, wager or transaction which is incidental to a bona fide social relationship, is participated in by natural persons only, and in which no person is participating, directly or indirectly, in professional gambling.
- D. "Professional Gambling".
  - 1. Aiding or inducing another to engage in gambling, with the intent to derive a profit therefrom; or
  - 2. Participating in gambling and having, other than by virtue of skill or luck, a lesser chance of losing or a greater chance of winning than one or more of the other participants.

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<sup>10</sup> For definitions of general application, see section 1.04.030 of this Code.

E. "Gambling Device". Any device, machine, paraphernalia or equipment that is used or usable in the playing phases of any professional gambling activity, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine.

F. "Gambling Premise". Any building, house, room, enclosure, vehicle, vessel or other place, whether open or enclosed, used or intended to be used for professional gambling. In the application of this definition, any place where a gambling device is found shall be presumed to be intended to be used for professional gambling.

G. "Gambling Proceeds". All money or other things of value at stake or displayed in or in connection with professional gambling. (Ord. 762 §1, 1987)

#### 9.16.020 Gambling Offenses.

A. Gambling Prohibited. It shall be unlawful for any person to engage in gambling, or professional gambling, as defined herein.

B. Possession of a Gambling Device. It shall be unlawful for any person to own, manufacture, sell, transport, possess or engage in any transaction designed to affect the ownership, custody, or use of a gambling device, knowing that it is to be used in professional gambling.

C. Gambling Premises. It shall be unlawful for any person as owner, lessee, agent, employee, operator or occupant, knowingly to maintain or aid or permit the maintaining of a gambling premise. (Ord. 762 §1, 1987)

9.16.030 Seizure of Gambling Devices, Proceeds. al gambling devices, instruments and things used for the purpose of gambling, as well as gambling proceeds, are hereby declared to be contraband and shall be subject to seizure by any peace officer, and may be confiscated and destroyed by order of any judge of the municipal court. All gambling proceeds shall be forfeited to the City and transferred by court order to the General Fund of the City. (Ord. 762 §1, 1987)

### **Chapter 9.20**

#### **OFFENSES AFFECTING PROPERTY**

##### I. GENERAL OFFENSES

#### Sections:

9.20.010	Damage to Property
9.20.020	Trespass on Private Property
9.20.030	Trespass Upon Public Property
9.20.040	Use of Property of Another



- 9.20.050 Parking Motor Vehicles on Private Property
- 9.20.060 Unlicensed or Unregistered Vehicles on Property of Another

## II. LITTER

- 9.20.080 Definitions
- 9.20.090 Littering Prohibited
- 9.20.100 Litter Receptacles Required on Private Property
- 9.20.110 Littering From Vehicles – Presumption
- 9.20.120 Sidewalks and Parking Areas to be Kept Free of Litter

## III. SHOPLIFTING AND PRICE SWITCHING

- 9.20.130 Shoplifting
- 9.20.140 Concealment of Goods
- 9.20.150 Questioning of Person Suspected of Shoplifting Without Liability
- 9.20.160 Price Switching

## IV. THEFT

- 9.20.170 Theft
- 9.20.180 Theft of Rental Property

### 9.20.010 Damage to Property.

A. Private Property. It shall be unlawful for any person intentionally, knowingly or recklessly to injure, deface, destroy or sever in any manner any real or personal property or improvements thereto of any other person in this City.

B. City Property. It shall be unlawful for any person intentionally, knowingly or recklessly to injure, deface, destroy or sever in any manner any real or personal property or improvements thereto belonging to the City.

### C. Graffiti.

#### 1. Definitions.

- a. The term “graffiti” as used in this Section means the defacing of public or private property by any person or persons by painting, drawing, writing, etching or carving with paint, spray paint, ink, knife or any other method.
- b. The terms “owner” and “property owner” as used in this Section mean any person owning, leasing, occupying or having control or possession of any property in the City.
- c. The term “cover over” as used in this Section means using the same cover treatment such as stain, paint, or stucco, which was used prior to the graffiti to an adequate extent so as to remove the graffiti from sight.

2. Declaration of Public Nuisance. All property defaced by graffiti which is visible to public view is hereby declared to be a public nuisance and in the interest of public health, safety and general welfare, shall be abated as set forth in this Section

3. Unlawful to Apply Graffiti. It shall be unlawful and considered a violation of this Section to cause graffiti to be placed on any public or private property within the City. Any person convicted for the violation of any provision of this Section shall be punished by a fine of not more than one thousand dollars (\$1,000.00), by imprisonment in jail for a period not exceeding one year or by both such fine and imprisonment. In addition to such fine and imprisonment any person convicted for a violation of any provision of this Section shall be ordered to pay restitution for reasonable costs incurred to abate the graffiti as may be determined by the Court to exist. Should the person convicted for a violation of any provision of this Section be a minor, the Court may apply the provisions of the parental responsibility Ordinance and require the parents and or custodial person of the minor to be jointly and severally liable for any or all of the restitution.

4. Unlawful to Fail to Abate Graffiti. It shall be unlawful and considered a violation of this Section for any person who is an owner, lessee or occupant or any agent, servant, representative or employee of the property owner, having control of any building, sign, fence, or other structure in the City to permit or maintain on any such structure the appearance of graffiti. It shall be the duty of any person who is the owner, lessee or occupant or any agent, servant, representative or employee of the property owner, having control of any building, sign, fence or other structure on which graffiti exists in violation of this section to remove or cover over so as to remove from sight all graffiti as often as may be necessary to comply with the provisions of this Section.

Whenever any graffiti shall be found, the City Manager or his designee may issue an abatement order, either by delivery of written letter or by posting on the property, requiring the occupant or owner of the property upon which the graffiti shall exist at the owner or occupants expense, to remove or cover over the same within twenty-four (24) hours or such period in excess of twenty-four (24) hours as designated in writing by the City Manager or his designee. If the occupant or owner does not comply with the abatement order of the City Manager or his designee, the owner or occupant may be issued a Summons alleging a violation of this Section for failure to abate graffiti, and each 24 hour period following the period designated by the City Manager or his designee may constitute a new and separate offense.

5. Abatement of Graffiti by City and Collection of Costs from Property Owner. In addition to and regardless of whether or not a Summons and Complaint is issued, if the owner or occupant fails to comply with the abatement order of the City Manager or his designee, the City Manager or his designee may cause the graffiti to be removed or covered over and all expense incurred thereby shall be paid by the said occupant or owner and may be recovered by the City in an action against the occupant and/or owner.

In all cases where the City Manager or his designee shall incur any expense for abating any graffiti found upon any premises, the expense of such abatement plus twenty-five percent (25%) for incidental costs may be charged against the property upon or on account of which such expense was incurred, or from which such graffiti was removed or abated. A bill for such expense shall be mailed to the occupant and/or the owner and if the same shall not be paid within thirty (30) days, the City Manager or his designee shall add another twenty-five percent (25%) as penalty and shall cause the same to be assessed upon such property or lot or premises upon which the graffiti existed and to be collected by the El Paso County Treasurer for reimbursement to the City of Fountain in the same manner as a real estate tax upon the property.

6. Opportunity for Property Owner to Object and Have a Hearing. The property owner may object to the abatement order and request a hearing before the City Manager as long as it is done in writing and delivered to the City Manager prior to the expiration of the designated period of time in the abatement order. The City Manager shall keep a tape recording of the hearing which shall be conducted within three (3) days of the request and the decision of the City Manager shall be subject to review by court action pursuant to Rule 106 of the Colorado Rules of Civil Procedure.

7. Non-Exclusive Remedy. The abatement procedures set forth in this Section for defaced property shall not be exclusive and shall not restrict the City from concurrently enforcing other City Ordinances, or pursuing any other remedy provided by law. (Ord. 762 §1, 1987; Ord. 1003 §1, 1993)

9.20.020 Trespass on Private Property. It shall be unlawful for any person intentionally or knowingly to trespass or enter upon the land of another or in possession of another without the permission of the owner or the person in possession thereof, or, having lawfully entered upon such property, to remain thereon after having been directed by the owner or person in possession thereof to depart. (Ord. 762 §1, 1987)

9.20.030 Trespass Upon Public Property. It shall be unlawful for any person to knowingly enter or remain upon the land, watershed or premises belonging to the City or having lawfully entered upon such property remain thereon after having been directed by a City employee to depart. (Ord. 762 §1, 1987)

9.20.040 Use of Property of Another. It shall be unlawful for any person to use or cause to be used, in any manner, the real or personal property of another, or in lawful possession of another, for any purpose, including advertising, storage, trash disposal, grazing or recreation, without the permission of the owner or person in possession thereof. (Ord. 762 §1, 1987)

9.20.050 Parking Motor Vehicles on Private Property. It shall be unlawful for any person to park or stand a motor vehicle or other personal property on the premises of another or

on the lawful possession of another without the permission of the owner or person in possession thereof. (Ord. 762 §1, 1987)

9.20.060 Unlicensed or Unregistered Vehicles on Property of Another. It shall be unlawful for any person to ride or drive an all-terrain vehicle, mini-bike, dirt bike, off-the-road vehicle or motorcycle (2, 3 or 4 wheel) upon the land or real property of another without the written permission of the owner or person in possession thereof. (Ord. 762 §1, 1987)

9.20.080 Definitions<sup>1</sup> The following terms, as used in this Part, shall have the meanings hereinafter designated, unless the context specifically indicates otherwise, or unless such meaning excluded by express violation.

A. “Litter”. Any and all rubbish, waste material, refuse, garbage, trash, debris or other foreign substance, solid or liquid, of every form, size, kind and description.

B. “Littering”. Dumping, dropping, throwing, or depositing any litter or otherwise causing or permitting any litter to escape from a vehicle or otherwise. (Ord. 762 §1, 1987)

9.20.090 Littering Prohibited. It shall be unlawful for any person to litter on any public or private property in this City or any waters in this City unless:

A. Such property is an area designated by the State or any of its agencies or political subdivisions, including the City, for the disposal of such material and such person is authorized by the proper public authority to so use such property; or

B. The litter is placed in a receptacle or container used on such property for such purpose. (Ord. 762 §1, 1987)

9.20.100 Litter Receptacles Required on Private Property.

A. It shall be unlawful for any owner or occupant of private property, which with his consent is used by the public, to fail or refuse to provide litter receptacles in appropriate locations, to fail to post signs directing persons to such receptacles, or to fail to publicize the availability of litter receptacles on such property.

B. It shall be unlawful for any person responsible for providing such litter receptacles as determined herein, to fail or refuse to empty such containers as often as is necessary to prevent a nuisance. (Ord. 762 §1, 1987)

9.20.110 Littering From Vehicles – Presumption.

A. Whenever litter is thrown, deposited, dropped or dumped from any motor vehicle, the operator of said vehicle shall be presumed to have caused or permitted such littering. In the

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<sup>1</sup> For definitions of general application, see Section 9.01.020 of this Code.

event that positive identification cannot be made, it shall be presumed that the registered owner of such vehicle has caused or permitted such littering to occur.

B.

1. Whenever litter escapes from a vehicle designed or used as a transporter of material of any description, the person operating the vehicle shall be presumed to have caused or permitted such litter to have been thrown, deposited, dropped or dumped from the vehicle. Violation of this subsection shall result in a minimum fine of one hundred dollars (\$100.00) for each offense.
2. It shall be presumed that a vehicle used to transport material is subject to the provisions of Subsection (B)(1) of this Section. Such presumption may be rebutted by evidence that such use was for personal purposes and not incidental to a business or employment purpose. (Ord. 762 §1, 1987)

9.20.120 Sidewalks and Parking Areas to be Kept Free of Litter.

A. It shall be unlawful for the owner or person in charge of a place of business or shopping area to fail or refuse to maintain in a clean and unlettered condition the sidewalk area adjacent to such shopping area or place of business and any area used by persons for automobile parking.

B. It shall be unlawful for persons owning or occupying property to fail or refuse to keep the sidewalk and driveways abutting their premises clean and free of litter.

C. It shall be unlawful for any person to sweep into or deposit in any gutter, street, alley or other public or private place within the City an accumulation of litter from any building or lot, or from any public or private sidewalk or driveway. (Ord. 762 §1, 1987)

9.20.130 Shoplifting. It shall be unlawful for any person to knowingly, without authorization, or by threat or deception, obtain or exercise control over any goods, wares, merchandise or any other thing of value having a value of less than three hundred dollars (\$300.00) which is owned or held by and offered or displayed for sale by any store or other mercantile establishment, and

A. That persons intends to deprive the store or mercantile establishment permanently of the use or benefit of the thing of value; or

B. Knowingly uses, conceals or abandons the thing of value in such manner as to deprive the store or mercantile establishment permanently of its use or benefit; or

C. Uses, conceals, or abandons the thing of value intending that such use, concealment, or abandonment will deprive the store or mercantile establishment permanently of its use or benefit. (Ord. 762 §1, 1987)

9.20.140 Concealment of Goods. If any person willfully conceals unpurchased goods, wares, merchandise, or any other thing of value owned or held by and offered or intended to be offered or displayed for sale by any store or other mercantile establishment, whether the concealment be on his person or otherwise and whether such shall take place on or off the premises of said store or mercantile establishment, such concealment shall constitute prima facie evidence that the person intended to commit the offense of shoplifting. (Ord. 762 §1, 1987)

9.20.150 Questioning of Person Suspected of Shoplifting Without Liability. If any person conceals upon his person or otherwise carries away any unpurchased goods, wares, merchandise to be offered or displayed for sale by any store or other mercantile establishment, the merchant or any employee thereof, or any peace officer, acting in good faith and upon probable cause based upon a reasonable manner for the purpose of ascertaining whether the person is guilty of shoplifting. Such questioning of a person by a merchant, merchant's employee, or peace or police officer does not render the merchant, merchant's employee, or peace or police officer civilly or criminally liable for slander, false arrest, false imprisonment, malicious prosecution, or unlawful detention. (Ord. 762 §1, 1987)

9.20.160 Price Switching. It is unlawful for any person to knowingly alter, remove or switch the indicated price of any unpurchased goods, ware or merchandise owned or held by and offered or displayed for sale by any store or other mercantile establishment with the intent to deprive the owner, seller or mercantile establishment of a portion of the indicated price of said goods, ware or merchandise; provided, however, that this section shall only apply to goods, ware or merchandise of a value less than three hundred dollars (\$300.00).

(Ord. 762 §1, 1987)

9.20.170 Theft.

A. It shall be unlawful to commit theft. A person commits theft when he knowingly obtains or exercises control over anything of value of another without authorization, or by threat or deception, and:

1. Intends to deprive the other person permanently of the use or benefit of the thing of value; or
2. Knowingly uses, conceals, or abandons the thing of value in such a manner as to deprive the other person permanently of its use or benefit; or
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 is not legally entitled as condition of restoring the thing of value to the other person.

B. This section shall only apply if the thing involved is less than three hundred dollars (\$300.00). (Ord. 762 §1, 1987)

9.20.180 Theft of Rental Property.

A. It shall be unlawful to commit theft of rental property. A person commits theft of rental property if he:

1. Obtains the temporary use of personal property of another, which is available only for hire, by means of threat or deception, or knowing that such use is without the consent of the person providing the personal property; or
2. Having lawfully obtained possession for temporary use of the personal property of another which is available only for hire knowingly fails to reveal the whereabouts of or to return said property to the owner thereof or his representative or to the person from whom he has received it within seventy-two (72) hours after the time at which he has agreed to return it.

B. This section shall only apply if the value of said personal property is less than three hundred dollars (\$300.00). (Ord. 762 §1, 1987)

## Chapter 9.24

### OFFENSES RELATING TO FIREARMS AND WEAPONS

#### Sections.

9.24.010	Definitions
9.24.020	Carrying Weapons
9.24.030	Possession of Throwing Stars or Nunchaku in Public Prohibited
9.24.040	Discharge of Firearms
9.24.050	Forfeiture and Disposition

#### 9.24.010 Definitions.

A. "Blackjack" includes any billy, sand club, sandbag, or other hand-operated striking weapon consisting, at the striking end, of an encased piece of lead or other heavy substance and, at the handle end, a strap or springy shaft which increases the force of impact.

B. "Firearm" means any handgun, automatic, revolver, pistol, rifle, shotgun, air gun, gas-operated gun, spring gun, BB gun or other instrument or device capable or intended to be capable of discharging bullets, cartridges, explosive charges, pellets, Bibs or such other similar projectiles.

C. "Gas Gun" means a device designed for projecting gas-filled projectiles, which release their contents after having been projected from the device and includes projectiles designed for use in such device.

D. "Gravity Knife" means any knife that has a blade released from the handle or sheath thereof by the force of gravity or the application of centrifugal force, that when released is locked into place by means of a button, spring, lever, or other device.

E. "Knife" means any dagger, dirk, knife, or stiletto with a blade over three and one-half inches in length, or any other dangerous instrument capable of inflicting cutting, stabbing, or tearing wounds, but does not include a hunting or fishing knife carried for sports use. The issue that a knife is a hunting or fishing knife must be raised as an affirmative defense.

F. "Nunchaku" means an instrument consisting of two sticks, clubs, bars or rods to be used as handles, connected by rope, cord, wire or chain, which is in the design of a weapon used in connection with the practice of self-defense.

G. "Switchblade Knife" means any knife, the blade of which opens automatically by hand pressure applied to a button, spring, or other device in its handle.

H. "Throwing Star" means a disk having sharp radiating points or any disc-shaped bladed object which is hand-held and thrown and which is in the design of a weapon used in connection with the practice of a system of self-defense. (Ord. 762 §1, 1987; Ord. 813 §1, 1988)

#### 9.24.020 Carrying Weapons

A. As used in this section, the term "dangerous or deadly weapon" means any blackjack, gas gun, knife, gravity knife, switchblade knife or firearms as defined in this chapter.

B. It shall be unlawful for any person to carry a dangerous or deadly weapon concealed on or about his person.

C. It shall not be an offense under this section that at the time of the act of carrying the weapon that the defendant was:

1. A person in his or her own dwelling or place of business or on property owned or under his or her control at the time of the act of carrying; or
2. A person in a private automobile or other private means of conveyance who carries a weapon for lawful protection of such person's or another's person or property while traveling; or
3. A person who, at the time of carrying a concealed weapon, held a valid written permit to carry a concealed weapon issued pursuant to Section 18-12-105.1, C.R.S., as it existed prior to its repeal, or, if the weapon involved was a handgun, held a valid permit to carry a concealed handgun or a temporary emergency permit issued pursuant to part 2 of Article 12 of Title 18 C.R.S.; except that it shall be an offense under this section if the person was carrying a concealed handgun in violation of the provisions of Section 18-12-214 C.R.S.; or



4. A peace officer, as described in Section 16-2.5-101, C.R.S., when carrying a weapon in conformance with the policy of the employing agency as provided in Section 16-2.5-101(2), C.R.S.; or
5. A United States probation officer or a United States pretrial services officer while on duty and serving in the State of Colorado under the authority of rules and regulations promulgated by the judicial conference of the United States. (Ord. 1228 §1, 2004)

9.24.030 Possession of Throwing Stars or Nunchaku in Public Prohibited.

A. It shall be unlawful for any person to knowingly aim, swing, or throw a throwing star or nunchaku at another person or to knowingly possess a throwing star or nunchaku in a public place except for the purpose of presenting an authorized public demonstration or exhibition or for a school or class. When transporting throwing stars or nunchaku for a public demonstration or exhibition or for a school class, such devices shall be transported in a closed and secured container. (Ord. 762 §1, 1987)

9.24.040 Discharge of Firearms. It shall be unlawful for any person to wrongfully fire or discharge any cannon, gun, pistol or other firearm whatsoever within the City; provided however, that the discharge of firearms using only blank ammunition, by the members of any military company when on parade or when engaged in an official ceremony, done in accordance with the command of the commanding officer, shall not be deemed a violation hereof; nor shall the discharge of firearms at shooting galleries as a licensed business, or as part of a business licensed or permitted to operate within the City be deemed a violation hereof. (Ord. 762 §1, 1987)

9.24.050 Forfeiture and Disposition.

A. Forfeiture. Any dangerous or deadly weapon as defined by section 9.24.010 or any weapon used or possessed in violation of this Chapter shall be forfeited to the City upon a conviction resulting from such use or possession.

B. Disposition. It shall be the duty of every peace officer upon making an arrest and taking such a weapon, thing or substance from the person of the offender to deliver or cause to be delivered the same to the Chief of Police to be held in his custody until the final determination of the prosecution of said offense. The Chief of Police, or his authorized agent, shall dispose of weapons forfeited pursuant to subsection (A) above by destruction or sale in accordance with procedures and regulations of the Police Department. (Ord. 762 §1, 1987)

**Chapter 9.28**

**DANGEROUS WEAPONS AND SUBSTANCES**

**Sections:**

9.28.010 Concealment and Use

- 9.28.020 Use of Certain Chemicals Prohibited
- 9.28.030 Incendiary or Explosive Devices
- 9.28.040 Unlawful to Throw Stones or Missiles
- 9.28.050 Open Carrying of Firearms

9.28.010 Concealment and Use. It shall be unlawful for any person to wear under his clothes or conceal about his person, or to use or to attempt to use a weapon, any substance or article containing any substance whatsoever which is required to bear a cautionary label stating that its use in other than the manner prescribed thereby, is dangerous or deadly or injurious to the body of any person or animal, or may be the cause of illness of any person or animal, as such requirements are set forth in the Colorado Hazardous Substances Act,<sup>11</sup> or any other statute of the State of Colorado which may now be or hereafter be enacted to control such injurious substances, or are established by the Federal Hazardous Substances Act,<sup>12</sup> or are established by the Federal Food, Drug and Cosmetic Act,<sup>13</sup> as any such statute is now in effect or may hereafter be amended, or are established by any State or Federal regulation promulgated pursuant to any such statutes. (Ord 762 §1, 1987)

9.28.020 Use of Certain Chemicals Prohibited. It shall be unlawful for any person to have in his possession, to sell, to offer for sale, to give away, to lend or to furnish, to use or threaten to use any device for dispensing mace, paralyzing gas, mace or any similar chemicals or combination of chemicals, or other ingredients, designed to injury, maim, paralyze, immobilize or cause the illness of a person or animal, whether or not such substance is packaged in a container under pressure; provided, however, that any such device designed to be carried in a handbag or pocket and which does not contain more than one and one quarter (1 1/4) ounces of chemical may be possessed by and sold to persons eighteen (18) years of age and older and may be used by such persons in self defense. Nothing in this section or section 9.28.010 shall be construed to prohibit the use of such devices by peace officers and mailmen in the discharge of their duties, nor by City employees who have obtained the approval of the City Manager to use such devices in the discharge of their duties. (Ord. 762 §1, 1987)

9.28.030 Incendiary or Explosive Devices.

A. It shall be unlawful for any person to throw, place or cause to be placed any incendiary or explosive device for the purpose of causing injury to any person or damage to property.

B. It shall be unlawful for any person to prepare or to assist in the preparation of an incendiary or an explosive device, to possess, handle, store, transport or sell any such device, knowing the same is to be thrown, placed or caused to be placed for the purpose of causing injury to any person or damage to property.

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<sup>11</sup>C.R.S. section 25-5-501 et seq., C.R.S.

<sup>12</sup>15 USC §§1261-1276.

<sup>13</sup>21 USC §§301-392.

C. Except as otherwise permitted by law, it shall be unlawful for any person to possess on his person, in any motor vehicle or in any structure, an incendiary or an explosive device as defined in this section.

D. An incendiary or explosive device includes, but not by way of limitation, any device consisting in whole or in part of flammable material or other material having the capability of exploding, igniting or burning. (Ord. 762 §1, 1987)

9.28.040 Unlawful to Throw Stones or Missiles. It shall be unlawful for any person to throw, cast, project or hurl any stone, missile or projectile of any kind by any means at or upon any vehicle, building, tree or other public or private property, or upon or at any person (Ord. 762 §1, 1987)

9.28.050 Open Carrying of Firearms.

A. It shall be unlawful for any person to openly carry any firearm within any building owned or leased by the City or any City Park for which signs are posted at the public entrances to City owned or leased buildings or City Park informing the public that the open carrying of firearms is prohibited.

B. The City Manager is hereby authorized to post signs at the public entrances to City owned or leased buildings or City Parks informing the public that the open carrying of firearms is prohibited.

C. This section shall not apply to a peace officer as described in Section 16-2.5-101 C.R.S., when carrying a weapon in conformance with the policy of the employing agency as provided in Section 16-2.5-101 C.R.S. or a United States probation officer or a United States pretrial services officer while on duty and serving in the State of Colorado under the authority of rules and regulations promulgated by the judicial conference of the United States.

D. This section shall not be deemed to affect or impair in any way the authority of any public or private property owner other than the City to prohibit the carrying of firearms into or upon other public or private property. (Ord. 1228 §3, 2004)

**Chapter 9.30**

**MARIJUANA**

Sections:

- 9.30.010 Marijuana Defined
- 9.30.020 Unlawful to Possess, Consume, Publicly Display, Transfer or Dispense Marijuana

9.30.010 Marijuana Defined. As used in this Chapter “Marijuana” or “Marihuana” shall mean all parts of the plant cannabis sativa L. whether growing or not, the seeds thereof, the resin extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. It shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt derivative, mixture or preparation of such mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination. (Ord. 762 §1, 1987)

9.30.020 Unlawful to Possess, Consume, Publicly Display, Transfer, or Dispense Marijuana.

A. It shall be unlawful for any person knowingly to possess, consume openly and publicly display or consume, or to transfer or dispense to another person, marijuana; provided, however, that this section shall not apply to any person knowingly possessing, consuming, openly and publicly displaying or consuming, or transferring or dispensing to another person, more than one (1) ounce of marijuana.

B. Transferring or dispensing not more than one (1) ounce of marijuana from one person to another for no consideration shall be deemed possession and not dispensing or sale thereof. (Ord. 762 §1, 1987)

## Chapter 9.32

### OPEN CONTAINERS

Sections:

9.32.010	Definitions
9.32.020	Drinking in Public Prohibited
9.32.030	Drinking in Vehicles Prohibited

9.32.010 Definitions. As used in this Chapter, the following words and phrases shall have the following meanings:

A. "Fermented Malt Beverage". Any beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops or any similar product or any combination thereof in water containing not less than one-half of one percent and not more than three and two-tenths percent alcohol by weight.

B. "Alcoholic Beverage". Malt, vinous or spirituous liquors.

C. "Public Place". A place to which the public or a substantial part of the public has access, including streets, alleys, roadways, highways, schools, places of amusement, parks, playgrounds and the common areas of public and private buildings and facilities, including parking lots or any other area intended for use by the public.

D. "Container". Any enclosing structure or vessel including, but not limited to, a decanter, flask, bottle, jar, thermos, bottle, cup, can or jug.

E. "Open Container". Any container that is open and would allow consumption by virtue of the seal being broken or any covering device utilized by the manufacturer as an original sealing device of the container being removed.

F. "Vehicle". Any vehicle as defined in the Model Traffic Code as adopted by section 10.04.010 of this Code. (Ord. 762 §1, 1987)

9.32.020 Drinking in Public Prohibited. It shall be unlawful for any person to drink, possess or have under his control any fermented malt beverage or alcoholic beverage in an open container or in a container having a broken seal while in or upon any street, alley, park, public property, vacant lot or ground, or in or upon any public place, except licensed establishments within the jurisdiction of the City.<sup>14</sup> (Ord. 762 §1, 1987)

9.32.030 Drinking in Vehicles Prohibited.

A. It shall be unlawful for any person or persons to drink, possess or have under his control any fermented malt beverage or alcoholic beverage in an open container or in a container having a broken seal while in a vehicle which is moving, parked, stopped or standing on any street, alley, roadway or other public place in the City or for the driver, owner or person in control of any such vehicle to permit any person or persons to drink fermented malt beverages or alcoholic beverages therein while such vehicle is being driven or is stopped, standing or parked on any street, alley, roadway or other public place in the City. (Ord. 762 §1, 1987)

B. In any prosecution charging a violation of this section, proof that the particular person described in the complaint or any person in a vehicle of which the particular person named in the complaint was the driver, owner or person in control, was found, while such vehicle was moving, parked, stopped or standing on any street, alley, roadway or other public place in the city, in possession of any fermented malt beverage or alcoholic beverage in a container which is not so closed or sealed so as to prevent a person from drinking from such container without removing said closure or seal, together with proof that such container held less than the full amount of such beverages than it was designed to contain, shall constitute in evidence a prima facie presumption that such person had drunk from said container and that such drinking had occurred in a place prohibited by this section. (Ord. 762 §1, 1987)

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<sup>14</sup>The City Clerk may issue a permit for consumption of fermented malt beverages within certain city parks. See chapter 12.28 of this code.

## Chapter 9.36

### DISTURBING THE PEACE AND NOISE

Sections:

- |          |   |
|----------|---|
| 9.36.010 | Disturbing the Peace Prohibited                 |
| 9.36.020 | Noise Prohibited Generally                      |
| 9.36.030 | Muffler Required                                |
| 9.36.040 | Use of Sirens and Red or Blue Lights Restricted |

9.36.010 Disturbing the Peace Prohibited. It is unlawful for any person to disturb or tend to disturb the peace of others by violent, tumultuous, offensive or obstreperous conduct, by loud or unusual noises, or by unseemly, profane, obscene or offensive language calculated to provoke a breach of the peace; or for any person to permit any such conduct in any house or upon any premises owned or possessed by him or under his management or control, when within his power to prevent, so that others in the vicinity are or may be disturbed thereby. (Ord. 762 §1, 1987)

9.36.020 Noise Prohibited Generally. The making of unnecessary noises upon, near or adjacent to the streets, highways and other public places in the City is declared to be a public nuisance. It shall be unlawful for any person to make, continue or cause to be made or continued any unnecessary, excessive or unusual noise which disturbs, injures or endangers the comfort, repose, health, safety of other persons, unless the making and continuing of the same is necessary for the protection or preservation of property or the health, safety, and welfare of individuals or the public at large. (Ord. 762 §1, 1987)

9.36.030 Muffler Required. It is unlawful for any person to operate a motor vehicle which is not at all times equipped with a muffler upon the exhaust thereof, in good working order and in constant operation to prevent excessive or unusual noise, and it is unlawful for any person operating any motor vehicle to use a cut-out, bypass, or similar muffler-elimination appliance. (Ord. 762 §1, 1987)

9.36.040 Use of Sirens and Red and Blue Lights Restricted. It is unlawful for any person to carry or use upon any vehicle other than police or fire department vehicles, private vehicles authorized by the Police or Fire Chief or emergency vehicles for public use, any gong, siren, whistle, red or blue light similar to that used on ambulances or vehicles of the police and fire department. (Ord. 762 §1, 1987)

## Chapter 9.40

### OFFENSES BY OR AGAINST MINORS

Sections:

9.40.010	Parental Responsibility
9.40.020	Subpoena Authority
9.40.030	Orders of Municipal Court
9.40.040	Violation - Penalty - Parent
9.40.050	Presentation of False Credentials Prohibited
9.40.060	Possession of Alcoholic Beverages and Beer Prohibited
9.40.070	Furnishing Cigarettes or Tobacco Products to Minors - Sale of Cigarettes or Tobacco Products in Vending Machines - Purchase of Cigarettes or Tobacco Products by Minors

9.40.010 Parental Responsibility.

A. It shall be the duty of every parent, or person standing in the place or position of parent, to instruct and supervise their minor child or children so as to prevent such child or children from violating any of the ordinances of the City.

B. It shall be unlawful for any person having the care, custody, control, confidence or influence over any minor child to cause or permit such child to be placed in such a situation as to endanger the health, safety or welfare of such child. (Ord. 762 §1, 1987)

9.40.020 Subpoena Authority. Upon request of the Municipal Court, the prosecuting attorney or the Police Department, the Clerk of the Court shall issue a subpoena for the appearance, at any and all stages of the Court's proceeding, of the parent, guardian, or lawful custodian of any minor offender who is charged with a municipal offense as provided hereunder. (Ord. 762 §1, 1987)

9.40.030 Orders of Municipal Court. The judge of the Municipal Court may promulgate such rules or orders regarding the procedural processing of minor offenders appearing before the Municipal Court as he may, from time to time, deem appropriate. (Ord. 762 §1, 1987)

9.40.040 Violation - Penalty - Parent. If any person fails to sufficiently instruct or supervise any minor child to which such person stands in the position of a parent and, as a result thereof, such minor child violates any ordinance of the City, such parent or person shall be guilty of violating this chapter. (Ord. 762 §1, 1987)

9.40.050 Presentation of False Credentials Prohibited. It is unlawful for any person under twenty-one years of age to make false statements, to furnish, present or exhibit any fictitious or false registration card, identification card or other document for any unlawful purpose or to furnish, present or exhibit such document or documents issued to a person other than the one presenting the same for the purpose of procuring the sale, gift or delivery of prohibited articles, including beer, wine, liquor or fermented malt beverages. (Ord. 762 §1, 1987)

9.40.060 Possession of Alcoholic Beverages and Beer Prohibited. It is unlawful for any person under the lawful drinking age to have in his possession alcoholic beverages or fermented malt beverages in any place including public property, streets, alleys, roads or highways, or inside vehicles while upon public streets, alleys, roads or highways. (Ord. 762 §1, 1987)

## **Chapter 9.44**

### **CURFEW**

#### Sections:

9.44.010	Definitions
9.44.020	Unlawful Acts
9.44.030	Exceptions
9.44.040	Parental Responsibility
9.44.050	Enforcement/Prosecution
9.44.060	Separate Offenses

#### 9.44.010 Definitions.

- A. Minor/Juvenile. Any person under the age of eighteen (18).
- B. Parent. The natural or adoptive parent of a minor.
- C. Guardian. Any person, other than a parent, who has legal guardianship of a minor.
- D. Disorderly assembly. An assemblage of three (3) or more persons which:
  1. Creates a significant danger of damage or injury to property or persons as exhibited by threats or tumultuous or violent conduct; or
  2. Obstructs traffic on or into a street, road, highway, sidewalk, building entrance or other public or private passageway; or
  3. Involves a trespass upon or interference with the use of public or private property; or
  4. Causes a significant public disturbance or disruption of the nighttime peace by means of unreasonable noise or obviously offensive conduct, such as screaming, loud music, loud use of obscene language, squealing of tires, public urination or the open performance of sexual acts.
- E. Loiter. To be dilatory, to stand idly around, to linger, delay, tarry, abide or wander about, whether on foot or in/on a vehicle. Loitering shall include “cruising”, i.e., driving or riding in/on a vehicle repeatedly up and down a street, road or highway or repeatedly around a given area, or driving or riding aimlessly about.
- F. Private place. Any privately owned property or business, including any parking lot, vacant lot, yard, building, place of amusement, eating establishment, and the like, where juveniles



may congregate or be found without the consent or permission of the owner or occupant of the property or when the property or business is closed to the public.

G. Public place. Any publicly owned property or facility, including any street, road, highway, sidewalk, alley, parking lot, park, playground, common area, school or other public building, where juveniles may congregate or be found, except for public facilities that are holding events or activities expressly open to the juveniles at the time when they congregate or are found there.

H. Reasonable necessity. A compelling reason involving an exceptional or uncommon situation, such as an emergency or crisis requiring immediate action or an unusual circumstance where the juvenile is acting on behalf of or at the request of the parent, guardian or legal custodian.

I. Specified nighttime hours. Saturday and Sunday mornings between the hours of 12:00 a.m. (midnight) and 6:00 a.m. and Sunday evenings through Friday mornings between the hours of 10:00 p.m. and 6:00 a.m. (Ord. 1006 §1, 1993)

#### 9.44.020 Unlawful Acts.

A. It shall be unlawful for any juvenile to loiter or to engage in a disorderly assembly in any public place or private place during specified nighttime hours. Any juvenile found in any public place or private place during specified nighttime hours shall be presumed to be in violation of this provision, except as otherwise provided in Section 9.44.021 below. Satisfactory proof of “reasonable necessity” may be presented to rebut the presumption. Any minor convicted for the violation of any provision of this Ordinance shall be punished by a fine of not more than one thousand dollars (\$1,000.00).

B. It shall be unlawful for any juvenile to fail or refuse to comply with any order issued pursuant to this Ordinance. (Ord. 1006 §1, 1993)

#### 9.44.030 Exceptions. The following shall not be in violation of Section 9.44.020:

A. Any juvenile accompanied by a parent, step-parent, grandparent, guardian, or person having legal custody of the juvenile.

B. Any juvenile accompanied by a person over the age of twenty-one (21) years who has written and signed authorization by a parent, guardian or legal custodian of such juvenile to accompany said juvenile for a specific period of time and purpose. Said person must satisfactorily show that he/she is acting within the specified authorization.

C. Any juvenile traveling to or from lawful employment, for up to one-half hour of travel time to and from the place of employment when the juvenile is carrying an employer’s written and signed statement specifying the type, hours and place of employment.

D. Any assemblage of juveniles engaged in or going to and returning from in a reasonably prudent manner, an activity or event sponsored by an established and reputable organization, such as a school or church, or engaged in an activity or event clearly involving First Amendment exercise of free speech/religious rights or the right to petition the government for redress of grievances, such as attending political or civic meetings or church services, when said assemblage is otherwise lawful and orderly. (Ord. 1006 §1, 1993)

9.44.040 Parental Responsibility.

A. It is unlawful for any parent, guardian or other persons having the legal care and custody of any person under eighteen (19) years of age, to allow or permit such child or ward, under such age, and in such legal custody, to be in violation of this Ordinance unless such person, having legal care and custody of said minor, accompanies the minor or provides the minor with a written statement to the effect that the employment of the minor makes it necessary for the minor to be in or upon the streets, alleys or public places during the specified nighttime hours, or unless the person having the legal care and custody of the minor provides the minor with a written statement setting forth the errand or duty directed by such person having legal care and custody of the minor. (Ord. 762 §1, 1987)

B. Any parent, guardian or legal custodian of a minor who is found to be in violation of this Ordinance may, pursuant to the provisions of the parental responsibility Ordinance, be found guilty of a violation of this code and it shall not be a defense that the parent, guardian or legal custodian of the minor was indifferent to the activities, conduct or whereabouts of such minor. (Ord. 1006 §1, 1993)

9.44.050 Enforcement/Prosecution. The Fountain Police Officers shall have authority to order any juvenile to immediately cease any violation of this Ordinance. This authority shall include the right to take a juvenile into temporary custody for the purpose of conveying the juvenile to the home of his/her parent, step-parent, grandparent, guardian or legal custodian and requesting that this person retrieve the juvenile. Should it not be possible to deliver home or arrange the retrieval of a juvenile, said juvenile will be released by 6:00 a.m. of the same morning or the morning following the evening when the juvenile was taken into custody, unless legally detained for other reasons. (Ord. 1006 §1, 1993)

9.44.060 Separate Offenses. Each violation of this Ordinance shall be deemed separate and distinct from any other violation of this Ordinance or of any other state or local law, rule or regulation. (Ord. 1006 §1, 1993)

**Chapter 9.48**

**PEDDLERS AND SOLICITORS**

Sections:

9.48.010 Door-to-Door Solicitation - Hours and Days

Permitted

9.48.010 Door-to-Door Solicitation - Hours and Days

Permitted. No door-to-door solicitation for the purpose of selling goods, wares, merchandise or services, or anything of value for present or future delivery or performance, shall be permitted within the City before nine A.M. or after six P.M.; provided, however, there shall be no solicitation or door-to-door selling for the purpose of selling ware, goods, merchandise or services, or anything of value for present or future delivery or performance, on Sundays and holidays.<sup>15</sup> (Ord. 762 §1, 1987)

**Chapter 9.52**

**SMOKING IN ENTRYWAYS**

Sections:

9.52.010	Legislative Declaration
9.52.020	Definitions
9.52.030	Determination and Establishment of Radius
9.52.040	Unlawful Acts

9.52.010 Legislative Declaration: The City Council finds and determines as follows: Sections 25-14-203 (7) and 24-14-207 (2) (a) C.R.S., sections of the Colorado Clean Indoor Act, Part 29 of Article 14 of Title 25 C.R.S., establish a smoking prohibition within an area that has a radius of fifteen feet from an entryway to a building or facility. Sections 25-14-203 (7) and 25-14-207 (2) (a) C.R.S. permit a municipality as a local authority to reduce the radius of the area included within an entryway to less than fifteen feet. The City Council finds that the area included within a fifteen feet radius from the entryway to a building or facility is an unrealistic limitation on smoking. Such fifteen foot prohibition may extend into public parking lots or other public areas and does not provide an area reasonably close to a building or other facility for containers for the disposal of lighted cigarettes, lighted cigars and other smoking products before entering a building or facility. The City Council finds that a reduction of the radius from fifteen feet to five feet is an appropriate balance between the interests of smokers and nonsmokers. (Ord. 1364, §2, 2007)

9.52.020 Definitions:

A. “Local authority” means the City of Fountain, Colorado.

B. “Entryway” means the outside of the front or main doorway leading into a building or facility that is not exempted from Part 2 of Article 14 of Title 25 C.R.S. under section 25-12-205 C.R.S. “Entryway” also includes the area of a public or private property within a

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<sup>15</sup>A business license is also required pursuant to this code.

specified radius outside of the doorway. The specified radius shall be five feet. (Ord. 1364, §2, 2007)

9.52.030 Determination and Establishment of Radius: The City Council hereby determines and establishes a radius of five feet for the area included within an entryway. (Ord. 1364, §2, 2007)

9.52.040 Unlawful Acts: It shall be unlawful for any person to smoke in the entryways of all buildings and facilities listed in paragraphs (a) to (bb) of section 25-14-204 C.R.S. (Ord. 1364, §2, 2007)

## **TITLE 10**

### **Chapter 10.04**

#### **MODEL TRAFFIC CODE\***

Sections:

10.04.010	Adoption - Purpose - Copies on File
10.04.020	Additions or Modifications
10.04.030	Applicability
10.04.040	Interpretation
10.04.050	Violation - Penalty

10.04.010 Adoption. Pursuant to parts 1 and 2 of article 16 of title 31, C.R.S., as amended, there is hereby adopted by reference Articles I and II, inclusive, of the 1995 edition of the “Model Traffic Code for Colorado Municipalities”, promulgated and published as such by the Colorado Department of Transportation, Staff Traffic and Safety Projects Branch, 4201 East Arkansas Avenue, Denver, CO 80222. The subject matter of the Model Traffic Code relates primarily to comprehensive traffic control regulations for the City. 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. Three (3) copies of the Model Traffic Code adopted herein are now filed in the office of the Clerk of the City of Fountain, Colorado, and may be inspected during regular business hours. (Ord. 1057 §1, 1999)

10.04.020 Additions or Modifications. The code adopted in section 10.04.010 is subject to the following additions or modifications:

A. Section 6-6. Add to subparagraph (3)(b) the following clause: "and when such movement is specifically authorized by a posted sign in the area."

B. Section 10-1. Add a subparagraph (c) to read as follows:

(c). No person shall park any vehicle having a gross vehicle weight rating (G.V.W.R.) of eight thousand (8,000) pounds or greater or having a length exceeding twenty (20) feet (20 feet in combined length for vehicles with trailers) in public right-of-way in a residential area, with the following exceptions:

- i. Temporary parking for loading or unloading of such vehicles for a period of four (4) hours or less.
- ii. Loading or unloading of moving vans or similar type vehicles used for the moving of personal goods for a period of twenty-four (24) hours.<sup>16</sup>
- iii. Construction vehicles and equipment currently being utilized for on-site construction work.

(d) Except as provided in this paragraph (d), no person shall operate any motor vehicle registered in Colorado on which any window, except the windshield, is composed of, covered by, or treated with any material or component which presents an opaque, nontransparent, or metallic or mirrored appearance in such a way that it allows less than twenty-seven percent light transmittance. The windshield shall allow seventy percent light transmittance. The provisions of this paragraph (d) shall not apply to the windows to the rear of the driver, including the rear window, on any motor vehicle; however, if such windows allow less than twenty-seven percent light transmittance, then the front side windows and the windshield on such vehicles shall allow seventy percent light transmittance.

Notwithstanding any provision of this paragraph (d), nontransparent material may be applied, installed, or affixed to the topmost portion of the windshield subject to the following:

- i. The bottom edge of the material extends no more than four inches measured from the top of the windshield down;
- ii. The material is not red or amber in color, nor does it affect perception of primary colors or otherwise distort vision or contain lettering that distorts or obstructs vision;
- iii. The material does not reflect sunlight or headlight glare into the eyes of occupants of oncoming or preceding vehicles to any greater extent than the windshield without the material.

Nothing in this paragraph (d) shall be construed to prevent the use of any window which is composed of, covered by, or treated with any material or component in a manner approved by federal statute or regulation if such window was included as a component part of a vehicle at the time of the vehicle manufacture, or the replacement of any such window by such covering which meets such guidelines.

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<sup>16</sup> For statutory provisions on the regulation of traffic by local authorities, see C.R.S. 42-4-108 and 42-2-109, as amended; for provisions authorizing cities to adopt a model traffic code by reference, see C.R.S. 42-4-108(1)(b), as amended. for charter provisions on adopting a code by reference, see Chapter 6.9.

No material shall be used on any window in the motor vehicle that presents a metallic or mirrored appearance.

Nothing in this paragraph (d) shall be construed to deny or prevent the use of certificates or other papers, which do not obstruct the view of the driver and which, may be required by law to be displayed.

This prohibition shall apply to all motor vehicles owned or operated within the City limits of the City of Fountain, Colorado. It is a violation of this ordinance to manufacture or install a window or windows on a motor vehicle, which is in violation of the standards outlined in section one above. It is a violation of this ordinance to own, possess, or operate a motor vehicle which is in violation of this ordinance, unless the owner, possessor, or operator can demonstrate that the window(s) which are alleged to be in violation were put in that condition of being in violation of this ordinance on or before April 6, 1988. (Ord. 996 §1, 1993)

(e). No person shall park any farm tractor or implement of husbandry upon any street, highway, road or alley within the City. (Ord. 761 §1, 1987)

C. Section 17-20. Add the following sentence:

"No person shall tow a sled, skateboard, wagon, or other bicycle with a bicycle."

D. Section 22-2. Change "finance officer" to "City Clerk."

E. Section 22-5. Change "Immediately" to "within a reasonable time" in the opening paragraph of this section.

F. Section 23-7. Change the opening paragraph to read:

"The police department with assistance from the traffic engineer shall annually prepare a traffic report which shall be submitted to the City Manager, and shall contain information on traffic matters in this municipality as follows:

G. Section 23-9(a). Change to:

"The City Manager is designated and appointed by the Council of Fountain as the city traffic engineer to exercise the powers and duties provided by this code." (Ord. 516 §2, 1979)

H. Section 225. (Mufflers-prevention of noise) Add the following:

“(3) Any commercial vehicle as defined in section 42-4-235(1)(a) C.R.S., subject to registration and operation on a highway, that is equipped with an engine compression brake device is required to have a muffler.” (Ord. 1276 §1, 2005)

10.04.030 Applicability. This chapter shall apply to every street, alley, sidewalk area, driveway, park, and to every other public way or public place or public parking area, either within

or outside the corporate limits of this municipality, the use of which this municipality has jurisdiction and authority to regulate. The provisions of Section 5-1, 5-2, 5-12, 21-13 and 23-3 of the adopted Model Traffic Code, respectively concerning reckless driving, careless driving, unauthorized signs, signals or markings, eluding officer, and accident investigation, shall apply not only to public places and ways but also throughout this municipality. (Ord. 516 §4, 1979)

10.04.040 Interpretation. This chapter 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 chapter and adopted Model Traffic Code shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or extent of the provisions of any article or section thereof. (Ord. 516 §7, 1979)

10.04.050 Violation - Penalty. The following penalties, herewith set forth in full, shall apply to this Chapter:

A. It is unlawful for any person to violate any of the provisions stated or adopted in this Chapter.

B. Every person convicted of a violation of any provisions stated or adopted in this Chapter shall be punished by a fine not exceeding One Thousand Dollars (\$1,000.00) or by imprisonment for not more than one year, or by both such fine and imprisonment. (Ord. 924 §1, 1991)

C. The penalty and surcharge imposed for any traffic violation is doubled if the violation occurs within a school zone. School zone means an area that is designated as a school zone and has signs posted indicating that penalties will be doubled. (Ord. 1124, 2000)

## Chapter 10.08

### TRAINS

#### Sections:

- 10.08.010 Speed Regulations Within City Limits
- 10.08.020 Blocking Streets Within City Limits
- 10.08.030 Violation - Penalty

10.08.010 Speed Regulations Within City Limits. It is unlawful for any person to direct the operation, order the operation, permit the operation or operate any railroad train with the city limits of the city, at a speed greater than that mandated by the Federal Railroad Safety Act, and relevant regulations covering train speed pursuant to Title 49 of the Code of Federal Regulations.. (Ord. 841 §1, 1989; Ord. 1056 §1, 1997)

10.08.020 Blocking Streets Within City Limits. It is unlawful for any person to direct the operation, order the operation, permit the operation or operate any railroad train in such a manner as to prevent the use of the street or roadway for purposes of vehicular or foot travel by blocking or otherwise preventing the movement of such traffic thereon for any period of time longer than five consecutive minutes in duration, and if a street or roadway is so blocked for a period of five minutes before it is again blocked; provided, that the provisions of this section shall not apply to trains moving continuously in the same direction to such intersections or crossing. (Ord. 454 §2, 1975)

10.08.030 Violation - Penalty. Any person, firm or corporation violating any of the provisions of this Chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00), or by imprisonment for not more than one year, or by both such fine and imprisonment. (Ord. 924 §1, 1991)

## **CHAPTER 10.12**

### **REMOVAL AND IMPOUNDMENT OF VEHICLES**

#### Sections:

- 10.12.010 Authority to Impound Vehicles
- 10.12.020 Illegal Parking
- 10.12.030 Notice of Impoundment
- 10.12.040 Post-tow Administrative Hearing

#### 10.12.010 Authority to Impound Vehicles.

A. Members of the Police Department or such code enforcement officers as designated by the City manager are hereby authorized to remove or have removed at their direction any vehicle from any public property, including any portion of a public road right-of-way, under any of the circumstances hereinafter enumerated. The City Council hereby finds and determines that any vehicle under any such circumstances constitutes a public nuisance and a threat to the health, safety and welfare of the public. Any vehicle removed from public property under the provisions of this chapter may be taken to any lot maintained by the City, to any other place designated by the Police Department or to any lot under contract with the City for the storage of such impounded vehicles.

B. Vehicles may be removed from public property by the Police Department or such code enforcement officers as designated by the City Manager under the following circumstances:

1. Any vehicle left unattended on public property, including any portion of public road right-of-way, for a period of seventy-two (72) hours. For the purposes of this provision, any vehicle parked in the same place on public right-of-way continuously for a period of seventy-two (72) hours shall be deemed to have been left unattended.
2. Any unlicensed or inoperable vehicle left unattended on public right-of-way or property.



3. Any vehicle left unattended upon any bridge, viaduct, or tunnel, or where such vehicle constitutes an obstruction to traffic.
4. Any vehicle left unattended upon a street or parked illegally so as to constitute a definite hazard or obstruction to the normal movement of traffic, or where left on any public street with engine running or with key in the ignition, or both, or when parked in any area designated by the city traffic engineer as to "tow-away" area or when any vehicle is left unattended or parked so as to block ingress or egress from driveways or to obstruct sidewalk pedestrian traffic.
5. Any vehicle left on or so near to any railroad track as to cause a hazard or block the same in any manner.
6. Any vehicle left on public property and so disabled as to constitute an obstruction to traffic and the person in charge of the vehicle is by reason of physical injury or other physical condition incapacitated to such an extent as to be unable to provide for its custody or removal.
7. If the driver of such vehicle is taken into custody by the Police Department and the vehicle would thereby be left unattended.
8. The driver of the vehicle is reasonably suspected of using license plates or a license permit unlawfully, misusing the license plates or license permit issued to him, or vehicle is driven or parked by a public way without proper license plates or license permit, or driven or parked with an invalid or expired license permit.
9. The driver of the vehicle is driving without an operator's license or chauffeur's license which is current and valid or does not have such license in his immediate possession or drives a vehicle contrary to restrictions imposed upon his license, or who drives a vehicle while his operator's license or chauffeur's license has been denied, suspended, cancelled or revoked by the state.
10. The driver of any vehicle, or the vehicle which he is driving, is reasonably believed to have been involved in an accident and to have left the scene without reporting the accident to proper authorities.
11. Any vehicle is reasonably suspected of being a stolen vehicle, or parts thereof to be stolen parts.
12. The driver of any vehicle is taken into custody for a suspected felony or misdemeanor, when the vehicle is suspected of containing stolen goods or other contraband.

C. Neither the officer nor anyone acting under his direction shall be liable for any damage to such motor vehicle occasioned by such removal. (Ord. 842 §1, 1989)

#### 10.12.010 Illegal Parking.

A. It shall be unlawful for any person to park or leave unattended a vehicle in the manner described in subsection (B)(1) to (B)(5), above.

B. The registered owner of such vehicle shall be presumed to have left such vehicle parked or unattended as described in subsection A of this section. (Ord. 842 §1, 1989)

10.12.030 Notice of Impoundment.

A. Whenever a vehicle is towed and impounded by the Police Department or such code enforcement officers as designated by the City Manager pursuant to the provisions of this chapter, the Police Department shall notify the registered owner, if such can be ascertained, of the impoundment of such vehicle and of the owner's opportunity to request a hearing to determine the validity of the impoundment.

B. Such notice shall be sent by certified mail or shall be personally served on the registered owner within five working days from the date of impoundment, excluding weekends and holidays, or as soon thereafter as reasonably possible and shall include the following information:

1. The location of storage of the motor vehicle;
2. The location from which the motor vehicle was towed;
3. The manner in which the vehicle may be reclaimed;
4. The reason for which the motor vehicle was towed and impounded;
5. A description of the motor vehicle, which shall include, if available, the make, model, license plate number, and vehicle identification number;
6. That, unless claimed within thirty calendar days from the date the notice was sent the motor vehicle is subject to sale;
7. That the registered owner has the right to a hearing concerning the validity of impoundment, and that the registered owner must request such hearing in writing of the Fountain Municipal Court within ten (10) days from the postmark on the notice.

C. Subsequent to the notification of the registered owner, or should the Police Department be unable to ascertain the registered owner within the time requirements of subsection B of this section, the provisions of section 42-4-1604, C.R.S. shall apply; provided, however, that should not a lienholder exist or should the owner of record as ascertained pursuant to section 42-4-1604 be identical to that notified pursuant to subsection A of this section, no further notice need be given.

D. The notice and hearing requirements as provided in this chapter shall not be applicable to any vehicle which is towed, impounded and held pursuant to order of a law enforcement agency for evidentiary purposes relating to any criminal case which is under investigation or pending in a court of competent jurisdiction. This subsection shall not limit any registered owner's rights under the Colorado Rules of Criminal Procedure, Colo. R. Crim. P.41 (e) or Colorado Municipal Court Rules of Procedure, Colo. Mun. Ct. R. P.241 (e). (Ord. 842 §1, 1989)

10.12.040 Post-tow Administration Hearing.

A. The registered owner or lienholder of a vehicle which has been towed and impounded pursuant to this chapter may request a hearing concerning the legality of the towing and impoundment by filing a written request with the Fountain Municipal Court within ten days of the

postmark date of sending such notice. Failure to request a hearing within said time limit or failure to attend a scheduled hearing shall be deemed a waiver to the right of such hearing.

B. Upon receipt of a timely written request, a hearing shall be conducted within seventy-two (72) hours of such request excluding weekends and holidays. The hearing shall be conducted by the municipal court judge or deputy municipal court judge for the City of Fountain.

C.

1. The hearing shall be conducted in an informal manner and shall not be subject to technical rules of evidence. The sole issue of the hearing shall be the legality of the tow and impoundment of the vehicle. The burden of proof shall be on the Police Department or code enforcement officer to establish by a preponderance of the evidence that probably cause exists for the impoundment.
2. For the purposes of this section, "probably cause" shall mean such a state of facts as would lead a reasonable person to believe that there was sufficient violation of section 10.12.010 to grant authority to tow and impound the vehicle.

D.

1. If the municipal court judge determines that there was probably cause to tow and impound the vehicle, then said vehicle shall not be released until the cost incurred in the towing and storage of the motor vehicle have been paid. Should the charges not be paid, the vehicle shall be sold or otherwise disposed of pursuant to section 42-4-1601, et seq., C.R.S.
2. If the municipal court judge determines that there was no probably cause to tow and impound the vehicle, the Police Department shall release such vehicle to the registered owner and shall be responsible for the costs incurred in the towing and storage of such vehicle. Failure of the registered owner to take possession of the vehicle within forty-eight hours of the hearing, excluding weekends and holidays, shall render the registered owner liable for all subsequent storage charges. (Ord. 842 §1, 1989)

## **Chapter 10.16**

### **STATE HIGHWAY ACCESS CODE AND ACCESS PERMITS**

#### **Sections:**

10.16.010	State Highway Access Code Adopted by Reference
10.16.020	City Manager to Administer State Highway Access Code
10.16.030	Permit Fees
10.16.040	Application Form
10.16.050	Permit – Platting Prerequisite
10.16.060	Access to City Roads or Streets

## 10.16.070 Violation

10.16.010 State Highway Access Code Adopted by Reference. Pursuant to Title 31, Article 16, Parts a and 2, C.R.S., as amended and pursuant to Article VI, Section 6.9 of the Fountain City Charter, there is hereby adopted by reference the State Highway Access Code, as amended by the Colorado Highway Commission on August 15, 1985, and published by the State of Colorado, State Department of Highways, 4201 East Arkansas Avenue, Denver, Colorado 80222. The purpose of this Chapter and code adopted in this Chapter is to provide regulations governing access to local roads and streets that are not a part of the State Highway System. Three copies of the State Highway Access Code adopted in this chapter are on file in the office of the City Clerk and may be inspected during regular business hours. The 1985 edition of the State Highway Access Code is adopted as if set out at length, excepted as modified within this Chapter. (Ord. 784 §1, 1988)

10.16.020 City Manager to Administer State Highway Access Code. The authority, duties, powers, and responsibilities of the “issuing authority” and of the “appropriate local authority” as these terms are used in the State Highway Access Code, are hereby delegated to and shall be exercised by the City Manager and such employees as the City Manager may designate. All decisions of the City Manager or his designees are to be made in conformity with the standards, guidelines, and requirements of the State Highway Access Code and of this Chapter. (Ord. 784 §1, 1988)

10.16.030 Permit Fees. Prior to the issuance of an access permit, the applicant shall pay a fee to partially defray the cost of processing the application. This fee shall be fifty dollars (\$50.00) per access approach, unless the City Manager or his designee shall determine that the anticipated average daily traffic volume count for any access approach exceeds one hundred (100) vehicles. For each access approach for which the anticipated average daily traffic volume count does exceed one hundred (100) vehicles, the fee shall be one hundred dollars (\$100.00). The determination of anticipated average daily traffic volume counts shall be made based on standard references. (Ord. 784 §1, 1988)

10.16.040 Application Form. Applications for access permits shall be made on forms provided by the State Department of Highways or such other forms designated by the City Manager and shall be accompanied by all of the following:

- A. Highway and driveway plans and profiles;
- B. Complete drainage plans showing impact to the highway right-of-way, the property for which the permit is sought, and all adjoining properties;
- C. Maps and documents indicating utility locations before and after development;
- D. Any approved final subdivision plats and site plans;
- E. Property maps indicating other access approaches and abutting public roads and streets;
- F. Proposed access approach designs. (Ord. 784 §1, 1988)

10.16.050 Permit – Platting Prerequisite. If the property for which the permit is sought is subject to the platting requirements of Title 16 of this Code, no application may be made and no permit may be granted unless the planning and zoning commission and the City Council have first approved a final subdivision plat for the property. No application shall be granted which is not in substantial compliance with any approved final subdivision plat, site plan and the zoning requirements of Title 17 of this Code. (Ord. 784 §1, 1988)

10.16.060 Access to City Roads or Streets. No person shall construct any driveway providing vehicular access to any City road or street from any property without an access permit issued by the City Manager. (Ord. 784 §1, 1988)

10.16.070 Violation.

A. It shall be unlawful for any person to violate the provisions of this Chapter, including the State Highway Access Code, as adopted by reference herein.

B. Every person convicted of a violation of any provision of this Chapter shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300.00) or imprisonment not exceeding ninety days, or by both such fine and imprisonment. Each and every day during which such violation shall occur and continue shall be a separate offense. (Ord. 784 §1, 1988)

## Chapter 10.20

### PARKING UNATTENDED VEHICLES CONTAINING CLASS A OR B EXPLOSIVES

Sections:

10.20.010	Issuance of Revocable Permit
10.20.020	Definition of Explosives
10.20.030	Parking of Vehicles
10.20.040	Information Required and Revocation of Permit
10.20.050	Penalty

10.20.010 Issuance of Revocable Permit. The City Manager of the City of Fountain is authorized to issue a revocable permit to any person desiring to establish a safe haven area for the parking of vehicles containing Class A or Class B explosives, upon compliance with provisions of this chapter and such rules and regulations as the City Manager may impose. (Ord. 663 §1, 1984)

10.20.020 Definitions of Explosives. Class A and Class B explosives are such as defined in the Motor Carrier Safety Regulations, United States Department of Transportation, Federal Highway Administration. (Ord. 663 §2, 1984)

10.20.030 Parking of Vehicles. A motor vehicle which contains Class A or Class B explosives must not be parked:

1. On or within 5 feet of the traveled portion of a public street or highway;
2. On private property (including premises of a fueling or eating facility) without the knowledge and consent of the person who is in charge of the property;
3. Within 300 feet of a bridge, tunnel, dwelling, building, or place where people work, congregate, or assemble, except for brief periods when the necessities of operation require the vehicle to be parked and make it impracticable to park the vehicle in any other place. (Ord. 663 §3, 1984)

10.20.040 Information Required and Revocation of Permit. Any person desiring a revocable permit must complete an application setting forth the name and address of applicant; owner of property; location of property and of proposed safe haven; dimensions of proposed safe haven; location of buildings within 500 feet of boundaries of safe haven; lighting; type of security; how safe haven is enclosed; diagram of area, and such other information deemed pertinent by the City Manager.

Upon approval of application by the City Manager he may issue a revocable permit for a safe haven area for a designated period of time, subject to renewal as long as applicant is deemed in compliance with the chapter and applicable rules and regulations.

Upon violation of the terms of this chapter or any applicable rules and regulations, including those of the State of Colorado or the United States, or any agency thereof, such permit may be summarily revoked by the City Manager. Revocation of the permit shall be in addition to any other penalty hereunder. (Ord. 924 §1, 1991)

10.20.050 Violation - Penalty. Any person who violates or fails to comply with any provision of this Chapter, shall upon conviction thereof be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment for not more than one year by both such fine and imprisonment. (Ord. 924 §1, 1991)

**Chapter 10.24**  
**Effective Date December 10, 2007**  
**SCHOOL ZONES**

**Sections:**

- 10.24.010 School Zone Fee
- 10.24.020 Application of School Zone Fee
- 10.24.030 Designated Fund Balance

10.24.010 School Zone Fee. A school zone fee of ten dollars (\$10.00) shall be assessed by the City of Fountain municipal court upon all guilty pleas, findings of guilt or deferred sentences resulting from the issuance of a summons and complaint or penalty assessment alleging a violation of this Chapter 10.04 of this Title or alleging a violation Articles I and II inclusive, of the 1995

edition of the “Model Traffic Code for Colorado Municipalities” as adopted by Chapter 10.04 of this Title, excepting violations relating to parking as set forth in section 10.04.20 B of this Chapter and sections 1201 through 1211 of the Model Traffic Code for Colorado Municipalities. (Ord. 1387 §1, 2007) (Ord. 1397 §1, 2007)

10.24.020 Application of School Zone Fee. All proceeds derived from the school zone fee shall be applied to any expenses or costs incurred by the City as a result of the implementation of a pedestrian safety program for school zones. Such program may include, but is not limited to, school crossing signs, school crossing lights, pavement striping for school zones, improvements to streets and public rights-of-way which benefit school zones and any other improvement that provides a safety benefit for pedestrians in school zones. (Ord. 1387 §1, 2007) (Ord. 1397 §1, 2007)

10.24.030 Designated Fund Balance. Any funds collected during the City’s fiscal year and not spent during the same fiscal year shall constitute a designated fund balance for expenditure in accordance with this Chapter during the next fiscal year subject to appropriation by the City Council. (Ord. 1387 §1, 2007) (Ord. 1397 §1, 2007)

## TITLE 12

### Chapter 12.04

#### CONSTRUCTION GENERALLY

Sections:

12.04.010	Short Title
12.04.020	Adoption by Reference
12.04.021	Modification of Codes Adopted by Reference
12.04.030	Definitions
12.04.040	Authority
12.04.050	Permit – Required – Standards and Specifications
12.04.060	Construction Plan Submittal and Approval
12.04.070	Permit – Application Requirements
12.04.080	Permit – Fee - Conditions
12.04.090	Inspection of Work Site
12.04.100	Permit Site
12.04.110	Unlawful to Remove Safety Devices
12.04.120	Prompt Completion of Work
12.04.130	Indemnification
12.04.140	Construction Site Traffic Control
12.04.150	Obstructions on Public Way Prohibited
12.04.160	Grading, Erosion, and Stormwater Quality

12.04.170	Dirt, Debris, and Construction Waste
12.04.180	Hours of Operation for Construction Activity
12.04.190	Quality of Work – Bond
12.04.200	Violation – Penalty
	12.04.210 Liability of the Permittee for Damage to and Restoration of Public Right-of-Way
12.04.220	Revocation of Permit
12.04.230	Appeals

12.04.040 Short Title: This Chapter may be known and cited as the Construction Code. (Ord. 1324 §1, 2006)

12.04.020 Adoption by Reference: Pursuant to Part 2 of Article 16 of Title 31, Colorado Revised Statutes and pursuant to the Charter of the City of Fountain, there is hereby adopted by reference the following codes as primary codes and including all codes referred to therein as secondary codes.

A. Manual of Uniform Traffic Control Devices for Streets and Highways, 2003 edition, U.S. Department of Transportation Federal Highway Administration, 400 Seventh Street, SW, Washington, D.C. 20590.

B. City of Colorado Springs City Engineering Standard Specifications revised March 2005, City of Colorado Springs, Colorado 30 South Nevada Avenue, Colorado Springs, Colorado 80903.

C. City of Colorado Springs/El Paso County Drainage Criteria Manual, revised October 1994, City of Colorado Springs, Colorado 30 South Nevada, Colorado Springs, Colorado 80903.

D. City of Colorado Springs Drainage Criteria Manual, Volume 2, Stormwater Quality Policies, Procedures, and Best Management Practices (“BMPs”) revised November 1, 2002, City of Colorado Springs, Colorado, 30 South Nevada Avenue, Colorado Springs, Colorado 80903.

E. City of Colorado Springs, Subdivision Policy Manual and Public Works Design Manual, revised January 1990 with addenda 1991-1996, City of Colorado Springs, Colorado 30 South Nevada Avenue, Colorado Springs, Colorado 80903.

F. “Pikes Peak Region Asphalt Paving Specifications” as adopted by the City of Colorado Springs City Engineer and the El Paso County Department of Transportation Director Dated April 1, 2008. (Ord. 1402 §1, 2008)

G. “Pedestrian Sidewalk Ramp Design Detail Drawings Standard D-8A through D-8M” as adopted by the City of Colorado Springs City Engineer Dated January 2005. (Ord. 1402 §1, 2008)



Any reference to this Chapter, Chapter 12.04, or the Construction Code, unless the context requires otherwise shall include all codes adopted by reference in this Section 12.06.020 and modifications set forth in section 12.04.021. (Ord. 1324 §1, 2006) (Ord. 1402 §2, 2008)

12.04.021 Modification of codes Adopted by Reference: The primary and secondary codes also referred to as design standards or specifications adopted by reference pursuant to section 12.04.020 of the Fountain Municipal Code are hereby modified as follows:

A. The attached City of Fountain Street Design Standards Chart Dated January 2009 shall supersede the referenced City of Colorado Springs Public Works Design Manual Roadway Design Chart.

B. The attached City of Fountain Table 5 Pavement Structure Component Strength Coefficients Dated March 2008 shall supersede the referenced City of Colorado Springs Public Works Design Manual Pavement Design Criteria Strength Coefficients Table Dated 12/30/88.

C. The referenced Federal Highway Administration Manual of Uniform Traffic Control Devices 2003 Edition Section 2A.09 currently does not include Minimum Retroreflectivity standards. The City of Fountain hereby requires that all new and replacement residential/minor collector/industrial street regulatory, warning and guide signs shall meet minimum ASTM Type III – High Intensity Grade Prismatic sheeting standards. New and replacement community collector/arterial/expressway street regulatory, warning and guide signs shall meet higher ASTM Diamond Grade Micro Prismatic Reflective sheeting standards. The following retroreflectivity sign exclusions shall apply: parking (R7 & R8 Series), walking/hitchhiking/crossing (R9 & R10-1 to 4b), adopt-a-highway, blue or brown background, pedestrian/bikeway signs not adjacent to roadway, and MUTCD Table 2A-1 standard illuminated signs. (Ord. 1402 §3, 2008) (Ord. 1445 §2, 2009)

12.04.030 Definitions: The following definitions apply to this Chapter:

- A. City Engineer includes any person acting on behalf of the City Engineer.
- B. Public area includes any City owned public right-of-way, or easement, or other public way owned by the City.
- C. Public right-of-way or easement includes any sidewalk, street, alley, curb or gutter or drainage facility or watercourse located within any public right-of-way or easement.
- D. Public improvement includes any improvement within a public area. (Ord. 1324 §1, 2006)

12.04.040 Authority. All streets, alleys, sidewalks, curbs, gutters and construction or excavation within a public rights-of-way or public areas within the City shall be done only on authority of a permit issued by the City Clerk. (Ord. 1324 §1, 2006)

**Table 16.24.040-1 Right-of-Way Dedications**

<b>Street Classification</b>	<b>Right-of-Way Width (ft)<sup>1, 2</sup></b>
Expressways	160-210 <sup>5</sup>
Community Arterials	<b>100-120<sup>5</sup></b>
Community Collectors	<b>80-90<sup>5</sup></b>
Industrial/Commercial Collectors/Locals	65
Minor Residential Collectors	60
Residential	60 <sup>4</sup>
Cul-de-Sac	100-150 <sup>3</sup>
Alley	<b>16-24<sup>3</sup></b>
<p><sup>1</sup>Additional right-of-way for right turn lanes and second left turn lanes may be required based on the TIA at arterial and collector street intersections at the discretion of the City Engineer.</p> <p><sup>2</sup>The City may require additional dedication of right-of-way for public purposes.</p> <p><sup>3</sup>The width varies depending on the street classification.</p> <p><sup>4</sup>This may also be accomplished with a fifty-foot (50') right-of-way and one ten-foot (10') public improvement and utility easements on each side of the right-of-way. This may alternative dedication may only be proposed where a 5" thick, 5½' wide attached sidewalk with mountable curb will be constructed. In this case, the ten-foot (10') public improvement and utility easement shall be considered to have fulfilled the requirements of Section 16.22.050.</p> <p><sup>5</sup>The required right-of-way dedication varies depending on the number of lanes.</p>	

(Ord. 1445 §3, 2009)

#### 12.04.050 Permit – Required – Standards and Specifications.

A. “It is unlawful for any person, firm corporation, or any other entity, other than those under contract with the City to construct, reconstruct, pave, cut, open, trench, excavate, alter or repair any street, alley, sidewalk, curb, gutter or public area within the City without first obtaining a permit from the City Clerk. All such work must comply with the requirements of this Chapter and to the satisfaction of the City Engineer.

B. Any request for deviation from or variance to the engineering/construction design standards and specifications or other requirements of this Chapter by a Permittee shall be submitted in writing to the City Engineer. The City Engineer may grant a deviation or variance from the requirements of this Chapter if such requirements impose an unreasonable hardship on the Permittee. In approving a deviation or variance from the requirements of this Chapter, the City Engineer may impose reasonable conditions.

C. The denial of an application for a deviation or variance from the requirements of this Chapter by the City Engineer may be appealed by the Permittee within fifteen days after such decision to the City Manager by filing such appeal in writing with the City Clerk setting forth the reasons for the appeal. The denial of an application for a deviation or variance from the requirements of this Chapter by the City Manager may be appealed by the Permittee within fifteen days after such decision to the City Council by filing such appeal in writing with the City

Clerk setting forth the reasons for the appeal. Prior to consideration of the appeal by the City Council, the City Manager may request the recommendations and comments by the Planning Commission. The decision of the City Council shall be final. (Ord. 1402 §4, 2008) (Ord. 1324 §1, 2006)

12.04.060 Construction Plan Submittal and Approval. All construction plans, specifications, traffic control plans, and associated engineering reports required pursuant to this Section shall be prepared by, or under the direct supervision of a professional engineer duly registered and licensed to practice engineering in the State of Colorado and bear the seal of said engineer. All construction plans, specifications, traffic control plans and associated engineering reports required pursuant to this Section shall be prepared in compliance with the requirements of this Chapter. The approval by the City shall indicate only that the plan, specification, or report appears to be in conformance with the City's submittal requirements and that standard engineering principles and practices appear to have been followed. The professional engineer submitting and sealing the plans, specifications, and reports shall, at all times, be solely responsible for their accuracy and validity. If construction has not commenced after one (1) year from the date of approval, the plans, specifications, or reports will be subject to review, re-submittal, and re-approval by the City Engineer. (Ord. 1324 §1, 2006)

12.04.070 Permit – Application Requirements. Every person, firm or corporation or other entity desiring to construct, reconstruct, pave, cut, open, trench, excavate, alter or repair any street, alley, sidewalk, curb, gutter or other public area shall apply to the City Clerk for a permit therefore on a form to be provided by the City stating the applicant's name, the location, length, dates of commencement and completion of the work, adequate plans and drawings of any work, and a statement that work will be performed in good workmanlike manner and that all construction plans, specifications, traffic control plans and associated engineering reports required pursuant to this Section shall be prepared in compliance with the Requirements of this Chapter. All permits under this Section shall be approved by the City Engineer. (Ord. 1324 §1, 2006)

12.04.080 Permit – Fee – Conditions.

A. A fee shall be paid to the City Clerk prior to the issuance of said permit; provided however, that said fee may be waived by the City Engineer in the Engineer's sole discretion in the event of small or minor installations. All fees shall be charged as allowed by the City's current fee schedule, which is kept on file at the City Clerk's office.

B. The City Engineer may refuse to grant any permit for work, which the City Engineer determines that the granting of such permit would constitute a safety hazard. The City Engineer may impose reasonable conditions to assure that the work does not become a safety hazard and any other reasonable conditions that the city Engineer determines are necessary. The permit shall set forth its date of expiration. The City Engineer may refuse to issue a permit if the requirements of this Chapter are not met. (Ord. 1324 §1, 2006)

12.04.090 Inspection of Work Site. The City Engineer is authorized to enter any project or worksite on public property without notice to inspect for compliance with the requirements of this Chapter. (Ord. 1324 §1, 2006)

12.04.100 Permit Site. The site of the permitted use shall have adequate safeguards to protect the public against damage or injury, and shall be kept in a clean and orderly manner. Every excavation shall be protected at all times by safety devices as prescribed by the Manual of Uniform Traffic Control Devices for Streets and Highways, and in such a manner as to minimize the disruption of the flow of traffic in the vicinity of the excavation. Failure to maintain a safe, clean and orderly site shall be cause for suspension of the permit pending correction of the cause of suspension, or revocation of the permit if the said fault be continued or of an aggravated nature. (Ord. 1324 §1, 2006)

12.04.110 Unlawful to Remove Safety Devices. It shall be unlawful to remove, displace, damage or interfere with any barricade, warning light, or any other safety device, which is legally placed around or about any street, alley, sidewalk, excavation, or other construction work within the City. (Ord. 1324 §1, 2006)

12.04.120 Prompt Completion of Work. After any work is commenced, the permittee shall proceed with diligence, expedite all work covered by the permit (or contract), promptly complete the work and restore the street and any traffic control devices to their original condition, or as near as may be, so as not to obstruct the public place or travel more than is reasonably necessary. (Ord. 1324 §1, 2006)

12.04.130 Indemnification. The permittee shall be responsible for any and all damages, losses to property or injury to persons including the City arising out of the exercise of the permit or the construction, installation or maintenance of any device or structure including the installation of barricades or lights or the lack of installation thereof, and the permittee shall indemnify and save harmless, the City and all its officers, agents, and employees from all suits, actions, claims of any character, name and description brought for or on account of any injuries, losses or damages received or sustained by any person or persons or property on account of the exercise of the permit or of any act or omission of the permittee thereunder, the permittee's agents or employees or on account of the failure of the permittee to maintain the structure or device or to provide necessary safety devices to ensure the safety of the public including the installation of barricades or lights or the lack of installation thereof; and the permittee shall defend against any suit, action, or claim and pay attorney's fees and any judgment, with costs, which may be obtained against the City, its officers, agents, or employees growing out of the injury or damage. (Ord. 1324 §1, 2006)

12.04.140 Construction Site Traffic Control.

A. Every person, firm or corporation doing or causing to be done any of the work authorized by this Chapter shall keep the work site protected at all times with proper signs and notices of danger posted on the street, alley or sidewalk, and between the hours of sunset and sunrise shall keep the work properly lighted so as to warn all persons thereof. Work zone traffic

control shall comply with the City of Colorado Springs City Engineering Standard Specifications.

B. Construction signing and marking shall conform to the Manual of Uniform Traffic Control Devices for Streets and Highways.

C. Prior to beginning construction, a Traffic Control Plan (“TCP”) in drawing form shall be submitted by a registered professional engineer for review and approval of the City Engineer. No phase of the construction shall commence until the TCP has been approved. Approved TCPs shall not be revised without prior written approval of the City Engineer.

D. The TCP shall include detailed signing, barricading, and traffic detouring information for each phase or stage of construction including as a minimum: type and number of devices, working hours, number and location of flaggers, and time restrictions, if any.

E. Copies of the approved TCP shall be available on-site at all times; the contractor shall provide copies to the City Engineer and project inspector. (Ord. 1324 §1, 2006)

#### 12.04.150 Obstructions on Public Way Prohibited.

A. Unlawful to Obstruct Public Way – It shall be unlawful for any person to place upon or construct upon any sidewalk, street, alley, or other public way or upon any natural watercourse or improved drainageway any encumbrance or obstruction, such as, but not limited to, earth fill, building materials, fences, platforms, stairs, railings, or barricades (offending objects).

B. Notice to Remove Offending Objects – The Director of Public Works/City Engineer or designated representative shall notify in writing the owner, agent, or person responsible for the placing or construction of the offending object, when known to the Director of Public Works/City Engineer, to remove same within a reasonable time and restore the public way to its former state. If the offending object has not been removed at the expiration of the time stated in the notice, the Director of Public Works/City Engineer shall cause the same to be removed and stored and all necessary correction work performed to restore the public way at the sole expense of the owner.

C. Abandoned Objects Become City Property – If within 30 days the offending object has not been reclaimed and all costs of removal and restoration of the public way paid, the same shall be presumed to have been abandoned and the City Manager may declare the same to be city property. The same may be used or disposed of in the same manner as other city property. (Ord. 1324 §1, 2006)

#### 12.04.160 Grading, Erosion, and Stormwater Quality.

A. Permit Required – No land area within the City shall be graded, stripped, excavated, filled, or otherwise disturbed without first obtaining a grading permit pursuant to the provisions of this Section. Prior to the issuance of a grading permit, the City requires all land

development and proposed construction project plans submitted for approval to include a soil erosion/dust control plan. All soil erosion/dust control plans shall incorporate measures to prevent or reasonably control soil from being exported by air or water from the site to streets, alleys, sidewalks, curbs, gutters, storm sewers, and other public utility systems, water courses and any other properties. The soil erosion/dust control plan shall be prepared in accordance with the BMP manual adopted by the City.

B. Requirements – any land disturbance by owner, developer, contractor, or other person shall comply with the basic grading, erosion, and storm water quality requirements and general prohibitions listed below and comply with the City of Colorado Springs Drainage Criteria Manual, Volume 2, Stormwater Quality Policies, Procedures, and Best Management Practices (BMPs).

1. All persons engaged in soil disturbance shall implement and maintain acceptable soil erosion and sediment control measures including BMPs in conformance with the erosion control technical standards of the manual and in compliance with the erosion and storm water quality control plan approved by the City, if required.
2. Stormwater discharges from construction sites shall not cause or threaten to cause pollution, contamination or degradation of State waters.
3. Concrete wash water shall not be discharged to or allowed to runoff to State waters, including any surface or subsurface drainage system or appurtenance thereto.
4. Building, construction, excavation, or other waste materials shall not be temporarily placed or stored in the street, alley, or other public way unless in conformance with an approved traffic control plan. A best management practice (BMP) may be required by the City Engineer if deemed necessary based upon specific conditions and circumstances.
5. Vehicle tracking of soils off site shall be minimized.
6. The owner, site developer, contractor, and/or their authorized agents shall be responsible for the removal of all construction debris, dirt, trash, rock, sediment and sand that may accumulate in the storm sewer or other drainage conveyance system as a result of site development.
7. No person shall cause the impediment of the storm water flow line of curb and gutter, including the temporary ramping with materials for vehicle access.
8. Individuals shall comply with the “Colorado Water Quality Control Act” Article 8 of Title 25 C.R.S. and “Clean Water Act” (33 USC, Section 1344), the City MS4 Permit requirements, Phase II EPA Regulations, other regulations promulgated, certifications, or permits issued, in addition to the requirements included in the BMP manual.
9. The quantity of materials stored on the project site shall be limited, as much as practical, to the quantity required to perform the work in an orderly sequence. All materials on site shall be stored in a neat, orderly manner, in their original containers, with manufacturer’s labels. Materials shall not be stored in a location where they can be carried by storm water runoff into State water at any time.
10. A copy of a Storm Water Management Plan (SWMP) shall be submitted to and kept on file by the City Engineer.
11. A copy of a Storm Water Management Plan (SWMP) shall be kept on the

Construction Site until Construction is complete and accepted by the City. (Ord. 1324 §1, 2006)

12. New Development and Redevelopment shall utilize low impact permanent water quality drainage Best Management Practices (BMPs) including Full spectrum Extended Detention Basin Sedimentation Facility design standards. The following additions are hereby adopted by reference:
  - a. “Peak Flow Control for Full spectrum of Design Storms: Urban Drainage & Flood Control District (UDFCD), Denver, Colorado Concept Paper Dated January 1, 2005;
  - b. Full Spectrum Detention Design Standards from UDFCD, Denver, Colorado Criteria Manual Volume 2 Chapter 10 & Detention Volume Estimating Workbook Dated June 2007;
  - c. Full spectrum Detention Design Standards from Arapahoe County Colorado Storm Water Management Manual Chapters 13 & 14 Dated March 2007.
  - d. “Stormwater Best Management Practices Toolbox – April 2006” prepared by HDR Company for City of Boulder, Colorado.
  - e. “Criteria Manual Volume 3, BMP Spreadsheets/Drawings” from UDFCD, Denver, CO.
  - f. “Preliminary Data Summary of Urban Storm Water BMPs – EPA-821-R-99-012” from Environmental Protection Agency (EPA), Washington, DC.
  - g. “Urban Stormwater Retrofit Practices – Manual 3 – August 2007” prepared for EPA by the Center for Watershed Protection, Ellicott City, MD.
13. All storm sewer facilities shall be cleaned, video camera/DVD inspected and repaired (if needed) at developer expense prior to City acceptance.
14. All new development and redevelopment storm sewer inlet and outlet control structures shall include an 4-inch diameter disc storm drain marker with a centered fish emblem and the wording above/below stating “No Dumping-Drains to Creek” as approved by the City. (Ord. 1384 §3, 2007; Ord. 1450 §1, 2009)

#### 12.04.170 Dirt, Debris, and Construction Waste.

A. Depositing on Streets Prohibited – No person shall allow the tracking, dropping, or depositing of dirt, debris, construction waste or any other material by or from any vehicle onto any street, alley, sidewalk, curb, gutter or public property. If the tracking, dropping, or depositing occurs, the person causing same shall promptly remove all materials and restore the street, alley, sidewalk, curb, gutter or public property to its prior condition.

B. Removal of Debris Required – No person engaging in activity at a construction site on public or private property in conjunction with the construction activity shall allow the street, alley, sidewalk, curb, gutter or public property to accumulate construction materials, waste materials, debris, or rubbish as the result of the construction activity. Such person shall remove all such materials, tools, construction equipment, machinery and surplus materials, from the street, alley, sidewalk, curb, gutter, or public property, if public access is restricted in any manner.

C. Responsibility for Nuisance – Any person functioning as a general contractor or superintendent with overall construction responsibilities and/or supervision of the construction site or operation area shall be responsible for any violations of the provisions of this Section by any agents, employees, subcontractors, or handlers of materials or supplies to and from the construction site. (Ord. 1324 §1, 2006)

12.04.180 Hours of Operation for Construction Activity.

Construction work is permitted only within the specified hours:

Monday-Friday:	7:00 AM – 7:00 PM
Saturday:	8:00 AM – 5:00 PM
Sunday:	9:00 AM – 4:00 PM

Construction work times may be increased or reduced by the City to accommodate traffic, schools, and other activities. Other working hours may be granted with the express written permission of the City Manager or in the case of an emergency. (Ord. 1324 §1, 2006)

12.04.190 Quality of Work – Bond.

A. Every person, firm or corporation performing work under such permit shall fully comply with said plans and drawings of the work and with all of the aforesaid rules, regulations and specifications authorized by this Chapter shall perform said work in a good workmanlike manner and shall use proper materials in all construction. Any permittee or other person, who cuts, opens, trenches, or excavates any street, alley, sidewalk, curb, or gutter shall make proper repairs after completion of his work and leave said street, alley, sidewalk, or curb in the same or better condition than it was before such work was begun.

B. Every person, firm or corporation applying for a permit authorized by this Chapter, and prior to the issuance thereof, shall file a surety bond good for one year in favor of the City in the penal sum to be set by the City Engineer, and conditioned upon the faithful performance of such work in strict compliance with plans and drawings, which bond will guarantee the repair and replacement of any defective or unskilled work and indemnify and save the City harmless from any and all claims for damages on account of improper work or the negligent or improper barricading, blocking or lighting of the street, alley or sidewalk, and assure the City of adequate repair and replacement of damage caused by cutting, opening, trenching, or excavating said street, alley, sidewalk, curb, or gutter. The bond may be waived by the City Engineer in the City Engineer's discretion in the event of small or minor installations or repair, or in the event of other circumstances making the bond unnecessary. (Ord. 1324 §1, 2006)

12.04.200 Violation – Penalty. Any person, firm or corporation or other entity violating any of the provisions of this Chapter, or codes adopted by reference pursuant to this Chapter, shall be guilty of a misdemeanor, and such person, firm or corporation shall be guilty of a separate offense for each and every day or portion thereof during which any such violation is committed, continued or permitted, and, upon conviction of any such violation, such person, partnership or corporation shall be punished by a fine of not more than One Thousand Dollars



(\$1,000.00) or by imprisonment. Also, in the event of the violation of any of the provisions of this Chapter by any holder of a permit under this Chapter, the City Engineer may forthwith cancel the permit of the holder thereof, remove his construction apparatus and equipment, if any, from the street, alley or sidewalk involved, and repair any damage to this street, alley or sidewalk, curb, gutter or curb walk at the sole expense of the holder of said permit. (Ord. 1324 §1, 2006)

12.04.210 Liability of the Permittee for Damage to and Restoration of Public Right-of-Way. The permittee shall be liable to the City for any damage the permittee causes to the curb, gutter, asphalt, or sidewalk within the public right-of-way. The permittee shall immediately repair any such damage to the satisfaction of the City Engineer upon either completion of the work or notification by the City Engineer of such damage. If not repaired to the satisfaction of the City Engineer by the permittee, the permittee shall pay any cost the City incurs in repairing any such damage upon notification to the permittee by the City of the cost of the damage and any costs incurred by the City in collecting damages from the permittee including reasonable attorney's fees. (Ord. 1324 §1, 2006)

12.04.220 Revocation of Permit. The permit may be revoked by the City Engineer upon ten days written notice to the permittee for violation of this Chapter or violation of any of the conditions of the permit, or immediately by the City Engineer, without written notice, if the City Engineer determines that the work authorized by the permit constitutes a safety hazard. (Ord. 1324 §1, 2006)

12.04.230 Appeals. Any permittee may appeal denial of issuance of a permit or the revocation of a permit to the City Clerk within ten days after the mailing of a notice of revocation. Upon receipt of such appeal, the City Clerk shall hold a hearing within fifteen days after the receipt of the appeal concerning the appeal and shall notify the appellant of the time and place of the appeal. Such hearing shall be informal. No formal rules of evidence shall apply. The decision of the City Clerk at the hearing shall be final. In the event that the decision of the City Clerk is the subject of the appeal, the City Clerk shall appoint another person to hear the appeal in lieu of the City Clerk. (Ord. 1324 §1, 2006)

Street Design Standards Chart  
City of Fountain (March 2008)

Page 1 of 2

	Community Arterials	Community Collector	Minor Residential Collector	Residential
Design Speed	40	35	30	25 – 30
Spacing	½ to 1 mile	¼ to ½ mile	¼ to ½ mile	400 – 1400
Trip Length	Over 1 mile	1 mile	1 mile	Under 1 mile
Row Width	100' - 120'	80'	60' *	50' *
Pavement Width	60' – 72'	44'	40'	34'
Number of Lanes	4 – 5	2 – 4	2 – 3	2
Lane Widths	12'	11' – 12'	11' – 12'	11'
Design ADT	10,000 – 25,000	3,500 – 10,000	1,500 – 3,500	200 – 1,500
Median	Painted / Raised 12' – 17'	Painted 12'	N/A	N/A
Sidewalk Minimum Width (W), Thickness (T), Placement & Curb Type	6' W. x 4" T. Detached with Vertical Curb	5' W. x 4" T. Detached with Vertical Curb	5' W. x 4" T. Attached or Detached with Vertical Curb	5.5' W. x 5" T. Attached with Ramp Curb or 5' W. x 4" T. Attach/Detach with Vert. Curb
Grades	0.5% -6%	0.5% - 8%	0.5% - 10%	0.5% - 10%
Grade Maximum Length	800' – 1100'	500'	500'	350'
Horizontal & Alignment Radius	700'	450'	300'	200'
Vertical Alignment (K Value)	Refer to AASHTO Design Standards			
Intersection Frequency	600'	500'	500'	500'
Intersection Grade	0.5% - 4%	0.5% - 4%	0.5% - 4%	0.5% - 4%
Access	Full Control	Partial Control	Partial Control	Partial Control
Parking	NO	NO	MAYBE	YES
Design Vehicle	WB 50	WB 40	WB 40	SU 30
Intersection Sight Distance	Use City of Colorado Springs Traffic Engineering Standards			
Stopping Sight	Use City of Colorado Springs Traffic Engineering Standards			

Distance	
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\* -- Requires 5' to 10' minimum width easements each side of roadway.

Note: Turn Lanes & Bike Lanes may require additional pavement width & Right-of-Way.

Street Design Standards Chart  
City of Fountain (March, 2008)

Page 2 of 2

	<b>Industrial Commercial</b>	<b>Expressway</b>		
Design Speed	30	60		
Spacing	400 – 1400	2 miles		
Trip Length	Local Truck	Over 5 miles		
Row Width	65'	160' - 210'		
Pavement Width	44'	72' – 96'		
Number of Lanes	2 – 4	4 - 6		
Lane Widths	11' – 12'	12'		
Design ADT	7,500 – 10,000	25,000 - 75,000		
Median	N/A	Landscaped 28'		
Sidewalk Minimum Widths, Thickness, Placement & Curb Types	5' W. x 5" T. Detached If Any with Vertical Curb	8' to 10' W x 5" T Detached Path or Trail If Any with Variable Curb Types		
Grades	0.5% - 8%	0.5% - 4%		
Grade Maximum Length	500'	1500'		
Horizontal & Alignment Radius	450'	2000'		
Vertical Alignment (K Value)	Refer to AASHTO Design Standards			
Intersection Frequency	500'	1320'		
Intersection Grade	0.5% - 4%	0.5% - 2%		
Access	Partial Control	Full Control		
Parking	May be prohibited	NO		
Design Vehicle	WB 60	WB 60		
Intersection Sight Distance	Use City of Colorado Springs Traffic Engineering Standards			
Stopping Sight Distance	Use City of Colorado Springs Traffic Engineering Standards			

Note: Turn Lanes & Bike Lanes may require additional pavement width & Right-of-Way.

**TABLE 5**  
**STRENGTH COEFFICIENTS**  
**City of Fountain - March 2008**

<b>Pavement Structure Component*</b>	<b>Strength Coefficients</b>	<b>(Limiting Test Criteria)</b>
<b>Conventional Material</b>		
Portland Cement Concrete	0.50	(See Section 3.7)
Hot Mix Bituminous Pavement	(Pikes Peak Region "SuperPave" HMA Specs)	
	0.46	(75% Minimum Crushed Aggregate)
	0.44	(60% Minimum Crushed Aggregate)
	0.42	(45% Minimum Crushed Aggregate)
Hot Mix Bituminous Pavement	(1800 lbs. Marshall or Stabilometer = 35+)	
	0.40	(30% Minimum Crushed Aggregate)
Exist Bituminous Pavement	0.30	( 9 to15 year age)
	0.24	(>15 year age)
Graded Aggregate Base Course	0.14	(CBR 60+ or R 77+)
Crushed Stone Base Course	0.12	(CBR 60+ or R 77+)
Exist Aggregate Base Course	0.10	(CBR 40+ or R 69+)
Granular Subbase Course	0.08	(CBR 15+ or R 50+)
<b>Treated Materials</b>		
Bituminous Treated Aggregate Base	0.23	(3.5% by Volume & 50% Crushed)
Cement Treated Aggregate Base	0.20	(7 day 650-1000 psi)
Cement Treated Subgrade	0.12	(7 day, 160 psi, P.I. <6)

\* The combination of one or more of the following courses of pavement materials placed on a properly stabilized roadbed to support the traffic load and distribute it to the underlying roadbed .

## Chapter 12.06

### DUMPSTERS

#### Sections:

12.06.010	Definitions
12.06.020	Application
12.06.030	Permit Required
12.06.040	Requirements for Dumpsters Placed in the Public Right-of-Way
12.06.050	Liability of the Permittee for Damage to and Restoration of Public Right-of-Way

12.06.060	Indemnification
12.06.070	Revocation of Permit
12.06.080	Appeal
12.06.090	Fee
12.06.100	Requirements for Dumpsters Placed Within Construction Sites

12.06.010 Definitions: The following definitions apply to this Chapter:

A. “Construction Site:” As used within this Chapter, construction site shall include any lot or area upon which construction is occurring.

B. “Dumpster:” As used within this Chapter dumpster shall mean any container that is placed within the public right-of-way or upon a construction site and which is used for, intended for, or is capable of being used for the containment of trash, debris, or rubbish.

C. “Public right-of-way:” As used within this Chapter, public right-of-way shall mean City owned public right-of-way and shall include any sidewalk, street, curb, or gutter located with any public right-of-way. (Ord. 1287 §1, 2005)

12.06.020 Application: This Chapter shall apply to the placement or use of dumpsters within any public right-of-way within the City and to the placement of dumpsters within construction sites within the City. (Ord. 1287 §1, 2005)

12.06.030 Permit Required: No dumpster shall be placed in the public right-of-way without a permit issued by the City Public Works Department. A separate permit shall be required for each dumpster location within the public right-of-way. The City is not required to issue a permit if the City determines that issuance of such permit would constitute a safety hazard. The City Public Works Department may impose reasonable conditions to assure that the dumpster does not become a safety hazard and any other reasonable conditions that the Public Works Department determines are necessary. The permit shall set forth its date of expiration. The City Public Works Department may refuse to issue a permit if the requirements of this Chapter are not met. (Ord. 1287 §1, 2005)

12.06.040 Requirements for Dumpsters Placed in the Public Right-of Way: Dumpsters placed within the public right-of-way shall meet for the following requirements:

- A. Dumpsters shall not be larger than a ten cubic yard capacity.
- B. Dumpsters shall have covers to prevent debris to prevent the spread of debris.
- C. Dumpsters shall be placed upon plywood with a minimum of one-half inch thickness to reduce damage to the street.
- D. Dumpsters shall not inhibit drainage in the area.
- E. Dumpsters shall not rest on the curb or gutter.

F. Debris, trash, or refuse shall not be stored outside of the dumpster on the construction, home or business site.

G. Dumpsters shall be emptied frequently so as not to allow trash to spill out. (Ord. 1287 §1, 2005)

12.06.050 Liability of the Permittee for Damage to and Restoration of Public Right-of-Way: The permittee shall be liable to the City for any damage the dumpster or its use cause to the curb, gutter, asphalt, sidewalk within the public right-of-way. The permittee shall immediately repair any such damage to the satisfaction of the City Public Works Department upon either completion of the project, removal of the dumpster or notification by the City Public Works Department of such damage. If not repaired to the satisfaction of the City by the permittee, the permittee shall pay any cost the City incurs in repairing any such damage upon notification to the permittee by the City of the cost of the damage and any costs incurred by the City in collecting damages from the permittee including reasonable attorney's fees. (Ord. 1287 §1, 2005)

12.06.060 Indemnification: The permittee shall be responsible for any and all damages to property or injury to persons arising out of the exercise of the permit or the construction, installation or maintenance of the dumpster and the permittee shall indemnify and save harmless the City and all its officers, agents and employees from all suits, actions or claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person or persons or property on account of the exercise of the permit or of any act or omission of the permittee thereunder, the permittee's agents or employees or on account of the failure of the permittee to maintain the dumpster or to provide necessary safety devices to ensure the safety of the public; and the permittee shall defend against any suit, action or claim and pay any judgment, with costs, which may be obtained against the City, its officers, agents or employees growing out of the injury or damage. (Ord. 1287 §1, 2005)

12.06.070 Revocation of Permit: The permit may be revoked by the City Public Works Department upon ten days written notice to the permittee for violation of this Chapter or violation of any of the conditions of the permit, or immediately by the City Public Works Department, without written notice, if the City Public Works Department determines that the dumpster authorized by the permit constitutes a safety hazard. If the dumpster is removed without written notice, the City Public Works Department shall mail written notice as soon as practicable to the permittee after such removal. Upon revocation of the permit, the dumpster shall immediately be removed from the public right-of-way. (Ord. 1287 §1, 2005)

12.06.080 Appeal: Any permittee may appeal denial of issuance of a permit or the revocation of a permit to the City Clerk within ten days after the mailing of a notice of revocation. Upon receipt of such appeal, the City Clerk shall hold a hearing within fifteen days after the receipt of the appeal concerning the appeal and shall notify the appellant of the time and place of the appeal. Such hearing shall be informal. No formal rules of evidence shall apply. The decision of the City Clerk at the hearing shall be final. (Ord. 1287 §1, 2005)

12.06.090 Fee: The permit fee for each dumpster located in the public right-of-way shall be established by resolution by the City Council. (Ord. 1287 §1, 2005)

12.06.100 Requirements for Dumpsters Placed Within Construction Sites: A permit is not required for dumpsters placed within construction sites. Dumpsters placed within construction sites shall meet the following requirements:

- A. Dumpsters shall not be larger than a ten cubic yard capacity.
- B. Dumpsters shall have covers to prevent the spread of debris.
- C. Dumpsters shall not inhibit drainage in the area.
- D. Dumpsters shall not rest on the curb or gutter.
- E. Debris, trash, or refuse shall not be stored outside of the dumpster on the construction, home or business site.
- F. Dumpsters shall be emptied frequently so as not to allow trash to spill out. (Ord. 1287 §1, 2005)

### **Chapter 12.08**

### **WATER CONTROL**

Sections:

- 12.08.010 Flooding of Streets Prohibited
- 12.08.020 Violation - Penalty

12.08.010 Flooding of Streets Prohibited. It is a misdemeanor to allow the water running in ditches to overflow or work out so as to flood any street, alley or public avenue in the City, and it shall be the duty of all persons in charge of, or using water rights from any ditches to so contain the water that it cannot overflow any street alley or public avenue in the City. (Ord. 38 §1, 1907)

12.08.020 Violation – Penalty. Any person convicted of violating Section 12.08.010 shall be fined a sum not less than Twenty-five Dollars (\$25.00) nor more than One Thousand Dollars (\$1,000.00) or imprisoned up to one year, or both such fine and imprisonment, provided that each day during which such violation shall occur and continue shall be considered a separate offense. (Ord. 924 §1, 1991)

### **Chapter 12.10**

### **STORM WATER QUALITY MANAGEMENT AND DISCHARGE CONTROL CODE**



## I. GENERAL PROVISIONS

### Sections

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- 12.10.102 Purpose and Intent
- 12.10.103 Definitions
- 12.10.104 Applicability
- 12.10.105 Responsibility for Administration
- 12.10.106 Severability
- 12.10.107 Regulatory Consistency
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## II. DISCHARGE PROHIBITIONS

- 12.10.201 Prohibition of Illegal Discharges
- 12.10.202 Prohibition of Illicit Connections
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- 12.10.204 Discharges in Violation of Industrial or Construction Activity NPDES Storm Water Discharge Permit

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- 12.10.301 Requirement to Prevent, Control and Reduce Storm Water Pollutants
- 12.10.302 Requirement to Eliminate Illegal Discharges
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- 12.10.401 Authority to Inspect
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- 12.10.501 Public Nuisance; Notice of Violations
- 12.10.502 Appeal
- 12.10.503 Abatement by the City
- 12.10.504 Charging Cost of Abatement; Liens
- 12.10.505 Emergency Abatement
- 12.10.506 Violations
- 12.10.507 Compensatory Action
- 12.10.508 Acts Potentially Resulting in a Violation

## I General Provisions

12.10.101: Title: This chapter shall be known as the STORM WATER QUALITY MANAGEMENT AND DISCHARGE CONTROL CODE and may be so cited. (Ord. 1384. §2, 2007)

12.10.102: Purpose and Intent: The purpose and intent of this chapter is to ensure the health, safety and general welfare of citizens, and to protect the water quality of watercourses and water bodies in a manner pursuant to and consistent with the Federal Clean Water Act (33 USC section 1251 et seq.) by reducing pollutants in storm water discharges to the maximum extent practicable and by prohibiting non-storm water discharges to the City's Municipal separate storm sewer system. (Ord. 1384. §2, 2007)

12.10.103: Definitions: The terms used in this chapter shall have the following meanings:

**BEST MANAGEMENT PRACTICES OR BMPs:** Schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce the pollution of waters of the State. BMPs also include treatment, operating procedures, and practices to control site runoff, spillage or leaks, waste disposal or drainage from material storage. BMPs include structural and nonstructural controls.

**CDPHE:** The Colorado Department of Public Health and Environment.

**CITY:** The City of Fountain.

**CLEAN WATER ACT:** The Federal Water Pollution Control Act (33 USC section 1251 et seq.), and any subsequent amendments.

**CONSTRUCTION ACTIVITY:** Activities subject to NPDES (see definition of National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permits) construction permits. These include construction projects resulting in land disturbance of one acre or more. Activities include, but are not limited to, clearing and grubbing, grading, excavating and demolition.

**HAZARDOUS MATERIALS:** Any material, including any substance, waste, or combination thereof, defined as hazardous material or hazardous waste by the Federal Clean Water Act, Colorado State statutes or regulations, the Fountain Municipal Code, or the City's NPDES permit.

**ILLEGAL DISCHARGE:** Any discharge to an MS4 (see definition of Municipal Separate Storm Sewer System Or MS4) that is not composed entirely of storm water except the following:

discharges specifically authorized by a Colorado Discharge Permitting System (CDPS) permit and allowable non-storm water discharges under the City's Municipal Storm Water Discharge Permit (MSDP).

**ILLICIT CONNECTIONS:** Either of the following:

- A. Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the MS4 including, but not limited to, any conveyances which allow any storm water discharge including sewage, process wastewater and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether the drain or connection had been previously allowed, permitted or approved by a government agency; or
- B. Any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps or equivalent records and approved by the City.

**INDUSTRIAL ACTIVITY:** Activities subject to NPDES industrial permits as defined in 40 CFR, section 22.26(b)(14).

**MUNICIPAL SEPARATE STORM SEWER SYSTEM OR MS4:** A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels or storm drains):

- A. Owned or operated by the State or a city, town, county, district, association or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water or other wastes, including a sewer district, flood control district or drainage district, or similar special districts under State law, or a designated and approved management agency under section 208 of the Clean Water Act that discharges to State waters;
- B. Designed or used for collecting or conveying storm water;
- C. Which is not a combined sewer; and
- D. Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR section 122.2 and 5 CCR 1002-20, 4.3.7.X(3-91).

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMITS:** General, group and individual storm water discharge permits which regulate facilities defined in Federal NPDES regulations pursuant to the Clean Water Act. NPDES permits are issued by the State of Colorado as Colorado Discharge Permitting System (CDPS) permits.

**POLLUTANT:** Includes dredged spoil, dirt, slurry, solid waste, incinerator residue, sewage, sewage sludge, garbage, trash, chemical waste, biological nutrient, biological material, radioactive material, heat, wrecked or discarded equipment, rock, sand, or any industrial, municipal or agricultural waste.

**POLLUTION:** Manmade, man induced or natural alteration of the physical, chemical, biological and radiological integrity of water.

**PREMISES:** Any building, lot, parcel of land or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

**STATE WATERS:** Any and all surface and subsurface waters which are contained in or flow in or through this State, but not including waters in sewage systems, waters in treatment works of disposal systems, waters in potable water distribution systems and all water withdrawn for use until use and treatment have been completed.

**STORM WATER:** Precipitation induced surface runoff and drainage.

**WATERS OF THE UNITED STATES:** Surface watercourses and water bodies as defined at 40 CFR section 122.2 including all natural waterways and definite channels and depressions in the earth that may carry water, even though the waterways may only carry water during rains and storms and may not carry storm water at and during all times and seasons. (Ord. 1384. §2, 2007)

12.10.104: Applicability: This chapter shall apply to all water entering the MS4 generated on or flowing from any developed and undeveloped lands lying within the City of Fountain. (Ord. 1384. §2, 2007)

12.10.105: Responsibility for Administration: The City Engineer shall administer, implement and enforce the provisions of this article. Any powers granted or duties imposed upon the City Engineer may be delegated in writing by the City Engineer to persons or entities (collectively, the "City Engineer") acting in the beneficial interest of or in the employ of the City. (Ord. 1384. §2, 2007)

12.10.106: Severability: The provisions of this chapter are severable. If any provision, clause, sentence or paragraph of this article or its application to any person, establishment or circumstances shall be held invalid, the invalidity shall not affect the other provisions or application of this article. (Ord. 1384. §2, 2007)

12.10.107: Regulatory Consistency: This chapter shall be construed to assure consistency with the requirements of the Clean Water Act and Federal acts amending or supplementing the act, or any applicable Federal regulations. (Ord. 1384. §2, 2007)

12.10.108: Ultimate Responsibility of Discharger: The standards set forth in and promulgated pursuant to this chapter are minimum standards. This chapter does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution or

unauthorized discharge of pollutants into waters of the United States caused by that person. This chapter shall not create liability on the part of the City of Fountain, or any City agent or employee for any damages that result from any discharger's reliance on this chapter or any administrative decision lawfully made pursuant to this chapter. (Ord. 1384. §2, 2007)

## II Discharge Prohibitions

### 12.10.201: Prohibition of Illegal Discharges:

A. It shall be unlawful to discharge or cause to be discharged into the MS4 any materials, including, but not limited to, pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards or that could cause the City to be in violation of its MSDP, other than storm water. It shall be unlawful to store, handle or apply any pollutant in a manner that will cause exposure to rainfall or runoff and discharge to the MS4 and to State waters or waters of the United States.

B. The commencement, conduct or continuance of any discharge not composed entirely of storm water to the MS4 is prohibited except as described as follows:

1. Discharges pursuant to an NPDES (CDPS) permit and discharges due to firefighting activities.
2. Discharges from the following activities will not be considered a source of pollutants to the MS4 and to State waters when properly managed to ensure that no potential pollutants are present, and shall not be considered illegal discharges unless determined by the City to be significant contributors of pollutants to the MS4 or to cause a violation of the provisions of the Clean Water Act or this article: landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering (excluding over watering), individual residential car washing, individual residential swimming pool and hot tub discharges, individual residential street washing, water line flushing, flows from riparian habitats and wetlands, uncontaminated water from irrigation system meter pits and flows from emergency firefighting activities. Before applying the listed exceptions, the City shall make a determination on a case by case basis as to what is considered significant contributors of pollutants. In addition, the following non-storm water discharges need not be prohibited from entering the MS4, provided CDPHE approved control measures to minimize the impacts from the sources are implemented: Municipally owned swimming pool discharges, Municipal water tank draining and water from street washing (including sidewalks and medians) that is conducted by City staff or under contract with the City. These discharges may still require a CDPS permit, such as a minimal industrial discharge (MINDI) permit.
3. This prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver or waste discharge order issued to the discharger and administered by

the State of Colorado under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver or order and other applicable laws and regulations.

4. With written concurrence of the City Council by ordinance, resolution or motion, the City Engineer may exempt in writing other non-storm water discharges which are not a source of pollutants to the City's MS4 or waters of the United States. (Ord. 1384. §2, 2007)

12.10.202: Prohibition of Illicit Connections:

A. The construction, use, maintenance or continued existence of illicit connections to the MS4 is prohibited.

B. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. (Ord. 1384. §2, 2007)

12.10.203: Waste Disposal Prohibitions:

No person shall throw, deposit, leave, maintain, wash or rinse, keep, or permit to be thrown, deposited, left, or maintained, washed or rinsed, in or upon any public or private property, driveway, parking area, street, alley, sidewalk, component of the MS4, or State waters, any pollutants so that the same may cause or contribute to pollution. Wastes deposited in streets and contained in waste receptacles for the purposes of collection are exempted from this prohibition. (Ord. 1384. §2, 2007)

12.10.204: Discharges in Violation of Industrial or Construction Activity NPDES Storm Water Discharge Permit:

Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of that permit. In addition, all City requirements for grading and erosion control shall be complied with in accord with the Fountain Municipal Code. (Ord. 1384. §2, 2007)

### III Regulations and Requirements

12.10.301: Requirement to Prevent, Control and Reduce Storm Water Pollutants:

A. New Development and Redevelopment: The City has adopted requirements identifying appropriate BMPs to control the volume, rate, and potential pollutant load of storm water runoff from new development and redevelopment projects as may be appropriate to minimize the generation, transport and discharge of pollutants (see Fountain Municipal Code chapter 12.04). New Development and Redevelopment shall utilize low impact permanent water quality drainage Best Management Practices (BMPs) including Full Spectrum Extended

Detention Basin Sedimentation Facility design standards (see Fountain Municipal Code Section 12.04.160 Paragraph B).

B. Responsibility to Implement BMPs: Any person or entity engaged in activities or operations, or owning facilities or property which will or may result in pollutants entering storm water, the MS4 or State waters shall implement BMPs to the maximum extent practicable to provide protection from discharge into the MS4. BMPs shall be provided and maintained at the owner's or operator's expense. The City Engineer shall have the authority to require the installation, operation and/or maintenance of BMPs. The City Engineer shall also have the authority to require the removal of temporary BMPs.

C. The following BMP Technical Documents are hereby incorporated by reference:

1. Drainage Criteria Manual, volume 2, Stormwater Quality Policies, Procedures, Best Management Practices (“BMPs”) Nov. 1, 2002 from Colorado Springs, Colorado.
2. “Stormwater Best Management Practices Toolbox – April 2006” prepared by HDR Company for City of Boulder, Colorado
3. Criteria Manual Volume 3, BMP Spreadsheets/Drawings from UDFCD, Denver, CO.
4. Preliminary Data Summary of Urban Storm Water BMPs – EPA-821-R-99-012 from Environmental Protection Agency (EPA), Washington, DC.
5. Urban Stormwater Retrofit Practices – Manual 3 – August 2007 prepared for EPA by the Center for Watershed Protection, Ellicott City, MD.

(Ord. 1384. §2, 2007; Ord. 1450 §2, 2009)

12.10.302: Requirement to Eliminate Illegal Discharges:

The City Engineer may require by written notice that a person or entity responsible for an illegal discharge immediately, or by a specified date, discontinue the discharge and, if necessary, take measures to eliminate the source of the discharge to prevent the occurrence of future illegal discharges. (Ord. 1384. §2, 2007)

12.10.303: Requirement to Eliminate or Secure Approval for Illicit Connections:

A. The City Engineer may require by written notice that a person or entity responsible for an illicit connection to the MS4 comply with the requirements of this chapter to eliminate or secure approval for the connection by a specified date, regardless of whether or not the connection or discharges to it had been established or approved prior to the effective date of this chapter.

B. If, subsequent to eliminating a connection found to be in violation of this chapter, the responsible person or entity can demonstrate that an illegal discharge will no longer occur, that person or entity may request City approval to reconnect. The reconnection or reinstallation of the connection shall be at the responsible person's or entity's expense. (Ord. 1384. §2, 2007)

12.10.304: Watercourse Protection:

Every person owning property through which a watercourse passes, or that person's lessee, shall keep and maintain all parts of the watercourse within that property reasonably free of trash, debris, excessive vegetation and other obstacles that would pollute, contaminate or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain any existing privately owned structures within or adjacent to that watercourse, so that those structures will not become a hazard to the use, function or physical integrity of the watercourse. The owner or lessee shall not remove healthy bank vegetation beyond that actually necessary for maintenance, or remove that vegetation so as to increase the vulnerability of the watercourse to erosion. The property owner shall be responsible for maintaining and stabilizing that portion of the watercourse that is within the property owner's property boundaries in order to protect against any erosion and degradation of the watercourse originating or contributed from their property. (Ord. 1384. §2, 2007)

12.10.305: Requirement to Remediate:

Whenever the City Engineer finds that a discharge of pollutants is taking place or has occurred which will result in or has resulted in pollution of storm water, the MS4 or State waters, the City Engineer may remediate the pollution at the owner's or responsible person's or entity's expense, or may require by written notice to the owner of the property and/or the responsible person or entity that the pollution be remediated and the affected property restored within a specified time pursuant to the provisions of this chapter and using a remediation plan pre-approved by the City Engineer. Remediation plans must be submitted by the owner or responsible person or entity to the City Engineer and approved by the City Engineer prior to the start of the remediation. The plan shall be submitted on or before a mutually agreed date and time; however, if, in the sole opinion of the City Engineer, mutual agreement is not reached on a date and time for submittal of the plan, then the City Engineer shall designate a date and time for submittal. The plan shall include at a minimum a remediation schedule, list of personnel performing remediation work and list of equipment to be used. (Ord. 1384. §2, 2007)

12.10.306: Requirement to Monitor and Analyze:

The City Engineer may require by written notice that any person engaged in any activity and/or owning or operating any facility which may cause or contribute to storm water pollution, illegal discharges and/or non-storm water discharges to the MS4 or State waters, undertake at the person's or owner's expense monitoring and analyses by a State certified laboratory pursuant to the provisions of this article, and furnish reports to the City of Fountain as deemed necessary to determine compliance with this chapter. (Ord. 1384. §2, 2007)

12.10.307: Notification of Spills:

Notwithstanding other requirements of law, as soon as any owner or person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the MS4, or State waters from that facility, that person shall take all necessary steps to ensure the discovery, containment and



cleanup of the release. In the event of a release of a hazardous waste or material, the person shall immediately notify emergency response officials of the occurrence via emergency dispatch services (911). In the event of a release not requiring an emergency response, that person shall notify the City Engineer via the City's non-emergency dispatch telephone number, which shall also serve as the Spill Hotline, or by calling the City's Storm Water Drainage Team within the City Public Works Department. If the discharge of prohibited materials emanates from a commercial or industrial establishment, an on site written record of the discharge and the actions taken to prevent its recurrence must be kept. These records shall be retained for at least three (3) years. (Ord. 1384. §2, 2007)

#### IV Inspection and Monitoring

##### 12.10.401: Authority to Inspect:

Whenever necessary to enforce any provision of this chapter, or whenever the City Engineer has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this chapter, the City Engineer may enter the premises at all reasonable times to inspect the premises and to inspect and copy records related to storm water compliance. In the event the owner of any property within the City or the occupant refuses entry by City personnel after a request to enter and inspect has been made, the City Engineer may make application to any judge of the Municipal Court for the issuance of a warrant to inspect the property or carry out other duties, including the abatement of violations. The sworn application for entry and inspection shall identify the premises upon which entry is sought and the purpose for which entry is desired. The application shall state the facts giving rise to the belief that a condition which is a violation of the Fountain Municipal Code, the requirements of this chapter or the City's NPDES permit exists on the premises, or that a violation of the Fountain Municipal Code in fact exists and must be abated. Any warrant issued shall command the owner and occupant to permit entry to the City Engineer for the purposes stated in the application. (Ord. 1384. §2, 2007)

##### 12.10.402: Authority to Sample, Establish Sampling Devices and Test:

During any inspection provided by this chapter, the City Engineer may take any samples and perform any testing deemed necessary to aid in the pursuit of the inquiry or to record site activities. (Ord. 1384. §2, 2007)

#### V Enforcement

##### 12.10.501: Public Nuisance; Notice of Violation:

A. The protection of clean water being essential to the health, safety and welfare of the public, a violation of this chapter is declared to be a public nuisance, and may be summarily abated, restored or remediated by the City at the violator's expense. The City Engineer is authorized to take any action, including, but not limited to, education and training, to abate, enjoin or otherwise compel the cessation of the nuisance.

B. In addition to any other provision of the Fountain Municipal Code for the abatement of a public nuisance, whenever the City Engineer finds that a person has violated a prohibition or failed to meet a requirement of this chapter, the City Engineer may order compliance by written notice of violation to the person. That notice shall provide a description of the violation or failure and may require, without limitation:

1. The elimination of illicit connections or discharges;
2. The performance of monitoring, analyses and reporting;
3. The person to cease and desist any discharges, practices or operations in violation of this chapter;
4. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
5. The payment of a fine to cover administrative and remediation costs;
6. The implementation and/or maintenance of source control or treatment BMPs; and
7. The application for a State discharge permit.

If abatement of a violation and/or restoration or remediation of affected property is required, the notice shall set a deadline within which a remediation plan shall be developed, approved and implemented, and the remediation or restoration completed. The notice shall further advise that, should the person fail to abate, remediate or restore within the established deadline, the work may be done by the City or a contractor designated by the City Engineer and the expense of abatement shall be charged to the person. The notice shall include a date which shall be identified as the "date of notice of violation" for purposes of appeal rights. (Ord. 1384. §2, 2007)

12.10.502: Appeal:

Any person receiving a notice of violation under section [12.10.501](#) of this Chapter may appeal the determination of the City Engineer to the City Manager or the Manager's designee (the "City Manager"). The notice of appeal must be received by the Manager within ten (10) City business days from the date of the notice of violation. A hearing on the appeal before the Manager or the Manager's designee shall take place within fifteen (15) City business days from the date the City actually receives a timely notice of appeal. An appeal of the Manager determination can be made to the City Council. The notice of appeal must be received by the City Clerk within ten (10) City business days from the date of the Manager's determination. A de novo hearing on the appeal before the City Council shall take place within fifteen (15) City business days from the date the City Manager's actually receives a timely notice of appeal of the Manager's determination. The decision of the City Council shall be final. (Ord. 1384. §2, 2007)

12.10.503: Abatement by the City:

If the violation has not been abated pursuant to the requirements set forth in the notice of violation, or an emergency situation exists in the sole determination of the City Engineer, then the City Engineer or a contractor engaged by the City may enter upon the subject private property and shall be authorized to take any and all measures necessary to abate the violation, remediate and/or restore the property. (Ord. 1384. §2, 2007)

12.10.504: Charging Cost of Abatement; Liens:

A. Within thirty (30) City business days after abatement of the violation by City, the City Engineer shall notify in writing the property owner of the cost of abatement, including administrative costs. The City Engineer's notice shall include an "official notice date". The property owner may file a written protest objecting to the amount of the assessment with the City Clerk within fifteen (15) City business days of the "official notice date". The City Clerk shall set the matter for public hearing by the City Council. The decision of the City Council shall be set forth by resolution and shall be final. In addition to any lien placed upon real property, the cost of abatement, cost including administrative costs, shall be deemed a joint and severable personal debt of the property owner and the responsible party.

B. If the amount due is not paid within ten (10) City business days of the decision of the City Council or the expiration of the time in which to file an appeal under this section if no appeal is filed, the charges shall become a special assessment against the property and shall constitute a priority lien on the property for the amount of the assessment. This lien shall be deemed in priority of, and superior to, any and all liens then existing on the property or later levied upon the property. A copy of the resolution shall be filed with the County Assessor and the County Treasurer so that the Assessor may enter the amounts of the assessment against the parcel as it appears on the current assessment roll, and the tax collector shall include the amount of the full amount of the assessment on the bill for taxes levied against the parcel of land. (Ord. 1384. §2, 2007)

12.10.505: Emergency Abatement:

The City Engineer is authorized to require immediate abatement of any violation of this chapter which, in the City Engineer's sole determination, constitutes an immediate threat to the health, safety or welfare of the public. If any violation is not abated immediately as directed by the City Engineer, the City is authorized to enter onto the affected property and to take any and all measures required to remediate the violation. Any expense related to abatement, restoration or remediation undertaken by the City shall be fully reimbursed by the property owner and/or responsible party. Any relief obtained under this section shall not prevent City from seeking other and further relief authorized under this chapter or under Federal or State law. (Ord. 1384. §2, 2007)

12.10.506: Violations:

A. Penalties: It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. A violation of or failure to comply with any

of the requirements of this chapter shall constitute a misdemeanor. Except as otherwise stated in this chapter, each twenty four (24) hour period of violation, or part thereof, shall be considered a separate offense.

B. Authority to Issue Summons: The City Engineer or the Engineer's designee shall have the authority to issue a municipal summons to the Municipal Court for any violation of this chapter. All summonses issued under this subsection B shall be prosecuted in the Municipal Court by the Office of the City Attorney.

C. Enforcement by The City Attorney: The City Attorney is authorized to enforce this chapter in the Municipal Court and in the Colorado State courts. The City Attorney is authorized to call upon the United States Attorney for Colorado for the prosecution of any violations of the Federal Clean Water Act or permits, and the State's Fourth Judicial District Attorney or the Attorney General for the prosecution of any violations of State clean water statutes or permits occurring within the City limits or upon property owned, leased, controlled, regulated or otherwise held by the City under authority of the local, State or Federal law. (Ord. 1384. §2, 2007)

12.10.507: Compensatory Action:

In lieu of enforcement proceedings, penalties and remedies authorized by this chapter, the City Engineer may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc. (Ord. 1384. §2, 2007)

12.10.508: Acts Potentially Resulting in a Violation of the Federal Clean Water Act:

Any person who violates any provision of this chapter or any provision of any requirement issued pursuant to this chapter may also be in violation of the Clean Water Act or other Federal law, and may be subject to the sanctions of that act or Federal law, including civil and criminal penalties, in addition to the City's enforcement of this chapter. (Ord. 1384. §2, 2007)

**Chapter 12.12**

**SIDEWALK CONSTRUCTION<sup>1</sup>**

Sections:

12.12.010	Responsibility of Owner
12.12.020	Specifications of Construction
12.12.030	Failure of Owner to Construct – Authority of Board of Trustees
12.12.040	Failure of Owner to Construct – Notice Served

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<sup>1</sup> For statutory provisions on the construction of sidewalks, see C.R.S. 1973 §31-15-703(2).

- 12.12.050 Failure of Owner to Construct – Construction by Street  
Commissioner or Contractor
- 12.12.060 Laying to Established Grade Required
- 12.12.070 Work by Street Commissioner or Contractor – Inspection  
Required – Cost Assessment and Funding

12.12.010 Responsibility of Owner. Sidewalks shall be constructed by owners of property abutting on same, or at their expense, as provided in this Chapter, throughout the City, in the manner provided for in Section 12.12.020, and in such places and at such times as ordered by the Board of Trustees. (Ord. 28 §1, 1905)

12.12.020 Specifications of Construction. The ditch or curbline on all streets and avenues shall be thirteen feet from the property line, and the space between the property line and the ditch or curbline shall be made or constructed with walk and parked, except as follows:

A. A space of two feet from the property line shall be parked and sown to the grass, joining which shall be constructed a cement walk four and one-half feet wide; the space from said walk to the curbline or ditch line shall be six and one-half feet, and shall be sown to the grass; except, that on Main Street between Missouri Avenue and the center of the block between Ohio and Iowa Avenues, where all walks shall be constructed of cement from the property line to the curbline, ten feet.

B. All walks shall have a cement curb on the curbline six (6) inches wide and eighteen (18) inches deep and of proper grade.

C. All walks shall be constructed of cement and under the approval of the Board of Trustees. (Ord. 90 §1, 1916; Ord. 56 §1, 1909; Ord. 29 §1, 1905; Ord. 28 §2, 1905)

12.12.030 Failure of Owner to Construct – Authority of Board of Trustees. Whenever any sidewalk is ordered built, rebuilt or repaired, and the owner fails to build, rebuild or repair the same, then the same may be done by the Street Commissioner by order of the Board of Trustees, or in such manner as may be provided for by the Board of Trustees; provided further, that the Board of Trustees may order, from time to time, sidewalks to be constructed in any part of the City, and of such material and in such manner as they may deem desirable, in accordance with Section 12.12.020 of this Chapter. (Ord. 28 §3, 1905)

12.12.040 Failure of Owner to Construct – Notice Served. The City Clerk shall, upon the passage of any further order or resolution of the Board directing the construction or repair of any walk, cause a written notice to be served on the owner or owners of the property adjacent to or abutting upon the sidewalk, to construct the same in accordance with the provisions of this Chapter, or said order or resolution, within thirty (30) days from the service of said notice, which may be served by delivering a copy thereof to the owner or owners, at the abode of the owner, to any member of the owner's family over the age of fifteen (15) years. In case any owner is a non-resident, or his place of abode cannot be found, then the City Clerk shall cause said notice to be published for four (4) weeks in the paper of the City, or in the official paper. (Ord. 28 §4, 1905)

12.12.050 Failure of Owner to Construct – Construction by Street Commissioner or Contractor. If, at the expiration of the time for which the notice is given, the sidewalks have not been built by the owner of the abutting or adjacent property, then the Street Commissioner or contractor shall proceed as soon as practicable to construct the proper sidewalk as provided by this Chapter, where the same is directed to be built and has not been constructed by the owner of the abutting property, and in case any walk needs to be rebuilt or repaired, the same order shall prevail as in constructing new walks, as provided for in this Chapter. (Ord. 28 §5, 1905)

12.12.060 Laying to Established Grade Required. All sidewalks must be laid to the established grade of the City which may be shown or designated by the City surveyor, at the expense of the property owner or owners; and, if the sidewalks are not so laid upon the grade so designated, the Board may direct them to be repaired or rebuilt as provided in Section 12.12.040. The Trustees shall designate the grade upon which the sidewalk shall be built and issue a permit and instructions therefore whenever application is made to them, setting forth the location and kind of walk that shall be built. (Ord. 28 §6, 1905)

12.12.070 Work by Street Commissioner or Contractor – Inspection Required – Cost Assessment and Funding. As soon as the building, rebuilding or repairing of any sidewalk is completed, the same shall be inspected by the street and alley committee and a report made to the Board of Trustees, at their next regular meeting, of the cost of such sidewalk, if constructed by the Street Commissioner or contractor, and the amount that should be assessed to each lot, and said amount shall be a lien against the lots or property abutting such sidewalks; and, unless otherwise paid by the property owner, shall be collected the same as other taxes and whenever any sidewalk is built by the Street Commissioner or contractor, the Board of Trustees may cause a warrant to be drawn on the sidewalk funds to pay for the same, and if such warrant is presented to the Treasurer of the City, and there are not funds on hand to pay the same, the Treasurer shall endorse on the back of the warrant the date of presentation and the words, “no funds,” and any and all warrants so endorsed by the Treasurer shall draw interest at eight percent (8%) per year until paid. (Ord. 28 §7, 1905)

## Chapter 12.16

### CONSTRUCTION ASSESSMENTS<sup>1</sup>

Sections:

12.16.010	Authority to Apportion and Collect
12.16.020	Action on Bills Presented to Board of Trustees
12.16.030	Apportionment and Allotment to Owners Required
12.16.040	Lien Upon Property – Assessment Notice Requirements
12.16.050	Service of Assessment Notices by City Treasurer

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<sup>1</sup> For statutory provisions on municipal assessments for construction, see C.R.S. 1973 §31-15-401(d) and 31-15-704

- 12.16.060 Unpaid Assessments – Extension and Collection Procedure  
12.16.070 Failure of City Officer Not to Preclude Final Collection

12.16.010 Authority to Apportion and Collect. Whenever, pursuant to the general law of this State or ordinances of the City, the Board of Trustees has ordered put in, built, constructed or made any sidewalks or other public improvements, or repairs, and the same is done by or at the expense of the owners of particular lots or lands within the corporate limits, proceedings for the apportionment and collection of the expense of having such work done by the City, by contract or otherwise, may be as provided in this Chapter. (Ord. 128 §1, 1925)

12.16.020 Action on Bills Presented to the Board of Trustees. When any such work has been completed, and the bill therefore presented to the Board of Trustees, the same shall be audited, considered, allowed, or otherwise dealt with, in the same manner as other bills and claims against the City, and a warrant therefore may or may not be ordered drawn, in the discretion of the Board of Trustees. (Ord. 128 §2, 1925)

12.16.030 Apportionment and Allotment to Owners Required. Whenever any such bill has been allowed, it shall be the duty of the finance committee, aided, if he is so requested, by the City Clerk, to equitably apportion and allot to each owner, including the City if any of its property is affected, the proportionate share of each of the total cost of any such improvement among the several owners of the lots, or lands abutting upon or opposite to any such work in proportion to the frontage of each thereto, and report such apportionment and allotment to the Board of Trustees at its next regular meeting, for consideration and action, unless an adjourned regular or specially called meeting has been provided for, for that purpose. (Ord. 128 §3, 1925)

12.16.040 Lien Upon Property – Assessment Notice Requirements. Whenever the Board of Trustees approves any such apportionment and allotment, the same shall become a lien, as other taxes, upon the lots, or lands, against which charged, as provided in this Section, and it shall be the duty of the City Clerk, within three (3) days thereafter, to make out and sign and deliver to the City Marshal, notice in writing and the necessary copies thereof, wherein shall be stated a brief description of the lot, or land, against which any apportionment has been made, the name of the owner against whom any allotment has been charged, the amount thereof, and notice that unless such allotment, so charged, is paid to the City Treasurer within thirty (30) days from the date of service or posting such notice, the said amount, together with ten percent (10%) thereof to cover costs of assessment and collection, will be prorated to each lot, or parcel of land, and charged against the same as a special assessment, to be collected in the same manner as other taxes and the city Clerk shall cause the notice of such assessments to be published ten (10) days in some newspaper published in the City, and shall designate in the notice the time and place when any lot owner may appear before the Board of Trustees and be heard as to the justice and correctness of the amount so assessed. (Ord. 128 §4, 1925)

12.16.050 Service of Assessment Notices by City Treasurer. Upon receipt of any such notice, it shall be the duty of the City Marshal to deliver a true copy thereof to the City Treasurer, and another to the owner against whom any allotment has been charged, or to his agent in charge or control of the lot, or land, therein described. In case he is unable to find any such owner or agent within the corporate limits, such notice may be served by posting a copy

thereof upon the premises therein mentioned, and by mailing a copy of such notice, with postage fully prepaid, addressed to the owner at his last known, or discoverable, post office address, and he shall endorse on such original notice the date and manner of service; provided, that if for any reason there is no acting City Marshal, the City Clerk shall, and he is authorized to, perform the duties of the City Marshal enumerated above in this Section. (Ord. 128 §5, 1925)

12.16.060 Unpaid Assessments – Extension and Collection Procedure. If, at the expiration of thirty (30) days after the date of service of such notice, the amount therein stated is yet unpaid, the City Treasurer shall endorse such notice “unpaid”, and return the same to the city Clerk, who shall thereafter, and after the publication of notice as provided in Section 12.16.040, certify the same to the County Treasurer, within the proper time for extending the amount stated, together with ten percent (10%) thereof to cover costs of extension and collection, to be assessed against any lot, or land, therein described, and collected the same as any other taxes. (Ord. 128 §6, 1925)

12.16.070 Failure of City Officer Not to Preclude Final Collection. The failure of any officer mentioned in Sections 12.16.010 through 12.16.060 to perform at the prescribed time any duty therein mentioned, shall not invalidate any previous proper proceeding had, but, from any last proper proceeding, action in continuance thereof may be begun and pursued to effect a final collection of any allotment and charge mentioned in this Chapter. (Ord. 128 §7, 1925)

## Chapter 12.24

### SPECIAL IMPROVEMENT MAINTENANCE DISTRICTS

Sections:

12.24.010	Purpose
12.24.020	Organization
12.24.030	Contents of Petition
12.24.040	Validity
12.24.050	City Council Action
12.24.060	Hearing
12.24.070	Termination
12.24.080	Annual Levy
12.24.090	Boundaries
12.24.100	Provision for Lien
12.24.110	Advisory Committee
12.24.120	Obligation of City

12.24.010 Purpose. The City Council shall have the power and authority to establish, by ordinance, Special Improvement Maintenance Districts, for the purpose of maintenance and security of public improvements including, but not limited to, streets, utilities, lighting, sidewalks, drainage, parking and off-street parking systems, and traffic control devices. (Ord. 724 §1, 1987)



12.24.020 Organization. The organization of a district shall be initiated only by a petition filed with the City Clerk. The petition shall be signed by not less than a majority of persons who own real property in the district. For purposes of this Section, a corporation or partnership shall be considered one (1) person. After the filing of a petition, no signer shall be permitted to withdraw his name from the petition. (Ord. 724 §1, 1987)

12.24.030 Contents of Petition. The petition shall set forth:

- A. The name of the proposed district.
- B. A general description of the boundaries of the district with such certainty as to enable a property owner to determine whether or not his property is within the district.
- C. A general description of the improvements to be maintained within the district.
- D. A general description of the measures deemed appropriate for the security of the public improvements.
- E. The estimated yearly cost of maintaining and securing the improvements.
- F. The mill levy required by the district to meet the cost of maintaining and securing the improvements.
- G. A request for organization of the district. (Ord. 724 §1, 1987)

12.24.040 Validity. Any petition having the requisite signatures shall be valid if in substantial compliance with the requirements of Section 12.24.030. The City Council may, at any time, permit the petition to be amended to correct any errors in the description of the district or in any other particular. (Ord. 724 §1, 1987)

12.24.050 City Council Action. After the filing of the petition, the City Council shall set a date not less than thirty (30) or more than sixty (60) days after the petition is filed for a hearing thereon. The City Clerk shall cause a notice of the hearing to be published at least ten (10) days prior to the hearing. The City Clerk shall also mail a copy of the notice of the hearing to each owner of record of real property within the proposed district. The notice of hearing shall set forth the boundaries of the proposed district, the fact that all property in the district is subject to the lien of the indebtedness, and shall set forth the amount of the mill levy required to meet the cost of maintaining and securing the improvements as set forth in the petition. (Ord. 724 §1, 1987)

12.24.060 Hearing. Upon the hearing, if it appears that the petition has the requisite number of signatures, and that the allegations of the petition are true, the City Council shall, by ordinance, establish the district. If the City Council shall find that the petition has not been signed by the requisite number or if in the opinion of the City Council the proposed mill levy is excessive in relation to the benefit conferred, it shall dismiss the petition. The finding of the City

Council on accepting or dismissing a petition shall be final and conclusive and no appeal shall lie from determination to accept or dismiss the petition; provided, however, that nothing in this Section shall be construed as preventing the filing of subsequent petitions for similar improvements or a similar district. In establishing a district the City Council shall determine the public improvements to be maintained and secured, the amount of property in the district, and shall fix a rate of levy which, when levied upon every dollar of the valuation for assessment of taxable real property within the district, shall raise the amount required by the district during the ensuing fiscal year to meet the cost of maintaining and securing the public improvements. The mill levy shall not exceed the mill levy requested in the petition. (Ord. 724 §1, 1987)

12.24.070 Termination. The district so created shall continue in effect until a request to terminate the district by a petition signed by not less than a majority of persons who own real property in the district shall be filed with the City Clerk. If the City Clerk shall so certify that the petition contains the requisite number of signatures, the City Council shall set a date not less than thirty (30) nor more than sixty (60) days after the petition is filed for a hearing thereon. The City Clerk shall cause a notice of the hearing to be published at least ten (10) days prior to the hearing.

The City Clerk shall also mail a copy of the notice of hearing to each owner of record of real property within the district. Upon the hearing the City Council shall determine whether to dissolve the district or keep the district in effect. If the City Council determines to dissolve the district, it shall by ordinance declare the district dissolved. The finding of the City Council on dissolving the district or keeping the district in effect shall be final and conclusive and no appeal shall lie from such a determination. If the City Council determines to keep the district in existence, no further petition to dissolve the district shall be considered for one (1) year. (Ord. 724 §1, 1987)

12.24.080 Annual Levy. As long as the district shall remain in effect, the City Council shall, no later than October 1 of each fiscal year, determine for the ensuing fiscal year the public improvements to be maintained, the appropriate measures for the security of the public improvements, the amount of money necessary to be raised by a levy of taxable real property in the district, and shall fix a rate of levy which, when levied upon every dollar of the valuation for assessment of taxable real property within the district, shall raise the amount required by the district during the ensuing fiscal year to meet the cost of maintaining and securing the public improvements. The mill levy shall not exceed the mill levy set forth in the petition for creation of the district unless a subsequent petition signed by not less than a majority of those persons who own real property in the district requesting a higher mill levy is filed with the City Clerk. Upon the filing of such petition, the City Council shall set a date not less than thirty (30) nor more than sixty (60) days after the petition is filed for a hearing thereon. The City Clerk shall cause a notice of the hearing to be published at least ten (10) days prior to the hearing. The City Clerk shall also mail a copy of the notice of hearing to each owner of record of real property within the district. Upon the hearing the City Council shall determine whether the petition has the requisite number of signatures and whether a higher mill levy is excessive in relation to the benefit conferred. The finding of the City Council to set a higher mill levy shall be final and conclusive and no appeal shall lie from such a determination. (Ord. 724 §1, 1987)

12.24.090 Boundaries. The boundaries of any district organized under this Chapter may be changed in the manner prescribed in this Section. The owners of property proposed to be included in the district, or if more than one tract of property, not less than a majority of persons who own the real property sought to be included, may file a petition with the City Clerk requesting that such property be included in the district. The petition shall describe the property owned by the petitioners and shall be verified. The City Clerk shall cause a notice of hearing on said petition to be published at least ten (10) days prior to the hearing on the petition by the City Council, which notice shall state the filing of such petition, names of petitioners, and descriptions of property sought to be included. The City Clerk shall also mail a copy of said notice to each owner of record of real property sought to be included in the district. The City Council, at the time and place mentioned, shall proceed to hear the petition and any objections thereto. If the petition is granted, the City Council shall adopt an ordinance to that effect, and thereafter, said property shall be included in the district. (Ord. 724 §1, 1987)

12.24.100 Provisions For Lien. All taxes levied under this Chapter together with interest thereon and penalties for default in payment thereof, and all costs of collection the same shall constitute a lien, until paid, on and against the property taxed, and such lien shall be a lien as for all other general taxes. (Ord. 724 §1, 1987)

12.24.110 Advisory Committee. The City Council may appoint an advisory committee consisting of owners of real property within the district, to advise the City Council on the public improvements within the district to be maintained and secured and any other matters concerned with the operation of the district. (Ord. 724 §1, 1987)

12.24.120 Obligation of City. Except as otherwise provided in this Chapter the City is under no obligation to provide maintenance and service within said district higher than provided else where in the City. (Ord. 724 §1, 1987)

## **Chapter 12.28**

### **PUBLIC PARKS**

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## I. GENERAL PROVISIONS

12.28.010 Definitions. The following definitions shall have the meanings hereinafter designated unless the context specifically indicates otherwise or unless such meaning is excluded by express provision:

A. “Director” shall mean the City Clerk of the City of Fountain or such other person as may be appointed by the City Manager.

B. “Council” shall mean the City Council of the City of Fountain.

C. “Park” and “City Park” shall mean those areas, structures or facilities which are park areas within the city limits of the City of Fountain.

D. “Commercial Purposes” shall mean the anticipated use of a park or portion thereof for an activity for which a fee or admission is charged; a class or course of instruction for which a fee is charged; a franchise or concession granted or given for use of park property; the use of a park or any portion thereof for the purpose of any activity from which monetary benefit is to be derived directly or indirectly.

E. “Park Property” shall mean any real or personal property or improvements thereto which is within a park. (Ord. 770 §1, 1987; Ord. 1074 §1, §2, 1998)

12.28.020 Park Hours. The parks shall be open to the public daily from 5:00 A.M. to 11:00 P.M., unless otherwise posted. It shall be unlawful for any person other than employees of the City of Fountain, while on duty, to enter or remain in the parks at any other time; provided however, the Director may extend or limit the time specified above by issuing a park permit. (Ord. 770 §1, 1987)

12.28.030 Park Closings. The Director is authorized to close any park or portion thereof at any time for an interval of time, whether temporarily or at regularly stated intervals as the Director shall find necessary, for the protection of the park property or for the public health, safety or welfare. (Ord. 770 §1, 1987)

12.28.040 Closed Park Areas. It shall be unlawful for any person to enter or remain in any park area which is barricaded or posted as closed to the public or reserved by any person or group. No person shall aid or abet the use of any area in violation of this section. (Ord. 770 §1, 1987)

12.28.050 Park Permits. Although City Park areas are available on a first-come, first-served basis, exception to this rule shall be made when an area is reserved for a specific use. A park permit or special agreement shall be obtained by persons who desire to use a park or portion thereof to the exclusion of others or who desire to use a park or portion thereof when such park(s) is closed to the public. The Director may list those parks or areas thereof for which he deems it necessary to issue park permits in order to preserve the public peace and safety, protect the public property from injury or damage and secure to the public its common enjoyment. Reservation or use of any park or portion thereof for a special purpose, such as, but not limited to, a public gathering, entertainment, tournament, exhibition or any other activity shall require a permit. Preference in the issuance of

permits shall be given to residents of the City and to commercial and industrial enterprises located within the City. (Ord. 770 §1, 1987)

12.28.060 Park Uses for Commercial Purposes. Any person desiring to use any park for commercial purposes shall apply to the City Council for a park permit for such use. (Ord. 770 §1, 1987)

12.28.070 Consumption of Alcohol and Fermented Malt Beverages in Parks Prohibited – Permit to Consume Fermented Malt Beverages in City Parks. It shall be unlawful to consume alcoholic beverages or fermented malt beverages in any City park, except that the Director may issue a park permit for the consumption of fermented malt beverages in cans in City Parks between the hours of twelve o'clock noon and nine p.m. Each permit providing for the consumption of fermented malt beverages shall be issued for a specific location and is not valid for any other location. In addition to the criteria for issuance of a park permit in Section 12.28.100 of this Chapter, the Director may consider likelihood, by reason of the nature of the event, of persons under the legal drinking age consuming fermented malt beverages or the failure of the applicant to conduct such use under a prior permit in compliance with applicable laws and regulations. (Ord. 770 §1, 1987)

12.28.080 Sale of Alcoholic Beverages and Fermented Malt Beverages in Parks Prohibited – Permit for Sale of Fermented Malt Beverages in City Parks. It shall be unlawful for any person to sell alcoholic or fermented malt beverages in City parks, except that the Director may issue a park permit for the sale and consumption of fermented malt beverages in cans in City parks between the hours of twelve o'clock noon and nine p.m. In addition to a park permit, any person proposing the sale of fermented malt beverages must have a license approved by the City Council, as local licensing authority, and the state licensing authority. The park permit shall be issued for a specific location and is not valid for any other location, unless the entire park is designated for such sale. (Ord. 770 §1, 1987)

12.28.090 Application for a Park Permit. The application shall include the following information:

- A. Name and address of the applicant.
- B. Name and address of the person sponsoring the use.
- C. The day(s) and hours for which the permit is desired.
- D. The park or portion thereof for which such permit is desired.
- E. How the park or portion thereof will be used.
- F. An estimate of the anticipated attendance or persons involved in the use or both.
- G. Any other information which the Director may require to make a fair determination as

to whether a permit should be issued.

H. Description of any proposed amplification equipment. (Ord. 770 §1, 1987)

12.28.110 Fees, Charges and Damage Deposits. Each application for a park permit shall be accompanied by the amount of fees or charges for use of parks as determined by the Director. If a permit is not granted, the fee shall be returned. The Director, prior to the issuance of a park permit, may assess additional fees to cover the costs of service provided by the City to the permittee. However, such additional fees shall not exceed expenses reasonably anticipated in connection with the services provided. As a condition precedent to the issuance of any permit, the Director may require a damage deposit to protect the City against damage to park property and to insure clean up. The amount of such deposit shall be determined on a case-by-case basis. Cost of cleanup and/or repairs shall be deducted from the amount deposited. The deposit shall be refunded in full if the area is left in the same condition it was prior to the permitted use. (Ord. 770 §1, 1987)

12.28.120 Insurance. As a condition precedent to the issuance of any permit, the Director may require public liability and property damage insurance naming the City as co-insured with the permittee in an amount which is reasonable and appropriate under the circumstances. The permittee shall provide the Director with a certificate proving the existence of such insurance coverage no later than forty-eight (48) hours prior to the beginning of the scheduled event. No event shall be conducted until proof of insurance and co-insurance has been provided to the Director. (Ord. 770 §1, 1987)

12.28.130 Indemnification. The permittee shall be responsible for any and all damage to property or injury to persons arising out of the exercise of the permit, and the permittee shall indemnify and hold harmless the City and all its officers, agents and employees from all suits, actions or claims of any injuries or damages received or sustained by any persons or property on account of the exercise of the permit or of any action or omission of the permittee there under, his agents or employees, or on account of the failure of the permittee to maintain or to provide necessary safety devices to ensure the protection of the public and the permittee shall defend against any suit, action or claim and pay any judgment, with costs, which may be obtained against the City, its officers, agents or employees arising out of such injury or damage. (Ord. 770 §1, 1987)

12.28.140 Appeal Procedure. Any applicant aggrieved by denial of the permit may appeal in writing to the Council within seven (7) days of the denial. The appeal shall be heard and determined by the Council at its next regular meeting if the appeal is received not later than three (3) working days before the meeting. (Ord. 770 §1, 1987)

12.28.150 Effect of Permit. The permittee and all persons using a park under such permit shall be bound by all park rules and regulations and applicable City ordinances and State Statutes. Agreement to abide by the same shall be a condition precedent to issuance of a permit. Such permittee shall be responsible for the overall conduct of participants and guests involved in the scheduled event. (Ord. 770 §1, 1987)

12.28.160 Permit Exhibited. It shall be unlawful for any person to fail to produce or exhibit any permit issued by the Director, upon the request of any authorized person who shall desire to

inspect the same for the purpose of enforcing compliance with any City ordinance, rule or regulation. (Ord. 770 §1, 1987)

12.28.170 Revocation. The Director shall have the authority to revoke a permit upon finding a violation of any park rule, regulation, ordinance, or statute, failure to comply with requirements specified in the park permit, or upon other good cause shown. (Ord. 770 §1, 1987)

## **II. PARK RULES AND REGULATIONS**

12.28.180 Construction Prohibited. It shall be unlawful for any person to construct or erect any building or structure of any kind, whether temporary or permanent, in any park without the permission of Council. (Ord. 770 §1, 1987)

12.28.190 Park Roads – Parking. It shall be unlawful for any person to drive or park any motorized vehicle in any area except upon designated roads or parking areas, or such other areas as may be designated by the Director. (Ord. 770 §1, 1987)

12.28.200 Fires Prohibited – Exceptions. It shall be unlawful for any person to build or attempt to build a fire in any park except in areas designated by the Director or in such fireplaces as are provided in the park or in grills provided by the user. (Ord. 770 §1, 1987)

12.28.210 Camping. It shall be unlawful for any person to camp in any park or to set up a tent or any other temporary shelter for such purpose unless such activity shall be specifically authorized by the Director. No motor vehicles, movable structures or special vehicle, such as a house trailer, camper or mobile home, shall be permitted to remain in a park after closing without the Director's authorization. (Ord. 770 §1, 1987)

12.28.220 Alcoholic Beverage and 3.2% Beer. It shall be unlawful for any person to consume alcoholic beverages or fermented malt beverages in any park at any time, except where a permit has been issued for the consumption of fermented malt beverages in such park. (Ord. 770 §1, 1987)

### 12.28.230 Dogs – Domestic Animals – Animal Waste.

A. It shall be unlawful for any person who owns or has charge of a dog or other domestic animal to allow such animal to run at large in any park. Dogs or other domestic animals shall be under leash control at all times.

B. It shall be unlawful for any person to allow any animal over which he is responsible to defecate upon any parkland without such excrement being removed by the person in control of such animal from the park or properly disposed of in a park trash receptacle. (Ord. 770 §1, 1987)

12.28.240 Hoofed Animals. It shall be unlawful for any person to ride or walk any hoofed animal in any park except on park roads, paved areas, trails, or other areas as designated by the Director. (Ord. 770 §1, 1987)



12.28.250 Soliciting. It shall be unlawful for any person to solicit contributions for any purpose in any park without prior authorization by the Council. (Ord. 770 §1, 1987)

12.28.260 Sales – Concessions. It shall be unlawful for any person to exhibit or offer for sale any article or service in any park area except those persons granted a concession by the Council. (Ord. 770 §1, 1987)

12.28.270 Sound Amplification. It shall be unlawful for any person to operate sound amplification equipment in any park except as authorized by the Director. All amplified music shall be controlled by the user. Sound levels shall be maintained at levels that do not interfere with scheduled groups, other park patrons or surrounding residents. (Ord. 770 §1, 1987)

12.28.280 Firearms, Fireworks, and Explosives. It shall be unlawful for any person other than law enforcement officers to possess any, fireworks or explosive devices in any park except as otherwise designated by the Council. Discharge of firearms using only blank ammunition by members of any military company when on parade or when engaged in an official ceremony shall not be deemed a violation hereof. (Ord. 1228 §4, 2004)

12.28.290 Fishing. It shall be unlawful to fish in any park waters except in areas and at times designated by the Director. (Ord. 770 §1, 1987)

12.28.300 Boating. It shall be unlawful for any person to use or permit to be used or operated in or on the waters in any park any boat except as otherwise authorized by the Director. (Ord. 770 §1, 1987)

12.28.310 Swimming. It shall be unlawful for any person to swim, bathe, or wade in any waters or waterways in or adjacent to any park, except in such waters or places and at such times as authorized by the Director. (Ord. 770 §1, 1987)

12.28.320 Regulatory Signs. It shall be unlawful for any person to violate conspicuously posted rules and conditions governing the use of any park area. (Ord. 770 §1, 1987)

12.28.330 Advertising. Except as permitted by Council, it shall be unlawful for any person to place, glue, tack or otherwise post any sign, placard, advertisement, or inscription whatsoever upon any park premises, or to announce, advertise or call to the public attention in any way any article or service for sale or hire in any park. (Ord. 770 §1, 1987)

12.28.340 Damage to Park Property. It shall be unlawful for any person in any manner to injure, deface, destroy, sever or remove any park property. (Ord. 770 §1, 1987)

12.28.350 Refuse – Trash. It shall be unlawful for any person to bring in or to dump, deposit or leave any bottles, broken glass, discarded vegetation, ashes, paper, boxes, cans, garbage, dirt, rubbish, waste or other trash in any park. No person shall place such refuse or trash anywhere on the ground of any park. (Ord. 770 §1, 1987)

12.28.360 Use of Trash Receptacles. All such materials or trash related to park use shall be placed in the proper receptacles where provided; however, residential trash and construction debris shall in no event be placed in such receptacles. Where such receptacles are not so provided, all such materials and trash shall be carried away from the park by the person responsible for its presence. (Ord. 770 §1, 1987)

12.28.370 Bicycles, Vehicles – Designated Areas. It shall be unlawful for any person to ride a bicycle, motorcycle, moped, snow mobile or any similar type vehicle on other than a park road or path specifically designated for such traffic. A bicyclist shall be permitted to walk a bicycle over any grassy area, wooded trail or other areas restricted to pedestrian use. (Ord. 770 §1, 1987)

12.28.380 Picnic Areas – Fires, Trash. It shall be unlawful for any person to leave a picnic area before his fire is completely extinguished and before all trash is placed in disposal receptacles provided. In the event no receptacles are provided, such trash shall be carried out of the park by the person responsible for its presence. (Ord. 770 §1, 1987)

12.28.390 Propelling Objects Prohibited. It shall be unlawful to launch or fly rockets, model airplanes or to propel objects such as arrows, javelins, or other missiles in any park except in designated areas set apart for such forms of recreation. (Ord. 770 §1, 1987)

12.28.400 Gambling. It shall be unlawful for any person to gamble or to participate in any games of chance in any park. “Gambling” shall be defined as set forth in Section 9.16.010 of this Code. (Ord. 770 §1, 1987)

12.28.410 Offensive Language. It shall be unlawful for any person to engage in loud, threatening, abusive, insulting or indecent language, which disturbs the peace of any person in any park. (Ord. 770 §1, 1987)

12.28.420 Damage to Trees, Grass. It shall be unlawful for any person to attach any rope, wire or other contrivance to any tree or plant in any park. It shall be unlawful to dig or otherwise disturb grass areas, or any other way to injure or impair the natural beauty or usefulness or any area in a park. (Ord. 770 §1, 1987)

12.28.430 Climbing on Property. It shall be unlawful for any unauthorized person to climb any tree, or to walk, stand or sit upon any monument, fence, or structure not designated or customarily used for such purpose in any park. (Ord. 770 §1, 1987)

12.28.440 Birds, Animals, Reptiles. It shall be unlawful for any person to hunt, molest, harm, frighten, kill, trap, chase, shoot, to throw missiles at any animal, reptile or bird in any park unless such action is taken in defense of self or others. It shall be unlawful for any person to remove from a park or have in his possession in a park any wild animal, reptile, bird or the young, eggs or nest thereof. (Ord. 770 §1, 1987)

12.28.450 Park Waters – Pollution. It shall be unlawful for any person to throw, discharge, or otherwise place or cause to be placed in the waters of any fountain, pond, lake, stream, or other

body of water in any park, any substance, liquid or solid, which will or may result in the pollution of said waters. (Ord. 770 §1, 1987)

## Chapter 12.32

### SPECIAL IMPROVEMENT DISTRICTS

#### Sections:

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12.32.050	Creation of Improvement Districts – First Reading of Creation Ordinance
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12.32.080	Additional Plans and Specifications - Changes
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12.32.310	Limitation of Actions

12.32.010 Authority – Purpose. This ordinance is adopted pursuant to Sections 10.8 and 10.9 of the Home Rule Charter (the “Charter”) of the City of Fountain, Colorado (the “City”) to

prescribe procedures with respect to local or special improvement districts (“improvement districts”). (Ord. 673 §1, 1984)

12.32.020 Statutes Superseded. Pursuant to Article XX of the Colorado Constitution and the Charter, Part 5 of Article 25, Chapter 31, C.R.S., and all other statutes or portions of statutes relating to the creation of improvement districts or the levying of assessments for improvements, or the issuance of special assessments bonds, are hereby superseded. (Ord. 673 §2, 1984)

12.32.030 Improvements – Assessment Units. The improvements for which the City Council of the City (the “Council”) may create improvement districts may consist of any special or local improvements of every character which confer special benefits on property within the improvement district in addition to the general benefits conferred on the City at large. Improvement districts may be created for the purchase, other acquisition, repair, restoration or maintenance of existing works or improvements, or for the construction, installation or other acquisition of new or additional improvements, or any combination thereof (collectively, “improvements”). More than one kind of improvement districts may consist of noncontiguous territory. The Council may provide for an improvement district to consist of more than one assessment unit if the Council determines that, due to differences in cost, character, nature or location of the improvements, the costs can be more equitably assessed by means of separate assessment units within the improvement district. (Ord. 673 §3, 1984)

12.32.040 Creation of Improvement Districts – Engineering Materials. The City Manager or the Council shall direct the engineer or engineering firm employed or designated by the City to prepare and present to the Council the following:

- A. Preliminary plans and specifications of such improvements;
- B. An estimate of the probable total cost of such improvements, which may include the cost of constructing or otherwise acquiring, installing, repairing, restoring and maintaining the improvements, and engineering, legal and advertising costs, collection costs, interest during construction and until interest on any installation payments of assessments is expected to be received by the City, and any other incidental costs; and
- C. A map of the improvement district which is to be assessed for the cost of the improvements. (Ord. 673 §4, 1984)

12.32.050 Creation of Improvement Districts – First Reading of Creation Ordinance. Upon such materials being presented to the Council, the Council shall consider the adoption on first reading of an ordinance creating the improvement district (the “creation ordinance”). The publication of the creation ordinance after first reading, as provided in the Charter, shall constitute notice of the public hearing on the creation of the improvement district. The creation ordinance shall generally describe the nature and location of the improvements to be made, without mentioning minor details, and describe the area to be included within the improvement district, by boundaries or other brief description. The creation ordinance shall describe:

- A. The extent of the improvement district to be assessed (by boundaries or other brief description) and the assessment units, if any;
- B. The kind of improvements (without mentioning minor details);
- C. The probable total cost, including incidentals, as shown by the estimate of the engineer, which estimate shall not constitute a limitation upon the cost of the project nor for any other purpose;
- D. The estimated portion of the cost of the improvements to be paid by the City and not be assessment, if any;
- E. The basis of assessment; and
- F. The date, time and place of the public hearing on the creation of the improvement district, which may also be the date, time and place at which the Council will consider the creation ordinance on second reading. (Ord. 673 §5, 1984)

12.32.060 Notice of Hearing on Creation. Notice of the public hearing on the creation of the improvement district shall be given by publishing the creation ordinance one time, and by posting the creation ordinance, as provided in the Charter. The City Clerk shall, by registered or certified mail, send a copy of the creation ordinance to the last known address of each last known owner within the improvement district whose property assessment rolls for general (ad valorem) taxes of El Paso County, Colorado, wherein the property is located. Any such list of names and addresses pertaining to any improvement district may be revised more frequently from time to time, but such a list need not be revised more frequently than at twelve (12) month intervals. The creation ordinance shall be published, posted and mailed at least fifteen (15) days prior to the public hearing. (Ord. 673 §6, 1984)

12.32.070 Public Hearing on Creation – Protests – Second Reading of Creation Ordinance. At the public hearing on the creation of the improvement district, the Council shall consider protests submitted by owners of property within the improvement district, as to the creation of the improvement district or other matters set forth in the creation ordinance. Protest must be in writing and must be received by the City Clerk no later than the close of business on the business day next preceding the public hearing. Protests must include the name and address of the protesting property owner, a reasonable description of reasons for the protest. After the public hearing, the Council may, in its sole discretion, either adopt the creation ordinance on second reading, with such modifications or deletions, if any, as the Council may deem appropriate, or abandon the proceedings. (Ord. 673 §7, 1984)

12.32.080 Additional Plans and Specifications – Changes. After the improvement district has been created, the City shall direct the engineer to prepare such additional plans and specifications as may be necessary to provide greater detail or to reflect any modifications made by the Council after the public hearing. The City shall have the right to make additional minor changes in time, plans and materials entering into the work at any time before its completion. (Ord. 673 §8, 1984)

12.32.090 Performance or Contracting of Work. Except to the extent otherwise required by law, the City may either perform the work for the improvements itself or let one or more contracts for such work by means of competitive bids, requests for proposals, negotiation or such other means as the Council may find to be in the public interest. Contracts for improvement districts may be combined with contracts for other City work. (Ord. 673 §9, 1984)

12.32.100 Basis for Assessments. Whenever any improvement district is created, the cost of the improvements, or the portion thereof to be defrayed by special assessments, shall be assessed against tracts or parcels of land included within the improvement district specially benefited thereby, but not including any tract or parcel owned by the United States of America or any agency, instrumentality or corporation thereof, or any streets or public highways. Such special assessments may be apportioned on any equitable basis, as may be determined by the Council. (Ord. 673 §10, 1984)

12.32.110 Assessments Against Public Property. When the City, county, school district or any other political subdivision (other than the United States of America or any agency, instrumentality or corporation thereof) owns any tract of land not used as a street or public highway, which if owned by a private person would be liable to assessment for benefits to pay for improvements, an assessment shall be made against the land as though the land were the property of the private person. If the assessment is not paid as provided in the assessing ordinance, suit may be brought to enforce the collection of the assessment, and the judgment may be rendered against political subdivision, but no such land shall be sold under any such judgment. (Ord. 673 §11, 1984)

12.32.120 Equitable Adjustments. When any property is “V” shaped or of any irregular form, or whenever the Council otherwise determines that adjustment is required in order to make the assessment proportionate to the benefit, the Council may, upon the recommendation of the engineer, make such allowance in the assessment on such property as seems equitable or just, so that the assessment against such property shall be in proportion to the special benefits thereby derived, if such were not the case in the absence of such an adjustment. (Ord. 673 §12, 1984)

12.32.130 Preparation of Assessment Roll. At such time as the estimated costs of the improvements or any portion thereof are, in the judgment of the Council or the City Manager, reasonably ascertainable, the engineer shall, on direction of the Council or the City Manager, prepare a statement showing the total estimated cost of the improvements or of such portion thereof including incidental costs. The engineer also shall prepare an assessment roll which shall contain:

- A. The names of the last known owners of the property to be assessed or, if not known, a statement to the effect that the name is unknown;
- B. A description of each tract or parcel of land to be assessed; and
- C. The amount of the assessment thereon.

The engineer shall certify the assessment roll to the Council by filing the same in the office of the City Clerk. (Ord. 673 §13, 1984)

12.32.140 First Reading of Assessment Ordinance. When the assessment roll is so certified and filed, the Council shall consider the adoption on first reading of an ordinance levying the assessments (the “assessment ordinance”). The publication of the assessment ordinance after first reading, as provided in the Charter, shall constitute notice of the public hearing on the assessment roll. Such ordinance shall state:

- A. That such assessment roll is on file in the City Clerk’s office;
- B. The date of filing the same;
- C. The basis of assessment; and
- D. The date, time and place of the public hearing on the assessment roll, which may also

be the date, time and place at which the Council will consider the assessment ordinance on second reading. (Ord. 673 §14, 1984)

12.32.150 Notice of Hearing on Assessment Roll. Notice of the public hearing on the assessment roll shall be given by publishing the assessment ordinance one time, and by posting the assessment ordinance, as provided in the Charter. The City Clerk shall, by registered or certified mail, send a copy of such ordinance to the last known address of each last known owner of land within the improvement district whose property will be assessed for the cost of the improvements, such addresses and owners being those appearing on the real property assessment rolls for general (ad valorem) taxes of el Paso County, Colorado, wherein said property is located. Any such list of names and addresses pertaining to any improvement district may be revised more frequently than at twelve (12) month intervals. The assessment ordinance shall be published, posted and mailed at least fifteen (15) days prior to the public hearing. (Ord. 673 §15, 1984)

12.32.160 Public Hearing on Assessment Roll – Protests – Second reading of Assessment Ordinance. At the public hearing on the assessment roll, the Council shall consider protests submitted by owners or property to be assessed, as to the amounts of such assessments. Protests must be in writing and must be received by the City Clerk no later than the close of business on the business day next preceding the public hearing. Protests must include the name and address of the protesting property owner, a reasonable description of the property to which the protest relates, and a statement of the reasons for the protest. After such hearing, the Council shall adopt the assessment ordinance on second reading with such modifications as the Council may deem appropriate, if any. Such ordinance shall be a final determination of the regularity, validity and correctness of the proceedings relating to the assessment roll, of each assessment contained therein, and of the amount of each assessment levied on each tract and parcel of land, and such determination by the Council shall be conclusive upon the owners of the property assessed; provided, however, that if assessments are levied on the basis of less than the entire cost of the improvements to be assessed, additional assessments may subsequently be levied for the remaining costs to be assessed. (Ord. 673 §16, 1984)

12.32.170 Assessment Liens. All assessments made in pursuance of this ordinance shall be a lien in the several amounts assessed against each tract or parcel of land from the effective date of the assessment ordinance and shall have priority over all other liens except general tax liens, prior assessment liens, and possibly certain liens by or in favor of the State of Colorado or its political subdivisions or the United States of America or any agency, instrumentality or corporation thereof. (Ord. 673 §17, 1984)

12.32.180 Finality of Assessments – Apportionment. Except as otherwise provided in this ordinance, the assessments when made and apportioned and adopted by the Council shall be final. The Council may, in the assessment ordinance, provide either (i) that assessments shall not thereafter be apportioned as to subsequent subdivisions of assessed tracts, and the entire tract so assessed shall remain liable for the entire assessment on the tract; or (ii) that assessments may thereafter be apportioned as to subsequent subdivisions of assessed tracts, on a basis determined in the assessment ordinance. (Ord. 673 §18, 1984)

12.32.190 Remedies for Defective Assessments. No delays, mistakes, errors, defects or irregularities in any act or proceedings authorized by this ordinance shall prejudice or invalidate any final assessment but the same shall be remedied by subsequent or amended acts or proceedings as the case may require, and when so remedied, the same shall take effect as of the date of the original act or proceeding. (Ord. 673 §19, 1984)

12.32.200 Terms of Assessment Payments. Assessments shall be due and payable, without interest and without demand, within thirty (30) days after the effective date of the assessment ordinance. If the assessment ordinance so provides, the assessments may, at the election of the property owner, be paid in installments, with interest. If installment payments are so provided for, failure to pay the whole assessment within said period of thirty (30) days shall be conclusively considered and held an election on the part of all persons interested, whether under disability or otherwise, to pay in installments the amount of the assessment then unpaid. All persons so electing to pay in installments shall be conclusively considered and held as consenting to the improvements, and such election shall be conclusively considered and held as a waiver of any and all rights to question the power or jurisdiction of the City to construct or otherwise acquire the improvements, the quality of the work, the regularity or sufficiency of the proceedings or the validity or correctness of the assessment. The owner of any piece of property may at any time pay the whole unpaid principal with the interest accrued to the next interest payment date, together with penalties, if any. Subject to the foregoing provisions, all installments both of principal and interest shall be payable at such times as may be determined in and by the assessment ordinance. (Ord. 673 §20, 1984)

12.32.210 Interest on Installment Payments. In case of such election by a property owner to pay in installments, the assessment shall be payable at such times as may be provided by the assessment ordinance, with interest on the unpaid principal at a rate at least equal to the highest interest rate borne by any bonds theretofore issued in connection with the improvement district, or if no such bonds have been issued, at a rate determined by the Council. (Ord. 673 §21, 1984)

12.32.220 Cash Payment of Assessments – Notice. Payments may be made to the City Treasurer at any time within thirty (30) days after the effective date of the assessing ordinance, without penalty or the payment of interest. The City Treasurer shall give notice by publication in a



newspaper of general circulation in the City at least once, at least twenty (20) days before the end of said thirty (30) day period, of the place of payment and the time for the cash payment period to close. At the expiration of said thirty (30) day period, the City Treasurer shall prepare or cause to be prepared a permanent assessment roll reflecting the cash payments and the amounts remaining due in installments. (Ord. 673 §22, 1984)

12.32.230 Installment Payments of Assessments – Collection. Assessment installment payments may be made payable at the office of the City Treasurer or at the office of the County Treasurer, as provided in the assessment ordinance. If assessment installment payments are to be paid to the County Treasurer, the City Treasurer shall certify and deliver the final assessment roll to the County Treasurer with his warrant for the collection of the remaining assessments. If the assessment roll is so certified and delivered to the County Treasurer for collection, the County Treasurer shall receive payment of all assessments appearing upon the assessment roll, with interest. All collections made by the County Treasurer upon the assessment roll in any calendar month shall be accounted for and paid over to the City Treasurer on or before the tenth day of the next succeeding calendar month with a separate statement for all such collections for each improvement district. In case of default in the payment of any installment of principal or interest due, the City Treasurer shall advertise and sell, or cause the County Treasurer to advertise and sell, any and all property concerning which such default is suffered, for the payment of the whole of the unpaid assessment thereon, with interest and penalties. (Ord. 673 §23, 1984)

12.32.240 Penalties. The assessment ordinance may provide such penalties for delinquent payments of any installments as the Council may deem appropriate, including, without limitation, acceleration of principal, penalty interest and payment of the costs of collection. (Ord. 673 §24, 1984)

12.32.250 Compulsory Connections. Before commencing work in any improvement district pursuant to this ordinance, the Council may order the owners of the abutting real estate to connect their several premises with the gas or water mains or sewer lines, or with any other utilities in the street in front of their several premises. On default of the owners for thirty (30) days after the order to make such connections, the Council may contract for and make such connections at the distance, under such regulations and in accordance with such specifications as may be prescribed by the Council. The whole cost of each connection shall be assessed against the premises with which the connection is made. Any number of such connections may be included in one contract but the cost shall be paid upon the completion of the work, in one (1) sum. Upon default in the payment of any such assessment, the City may enforce such assessment, or cause the County Treasurer to enforce such assessment, in the same manner as any other assessment levied pursuant to this ordinance. (Ord. 673 §25, 1984)

12.32.260 Special or Local Improvement Bonds. For the purpose of paying all or such portion of the cost of any improvements constructed under the provisions of this ordinance as may be assessed against the property specially benefited, special or local improvement bonds of the City may be issued of such date and in such form as may be prescribed by ordinance of the Council, and payable within a sufficient period of years after date to cover the period of assessment payments, but subject to call with or without premium. Special or local improvement bonds may be issued at any time after an improvement district is created, either before or after assessments are levied, based

on the then current estimates of the cost of the improvements. Except as hereinafter provided, the bonds shall be payable out of the monies collected on account of the assessments made for the improvements. All monies collected from such assessments for any improvements shall be applied to the payment of the bonds issued until payment in full is made of all the bonds, both principal and interest, except that the City may reimburse itself for monies advanced to pay bonds or interest thereon, from monies subsequently received from assessments and not then needed to maintain or restore current payments of interest and substantially equal annual payments of principal on the bonds. The bonds may be used in payment of the cost of improvements as herein specified, or the Council, in its discretion, may sell the bonds at public or private sale, at above or below par to pay such costs in cash. The bonds shall bear interest as may be fixed by the Council. (Ord. 673 §26, 1984)

12.32.270 Redemption of Bonds. Whenever on any interest payment date there will be available funds derived from the assessment payments pledged to such bonds, it shall be the duty of the City Treasurer to call in and pay a suitable number of the bonds outstanding by giving notice as prescribed in the ordinance authorizing the bonds. (Ord. 673 §27, 1984)

12.32.280 Additional Security for Bonds. The Council in the ordinance authorizing the issue for special assessment bonds may provide for the mill levies and bond payments authorized by Section 10.8 of the Charter and make covenants in regard thereto. (Ord. 673 §28, 1984)

12.32.290 Waivers. Any procedure or right granted in this ordinance may be waived by any property owner in writing. (Ord. 673 §29, 1984)

12.32.300 Actual Receipt of Mailed Notice Not Required. Whenever the City Clerk certifies that any notice was mailed as required in this ordinance, the fact that the person to whom it was addressed did not receive it shall not in any manner invalidate or affect the proceedings herein provided for. (Ord. 673 §30, 1984)

12.32.310 Limitation of Actions. No action or proceeding, at law or in equity, to review any acts or proceedings, or to question the validity or enjoin the issuance or payment of any securities issued in accordance with their terms, or the levy or collection of any assessments, or for any other relief against any acts or proceedings of the City done or had relating to improvement districts, shall be maintained against the City, unless commenced within fifteen (15) days after the performance of the act or the effective date of the resolution or ordinance complained of, or else be thereafter perpetually barred. (Ord. 673 §31, 1984)

## **TITLE 13**

### **Chapter 13.04**

### **WATER CODE**

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**Chapter 13.04**

**WATER CODE**

**13.04.010 Definitions.** Unless the context specifically indicates otherwise, the following terms, as used in this chapter, shall be defined as follows:

A. "Distribution Main" means that portion of the water supply system, which transmits and distributes water of the City from treatment or storage facilities to users, excluding service lines.

B. "Water Department" means the City department, which is responsible for the operation and maintenance of the water supply system.

C. "Superintendent of Water Department" means the manager of the water department or his designated representative.

D. "Transmission Line" means that portion of the water supply system, which transports untreated water to water treatment facilities.

E. "User" means any person that uses, takes water from or is connected to the water supply system of the City.

F. "Utility Director" means the supervisor of the Water, Electric and Utilities Customer Service Departments. The managers of such departments report to the Utility Director.

G. "Water Supply System" or "Water System" means:

1. Any and all rights, property and obligations of the City concerning water and water supply facilities;

2. Any and all devices, facilities, structures, equipment or works owned or used by the City for the purpose of the collection, storage, transmission, treatment, regulation or distribution of potable water, including distribution mains, pumping facilities, metering facilities, pressure regulation facilities and their appurtenances and excluding service lines;

3. Any and all standby or contingency equipment, facilities or material which may be necessary to provide reliable water service;

4. Any and all devices, facilities, structures, equipment or works owned or used by the City for the purpose of the transmission, storage, treatment, or distribution of water,

including water treatment plants, pumping facilities, reservoirs, transmission lines and their appurtenances;

5. Any and all land or sites owned or used by the City for the purpose of providing water to users including streams or other waters which contribute to the water supply of the City and any area in or along such waters or within five (5) miles upgrade of any point from which water is taken by the City and any and all watershed areas;<sup>17</sup> and

6. Any and all extensions, improvements, additions, alterations or remodeling thereof. (Ord. 1138 §1, 2001)

13.04.020 Responsibility of Water Department. The Water Department shall be responsible for the water supply system serving the City and such other areas authorized by the City Council. (Ord. 1138 §1, 2001)

13.04.030 Responsibility of Superintendent. The Superintendent of the Water Department shall be responsible for the management of the water system of the City and all of the property appertaining thereto. He shall see that such system and such property are kept in good working order and repair. He shall insure proper compliance with all local, state and federal regulations for the collection, transmission, treatment and distribution of water and shall perform all other duties in connection with such system as may be required of him. (Ord. 1138 §1, 2001)

13.04.031 City of Fountain Public Utility Design and Construction Specifications for a Water Distribution System. There is hereby adopted by reference the 2007 edition of the City of Fountain Public Utility Design and construction specifications for a Water Distribution System. (Ord. 1383 §2, 2007)

13.04.040 Adoption of Rules and Regulations.

A. Upon recommendation of the Utility Director, the City Manager shall adopt rules and regulations for the administration of the Water Department. Said rules and regulations shall pertain to, but shall not be limited to, standards and requirements for the installation, construction, maintenance, repair or replacement of property appertaining to the water system, standards and requirements for providing water service to the public and standards and requirements for insuring the potable and palatable quality of water. In establishing such rules and regulations, the Utility Director shall seek to provide for the safe and efficient operation of the water supply system, for a water supply sufficient to satisfy the public needs, and for water quality, by protecting the water supply and the public from polluting or unsanitary substances and conditions.

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<sup>17</sup> For the jurisdiction of the City in regard to its water system, see section 31-15-707(1)(b), C.R.S.

B. Such rules and regulations shall be approved by the City Council and upon adoption and approval shall be filed with the City Clerk. Such rules and regulations may be inspected by any person at any time during regular business hours and copies thereof may be purchased by any person upon payment of the cost of reproduction.

C. It shall be unlawful for any person to violate the rules and regulations officially issued by the Utility Director, approved by the City Council and filed with the City Clerk. A separate and distinct offense shall be deemed to have been committed for each day on which violation shall occur or continue. (Ord. 1138 §1, 2001)

13.04.050 Application for Water Service. Any person desiring to connect a service line to the water supply system of the City shall make application to the City Clerk. The application to the City shall be supplemented by any plans, specifications or other information deemed necessary by the Superintendent of the Water Department to determine compliance with all ordinances, regulations or rules concerning the water system. The application shall comply with all ordinances, regulations or rules concerning the water system of the City. Upon approval by the Superintendent of such application, all applicable fees and charges shall be paid to the City Clerk. (Ord. 1138 §1, 2001)

13.04.060 Water Service Outside City. It is the policy of the City of Fountain not to furnish water to users outside the corporate limits of the City; however, there are situations where the City Council in its sole discretion may justify exceptions to that policy. The City expressly reserves the right, as may be limited by state or federal law, to impose such conditions as it may see fit relative to the furnishing of such service and to refuse such service in its discretion. All provisions of this chapter apply to those areas outside the corporate limits of the City, except those areas covered by a contract which expressly establishes other rules for the area served under the contract. (Ord. 1138 §1, 2001)

13.04.070 Water Service by Special Contract. The City may provide by contract augmentation water, non potable ground water and allow for the use of and connection to the water supply system of the City by governmental institutions, organized water districts, municipal corporations or other similar users. Such contracts shall expressly provide for compliance by such users with ordinances, regulations and rules of the City concerning the water supply system. Such contracts shall be further subject to such other terms and conditions as the City Council sees fit to impose. Such contracts and the terms, conditions and/or renewals thereof, existing on the effective date of this chapter shall remain in full force and effect. (Ord. 1138 §1, 2001)

13.04.080 Rights of the City.

A. This chapter shall not be construed to create any rights or cause of action in any person or land, whether or not the same is eligible for annexation, to demand or receive water or any other municipal service. The City has never previously and does not now assert exclusive control over the right to serve areas outside the corporate limits of the City with water service or other municipal services. Areas and activities outside the corporate limits of the City are free to obtain water and other services from any other sources.

B. The right of the City Council to restrict and regulate the use of City water within or outside the City limits shall not be abridged by anything contained in this chapter. The City Council hereby declares the policy of the City to be that water belonging to the City is in no way allocated to a particular parcel of land until such land is developed and water applied to actual use upon such land. Nothing in this chapter shall be construed to confer upon undeveloped land within the City limits, as such City limits exist at the time of adoption of this chapter or as such City limits may be hereinafter altered by annexation or disconnection, any right to the preservation of existing water rights or quantities of water for the sole and exclusive use of such land. (Ord. 1138 §1, 2001)

## II. CONNECTION AND INSTALLATION OF SYSTEM

13.04.090 Connection Required. The owner of any house or other building occupied for business or residential purposes, situated within the City and abutting any street, alley or right-of-way in which there is now located or may be in the future be located a water distribution main of the City, is hereby required at such owner's expense to connect such building by means of a service line directly with the distribution main in accordance with the provisions of this chapter. The point or points at which connection is made to the distribution main shall be determined by the Superintendent. (Ord. 1138 §1, 2001)

### 13.04.100 Connection Requirements - Exception.

A. Connection to the water supply system of the City shall not be required for any property which is served by an existing well or other water supply system, which system is approved by the El Paso County Health Department and which system serves said property in substantially the same manner as it would be served by the water supply system of the City.

B. This section shall apply solely to property served by an existing well or other water supply system prior to connection to the water supply system of the City, and shall not be construed to permit any person already connected to the water supply system of the City, whose property may subsequently be served by a well or other water supply system, to disconnect from the water supply system of the City. (Ord. 1138 §1, 2001)

13.04.110 Connection Required - Violation. It shall be unlawful for any person who owns any house or other building occupied for business or residential purposes situated within the City to fail to connect such house or building to a water supply system in accordance with the requirements of this chapter. (Ord. 1138 §1, 2001)

13.04.120 Connection - Permits. No connection to the water supply system of the City shall be made without first obtaining a tap permit therefor issued by the City Clerk. (Ord. 1138 §1, 2001)

13.04.130 Unauthorized Connections Prohibited. It shall be unlawful for any unauthorized person to uncover, make any connection with or opening into, use, alter or disturb any distribution main or appurtenance thereof without first obtaining a permit from the City



Clerk. Any such connection shall be made in compliance with the provisions of this chapter. (Ord. 1138 §1, 2001)

13.04.140 Connection to System - Exclusion of Liability. The City shall not be subjected to any liability for any deficiency in the installation, which is not discovered by inspection, nor shall the owner of the premises be absolved from liability for such deficiency and any resulting damage or from responsibility to correct such deficiency. (Ord. 1138 §1, 2001)

13.04.150 Installation - Excavations For. All excavations for water service installation or repair shall be performed in accordance with the Fountain Municipal Code and the rules and regulations of the Water Department as applicable. Such excavations shall meet all applicable safety standards, including any requirements as to barricades and lights. Streets, sidewalks, parkways and other public property disturbed in the course of work shall be restored in a manner satisfactory to the Department of Public Works of the City. (Ord. 1138 §1, 2001)

13.04.160 Service Line - Separate for Each Building - Exceptions.

- A. A separate and independent service line shall be provided for every building.
- B. Where one building stands at the rear of another on an interior lot which cannot be subdivided, and where no service line is available nor can be constructed to the rear building through an adjoining alley, court, yard or driveway, the service line of the front building may be extended to the rear building and the whole considered as one water service.
- C. Multi-family or commercial or industrial complexes having more than one building on a single platted lot owned by one person may have the individual buildings connected to a single common service line, unless and until such lot is resubdivided or the buildings otherwise become separately owned in which case independent connections shall be made.
- D. The City does not assume any obligation or acquire any liability for damage to the connecting property or any portion thereof caused by or resulting from any such connection to the water supply system as aforementioned. (Ord. 1138 §1, 2001)

13.04.170 Service Line - Conformance to Rules and Regulations. The size, slope, alignment and materials of construction of a service line, and the methods to be used in excavating, placing of the pipe, jointing, testing, backfilling and inspection of a trench shall all conform to the requirements of the Building and Plumbing Codes and other applicable rules and regulations of the City. Additionally, all existing and new service lines shall conform to the requirements of the water service quality control regulations. (Ord. 1138 §1, 2001)

13.04.180 Service Lines - Standards For.

- A. All service lines for connection to the water supply system of the City shall be installed in accordance with the provisions of this Chapter and of the Public Works Design and Construction Specifications.

B. All service lines shall be laid at such depth that the top of any such line throughout its length is not less than five (5) feet or more than six (6) feet below the finished surface of the ground.

C. All service lines shall be connected to a curbstop so that water may be shut off from the service line at any time. Such curb stop shall be level with the adjacent ground surface and shall be protected by an adjustable iron box or cylinder not less than five (5) feet in length. Curb stop boxes shall not be located in concrete areas, driveways, sidewalks, curb or gutter.

D. A water pressure regulator shall be installed in each service line connected to a distribution main owned by the City. (Ord. 1138 §1, 2001)

13.04.190 Responsibility for Maintenance of Service Line. The owner shall keep the service line and all pipes and fixtures on his premises in good repair so as to prevent waste of water. The owner must secure all required permits for construction purposes and shall be responsible for restoring the public right-of-way and the street to acceptable City standards. Where more than one premises are connected to a single service line, the owners of the respective premises shall be jointly and severally responsible for maintenance and repair of the service line.

A. The property owner shall be responsible for the repair and maintenance of the water service line from the curb stop to the premises. In case of an emergency, the water department may repair this portion of the service line for which the owner is responsible and bill the owner for such costs of repair.

B. The Water Department shall be responsible for the maintenance and repair of the water service line from the distribution main to the curb stop. Repair and maintenance of this portion of the service line shall be performed by the Water Department at no cost to the property owner.

C. The property owner shall be responsible for the repair and maintenance of the water service line from the property line to the house or other building.

D. Leaks occurring on water service line between the curb stop and the house or building shall be repaired as necessary to include backfilling restoration of property at the property owner's expense. However, the Water Department will, if requested to do so, shut off the water service line at the curb stop. To preclude unnecessary waste of water, if repairs are not initiated within a reasonable period of time, the Water Department may, in its discretion, shut off the water service until repairs have been effected.

E. The property owner shall be responsible for all damages that may occur to other property, real or personal, including property of the Water Department, that were a result of a failure to repair and maintain the water service, including, but not limited to, leaks occurring on a water service line, bursting or other failure of the water line.

F. When a doubt exists concerning the responsibility for repairing a leak, the Water Department will determine the origin of the leak, and the responsibility for repair. This will be done by turning off the service at the curb stop. When this action causes the leak to stop flowing, the homeowner or property owner will be responsible for repair. When the leak continues to flow after turn off, the Water Department assumes responsibility and will effect repair at no expense to the homeowner/property owner. (Ord. 1138 §1, 2001)

13.04.200 Mains and Lines - Manner of Extension. Distribution mains to supply and distribute water to and throughout areas or additions shall be extended by the owner or developer of premises to be served by such lines from the existing distribution main to the point or points of the property line of such premises farthest from the existing distribution main. Such extension requirement may be waived by the Superintendent in the event that he determines that extension to the farthest point from the existing distribution main is not necessary for the efficient expansion of the water supply system. In any event, distribution mains shall be extended by the owner or developer of premises to be served by such mains to a point which permits the shortest possible service line between the distribution main and the property line of the premises served thereby. Thereafter, said distribution mains shall be extended to adjoining premises in compliance with the public works designs and construction specifications for water main installations. Extensions shall not be made for remote or isolated service unless the applicant requesting such service shall provide for the cost of such extension to the point of service and such extension is approved by the Superintendent. (Ord. 1138 §1, 2001)

13.04.210 Mains and Lines - Compliance with Subdivision Regulations. No water distribution main or service line shall be laid or placed in any proposed addition to or subdivision within the City until said addition or subdivision is platted and approved in accordance with the City's subdivision ordinance. (Ord. 1138 §1, 2001)

13.04.220 Existing Lines - Conditions for Use. Existing service lines and/or distribution mains may be used in connection with new buildings only when they are found by the Superintendent to meet all requirements of this Chapter. (Ord. 1138 §1, 2001)

13.04.230 Construction - Requirements for Commencement and Completion. Construction of any building or facility to be served by a connection with the water supply system of the City shall be commenced within one hundred twenty (120) days from the date of approval or payment of the charges set out in this chapter and such construction shall be pursued to completion without suspension or abandonment, as provided in the City's Building Code. Failure to comply with the above requirements shall result in cancellation of the connection permit and the return of the connection charge less expenses incurred by the division to determine such noncompliance. (Ord. 1138 §1, 2001)

13.04.231 City of Fountain Public Utility Design and Construction Specifications for a Water Distribution System. There is hereby adopted by reference the 2007 edition of the City of Fountain Public Utility Design and construction Specifications for a Water Distribution System. (Ord. 1383 §2, 2007)

13.04.240 Disconnection.

A. For the purposes of this section, "customer" shall mean the person designated on the Customer Service Department's records as the person responsible for payment of charges incurred for the use at his premises of the water supply system of the City.

B. The Water Department shall disconnect the service line of premises from the distribution main of the City upon request of the customer. Such disconnection shall be accomplished in a manner that ensures against leakage of water.

C. In the event that the premises of a customer are disconnected from the water supply system of the City, such customer shall be responsible for all costs of such disconnection. In no event shall taps serving the premises of any customer be transferred to another premises.

D. In the event that a customer desires to install a new service line for premises for which an existing service line is available, the new service line shall not be connected until the existing service line is disconnected from the distribution main.

E. 1. In the event that a previously used service line is not used for a continuous period of one (1) year or more, the Water Department may, at the customer's expense, shut off such service line at the corporation stopcock provided; however, the shut off may be delayed if the customer states in writing that the service line will be in regular use within a specific time agreed to pay the cost of such shut off within thirty (30) days after billing, then in addition to any other remedies that may be available to the department, such cost may be assessed against the property formerly served in the same manner as other water charges may be assessed against the property.

2. In the event that a previously used service line is not used for a continuous period of five (5) years or more, such service line shall be deemed to be abandoned, unless a letter of agreement is entered into between the customer and the Water Department. When a service line is deemed to be abandoned, there shall be no further obligation on the Water Department to provide water to that service line. The obligation to serve shall not again arise except upon reapplication in accordance with all ordinances then applicable and the payment of all fees due at the time of the reapplication. (Ord. 1138 §1, 2001)

### III. COSTS AND CHARGES

#### 13.04.250 Water Facilities - Cost.

A. A property owner or developer shall be responsible for the cost and construction of all water distribution mains, and the appurtenances thereto, including any required fire hydrants necessary to serve the property or development upon approval by the City of the plans and specifications of such facilities and appurtenances. The City shall inspect and approve the actual construction prior to connection of such facilities.

B. When an owner or developer finds it necessary to construct water supply and distribution facilities through or adjacent to unserved or undeveloped lands, such owner or

developer shall pay the entire cost of such facilities. However, the City shall agree in writing with such owner or developer to assist in the collection of a prorata share of the actual cost of such facilities from the owner of such unserved or undeveloped lands at the time of connection to the facilities and refund such cost to the owner or developer.

C. 1. An owner or developer, who is a party to a recovery agreement with the City, shall provide a complete detailed summary of all construction costs to the City Engineer within ninety (90) days after completion of construction. Failure to provide such construction cost information shall relieve the City of responsibility to assist in the collection of a prorata share from subsequent connectors; provided, nothing contained herein shall relieve a subsequent connector from the obligation to pay a reasonable cost of construction, such reasonable cost to be determined by the City Engineer on the basis of the best information available to him at the time.

2. The owner or developer and the Superintendent of the Water Department shall jointly determine the service area of the facilities constructed by the owner or developer and shall jointly determine a recovery charge, which normally shall be on per-front-foot basis. In the event that the owner or developer and the Superintendent of the Water Department shall fail to agree, the determinations of the Superintendent of the Water Department shall be subject to review by the City Manager, whose decision shall be appealable to City Council.

3. The owner or developer's right to reimbursement under the provisions of the recovery agreement shall not exceed the actual construction costs for a period of twenty (20) years from execution of the agreement unless the City Council shall approve a contract period exceeding twenty (20) years.

D. A property owner or developer may be required to construct a distribution main larger than that required for his needs for the service of lands beyond the property or development. The construction costs due to oversizing of a distribution main shall be subject to the same cost recovery provisions as provided in this section. (Ord. 1138 §1, 2001)

13.04.260 Installation Cost. All costs and expenses incidental to the installation and connect of a service line from the distribution main to the premises shall be borne by the owner of such premises. The owner shall indemnify the City for any loss or damage to the City that may directly or indirectly be occasioned by installation of such service line. (Ord. 1138 §1, 2001)

13.04.270 Connection Charge.

A. In each lot, area, territory, subdivision or addition, inside or outside the corporate limits of the City, for which a request for water service connection or addition to the water supply system of the City shall be made, there is and shall be a connection charge for each service line. The connection charge is based upon the total cost associated with providing water service to new customers of the City.

B. If the area to be served is subject to an outstanding recovery agreement; a recovery agreement charge shall also be included in the connection charge.

C. The connection charge shall be payable in full in cash prior to the issuance of a tapping permit. Application for a tapping permit shall be made to the City Clerk. A tapping permit shall only be issued for a specific lot or parcel.

D. Requests for a refund of the connection charge under this section shall be made in writing to the City Clerk within one year of payment thereof.

13.04.270 Connection Charges

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“E. Each new or expanded connection to the water system of the City of Fountain of premises located wholly within the corporate limits of the City of Fountain shall pay a connection fee as hereinafter set forth which includes a water acquisition fee and a tap fee in the amounts hereinafter set forth:

Tap Size	Tap Fee	Water Acquisition Fee	Connection Fee
3/4"	\$10,824	\$6,500	\$17,324
1"	\$19,279	\$11,577	\$30,856
1 1/4"	\$30,110	\$18,081	\$48,191
1 1/2"	\$42,530	\$25,539	\$68,070
2"	\$47,433	\$28,483	\$75,916
2 1/2"	\$75,274	\$45,201	\$120,475
3"	\$110,819	\$66,545	\$177,364
4"	\$193,740	\$116,341	\$310,081

6” For a 6 inch tap, the water tap fee and the water acquisition fee are to be established by contract between the user and the City.

8” For an 8 inch tap, the water tap fee and the water acquisition fee are to be established by contract between the user and the City.

Each unit multifamily			
	\$6,173	\$3,640	\$9,813

(Ord. 1403, §3, 2008) (Ord. 1443, §3, 2008)

F. Water acquisition fees and tap fees to be paid by customers whose premises are located in whole or in part outside the corporate limits of the City of Fountain shall pay twice the amount for such fees as would be imposed by subsection E above if the premises were located wholly within the corporate limits of the City of Fountain.”

(Ord. 1357, §3, 2006)

G. These connection charges shall apply to any connection that occurs on or after June 15, 2001. However, any residential structure that met the following criteria before June 15, 2001 and connects to the City of Fountain water system on or before June 15, 2006 shall pay the charges that were in effect immediately prior to June 15, 2001;

1. Was in the City of Fountain City limits
2. Had received a certificate of occupancy and was occupied;
3. Was located more than five hundred (500) feet from any public water distribution main. Public Water Distribution Main includes any Distribution Main including but not limited to that which may be owned by the City of Fountain; and
4. Is only served by well water. (Ord. 1138 §1, 2001)

H. These connection charges may be reduced or waived by the City Council upon a determination by the City Council that the reduction or waiver of such connection charges provides an economic benefit to the City or to the consumers of water service provided by the City and such waiver or reduction serves a public purpose. The City Council shall be the sole judge concerning whether the waiver or reduction of a connection charge constitutes an economic benefit to the City or to the consumers of water service and serves a public purpose. (Ord. 1233 §1, 2004)

13.04.280 Recovery Agreement Charge. A recovery agreement charge may be assessed for each connection to or use of a distribution main or other facility which is the subject of a recovery agreement between the City and the person responsible for the construction of said main or facility. Consistent with such agreement, such charge shall be in an amount, which represents a prorata share of the cost of construction of the main, or facility and shall be collected prior to issuance of a building permit. (Ord. 1138 §1, 2001)

13.04.290 Charge - Credit For.

A. In the event that a property owner or developer, with the approval of the Superintendent, connects a new building or structure to a previously existing service line, without changing the size of such service line, such owner or developer shall not be required to pay a water development charge.

B. In the event that an owner or developer replaces an existing service line with a larger service line, such owner or developer shall pay a water connection fee in an amount representing the difference between the amount assessed on the basis of the existing tap and the amount assessed on the basis of the larger tap. Such owner or developer shall not pay a recovery agreement charge.

C. In the event that an owner or developer replaces an existing service line with a smaller service line, such owner or developer shall not be entitled to a refund of the permit charge or the water development charge. (Ord. 1138 §1, 2001)

13.04.300 Building Permit Approval. The City Clerk or other proper City official shall refuse to approve the issuance of any building permit until and unless all water connection charges, recovery agreement charges and other applicable water service fees have been paid. (Ord. 1138 §1, 2001)

13.04.310 Water Service Application and Fee.

A. In addition to any applicable tapping permit requirements, an application for water service shall be made in writing to the customer service department and shall contain an agreement by the applicant to abide by and accept all of the provisions of this Chapter as conditions governing the use of City water by the applicant.

B. A fee shall be paid for the initial connection and for each subsequent reconnection of service on weekdays (excluding City-recognized holidays) between the hours of 8:00 a.m. and 4:00 p.m. If said connection or reconnection is made after hours (weekends between 8:00 a.m. and 4:00 p.m., City-recognized holidays or on weekends) at the customer's request, the City will charge the customer an after hours connection or reconnection fee.

C. If said payment is made by a check, which is subsequently returned by the bank dishonored, the City will charge the customer a dishonored check-processing fee.

D. The service charges contemplated herein shall be set forth by separate Ordinance as approved by City Council. These charges are to offset the City's costs for such service work and transactions and are in addition to all other customer charges for utility service and for customer deposits. (Ord. 1138 §1, 2001)

13.04.320 Water Service Deposit. Unless otherwise provided in this section, the General Deposit Provisions in Section 13.16.180 apply to deposits made under this section. A deposit of fifty dollars (\$50) shall be made with each application for residential water service inside of the City limits to insure payment of all water bills. A deposit on one hundred dollars (\$100) shall be made with each application for residential water service outside of the City limits to insure payment of all water bills. A deposit equal to the estimated bills for a period of ninety (90) days or one hundred dollars (\$100), whichever is greater, shall be required for all non-residential users. Deposits for water service which are refunded to the customer or applied to the customer's account shall be without interest. (Ord. 1242 §2, 2004)

13.04.322 Unclaimed Utility Water Service Deposit. Unless otherwise provided in this section, the Unclaimed Utility Deposit Provisions in section 13.16.182 of this Code apply to all deposits made pursuant to section 13.04.320 of this Code. (Ord. 1299 §2, 2005)

13.04.330 Water Meters - Reading - Billing. The customer service department shall read or cause to be read every water meter utilized for City water service in order that bills may be sent to the consumer on a monthly basis. Whenever the customer service department is unable to read the customer's meter, the City may estimate the monthly bill based upon the best available information. The bill or charge for said water shall become delinquent ten (10) days after the mailing of such notice to the customer. Failure to send the monthly bill to the consumer shall not absolve the consumer of any liability from said water bill. (Ord. 1138 §1, 2001)

13.04.340 Water Meters - Testing - Fee. Any City water meter may be taken out and tested upon complaint of the consumer, upon payment of a fee of twenty-five dollars (\$25). If



the meter is tested and not found to be within three (3) percent or less of being accurate, then the meter shall be repaired or replaced and the twenty-five dollar (\$25) fee shall be returned to the consumer. (Ord. 1138 §1, 2001)

13.04.350 Meters Required. Except as otherwise provided by contract, a water meter shall be installed at the premises of each user of water services of the City. Such meter shall be capable of measuring the consumption of water at such premises, which measurement shall be recorded at periodic intervals as necessary for the purpose of determining the amount of applicable user charges. One or more meters shall be installed at each of such premises for each user charge rate at which such user receives such service at such premises. (Ord. 1138 §1, 2001)

13.04.360 Remote Readers. Where a remote reader exists at the premises of a user of water services of the City and a discrepancy exists between the reading on such remote reader and the reading on the inside meter at such premises, the reading on the inside meter shall prevail for the purposes of determining the amount of applicable user charges. (Ord. 1138 §1, 2001)

13.04.370 Meters - Installation and Maintenance. Water meters for three-quarter (3/4) inch and one (1) inch lines shall be furnished and installed by the Water Department at the expense of the City, and the City shall retain ownership of such meters. All other sizes of water meters shall be provided and installed by the user at this expense and shall become the property of the City. The Water Department shall perform all necessary maintenance and/or repair of meters including replacement of meters; provided, however that the property owner shall be responsible for protecting the meter against damage. (Ord. 1138 §1, 2001)

13.04.380 Metering Facilities - Installation and Location.

A. The owner or developer of premises served or to be served by the water supply system of the City shall provide and install sufficient and proper meter loops and other necessary facilities for the installation of a water meter. Such a facility shall be provided and installed at the expense of such owner or developer in accordance with all applicable ordinances of the City and the public works design and construction specifications. No meter shall be installed until such facilities have been inspected and approved by the Water Department.

B. The location of meter installation facilities and other metering equipment upon the premises shall be designated by the Water Department. Such location shall provide for adequate clearance to insure that the meter and appurtenant facilities and equipment are readily accessible for the purpose of reading, testing, maintaining and repairing the meter and shall be in conformity with the public works design and construction specifications. The location of the meter and appurtenant facilities shall be such as to prevent obstruction of or interference with traffic, streets, driveways, sidewalks, hallways or other passageways, or the opening or closing of doors or windows and to provide for protection from hazard. (Ord. 1138 §1, 2001)

13.04.390 Monthly Water Service Charges for Inside and Outside Corporate Limits.

“A. Each user or consumer of water shall pay a minimum monthly water service charge based on the rate schedule (see Charts 13.04.390-2 and 13.04.390-3) for water supplied by the

City to premises located within the corporate limits of the City of Fountain as provided in the following tables:

**Chart 13.04.390-2 Water Rates (3/4" Tap)**

Block	Gallons per Month	Rate
1	up to 3,000	\$24.64
2	3,001 - 6,000	\$3.26 per 1,000 gallons
3	6,001 - 10,000	\$3.89 per 1,000 gallons
4	10,001 - 15,000	\$4.29 per 1,000 gallons
5	15,001 – 21,000	\$4.87 per 1,000 gallons
6	over 21,000 gallons	\$5.36 per 1,000 gallons

**Chart 13.04.390-3 Water Rates (Greater than 3/4" Tap)**

Tap size	Block	Gallons per Month	Rate
1"	1	up to 6,000	\$49.28
	2	6,001 - 12,000	\$3.78 per 1,000 gallons
	3	12,001 - 20,000	\$4.51 per 1,000 gallons
	4	20,001 - 30,000	\$4.97 per 1,000 gallons
	5	30,001 – 42,000	\$5.67 per 1,000 gallons
	6	over 42,000 gallons	\$6.24 per 1,000 gallons
1 1/4"	Block	Gallons per Month	Rate
	1	up to 8,000	\$75.34
	2	8,001 - 16,000	\$3.78 per 1,000 gallons
	3	16,001 - 26,667	\$4.51 per 1,000 gallons
	4	26,668 - 40,000	\$4.97 per 1,000 gallons
	5	40,001 – 56,000	\$5.67 per 1,000 gallons
6	over 56,000 gallons	\$6.24 per 1,000 gallons	
1 1/2"	Block	Gallons per Month	Rate
	1	up to 13,500	\$109.87
	2	13,501 - 27,000	\$3.78 per 1,000 gallons
	3	27,001 - 45,000	\$4.51 per 1,000 gallons
	4	45,001 - 67,500	\$4.97 per 1,000 gallons
	5	67,501 – 94,500	\$5.67 per 1,000 gallons
6	over 94,500 gallons	\$6.24 per 1,000 gallons	
2"	Block	Gallons per Month	Rate
	1	up to 24,000	\$197.76
	2	24,001 - 48,000	\$3.78 per 1,000 gallons
	3	48,001 - 80,000	\$4.51 per 1,000 gallons
	4	80,001 - 120,000	\$4.97 per 1,000 gallons
	5	120,001 – 168,000	\$5.67 per 1,000 gallons
6	over 168,000 gallons	\$6.24 per 1,000 gallons	

2 1/2"	Block	Gallons per Month	Rate
	1	up to 36,000	\$295.07
	2	36,001 - 72,000	\$3.78 per 1,000 gallons
	3	72,001 - 120,000	\$4.51 per 1,000 gallons
	4	120,001 - 180,000	\$4.97 per 1,000 gallons
	5	180,001 – 252,000	\$5.67 per 1,000 gallons
	6	over 252,000 gallons	\$6.24 per 1,000 gallons
3"	Block	Gallons per Month	Rate
	1	up to 52,500	\$433.19
	2	52,501 - 105,000	3.78 per 1,000 gallons
	3	105,001 - 175,000	\$4.51 per 1,000 gallons
	4	175,001 - 262,500	\$4.97 per 1,000 gallons
	5	262,501 – 367,500	\$5.67 per 1,000 gallons
	6	over 367,500 gallons	\$6.24 per 1,000 gallons
4"	Block	Gallons per Month	Rate
	1	up to 90,000	\$739.25
	2	90,001 - 180,000	\$3.78 per 1,000 gallons
	3	180,001 - 300,000	\$4.51 per 1,000 gallons
	4	300,001 - 450,000	\$4.97 per 1,000 gallons
	5	450,001 – 630,000	\$5.67 per 1,000 gallons
	6	over 630,000 gallons	\$6.24 per 1,000 gallons

6” For a 6 inch tap, the water rates are to be established by contract between the user and the City.

8” For an 8 inch tap, the water rates are to be established by contract between the user and the City.”

B. Rates to be paid by customers using compound water meters (a meter that has two registers built into the meter, one (1) for high volume readings and one (1) for low volume readings) shall be the total of the readings of both registers with a minimum monthly water service charge which is the greater of either of the two flows as measured by the registers.

C. Rates to be paid by customers having a bypass meter (a secondary meter installed to insure continuous flow during periods when the primary meter is out of operation for servicing) shall be the total of the readings of the registers for both meters. No minimum charge as set forth in Block 1 of *Chart 13.04.390-2* or Block 1 of *Chart 13.04.390-3* shall be applied to billings based on the bypass meter.

D. Rates to be paid by customers whose premises are located in whole or in part outside the corporate limits of the City of Fountain shall pay twice the rate that would be imposed by subsections A, B, and/or C above if the premises were located wholly within the corporate limits of the City of Fountain.” (Ord. 1403 §2, 2008) (Ord. 1443 §2, 2008)

13.04.400 Special Charges. For those areas served by the City and utilizing pumping facilities to accomplish adequate water service, a surcharge may be imposed in an amount, which represents the cost of operations and maintenance of such facilities. (Ord. 1138 §1, 2001)

13.04.410 Definitions. As used in sections 13.04.420 to 13.04.470, inclusive, the following definitions shall apply:

A. "By-pass or by-passing" shall mean any pipe, tube, faucet or other instrument, device or contrivance by which water may be transmitted, diverted, taken or used, connected to any line used to supply water to the premises in such a manner as to transmit, divert, take or use any such water without passing through an authorized meter for measuring or determining the amount of such water.

B. "Customer" shall mean the person or organization responsible for the water utility account for the premises and includes authorized employees or agents of the owner.

C. "Tamper or tampering" shall mean damaging, altering, adjusting or in any manner interfering with or obstructing the action or operation of any meter provided for measuring or determining the amount of water passing through such meter.

D. "Unauthorized metering" shall mean removing, moving, installing, connecting, reconnecting or disconnecting any meter or metering device for water service by a person other than an authorized employee of the Water Department. (Ord. 1138 §1, 2001)

13.04.420 Unlawful Acts.

A. It shall be unlawful for any person to install a by-pass without the express written authorization of the Superintendent.

B. It shall be unlawful for any customer or the user at any premises knowingly to receive water service by means of a by-pass which has not been authorized in writing by the Superintendent of the Water Department or knowingly to receive water service by means of an authorized by-pass which is not approved or intended for water service.

C. It shall be unlawful for any person to tamper with a water meter or other water utility equipment without the express written authorization of the Superintendent.

D. It shall be unlawful for any customer or the user of any premises knowingly to receive water service by means of tampering which has not been authorized in writing by the Superintendent.

E. It shall be unlawful for any person to engage in unauthorized metering.

F. It shall be unlawful for any customer or the user of any premises knowingly to receive water service by means of unauthorized metering which has not been expressly authorized in writing by the superintendent. (Ord. 1138 §1, 2001)

13.04.430 Restitution. As a condition of granting probation, deferred prosecution, deferred sentence or suspended sentence, the court may order any person who is charged with or found guilty of, as the case may be, of violating any of the provisions of section 13.04.440, to pay as restitution estimated or actual user charges for the period during which the violation existed, the cost of repairing or replacing any damaged utility equipment, or any other costs incurred by the City related to the violation including, but not limited to, costs of investigation, disconnection, reconnection and service calls. (Ord. 1138 §1, 2001)

13.04.440 Evidence of Violations.

A. Proof of the existence of any by-pass, tampering or unauthorized metering, as prohibited in this part, shall be deemed prima facie evidence of the user of the premises where such by-pass, tampering or unauthorized metering if it is proved that the user is an occupant of the premises and that said user had access to the water meter or other utility equipment where the by-pass, tampering or unauthorized metering is proved to exist.

B. Proof of the existence of any by-pass, tampering or unauthorized metering, as prohibited by this subsection A shall be deemed prima facie evidence that the customer had knowledge of the by-pass, tampering or unauthorized metering if it is proved that said customer controlled access to the water meter or other utility equipment where the by-pass, tampering or unauthorized metering is proved to exist. (Ord. 1138 §1, 2001)

13.04.450 Interruption of Service on Account of Tampering, By-passing or Unauthorized Metering. Tampering, by-passing or unauthorized metering, as defined in section 13.04.420 at any premises is subterfuge. Such tampering, by-passing or unauthorized metering shall be grounds for immediate disconnection of service without notice to the customer or user at such premises. Service shall not be reconnected until any and all deficiencies in piping, connections, meters and/or water facilities of the premises have been repaired, corrected or otherwise altered to conform to the requirements of all applicable ordinances, rules and regulations and until the requirements of section 13.04.440 are met. (Ord. 1138 §1, 2001)

13.04.460 Reconnection Charges for Tampering, By-passing or Unauthorized Metering. In order for water service to be reconnected to premises where tampering, by-passing or unauthorized metering has occurred, the customer or user of the premises shall pay the following charges to the department prior to reconnection:

A. Service charge calculated to compensate the department for all reasonable expenses incurred on account of the tampering, by-passing or unauthorized metering including, but not limited to, costs of investigation, disconnection, reconnection and service calls, but in no event less than twenty-five dollars (\$25);

B. The cost of repairing or replacing any damaged utility equipment; and

C. The actual or estimated user charges not previously billed to the customer as a result of the tampering, by-passing or unauthorized metering. (Ord. 1138 §1, 2001)

13.04.470 Defective Meters-Estimated User Charges.

A. If a meter is found not to register, to register intermittently or inaccurately, or to partially register for any period, the amount of water consumed at the premises of any user of the water supply system, the water department may estimate charges for the water consumed by averaging the amounts over similar periods, over corresponding periods in previous years, or on such other basis as may be reasonable. The owner or occupant of the premises in which such defective meter is found to exist shall be liable for estimated user charges as so determined by the Water Department.

B. In the event a defective meter has resulted in the overpayment of user charges by the owner or occupant of the premises in which such defective meter is found to exist, the excess amount is determined on the basis of estimated user charges in the manner provided in subsection A of this section, shall be refunded or credited to such owner or occupant. (Ord. 1138 §1, 2001)

13.04.480 Dishonored Checks. Any check received by the City in payment of a customer's bill and subsequently returned from the bank without being honored shall constitute non-payment of the amount due. Receipt of such check in payment of an amount due pursuant to a pending notice of discontinuance shall result in discontinuance of service without additional notice. If service is restored by the City upon payment of such a check, the City may immediately discontinue service without additional notice when the City learns that the bank will not honor the check. In the event the City receives two dishonored checks from any one customer in any one year, the City may issue notice to the customer and require future payments for the next twelve months to be in cash or certified funds. (Ord. 1138 §1, 2001)

13.04.490 Requirements for Budget Billing Plan. Residential users of water service may elect to pay future monthly water charges in accordance with a budget-billing plan. In order to qualify for this plan, the user shall not have a past due balance for water service and must request said plan at least thirty (30) days prior to the beginning of the customer's billing cycle. The budget-billing plan shall apply to all services furnished to the user. A user shall not be eligible for the budget-billing plan unless the user has a twelve (12) month billing history at the particular residence. (Ord. 1138 §1, 2001)

13.04.500 Monthly Amount Due.

A. The monthly amount due from any user under a budget billing plan shall be equal to one tenth (1/10) of the total of the amount determined by applying the user charge rate for each utility service in effect at the time such user requests such plan to the amount of each utility service consumed at the premises of such user for the most recent twelve (12) month period.

B. The monthly amount due from any user under a budget billing plan shall be paid by such user for eleven (11) consecutive months with the final or twelfth (12<sup>th</sup>) month's payment being a settlement amount equal to the difference between the total payments made during the prior payment months and the actual billing for the twelve (12) month period. The settlement amount, if a credit balance, would be credited against future bills of the customer. If the settlement amount is a balance owned by the customer, it shall be due and payable on the due date indicated on the bill for the settlement month.

C. The budget-billing plan shall remain in effect for the user charged in accordance with such plan until such user requests that charges be determined and collected in accordance with regular billing procedures. Such request shall terminate such plan for all services furnished for such user by the customer service department. If a customer is removed from the budget-billing plan for any reason, the customer shall not be eligible to participate in the plan again for a minimum period of twelve (12) months.

D. If a user under the budget-billing plan fails to pay the budget-billing obligation on any month, normal collection procedures shall be applicable for the outstanding budget billing amount. The user shall be removed from the budget-billing plan and service may be discontinued.

E. The monthly budget-billing amount may be adjusted, at the option of the City, for any increase or decrease in the City's rates. Said monthly budget billing amount may also be adjusted, at the option of the City, if the customer's water use increases or decreases substantially.

F. If water service is terminated for any reason to a user on a budget billing plan, the user shall be removed from the plan and the entire outstanding amount of the account shall be due and payable.

G. The user may elect to terminate the budget-billing plan at any time by notifying the City in writing and by paying in full the entire outstanding amount of the account. If the customer has a credit balance, the City shall apply the credit balance to future billings. (Ord. 1138 §1, 2001)

13.04.510 Discontinuance of Service at User's Request. A user requesting to discontinue service or terminate his responsibility for service shall give at least three (3) working day's notice to the City in order to allow sufficient time for final meter reading and disconnection or transfer of service. Where such notice is not received by the City, the user shall be responsible for service until final reading of the meter. Notice of discontinuance of service will not relieve the customer for any minimum or guaranteed payment under any contract or rate schedule. (Ord. 1138 §1, 2001)

13.04.520 Discontinuance of Service by the City.

A. In the event that a user violates an ordinance or regulation concerning water service, such service may be discontinued upon giving seven (7) days prior written notice unless a hazardous condition exists in which event service may be discontinued without prior notice.

B. A notice of discontinuance as a condition precedent to disconnection or discontinuance of water service shall include, as a minimum, the following:

1. A statement describing the ordinance or regulation that is being violated;
2. Where applicable, a statement that disconnection or discontinuance of service may be avoided by correction of the violation; and
3. A statement that a procedure is available with the City to resolve disputes concerning violation of the water service ordinance or regulations. Such statement shall state how the user may contact the customer service department to resolve any dispute by telephone, by person or by letter.

C. One notice of discontinuance may be used for all services provided by the City.

D. Dispute resolution procedures shall be in accordance with the procedures adopted for discontinuance of electrical service. (Ord. 1138 §1, 2001)

#### 13.04.530 Restoration of Service.

A. Where service has been discontinued for non-payment, service will be restored within twenty-four (24) hours (unless extenuating circumstances prevent restoration) after the customer pays in full all amounts past due, plus any deposit, collection or water service restoration fees as may be specifically provided for in this chapter.

B. Where service has been discontinued for reasons other than non-payment, service shall be restored within twenty-four (24) hours (unless extenuating circumstances prevent restoration) and after the customer pays any water service restoration and/or collection charges plus any deposit as may be specifically required in the event of discontinuance and notifies the customer service department and the customer service department confirms that the cause for discontinuance, if other than non-payment, has been cured. (Ord. 1138 §1, 2001)

13.04.540 Installment Payment Plan Arrangements. Where a residential water account is delinquent, a user may be eligible for an installment payment plan in accordance with the provisions for such payment plan for electric utility service. (Ord. 1138 §1, 2001)

13.04.550 Complaints. Customer complaints, whether service or payment related, shall be handled in the same manner as provided for electrical service. (Ord. 1138 §1, 2001)

#### 13.04.551 Collection of Charges and Remedies.

A. Unpaid Charges; Lien; Collection:



Until paid, all charges which shall include costs, fees or other financial obligations imposed or authorized by this Chapter or Chapter 13.08 of the Fountain Municipal Code for water services provided by the City shall constitute a perpetual lien on and against the property connected to or served by the water system which may be recorded against the property at any time thereafter, and shall be chargeable against the owner of the property at the time of use of the service or the owner's successors in interest to the property. In the event that any charge imposed or authorized by this Chapter or Chapter 13.08 of the Fountain Municipal Code shall not be paid when due, the Utility Director or the Utility Director's representative may issue a notice of lien to the owner of the property or the user or both, setting forth the amount of the charge due and payable, identifying the property connected to the water system for which the charge is delinquent and stating that the City claims a perpetual lien on and against the property for the unpaid charge. Until paid, the charge shall constitute a perpetual lien on and against the property served. After the issuance of notice of lien, the Utility Director or the Utility Director's representative may file a verified notice of lien with the Clerk and Recorder of the County in which the property is located.

After the issuance of notice of lien, a verified notice of lien may be filed with the City Clerk by the Utility Director or the Utility Director's representative. The City Clerk shall certify the charge to the County Treasurer to be placed upon the tax list for the current year and to be collected in the same manner as taxes with a ten percent (10%) penalty thereon to defray the costs of collection. All laws of the State of Colorado for the assessment and collection of general taxes and the redemption of same shall apply to the charges

B. Dispute Procedures: The owner of property subject to the lien may dispute the amount or validity of the lien in accordance with the procedures for complaints set forth in section 13.16.400 of the Code.

C. Remedies: Charges may be collected and the lien created hereunder may be enforced in a proceeding in law or equity as provided in section 31-15-302(1)(e) C.R.S. and reasonable attorney's fees and other costs of collection may be imposed as authorized by section 31-35-402(1)(f) C.R.S. The remedies of the City as set forth in this section shall be cumulative and not alternative, and the City may pursue any remedy either singly or in combination as it may deem necessary and appropriate or any other remedy provided in law or equity. (Ord. 1243 §1, 2004)

#### IV. REGULATIONS FOR USE OF WATER

13.04.560 Use - Determination by Council. In order to maintain adequate water pressure and water supply and/or proper water quality, the City Council may restrict or deny the use of water by any user. Such restrictions may include, but shall not be limited to, designation of the type and number of uses of water, which shall be permitted, and/or any other restriction, which the Council may deem necessary. (Ord. 1138 §1, 2001)

13.04.570 Use - Restrictions First Applied to Outside Users. In the event that City Council determines that, owing to shortage of water caused by dry spells, adverse climatic conditions or other causes, restrictions as to the use of water are necessary to preserve an adequate supply of water, such restrictions may be applied first to users outside the corporate limits of the City as the City Council may direct. (Ord. 1138 §1, 2001)

13.04.571 Farmer's Hydrant Use Restrictions.

A. The provisions of this section apply to water taken from the Farmer's Hydrant, a water hydrant owned by the City and located near the intersection of Missouri Avenue and Walnut Street and designated by the City as the "Farmer's Hydrant."

B. Only persons who are residents of the City whose property does not have a permanent connection to the City water supply and who have entered in a contract with the City shall be permitted to take, use or transport water from the Farmer's Hydrant.

C. It shall be unlawful for any person who is not a resident of the City of Fountain, to take, use, or transport water from the Farmer's Hydrant. It shall be unlawful for any person to take, use, or transport water from the Farmer's Hydrant water for use outside of the city limits of the City of Fountain. Any person authorized by the City to take water from the Farmer's Hydrant who violates this section may have such authorization terminated under the provisions of Section 13.04.520 of this Code pertaining to Discontinuance of Service by the City.

D. The City Manager, Utility Director, or their designees are authorized to make exceptions to these prohibitions where a petition for annexation has been filed with the City and water taken from the Farmer's Hydrant will be used to serve land described in the petition for annexation. (Ord. 1306 §1, 2005)

13.04.580 Conditions of Service.

A. All water furnished by the City in providing water service is and shall be on a license basis for one time use for lawful purposes on the customer's premises. The license herein granted may be modified, suspended or terminated as now or hereafter provided in the rules, regulations and ordinances of the City. Neither the granting of this license nor the use of water thereunder shall constitute or be deemed a relinquishment of the City's dominion and control of its water or the title to any of its water or water rights. No act, circumstance or condition of such use or service shall be deemed to constitute a conveyance of the City's title or surrender of the City's dominion and control, or shall operate to create any vested or proprietary right, relating to the City's water or water rights, in any person whatsoever.

B. It shall be unlawful for any person to make any reuse or succession of uses of the water provided by the City, except as specifically allowed by the rules, regulations, resolutions or ordinances of the City.

C. It shall be unlawful for any person to directly or indirectly sell or otherwise dispose of water service furnished by the City or to do any other act, except in accordance with that person's service application and service contract and with the rules, regulations, resolutions or ordinances of the City. Nothing in the foregoing sentence shall prohibit a customer from establishing an appropriate allocation procedure for the purposes of receiving reimbursement from tenants or lessees for their proportionate share of water service used which allocation procedure shall be determined solely by contractual arrangement between the customer and the tenants or lessees, provided that the customer shall not receive total reimbursement in excess of the amount necessary to pay said customer's water bill. (Ord. 1138 §1, 2001)

13.04.590 Unlawful to Steal Water. It shall be unlawful for any person to take or use any water from the water supply system of the City, or to aid or abet any person in such taking or using, otherwise than in compliance with this chapter. (Ord. 1138 §1, 2001)

13.04.600 Unlawful Taking - Evidence of. Occupancy of any premises for which the City supplies water for any purpose for any length of time greater than five (5) days, without entering into a water service agreement with the City, shall be deemed prima facie evidence of the unlawful taking or use of water by the owner of such premises. (Ord. 1138 §1, 2001)

13.04.610 Unlawful to Take Water From Fire Hydrant. It shall be unlawful for any person to take any water from any fire hydrant or hose pipe except for the extinguishment of fires, the cleaning or testing of fire apparatus or with the permission of the Superintendent. The Superintendent may take water from a fire hydrant when necessary for any purpose of the water system. (Ord. 1138 §1, 2001)

13.04.620 Private Lines Prohibited. It shall be unlawful for any consumer of City water to either reconnect hook up or create a cross-connection with any water well or other water supply, not operated by the City, to any of the water lines of the City or to any water lines that may connect to the water lines of the City. The Water Department may deny or disconnect service to any property that is connected to a private source of water supply. (Ord. 1138 §1, 2001)

13.04.630 Admission to Property. The Water Department shall have the right to enter upon the premises of the customer at all reasonable times for the purpose of inspecting, repairing or removing any or all equipment used in connection with its service, and removing its property when service has been discontinued. (Ord. 1138 §1, 2001)

13.04.640 Use of Water - Temporary Discontinuance. The City expressly reserves the right to temporarily shut off water from the distribution mains when necessary to repair any portion of the water supply system or to make connections to or extensions of the water supply system. The Water Department shall endeavor to give reasonable notice of the proposed interruption of water service, whenever possible, to all users potentially affected thereby. (Ord. 1138 §1, 2001)

13.04.650 Liability of City - Exclusion of. The City shall not be liable to any person for failure to supply water during repairs or extensions of the distribution mains nor for other causes

such as strikes, acts of God, unavoidable accidents or other contingencies beyond its control. The City shall not be liable to any person for failure to maintain water pressure sufficient to any proposed use of water. (Ord. 1138 §1, 2001)

## V. CONTROL AND PROTECTION OF WATER SYSTEM

### 13.04.660 Unlawful Acts.

A. It shall be unlawful for any person to interfere in any manner with any distribution main, meter, corporation or any other appurtenance connected to the water system or comprising a part thereof without permission therefor obtained from the Superintendent.

B. It shall be unlawful for any person to damage, impair or deface any part, appliance or appurtenance of the water supply system of the City.

C. It shall be unlawful for any person to excavate or obstruct any line or main belonging to the City, or to do any act or thing to divert, damage, drain or otherwise impede or hinder, or tend to impede or hinder, the flow of any of the waters or streams tributary or contributing to the water supply of the City without permission therefor obtained from the Manager.

D. It shall be unlawful for any person to damage, tamper, meddle or interfere in any way with any of the works, lakes, reservoirs, drains, streams, trenches, mains, lines, filters, valves, gauges, devices, grounds, enclosures buildings, structures, boats or other property or works of the City used directly or indirectly for or in connection with the water supply system of the City.

E. It shall be unlawful for any person to enter without authority or to trespass upon any property or works of the City used directly or indirectly for or in connection with the water supply system of the City. (Ord. 1138 §1, 2001)

### 13.04.670 Unlawful to Pollute.

A. It shall be unlawful for any person to pollute or contaminate any of the waters in or of the water supply system of the City, or to do any act which would pollute or tend to pollute the watersheds of the City.

B. It shall be unlawful for any person to do any act whatsoever which shall tend to foul or render impure or unwholesome any of the waters or streams tributary or contributing to the water supply of the City, and it shall be unlawful for any person to cast into or allow to flow or fall into any of said waters, or into any reservoir or lake belonging to the City, any filth, sewage, carrion, garbage, minerals, clay, rock or earth of any kind, or any excretion, clothing, paper, rags or any extraneous substances. (Ord. 1138 §1, 2001)

## Chapter 13.08

### CONSTRUCTION WATER USE PERMITS

#### Sections:

13.08.010	Construction Water Use Permit Required
13.08.020	Construction Water Use Permit Application
13.08.030	Meter Required
13.08.040	Permit Deposit and Fees
13.08.050	Permit Requirements
13.08.060	Permit Expiration
13.08.070	Permit Revocation
13.08.080	Unlawful to Take Water from City Fire Hydrant Without Required Permit or Meter

13.08.010 Construction Water Use Permit Required. A construction water use permit is required whenever a temporary service connection is made to a City fire hydrant for construction purposes. A temporary service connection shall be defined as a service connection to the City's water infrastructure system for not more than ninety (90) days. The City reserves the right to deny the issuance of a water use permit for construction purposes outside of the City limits. (Ord. 1327 §2, 2006)

13.08.020 Construction Water Use Permit Application. Applications for construction water use permits may be made to the City's Water Department, at the Water Shop, on forms provided by the Water Department. Applications must be accompanied by the deposit and must contain the following information:

- A. Proposed dates of water usage.
- B. Project Location.
- C. A description of the purposes for which the water is to be used.
- D. The fire hydrant meter number and location of fire hydrant to be used, if applicable.
- E. The contractor's name, billing address, and telephone number. (Ord. 1327 §2, 2006)

13.08.030 Meter Required. All temporary connections to the City's water infrastructure system for the purpose of obtaining construction water shall be metered. (Ord. 1327 §2, 2006)

13.08.040 Permit Deposit and Fees.

- A. All applicants shall pay the following:
  1. Monthly minimum charge of eighty dollars (\$80.00) for 0 – 3,000 gallons

- and a charge of five dollars (\$5.00) per thousand gallons thereafter.
2. A water meter rental fee of ten dollars (\$10.00) per day.
  3. A deposit in the amount of thirteen hundred dollars (\$1,300.00) to insure payment of the bill and the return of the water meter in good working order.
  4. A water consumption deposit may be required up to the amount set forth in Section 13.04.320 of any applicant where the applicant has recent or substantial payment delinquencies.
  5. Payments for consumption shall be made by the applicant to the City of Fountain Utilities by the due date as stated on the bill. If payments are not made to the City of Fountain Utilities by the due date the applicant shall be considered delinquent. (Ord. 1327 §2, 2006)

13.08.050 Permit Requirements.

A. Before a construction water use permit is issued for the purpose of filling a truck, the applicant's truck shall be inspected and approved by the Water Department for adequate backflow prevention.

B. When using a fire hydrant, the female end of the adapter hose shall be connected to the fire hydrant, and the male end shall be connected to the meter. The gate valve shall be connected to the downstream side of the meter. The hydrant shall be opened slowly to full open position, and flow shall be controlled through the gate valve when the meter is in use. The hydrant shall be closed slowly to full shutoff position when the meter is not in use. Only fire hydrant wrenches shall be used for operating the hydrant.

C. When not in use, equipment rented from the City shall be safely and securely stored. Any damages occurring by applicant to the fire hydrant meter or fire hydrant is the responsibility of the applicant to pay all costs associated with repairs.

D. The applicant will provide to the Water department by telephone, e-mail, facsimile or in person a reading from the meter on the first Monday of each month, or if the first Monday of the month is a City-recognized legal holiday on the next business day, after the date of issuance of the permit.

E. The meter shall be brought in to the Water Department's Water Shop for reading and inspection on the permit expiration date. If applicant needs to continue use of the fire hydrant meter, a new permit will be issued.

F. The construction water use permit shall be available for inspection in the field by Water Department personnel. (Ord. 1327 §2, 2006)

13.08.060 Permit Expiration. A permit shall expire ninety (90) days after it has been issued. If payment is not received by City of Fountain Utilities by the due date, the permit shall expire and

be deemed void as of the next day after the due date. Upon expiration, the applicant may reapply for a new permit. (Ord. 1327 §2, 2006)

13.08.070 Permit Revocation. The City may revoke a construction water use permit for any one or more of the following reasons:

- A. Failure to comply with the requirements listed in Section 13.08.050.
- B. Misuse of City equipment.
- C. Use of the permit for other than original application purposes.
- D. Delinquency of any charges, billing or accounting with the City of Fountain.
- E. The City of Fountain reserves the right to restrict or suspend construction water use due to water restrictions implemented by the City or due to a determination by the City of an emergency which requires the City to immediately restrict or suspend water use. (Ord. 1327 §2, 2006)

13.08.080 Unlawful to Take Water From City Fire Hydrant Without Required Permit or Meter. It shall be unlawful for any person to take water without a permit or meter as required by this Chapter. (Ord. 1327 §2, 2006)

## **Chapter 13.16**

### **RULES AND REGULATIONS GOVERNING ELECTRIC SERVICE**

#### **I. INTRODUCTION**

Sections:

13.16.010	General Statement
13.16.020	Scope
13.16.030	Waiver
13.16.040	Revision
13.16.050	Choice of Rates
13.16.060	Conflict
13.16.070	Liability and Indemnification

#### **II.**

#### **SERVICE CONDITIONS**

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13.16.080	Customer's Installation
13.16.090	Interference With Quality of Service

13.16.100	Phase Balancing
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## I. INTRODUCTION

13.16.010 General Statement. The following rules and regulations shall be known as the “City of Fountain’s Rules and Regulations Governing Electric Service.” (These rules may be referred to herein as the “Rules” or the “Rules and Regulations”. Specific Rules will be referred to as the “rule governing....”). These Rules and Regulations are issued pursuant to the authority conferred upon the Fountain City Council (the “City Council”) pursuant to Section 9.16 of the Home Rule Charter of the City of Fountain and the appropriate statutory and constitutional provisions of the State of Colorado. The following Rules and Regulations set forth the terms and conditions under which electric service is supplied and govern all classes of service and all territory served by the City of Fountain’s Electric Utility (“hereinafter referred to as the “City”). These Rules and Regulations are necessary to fulfill the City Council’s obligation and duty to regulate electric service provided by the City and to ensure that said electric service, and the rates and charges therefore, are adequate, efficient, just and reasonable. (Ord. 682 §2, 1985)

13.16.020 Scope. These Rules and Regulations are a part of all oral or written contracts for delivery of electric power and energy by the City. By applying for or accepting electric service from the City, each customer agrees to pay the appropriate rate as set forth in the City’s rate schedules and to comply with the Rules and Regulations of the City regarding such service. The City may discontinue or refuse service to any customer who violates any Rule set forth herein or who fails to comply with any requirement of the City pursuant to these Rules. Copies of these Rules and Regulations shall be available for inspection during regular business hours in the office of the City Clerk. (Ord. 682 §2, 1985)

13.16.030 Waiver. Failure of the City to enforce or insist upon strict compliance with any of the Rules and Regulations herein shall not constitute a general waiver or relinquishment of any Rules and Regulation stated, but the same shall be and remain at all times in full force and effect. (Ord. 682 §2, 1985)

13.16.040 Revisions. These Rules and Regulations may be revised, amended or otherwise changed at any time by action of the City Council, subject to applicable charter, statutory and constitutional provisions. These Rules and Regulations cancel and supercede all previous Rules and Regulations. (Ord. 682 §2, 1985)

13.16.050 Choice of Rates. Rate schedules for the City are on file in the office of the City Clerk and are available for review by an applicant for service. Service will be supplied under the rate schedule(s) selected by applicant subject to the applicability requirements and the terms and conditions of the individual rate schedule. The determination whether the applicant meets the applicability requirements and terms and conditions of a particular rate schedule shall be made by the City, in its sole discretion. When there are two or more rate schedules applicable to the service requested, the City will, upon request of applicant, explain the conditions, character of installation or use of service governing the several rate schedules and assist in the selection of the rate schedule most suitable for the applicant’s requirements. Applicant, however, shall be

responsible for the final selection of the rate schedule, and the City assumes no liability therefore. (Ord. 682 §2, 1985)

13.16.060 Conflict. In the case of conflict between any provisions of a particular rate schedule and these Rules and Regulations, the provisions of the particular rate schedule shall govern. (Ord. 682 §2, 1985)

13.16.070 Liability and Indemnification.

A. All lines, wires, apparatus, instruments, meters, transformers, and material supplied by the City at its expense or under its standard policies shall not be worked upon or interfered with by any customer or other unauthorized person(s). The customer shall be responsible for any damage to or loss of the City's property by the customer or others. The cost of making good such loss and/or repairing such damage shall be paid by the customer.

B. The customer shall be held responsible for injury to the City's employees if caused by the customer's acts, omissions or negligence. The customer shall be responsible and will indemnify and hold the City harmless for any injury to person or damage to property occasioned or caused by the acts, omissions or negligence of the customer or any of his agents, employees, or licensees, in installing, maintaining, operating, or using any of the customer's lines, wires, equipment, machinery, or apparatus, and for injury and damage caused by defects in the same.

C. The City shall not be held liable for injury to persons or damage to property caused by its lines or equipment when contacted or interfered with through digging or the installation of objects in the ground or by ladders, pipes, guywires, ropes, aerial wires, attachments, trees, structures, airplanes or other objects not the property of the City which cross over, through, or in close proximity to the City's lines and equipment. The City should be given adequate written notice before any digging takes place near the City's lines or equipment, before trees overhanging or in close proximity to the City's lines or equipment are trimmed or removed or when stacks, guys, radio or television aerials, wires, ropes, drain pipes, structures, or other objects are installed or removed near the City's lines or equipment, but the City assumes no liability whatsoever because of such notice.

D. The City shall not be held liable for either authorized or unauthorized use of City equipment, including station equipment. The user of such equipment will indemnify and hold harmless the City from all liability resulting from the use thereof.

E. Customer shall hold the City harmless and indemnify it against all claims and liability for injury to persons or damage to property when such damage or injury results from or is occasioned by the facilities located on the customer's side of the point of delivery unless by the negligence or wrongful acts of the City's agents or employees.

F. The developer, or builder where appropriate, will be deemed to be the "customer" for the purpose of this Rule until all normal construction responsibilities in the development and on the site are complete. (Ord. 682 §2, 1985)

## II. SERVICE CONDITIONS

### 13.16.080 Customer's Installation.

A. The customer, before purchasing or beginning construction of a proposed installation, should confer with the City to determine if the type of service, capacity, and voltage desired by customer is available; to determine if extensions of, or additions to, the City's facilities will be required; and to secure definite location of the point of delivery. Before any additions to or alternations of existing installations are made by customer which will materially affect the amount of service required, or which may require a change in the type of service or the point of delivery, the City must be notified reasonably in advance thereof as to the proposed additions or alterations in order that the City may first determine if the service desired is available and, if so, that the necessary changes in the City's facilities may be arranged for and completed.

B. All wiring and other electrical equipment on the customer's side of the point of delivery will be furnished, installed and maintained at all times by the customer in conformity with good electrical practice and with the requirements of the National Electrical Code, the National Electrical Safety Code, the wiring regulations of the public body having jurisdiction, and in accordance with the City's Rules and Regulations. The City may also require the customer to meet additional safety conditions when deemed necessary by the City due to the customer's proposed use or installation. It shall be the customer's responsibility to provide suitable protective equipment to adequately protect the customer's wiring and equipment.

C. The customer's service shall be required to meet the service conditions set forth in these Rules. Failure to meet these conditions shall constitute cause for refusal to serve or discontinuance of service, whichever is appropriate. Any waiver by the City of any service condition contained herein must be in writing. The City retains the sole discretion to determine compliance with these service conditions. (Ord. 682 §2, 1985)

13.16.090 Interference with Quality of Service. The customer shall use care in the selection of equipment and the use of power and energy provided by the City such that objectionable voltage fluctuations or other electrical system disturbances, as determined by the City, are minimized. If, in the City's opinion, service to a customer, including his equipment or operations: a) causes objectionable voltage fluctuations or other electrical system disturbances; b) could cause the City to make system improvements that would not otherwise be necessary; c) interferes with telephone, television or other communication facilities; or d) in any other way creates interference with the quality of service supplied to other customers, including those situations where the customer fails to comply with these Rules, the City may require the customer to provide, at its sole expense, such special or additional equipment as is required to correct the situation, or the City, at its option, may provide such equipment if the customer agrees to pay the net installed cost of such equipment. Should the problem prove uncorrectable, the City may refuse or discontinue service under such conditions. If, within 10 days of notification by the City that corrective action is necessary, customer refuses to provide his own corrective equipment, or to reimburse the City for the cost of such additional or special

equipment as is required, the City may refuse or discontinue service to the customer. The City, in its sole judgment may extend the time for compliance with this rule when deemed necessary. In emergency situations, as determined by the City, the City may undertake corrective action or discontinue service immediately after discovery of the condition. (Ord. 682 §2, 1985)

13.16.100 Phase Balancing. Where three-wire single-phase, or three-phase, or four-wire combination single-phase and three-phase service is supplied, the load must be balanced as nearly as practicable between the two sides or several phases, respectively. In no case is the load on one side of a three-wire single-phase service to be greater than twice that on the other, nor the load on any one phase of a three-phase star service greater than twice that on any other phase. (Ord. 682 §2, 1985)

13.16.110 Welders.

A. The City will serve, at the applicable rate and without additional compensation, welding equipment of the limited input type which conforms to the standards of the National Electrical Manufacturers Association (NEMA), and which has a maximum input (primary) current rating not exceeding 12 amperes at 120 volts or 50 amperes at 208 or 240 volts.

B. Welding equipment which does not meet the standards of NEMA, or which exceeds in input rating 12 amperes at 120 volts or 50 amperes at 208 or 240 volts, will also be served at the applicable rate, at the discretion of the City, provided that service to such welders has no detrimental effect on service to neighboring customers. Such equipment may require an upgrade in service to the customer. All costs of said upgrade will be paid by the customer. (Ord. 682 §2, 1985)

13.16.120 Motor Protective Devices. All motor installations shall have protective apparatus or construction within the motor to accomplish equivalent protection as follows:

A. Motors that cannot be safely subjected to full-rated voltage at starting shall be provided with a device to insure that on failure of voltage, such motors will be disconnected from the line.

B. Suitable overload and overcurrent running protection shall be provided for each motor so as to disconnect the motor from the line to protect it from damage caused by overheating.

C. Phase reversal and open-phase protection is recommended on all three-phase installations and is required for such installations involving elevators, hoists, and similar equipment to disconnect motors from the line in the event of phase reversal or opening of one phase. (Ord. 682 §2, 1985)

13.16.130 Instantaneous Demand. In order to protect service and equipment, motors of ten (10) horsepower or larger shall have such characteristics, or be equipped with a starter of such design, that the instantaneous starting current requirement will be limited to approximately 300% of normal full load current. (Ord. 682 §2, 1985)

13.16.140 Harmonics. In the event that the City determines, in its sole discretion, that a customer's loads generate sufficient harmonics to be detrimental to City equipment (such as transformers) or to adversely affect other customer's loads, the City may require customer to take corrective action at the customer's expense. As an alternative, the City may choose to take corrective action itself and charge the customer for the expense of the corrective work. (Ord. 682 §2, 1985)

13.16.150 Power Factor.

A. All non-residential customers with a maximum monthly demand in excess of 50kw shall be required to maintain a 95% power factor at the customer's peak.

B. All 5 horsepower or larger motors shall be required to install capacitors connected to the motor starter to be energized when the motor is running.

C. In the event that it is not practicable for the customer to correct the power factor as required by this rule, the City may install corrective equipment on the City's system at the customer's expense. (Ord. 682 §2, 1985)

### III. BILLING PROCESS

13.16.160 Application for Service. Each prospective customer requesting electric service shall sign the City's standard application for service, agreeing to the conditions set forth therein, and shall supply the City with such information as is requested by the City, including, but not limited to, the applicant's social security number, name and phone number of employer, birth date, the number of rooms of any residential dwelling requiring service, along with information relating to load, voltage, phase, the manner in which power will be utilized and, if necessary, credit references. The City may inspect the customer's facilities and investigate the information supplied by the customer to assure that any information provided is accurate. Non-residential customers may be required to sign a special contract containing such provisions and conditions as may be necessary or desirable to protect the interests of both the City and the customer. In the case of such a special contract, the City may modify either the City's or the customer's obligations, or both, under these Rules, by the use of express language to that effect in the written contract. No promise, agreement or representation of any employee or agent of the City shall be binding on the City unless the same shall have been incorporated in the written contract or application for service. The benefits and obligations of any agreement for service may not be assigned without the written consent of the City. In the case where two or more parties apply jointly for service, such parties shall be jointly and severally liable thereunder, but only one bill for electric service will be rendered. (Ord. 682 §2, 1985)

13.16.170 Billing.

A. Bills for service will be rendered monthly. The term "month" for billing purposes means the period between any two consecutive regular readings by the City of meters at the customer's premises, such readings to be taken as nearly as practicable every thirty (30) days.

However, the City reserves the right to require more frequent payment of bills. The City will allow at least ten (10) days between the date of mailing or delivery of a bill and the due date of a regular monthly bill. All other bills, including final bills, special bills, and bills for connection or reconnection are due within ten (10) days of the date of mailing or delivery. Failure to receive a bill will not release the customer from obligation for payment. The City will issue a duplicate bill upon request. In the event a billing error occurs, the City shall refund any overcharge and shall have the right to collect the amount of any undercharge.

B. If service is connected not more than seven (7) days before the route reading date, a separate bill for this period will not be rendered but the readings will be included with the readings of the next regular billing.

C. Whenever the City is unable, for any reason, to read the customer's meter, the City may render an estimated bill for the month, based on the best available information.

D. Once notification of termination or transfer of service is received and service is discontinued, the final bill will be computed and mailed within thirty (30) days of the last meter reading.

E. Charges for all services provided by the City to a particular customer, including, where applicable, electric (including street or yard lighting), water, and sewer, may be set forth on one combined bill. Once an amount is past due, future bills will not reflect a breakdown of such a past due amount between each respective service. Any payment by a customer receiving a combined bill will be presumed to apply proportionately between the amounts due for the applicable services provided by the City. This presumption will be conclusive unless a customer indicates in writing when making payment that such payment is limited to specific services.

F. The City will normally make all connections, reconnections and disconnections on weekdays (excluding City recognized holidays) between the hours of 8:00 A.M. and 4:00 P.M. Where facilities are in place to serve the customer, the City will connect the customer's service within three (3) days of a request for service. Should the customer desire connection, reconnection or disconnection after hours, the customer will be required to pay the applicable after hours charge. (Ord. 682 §2, 1985)

#### 13.16.180 General Deposit Provisions.

A. The City will require a deposit from any customer or prospective customer or for any new account of an existing customer to guarantee payment of bills by the customer except when the Utility Director or the Utility Director's representative determines based upon credit information or based upon previous utility service that a deposit is not required.

B. The City may require a new deposit or an additional deposit up to the amount set forth in Section 13.16.180 F from any customer where the customer has recent or substantial payment delinquencies.

C. Where a deposit is required, the customer may satisfy the requirement by cash, an irrevocable letter of credit, or a surety bond.

D. The City will pay the customer accrued simple interest on a cash deposit at the rate set by the Colorado Public Utilities Commission for the period the City holds the cash deposit.

E. 1. All deposits will be retained by the City for a minimum period of two (2) years, unless service is discontinued:

2. After the initial two-year period, and if during the previous twelve (12) months, the customer did not receive a service termination notice, the City will, upon request of the customer, refund the deposit and any accrued interest (the “deposit amount”) to the customer or, upon the direction of the customer, apply the deposit amount to the customer’s account.

3. If the service is discontinued prior to the deposit amount being returned to the customer or applied to the customer’s account, the deposit amount will be applied to the customer’s final bill. Any deposit amount in excess of the outstanding balance will be refunded to the customer, unless the customer has an outstanding balance for service to another address in which case the City may apply the credit balance to the outstanding balance at the other address. If the refundable amount is in excess of \$5.00, a check will be mailed to the customer’s last known address. If the refundable amount is \$5.00 or less, the amount must be claimed in cash in person. To the extent outstanding balance due is in excess of the deposit amount, the customer shall be billed for the remaining amount due. In the event the customer fails to pay the final bill, the acceptance and application of the deposit amount to amounts past due does not constitute a settlement or satisfaction of the customer’s debt or limits the City’s right to pursue any and all legal remedies to obtain any balance due.

F. For all customers where a deposit is required the following deposits shall be required:

1. For residential service to one bedroom dwellings with electric space heating - \$300;
2. For residential service to dwelling with two or more bedrooms and electric space heating - \$500;
3. For all other residential service - \$100;
4. For all non-residential service-an amount equal to an estimated ninety days’ bills of such customer or \$100, whichever is greater.

G. 1. In the event any customer files a bankruptcy petition, the City will charge a usage deposit for electric service as set forth in Section 13.16.180 F or will charge a usage deposit for water service as set forth in Section 13.04.320 pursuant to the federal bankruptcy code, Title 11 U.S.C. Section 366, as security for services provided to the customer after date the customer files a bankruptcy petition unless waived by the Utility Director or the Utility Director’s representative for good cause. The deposit is due and payable within twenty (20) days of the City’s receipt of notice of filing the bankruptcy petition unless extended by the Utility Director or the Utility Director’s representative for good cause. The City will return the deposit

as described in this Section consistent with the bankruptcy code. Unless excused by the bankruptcy court, failure to pay a deposit in the time specified may result in disconnection of service until the City receives the deposit.

2. Unpaid charges for services rendered before the filing of a bankruptcy petition are pre-petition charges. Charges for services rendered after the customer files a bankruptcy petition are post-petition charges if authorized by the bankruptcy trustee, if any, or the debtor. Pre-petition charges are the responsibility of the bankruptcy debtor; post-petition charges are the responsibility of the party authorizing them.
3. The City may file a claim with the bankruptcy court for all services rendered to the bankruptcy debtor. (Ord. 1242 §1, 2004)

#### 13.16.182 Unclaimed Utility Deposit Provisions.

##### A. Purpose, Application and Authority:

The purpose of this section is to provide a procedure for the administration and disposition of unclaimed utility deposits for electric and water services held by the City of Fountain through its Electric, Water and Wastewater Utility Enterprise. This Section shall not apply to any utility deposits held for wastewater services. The City as a home rule city under its City Charter and Article XX of the Colorado Constitution, under the authority to enact local law relating to unclaimed property in Sections 38-13-104(1) C.R.S. and Section 38-13-134 C.R.S., Sections of the Unclaimed Property Act, Article 13 of Title 38 C.R.S. and having determined that the provisions of Article 8.5 of Title 40 C.R.S. do not govern utility deposits of the City of Fountain Electric, Water, and Wastewater Utility Enterprise as a municipally owned electric utility adopts Section 13.16.182 to govern unclaimed utility deposits for electric and water services.

##### B. Definitions:

1. "Fountain Utilities" means the City of Fountain Electric, water and Wastewater Utility Enterprise.
2. "Owner" means a utility customer who has paid a utility deposit held by Fountain Utilities.
3. "Utility Deposit" means a deposit including any interest thereon made by a customer with Fountain Utilities to secure payment or any sum paid in advance for electric or water utility services to be furnished, less any lawful deductions.
4. "Utility Director" means the director of the Fountain Utilities or the director's representative.

C. Procedures for Disposition for Unclaimed Utility Deposits. A utility deposit shall be an unclaimed utility deposit and is presumed abandoned if C 1, C 2, or C 3 are met:

1. A refund of a utility deposit which has been issued by check by Fountain Utilities and mailed to the owner at the owner's last known address for delivery of mail according to the records of Fountain Utilities if the mail is



undeliverable by the United States Postal Service to the addressee and is returned to Fountain Utilities by the United States Post Office as undeliverable.

2. A check for a refund of a utility deposit not presented for payment within six (6) months after the date on the check, which shall be deemed void.
3. A utility deposit which remains unclaimed by the owner more than one year after termination of services for which the deposit was made.
4. All unclaimed utility deposits existing on the effective date of this Section and all utility deposits which subsequently become unclaimed utility deposits shall be used to fund the Fountain Utilities low-income energy assistance program as established by the City Council pursuant to Resolution 05-046 or as the resolution may subsequently be amended by City Council.
5. The Director is authorized to establish and administer procedures for the implementation of this Section. (Ord. 1299 §1, 2005)

#### 13.16.190 Service Charges.

A. It shall be the customer's responsibility to pay each utility bill when due. If said payment is made by a check which is subsequently returned by the bank dishonored, the City will charge the customer a dishonored check processing fee.

B. Whenever a service call is necessary for collection purposes, or service has been disconnected for fraudulent use, noncompliance with the Rules and Regulations or nonpayment, the City will charge the customer the appropriate service charge.

C. For the initial connection and for each subsequent reconnection of service, the City will charge the customer a connection or reconnection charge. If said connection or reconnection is made after hours (weekends between 8:00 A.M. and 4:00 P.M., City-recognized holidays or on weekends) at the customer's request, the City will charge the customer an after hours connection or reconnection fee.

D. The service charges contemplated herein shall be set forth by separate Ordinance as approved City Council. These charges are to offset the city's costs for such service work and transactions and are in addition to all other customer charges for utility service, for customer deposits and for required charges under the City's Service Extension rule. (Ord. 906 §1, 1991)

13.16.200 Dishonored Checks. Any check received by the City in payment of a customer's bill that is subsequently returned from the bank without being honored will constitute non-payment of the amount due. Receipt of such a check in payment of an amount due pursuant to a pending notice of discontinuance justifies discontinuance of service without additional notice. If service is restored by the City upon payment with such a check, the City may immediately discontinue service without additional notice when the City learns that the bank will not honor the check. In the event the City receives two dishonored checks from any one customer in any one year, the City may issue notice to the customer and require future payments for the next twelve (12) months to be in cash or certified funds. (Ord. 682 §2, 1985)

#### IV. BUDGET BILLING AND DISCONTINUANCE OF SERVICE

##### 13.16.210 Budget Billing Plan.

A. Customers served under a residential rate schedule, who are not subject to a pending notice of discontinuance of service, may elect to convert to a Budget Billing Plan, subject to the conditions set forth in this rule, by submitting a written request therefore at least thirty (30) days prior to the beginning of the customer's billing cycle. If the customer receives a combined bill including charges for other services provided by the City, as described in the rule governing billing, the Budget Billing Plan must be applied to the combined bill and may not be applied to selected services provided by the City on an individual basis.

B. Any customer electing the Budget Billing Plan shall pay a monthly amount equal to a minimum of one-tenth (1/10) of the total of the customer's twelve (12) most recent months' bills, adjusted to reflect any rate increases which may have become effective during said twelve-month period. A customer may not elect the Budget Billing Plan unless the customer has twelve (12) months billing history at the particular residence.

C. The monthly payment amount determined in part B above shall be paid for the following eleven (11) successive months with the final or twelfth month's payment being a settlement amount equal to the difference between the total payments made during the prior payment months and the actual billing for the twelve (12) month period. The settlement amount, if a credit balance, will be credited against future bills of the customer. If the settlement amount is a balance owed by the customer, it shall be due and payable on the due date indicated on the bill for the settlement month.

D. The Budget Billing Plan will automatically continue from year to year unless terminated by either party.

E. To be eligible to participate in the Budget Billing Plan, a customer may be required to execute a standard form "Agreement for Budget Billing Plan", at least fifteen (15) days prior to the beginning of the Budget Billing Plan. If a customer electing the Budget Billing Plan fails to pay the Budget Billing obligation in any month, normal collection procedures shall be applicable for the outstanding Budget Billing amount. The customer shall be removed from the Budget Billing Plan and service may be discontinued pursuant to the City's rules and regulations governing such discontinuance.

F. The monthly Budget Billing amount may be adjusted, at the option of the City, for any increase or decrease in the City's rates. Said monthly Budget Billing amount may also be adjusted, at the option of the City, if the customer's use of electricity increases or decreases substantially.

G. If service is terminated for any reason to a customer on a Budget Billing Plan, the customer shall be removed from the Plan and the entire outstanding amount of the account shall be due and payable.

H. The customer may elect to terminate the Budget Billing Plan at any time by notifying the City in writing and by paying in full the entire outstanding amount of the account. If the customer has a credit balance, the City will apply the credit balance to future billings.

I. If a customer is removed from the Budget Billing Plan for any reason, the customer shall not be eligible to participate in the Plan again for a minimum period of twelve (12) months.

J. The customer's bill under the Plan will indicate the actual kwh used in the current month being billed plus the amount that would be charged under the current rates for the amount of usage. However, the customer's obligation will be to pay no less than the amount denominated "Budget Billing Amount".

K. A deposit may be required of a customer participating in a Budget Billing Plan, pursuant to the City's rules and regulations governing deposits.

L. The Budget Billing Plan will be adjusted each successive year by taking into consideration the following:

1. Rate changes during the year;
2. Credit or debit balances at adjustment times;
3. A change in usage; and
4. Contract agreements.

The customer will be notified of the adjusted amount of the Budget Billing. (Ord. 682 §2, 1985)

13.16.220 Discontinuance of Service at Customer's Request. A customer wishing to discontinue service or terminate his responsibility for service should give at least three (3) working days' notice to the City to that effect, unless otherwise specified in the rate schedule or contract applicable, in order to allow sufficient time for final meter reading and disconnection or transfer of service. Where such notice is not received by the City, the customer will be liable for service until final reading of the meter. Notice of discontinuance of service will not relieve the customer from any minimum or guaranteed payment under any contract or rate schedule. (Ord. 682 §2, 1985)

13.16.230 Discontinuance of Service by the City.

A. Applicability. The City shall not discontinue the service of any customer for violation of any of the City's Rules and Regulations Governing Electric Service or for nonpayment of any sum due for or charge related to electric service, deposits or other charges, except in accordance with this rule.

B. Requirement of Written Notice.

1. Written notice of propose discontinuance of service must be mailed by first-class mail, or delivered at lease seven (7) days in advance of the proposed date, advising the customer in particular what rule has been violated for which service will be discontinued, and/or the amount past due and the date by which the same shall be paid in order to avoid

discontinuance. For the purposes of this rule, “amount past due” shall refer to any sum due for or charge related to services provided by the City, deposits or other charges. With regard to a combined bill, as described in the rule governing billing, one notice of discontinuance may be used for all services provided by the City.

2. The notice of discontinuance shall be conspicuous in nature and contain easily understood language. The heading of a notice of discontinuance shall be in blocked capital letters. The heading shall contain, as a minimum, the following warning written in English:

THIS IS A NOTICE OF DISCONTINUANCE OF ELECTRIC  
UTILITY SERVICE AND CONTAINS IMPORTANT INFORMATION  
INVOLVING YOUR LEGAL RIGHTS AND REMEDIES.

3. At a minimum, said notice shall advise the customer:

- a. Of the right to contact the City by telephone or in person to attempt to informally resolve any dispute.
- b. Of the availability of a hearing date and time, or the opportunity to request a hearing, prior to discontinuance of service, during which the customer will have the opportunity to resolve with a designated representative of the City any dispute, with respect to the amount or date due, and/or with respect to violation of any rule.
- c. That the customer may appeal the decision of the City’s designated representative to the City Manager by requesting a hearing in writing within five (5) days with the City Manager and by posting a deposit equal to the amount due, subject to refund if the dispute is resolved in the customer’s favor by the City Manager.
- d. That the residential customer may avoid discontinuance of service by paying, on or before the expiration date of the notice, the current month’s bill in full, and entering into a reasonable installment payment plan with the utility to pay the past due balance in equal monthly installments, according to the provisions of this rule.
- e. That, in the event a residential customer is unable to pay for the services regularly billed by the utility and medical certification is delivered to the utility indicating that discontinuance of service would be especially dangerous to the health or safety of a residential customer or a permanent resident of the residential customer’s household, that there will not be discontinuance of service for thirty (30) days from the date of the medical certification.

4. Said notice may also list agencies, which may provide assistance in the payment of utility bills, and the City may also provide a list of such agencies upon request. Any such listing is solely to inform the customer and the City makes no representations with regard to such listings and the accuracy thereof.

5. In the event the customer previously has executed a third-party notification form indicating a third party to whom notices of discontinuance are to be sent, written notice shall also be mailed by first class mail or delivered at least seven (7) days in advance of the proposed discontinuance date to said third party. The City shall make available a third party notification form to each new residential customer and upon request, to any existing residential customer. The customer, at his option, may mail or deliver to the City such third party notification form, which form shall be signed by both the customer (or his legal representative) and by the third party to be notified in the event of possible discontinuance of service.

6. The prediscontinuance notice and hearing requirements set forth herein are not applicable in the following situations:

a. When, in the sole discretion of the City and its agents, an immediate discontinuance of service to the premises is imperative for reasons of safety. This would include a hazardous condition on the customer's premises or, where the customer utilizes service in such a manner as to make it dangerous for occupants of the premises (including energy diversion in the appropriate situations), thus making an immediate discontinuance of the service imperative. Notice of the discontinuance and reasons therefore will be provided when the service is discontinued, or as soon thereafter as practicable. The affected customer will be entitled to a hearing after the discontinuance.

b. when discontinuance is ordered by any properly constituted governmental authority due to alleged violations by the customer of the ordinances, statutes or regulations applicable to the service. The City, in its capacity as an electric utility, shall not be responsible for ascertaining such conditions.

c. when service, having been discontinued in accordance with this rule, is restored by someone other than the utility.

7. In situations involving permanent residents in multi-unit dwellings, or a cluster of dwellings, known by the City to exist, where utility service recorded on a single meter is used directly or indirectly by more than one dwelling unit, in order to discontinue service, the City shall do the following:

- a. Issue notice as required in part B to the customer of record;
- b. Deliver or mail a written notice to each individual dwelling unit within the multi-unit dwelling advising that a notice of discontinuance has been sent to the party responsible for the electric bills for the dwelling, the date upon which termination will become effective, and how the individual resident in the dwelling unit may contact the City for additional information concerning the proposed termination; and
- c. To the extent possible, post a copy of said notice in at least one of the common areas of the multi-unit dwelling.

C. Service Shall Not Be Discontinued:

1. for nonpayment of any sum due which has not appeared on a regular monthly bill. The due date on the bill must be specifically indicated on the bill and the due date shall be no earlier than ten (10) days subsequent to the mailing or delivery of the bill.

2. for nonpayment of any sum not past due, nor shall any notice of intent to discontinue service be sent with respect to any amount not past due.

3. for nonpayment of any sum due, on which payment arrangements have not otherwise been made, with respect to any other account presently or previously held or guaranteed by the customer or with respect to which the customer was the beneficiary of service (including service at another location), unless the amount has first been transferred to the account in which the notice may be given and displayed on the regular monthly bill. In such event, the amount so transferred shall be considered "due" on the regular due date of the bill on which it first appears as a transfer and shall be subject to notice as if it had been billed for the first time. If these requirements are met, service may be discontinued for nonpayment of any transferred amount from any other account of the customer.

4. for nonpayment of any amount due on any other account on which the customer is, or was, neither the customer of record nor the guarantor, unless the customer is or was a user obtaining service through subterfuge in any manner. Obtaining service through subterfuge constitutes grounds for discontinuance of service.

5. between 12:00 Noon on Friday and 9:00 A.M. the following Monday, or between 12:00 Noon on the day prior to and 8:00 A.M. on the day following any City-observed holiday.

6. until the City has made a reasonable effort to give personal notice of the proposed discontinuance either in person or by telephone to the residential customer (or to a resident of the customer's household eighteen (18) years of age or over). "Reasonable effort" shall constitute at a minimum either an attempt to make telephone contact or an attempt to make personal contact at the location of service to remind the customer of the pending discontinuance and the terms to avoid same at least twenty-four (24) hours prior to actual discontinuance. This requirement may be met by the hanging of a door hanger containing notice of the pending discontinuance.

7. if a residential customer pays, on or before the expiration date of the notice, the current bill in full and enters into a reasonable installment plan with the City, to pay all past due amounts, as elsewhere provided in this rule.

8. if the residential customer presents a medical certification in compliance with the appropriate provisions of this rule.

D. Restoration of Service.

1. Where service has been discontinued for non-payment, service will be restored within 24 hours (unless extenuating circumstances prevent restoration) after the customer pays in full all amounts past due, plus any deposit and/or collection, disconnection and reconnection fees as may be specifically required by the City's rate schedules.

2. Where a service has been discontinued for reasons other than non-payment, service will be restored within 24 hours (unless extenuating circumstances prevent restoration) after the customer pays any disconnection, reconnection and/or collection charges, plus any deposit, as may be specifically required in the event of discontinuance, and notifies the utility and the utility confirms that the cause for discontinuance, if other than nonpayment, has been cured.

#### E. Installment Payment Plan Arrangements.

1. Installment payment plan arrangements must be made if a residential customer fulfills one of the following conditions:

- a. on or before the expiration date of the notice of discontinuance pays the current bill in full and enters into installment payment plan arrangements, as provided for herein, for past due amounts.
- b. On or before the last day covered by medical certification or extension thereof, pays the current bill in full and enters into installment payment plan arrangements for the remaining amounts due.

2. Installment payment plan arrangements must be made with respect to any and all of the following amounts as may be applicable at the time the request for arrangements is made. The total amount for which an arrangement is made shall be referred to as the "arrangement amount". The "arrangement amount" shall include:

- a. the unpaid remainder of the amount shown on the notice.
- b. Any collection fees required by the City's rate schedules.

3. The terms of an installment payment plan arrangement will be explained and offered to each residential customer who contacts the City in response to a notice of discontinuance. The City may require the customer to sign an installment payment arrangement agreement as a condition to the offer of an installment payment arrangement.

4. An installment payment plan arrangement shall consist of equal monthly installments over a period of time selected by the customer up to three (3) months. The amount of the monthly installment payment shall be the arrangement amount divided by the number of months over which the payments are to be made.

- a. The first monthly payment shall be due, together with the new bill, on the due date of the new bill.
- c. The second and succeeding monthly installment payments shall be due, together with each new bill, on the due date of the new bill.

5. If a residential customer fails to make a monthly installment payment when due, the City may issue a notice of discontinuance and take the same steps for discontinuance as outlined in this rule.

6. Nothing in this rule shall be construed to prevent the City from offering any other installment payment plan arrangement terms to avoid discontinuance or terms for restoration of service, which offer is at least as favorable to the residential customer as the terms and conditions set forth in this rule or to which the customer agrees.

F. Medical Certification Process. Service may not be discontinued, or if already discontinued, must be restored, during any period when discontinuance of service has been demonstrated by the residential customer to be especially dangerous to the health or safety of the residential customer or a permanent resident of the customer's household pursuant to the requirements of this part F.

1. This condition shall be demonstrated when a physician licensed by the State of Colorado, or a health practitioner licensed by the State of Colorado and acting under a physician's authority, makes a certification thereof and said certification is received by the City in writing.

2. In the event a medical certification is delivered to or received by the City, the nondiscontinuance of service shall be effective for thirty (30) days from the date the City receives said medical certification.

3. A residential customer may invoke the provisions of this part F no more than once during any period of twelve (12) consecutive months, said period to begin on the first date said medical certification is presented.

G. Mail or Delivery. Whenever reference is made herein to a notice or other document being mailed or delivered, that phrase shall mean that the notice or the document is either deposited in the United States mails, or physically delivered to the address of the addressee, and does not necessarily include actual physical receipt by the addressee. (Ord. 682 §2, 1985)

## V. METERS

### 13.16.240 Point of Delivery.

A. The point of delivery is that point or points on the customer's premises (or other agreed point) where the City terminates its electrical service conductors, and the customer's wires are connected to the City's conductors. All equipment on the load side shall belong to and be the responsibility of the customer, except meters and metering equipment and other equipment provided by the City, including instrument transformers.

B. It shall be the responsibility of the customer, builder, developer or their electrical contractor, whichever is appropriate, to advise the City of the customer's requirements in



advance of installing the service entrance equipment, and to ascertain that the location is acceptable to the City.

C. When it is necessary for the City to move or alter its distribution system, thereby necessitating a change in the location of the customer's service outlets and the point of delivery, the City may designate a new point of delivery to which the customer, at its expense, shall bring its facilities.

D. Service will be delivered to the customer for each premise at a point or points of delivery to be designated by the City. If customer requests more than one point of delivery where the City can adequately provide service at a single point of delivery, such additional point or points of delivery may be provided by the City, in its discretion, at the expense of the customer. Except where determination has been made by the City that there is an operational advantage to it in providing multiple points of delivery provided for the convenience of the customer will be billed at each point of delivery as a separate customer and will not be combined for billing purposes. Multiple points of delivery must be in compliance with all applicable codes and governmental regulations. For the mutual protection of the customer and the City, only authorized employees of the City are permitted to make and energize the connection between the City's service wire and the customer's service entrance conductors.

E. If, for special reasons, the customer requires or elects to use voltages other than the standard secondary and primary voltages of the City's established distribution system, the special transformers (with necessary spare or emergency units) will be installed, operated and maintained by and at the expense of the customer.

G. The customer shall install an approved meter socket, furnished by the City, for the installation of the City's metering equipment. The customer will also furnish and maintain all facilities and space deemed necessary by the City for the City's transformers and other equipment at the expense of the customer. (Ord. 682 §2, 1985)

#### 13.16.250 Meter Locations.

A. Meters shall be installed on the outside of buildings, or service structures, or in meter pedestals provided by the City; except that in the case of rural service, meters may be installed on a meter pole. Exception to this practice must be approved by the City.

B. Meters shall not be installed in places difficult to access, such as over open pits, moving machinery, hatchways, in the path of water from eaves or rain spouts, or subject to live steam or corrosive vapors. It shall be the responsibility of the customer to maintain a clear space of at least 36 inches in front of the meter. No hazardous plants, shrubs or other obstructions shall be placed within 30 inches of the meter glass side of pedestals. Customers shall be given ten (10) days to remove any obstacles after written notice. After the expiration of the ten (10) days, the City, in its discretion, may remove the obstacle at the owner's expense or discontinue service.

C. Meters shall be installed at a height of approximately five and one-half (5 ½) feet on center above the ground or platform (except in meter pedestals provided by the City). In cases where unusual conditions exist, the City shall be consulted prior to installation.

D. Where the meter is recessed in the wall of a building, a space of not less than twelve (12) inches on each side of the center line of the meter base shall be provided to permit access for City test equipment.

E. New service entrance locations shall be approved by the City prior to installation. (Ord. 682 §2, 1985)

#### 13.16.260 Meter Reading.

A. The City will attempt to read all meters on a monthly basis. Although the City will attempt, as nearly as possible, to read meters on the same cycle date, some variation may occur.

B. If for any reason, a meter reading cannot be obtained for any particular period, the billing may be based on an estimated energy use and demand. It will be subject to later adjustment, if deemed necessary by the City.

C. The City will not be obligated to reset demand meters in the event of system disturbances, inoperable load controllers, or other reasons beyond the City's control. (Ord. 682 §2, 1985)

#### 13.16.270 Meter Tests.

A. The City will, at its own expense, make tests and inspections, as required, on its meters to insure a high standard of accuracy. The City may, in its discretion test a meter at any time. The City will, at its own expense, make one meter test per year upon the customer's request. A meter may be considered accurate if it tests within 2% plus or minus. The City may adjust bills accordingly if a meter tests in excess of the 2% accuracy standard.

B. Additionally, more frequent tests will also be made at the request of the customer. In the event the meter is found to register within 2% plus or minus, the customer will be required to pay a test fee of fifteen dollars (\$15.00). If the meter is found to exceed the 2% limit plus or minus, the bill may be adjusted accordingly for the preceding six (6) month period or until the previous test, if tested less than six (6) months before, and no charge will be made for the testing. (Ord. 682 §2, 1985)

13.16.280 Separate Meter for Each Class of Service. When the customer receives service under more than one rate schedule, a separate meter must be installed for service under each rate schedule. The customer will be billed under each rate schedule based on the measurement registered by the applicable meter. (Ord. 682 §2, 1985)

13.16.290 Additional Meters. Should the customer desire the installation of additional meters other than those deemed necessary by the City to measure adequately the service taken by

the customer, such additional meters shall be provided, installed and maintained by the customer at his own expense. (Ord. 682 §2, 1985)

## VI. MISCELLANEOUS

13.16.300 Additional Load. In the event the customer desires to change his load materially, he shall notify the City sufficiently in advance so that the City may, if economically feasible, provide the facilities required. In the event that the customer fails to notify the City, and as a result the City's equipment is damaged, the customer shall be liable for the cost of such damage. The City will not be responsible for providing adequate service in the event that it is not properly notified. (Ord. 682 §2, 1985)

13.16.310 Attachments to Utility Property. No posters, banners, placards, radio or television aerials, or other objects will be attached to the poles or other utility property of the City. Any attachment to the City's poles or other utility property must have the express prior written authorization of the City. (Ord. 682 §2, 1985)

13.16.320 Curtailment. In the event that a serious power shortage should develop, and should it become mandatory that the City place into effect a curtailment program, the City reserves the right to limit the use of electrical energy during such hours as may become necessary. In the case of emergency, the City shall have the right to grant a preference to the electric service, which, in the City's opinion, is most essential to the public welfare. (Ord. 682 §2, 1985)

13.16.330 Customer Power Outage. If a customer's service fails, he shall endeavor to determine if he has blown fuses, tripped breakers, or, if his equipment is at fault before calling the City. If a service person is sent out at the customer's request and it is determined that the customer's equipment is at fault, a charge may be made for the call. The charge may include the actual cost of labor and transportation. (Ord. 682 §2, 1985)

13.16.340 Easements. A contract for electric service, or receipt of service by the customer, will be construed as an agreement granting to the City an easement for electric line, wires, conduits, and other equipment of the City necessary to render service to the customer. If requested by the City, before service is connected, the customer will execute a right-of-way agreement, granting to the City, at no expense therefore, satisfactory easements for a suitable location of the City's wires, conduits, poles, transformers, metering equipment, and other appurtenances on or across lands owned or controlled by the customer, and will furnish space and shelter satisfactory to the City for all apparatus of the City located on the customer's premises. In the event that customer shall divide its premises by sale in such manner that one part shall be isolated from the point where the City's electric lines are accessible, customer shall grant or reserve an easement for electric service over the part having access to electric lines for the benefit of the isolated part. (Ord. 682 §2, 1985)

13.16.350 Diversion of Electric Energy.

A. Definitions.

1. "By-passing" means the act of attaching, connecting, or in any manner affixing any wire, cord, socket, motor or other instrument, device or contrivance to the electric supply system or any part thereof in such a manner as to transmit, supply or use any electricity without passing through an authorized meter for measuring, registering or determining the amount of such electricity consumed.
2. "Energy Diversion" means by-passing, tampering or unauthorized metering.
3. "Tampering" means the act of tampering, altering, adjusting or in any manner interfering with or obstructing the action or operation of any meter provided for measuring, registering or determining the amount of electricity passing through such meter.
4. "Unauthorized Metering" means the act of removing, moving, installing, connecting, reconnecting or disconnecting of any meter or metering device for electric service by a person other than an authorized employee of the City.

B. Prohibited Activity. Energy diversion is subterfuge and constitutes a safety hazard. As such, energy diversion is prohibited. Due to its hazardous nature, discovery by the City that energy diversion has occurred shall be grounds for immediate disconnection of service without prior notice to the customer or user at such premises, and service shall not be reconnected until any and all deficiencies in wiring, connections, meters and/or electric facilities at the premises have been repaired, corrected or otherwise altered to conform with City requirements. In any case where energy diversion has occurred and immediate disconnection is effected, the City will give notice concurrent with the disconnection or as soon as practicable thereafter and provide an opportunity for hearing regarding possible resolution of the dispute.

C. Estimated Bill. In all cases where the City discovers that energy diversion has occurred, the City may bill the customer for estimated energy consumed but not properly registered.

D. Additional Charges. Where the City discovers that energy diversion has occurred, the City, in its discretion, may charge the customer for the costs of investigation and the costs resulting from the installation of protective devices by the City.

E. Waiver. The foregoing rule and payment by the customer of any charges thereunder in no way limits or waives the City's rights to pursue any and all remedies provided or affects any action or prosecution, under applicable Colorado laws and ordinances of the City of Fountain, absent an express written agreement to the contrary.  
Ord. 682 §2, 1985)

13.16.360 Service Failures.

A. The City will endeavor to provide a constant and uninterrupted supply of power and energy to its customers and to avoid service failures, but does not guarantee same. The City shall not be liable for any loss or damages, including consequential damages, resulting from service failures caused by accidents, acts of God, action of the elements, public enemy, strikes and other work stoppages, wars, authority or orders of government, required maintenance work,

equipment breakdown, the unavoidability, restriction or interruption of its power and energy supply, or any other causes or contingencies beyond its control.

B. Service failures include, but are not limited to, phase reversals and/or single phasing of three-phase services, voltage transients, frequency deviations, wave shape deviation and service interruptions. In addition to the causes listed above, service failures may result from generally accepted utility system design, construction or operating practices and procedures.

C. The consumer shall provide at its expense any devices necessary for adequate protection of its equipment, processes, products or personnel against such service failures. The City shall not be liable for any loss or damages caused by service failures resulting from utility system design, construction or operating practices and procedures unless both the City acted in a negligent manner and the loss or damage would have occurred despite the proper installation and operation of the appropriate protective devices by the consumer. (Ord. 682 §2, 1985)

13.16.370 Notice of Trouble. In the event that service is interrupted or not satisfactory, or any hazardous condition is known to exist, it shall be the obligation of the customer to notify the City of such existing condition. (Ord. 682 §2, 1985)

13.16.380 Resale of Electric Energy. Electric energy supplied by the City is for the exclusive use of the customer. The customer may not, by submetering, determine a quantity of electric energy and resell said electric energy to any other person or persons on the customer's premises or for use on any other premises. A master meter customer may, however, check meter tenants, lessees, or other persons to whom ultimately the electricity is distributed for the purpose of reimbursing the master meter customer through an appropriate allocation procedure. In that event, the City reserves the right to check said meters and evaluate the reimbursement procedure to protect against inequities and guarantee that the customer is not reselling the electric energy. The City reserves the right to refuse to furnish electric service to any customer where the purchase of such service is for the purpose of resale by the customer to others. In the event electric energy is sold in conflict with this rule, the City shall have the right to discontinue service to said customer. (Ord. 682 §2, 1985)

13.16.390 Right of Access. The customer will provide access to his premises at all reasonable times for authorized employees of the City for any proper purpose incidental to the supplying of electric service. This would include, but is not limited to, reading meters and testing, inspecting, repairing or replacing any equipment which is the property of the City. If access to the property or any equipment is limited in any fashion, the customer shall take all steps, including the provision of keys where necessary, to provide access to the City. All easement areas shall be maintained for adequate access to City equipment. The City shall have the right to remove any obstruction at the customer's expense if the customer does not correct the access problem within 72 hours after notification of the problem. In the case of an emergency, the City may correct the access problem without notice. (Ord. 682 §2, 1985)

13.16.400 Complaints.

A. The City will investigate promptly all complaints by its customers. The City will keep for at least two (2) years, a record of all written complaints including:

1. the complaint itself;
2. the date received;
3. the date finally disposed; and
4. the actual disposition of the complaint.

Complaints may be either service or payment related.

B. The following procedure governs complaints to the City:

1. A customer may contact the City informally by telephone or in person to attempt to resolve any complaint. The appropriate staff person will investigate the complaint and may take appropriate action
2. As an alternative, or if the customer is not satisfied with the outcome of paragraph 1 above, the customer may request a formal hearing to provide an opportunity to resolve any complaint in person with a designated representative of the City.
3. The customer may appeal the decision of the City's designated representative to the City Manager by requesting a hearing in writing within five (5) days of the decision of the City's designated representative.
4. For customer complaints related to a pending notice of discontinuance, a request for a hearing, pursuant to paragraph 2 above, prior to expiration of the notice, will act to postpone the proposed discontinuance until five (5) days after the decision of the designated City representative. During this five (5) day period, the customer may further postpone the proposed discontinuance pending an appeal pursuant to paragraph 3 above by posting a deposit with the City equal to the amount due, subject to refund if the dispute is resolved in the customer's favor by the City Manager.  
(Ord. 682 §2, 1985)

13.16.410 Computation of Time. In computing any period of time required or allowed by these Rules, the day of the act, event, mailing or delivery from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or a City-observed holiday, in which event the period runs to the end of the next day which is not a Saturday, Sunday or City-observed holiday. All references to a number of "days" herein, shall refer to calendar days and not working days, unless indicated otherwise. (Ord. 682 §2, 1985)

13.16.420 Service Extensions.

A. Applicability. This rule is applicable to all extensions of electric distribution facilities by the City to the applicant's point of delivery. Title to all facilities by the City pursuant to this policy shall at all times vest in the City. All facilities beyond the point of delivery, except equipment such as meters that are installed by the applicant at the applicant's expense and will be subject to the standards and conditions contained in the City's Rules and Regulations.

B. General Provisions.

1. When one or more applicants request electric service at locations not presently connected to the City's electric distribution system or request an increase in electric service necessitating additional investment, the City shall evaluate the request as to the nature and the permanence of the service. The City, in its sole discretion shall designate the service requested as "Permanent", "Indeterminate", or "Temporary" in character, in accordance with the following definitions.
  - a. Permanent Service. Service to customers pursuant to the City's residential or general service – small rate schedules when, in the opinion of the City, the use of service, both as to amount and permanency, can be reasonable assured.
  - b. Indeterminate Service. Service, which is of an indefinite or indeterminate nature, such as that required by, but not limited to:
    - i. real estate subdivisions and development of property for sale;
    - ii. mines, quarries, sand pits, oil wells and other enterprises of more or less speculative characteristics; and
    - iii. all other service to which neither the permanent or temporary classifications are applicable.
  - c. Temporary Service. Service to circuses, bazaars, fairs, concessions, and similar enterprises, construction sites, and other enterprises of a temporary nature, and to ventures of uncertain speculative character such as coal and metal mining, gas or oil production operations during the preliminary or development period where the permanency of service is questionable. This classification would include any service where service is projected to be utilized less than eighteen (18) months.
2. The City will estimate the investment required to provide the service requested. The investment estimate shall include the following costs:
  - a. all costs related to the construction or installation of facilities necessary to adequately provide the service requested by applicant, including the cost of all materials, labor, right-of-ways, trench and backfill, tree trimming, special transformers and enclosures, transformer investment, supports or construction, conductors, lightning arresters, and other protective equipment.
  - b. All incidental costs such as engineering fees, fees for legal counsel, and all other overhead costs incurred in conjunction with the extension; and
  - c. Costs of reinforcement, reconstruction or relocation of the existing distribution facilities necessitated by the applicant's request for service, including temporary movement of facilities during construction.
3. To the extent both primary and secondary distribution facilities are required, the City will separate the investment estimate into those costs attributable to each type of facility. Primary distribution facilities shall be defined as three-phase

facilities as 12.47kv or greater. Secondary distribution facilities shall be defined as all other facilities required to provide the requested service.

4. All costs attributable to secondary distribution facilities shall be allocated to the applicant. In the City's discretion, some portion of the costs attributable to primary distribution facilities shall also be allocated to the applicant after considering such factors as the number of additional customers anticipated to connect with such primary distribution facilities in the subsequent five (5) year period, the percentage of the capacity of the facilities to be utilized by the applicant, the minimum facilities necessary to serve the applicant, the usefulness of the proposed facilities to existing customers and the City's system, and any other appropriate factors. The City is in no way precluded from allocating the full costs of primary distribution facilities to the applicant under the appropriate circumstances. The total costs allocated to the applicant shall be designated the "applicant's allocation." Where there is more than one (1) applicant, the total costs shall be apportioned between the applicants, as deemed appropriate by the City. Each applicant's allocation shall be utilized to determine the appropriate construction payment to be required from the applicant, if any, pursuant to the provisions of this rule.

5. Records of those costs attributable to primary distribution facilities that were not allocated to the original. Applicant(s) shall be kept by the City for a minimum of five (5) years. For a period of five (5) years from the date of the completion of the extension, the City will allocate a portion of these remaining costs to additional extensions that connect to such primary distribution facilities, to be included in the applicant's allocations related to those extensions, based upon consideration of the factors set forth in paragraph B(4) above.

6. The determination of facility type and routing will be made by the City in its sole discretion consistent with the characteristics of the territory in which service is to be rendered and the nature of the City's existing facilities in the area. The facilities provided will be constructed to conform to the City's specifications.

7. After receipt of any requested construction payment, as required below, and the execution of an agreement, where deemed necessary by the City, the City will proceed with reasonable promptness to construct the requested service extension facilities pursuant to the applicable provisions of this and any other rules and regulations governing electric service by the City.

8. The City shall review each application for service and each proposed service extension and shall prevent new requests for service or requests for additional service from causing an unreasonable financial burden on the City or the general class of customers. In this regard, the City, in specific instances, may waive or create additional requirements governing a particular service extension. Where it is doubtful that the revenue to be presently derived from the proposed extension will allow the City to recover the fixed costs on its investment, the City may require the applicant to pay the City annually an amount to cover the costs of depreciation, taxes, operation and maintenance, and removal of such facilities.

9. Extensions of service pursuant to this policy are also subject to all other applicable rules and regulations and any additional requirements imposed by the City.



10. Charges for service extensions may be reduced or waived by the City Council upon a determination by the City Council that the reduction or waiver of such charges provides an economic benefit to the City or to the consumers of electric service provided by the City and serves a public purpose. The City Council shall be the sole judge concerning whether the waiver or reduction of charges for service extensions constitutes an economic benefit to the City or to the consumers of electric service and serves a public purpose.

C. Application to Service Classifications. Once the City has designated the appropriate service classification (e.g., permanent, indeterminate, or temporary) applicable to the service requested by applicant, and determined an appropriate applicant's allocation, the amount and treatment of the cash construction payment to be required from the applicant will be determined as set forth in the following paragraphs.

1. Permanent service.

- a. The City will install at its expense necessary electric distribution facilities equivalent in cost to the construction allowance applicable to the applicant's or applicants' class of service as set forth on the service extensions construction allowance schedule. For extensions involving more than one permanent service applicant, each such applicant is entitled to the appropriate construction allowance.
- b. This construction allowance will be equal to the average revenue per customer, excluding any fuel cost adjustment, for the particular class of service. This allowance is subject to review and adjustment by the City on a periodic basis.
- c. To the extent that the applicant's allocation exceeds the sum of all applicable construction allowances, this amount will be paid as a construction payment in advance of any construction. When the facilities are completed, the construction payment shall be adjusted as appropriate to reflect actual costs. Based on this adjustment, an additional payment may be required from the applicant or the City may refund a portion of the payment, whichever is appropriate, within sixty (60) days. The failure of the applicant to make any additional payment requested shall constitute grounds for refusal or discontinuance of service. The adjusted construction payment shall be non-refundable.

2. Indeterminate Service.

- a. For indeterminate service involving real estate subdivisions and development of land for sale, the City shall estimate, in its sole discretion, the net number of permanent service customers that may reasonably be expected to apply for service from the facilities installed to serve the subdivision or development within five (5) years of the completion of said facilities. The City shall give the applicant credit for this estimated number of customers, multiplied by the applicable construction allowance, against the applicant's allocation. The applicant shall pay as a construction payment, the excess of the applicant's allocation over the applicant's credit for the

estimated future number of customers. Where the credit is equal to or exceeds the applicant's allocation, the applicant's service will be installed without any payment by the applicant. However, the applicant will have no entitlement regarding any excess construction allowance credit. When the facilities are completed, the construction payment shall be adjusted as appropriate to reflect actual costs. Based on this adjustment, an additional payment may be required from the applicant or the City may refund a portion of the payment, whichever is appropriate, within sixty (60) days. The failure of the applicant to make any payment requested shall constitute grounds for refusal or discontinuance of service. The adjusted construction payment shall be non-refundable.

- b. For all other types of indeterminate service, the applicant shall be required to pay the City the entire applicant's allocation as a construction payment. When the facilities are completed, the construction payment shall be adjusted as appropriate to reflect actual costs. Based on this adjustment, an additional payment may be required from the applicant or the City may refund a portion of the payment, whichever is appropriate, within sixty (60) days. The failure of the applicant to make any payment requested shall constitute grounds for refusal or discontinuance of service. The adjusted construction payment shall be non-refundable.

3. Temporary Service.

- a. For temporary service, applicant(s) shall be required to pay the City as a construction payment an amount equal to the applicant's allocation plus all estimated costs related to removing the facilities installed to serve the applicant. When the facilities are completed, the construction payment shall be adjusted as appropriate to reflect actual costs. Based on this adjustment, an additional payment may be required from the applicant or the City may refund a portion of the payment, whichever is appropriate, within sixty (60) days. The failure of the applicant to make any payment requested shall constitute grounds for refusal or discontinuance of service. After removal of the facilities, any net salvage value in excess of the costs of removal will be refunded to the customer. The remaining construction payment shall be non-refundable.
- b. If temporary service is continued for more than eighteen (18) months following the extension completion date, the nature of such continued service will be evaluated, and, if appropriate, reclassified as indeterminate service. If so reclassified, all estimated removal costs may be refunded by the City. At this time, salvage value and the remaining construction payment shall become non-refundable.

4. Overhead to underground conversion. Customer(s) desiring to have the City's existing overhead facilities presently providing service installed underground or desiring to have existing overhead or underground facilities relocated may request the City to make such changes. If the City determines that such conversion or

relocation can reasonably be made, the City will make such conversion or relocation on the following basis: the estimated remaining life value of the City's existing facilities plus the costs of removing such facilities less salvage value shall be paid by the customer or customers as a non-refundable payment. The new facilities to be installed will then be considered in all respects as a new service extension under the terms and conditions of this service extension rule. (Ord. 682 §2, 1985) (Ord. 1233 §2, 2004)

#### 13.16.430 Cogeneration and Small Power Production.

A. The FERC has promulgated regulations with regard to small power production and cogeneration (Part 292 of Title 18 of the Code of Federal Regulations (1984)). As required by Federal law, the City, as a nonregulated electric utility, will implement the requirements of the FERC regulations through this rule.

B. This rule applies to all qualifying cogeneration and small power production facilities ("qualifying facilities"), as defined in the FERC regulations, that are willing and able to enter an agreement with the City. This rule represents general guidelines, since the nature, size and character of qualifying facilities may vary widely. The City reserves the right to evaluate each qualifying facility on a case-by-case basis.

C. The City shall purchase energy, or, if satisfactory conditions have been met, capacity and energy, from any qualifying facility who offers to sell energy or capacity and energy. The standard rates for purchases from qualifying facilities with a design capacity of 100kw or less are set forth on the appropriate rate schedule of the City. Rates for purchases from qualifying facilities with a design capacity in excess of 100kw shall be established by contract on a case-by-case basis.

D. In establishing rates for purchases from qualifying facilities, the City shall consider the criteria set forth in the FERC's regulations at 18 C.F.R. §292.304(e). Such rates shall: be just and reasonable, be in the public interest, and not discriminate against qualifying facilities. Whether capacity payments shall be made and the amount of capacity to be credited to a qualifying facility shall be determined based upon the criteria established by the City pursuant to 18 C.F.R. §292.304(e). Said criteria include, but are not limited to, reliability, availability, type of equipment, degree of coordination with the City's power supply sources and the City's ability to avoid capacity costs.

E. In the event of the imposition of any tax or payment in lieu thereof on the City, by any lawful authority, on the production, transmission, sale or purchase of energy or capacity and energy that would not occur in the case of a comparable nongenerating customer, such tax shall be paid by the qualifying facility.

F. Upon notification to the qualifying facility, the City may discontinue its purchases from the qualifying facility if the City determines that purchases from the qualifying facility

would result in costs greater than those that the City would incur if it did not make such purchases.

G. The City will determine the appropriate equipment required to meter capacity and/or energy provided by the qualifying facility. This equipment shall be installed, maintained and read at the expense of the qualifying facility.

H. The City will provide electric service to all qualifying facilities located in its service territory pursuant to its standard applicable rate schedules and the City's rules and regulations governing electric service. Supplementary, back-up, maintenance and interruptible power may be provided to qualifying facilities, upon request, at a contract rate determined on a case-by-case basis.

I. The City must be consulted in advance of any construction or operation by a qualifying facility. The qualifying facility shall provide to the City all information requested by the City relevant to the proposed construction and operation of the qualifying facility. The City will evaluate each proposal on a case-by-case basis and may prescribe reasonable terms and conditions governing construction, operations and interconnection of the qualifying facility.

J. The City may require the execution of a written agreement prior to interconnection containing such terms and conditions as deemed reasonable by the City governing the relationship between the City and the qualifying facility. In all cases where the design capacity of the qualifying facility is in excess of 100kw, such a written agreement will be required.

K. Any and all costs of interconnection, including those incurred by the City, shall be the sole responsibility of the qualifying facility. The City will also charge the qualifying facility for administrative costs, consulting and legal fees incurred in processing the qualifying facility's application, negotiating an agreement.

L. Based on mutual agreement, the City, in its discretion, may transmit energy or power and energy, supplied by the qualifying facility, to another utility, pursuant to an appropriate contract, to the extent that transmission capacity is available. The City may make an appropriate charge to the qualifying facility for such transmission.

M. The City shall provide, upon request, sufficient data to allow a potential qualifying facility to determine the City's avoided costs. The data provided will generally conform to the outline provided in 18 C.F.R. §292.302 (1984).

N. The qualifying facility shall comply with all requirements of the National Electrical Safety Code, American National Standards Institute, Institute of Electrical and Electronic Engineers, American Society of Mechanical Engineers, and any other applicable local, state, or national codes (including any standards prescribed by the City) and shall operate its equipment according to prudent utility practice. In case of any conflict in the foregoing codes or standards, the City shall decide which shall govern.

O. The qualifying facility shall, to the point of interconnection, furnish, install, operate and maintain in good order and repair and without cost to the City such relays, locks and seals, breakers, automatic synchronizers, and other control and protective equipment as shall be designated by the City as being required as suitable for the operation of the qualifying facility in parallel with the City's system. The qualifying facility shall take appropriate steps to ensure that operating in parallel will not degrade in any fashion the quality of service that is normally maintained on the City's system.

P. The qualifying facility, at its own expense, must provide switching equipment capable of isolating the qualifying facility from the City's system. This equipment must be designated for the exclusive use of the City and shall be accessible to the City or its agent at all times.

Q. The City or its agent, in its sole discretion and without notice or liability, may choose to operate the switching equipment described above if, in the opinion of the City or its agent, continued operation of the qualifying facility in connection with the City's system may create or contribute to a system emergency or safety hazard. The City's failure to operate such equipment shall not relieve the qualifying facility of liability for any damage resulting to the City's system. The City's obligation to purchase from the qualifying facility ceases when the City or its agent operates the switching equipment described above. The City shall endeavor to minimize any adverse effects of such operation on the qualifying facility.

R. The qualifying facility shall indemnify and hold harmless the City from any and all liability arising from the operation and interconnection of the qualifying facility. The qualifying facility shall bear full responsibility for the installation and safe operation of the equipment required to generate and deliver energy or capacity and energy to the point of interconnection. All facilities constituting the qualifying facility are subject to the inspection and approval of the City, as often as deemed necessary by the City, at any time after construction has begun. This right to inspection shall continue after the qualifying facility has interconnected with the City. The City shall also have a right to inspect maintenance schedules and records. Such inspection or approval of facilities shall not be construed to endorse their design, warrant safety, durability or reliability, or waive any of the City's rights. The inspection and approval shall be solely for the City's use. The qualifying facility must, at the request of the City or its agent, modify existing facilities or install additional facilities to comply with the existing or changing requirements of the City's system.

S. The qualifying facility is required to procure and maintain such insurance as is deemed necessary by the City, solely at the expense of the qualifying facility.

T. The City may, without cost or liability, discontinue purchases from the qualifying facility;

1. to allow the City or its agents to perform maintenance, tests or repairs on the interconnection facilities or the C's system;
2. during a system emergency where continuing purchases would contribute to such emergency;

3. when the operation of a qualifying facility is jeopardizing the integrity of the City's system or interfering with the service to customers or other sources of generation and transmission on the City's system; or
5. when monitoring or inspection by the City or its agent of the qualifying facility reveals a condition hazardous, in the City's opinion, to the City's system or a lack of scheduled maintenance or maintenance records for equipment necessary to protect the City's system.

U. The qualifying facility shall obtain and supply all easements necessary for operation and maintenance of those interconnection facilities owned by the City on the property of the qualifying facility or a third party. This shall include the switching equipment designated above and necessary metering equipment. (Ord. 682 §2, 1987)

## TITLE 15

### Chapter 15.16

#### FIRE CODE

#### Sections:

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|-----------|--|
| 15.16.010 | Short Title  |
|           | 15.16.020 Adoption of the 2003 Edition of the International Fire Code Including Appendices |
| 15.16.030 | Copies on File   |
| 15.16.040 | Application of provisions  |
| 15.16.050 | Interpretation of Provision  |
| 15.16.060 | Definitions  |
| 15.16.070 | Amendments to the International Fire Code  |

15.16.010: Short Title: This Chapter may be known and cited as the Fire Code. (Ord. 1302 §1, 2005)

15.16.020: Adoption of the 2003 Edition of the International Fire Code Including Appendices:

Pursuant to Part 2 of Article 16 of Title 31, Colorado Revised Statutes and pursuant to the Charter of the City of Fountain, there is hereby adopted by reference the *International Fire Code*, 2003 edition, of the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL, 60478-5795 and Appendices A, B, C, D, E, F, and G as set forth therein. The above codes are adopted as if set out at length, subject to modifications, additions, or deletions as set forth in Chapter 15.16 of the Fountain Municipal Code. Any reference to this Chapter, Chapter 15.16 of the Fountain Municipal Code, the *International Fire Code*, or the Fire Code, unless the context requires

otherwise, shall include the *International Fire Code*, all appendices adopted herein and modifications, additions or deletions as set forth herein. (Ord. 1302 §1, 2005)

15.16.030: Copies on File: Three copies of the 2003 *International Fire Code* and appendices and three copies of all amendments or modifications thereto are on file in the Office of the City Clerk, and may be inspected during regular business hours. The City Clerk shall delegate responsibility to maintain a reasonable supply of copies of the *International Fire Code*, amendments and modifications thereto, available for purchase by the public from the Pikes Peak Regional Building Department. (Ord. 1302 §1, 2005)

15.16.040: Application of Provisions: The *International Fire Code* hereby adopted shall apply to every building, structure or asset, either within or outside the corporate limits of the City, the use of which the City has jurisdiction and authority to regulate. (Ord. 1302 §1, 2005)

15.16.050: Interpretation of Provisions: This part shall be so interpreted and construed as to effectuate its general purpose to make uniform the local fire regulations contained herein. Article and section headings of this part and of the adopted *International Fire Code* shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or extent of the provisions of any article or section thereof. (Ord. 1302 §1, 2005)

15.16.060: Definitions: As used in this chapter the following words are defined as follows:

A. Wherever the word “jurisdiction” or “authority having jurisdiction” is used in the *International Fire Code*, it shall be held to mean the City of Fountain.

B. Wherever the term “counsel” is used in the *International Fire Code*, it shall be held to mean the attorney for the City of Fountain.

C. Wherever the term “Bureau of Fire Prevention” or “Fire Prevention Bureau” is used in the *International Fire Code*, it shall also be held to mean the member(s) of the Fire Department that have been designated to perform those duties.

D. Where the term “Chief” is used in the *International Fire Code*, it shall mean the Fire Chief of the City of Fountain Fire Department.

E. Where the term “Code Official” is used in the *International Fire Code*, it shall mean the Fire Chief of the City of Fountain Fire Department or a member of the Fountain Fire Department designated by the Fire Chief to perform those duties.

F. Where the term “Board of Appeals” is used in the *International Fire Code*, it shall mean the Board of Adjustment of the City of Fountain.

G. Where the term “Administrator” is used it shall mean the City Manager of the City of Fountain.  
(Ord. 1302 §1, 2005)

15.16.070: Amendments to the International Fire Code. The *International Fire Code* and

Appendices herein adopted, are adopted subject to the following modifications, additions, or deletions as hereinafter set forth:

A. Preface. Under the “letter designations in front of section numbers” in the second paragraph, add a second sentence as follows: “As such, any section within this code which references a companion code, it shall be the responsibility of the code body responsible for said code. In addition, where the *International Fire Code* is referenced in other codes, the Fire Chief shall be the designated “Code Official”.

CHAPTER 1

B. Section 101.1 Amend Section 101.1 by inserting the following: “The City of Fountain” in place of NAME OF JURISDICTION.

C. Section 102.4 Delete International Existing Building Code from section 102.4 and replace with the International Building Code.

D. Section 102-6 Add a new sentence to section 102.6 to read as follows: “Applicable NFPA standards shall be the current most updated edition.”

E. Section 103.4 and section 103.4.1 Delete section 103.4 and section 103.4.1. Add a new section 103.4 to read as follows: “Actions, liability and legal defense. The Colorado Governmental Immunity Act, Article 10 of Title 24 Colorado Revised Statutes, shall apply to the actions, liability and legal defense of any fire code official, officer or employee charged with the enforcement of this code.”

F. Section 105.1.1. Add a new section 105.1.1. to read as follows: “105.1.1. Liability. The Permittee shall indemnify the City, its officers, agents, and employees against any claim or liability arising from or based on the violation of this code or any other applicable law or regulation caused by any actions or omissions of the Permittee arising out of the exercise of the activity authorized by the permit.”

G. Section 105.1.4. Add a new section 105.1.4 to read as follows: “105.1.4 Work without permit. Whenever any activity requiring a permit commenced without the permit, a special investigation shall be conducted by the Fire Prevention Bureau and a citation shall be issued in accordance with section 109 of this code.”

H. Section 105.4.1.2 Add new sections 105.4.1.2 to read as follows: “105.4.1. Required construction document submittals. Adequately prepared construction documents, as per International Fire Code Section 202 “Construction Documents”, are required to be submitted for Fire Department review and approvals prior to any construction activity for the following:

- Construction projects
- Development/site plans



- Fire sprinkler systems
- Fire standpipe systems
- Fire alarm/detection systems
- Fixed fire protection systems
- Fixed fire kitchen hood protection systems
- Hazardous materials
- High-pile storage

I. Section 105.6.37. Delete section 105.6.37 and substitute with the following: “105.6.37 pyrotechnic special effects material and display fireworks. An operational permit is required for use and handling of pyrotechnic special effects material. A hazardous materials construction permit is required for the construction or installation of buildings for manufacturing, storage, use, and handling of fireworks or pyrotechnics special effects material, within the scope of Chapter 33. A temporary activity operational permit is required for the storage, handling, use of explosive material used in fireworks displays or for pyrotechnic special effect activities or flame effects before a proximate audience with the scope of chapter 33.”

J. Section 105.6.43. Delete Section 105.6.43 and substitute the following: “105.6.43 Storage of scrap tires and tire byproducts. An operational permit is required to establish, conduct or maintain storage of scrap tires and tire byproducts that exceeds 2500 cubic feet of total volume of scrap tires and for storage of scrap tires and tire byproducts. An operational permit is required to establish, conduct, or maintain indoor storage of tires and tire by products that exceeds 1,000 cubic feet of total volume of tires.”

K. Section 105.7.1.1. Add new Section 105.7.1.1 to read as follows: “105.7.1.1 Fire Suppression System Out of Service. A construction permit is required for any required fire suppression system taken out of service for repair, remodel or modification for any length of time. A construction permit is required for any fire suppression system placed out of service for over 4 hours due to a malfunction or activation. The Fire Code Official shall be notified once the system has been placed back in service.”

L. Section 105.7.3.1. Add new Section 105.7.3.1 to read as follows: “105.7.3.1 Fire Alarm and Detection System Out of Service. A construction permit is required for any required fire alarm or detection system taken out of service for repair, remodel or modification for any length of time. A construction permit is required for any fire alarm or detection system placed out of service for over 8 hours due to a malfunction or activation. The Fire Code Official shall be notified once the system has been placed back in service.”

M. Section 105.7.8.1. Add new Section 105.7.8.1 to read as follows: “107.7.8.1 LP gas cylinder exchange facilities. A construction permit is required to install, maintain or store portable LP-gas containers awaiting use, resale or part of a cylinder exchange program (LP-gas cage installations) where a single container, cylinder or tank is more than 125 gallons (473.2 L) water capacity or the aggregate capacity of containers is more than 125 gallons water capacity.

N. Section 106.4. Add a new Section 106.4 to read as follows: “106.4 Inspection

requests. It shall be the duty of the person doing the work authorized by a permit to notify the Chief that such work is ready for inspection. The Chief is authorized to require that every request for inspection be filed not less than three working days before such inspection is desired. Such requests may be in writing or by telephone at the option of the Fire Chief. It shall be the duty of the person requesting any required inspections to provide access to and means for proper inspection of such work.”

O. Section 108.1. Delete Section 108.1 and substitute with the following: “108.1 Board of Appeals Established. In order to hear and decide appeals of orders, decisions or determinations made by the Fire Code Official relative to the application and interpretation of this code, there shall be and hereby created a board for the purpose of hearing appeals. The Board shall be known as the “Board of Adjustment” and appointed per the Fountain Municipal Code. Where the term “Board of Appeals” is used in the International Fire Code, it shall mean the Board of Adjustment of the City of Fountain as set forth in Chapter 2.15 of the Fountain Municipal Code. When hearing issues relative to this code the Board of Adjustment shall operate in accordance with Appendix A of this Code.”

P. Section 108.3. Delete Section 108.3

Q. Section 109.3. Amend Section 109.3 by inserting the following: “Misdemeanor” in place of SPECIFY OFFENSE, “One Thousand” in place of AMOUNT, and “One Year” in place of NUMBER OF DAYS.

R. Section 111.4. Delete Section 111.4 and replace with the following: “111.4 Failure to comply. Persons operating or maintaining an occupancy, premises or vehicle subject to this code who allow a hazard to exist or fail to take immediate action to abate a hazard on such occupancy, premises or vehicle when ordered or notified to do so by the Chief shall be guilty of a misdemeanor, punishable by a fine of not more than One Thousand Dollars or by imprisonment not exceeding One Year or both such fine and imprisonment.”

S. Section 111.5. Add a new Section 111.5 to read as follows: “111.5 Penalties. It is unlawful for any person to violate any of the provisions of this part including any provisions of the International Fire Code, International Fire Code Appendices, and International Fire Code Amendments, as adopted. Any person convicted of a violation of any provision set forth in this part shall be punished in accordance with Chapter 15.16.080 of the Fountain Municipal Code.”  
(Ord. 1302 §1, 2005)

### CHAPTER 3

T. Section 311.1.1. Amend Section 311.1.1 by adding an additional paragraph to read as follows: “These situations will be referred to the Building Department in accordance with the International Building Code, Chapter 1, Section 115, and to the City Code Enforcement Division for appropriate action.”

U. Section 315.2.3. Delete Section 315.2.3 and substitute the following: “315.2.3 Equipment rooms. Where mechanical room is of sufficient size to allow for storage, it will be permitted under the following guidelines:

- Storage of any type must remain a minimum of 5 feet away from any type of mechanical appliance, or its listed clearance, whichever is greater.
- Allowance of storage does not conflict with any other code(s).
- No hazardous materials, flammable or combustible liquids, or other highly dangerous substances shall be stored in any mechanical room.

(Ord. 1302 §1, 2005)

#### CHAPTER 4

V. Section 401.1 Delete the exception from Section 401.1.

W. Section 403.1.3. Add a new Section 403.1.3 to read as follows: “403.1.3 Inspections. Public assemblies and events shall be inspected as required by the Fire Chief.”

X. Section 405.3.2. Amend Section 404.3.2, number 4, part 4.8 to read as follows: “4.8 Hose valve/standpipe stations.”

Y. Section 405.6. Delete Section 405.6 and replace with the following: “405.6 Notification. Prior notification of emergency evacuation drills shall be given to the Fire Code Official.”

Z. Section 405.10. Add a new Section 405.10 to read as follows: “405.10 Drill participation. When fire and evacuation drills are conducted, all persons who are subject to the fire drill requirements shall participate in the drill.”

(Ord. 1302 §1, 2005)

#### CHAPTER 5

AA. Section 503.1. Amend Section 503.1 to read as follows: “503.1 Where required. Fire apparatus access roads shall be provided and maintained in accordance with Sections 503.1.1 through 5.3.1.3 and Appendix D.”

BB. Section 503.2. Amend Section 503.2 to read as follows: “503.2 Specifications. Fire apparatus access roads shall be installed and arranged in accordance with Sections 503.2.1 through 503.2.7 and Appendix D.”

CC. Section 503.2.1. Amend Section 503.2.1 to read as follows: “503.2.1 Dimensions. Fire apparatus access roads shall have an unobstructed width of not less than 24 feet except for approved security gates in accordance with Section 503.6, and an unobstructed vertical clearance of not less than 14 feet.”

DD. Section 503.3. Amend Section 503.3 to read as follows: “503.3 Marking. Where required by the Fire Code Official, approved striping and/or signs shall be provided and maintained in accordance with Section D103.6 for fire apparatus access roads to identify such roads or prohibit the obstruction thereof. Striping and signs shall be maintained in a clean and legible condition at all

times and be replaced or repaired when necessary to provide adequate visibility.”

EE. Section 503.4. Amend Section 503.4 to read as follows: “503.4 Obstruction of fire apparatus access roads. Fire apparatus access roads shall not be obstructed in any manner, including the parking of vehicles. The minimum widths and clearances established in Section 503.2. and any area marked as a fire lane as described in Section 503.3 shall be maintained at all times.”

FF. Section 506.1. Amend Section 506.1 to read as follows: “506.1 Where required. In existing buildings where access to or within a structure or an area is restricted because of secured openings or where immediate access is necessary for life-saving or firefighting purposes or where a monitored fire alarm system, fire sprinkler system, any other fire suppression systems or elevators exist in the building, a Knox™ box shall be installed in an approved location unless otherwise authorized by the Fire Chief. Knox™ boxes shall be installed on all new businesses in existing buildings as required by the Fire Chief. Knox™ boxes shall be installed on all new commercial buildings built in the City of Fountain.”

GG. Section 508.3. Amend Section 508.3 by adding a sentence to read as follows: “Reference Appendix B Fire-Flow Requirements for Buildings for requirements.”

HH. Section 508.4. Amend Section 508.4 by adding a second paragraph to read as follows: “On new construction sites, it will be the responsibility of the owner, general contractor, or site manager to have the private fire hydrant systems flow tested prior to requested the fire department’s final inspections of the project. At no time shall any City of Fountain Fire Department personnel conduct fire flow testing of private hydrants. As with any new or revised fire protection system, the fire department will witness all tests to verify the systems will meet the fire flow requirements established during the plan review process. If this test occurs without fire personnel on site, it will be deemed unacceptable by the inspector. No fire finals are to be approved without acceptable fire flow tests of the applicable hydrant assemblies.”

II. Section 508.5. Amend Section 508.5 by adding a sentence to read as follows: “Reference Appendix C Fire Hydrant Locations and Distribution for requirements.”

JJ. Section 508.5.1. Delete the exception from Section 508.5.1.

KK. Section 508.5.5.1. Add a new Section 508.5.5.1 to read as follows: “508.5.5.1 Vehicle parking around fire hydrants. Vehicles are to be kept clear of hydrants at all times. A minimum of 15 feet in all directions, as measured laterally along the road edge, shall be maintained in the front of all hydrants.”  
(Ord. 1302 §1, 2005)

## CHAPTER 6

LL. Section 603.8. Delete “residential type” from this section.

MM. Section 603.8.1. Delete Section 603.8.1 and substitute the following: “603.8.1 Residential Incinerators. The use of residential incinerators is prohibited.”

NN. Section 605.5.1. Delete Section 605.5.1 and substitute the following: “605.5.1 Power Supply. Extension cords shall be plugged directly into an approved receptacle. Extension cords shall only serve one portable appliance. Extension cords shall be unplugged from the power source when not in use.”

Ord. 1302 §1, 2005)

## CHAPTER 9

OO. Section 901.2. Renumber existing Section 901.2 as Section 901.2.1.

PP. Section 901.2.1. Renumber existing Section 901.2.1 as Section 901.2.2.

QQ. Section 901.2. Add a new Section 901.2 to read as follows: “901.2 Approved contractors. All sprinkler systems shall be installed, repaired, inspected, tagged, and maintained by a Colorado State licensed fire sprinkler contractor on an annual basis. All multi-purpose residential fire sprinkler systems in one and two-family dwellings shall be installed, repaired, inspected, tagged and maintained by a Colorado State licensed fire sprinkler contractor. All fire extinguishers shall be repaired, inspected, tagged, and maintained by a licensed FSC-B, -C, or -D licensed contractor on an annual basis. Fixed fire protection systems shall be installed, repaired, inspected, tagged, and maintained by a Colorado State licensed fire suppression contractor in accordance with manufacturers’ specifications. These specifications shall be followed in order to maintain specific listings.”

RR. Section 901.9. Add a new Section 901.9 to read as follows: “901.9 Clear space around fire protection equipment. A three (3) foot clear space shall be maintained in front of, to the side of, and around, as applicable, fire sprinkler riser assemblies, to include all control valves, hose valves, fire alarm control panels, fire alarm annunciators, and power supply panels. This clear space shall include an unobstructed path of travel to the fire protection system appurtenances.”

SS. Section 903.2.1.1. Delete item 1 and replace with the following: “1. the fire area exceeds 8,000 square feet;”

TT. Section 903.2.1.2. Delete item 2 and replace with the following: “2. The fire area has an occupant load of 100 or more;”

UU. Section 903.2.1.3. Delete item 1 and replace with the following: “1. The fire area exceeds 8,000 square feet;”

VV. Section 903.2.1.4. Delete item 1 and replace with the following: “1. The fire area exceeds 8,000 square feet;”

WW. Section 903.2.2. Delete section 903.2.2 and substitute the following: “An automatic sprinkler system shall be provided throughout all buildings that contain a Group E occupancy where one of the following conditions exist:

1. Where the Group E Occupancy exceeds 10,000 square feet;
2. Where the Group E fire area has an occupancy load of 300 or more students; or
3. Where the Group E Occupancy fire area is located on a floor other than the level of exit discharge.

XX. Section 903.2.7. Delete Section 903.2.7 and substitute the following: “903.2.7 Group R. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings of Group R occupancy with eight (8) or more dwelling units. Buildings with more than four (4) but not greater than eight (8) dwelling units shall be provided with an automatic sprinkler system installed in accordance with either Section 903.3.2 or 903.3.3 as approved by the City of Fountain Fire Department.” RBD code amendment.

YY. Section 903.2.8 Add new item 4 to read as follows: “4. Group S-1 stored in height greater than 12 feet and an area of greater than 5,000 square feet.”

ZZ. Section 903.2.8.2 Delete Section 903.2.8.2 and substitute the following: “903.2.8.2 Bulk storage of tires. Buildings and structures where the area for the storage of tires exceeds 3,000 cubic feet shall be equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1.”

AAA. Section 903.2.10.4 Add new section 903.2.10.4 to read as follows: “An automatic sprinkler system shall be provided throughout buildings with a ground floor area that exceeds 12,000 square feet or a total area that exceeds 24,000 square feet regardless of Occupancy class.”

BBB. Section 903.4. Amend Section 903.4 by changing item number 2 to read as follows: “2. Limited area systems serving fewer than 6 sprinklers.”

CCC. Section 903.4.2.1. Add a new Section 903.4.2.1 to read as follows: “903.4.2.1 Waterflow alarm systems. Waterflow alarm systems shall be provided with a minimum of one interior audible and visual waterflow alarm appliance, and one pull station located in a normally occupied location. Additional initiating and/or notification devices may be required by the Fire Chief. These systems shall also include an exterior audible and visual waterflow alarm appliance. Exterior audible and visual alarms shall have a sign below that states “Fire Alarm – When Alarm Sounds Call 911”. In buildings with multiple separate tenants being served by the same automatic sprinkler system at least one interior audible and visual alarm appliance shall be placed in each tenant space.

DDD. Section 903.7. Add a new Section 903.7 to read as follows: “903.7 Relocations and additions to fire sprinkler systems in existing facilities.

1. Any additions or remodeling to existing commercial sprinkler systems that involve 20 sprinkler heads or less will not require a permit through the Fire Prevention Division.
2. Any additions or remodeling to existing commercial sprinkler systems that involve 20 sprinkler heads or less will require a letter from a State of Colorado

licensed sprinkler contractor addressed to the City of Fountain Fire Prevention Division. This letter shall be on the sprinkler contractor's letterhead and include the following information:

- a. All work performed will be completed by the licensed sprinkler contractor indicated on the letterhead.
  - b. The hydraulic supply to the system in this area will be sufficient and that no hydraulic overloading exists.
  - c. The system will be installed in accordance with all applicable local and national standards (e.g. International Building Code and NFPA 13).
  - d. The scope of the work being conducted including the building name and address as well as interior area location.
  - e. The number of heads being relocated and/or installed.
  - f. A time schedule of the work being performed, giving start and completion dates.
3. This does not apply to spray booths, NFPA 13D, and 13R systems, special hazard systems, or other special stipulations previously mandated and required by the Fire Prevention Division.
  4. All systems with more than 20 heads must conform to all local and state standards including plan submittal, permits and other requirements."

EEE. Section 904.12. Add a new Section 904.12 to read as follows: "904.12 Alarm programming for carbon dioxide, halon and clean agent systems. Rooms protected with special hazard extinguishing systems shall be provided with the following:"

1. Pre-discharge (audible/visual) signal shall be separate and distinct from the evacuation signal and the imminent discharge signal. At the time of plan submittal, designer shall declare the type of signal for review and approval by the City of Fountain Fire Department.
2. Imminent discharge (audible/visual) signal shall be separate and distinct from the evacuation signal and pre-discharge signal. At the time of plan submittal, designer shall declare the type of signal for review and approval by the City of Fountain Fire Department.
3. Three-pulse temporal shall indicate system discharge on the interior of the protected room at which point the building enters into a general alarm and evacuation state. The discharge, evacuation signal shall originate from the base building system in the protected space and building wide simultaneously.
4. A red strobe located outside the protected room shall indicate activation of the suppression system. This device shall be indicated as FIRE SUPPRESSION SYSTEM DISCHARGE.
5. Audible notification is not required to be provided outside the protected room (except as provided above).

Except in cases where the special hazard releasing system is the main fire alarm control panel for the premises, all changes of state (alarm, trouble, supervisory, etc.) in the releasing system shall be monitored by the base building fire alarm control

panel. Pre-discharge, imminent discharge, valve supervisory switches and any other device designated to report as a supervisory condition, i.e., duct detectors, shall report to the main FACP as supervisory conditions. System discharge shall report to the main FACP as a general alarm. The three different types of signals shall be grouped and placed throughout the protected space such that any one of the stages, first, second or third, shall meet the audible and visual signal requirements of the governing code. First, second and third stage signaling devices shall be provided with placards located adjacent to the device, identifying the associated event, i.e., pre-discharge, imminent discharge, evacuate. Placards shall be permanent with lettering at least 1 ½ inches tall in contrasting color to the background. Activation of a second stage event shall shunt the first stage audible and visual signals. Activation of a third stage event shall shunt the second stage audible and visual signals. In cases where the second stage event constitutes discharge, i.e., gas extinguishing systems, Deluge systems, the activation of the second smoke detector in a protected room or a manual pull station, all sequences, functions and requirements herein designated as a third stage event shall be applied to the second stage event. Exception: Wet, dry, foam and commercial cooking systems.”

FFF. Section 905.3.1. Amend Section 905.3.1 to read as follows: “905.3.1 Building height. Class I automatic wet standpipe system shall be installed throughout buildings where the floor level of the highest story is located more than 30 feet above the lowest level of the Fire Department vehicle access, or where the floor level of the lowest story is located more than 30 feet below the highest level of fire.

GGG. Section 905.3.4.1. Delete entire Section 905.3.4.1.

HHH. Section 907.2.3. Delete exception 1 and replace with the following: “1. Group E occupancies with an occupancy load of less than 15 persons.”

III. Section 908.2.3.1. Add new Section 907.2.3.1 to read as follows: “Monitoring. Group E occupancies with an occupancy load of more than 50 persons shall be equipped with a centrally monitored automatic fire alarm system.”

JJJ. Section 907.4.4. Amend Section 907.4.4 to read as follows: 907.4.4 Signs. Where fire alarm systems are not monitored by a supervising station, an approved permanent sign shall be installed adjacent to each manual fire alarm box that reads: FIRE ALARM – WHEN ALARM SOUNDS – CALL 911”.

KKK. Section 907.15. Amend Section 907.15 by deleting Exception #2.

LLL. Section 907.3.1.1. Delete Exception 2 and replace with the following: “2. Group Occupancies with an occupancy load of less than 25 persons.”

MM. Section 907.15.1. Add new Section 901.15.1 to read as follows: “Section 907.15.1 All new Fire Alarm Systems installed in the City of Fountain shall be monitored by An Approved



Central Station Service complying with Chapter 8.2 of NFPA 72. Installation shall be certificated. An approved Central Station Service complying with Chapter 8.2 of NFPA 72 shall monitor all existing Fire Alarm Systems in sprinkled buildings with more than 20 sprinkler heads. Installation shall be certificated. All existing Proprietary Supervising Station Systems shall comply with Chapter 8.3 of NFPA 72. Proprietary Supervising Station Systems shall be approved by the Fire Chief. All existing Remote Supervising Station Systems shall comply with Chapter 8.4 of NFPA 72. Location of the Remote Supervising Station shall be approved the City of Fountain Fire Chief. Remote Supervising Stations monitoring Fire Alarm Systems in the City of Fountain shall be located within El Paso County Colorado. Remote Supervising Station Systems shall be approved by the Fire Chief. All Commercial Fire Alarm Systems are required to be monitored unless otherwise permitted by the Fire Chief. Local Alarm Systems require approval of the Fire Chief.”

NNN. 907.20.6. Add new Section 907.20.6 to read as follows: “Qualifications: Personnel performing installation, inspection, testing and/or maintenance shall be NICET level II or approved by the City of Fountain Fire Department.

OOO. Section 912.2.1. Amend Section 912.2.1 to read as follows: “912.2.1 Visible location. Fire department connections shall be located on the front entrance and/or addressed side of buildings, fully visible and recognizable from the street or nearest point of fire department vehicle access or as otherwise approved by the Fire Chief. The connection(s) shall be located within 40 feet of a Fountain Fire Department approved fire department access road and within 150 feet of a fire hydrant capable of supplying the required fire flows of the fire protection system.”

PPP. Section 912.4.1. Add a new Section 912.4.1 to read as follows: “912.4.1 Signage Specifics. Fire Department connections and the horn/strobes shall be provided with adequate signage posted as needed to properly indicate the exact device type and exact area(s) served, and shall comply with Fountain Fire Department requirements.”

QQQ. Section 912.7. Add a new Section 912.7 to read as follows: “912.7 Indicating device. A listed horn/strobe indicating device shall be located within 10 feet of the fire department connection, and shall be highly visible.”

RRR. Section 912.8. Add a new Section 912.8 to read as follows: “912.8 Inlets. There shall be a minimum of a Siamese connection with one additional 2 ½” connection for every 250 gallons per minute (gpm) of sprinkler demand. Exception: As allowed by NFPA 13R.”

SSS. Section 912.9. Add a new Section 912.9 to read as follows: “912.9 Multiple FDC’s. When demand of sprinkler system exceeds 1500 gallons per minute (gpm) additional FDC’s shall be provided and located as specified by the Fire Code Official. Multiple FDC’s shall be of equal capacity.” (Ord. 1302 §1, 2005)

## CHAPTER 10

TTT. [B] Table 1004.1.2 Amend Table 1004.1.2 as follows: Add a new row – “Beauty Care Business – 50 gross.” Add the following footnote applicable to the entire table: “a. When an

intended occupancy or use is not listed, the occupancy or use which most nearly resembles the intended occupancy or use shall be selected.” RBD Amendment.

UUU. [B] Section 1007.2. Amend Section 1007.2 by deleting number 4 from the list of components. RBD Amendment.

VVV. [B] Section 1007.5. Amend Section 1007.5 to read as follows: “1007.5 Platform (wheelchair) lifts shall not serve as a part of an accessible means of egress.” Delete the rest of the paragraph. RBD Amendment.

WWW. [B] Section 1008.1.4. Amend Section 1008.1.4 Exception 3 to read as follows: “3. In Group R-3 occupancies, the landing at an exterior doorway shall not be more than 8 inches (203 mm) below the top of the threshold, provided the door, other than an exterior storm or screen door, does not swing over the landing.” RBD Amendment.

XXX. [B] Section 1008.1.6. Amend Section 1008.1.6 by deleting the exception. RBD Amendment.

YYY. [B] Section 1008.1.8.7. Delete the entire Section 1008.1.8.7 RBD Amendment.

ZZZ. [B] Section 1008.1.9. Amend Section 1008.1.9 by changing the number “100” in the second paragraph to “50”. RBD Amendment.

AAAA. [B] Section 1009.1. Amend Section 1009.1 by deleting Exception 4. RBD Amendment.

BBBB. [B] Section 1009.3. Amend Section 1009.3, Exception 5 to read as follows: “5. In occupancies in Group R-3, as applicable in Section 1001.1, within dwelling units in occupancies in Group R-2, as applicable in Section 1001.1, and in occupancies in Group U, which are accessory to an occupancy in Group R-3, as applicable in Section 1001.1, the maximum riser height shall be 8 inches (203 mm) and the minimum tread depth shall be 10 inches (254 mm), the minimum winder tread depth at the walk line shall be 9 inches (229 mm), and the minimum winder tread depth shall be 6 inches (152 mm). A nosing not less than 0.75 inch (19.1 mm) but not more than 1.25 inches (32 mm) shall be provided on stairways with solid risers where the tread depth is less than 11 inches (279 mm).” RBD Amendment.

CCCC. [B] Section 1009.5.2. Amend Section 1009.5.2 by deleting the second sentence. RBD Amendment.

DDDD. [B] Section 1010.7.2. Amend Section 1010.7.2 by deleting the second sentence. RBD Amendment.

EEEE. [B] Section 1012.2. Amend Section 1012.2 by adding the following exception: “3. For occupancies in Group R-3, and within individual dwelling units in occupancies

in Group R-2, both as applicable in Section 101.2, guards may be not less than 36 inches (914 mm) in height.” RBD Amendment.

FFFF. [B] Section 1012.5. Delete the existing Section 1012.5. RBD Amendment.

GGGG. [B] Table 1016.1. Amend Table 1016.1 as follows: In the occupancy row designated as “R”, delete “0.5” from the “With sprinkler system” column and replace with “1”. RBD Amendment.

HHHH. [B] Section 1025.2. Amend Section 1025.2 to read as follows: “Emergency Escape and rescue openings shall have a minimum net clear opening of 4.5 square Feet (0.42 m<sup>2</sup>)”, and delete the exception. RBD Amendment.

IV. [B] Section 1025.2.1. Amend Section 1025.2.1 by adding the following exception: “Exception: A 3-foot (914 mm) wide by 4-foot (1219 mm) high nominal single or double hung window with a minimum vertical opening of 19 inches (483 mm) and a minimum net clear opening of 4.5 square feet (0.42 m<sup>2</sup>) is approved.” RBD Amendment.

JJJJ. [B] Section 1025.4. Amend Section 1025.4 by adding the following exception: “Exception: Bars, grilles, grates, or similar devices are not permitted to be used in conjunction with hatches or covers as permitted in Section 1025.5.3, Exception 3.” RBD Amendment.

KKKK. [B] Section 1025.5.3. Add a new Section 1025.5.3 to read as follows: “1025.5.3. Clearance. Horizontal projections above a window well are not permitted. Exceptions:

1. The minimum horizontal area of 9 square feet (0.84 m<sup>2</sup>) is provided clear of the projection and the horizontal projection of the operable portion of the egress window and ladder or steps, if required, remain clear of the projection.
2. The vertical distance between the top edge of the window well and the bottom of the projection is at least 24 inches (610 mm).
3. Where the projection is a walking surface which provides a clear and discernible path of egress away from the building and provided with a hatch or cover providing a minimum net clear opening of 9 square feet (0.84 m<sup>2</sup>) which is releasable or removable from the window well side without the use of a key, tool or applied force greater than 30 lbs. (133 N).” RBD Amendment. (Ord. 1302 §1, 2005)

## CHAPTER 14

LLLL. Section 1410.1.1. Amend the first paragraph of new Section 14.10.1 to read as follows: “14.10.1.1 Minimum specifications for temporary roads. Temporary access roads shall be an all weather surface comprised of either the first lift of asphalt or concrete/compacted road base to a thickness capable of supporting the imposed loads of fire department apparatus. A 20-foot minimum width shall be maintained. Adequate street signs and fire lane signs shall be installed

where applicable and addresses shall be provided for all buildings in such a position as to be plainly visible and legible from the street or road fronting the property.

Any damage made to the temporary access roadway shall be repaired within 5 working days weather permitting and shall be completed prior to finishing of the roadway to its final/permanent state.

Fire apparatus access roads shall not be obstructed in any manner, including parking of any vehicles.

Temporary roads serving as fire lanes shall not be in place more than 4 months without special approval from the fire department.”  
(Ord. 1445 §4, 2009)

MMMM. Section 1412.1. Delete Section 1412.1 and replace with the following: “1412.1 Water Supply. All water mains and fire hydrants shall be installed and operational prior to the arrival of combustible materials on the site.” (Ord. 1302 §1, 2005)

## CHAPTER 19

NNNN. Section 1903.5.3. Delete Section 1903.5.3 and replace with the following: “1903.5.3. Smoking. Smoking is prohibited in lumberyards and woodworking facilities, except in fire department approved and designated areas. Owner or occupant shall post City of Fountain Fire Department approved “No Smoking” signs conspicuously throughout the facility. Also see *International Fire Code* Section 310 Smoking.”

OOOO. Section 1904.2. Amend Section 1904.2 to read as follows: “1904.2 Portable fire extinguishers. Portable fire extinguishers shall be provided within 50 feet of travel distance to any machine producing shavings or sawdust. Extinguishers shall be provided in accordance with Section 906 for extra-high hazards.” (Ord. 1302 §1, 2005)

## CHAPTER 22

PPPP. Section 2211.6.1. Add a new Section 2211.6.1 to read as follows: “2211.6.1 Fire protection. An automatic sprinkler system shall be provided throughout all buildings used as repair garages in accordance with the International Building Code, as follows:

1. Buildings two or more stories in height, including basements, with a fire area containing a repair garage exceeding 10,000 square feet (929 m<sup>2</sup>).
2. One-story buildings with a fire area containing a repair garage exceeding 12,000 square feet (1115 m<sup>2</sup>).
3. Buildings with a repair garage servicing vehicles parked in the basement.” (Ord. 1302 §1, 2005)

## CHAPTER 23

QQQQ. Section 2301.1.1. Add a new Section 2301.1.1 to read as follows: “2301.1.1 NFPA 13 code reference. Whichever the code references NFPA 231, and NFPA 231C, it shall also be held to mean compliance with NFPA 13.”

RRRR. Section 2302.1. Amend Section 2302.1 by adding the following definition: “Area Capable of accommodating high-pile storage. Buildings containing an area capable of accommodating high-pile storage, but which is not being utilized as such, shall be Maintained in accordance with Section 2311.”

SSSS. Table 2306.2. Amend Table 2306.2 to read as follows:

TABLE 2306.2

CLASS	SIZE OF HIGH-PILE STORAGE AREA <sup>a</sup> (SQUARE FEET) (SEE SECTIONS 2306.2 & 2306.4)	ALL STORAGE AREAS (See Sections 2306, 2307 and 2308) <sup>b</sup>					SOLID-PILED STORAGE, SHELF STORAGE & PALLETIZED STORAGE (SEE SECTION 2307.3)		
		Automatic fire-extinguishing system (SEE SECTION 2306.4)	Fire detection system (SEE SECTION 2306.5)	Building Access (SEE SECTION 2306.6)	Smoke & heat removal (SEE SECTION 2306.7)	Draft curtains <sup>i</sup> (SEE SECTIONS 2306.7 and 910.3.4)	Maximum pile dimension <sup>c</sup> (feet)	Maximum permissible storage height <sup>d</sup> (feet)	Maximum pile volume (cubic feet)
I - IV	0- 500	Not Required <sup>a</sup>	Not Required	Not Required <sup>e</sup>	Not Required	Not Required	Not Required	Not Required	Not Required
	501- 2,500	Not Required <sup>a</sup>	Yes <sup>h</sup>	Not Required <sup>e</sup>	Not Required	Not Required	100	40	100,000
	2,501-12,000	Yes	Not Required	Not Required <sup>e</sup>	Not Required	Not Required	100	40	400,000
	12,001-20,000	Yes	Not Required	Yes	Yes	Not Required	100	40	400,000
	20,001-500,000	Yes	Not Required	Yes	Yes	Not Required	100	40	400,000
	Greater than 500,000 <sup>g</sup>	Yes	Not Required	Yes	Yes	Not Required	100	40	400,000
HIGH - HAZARD	0-500	Not Required <sup>a</sup>	Not Required	Not Required <sup>e</sup>	Not Required	Not Required	50	Not Required	Not Required
	501-2,500	Yes	Not Required	Not Required <sup>e</sup>	Not Required	Not Required	50	30	75,000
	2,501-300,000	Yes	Not Required	Yes	Yes	Not Required	50	30	75,000
	300,001-500,000 f, g	Yes	Not Required	Yes	Yes	Not Required	50	30	75,000

<sup>a</sup>. When automatic sprinklers are required for reasons other than those in Chapter 23, the portion of the sprinkler system protecting the high-pile storage area shall be designed and installed in accordance with Sections 2307 and 2308.

<sup>b</sup>. For aisles, see Section 2306.9

<sup>c</sup>. Piles shall be separated by aisles complying with Section 2306.9.

<sup>d</sup>. For storage in excess of the height indicated, special fire protection shall be provided in accordance with Note <sup>g</sup> when required by the fire marshal. See also Chapters 28 and 34 for special limitations for aerosols and flammable and combustible liquids.

<sup>e</sup>. Section 503 shall apply for fire apparatus access.

f. Special fire protection provisions including, but not limited to, fire protection of exposed steel columns; increased sprinkler density; additional in-rack sprinklers, with-out associated reductions in ceiling sprinkler density; or additional fire department hose connections shall be provided when required by the fire marshal.

g. High-piled storage areas shall not exceed 500,000 square feet. A 2-hour fire-wall constructed in accordance with the *International Building Code* shall be used to divide high-pile storage exceeding 500,000 square feet in area.

h. Not required when an automatic fire-extinguishing system is designed and installed to protect the high-piled storage area in accordance with Sections 2307 and 2308.

i. Draft curtains are permitted ONLY in non-fire sprinkled structures as per Section 2306.7. and 910.3.4.

TTTT. Section 2311. Add a new Section 2311 to read as follows: “Section 2311 Buildings Containing areas capable of accommodating high piled storage.”

UUUU. Section 2311.1. Add a new Section 2311.1 to read as follows: “2311.1 General. Any building containing an area capable of accommodating high piled storage, but which is not being utilized as such, shall be maintained in accordance with Section 2311.”

VVVV. Section 2311.2. Add a new Section 2311.2 to read as follows: “2311.2 Permits. For a permit to use a building or portion thereof as an area capable of accommodating High-piled storage, see Section 105.6.23.”

WWWW. Section 2311.3. Add a new Section 2311.3 to read as follows: “2311.3. Acknowledgement of responsibility. The owner or the owner’s designated representative shall acknowledge in writing the stipulation that in the event such structure is used for high piled storage, the Fire Prevention Division shall be notified and compliance with this article shall become compulsory.”

XXXX. Section 2311.4. Add a new Section 2311.4 to read as follows: “2311.4. Storage Height. An approved method of delineating permissible storage height shall be Provided and maintained within all areas capable of accommodating high piled storage. Proper “No Stacking Above This Line By Order of the Fire Department” signs shall be posted.” (Ord. 1302 §1, 2005)

### CHAPTER 33

YYYY. Section 3301.1.3. Delete Exception 4.

ZZZZ. Section 3301.2.2. Amend Section 3301.2.2 to read as follows: “No person shall construct a retail display nor offer for sale explosives, explosive materials, or fireworks within the City of Fountain.”

AAAAA. Section 3308.11. Delete Section 3308.11 in its entirety.  
(Ord. 1302 §1, 2005)

### CHAPTER 45

BBBBB. NFPA add the following sentence to the Section titled NFPA: “Applicable NFPA standards shall be the current most updated edition.” (Ord. 1302 §1, 2005)

#### APPENDIX A

CCCCC. Appendix A. Delete entire Appendix A and replace with the following:  
“Appendix A, Board of Appeals:

Section A101 Board of Appeals Established. In order to hear and decide appeals of orders, decisions or determinations made by the Fire Code Official relative to the application and interpretation of this code, there shall be and hereby created a board for the purpose of hearing appeals. The Board shall be the Board of Adjustment as established pursuant to Chapter 2.15 of the Fountain Municipal Code. Where the term “Board of Appeals” is used in the *International Fire Code*, it shall mean the Board of Adjustment of the City of Fountain. When hearing issues relative to this code the Board of Adjustment shall operate in accordance with Appendix A of this Code and Chapter 2.15 of the Fountain Municipal Code.

Section A102 Scope. The Board of Appeals/Adjustments shall be authorized to hear evidence from the appellants and the Fire Code Official pertaining to the application and intent of this code for the purpose of issuing orders pursuant to these provisions.

Section A103 Decisions. Every decision shall be promptly filled in writing in the office of the Fire Code Official and shall be open to public inspection. A certified copy shall be sent by mail or otherwise delivered to the appellant. A copy shall be publicly posted at each of the fire stations for a period of 2 weeks after filing. (Ord. 1302 §1, 2005)

#### APPENDIX B

DDDDD. Section B105.1. Delete Section B105.1 and replace with the following:  
“B105.1. One and two-family dwellings. The minimum fire-flow requirements for one and two-family dwellings having a fire flow calculation area, which does not exceed 3,600 square feet shall be 1,500 gallons per minute. Fire flow and flow duration for dwellings having a fire flow calculation area in excess of 3,600 square feet shall not be less than that specified in Table B105.1. Exception: A reduction in required fire flow of 50%, as approved by the Fire Chief, is allowed when the building is provided with a voluntarily installed approved automatic fire sprinkler system.”

EEEEEE. Section B105.2. Delete the exception of Section B105.2 and replace with the following: “Exception: A reduction in required fire flow of 50%, as approved by the Fire Chief, is allowed when the building is provided with an approved automatic fire sprinkler system, which is voluntarily installed in accordance with Section 903.3.1.1 or 903.3.3.1.2 of the *International Fire Code*. The resulting fire flow shall not be less than 1,500 gallons per minute for the prescribed duration as specified in table B105.1.”

FFFFF. Table B105.1. Delete footnote 'a' from Table B105.1. (Ord. 1302 §1, 2005)

### APPENDIX C

GGGGG. Section C105.1. Amend Section C105.1 to read as follows: "Residential areas with one and two family dwellings with a square footage of less than 6200 Sq. ft. shall have a hydrant spacing of 500 feet driving distance or less. The maximum distance from any point on the street to a fire hydrant shall be 250 feet or less. Except for residential areas listed above average fire hydrant spacing shall not exceed that listed in table C105.1.

HHHHH. Section C105.2. Add new Section C105.2 to read as follows: "In Commercial areas the maximum average hydrant spacing shall be 300 ft. or less. The maximum distance from any point on the street to a fire hydrant shall be 200 feet or less in commercial areas regardless of fire flow. For a commercial building to receive credit for a fire hydrant it shall be 250 ft. or less driving distance from the building."

IIIII. Section C105.3. Add new Section C105.3 to read as follows: "Dead ends. A fire hydrant is required in each dead end or cul-de-sac. (Ord. 1302 §1, 2005)

### APPENDIX D

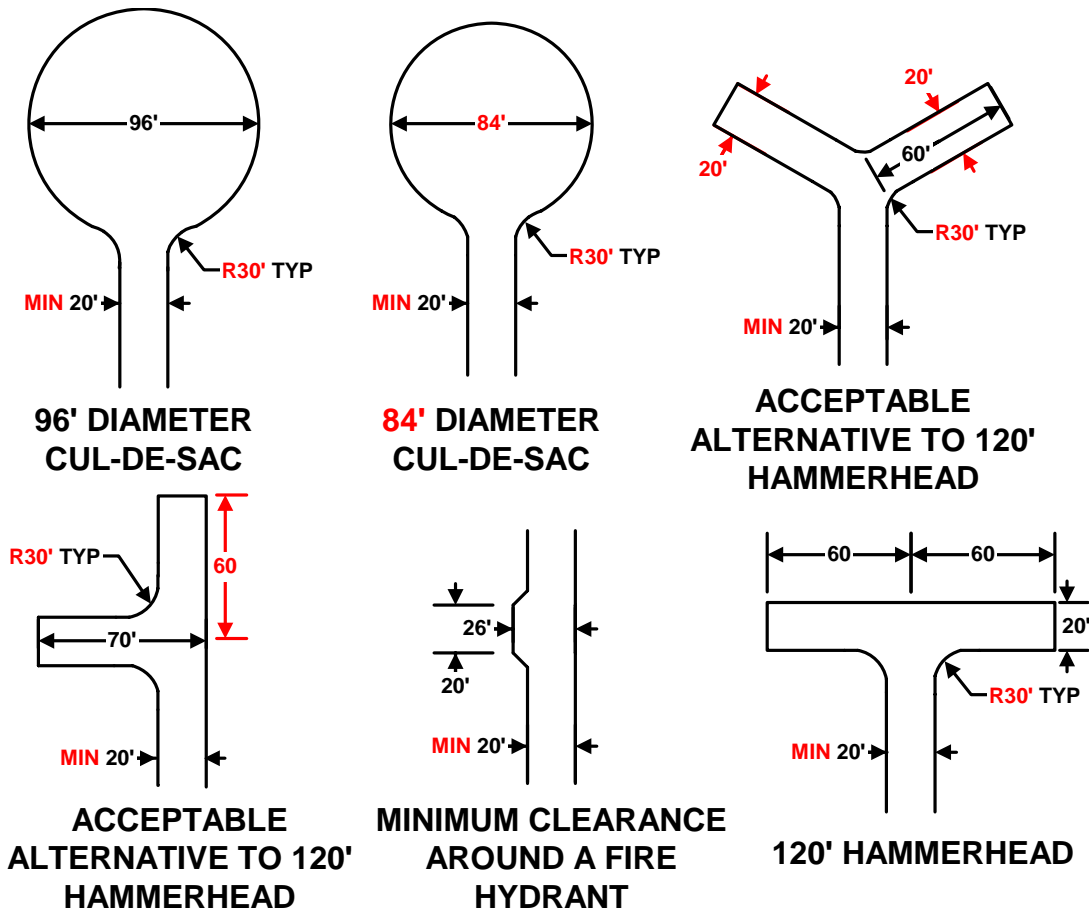
JJJJJ. Section D102.1. Amend Section D102.1 to read as follows: "D102.1 Access and loading. Facilities, buildings or portions of buildings hereafter constructed shall be accessible to fire department apparatus by way of an approved fire apparatus access road with an asphalt, concrete or other approved driving surface capable of supporting the imposed load of fire apparatus weighing at least 75,000 pounds (34,050 kg) with a minimum single axle weight of 27,000 pounds. Alternative methods such as brick pavers, road base, and gravel, etc., may be considered on a case by case basis. A State of Colorado Certified Civil Engineer must approve the design and installation as being capable of supporting 80,000 pounds gross vehicle weight in all weather conditions."

KKKKK. Section D103.1. Amend Section D103.1 to read as follows: "D103.1 Access road width with a hydrant. Access road width with a hydrant, complying with Figure D103.1, where a fire hydrant is located on a fire apparatus access road, the minimum road width shall be 26 feet (7925 mm) and an unobstructed vertical clearance of not less than 14 feet."

LLLLL. Figure D103.1. Delete Figure D103.1 and replace with the following:

FIGURE D103.1  
MINIMUM DEAD-END FIRE APPARATUS ACCESS ROAD TURNAROUND.





LLLLL. Section D103.4. Amend Section to read as follows: “D103.4 Dead Ends. Dead end fire apparatus access roads in excess of 150 feet shall be provided with width and turnaround provisions in accordance with Table D103.4”

**TABLE D103.4  
MINIMUM REQUIREMENTS FOR DEAD-END FIRE  
APPARATUS ACCESS ROADS**

LENGTH (feet)	WIDTH (feet)	TURNAROUNDS REQUIRED
0 – 150	20	None required
150 – 500	20	120 feet “Hammerhead,” 60 feet “Y” or 96 feet diameter cul-de-sac in accordance with Figure D103.1
501 – 750	26	120 feet Hammerhead, 60 feet “Y” or 96 feet Diameter cul-de-sac in accordance with Figure D103.1
Over 750	Special approval required	

**For SI: 1 Foot = 304.8 mm**

MMMMM. Section D103.6. Amend Section D103.6 to read as follows: “D103.6 Fire apparatus access road marking. Where required by the Fire Department, fire apparatus access roads shall be provided with permanent no parking fire lane markings in accordance with this section by either striping in accordance with Section D103.7 and/or with signs in accordance with Section D103.8.”

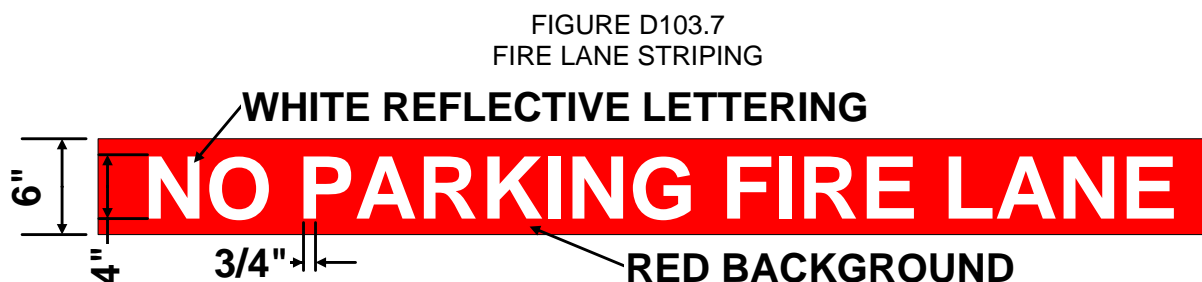
NNNNN. Section D103.6.1 Amend Section D103.6.1 to read as follows: “D103.6.1 Roads less than 26 feet in width. Fire apparatus access roads less than 26 feet wide shall be marked on both sides as a fire lane.” (Ord. 1445, §4, 2009)

OOOOO. Section D103.6.2 Amend Section D103.6.2 to read as follows: “D103.6.2 Roads at least 26 feet in width and less than 31 feet in width. Fire apparatus access roads at least 26 feet wide and less than 31 feet wide shall be marked on one side of the road as a fire lane.” (Ord. 1445, §4, 2009)

PPPPP. Section D103.6.3 Amend new Section D103.6.3 to read as follows: “D103.6.3 Roads at least 31 feet in width. Fire apparatus access roads at least 31 feet wide shall not require marking as a fire lane.” (Ord. 1445, §4, 2009)

QQQQQ. Section D103.7. Add a new Section D103.7 to read as follows: “D103.7 Striping. Complying with Figure D103.7, fire apparatus access roads shall be marked by painted Lines of red traffic paint six (6) inches in width to show the boundaries of the lane. The words “No Parking Fire Lane” shall appear in four (4) inch white reflective letters at twenty-five (25) feet intervals on the red border markings along both sides of the fire lanes. Where a curb is available, the striping shall be on the vertical face of the curb.”

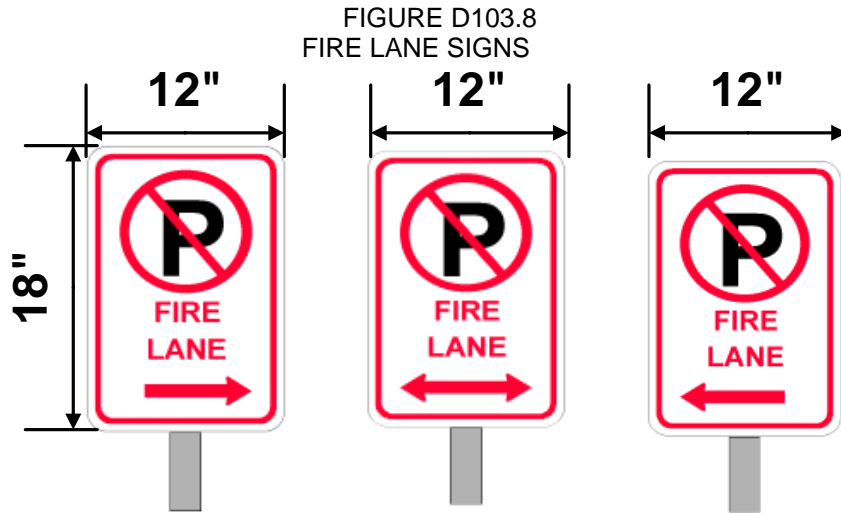
RRRRR. Figure D103.7. Add a new Figure D103.7 as follows:



SSSSS. Section D103.8. Add a new Section D103.8 to read as follows: “D103.8 Signs. Where required by the Fire Department, fire apparatus access roads shall be marked with permanent No Parking Fire Lane signs complying with Figure D103.8. Signs shall have a white background with letters and borders in red, using not less than two-inch lettering and have a minimum dimension of 12 inches wide by 18 inches high. Signs shall be posted on one or both sides of the fire apparatus access road as required by Section D103.6. Signs

shall indicate the beginning and ending of the fire apparatus access road and shall be spaced no more than two hundred (200) feet apart. Signs may be installed on permanent buildings or walls or as approved by the Fire Department.”

TTTTT. Figure D103.8. Add a new Figure D103.8 as follows: (Ord. 1302 §1, 2005)



15.16.080: Violation – Penalty:

A. It is unlawful for any person to violate any of the provisions of this Chapter including any provision of the *International Fire Code, International Fire Code Appendices, International Fire Code Amendments* as adopted by this Chapter.

B. Every person convicted of a violation of any provision set forth in this Chapter shall be punished by a fine of not more than One Thousand Dollars (\$1,000) or by imprisonment not exceeding one year, or both such fine and imprisonment. Each and every day during which such violation shall occur and continue to occur shall be a separate offense. (Ord. 1302 §1, 2005)

**TITLE 16**

**Title 16**

**BUILDING**

Sections:

- 16.01.010 Adoption of the Pikes Peak Regional Building Code
- 16.01.020 Copies on File

16.01.030	Applicability
16.01.040	Interpretation
16.01.050	Violations
16.01.060	Authority of the Building Official to Impose a Fine
16.01.070	Failure to Obey Order
16.01.080	Felony and Criminal Fraud
16.01.090	Contractor Penalty Provisions
16.01.091	Punishable Acts and Omissions
16.01.092	Automatic Revocation or Suspension
16.01.093	Voluntary Suspension
16.01.100	Altering, Defacing or Removing a Numeric Address
16.01.110	Failure to Abate a Swimming Pool Nuisance
16.01.120	Amendments to Regional Building Code

16.01.010 Adoption of the Pikes Peak Regional Building Code. Pursuant to the Charter of the City of Fountain and pursuant to Part 2 of Article 16 of Title 31 Colorado Revised Statutes, the 2005 edition of the Pikes Peak Regional Building Code as published by the Pikes Peak Regional Building Department, 2880 International Circle, Suite 100, Colorado Springs, Colorado 80910-3148 including all codes referred to therein, hereinafter referred to as “this Code”, and attached hereto as Exhibit 1, is hereby adopted by reference and enacted as the building code of the City of Fountain. This Code is being adopted and incorporated fully as if set out at length, subject to modifications, additions or deletions as set forth in this title. (Ord. 1257 §1, 2005)

16.01.020 Copies on File. Three (3) copies of this Code are now on file in the office of the City Clerk and may be inspected during regular business hours. The City Clerk shall delegate responsibility to maintain a reasonable supply of copies of this Code, available for purchase by the public at a reasonable price to the Pikes Peak Regional Building Department. (Ord. 1257 §1, 2005)

16.01.030 Applicability. This Code shall apply to every building or structure the use of which the City has jurisdiction and authority to regulate. (Ord. 1257 §1, 2005)

16.01.040 Interpretation. This Code shall be so interpreted and construed as to effectuate its general purpose to make uniform the local building regulations contained herein. (Ord. 1257 §1, 2005)

16.01.050 Violations. Every person convicted of a violation of any provision set forth in Title 16 of this Code shall be punished by a fine of not more than One Thousand Dollars (\$1,000) or by imprisonment not to exceed one (1) year, or by both such fine and imprisonment. A separate offense shall be deemed committed for each and every calendar day during which such illegal erection, construction, reconstruction, alteration, maintenance, or use continues. In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered or remodeled, used or maintained in violation of this Code or of any provision of the Building Code, the City Attorney, 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, remodeling, maintenance or use. (Ord. 1257 §1, 2005)

16.01.060 Authority of the Building Official to Impose a Fine. The Building Official may impose an administrative fine in an amount of up to One Thousand Dollars (\$1,000) on any person or entity engaged in any construction consulting work or construction work covered by this Code within the City who engages in said work in violation of any provisions of this Code. Appeals to such action may be made as provided for elsewhere in this Code. The Building Official shall make monthly reports of such imposed fines to the Regional Board of Review. (Ord. 1257 §1, 2005)

16.01.070 Failure to Obey Order. If, after any order of the Building Official or Board of Appeals made pursuant to Section RBC112 of this Code (Dangerous Buildings) has become final, the person to whom such order is directed fails, neglects or refuses to obey such order, the Building Official may either cause such person to be prosecuted under Section RBC112.3.11 of this Code or institute any appropriate action to abate such building as a public nuisance. (Ord. 1257 §1, 2005)

16.01.080 Felony and Criminal Fraud. No person or entity convicted by a court having competent jurisdiction of a felony, or for civil or criminal fraud, constructive or actual, for work related to any license issued by the Building Department, or for work related to the building trades in any jurisdiction, shall be granted a license or registration, or serve as an examinee for a contractor in the City. (Ord. 1257 §1, 2005)

16.01.090 Contractor Penalty Provisions.

16.01.091 Punishable Acts and Omissions.

The following actions shall be considered punishable:

1. Willfully violating any provisions of the Building Code including any codes which are adopted by reference.
2. Failure to comply with any lawful order of the Building Official or of any other authorized representative employed by the Building Department pertaining to the administration of the Building Code and the codes which have been adopted by reference.
3. Using a contractor's license to obtain permits required under the Building Code for work that will not be performed by or supervised by the contractor.
4. Misrepresentation by an applicant of a material fact when applying for a contractor's license.
5. Failure to obtain a proper permit for any work for which a permit is required by virtue of the Building Code.

6. Commitment of any act of willful and wanton negligence in the conduct of the contractor's or other person's specific trade or business on work done by the contractor or other person that is regulated by the provisions of the Building Code.
7. Ordinary negligence of the contractor or other person, evidenced by letters of reprimand and/or incident reports received by the contractor within a three (3) year time period that are, in the judgment of the Board of Review, sufficient in number and severity to warrant revocation or suspension of the contractor's license. (Ord. 1257 §1, 2005)

16.01.092 Automatic Revocation or Suspension.

A license or registration, or the right of an examinee or principal of the contractor to serve as a contractor or as an examinee of a contractor, shall automatically be suspended or revoked by the Building Official as follows:

1. Registrations within this jurisdiction shall be automatically revoked or suspended upon revocation, suspension or refusal to renew any required Colorado state license.
2. Any license or registration within this jurisdiction shall be automatically suspended upon lapse, cancellation, or reduction of insurance coverage below that required by Section RBC201.7 of the Building Code. This suspension shall remain in effect until proof of the reinstatement of the required coverage is presented to the Building Department. Failure to present this proof within twelve (12) months from the date of the lapse, cancellation, or reduction shall result in automatic revocation of the license or registration.
3. Conviction by a court having competent jurisdiction of the contractor and/or its examinee or registrant for a felony, or for civil or criminal fraud, constructive or actual, for work related to any license under the Building Code, shall result in automatic revocation of the license or registration and revocation of the right of the examinee, registrant, or principals of the contractor to serve as contractor or examinee or registrant for another contractor after notification by the Board of Review. The notification shall be served personally or posted by certified mail, return receipt requested, to the last known mailing address. (Ord. 1257 §1, 2005)

16.01.093 Voluntary Suspension.

1. The Board of Review may suspend licenses or registrations upon the voluntary written request for this action by the contractor. These suspensions shall not exceed a period of twelve (12) months unless a notarized annual certification from the contractor's employer is furnished to the Building

Department indicating that the contractor is engaged in an active capacity in the field of building construction

2. While under voluntary suspension, the contractor need not carry insurance, but shall be responsible for all license or registration fees normally due.
3. The voluntary suspension shall be automatically lifted at any point during the twelve (12) month period under the following conditions:

Written request is made to the Board of Review by the contractor.

Proof of insurance is provided in accordance with Section RBC201.7 of the Building Code.

4. In the event the contractor does not rescind the voluntary suspension within the twelve (12) month period as provided in paragraph 3 above, or furnish proof of active engagement in the construction field, as provided in paragraph 1 above, in order to obtain a new license or registration, the contractor must then meet all requirements of Sections RBC201.5 and RBC201.6 of this Code. (Ord. 1257 §1, 2005)

#### 16.01.100 Altering, Defacing or Removing a Numeric Address.

It shall be unlawful for any person to alter, deface or remove any number placed on any premises in accordance with the requirements of Section RBC312 of the Building Code, except for repair or replacement of such number. Upon notice, actual or otherwise, repair or replacement of any number shall be completed within a twenty-four (24) hour time period. (Ord. 1257 §1, 2005)

#### 16.01.110 Failure to Abate a Swimming Pool Nuisance.

Any party responsible for the operation of a swimming pool not in compliance with Section RBC314 of this Code, or who fails to obey an order of the Building Official to abate the nuisance involved, or who refuses to permit the Building Official or the Building Official's authorized representative to inspect the swimming pool, shall be guilty of a misdemeanor. (Ord. 1257 §1, 2005)

16.01.120 Amendments to Regional Building Code. The 2005 edition of the Pikes Peak Regional Building Code is subject to the following modifications, additions or deletions as hereinafter set forth:

A. RBC101.8. Amend RBC101.8 by deleting "shall be fined not more than five hundred dollars (\$500) or imprisoned not more than ninety (90) days" and substituting therefore "shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than one (1) year." (Ord. 1257 §1, 2005)

The following amendments to the Pikes Peak Regional Building Code as adopted pursuant to section 16.01.010 of the Fountain Municipal Code are accepted and approved by the City of Fountain as a participating jurisdiction in the Pikes Peak Regional Building Department: (Ord. 1417, §2, 2008)

**Section RBC201.10.4. Delete and replace with the following:**

**Section RBC201.10.4 Renewal with Fees.** Failure to renew a license within this (45) calendar day period after the expiration date of the license will require payment of a penalty at (½) of the license fee if renewed within ninety (90) days of the expiration date. After (90) days to (135) days the penalty will be equal to the license fee, after (135) days up to (180) days the penalty will be equal to twice the license fee. All requests for renewals after (180) days from the expiration date shall require payment of all fees accrued, re-application, examination, evaluation by the respective Committee, and approval by the Board of Review.

**RBC304.4.58. Delete and replace with the following:**

**RBC304.4.58 603.2 Duct sizing.** Ducts installed in buildings other than single dwelling units shall be sized in accordance with the *ASHRAE Handbook of Fundamentals* or other equivalent computation procedure.

**Section RBC305.4.49. Delete and replace with the following:**

Section RBC305.4.49 406.6.3 Disconnected piping inspection. When existing piping is disconnected from the source of supply (gas meter removed, etc.) in a R-3 occupancy for more than one (1) calendar year, the piping shall be retested in accordance with the requirements of Section 406.4 of the International Fuel Gas Code, 2003 Edition. When existing piping is disconnected from the source of supply (gas meter removed, etc.) in any occupancy other than R-3 for more than six (6) months, the piping shall be retested in accordance with the requirements of Section 406.4 of the International Fuel Gas Code, 2003 Edition.

**Section RBC306.3. Delete and replace with the following:**

RBC306.3 Code Adopted by Reference. There is hereby adopted by reference the International Plumbing Code of the International Code Council, Inc, 4051 West Flossmoor Road, Country Club Hills, Il; 60478-5795, 2003 edition. One copy of the Code is now filed in the office of the City Clerk and may be inspected during regular business hours. The Code is being adopted as if set out at length, to include appendices B, D, E, F, save and except the following which are declared to be non-applicable and therefore expressly deleted:

- 1. Chapter 1, Administration except Section 107.**
- 2. Chapter 5, Water Heaters.**
- 3. Chapter 12, Special Piping and Storage System**

**Section RBC306.4.1, through Section RBC306.4.48. Delete and replace with the following:**

**RBC306.4.1 Section 201.3. Terms defined in other codes. Delete ICC Electrical Code**



and replace with National Electrical Code.

**RBC306.4.2 Section 202.** Add the following general definitions

**BACKFLOW.** Delete the definition for Backwater valve.

**BUILDING DRAIN.** Delete the definition for Combined.

**BUILDING SEWER.** Delete the definition for Combined.

**COMBINED BUILDING DRAIN.** Delete in its entirety.

**COMBINED BUILDING SEWER.** Delete in its entirety.

**CONDUCTOR.** Delete the words “or combined building” from the definition.

**GREASE INTERCEPTOR.** Delete the definition and replace with the following:

An interceptor of at least 750 gallons capacity to serve one (1) or more fixtures and which shall be remotely located.

**RBC306.4.3 Section 301.6. Prohibited locations.** Delete the exception and replace with the following:

**Exception:** Floor drains; sumps and sump pumps shall be permitted at the base of the shaft provided they are in accordance the ASME Elevator Code.

**RBC306.4.4 Table 303.4.** Delete Table 303.4 and replace with the following:

**PRODUCTS AND MATERIALS REQUIRING THIRD-PARTY TESTING AND THIRD-PARTY CERTIFICATION**

<b>PRODUCT OR MATERIAL</b>	<b>THIRD-PARTY CERTIFIED</b>	<b>THIRD-PARTY TESTED</b>
Potable water supply system components and potable water fixture fittings	Required	
Sanitary drainage and vent system components	Plastic pipe, fittings and pipe related components	All others
Waste fixture fittings	Plastic pipe, fittings and pipe related components	All others
Storm drainage system components	Plastic pipe, fittings and pipe related components	All other
Plumbing fixtures	Required	

<b>Plumbing appliances</b>	<b>Required</b>
<b>Backflow prevention devices</b>	<b>Required</b>
<b>Water Distribution system safety devices</b>	<b>Required</b>
<b>Special waste system components</b>	<b>Required</b>

**RBC306.4.5 Section 305.5. Pipes through or under footings or foundation walls. Delete the last sentence and replace with the following:**

**The minimum annular space between the pipe and the sleeve shall be 1/2 inch.**

**RBC306.4.6 Section 305.6. Freezing. Delete the last sentence and replace with the following:**

Exterior water supply system piping shall be installed not less than 12 inches below the frost line and not less than 60 inches below grade.

**RBC306.4.7 Section 305.6.1 Sewer depth. Delete in its entirety.**

**RBC306.4.8 Section 308.6 Sway bracing. Delete in its entirety.**

**RBC306.4.9 Table 308.5. Hanger spacing. Add footnote “c” reading:**

c. 4 inch and smaller cast iron pipe shall be supported at every joint, pipe larger than 4 inch, at every other joint.

**RBC306.4.10 Section 308.9. Stacks. Delete in its entirety.**

**RBC306.4.11 Section 310.1. Light and ventilation. Delete in its entirety.**

**RBC306.4.12 Section 310.2. Location of fixtures and piping. Delete in its entirety.**

**RBC306.4.13 Section 310.3. Interior finish. Delete in its entirety.**

**RBC306.4.14. Add Section 310.5 and its exceptions to read:**

**Urinal partitions. Each urinal utilized by the public or employees shall occupy a separate area with walls or partitions to provide privacy. The construction of such walls or partitions shall incorporate waterproof, smooth, readily cleanable and nonabsorbent finish surfaces. The walls or partitions shall begin at a height not more than 12 inches (305mm) from and extend not less than 60 inches (1524mm) above the finished floor surface. The walls or partitions shall extend from the wall surface at each side of the urinal a minimum 18 inches (457mm) or to a point not less than 6 inches (152mm) beyond the outermost lip of the urinal measured from the finished back wall, whichever is greater.**

**Exceptions:**

1. **Urinal partitions shall not be required in a single occupancy or unisex toilet room with a lockable door.**
2. **Toilet rooms in a daycare and child care facilities containing two or more urinals shall be permitted to have one urinal without partitions.**

**RBC306.4.15 Section 311. Toilet facilities for workers. Delete in its entirety.**

**RBC306.4.16 Section 312.1. Required tests. Delete the words “for piping systems other than plastic” from the section.**

**RBC306.4.17 Section 312.1.1. Test gauges. Delete items 1, 2, and 3, replace with the following:**

Test pressure gauge scales shall be graduated over a range of not less than one and one-half times and not greater than four times the maximum test pressure. Gauge increments shall be no greater than one pound for tests of 10 pounds or less nor greater than 2 pounds for tests over 10 pounds.

**RBC306.4.18 Section 312.2. Drainage and vent water test. Add an exception to read:**

**Exception: An underslab plumbing base inspection may be tested with no less than a 5-foot head of water.**

**RBC306.4.19 Section 312.4. Drainage and vent final test. Delete in its entirety.**

**RBC306.4.20 Section 312.5. Water supply test. Delete the words “for piping systems other than plastic” from the section.**

**RBC306.4.21 Section 312.6. Gravity sewer test. Delete in its entirety.**

**RBC306.4.22 Section 312.7. Forced sewer test. Delete in its entirety.**

**RBC306.4.23 Section 312.9. Inspection and testing of backflow prevention assemblies. Delete in its entirety.**

**RBC306.4.24 Section 314. Condensate disposal. Delete in its entirety.**

**RBC306.4.25 Section 402.4. Sheet Lead. Delete the section and replace with the following:**  
Sheet lead shall not be used for plumbing fixtures.

**RBC306.4.26 Table 403.1:**

1. Change the wording for lavatories for row 2, Business, to read:  
**1 per 40 for the first 80 and 1 per 80 for the remainder exceeding 80.**
2. **Delete the requirement for Bathtubs/Showers from No. 8, Storage.**

**RBC306.4.27 Table 403.1. Add the following exceptions after the footnotes:**

**Exception:**

- 1. Bar sinks may be substituted for drinking fountains.**
- 2. A service sink and drinking fountain are not required if separate facilities are not required for each gender.**
3. Building categories not shown on this table shall be considered separately by the Building Official.

**RBC306.4.28 Section 403.2. Separate facilities. Delete Exception No. 4 and replace with:**

4. In mercantile or storage occupancies with a total floor area of 3,000 square feet (278.7 m) or less, one toilet facility, designed for use by no more than one person at a time, shall satisfy the requirements for serving customers and employees of both genders.

**RBC306.4.29 Section 405.3.2. Public lavatories. Add an exception to read:**

**Exception: E occupancies.**

**RBC306.4.30 Section 405.5. Water- tight joints. Add an exception to read:**

**Exception: Floor mounted water closets or bidets.**

**RBC306.4.31 Section 406.1. Approval. Delete in its entirety.**

**RBC306.4.32 Section 406.3. Waste connection. Delete the last sentence. Add an exception to read:**

**Exception: Gravity drain clothes washers may drain into an indirect waste receptor.**

**RBC306.4.33 Section 409.1. Approval. Delete in its entirety.**

**RBC306.4.34 Section 410.1. Approval. Delete the last sentence.**

**RBC306.4.35. Add new Section 412.5 to read:**

**Section 412.5 Floor drain locations. An emergency floor drain shall be provided in the same room within five (5) feet of a water meter and/or water service backflow prevention device.**

**RBC306.4.36 Section 413.1. Approval. Delete the first and second sentences.**

**RBC306.4.37 Section 416.2. Cultured marble lavatories. Delete in its entirety.**

**RBC06.4.38 Section 417.5.2.3. Sheet lead. Delete in its entirety.**

**RBC306.4.39. Chapter 5 Water Heaters. Delete in its entirety (see RBC305.4.103 Section 624. Water Heaters).**

**RBC306.4.40 Section 601.1. Scope. Add an exception to read:**

**Exception: Water supply systems owned and operated by municipalities, rural water districts, privately owned water purveyors and other such entities.**

**RBC306.4.41 Section 602.3.3. Water quality. Delete the words, "prior to connection to the plumbing system" in the last sentence.**

**RBC306.4.42 Section 602.3.4. Disinfection of system. Delete in its entirety.**

**RBC306.4.43 Section 602.3.5. Pumps. Delete the last two sentences.**

**RBC306.4.44 Section 602.3.5.1. Pump enclosure. Delete the first sentence.**

**RBC306.4.45 Section 604.2. System interconnection. Delete in its entirety.**

**RBC306.4.46 Section 604.3. Add an exception to read:**

**Exception: For 3- and 4- plex residential occupancies, one- and two-family residential occupancies use Appendix E Section, E201.3**

**RBC306.4.47 Section 604.9. Water hammer. Add exception:**

**Exception: Single family dwellings.**

**RBC306.4.48 Section 605.5. Fittings. Delete the sentence reading: The fittings shall not have ledges, shoulders or reductions capable of retarding or obstructing flow in the piping.**

**RBC306.4.49 Section 605.9. Prohibited joints and connections. Delete Item No. 4. Saddle type fittings.**

**RBC306.4.50 Section 606.1. Location of full open valves. Change Item No. 4 to read:**

4. On the base of every water pipe riser in occupancies other than 3- and 4-plex residential occupancies that are two stories or less in height and in one- and two-family residential occupancies.

**Add Item No. 9 to read:**

9. On the water supply pipe to each irrigation system.

**RBC306.4.51 Section 606.2. Location of shutoff valves. Change Item No. 1 to read:**

1. On the fixture supply at each plumbing fixture other than bathtubs and showers in one- and two-family residential occupancies, and other than in guestrooms that are provided with individual shutoff valves in hotels, motels, boarding houses, and similar occupancies.

**Delete Item No. 2 in its entirety.**

**Add an exception to read:**

**Exception: Manifold systems with individual shutoff valves for each fixture at the manifold.**

**RBC306.4.52 Section 606.4. Valve identification. Delete in its entirety.**

**RBC306.4.53 Section 607.2.1. Piping insulation. Add exception to read:**

**Exception: Where the circulating hot water system pump is controlled by an integral timer.**

**RBC306.4.54 Section 607.2.3. Recirculating pump. Add to the end of the sentence: “or install per manufacturer’s instructions.”**

**RBC306.4.55 Section 607.4. Flow of hot water to fixtures. Add an exception to read:**

**Exception: Deck mounted tub faucets.**

**RBC306.4.56 Section 608.15. Add an exception to read:**

**Exception: This section shall not apply to kitchen sink and personal shower sprays in R occupancies.**

**RBC306.4.57 Section 608.16.3. Heat exchangers. Add exception to read:**

**Exception: R-3 occupancies**

**RBC306.4.58 Section 608.16.9. Dental pump equipment. Delete the words “in accordance with Sections 608.13.1, 608.13.2, 608.13.3, 608.13.7, or 608.13.8.”**

**RBC306.4.59 Section 608.17. Protection of individual water supplies. Add a period after the word “contamination,” delete the rest of the sentence and section.**

**RBC306.4.60 Section 610. Disinfection of potable water system. Delete in its entirety.**

**RBC306.4.61 Section 701.2. Sewer required. Delete the words “in accordance with the International Private Sewage Disposal Code.”**

**RBC306.4.62 Section 701.5. Damage to drainage system or public sewer. Delete the words “as directed by the code official”.**

**RBC306.4.63 Section 702.3. Building sewer pipe. Delete in its entirety.**

**RBC306.4.64 Section 702.6. Lead bends and traps. Delete in its entirety.**

**RBC306.4.65 Section 703. Building Sewer. Delete in its entirety.**

**RBC306.4.66 Section 705.8.2. Solvent cementing. Add the following exception:**

**Exception: Clear primer is acceptable.**

**RBC306.4.67 Section 705.14.2. Solvent cementing. Add the following exception:**

**Exception: Clear primer is acceptable.**

**RBC306.4.68 Table 706.3. Fittings for change of direction. Delete footnotes a and b.**

**RBC306.4.69 Section 708.3.1. Horizontal drains within buildings. Delete and replace with the following:**

Each horizontal drainage pipe shall be provided with a clean out at its upper terminal and each run of piping, which is more than one hundred (100) feet in total developed length, shall be provided with a cleanout for each one hundred (100) feet, or fraction thereof in length of such piping.

Exceptions:

- 1. Cleanouts may be omitted on a horizontal drain line less than five feet in length unless such line is serving sinks or urinals.**
- 2. Cleanouts may be omitted on any horizontal drainage pipe installed on a slope of seventy-two degrees (1.26 rad) or less from the vertical (one-fifth bend).**
- 3. Excepting the building drain and its horizontal branches, a cleanout shall not be required on any pipe or piping which is above the floor level of the lowest floor of the building.**
- 4. An approved type of two-way cleanout fitting, installed inside the building wall near the connection between the building drain and building sewer or installed outside of a building at the lower end of the building drain and extended to grade, may be substituted for an upper terminal cleanout.**

**RBC306.4.70 Section 708.3.2. Building Sewers. Delete in its entirety.**

**RBC306.4.71 Section 708.3.3. Changes of direction. Delete and replace with the following:**

An additional cleanout shall be provided in a drainage line for each aggregate horizontal change of direction exceeding one hundred thirty five (135) degrees (2.36 rad).

**RBC306.4.72 Section 708.3.4. Base of stack. Delete in its entirety.**

**RBC306.4.73 Section 708.3.6. Manholes. Delete in its entirety.**

**RBC306.4.74 Section 712.2. Valves required. Delete the Exception entirely.**

**RBC306.4.75 Section 712.4.1. Macerating toilet systems. Delete in its entirety.**

**RBC306.4.76 Section 712.4.2. Capacity. Delete exception No. 2.**

**RBC306.4.77 Section 715. Backwater Valves. Delete in its entirety.**

**RBC306.4.78 Section 802.1.7. Commercial dishwashing machines. Delete and replace with the following the following:**

The discharge from a commercial dishwashing machine shall be through an air gap or air break into a standpipe or the tailpiece of a waste receptor.

**RBC306.4.79 Section 904.1. Roof extensions. Replace with the word “six” for “[number]” and change “(mm)” to read “(152mm).”**

**RBC306.4.80 Section 917.3. Where permitted. Delete the section and replace with the following:**

Automatic air admittance valves may be permitted for use on fixtures located on the same floor at the following locations: Islands, peninsulas, under windows, at bearing walls, basement finish, renovations, tenant improvements and other applications where conventional venting methods are not possible due to existing construction and structural conditions.

**RBC306.4.81 Section 1002.4. Trap seals. Delete the second sentence and replace with:**

Where a trap seal is subject to loss by evaporation, a trap seal primer valve, or other approved automatic method to prevent sewer gas from entering the space shall be installed.

**RBC306.4.82 Section 1002.8. Recess for trap connection. Delete in its entirety.**

**RBC306.4.83 Section 1002.10. Plumbing in mental health centers. Delete the section and replace with:**

**Plumbing in correctional and mental health centers. In correctional and mental health centers, pipes and traps shall not be exposed.**

**RBC306.4.84 Section 1003.3.4. Grease traps and grease interceptors. Delete the words “grease interceptor” from the section heading and body.**

**RBC306.4.85 Section 1101.2. Where required. Delete the first sentence and replace with:**

All roofs shall drain into a storm sewer system, or to an approved place of disposal.

**RBC306.4.86 Section 1101.8. Cleanouts required. Delete the exception**

**RBC306.4.87 Section 1101.9. Backwater valves. Delete in its entirety.**

**RBC306.4.88 Section 1102.5. Subsoil drain pipes. Delete in its entirety.**

**RBC306.4.89 Section 1103. Traps. Delete in its entirety.**

**RBC306.4.90 Section 1104.2. Combining storm with sanitary drainage. Delete in its entirety.**



**RBC306.4.91 Section 1108. Combined sanitary and storm system. Delete in its entirety.**

**RBC306.4.92 Section 1111. Subsoil drains. Delete in its entirety.**

**RBC306.4.93 Section 1112. Building Subdrains. Delete and replace with the following:**  
Building Storm Subdrains.

**RBC306.4.94 Section 1112.1. Building Subdrains. Delete and replace with the following:**  
Building Storm Subdrains. Building storm subdrains located below the public storm sewer level shall discharge into a sump or receiving tank, the contents of which shall be automatically lifted and discharged into the storm drainage system as required for building sumps. The sump and pumping equipment shall comply with section 1113.1.

**RBC308.4.29. Delete and correct typographical error with the following:**

**RBC308.4.29 803.2.8 Duct and plenum insulation and sealing. All supply and return air ducts and plenums shall be insulated with a minimum of R-5 insulation when located in unconditioned spaces inside the building and of R-8 insulation when located outside the building envelope. When located within a building envelope assembly, the duct or plenum shall be separated from the building exterior or unconditioned or exempt spaces by a minimum of R-8 insulation. All supply air ducts located within a return air plenum shall be insulated with a minimum of R-4.2 insulation.**

(Ord. 1417, §2, 2008)

## Chapter 16.10

### FLOODPLAIN MANAGEMENT REGULATIONS

Sections:

16.10.010	Statutory Authorization
16.10.020	Findings of Fact
16.10.030	Statement of Purpose
16.10.040	Methods of Reducing Flood Losses
16.10.050	Definitions
16.10.060	Lands to Which This Section Applies
16.10.070	Basis for Establishing the Areas of Special Flood Hazard
16.10.080	Compliance
16.10.090	Penalties for Noncompliance
16.10.100	Abrogation and Greater Restrictions
16.10.110	Interpretation
16.10.120	Warning of Disclaimer of Liability
16.10.130	Establishment of Development Permit

- 16.10.140 Designation of the Floodplain Administrator
- 16.10.150 Duties and Responsibilities of the Floodplain Administrator
- 16.10.160 Variance Procedure
- 16.10.170 General Standards
- 16.10.180 Specific Standards
- 16.10.190 Floodways

16.10.010 Statutory Authorization. The Legislature of the State of Colorado has delegated in Section 31-23-301, Colorado Revised Statutes, the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the City of Fountain does ordain as set out in this Section. (Ord. 1183, §1, 2002)

16.10.020 Findings of Fact.

A. The flood hazard areas of the Fountain are subject to periodic inundation which could result in loss of life and property, health and safety hazards, disruption commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which could adversely affect the public health, safety and general welfare.

B. These flood losses could be caused by the cumulative effect of obstructions in areas of special flood hazards, which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss. (Ord. 1183, §1, 2002)

16.10.030 Statement of Purpose. It is the purpose of this section to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- A. To protect human life and health;
- B. To minimize expenditure of public money for costly flood control projects;
- C. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. To minimize prolonged business interruptions;
- E. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;
- F. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard;

G. To insure that potential buyers are notified that the property is in an area of special flood hazard; and

H. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions. (Ord. 1183, §1, 2002)

16.10.040 Methods of Reducing Flood Losses. In order to accomplish its purposes, this section includes methods and provisions for:

A. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increase in erosion or in flood heights or velocities;

B. Requiring that uses vulnerable to floods, including facilities, which serve such uses, be protected against flood damage at the time of initial construction;

C. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel floodwaters;

D. Controlling filling, grading, dredging, and other development which may increase flood damage; and

E. Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards in other areas.

F. Prohibiting any development in regulatory floodways if any increase in flood levels during the base flood discharge would result. (Ord. 1183, §1, 2002)

16.10.050 Definitions. Unless specifically defined below, words or phrases used in this section shall be interpreted so as to give them the meaning they have in common usage and to give this section its most reasonable application.

A. "Appeal" means a request for a review of the Floodplain Administrator's interpretation of any provision of this section or a request for a variance.

B. "Area of special hazard" means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.

C. "Base flood" means the flood having one percent chance of being equaled or exceeded in any given year.

D. "Critical feature" means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

E. "Development activities" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining dredging, filling

grading, paving, excavation, or drilling operations located within the area of special flood hazard.

F. “Development permit” means the permit issued by the floodplain administrator before a development occurs within any area of special flood hazard.

G. “Existing manufactured home park or subdivision” means a manufactured home park for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) are completed before the effective date of the ordinance codified herein.

H. “Expansion to existing manufactured home park or subdivision” means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

I. “Flood” or flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from the unusual and rapid accumulation or runoff of surface waters from any source.

J. “Flood Insurance Rate Map (FIRM)” means the official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

K. “Flood insurance study” means the official report provided by the Federal Emergency Management Agency that includes flood profiles, the flood boundary-floodway map, and the water surface elevation of the base flood.

L. “Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

M. “Floodway fringe” means those areas denoted on the floodway map that are adjacent to the floodway and within the one-hundred-year floodplain.

N. “Levee” means a man-made structure, usually an earthen embankment, designed and constructed to contain, control, or divert the flow of water to provide protection from flooding.

O. “Levee system” means a flood protection system, which consists of a levee, or levees, and associated structures, such as closure and drainage devices.

P. “Manufactured home” means a structure that is transportable in one or more sections, built on a permanent chassis, and designed to be used with or without a permanent foundation when connected to the required utilities, for purposes of these regulations, manufactured home

also includes recreational vehicles or travel trailers placed on a site for more than one hundred eighty (180) days.

Q. “Manufactured home park or subdivision” means a parcel of land divided into two or more manufactured home lots for rent or sale.

R. “Mean sea level” means the National Geodetic Vertical Datum (NGVD) or other datum, to which base flood elevations shown on a community’s Flood Insurance Rate Map are referenced.

S. “New construction” means structures for which the ‘start of construction’ commences on or after the effective date of these regulations.

T. “Recreational vehicle” means a vehicle which is built on a single chassis; four-hundred square feet or less when measured at the largest horizontal projections; designed to be self-propelled or permanently towable by a light duty truck; and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

U. “Start of construction” means the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, installation of piles, construction of columns or any work beyond the stage of excavation. For a structure without a basement or poured footings, the “start of construction” includes the first permanent framing or assembly of a structure or any part thereof on its piling or foundation. For manufactured homes, “start of construction” means the date of placement of the manufactured home to its permanent site.

V. “Structure” means something built or constructed; an improvement. A structure is usually anything that is more than eighteen inches off the ground, which cannot be lifted by a person without mechanical aid, or any production or piece of work, artificially built up or composed of parts joined together in some defined manner. This term also applies to such construction as swimming pools, fences, tennis courts and satellite dishes.

W. “Substantial improvement” means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty percent of the market value of the structure either:

1. Before the improvement or repair is started; or
2. If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, ‘substantial improvement’ is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

1. Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or

2. Any alteration of a structure listed on the National register of Historic Places or a state Inventory of Historic Places.

X. “Variance” means a grant of relief from the requirements of this section, which permits construction in a manner that would otherwise be prohibited by this section. (Ord. 1183, §1, 2002)

16.10.060 Lands to which this section applies. This section shall apply to all areas of special flood hazard within the jurisdiction of the City of Fountain. (Ord. 1183, §1, 2002)

16.10.070 Basis for Establishing the Areas of Special Flood Hazard. The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled “The Flood Insurance Study El Paso County, Colorado and Incorporated Areas,” with accompanying Flood Insurance Rate Maps and any amendments, is adopted by reference and declared to be a part of this section. The Flood Insurance Study is part of this section. (Ord. 1183, §1, 2002)

16.10.080 Compliance. No structure or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this section and other applicable regulations. (Ord. 1183, §1, 2002)

16.10.090 Penalties for Noncompliance. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this regulation and other applicable regulations. Violations of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall be subject to the following penalty:

A. Whenever in this code an ordinance heretofore enacted and still in full force and effect or any other ordinance of the county hereafter enacted or any section or a rule or regulation promulgated under the authority of any ordinance hereafter enacted, any act is prohibited or is made or is declared to be unlawful or an offense or misdemeanor for the doing of any act is required or the failure to do any act is declared to be unlawful or an offense or misdemeanor or where a person fails to meet a standard of conduct or behavior described in the provisions of this code where no specific penalty is provided therefore, any person who is convicted of the violations of any such provision of this code or other ordinance of the county hereinafter enacted or of such rules or regulations, shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment in jail not exceeding ninety days (90) or by both such fine and imprisonment or by any combination thereof. Each day any such person neglects to comply with this code is a separate offense.

B. Every day any violation of this regulation of the county hereafter enacted or any rule or regulation promulgated under the provisions of this code or promulgated under the authority of any ordinance hereafter enacted continues shall constitute a separate offense.

C. In addition to the penalties provided in this chapter, any condition caused or permitted to exist in violation of any of the provisions of this code shall be deemed a public nuisance and may be, by this county, summarily abated as such, and each day that such condition continues shall be regarded as a new and separate offense. (Ord. 1183, §1, 2002)

16.10.100 Abrogation and greater restrictions. This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another regulation, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail. (Ord. 1183, §1, 2002)

16.10.110 Interpretation. In the interpretation and application of this chapter, all provisions shall be:

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit nor repeal any other powers granted under state statutes. (Ord. 1183, §1, 2002)

16.10.120 Warning of Disclaimer of Liability. The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This chapter shall not create liability on the part of the City of Fountain, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made there under. (Ord. 1183, §1, 2002)

16.10.130 Establishment of Development Permit. A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Chapter 16.10.070. The permit shall expire at the end of twelve months (12) from the issuance if start of construction has not taken place. Application for a development permit shall be made on forms furnished by the floodplain administrator and may include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required and is to be certified by a licensed professional engineer or architect:

- A. Elevation in relation to mean sea level or the lowest floor (including basement) of all structures;
- B. Elevation in relation to mean sea level to which any structure has been floodproofed;
- C. Evidence that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Chapter 16.10.180(B); and,

D. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development (Ord. 739 §1)

E. Plans shall be approved by the City of Fountain, prior to submittal for a development permit. (Ord. 1183, §1, 2002)

16.10.140 Designation of the Floodplain Administrator. The floodplain administrator is appointed to administer and implement this chapter by granting or denying development permit applications in accordance with its provisions. (Ord. 1183, §1, 2002)

16.10.150 Duties and Responsibilities of the Floodplain Administrator. Duties of the floodplain administrator shall include, but not be limited to:

A. Permit Review.

1. Review all development permits to determine that the permit requirements of this chapter have been satisfied;
2. Review of all development permits to determine that all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required;
3. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of Chapter 16.10.190(A) are met.
4. The applicant is to submit to the Floodplain Administrator and the City Engineer for the City of Fountain. No work (grading, tree removal, etc.) can occur in the Floodplain without a floodplain permit. Grading cannot occur in the floodplain without a grading approval letter or letter of release from the City of Fountain City Engineer. Letter shall be required for approval of a Floodplain Permit.

B. Use of Other Base Flood Data. The floodplain administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source in order to administer Chapter 16.10.180(A), Specific standards—Residential construction, and Chapter 16.10.180(B), Specific Standards—Nonresidential construction.

C. Information to be Obtained and Maintained.

1. Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures;
2. For all new or substantially improved floodproofed structures:
  - a. Verify and record the actual elevation (in relation to mean sea level), and
  - b. Maintain the floodproofing certifications required in Chapter 16.10.130(C);
3. Maintain for public inspection all records pertaining to the provisions of this chapter.

D. Alteration of Watercourses.

1. Notify adjacent communities and the Colorado Water Conservation Board prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration;



2. Require that maintenance be provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

E. Interpretation of FIRM Boundaries. Make interpretations where needed as to the exact location of the boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Chapter 16.10.160. (Ord. 1183, §1, 2002)

#### 16.10.160 Variance Procedure.

##### A. Appeal Board.

1. The City Council shall hear and decide appeals from a decision of the floodplain administrator and requests for variances from the requirements of the chapter.
2. The City Council may review any requirements, decisions, or determinations made by the floodplain administrator in the enforcement or administration of this chapter.
3. The decision of the City Council may be appealed pursuant to Rule 106 of the Colorado Rules of Civil Procedure. The applicant shall pay the cost of preparing a transcript of the record by a certified court reporter, or other qualified individual, at the time such transcript is requested.
4. In passing upon such applications, the City Council shall consider all technical evaluations, all relevant factors, standards specified in other sections of the section, and:
  - a. The danger that materials may be swept onto other lands to the injury of others;
  - b. The danger to life and property due to flooding or erosion damage;
  - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - d. The importance of the services provided by the proposed facility to the community;
  - e. The necessity to the facility of a waterfront location, where applicable;
  - f. The availability of alternate locations for the proposed use, which are not subject to flooding or erosion damage;
  - g. The compatibility of the proposed use with existing and anticipated development;
  - h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
  - i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - j. The expected heights, velocity, duration, rate of use, and sediment transport of the flood waters and the effects of wave action, if applicable, and expected at the site; and
  - k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

5. Upon consideration of the factors of subsection A(4) of this section and purposes of the section, the City Council may attach such conditions to the granting of variances as it deems necessary to further the purposes of this section
6. The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

B. Conditions for Variances:

1. Development permits may be issued by the regional floodplain administrator for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places, the State Inventory of Historic Places, or part of the local Historic Preservation District or a locally designated historic landmark, without regard to the procedures set forth in the remainder of this subsection. Infill of vacant lots within the Historic Preservation District may be issued variances provided that the provisions of this subsection are met.
2. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
4. Variances shall only be issued upon:
  - a. A showing of good and sufficient cause;
  - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
  - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public as identified in subsection A (4) of this section, or conflict with existing local laws or ordinances.
5. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor 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. (Ord. 1183, §1, 2002)

16.10.170 General Standards. In all areas of special flood hazards, the following standards are required:

A. Anchoring. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

B. Construction Materials and Methods.

1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;

2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage;
3. All new mechanical and utility equipment shall be designed and/or elevated to prevent water from entering or accumulating in components;
4. All new construction and substantial improvements with fully enclosed areas below the lowest floor that 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 professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

C. Utilities.

1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;
2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration into the systems and discharge from the systems into flood waters; and,
3. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

D. Subdivision Proposals.

1. All subdivision proposals shall be consistent with the need to minimize flood damage;
2. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and,
4. Base flood elevation data shall be provided for subdivision proposals and other proposed developments, which contain at least fifty lots or five acres (whichever is less). (Ord. 1183, §1, 2002)

16.10.180 Specific Standards. In all areas of special flood hazard where base flood elevation data has been provided as set forth in Section 16.10.170, basis for establishing the areas of special flood hazard, the following provisions are required:

A. Residential Construction. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated one foot or more above base flood elevation.

B. Nonresidential Construction. New construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall either have the lowest floor, including basement, elevated to one foot or more above the level of the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

1. Be floodproofed so that from a point one foot above the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
3. Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the official as set forth in section 16.10.150(B).

C. Openings in Enclosures below the Lowest Floor.

1. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that 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 professional engineer or architect or must meet or exceed the following criteria:
  - a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;
  - b. The bottom of all openings shall be no higher than one foot above grade;
  - c. Openings may be equipped with screens, louvers, or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.

D. Manufactured Homes.

1. Manufactured homes shall be anchored in accordance with Section 16.10.170(A).
2. All manufactured homes or those to be substantially improved shall conform to the following requirements:
  - a. Require that manufactured homes that are placed or substantially improved on a site outside of a manufactured home park or subdivision, or in an expansion to an existing manufactured home park or subdivision, or in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
  - b. Require that manufactured homes to be placed or substantially improved on sites in existing manufactured home parks or subdivisions that are not subject to the provisions of subsection (D)(1)(a) of this section be elevated so that either the lowest floor of the manufactured home is at or above the base flood elevation, or the manufactured home chassis is supported by reinforced piers or other foundation system to resist flotation, collapse, and lateral movement.

E. Recreational Vehicles.

1. A recreational vehicle shall meet the permit requirements and elevation and anchoring requirements of this code unless:
  - a. It is on the site for fewer than one hundred eighty (180) consecutive days.
  - b. It is fully licensed and ready for highway use.
  - c. It will meet the requirements of subsection (D) of this section.

F. Below-Grade Residential Crawlspace Construction. New construction and substantial improvement of any below-grade crawlspace shall:

1. Have the interior grade elevation that is below base flood elevation no lower than two feet below the lowest adjacent grade;
2. Have the height of the below-grade crawlspace measured from the interior grade of the crawlspace to top of the foundation wall, not to exceed four feet at any point;
3. Have an adequate drainage system that allows floodwaters to drain from the interior area of the crawlspace following a flood;
4. Meet provisions of section 16.10.170(A), Anchoring; 16.10.170(B), Construction Materials and Methods; 16.10.180(C), Openings in Enclosures Below the Lowest Floor. (Ord. 1183, §1, 2002)

16.10.190 Floodways. Located within areas of special flood hazard established in Section 16.10.170 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters, which carry debris, potential projectiles, and erosion potential, the following provisions apply:

A. Prohibited encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood discharge.

B. If subsection A of this section is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Chapter 16.10.170 through 16.10.190.

C. Prohibit the placement of any mobile homes except in an existing mobile home park or existing mobile home subdivision. (Ord. 1183, §1, 2002)

**TITLE 16**  
**Effective July 20, 2006**  
**SUBDIVISION REGULATIONS**

Chapters:

**16.20 ADMINISTRATIVE PROCEDURES**

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| 16.20.020 | Purpose                  |
| 16.20.030 | Preemption and Authority |

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16.20.120	Appeals
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### **ADMINISTRATIVE PROCEDURES**

16.20.010 Short Title. This Title shall be known and may be cited as the “Subdivision Regulations of the City of Fountain, Colorado.” For purposes of this Title, “these regulations” shall mean the Subdivision Regulations. (Ord. 1412 §2, 2008)

16.20.020 Purpose. The subdivision of land is the first step in the process of urban development. The arrangement of land parcels for residential, commercial, industrial, recreational, utility and other public purposes will determine to a large degree the qualities of health, safety, convenience, environment and general welfare of the City.

These regulations are designed, intended, and should be administered in a manner to:

- Implement the City’s Comprehensive Development Plan; specific area plans; resource, utility and other master plans; Planned Unit Development (PUD) ordinances; and other development policies and ordinances, as such may be amended from time to time.
- Establish adequate and accurate records of land subdivision;
- Protect and provide for the public health, safety, and general welfare of the citizens of the City;
- Establish reasonable standards of design and procedures for subdivisions and re-subdivisions of land to further the orderly layout and use of land;
- Harmoniously relate the development of land to the existing community and facilitate the future development of adjoining tracts;
- Provide for adequate, safe and efficient public utilities and improvements; and provide for other general community facilities and public places;
- Ensure adequate and efficient transportation, water, sewerage, schools, parks, playgrounds, recreation, and other public requirements and facilities;
- Preserve important natural features, vegetation and viewsheds;
- Protect the community from fire, flood and other dangers;
- Provide for proper design of stormwater drainage and streets;
- Ensure the cost of improvements, which primarily benefit the tract of land being developed, be borne by the subdivider of the tract; and
- Make certain that public facilities are available and will have a sufficient capacity to serve a proposed subdivision.
- Coordinate timely agency review of subdivisions and associated improvements.

(Ord. 1412 §2, 2008)

16.20.030 Preemption and Authority. In adopting these regulations, the City invokes its powers as a home rule municipality and preempts and supersedes any statutory provisions regulating the subdivision of land within the boundaries of the City. (Ord. 1412 §2, 2008)

16.20.040 Jurisdiction.

A. *Area Inside City Limits.* The territorial jurisdiction under this Title shall include all land located within the corporate limits of the City of Fountain, Colorado.



B. *Area Outside City Limits.* All layouts of proposed subdivisions outside the City, but within the territorial limits, established under C.R.S. §31-23-212, as amended, shall be submitted to the Planning Commission for its recommendations relating to subdivision design, traffic circulation, and the City's Comprehensive Development Plan.  
(Ord. 1412 §2, 2008)

16.20.050 Effective Date. The effective date of this ordinance shall be five days from the date of final publication subsequent to passage on second reading by Council in accordance with City Charter. (Ord. 1412 §2, 2008)

16.20.060 Restrictions, Limitations, and Prohibitions.

A. *Plat Required.* Any person, firm, partnership, corporation, or other entity, or any authorized agent thereof, dividing or proposing to divide land so as to constitute a subdivision as defined herein shall be subject to the provisions of this Title; and a plat for the subdivision of such land shall be submitted to, and approved by, the City pursuant to the provisions of this Title.

B. *Unlawful to Transfer Land in Violation of this Title.* It shall be unlawful for the owner, or an agent of the owner, of any land to transfer, sell or agree to sell any unsubdivided land or lands by reference to, exhibition of, or by use of a plat of a subdivision before such plat has been approved by the City and recorded in the office of the El Paso County Clerk and Recorder unless the transaction is exempted under Section 16.20.080. The description of such lot, tract, or parcel by metes and bounds in the instrument of transfer, or other document used in the process of selling or transferring, shall not exempt the transaction from such penalties or other remedies provided in this Title. Both the grantor and grantee named in an instrument of conveyance prohibited under this Title shall be subject to the penalties contained in Section 16.20.130; provided, however, that it shall be an affirmative defense that the grantee in such transaction either had no knowledge of the transaction, or did not authorize, consent or acquiesce to the recordation of the instrument of conveyance. In a security instrument, the party granting the security interest in a transaction shall be subject to such enforcement and sanctions.

C. *Building Permits and Certificates of Occupancy.* Building permits and certificates of occupancy shall only be issued in accordance with the requirements of Section 16.20.070.

D. *Construction Exempt from Requirements of this Title.* Specific types of minor construction are exempt from compliance with this Title and shall not cause a property to be platted in accordance with this Title. Minor construction is limited to: interior remodel; or repair or modification of other structural elements exterior to, but attached as part of the structure, such as roofing, windows, doors, siding, porch, stoop and stairway; or accessory buildings smaller than 120 square feet in area; or new construction limited to decks and patio covers; or other construction determined to be minor by the Subdivision Administrator. In addition, legal lots of record (i.e., parcels created on or before July 23, 1973) shall be exempt from the requirement to plat to obtain a building permit provided the proposed construction complies with the City of Fountain Zoning Ordinance.

E. *Grading and Construction of Improvements.* No subdivision grading operations or construction of improvements shall be undertaken until the final plat is recorded and construction plans for all improvements are stamped accepted by the City Engineer and a Subdivision Improvements Agreement (SIA) and required surety is in place, unless otherwise authorized and controlled by a development agreement approved by the Subdivision Administrator with adequate surety to cover all costs associated with: site restoration and erosion, dust and stormwater control measures; and any proposed modifications to existing public infrastructure including the repair of such existing public infrastructure. Surety shall be considered adequate if the surety is sufficient to cover one hundred and twenty (120) percent of the projected costs identified and is provided in a form approved by the City Attorney. The subdivider shall not initiate grading or construction of improvements within the proposed or approved subdivision until: (1) the City Engineer has stamped the construction plans accepted, all required permits and approvals have been obtained from outside agencies with jurisdiction over the project or any component thereof; the development agreement or SIA has been executed and recorded, the required surety has been posted; and the preliminary plat has been approved by the City and a final copy of the preliminary plat integrating all requested changes has been filed with the Subdivision Administrator by the subdivider, approved by the Subdivision administrator and signed by the Planning Commission Chairman; or (2) the City Engineer has stamped the construction plans accepted, all required permits and approvals have been obtained from outside agencies with jurisdiction over the project or any component thereof; the SIA has been executed and recorded, the required surety has been posted; and the final plat has been approved by the Subdivision Administrator and filed for recording in the office of the El Paso County Clerk and Recorder.

Any work performed in advance of final plat approval and recording is completed at risk by the subdivider. The City is under no obligation to approve the final plat. All actions undertaken by the subdivider shall be subject to the inspection, open trench and other provisions concerning public and private improvements in Section 16.23 of this Title. In no case shall construction begin prior to preliminary plat approval.

F. *Conformance of Plat Required.* No concept plan, preliminary plat or final plat of a subdivision shall be recommended for approval by the Subdivision Administrator or Planning Commission, or approved by the Subdivision Administrator, Planning Commission, or Council unless it conforms to the provisions of this Title.

G. *Street Improvements and Maintenance.* The City shall withhold all public street improvements and maintenance from all rights-of-way which have not been accepted for maintenance by the City.

H. *Withdraw of Approval.* The City may suspend or withdraw any approval of a plat or may require certain corrective measures be taken following a determination that the information provided by the subdivider upon which such approval was based is substantially false or inaccurate or that new significant information has been brought to their attention. Suspension of approval may occur at any step in the platting process and shall be affected by resolution of the Council adopted at a public meeting. A written notice from the Subdivision Administrator shall be served upon the subdivider, setting out a clear and concise statement of

alleged facts and directing the subdivider to appear before the Council no less than ten (10) days nor more than thirty (30) days after the date of notification. The Council shall determine at the public meeting the nature and extent of alleged false or inaccurate information, shall consider any new significant information that has been brought to their attention, and shall have the power, if the Council determines there is a violation of any of the provisions of this Title, to suspend or withdraw any approval of the plat. If the plat was previously recorded, due notice that the plat has been withdrawn and the plat voided shall be recorded in the office of the El Paso County Clerk and Recorder by the Subdivision Administrator.

I. *No Changes or Erasures.* No changes, erasures, modifications or revisions shall be made on the final plat after the approval by the City, except as may be required as a condition of the approval or may be made in accordance with the plat vacation and amendment procedures established by these regulations. The Subdivision Administrator may approve the correction of minor or typographic errors.

J. *Ad Valorem Taxes Paid Prior to Approval.* No plat for subdivided land shall be approved unless all ad valorem taxes applicable to such subdivided land, for years prior to that year in which approval is granted, have been paid.  
(Ord. 1412 §2, 2008)

#### 16.20.070 Issuance of Building Permits/Cos Prior to Platting or Improvements.

A. *No Building Permits or Certificate of Occupancy Issued Until Improvements Installed.* Until all improvements described as required by Section 16.20.070.B or as otherwise specifically required under any applicable development agreement or SIA are completed, the City shall not be obligated to authorize the issuance of any building permit for private improvements within the subdivision. Until all improvements as required in Section 16.20.070.C or as otherwise specifically required under any applicable subdivision improvement agreement are completed and formally accepted for ownership and maintenance by the City, the City shall not be obligated to authorize the issuance of any certificate of occupancy for any habitable structure.

B. *Required Improvements for Building Permits.* The minimum acceptable improvements to a subdivision that must be completed before the issuance of a building permit will be granted include, but are not limited to, the following: (1) sanitary sewer, accepted by applicable sanitation district or municipality; (2) potable water system to include distribution system and fire protection accepted by the City of Fountain or applicable district; (3) storm sewer system to include collection infrastructure and detention facilities; (4) curbs and gutters; (5) all weather surface roadway approved by the City of Fountain Fire Department and City Engineer; (6) temporary stop signs and street identification signs; (7) temporary survey monumentation of boundaries, lot lines, right-of-way, etc.; and (8) electric and natural gas service.

C. *Required Improvements for Certificate of Occupancy.* The minimum acceptable improvements to a subdivision that must be completed and accepted, where the improvement will be owned and maintained by the City, by the City of Fountain before the issuance of a

Certificate of Occupancy will be granted include, but are not limited to, the following: (1) electric service; (2) natural gas service; (3) complete paving of streets; (4) permanent monumentation of boundaries, lot lines, row, etc.; (5) permanent signage as required by the approved signage plan; (6) detention ponds, retaining walls, and any other special items necessary to support the development of the subdivision and associated infrastructure; (7) sidewalks; (8) water stop box inspection; and (9) franchised telecommunication and cable television services, where applicable.

D. *Platting Required before Issuance of Building Permit.* Except as otherwise provided by Section 16.20.060.D, no building permit shall be authorized for issuance for construction on land for which a plat conforming to the requirements of this Title has not been approved by the City and recorded in the office of the El Paso County Clerk and Recorder. Such construction is considered a subdivision.

E. *Permit Issuance by City Employees or Contract Agencies.* All departments, officials and public employees of the City or those departments, officials and public employees under contract who are vested with the duty or authority to issue permits shall ensure their actions conform to the conditions of these regulations and shall issue no permit, certificate or license for any purposes in conflict with the provisions of these regulations, and any permit, certificate or license so issued shall be null and void.

(Ord. 1412 §2, 2008)

16.20.080 Divisions, Conveyances and Transactions Exempted. The following conveyances and transactions are permitted notwithstanding the prohibitions of Section 16.20.060: (1) divisions of land created by order of any court in this state, or by operation of law, or which could be created by any court in the State of Colorado pursuant to the law of eminent domain including divisions of property by testamentary or intestate provisions or judgments of foreclosure; (2) divisions of land created by a lien, mortgage, deed of trust or any other security instrument; (3) divisions of land created by a security or unit of interest in any investment trust regulated under the laws of the State of Colorado or any other interest in an investment entity; (4) divisions of land which create cemetery lots; (5) divisions of land created by the granting, purchase, conveyance or separation of land for public purposes, including condemnation for any public purpose or the establishment of rights-of-way; (6) divisions of land that create easements or other conveyances of less than fee interest including an interest, or interests, in oil, gas, minerals, or water which are now or hereafter severed from the surface ownership or real property; (7) divisions of land created by the acquisitions of an interest in land in the name of a husband and wife, or other persons in joint tenancy, or as tenants in common; and any such interest shall be deemed as only one interest; (8) street vacations; and (9) divisions of land created for agricultural purposes into parcels of thirty-five (35) acres or more, does not require the opening of any new street or the use of any new public easement of access, does not obstruct, or is not likely to obstruct, natural drainage; does not adversely affect, or is not likely to adversely affect, the establishment of any freeway, major street, primary highway, or arterial street, and does not adversely affect the execution or development of any plat, any subdivision approved by the Council or otherwise adversely affect the orderly subdivision of contiguous property. (Ord. 1412 §2, 2008)

16.20.090 Platting Waiver. The Council may waive, by resolution, the requirement to plat for proposed divisions of less than thirty-five (35) acres subject to the following criteria: (1) no development permits (applications for zoning, subdivision or building) are being requested at this time; (2) the plat waiver request and accompanying legal description and drawing of the proposed division have been submitted to the City; (3) the division will not hinder the property's ability to comply with an existing development agreement, PUD zone obligations, and other City plans and policies; or (4) there is a benefit to the public that results from the platting waiver. (Ord. 1412 §2, 2008)

16.20.100 Relief from Subdivision Regulations. In conjunction with a request for preliminary plat or final plat, a subdivider may request relief from these regulations in accordance with the following procedures. Only the Planning Commission and Council shall have the authority to grant relief from the requirements of these regulations. As a result, if relief is first requested in association with a final plat, action concerning the final plat shall be held in abeyance until final action concerning the request for relief has been taken by the Planning Commission or Council.

A. *Request for Relief.* The request for relief shall be submitted in writing to the Subdivision Administrator for consideration by the Planning Commission and Council. The request for relief shall indicate the nature and extent of the requested relief supported with reasons for the request. The request for relief shall be heard concurrent with the preliminary plat request. If the request for relief is submitted as part of a final plat application, no action on the final plat shall be taken by the Subdivision Administrator until the Planning Commission and Council have taken action on the request for relief.

B. *Consideration and Approval of Relief.*

- (1) *Relief from a Public Infrastructure Standard.* Where the relief requested involves public infrastructure, the Planning Commission shall recommend approval, approval with conditions, or denial of the request for relief to Council. The Council shall take final action to approve, approve with conditions or deny the request for relief. Approval of relief shall be based on finding that an unusual topographical or other exceptional condition not caused by action of the subdivider requires such relief, and that granting relief will not adversely affect the general public, nor have the effect of nullifying the intent and purpose of these regulations. In no case shall any relief be more than a minimum change in requirements; and in no case shall it be in conflict with the City of Fountain Zoning Ordinance or objectives of the Comprehensive Development Plan. In granting relief, the Planning Commission may recommend and the Council may require such conditions which, in its judgment, will substantially secure the objectives of the standards and requirements affected. In granting a request for relief, the Planning Commission and Council shall find substantial conformance to the following applicable review criteria;

- (a) The relief will not be detrimental to the public good or to the surrounding properties.

- (b) There are unusual topographic, soil, access, location, shape, size, drainage, or physical features of the site.
  - (c) The conditions upon which the relief request is based are unique to the property for which the relief is sought and are not applicable to other property in the area.
  - (d) The strict application of the requirements of this Title will constitute substantial hardship or practical difficulties to the subdivider or the purposes of this Title may be served to a greater extent by an alternative proposal. Financial hardship, by itself, shall not be considered grounds for granting relief.
  - (e) The relief is consistent with the intent and the purpose of this Title.
- (2) *Relief from a Standard Not Related to Public Infrastructure.* Where the relief requested does not involve public infrastructure, the Planning Commission shall approve, approve with conditions, or deny the request for relief. Approval of relief shall be based on finding that an unusual topographical or other exceptional condition not caused by action of the subdivider requires such relief, and that granting relief will not adversely affect the general public, nor have the effect of nullifying the intent and purpose of these regulations. In no case shall any relief be more than a minimum change in requirements; and in no case shall it be in conflict with the City of Fountain Zoning Ordinance or objectives of the Comprehensive Development Plan. In granting relief, the Planning Commission may require such conditions which in its judgment will substantially secure the objectives of the standards and requirements affected. In granting a request for relief, the Planning Commission shall find substantial conformance to the following applicable review criteria:
- (a) The relief will not be detrimental to the public good or to the surrounding properties.
  - (b) There are unusual topographic, soil, access, location, shape, size, drainage, or physical features of the site.
  - (c) The conditions upon which the relief request is based are unique to the property for which the waiver is sought and are not applicable to other property in the area.
  - (d) The strict application of the requirements of this Title will constitute substantial hardship or practical difficulties to the subdivider or the purposes of this Title may be served to a greater extent by an alternative proposal. Financial hardship, by itself, shall not be considered grounds for granting relief.
  - (e) The relief is consistent with the intent and the purpose of this Title

C. *PUD and Relief.* To allow maximum flexibility and to encourage creative design in a PUD, the Council, after Planning Commission review, may modify the standards set forth in this Title, provided however, that unusual circumstances exist or the design of the PUD development offers alternative amenities and standards that are in the public interest and not detrimental to surrounding properties, and which do not have the effect of nullifying the purpose

and intent of this Title. Where alternative standards are not approved as part of a PUD and the plat fails to meet the requirements of this Title or where the plat fails to meet a requirements of the PUD, relief shall be requested by the subdivider and reviewed by the Planning Commission and Council as prescribed in Sections 16.20.100.A and 16.20.100.B.

(Ord. 1412 §2, 2008)

16.20.110 Deviations from Public Works and Utilities Design and Construction

Specifications. Deviations from the adopted public works standards shall be processed in accordance with the procedures outlined in the Public Works and Utilities Design and Construction Specifications. (Ord. 1412 §2, 2008)

16.20.120 Appeals. The subdivider or any aggrieved party may appeal any administrative decision of the Subdivision Administrator to the Planning Commission and any decision of the Planning Commission to the Council as provided for in these regulations. Approval with conditions may be considered a denial for purposes of appeal. Any appeal must be made in writing to the Subdivision Administrator within fifteen (15) days of the Subdivision Administrator's or Planning Commission's action. (Ord. 1412 §2, 2008)

16.20.130 Penalties for Noncompliance. It shall be unlawful to fail to comply with any provision of these regulations. Any person who fails to comply with any provision of these regulations shall be guilty of a separate offense for each and every day during any portion of which any failure to comply is committed, continued, or permitted by any such person. The City may enjoin any pending transaction which upon its recordation would violate Section 16.20.060 by action for injunction brought in any court of competent jurisdiction. (Ord. 1412 §2, 2008)

16.20.140 Enforcement. This Title shall be enforced by the Subdivision Administrator or a representative duly authorized by the Council.

A. *Authority to Enter.* For the purposes of enforcing this Title, the Subdivision Administrator is authorized to enter and inspect any building, structure, or tract of land under development in the incorporated areas of the city with the authorization by the property owner. An application for subdivision signed by the subdivider shall constitute authorization to enter and inspect any building, structure, or tract of land under development in association with such application. In the event the property owner does not authorize the Subdivision Administrator to enter and inspect any building, structure or tract of land under development, the Subdivision Administrator may apply to the municipal court for issuance of an appropriate warrant to allow such entrance and inspection.

B. *Written Notice.* When the Subdivision Administrator has knowledge of any alleged violation of this Title on a particular property, the Subdivision Administrator shall issue a written notice requiring the correction of such alleged violation within thirty (30) days, or such shorter or greater period of time as shall be identified by the Subdivision Administrator.

C. *City Attorney Action.* If the alleged violation has not been corrected within thirty (30) days or the applicable time period specified in the notice, a copy of the file shall be

forwarded to the City Attorney for further legal action as determined appropriate by the City Attorney. The Subdivision Administrator shall be advised of any actions taken.

D. *Withholding Building Permits.* The City may enforce this Title by authorizing the Pikes Peak Regional Building Department to withhold the issuance of building permits. (Ord. 1412 §2, 2008)

16.20.150 Injury. This Title shall not be construed to hold the City in any manner responsible for any injury to persons or property resulting from any inspection as herein authorized or resulting from any failure to so inspect, or resulting from the issuance or denial of a building permit as herein provided, or resulting from the institution of court action as herein set forth or the forbearance by the City to proceed. (Ord. 1412 §2, 2008)

16.20.160 Severability.

A. *Provision Declared Invalid.* If any provision of this Title is declared to be invalid by a decision of any court of competent jurisdiction, the effect of such decision shall be limited to that specific provision held to be invalid as expressly stated in such judgment. Such decision shall not affect, impair or nullify this Title as a whole or any other part thereof, but the rest of this Title shall continue in full force and effect.

B. *Application of Provision to Tract of Land Declared Invalid.* If the application of any provision of this Title to any tract of land is declared to be invalid by a decision of any court of competent jurisdiction, it is hereby declared to be the legislative intent that the effect of such decision shall be limited to that specific tract of land immediately involved in the controversy, action or proceeding in which judgment or decree of invalidity was rendered. Such decision shall not affect, impair or nullify this Title as a whole or the application of any provision thereof, to any other tract of land. (Ord. 1412 §2, 2008)

16.20.170 Review Fees. The Council shall establish a schedule of fees, to be paid by all subdividers (with the exception of City departments or agencies) to cover anticipated expenses incurred by the City in the review and hearing of the proposed application or request for approval of a subdivision, amendment, replat, exemption or other process provided for herein. All fees are nonrefundable. (Ord. 1412 §2, 2008)

16.20.180 Impact Fees and Cost Recovery. The Council may adopt impact fees. Any person seeking a building permit for the construction of any residential unit or nonresidential building within an area subject to impact fees shall pay the applicable impact fees prior to the issuance of a building permit for said residential unit or nonresidential building unless the impact fee is specifically authorized to be collected and has been collected at time of platting in accordance with the ordinance adopting said impact fee.



The Council may also approve a Cost Recovery Agreement for any offsite facilities and compel a benefited property owner to pay a pro-rata share for regional improvements serving the development in accordance with Section 16.23.070. (Ord. 1412 §2, 2008)

16.20.190 Authority of the Subdivision Administrator. The Subdivision Administrator shall have the authorities specifically granted in this Title including but not limited to the following: (1) review final plat applications and proposals for compliance with this Title, the City of Fountain Zoning Ordinance and the Comprehensive Development Plan, and take action to approve or deny a final or administrative plat in accordance with the provisions of this Title; (2) review concept plan, and preliminary or final plat applications for compliance with this Title, the City of Fountain Zoning Ordinance and the Comprehensive Development Plan, and make recommendations to the Planning Commission and Council in accordance with the provisions of this Title; (3) review requests for waivers or relief from this Title and make recommendations to the Planning Commission and Council; (4) initiate, review, or recommend amendments to this Title to the Planning Commission and Council; (5) enforce the provisions of this Title; (6) execute SIAs, development agreements or other official documents or agreements as specifically authorized by City Charter for the purposes of enforcing the provisions of this Title; (7) authorize the vacation of easements in conformance with these regulations; and (8) coordinate the interagency review sequence, including distribution of applications and supporting documents to review agencies, collection of review agency comments and forwarding these comments to applicants and convening initiation and completion meetings to confirm conformance to review agency standards. (Ord. 1412 §2, 2008)

16.20.200 Authority of the Planning Commission. The Planning commission shall have the authorities specifically granted in this Title including but not limited to the following: (1) review applications and proposals for compliance with this Title, the City of Fountain Zoning Ordinance and the Comprehensive Development Plan, and make recommendations to the Council or take action to approve or deny an application as specifically provided for by this Title; (3) hear appeals of a decision or action of the Subdivision Administrator; and (4) initiate, review or recommend amendments to this Title to the Council. (Ord. 1412 §2, 2008)

16.20.210 Authority of the Council. The Council shall have the authorities provided in this Title and any other specific or implied powers including but not limited to the following: (1) review applications and proposals for compliance with this Title and conformance with the Comprehensive Development Plan, and approve, conditionally approve or deny them in accordance with this Title; (2) void plats, subdivision improvement agreements or other official documents or agreements if it is found that there has been a misrepresentation of fact which impacts the design or legal or physical status of the subdivision; (3) grant requests for waivers and relief from this Title; (4) hear appeals of a decision or action of the Planning Commission; (5) modify and amend this Title; (6) enforce the provisions of this Title; and (7) sign SIAs, development agreements, or other official documents or agreements. (Ord. 1412 §2, 2008)

16.20.220 Referral to Appropriate Agencies. The Subdivision Administrator shall refer copies of preliminary and final plats for review and comment to all persons, departments and agencies as determined appropriate by the Subdivision Administrator. Failure of a reviewing

agency to inform the Subdivision Administrator of its comments within the specified review period, not to exceed fifteen (15) calendar days, may be interpreted to indicate there are no objections to the plat. (Ord. 1412 §2, 2008)

16.20.230 Computing Time Periods. In computing any time period prescribed in this Title, the last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday. (Ord. 1412 §2, 2008)

16.20.240 Interpretation. In the interpretation and application of the provisions of this Title, the following shall govern:

A. *Provisions are Minimum Requirements.* In their interpretation and application, the provisions of this Title shall be regarded as the minimum requirements for the protection of the public health, safety, comfort, morals, convenience, prosperity and welfare. This Title shall be regarded as remedial and shall be liberally construed to further its underlying purposes.

B. *Application of Overlapping Regulations.* Whenever both a provision of this Title and any other provisions of this Title or any provision of any other law, ordinance, resolution, rule or regulation of any kind contains any restrictions covering any of the same subject matter, whichever restrictions are more restrictive or impose higher standards or requirements shall govern.

C. *Relationship to Private Agreements.* This Title is not intended to abrogate any easement or any other private agreement or restriction; provided, however, that where the provisions of this Title are more restrictive or impose higher standards or requirements than such easement, covenant or other private agreement or restriction, the provisions of this Title shall govern.

D. *Existing Permits.* This Title is not intended and shall not abrogate or annul any permits issued or agreements made before the effective date of the ordinance codified in this Title, and shall not apply to applications submitted to the City under the provisions of Ordinance Numbers 422, 653, and 1245. However, an applicant who has submitted an application under the provisions of Ordinance Numbers 442, 653 or 1245 may elect to finish processing the application upon written notification to the City under the provisions of this Title. (Ord. 1412 §2, 2008)

16.20.250 Rules of Construction. The following rules of construction shall be used to interpret this Title: (1) the particular controls the general; (2) in case of any difference of meaning or implication between the text of this Title and the captions for each Section, the text shall control; (3) the word “shall” is always mandatory and the word “may” is permissive; (4) words used in the present tense include the future, unless the context clearly indicates the contrary; and (5) words used in the singular include the plural, and words used in the plural include the singular, unless the context clearly indicates the contrary. (Ord. 1412 §2, 2008)

16.20.260 Definitions. The following terms, as used in this Title, shall have the meanings hereinafter designated, unless the context specifically indicates otherwise, or unless such meaning is excluded by express provision:

A. *Adjoining Property Owners.* The owner of property which abuts any property line of the property under review, or if separated by intervening public streets, alleys, other public rights-of-way, railroad right-of-way would abut the subject property if lot lines were extended across the intervening land area until intersecting another property line.

B. *Alley.* Public right-of-way or easement located at the side or rear of lots and providing a secondary means of vehicular access to the property. An alley shall not be considered a street as defined herein.

C. *Block.* An area of land containing one (1) or more lots or tracts, bordered on all sides, at the time of platting, by streets, public land, private open space, waterway, subdivision boundary, different zone district or different pattern of platting or development within a subdivision.

D. *City.* The City of Fountain, Colorado.

E. *City Attorney.* The City's general counsel or attorney as authorized by resolution, contract or other Council action, who performs the legal functions as set forth in this Title.

F. *City Engineer.* The City's designated engineer who, as a city employee or as authorized by contract, performs the engineering functions as set forth in this Title.

G. *Commercial Building Pad.* The areas of a lot, parcel or site which will be occupied by commercial buildings, and includes any other structure or improvement attached, adjoining or adjacent thereto. Like a townhome, commercial building pads, as a form of ownership, includes individual ownership of the land, and may include shared ownership of common elements, such as a central courtyard, that would have shared ownership. Unlike townhomes, the commercial building is not required to share common walls.

H. *Common Open Space.* A parcel of land, an area of water or a combination of land and water within the site designated and intended primarily for the use of residents, occupants and owners of a lot or unit within a subdivision or planned unit development.

I. *Comprehensive Development Plan.* The Comprehensive Plan of the City of Fountain adopted by the Planning Commission and all subsequent amendments thereto.

J. *Concept Plan.* An early step in the subdivision review and approval process used to evaluate project feasibility, design characteristics, and relationship of a proposed subdivision to adjacent properties.

K. *Condominium.* A type of ownership in real property where all of the owners own the property, common areas and buildings together, with the exception of the interior of the unit

to which each individual holds title. Often mistakenly referred to as a type of construction or development, it is actually a type of ownership.

L. *Condominium Map.* A map of certain described lands prepared in accordance with this Title as an instrument for describing the location and nature of the common elements and the individual condominium units along with specified supporting materials required by this Title.

M. *Construction Plan.* The maps or drawings accompanying a final plat submittal showing the specific location and design of public and private improvements to be installed within the boundaries of the subdivision. Construction plans must conform to the City's adopted Public Works and Utilities Design and Construction Specifications.

N. *Conveyance.* The transfer of title to real property including condominiums, commercial building pads, townhomes, land, or other forms of real estate.

O. *Council.* The Fountain City Council.

P. *County.* El Paso County, Colorado

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

R. *Dedicated Land.* Land transferred to the City by platting, title, deed or other legal method approved by the City Attorney. This land shall be used for public purposes, such as school sites, fire stations, parks, open space or such other uses or facilities as approved by the Council or indicated within approved development guides or plans.

S. *Development.* The construction on land of improvements for residential, institutional, commercial, industrial, transportation, flood control, recreation, and similar uses, in contrast to use of the land for growing crops, grazing of farm animals, and other agricultural pursuits. The term also applies to vacant land which has been or its being prepared for development by such steps as installation of water and sewer lines, construction of access streets, and construction of a railroad spur or branch tracks.

T. *Development Agreement.* A contractual agreement between the City and subdivider entered into in conjunction with approval of a preliminary plat to allow the subdivider to initiate construction of a subdivision at risk, in advance of final plat approval.

U. *Development Review Team (DRT).* The lead subdivision reviewers from City departments and external agencies responsible for reviewing and providing comment concerning subdivision applications.

V. *Drainage Criteria Manual.* A document adopted by Council resolution or ordinance to establish design criteria and specifications for drainage facilities.

W. *Drainage Plan and Report.*

- (1) *Drainage Plan and Report, Final (Final Drainage Report).* A study in a form and content specified in the Drainage Criteria manual and Public Works and Utilities Design and Construction Specifications.
- (2) *Drainage Plan and Report, Preliminary (Preliminary Drainage Report).* A report in a form and content specified in the Drainage Criteria Manual and Public Works and Utilities Design and Construction Specifications

X. *Easement.* An interest in real property generally established in a real estate document or on a recorded plat to convey or dedicate the use of land for a specialized or limited purpose without the transfer of fee title.

Y. *Easement, Drainage.* A grant to the City of the right to control development of a drainage way or an area subject to periodic flooding including detention and retention basins. Development on such easements shall be restricted to uses that would not interfere with the flow of the water or act as a barrier for debris.

Z. *FEMA (Federal Emergency Management Administration).* The federal agency responsible for administering the National Flood Insurance Program and federal response to declared natural disasters.

AA. *Floodplain.* That land inundated by water in the case of a flood of a one-hundred year frequency as delineated by the flood insurance rate maps (FIRM) and the floodplain ordinance of the City.

BB. *Improvements.* All public and private infrastructure improvements determined necessary by the City to support the development of land for the purposes intended including, but not limited to, curb and gutter, asphalt pavement, concrete pavement, streets of all types, sidewalks, pedestrian and bike paths, traffic signals, street lights, highways, freeways, rights-of-way, easements, access rights, medians, bridges, acceleration and deceleration lanes, culverts, storm drainage facilities, water lines, sewer facilities, electric lines, gas lines, telecommunications facilities, parks and open space, drainage facilities, etc.

CC. *Improvements, Public.* Public improvements are those rights-of-way, easements, access rights, and physical improvements which, upon formal acceptance by the City, may become the responsibility of the City for ownership, maintenance and repair and are intended to be for the use and enjoyment of the public. Public Improvements shall include, but not by way of limitation, the following: curb and gutter, asphalt pavement, concrete pavement, streets of all types, sidewalks, pedestrian and bike paths, traffic signals, street lights, highways, freeways, rights-of-way, easements, access rights, medians, bridges, acceleration and deceleration lanes, culverts, storm drainage facilities including necessary structures, channels, water lines, and all other improvements determined by the City to be public improvements.

DD. *Land Analysis Report (LAR)*. A report containing both mapped and written information, required to be submitted with the preliminary plat identifying the extent of and impact upon the property's natural features and environmental constraints that addresses proposed mitigating measures, where appropriate. This report includes the geologic and hazards evaluation, soils report, wildlife report, wetlands report, wildfire hazard, and other information concerning the site necessary to evaluate the proposed subdivision. Where a particular parameter does not apply, the report shall identify how a determination was made that the parameter does not apply. The intent of the report should be to identify all potential issues associated with the development of the property and, where appropriate, identify how the proposal mitigates these issues or why an issue has been dismissed.

EE. *Landowner*. All persons having legal title to or sufficient proprietary interest in the land proposed to be subdivided.

FF. *Legal Description*. A written metes and bounds description of the boundary of a parcel of real property for the purpose of perpetuating location and title. The description must recite all ties and monuments, recorded or physical, which will determine the correct position of the boundary, all references to adjoining lands by name and record and a full dimensional recital of the boundary courses in succession which shall be mathematically correct. The description must be accompanied by an exhibit or map illustrating all pertinent information as described in the narrative.

GG. *Letter of Map Amendment (LOMA)*. The document issued by FEMA that authorizes an amendment to the currently effective flood insurance rate map (FIRM), which establishes that a property is not located in a floodplain. A LOMA is issued only by FEMA, A LOMA is sought when it appears that a property is mapped incorrectly.

HH. *Letter of Map Revision (LOMR)*. The document issued by FEMA with an accompanying copy of an annotated flood insurance rate map (FIRM), this acknowledges changes in the base flood elevation, floodplain boundary, or floodway based on post-construction or revised conditions. LOMRs are issued upon completion of a project. Most projects obtain a Conditional Letter of map Revision (CLOMR) prior to construction to ensure that the proposed facility will meet FEMA criteria. Obtaining a CLOMR is a way to guarantee that unforeseen issues do not prevent the issuance of a LOMR. In accordance with the City's floodplain regulations, a floodplain development permit is required prior to filling, construction within or altering the floodplain. A CLOMR indicates that a LOMR will be issued by FEMA upon compliance with the conditions.

II. *Lot*. A unit into which land is divided on a subdivision plat or deed with the intention of separate ownership or use. A lot is intended for development with habitable structures, residential or commercial, and is distinguished from a tract or right-of-way, separately defined herein.

- (1) *Lot, Corner*. A lot of which at least two (2) adjacent sides abut upon a public right-of-way, street easement or public or private street (other than an alley) except the combination of a front and rear side (see double frontage)

- (2) *Lot, Double Frontage.* A single lot having the front and the rear thereof abut two (2) public rights-of-way, street easements or public or private streets (other than an alley), and does not include a corner lot.
- (3) *Lot, Flag.* A lot, the building area of which does not abut a public right-of-way, street easement or public or private street (other than an alley), but is connected thereto by a narrow strip of land which is a part of the lot.
- (4) *Lot, Reverse Corner.* A corner lot, the side street line of which is substantially a continuation of the front lot line of the first lot to its rear.
- (5) *Lot, Super.* A large platted lot designed to be replatted, at a later date, into townhome lots, pad lots, or condominiums.
- (6) *Lot, Townhouse (or Commercial Building Pad).* A lot intended for conveyance with a dwelling unit or commercial space where the units or spaces share common walls and an undivided common area. In the case of commercial buildings, common walls are not required.

JJ. *Lot Line.*

- (1) *Lot Line, Front.* The boundary of a lot that separates a lot from any street, but not including alleys. Corner lots have as many front lot lines as there are street frontages.
- (2) *Lot Line, Rear.* The boundary line of a lot that is most nearly opposite the front line of the lot.
- (3) *Lot Line, Side.* Any boundary line of a lot, other than a front lot line or rear lot line.

KK. *Lot Line Adjustment.* A rearrangement of lot lines that does not increase the number of lots within a block or other subdivision unit or area, and that does not affect any streets or alleys, or create any new public easements within the area, and that meets all the minimum requirements of this Title and the City of Fountain Zoning Ordinance. A property boundary adjustment may vacate public easements if they are included in the submittal.

LL. *Lot Line Vacation.* An administrative procedure which, when approved and recorded, vacates an interior lot line. This procedure may be used for up to ten platted lots.

MM. *Major Street Plan.* The adopted street plan for the City of Fountain to depict existing and proposed state highways, arterials, and collectors, including the functional classification of such streets.

NN. *Mobile Home Park.* Any tract of land for the accommodation of mobile homes and held in single ownership or unified control.

OO. *Offsite.* Any premises not located within the area of the property to be subdivided, whether or not in the common ownership of the subdivider.

PP. *Open Space.* Any parcel or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for the public or private use or enjoyment or for the use and enjoyment of owners and occupants of land of the subdivision. The types of lands and reasons for preservation include, but are not limited to the following: (a) lands that may be needed for the health and safety of the community including areas required for the recharge of groundwater, reservoirs and surrounding lands, lands with vegetation ensuring better air quality, high wildfire danger zones, steep slopes, floodplains, buffers around airports and similar facilities; (b) lands that might be a resource for the community including farmland, rangeland, lakes, streams, rivers, wetlands, forests, mines, etc.; (c) lands that might be ecologically valuable areas such as habitat for animals and plants, unique ecosystems, etc.; (d) lands that could provide a diversity of activities for the public such as areas with outstanding historical, educational, cultural, or archaeological value, areas providing access to lake shores, beaches, or rivers and streams; (e) lands that may provide view sheds or aesthetically pleasing experiences; or (f) lands that may provide or act as community separators providing a buffer between communities. Privately-owned landscaped areas, undeveloped portions of a lot, and rights-of-way are not considered open space.

QQ. *Park.* An area set aside and intended for use as open areas, fields, play fields, trails, national areas, historic areas, and wildlife areas or other areas.

(1) *Park, Community.* A park that provides opportunities for community-wide activities and facilities. Community parks are generally 30-100 acres in size and provide a balance between programmed sports facilities and other community activities (urban forests and gardens, water features, performance areas, festival spaces, plazas, etc.).

(2) *Park, Neighborhood.* A park that provides nearby recreation and leisure opportunities within walking distance of residential areas. Neighborhood parks are generally 5-12 acres in size and provide multipurpose areas for court games and a multipurpose play field, etc.

RR. *Park Board.* The City of Fountain Park and Recreation Advisory Board.

SS. *Planned Unit Development (PUD).* A property designated by the City of Fountain Zoning Ordinance and official zoning map as a Planned Unit Development District.

TT. *Planning Commission.* The Planning Commission of the City of Fountain.

UU. *Plat.*



- (1) *Plat, Final.* A map of certain described lands prepared in accordance with this Title as an instrument for describing real estate along with specified supporting materials required by this Title.
- (2) *Plat, Preliminary.* A map of a proposed subdivision and specified supporting materials prepared in accordance with this Title to permit evaluation of the proposed subdivision prior to detailed engineering and design
- (3) *Plat, Subdivision.* A map of a platted subdivision recorded for the purpose of creating land parcels which can be identified uniquely by reference to such map.
- (4) *Plat, Townhome (or Commercial Building Pad).* A map of certain described lands prepared in accordance with this title as an instrument for describing the location and nature of the common elements and the individual townhome units (or commercial units or pads) along with specified supporting materials required by this Title.
- (5) *Plat, Vacation.* A map vacating a plat for land previously subdivided.

VV. *Platting.* The process of preparing a map of land to be subdivided in accordance with the terms of this Title, and the subsequent approval and recording of such map pursuant to the provisions of this Title.

WW. *Public Works and Utilities Design and Construction Specifications.* A comprehensive set of standard details, design criteria, and specifications approved by Council ordinance to establish minimum requirements, including, but not limited to streets, utilities and structures related or appurtenant thereto, and drainage structures. In the lack of such standard details, design criteria, and specifications, the Subdivision Administrator or the City Engineer may use the latest editions of the following for the design and construction of subdivision facilities: City of Fountain Water Distribution System Design & construction Specifications Manual, City of Colorado Springs Public Works Design manual, City of Colorado Springs Subdivision Design Criteria, City of Colorado Springs Drainage Criteria Manual Volumes I and II, El Paso County Engineering Criteria Manual, and Colorado Department of Transportation specifications and construction standards. Other standards adopted by special districts or public utilities also apply although not specifically adopted by Council including the Fountain Sanitation District Specification and Regulations Manual and the Widefield Water and Sanitation District Rules and Regulations.

XX. *Regional Building Department.* The Pikes Peak Regional Building Department

YY. *Right-of-Way.* A strip of land occupied or intended to be occupied by a street, crosswalk, railroad, road, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, or for another special use. The usage of the term right-of-way for land platting purposes shall mean that every right-of-way established and shown on a final plat is to be

separate and distinct from the lots or parcels adjoining such right-of-way and not included within the dimensions of such lots or parcels. Rights-of-way intended for streets, crosswalks, water mains, sanitary sewers, storm drains, or any other use involving maintenance by a public agency shall be dedicated to public use on the plat on which such right-of-way is established.

*ZZ. Street.*

(1) *Street, Private.* A street that is privately owned and maintained.

(2) *Street, Public.* A street which is dedicated and accepted for public use and is maintained by the City or other public entity.

*AAA. Subdivider.* Any person, firm, partnership, corporation, or other entity, or any authorized agent thereof, dividing or proposing to divide land so as to constitute a subdivision as defined herein. For the purposes of this Title, a subdivider is considered to be the owner of the land or an authorized agent of the owner.

*BBB. Subdivision.* The term subdivision includes: (1) the division or resubdivision of a lot, tract, or any parcel of land into two or more lots, plats, sites, parcels, separate interests, or interests in common or other division of land for the purpose, whether immediate or future, of sale, lease or development; or the use of land or the conversion of a building or structure for condominiums, apartments, or other multiple-dwelling or office units unless such land, building or structure is included in an approved subdivision and is within a zone district that authorizes the same or greater density; (2) the combining of two or more contiguous parcels of land into one or more larger parcels, or more than one separate interest; and (3) the construction or erection of any building or other structure on any parcel of land which is not included in an approved subdivision plat. For purposes of this subsection, the term construction or erection includes any increase in the gross square footage of an existing building or structure, or the remodeling of an existing building or structure, the cost of which exceeds fifty (50) percent of the replacement cost of such building or structure.

*CCC. Subdivision Administrator.* The chief administrative officer of the City government as set forth in the City Charter, or his duly authorized representative.

*DDD. Subdivision Improvements Agreement (SIA).* A contractual agreement between the City and subdivider entered into in conjunction with approval of a final plat or at such time as construction of a subdivision is initiated.

*EEE. Surety.* A financial guarantee provided by the subdivider and in a form approved by the City Attorney, at the time of final plat is filed or upon initiation of construction of a subdivision, and as stipulated in the SIA for the purpose of guaranteeing the provision of improvements which may include an irrevocable letter of credit, negotiable certificate of deposit, cash, or other type of assurance.

FFF. *Townhome*. One of a row of homes sharing common walls. Differing from condominiums, townhomes, as a form of ownership, includes individual ownership of the land, and may include shared ownership of common elements, such as a central courtyard, that would have shared ownership.

GGG. *Tract*. A parcel of land that is created for the purposes of common ownership and use by two (2) or more property owners; ownership and use by association or government entity; or an impermanent status where property intended for further division can be platted and transferred.

HHH. *Traffic Analysis Report*. A report addressing the traffic impact of a subdivision or development, including an analysis of trip generation, a.m. and p.m. peak flows, level of service, and proposed street improvements required by such development. Such report may also be required to include cumulative traffic impacts of a project if subdivision plats are proposed in phases for a development (See Appendix A for details)

(Ord. 1412 §2, 2008)

## 16.21 PLATTING PROCEDURES AND REQUIREMENTS

16.21.010 General Requirements. Subdivisions shall be reviewed and approved in accordance with the procedures set forth in this Title. (Ord. 1412 §2, 2008)

16.21.020 Description of the Subdivision Types. Processing of applications for the subdivision of land shall be based on whether the subdivision is classified as a minor subdivision, major subdivision, subdivision plat amendment or correction, subdivision vacation, or subdivision replat (includes a condominium, commercial building pad or townhome subdivision). A subdivision of land may be classified as more than one type of subdivision (e.g., subdivision plat vacation and major subdivision that replats the subject property). Where a subdivision is classified as two or more subdivision types, the subdivision applications may be processed concurrently although each subdivision type may be required to be approved in a specific sequence (e.g., a subdivision plat vacation would need to be approved before a major subdivision that replats the subject property).

A. *Minor Subdivision*. A minor subdivision is any subdivision that:

1. Involves the division of a parcel into fewer than ten (10) lots or changes the configuration of fewer than ten (10) lots or tracts; and
2. Does not involve the dedication of additional public land or rights-of-way, except dedications required to expand or alter existing rights-of-way; and
3. Does not involve the vacation of previously dedicated rights-of-way; and
4. Does not involve the replat or resubdivision of a previously platted minor subdivision or the platting of the remainder of the parent parcel from which a minor subdivision was platted.

B. *Major Subdivision.* A major subdivision is any subdivision that:

1. Involves the division of a parcel into ten (10) or more lots or the reconfiguration of ten (10) or more lots; or
2. Involves the establishment of a super lot for the purpose of creating a condominium, commercial building pads or townhome subdivision by a future administrative action; or
3. Does not otherwise qualify as a minor subdivision, amendment or correction, vacation, or replat.

C. *Amendment or Correction.* A subdivision amendment or correction is any subdivision that:

1. Removes a plat note or restriction;
2. Involves the combination of two (2) or more lots or parcels into a single building lot or lots;
3. Adjusts a boundary or lot line or a building envelope; or
4. Releases easements created by a plat.

D. *Vacation.* A subdivision vacation is any subdivision that involves vacation of:

1. All or a portion of a plat;
2. A previously dedicated right-of-way or public road; or
3. A lot line.

E. *Replat.* A subdivision replat is any subdivision that:

1. Creates a new plat for previously platted land where the previous plat will be vacated and where the action does not qualify as an amendment, correction, or vacation.
2. Creates a subdivision that:
  - a. Involves the conversion of building units into individual units for sale or exchange as condominiums or other separate forms of ownership;
  - b. Does not convey separate title to an identifiable portion of the site;

- c. Involves a parcel that otherwise meets all the requirements of a legal building site; and
  - d. Does not require any changes in the physical development onsite or offsite as a result of the conveyance.
3. Creates a condominium, commercial building pad, or townhome subdivision where the development concept was approved as part of the original super lot plat.
- (Ord. 1412 §2, 2008)

#### 16.21.030 General Description of Subdivision Process.

A. *Intent* The intent of the subdivision processes and procedures is to ensure that those actions involving a change in the configuration of lots, parcels, or tracts result in the creation of lots, parcels or tracts that: (1) conform to the requirements of City codes, rules, regulations and ordinances; (2) are adequately served by utilities and other municipal services; (3) have safe and convenient access; and (4) are adequately described and surveyed for the purpose of sale.

B. *Overview of Process.* The review and approval process is designed to ensure efficiency and effectiveness. Where the review and approval process involves more limited discretion, the review and approval process is handled administratively to reduce processing time. The primary focus of the process is on the preliminary plat. Generally, any decisions involving more discretionary judgment are made at the time of preliminary plat. As a result of the focus on the preliminary plat process, final plats may be processed administratively if they are generally consistent with the preliminary plat and fulfill all conditions of approval associated with the preliminary plat approval. There are six general stages of the subdivision review and approval process. Depending on the nature of the proposed subdivision, some or all will apply.

##### 1. *Pre-Application and DRT Meeting.*

- (a) *Pre-Application Meeting.* Persons desiring to subdivide land are required to meet with the Subdivision Administrator for a pre-application meeting, unless specifically waived by the Subdivision Administrator. The purpose of the meeting is to inform the subdivider of subdivision procedures and requirements, to provide a checklist of the items to be included with the subdivision application, and to provide preliminary recommendations. It may be appropriate for the subdivider to request a pre-application meeting in advance of each stage of the subdivision review and approval process involving the submittal of an application and associated documents.
- (b) *DRT Meeting.* Where determined necessary by the Subdivision Administrator, the Subdivision Administrator shall require the subdivider to attend a DRT meeting to discuss the proposed subdivision. The subdivider

may also specifically request to meet with the DRT. The DRT meetings provide the subdivider with the opportunity to interface with all members of the review team and to identify issues that need to be addressed. This step occurs early in the design process to provide direction, identify expectations, and establish clear lines of communication. Where required by the Subdivision Administrator, attendance at the DRT meeting shall be considered a prerequisite to acceptance of any application for concept plan, preliminary plat or final plat. A DRT meeting may also be scheduled by the Subdivision Administrator or requested by the subdivider where significant issues have been identified or where agency comments conflict as a means of resolving the issues or conflicts. The subdivider may be invited to the DRT meeting scheduled to resolve issues or conflicts.

2. *Concept Plan.* A subdivider is encouraged to use the concept plan review process to test ideas and alternative development plans, to test variations in design not specifically provided for by this part or other rules and regulations, to identify any potential issues early in the process, or to simply gauge public and City acceptance of a proposed subdivision. The concept plan is an optional stage of any subdivision process, but is recommended in the case of large or complex subdivisions or as a tool in the annexation process. The concept plan is also used to review townhome and condominium subdivisions at the time of preliminary plat of the super lot, and should be filed concurrently with the preliminary plat applications where the development concept is known.

3. *Preliminary Plat.* The preliminary plat review process provides an opportunity for the subdivider to obtain approval of the lot layout and general design of the subdivision from the Planning Commission prior to completing detailed engineering. The preliminary plat process verifies the conformance of the proposed subdivision with City standards, codes, rules, regulations and ordinances and the City's Comprehensive Plan. The process helps to identify issues that must be addressed to ensure conformance with all municipal requirements prior to final plat and recording, identifies needed improvements, and facilitates resolution of any complex issues associated with the proposal.

4. *Final Plat.* The final plat review process: (1) documents conformance of the proposed subdivision with all City standards, codes, rules, regulations and ordinances; (2) ensures the design of proposed infrastructure meets the requirements of the Public Works and Utilities Design and Construction Specifications; (3) determines conformance with any applicable preliminary plat; and (4) reviews the legal documentation associated with the subdivision to ensure that lots, tracts and parcels are adequately described for the purposes of sale, and assignment of ownership and maintenance of public and private infrastructure.

5. *Document Recording.* The document recording process is the process by which the required subdivision documentation is compiled for filing the plat for recording in the office of the El Paso County Clerk and Recorder. The materials are reviewed for

conformance with the final plat approval, executed by City officials, and filed for recording by the Planning Department in the office of the El Paso County Clerk and Recorder. This step may occur before, concurrent with, or subsequent to the construction of improvements. No lots may be sold until the plat is recorded. A SIA with the required surety is required prior to filing the plat for recording where improvements have not been completed and approved by the City Engineer for preliminary acceptance by the City. Improvements may not be formally accepted by the City Engineer for maintenance by the City until the final plat is filed with the Subdivision Administrator for recording in accordance with Section 16.21.090 H.

6. *Construction and Acceptance of Public Improvements.* The construction of improvements and acceptance of public improvements is the process by which all required services, roads and other facilities necessary to support the development of lots within the proposed subdivision are installed by the subdivider and accepted by the City. The process requires the review and acceptance of construction drawings by the City Engineer, inspections by the City Engineer, and acceptance of public improvements by the City Engineer. Construction may only be initiated where construction plans have been stamped approved by the City Engineer and all other requirements of Section 16.020.060 E have been met. In accordance with Section 16.020.060 E, a SIA or development agreement with the required surety is required prior to initiating construction of a subdivision or any improvements associated therewith unless otherwise authorized by the Subdivision Administrator. Surety releases shall be made by the City Engineer based on percent of improvements complete at the request of the subdivider, but no more than three (3) surety releases shall be approved in any calendar year. No improvements may be final accepted by the City until approvals of all facilities to be owned and operated by special districts or public utilities have been received by the City Engineer.

C. *Public Notice.*

1. *Courtesy Notice to Adjacent Property Owners and Neighborhood for Major Subdivision.* Notice is generally provided to all property owners within 400 feet of a proposed major subdivision at the time of concept plan (if any) and preliminary plat. The notice shall provide a description of the proposal including a copy of the concept plan or preliminary plat and time and date of the first scheduled Planning Commission meeting at which the application will be reviewed. The notice is provided as a courtesy to property owners. No public hearing is held concerning a concept plan or preliminary plat. The subdivider is responsible for sending the notice by first class mail and providing a copy of the notice and mailing list to the Subdivision Administrator. The notice shall be sent as soon as possible once the subdivider is informed of the meeting date by the Subdivision Administrator, but no fewer than seven (7) days before the meeting.

2. *Public Notice to Adjacent Property Owners and Neighborhood for Vacation of Right-of-Way or Public Improvements.* Notice is provided to all potentially-affected property owners of any subdivision action that will result in the vacation of right-of-way,

public infrastructure or other public dedications. The notice shall provide a description of the proposal including a map showing the location and extent of the vacation and time and date of the first scheduled Planning Commission meeting at which the vacation will be reviewed. A public hearing is held concerning vacation of right-of-way, public infrastructure or other public dedications by both the Planning Commission and Council. At the hearing, the Planning Commission and Council shall take input and comments from the public. The subdivider is responsible for sending the notice by first class mail and providing a copy of the notice and mailing list to the Subdivision Administrator. The notice shall be sent as soon as possible once the subdivider is informed of the meeting date by the Subdivision Administrator at least fifteen (15) days in advance of the public hearing before the Planning Commission. Notice of the public hearing shall also be published in a newspaper of general circulation within the City at least 20 days prior to the hearing.

3. *Courtesy Notice to Adjacent Property Owners and Neighborhood for Other Subdivision Requests.* Notice may be provided, at the discretion of the Subdivision Administrator to all property owners within 400 feet of a proposed subdivision at the time of concept plan (if any) preliminary plat or final plat for minor subdivisions, plat amendments, corrections, vacations, or other subdivision actions for which notice is not specifically required. The notice shall provide a description of the proposal and time and date of any scheduled meeting at which the subdivision application will be reviewed by the Planning Commission, if known, or a date by which the Subdivision Administrator anticipates taking action on the application. The notice is provided as a courtesy to property owners. No public hearing or meeting may be held concerning these other subdivision requests. If required by the Subdivision Administrator, the subdivider is responsible for sending the notice by first class mail and providing a copy of the notice and mailing list to the Subdivision Administrator. The notice shall be sent as soon as possible once the subdivider is informed of the meeting date or date of proposed action by the Subdivision Administrator, but no fewer than seven (7) days before the meeting or date of proposed action. (Ord. 1412 §2, 2008)

16.21.040 Major Subdivision Process. The major subdivision process is most commonly a five step process that includes: (1) pre-application meeting and DRT meeting; (2) review and approval of a preliminary plat; (3) review and approval of a final plat, (4) document recording; and (5) construction of improvements and acceptance of public improvements. At the discretion of the subdivider, the process may be expanded to include the review of a concept plan.

A. *Pre-Application Meeting.* A pre-application meeting is required for all major subdivisions in advance of filing an application for concept plan or preliminary plat. The purpose of the meeting is to inform the subdivider of subdivision procedures and requirements, to provide a checklist of the items to be included with the subdivision application, and to provide preliminary recommendations. The subdivider can request a pre-application meeting in advance of each step of the subdivision review and approval process.

B. *DRT Meeting.* Where determined necessary by the Subdivision Administrator, the Subdivision Administrator may require the subdivider to attend a DRT meeting to discuss the



proposed subdivision. The subdivider may also specifically request to meet with the DRT. The DRT meetings provide the subdivider with the opportunity to interface with all members of the review team and to identify issues that need to be addressed. Where required by the Subdivision Administrator, attendance at the DRT meeting shall be considered a prerequisite to acceptance of any application for concept plan, preliminary plat or final plat.

C. *Concept Plan Review-Optional Except for Super Lot.* A concept plan, when associated with a major subdivision, is reviewed by the Planning Commission. The concept plan provides the subdivider with an opportunity to present a proposed subdivision before making substantial investment in design to determine if the proposed subdivision is acceptable or if there are issues that need to be addressed in the design process in advance of submitting an application for preliminary plat. The concept plan is also used to review townhome and condominium subdivisions at the time of preliminary plat of the super lot. No formal action is required for a concept plan except in the case of a super lot where the concept plan becomes a component of the preliminary plat approval.

D. *Preliminary Plat Approval.* The preliminary plat for a major subdivision is reviewed and approved by the Planning Commission. The Planning Commission may approve or deny the preliminary plat with or without conditions. The Planning Commission's decision may be appealed to the Council by the subdivider or any aggrieved party.

E. *Final Plat Approval.* The final plat may be approved administratively by the Subdivision Administrator when the preliminary plat has been approved by the Planning Commission or Council. The Subdivision Administrator's decision concerning a final plat may be appealed to the Planning Commission, and subsequent to the Planning Commission's decision to the Council by the subdivider or any aggrieved party. The Subdivision Administrator has the option of referring the final plat to the Planning Commission for action when: (1) issues cannot be resolved including those issues raised by a referral agency or other party noticed of the action; (2) where the final plat fails to substantially conform to the approved preliminary plat and any associated conditions; (3) where relief from a requirement of this Title or a deviation from the Public Works and Utilities Design and Construction Specifications is required that was not approved as part of the preliminary plat; or (4) there are known complex or controversial issues associated with the proposed subdivision.

F. *Document Recording.* Upon approval of the final plat and all associated documents by the Subdivision Administrator, the final plat shall be filed for recording in the office of the El Paso County Clerk and Recorder. All final plat materials shall be executed by the subdivider and submitted to the Subdivision Administrator including all recording fees, SIA and surety. Once all materials have been received and determined to be in conformance with the approved plat and these regulations, the Subdivision Administrator shall cause the subdivision plat and any associated materials to be executed by the required City officials and recorded. The final plat shall be recorded prior to the transfer of title to any lot within the boundaries of the subdivision.

G. *Construction Improvements and Acceptance of Public Improvements.* The subdivider may initiate construction of the subdivision improvements only after the construction

plans are stamped accepted by the City Engineer and the requirements of Section 16.020.060 E have been met. The City Engineer shall not approve the construction plans until the preliminary plat has been approved. After some or all of the required improvements have been completed, the City Engineer may approve the improvements, accept public improvements, release surety, and authorize issuance of building permits in accordance with Section 16.20.060, 16.20.070, and Section 16.23 of these regulations. (Ord. 1412 §2, 2008)

16.21.050 Minor Subdivision Process. The minor subdivision process is most commonly a three step process involving: (1) pre-application meeting, (2) review and approval of a final plat, and (3) document recording. At the discretion of the subdivider, the process may be expanded to include Planning Commission review of a concept plan, preliminary plat or both. In some cases, the process may also include the construction of improvements and acceptance of public improvements.

A. *Pre-Application Meeting.* A pre-application meeting is required for all minor subdivisions in advance of filing an application for concept plan or preliminary or final plat depending on how the subdivider plans to initiate their application. The purpose of the meeting is to inform the subdivider of subdivision procedures and requirements, to provide a checklist of the items to be included with the subdivision application, and to provide preliminary recommendations. The subdivider can request a pre-application meeting in advance of each step of the subdivision review and approval process.

B. *Concept Plan Review-Optional.* A concept plan, when associated with a minor subdivision, is reviewed by the Planning Commission. The concept plan provides the subdivider with an opportunity to present a proposed subdivision before making substantial investment in design to determine if the proposed subdivision is acceptable or if there are issues that need to be addressed in the design process in advance of submitting an application for final plat. The Planning Commission takes no formal action on a concept plan.

C. *Preliminary Plat Review.* As with a concept plan, when an application for preliminary plat is submitted for a minor subdivision, it is reviewed and approved by the Planning Commission. The Planning Commission may approve or deny the preliminary plat with or without conditions. The Planning Commission's decision may be appealed to the Council by the subdivider or any aggrieved party.

D. *Final Plat Approval.* The final plat for a minor subdivision may be approved administratively by the Subdivision Administrator. The Subdivision Administrator's decision concerning a final plat for a minor subdivision may be appealed to the Planning Commission, and subsequent to the Planning Commission's decision to the Council by the subdivider or any aggrieved party. The Subdivision Administrator has the option of referring a final plat to the Planning Commission for action when: (1) issues cannot be resolved including those issues raised by a referral agency or other party noticed of the action; (2) where relief from a requirement of this Title or a deviation from the public Works and Utilities Design and Construction Specifications is required; or (3) there are known complex or controversial issues associated with the proposed subdivision.

E. *Document Recording.* Upon approval of the final plat and all associated documents by the Subdivision Administrator, the final plat shall be filed for recording in the office of the El Paso County Clerks and Recorder. All final plat materials shall be executed by the subdivider and submitted to the Subdivision Administrator including all recording fees, and any required SIA and surety. Once all materials have been received and determined to be in conformance with the approved plat and these regulations, the Subdivision Administrator shall cause the subdivision plat and any associated materials to be executed by the required City officials and recorded. The plat shall be recorded prior to the transfer of title to any lot within the boundaries of the subdivision.

F. *Construction Improvements and Acceptance of Public Improvements.* The subdivider may initiate construction of the subdivision improvements only after the construction plans are stamped accepted by the City Engineer and the requirements of Section 16.020.060 E have been met. The City Engineer shall not approve the construction plans until the preliminary plat has been approved. After some or all of the required improvements have been completed, the City Engineer may approve the improvements, accept public improvements, release surety, and authorize issuance of building permits in accordance with Section 16.20.060, 16.20.070, and Section 16.23 of these regulations.  
(Ord. 1412 §2, 2008)

16.21.060 Vacation, Replat, Amendment, and Correction Process. The vacation, replat, amendment, and correction processes vary depending on the specific type of subdivision proposed. In most cases, when the action does not result in the vacation of public rights-of-way or infrastructure, or result in a change to or the creation of ten (10) or more lots (except in the case of a townhome plat or condominium map), the process is a two step process that involves: 91) the administrative review and approval of a final plat or other required documents by the Subdivision Administrator; and (2) document recording. Where public rights-of-way or infrastructure will be vacated or ten (10) or mote lots will be created, the process involves more steps depending on the specific action proposed. In all cases involving public right-of-way or infrastructure vacation, a preliminary or final plat or other required documents are subject to review and approval by the Planning Commission and Council. Table 16.21.060-a details the process involved and decision-making body for the various plat vacation, replat, plat amendment, and plat correction processes. (Ord. 1412 §2, 2008)

**Table 16.21.060-1 Vacation, Replat, Amendment, and Plat Correction Processes**

<b>Type of Plat</b>	<b>Public Hearing</b>	<b>Decision Body</b>	<b>Appeal</b>
<b>Plat Vacations</b>			
Vacation of plat with public infrastructure or dedications <sup>8</sup>	Yes	Planning Commission (recommendation), Council (action by ordinance)	District Court
Vacation of plat without public infrastructure or dedications	No	Subdivision Administrator <sup>2</sup>	1 <sup>st</sup> appeal: Planning Commission <sup>5,6</sup>
Lot line vacations <sup>7</sup>	No	Subdivision Administrator <sup>2</sup>	1 <sup>st</sup> appeal: Planning Commission <sup>5,6</sup>
Roadway vacation <sup>8</sup>	Yes	Planning Commission (recommendation), Council (action by ordinance)	District Court

<b>Plat Amendments or Correction</b>			
Amendment to, or removal of, plat restrictions or conditions	No	Subdivision Administrator <sup>2,4</sup>	1 <sup>st</sup> appeal: Planning Commission
Lot line adjustments	No	Subdivision Administrator <sup>2</sup>	1 <sup>st</sup> appeal: Planning Commission <sup>5,6</sup>
Error corrections	No	Subdivision Administrator <sup>2</sup>	1 <sup>st</sup> appeal: Planning Commission <sup>5,6</sup>
<b>Replat<sup>3</sup></b>			
Replat of 10 lots or more	Processed as Major Subdivision <sup>3</sup>		
Replat of fewer than 10 lots	Processed as Minor Subdivision <sup>3</sup>		
Condominium subdivision <sup>1,3</sup>	No	Subdivision Administrator <sup>2</sup>	1 <sup>st</sup> appeal: Planning Commission <sup>5,6</sup>
Townhome plat <sup>1,3</sup>	No	Subdivision Administrator <sup>2</sup>	1 <sup>st</sup> appeal: Planning Commission <sup>5,6</sup>
Commercial building pad plat <sup>1,3</sup>	No	Subdivision Administrator <sup>2</sup>	1 <sup>st</sup> appeal: Planning Commission <sup>5,6</sup>
<sup>1</sup> Processed as a Major Subdivision if original final plat did not include approval of concept plan for townhome lots, commercial building pads, or condominiums. <sup>2</sup> The subdivision administrator has the option of referring any plat to the Planning Commission for action when issues cannot be resolved including those issues raised by a referral agency or other party noticed of the action. <sup>3</sup> A replat will also require a plat vacation, which may be processed concurrently. <sup>4</sup> Unless plat was originally approved by Council, in which case Council must approve amendment. <sup>5</sup> A decision by the Subdivision Administrator may be appealed to the Planning Commission by the subdivider or any aggrieved party. An approval with conditions is considered a denial for purposes of appeal <sup>6</sup> A decision by the Planning Commission may be appealed to the Council by the subdivider or any aggrieved party. An approval with conditions is considered a denial for purposes of appeal. <sup>7</sup> Where the removal of a lot line is desired for conformance with zoning only, a merger agreement may be executed by the owner and approved by the Subdivision Administrator as opposed to having to prepare the materials necessary for a lot line vacation. <sup>8</sup> A public hearing requires publication of the notice of public hearing in a newspaper of general circulation within the City at least 10 days prior to the hearing.			

**16.21.070 Concept Plan Procedures.** The concept plan is an optional process, except in the case of a proposed condominium, commercial building pad or townhome subdivision where it is required to accompany the preliminary plat for the major or minor subdivision creating the super lot to receive feedback and recommendations from the City to assist the subdivider in preparing a preliminary or final plat meeting the requirements of applicable City codes, rules, regulations and ordinances, and advancing the goals of the Comprehensive Development Plan. The process is informal and the level of detail included in the application and associated submissions may be varied at the subdivider's discretion depending on what the subdivider desires to explore or achieve through the process. It is assumed that, as a minimum, the subdivider will include with the application, a sketch plan of the proposed subdivision that shows lot and road layout.

A. *Intent.* Prior to preparing a preliminary or final plat, a concept plan may be prepared for review by the Planning Commission. The intent of a concept plan is to allow the subdivider to present a subdivision proposal at a very early stage to: (1) examine the feasibility of the project, design characteristics, and relationship of a proposed subdivision to adjacent properties, (2) identify possible issues that may affect the proposed development, and (3) gain insight about the design from the public, City staff, Planning Commission, or Council. This may

include the location of geologic hazards, identification of environmentally sensitive areas and wildlife habitat areas, open space and parks, and general conformance with City codes, rules, regulations and ordinances, and Comprehensive Development Plan. The concept plan process may be used in association with any type of subdivision application to obtain advice concerning the proposed development from the decision-making body before preparing and submitting an application for preliminary or final plat. The concept plan may also be used to support other types of development applications such as a rezoning or annexation request. The concept plan should not be confused with the Overall Development Plan (ODP) in the PUD process, although the required drawings, sketches, or maps used may be the same in both cases.

*B. Prerequisite.*

1. *Pre-Application Meeting.* Persons desiring to submit a concept plan are required to meet with the Subdivision Administrator for a pre-application meeting, unless specifically waived by the Subdivision Administrator. The purpose of the meeting is to inform the subdivider of subdivision procedures and requirements, to provide a checklist of the items to be included with the subdivision application, and to provide preliminary recommendations.
2. *DRT Meeting.* Where determined necessary by the Subdivision Administrator, the Subdivision Administrator may require the subdivider to attend a DRT meeting to discuss the proposed subdivision prior to filing an application. The subdivider may also specifically request to meet with the DRT. The DRT meetings provide the subdivider with the opportunity to interface with all members of the review team and to identify issues that need to be addressed. Where required by the Subdivision Administrator, attendance at the DRT meeting shall be considered a prerequisite to acceptance of any application for concept plan.

*C. Approval Standards.* No official action is taken on a concept plan. The recommendations and discussion concerning a concept plan are advisory only and non-binding on either the subdivider or the City.

*D. Submittal and Review Process.* A complete application for a concept plan must be submitted to the Subdivision Administrator and shall not be considered accepted until all required information is received.

1. The subdivider shall submit a complete application with accompanying documents in accordance with the application package and Section 16.21.070.E to the Subdivision Administrator including complete packets for each referral agency. Referral packets with all submittal information accurately folded and assembled shall be provided by the subdivider in unsealed manila envelopes addressed to appropriate referral agencies.
2. Referral packets shall be mailed by the Subdivision Administrator. The referral agencies shall provide comment within fifteen (15) days of receiving a

complete submittal. A minimum of fifteen (15) days after mailing the referral packets to the referral agencies, the Subdivision Administrator shall review and compile the referral comments received. The Subdivision Administrator shall prepare a review memorandum, schedule the concept plan for review by the Planning Commission, and notify the subdivider of the meeting date and time. A copy of the review memorandum and comments shall be provided to the subdivider. The subdivider shall provide courtesy notice in accordance with the notice provisions in Section 16.21.030.C.1.

3. The Planning Commission shall review the application, review memorandum, testimony from the subdivider, and public comments in considering the concept plan. The Planning Commission shall provide their concerns, ideas, issues, and recommendations to the subdivider. The information brought forth and discussed shall be documented in meeting minutes including any specific recommendations. The minutes shall serve as the City's official response to the subdivider concerning the proposed concept plan. A copy of the minutes shall be placed on file with the application.

E. *General Submittal Requirements.* General submittal requirements are as follows:

1. Completed and signed application.
2. The appropriate fee as set forth in the fee schedule.
3. Proof of ownership, which may be achieved by including a copy of the current deed showing the subdivider's name as owner; a current title insurance policy or title commitment no more than thirty (30) days prior to the date of application; or a copy of the current deed and a notarized letter of authorization from the landowner authorizing the subdivider to process and represent the subdivision application dated no more than thirty (30) days prior to the date of application.
4. Letter of intent describing the project. The following should generally be included in all letters of intent; name of the owner, subdivider and consultant, including addresses and telephone numbers; site location, size and zoning; description of the project, request and justification for approval of request; existing and proposed facilities, structures, roads, etc.; the basis for the proposed design including how site issues have been addressed in the design; description and justification for any waivers, relief or deviations from standards that are either required or desired; and a statement describing the conformance of the proposed subdivision with City codes, rules, regulations, ordinances and plans. The description of the project shall include the average lot size, the range of lot sizes, gross density, open space, and phasing.
5. A concept plan exhibit at a reasonable scale generally showing boundaries, easements, contour lines, zoning, floodplain, large stands of significant

vegetation, wildlife habitat areas, proposed open space, existing and proposed streets, and the proposed lot layout..

6. A vicinity map at reasonable scale which indicates the proposed subdivision in relationship to platted and unplatted land and streets that are adjacent to or serve the proposed subdivision.

F. *Expiration of Approval.* No formal action is taken to approve or deny the concept plan. The concept plan is advisory only and is not binding on the subdivider or City. As a result, the concept plan has no expiration, but generally should be considered as reliable information on which to base a preliminary plat application for no more than one (1) year. Where a concept plan is approved in association with the platting of a super lot, the concept plan shall be subject to the expiration provisions associated with the preliminary plat and shall be subject to no further expiration following the filing of the final plat of the super lot. (Ord. 1412 §2, 2008)

#### 16.21.080 Preliminary Plat Procedures.

A. *Intent.* The purpose of the preliminary plat step is to allow the City an opportunity to examine in detail all aspects of a proposed plat, including, but not limited to: compatibility with surrounding land uses and zoning; adequate water, utilities and other services; desirable open space areas; preservation of significant environmental features and viewsheds; protection from flooding and other geologic hazards; adequate land dedication for parks, schools and other public uses; and adequate streets and other types of access facilities for residents, businesses and emergency services. The preliminary plat must comply with the applicable PUD or other zone district regulations and requirements. The preliminary plat is also reviewed against design standards; the requirements of City codes, rules, regulations and ordinances; the City's Comprehensive Development Plan, and other master plans

B. *Prerequisite.* The preliminary plat is an optional step except in the case of a major subdivision where a preliminary plat is required to be approved in advance of the final plat. Where a concept plan has been considered in advance of the preliminary plat, the preliminary plat should generally take into consideration the recommendations and discussions associated with the concept plan.

1. *Pre-Application Meeting.* Persons desiring to submit a preliminary plat are required to meet with the Subdivision Administrator for a pre-application meeting, unless specifically waived by the Subdivision Administrator. The purpose of the meeting is to inform the subdivider of subdivision procedures and requirements, to provide a checklist of the items to be included with the subdivision application, and to provide preliminary recommendations. Where a pre-application meeting was held in association with a concept plan, the Subdivision Administrator may waive the pre-application meeting.
2. *DRT Meeting.* Where determined necessary by the Subdivision Administrator, the Subdivision Administrator may require the subdivider to

attend a DRT meeting to discuss the proposed subdivision in advance of filing an application. The subdivider may also specifically request to meet with the DRT. The DRT meetings provide the subdivider with the opportunity to interface with all members of the review team and to identify issues that need to be addressed. Where required by the Subdivision Administrator, attendance at the DRT meeting shall be considered a prerequisite to acceptance of any application for preliminary plat.

C. *Approval Standards.* The Planning Commission will consider the comments of other agencies, governmental units, utilities, service companies before reaching a decision. A preliminary plat may be approved provided: (1) evidence has been presented that there is adequate water supply; (2) evidence has been presented that an adequate public sewage disposal system is available and, if other methods of sewage disposal are proposed that those systems comply with state and local laws and regulations; (3) soil and topographical conditions presenting hazards or requiring particular precautions have been identified by the subdivider and the proposed uses of the areas are compatible with such conditions; (4) proposed lots conform to City codes, rules, regulations, and ordinances governing size, length to depth ratio, width, frontage, access, etc.; (5) proposed park, trail and open space dedications meet the requirements of City code and are properly located and of the appropriate character to accommodate the proposed use (or cash-in-lieu of parkland dedication has been offered and is an appropriate and reasonable alternative to dedications); (6) adequate vehicular and pedestrian access has been made available; (7) necessary offsite improvements have been planned to accommodate the proposed development and provisions for their installation have been made; (8) the design of the subdivision appears to allow the design and installation of infrastructure meeting the requirements of municipal infrastructure standards; (9) no significant issues remain unresolved that would impact the ability to provide necessary services to the proposed subdivision or compromise the integrity of the proposed subdivision; and (10) that the proposed subdivision supports the City's Comprehensive Development Plan and other master plans.

D. *Submittal and Review Process.* A complete application for preliminary plat must be submitted to the Subdivision Administrator and shall not be considered accepted until all required information is received.

1. The subdivider shall submit a complete application with accompanying documents in accordance with the application package and Section 16.21.080.E to the Subdivision Administrator including complete packets for each referral agency. Referral packets with all submittal information accurately folded and assembled shall be provided by the subdivider in unsealed manila envelopes addressed to appropriate referral agencies.
2. Referral packets shall be mailed by the Subdivision Administrator. The referral agencies shall provide comment within fifteen (15) days of receiving a complete submittal. A minimum of fifteen (15) days after mailing the referral packets to the referral agencies, the Subdivision Administrator shall review and compile the referral comments received. A DRT meeting may also be scheduled by the Subdivision Administrator or requested by the subdivider



where significant issues have been identified or where agency comments conflict as a means of resolving the issues or conflicts. The subdivider may be invited to the DRT meeting scheduled to resolve issues or conflicts. The Subdivision Administrator shall prepare a staff report, schedule the application for review by the Planning Commission, and notify the subdivider of the meeting date and time. The subdivider is encouraged to meet with referral agencies and other interested parties to address concerns with the preliminary plat prior to the Planning Commission meeting. The subdivider shall provide courtesy notice in accordance with the notice provisions in Section 16.21.030.C.1.

3. The Planning Commission will review the preliminary plat, the referral comments, the subdivider's testimony, the public comments, and the staff report. The Planning Commission's decision concerning the application will be based on presented documentation and any remarks along with compliance of standards, policies, regulations, and guidelines and the preliminary plat approval standards outlined in Section 16.21.080.C. Nothing in this Title is intended to limit the authority of the Planning Commission to impose use, height, area, or bulk requirements or restrictions governing buildings and premises within a subdivision, so long as such requirements and restrictions do not authorize violation of the City of Fountain Zoning Ordinance, and the Council shall have the same authority.
4. If the Planning Commission denies the preliminary plat, the decision may be appealed to the Council in writing by the subdivider within fifteen (15) days of the Planning Commission's action by the subdivider or any aggrieved party. The request for appeal shall be submitted to the Subdivision Administrator and shall explain the nature of the appeal including the specific issues under appeal and provide written justification supporting the appeal. The appeal shall be accompanied by all required fees. After the request for appeal is determined to be complete, the Subdivision Administrator shall prepare a staff report and schedule the appeal for consideration before the Council. The Subdivision Administrator shall notify the subdivider of the date and time of the hearing. The Council, after considering all information presented including the staff report, application, written appeal, the Planning Commission's action and any testimony from the subdivider, Planning Commission members, staff, or public shall take action to either support the Planning Commission's action, modify the Planning Commission's action, overturn the Planning Commission's action, or refer the application back to the Planning Commission for reconsideration. Whenever a preliminary plat has been disapproved by the Council, the Planning Commission shall not reconsider the plat for a period of one (1) year from the Planning Commission's final action or disapproval. However, if the plat is modified so as to overcome the reasons for disapproval, the Planning Commission may consider the modified plat within the one (1) year time limitation. If the Council approves the preliminary plat with or without conditions, a copy of

the approved preliminary plat and conditions of approval shall be signed by the Mayor and placed on file in the Planning Department which shall serve as the official record of the decision.

5. If the Planning Commission approves the preliminary plat, no Council review and approval shall be necessary. A copy of the approved preliminary plat and conditions of approval shall be signed by the Planning Commission Chairman and placed on file in the Planning Department which shall serve as the official record of the decision.

E. *General Submittal Requirements.* Preliminary plat submittal requirements are as follows:

1. Completed and signed application.
2. The appropriate fee as set forth in the fee schedule.
3. Letter of intent describing the project in detail. The following should generally be included in all letters of intent: name of the owner, subdivider and consultant, including addresses and telephone numbers; site location, size and zoning; description of the project, request and justification for approval of request; existing and proposed facilities, structures, roads, etc.; the basis for the proposed design including how site issues have been addressed in the design; description and justification for any waivers, relief or deviations from standards that are either required or desired; and a statement describing the conformance of the proposed subdivision with City codes, rules, regulations, ordinances and plans. The description of the project shall include the average lot size, the range of lot sizes, gross density, open space, and phasing. The letter of intent is the opportunity for the subdivider to show how the proposal meets the criteria for approval; explain how the various competing regulatory requirements and site constraints were balanced to achieve a sound proposal; and describe in detail the construction and other commitments the subdivider is prepared to establish in the development of the subdivision. In most cases, the subdivider should consider addressing the discussions concerning the concept plan in the application for preliminary plat to show how the discussion was incorporated into the preliminary plat.
4. Complete legal description of the property prepared by a professional land surveyor where a previous survey has not been prepared that may be referenced and the description cannot be completed by an aliquot parcel description.
5. Proof of ownership, which may be achieved by including a copy of the current deed showing the subdivider's name as owner; a current title insurance policy or title commitment no more than thirty (30) days prior to the date of application; or a copy of the current deed and a notarized letter of

authorization from the landowner authorizing the subdivider to process and represent the subdivision application dated no more than thirty (30) days prior to the date of application.

6. A vicinity map at reasonable scale which indicates the proposed subdivision in relationship to platted and unplatted land and streets that are adjacent to or serve the proposed subdivision.
7. Where the preliminary layout covers only a part of the entire holding, a sketch of the prospective street system of the un-submitted part shall be furnished insofar as it affects the plat submitted for consideration of the overall street system.
8. A map depicting proposed street connections to adjacent subdivided and unsubdivided lands showing how adjacent properties could be developed and how the extension of the street works from a design perspective both horizontally and vertically.
9. Preliminary utility plan showing location and size of existing utilities within, or adjacent to the subdivision (including water sanitary sewer, storm sewer, electric, gas) and containing such information as necessary to show generally how water, sanitary sewer, storm (sewer) water, electric, gas, telephone, and cable television services are to be provided. A "will serve" letter shall also be submitted.
10. Plat exhibit meeting the requirements of Section 16.21.080.F.
11. Development reports meeting the requirements of Section 16.21.080.G.
12. Such other items deemed necessary by the Subdivision Administrator to support review and approval of the application.

F. *Preliminary Plat Exhibit.* The preliminary plat exhibit shall be a neat, clear, permanent, legible, and reproducible document. Inaccurate, incomplete or poorly drawn plats shall be rejected.

1. *Sheet Size.* The sheet size shall be 24 inches by 26 inches or 24 inches by 36 inches, including a minimum one-half (1/2) inch border. Reduced 11 inch by 17 inch copies shall also be provided.
2. *Scale.* The preliminary plat shall be drawn to a scale of one inch equals 100 feet (1"=100') or a scale of one inch equals 50 feet (1"=50') unless the Subdivision Administrator approves a larger or smaller scale. In the event a single sheet is not practicable, multiple sheets may be used if no lot is split between sheets and one each sheet:

- a. Match lines are indicated; and
  - b. A composite drawing is provided that shows the entire subdivision, location of the match lines, sheet numbers, and the location of the sheet within the proposed subdivision by the shading in of the appropriate area on the composite drawing.
3. *Content of Plat.* The preliminary plat exhibit shall contain the following:
- a. A title block and reference information pertaining to the subdivision, including:
    - (1) Name of proposed subdivision centered on the top of the plat and at the top of each sheet. On each sheet, a subtitle, in smaller lettering, shall indicate the quarter section(s)(1/4), section, township and range in which the subdivision is located. If the subdivision is a replat of a previously approved subdivision, the replat information shall be included in the subtitle. The name of the City, County and the State shall be included in the subtitle.
    - (2) Date of preparation, date of survey, north arrow, written and graphic scale located in the lower right hand corner of each sheet.
    - (3) Names, address, and telephone number of person(s) responsible for preparing the plat (e.g., licensed surveyor, licensed engineer or designer of the plat) located in the lower right hand corner.
    - (4) Date of submission with provisions for dating revisions located in the lower right hand corner.
    - (5) Vicinity map (scale of 1"=2000') showing the subdivision in relation to section lines and existing or proposed streets within one mile.
  - b. The location of property lines including location and boundaries of the subdivision if part of a larger area.
  - c. The location of burial grounds, railroad rights-of-way, watercourses, irrigation ditches and laterals, paleontological, archeological or historic sites or grounds, and other significant features within or adjacent to the tract to be subdivided.
  - d. Approximate location of land intended to be conveyed or reserved for public use or reserved in the deeds for the use of all property owners, residents, or general public and the proposed method of dedication and maintenance of such land to include, but not be limited to, parks, trails, open space; streets, bikeways, schools and school sites, utilities, and community and social service facilities. All locations or lands shall be identified as public or private.

- e. Approximate layout, dimensions, and area in square feet of each lot (sought) to be platted.
- f. The approximate length of all street centerlines, radii of curves, type of curb, gutter and sidewalk.
- g. Right-of-way lines, widths, locations, and street names of all existing and proposed streets within and immediately adjacent to, the property being subdivided, including the classification of each of the streets. Street names shall be approved by El Paso Teller E9-1-1 Authority. Alleys, greenways, bikeways, trails, and other transportation links shall also be indicated.
- h. The approximate locations, dimensions, ownership and use designations of all proposed or existing easements.
- i. Final total gross acreage, the total number of lots, gross density, net density and net acreage of the subdivision.
- j. The net acreage of land to be dedicated for public streets; dedicated for other public uses; and developed for private uses and facilities including private parks, open space and recreation centers.
- k. Approximate location of all areas of floodplain or storm water overflow and the location, widths, and direction of flow of all water courses including the one-hundred-foot (100') buffer from the floodplain.
- l. Areas of geological hazards.
- m. Existing and proposed location of bridges, culverts, and provisions for collection and discharge of surface drainage including detention facilities.
- n. Accurate existing contours shall be shown at intervals of two (2) feet or less; contours at intervals of five (5) feet will be acceptable where the slope is greater than ten (10) percent. Contours shall be extended onto adjacent property for a distance of 200 feet or as otherwise needed to establish proper topographical relationships. The contours on adjacent properties may be projected or data available from the City may be used if access cannot be obtained.
- o. Outline of buildings and structures that are not to be moved in the development of the subdivision.
- p. Buffering proposed from collector and arterial streets and, where appropriate, adjacent uses.

q. Signature block for the Planning Commission Chairman.

G. *Development Reports.* The subdivider shall submit a report or reports with supporting materials.

1. A Land Analysis Report (LAR) containing both mapped and written information identifying the extent of and impact upon the property's natural features and environmental constraints, and that addresses proposed mitigating measures which may include avoidance, replacement, proposed plat notes, etc. The LAR may take the form of a single report or multiple reports at the discretion of the subdivider. The intent of the report should be to identify all potential issues associated with the development of the property and, where appropriate, identify how the proposal mitigates these issues or why an issue has been dismissed. At a minimum the report shall include:
  - a. A discussion site features depicted on the plat that may affect the evaluation of the proposed development. All significant natural and man-made features shall be identified, including major views into and out of the subdivision in any proposed industrial and commercial subdivisions. A written analysis shall be provided that summarizes the existing site features and constraints and addresses how the development of the site will occur in a manner that considers both the opportunities and constraints. The written analysis must address the site's physical constraints and hazards, along with proposed impact mitigation measures. The report shall also address wildlife, wetlands, soils, geologic hazard, wildfire hazard, and other issues. Where a particular parameter does not apply, the report shall identify how a determination was made that the parameter does not apply.
  - b. Evidence establishing soil suitability in the form of a report prepared by a professional engineer or professional geologist and information on the geological characteristics of the site prepared by a qualified professional. Significant natural features (e.g., drainage channels, bodies of water, rock outcroppings, ravines, ridge lines, buttes and bluffs) and geologic hazards (e.g., down slope creep, debris flow, flood hazards, rock fall hazards, underground mines, known areas of soil problems such as subsidence or shrink/swell, soil contamination, soil corrosiveness) that may require unusual mitigation during design and construction of structures and infrastructure.
  - c. Unless the City of Fountain has provided a commitment to serve, evidence that an adequate water supply is provided.
  - d. Evidence of the physical and legal capability to provide

wastewater.

- e. A discussion on the effect of the proposal on significant cultural, archaeological and historical resources and plans for the protection of such resources.
2. Preliminary drainage report including preliminary construction plans meeting the requirements of the Drainage Criteria Manual and Public Works and Utilities Design and Construction Specifications. Such report shall analyze, identify and substantiate assumptions made as specifically related to the drainage improvements required for the proposed subdivision, including any necessary offsite improvements. Comprehensive analysis and calculations for all proposed drainage facilities are required to be included in the report. Approximate location and size of rights-of-way and easements for drainage facilities should also be identified. The report must identify any proposed modifications to the floodplain. The report and design shall address full spectrum requirements.
3. A report describing the availability and adequacy of existing infrastructure and other necessary services, including fire and police protection, schools, recreation, utilities and open space.
4. A traffic study describing the transportation network, establishing the availability and adequacy of the system in conformance with the Public Works and Utilities Design and Construction Specifications per the requirements in Appendix A.
5. Preliminary construction plans for the subdivision (30% plans) may be submitted for review with the preliminary plat. If submitted, the City Engineer shall provide a timely review and constructive advice to the subdivider concerning the design in an effort to facilitate resolution of potential issues prior to the development of final construction plans. The review and acceptance of construction plans shall not delay the processing of the preliminary plat. The City Engineer may coordinate review of the construction plans through the DRT or through other methods determined appropriate by the City Engineer.

H. *Effective of Approval.* If a preliminary plat application is approved by the Planning Commission, the final plat may be administratively approved by the Subdivision Administrator.

I. *Post-Approval Requirements.* Prior to filing an application for final plat or initiating construction of the subdivision, the subdivider shall file a corrected preliminary plat meeting the requirements of Section 16.21.080.F and integrating all requested corrections, changes, and conditions of approval on its face. The corrected preliminary plat shall be reviewed by the Subdivision Administrator. If the corrected preliminary plat meets all the requirements of Section 16.21.080.F and integrates all requested corrections, changes, and conditions of

approval, the Subdivision Administrator shall present the corrected preliminary plat to the Planning Commission Chairman for execution. Once executed the preliminary plat shall be considered the official record copy. Within ninety (90) days of the final action by the Planning Commission or Council to approve the preliminary plat, the subdivider shall file the corrected preliminary plat with the Subdivision Administrator. The subdivider shall have thirty (30) days to make any corrections still determined necessary by the Subdivision Administrator based on the Subdivision Administrator's review of the corrected preliminary plat. Failure of the subdivider to file the corrected preliminary plat within ninety (90) days of the final action by the Planning Commission or Council to approve the preliminary plat or to make the requested corrections to the corrected preliminary plat within thirty (30) days of receiving the requested corrections from the subdivision administrator shall invalidate the preliminary plat approval. If the preliminary plat action is invalidated, an application for preliminary plat shall be made following the procedures as if the request were for a new application.

*J. Expiration of Approval.*

1. *Plat validity and Extensions.* The preliminary plat shall be valid for a period of one (1) year from the date of approval. Prior to the end of the one (1) year period, the subdivider shall have submitted an application for final plat. The subdivider may request in writing, prior to the expiration of the approved preliminary plat, an extension of the approval period. Extensions may be granted annually provided there has been no change in surrounding land uses or in the regulatory provisions governing development. An application for extension shall: (1) show good cause for the extension; (2) be limited to a maximum of twelve [12] months; and (3) be reviewed by the staff and approved by the Subdivision Administrator. Upon denial of an extension, the subdivision Administrator's decision may be appealed to the Planning Commission by the subdivider or any aggrieved party. Upon denial by the Planning Commission of an extension, the subdivider or any aggrieved party may appeal the decision of the Planning Commission to the Council.
2. *Expiration of Approval.* Prior to the end of one (1) year if an extension has not been granted or up to the end of any extension period that has been granted, the subdivider shall have met all requirements of the subdivision plat process and a final plat shall have been filed for review and approval by the Subdivision Administrator. If a complete final plat application has not been filed with the Subdivision Administrator for all or a portion of the preliminary plat, the preliminary plat shall be considered to have expired. If the preliminary plat expires, an application for preliminary plat shall be made following the procedures as if the request were for a new application. No final plat shall be approved, where the preliminary plat has expired. The Subdivision Administrator may close the subdivision file without notice to the subdivider.
3. *Subdivision Phasing.*



- a. *Partial Final Plats.* In the case of partial final plat submittal and approval, the approval of the remaining portion of the preliminary plat shall automatically result in an extension of one (1) year before another final plat must be submitted.
  - b. *Subdivision Specific Phasing Plan.* Where a subdivision is phased, a phasing plan for the subdivision may be approved as part of the preliminary plat approval. All final platting shall conform to the phasing plan and provided the phasing plan is met, the preliminary plat shall remain valid until all portions of the subdivision subject to the phasing plan are platted. The phasing plan shall include specific dates or triggers for platting each phase. In no case shall the phasing plan allow any final plat to remain unrecorded at the end of twenty (20) years of the date of approval of the preliminary plat. The phasing plan may be amended upon application by the subdivider. The amendment may be approved by the Subdivision Administrator at the discretion of the Subdivision Administrator for good cause shown. If the subdivider fails to plat in accordance with the phasing plan, the preliminary plat shall be considered to have expired. If the preliminary plat expires, an application for preliminary plat shall be made following the procedures as if the request were for a new application. No final plat shall be approved, where the preliminary plat has expired. The Subdivision Administrator may close the subdivision file without notice to the subdivider.
4. *Existing Preliminary Plats.* Where a preliminary plat was approved prior to the effective date of these regulations and no final plat application has been filed for review and approval by the Subdivision Administrator within one (1) year of the effective date of these regulations, the preliminary plat shall be considered to have expired. If the preliminary plat expires, an application for preliminary plat shall be made following the procedures as if the request were for a new application. No final plat shall be approved, where the preliminary plat has expired. The Subdivision Administrator may close the subdivision file without notice to the subdivider. For any preliminary plat approved prior to April 1, 2008, the subdivider may request extensions in accordance with Section 16.21.080.J.1., provided the request for extension is filed prior to expiration of the preliminary plat.
  5. *Existing Official Development Plans (ODP).* Where an ODP was approved prior to the effective date of these regulations and the ODP was determined to also constitute the preliminary plat, the preliminary plat approval shall expire at such time as the ODP expires if no final plat is filed in advance of the expiration. If the ODP has no expiration, the preliminary plat approval shall have no expiration.

(Ord. 1412 §2, 2008)

### 16.21.090 Final Plat Procedures

A. *Intent.* The final plat establishes legally described lot lines and conveys necessary easements and land to the City and other public agencies. The final plat is accompanied by a SIA. The final plat is required to substantially conform to all elements of the approved preliminary plat.

B. *Prerequisite.* After the subdivider has received approval of the preliminary plat, the final plat may be prepared. The final plat may reflect the entire preliminary plat or any logical part thereof. The final plat shall be in substantial compliance to all elements of the approved preliminary plat if a preliminary was approved by the Planning Commission.

1. *Pre-Application Meeting.* Persons desiring to submit a final plat are required to meet with the Subdivision Administrator for a pre-application meeting, unless specifically waived by the Subdivision Administrator. The purpose of the meeting is to inform the subdivider or subdivision procedures and requirements, to provide a checklist of the items to be included with the subdivision application, and to provide preliminary recommendations. Where a pre-application meeting was held in association with a concept plan or preliminary plat, the Subdivision Administrator may waive the pre-application meeting.
2. *DRT Meeting.* Where determined necessary by the Subdivision Administrator, the Subdivision Administrator may require the subdivider to attend a DRT meeting to discuss the proposed subdivision in advance of filing an application. The subdivider may also specifically request to meet with the DRT. The DRT meetings provide the subdivider with the opportunity to interface with all members of the review team and to identify issues that need to be addressed. Where required by the Subdivision Administrator, attendance at the DRT meeting shall be considered a prerequisite to acceptance of any application for final plat.

C. *Approval Standards.* The Subdivision Administrator will consider the comments of referral agencies and preliminary plat before reaching a decision. A final plat may be approved provided all standards are met as described in Section 16.21.080.C and the design conforms to the Public Works and Utilities Design and Construction Specifications. The Subdivision Administrator has the option of referring the final plat to the Planning Commission for action when : (1) issues cannot be resolved including those issues raised by a referral agency or other party noticed of the action; (2) where the final plat fails to substantially conform to the approved preliminary plat and any associated conditions; (3) where a waiver, relief or a deviation is required that was not approved as part of the preliminary plat, or (4) where the plat involves complex or controversial issues.

D. *Submittal and Review Process.* A complete application for final plat must be submitted to the Subdivision Administrator and shall not be considered accepted until all required information is received.

1. The subdivider shall submit a complete application with accompanying documents in accordance with the application package and Section 16.21.090.E to the Subdivision Administrator including complete packets for each referral agency. Referral packets with all submittal information accurately folded and assembled shall be provided by the subdivider in unsealed manila envelopes addressed to appropriate referral agencies.
2. Referral packets shall be mailed by the Subdivision Administrator. The referral agencies shall provide comment within fifteen (15) days of receiving a complete submittal. A minimum of fifteen (15) days after mailing the referral packets to the referral agencies, the Subdivision Administrator shall review and compile the referral comments received. A DRT meeting may also be scheduled by the Subdivision Administrator or requested by the subdivider during the review of a final plat where significant issues have been identified or where agency comments conflict as a means of resolving the issues or conflicts. The subdivider may be invited to the DRT meeting scheduled to resolve issues or conflicts.
3. Based upon the issues identified in the review, the Subdivision Administrator may forward the final plat to the Planning Commission for action. In either event, the Subdivision Administrator shall prepare a checklist of needed corrections and present the corrections to the subdivider.
4. In the event the final plat is forwarded to the Planning Commission for review, the following steps shall be followed:
  - a. The Subdivision Administrator shall prepare a staff report, schedule the application for review by the Planning Commission, and notify the subdivider of the meeting date and time. The subdivider is encouraged to meet with referral agencies and other interested parties to address concerns with the final plat prior to the Planning Commission meeting. The subdivider shall provide courtesy notice in accordance with the notice provisions in Section 16.21.030.C.1., if required by the Subdivision Administrator.
  - b. The Planning Commission considering applicable codes, regulations, development standards and any other relevant written documents or plans adopted by the Planning Commission or Council, the pertinent comments of the participating City departments and divisions and other affected public agencies, and any approved preliminary plat and associated conditions of approval, shall evaluate the final plat and shall either approve, approve with conditions or deny the final plat. The Planning Commission's decision concerning the application will be based on presented documentation and any remarks along with compliance of standards, policies, regulations, and guidelines and the final plat approval standards outlined in Section

16.21.090.C. As part of the approval of the final plat the Planning Commission may permit or require that the final plat be divided into two or more development phases and may impose conditions upon each phase as necessary to ensure the availability of public services and orderly development of the subdivision. Whenever a final plat has been disapproved by the Planning Commission, the final plat shall not be reconsidered unless the plat is modified so as to overcome the reasons for disapproval.

- c. If the Planning Commission denies the final plat, the decision may be appealed to the Council in writing by the subdivider within fifteen (15) days of the Planning Commission's action by the subdivider or any aggrieved party. The request for appeal shall be filed with the Subdivision Administrator and shall explain the nature of the appeal including the specific issues under appeal and provide written justification supporting the appeal. The appeal shall be accompanied by all required fees. After the request for appeal is determined to be complete, the Subdivision Administrator shall prepare a staff report and schedule the appeal before Council for consideration. The Subdivision Administrator shall notify the subdivider of the date and time of the hearing. The Council, after considering all information presented including the staff report, application, written appeal, the Planning Commission's action and any testimony from the subdivider, Planning Commission members, staff, or public shall take action to either support the Planning Commission's action, modify the Planning Commission's action, overturn the Planning Commission's action, or refer the application back to the Planning Commission for reconsideration. Whenever a final plat has been disapproved by the Council, the final plat shall not be reconsidered unless the plat is modified so as to overcome the reasons for disapproval. If the Council approves the final plat, a copy of the approved final plat and conditions of approval shall be signed by the Mayor and placed on file in the Planning Department, which shall serve as the official record of the decision.
  - d. If the Planning Commission approves the final plat, no Council review and approval shall be necessary. A copy of the approved final plat and conditions of approval shall be signed by the Planning Commission Chairman and placed on file in the Planning Department, which shall serve as the official record of the decision.
5. In the event the final plat is to be reviewed and approved by the Subdivision Administrator, the following steps shall be followed:
- a. The Subdivision Administrator, considering applicable codes, regulations, development standards and any other relevant written documents or plans adopted by the Planning Commission or Council, the pertinent comments of the participating City departments and divisions and other affected public agencies, and any approved preliminary plat and associated conditions of

approval, shall evaluate the final plat and shall either approve, approve with conditions or deny the final plat. The Subdivision Administrator's decision concerning the application will be based on presented documentation and any remarks along with compliance of standards, policies, regulations, and guidelines and the final plat approval standards outlined in Section 16.21.090.C. As part of the approval of the final plat the Subdivision Administrator may permit or require that the final plat be divided into two or more development phases and may impose conditions upon each phase as necessary to ensure the availability of public services and orderly development of the subdivision. Whenever a final plat has been disapproved by the Subdivision Administrator, the final plat shall not be reconsidered unless the plat is modified so as to overcome the reasons for disapproval. If the Subdivision Administrator approves the final plat a copy of the approved final plat and conditions of approval shall be signed by the Subdivision Administrator and placed on file in the Planning Department which shall serve as the official record of the decision.

- b. The subdivider or any aggrieved party may appeal the decision of the Subdivision Administrator to the Planning Commission. If denied by the Planning Commission, the subdivider or any aggrieved party may appeal the Planning Commission's decision to the Council. All appeals shall be filed with the Subdivision Administrator in writing within fifteen (15) days of the action by the Subdivision Administrator or Planning Commission. The request for appeal shall explain the nature of the appeal including the specific issues under appeal and provide written justification supporting the appeal. The appeal shall be accompanied by all required fees. Once the request for appeal is complete, the Subdivision Administrator shall prepare a staff report and schedule the appeal for consideration before the Planning Commission or Council, as applicable. The Subdivision Administrator shall notify the subdivider of the date and time of the hearing. The Planning Commission or Council, after considering all information presented including the staff report, application, written appeal, the Subdivision Administrator or Planning Commission's action and any testimony from the subdivider, staff, or public shall take action to either support the action, modify the action, overturn the action, or refer the application back to the Subdivision Administrator or Planning Commission for reconsideration. The action by the Planning Commission or Council action shall be by a majority vote. Whenever a final plat has been disapproved by the Planning Commission or Council, the final plat shall not be reconsidered unless the plat is modified so as to overcome the reasons for disapproval. If the Planning Commission or Council approves the final plat, a copy of the approved final plat and conditions of approval shall be signed by the Chairman or Mayor and placed on file in the Planning Department which shall serve as the official record of the decision.

E. *General Submittal Requirements.* General submittal requirements are as follows:

1. Completed and signed application.
2. The appropriate fee as set forth in the fee schedule.
3. Complete legal description of the property prepared by a professional land surveyor where a previous survey has not been prepared that may be referenced or the land cannot be accurately described by an aliquot parcel description.
4. Proof of ownership, which may be achieved by including a copy of the current deed showing the subdivider's name as owner; a current title insurance policy or title commitment no more than thirty (30) days prior to the date of application; or a copy of the current deed and a notarized letter of authorization from the landowner authorizing the subdivider to process and represent the subdivision application dated no more than thirty (30) days prior to the date of application. An ownership and encumbrances report (O&E) or title policy, report or commitment is recommended to allow a check of easements on the final plat and ensure that processing is not delayed at the time of post-approval review (Section 16.21.090.H.).
5. A vicinity map at reasonable scale which indicates the proposed subdivision in relationship to platted and unplatted land and streets that are adjacent to or serve the proposed subdivision.
6. Copy of computed closure sheet.
7. Final plat exhibit meeting the requirements of Section 16.21.090.F.
8. Construction plans in a 24 inches by 36 inches format prepared in accordance with the Public Works and Utilities Design and Construction Specifications including the design of roads, grading plan, utilities, drainage, erosion control and over lot grading, including, as applicable, a complete list and description of all required public improvements; specifications; estimated construction costs and quantities estimate; unit costs; time schedule; and typical road sections. The subdivider may elect at risk to process a final plat without submitting and obtaining acceptance of construction plans. The subdivider should be aware that any required changes to the final plat that result from the need to meet any standard or specification in accordance with the Public Works and Utilities Design and Construction Specifications, a standard of any other agency having jurisdiction, or the standards and specifications of any utility company required to serve the subdivision are the responsibility of the subdivider. Any changes to a filed plat require that the subdivider submit an application for a vacation and replat or other applicable form of amended plat. No construction may begin on any subdivisions improvements except as allowed pursuant to Section 16.20.060.E. until the construction plans are

accepted by the City Engineer. No real property may be sold or conveyed until the construction plans have been accepted by the City Engineer and the recorded subdivision plat conforms to the construction plans. In addition, no building permits shall be issued until the recorded subdivision plat conforms to the accepted construction plans. Whenever a final plat is approved and allowed to be filed for recording without the acceptance of the construction plans by the City Engineer, a document approved by the Subdivision Administrator restricting the conveyance of any lots, tracts, parcels or other real property within the subdivision shall be filed for recording concurrently with the plat. Said document shall clearly indicate that: (1) construction plans have not been prepared by the subdivider and accepted by the City Engineer for the public and subdivision improvements associated with the subdivision; and (2) no lots, tracts, parcels or other real property may be conveyed until construction plans have been accepted by the City Engineer and the lots, tracts, parcels or other real property has been authorized for conveyance by the Subdivision Administrator. Said conveyance shall not be authorized until and unless construction plans have been accepted by the City Engineer, the recorded subdivision plat conforms to the accepted construction plans, and the surety required to secure all required improvements has been accepted by the City of Fountain. All costs associated with preparing an amended plat are the responsibility of the subdivider. The City is under no obligation to approve for recording any amended plat that departs substantially from the approved preliminary plat or any recorded final plat that may be required to meet the Public Works and Utilities Design and Construction Specifications, a standard of any other agency having jurisdiction, or the standards and specifications of any utility company required to serve the subdivision. The City is also under no obligation to vary or deviate from a standard or specification that cannot be met in order to validate the recorded subdivision plat. Nothing shall prohibit the subdivider from contracting for the conveyance of a lot, tract, parcels, or other real property within the boundaries of a recorded subdivision plat, provided the subdivider clearly indicates the restrictions associated with said conveyance and that changes to the recorded plat may be required prior to conveyance which may affect the layout, gross and net area, orientation and other aspects of the property under contract.

9. Development reports per Section 16.21.090.G.
10. A Conditional Letter of Map Revision (CLOMR) application for any proposed modifications to the floodplain. A Letter of Map Revision (LOMR) will be required to be submitted prior to release of surety where proposed construction will result in a change to the existing floodplain. A Letter of Map Amendment (LOMA) shall be required where the floodplain is depicted on the plat differently than on the Flood Insurance Rate Map.
11. Such other items deemed necessary by the Subdivision Administrator to

support review and approval of the application.

F. *Final Plat Exhibit.* The final plat exhibit shall substantially conform to the approved preliminary plat and any conditions of approval. The final plat shall be prepared by or under the supervision of a registered professional land surveyor licensed by the State of Colorado for recording in the office of the El Paso County Clerk and Recorder in accordance with C.R.S. §§38-51-101 et seq. It shall be a neat, clear, permanent, legible and reproducible document. Inaccurate, incomplete or poorly drawn plats shall be rejected.

1. *Sheet Size.* The sheet size shall be 24 inches by 36 inches, including a minimum one-half (1/2) inch border and shall meet the recording requirements of the El Paso County Clerk and Recorder. Reduced 11 inch by 17 inch copies shall also be provided.
2. *Scale.* The final plat shall be drawn to a scale of one inch equals 100 feet (1"=100') or a scale of one inch equals 50 feet (1"=50') unless the Subdivision Administrator approves a larger or smaller scale. A townhome plat may be drawn at a scale of one inch equals 50 feet (1"-50'). In the event a single sheet is not practicable, multiple sheets may be used if no lot is split between sheets and on each sheet:
  - a. Match lines are indicated; and
  - b. A composite drawing is provided that shows the entire subdivision, location of the match lines, sheet numbers, and the location of the sheet within the proposed subdivision by the shading in of the appropriate area on the composite drawing.
3. *Content of Plat.* The final plat exhibit shall contain the following:
  - a. A title block and reference information pertaining to the subdivision, including:
    - (1) Name of proposed subdivision centered on the top of the plat and at the top of each sheet. On each sheet, a subtitle, in smaller lettering, shall indicate the quarter section(s)(1/4), section, township and range in which the subdivision is located. If the subdivision is a replat of a previously approved subdivision, the replat information shall be included in the subtitle. The name of the City, County and the State shall be included in the subtitle.
    - (2) Date of preparation, date of survey, north arrow, written and graphic scale located in the lower right hand corner of each sheet.
    - (3) Name(s) and address(s) of the person(s) responsible for preparing the plat (e.g., licensed surveyor, licensed engineer or designer of the plat) located in the lower right hand corner.
    - (4) Date of submission with provisions for dating revisions located in the lower right hand corner.



- (5) Vicinity map (scale of 1"=2000') showing the subdivision in relation to section lines and existing or proposed streets within one mile.
- b. Data determining the location, bearing and length of all lines and the location of all monuments that are sufficient to establish boundaries and locate the monuments including a description of all monuments, both found and set, that mark the boundaries of the property, and a description of all control monuments used in conducting the survey.
- c. A statement by the land surveyor explaining how bearings were determined.
- d. The lengths of all lines and the radii, internal angles, points of curvature, arc and chord lengths, and bearing.
- e. All lot lines and other parcels of land with accurate dimensions in feet and hundredths of a foot with bearings or angles to street and alley lines.
- f. A certified legal boundary description showing the location and dimension of all boundary lines and monuments of the property proposed to be subdivided expressed in feet and hundredths of a foot prepared by a professional land surveyor including the total acreage.
- g. Certification by a professional land surveyor that the subdivision plat represents a survey made by the surveyor and that the monuments shown on the subdivision plat are accurate as located, that all dimensions and other details are correct and that all monuments will be set to establish property corners or control points as required by the City and State law. The certification shall include the title, name, address, seal, and signature of the professional land surveyor and date of certification and revision dates.
- h. A number associated with each lot and block in the subdivision, beginning with the numeral 1 (one) and continuing consecutively throughout the property being subdivided, with no omissions or duplications. Tracts shall be given an alpha designation. (See Section 16.22.130 Plat Naming and Number Conventions and Standards).
- i. The dimensions and areas of all proposed or existing lots within the subdivision including the address of each lot as provided by the Pikes Peak Regional Department.
- j. Right-of-way lines, widths, locations, and street names of all existing and proposed streets within, and immediately adjacent to, the property being

subdivided. Street names shall be approved by El Paso Teller E9-1-1 Authority.

- k. The locations, dimensions and use designations of all property proposed to be set aside for public and private facilities, including parks, trails, open space, recreation facilities, stormwater storage and drainage facilities, including the area of each tract to be set aside.
- l. The locations, dimensions and use designations of all proposed or existing easements and rights-of-way showing when conveyed by reception number.
- m. Areas of floodplain and a one hundred-foot (100') setback.
- n. Names of all adjoining subdivisions with dotted lines of abutting lots. If the adjoining land is unplatted, it should be shown as such.
- o. Lots that require special studies for development or that present significant hazards to development shall bear notation.
- p. Labels reading "Not a part of this subdivision" and dashed lines delineating areas that do not constitute a part of the subdivision.
- q. Dedication statements for streets, parks, trails, open space, schools, or other uses and dedication of public streets, alleys and easements to the City. All dedication language shall be in a form approved by the Subdivision Administrator.
- r. Signature block for the Subdivision Administrator and City Clerk.
- s. Acknowledgments of the execution of the plat by the property owner (statement of ownership and acknowledgment) before a notary public.
- t. Certificates for execution for the County Clerk and Recorder.
- u. Summary notes including:
  - (1) Notations of any restrictive covenants or other restriction to be recorded with the subdivision plat.
  - (2) A statement restricting access or waiving access rights to a major street, where required.
  - (3) Statement that maintenance of easements shall be the responsibility of the property owner.
  - (4) Any notes that were a requirement or condition of the preliminary plat approval or in the opinion of the Subdivision Administrator further the purposes of this Title.
  - (5) Any other notes determined necessary by the Subdivision Administrator.

G. *Development Reports.* The subdivider shall submit a report or reports with supporting materials necessary for the review of the final plat. The report(s) shall substantially conform to the approved development report(s) including all detail of analysis from Section 16.21.080.G Additional requirements are as follows:

1. final drainage plan and report and erosion control plan in accordance with the requirements of the Drainage Criteria Manual and Public Works and Utilities Design and Construction Specifications. Such report shall update and refine the analysis and facilities identified in the preliminary drainage report. The final drainage plan and report shall include all specific design details necessary to prepare construction plans including the identification of specific rights-of-way and easements for such facilities. The report must include the result of a detailed floodplain analysis if modifications are proposed.
2. Traffic analysis report, if not prepared as part of an application for preliminary plat unless waived by the City Engineer.
3. Geological hazards and soils report, if not prepared as part of an application for preliminary plat.

H. *Post-Approval Requirements.* Prior to recording the final plat in the office of the El Paso County Clerk and Recorder, the following requirements shall be completed:

1. The subdivider shall cause to have placed permanent reference monuments on the property in accordance with C.R.S. §§38-51-101 et seq. and as required by Section 16.22.140 Survey and Monumentation Standards.
2. When the final plat is ready for execution and recording, the following information and materials shall be submitted in final form:
  - a. The final plat exhibit meeting the requirements of Section 16.21.090.F. Two (2) photographic Mylar copies of the approved final plat and an electronic copy of the subdivision in a format approved by the City Engineer shall be submitted. The electronic copy requirement may be waived by the City Engineer, in which case the City Engineer may charge a fee for its preparation and integration into the City's geographic information system. The subdivision data must be in the Colorado Central State Plane NAD 1983 coordinate system or other coordinate system approved by the City Engineer. The final plat shall be signed by the owner(s) of record and professional land surveyor. The signatures of the owner of record and professional land surveyor shall be notarized.
  - b. Any information requested as part of the application for final plat corrected as required by Subdivision Administrator's conditions of

approval for the final plat including construction plans in a 24 inch by 36 inch format meeting the requirements of the Public Works and Utilities Design and Construction Specifications and letters approving the construction plans from all special districts and public utilities except as otherwise provided in section 16.21.090.E.8.

- c. Executed SIA, cost estimates, and surety, in accordance with Section 16.23 of these regulations, to guarantee public improvements.
- d. The appropriate fees as set forth in the fee schedule and fees established by the El Paso County Clerk and Recorder for recordation of the final plat and other required recordations.
- e. A title policy naming the City as an insured party, or attorney's certificate showing title free and clear of encumbrances on all property dedicated to the public as of the date the materials are submitted for recordation. The title policy or attorney's certificate shall be dated no more than thirty (30) days in advance of the submittal date.
- f. An ownership and encumbrances report (O&E) or equivalent showing all interests in the property. The O&E shall be dated no more than thirty (30) days in advance of the submittal date.
- g. A notarized ratification of plat statement or partial release signed by all lien holders or other parties necessary to convey unencumbered fee simple title to all property dedicated to the City or other public entity, if such parties are not signatory to the final plat.
- h. Any supplemental information or legal documents to be recorded with the final plat including covenants and restrictions, homeowners association documents, deeds for all tracts to be deeded to homeowners association, etc.
- i. A warranty deed or any cash-in-lieu for land dedication for parks or schools or other public lands as identified on the plat and rights-of-way outside and adjacent to the subdivision, if due at time of platting. Where fees have been deferred to time of building permit, a plat note shall indicate which fees are due at time of building permit.
- j. Tax certificate from the El Paso County Treasurer certifying that all taxes due have been paid.
- k. A Phase I Environmental Assessment for all tract or lands to be dedicated to the City of Fountain or any other public entity where

there is reason to believe that an environmental issue may exist.

A Phase II Environmental Assessment shall be required where the Phase I Environmental Assessment identifies area of concern. When required, the Phase I or Phase II Environmental Assessment may be dated from the time of acquisition of the property provided no activities have occurred that in the opinion of the City Attorney could have resulted in environmental contamination.

- l. Check or cash for street, bridge and drainage recovery fees and any other fees established by the City of Fountain and due at time of platting, if applicable.
  - m. Other documents or information requested by the Subdivision Administrator to confirm conformance with any conditions of approval.
3. Procedures for signing of the subdivision plat are as follows:
- a. Subdivision plats may be signed only after the City has determined that the subdivision plat and supporting materials required by this Title are in substantial conformance with: (1) all conditions established by the Subdivision Administrator in approving the final plat; (2) final plat approved by the Subdivision Administrator; and (3) all other requirements of this Title and other applicable City codes, rules, regulations and ordinances.
  - b. Each applicable City official shall sign the final plat should it meet the conditions and requirements of this Title.
4. Once the subdivision plat is signed, the City shall:
- a. File the fully approved final plat for recording with the El Paso County Clerk and Recorder;
  - b. Simultaneously record the SIA together with any other legal documents required to be recorded by the City with the final plat; and
  - c. Mail a letter to the subdivider verifying that the documents have been filed for recording with the El Paso County Clerk and Recorder for recordation.
5. Execution of the approved subdivision plat shall constitute the City's acceptance of any dedication, but does not obligate the City to accept for ownership and maintenance any such improvements located within such dedications.

I. *Construction of Improvements.* Following approval of the final plat, the subdivider is responsible for constructing all improvements necessary to serve the subdivision in accordance with the SIA and Section 16.23 of this Title. All required improvements shall be constructed, approved and accepted in accordance with Section 16.23 of this Title.

J. *Expiration of Approval.* The approved final plat shall be effective for a period of three (3) years from the date of the Subdivision Administrator's approval or the date of approval of the final plat by the Planning Commission or Council, when applicable. Prior to the end of the three (3) years, the subdivider shall have met all requirements of the subdivision plat process and the plat shall have been signed and recorded in the office of the El Paso County Clerk and Recorder. The subdivider may request in writing, prior to the expiration of the approved final plat, an extension of the approval period. An application for extension shall: (1) show good cause for the extension; (2) be limited to a maximum of twelve (12) months; and (3) be reviewed by the staff and approved by the Subdivision Administrator's decision may be appealed to the Planning Commission by the subdivider or any aggrieved party. Upon denial by the Planning Commission of an extension, the subdivider or any aggrieved party may appeal the decision of the Planning Commission to the Council. Final plats that were approved by the Planning commission or Council prior to the effective date of these regulations that have not been recorded shall be recorded within one (1) year of the effective date of these regulations. Failure to record an existing approved plat within one (1) year or obtain approval for an extension in accordance with the provisions provided herein shall expire. If the final plat approval expires prior to filing of the final plat for recording, a new application must be submitted.

(Ord. 1412 §2, 2008)

#### 16.21.100 Vacation, Replat, Amendment and Correction Procedures.

##### A. *Vacation of Plat with Public Infrastructure or Dedication.*

1. *Intent.* The Council is authorized to vacate roadways or other public infrastructure, which includes any public street, alley, lane, parkway, avenue, road, trail or other public way designated or dedicated on the subdivision plat as streets and other public rights-of-way by ordinance in accordance with C.R.S., §§43-2-301, et seq., and to vacate public easements in accordance with the City Charter. Such requests must be approved by ordinance (or resolution in the case of public easements) except where the Council has authorized the Subdivision Administrator and Planning commission by this Title to vacate existing dedications where the existing public easements have not been used, no infrastructure has been built within existing public easements, and no plans have been adopted that rely upon the public easements in which case the vacation may occur concurrently with the filing of a new final plat approved by the Subdivision Administrator (e.g., Minor Subdivision) or Planning Commission (e.g., Major Subdivision).

2. *Prerequisite.*

- a. *Pre-Application Meeting.* Persons desiring to submit a vacation plat are required to meet with the Subdivision Administrator for a pre-application meeting, unless specifically waived by the Subdivision Administrator. The purpose of the meeting is to inform the subdivider of subdivision procedures and requirements, to provide a checklist of the items to be included with the subdivision application, and to provide preliminary recommendations.
  - b. *DRT Meeting.* Where determined necessary by the Subdivision Administrator, the Subdivision Administrator may require the subdivider to attend a DRT meeting to discuss the proposed subdivision in advance of filing an application. The subdivider may also specifically request to meet with the DRT. The DRT meetings provide the subdivider with the opportunity to interface with all members of the review team and to identify issues that need to be addressed. Where required by the Subdivision Administrator, attendance at the DRT meeting shall be considered a prerequisite to acceptance of any application for vacation plat.
3. *Approval Standards.* A platted street, public way, easement, public infrastructure, or portion thereof, shall not be vacated so as to leave any land adjoining said street, public way, easement, or public infrastructure without an established public street, or utility easement for utility service. No vacation plat shall be approved unless: (1) the vacation is in accordance with the adopted standards and criteria, and the original conditions of approval of this Title and other applicable regulations, including setbacks for any existing structures or uses and area requirements for any lots; (2) the vacation does not include any lots or parcels created illegally; (3) the vacation does not impair any existing access or access easement, or create a need for a new access to or any new easement serving any adjacent lots or parcels; (4) the vacation does not require substantial alteration of existing improvements or create a need for any new improvements; (5) nonconforming lots are not created, and in the case of nonconforming lots, the nonconformity is not increased; (6) the vacation is in keeping with the purpose and intent of this Title; (7) the approval will not adversely affect the public health and safety or the environment; and (8) the vacation plat will not leave any land without access or access easement to a public street or easement to utilities.
  4. *Submittal and Review Process.* A complete application for vacation plat must be submitted to the Subdivision Administrator and shall not be considered accepted until all required information is received.
    - a. The subdivider shall submit a complete application with accompanying documents in accordance with the application package and Section 16.21.100.A.5 to the Subdivision Administrator including complete packets for any referral agencies, if any. Referral packets with all submittal information accurately folded and assembled shall be provided by the

subdivider in unsealed manila envelopes addressed to appropriate referral agencies.

- b. Referral packets shall be mailed by the Subdivision Administrator. The referral agencies shall provide comment within fifteen (15) days of receiving a complete submittal. A minimum of fifteen (15) days after mailing the referral packets to the referral agencies, the Subdivision Administrator shall review and compile the referral comments received. A DRT meeting may also be scheduled by the Subdivision Administrator or requested by the subdivider where significant issues have been identified or where agency comments conflict as a means of resolving the issues or conflicts. The subdivider may be invited to the DRT meeting scheduled to resolve issues or conflicts.
- c. The Subdivision Administrator shall prepare a staff report, schedule the application for review by the Planning Commission, and notify the subdivider. Any known objector or beneficiary of any easement or public right-of-way shall be noticed of the meeting date and time by the mailing the known objector or beneficiary notice of the meeting at least ten (10) days in advance of the meeting. The subdivider shall provide notice in accordance with the notice provisions in Section 16.21.030.C.2.
- d. The Planning commission shall hold a public hearing to review the vacation, the referral comments, the subdivider's testimony, the public comments, and the staff report. The Planning Commission's decision concerning the application will be based on presented documentation and any remarks along with compliance of standards, policies, regulations, and guidelines and the vacation plat approval standards outlined in Section 16.21.100.A.3.
- e. Following action by the Planning Commission, the Subdivision Administrator, in consultation with the City Attorney, shall prepare a vacation ordinance that specifies the legal description of the vacated plat and public infrastructure and dedications, and the reception number of the plat, and that makes reference to the recommendation of the special districts, utility companies and easement holders, and other beneficiaries as applicable. The Subdivision Administrator shall schedule the application and reference for public hearing before the Council. The City Clerk shall provide notice as required by Council policy and City Charter.
- f. The Council shall evaluate the vacation plat request, referral agency comments, staff report, the Planning Commission recommendation and public testimony, and shall approve, conditionally approve, table for further study, or deny the vacation plat request. The Council's action shall be based on the evidence presented, and compliance with the adopted standards, regulations, policies and other guidelines.



- g. In approving a vacation of any right-of-way, the Council shall adopt such vacation by ordinance.

5. *General Submittal Requirements.* Vacation plat submittal requirements are as follows:

- a. Completed and signed application.
- b. The appropriate fee as set forth in the fee schedule.
- c. Letter of intent describing the vacation plat to be made in specific terms and the reasons that the vacation plat is needed or desired. The following should generally be included in all letters of intent: description of the vacation plat, request and justification for approval of request; and a statement describing the conformance of the proposed vacation with City codes, rules, regulations, ordinances and plans.
- d. Proof of ownership, which may be achieved by including a copy of the current deed showing the subdivider's name as owner; a current title insurance policy or title commitment no more than thirty (30) days prior to the date of application; or a copy of the current deed and a notarized letter of authorization from the landowner authorizing the subdivider to process and represent the subdivision application dated no more than thirty (30) days prior to the date of application.
- e. Complete written description of the public infrastructure and dedications to be vacated including a legal description of all lands being vacated.
- f. Vacation plat (i.e., a reproduction of the subdivision on an 11.5 inches x 11 inches sheet of paper or another size approved by the Subdivision Administrator) including the abutting streets indicating the lots/streets/public easements vacated. A vicinity map shall be included (i.e., a reduction of the subdivision showing the location of the vacation in relation to the lots or the area surrounding the street within a one-mile radius, superimposed on a current County or City Map).
- g. Letters from the following, stating their recommendation regarding the vacation and any existing facility they have over or across the land. Note that where letters cannot be obtained, notice provided in accordance with Section 16.21.030.C.2. shall be considered adequate.

- (1) All special districts and utility companies providing maintenance of infrastructure within the rights-of-way or public easements proposed for vacation;

- (2) All landowners abutting or using a right-of-way or easement proposed for vacation;
  - (3) City departments; and
  - (4) All known easement beneficiaries.
- h. A map identifying the area to be vacated and relationship to the abutting landowners including the names and addresses of all owners.
  - i. Such other items deemed necessary by the Subdivision Administrator to support review and approval of the application.
6. *Post-Approval Requirements and Recording.*
- a. *Vesting of Title.* Vesting of title upon vacation shall be accordance with C.R.S. §43-2-302.
  - b. *Post Approval Submittals.* Prior to recording the vacation plat in the office of the El Paso County Clerk and Recorder, the following requirements shall be completed:
    - (1) The subdivider shall cause to have removed and placed permanent reference monuments on the property in accordance with C.R.S. §§38-51-101 et seq. and as required by Section 16.22.140 Survey and Monumentation Standards.
    - (2) When the vacation plat is ready for execution and recording, the following information and materials shall be submitted in final form:
      - (a) The vacation plat meeting the requirements of Section 16.21.100.A.5. The map shall be signed by the owner(s) of record and professional land surveyor. The signatures of the owner of record and professional land surveyor shall be notarized.
      - (b) The appropriate fees as set forth in the fee schedule and fees established by the El Paso County Clerk and Recorder for recordation of the vacation plat and other required recordations.
      - (c) A notarized consent of vacation statement or partial release signed by all lien holders or other parties.
      - (d) Correction deeds.

- (e) Any supplemental information or legal documents to be recorded with the vacation plat including changes or nullifications of covenants and restrictions, homeowners association documents, etc.
- (f) Tax certificate from the El Paso County Treasurer certifying that all taxes due have been paid.
- (g) Other documents or information requested by the Subdivision Administrator to confirm conformance with any conditions of approval.

c. *Recording.* Procedures for signing and recording of the vacation are as follows:

- (1) A vacation certificate shall be prepared by the Subdivision Administrator. The vacation certificate shall specify the affected plat, its reception number, the specific lots, easements or building envelope affected and reference the vacation plat, and the recommendations of the special districts/easement holders, as applicable. The vacation ordinance may serve as the vacation certificate.
- (2) The vacation certificate may be signed only after the City has determined that the vacation plat and supporting materials required by this Title are in substantial conformance with: (1) all conditions established by the City in approving the vacation; and (2) all other requirements of this Title and other applicable City codes, rules, regulations and ordinances.
- (3) Within thirty (30) days of receipt of all required materials, the Subdivision Administrator shall sign and record the vacation certificate, vacation plat, deeds and any other required materials in the office of the El Paso County Clerk and Recorder.

7. *Expiration of Approval.* The approved vacation plat shall be effective for a period of one (1) year from the date of the City's approval. Prior to the end of the one (1) year, the subdivider shall have met all requirements of the vacation process and the vacation plat shall have been signed and recorded in the office of the El Paso County Clerk and Recorder. The subdivider may request in writing, prior to the expiration of the approved vacation, an extension of the approval period. An application for extension shall: (1) show good cause for the extension; (2) be limited to a maximum of three (3) months; and (3) be reviewed by the staff and approved by the Subdivision Administrator. Upon denial of an extension, the Subdivision Administrator's decision may be appealed to the Planning Commission by the subdivider or any aggrieved party. Upon denial by the

Planning commission of an extension, the subdivider may appeal the decision of the Planning Commission to the Council. If the approval expires prior to filing of the vacation plat for recording, a new application must be submitted.

B. *Vacation of Plat without Public Infrastructure.*

1. *Intent.* The Subdivision Administrator and Planning Commission are authorized by Council through this Title to vacate any plat without public infrastructure or to vacate existing public easements where the existing public easements have not been used, no infrastructure has been built within existing dedications, and no plans have been adopted that rely upon the public easements in which case the vacation may occur concurrently with the filing of a new final plat.
2. *Prerequisite.*
  - a. *Pre-Application Meeting.* Persons desiring to submit a vacation plat are required to meet with the Subdivision Administrator for a pre-application meeting, unless specifically waived by the Subdivision Administrator. The purpose of the meeting is to inform the subdivider of subdivision procedures and requirements, to provide a checklist of the items to be included with the subdivision application, and to provide preliminary recommendations.
  - b. *DRT Meeting.* Where determined necessary by the Subdivision Administrator, the Subdivision Administrator may require the subdivider to attend a DRT meeting to discuss the proposed subdivision in advance of filing an application. The subdivider may also specifically request to meet with the DRT. The DRT meetings provide the subdivider with the opportunity to interface with all members of the review team and to identify issues that need to be addressed. Where required by the Subdivision Administrator, attendance at the DRT meeting shall be considered a prerequisite to acceptance of any application for vacation plat.
3. *Approval Standards.* An easement, or portion thereof, shall not be vacated so as to leave any land adjoining said street, public way, or easement without an established easement connection said land with an established public street or utility easement for utility service. No vacation plat shall be approved unless: (1) the vacation is in accordance with the adopted standards and criteria, and the original conditions of approval of this Title and other applicable regulations, including setbacks for any existing structures or uses and area requirements for any lots; (2) the vacation does not include any lots or parcels created illegally; (3) the vacation does not impair any existing access or access easement, or create a need for a new access to or any new easement serving any adjacent lots or parcels; (4) the vacation does not require substantial alteration of existing improvements or create a need for any new improvements; (5) nonconforming lots are not created, and in the case of nonconforming lots, the nonconformity is not increased; (6) the vacation is in keeping with the purpose and intent of this Title; (7) the approval will not adversely affect the

public health and safety or the environment; and (8) the vacation plat will not leave any land without access or access easement to a public street or easement to utilities.

4. *Submittal and Review Process.* A complete application for vacation plat must be submitted to the Subdivision Administrator and shall not be considered accepted until all required information is received.
  - a. The subdivider shall submit a complete application with accompanying documents in accordance with the application package and Section 16.21.100.B.5 to the Subdivision Administrator including complete packets for any referral agencies, if any. Referral packets with all submittal information accurately folded and assembled shall be provided by the subdivider in unsealed manila envelopes addressed to appropriate referral agencies.
  - b. Referral packets shall be mailed by the Subdivision Administrator. The referral agencies shall provide comment within fifteen (15) days of receiving a complete submittal. A minimum of fifteen (15) days after mailing the referral packets to the referral agencies, the Subdivision Administrator shall review and compile the referral comments received. A DRT meeting may also be scheduled by the Subdivision Administrator or requested by the subdivider where significant issues have been identified or where agency comments conflict as a means of resolving the issues or conflicts. The subdivider may be invited to the DRT meeting scheduled to resolve issues or conflicts. The subdivider shall provide notice in accordance with the notice provisions in Section 16.21.030.C.2.
  - c. If no objections to the vacation plat are filed, the following steps shall be followed:
    - (1) The Subdivision Administrator shall approve, approve with conditions or deny the vacation plat. The Subdivision Administrator shall document the decision including the reasons for the decision in the file which shall serve as the official record of the decision. The Subdivision Administrator shall notify the subdivider of the decision.
    - (2) If the Subdivision Administrator denies the vacation plat, the decision may be appealed in writing by the subdivider or any aggrieved party within fifteen (15) days of the Subdivision Administrator's action. The request for appeal shall be filed with the Subdivision Administrator and shall explain the nature of the appeal including the specific issues under appeal and provide written justification supporting the appeal. The appeal shall be accompanied by all required fees. After the request for appeal is

determined to be complete, the Subdivision Administrator shall prepare a staff report and schedule the appeal for consideration before Planning Commission. The Subdivision Administrator shall notify the subdivider of the date and time of the hearing. The Planning commission, after considering all information presented including the staff report, application, written appeal, the Subdivision Administrator's action and any testimony from the subdivider, staff, or public shall take action to either support the Subdivision Administrator's action, modify the Subdivision Administrator's action, overturn the Subdivision Administrator's action, or refer the application back to the Subdivision Administrator. The Planning commission's decision may be appealed in writing to the Council within fifteen (15) days by the subdivider or any aggrieved party.

- c. If a member of the public or any special district or utility objects to the vacation, then the following steps shall be followed:
  - (1) The Subdivision Administrator shall prepare a staff report and schedule the application for review by the Planning Commission. The objector shall be notified of the meeting date and time by the mailing the objector notice of the meeting at least ten (10) days in advance of the meeting. The subdivider shall provide notice in accordance with the notice provisions in Section 16.21.030.C.1.
  - (2) The Planning Commission shall hold a public meeting to review the vacation, the referral comments, the subdivider's testimony, the public comments, and the staff report. The Planning Commission's decision concerning the application will be based on presented documentation and any remarks along with compliance of standards, policies, regulations, and guidelines and the vacation plat approval standards outlined in Section 16.21.100.B.3.
  - (3) Following action by the Planning Commission, the Subdivision Administrator, in consultation with the City Attorney, shall prepare a vacation ordinance that specifies the legal description of the vacated plat and public infrastructure and dedications, and the reception number of the plat, and that makes reference to the recommendation of the special districts, utility companies and easement holders, as applicable. The Subdivision Administrator shall schedule the application and ordinance for public hearing before the Council. The City Clerk shall provide notice as required by Council policy and City Charter.
  - (4) The Council shall evaluate the vacation plat request, referral agency comments, staff report, the Planning Commission recommendation

and public testimony, and shall approve, conditionally approve, table for further study, remand to the Planning Commission or deny the vacation plat request. The Council's action shall be based on the evidence presented, and compliance with the adopted standards, regulations, policies and other guidelines.

5. *General Submittal Requirements.* Vacation plat submittal requirements are as follows:
- a. Completed and signed application.
  - b. The appropriate fee as set forth in the fee schedule.
  - c. Letter of intent describing the vacation plat to be made in specific terms and the reasons that the vacation plat is needed or desired. The following should generally be included in all letters of intent: description of the vacation plat, request and justification for approval of request; and a statement describing the conformance of the proposed vacation with City codes, rules, regulations, ordinances and plans.
  - d. Proof of ownership, which may be achieved by including a copy of the current deed showing the subdivider's name as owner; a current title insurance policy or title commitment no more than thirty (30) days prior to the date of application; or a copy of the current deed and a notarized letter of authorization from the landowner authorizing the subdivider to process and represent the subdivision application dated no more than thirty (30) days prior to the date of application.
  - e. Complete written description of the public infrastructure and dedications to be vacated including a legal description of all lands to be vacated.
  - f. Vacation plat (i.e., a reproduction of the subdivision on an 8.5 inches x 11 inches sheet of paper or another size approved by the Subdivision Administrator) including the abutting streets. Indicate the lots/streets/public easements vacated. A vicinity map shall be included (i.e., a reduction of the subdivision showing the location of the vacation in relation to the lots, or the area surrounding the street within a one-mile radius, superimposed on a current County or City Map).
  - g. Letters from the following, stating their recommendation regarding the vacation and any existing facility they have over or across the land:
    - (1) All special districts and utility companies providing maintenance of infrastructure within an easement proposed for vacation;
    - (2) All landowners abutting or using an easement proposed for vacation;

- (3) City departments; and
- (4) All known easement beneficiaries.
- h. A map identifying the area to be vacated and relationship to the abutting landowners including the names and addresses of all owners.
- i. Such other items deemed necessary by the Subdivision Administrator to support review and approval of the application.

6. *Post-Approval Requirements and Recording.*

- a. *Post Approval Submittals.* Prior to recording the vacation plat in the office of the El Paso County Clerk and Recorder, the following requirements shall be completed:
  - (1) The subdivider shall cause to have removed and placed permanent reference monuments on the property in accordance with C.R.S. §§38-51-101 et seq., and as required by Section 16.22.140 Survey and Monumentation Standards.
  - (2) When the vacation plat is ready for execution and recording, the following information and materials shall be submitted in final form:
    - (a) The vacation plat meeting the requirements of Section 16.21.100.B.5. The map shall be signed by the owner(s) of record and professional land surveyor. The signatures of the owner of record and professional land surveyor shall be notarized.
    - (b) The appropriate fees as set forth in the fee schedule and fees established by the El Paso County Clerk and Recorder for recordation of the vacation plat and other required recordations.
    - (c) A notarized consent of vacation statement or partial release signed by all lien holders or other parties.
    - (d) Correction deeds.
    - (e) Any supplemental information or legal documents to be recorded with the vacation plat including changes or nullifications of covenants and restrictions, homeowners association documents, etc.



(f) Tax certificate from the El Paso County Treasurer certifying that all taxes due have been paid.

(g) Other documents or information requested by the Subdivision Administrator to confirm conformance with any conditions of approval.

b. *Recording.* Procedures for signing and recording of the vacation are as follows:

(1) A vacation certificate shall be prepared by the Subdivision Administrator. The vacation certificate shall specify the affected plat, its reception number, the specific lots, easements or building envelope affected and reference the vacation plat, and the recommendations of the special districts/easement holders, as applicable. The vacation ordinance may serve as the vacation certificate.

(2) The vacation certificate may be signed only after the City has determined that the vacation plat and supporting materials required by this Title are in substantial conformance with: (1) all conditions established by the City in approving the vacation; and (2) all other requirements of this Title and other applicable City codes, rules, regulations and ordinances.

(3) Within thirty (30) days of receipt of all required materials, the Subdivision Administrator shall sign and record the vacation certificate, vacation plat, deeds and any other required materials in the office of the El Paso County Clerk and Recorder.

7. *Expiration of Approval.* The approved vacation plat shall be effective for a period of one (1) year from the date of the City's approval. Prior to the end of the one (1) year, the subdivider shall have met all requirements of the vacation process and the vacation plat shall have been signed and recorded in the office of the El Paso County Clerk and Recorder. The subdivider may request in writing, prior to the expiration of the approved vacation, an extension of the approval period. An application for extension shall: (1) show good cause for the extension; (2) be limited to a maximum of three (3) months; and (3) be reviewed by the staff and approved by the Subdivision Administrator. Upon denial of an extension, the Subdivision Administrator's decision may be appealed to the Planning Commission by the subdivider or any aggrieved party. Upon denial by the Planning Commission of an extension, the subdivider or any aggrieved party may appeal the decision of the Planning Commission to the Council. If the approval expires prior to filing of the vacation plat for recording, a new application must be submitted.

C. *Lot Line and Easement Vacations.*

1. *Intent.* The intent of the lot line vacation process is to provide a simple administrative review process to vacate lot lines within a subdivision, in which the original subdivision is not substantially modified and additional lots are not created. As an alternative, the City may allow the execution of a combination of lots agreement to establish a zoning lot for purposes of compliance with zoning. It is the purpose of this procedure to alleviate platting costs for certain minor vacations where the purposes of this Title can be served by administrative actions. The procedures set forth shall apply to vacations of interior lot lines and vacations of public easements.
2. *Prerequisite.*
  - a. *Pre-Application Meeting.* Persons desiring to submit a lot line or easement vacation are required to meet with the Subdivision Administrator for a pre-application meeting, unless specifically waived by the Subdivision Administrator. The purpose of the meeting is to inform the subdivider of subdivision procedures and requirements, to provide a checklist of the items to be included with the subdivision application, and to provide preliminary recommendations.
  - b. *DRT Meeting.* Where determined necessary by the Subdivision Administrator, the Subdivision Administrator may require the subdivider to attend a DRT meeting to discuss the proposed subdivision in advance of filing an application. The subdivider may also specifically request to meet with the DRT. The DRT meetings provide the subdivider with the opportunity to interface with all members of the review team and to identify issues that need to be addressed. Where required by the Subdivision Administrator, attendance at the DRT meeting shall be considered a prerequisite to acceptance of any application for lot line or easement vacation.
3. *Approval Standards.* The Subdivision Administrator may administratively approve any lot line vacation to an approved final plat including a reconfiguration of an easement upon finding that: (1) the lot line vacation is in accordance with the adopted standards and criteria, and the original conditions of approval of this Title and other applicable regulations, including setbacks for any existing structures or uses and area requirements for any lots; (2) the vacation does not include any lots or parcels created illegally; (3) the vacation does not impair any existing access or access easement, or create a need for a new access to or any new easement serving any adjacent lots or parcels; (4) the vacation does not require substantial alteration of existing improvements or create a need for any new improvements; (5) nonconforming lots are not created, and in the case of nonconforming lots, the nonconformity is not increased; (6) the vacation is in keeping with the purpose and intent of this Title; (7) the approval will not adversely affect the public health and safety or the environment; and (8) where an easement will be vacated, the findings for approval of easement vacation in Section 16.21.100.B.3 shall be met.

4. *Submittal and Review Process.* A complete application for lot line vacation must be submitted to the Subdivision Administrator and shall not be considered accepted until all required information is received. Where an easement will be vacated or vacated and relocated, the applicant shall provide letters not objecting to the vacation or vacation and relocation from all easement beneficiaries. If letters from easement beneficiaries cannot be obtained, a plat vacation application must be submitted and processed concurrently with the lot line vacation in accordance with Section 16.21.100.B.
- a. The subdivider shall submit a complete application with accompanying documents in accordance with the application package and Section 16.21.100.C.5 to the Subdivision Administrator including complete packets for any referral agencies, if any. Referral packets with all submittal information accurately folded and assembled shall be provided by the subdivider in unsealed manila envelopes addressed to appropriate referral agencies.
  - b. If any referral agencies have been identified, referral packets shall be mailed by the Subdivision Administrator. The referral agencies shall provide comment within fifteen (15) days of receiving a complete submittal. A minimum of fifteen (15) days after mailing the referral packets to the referral agencies, the Subdivision Administrator shall review and compile the referral comments received. A DRT meeting may also be scheduled by the Subdivision Administrator or requested by the subdivider where significant issues have been identified or where agency comments conflict as a means of resolving the issues or conflicts. The subdivider may be invited to the DRT meeting scheduled to resolve issues or conflicts.
  - c. The Subdivision Administrator shall approve, approve with conditions or deny the lot line vacation. The Subdivision Administrator shall document the decision including the reasons for the decision in the file which shall serve as the official record of the decision. The Subdivision Administrator shall notify the subdivider of the decision.
  - d. If the Subdivision Administrator denies the lot line vacation, the decision may be appealed in writing by the subdivider or any aggrieved party within fifteen (15) days of the Subdivision Administrator's action. The request for appeal shall be filed with the Subdivision Administrator and shall explain the nature of the appeal including the specific issues under appeal and provide written justification supporting the appeal. The appeal shall be accompanied by all required fees. After the request for appeal is determined to be complete, the Subdivision Administrator shall prepare a staff report and schedule the appeal for consideration before Planning Commission. The Subdivision Administrator shall notify the subdivider of the date and time of the hearing. The Planning Commission, after considering all information presented including the staff report, application, written appeal, the Subdivision

Administrator's action and any testimony from the subdivider, staff, or public shall take action to either support the Subdivision Administrator's action, modify the Subdivision Administrator's action, overturn the Subdivision Administrator's action, or refer the application back to the Subdivision Administrator. The Planning Commission's decision may be appealed in writing to the Council within fifteen (15) days by the subdivider or any aggrieved party.

5. *General Submittal Requirements.* Lot line vacation submittal requirements are as follows:

- a. Completed and signed application.
- b. The appropriate fee as set forth in the fee schedule.
- c. Letter of intent describing the lot line vacation to be made in specific terms and the reasons that the lot line vacation is needed or desired. The following should generally be included in all letters of intent: name of the owner, subdivider and consultant, including addresses and telephone numbers; site location, size and zoning; description of the lot line vacation, request and justification for approval of request; and a statement describing the conformance of the proposed lot line adjustment with City codes, rules, regulations, ordinances and plans.
- d. Complete legal description of the property.
- e. Proof of ownership, which may be achieved by including a copy of the current deed showing the subdivider's name as owner; a current title insurance policy or title commitment no more than thirty (30) days prior to the date of application; or a copy of the current deed and a notarized letter of authorization from the landowner authorizing the subdivider to process and represent the subdivision application dated no more than thirty (30) days prior to the date of application.
- f. Lot line vacation plat (i.e., a certified boundary survey of the lots prepared by a professional land surveyor on an 8.5 inches x 11 inches sheet of paper, or another size approved by the Subdivision Administrator), that shows the existing and proposed lot and easements, with distances and bearings and a vicinity map (i.e., a reduction of the filing showing the relationship of the lots to the filing), as determined appropriate or necessary by the Subdivision Administrator.
- g. A letter from all special districts and utility companies and City departments providing service to the lots, stating their recommendations regarding the lot line vacation.

- h. When an easement is realigned or vacated, a letter from all known beneficiaries, stating their recommendation regarding the request and any existing facilities they have over or across the land.
- i. Such other items deemed necessary by the Subdivision Administrator to support review and approval of the application.

6. *Post-Approval Requirements and Recording.*

- a. *Post Approval Submittals.* Prior to recording the lot line vacation plat in the office of the El Paso County Clerk and Recorder, the following requirements shall be completed.
  - (1) The subdivider shall cause to have removed and placed permanent reference monuments on the property in accordance with C.R.S. §§38-51-101 et seq. and required by Section 16.22.140 Survey and Monumentation Standards.
  - (2) When the lot line vacation plat is ready for execution and recording, the following information and materials shall be submitted in final form:
    - (a) The vacation plat meeting the requirements of Section 16.21.100.C.5. The map shall be signed by the owner(s) of record and professional land surveyor. The signatures of the owner of record and professional land surveyor shall be notarized.
    - (b) The appropriate fees as set forth in the fee schedule and fees established by the El Paso County Clerk and Recorder for recordation of the vacation plat and other required recordations.
    - (c) A notarized consent of vacation statement or partial release signed by all lien holders or other parties.
    - (d) Correction deeds.
    - (e) Any supplemental information or legal documents to be recorded with the lot line vacation plat including changes to covenants and restrictions, homeowner's association documents, etc.
    - (f) Tax certificate from the El Paso County Treasurer certifying that all taxes due have been paid.
    - (g) Other documents or information requested by the Subdivision Administrator to confirm conformance with any conditions of approval.

b. *Recording.* Procedures for signing and recording of the lot line vacation are as follows:

- (1) A lot line vacation certificate shall be prepared by the Subdivision Administrator. The lot line vacation certificate shall specify the affected plat, its reception number, the specific lots, easements or building envelope affected and reference the lot line vacation plat, and the recommendations of the special districts/easement holders, as applicable.
- (2) The vacation certificate may be signed only after the City has determined that the lot line vacation plat and supporting materials required by this Title are in substantial conformance with: (1) all conditions established by the City in approving the vacation; and (2) all other requirements of this Title and other applicable City codes, rules, regulations and ordinances.
- (3) Within thirty (30) days of receipt of all required materials, the Subdivision Administrator shall sign and record the lot line vacation certificate, vacation plat, deeds and any other required materials in the office of the El Paso County Clerk and Recorder.

7. *Expiration of Approval.* The approved lot line vacation plat shall be effective for a period of one (1) year from the date of the City's approval. Prior to the end of the one (1) year, the subdivider shall have met all requirements of the vacation process and the lot line vacation plat shall have been signed and recorded in the office of the El Paso County Clerk and Recorder. The subdivider may request in writing, prior to the expiration of the approved vacation, an extension of the approval period. An application for extension shall: (1) show good cause for the extension; (2) be limited to a maximum of three (3) months; and (3) be reviewed by the staff and approved by the Subdivision Administrator. Upon denial of an extension, the Subdivision Administrator's decision may be appealed to the Planning commission by the subdivider or any aggrieved party. Upon denial by the Planning Commission of an extension, the subdivider or any aggrieved party may appeal the decision of the Planning Commission to the Council. If the approval expires prior to filing of the lot line vacation plat for recording, a new application must be submitted.

D. *Amendment to, or Removal of, Plat Restrictions or Conditions of Approval.*

1. *Intent.* The Council is authorized to amend or remove plat restrictions or conditions of approval through a simplified review process where it is determined by Council that such restriction or condition is no longer necessary or applicable.

2. *Prerequisite.*

- a. *Pre-Application Meeting.* Persons desiring to submit an amendment are required to meet with the Subdivision Administrator for a pre-application meeting, unless specifically waived by the Subdivision Administrator. The purpose of the meeting is to inform the subdivider of subdivision procedures and requirements, to provide a checklist of the items to be included with the subdivision application, and to provide preliminary recommendations.
  - b. *DRT Meeting.* Where determined necessary by the Subdivision Administrator, the Subdivision Administrator may require the subdivider to attend a DRT meeting to discuss the proposed subdivision in advance of filing an application. The subdivider may also specifically request to meet with the DRT. The DRT meetings provide the subdivider with the opportunity to interface with all members of the review team and to identify issues that need to be addressed. Where required by the Subdivision Administrator, attendance at the DRT meeting shall be considered a prerequisite to acceptance of any application for amendment.
3. *Approval Standards.* Plat restrictions or conditions of approval shall not be amended or removed unless: (1) The change or removal is in accordance with the adopted standards and criteria, and the original conditions of approval and as a result of actions by the subdivider or changes in the environment such restriction or condition is no longer necessary or applicable; (2) the change or removal is in keeping with the purpose and intent of this Title; and (3) the approval will not adversely affect the public health, safety and welfare.
4. *Submittal and Review Process.* A complete application must be submitted to the Subdivision Administrator and shall not be considered accepted until all required information is received.
- a. The subdivider shall submit a complete application with accompanying documents in accordance with the application package and Section 16.21.100.D.5 to the Subdivision Administrator including complete packets for any referral agencies, if any. Referral packets with all submittal information accurately folded and assembled shall be provided by the subdivider in unsealed manila envelopes addressed to appropriate referral agencies. The subdivider shall provide notice in accordance with the notice provisions in Section 16.21.030.C.3.
  - b. If referral is required, referral packets shall be mailed by the Subdivision Administrator. The referral agencies shall provide comment within fifteen (15) days of receiving a complete submittal. A minimum of fifteen (15) days after mailing the referral packets to the referral agencies, the Subdivision Administrator shall review and compile the referral comments received. A DRT meeting may also be scheduled by the Subdivision Administrator or

requested by the subdivider where significant issues have been identified or where agency comments conflict as a means of resolving the issues or conflicts. The subdivider may be invited to the DRT meeting scheduled to resolve issues or conflicts.

- c. Where the condition or restriction is a standard condition or restriction and compliance may be verified by the Subdivision Administrator, the following steps shall be followed:

(1) The Subdivision Administrator shall approve, approve with conditions or deny the plat amendment. The Subdivision Administrator shall document the decision including the reasons for the decision in the file which shall serve as the official record of the decision. The Subdivision Administrator shall notify the subdivider of the decision

(2) If the Subdivision Administrator denies the plat amendment, the decision may be appealed in writing by the subdivider or any aggrieved party within fifteen (15) days of the Subdivision Administrator's action. The request for appeal shall be filed with the Subdivision Administrator and shall explain the nature of the appeal including the specific issues under appeal and provide written justification supporting the appeal. The appeal shall be accompanied by all required fees. After the request for appeal is determined to be complete, the Subdivision Administrator shall prepare a staff report and schedule the appeal for consideration before Planning Commission. The Subdivision Administrator shall notify the subdivider of the date and time of the hearing. The Planning Commission, after considering all information presented including the staff report, application, written appeal, the Subdivision Administrator's action and any testimony from the subdivider, staff, or public shall take action to either support the Subdivision Administrator's action, modify the Subdivision Administrator's action, overturn the Subdivision Administrator's action, or refer the application back to the Subdivision Administrator. The Planning Commission's decision may be appealed in writing to the Council within fifteen (15) days by the subdivider or any aggrieved party.

- d. Where the condition or restriction was specifically required by the Planning Commission or Council and compliance or removal is a discretionary decision of the Council, the following steps shall be followed:

(1) The Subdivision Administrator shall prepare a staff report and schedule the application for review by Council. The subdivider shall provide courtesy notice in accordance with the notice



provisions in Section 16.21.030.C.1., if required by the Subdivision Administrator.

- (2) The Council shall evaluate the request, referral agency comments, staff report, and public testimony, and shall approve, conditionally approve, table for further study, or deny the request. The Council's action shall be based on the evidence presented, and compliance with the adopted standards, regulations, policies and other guidelines.

5. *General Submittal Requirements.* Plat amendment submittal requirements are as follows:

- a. Completed and signed application
- b. The appropriate fee as set forth in the fee schedule.
- c. Letter of intent describing the request in specific terms and the reasons that the amendment or removal is needed or desired. The following should generally be included in all letters of intent: description of the request and justification for approval of request; and a statement describing the conformance of the proposed request with City codes, rules, regulations, ordinances and plans.
- d. Proof of ownership, which may be achieved by including a copy of the current deed showing the subdivider's name as owner; a current title insurance policy or title commitment no more than thirty (30) days prior to the date of application; or a copy of the current deed and a notarized letter of authorization from the landowner authorizing the subdivider to process and represent the subdivision application dated no more than thirty (30) days prior to the date of application.
- e. Such other items deemed necessary by the Subdivision Administrator to support review and approval of the application.

6. *Lot line Adjustments*

1. *Intent.* The intent of the lot line adjustment process is to provide a simple administrative review process to adjust lot lines within a subdivision or replat several lots (e.g., three [3] lots into two [2]), in which the original subdivision is not substantially modified and additional lots are not created. Lot line adjustments may be used to adjust the boundaries between no more than ten (10) adjacent platted lots without the necessity of a vacation plat and replat when no additional lots are being created.

2. *Prerequisite.* Prior to submittal of a lot line adjustment application, the subdivider shall meet with the Subdivision Administrator to discuss the lot line adjustment, the procedures and submittal requirements. The Subdivision Administrator shall also identify the referral agencies that will need to review the application, if any.
3. *Approval Standards.* The Subdivision Administrator may administratively approve any lot line adjustment to an approved final plat including a vacation or vacation and reconfiguration of an easement upon finding that: (1) the lot line adjustment is in accordance with the adopted standards and criteria, and the original conditions of approval of this Title and other applicable regulations, including setbacks for any existing structures or uses and area requirements for any lots; (2) the adjustment does not include any lots or parcels created illegally; (3) the adjustment does not impair any existing access or access easement, or create a need for a new access to or any new easement serving any adjacent lots or parcels; (4) the adjustment does not require substantial alteration of existing improvements or create a need for any new improvements; (5) nonconforming lots are not created, and in the case of nonconforming lots, the nonconformity is not increased; (6) the lot line adjustment is in keeping with the purpose and intent of this Title; (7) the approval will not adversely affect the public health and safety or the environment; and (8) where an easement will be vacated, the findings for approval of easement vacation in Section 16.21.100.B.3. shall be met.
4. *Submittal and Review Process.* A complete application for lot line adjustment must be submitted to the Subdivision Administrator and shall not be considered accepted until all required information is received. Where an easement will be vacated or vacated and relocated, the applicant shall provide letters not objecting to the vacation or vacation and relocation from all easement beneficiaries. If letters from easement beneficiaries cannot be obtained, a plat vacation application must be submitted and processed concurrently with the lot line vacation in accordance with Section 16.21.100.B.
  - a. The subdivider shall submit a complete application with accompanying documents in accordance with the application package and Section 16.21.100.E.5 to the Subdivision Administrator including complete packets for any referral agencies, if any. Referral packets with all submittal information accurately folded and assembled shall be provided by the subdivider in unsealed manila envelopes addressed to appropriate referral agencies.

- b. If referral is required, referral packets shall be mailed by the Subdivision Administrator. The referral agencies shall provide comment within fifteen (15) days of receiving a complete submittal. A minimum of fifteen (15) days after mailing the referral packets to the referral agencies, the Subdivision Administrator shall review and compile the referral comments received. A DRT meeting may also be scheduled by the Subdivision Administrator or requested by the subdivider where significant issues have been identified or where agency comments conflict as a means of resolving the issues or conflicts. The subdivider may be invited to the DRT meeting scheduled to resolve issues or conflicts. The subdivider shall provide notice in accordance with the notice provisions in Section 16.21.030.C.3., if required by the Subdivision Administrator.
- c. The Subdivision Administrator shall approve, approve with conditions or deny the lot line adjustment. The Subdivision Administrator shall document the decision including the reasons for the decision in the file which shall serve as the official record of the decision. The Subdivision Administrator shall notify the subdivider of the decision.
- d. If the Subdivision Administrator denies the lot line adjustment, the decision may be appealed in writing by the subdivider or any aggrieved party within fifteen (15) days of the Subdivision Administrator's action. The request for appeal shall be filed with the Subdivision Administrator and shall explain the nature of the appeal including the specific issues under appeal and provide written justification supporting the appeal. The appeal shall be accompanied by all required fees. After the request for appeal is determined to be complete, the Subdivision Administrator shall prepare a staff report and schedule the appeal for consideration before Planning Commission. The Subdivision Administrator shall notify the subdivider of the date and time of the hearing. The Planning Commission, after considering all information presented including the staff report, application, written appeal, the Subdivision Administrator's action and any testimony from the subdivider, staff, or public shall take action to either support the Subdivision Administrator's action, modify the Subdivision Administrator's action, overturn the Subdivision Administrator's action, or refer the application back to the Subdivision Administrator. The Planning Commission's decision may be appealed in writing to the Council within

fifteen (15) days by the subdivider or any aggrieved party.

5. *General Submittal Requirements.* Lot line adjustment submittal requirements are as follows:

- a. Completed and signed application.
- b. The appropriate fee as set forth in the fee schedule.
- c. Letter of intent describing the lot line adjustment to be made in specific terms and the reasons that the lot line adjustment is needed or desired. The following should generally be included in all letters of intent: name of the owner, subdivider and consultant, including addresses and telephone numbers; site location, size and zoning; description of the lot line adjustment, request and justification for approval of request; and a statement describing the conformance of the proposed lot line adjustment with City codes, rules, regulations, ordinances and plans.
- d. Complete legal description of the property.
- e. Proof of ownership, which may be achieved by including a copy of the current deed showing the subdivider's name as owner; a current title insurance policy or title commitment no more than thirty (30) days prior to the date of application; or a copy of the current deed and a notarized letter of authorization from the landowner authorizing the subdivider to process and represent the subdivision application dated no more than thirty (30) days prior to the date of application.
- f. Lot line adjustment (i.e., a certified boundary survey of the lots prepared by a professional land surveyor on an 8.5 inches x 11 inches sheet of paper, or another size approved by the Subdivision Administrator), that shows the existing and proposed lot and easements, with distances and bearings and a vicinity map (i.e., a reduction of the filing showing the relationship of the lots to the filing), as determined appropriate or necessary by the Subdivision Administrator.
- g. A letter from all special districts and utility companies and City departments providing service to the lots, stating their recommendations regarding the lot line adjustment.
- h. When an easement is realigned or vacated a letter from all known beneficiaries, stating their recommendation regarding the request and any existing facilities they have over or across the land.

- i. Such other items deemed necessary by the Subdivision Administrator to support review and approval of the application.

6. *Post-Approval Requirements and Recording.*

- a. *Post Approval Submittals.* Prior to recording the lot line adjustment map in the office of the El Paso County Clerk and Recorder, the following requirements shall be completed.
  - (1) The subdivider shall cause to have removed and placed permanent reference monuments on the property in accordance with C.R.S. §§38-51-101 et seq. and as required by Section 16.22.140 Survey and Monumentation Standards.
  - (2) When the lot line adjustment map is ready for execution and recording, the following information and materials shall be submitted in final form:
    - (a) The lot line adjustment map meeting the requirements of Section 16.21.100.E.5. The map shall be signed by the owner(s) of record and professional land surveyor. The signatures of the owner of record and professional land surveyor shall be notarized.
    - (b) The appropriate fees as set forth in the fee schedule and fees established by the El Paso County Clerk and Recorder for recordation of the map and other required recordations.
    - (c) A notarized consent of lot line adjustment statement or partial release signed by all lien holders or other parties.
    - (d) Correction deeds.
    - (e) Any supplemental information or legal documents to be recorded with the lot line adjustment map including changes to covenants and restrictions, homeowner's association documents, etc.
    - (f) Tax certificate from the El Paso County Treasurer certifying that all taxes due have been paid.
    - (g) Other documents or information requested by the Subdivision Administrator to confirm conformance with any conditions of approval.

b. *Recording.* Procedures for signing and recording of the lot line adjustment are as follows:

- (1) A lot line adjustment certificate shall be prepared by the Subdivision Administrator. The lot line adjustment certificate shall specify the affected plat, its reception number, the specific loss, easements or building envelope affected and reference the lot line adjustment map, and the recommendations of the special districts/easement holders, as applicable.
- (2) The lot line adjustment certificate may be signed only after the City has determined that the lot line adjustment map and supporting materials required by this Title are in substantial conformance with: (1) all conditions established by the City in approving the vacation; and (2) all other requirements of this Title and other applicable City codes, rules, regulations and ordinances.
- (3) Within thirty (30) days of receipt of all required materials, the Subdivision Administrator shall sign and record the lot line adjustment certificate, lot line adjustment map, deeds and any other required materials in the office of the El Paso County Clerk and Recorder.

7. *Expiration of Approval.* The approved lot line adjustment map shall be effective for a period of one (1) year from the date of the City's approval. Prior to the end of the one (1) year, the subdivider shall have met all requirements of the lot line adjustment process and the lot line adjustment map shall have been signed and recorded in the office of the El Paso County Clerk and Recorder. The subdivider may request in writing, prior to the expiration of the approved lot line adjustment, an extension of the approval period. An application for extension shall: (1) show good cause for the extension; (2) be limited to a maximum of three (3) months; and (3) be reviewed by the staff and approved by the Subdivision Administrator. Upon denial of an extension, the Subdivision Administrator's decision may be appealed to the Planning Commission by the subdivider or any aggrieved party. Upon denial by the Planning Commission of an extension, the subdivider or any aggrieved party may appeal the decision of the Planning Commission to the Council. If the approval expires prior to filing of the lot line adjustment map for recording, a new application must be submitted.

F. *Error Corrections.*

1. *Intent.* The intent of the plat correction process is to provide a simple administrative review process to make corrections to subdivision plats and any associated documents due to errors or omissions; i.e., dimensions, road names, plat notes.

2. *Prerequisite.* Prior to submittal of a plat correction application, the subdivider shall meet with the Subdivision Administrator to discuss the correction, the procedures and submittal requirements since the submittal requirements and document filed may vary depending on the nature of the correction. The Subdivision Administrator shall also identify the referral agencies that will need to review the application, if any.
3. *Approval Standards.* The Subdivision Administrator may administratively approve any correction to an approved final plat or any associated documents where the change is due to a minor error or omission including a minor reconfiguration of an easement upon finding that: (1) The correction is in accordance with the adopted standards and criteria, and the original conditions of approval; (2) nonconforming lots are not created, and in the case of nonconforming lots, the nonconformity is not increased; (3) the correction is in keeping with the purpose and intent of this Title; and (4) the approval will not adversely affect the public health, safety and welfare.
4. *Submittal and Review Process.* A complete application for plat correction must be submitted to the Subdivision Administrator and shall not be considered accepted until all required information is received.
  - a. The subdivider shall submit a complete application with accompanying documents in accordance with the application package and Section 16.21.100.F.t to the Subdivision Administrator including complete packets for any referral agencies, if any. Referral packets with all submittal information accurately folded and assembled shall be provided by the subdivider in unsealed manila envelopes addressed to appropriate referral agencies.
  - b. If referral is required, referral packets shall be mailed by the Subdivision Administrator. The referral agencies shall provide comment within fifteen (15) days of receiving a complete submittal. A minimum of fifteen (15) days after mailing the referral packets to the referral agencies, the Subdivision Administrator shall review and compile the referral comments received. A DRT meeting may also be scheduled by the Subdivision Administrator or requested by the subdivider where significant issues have been identified or where agency comments conflict as a means of resolving the issues or conflicts. The subdivider may be invited to the DRT meeting scheduled to resolve issues or conflicts.
  - c. The Subdivision Administrator shall approve, approve with conditions or deny the plat correction. The Subdivision Administrator shall document the decision including the reasons for the decision in the file which shall serve as the official record of the decision. The Subdivision Administrator shall notify the subdivider of the decision.
  - d. If the Subdivision Administrator denies the plat correction, the decision may be appealed in writing by the subdivider or any aggrieved party within fifteen

(15) days of the Subdivision Administrator's action. The request for appeal shall be filed with the Subdivision Administrator and shall explain the nature of the appeal including the specific issues under appeal and provide written justification supporting the appeal. The appeal shall be accompanied by all required fees. After the request for appeal is determined to be complete, the Subdivision Administrator shall prepare a staff report and schedule the appeal for consideration before Planning Commission. The Subdivision Administrator shall notify the subdivider of the date and time of the hearing. The Planning Commission, after considering all information presented including the staff report, application, written appeal, the Subdivision Administrator's action and any testimony from the subdivider, staff, or public shall take action to either support the Subdivision Administrator's action, modify the Subdivision Administrator's action, overturn the Subdivision Administrator's action, or refer the application back to the Subdivision Administrator. The Planning Commission's decision may be appealed in writing to the Council within fifteen (15) days by the subdivider or any aggrieved party.

5. *General Submittal Requirements.* Plat correction submittal requirements are as follows:

- a. Completed and signed application.
- b. The appropriate fee as set forth in the fee schedule.
- c. Letter of intent describing the correction to be made in specific terms and the reasons that the correction is needed or desired. The following should generally be included in all letters of intent: name of the owner, subdivider and consultant, including addresses and telephone numbers; site location, size and zoning; description of the correction, request and justification for approval of request; and a statement describing the conformance of the proposed correction with City codes, rules, regulations, ordinances and plans.
- d. Complete legal description of the property.
- e. Proof of ownership, which may be achieved by including a copy of the current deed showing the subdivider's name as owner; a current title insurance policy or title commitment no more than thirty (30) days prior to the date of application; or a copy of the current deed and a notarized letter of authorization from the landowner authorizing the subdivider to process and represent the subdivision application dated no more than thirty (30) days prior to the date of application.
- f. Plat exhibit meeting the requirements of Section 16.21.090 or other form of map exhibit showing the correction, if determined appropriate by the Subdivision Administrator.



- g. Such other items deemed necessary by the Subdivision Administrator to support review and approval of the application.
5. *Post-Approval Requirements and Recording.* A plat correction certificate shall be prepared by the Subdivision Administrator that identifies the error or omission, the plat to be corrected, its reception number and the necessary corrective action. The plat correction certificate shall be signed by the Subdivision Administrator and filed for recording in the office of the El Paso County Clerk and Recorder. Where the error or omission involves the survey information, the professional land surveyor responsible shall also sign the certificate. All recording fees shall be the responsibility of the subdivider.

G. *Street Vacation.*

1. *Intent.* The Council has authority to vacate roadways, which include any public street, alley, lane, parkway, avenue, road, trail or other public way designated or dedicated on a plat, conveyed by deed or recorded easement, or acquired by prescriptive use (common law dedication needed), whether or not it has ever been used as such by ordinance in accordance with C.R.S. §§43-2-301, et seq., and as authorized and required by the City's Charter including any associated public easements.
2. *Prerequisite.* Prior to submittal of a street vacation application, the subdivider shall meet with the Subdivision Administrator to discuss the vacation, the procedures and submittal requirements since the submittal requirements and document filed may vary depending on the nature of the vacation. The Subdivision Administrator shall also identify the referral agencies that will need to review the application, if any.
3. *Approval Standards.* A platted or deeded street, or portion thereof, or unplatted or undefined streets which have arisen by public usage shall not be vacated so as to leave any land adjoining said street without an established public street or private access easement connecting said land with another established public street.
4. *Submittal and Review Process.* A complete application for street vacation must be submitted to the Subdivision Administrator and shall not be considered accepted until all required information is received.
  - a. The subdivider shall submit a complete application with accompanying documents in accordance with the application package and Section 16.21.100.G.6 to the Subdivision administrator including complete packets for any referral agencies, if any. Referral packets with all submittal information accurately folded and assembled shall be provided by the subdivider in unsealed manila envelopes addressed to appropriate referral agencies.

- b. The referral agencies shall provide comment within fifteen (15) days of receiving a complete submittal. A minimum of fifteen (15) days after mailing the referral packets to the referral agencies, the Subdivision Administrator shall review and compile the referral comments received. A DRT meeting may also be scheduled by the Subdivision Administrator or requested by the subdivider where significant issues have been identified or where agency comments conflict as a means of resolving the issues or conflicts. The subdivider may be invited to the DRT meeting scheduled to resolve issues or conflicts.
  - c. The Subdivision Administrator shall prepare a staff report, schedule the application for review by the Planning Commission, and notify the subdivider of the meeting date. Any known objector or beneficiary of the public right-of-way to be vacated shall be noticed of the meeting date and time by the mailing the known objector or beneficiary notice of the meeting at least ten (10) days in advance of the meeting. The subdivider shall provide notice in accordance with the notice provisions in Section 16.21.030.C.2.
  - d. The Planning Commission will hold a public hearing to review the street vacation, the referral comments, the subdivider's testimony, the public comments, and the staff report. The Planning Commission's decision concerning the application will be based on presented documentation and any remarks along with compliance of standards, policies, regulations, and guidelines and the street vacation approval standards outlined in Section 16.21.100.G.3.
  - e. Following action by the Planning Commission, the Subdivision Administrator, in consultation with the City Attorney, shall prepare a vacation ordinance that specifies the legal description of the street vacated, and that makes reference to the recommendation of the special districts, utility companies, and other beneficiaries, as applicable. The Subdivision Administrator shall schedule the application and ordinance for public hearing before the Council. The City Clerk shall provide notice as required by Council policy and City Charter.
  - f. The Council shall evaluate the vacation request, referral agency comments, staff report, the Planning Commission recommendation and public testimony, and shall approve, conditionally approve, table for further study, or deny the vacation request. The Council's action shall be based on the evidence presented, and compliance with the adopted standards, regulations, policies and other guidelines.
5. *General Submittal Requirements.* Street vacation submittal requirements are as follows:

- a. Completed and signed application.
- b. The appropriate fee as set forth in the fee schedule.
- c. Letter of intent describing the street vacation to be made in specific terms and the reasons that the street vacation is needed or desired. The following should generally be included in all letters of intent: description of the street vacation, request and justification for approval of request; and a statement describing the conformance of the proposed street vacation with City codes, rules, regulations, ordinances and plans.
- d. Complete written description of the street to be vacated.
- e. Vacation map (i.e., a reproduction of the street or access easement on an 8.5 inches x 11 inches sheet of paper or another size approved by the Subdivision Administrator including the written legal description). A vicinity map shall be included (i.e., a reduction of the subdivision showing the location of the street in relation to the lots, or the area surrounding the street within a one-mile radius, superimposed on a current County or City Map).
- f. Letters from the following, stating their recommendation regarding the vacation and any existing facility they have over or across the land. Note that where letters cannot be obtained, notice provided in accordance with Section 16.21.030.C.2. shall be considered adequate.
  - (1) All special districts and utility companies providing maintenance of infrastructure within the rights-of-way or public easements proposed for vacation;
  - (2) All landowners abutting or using a right-of-way or public easement proposed for vacation;
  - (3) City departments; and
  - (4) All known easement beneficiaries.
- g. A map identifying the area to be vacated and relationship to the abutting landowners including the names and addresses of all owners.
- h. Such other items deemed necessary by the Subdivision Administrator to support review and approval of the application.

6. *Post-Approval Requirements and Recording.*

- a. *Vesting of Title.* Vesting of title upon vacation shall be in accordance with C.R.S. §43-2-302.
- b. *Deeds and Recording.* Upon approval by the Council, the Subdivision Administrator shall, in consultation with the City Attorney, prepare any deeds required by the vacation. Within thirty (30) days, the Subdivision Administrator shall submit the vacation ordinance, vacation plat and deeds, if required, for recordation to the office of El Paso County Clerk and Recorder.

H. *Replat (vacation and) and Townhome (including Commercial Building Pads).*

1. *Intent.* The intent of the replat provision is to allow the resubdivision of lands already platted. The replat involves the vacation of previously platted land with or without the requirement to file a vacation plat. Several forms of replat are recognized these include Major Subdivisions, Minor Subdivisions, Townhome Subdivisions, Commercial Building Pads, and Condominium Subdivisions. Condominium subdivisions or maps are governed by Section 16.21.100.1.
2. *Prerequisite.*
  - a. *Pre-Application Meeting.* Persons desiring to submit a replat are required to meet with the Subdivision Administrator for a pre-application meeting, unless specifically waived by the Subdivision Administrator. The purpose of the meeting is to inform the subdivider of subdivision procedures and requirements, to provide a checklist of the items to be included with the subdivision application, and to provide preliminary recommendations. Where a pre-application meeting was held in association with a concept plan or preliminary plat, the Subdivision Administrator may waive the pre-application meeting.
  - b. *DRT Meeting.* Where determined necessary by the Subdivision Administrator, the Subdivision Administrator may require the subdivider to attend a DRT meeting to discuss the proposed subdivision in advance of filing an application. The subdivider may also specifically request to meet with the DRT. The DRT meetings provide the subdivider with the opportunity to interface with all members of the review team and to identify issues that need to be addressed. Where required by the Subdivision Administrator, attendance at the DRT meeting shall be considered a prerequisite to acceptance of any application for replat.
3. *Approval Standards.* The approval standards for a replat are the same as those for a preliminary plat and final plat as specified in Section 16.21.080.C and 16.21.090.C. In addition, because a replat involves the vacation of all or a portion of a previously approved plat, the approval standards for a vacation plat also apply. If the vacation involves existing public infrastructure or dedications that are in use, the approval standards also include the approval standards identified in Section 16.21.100.A.3. If

the vacation does not involve the vacation of public infrastructure or dedications that are in use, the approval standards include the approval standards identified in Section 16.21.100.B.3.

4. *Submittal and Review Process.* A complete application for replat must be submitted to the Subdivision Administrator and shall not be considered accepted until all required information is received.
  - a. *Replats Processed as Minor Major Subdivisions.* The replat application shall be processed as a Minor or Major Subdivision in accordance with Section 16.21.040 or 16.21.050 depending on the exact nature of the request. Notice shall be as required for the associated vacation and platting actions.
  - b. *Townhome or Commercial Building Pads.* Where a concept plan for a townhome or commercial development was prepared and approved as part of the super lot, the townhome or commercial building pad plat may be processed administratively as a final plat even though the plat may result in the creation of more than 10 lots. Where no concept plan was approved when establishing the super lot, the townhome or commercial building pad plat shall be processed as a Minor or Major Subdivision in accordance with Section 16.21.040 or 16.21.050 depending on the exact nature of the request. Notice is as required for the platting action in the case of an administrative approval.
5. *General Submittal Requirements.* The submittal requirements shall be the same as those required for Preliminary and Final Plat in accordance with Section 16.21.080.D or 16.21.090.D depending on the exact nature of the request. Where an easement will be vacated or vacated and relocated, the applicant shall provide letters not objecting to the vacation or vacation and relocation from all easement beneficiaries. If letters from easement beneficiaries cannot be obtained, a plat vacation application must be submitted and processed concurrently with the lot line vacation in accordance with Section 16.21.100.B. Where a right-of-way will be vacated, the right-of-way shall be vacated using the procedures established in Section 16.21.100.A or 16.21.100.G. In addition to the information required by Section 16.21.080.D or 16.21.090.D, the following information shall be required:
  - a. Complete written description of the public infrastructure and dedications to be vacated including legal descriptions.
  - b. Vacation plat (i.e., a reproduction of the subdivision on an 8.5 inches x 11 inches sheet of paper or another size approved by the Subdivision Administrator, including the abutting streets. Indicate the lots/streets/public easements vacated.). A vicinity map shall be included (i.e., a reduction of the subdivision showing the location of the vacation in relation to the lots, or the area surrounding the street within a one-mile radius, superimposed on a current County or City Map).

- c. Letters from the following, stating their recommendation regarding the vacation and any existing facility they have over or across the land:
    - (1) All special districts, utility companies, and other authorized users of right-of-way or public easements providing maintenance of infrastructure within the right-of-way or public easements;
    - (2) City departments;
    - (3) All landowners abutting or using a right-of-way or easement proposed for vacation; and
    - (4) All known right-of-way or easement beneficiaries.
  - d. A map shall be included identifying the area to be vacated and relationship to the abutting landowners including the names and addresses if all owners.
  - e. Such other items deemed necessary by the Subdivision Administrator to support review and approval of the application.
6. *Post-Approval Requirements.* All post approval requirements associated with a final plat shall apply to a final plat of a replatted subdivision as outlined in Section 16.21.090.H. In addition, all requirements associated with vacation outlined in Section 16.21.100.A.6, 16.21.100.B.6, or 16.21.100.G.6 depending on the nature of the vacation.
7. *Expiration of Approval.* The approved preliminary and final replat shall be subject to the same expirations as all preliminary plats (Section 16.21.080.I) and final plats (Section 16.21.090.I).
- I. *Condominium Subdivision (Condominium Map).*
- 1. *Intent.* The purpose of this procedure is to provide review processes to ensure that the creation or conversion of condominium subdivisions will comply with the Building Code provisions of this Title, and other City codes and ordinances.
  - 2. *Prerequisite.*
    - a. *Pre-Application Meeting.* Persons desiring to submit a condominium map are required to meet with the Subdivision Administrator for a pre-application meeting, unless specifically waived by the Subdivision Administrator. The purpose of the meeting is to inform the subdivider of subdivision procedures and requirements, to provide a checklist of the items to be included with the subdivision application, and to provide preliminary recommendations. Where a pre-application meeting was held in association with a concept plan

or preliminary plat, the Subdivision Administrator may waive the pre-application meeting.

- b. *DRT Meeting.* Where determined necessary by the Subdivision Administrator, the Subdivision Administrator may require the subdivider to attend a DRT meeting to discuss the proposed subdivision in advance of filing an application. The subdivider may also specifically request to meet with the DRT. The DRT meetings provide the subdivider with the opportunity to interface with all members of the review team and to identify issues that need to be addressed. Where required by the Subdivision Administrator, attendance at the DRT meeting shall be considered a prerequisite to acceptance of any application for a condominium map.
3. *Approval Standards.* The Subdivision Administrator may approve the condominium map upon the finding that: (1) the plat is consistent with the approved final plat and any associated concept plan or site improvement plan; (2) the property line boundaries are consistent with the approved final plat; (3) the condominium map is consistent with the approved final plat and any associated concept plan or site improvement plan; and (4) access has been provided for subsequent phases.
4. *Submittal and Review Process.* A complete application for condominium map must be submitted to the Subdivision Administrator and shall not be considered accepted until all required information is received. Notwithstanding anything in this Title to the contrary, no requirement for public improvements, dedication of land to public use, or other subdivision requirement shall be imposed as a condition of approval for a condominium subdivision or common interest community which would not be imposed upon a physically-identical development under a different form of ownership. This provision shall not be construed to prevent the City from imposing the review requirements of this Title upon any change of use, expansion of use, increase in intensity of use, or other change in a condominium or common interest community unrelated to its form of ownership.
  - a. The subdivider shall submit a complete application with accompanying documents in accordance with the application package and Section 16.21.100.I.5 to the Subdivision Administrator.
  - b. The Subdivision Administrator shall approve, approve with conditions or deny the condominium map. The Subdivision Administrator shall document the decision including the reasons for the decision in the file which shall serve as the official record of the decision. The Subdivision Administrator shall notify the subdivider of the decision.
  - c. If the Subdivision Administrator denies the condominium map, the decision may be appealed in writing by the subdivider or any aggrieved party within fifteen (15) days of the Subdivision Administrator's action. The request for appeal shall be filed with the Subdivision Administrator and explain the

nature of the appeal including the specific issues under appeal and provide written justification supporting the appeal. The appeal shall be accompanied by all required fees. After the request for appeal is determined to be complete, the Subdivision Administrator shall prepare a staff report and schedule the appeal for consideration before Planning Commission. The Subdivision Administrator shall notify the subdivider of the date and time of the hearing. The Planning Commission, after considering all information presented including the staff report, application, written appeal, the Subdivision Administrator's action and any testimony from the subdivider, staff, or public shall take action to either support the Subdivision Administrator's action, modify the Subdivision Administrator's action, overturn the Subdivision Administrator's action, or refer the application back to the Subdivision Administrator.

5. *General Submittal Requirements.* The condominium map submittal requirements are as follows:
- a. Completed and signed application.
  - b. The appropriate fee as set forth in the fee schedule.
  - c. Letter of intent describing the condominium map in specific terms. The following should generally be included in all letters of intent: name of the owner, subdivider and consultant, including addresses and telephone numbers; site location, size and zoning; description of the condominium map, request and justification for approval of request; and a statement describing the conformance of the proposed condominium map with City codes, rules, regulation, ordinances and plans.
  - d. Complete legal description of the property.
  - e. Proof of ownership, which may be achieved by including a copy of the current deed showing the subdivider's name as owner; a current title insurance policy or title commitment no more than thirty (30) days prior to the date of application; or a copy of the current deed and a notarized letter of authorization from the landowner authorizing the subdivider to process and represent the subdivision application dated no more than thirty (30) days prior to the date of application.
  - f. Condominium map (i.e., a certified boundary survey of the lot prepared by a professional land surveyor on an 8.5 inches x 11 inches sheet of paper, or another size approved by the Subdivision Administrator) including the exact name of condominium subdivision; written and graphic scale, north arrow and date of preparation; location of the condominium subdivision by reference to streets, lots and blocks, lot lines and property lines to the hundredth foot (1/100'); zoning and existing densities on adjacent properties;



required parking spaces and joint trash collection areas, floor plans, elevations and site plan as required to show separate ownership of all separate units; common elements and limited common elements labeled as such and numbered for ease of identification; number, type and floor area of units, common elements and limited elements, delineated in square feet and fractions thereof; proposed use for each unit; land area; percentage of open space; and floor area ratio; and statement of the total number of units shown on the proposed plat. All dimensions shall be to the nearest hundredth foot (1/100'). Land surveyor's certificate signed by a land surveyor registered by the State of Colorado and a vicinity map (i.e., a reduction of the filing showing the relationship of the lots to the filing), as determined appropriate or necessary by the Subdivision Administrator.

- g. A copy of the condominium declaration and all associated homeowners association documents.
- h. Such other items deemed necessary by the Subdivision Administrator to support review and approval of the application.

6. *Post-Approval Requirements and Recording.*

- a. *Prior to Recording Declaration.* Prior to recording a declaration which would convert a multiunit development to condominium units, the owner of such property shall demonstrate that the following provisions have been met.
  - (1) The structure subject to the proposed condominium conversion shall meet current off street parking requirements for the underlying zone district. Each residential condominium unit shall be considered a separate dwelling unit for purposes of determining parking compliance.
  - (2) A fire wall may be required between units as a condition of approval of any condominium plat involving a condominium conversion in accordance with the Building or Fire Code.
  - (3) Owners of properties proposed for condominium conversion shall notify all residential tenants in writing of the conversion at least ninety (90) days prior to termination of any residential tenancy in accordance with C.R.S. §38-33-112, as amended. Copies of the notification shall be filed with the Subdivision Administrator as proof of notification.
- b. When the condominium map and declaration is ready for execution and recording, the following information and materials shall be submitted in final form:

- (1) The condominium map meeting the requirements of Section 16.21.100.I.5. The map shall be signed by the owner(s) of record and professional land surveyor. The signatures of the owner of record and professional land surveyor shall be notarized.
- (2) The appropriate fees as set forth in the fee schedule and fees established by the El Paso County Clerk and Recorder for recordation of the map and other required recordations.
- (3) A notarized consent of condominium statement or partial release signed by all lien holders or other parties.
- (4) Any supplemental information or legal documents to be recorded with the condominium map including declaration covenants and restrictions, homeowners association documents, etc.
- (5) Tax certificate from the El Paso County Treasurer certifying that all taxes due have been paid.
- (6) Other documents or information requested by the Subdivision Administrator to confirm conformance with any conditions of approval.

c. *Recording.* Procedures for signing and recording of the condominium map are as follows:

- (1) The condominium map may be signed only after the City has determined that the condominium map and supporting materials required by this Title are in substantial conformance with: (1) all conditions established by the City in approving the condominium map; and (2) all other requirements of this Title and other applicable City codes, rules, regulations and ordinances.
- (2) Within thirty (30) days of receipt of all required materials, the Subdivision Administrator shall sign and record the condominium map, declaration and any other required materials in the office of the El Paso County Clerk and Recorder.

7. *Expiration of Approval.* The approved condominium map shall be effective for a period of one (1) year from the date of the City's approval. Prior to the end of the one (1) year, the subdivider shall have met all requirements of the condominium process and the condominium map shall have been signed and recorded in the office of the El Paso County Clerk and Recorder. The subdivider may request in writing, prior to the expiration of the approved condominium map, an extension of the approval period. An application for extension shall: (1) show good cause for the extension; (2) be limited to a maximum of three (3) months; and (3) be reviewed by

the staff and approved by the Subdivision Administrator. Upon denial of an extension, the Subdivision Administrator's decision may be appealed to the Planning Commission by the subdivider or any aggrieved party. Upon denial by the Planning Commission of an extension, the subdivider or any aggrieved party may appeal the decision of the Planning Commission to the Council. If the approval expires prior to filing of the condominium map for recording, a new application must be submitted.

(Ord. 1412 §2, 2008)

16.21.110 Inactive Files. Subdivision files become inactive when the subdivider is required to submit additional information, request a meeting date and has failed to do so, or no applicant activity and progress have occurred on the application for a period of more than six (6) months. When a subdivision file becomes inactive, the subdivision application shall become void. Submittal of a new subdivision application and fees shall be required to pursue the subdivision request.

A written application for an extension must show good cause for the extension along with an estimated time for submittal of the additional information or submittal of a request for a hearing date. The Subdivision Administrator may grant an extension of time, for no more than six (6) months, upon timely submission of a written application by the subdivider providing a) land development in the surrounding area has not changed, b) regulatory provisions governing the development have not changed, and c) the Subdivision Administrator determines that the requested extension of time is for good cause. In determining if good cause for an extension exists, the Subdivision Administrator shall consider if the applicant has demonstrated good cause for an extension request based upon sufficient financial hardship or other sufficient hardship.

After granting an extension of time, the Subdivision Administrator may grant additional extensions of time of no more than six (6) months each if a written request in accordance with the criteria set forth in this section for extension is submitted prior to the expiration of the previous extension.

Whenever an application for an extension of time is submitted prior to a subdivision file becoming inactive the file shall remain active and the subdivision application shall remain in effect until the Subdivision Administrator approves or disapproves the application for an extension of time. Subdivision files may have several periods of inactivity throughout the subdivision process; provided that no period of subdivision file inactivity shall exceed six (6) months. In no case shall extensions of time be granted which together total more than twelve (12) consecutive months.

These provisions shall apply to all subdivision applications on file with the City and to any subdivision applications filed thereafter.

(Ord. 1412 §2, 2008) (Ord. 1447 §2, 2009)

## **16.22 SUBDIVISION DESIGN STANDARDS**

16.22.020 General Requirements.

A. *Conformity with Zoning.* In addition to the standards set forth in this Title, all plats and maps shall comply with the City of Fountain Zoning Ordinance.

B. *Continuation of Roads and Other Linear Facilities.* Subdivisions shall be designed to accommodate the continuation of streets, trails, pedestrian access, utilities and drainage facilities into adjacent property unless there is sufficient justification for an alternative design. The connection shall provide a logical, safe and convenient circulation link for vehicular, bicycle, pedestrian, or equestrian traffic with existing or planned circulation routes and, in particular, to destinations such as schools, parks and business or commercial centers.

C. *Steep, Unsuitable and Poorly Drained Lands.* Steep land, unstable land, and areas having inadequate drainage shall be noted, and unless acceptable provisions are made for eliminating or controlling problems that may endanger health, life, or property, such areas shall not be platted for occupancy.

D. *Natural Drainage Channels.* Any land in a natural drainage channel shall not be platted for occupancy unless adequate provisions to eliminate or control flood hazards are made and approved. These provisions shall be made to protect the health, safety, and welfare of the public, as well as to eliminate any flood hazard resulting from the development of the area. Development shall be carried out in conformity with plans as finally approved.

(Ord. 1412 §2, 2008)

16.22.030 Block Standards. Block design shall conform to sound subdivision design principles; and the length, width and shape shall be determined with due regard to zoning district requirements as to lot size, topographic conditions, and the need for safe, convenient access and traffic circulation. Blocks shall not exceed fifteen hundred (1,500) feet in length. Whenever practicable, blocks along major streets shall not be less than one thousand (1,000) feet in length.

(Ord. 1412 §2, 2008)

16.22.040 Lot Standards.

A. *Size, Shape and Orientation.* The size, shape and orientation of lots shall be appropriate to the proposed subdivision location, and to the type of development contemplated, and shall conform to requirements of this Title and the City of Fountain Zoning Ordinance. All subdivisions shall result in the creation of lots that are developable and that have adequate building sites.

B. *Contours and Natural Features.* The layout of lots and blocks should provide desirable settings for structures by making use of natural contours and maintaining existing views, affording privacy for the residents, and protection from adverse noise and vehicular traffic. Natural features and vegetation of the area should be preserved to the greatest extent possible.

C. *Steep or Unsuitable Slopes.* Steep land or unsuitable slopes shall be avoided in accordance with Section 16.22.020.C. Appropriate engineering measures to ensure slope stability, occupant safety and erosion prevention shall be required where lots are proposed in areas having slopes in excess of 10 percent.

D. *Division of Lots or Subdivision by Municipal or School District Boundaries.* No subdivision or lot within a subdivision shall be divided by a City limit line or School District boundary.

E. *Access of Lots to Street.* Each lot shall be provided with vehicular access to a dedicated public street. Access to and from the lot may occur by shared private driveway easement or private street. Residential lots should front only on Residential, Residential Collector, or Local streets including cul-de-sacs located on Residential, Residential Collector, or Local Streets (See Section 16.24.040 for street types). Commercial and industrial lots should front only on Industrial/Commercial Collectors/Local Streets. Lots designated to face Expressway, Community Arterial or Community Collector Streets shall provide adequate means for automobile turnaround within the lot. Direct lot access is not generally allowed from a Community Arterial or Community Collector Street, but may be granted where no other alternative exists. However, every effort shall be made in the design of a subdivision to minimize the number of accesses to a Community Arterial or Community Collector. No direct lot access is allowed from an Expressway. No more than four (4) lots may access a public or private street via a private driveway easement except where specifically designed as part of a commercial or industrial development where adequate provision for access by emergency service vehicles has been provided and maintenance is secured through maintenance agreements approved by the City Attorney.

F. *Use of Double Fronting Lots Limited.* Double frontage and reverse frontage lots should be avoided except where they are needed to provide for the separation of residential development from major streets or to overcome specific disadvantages or topography or orientation. An appropriate landscaped or fenced buffer shall be provided along the portion of the lots abutting such a traffic artery or other use where screening is required. There shall be no right of access across a planting and screening easement. The City may require a permanent ornamental fence of a height and architectural design that will appropriately screen and be harmonious with the neighborhood and residential character.

G. *Use and Design of Flag Lots.* Flag lots shall only be allowed where warranted by physical conditions of land form, existing lot pattern, or unusual size or shape of parcel(s). The narrow strip of land connecting the main portion of a flag lot to the street shall not be less than twenty (20) feet wide at any point so long as five-foot (5') side lot utility public easements are provided on property adjacent to the flag lot lines. If public easements are not provided on the adjacent lot, the stem portion of the flag lot shall be not less than twenty-five (25) feet in width. The narrow strip of land shall also provide for practical vehicular and utility access. The stem-portion of the lot may not be used to calculate the minimum lot area requirement of the zoning district. The length of the stem of the flag lot shall not exceed the length of the longest side of the flag portion of the flag lot. Wherever possible, flag lots should be avoided in favor of creating lots without frontage on a private or public road where access is provided via a shared

private driveway easement. All driveways shall be consolidated to the maximum extent practicable.

H. *Superlots*. If a tract is subdivided into parcels larger than ordinary building lots for purposes of future division or the creation of townhome or condominium plats, such parcels shall be arranged to allow the opening of future streets and logical further subdivision.

I. *Orientation of Side Lot Lines*. The side lines of all lots should be at right angles or radial to the street upon which the lots front with a maximum divergence of up to ten (10) degrees at the front setback line, unless there are topographic features or areas of unusual vegetation warranting greater divergence from this standard or the most efficient use of land demands an alternative standard.

J. *Zoning*. Lots and tracts shall be entirely within one (1) zone or use area.

K. *Floodplain*. Tracts of land or portions thereof lying within the floodplain shall not be subdivided except for undeveloped open space until the subdivider has complied with requirements of the City of Fountain floodplain ordinance and Section 16.22.020.D.

L. *Remnants of Land*. Substandard remnants of land shall be prohibited unless designated as tracts or adequate assurance is provided to incorporate the tracts into usable lots in future developments.

M. *Special Tracts*. Special tracts of land that are included on a plat must have a special plat note describing the intended use, ownership, and perpetual maintenance responsibility for the tract.

N. *Commercial Lots or Building Pads*. Commercial lots or building pads shall not be required to have frontage on a public street and may be platted as townhome or condominium subdivisions. Access may be provided by cross-lot access easements within a commercial development. All lots and building pads shall have legal access and shall be designed to accommodate the proposed use.

O. *Lot Design Adjacent to Arterial and Collector Streets and Railroad*.

1. *Arterial and Collector Streets*. Restriction of access shall be required when a lot or tract adjoins a Community Arterial or Community Collector Street. Marginal access streets, reverse frontage with screen planting contained in a non-access reservation, deep lots, or similar treatment shall be required to reduce the impact of traffic on residential properties and to avoid interference with the movement of traffic on thoroughfares. At a minimum, all plats having lots bordering a Community Collector or Community Arterial Street shall contain a note limiting or prohibiting ingress and egress to that street.

2. *Railroads.* Where a residential subdivision borders a railroad right-of-way, either a parallel street, lots with increased setbacks, or a landscaped buffer area may be required by the Planning Commission and the Council.  
(Ord. 1412 §2, 2008)

#### 16.22.050 Easements.

A. *Maintenance of Easements.* The property owner shall be responsible for the maintenance of all easements.

B. *Required Public Utility and Drainage Easements.* Public utility and private drainage easements shall be provided not less than five (5) feet in width on both sides of all side lot lines and eight (8) feet in width on both sides of all rear lot lines. If the rear lot line adjoins an unplatted parcel under separate ownership, the utility easement for the rear lot line shall be twelve (12) feet in width. A public utility and improvement easement shall be provided not less than ten (10) feet in width along the front lot line. The ten (10) foot easement is in addition to the five (5) foot easement required by Section 16.24.040. Additional easements or tracts may be required to accommodate drainage from the subdivision and maintain drainage through the subdivision. In some cases, a special district or public utility may require additional easements or wider easements to accommodate utilities. Where a special district or public utility requires additional or wider easements to serve a proposed subdivision, the special district or public utility standard shall prevail. Where the special districts and utility companies serving a subdivision agree to an alternative easement layout, the Planning Commission or Subdivision Administrator may approve the alternative layout upon recommendation of the City Engineer at the time of the preliminary or final plat.

C. *Use of Easements by Lot Owner.* No buildings or structures shall be placed within an easement unless specifically authorized by the City of Fountain. Fences six (6) feet or less in height shall be allowed without City approval, but are subject to damage or removal by any entity authorized to use the easement. Such damage or removal shall not be the responsibility of the entity authorized to use the easement, but shall be the responsibility of the lot owner. However, the entity authorized to use the easement shall be responsible for making a reasonable attempt to restore the fence and other features within the easement to their original condition.

D. *Site Distance Triangle Easements.* The appropriate traffic sight distance triangles easements shall be designated and dimensioned on the plat. Sight distance triangles shall be shown at the intersection of all roads and at the intersection of all commercial or private road, drives, and access points with public roads with 500 ADT or more. No buildings, structures, vegetation, or other items higher than three (3) feet in height shall be placed within a site distance triangle easement. Where the sight distance triangle easement is proposed to accomplish the required corner right-of-way chamfer in Section 16.24.040.C, the easement shall be dedicated as a public improvements and sight distance triangle easement and meet the minimum chamfer right-of-way standards in Section 16.24.040.C.

E. *Private Access Easements.* Private access easements shall be a minimum of twenty-four (24) feet wide.

F. *Cross Lot Access Easements.* Private cross access easements may be required across any lot fronting on an arterial or collector street to minimize the number of access points and facilitate access between and across individual lots. The location and dimension of said easement shall be determined by the City Engineer.

G. *Easements for Maintenance of HOA or Metro District Facilities.* Homeowner association or metropolitan district facilities shall be placed in easements or tracts including walls, fences, landscaping, trails, pocket parks, detention ponds, drainage facilities, recreation facilities, signage, etc. All easements or tracts shall be large enough and provide adequate access for maintenance by the necessary type of equipment.

H. *Depiction of Easements on Plat.* All required easements shall be placed on the final plat by plat note or graphic depiction which shall note the purpose and limitations on the use, ownership, and maintenance responsibilities associated with the easement. Further, all private drainage easements shall be marked private drainage easement on the plat along with a special plat note describing the perpetual ownership and maintenance responsibility for the private drainage easement noting that the City is not responsible for the maintenance of private drainage easements.

(Ord. 1412 §2, 2008)

16.22.060 Street Layout and Design. Design and development of the street system shall conform to the requirements of this Title and the Public Works and Utilities Design and Construction Specifications. The City's functional street classification and design criteria, including design speeds and traffic volumes, right-of-way requirements, access conditions, planning characteristics, curb and gutter design, sidewalk width, street widths, travel lanes, parking lanes, street grades and other geometric parameters, are provided in the Public Works and Utilities Design and Construction Specifications.

A. *Streets to Conform to Major Street Plan.* The general location and alignment of collector and arterial streets, intersections, and interchanges shall generally conform to the Major Street Plan and any amendments thereto. Whenever a tract of land to be platted embraces or abuts a major street designated on the Major Street Plan, such section of the major street shall be dedicated and constructed by the subdivider in the location and at the width indicated on the plan to the extent to which the subdivider is responsible for such dedication and construction in accordance with the findings of the traffic impact study. If the City does not have a Major Street Plan in effect at the time a plat is submitted, the requirements for major street dedications shall be established by the City Engineer, subject to review by the Planning Commission and Council. Where identified by a transit provider or school district, bus pullouts shall be provided. Where the subdivision traffic impacts do not result in full dedication or construction of the major street, the City shall have the option to negotiate with the subdivider for the full dedication and construction which may be partially paid for by the City or the costs of which may be recovered by the subdivider through a cost recovery agreement. The City shall, at the City's sole discretion, have the option of acquiring any right-of-way or public easements at the time of approval of the subdivision necessary to implement the Major Street Plan.



B. *Right-of-Way and Design to Conform to Major Street Plan.* Except in cases where the Major Street Plan specifies a greater or lesser width as a minimum, the minimum right-of-way, roadway, raised or landscaped median, planter strip, sidewalk and pedestrian way widths shall be as indicated in the Public Works and utilities Design and construction Specifications and Section 16.24.040.

C. *Intersections at Right Angles.* Street intersections shall be at right angles (between 85 and 95 degrees), or as nearly so as topography and other limiting factors of good design will permit unless otherwise approved by the City Engineer. "T" or "cross" intersections shall be used whenever possible.

D. *Cul-de-Sac Design and Length.* The design and overall length of a cul-de-sac shall be determined by topography, type of development, proposed density, and other physical factors which may warrant special consideration. However, unless otherwise specifically approved by the City of Fountain Fire Department, no cul-de-sac be over 500 feet long, as measured from the curb line at the furthest end of the cul-de-sac to the center line of the through street to which it connects.

E. *Half Streets Not Allowed.* Half streets are discouraged. Half streets or portions of a street which do not permit at least two lanes of traffic shall not be allowed.

F. *Alleys.* Where provided, alleys shall be fully improved to the specifications of the Public Works Design and Construction Standards. Alleys in commercial and industrial areas may be permitted when such alleys are necessary for traffic circulation or loading or unloading. Where proposed, alleys must be open at both ends of a block.

G. *Temporary Dead-End Streets.* Dead-end streets shall only be permitted on a temporary basis. On streets which are stub-end streets designed to provide future connection with adjoining unsubdivided areas, there shall be provided a temporary turn-around at the stub-end or a temporary connection to another street if required by the City Engineer. If such a provision is required, the design for such stub-end or connecting street shall be approved by the City Engineer.

H. *Private Streets.* Private streets are generally prohibited, except in mobile home parks, multi-family housing, including apartments, townhomes and condominiums, and planned unit development districts. Where private streets are allowed, provision shall be made to assure that all lots accessing private streets have a legal right to use such streets. Proposed private street design and construction standards shall be subject to approval by the City Engineer. Private streets should not be allowed where a public street has been extended. Private streets shall be delineated in a tract that contains just the street or may be located in a common tract in a multi-family or townhome development. Whenever private streets are shown on a plat, a special plat not is required stating the perpetual ownership and maintenance responsibility for the private streets.

I. *Extension of Streets.* Existing streets, including streets shown on a valid preliminary plat, which adjoin a proposed plat shall be continued at equal or greater width and in similar

alignment to streets proposed in the subdivision. Proposed streets shall be extended to the boundary lines of the property to be subdivided unless prevented by topography or other physical conditions, or unless such extension is not necessary for the connection of the subdivision with the existing street system, or not the most advantageous for future development of adjacent tracts. Streets connecting to streets in an adjoining subdivision shall be of equal width in right-of-way and street section. The streets shall be stubbed regardless of the adjacent parcel's current status.

J. *Street Classification and Layout.* Local and collector streets shall be laid out so that their use by major through traffic will be discouraged. Expected volumes on proposed streets should not exceed the range acceptable for their assigned classification.

K. *Combined Access Points.* The provision of combined access points, to serve two (2) or more lots or business uses, is encouraged in commercial areas to minimize disruptions to traffic flow along the adjacent collector or arterial roadway.

L. *Noise Mitigation from Streets.* Where a subdivision borders or contains a state or federal highway right-of-way or contains or is proposed to contain a major collector or arterial by the Major Street Plan, the City may require adequate provisions for reduction of noise. A parallel street, landscaping, screening, sound wall, easement, greater lot depth, increased rear yard setbacks and fencing, among others, are some appropriate measures for mitigating undesired noise and other highway impacts. A noise study may be required to determine what mitigation is appropriate. All proposed mitigation shall be placed in an easement or tract and be maintained by the homeowner association or metropolitan district.

M. *Efficiency of Arterials Not Compromised.* The local roadway system should not detract from the efficiency of the arterial roadway system. Collector and local streets shall not intersect the same side of an arterial street at intervals of less than that allowed by the Public Works and Utilities Design and Construction Specifications, except as may be otherwise specified by an adopted access management plan for the arterial street. Ideally, local streets should not directly access arterial facilities.

N. *Rail Crossings.* Where railroad crossings are proposed or are affected, provisions for grade separations, buffer strips and safety protection devices shall be provided by the subdivider or railroad as required. Obtaining approval from the affected railroad company and the Colorado Public Utilities Commission where applicable shall be the subdivider's responsibility.

O. *Landscape Strip or Curb Lawn.* Where curbs with separated sidewalk are to be provided, the planting area or that unpaved portion of the right-of-way between the curb and the sidewalk shall be landscaped and maintained by the abutting property owners. Landscaping shall normally be limited to sod or seeding as determined by the subdivider or landowner, except that trees, shrubs or other plant materials may be used subject to City approval of the location and species of planting materials to be installed. Xeric landscaping is encouraged by the City of Fountain.

(Ord. 1412 §2, 2008)

16.22.070 Sidewalks. Sidewalks shall conform to the Public Works and Utilities Design and Construction Specifications. Sidewalks shall meet ADA Guidelines. Pedestrian curb ramps shall be constructed at all pedestrian crosswalks at all intersections. Pedestrian curb ramps shall also be required where public sidewalks cross driveways with curbs. All sidewalks shall be a minimum of 5 feet in width. If determined necessary by the City Engineer, sidewalk widths may be required to be expanded in areas anticipated to carry higher numbers of pedestrians. Safe routes to schools shall be identified. Where off-site sidewalks are required to complete a safe route to school, the subdivider shall be responsible for its installation including all crosswalks and ramps where public easements or right-of-way exists. All identified safe routes shall be required to be completed at the time of approval of issuance of half of the building permits within any phase of the subdivision.

A. *Sidewalks in Residential Areas.* Sidewalks shall be required on both sides of every street for all developments with a net density of two (2) dwelling units per acre or greater; for developments of less than two (2) dwelling units per acre, sidewalks are required on one side of every street. Sidewalks shall be required on both sides of every street as property is platted within three (3) blocks of any school site.

B. *Sidewalks in Commercial Areas.* In commercial zones, sidewalks shall be required on both sides of every street.

C. *Sidewalks in Industrial Areas.* Sidewalks are required on both sides of arterial streets in industrial zones and may be required along both sides of other streets when special circumstances warrant their installation such as high numbers of employees or the presence of mixed uses generating customer traffic.

D. *Curb Ramps.* Pedestrian curb ramps shall be constructed at all pedestrian crosswalks at all intersections. Pedestrian curb ramps shall also be required where sidewalks cross driveways with curbs. All ramps shall meet Federal American's with Disability Act Standards. (Ord. 1412 §2, 2008)

16.22.080 Perimeter Fences. The subdivider shall install a solid, opaque six-foot-high perimeter fence along all community and industrial/commercial collectors, community arterials or expressways adjacent to a residential subdivision within an easement or tract where lots will back to the collector, arterial or expressway street. A perimeter fence may also be required in industrial subdivisions.

Perimeter fences along arterials and expressways shall be constructed of durable material, such as stone, masonry, or architectural bloc. Perimeter fences along collectors shall be constructed of durable materials such as stone, masonry or architectural block or upon approval by the Planning Commission, other material such as vinyl or wood. Chain link fence shall not be permitted for perimeter. Perimeter fencing shall include brick or stone columns, a minimum of two (2) feet in width and depth, spaced a maximum of sixty-five (65) feet apart. In some cases, such as adjacent to parks or in special streetscape situations, fencing may be modified to include low profile, split rail, or wrought iron fencing. All horizontal-supporting structures shall be constructed toward the interior of the project or lot to reduce visibility of the support structures

from streets and other public areas. Offsets in perimeter fences a minimum of five (5) feet in depth and approximately 300-400 feet long with a ten (10) feet long gap between perimeter fences for landscaping using trees and shrubs provided every 200 feet or less. An offset is a location where the perimeter fence is broken and a new section of perimeter fence is set toward the inside or outside of the perimeter fence on either side of the offset. Breaks in perimeter fencing for pedestrian walkways are encouraged. Where a park or open space adjoins a collector or arterial street, perimeter fencing shall not be required. Perimeter fences shall be maintained in perpetuity by the homeowners association or metropolitan district. Alternative designs that meet the intent of this section may be approved by the Planning Commission or Subdivision Administrator in association with a Preliminary or Final Plat. A request to eliminate a perimeter fence shall be considered a variance and shall be approved by the Planning commission at the time of Preliminary or Final Plat approval.

No more than fifty (50) percent of the building permits within any given phase of a subdivision shall be authorized for issuance prior to perimeter open space landscaping and perimeter fencing being completed in such phase. The Subdivision Administrator may issue an extension for installation of perimeter landscaping or fencing due to weather unfavorable to planting; such extension not to exceed nine (9) months. Financial surety shall be provided for all perimeter landscaping or fencing for which an extension is granted.  
(Ord. 1412 §2, 2008)

#### 16.22.090 Overlot Grading.

A. *Grading to Complement Topography.* Grading should complement the natural topography, land forms and vegetation of the site. Grading should be accomplished so as to leave a natural appearance to the land, rather than creating sharp breaks between grading planes.

B. *Maximum Slopes and Retaining Walls.* Subdivision grading should maintain minimum slopes of two (2) percent and maximum slopes of three (3) to one (1). Retaining walls of a height greater than four (4) feet shall require design by a structural engineer. Areas of fill must be adequately compacted to ensure public safety.  
(Ord. 1412 §2, 2008)

16.22.100 Drainage. Drainage improvements shall be provided which protect public and private property and allow public and private improvements to function as intended. Developed flows shall not exceed historic flows for the one-hundred year storm event. All facilities shall be designed to meet the full spectrum of storm events.

A. *Standards and Criteria.* All drainage shall be planned and designed in accordance with the Public Works and Utilities Design and Construction Specifications and these regulations. Drainage studies, plans and improvements shall be consistent with the approved Master Development Drainage Plan (MDDP) or Drainage Basin Planning Study (DBPS). Where a MDDP or DBPS covering the property does not exist, a MDDP or DBPS shall be developed by the subdivider and approved by the City prior to platting. Basin transfers will only be allowed with prior approval from the City.

B. *Lands Subject to Flooding.* Land within a floodplain or land which is subject to inundation by a one-hundred (100) year flood shall not be platted for occupancy unless the flooding condition is alleviated in conformance with the City of Fountain Floodplain Ordinance. All development shall be setback a minimum of one hundred (100) feet from the floodplain. The floodplain setback area shall be shown as a “no build” area on the final plat. The plat setback limitation may be removed provided a study of the land area and surrounding land that may be impacted by potential development is conducted and determines that development within the setback area will not to cause any adverse effects to the development or to any other properties from either increased flood heights, flow velocities, flow duration, rate of rise of flood waters, channel stability or sediment transport; provided, however, that any development shall not be considered as causing an adverse effect to any other properties by reason of increased flood heights if such development does not cause a rise of more than one-tenth ( $1/10^{\text{th}}$ ) of a foot in the base flood elevation of the floodplain. The study shall be produced by a geo-technical engineer licensed in the State of Colorado. Such study shall contain an analysis of potentially unstable slopes, faulting, or soil conditions, etc., that may be unfavorable to development. The study shall also contain, where appropriate, recommendations for special mitigation measures and engineering precautions that shall be taken to overcome those limitations. The floodplain shall be platted in a tract and shall be maintained by a homeowners association or metropolitan district.

C. *Historical Flows Maintained.* Historical flow patterns and runoff amounts shall be maintained in such a manner that would preserve the natural character of the area and prevent property damage of the type generally attributed to runoff rate and velocity increases, diversion concentrations, or unplanned ponding of storm runoff.

D. *Use and Design of Natural Swales and Ponds.* Surface drainage shall utilize, wherever possible and practical, natural swales and retention/detention ponds. Where possible, the bottoms of swales shall be lined with natural materials such as grass, rock, stones, sand or coarse gravel. Perimeter boundaries of retention/detention areas shall follow a configuration of natural land contours wherever possible to create a natural look to such areas.

E. *Storm Sewers and Associated Drainage Facilities.* All storm sewers and drainage facilities such as gutters, catchbasins, bridges and culverts shall be installed and the land graded for adequate drainage as shown on the submitted and accepted plans, and shall be inspected and checked for adequacy with City standards by the City Engineer.

F. *Erosion and Sediment Control.* In addition to permanent provisions, temporary erosion and sediment control measures are also required during construction operations in accordance with the requirements of the Public Works and Utilities Design and Construction Specifications and the City of Colorado Springs Drainage Criteria Manual, volume I and II. The subdivider shall be immediately responsible for the protection and maintenance of all existing drainage facilities, including streets, until the improvements are completed and accepted by the City. Construction schedules are to be programmed to permit installation of required permanent sediment and erosion control structures as soon as possible. Finished slopes are to be protected with a vegetative cover, riprap, or other suitable means. The construction surety shall include

provisions for enforcement of both the permanent and temporary erosion and sediment control facilities.

(Ord. 1412 §2, 2008)

16.22.110 Utilities.

A. *Water and Sewer.* Water and sewer shall be designed and constructed in accordance with the City's overall utility plans, the Public Works and Utilities Design and construction Specifications, City of Fountain Water Distribution System Design & Construction Specifications manual, the Fountain Sanitation District Specification and Regulations Manual and the Widefield Water and Sanitation District Rules and Regulations. Water and sewer lines shall be designed to permit the extension to all adjacent properties which may develop at a later time.

B. *Dry Utilities.*

1. *General Requirements.* Utilities such as telephone, cable television, electric and gas services shall be installed in accordance with the standards of the special district or public utility, and all locations within public rights-of-way shall be approved by the City Engineer. These utilities shall be installed underground and shall be in place prior to street surfacing. Electric transmission lines of greater than 30KV capacity are exempt from this requirement due to the prohibitive cost of undergrounding such facilities. Transformers, switching boxes, terminal boxes, meter cabinets, pedestals, ducts, and other facilities necessarily appurtenant to such underground utilities may be placed above ground.
2. *Notification of Utility Companies.* It shall be the subdivider's responsibility to contact all utility companies who hold a franchise agreement with the City concerning their intent to plat and to provide each such utility company a construction schedule in accordance with the specific requirements adopted by each utility company in accordance with the provisions of Section 16.23.100.

C. *Construction of Utilities.* No utilities shall be installed until a final plat is approved and recorded, the City Engineer has stamped the construction plans for the subdivision accepted, a development agreement or subdivision improvement agreement has been executed, all required surety has been posted, and the special district or public utility has approved the construction plans for the utilities. Utilities may be installed at risk upon approval of the preliminary plat where the City Engineer has stamped the construction plans for the subdivision accepted, a development agreement or subdivision improvement agreement has been executed, all required surety has been posted, and the special district or public utility has approved the construction plans for the utilities.

(Ord. 1412 §2, 2008)

16.22.120 Terrain and Vegetation Preservation.

A. *Fit with the Landscape.* In the site planning and layout of any lot, consideration shall be given to the relationship of roads, lots and buildings to existing slopes, grades, natural vegetation and drainageways. All structures and roadways shall achieve a fit with the landscape that is not intrusive.

B. *Disturbance of Drainageways.* Significant natural drainageways shall not be disturbed or re-routed except where of general benefit to the overall development and shall be subject to the review and approval of the City.

C. *Unique Site Features.* Unique site features, whether topographic or vegetative, shall receive special consideration in any subdivision design. Such features shall be left undisturbed wherever practical in lot development.

D. *Integration of Structures in Sloping Areas.* Lots and structures in sloping areas shall be designed to conform to the slope by means of stepped foundations or similar methods that will keep grading and site preparation to a minimum. In principle, structures shall accommodate slope in design rather than cause slope to accommodate structures.

E. *Grading.* Grading shall be shaped to complement the natural land forms.

F. *Visual Impacts.* Visual impacts of commercial and industrial development upon offsite residential areas shall be avoided or reasonably mitigated.

G. *Wildlife Impacts.* Consideration shall be given to wildlife impacts in the layout of open space areas within the plat. All subdivision proposals involving sensitive lands should be referred to the State Division of Fish and Wildlife for information and comment on animal habitat preservation. Where designated threatened or endangered species are present, the subdivider must conform to all applicable state and federal restrictions and permitting requirements.

(Ord. 1412 §2, 2008)

16.22.130 Plat Naming and Number Conventions and Standards. All plats or documents filed for the purposes of compliance with this Title shall conform to the following naming and numbering conventions.

A. *Plat Naming.* Plats including preliminary plats and final plats shall be named in accordance with the following naming conventions.

1. *First Application Filed Entitled to Name.* The first application which utilizes a specific name is exclusively entitled to use that name throughout the platting process. Plat names for final plats shall follow the name established by the preliminary plat or PUD.

2. *No Duplication.* No plat shall receive approval if the name duplicates or could be confused with the name of a subdivision of record within the City of Fountain.
3. *Multiple Filings within Same Preliminary plat or PUD.* Multiple plat filings within the same preliminary plat or PUD area shall utilize sequential filing or phase numbers consistent with the name of the preliminary plat or PUD, unless they represent distinctly separate land uses (e.g., residential and commercial).
4. *Replat.* Replat names shall be consistent with the name of the original plat filing unless the land includes more than one plat name, and characterized by an alphabetic descriptor after the filing number, and shall reflect consistency with the order of the original filing.

B. *Road Naming. Approval Required.* Road names shall be subject to the approval of the El Paso Teller E9-1-1 Authority, in coordination with the City.

C. *Lot Numbering.*

1. *Sequential Numbering.* The numbering of lots shall follow a sequential numbering pattern.
2. *Lot Numbers Not Repeated in Same Block.* Lot numbers shall not be repeated within the same block.
3. *Lot Numbering in Case of Vacation or Replat.* A vacation or a replat of lots or tracts shall conform to the following lot number conventions:
  - a. *Vacating Common Lot Line.* When vacating a common lot line between two lots, the original lot number followed by the letter "A" shall be used to number the new lots (e.g., when vacating the common lot line between lot 1 and lot 2, the newly created lot shall be renumbered lot 1A).
  - b. *Replat with Fewer Lots.* When replatting 3 lots into 2 lots, the original lot numbers followed by the letter "A" shall be used to number the new lots (e.g., when replatting lots 3, 4, & 5, into two lots, the new lots should be numbered lot 3A and 4A).
  - c. *Adjustment to Common Lot Line.* When adjusting the common lot line between two lots, the original lot numbers followed by the letter "A" shall be used to number the new lots (e.g., when realigning the common lot line between lots 7 and 8, the new lots should be numbered 7A and 8A).



d. *Replating Entire Subdivision Filing.* When replating an entire subdivision filing, the lots shall be numbered consecutively starting with the number “1”.

4. *Common Area Tracts Labeled.* Tracts that are common open space for the subdivision shall be labeled “Common Area Tract” followed by a consecutive letter designation beginning with “A”. common area tracts shall be further identified as either buildable or nonbuildable.

D. *Addressing.*

1. *Assignment of Addresses.* Assignment of numeric addresses is the responsibility of the Building Official, in accordance with the Building Code.

2. *Address Correction.* Corrections to addresses shown on a final plat may be accomplished by an Affidavit of Correction, Plat Correction, Amended Plat or a Replat. The correction shall be approved by the Building Official.

(Ord. 1412 §2, 2008)

16.22.140 Survey and Monumentation Standards.

A. *Survey Closure Requirements.* An accurate and complete survey shall be made of the land to be divided. A traverse of the exterior boundaries of the subdivision and all blocks, lots and tracts, when computed from field measurements on the ground must close within a limit of one (1) foot to ten thousand (10,000) feet of perimeter. Boundaries shall be clearly indicated on the plat.

B. *Lot Dimensions and Distances.* Bearings and angles and lengths shall be given for all lot lines. In cases where a lot line is a common line only one set of figures, adjacent to the line described, need be given if the lot descriptions are given to the same bearing, not a reverse bearing. If table data is used, each individual lot shall be separately described giving all bearings and angles and lengths making each lot close by data provided and a table shall be included on the same page as the plat. Should the plat drawing be of such a size as to preclude the data table then the drawing shall be developed in such a manner as to show a portion of the plat and its pertinent table on each sheet as required.

C. *Curved Boundaries.* On curved boundaries and all curves on the plat sufficient data shall be given to enable the reestablishment of curves on the ground. Curve data shall include: (1) central angle; (2) radius; and (3) arc length.

D. *Monuments.* All subdivisions and exemption plats shall be monumented in accordance with C.R.S. §38-51-101 et seq. Subdivisions shall be tied by angles and distances to the nearest accepted monuments. All monuments shall be located and described. Information adequate to locate and trace all monuments shall be noted on the plat. Monuments shall meet the following at a minimum:

1. The external boundaries of the subdivision shall, prior to the recording of the plat, be monumented on the ground by reasonably permanent monuments solidly embedded in the ground.
2. Affixed securely to the top of each monument shall be a durable cap bearing the State registration number of the land surveyor responsible for the establishment of the monument.
3. Monuments shall be set not more than 1,400 feet apart along any straight boundary line, at all angle points, at the beginning, end, and points of change of direction or change of radius of any curved boundaries defined by circular arcs and at the end of any spiral curve.
4. Wherever any block is bounded by streets, the monuments may be set on the centerlines of such streets or on offset lines as designated on the plat. Offset corners are the preferred means of monumentation.
5. The corner of lots, tracts or other parcels of land, all aliquot corners and any line points or reference points which are set to perpetuate the location of any land boundary or easement shall be marked by permanent markers appropriately secured with a durable cap.
6. If any corner falls within the traffic area of a street, road, or highway, the top of the monument shall be provided with a monument box, the top of which shall be set flush with the surface of the pavement. No corner pins shall be set within the corner ADA sidewalk ramp construction zone. Offset corners are a preferred method of monumentation within these zones. Any offsets shall be designated on the plat.

E. *Supplemental Information to Submit with the Plat.* Closure sheets for the external boundary, blocks, lots and tracts of the subdivision, including the computed acreages for the entire subdivision, lots, and tracts shall be submitted to the Subdivision Administrator for review and approval prior to recording the plat.  
(Ord. 1412 §2, 2008)

## **16.23 SUBDIVISION IMPROVEMENTS**

16.23.010 General Requirements. In association with each subdivision, the City shall determine the type, location and extent of necessary improvements, depending upon the characteristics of the proposed development and its relationship to surrounding areas. Improvements shall be made by the subdivider at the subdivider's expense according to plans and specifications prepared by a qualified professional engineer in accordance with the Public Works and Utilities Design and Construction Specifications, Building Code, and these and other applicable regulations. Underground placement of utility lines shall be required in all

subdivisions. These may include both on and offsite improvements necessary to support the subdivision and the development of individual lots within the subdivision.

A. *Completion for Improvements or Surety Required.* The improvements identified in Section 16.23.010.B shall be constructed and installed by the subdivider, or provisions made therefore, prior to recording the final plat thereof. In lieu of the completion of such improvements, the subdivider shall provide acceptable surety to secure to the City the actual construction of the improvements within such period as shall be determined by the Subdivision Administrator. In all cases, surety is required to secure stormwater quality and erosion protection measures prior to beginning construction or site grading in accordance with Section 16.20.060.E. Where construction plans have not been accepted prior to filing the final plat for recording, the subdivider shall not be required to provide surety until such time as construction plans are accepted and construction of improvements is authorized or the subdivider desires to release lots, tracts, parcels or other real property for conveyance.

B. *Improvements Defined.* No subdivision shall be approved unless adequate provision has been made for all on and offsite improvements reasonably related to the needs generated by the subdivision. At a minimum, the following improvement shall be provided by the subdivider: (1) survey monuments; (2) sanitary sewers; (3) water lines; (4) telephone and electric lines; (5) gas lines; (6) storm water drainage facilities and erosion control facilities; (7) curbs and gutters; (8) sidewalks; (9) street paving; (10) fire hydrants; (11) street signs and traffic control devices; and (12) street lights. The City may require any other improvements determined to be reasonably related to the subdivision and necessary to support the development of the subdivision including a percent of the anticipated costs of offsite improvements.

C. *Installation of Individual Wastewater Disposal Systems.* In areas where public wastewater systems are not accessible, individual wastewater disposal systems may be installed only after the approval of the Subdivision Administrator, local wastewater utility, and the El Paso County Health Department.

D. *Standards and Conditions for Construction of Improvements.* Whenever improvements are required under this Title, the following provisions shall apply:

1. *Cost of Improvements Obligation of Subdivider.* The cost of constructing all improvements associated with a proposed subdivision shall be borne by the subdivider; and the construction thereof shall be at the sole cost, risk, and expense of the subdivider.
2. *Improvements to Meet Adopted Standards.* All required improvements shall be constructed in full compliance with the Public Works and Utilities Design and Construction Specifications. Subdivisions shall also conform to all applicable special district and public utility standards including the City of Fountain Water Distribution System Design & Construction Specifications Manual, the Fountain Sanitation District Specification and Regulations Manual and the Widefield Water and Sanitation District Rules and Regulations. While the City Engineer

shall make every effort to ensure that utility construction plans have been approved by the applicable entity before authorizing the construction of improvements, the City is under no obligation to enforce any special district or public utility standards.

3. *Construction Not Started Until Plans Accepted.* No grading or construction of improvements shall be started until the City Engineer has stamped the construction plans accepted and all other requirements of Section 16.20.060.E have been met.

(Ord. 1412 §2, 2008)

16.23.020 Review and Acceptance of Construction Plans. No later than the time of final plat submittal, the subdivider shall submit construction plans and specifications for all required improvements to the City Engineer for review and acceptance. The construction plans shall be stamped accepted by the City Engineer prior to initiating construction and prior to final plat recordation. Cost estimates to be used for purposes of the required surety shall be based upon the accepted construction plans. (Ord. 1412 §2, 2008)

16.23.030 Subdivision Improvements Agreement. Prior to initiating construction or recording the final plat, the subdivider shall enter into a development agreement or SIA. The SIA shall identify the improvements required to be constructed, and shall provide the required surety to secure that the necessary improvements will be constructed to established standards in a timely manner. All mortgagees shall be required to subordinate their lien and interest in the property to the real covenants and restrictions of the SIA. (Ord. 1412 §2, 2008)

16.23.040 Surety Requirements.

A. *Acceptable Surety.* Acceptable surety in the form of an irrevocable letter of credit, negotiable certificate of deposit, bond, cash or other type approved by the City Attorney shall be submitted with the SIA to secure and guarantee performance by the subdivider under the terms and conditions of said agreement. The amount of such surety shall be one hundred and twenty (120) percent of the cost of all improvements as estimated by the City Engineer plus the stormwater quality and erosion control surety required by Section 16.23.040.E.

B. *No Sale of Lots or Building Permits as Surety.* In lieu of financial forms of surety, the City and subdivider may agree that the subdivider shall construct all improvements prior to the sale of lots and issuance of building permits in the subdivision. Upon completion of the improvements and the acceptance thereof by the City, the City may approve the recording of the plat, sale of lots and issuance of building permits in the subdivision. Regardless, financial surety shall be required to secure the stormwater quality and erosion control measures during construction including estimated restoration costs and any changes to existing infrastructure in conformance with the requirements of Section 16.20.060.E. Financial surety shall also be required to secure the improvements over the term of the warranty period.

C. *Waiver of Surety Requirements.* With its approval of a final plat, the City Engineer may waive the surety required if it determines that only minimal improvements are required.

D. *Partial Release of Surety.* As improvements are completed, the subdivider may apply for a reduction in the amount of surety being held by the City. The City Engineer may approve any such request. Acceptance shall not be required to reduce the amount of surety. At no time shall the total surety available to the City be less than twenty (20) percent of the City Engineer's estimate of the total cost of improvements.

E. *Stormwater Quality and Erosion Control Surety.* In all cases, surety is required to secure stormwater quality and erosion control measures prior to beginning construction or site grading. Such surety shall be one hundred and twenty-five (125) percent of all estimated costs of implementing the proposed stormwater and erosion control measures as well as land revegetation and stabilization costs in the event the project is abandoned. The stormwater quality and erosion control surety shall not be released until such time as all lands disturbed by the action are fully revegetated and stabilized. Failure to maintain stormwater quality and erosion control measures in accordance with the approved plans and the City of Colorado Springs Drainage Criteria Manual Volumes I and II, as amended shall be termed a violation of the SIA. Written notice of such violation shall be provided to the subdivider by the City Engineer. If the violation is not repaired within seven (7) days of notice thereof, the City may correct said violation and may apply the surety to pay the cost of such repairs or may employ any other lawful remedy to secure correction or repair of such violation and recover any costs incurred by the City in doing so. The City may also repair any violation posing an immediate threat to the health, safety, or welfare of the public without providing seven (7) days notice and bill the subdivider for the reasonable costs of such corrections. The City may apply the surety to pay the costs of such corrections or may employ any other lawful remedy to secure correction or repair of such violation and recover any costs incurred by the City in doing so.  
(Ord. 1412 §2, 2008)

#### 16.23.050 Acceptance of Public Improvements.

A. *Request for Acceptance.* After completion of all improvements to be constructed pursuant to the SIA, the subdivider shall request in writing that the City Engineer issue a Certificate of Acceptance. At his discretion, the City Engineer may, by written notice, require that said request be accompanied by a letter from a professional engineer stating that said improvements have been completed and installed in accordance with the SIA, the accepted construction plans, and applicable design and construction specifications of the City. As-built drawings certified by said professional engineer shall be submitted for all improvements along with the required warranty surety prior to issuance of a Certificate of Acceptance. Subdivision improvements shall also conform to all applicable special district and public utility standards including the City of Fountain Water Distribution System Design & construction Specifications Manual, the Fountain Sanitation District Specification and Regulations Manual and the Widefield Water and Sanitation District Rules and Regulations. While the City Engineer shall make every effort to ensure that utility have been constructed and approved by the applicable entity before issuing a Certificate of Acceptance, the City is under no obligation to enforce any special district or public utility standards.

B. *City Engineer's Acceptance.* The City Engineer shall cause the improvements to be inspected. If the City Engineer determines that all public improvements are completed without significant defects and that they comply with the provisions of the Public Works and Utilities Design and Construction Specifications, subdivision approval, and the SIA, the City Engineer shall issue a Certificate of Acceptance; and the surety shall be released.

C. *Identification and Action Concerning Defects.* If the City Engineer determines that any improvements are not complete, or if they are complete, they contain significant defects, the City Engineer shall inform the subdivider in writing of the improvements requiring completion or repair and shall not issue a Certificate of Acceptance until the specified improvements are completed or repaired. Upon receipt of this written notice, the incomplete or defective improvements shall be completed or repaired within ninety (90) calendar days unless extended by the City Engineer. Request for a time extension shall be made in writing and shall be based on inclement weather or other similar circumstances beyond the subdivider's control.

D. *Required Improvement Completion Date.* All improvements shall be completed by the subdivider by the date identified in the SIA which may be extended through an amendment to the SIA. If no certificate of acceptance has been requested prior to this date, the City may construct, complete, or repair any improvements required under such agreement and may apply any surety to pay the costs of completion, correction, or repair of such improvements. Upon completion, correction, or repair of such improvements, the City Engineer shall issue a Certificate of Acceptance.

E. *Renewal and Expiration of Surety.* The subdivider shall be responsible for renewing or extending any surety that may expire prior to the completion and acceptance of all improvements. Failure of the subdivider to renew or extend (in a timely manner) any surety held by the City prior to its expiration date may result in the City drawing on such surety prior to its expiration date. In no event shall building permits be issued for lots in the subdivision if the surety has expired.  
(Ord. 1412 §2, 2008)

16.23.060 Warranty Period for Improvements. The subdivider shall warrant and guarantee that all improvements required in this Title are constructed in a workmanlike manner and as specified by the Public Works and Utilities Design and Construction Specifications, subdivision approval, and SIA. The warranty period for improvements shall run for a period of two (2) years from the date of acceptance by the City. The subdivider shall provide acceptable surety in the amount of twenty (20) percent of the City Engineer's estimate of the total cost of improvements to cover the warranty period for the improvements. The warrantee shall be released by the City Engineer after all obligations have been met. Upon the release of the warrantee surety, the improvements shall be considered to have been accepted by the City. The City Engineer shall not release the warrantee surety until approval of the improvements owned and operated by a special district or public utility have been received from all special districts and public utilities.

A. *Actions during Warranty Period.* Within two (2) years from the date of issuance of a Certificate of Acceptance, the subdivider shall repair any defect in materials or workmanship

discovered in any improvements for which a Certificate of Acceptance has been issued. Written notice of such defect shall be provided to the subdivider by the City Engineer. If such defect is not repaired within ninety (90) days of notice thereof, the City may correct said defect and may apply the surety to pay the cost of such repairs or may employ any other lawful remedy to secure correction or repair of such defect and recover any costs incurred by the City in doing so. If no defect is discovered within the warranty period, the surety shall be released by the City Engineer. The City may also repair any defect posing an immediate threat to the health, safety, or welfare of the public without providing ninety (90) days notice and bill the subdivider for the reasonable costs of such repairs. The City may apply the surety to pay the costs of such repairs or may employ any other lawful remedy to secure correction or repair of such defect and recover any costs incurred by the City in doing so.

B. *Failure to Correct Defect.* If, at the expiration of two (2) years from the date of issuance of the Certificate of Acceptance, the subdivider has failed to correct any defect of which notice has been mailed to him, the City shall retain the surety for ninety (90) additional days to allow for correction of each such defect and for a claim to be made by the City against such surety in the event that such defect has not been corrected within the time allowed. At the end of such ninety-day (90) period, the City shall release any surety against which no written claim has been made by the City Engineer.  
(Ord. 1412 §2, 2008)

#### 16.23.070 Cost Recovery for Regional and Other Improvements.

A. *Cost Recovery Agreements.* Notice to potentially benefited property owners that a Cost Recovery Agreement will be executed and filed for recording against their property shall be provided at least thirty (30) days prior to the meeting at which the Council will consider approving the Cost Recovery Agreement. The Cost Recovery Agreement shall include a depreciation schedule for all improvements which shall depreciate the improvements to zero (0) in year twenty (20). Interest shall also be calculated in the depreciation schedule. Interest shall be the average of the prime rate over the previous ten (10) years. Costs may be recovered at time of platting or at time of building permit authorization.

B. *Regional Improvements.* In the event the subdivision will impact or utilize improvements which benefit other developed or developing areas (“regional facilities”), the SIA shall provide that in the event the applicable regional improvements are constructed at the time of approval of the final plat of any phase of the subdivision, or the City has received a commitment from a third party securing construction of such facilities, the subdivider, if determined to be a benefited property owner under Section 16.23.070 D may be required to pay a pro rata portion of the cost of the regional facilities. In all other instances, where the cost of the regional facilities is initially borne by the subdivider, the subdivider shall have a right to cost recovery. The subdivider’s obligation to construct or participate in the cost of development of regional facilities must be secured as provided for other types of improvements, or as otherwise provided in a Cost Recovery Agreement approved by the City. This section does not affect water and sewer cost recovery which are controlled by their own ordinances, regulations, and standards.

C. *Sharing of Street Improvement Costs.* When a subdivider constructs necessary street improvements which benefit properties other than the property being developed by extending such improvements offsite, the Council may agree through the approval of a Cost Recovery Agreement to collect a pro rata share of the cost of such improvements from any person who subdivides the other benefited properties within twenty (20) years after completion of such improvements and to refund such moneys collected to the subdivider making such improvements. Any subdivision plat of property within the benefited property shall not be approved until such pro rata share of the costs of such street improvements have been paid to the City for the benefit of the original subdivider. The subdivider's obligation to construct or participate in the cost of development of street improvements must be secured as provided for other types of improvements, or as otherwise provided in a Cost Recovery Agreement approved by the City.

D. *Sharing of Drainage Improvement Costs.* When a subdivider constructs necessary drainage improvements which benefit properties other than the property being developed, either by oversizing or extending such improvements offsite, the Council may agree through the approval of a Cost Recovery Agreement to collect a pro rata share of the cost of such improvements from any person who subdivides the other benefited properties within twenty (20) years after completion of such improvements and to refund such moneys collected to the subdivider making such improvements. Any subdivision plat of property within the benefited property shall not be approved until such pro rata share of the costs of such drainage improvements have been paid to the City for the benefit of the original subdivider. The subdivider's obligation to construct or participate in the cost of development of drainage improvements must be secured as provided for other types of improvements, or as otherwise provided in a Cost Recovery Agreement approved by the City.

E. *Determining the Benefited Area.* The City Engineer shall determine the benefited area of the regional, street, or drainage improvements for purposes of review and approval by the Council. The City may determine pro rata shares on the basis of front footage, acreage, traffic report, or on any other equitable basis for the specific type of improvement constructed.

F. *Process for Documenting Eligible Costs for Recovery.* When the required regional, street, or drainage improvements have been completed, the subdivider shall certify the cost of such improvements with paid receipts to the City Engineer within one hundred and eighty (180) days after completion of construction. Such cost of improvements may include offsite right-of-way or land acquisition. Failure to provide such construction cost information shall relieve the City of any responsibility to assist in the collection of the pro rata share from other properties in the benefited area.

G. *Recording of Cost Recovery Agreement.* All Cost Recovery Agreements shall be recorded in the office of the El Paso County Clerk and Recorder against the benefited properties. (Ord. 1412 §2, 2008)

16.23.080 Disclaimer. Although these regulations mandate the construction of improvements and that the subdivider furnish financial guarantees to secure such construction, the City does not warrant that the required improvements will be completed, in the event of the



subdivider's default. The City, in its discretion, will determine which, if any, improvements are to be completed, considering the availability of funds from the financial guarantees, the status of completion and the need to mitigate public health and safety hazards. (Ord. 1412 §2, 2008)

#### 16.23.090 Private Improvements and Lands.

A. *Design and Construction Standards.* In the event that the subdivision, is proposed to contain property or facilities to be held in common ownership for private use and maintenance, and where the City has determined that a significant public interest in the facility's construction exists, the City may exercise its option to review the private facility construction plans, inspect construction activities and require improvement guarantees as part of the required SIA. Where deemed appropriate, the City may require that the private facility conform to the specifications for the corresponding public facility as outlined in the Public Works and Utilities Design and Construction Specifications. Such private facilities may include landscape areas and associated irrigation systems, recreational facilities, access drives, roadways and other types of common-use improvements.

B. *Ownership and Maintenance.* For a subdivision that includes easements or tracts to be used for common facilities including common open space or areas, private roads, detention facilities, water facilities, water augmentation obligations, landscaping or other features requiring maintenance, the subdivider shall establish a homeowners association, metropolitan district or other entity approved by the City Attorney or Subdivision Administrator to be responsible for the maintenance. For subdivisions with three (3) lots or less, maintenance responsibility may be placed on the individual lot owners in the covenants without having to create a homeowners association, metropolitan district or other entity. Prior to recording the final plat for any subdivision with maintenance requirements, the subdivider shall provide the Subdivision Administrator with the appropriate legal documents (e.g., covenants, Titles of incorporation, bylaws, maintenance plan and agreements, etc.) necessary to create the homeowners association, metropolitan district or other entity and to place maintenance responsibility on said homeowners association metropolitan district, other entity, or the individual lot owners. The homeowners association, metropolitan district, or other entity documents shall not allow for the dissolution of the entity or a change in any provision concerning the maintenance of said facilities without the approval of the Council and shall allow for the enforcement against the entity and assessment of costs for maintenance undertaken by the City after notice to the entity against individual lot owners.

C. *Conveyance of Common Land.* Easements, lots or tracts to be owned and maintained by a homeowners association, metropolitan district or other entity shall be dedicated by both a statement on the final plat and warranty deed. A plat note concerning the responsibility for ownership and maintenance of the easements or tracts shall be included on the face of the final plat.  
(Ord. 1412 §2, 2008)

16.23.100 Open Trench Installations and Notice to Parties. This section applies to excavation for any trench or opening of any trench located in an existing or proposed public right-of-way, public utility easement, or other public easement, for which telephone,

telecommunications, internet, cable television, or in which similar other facilities are intended to or may be installed to provide a service to the subdivision (the “service providers”). These provisions do not apply to water, wastewater, natural gas or electric facilities. It is the City’s policy to encourage joint use of utility trenches by service providers with the cost shared among the participating service providers. Sharing of joint utilities trenches shall be subject to compliance with state regulatory agency and utility standards. During the development of the subdivision and prior to recording of the final plat for the property, the subdivider shall coordinate the excavation for any trench or opening of any trench with the service providers that will be providing service to the property. The subdivider shall provide written or electronic notification to the service provider of the time and date which such excavation or open trench is anticipated to be available for installation of facilities by the service provider. The City shall make available the list of service providers requiring notification at the Planning Department. Any service provider that receives written or electronic notification of an open trench and fails to install its facilities at the date and time specified by the subdivider, and wishes to serve a subdivision where the trenches have been closed shall be responsible for its own trenching and associated costs and shall repair all public and private property to the condition which existed prior to such trenching. (Ord. 1412 §2, 2008)

#### **16.24 DEDICATION STANDARDS**

16.24.010 Purpose. The purpose of this Title is to provide minimum standards for required land dedication. For a PUD, this Title shall apply only when the required land dedication has not been satisfied. (Ord. 1412 §2, 2008)

16.24.020 Applicability. The purpose of the City’s land dedication requirements is to ensure that adequate sites are provided to the City to accommodate a variety of public facilities necessary to accommodate new growth. This Title contains the standards adopted by the City for determining the land dedication needs for schools, parks, water facilities, fire stations, police stations, and City administrative facilities. Where an open space and public land dedication plan including land dedication conveyance schedule, has been adopted for a PUD in accordance with the City of Fountain Zoning Ordinance, the provisions of that document shall replace and supersede the requirements herein. For all other subdivision proposals, the requirements spelled out in the following sections regarding land dedication or cash-in-lieu of land dedication shall apply. These dedication requirements shall apply to all new subdivisions and replats. (Ord. 1412 §2, 2008)

16.24.030 General Requirements. The subdivider shall convey and plat all land and public easements to the City as are necessary to serve the development with vehicular and pedestrian access and water, sewer, and stormwater utility services. The land required to be dedicated shall be dedicated at the time of final plat recordation whether or not the required dedications are located within the boundaries of the plat being filed for recording. In addition, all subdivisions shall comply with the school, park, water facility, fire station, police station, and City administrative facility land dedication requirements. Dedicated land shall be free of all liens and encumbrances, including any private covenant declarations. (Ord. 1412 §2, 2008)

### 16.24.040 Right-of-Way and Easement Dedication.

A. *Rights-of-Way and Public Easements Required at Time of Final Plat.* Every street, alley, walkway, drainage channel, reserve strip (or waiver of access rights), easement, and other right-of-way shown on the final plat intended for public use shall be offered for dedication at the time the final plat is filed. In addition, the subdivider shall provide right-of-way and public easements for all onsite and offsite streets, utilities, sidewalks and appurtenant landscaping. The subdivider shall pay all acquisition costs. If any offsite rights-of-way or public easements are required, before approval of the final plat, one of the following must have occurred: (1) the city has received signed deeds for all offsite rights-of-way and public easements; or (2) the subdivider has executed a City contract for real property acquisition and deposited the estimated acquisition costs into a City trust account, and the subdivider has formally requested and the Council has approved a resolution of intent to use its powers of condemnation to acquire the rights-of-way or easements.

B. *Minimum Right-of-Way Dedication Standards.* Concurrent with the recording of a final plat, right-of-way dedication is required for all subdivisions that abut or contain a street for which insufficient dedication has been secured. Right-of-way dedication requirements are listed in Table 16.24.040-1. The requirement to dedicate right-of-way shall be limited by Section 16.22.060.

**Table 16.24.040-1 Right-of-Way Dedications**

<b>Street Classification</b>	<b>Right-of-Way Width (ft)<sup>1,2</sup></b>
Expressways	160-210 <sup>5</sup>
Community Arterials	110-120 <sup>5</sup>
Community Collectors	80
Industrial/Commercial Collectors/Locals	65
Minor Residential Collectors	60
Residential	60 <sup>4</sup>
Cul-de-Sac	100-150 <sup>3</sup>
Alley	24
<sup>1</sup> Additional right-of-way for right turn lanes and second left turn lanes may be required based on the TIA at arterial and collector street intersections at the discretion of the City Engineer. <sup>2</sup> The City may require additional dedication of right-of-way for public purposes. <sup>3</sup> The width varies depending on the street classification. <sup>4</sup> This may also be accomplished with a fifty-foot (50') right-of-way and one ten-foot (10') public improvement and utility easements on each side of the right-of-way. This may alternative dedication may only be proposed where a 6" thick, 5½' wide attached sidewalk with mountable curb will be constructed. In this case, the ten-foot (10') public improvement and utility easement shall be considered to have fulfilled the requirements of Section 16.22.050. <sup>5</sup> The required right-of-way dedication varies depending on the number of lanes.	

C. *Corner Right-of-Way Chamfers.* At the intersection of all public streets, the right-of-way dedication shall include a chamfer corner. The diagonal chamfer for corner lot lines adjacent to roadway intersections a minimum of fifteen (15) feet as measured along the two legs of the projected intersecting property lines. If a radial corner property line is desired in lieu of a diagonal, then the radial chamfer corner shall have a minimum twenty-five (25) foot radius. The chamfer line whether diagonal or radial must provide approximately twelve (12) feet clearance

from the curb face to the chamfer property line in order to accommodate a standard ADA sidewalk ramp with level sidewalk landing area. In addition, the chamfer shall be sized to ensure that all property corner pins are outside of the corner ADA sidewalk ramp construction zone. This may also be accommodated by the placement of offset corners. No corner pins shall be set within the corner ADA sidewalk ramp construction zone. Note that the standard dimension represents the minimum chamfer corner. The required chamfer size may vary depending upon the roadway curb radius and the intersecting angle of the intersecting property lines in relationship with the intersecting roadway alignments. Where the sight distance easements required by Section 16.22.050.D fully encompass the required corner right-of-way chamfer and said easements are designated as public improvements and sight distance triangle easement, corner right-of-way chamfers shall not be required.

D. *Minimum Easement Widths.* When sewer, stormwater or drainage, water, power, communications or other public utilities are constructed on private property, a public utility easement must be granted to the City. These easements are needed to establish rights for the City and other utility providers including, but not limited to, construction, operation, and maintenance access as needed to own and operate the facility. In addition, all private easements necessary to serve a subdivision shall be dedicated. The minimum required width of all easements shall conform to the requirements in Section 16.22.050. However, the width of the required easements are governed by factors such as the type of utility, its depth, size or diameter, the equipment needed for maintenance, etc. The minimum width may be increased as determined necessary by the City Engineer or as otherwise required by the utility company. (Ord. 1412 §2, 2008)

#### 16.24.050 Park and Open Space Dedication Standards and Procedures.

A. *Requirement to Dedicate Park and Open Space Lands.* Whenever land is proposed for residential, commercial, office or industrial use, the subdivider shall provide land, cash-in-lieu of land dedication, or a combination of land and cash to meet the active and passive recreational demands generated by the proposed subdivision as identified in the City's parks and open space plans and studies. These lands must be suitable for neighborhood and community parks or open space, and typical facilities in terms of topography, size and location. Where a subdivision is of such a residential density or size, or commercial/office/industrial acreage as to not require the dedication of a full park site, the City shall require cash-in-lieu of onsite, or an appropriate offsite, park land dedication.

B. *Dedication Standards.* Any land to be dedicated as a requirement of this Title shall be reasonably adaptable for use as park, open space, trail, or other recreational purpose. Factors used in evaluating the adequacy of proposed park areas shall include size, shape, topography, geology, flora, fauna, access, and location. Table 16.24.050-1 establishes the park and open space dedication requirement. The formula used to calculate the minimum amount of land dedication required is based on eight (8) acres/one thousand (1,000) population: two (2) acres/one thousand (1,000) population for neighborhood parks and six (6) acres/one thousand (1,000) population for community parks.

#### **Table 16.24.050-1 Park and Open Space Dedication Standards.**

Type of Use	Dedication Requirement
<b><i>Single Family Residential</i></b>	
Neighborhood Park	Dedication or cash-in-lieu requirement: .002 acres/person or .006 ac/du (based on 3.0 persons/hh) <sup>1</sup>
Community Park	Dedication or cash-in-lieu requirement: .006 acres/person or .018 ac/du (based on 3.0 persons/hh) <sup>2</sup>
Open Space	As adopted by the Council <sup>3</sup>
TOTAL	Dedication or cash-in-lieu requirement: .008 acres/person or .024 ac/du
<b><i>Multifamily Residential</i></b>	
Neighborhood Park	Dedication or cash-in-lieu requirement: .002 acres/person or .0039 ac/du (based on 1.9 persons/hh) <sup>1</sup>
Community Park	Dedication or cash-in-lieu requirement: .006 acres/person or .0117 ac/du (based on 1.9 persons/hh) <sup>2</sup>
Open Space	As adopted by the Council <sup>3</sup>
TOTAL	Dedication or cash-in-lieu requirement: .008 acres/person or .015 ac/du
<b><i>Retail/Shopping Center</i></b>	
Parks	.0056 acres/acre <sup>1</sup>
Open Space	As adopted by the Council <sup>3</sup>
<b><i>Offices/Services</i></b>	
Parks	.0420 acres/acre <sup>1</sup>
Open Space	As adopted by the Council <sup>3</sup>
<b><i>Industrial and Other</i></b>	
Parks	.0200 acres/acre <sup>1</sup>
Open Space	As adopted by the Council <sup>3</sup>
<sup>1</sup> Minimum onsite dedication: 5-acre site up to 25-acre site (if combined with elementary school), 10–12 acre site is optimum. <sup>2</sup> Minimum onsite dedication: 30-acre site up to 100-acre site (if combined with secondary school), 60–80 acre site is optimum. <sup>3</sup> As a condition of preliminary or final plat approval, the subdivider may be required to provide land, cash-in-lieu of land, or a combination of land and fees for open space pursuant to, and to implement, the provisions of the Comprehensive Development Plan or any adopted master plans regarding open space when and if such dedications and fees are adopted by the City. Where a subdivision is of such a residential density or size or commercial/office/industrial acreage as to not require the dedication of open space the City shall require cash-in-lieu of dedication. Where open spaces are shown in the Comprehensive Development Plan or an adopted master plan, the City may require a subdivider to reserve the identified open space for those uses, as a condition of approval of a preliminary or final plat. The reserved area must be of such a size and shape as to allow: (1) the balance of the property to develop in an orderly and efficient manner, and (2) the reserved area to be efficiently used or divided if it is not acquired by a public agency. The amount of land reserved may not render development of the remaining land economically unfeasible. The public agency for whose benefit an open space has been reserved shall at the time of final plat approval enter into an agreement to acquire the area within two years, or longer by mutual agreement. As part of such mutual agreement, all or a portion of the reservation may be credited against other required dedications at the discretion of Council.	

C. *Park Board Recommendation.* The Park Board shall, after review of master plans and a proposed subdivision, make recommendations to the Planning Commission and Council concerning the adequacy of provisions for park and open space needs in each subdivision application being considered. The Park Board shall consider the following criteria prior to

making their recommendation: (1) the conservation and maintenance of the natural environment of the region; (2) the provision of park land facilities which, with minimal development, will serve the entire region and will support outdoor recreation programs including, but not limited to, interpretation of the natural and historic qualities of the region; (3) the placement of park lands in such a manner as to assist in combating air quality problems, enhancing the environment, and preserving community integrity in the most practical, attractive manner possible; (4) the determination of the place the park and outdoor recreation facilities of the development occupy in the broad scope of the City park and trail system; (5) the assurance of the continuity of open space links, trails, and other major components of the open space system; (6) the determination of the population densities which will result from the proposed development and their relation to park and open space needs; (7) the assessment of the suitability of proposed land dedications for park and open space needs; (8) the examination of the size, shape, topography, geology, presence, and condition of ground cover and timber, condition of soil, drainage, location, access, and availability of water to lands proposed for park and open space uses; and (9) the assurance of the protection of natural and historical features, scenic vistas, watersheds, timber, and wildlife.

D. *Dedication of Land Not Feasible.* When dedication of required park and open space lands is not deemed feasible or not in the public interest, the Council shall require the subdivider, in lieu thereof, to pay to the City cash-in-lieu of land dedication in accordance with Section 16.24.110. Said cash-in-lieu of park land dedication shall be paid by the subdivider prior to recording of the final plat or may be deferred to time of building permit on a per lot or dwelling unit basis.

E. *Dedication of All Required Land Not Feasible.* When dedication of all of the required park and open space lands or when payment of all of required cash-in-lieu of land is not deemed feasible or not in the public interest, the Council shall require the petitioner to dedicate and to pay to the City a combination of land and cash-in-lieu of land in accordance with Section 16.24.110. The combination of land dedication and payment of cash-in-lieu of land shall not exceed the total amount of land or fees required in by this Title.

F. *Trails.* Local trail linkages are considered part of the subdivision's overall circulation system. Trails may be required in addition to sidewalks where such access is needed to connect the subdivision to nearby schools and other similar facilities in a more safe and convenient manner. The Council may choose to credit regional trail right-of-way dedication towards a subdivision's park land dedication requirement.

G. *Excess Park or Open Spaces Dedication.* Open space lands for passive recreation and parks for active recreation provide significant value to the community. The Council may choose to credit open space or park dedications towards a subdivision's park land dedication where such open space is deemed to have significant public value and such dedication is determined to be in the public interest. The amount of credit for excess open space or park dedication, up to a maximum of one-hundred (100) percent, shall be determined by the Council based upon the value of the open space or park to the community.

H. *Credit for Private Park and Open Space.* When subdividers provide their own private land for parks, recreation areas and facilities, and open space, it has the effect of reducing the demand for local public parks and recreational services. Depending on the size of the development, a portion of the park and open space in a subdivision may, at the option of the Council, be provided in the form of private land-in-lieu of dedicated public parks and open space. Applications for credit for private parks and open space shall be considered by the Park Board, and its recommendations shall be forwarded to the Planning Commission and to the Council. The amount of credit for private parks and open space, up to a maximum of one hundred (100) percent, shall be determined by the Council based upon the following factors: (1) the extent to which such private land serves the overall park and recreation needs of the future residents of the subdivision; (2) whether the private land is reasonably adaptable for park and open space purposes, taking into account the size, shape, topography, geology, accessibility, and location of the site and whether the operation and maintenance of such private land as park and open space is adequately provided for by recorded written agreement, conveyance, or restriction. In general, a substitution of private parks and open space for dedicated parks will imply a substantially higher degree of improvement and the installation of recreational facilities, including equipment by the subdivider, as part of this obligation. Detailed plans of such areas, including specifications of facilities to be installed, must be approved by the City. Private park and open space credits can only be applied to areas within a development that specifically have a right to use the private park or open space.

I. *Replat or Resubdivision.* If cash-in-lieu has been paid or land dedicated for any residential land being replatted or resubdivided, no land dedication or cash-in-lieu shall be required, unless as a result of such replat or resubdivision, residential density is increased. If residential density is increased, the subdivider shall pay the cash-in-lieu or dedicate land as applied only to the increase in the number of residential units.

J. *Combining with Adjoining Developments.* Where the subdivision limits the amount of land that can be dedicated, such park land or open space that is to be dedicated may, when feasible, be combined with dedications from adjoining developments to produce usable park and open space areas without hardship on a particular subdivider.

K. *Park Development.* The subdivider shall be responsible for improving the park in accordance with established standards. The standards for development shall be established by ordinance. Where raw land is dedicated and not improved as a neighborhood or community park, the Council shall require the subdivider, in lieu of improvements thereto, to pay to the City cash-in-lieu of park improvements. Said cash-in-lieu of park improvements shall be paid by the subdivider prior to recording of the final plat or may be deferred to time of building permit on a per lot or dwelling unit basis. The cost of improvements shall be set by the Council on a per acre basis based on a recommendation from the Park Board.

L. *Park and Open Space Dedication Credits.* The Council may provide a subdivider credit for excess public park land and open space dedication in Association with any excess dedication. The credits may be used to offset all or a portion of park land and open space dedication requirements within subsequent phases of a subdivision or in other proposed subdivisions within the City. Credits may not be taken or applied without Council approval.

While it is the intent of Council in allowing park and open space credit for excess dedications to encourage a subdivider to dedicate important or critical park lands and open spaces, allowing the redemption of the credit in association with any particular subdivision or phase of a subdivision is solely at the discretion of Council. The use of a credit shall not have the affect of leaving an area of the City or a subdivision inadequately served by parks or open space. Credits may be transferred from one subdivider to another with the approval of Council. (Ord. 1412 §2, 2008)

16.24.060 School Land Dedication Standards and Procedures.

A. *Requirement to Dedicate School Lands.* Whenever land is proposed for residential use, the subdivider shall provide land, cash-in-lieu of land, or a combination of land and cash to meet the school facility demands generated by the proposed development.

B. *School District Recommendation.* The appropriate school district shall make recommendations to the City concerning the adequacy of provisions for school needs in each development proposal considered.

1. *Criteria.* The appropriate school district shall consider the following criteria prior to making their recommendations: 91) the determination of the population densities which will result from the proposed development and their relations to school needs; (2) the assessment of the suitability of proposed land dedications for school uses; (3) the examination of the size, shape, topography, geology, presence, and condition of ground cover, condition of soil, drainage, location, access, and availability of utilities to lands proposed for school uses; (4) the assurance of the protection of natural and historical features, scenic vistas, watersheds, timber, and wildlife; and (5) the demonstration of a present or future need for a school site.

2. *Land Not Deemed Feasible or in Public Interest.* When dedication of all or portions of required school lands is not deemed feasible or in the public interest, the school district may recommend to the City one of the following options:

(a) *Future Land.* Guarantee of future land dedication may be requested by the school district when dedication of all or portions of required school lands is not deemed feasible or in the public interest in a particular phase of development. Prior to final plat approval, the subdivider and the school district shall enter into a written agreement in which the subdivider guarantees the future dedication of land for school sites. Said agreement shall be executed by the current owner(s) of the site(s) and the guarantor, who shall provide proof of ownership. The agreement shall include a legal description of the property to be dedicated in a subsequent phase of the subdivision and shall be recorded with the office of the El Paso County Clerk and Recorder. Said agreement shall be binding upon the subdivider's heirs, legal representatives, successors in interest, and assigns.



(b) *Cash-in-Lieu.* The requirement for the payment of cash-in-lieu of dedication in accordance with Section 16.24.110.

C. *Dedication Standards.* Dedication of land, or the payment of cash-in-lieu thereof, or a combination of such dedication and such payment shall be made for school needs. The following formulas shall be used to calculate the minimum amount of land dedication required in residential subdivisions (See Table 16.24.060-1). These dedications shall serve as the basis for calculating any cash-in-lieu.

**Table 16.24.060-1 School Land Dedications-Unit Based Approach**

<b>Type of Unit</b>	<b>Square Feet of Dedication per Unit<sup>3</sup></b>
Single family detached <sup>1</sup>	871
Single family attached, multifamily or other types of residential units <sup>2</sup>	359
<sup>1</sup> Single family detached unit: A residential dwelling unit completely separate of other units and situated on its own lot. A mobile home subdivision or manufactured home shall be included within this definition for dedication requirement calculation, as well as patio home or townhome where not attached. <sup>2</sup> Other residential units: All other types of residential units not included as single family detached units, including but not limited to attached single family homes, townhomes, condominiums, apartments, and mobile home parks. <sup>3</sup> Existing dwelling units shall be excluded from the calculation of the school land dedication requirement if they have previously been included in the calculation for school land dedication unless the lot on which the existing dwelling will be located allows for greater residential density in which case the dedication requirements shall be calculated based on the maximum potential residential density.	

D. *Reductions in Dedications.* There is no land dedication for a public school site when the residential subdivision is zoned exclusively for nursing homes, retirement facilities, or similar proposals. In addition, a subdivider may propose limiting dedications for school sites where the subdivider can document to the satisfaction of the City and appropriate school district that the subdivision will generate fewer students than the standard on which the dedication requirements is based.

E. *Minimum Site Size.* The minimum acreage for the dedication of school sites is based upon the following standards: ten (10) acres for an elementary school; twenty-five (25) acres for a junior high school; and fifty (50) acres for high schools. Where a subdivision is of such a residential density as to not require the dedication of a full school site, the City shall require cash-in-lieu of dedication. The appropriate school district may recommend and the City may require where the total required dedication exceeds the minimum site area that all land dedications beyond the minimum school site size be contiguous. The appropriate school district may also request and the City may require the dedication of additional land to obtain a full site or site large enough to meet the appropriate school district's intended use. Where the requested dedication exceeds the total dedication required, the appropriate school district is required to compensate the subdivider for the additional lands in the same manner and amount as cash-in-lieu is calculated pursuant to Section 16.24.110 or such other amount agreed to by the subdivider and appropriate school district.

F. *Suitable Lands.* Dedicated sites shall be a single parcel suitable for school facilities in terms of topography, size and location. The dedicated school land shall be centrally located and provided with public access to adjacent street frontage and free from hazards that would threaten the safety of those using the land. The following land areas shall not be considered to fulfill the requirements of any required public school land area requirement:

- Rights-of-way or public easements.
- Greenbelts, walkways, bikeways and trails.
- Lakes, ponds, reservoirs.
- Swamps and boggy lands.
- Steep or rugged land areas.
- Hazardous geological land areas and hazardous wildfire land areas.

G. *Combining with Adjoining Developments.* Where the subdivision limits the amount of land that may be dedicated, such school land which is to be dedicated may, when feasible, be combined with dedications from adjoining developments to produce a usable school site without hardship on a particular subdivider.

H. *Dedication and Conveyance of Land to School District.* If the appropriate school district determines that the dedication of land for school purposes is appropriate, the subdivider shall convey the property by warranty deed to the appropriate school district concurrent with the recording of the final plat.

I. *Collection and Transfer of Cash-in-Lieu.* If the appropriate school district determines that cash-in-lieu of the dedication of land for school purposes is appropriate, said cash-in-lieu of land dedication shall be paid to the City prior to the recording of the final plat or may be deferred to the time of building permit in which case it shall be collected by the City at time of building permit. All cash-in-lieu collected by the City shall be paid to the appropriate school district on a quarterly basis by the City.

J. *Replat or Resubdivision.* If cash-in-lieu has been paid or land dedicated for any residential land being replatted or resubdivided, no land dedication or cash-in-lieu shall be required unless as a result of such replat or resubdivision, residential density is increased. If residential density is increased, the subdivider shall pay the cash-in-lieu or dedicate land as applied only to the increase in the number of residential units.  
(Ord. 1412 §2, 2008)

16.24.070 Land Dedication for Public Facilities. As a condition of preliminary or final plat approval, the subdivider may be required to provide land, cash-in-lieu of land, or a combination of land and fees for fire stations, library sites, child day care, public art, or any other public facilities pursuant to, and to implement, the provisions of the Comprehensive Development Plan or any adopted master plans regarding such facilities when and if such dedications and fees are adopted by ordinance. These lands must be suitable for public facilities in terms of topography, size and location. Where a subdivision is of such a residential density or commercial/office/industrial acreage as to not require the dedication of a full site the City shall

require cash-in-lieu of dedication. All cash-in-lieu shall be calculated in accordance with Section 16.24.110. (Ord. 1412 §2, 2008)

16.24.080 Reservations for Public Facilities

A. *General.* Where a recreational facility, fire station, library, or other public use is shown in the Comprehensive Development Plan or an adopted master plan, and the plan contains policies and standards for those uses, the City may require a subdivider to reserve sites for those uses, as a condition of approval of a preliminary or final plat.

B. *Limitations.* The reserved area must be of such a size and shape as to allow: (1) the balance of the property to develop in an orderly and efficient manner, and (2) the reserved area to be efficiently used or divided if it is not acquired by a public agency. The amount of land reserved may not render development of the remaining land economically unfeasible.

C. *Acquisition.* The public agency for whose benefit an area has been reserved shall at the time of final plat approval enter into an agreement to acquire the area within two years, or longer by mutual agreement. As part of such mutual agreement, all or a portion of the reservation may be credited against other required dedications at the discretion of Council.

(Ord. 1412 §2, 2008)

16.24.090 Drainage Basin and Other Infrastructure Fees. The Council may adopt drainage basin or other fees to fund infrastructure within all or certain portions of the City. Such fees shall be adopted by ordinance and shall be payable as specifically established in the ordinance authorizing the collection of the drainage basin or infrastructure fee. (Ord. 1412 §2, 2008)

16.24.100 Use of Land and Cash-in-Lieu. All land and cash-in-lieu dedicated or credited under the provisions of this Title shall be used for its intended public purpose (land for school, recreation, and open space, fire, police or administrative facilities) to the mutual benefit of the residents of the subdivision, City and general public in accordance with the City's, school districts', or other special district's adopted plans and policies for public uses and facilities. The City, school district, or special district may exchange land previously acquired for cash if in the opinion of the Council or governing board of the school district or special district, the public need for that specific public use would better be served at a different site. (Ord. 1412 §2, 2008)

16.24.110 Calculating the Cash-in-Lieu. The Council may adopt and apply a schedule of fees for cash-in-lieu based on the adopted land dedication rates and an established developed land value which may be based on a citywide appraisal of developed lands, on the County Assessor's average developed land value in the city, or some other acceptable method of determining land values. The rate shall be adjusted annually based on changes in land values. The cash-in-lieu schedule may be applied to all lands being subdivided on a per unit or per lot basis.

If the Council does not adopt a schedule of fees based on the dedication rates and an established developed land value, when cash-in-lieu of land area dedication is to occur, at the time of

submittal of documents for a final plat, the subdivider shall submit an appraisal, purchase price or other indication of the actual market value of the buildable land area based on the approved preliminary or proposed final plat (i.e., value shall be based on anticipated market value after completion of platting and completion of all required public improvements). The actual value of the land shall be determined by mutual agreement between the subdivider and the Subdivision Administrator. In the event that the parties cannot agree on the actual value of the sites, an independent qualified appraiser shall be selected by mutual agreement of the disagreeing parties. Said appraiser's findings on the actual value of the total site shall be final and binding on all parties. A qualified appraiser shall be a member of the Appraiser Institute (M.A.I.) or an Accredited Rural Appraiser (A.R.A.). The subdivider shall pay the full cost of said appraiser. This method shall establish the base land value for purposes of establishing the cash-in-lieu due at time of platting. Where the fees are to be paid at time of building permit, the base land value and schedule of fees established at the time of platting shall be inflated annually by the average increase in land values within the City of Fountain as determined by a review of the County Assessor's data.

Developed land value is the value of the land following platting and completion of all public improvements.  
(Ord. 1412 §2, 2008)

## **16.25 CRITERIA FOR TRAFFIC IMPACT STUDIES**

16.25.010 Introduction. This appendix outlines the policies and requirements for the preparation of Traffic Impact Studies (TIS) for development proposals in the City of Fountain. These requirements exist to ensure consistent traffic analysis practices for developments being considered. The responsibility for evaluating the traffic impacts associated with a proposed development rests with the applicant. The applicant is responsible for retaining a qualified transportation professional to provide an accurate and complete accounting of probable traffic impacts related to the proposed development. The City of Fountain Planning and Public Works staff are responsible for review of traffic impact studies to ensure that the study is completed accurately and in accordance with these requirements.  
(Ord. 1412 §2, 2008)

16.25.020 When a Traffic Impact Study is Required. Unless waived by the City Engineer, the City requires a TIS for any new development proposal that could potentially have a significant impact (as determined by the City) on the transportation system. Any of the following may be considered significant impacts:

- Daily trip generation is projected to be 500 or more vehicles.
- Peak hour trip generation is projected to be 50 or more vehicles.
- Traffic from a development will impact adjacent residential neighborhoods.
- Driveway impacts on public streets related to turning movements or signal timing/progression.
- Offsite collector and arterial road links and intersections that are impacted by 10% or more (during either A.M. or P.M. peak hour).

- Significant citizen concern due to expected traffic impacts.

A TIS may also be required when a previously approved development changes or expands in such a way that the approved access to the site is affected or trip generation estimates increase by more than 20% over the original estimates. A TIS may also be required for each phase of a large phased development. In this situation, an overall TIS would be completed for the overall proposal followed by an addendum prior to the development of each phase. (Ord. 1412 §2, 2008)

16.25.030 Traffic Impact Study Preparation and Review Process. The Subdivider is responsible for contacting the Planning Division before a development application is submitted to determine if a TIS will be required. The need for a TIS will be determined as part of the pre-application conference.

Prior to the commencement of the TIS, a pre-submittal meeting must be held between the City Engineer and the transportation professional retained by the subdivider to discuss the scope of the study and the requirements for the study content and format. The pre-submittal meeting is intended to provide a firm base of cooperation and communication between the City, the subdivider, and the transportation consultant. At a minimum, topics discussed at such meetings will include study area, proposed land uses, trip generation, trip distribution, traffic projection year(s), intersections requiring analysis, signal timing assumptions and background traffic assumptions.

The subdivider shall submit the traffic impact study at the time that the development application is submitted. If the study fails to comply with the technical requirements and the scope of the study outlined in the pre-submittal meeting, the Subdivider will be advised in writing through the City's normal development review process. A study must be submitted and accepted by the City before the Planning Commission schedules the project for consideration.

The City Engineer will review the draft study within fifteen (15) working days of the date of submittal. If study revisions are needed, the City Engineer will normally review the revised study within ten (10) working days of submittal. A longer review period will be necessary if the Colorado Department of Transportation (CDOT) or other agencies are involved in the review process. (Ord. 1412 §2, 2008)

16.25.040 Traffic Impact Study Requirements.

A. *Study Purpose and Site Description.* The study shall include a brief description of the development application proposal (i.e. annexation, rezoning, subdivision, site plan application etc.). It shall also include a brief description of the development proposal including the site location, the size of the land parcel, general terrain features, the types of land uses being proposed and the proposed access points.

B. *Study Area.* The boundaries of the study area will be based on engineering judgment and an understanding of existing traffic conditions surrounding the site. The limits should be

agreed upon at the pre-submittal meeting with staff. The boundaries of the study area shall be based on the size and extent of the proposed development and its relation to significant streets and intersections. Large developments may require a study area extending beyond one mile due to the magnitude of potential impacts. As a minimum, the study area will include:

- Adjacent streets.
- Adjacent or nearest offsite arterial/arterial or arterial/collector intersections.
- Site access points.
- Internal roads.
- Offsite collector and arterial road links and intersections that are impacted by 5% or more (during either A.M. or P.M. peak hour).
- Continuity and adequacy of pedestrian and bicycle facilities to the nearest attraction (existing or planned);
- Access to the most direct public transportation services facility or public transportation services route where public transportation services are available; and
- Any pedestrian routes within 2 miles of a school.

A vicinity map that shows the site and the study area boundaries in relation to the surrounding transportation system must be included in the study. All arterial and collector streets in the study area and access points to the site should be shown on the map. Key intersections in the study area that will be analyzed in the study shall be identified at the pre-submittal meeting. The key intersections should be identified on the map.

C. *Study Horizons.* Three study horizons are required for analysis: The current conditions, short term and long term. The current (existing) conditions should be analyzed to establish a baseline of traffic conditions.

The short-term horizon represents the planned opening year of the project. Both a background analysis and analysis with the project completed should be completed to assess the short-term impacts of the project. Assumptions about street improvements not associated with the study project in the short term should be based on projects shown in the City's Capital Improvement Program or projects that have already been financially obligated to a subdivider.

The long term planning horizon represents conditions at 80% build out of the Fountain Planning Area as shown in the Fountain Comprehensive Development Plan (FCDP). For land uses in compliance with the FCDP this analysis should be completed using forecast volumes and roadway improvements as shown in the FCDP. For land uses that are not in compliance with the FCDP analyses for both the adopted land uses in the FCDP and the proposed land uses should be completed so that the impact of the land use change can be evaluated.

When an overall traffic impact study is completed for a phased development the study shall look at all three study horizons. Addenda for each phase of development should only look at the current conditions and the short-term horizon.

D. *Analysis Time Periods.* Normally, the analysis time periods will be the weekday a.m. and p.m. peak hours. Under some circumstances the City may require analyses to occur at other times as appropriate.

E. *Existing/Base Conditions.*

1. *Existing and Proposed Land Uses.* A complete description (including a map) of the existing land uses in the study area as well as their current zoning, shall be included in the study. In addition, the future uses of all vacant land within the study area that may be developed within the projection year of the project must be identified. For the short term horizon only land where development applications have been approved should be considered as developed within the projection year. For the long-term horizon, land uses shown in the FCDP should be assumed as developed within the projection year.
2. *Existing and Proposed Transportation System.* The study shall describe the existing roadways and intersections in the study area including the road geometry and intersection traffic control. For the short-term horizon, assumptions about road improvements related to the development shall be based on the City's Capital Improvement Program and on improvements already financially obligated to a subdivider. For the long-term horizon all improvements shown in the FCDP within the study area should be assumed.
3. *Existing Traffic.* Current a.m. and p.m. peak hour traffic volumes shall be obtained for the roadways and intersections within the study area. "Current" means counts less than a year old. A map or series of maps of the existing roadway network shall be prepared showing the existing conditions and volume counts including lane geometry, traffic control, access points, turning movement volumes and calculated peak hour factors.
4. *Background Traffic.*
  - (a) *Short Term Horizon.* For the short term horizon, background traffic shall be the sum of existing traffic volumes plus the addition of traffic from any not yet built but approved developments in the study area plus background traffic growth. Background traffic growth should be calculated from historical 24-hour volume counts in the City of Fountain in the vicinity of the proposed development. Staff will provide this information when it is available. The annual percentage of background traffic growth should be agreed upon at the pre-submittal meeting.

- (b) *Long Term Horizon.* For the long-term horizon, background traffic shall be based on the most recent traffic forecasts from the City's long range transportation model. Maps of both the short term and long term roadway network shall be prepared showing the projected conditions and projected volume counts including lane geometry, traffic control, access points, a.m. and p.m. peak hour turning movement volumes and calculated peak hour factors.

F. *Site Related Traffic.*

1. *Trip Generation.* A summary table listing each type of land use, the size or amount involved, the trip generation rates used and the resultant total trips must be provided. Trip generation rates shall be calculated using data contained in the latest edition of the Institute of Transportation Engineers' (ITE) Trip Generation Manual or from a local trip generation study following procedures prescribed in the ITE Trip Generation Manual. If a local trip generation study is used to determine the trip generation rate, documentation of the trip generation study and the resulting rate should be included in an appendix of the traffic impact study. The ITE Trip Generation Manual presents data on trip generation rates in various formats. A weighted average trip generation rate is shown. Also, when possible, a regression equation is presented that defines the line representing "best fit" of the data. Trip generation rates should be determined as outlined below.

(a) Use Regression Equation When:

- A regression equation is provided.
- The independent variable is within range of data and
- Either the data plot has at least 20 points; or
- The  $R^2$  is greater than or equal to 0.75, equation falls within the data cluster in the plot and the standard deviation is greater than 110% of the weighted average rate.

(b) Use the Weighted Average Rate When:

- At least three data points.
- Independent variable is within range of data.
- Standard deviation is less than or equal to 110% of the weighted average rate.
- $R^2$  is less than 0.75 or no equation provided.
- Weighted average rate falls within data cluster plot.

(c) Collect Local data When:

- Study site is not compatible with ITE land use code definition.
- Only 1 or 2 data points; preferably when five or fewer data points.



- Independent variable does not fall within range of data.
- Neither weighted average rate line or fitted curve fall within data cluster at size of development.

Trip making reduction factors may be used after first generating trips at full ITE rates. These factors fall into two categories: those that reassign some portion of generated trips to the background stream of traffic, and those that remove or move generated trips. In all cases, the underlying assumptions of the ITE Trip Generation rates must be recognized and considered before any reductions are claimed.

The first category is when trips to the proposed development currently exist as part of the background traffic stream, referred to as pass-by trips. Pass-by percentages identified by ITE or in other industry publications may typically be used. But, the source of the percentages must be identified and the City must approve use. Pass-by traffic must continue to be assigned to site driveways and access points, but is not additive to the background traffic stream. An appendix that illustrates the assignment of pass-by trips must be included in the report.

The second category for adjustments is for internal site trips, transit use, and transportation demand management (TDM) actions. Reductions of these types may be allowed if analytic support is provided to show how the figures were derived. The City must approve any reductions that are claimed. Optimistic assumptions regarding transit use and TDM actions will not be accepted unless accompanied by specific implementation proposals that will become a condition of development approval. Such implementation proposals must have a high expectation of realization within a 3-year period after project initiation.

2. *Trip Distribution.* The percentage of trips to/from the proposed development to/from destinations in the region must be clearly shown graphically in the report. The consultant shall be responsible for estimating trip distribution. Marketing studies, sub-area transportation studies, documented existing traffic patterns and professional judgment may be used to make trip distribution assumptions. Whatever method(s) are used, the procedures and rationale used should be fully explained and documented in the study.

Different trip distribution assumptions can be used for different land uses in mixed-use developments. If more than one set of distribution assumptions are made they should be shown on separate graphics.

3. *Trip Assignment.* Site generated traffic shall be assigned to the street system according to the trip distribution percentages determined in the previous step. The traffic assignment must be clearly shown graphically in the report.

#### G. *Analysis and Identification of Impacts.*

1. *Tasks:* The project impacts shall be determined through an analysis procedure that follows the sequence of tasks outlined below.

- Assessment of existing conditions.
- Assessment of short term background conditions.
- Assessment of short term conditions with the planned land use shown in the FCDP for the land being proposed for development (this task is only needed when the proposed development is requesting a land use amendment).
- Assessment of short term conditions with the proposed development.
- Assessment of long term background conditions.
- Assessment of the long term conditions with the proposed development when a land use amendment is being requested.

2. *Highway Capacity Analysis.* Assessment techniques for existing conditions, short term background and short term with the development will include a capacity and level of service (LOS) analysis for the key intersections identified in the study area during the identified analysis time periods. For signalized intersections the analyses shall be completed using the operational analysis methodology shown in the latest edition of Highway Capacity Manual published by the Transportation Research Board. Both volume to capacity ratio (v/c ratio) and level of service for each movement shall be reported in a table or diagram for each signalized intersection analyzed. The overall intersection level of service shall also be reported. The City of Fountain's benchmark for traffic congestion states that all signalized intersections should be maintained at overall LOS C or better. In addition, the benchmark requires that all movements that have 5% or more of the total entering intersection volume should be maintained at LOS C or better and have a volume to capacity ratio less than 1.0. Therefore, any signalized intersections or movements at signalized intersections that exceed these thresholds should be noted.

The capacity and level of service analysis at signalized intersections shall be performed using the following assumptions:

- Peak hour factors should be calculated on an approach by approach basis from the turning movement count data collected for the analysis.
- Right turns on red should not be considered unless specific data documenting the percentage of turns on red is collected.
- Unless approved by the City at the pre-submittal meeting all arrival types shall be assumed to be type 3 as defined in the Highway Capacity Manual.
- Signal controller unit extension should be assumed to be 3.0 for through movements and 2.0 for left turn movements unless otherwise approved by the City.
- Start up lost time should be assumed to be 2.0 seconds unless otherwise approved by the City.
- Extension of effective green should be assumed to be 3.0 seconds unless otherwise approved by the City.
- Traffic signal timing parameters for the existing conditions will be the actual signal timing in effect unless determined otherwise by the City.

Traffic signal timing parameters for the short term background conditions and the short term conditions with the development will use signal cycle lengths between 80 and 120 seconds. Cycle lengths and Individual green intervals will be calculated to provide the least overall intersection delay while maintaining all movements below benchmark thresholds whenever possible. Clearance intervals shall be the actual times currently in effect for all scenarios analyzed. Where different signal phasing from the existing is used for the analysis this change shall be noted in the list of traffic impacts. Where traffic signals are part of a coordinated signal system or where proposed new signals are within a half mile of another signal the cycle lengths used for analysis should be the same at all intersections analyzed.

- Saturation flow rate will be assumed to be 1900 passenger cars per hour of green per lane (pcphgpl).
- Lane widths should be assumed to be 12 feet wide unless other data shows otherwise.
- 2% trucks should be assumed for all movements unless approved otherwise by the City.
- Saturation flow adjustment factors should be as per the Highway Capacity Manual.
- Where dual left turns exist or are proposed they shall be assumed to operate in a protected only mode.
- Free running right turns that are not effected by the signal timing should be excluded from the analysis.

3. *LOS Analysis Unsignalized Intersections.* Level of service analysis for unsignalized intersections shall be done in accordance with the methodology for unsignalized intersections in the latest edition of the Highway Capacity Manual. The results of the unsignalized intersection analysis should be shown in the table or diagram used for signalized intersection results. The following assumptions should be used for the analysis of unsignalized intersections:

- Duration of analysis period is assumed to be .25 hour.
- Peak hour factors should be calculated on an approach by approach basis from the turning movement count data collected for the analysis.
- 2% trucks should be assumed for all movements unless approved otherwise by the City.
- Saturation flow rate will be assumed to be 1700 pcphgpl.
- Critical gap and follow up time shall be in accordance with the values given in the Highway Capacity Manual.

4. *Long Range Assessment.* Assessment techniques for both long term background and long term with the proposed development will require analysis using the planning methodology for signalized intersections and the unsignalized intersection methodology for unsignalized intersections as outlined in the latest

edition of the Highway Capacity Manual. The condition (i.e. under capacity, near capacity, over capacity etc.) for signalized intersections and the level of service for unsignalized intersections should be reported in a table or diagram. Assumptions for the long-range unsignalized intersection analysis shall be the same as for the short-term analysis. The following assumptions shall be used for the long-range signalized intersection analysis.

- A peak hour factor of 0.9 shall be used.
- Cycle lengths between 80 and 120 seconds shall be used.

5. *Access Evaluation.* Assessment techniques for existing conditions, short term background, short term with the development, long term background and long term with the development will also include an evaluation of each proposed access point. Accesses should be considered intersections and included in the level of service/capacity analysis described above.

Safety is the top priority at access points. The City has developed standards for the spacing and design of access points to provide optimum safety. Accesses should be reviewed to ensure compliance with City (and CDOT if on a State Highway) standards. Proposed access points that do not meet the pertinent standards should be noted. In addition, all access points should be evaluated to determine what auxiliary lanes are required in accordance with City standards and the State Highway Access Code (where applicable).

6. *Evaluation of Signal Progression in Coordinated Signal Systems.* According to City Standards, intersections with the potential for signalization should be spaced no closer than one half mile. If a development proposes an access or intersection that is projected to be signalized and is less than a half mile from other signals or other planned signals a progression analysis shall be conducted to demonstrate that a new signal can be installed without negatively impacting progression.

The analysis shall consider all existing signals or possible future signals within one mile in each direction from the proposed signal location. On existing coordinated arterials, it must be demonstrated that the existing bandwidth in each direction can be maintained with the new signal installed. Where a new coordinated system will occur as a result of the new signal it must be demonstrated that a bandwidth of at least 45% can be achieved in each direction unless otherwise directed by the City. The following assumptions shall be used for the progression analysis:

- A cycle length between 80 and 120 seconds should be used for analysis.
- Actual prevailing speeds on the arterial shall be used for travel speed in the analysis.
- Split assumptions shall be based on projected turning movement volumes and designed to maintain all movements with at least 5% or more of the total intersection traffic at LOS C or better and below v/c ratio of 1.0.

Where pedestrian volumes are expected to be high (to be determined in the pre-submittal meeting), side street splits long enough to accommodate pedestrians shall be used assuming a 4.0 fps walking speed.

- Where left turn arrows are anticipated, protected/permissive phasing should be assumed unless dual left turns are projected. Then, protected only left turn phasing should be assumed.
- Lagging left turns will not be allowed for protected/permitted left turn phases.
- Any access where the required bandwidth cannot be achieved should be noted. Any such access shall remain unsignalized and have turning movements limited by driveway design and/or median islands to prevent the need for signalization. Time-space diagrams shall be included in an appendix to the study.

7. *Other Analysis.* Where the City deems it appropriate, other types of analysis may be required in the traffic impact study. Other types of analysis may include but are not limited to: Sight distance evaluation, transit and TDM opportunities, pedestrian/bicycle needs, environmental evaluations and evaluation of neighborhood impacts.

(Ord. 1412 §2, 2008)

#### 16.25.050 Impact Mitigation Measures.

A. *Summary of Analysis.* A conclusions and recommendations chapter should be included in the traffic impact study. The results of the analysis should be summarized in this chapter. This summary should note all impacts to the transportation system and recommendations for site access, roadway improvements and travel demand strategies needed to maintain traffic flow safely and at a level of service in keeping with the City's congestion benchmark. In the event that the analysis indicates unsatisfactory levels of service or v/c ratio at any study intersection a description of proposed mitigation techniques or physical improvements to remedy deficiencies must be included. It should be noted if the recommended improvements are part of the City's Capital Improvement Program, are already financially obligated to another subdivider or if there is currently no funding dedicated for the improvements.

B. *Transportation Demand Management.* If TDM measures are recommended to mitigate unsatisfactory traffic conditions a specific TDM Implementation Proposal shall be developed and presented to the City. If accepted, this Implementation Proposal will become a condition of approval of the land use action requested.

C. *Evaluation of Proposed Improvements.* If unsatisfactory levels of service or v/c ratio are predicted by the study and recommendations are made for mitigation. Additional analysis must be presented which demonstrates the effectiveness of the mitigation.

(Ord. 1412 §2, 2008)

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### **ARTICLE I. GENERAL PROVISIONS**

#### **Chapter 17.10 Introductory Provisions**

**Section 17.100 Title of Provisions.** The regulations codified in this title shall be known and may be cited as the Zoning Ordinance of the City of Fountain.

**Section 17.101 Purpose of Provisions.** This Title is written in accordance with the Fountain Comprehensive Development Plan and is designed for promoting the health, safety, convenience and welfare of the citizens of Fountain. The title is intended to lessen congestion in the streets, provide adequate light and air, encourage the most appropriate use of land, ensure the protection and preservation of open lands and natural amenities and to conserve the value of property in accordance with the Fountain Comprehensive Development Plan.

**Section 17.102 Statutory Authority.** The Fountain Zoning Ordinance is authorized by Title 31, Article 23, Section 301, and et. seq., of the Colorado Revised Statutes and is declared to be in accordance with all provisions of the statutes.

**Section 17.103 Jurisdiction.** Provisions of this Title shall be effective within the incorporated limits of the City of Fountain.

**Section 17.104 Effective Date.**

A. These regulations shall be in effect from the date of adoption by the city council of the City of Fountain.

B. To the extent that the provisions of this title are the same in substance as the previously adopted provisions that they replace in the city 's zoning and subdivision ordinances, they shall be considered as continuations thereof and not as enactments unless otherwise specifically provided. Any situation that did not constitute a lawful, non-conforming building, use, or site under a previously adopted zoning ordinance does not achieve lawful non-conforming status under this ordinance.

**Section 17.105 Relationships to the Fountain Comprehensive Development Plan.** It is the intent of the planning commission and city council that this title implements the planning policies adopted by the planning commission and council as reflected in the comprehensive development plan and other related plans and planning documents. The planning commission and city council reaffirms its commitment that this title and any amendment to it are in conformity with the adopted planning policies. The city hereby expresses its intent that neither this Title nor any amendment to it may be challenged based on any alleged nonconformity with any planning document. The Fountain Comprehensive Development Plan shall be used as guide in decision-making and may be reasonable grounds for denial or reconsideration of the application.

**Section 17.106 Severability.** Should any section or provision of this title be decided by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the title as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

**Chapter 17.12 Application of Regulations**

**Section 17.120 Application to Developments in Process**

A. Except as otherwise set forth in Section 17.53, Planned Unit Developments, all applications for development initiated on and after January 3, 2002 shall be reviewed pursuant to the review process and standards set forth in this title, as revised by Ordinance No. 1048 and effective on that date. All applications for development submitted for review prior to January 3, 2002 shall be reviewed pursuant to the process and under the criteria set forth in applicable portions of this title in force prior to the effective date of Ordinance No. 1048.

B. No building or structure shall be erected and no existing building or structure shall be moved, altered or extended, nor shall any land, building, or structure be used for any purpose other than as provided for among the uses hereinafter listed in the district regulations for the zoning district in which such land, building or structure, is located.

C. No building or structure shall be erected nor shall any existing building or structure be moved, altered or extended, nor shall any open space surrounding any building or structure be encroached upon or reduced in any manner, except in conformity with the dimensional regulations, district development standards and supplementary regulations or other provisions hereinafter provided in the district regulations for the zoning district in which such building, structure, or open space is located.

D. The General Regulations and Development Standards, Article III of this title shall apply to all uses as follows:

1. New buildings and uses of land: Additions involving expansion of the gross floor area of any structure by twenty percent (20 %) or more above than in existence prior to the effective date of this title.
2. A change of use: Prior to issuance of a building permit, conditional use permit, or granting of a change in use, the applicant shall demonstrate that the property will comply with all applicable regulations in this title.

E. All buildings, parking areas, landscaping, signs, and other improvements regulated by the development standards in this title shall be constructed and installed in accordance with the approved plans filed with the City of Fountain, prior to issuance of a certificate of occupancy for the building or use.

F. The Zoning Administrator may allow certain improvements to be constructed or installed within an agreed upon time allowing for seasonal changes. Such arrangements may involve cashiers checks, performance bonds or other methods as deemed appropriate by the Zoning Administrator to assure eventual compliance with this title.

G. Every building shall be located and maintained on a "lot" as defined in this title.

H. No parcel of land which has less than the minimum width, depth and area requirements for the zoning district in which it is located may be divided from a larger parcel of land for the purpose, whether immediate or future, of building or development as a lot.

#### **Chapter 17.14 Vested Rights**

**Section 17.140 Site-Specific Development Plan.** For all site developments, the final approval step, irrespective of its title, which occurs prior to building permit, shall be considered the "site specific development plan" for purposes of Article 68 of Title 24, CRS as amended. "Site Specific Development Plan" means a plan describing with reasonable certainty the type and intensity of use proposed for a specific parcel or parcels of property. For detached one-family and two-family dwelling units, the final plat shall constitute a "site specific development plan."

**Section 17.142 Requests to Vest.** In the event an applicant for site development approval wishes approval to have the effect of creating vested property rights pursuant to Article 68 of Title 24, CRS as amended, the applicant must so request, in writing, at least thirty (30) days prior to the date said approval is to be considered, accompanied by the owner's proposed formal notice of the creation of the vested property right.

**Section 17.144 Terms.** A vested property right has a duration of three (3) years from the date of approval in accordance with CRS § 24-68-104. In the event amendments to a site specific development are proposed and approved, the effective date of such amendments, for purposes of duration of a vested property right, shall be the date of the approval of the original site specific development plan, unless the city council specifically finds to the contrary and incorporates such finding in its approval of the amendment.

**Section 17.146 Vested Rights by Separate Agreement**

A. The city council may, at its sole discretion, enter into a development agreement with a landowner and provide for the vesting of property rights for a period exceeding three (3) years where warranted in light of all relevant circumstances, including, but not limited to:

1. The project will be clearly and significantly reduced impacts on the existing infrastructure.
2. The project will construct public facilities, water, sanitary sewer, drainage facilities and/or public streets that are oversized or extended to be of obvious strategic value to the community.
3. The project will provide public open space and/or public parkland significantly greater than required and/or provide public recreational facilities that are of obvious strategic value to the community.
4. A commercial project or commercial component of a mixed-use project must result in clear benefits to the city as evidenced by new jobs and tax revenue.
5. The project will make special contributions that are clearly in the public interest.

B. Subsequent Reviews. Such agreement shall provide for subsequent reviews and approvals by the city council to insure compliance with the terms and conditions of the original approval.

C. Limitations on Remedy. The establishment of vested property rights shall not preclude the application of ordinances or regulations which are general in nature and are applicable to all property subject to land use regulation by a local government including but not limited to building, fire, plumbing, electrical and mechanical codes.

D. Reservation. The City of Fountain reserves the right to undertake land use regulation of the site specific development plan in contravention of such plan, provided that the compensation required under CRS § 24-68-105 (1), is paid to the landowner. The adoption of this Section is not intended, and shall not be construed, to enlarge the right of the landowner or the obligation of the city beyond payment of the required compensation under the vesting statute.

E. Effect. Nothing in this section is intended to create any vested property right, but only to implement the provisions of Article 68 of Title 24, CRS. In the event of the repeal of said Article or a judicial determination that said article is invalid or unconstitutional, this section shall be deemed to be repealed, and the provisions hereof no longer effective.

## **Chapter 17.16 Interpretation and Enforcement**

### **Section 17.160 Interpretation**

A. In the application and interpretation of the provisions of this title, the provisions of this title shall be held to be the minimum requirements. Where regulations for any overlay zoning district or specific regulations of a particular zoning district or general regulations of this title differ for a specific condition, the more restrictive shall apply, except as approved and documented within a planned unit development.

B. For words not defined in Chapter 17.71, the words used in this title shall have the common and customary meaning.

C. The Zoning Administrator or his authorized representative shall be charged with the clarification of the intent of all provisions of this title.

### **Section 17.161 Enforcement**

A. It shall be unlawful to erect or construct any building subject to the uniform building code unless the street giving access to the lot or parcel upon which right-of-way, unless specifically excepted by this section or other city ordinances.

B. No permits shall be issued by any officer of the city for the construction of any building, or other improvements requiring a permit, upon any unplatted land, unless and until the requirements hereof have been complied with.

C. No building or construction permit shall be issued prior to approval of the plot plan or site development plan, unless the property has been specifically exempted from the development process by definition or by official action of the city council, after planning commission review.

D. No plot plan or site development plan shall be approved by the Zoning Administrator unless such property is classified in the appropriate zoning district as defined in this title.

E. Any person engaging in development, change of use, modification or enlargement of use of any land, building, or structure that is subject to these regulations who does not obtain any necessary permits, approvals, or variances as prescribed by these regulations, who does not comply with permit, approval, or variance requirements, who acts outside the authority of the permit, approval or variance, or who otherwise violates any of the provisions of these regulations, may be enjoined by the city from engaging in such activity and may be subject to the procedures and penalties described below:

1. No building or structure shall be erected, moved, or structurally altered unless a building permit therefore has been issued by the Building Official or his authorized representative. All building permits shall be issued in conformance with the provisions of these regulations and all other applicable regulations and shall be valid for a period of time not exceeding six (6) months from the date of issue.
  2. No land or building shall hereafter be changed in use, nor shall any new structure, building, or land be occupied or used unless the owner shall have obtained a certificate of occupancy from the Building Official. After inspection by the Building Official, and provided that the use shall be in conformance with the provisions of these regulations and all other applicable regulations, a certificate of occupancy shall be issued within three (3) days of the time of notification by the owner that the building is completed and ready for occupancy. A copy of all certificates of occupancy shall be filed by the City Building Official and shall be available for examination by any person with either proprietary or tenancy interest in the property or building;
- F. The Zoning Administrator is empowered, pursuant to Title 2 of the City of Fountain Municipal Code to order in writing the remedy of any violation of any provision of these regulations. After any such order has been served, no work on or use of any building, other structure, or tract of land covered by such order shall proceed, except to correct such violation or comply with said order.

**Section 17.162 Persons Liable.** The owner, tenant, or occupant of any building or land or part thereof and any architect, builder, contractor, agent, or other person who participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this title may be held responsible for the violation and suffer the penalties and be subject to the remedies herein provided. The owner or any person in possession of any property used in violation of this title shall also be held responsible for any violation thereof whether or not the owner or person in possession or any agent thereof committed the violation or has neglected to prevent the violation by another person.

**Section 17.163 Remedies.** In case any building or structure is erected, constructed or reconstructed, altered, or repaired, converted or maintained, or in case any building, structure or land is used in violation of this title, or other regulation made under authority conferred hereby, the city, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, or repair, conversion, maintenance, or use, to restrain, correct, or abate such violation, to prevent the occupancy of such building, structure or land or to prevent any illegal act, conduct, business, or use in or about such premises.

**Section 17.164 Penalties.** Failure to comply with the terms of this title shall constitute a civil infraction. Any person who is found guilty of, or pleads guilty or nolo contendere to the commission of, the civil infraction shall be subject to a civil penalty as set forth in the City of Fountain Municipal Code. For each day, or portion thereof during which any violation continues, a person may be cited for a separate infraction. The penalties specified in this title



shall be cumulative and nothing shall be construed as either prohibiting or limiting the city from pursuing such other remedies or penalties in an action at law or equity.

**Section 17.165 Liability For Damage.** This title shall not be construed to hold the City of Fountain responsible for any damage to persons or property by reason of the inspection or re-inspection authorized herein or failure to inspect or re-inspect or by reason of issuing a building permit or certificate of occupancy as herein provided.

**Section 17.166 Permit Revocation.** A zoning, sign, building, conditional use, other permit or any certificate of occupancy issued under the provisions and procedures of this title may be revoked by an authorized representative of the city if the permit recipient fails to develop, improve, or maintain the property in accordance with the approved plans, the requirements of this title, or any additional requirements lawfully imposed by the city.

## **ARTICLE II. DISTRICT REGULATIONS**

### **Chapter 17.20 Districts and Maps**

#### **Section 17.200 Districts Established**

A. Districts. To carry out the purpose and provisions of this title, the incorporated area of the city is divided into the following zoning districts:

1. LLR: Large Lot Agricultural/Residential District.
2. RA: Residential Agricultural District.
3. R1: Single-Family Residential: Small Lot District.
4. RMU: Residential Mixed Use District.
5. MF: Multi-Family Residential District.
6. MHP: Manufactured Housing Park.
7. MHS: Manufactured Housing Subdivision District.
8. MU: Downtown Mixed Use District.
9. NC: Neighborhood Commercial District.
10. VC: Village Center District.
11. RC: Regional Commercial District.
12. BP: Business Parks District.
13. SO: Small Office/Warehouse.
14. PI: Planned Industrial Development District.
15. POS: Parks and Open Space District.
16. PUD: Planned Unit Development District.

B. Characteristics and Objectives describe the location, natural and built characteristics and attributes which shall be used to determine appropriate zoning district classifications for particular land parcels. In addition, this section describes the desired characteristics, functions and attributes of appropriate uses for the zoning district, carrying out the intent of the Fountain

Comprehensive Development Plan. Appropriate uses shall be located and designed to fulfill the desired characteristics and objectives of the zoning district in which they fall.

C. Use Regulations.

1. Permitted Principal Uses are uses by right, which are permitted anywhere within the particular zoning district in which they are identified. Additional uses that are not listed, but which are consistent with the purpose and objectives of the zoning district, and are similar in character and level of impacts as identified in the permitted and accessory uses for the zoning district, may also be permitted. Permitted principal uses, other than a single-family or two-family dwelling units, require site development plan approval. All structures require building permit approval.
2. Permitted Accessory Uses are a use by right that are customarily incidental to the identified permitted uses, if they meet any applicable regulations. Permitted accessory uses or structures, other than in conjunction with a single-family, two-family dwelling unit or permitted agricultural building, require site development plan approval and building permit approval, if required.
3. Conditional Uses are uses that may be allowed in the zoning district indicated subject to any applicable regulations. Conditional uses are permitted if it can be demonstrated that the location and the site proposed for the use are appropriate, facilitating the use in a manner which supports the purposes of the zoning district and which is compatible with the surrounding area. Additional uses that are not listed, but which are consistent with the purpose and objectives of the zoning district, and are similar in character and level of impacts as identified in the permitted and accessory uses for the zoning district, may also be permitted subject to review. Conditional uses require the issuance of a permit approved by resolution by the city council, after public hearings before the planning commission and the city council.

D. Dimensional Requirements are minimum restrictions which apply to the siting, and massing of buildings and structures on the lot, from which no variance will be permitted, except as provided under Variances and Appeals, Chapter 17.59, Planned Unit Developments, Chapter 17.53 and Non-conforming Uses, Structures, Lots and Parking, Chapter 17.60. Dimensional requirements include:

1. Minimum Lot Area.
2. Minimum Lot Width.
3. Maximum Gross Density.
4. Front, Side And Rear Yard Setbacks.
5. Minimum Open Space.
6. Maximum Impervious Coverage.
7. Maximum Building Height.

E. Development Standards are minimum standards that development and uses within the zoning district must meet to obtain site development plan or plot plan approval.

**Section 17.202 Official Zoning Map Adopted**

A. The location and boundaries of the zoning districts established by this title are shown on the Official Zoning Map of the City of Fountain. The official zoning map, together with all data shown thereon and all amendments thereto, is by reference made part of this title. The official zoning map shall be identified by the signature of the Mayor of the City and attested by the City Clerk and shall bear the seal of the City and the date of adoption. The official zoning map shall be located in the office of the City Clerk and shall be available for inspection at the City Hall.

### **Section 17.204 District Boundaries**

A. District Boundaries. Except where otherwise indicated, zoning district boundaries shall follow municipal corporation limits, section lines, lot lines, right-of-way lines, or extensions thereof. In property where a zoning district boundary divides a lot or parcel, the location of such boundary, unless indicated by legal description with distance and bearing or other dimensions, shall be determined by using the graphic scale of the Official Zoning Map. In interpreting the official zoning map, unless otherwise specified on the official zoning map, zoning district boundary lines are intended to be property ownership lines or lot lines; centerline of streets, alleys, channel waterways or similar rights-of-way; the centerline of blocks; section or township lines; municipal corporate boundaries; the centerline of stream beds; or other lines drawn approximately to scale on the official zoning map.

#### B. Boundary Clarification.

1. In the event that a zoning district boundary is unclear or is disputed, it shall be the responsibility of the Zoning Administrator to determine the intent and actual location of the zoning district boundary.
2. Any appeal of the determination of the zoning district boundary made by the Zoning Administrator shall be heard by the board of adjustment in accordance with the procedures outlined in Article V.

C. Amendments to Map. Changes in the boundaries of any zoning district shall be made only upon amendment to this title as specified in Chapter 17.58 and shall promptly be entered on the official zoning map with an entry on the map giving the number of the amending ordinance.

### **Section 17.206 Minimum Sizes for New Districts**

A. Minimum sizes for new zoning districts: Unless contiguous to the same zoning district, all newly created zoning districts shall comply with the following minimum district size. When contiguous to an existing district of the same designation these minimums shall not apply:

1. LLR Large Lot Agricultural/Residential District: ten (10) acres.
2. RA Residential Agricultural District: five (5) acres.
3. R1 Single-Family Residential Small Lot District: one (1) acre.
4. RMU Residential Mixed Use District: one (1) acre.
5. MF Multi-Family Residential District: two (2) acres.
6. MHP Manufactured Housing Park District: three (3) acres.
7. MHS Manufactured Housing Subdivision District: three (3) acres.

8. MU Downtown Mixed Use District: none.
9. NC Neighborhood Commercial District: none.
10. VC Village Center District: one (1) acre.
11. RC Regional Commercial District: one (1) acre.
12. BP Business Park District: two (2) acres.
13. SO Small Office/Warehouse District: one (1) acre.
14. PI Planned Industrial District: one (1) acre.
15. POS Parks and Open Space District: none.
16. PUD Planned Unit Development District: one (1) acre.

**Section 17.208 Listing Of Permitted Principal Uses.** No use shall be allowed in any zoning district unless it is specifically enumerated as an allowed principal use or accessory use in the particular zoning district. Designations in lists of uses shall be determined as follows: Permitted principal uses are uses by right and are permitted anywhere within the zoning districts indicated. All principal and accessory uses require a building permit approval, except as exempted by the uniform building code. Permitted principal uses, other than a single-family dwelling unit and two-family units, which only require a plot plan, require a site development plan. Uses listed as accessory uses are permitted only if they meet specific criteria contained in this title, and can demonstrate that they are clearly accessory to the principal use. No accessory uses or structures shall be permitted on a lot unless the principal use or structure is previously existing or until construction has begun on the principal use or structure. A conditional use may be allowed in the district indicated if it can be demonstrated that the location and the site proposed for the use is appropriate, facilitates the use in a manner which support the purposes of the zoning district, and is compatible with adjacent properties and uses. Uses not listed as permitted principal or permitted accessory uses require determination by the Zoning Administrator. The Zoning Administrator will determine if a principal use or permitted use not listed in Article II for the district in which the use is proposed, is similar in character and impact to those listed. If it is determined by the Zoning Administrator to be a substantially different use, then it will be considered and deemed to be prohibited in that zoning district.

**Section 17.209 Public and Quasi-public Uses Permitted in All Districts**

A. Except as otherwise regulated by Chapter 17.22 Zoning Districts, the following uses shall be permitted in all districts:

1. Distribution, transmission and service utility lines and routes requiring simple easements or installation in public rights-of-way.
2. Irrigation ditches.
3. Public or private nonprofit park and recreational facilities.
4. Railway rights-of-way, but not including railway maintenance facilities.

B. Except as otherwise regulated by Chapter 17.22 Zoning Districts, the following uses shall be permitted in all districts upon approval of a preliminary site development plan by the planning commission:

1. Public utility storage facilities, maintenance facilities, substations, treatment facilities, regulator stations, exchanges and business offices.
2. Fire and police stations.

3. Ambulance facilities.
4. Municipal administration buildings.
5. Schools, excluding private schools.

## **Chapter 17.22 Districts and Maps**

### **Section 17.220 Large Lot Agricultural/Residential District (LLR)**

A. Characteristics and Objectives. The Large Lot Agricultural/Residential District is designed to accommodate very low density single-family residential uses on large lots that may accommodate livestock at specified density limits as set forth in Chapter 17.45 and allow land to remain in agricultural production. The purpose of the LLR zoning district is to promote the continuance of single-family neighborhoods by:

1. Allowing for larger lot development that assists in retaining the rural character of Fountain.
2. Allowing for agricultural and home-based businesses to help provide homeowners with additional economic means for maintaining permanent residency.
3. Ensuring that new development retains the natural conditions of the environment and land.

#### B. Use Regulations.

1. Permitted Principal Uses:
  - a. Single-family detached dwelling units.
  - b. Farming and ranching.
  - c. Keeping of animals as specified in Chapter 17.45.
  - d. Agricultural uses including nurseries.
  - e. Well-maintained and landscaped open space or neighborhood parks with structures of no more than five thousand (5,000) square feet.
  - f. An owner-occupied or nonprofit group home for the aged as these terms are defined by C.R.S. § 31-23-303 if it is for no more than eight persons, is not located within seven hundred and fifty feet (750') of another such group home, and the owner or operator resides and maintains primary residency within the group home.
2. Permitted Accessory Uses:
  - a. Uses that are customarily incidental to any of the permitted principal uses and are located on the same lot.
  - b. Off-street parking for the principal use as specified in Chapter 17.34.
  - c. Home-based businesses which occupy less than thirty-five percent (35%) of the gross floor area of the principle use and which have no exterior indication of nonresidential activity except for parking or signage as specified in Chapter 17.34. The business owner or operator must reside and maintain primary residency within the principal single-family dwelling unit on the lot. Such use shall not create traffic congestion, parking problems, noise or any other nuisance or hazard in the neighborhood.

- d. Private garages, only for the storage of private automobiles owned and used by the occupants of the residential building.
- e. Home based day care serving one (1) to six (6) children for less than twenty-four (24) hours per day.

3. Conditional Uses:

- a. Public buildings, civic facilities, schools (except public schools exempt from municipal land use control pursuant to state law) and places of worship.
- b. An owner-occupied or nonprofit group home for the aged as these terms are defined by C.R.S. § 31-23-303, if it is for more than eight persons, is not located within seven hundred and fifty feet (750') of another such group home, and the owner or operator resides and maintains primary residency within the group home.
- c. Public utility storage facilities, maintenance facilities, substations, treatment facilities, regulator stations, exchanges and business offices.
- d. Commercial riding stables with a minimum lot area of two and one half (2-1/2) acres and no more than one (1) animal unit per acre.
- e. Childcare facilities.

C. Dimensional Requirements.

- a. Minimum Lot Area: two and one half (2.5) acres.
- b. Minimum Lot Width: two hundred feet (200').
- c. Maximum Gross Density: one (1) dwelling unit per two and one half (2 1/2) acres.
- d. Minimum Open Space: fifty percent (50%).
- e. Maximum Impervious Coverage: twenty-five percent (25%).
- f. Minimum Front Yard Setback: twenty-five feet (25').
- g. Minimum Side Yard Setback: twenty-five feet (25').
- h. Minimum Rear Yard Setback: twenty-five feet (25').
- i. Maximum Building Height: thirty-six feet (36').

D. Development Standards.

- 1. All buildings, riding rings, corrals, poultry houses, pigeon coops, chinchilla hutches and fenced areas wherein animals are kept shall not be located within fifty feet (50') of any property line.
- 2. Maximum total ground coverage for accessory structures shall be nine hundred (900) square feet per gross acre of property.
- 3. Development shall be located, sited and designed to blend in with the existing natural environment and minimize disruption to existing terrain, vegetation, drainage patterns, natural slopes and any other distinctive natural features.
- 4. Development design and site layout shall protect and preserve wetlands and riparian areas, critical wildlife habitats and natural features and landmarks.
- 5. Home-based businesses shall only receive delivery of supplies between the hours of 8:00 a.m. and 6:00 p.m. Agricultural uses are exempt from this requirement.

### **Section 17.222 Residential Agricultural District (RA)**

A. Characteristics and Objectives. The RA zoning district is intended for single-family detached residential units with a maximum gross density of one (1) dwelling unit per acre. Incidental recreational, institutional, public and accessory uses compatible with the character of the district and customarily found in proximity to low density residential areas may be permitted. Other objectives for the RA district include:

1. Allowing for larger lot development that assists in retaining the rural character of Fountain.
2. Allowing for limited home-based businesses to help provide homeowners with additional economic means for maintaining permanent residency.
3. Ensuring that new development is compatible with and enhances the character of existing residences and the natural environment.

#### B. Use Regulations.

1. Permitted Principal Uses:
  - a. Single-family detached dwelling units.
  - b. Well-maintained and landscaped open space or neighborhood parks with structures of no more than five thousand (5,000) square feet.
  - c. Keeping of animals as specified in Chapter 17.45.
  - d. An owner-occupied or nonprofit group home for the aged as these terms are defined by C.R.S. § 31-23-303 if it serves no more than eight (8) persons, is not located within seven hundred and fifty feet (750') of another such group home, and the owner or operator resides and maintains primary residency within the group home.
2. Permitted Accessory Uses. Uses that are customarily incidental to any of the permitted principal uses and are located on the same lot.
  - a. Parking for the principal use as specified in Chapter 17.34.
  - b. Home-based businesses which occupy less than thirty-five percent (35%) of the gross floor area on the lot and which have no exterior indication of nonresidential activity except for parking or signage as specified in Chapters 17.34 and 17.38. The business owner or operator must reside and maintain primary residency within the principal single-family dwelling unit on the lot. Such use shall not create traffic congestion, parking problems, noise or any other nuisance or hazard in the neighborhood.
  - c. Private garages, only for the storage of private automobiles owned and used by the occupants of the residential building.
  - d. Home based day care serving one (1) to six (6) children for less than twenty-four (24) hours per day.
  - e. Farming as defined under "agricultural activity" in section 17.710.
3. Conditional Uses:
  - a. Public Buildings, facilities, schools and places of worship may be permitted if the traffic impacts can be mitigated and if adequate parking arrangements are made either on site or on an adjacent site.

- b. An owner-occupied or nonprofit group home for the aged as these terms are defined by C.R.S. § 31-23-303 if it serves more than eight (8) persons, is not located within seven hundred and fifty feet (750') of another such group home, and the owner or operator resides and maintains primary residency within the group home.
- c. Public utility storage facilities, maintenance facilities, substations, treatment facilities, regulator stations, exchanges and business offices.
- d. Commercial riding stables with minimum lot area of two and one-half (2.5) acres and no more than one (1) animal unit per acre.
- e. Childcare facilities.

#### C. Dimensional Requirements.

- 1. Minimum Lot Area: one (1) acre.
- 2. Minimum Lot Width: one hundred and twenty (120) feet.
- 3. Maximum Gross Density: one (1) dwelling unit per acre.
- 4. Minimum Open Space: fifty percent (50%).
- 5. Maximum Impervious Coverage: twenty-five percent (25%).
- 6. Minimum Front Yard Setback: twenty-five feet (25').
- 7. Minimum Side Yard Setback: ten feet (10') plus an additional five feet (5') for any structure over eighteen feet (18').
- 8. Minimum Rear Yard Setback: twenty feet (20') for principal structure and accessory buildings.
- 9. Maximum Building Height: Thirty-six feet (36').

#### D. Development Standards.

- 1. All buildings, riding rings, corrals, poultry houses, pigeon coops, chinchilla hutches and fenced areas wherein animals are kept shall not be located within fifty feet (50') of any property line.
- 2. Maximum total ground coverage for accessory structures shall be nine hundred (900) square feet per gross acre of property.
- 3. Home-based businesses shall only receive delivery of supplies between the hours of 8:00 a.m. and 6:00 p.m. Agricultural uses are exempt from this requirement.

### **Section 17.224 Single-Family Residential Small Lot District: (R1)**

#### A. Characteristics and Objectives.

- 1. The R1 zoning district is intended for single-family detached residential units with a maximum gross density of six (6) units per acre.

#### B. Use Regulations.

##### 1. Permitted Principal Uses:

- a. Single-family detached dwelling units.
- b. Well-maintained and landscaped open space or neighborhood parks with structures of no more than five thousand (5,000) square feet.
- c. Owner-occupied or nonprofit group home for the aged as these terms are defined by C.R.S. § 31-23-303 if it serves no more than eight (8)



persons, is not located within seven hundred and fifty feet (750') of another such group home, and the owner or operator resides and maintains primary residency within the group home.

2. Permitted Accessory Uses:

- a. Uses that are customarily incidental to any of the permitted principal uses and are located on the same lot.
- b. Home-based businesses which occupy less than thirty-five percent (35%) of the gross floor area on the lot and which have no exterior indication of nonresidential activity except for parking or signage as specified in Chapters 17.34 and 17.38. The business owner or operator must reside and maintain primary residency within the principal single-family dwelling unit on the lot. Such use shall not create traffic congestion, parking problems, noise or any other nuisance or hazard in the neighborhood.
- c. Private garages, only for the storage of private automobiles owned and used by the occupant of the residential building.
- d. Home based day care serving one (1) to six (6) children for less than 24 hours per day.

3. Conditional Uses:

- a. Public buildings, facilities, schools and places of worship may be permitted if the traffic impacts can be mitigated and if adequate parking arrangements are made either on site or on an adjacent site.
- b. An owner-occupied or nonprofit group home for the aged as these terms are defined by C.R.S. § 31-23-303 if it serves more than eight (8) persons, is not located within seven hundred and fifty feet (750') of another such group home, and the owner or operator resides and maintains primary residency within the group home.
- c. Public utility storage facilities, maintenance facilities, substations, treatment facilities, regulator stations, exchanges and business offices.
- d. Childcare facilities.

C. Dimensional Requirements.

1. Minimum Lot Area: six thousand (6,000) square feet per dwelling unit.
2. Minimum Lot Width: sixty feet (60') per dwelling unit measured at building setback line.
3. Maximum Impervious Coverage: thirty-five percent (35%).
4. Minimum Open Space: twenty percent (20%).
5. Maximum Building Height: thirty feet (30').
6. Minimum Front Yard Setback: twenty-five feet (25').
7. Minimum Side Yard Setback: five feet (5') or one foot (1') for every three feet (3') of building height, whichever is greater.
8. Minimum Rear Yard Setback: twenty feet (20') and five feet (5') for accessory buildings.

D. Development Standards.

1. Accessory uses that are customarily incidental to the permitted principal use shall represent less than thirty-five percent (35%) of the building footprint on the lot.
2. Home-based businesses shall only receive delivery of supplies between the hours of 8:00 a.m. to 6:00 p.m.

### **Section 17.226 Residential Mixed Use District (RMU)**

#### A. Characteristics and Objectives.

1. The Residential Mixed Use District shall be located in those areas contiguous to the Fountain Downtown Mixed Use District and must be accessible by arterial or collector streets. The Residential Mixed Use District is intended to provide sites for combined residential and low impact commercial and service uses and to maintain a residential appearance of such sites by establishing appropriate site development standards. This district allows for higher density residential development in close proximity to commercial activity by:
  - a. Encouraging growth to occur where land and service capacities can accommodate it.
  - b. Ensuring that development is designed with sensitivity to nearby pre-existing development.
  - c. Providing for a broader mix in the type and cost of housing available for all housing consumers.

#### B. Use Regulations.

1. Permitted Principal Uses. Any of the following uses are permitted if the gross floor area of a single building or structure containing the use does not exceed five thousand (5,000) square feet.
  - a. Single-family dwelling units, two-family dwellings and town homes.
  - b. Multi-family dwellings not to exceed twelve (12) dwelling units per acre.
  - c. Professional offices, business offices, and studios.
  - d. Retail stores and commercial establishments less than three thousand (3,000) square feet.
  - e. Personal services such as barber shops, beauty shops, business and office services, and travel and ticket agencies.
  - f. Public parks, neighborhood playgrounds, common areas and recreational facilities.
  - g. Bed and breakfast establishments.
  - h. Commercial accommodations.
  - i. Places of worship.
  - j. Educational Centers, including day-care centers and cultural complexes less than five thousand (5,000) square feet.
  - k. Area-wide transportation and parking facilities that support area transit.
  - l. An owner-occupied or nonprofit group home for the aged as these terms are defined by C.R.S. § 31-23-303 if it serves no more than eight

(8) persons, is not located within seven hundred and fifty feet (750') of another such group home, and the owner or operator resides and maintains primary residency within the group home.

2. Permitted Accessory Uses:

- a. Uses that are customarily incidental to any of the permitted principal uses and are located on the same lot.
- b. Home-based businesses which occupy less than thirty-five percent (35%) of the building footprint on the lot and which have no exterior indication of nonresidential activity except for parking or signage as specified in Chapters 17.34 and 17.38. The home occupation shall not involve the use of any yard space or activity outside of the building that is not normally associated with residential use. The business owner or operator must reside and maintain primary residency within the principal single-family dwelling unit on the lot.

3. Conditional Uses:

- a. Public buildings, and facilities over five thousand (5,000) square feet.
- b. An owner-occupied or nonprofit group home for the aged as these terms are defined by C.R.S. § 31-23-303 if it serves more than eight (8) persons, is not located within seven hundred and fifty feet (750') of another such group home, and the owner or operator resides and maintains primary residency within the group home.
- c. Professional activities and convenience businesses if located on the ground floor of any residential development and if it is accessible from an arterial or collector street and adequate parking can be accommodated on-site. Conditional use applies only if the total area devoted to nonresidential uses is greater than three thousand hundred (3,000) square feet.
- d. Outdoor dining areas operated in conjunction with permitted eating and drinking establishments.
- e. Public utility storage facilities, maintenance facilities, substations, treatment facilities, regulator stations, exchanges and business offices.
- f. Group care facilities.

C. Dimensional Requirements.

1. Minimum Lot Area: five thousand (5,000) square feet.
2. Minimum Lot Width: fifty feet (50').
3. Maximum Residential Density: twelve (12) dwelling units per acre.
4. Maximum Impervious Coverage: eighty percent (80%).
5. Minimum Open Space: twenty percent (20%).
6. Maximum Building Height and Bulk Plane Envelope: The bulk of a building shall be restricted on the street facade by a bulk plane. The bulk plane shall start from a point twenty-five feet (25') above the existing grade measured on the street property line and will extend at a forty-five degree (45) angle towards the rear of the property until it intersects with a horizontal plane thirty-five feet (35') above the average existing grade of the property line.
7. Minimum Front Yard Setback: none.

8. Minimum Side Yard Setback: five feet (5').
9. Minimum Rear Yard Setback: five feet (5').

D. Development Standards.

1. Accessory uses that are customarily incidental to the permitted principal uses shall represent less than thirty-five percent (35%) of the building footprint on the lot.
2. Storage of materials accessory to any of the permitted uses for this district, provided all such storage is located within a structure.
3. The distance between detached structures shall not be less than five feet (5').
4. At least twenty percent (20%) of each site shall be landscaped.
5. All development shall be designed so that for the given location, egress points, grading and other elements of the development could not be reasonably altered to:
  - a. Reduce the number of access points onto an arterial collector or local street.
  - b. Minimize adverse impacts on any existing or planned residential uses.
  - c. Improve pedestrian or vehicle safety within the site and exiting from it.
  - d. Reduce the visual intrusion of parking areas, screened outdoor storage areas and similar accessory areas and structures.
6. Development in the Residential Mixed Use District, including buildings, walls and fences shall be so sited to:
  - a. Complement existing development in scale and location.
  - b. Provide sidewalks as specified in the Subdivision standards or an off road system of pedestrian and bicycle trails of greater than five (5) feet in width.
  - c. Create pocket parks or green spaces that are accessible to the public and at a minimum provide seating and landscaping.

**Section 17.228 Multi-Family Residential District (MF)**

A. Characteristics and Objectives. This district is intended to provide for the development of multi-family residential uses in areas where such development would be compatible with surrounding uses and where such intensive use would not create service problems. Incidental recreational, institutional, public, accessory uses customarily found in proximity to medium and higher density residential areas may be permitted.

B. Use Regulations.

1. Permitted Principal Uses:
  - a. Multi-family dwelling.
  - c. Single-family and two-family dwellings.
  - d. Rooming house, boarding house and dormitory.
  - e. Institutional and quasi-public uses: Community center, detoxification center, family care home, group home, health care support facility, religious institution, and homeless shelter.

- f. An owner-occupied or nonprofit group home for the aged as these terms are defined by C.R.S. § 31-23-303 if it serves no more than eight (8) persons, is not located within seven hundred and fifty feet (750') of another such group home, and the owner or operator resides and maintains primary residency within the group home.
- 2. Permitted Accessory Uses:
    - a. Uses that are customarily incidental to any of the permitted principal uses and are located on the same lot.
    - b. Home-based businesses which occupy less than thirty percent (35%) of the building footprint on the lot and which have no exterior indication of nonresidential activity except for parking or signage as allowed in Chapters 17.34 and 17.38. The home occupation shall not involve the use of any yard space or activity outside of the building, which is not normally associated with residential use. The business owner or operator must reside and maintain primary residency within the principal single-family dwelling unit on the lot. The business owner or operator must reside and maintain primary residency within the principal single-family dwelling unit on the lot.
    - c. Private garages, only for the storage of private automobiles owned and used by occupants of the residential building.
  - 3. Conditional Uses:
    - a. Public buildings, grounds, and facilities over five thousand (5,000) square feet.
    - b. An owner-occupied or nonprofit group home for the aged as these terms are defined by C.R.S. § 31-23-303 if it serves more than eight persons, is not located within seven hundred and fifty feet (750') of another such group home, and the owner or operator resides and maintains primary residency within the group home.
    - c. Professional activities and convenience businesses if located on the ground floor of any residential development and if it is accessible from an arterial or collector street and adequate parking can be accommodated on-site. Conditional review applies only if the total area devoted to nonresidential uses is greater than three thousand (3,000) square feet.
    - d. Outdoor dining areas operated in conjunction with permitted eating and drinking establishments.
    - e. Public utility storage facilities, maintenance facilities, substations, treatment facilities, regulator stations, exchanges and business offices.
    - f. Group care facilities.
    - g. Childcare facilities.

### C. Dimensional Requirements.

- 1. Minimum Lot Area:
  - a. Single-family Residential: six thousand (6,000) square feet.
  - b. Two-family Residential: seven thousand (7,000) square feet.
  - c. Multi-family Residential: ten thousand (10,000) square feet.

- d. Lot Area Per Residential Unit: one thousand (1,000) square feet.
- 2. Minimum Lot Width:
  - a. Single-family Residential: sixty (60) feet.
  - b. Two-family Residential: sixty (60) feet.
  - c. Multi-family Residential: seventy-five (75) feet.
- 3. Maximum Gross Density: sixteen (16) dwelling units per acre.
- 4. Maximum Building Height: forty (40) feet.
- 5. Minimum Open Space: two hundred fifty (250) square feet per dwelling unit.
- 6. Maximum Impervious Surface: none
- 7. Minimum Front Yard Setback: twenty-five (25) feet.
- 8. Minimum Side Yard Setback: five (5) feet for the first story, plus an additional five (5) feet for each additional story.
- 9. Minimum Rear Yard Setback: twenty (20) feet.

#### D. Development Standards.

- 1. All development shall be designed so that for the given location, egress points, grading and other elements of the development, could not be reasonably altered to:
  - a. Reduce disruption to the existing terrain, vegetation or other natural site features.
  - b. Minimize adverse impacts on any existing or planned residential uses.
  - c. Improve pedestrian or vehicle safety within the site and exiting from it.
  - d. Reduce the visual intrusion of parking areas, screened outdoor storage areas and similar accessory areas and structures.
- 2. All development including buildings, walls and fences shall be so sited to:
  - a. Complement existing development in scale and location.
  - b. Provide sidewalks as specified in the Subdivision standards or an off road system of pedestrian and bicycle trails of greater than four (4) feet in width.
  - c. Create pocket parks or green spaces that at a minimum provide seating and landscaping.

### **Section 17.230 Manufactured Housing Park District (MHP)**

#### A. Characteristics and Objectives.

- 1. As used in this chapter, a manufactured housing park shall be designated MHP. Manufactured Housing Parks are composed of residential, medium low-density occupancy of manufactured homes on areas of land having undivided individual, joint or common ownership. This zoning district replaces the district previously entitled MHPS and applies exclusively to those mobile home parks that were previously subject to the MHPS zoning district.
- 2. Location of Manufactured Housing Restricted. Manufactured housing shall be located only in a Manufactured Housing Park or Manufactured Housing Subdivision.
- 3. Existing Manufactured Housing as Nonconforming Uses. If a manufactured home is used for residential purposes and is not located within a Manufactured

Housing park or Manufactured Housing Subdivision on the date of this title, or is located on property annexed to the city after the effective date of this title, the manufactured home shall be subject to all rights and limitations set forth this Title, except as provided herein. If a manufactured home is moved from its location within the RA zoning district, the manufactured home shall not be replaced or relocated except within a Manufactured Housing Park or Manufactured Housing Subdivision, unless it was moved from a location that was zoned RA at the time of removal and the manufactured home is replaced in the original location within three (3) month's time of its removal, provided the location is still zoned RA, and the manufactured home complies with the requirements of this chapter.

4. Application for Rezoning. The applicant for a MHP district shall make written application for rezoning which shall be processed in the manner as set forth in Chapter 17.58. The application shall be accompanied by a site development plan that shall contain the information in Chapter 17.54.
5. Modification of Standards. The standards for manufactured housing parks as set forth herein may be modified or waived in appropriate circumstances by the city council, after planning commission review, where it is demonstrated that no additional impact to the city or public will result from such modification or waiver, and the design of the project offers alternative standards which are not detrimental to surrounding properties or the community.

#### B. Use Regulations.

##### 1. Permitted Principal Uses:

- a. Any single family dwelling regardless of its method of assembly including Type 1 and Type 2 manufactured homes, module homes assembled after 1976, factory built homes or on-site built homes, provided said dwellings have been constructed no more than ten (10) years prior to the effective date of this title.
- b. Community center.
- c. Group care facilities.

##### 2. Permitted Accessory Uses:

- a. Uses that are customarily incidental to any of the permitted principal uses and are located on the same lot or on an adjacent lot.
- b. Recreational facilities.
- c. Service facilities.
- d. Storage facilities.

##### 3. Conditional Uses:

- a. Recreational vehicle, occupied.
- b. Public utility storage facilities, maintenance facilities, substations, treatment facilities, regulator stations, exchanges and business offices.

#### C. Dimensional Requirements.

1. Minimum Manufactured Housing Park Area: three (3) contiguous acres.
2. Minimum Manufactured Housing Park Width: two hundred (200) feet.
3. Maximum Gross Density: eight (8) manufactured homes per gross acre.

4. Maximum Building Coverage: sixty-five percent (65%) of manufactured housing lot or space.
5. Minimum Individual Lot or Space area:
  - a. Singlewide Manufactured Housing: three thousand (3,000) square feet.
  - b. Doublewide or Expandable Manufactured Housing: four thousand (4,000) square feet.
  - c. Individual Lot or Space Width: forty (40) feet.
6. Minimum Setbacks. Within a manufactured housing park, dwelling sites are not sited on defined lots. Therefore, all setbacks shall be calculated based on the distance between structures.
  - a. Minimum Distance Between Structures: fifteen (15) feet.
7. Maximum Structural Height: thirty (30) feet.

D. Development Standards.

1. All manufactured homes are required to meet the provision of CRS Article 32, Title 24 that requires comprehensive regulation of the installation of manufactured homes to ensure the safety, affordability and performance of such dwelling units.
2. Interior streets. All interior streets shall be hard-surfaced with asphalt or concrete and shall provide convenient access to each individual lot or space. Street widths shall be in accordance with adopted city street standards.
3. Walkways. Walkways not less than four feet (4') in width and having an all-weather surface shall be provided from Manufactured Homes to service buildings.
4. Lighting. Interior streets, parking areas and walkways shall be adequately lighted to provide safe movement of vehicles and pedestrians at night.
5. Common storage area. An enclosed individual or common storage area for the use of the manufactured housing park residents shall be provided in an amount equal to eighty (80) square feet per manufactured home.
6. Landscaping. Landscaping which complies with the provisions set forth in Chapter 17.37 shall be submitted as part of the required site plan for the park. All setback areas, with the exception of driveways and sidewalks, and other open space shall be landscaped to soften the appearance of the manufactured housing park.
7. Recreation area. Not less than ten percent (10%) of the total land area of the manufactured housing park shall be devoted to space for private recreation and play areas.
8. Skirting. All manufactured housing shall be skirted between the floor and the ground surface with durable, all-weather construction as manufactured specifically for covering the undercarriage area of the manufactured housing park.
9. Replacement mobile homes. No replacement mobile home or manufactured home shall be moved onto any lot unless such mobile home or manufactured home is certified pursuant to the "National Manufactured Housing Construction and Safety Standards Act of 1974", 42 U.S.C. §5401 et seq., as amended or is certified by the Colorado Division of Housing pursuant to



section 24-32-701, et seq., C.R.S. A mobile home presently located within a mobile home park that is relocated within the same mobile home park is exempted from the requirements of this chapter.

### **Section 17.232 Manufactured Housing Subdivision District (MHS)**

A. Characteristics and Objectives. As used in this section, a planned manufactured housing subdivision district shall be designated MHS. These standards are designed for promoting a low-medium density, quiet environment for manufactured homes on individually owned lots in manufactured housing subdivisions. It is intended that these standards shall be such that the quality of an adjacent neighborhood is not detrimentally affected by an manufactured housing subdivision.

#### B. Use Regulations.

##### 1. Permitted Principal Uses:

- a. Type I manufactured homes, modular homes assembled after 1976, factory built homes and on-site built homes, provided said dwellings have been constructed no more than ten (10) years prior to the effective date of this title.
- b. Accessory buildings and uses incidental to a permitted principal use.
- c. Schools, public and private.
- d. Places of worship.

##### 2. Permitted Accessory Uses:

- a. Uses that are customarily incidental to any of the permitted principal uses and are located on the same lot or on an adjacent lot.
- b. Recreational facilities.
- c. Service facilities.
- d. Home based day care serving one (1) to six (6) children for less than twenty-four (24) hours per day.

##### 3. Conditional Uses:

- a. Child care facilities.
- b. Public utility storage facilities, maintenance facilities, substations, treatment facilities, regulator stations, exchanges and business offices.

#### C. Dimensional Requirements.

1. Minimum Manufactured Housing Subdivision Area: five (5) contiguous acres.
2. Minimum Lot Area: four thousand five hundred (4,500) square feet.
3. Minimum Lot Width: Fifty (50) feet.
4. Minimum Front Yard Setback: twenty (20) feet.
5. Minimum Side Yard Setback: five (5) feet.
6. Minimum Rear Yard Setback: ten (10) feet.
7. Maximum Structural Height: thirty feet (30').
8. Maximum Structural Coverage: sixty percent (60%).

D. Performance Standards. All modular structures and manufactured homes shall meet the following criteria:

1. Must be partly or entirely commercially manufactured in a factory.
  2. Must be not less than twenty-four (24) feet wide or less than thirty-six (36) feet long.
  3. The manufactured home and any additions to it must be permanently anchored to a permanent foundation that has been certified by a professional engineer licensed by the State of Colorado.
  4. The manufactured home and any additions to it must have standard exterior siding.
  5. The manufactured home and any additions to it must have a pitched roof structure with standard house shingles or other standard roofing materials.
  6. The manufactured home must require a change in plane on two sides of the home through the use of one or more of the following: porches, bay windows, patios, offset garages or home additions, breezeways, porticos or other similar site-built add-ons.
  7. Is certified pursuant to the "National Manufactured Housing Construction and Safety standards Act of 1974" 42 USC 5401, etc., as amended.
  8. Meets or exceeds, on an equivalent performance engineering basis, the standards established by HUD code or the uniform building code, and the Uniform Code for Abatement of Dangerous Buildings as adopted in the City of Fountain Municipal Code.
    - a. In determining the engineering basis, normal engineering calculations for testing following commonly accepted engineering practices, all components and sub-systems of a manufactured home must meet or exceed health, safety and functional requirements to the same extent as other single-family dwellings as outlined in the UBC.
    - b. As an equivalent performance engineering standard for manufactured homes, snow loads shall meet the requirements as outlined in the uniform building code, as adopted by the City of Fountain.
  9. All front doors must face the primary street.
- E. Development Standards for Manufactured Homes.
1. Perimeter fencing. Perimeter fencing for manufactured housing in any MHS district is required and shall not be located within the setback cited in C. 4. of this section.
  2. Fences shall conform to standards set forth in Chapter 17.37. Landscaping generally.
  3. All lots within a MHS shall comply with the landscaping standards set forth in Chapter 17.37.

### **Section 17.234 Downtown Mixed Use District (MU)**

A. Characteristics and Objectives. The Downtown MU zoning district is intended to accommodate specialized government functions, specialty retail and housing. The purpose of this district is to promote the development of Fountain's historic downtown area district for retail, service commercial, recreational institutional and secondary residential uses and to enhance the visual character, scale and vitality of the downtown by:

1. Providing convenient business and other services for resident families and visitors to Fountain.
2. Providing a broad mixture of uses within a compact pedestrian oriented environment.
3. Facilitating small business development and vitality.
4. Building a clear identity for the historic central core of Fountain that is distinct from other parts of the community.

#### B. Use Regulations.

##### 1. Permitted Principal Uses:

- a. Small businesses that provide services or limited and specialty retail establishments situated predominantly on the ground floor level.
- b. Personal services and servicing facilities that support activities within the downtown core.
- c. Restaurants.
- d. Entertainment.
- e. Commercial services.
- f. Offices: professional, financial, insurance personal services and other office uses deemed to be of similar impact by the Zoning Administrator.
- g. Public and quasi-public uses, institutions and services.
- h. Residential dwelling units (two-family dwellings, condominiums, town houses and group homes) only if located above ground floor nonresidential uses and not exceeding twelve (12) dwelling units per acre.
- i. Recreation, cultural and educational facilities, public or private.
- j. Commercial accommodations only if located above ground floor nonresidential uses.
- k. Small inns and lodges (5 to 20 rooms).
- l. Public or private open space and common areas.
- m. Places of worship.

##### 2. Permitted Accessory Uses:

- a. Storage of material, such as equipment, tools etc., accessory to any of the uses listed in permitted uses for this district, provided all such storage is located within a structure.
- b. Uses that are customarily incidental to any of the permitted principal uses and are located on the same lot.

##### 3. Conditional Uses:

- a. Outdoor dining areas operated in conjunction with permitted eating and drinking establishments.
- b. Public utility storage facilities, maintenance facilities, substations, treatment facilities, regulator stations, exchanges and business offices.
- c. Theaters, meeting rooms and convention centers.
- d. Hospitals and clinic facilities.

#### C. Dimensional Requirements.

1. Minimum Lot Area: none

2. Minimum Lot Width: none.
3. Maximum Impervious Coverage: ninety percent (90%).
4. Minimum Open Space: ten percent (10%).
5. Maximum Building Height: forty feet (40') or three (3) stories.
6. Street Setbacks: within eight (8) horizontal feet of a street property line only the following shall be permitted:
  - a. Driveways not exceeding twenty-five feet (25') in width.
  - b. Pedestrian or landscaped areas.
  - c. Unoccupied architectural projections of not more than four (4) horizontal feet with nine feet (9') of vertical clearance.
  - d. Awnings or signs provided they meet building and sign code clearance requirements.
7. Minimum Side Yard Setback: none is required if the side wall is a party wall; but ten feet (10') shall be allowed if the side wall is not a party wall.
8. Minimum Rear Yard Setback: none.

#### D. Development Standards.

1. Entrances to buildings shall be designed to ensure smooth and safe pedestrian circulation, and ease of snow removal.
2. Loading and unloading facilities shall be located in the rear of buildings and shall be screened from public view.
3. Buildings shall be designed to minimize snow shedding and runoff onto pedestrian areas and public ways.
4. All activities shall be wholly contained within buildings except for access, parking, loading and if screened by sight impervious fencing or plantings, storage and refuse containers.
5. Driveways crossing sidewalks on arterial streets may serve parking and loading areas only, but shall not serve any drive-in, drive-through or auto service facility.
6. An exterior front wall of a building (street grade) shall not exceed an increment of twenty-five feet (25') without being differentiated by settings providing structural bays, clearly expressed columns or other architectural elements to add interest at the sidewalk edge.
7. All street-level windows shall be recessed at least four inches (4").

### **Section 17.235 Central Mixed Use Business District (CMU)**

A. Characteristics and Objectives. The Central Mixed Use Business zone district is intended to accommodate specialized government functions, specialty retail and housing. The purpose of this district is to promote the development of Fountain's central business area district for retail, service commercial, recreational institutional and residential uses and to enhance the visual character, scale and vitality of Fountain's downtown by:

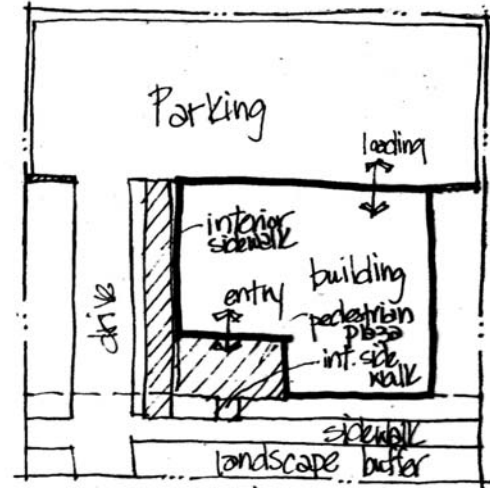
1. Providing convenient business and other services for residents and visitors to Fountain.

2. Providing a broad mixture of uses with consolidated access points as required by the Colorado Department of Transportation (CDOT) access management permit process<sup>18</sup>.
  3. Facilitating small business development and vitality.
  4. Building a clear identity for the corridor that is distinct from other parts of the community.
- B. Use Regulations.
1. Permitted Principal Uses:
    - a. Vehicle and Boat sales and services, vehicle service including auto detail, car washes, gas stations and auto service/repair and accessory storage or parking of vehicles which are awaiting service or pick-up, but excluding auto body and paint shops and storage of junk vehicles.
    - b. Commercial accommodations, including Bed & Breakfast facilities.
    - c. Commercial establishments engaged in providing personal or financial services to the general public, including but not limited to: banking, dry cleaning, laundromats, tailoring, shipping and receiving services that cater to walk-in customers, barber and beauty shops, garden shops, appliance stores, feed stores, fishing bait and tackle shops and businesses that offer goods and services for sale.
    - d. Indoor entertainment, entertainment facilities and complexes, including but not limited to: bowling alleys, arcades (pinball, video, etc.), theaters, dinner theaters, skating rinks, billiard parlors, teen clubs, concert or music hall and organizational clubs.
    - e. Offices used for the transaction of business, professional, or medical services and activities including, but not limited to: real estate brokers, non-profit organizations, travel agents, advertising or insurance agents, lawyers, physicians, dentists, architects, engineers, accountants, and other licensed professionals.
    - f. Pawn shops and second hand stores.
    - g. Eating and drinking establishments, including but not limited to: bakeries and delicatessens, cocktail lounges, taverns and bars, coffee shops, fountain and sandwich shops, restaurants and brew pubs, and nightclubs (with or without live entertainment), all of which may provide off site catering services. Drive-thru window services shall be allowed in this district provided they meet all other development criteria.
    - h. Indoor recreation, cultural and educational facilities, both public and private including, but not limited to: art gallery or studio, gymnasium, library, museum, private school, vocational training facilities, amphitheatres, and performing arts studios.
    - i. Residential dwelling units (two-family dwellings, condominiums, townhomes, apartment complexes, live/work residences, and group homes) not exceeding sixteen (16) dwelling units per acre.

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<sup>18</sup> Note- Access to businesses along Santa Fe Avenue require an access permit from the CDOT

- j. Outdoor dining areas operated in conjunction with permitted eating and drinking establishments.
- k. Retail establishments.
- l. Fabrication or assembly relating to retail sales with no outside storage.
- m. Day care centers or facilities.
- n. Transit facilities and structures such as park n' ride lots; public parking lots and bus stops.
- o. Contractor trades with no outside storage.
- p. Taxidermy.
- q. Recreational Vehicle Park
- r. Mortuary and Funeral Home.



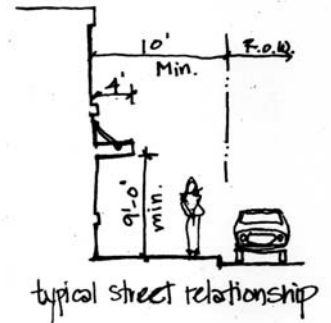
f.o.w.  
 Lot to have 75% max. impervious coverage - int. sidewalks & plaza not included in 75% (hatched)

- 2. Permitted Accessory Uses:
  - a. Storage of materials, such as equipment, tools etc., accessory to any of the uses listed in Permitted Principal and Conditional Uses for this district, provided all such storage is located within a structure. No outside storage shall be permitted.
  - b. Any accessory building, structures or uses in addition to and in conjunction with any permitted use in the district.
  - c. Home-based businesses which occupy less than thirty-five percent (35%) of a building footprint on the lot and which comply with the parking and signage requirements as specified in Chapters 17.34 and 17.38. The business owner or operator must reside and maintain primary residency within the principal single-family dwelling unit on the lot.
- 3. Conditional Uses:
  - a. Equipment storage if screened from public view.
  - b. Flea Markets.
  - c. Hospitals, medical and clinic facilities over 25,000 square feet.
  - d. Outdoor entertainment, entertainment facilities, entertainment complexes, recreation and cultural facilities.
  - e. Vehicle towing and impound lot if screened from public view.
  - f. Automotive body, or paint shop.
  - g. Single-family dwelling.

C. Dimensional Requirements.

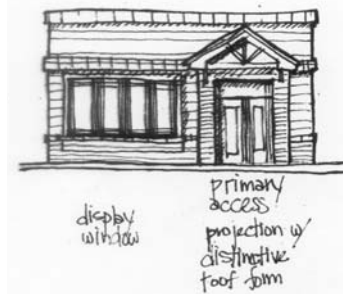
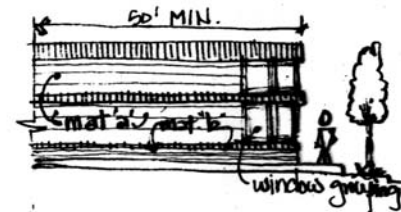
- 1. Minimum lot area: None.
- 2. Minimum lot width: None.
- 3. Maximum impervious coverage: Seventy-five percent (75%) excluding sidewalks, pedestrian plazas and other amenities.
- 4. Minimum landscaped area: Ten percent (10%).
- 5. Maximum building height: Forty feet (40') or three stories, whichever is less.

6. Setback from street: Ten feet (10') from street right-of-way. The following shall be allowed in the ten foot setback area:
  - a. Driveways not exceeding twenty-eight feet (28') in width that are perpendicular to the street. Driveways exceeding twenty-eight feet shall be separated by a landscaped or patterned hardscaped median.
  - b. Pedestrian or landscaped areas.
  - c. Unoccupied architectural projections of not more than four horizontal feet (4') with nine feet (9') of vertical clearance.
  - d. Awnings or signs provided they meet building and sign code clearance requirements.
7. Side yard setback: None is required if the side wall is a party wall; but five feet (5') is required if the side wall is not a party wall.
8. Rear yard setback: None is required if the rear wall is a party wall; but five feet (5') is required if the rear wall is not a party wall.
9. Transition between uses: Section 17.328 of this Ordinance shall not apply to this zone district.
10. Landscape Setback: Section 17.370.D shall not apply to this zone district.

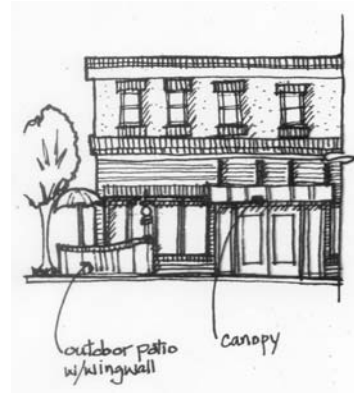


D. Development Standards.

1. Building Orientation and Function:
  - a. Entrances to buildings shall be designed to ensure smooth and safe pedestrian circulation, and ease of snow removal.
  - b. Buildings shall be designed so as to minimize snow shedding and runoff onto pedestrian areas and public ways.
  - c. Buildings shall orient facades and main entries toward the street, toward a plaza or toward a pedestrian way that leads directly to a street.
  - d. Residential, employment, retail, service and open space shall be arranged and designed such that they are convenient to and compatible with each other.
  - e. Minimum of two of the following design elements shall be incorporated for each fifty horizontal feet (50') of a building façade or wall while incorporating architectural consistency:
    - Changes in color, texture, or materials.
    - Projections, recesses, and reveals, expressing structural bays, entrances, or other aspects of the architecture with a minimum change of plane of 12 inches.

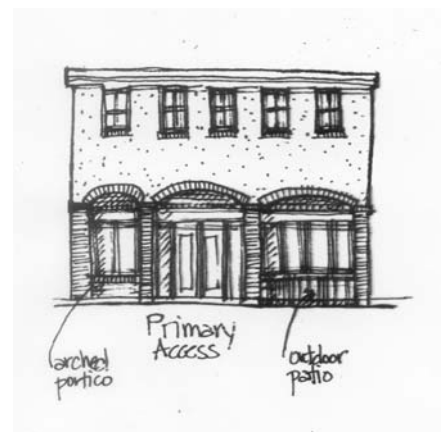
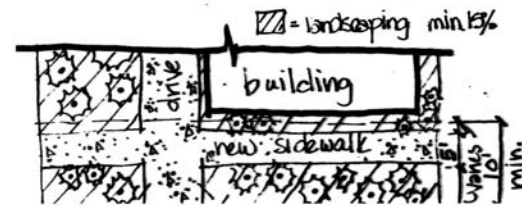
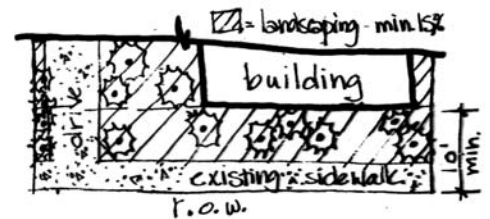


- Grouping of windows or doors.
  - Trellis, arcades, or pergolas providing pedestrian interest.
- f. Building facades facing a primary access street shall have clearly defined, highly visible customer entrances that feature no less than two of the following:
- Canopies or porticos.
  - Overhangs, recesses/projections.
  - Distinctive roof forms that vary in pitch and slope.
  - Arches.
  - Outdoor patios.
  - Display windows.
  - Planters or wing walls that incorporate landscaped areas and/or places for sitting.



2. Site Layout:

- a. Every lot within this district shall provide a defined edge treatment and clearly defined driveway entrances along the street frontage.
- b. Entrance drives shall be readily observable to the first time visitor.
- c. All development including buildings, walls and fences shall provide sidewalks at least five feet (5') in width between the front property line and any existing or proposed improvements (improvements shall include parking areas, walls, fences, building, storage areas, etc.) unless a sidewalk already exists along the street frontage.
- d. All development shall provide one of the following between the front property line and the outdoor parking area or the service area:
  - A landscaped area of a minimum ten feet (10') wide containing a minimum forty percent (40%) landscaping; or
  - A building, building façade, decorative wall, entry feature or other similar structure.
- e. All development shall provide at least two or more of the following design features:
  - Create useable pedestrian plaza or green spaces that are accessible to the public and at a minimum provide seating and landscaping.
  - Public or private outdoor seating areas.
  - Inviting street level storefront that is oriented toward pedestrians and provides visually interesting forms or displays.

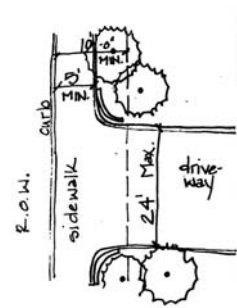
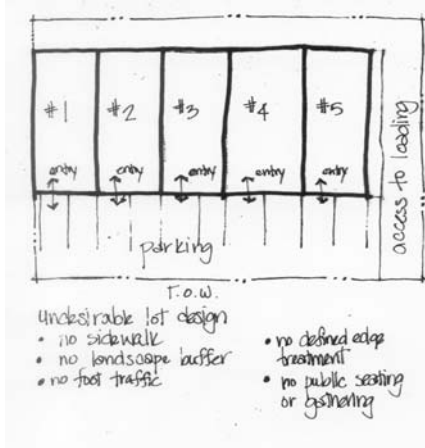




- Parking placed totally behind the primary structure, below grade, in a parking structure, or limit parking to one side of the building. In larger mixed-use projects, consider placing the parking within the interior of the project.

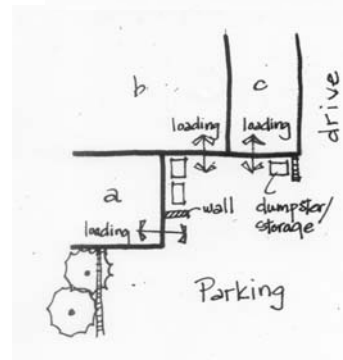
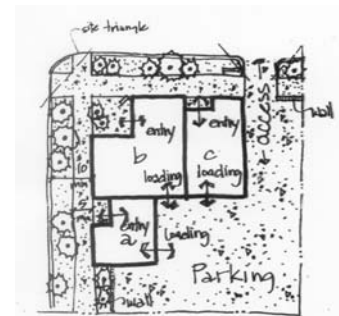
3. Parking, Vehicle Access and Loading Areas:

- a. Parking lots shall be screened from the street by low walls, landscaping and/or railings that effectively conceal parked cars.
- b. Loading and unloading facilities shall be located in the rear of buildings and shall be screened from public view.
- c. Parking lots shall be located at the side or rear of the buildings unless the size of the use, the building or the parking lot makes this infeasible. Avoid locating parking between a building's frontage and the street or open space.
- d. Driveways shall be perpendicular to the street.
- e. The number and width of driveways and curb cuts shall be minimized as required by CDOT. The sharing of vehicle entries between two adjacent lots is strongly encouraged.
- f. Continuous walkways shall provide connections to and between:
  - The primary entrance or entrances to each building, including pad site buildings.
  - All parking lots or parking structures that serve such buildings.
  - Any sidewalks or walkways on adjacent properties that extend to the boundaries shared with the development.
  - Any public sidewalk system along the perimeter streets adjacent to the development.



4. Service Areas, Trash Enclosures, Utility and Mechanical Equipment Locations:

- a. Storage and refuse containers and collection areas shall be screened by a six foot (6') high solid fence or masonry wall, styled to match the material of adjacent walls or the main building on the site and shall not front on to any street.
- b. Refuse storage and pick-up areas shall be combined with other service and loading areas.
- c. Utility meters shall not be mounted on the front or street facing façade of any building, but shall be mounted on the side or rear façade unless required by the utility provider.



- d. All mechanical equipment and utility meters placed on roof tops or the sides of a building shall be screened by way of screen walls, paint treatments, landscaping or similar techniques.
5. Application:
- a. See Sections 17.304 and Section 17.341 as they relate to the application of this section to existing, new or changes in land uses, buildings, site development, additions, occupancy or parking.

For all changes to a site, building or use that are not addressed in Sections 17.304 and 17.341, improvements to the visual nature of the landscaping, screening or building as stated in the requirements above shall still be required. The amount of landscaping, screening or building improvements required shall be based on the percentage of change to the use, building, site and/or occupancy. (For example, an addition to a building of five percent (5%) shall require an improvement to the same degree in either landscaping, screening or building façade.) (Ord. 1361, §2, 2007)

### **Section 17.236 Neighborhood Commercial District (NC)**

A. Characteristics and Objectives. NC zoning districts shall be established in those areas, which are located along community collector streets and within walking distance of existing neighborhoods. This district is designed to create walking and short distance destinations for residents. It is intended for small independently owned retail and service establishments, such as legal and professional services, cafes and restaurants, and specialty retail that are not dependent on high traffic volumes. These uses are of such character, scale, appearance and operation as to be compatible with the character of surrounding residential areas.

#### B. Use Regulations.

##### 1. Permitted Principal Uses:

- a. Any of the following uses if the gross floor area of a single building or structure containing the use does not exceed three thousand (3,000) square feet.
- b. Specialty retail and services, such as florists, studios, coffee shops, small appliance stores, bakery, candy and ice cream shops, barber shops/beauty salons, stationary store, pet shops and gift shops.
- c. Small-scale professional offices, such as medical, dental or other individual or health related offices.
- d. Restaurants, without drive-through facilities.
- e. Convenience store without gas pumps.

##### 2. Permitted Accessory Uses:

- a. Uses that are customarily incidental to any of the permitted principal uses and are located on the same lot.

##### 3. Conditional Uses:

- a. Any of the permitted principal uses where the gross floor area of a single building containing the use exceeds three thousand (3,000) may be permitted if the building and accessory facilities are designed to be

consistent with the desired character of the area, and do not adversely affect other uses in the area.

- b. Convenience stores with gas pumps.
- c. Public utility storage facilities, maintenance facilities, substations, treatment facilities, regulator stations, exchanges and business offices.

#### C. Dimensional Requirements.

1. Minimum Lot Area: none
2. Minimum Lot Width: none
3. Maximum Impervious Coverage: eighty percent (80%).
4. Minimum Open Space: twenty percent (20%).
5. Maximum Building Height: thirty feet (30').
6. Minimum Front Yard Setback: ten feet (10'), or average setback of all buildings on the block.
7. Minimum Side Yard Setback: five feet (5'). If located adjacent to a residential district or public use, the minimum setback shall be ten feet (10').
8. Minimum Rear Yard Setback: twelve feet (12').

#### D. Development Standards.

1. All development shall be designed so that for the given location, egress points, grading and other elements of the development, could not be reasonably altered to:
  - a. Reduce the number of access points onto an arterial or collector street.
  - b. Minimize adverse impacts on any existing or planned residential uses.
  - c. Improve pedestrian or vehicle safety within the site and exiting from it.
  - d. Reduce the visual intrusion of parking areas, screened outdoor storage areas and similar accessory areas and structures.
  - e. Reduce the number of removed trees measuring four inches (4") in diameter and taller than five (5) feet above ground level.
2. All development including buildings, walls and fences shall be so sited to:
  - a. Complement the scale and location of existing development.
  - b. Provide sidewalks as specified in the subdivision standards or an off road system of pedestrian and bicycle trails of greater than four feet (4') in width.
  - c. Create pocket parks or green spaces that are accessible to the public and at a minimum provide seating and landscaping.
3. New development shall minimize unused or unusable public or private areas in the side or rear yards.
4. Parking and loading areas for all uses must be paved and screened from view, by use of either fences or landscaping, of any adjacent residential properties.
5. Accessory uses that are customarily incidental to the permitted principal uses shall represent less than thirty-five percent (35%) of the ground floor area on the lot.
6. Garages or other buildings intended for vehicular storage shall provide a minimum eighteen foot (18') setback between property line and garage door

into the structure to accommodate vehicle driveway parking and prevent vehicle encroachment into the access street or alley.

7. No drive up facility of any sort is permitted.

### **Section 17.238 Village Center District (VC)**

A. Characteristics and Objectives. VC zoning districts shall be established in those areas, which are located at the intersection of at least one (1) community arterial street and community collector street. The VC zoning district is intended to provide shopping goods and services for surrounding neighborhoods, such as small-scale retail, professional offices and services, live/work development and medical offices. The intent of this zoning district is to encourage a mix of complementary commercial uses that share ingress and egress and clustered on-site parking and that are linked by pedestrian walkways, corridors and plazas.

B. Use Regulations. Any of the following uses are permitted if the gross floor area of a single building or structure containing the use does not exceed one hundred thousand (100,000) square feet.

1. Permitted Principal Uses:

- a. Retail establishments.
- b. Offices: professional, financial, insurance, personal services, medical and other office uses deemed to be of similar impact by the Zoning Administrator.
- c. Treatment and boarding of small animals within an enclosed structure.
- d. Pharmacies.
- e. Studios for professional work or services.
- f. Ambulance facilities.
- g. Restaurants.
- h. Places of worship.
- i. Commercial uses and professional services deemed to be of similar impact.
- j. Auto service/repair.

2. Permitted Accessory Uses:

- a. Storage of materials accessory to any of the uses listed in permitted uses for this district provided all such storage is located within a structure.
- b. Uses that are customarily incidental to any of the permitted principal uses and are located on the same lot.

3. Conditional Uses:

- a. Outdoor dining areas operated in conjunction with permitted eating and drinking establishments.
- b. Public utility storage facilities, maintenance facilities, substations, treatment facilities, regulator stations, exchanges and business offices.
- c. Recreational facilities and clubs.
- d. Theaters, meeting rooms and convention centers.
- e. Hospitals and clinic facilities.
- f. Indoor amusements.

- g. Child care facilities.
- h. Private schools.
- i. Lodging facilities.

#### C. Dimensional Requirements.

1. Minimum Lot Area: one (1) acre. Parcels of less than one (1) acres may be allowed if the applicant, through joint access easements or other negotiated means, has provided for:
  - a. Shared ingress and egress access between properties.
  - b. Consolidated access points with abutting properties.
  - c. Contiguous sidewalks with abutting properties.
  - d. Two (2) or more of the following: an integrated pattern of streets, outdoor spaces, building styles and land uses on any parcel abutting the parcel.
2. Minimum Lot Width: none.
3. Maximum Impervious Coverage: eighty-five percent (85%).
4. Minimum Open Space: fifteen percent (15%).
5. Maximum Building Height: forty feet (40').
6. Minimum Front Yard Setback: twenty feet (20').
7. Minimum Side Yard Setback: ten feet (10').
8. Minimum Rear Yard Setback: twenty feet (20').

#### D. Development Standards.

1. Entrances to buildings shall be designed to ensure smooth and safe pedestrian circulation, and ease of snow removal.
2. Loading and unloading facilities shall be located in the rear of buildings and shall be screened from public view.
3. Buildings shall be designed to minimize snow shedding and runoff onto pedestrian areas and public ways.
4. Driveways crossing sidewalks on arterial streets may serve parking and loading only, but may not serve any drive-in, drive-through or auto service facility.
5. All activities shall be wholly contained within buildings except for access, parking, loading and if screened by sight impervious fencing or plantings, storage and refuse containers.
6. New development shall minimize unused or unusable public or private areas in the side or rear yards.
7. All development shall be designed so that for the given location, egress points, grading and other elements of the development could not be reasonably altered to:
  - a. Reduce the number of access points onto an arterial or collector street.
  - b. Minimize adverse impacts on any existing or planned residential uses.

- c. Improve pedestrian or vehicle safety within the site and exiting from it.
- d. Reduce the visual intrusion of parking areas, screened outdoor storage areas and similar accessory areas and structures.
- e. Reduce the number of removed trees measuring four inches (4") in diameter.

### **Section 17.240 Regional Commercial District (RC)**

A. Characteristics and Objectives. RC zoning districts shall be established in those areas which are in close proximity to Interstate 25 or the proposed Powers Boulevard extension and/or highly visible from major roadways and have easy and safe access. This district is oriented to the traveler in the region and includes by way of example commercial uses such as gas stations, restaurants, motels and related businesses. It is intended to encourage a broad range of commercial services for visitors and residents, which are conveniently accessible by automobile, and which are designed to complement each other in character, scale, and proximity by:

- 1. Accommodating retail sales, services, and amenities which are oriented to serving a majority of the needs of residents and visitors and which generate substantial volumes of traffic.
- 2. Encouraging well planned attractive clusters or groupings of development that complement the scale of existing structures.
- 3. Encouraging a mix of complementary commercial uses that share ingress, egress, and clustered on-site parking, and that are linked by pedestrian corridors, sidewalks, or plazas.

#### B. Use Regulations.

- 1. Permitted Principal Uses:
  - a. Lodging and meeting facilities.
  - b. Entertainment complexes.
  - c. Automobile service stations.
  - d. Restaurants.
  - e. Destination retail, shopping centers, shopping malls, including large specialty retail establishments that people will drive distances to shop such as membership warehouses and natural food chain stores.
  - f. Office complexes with convenience retail located within each building.
  - g. Parks and common areas.
  - h. Area-wide transportation facilities.
  - i. Auto service/repair.
- 2. Permitted Accessory Uses:
  - a. Uses that are customarily incidental to any of the permitted principal uses and are located on the same lot.
- 3. Conditional Uses:
  - a. Outdoor recreation and amusements may be permitted if they are designed to be consistent with the desired character of the area, do not adversely effect other uses in the area and do not pose a threat to public safety.

- b. Public utility storage facilities, maintenance facilities, substations, treatment facilities, regulator stations, exchanges and business offices.

C. Dimensional Requirements.

1. Minimum Lot Area: forty thousand (40,000) square feet.
2. Minimum Lot Width and Depth: one hundred and fifty feet (150') wide; one hundred and fifty feet (150') deep.
3. Maximum Impervious Coverage: eighty percent (80%).
4. Minimum Open Space: fifteen percent (15%).
5. Maximum Building Height: fifty feet (50').
6. Minimum Front Yard Setback: twenty feet (20').
7. Minimum Side Yard Setback: twenty feet (20').
8. Minimum Rear Yard Setback: twenty-five feet (25').

D. Development Standards.

1. All development shall be designed so that for the given location, egress points, grading and other elements of the development could not be reasonably altered to:
  - a. Reduce the number of access points onto an arterial or collector street.
  - b. Minimize adverse impacts on any existing or planned residential uses.
  - c. Improve pedestrian or vehicle safety within the site and exiting from it.
2. All development including buildings, walls and fences shall be so sited to:
  - a. Complement the scale and location existing development within two hundred feet (200') of the site.
  - b. Provide sidewalks as specified in the subdivision standards or an off road system of pedestrian and bicycle trails of greater than five feet (5') in width.
  - c. Create pocket parks or green spaces that are accessible to the public and at a minimum provide seating and landscaping.
3. New development shall minimize unused or unusable public or private areas in the side or rear yards.
4. Parking and loading areas for commercial and office uses must be paved and screened from view of any adjacent residential properties.

**Section 17.242 Business Park District (BP)**

A. Characteristics and Objectives. This district is intended to protect and preserve prime industrial lands for high quality manufacturing, assembly, research and development and related supporting uses. BP zoning districts should be established in those areas that have direct access to major transportation thoroughfares. The primary objective of this district is to ensure the proper development and use of land and improvements so as to achieve a high quality, master planned, campus-like, nuisance free environment for manufacturing, assembly, research and development land uses. All development within a BP zoning district must follow a preliminary site development plan for the area. The uses, regulations and standards of this district strive to upgrade industrial development standards to protect the owner of each parcel against

development and uses which could depreciate the value of individual parcels. This district allows a mixture of office, light industrial and commercial uses.

B. Use Regulations.

1. Permitted Principal Uses:

- a. Uses primarily engaged in research and development activities including research laboratories and facilities, development laboratories and facilities and compatible light manufacturing facilities such as but not limited to the following: bio-chemical; chemical; genetics; environmental and natural resources; electronics; pharmaceutical and sonic and sound imaging.
- b. Office uses aimed at providing areas for intensive employment including but not limited to professional, financial, insurance, personal services, and research and development facilities.
- c. Uses primarily engaged in manufacturing, assembly, testing and repair of components, devices, equipment and parts. Examples include: communication, transmissions, and reception equipment; computer hardware and software development; telecommunication devices and educational or training facilities.
- d. Any production, fabrication or assembly activities, provided that the proposed use can demonstrate that it will not create traffic hazards, noise, dust, noxious fumes, odors, smoke, vapor, vibration or industrial waste disposal problems, and if the characteristics and appearance do not have undesirable impacts on surrounding used.
- e. Warehousing and distribution facilities provided that such activities shall be conducted wholly within in a completely enclosed building and shall not occupy more than fifty percent (50%) of the area of any building.

2. Permitted Accessory Uses:

- a. Uses that are customarily incidental to any of the permitted principal uses and are located on the same lot.
- b. Employee recreational facilities, dining facilities, and personal and professional services as an accessory use incidental to the primary use of the parcel.
- c. Associated uses to include by way of example: medical offices, pharmacies, childcare facilities, public or private spaces and community facilities.

3. Conditional Uses:

- a. Retail, personal and professional services, offices, child-care facilities and restaurants.
- b. Public utility storage facilities, maintenance facilities, substations, treatment facilities, regulator stations, exchanges and business offices.
- c. Lodging and meeting facilities.
- d. Restaurants.

C. Dimensional Requirements.



1. Minimum Lot Area: none.
2. Minimum Lot Dimensions: none.
3. Maximum Impervious Coverage: eighty percent (80%).
4. Minimum Open Space: fifteen percent (15%).
5. Maximum building height: forty feet (40') for every additional percentage of useable open space the building height may be increased by the same number. Five percent (5 %) increase in open space equals an additional five feet (5') in building height.
6. Minimum Front Yard Setback: twenty feet (20').
7. Minimum Side Yard Setback: ten feet (10').
8. Minimum Rear Yard Setback: ten feet (10').

#### D. Development Standards.

1. All development shall be designed so that for the given location, egress points, grading and other elements of the development could not be reasonably altered to:
  - a. Reduce the number of access points onto an arterial or collector street.
  - b. Minimize adverse impacts on any existing or planned residential uses.
  - c. Improve pedestrian or vehicle safety within the site and exiting from it.
  - d. Reduce the visual intrusion of parking areas, screened outdoor storage areas and similar accessory areas and structures.
  - e. Reduce the number of removed trees measuring four inches (4") in diameter and taller than five feet (5') above ground level.
2. All development including buildings, walls and fences shall be so sited to:
  - a. Complement the scale and location of existing development.
  - b. Provide sidewalks as specified in the subdivision standards or an off road system of pedestrian and bicycle trails of greater than five feet (5') in width.
  - c. Create pocket parks or green spaces that are accessible to the public and at a minimum provide seating and landscaping.
3. New development shall minimize unused or unusable public or private areas in the side or rear yards.
4. Parking and loading areas for all uses must be paved and screened from view of any adjacent residential properties.

### **Section 17.243 Small Office/Warehouse District (SO)**

A. Characteristics and Objectives. This district is intended for uses such as smaller businesses, office, warehouse, research and development space, contractor/trades, repair and equipment shops and workshops that may require the distribution of goods by cargo vans and smaller trucks (UPS, FEDEX) but not semi trucks. The site is easily accessible onto a major arterial or major street but circulation is handled internally and on-site. The uses do not have any visible outdoor storage.

#### B. Use Regulations.

1. Permitted Principal Uses. Any of the following uses, if there is no outside storage and access onto major arterials and streets are combined whenever possible.
  - a. Repair, professional trade and contractor/trade services.
  - b. Businesses engaged in providing health, grooming and kenneling services for animals, provided all activities other than kenneling are in a completely enclosed building.
  - c. Businesses located in an enclosed building, which does research, and development of products or processes but do not include materials in amounts which would be considered hazardous to general health and welfare.
  - d. Uses primarily engaged in selling goods or merchandise to the general public for personal, household, or business use and rendering services incidental to the sale of such goods, including building materials and garden supplies.
  - e. Auto repair/service.
  - f. Commercial accommodations.
  - g. Places of worship.
  - h. Educational centers, including day-care centers and cultural complexes.
  - i. Self-storage facilities.
  - j. Lodging and meeting facilities.
  - k. Restaurants.
  - l. Offices/warehouses.
2. Permitted Accessory Uses
  - a. Uses that are customarily incidental to any of the permitted principal use and are located on the same lot.
3. Conditional Uses
  - a. Outdoor dining areas operated in conjunction with permitted eating and drinking establishments.
  - b. Public utility storage facilities, maintenance facilities, substations, treatment facilities, regulator stations, exchanges and business offices.
  - c. Theaters, meeting rooms and convention centers.
  - d. Outside storage if screened from view.

#### C. Dimensional Requirements.

1. Minimum Lot Area: none.
2. Minimum Lot Width and Depth: none.
3. Maximum Impervious Coverage: eighty percent (80%).
4. Minimum Open Space: fifteen percent (15%).
5. Maximum Building Height: fifty feet (50').
6. Minimum Front Yard Setback: ten feet (10').
7. Minimum Side Yard Setback: five feet (5'), except where adjoining or immediately across the street from a residential district, educational institution, or park, there shall be a side yard setback of not less than ten feet (10').

8. Minimum Rear Yard Setback: twelve feet (12'), except where adjoining or immediately across the street from a residential district, educational institution, or park, there shall be a side yard setback of not less than twenty feet (20').

D. Development Standards.

1. All development shall be designed so that for the given location, egress points, grading and other elements of the development could not be reasonably altered to:
  - a. Reduce the number of access points onto an arterial or collector street.
  - b. Minimize adverse impacts on any existing or planned residential uses.
  - c. Improve pedestrian or vehicle safety within the site and exiting from it.
2. All development including buildings, walls and fences shall be so sited to:
  - a. Complement the scale and location of existing development within one hundred feet (100') of the site.
  - b. Provide sidewalks at least five feet (5') in width.
  - c. Create pocket parks or green spaces that are accessible to the public and at a minimum provide seating and landscaping.
3. New development shall minimize unused or unusable public or private areas in the side or rear yards.

**Section 17.244 Planned Industrial District (PI)**

A. Characteristics and Objectives. PI zoning districts may be established in those areas that are appropriate for limited industrial uses and contractor trades. This district should be created in areas having access to major streets and a low likelihood of conflict with other uses, as well as a low potential for adverse impacts on the overall visual image of key areas, including entryways into the community. This district is intended to accommodate a range of industrial activities that are of limited intensity, such as contractor trades, research and development institutions, warehousing and wholesaling, and small-scale production, fabrication, assembly or processing activities, to help provide a diversified employment base for the community by:

1. Allowing for planned industrial uses and the development of professional trades and contractor services that may serve and provide jobs for the City of Fountain and the surrounding area, in a manner, which minimizes adverse impacts on adjacent uses and the community.
2. Limiting uses to those that will not create traffic hazards, noise, dust, fumes, odors, smoke, vapor, vibration or industrial waste disposal problems, but their operating characteristics and appearance may have impacts not desirable in other zoning districts.

B. Use Regulations.

1. Permitted Principal Uses: Any of the following uses, if outside storage and activity areas, other than employee and visitor parking or loading areas, do not exceed fifteen percent (15%) of the lot area and such uses are screened from view.
  - a. Repair, professional trade and construction contractor services.

- b. Production, fabrication or assembly activities, provided that the proposed use can demonstrate that it will not create traffic hazards, noise, dust, noxious fumes, odors, smoke, vapor, vibration or industrial waste disposal problems, and if the characteristics and appearance does not have undesirable impacts on surrounding uses.
  - c. Railroad spur lines where such lines are used only for delivery or loading of freight to industries or businesses in occupancy of this zoning district but not including mainline.
  - d. Commercial laundries and dry cleaning.
  - e. Printing or publishing facilities.
  - f. Vocational training center and school.
  - g. Retail sale of products produced on-site.
  - h. Distribution centers and warehouse uses with less than fifty thousand (50,000) square feet of building area.
  - i. Auto service/repair.
  - j. Self-storage facilities.
2. Permitted Accessory Uses:
- a. Uses that are customarily incidental to any of the principal uses and are located on the same lot, subject to the restrictions on outside activities cited above for the permitted principal uses.
3. Conditional Uses:
- a. Any of the permitted uses requiring an outside storage or activity area that is equal to or greater than fifteen percent (15%) of the lot area, may be permitted if such outside uses will not have an adverse impact on existing uses in the area, including but not limited to safety, noise, odor, light or visual impacts.
  - b. Convenience businesses.
  - c. Trucking terminals.
  - d. Storage or warehouse facilities for materials or equipment such as explosives or any materials that are classified as toxic or hazardous under state and federal law, may be permitted if such a use demonstrates continuing compliance with state and federal requirements and will not have an adverse impact on existing uses in the area, including but not limited to safety, noise, odor, light or visual impacts.
  - e. Pawnshops, if it is not established, operated, or maintained within one thousand feet (1,000') of any commercial zoning district.
  - f. Adult-oriented use, if it is not established, operated, or maintained within one thousand feet (1,000') of a residential zoning district, place of worship, park, and/or school and is not established, operated, or maintained within three hundred feet (300') of another adult-oriented use.
  - g. Public utility storage facilities, maintenance facilities, substations, treatment facilities, regulator stations, exchanges and business offices.
  - h. Restaurants.

C. Dimensional Requirements.

1. Minimum Lot Area: twenty thousand (20,000) square feet.
2. Minimum Lot Width: one hundred feet (100').
3. Maximum Impervious Coverage: ninety percent (90%).
4. Minimum Open Space: fifteen percent (15%).
5. Maximum Building Height: thirty feet (30').
6. Minimum Front Yard Setback: twenty feet (20').
7. Minimum Side Yard Setback: fifteen feet (15').
8. Minimum Rear Yard Setback: twenty feet (20').

D. Development Standards.

1. All development shall be designed so that for the given location, egress points, grading and other elements of the development satisfy the requirements set forth below to the greatest extent practicable:
  - a. Reduce disruption to the existing terrain, vegetation or other natural site features.
  - b. Minimize adverse impacts on residential uses in the area.
  - c. Improve vehicle safety within and exiting from the site.
  - d. Reduce the visual intrusion of parking areas, screened outdoor storage areas and similar accessory areas and structures.
  - e. Reduce the number of removed trees measuring four inches (4") in diameter and taller than five feet (5') above ground level.
2. Parking and loading areas shall be screened from view of any adjacent residential properties.

**Section 17.246 Parks and Open Space District (POS)**

A. Characteristics and Objectives. The POS zoning district shall contain those areas, which are considered to be of special significance for their natural importance in defining the City of Fountain, or for the protection of public health and safety. The POS zoning district is intended to preserve the publicly owned or privately dedicated environmentally sensitive and culturally significant areas that are prominent features of the community, undeveloped or open space lands from intensive development and protect public health and safety by:

1. Preserving distinctive natural features including drainage swales, streams, hillsides, ridges, rock outcroppings, vistas, natural plant formations, trees and scenic views.
2. Preserving distinctive features of the city's railroad and agricultural heritage, which are a cultural amenity to the community.
3. Avoiding development in areas that may be a threat to public health and safety.

B. Use Regulations.

1. Permitted Principal Uses:
  - a. Agriculture, horticulture, and grazing activities if the El Paso County Assessor assesses the land as agricultural.

- b. Public parks, recreational areas and open space.
- 2. Permitted Accessory Uses:
  - a. Accessory buildings and uses customarily incidental to permitted agricultural uses, including barns, sheds, corrals and similar uses.
  - b. Retail sale of plants, trees or other farm or agricultural products grown, produced or made on the premises.
- 3. Conditional Uses:
  - a. Any use within public parks, recreation areas and open spaces which involves assembly of more than two hundred (200) persons together in one (1) building or group of buildings, or in one (1) recreational area or other public recreational facility.
  - b. Public and private schools, colleges and places of worship.
  - c. Private golf, tennis, swimming and riding clubs, rodeo facilities, hunting and fishing lodges and guide services.
  - d. Semi-public and institutional uses such as convents and religious retreats.
  - e. Keeping of horses subject to Chapter 17.45.

#### C. Dimensional Requirements.

- 1. Minimum Lot Area: one (1) acre.
- 2. Minimum Width Dimensions: one hundred feet (100').
- 3. Maximum Impervious Coverage: fifteen percent (15%) or three thousand (3,000) square feet.
- 4. Maximum Building Height: twenty-seven feet (27').
- 5. Minimum Front Yard Setback: twenty feet (20').
- 6. Minimum Side Yard Setback: twenty feet (20').
- 7. Minimum Rear Yard Setback: twenty feet (20').

#### D. Development Standards.

- 1. Development shall be located, sited and designed to blend in with the existing natural environment and minimize disruption to existing terrain, vegetation, drainage patterns, natural slopes and any other distinctive natural features.
- 2. Accessory uses that are customarily incidental to the permitted principal uses shall represent less than thirty-five percent (35%) of the ground floor area on the lot.

### **Section 17.248 Planned Unit Development District (PUD)**

#### A. Purpose, Conditions and Standards.

- 1. Purpose. Planned Unit Developments (PUD) are intended, to facilitate the achievement of the purposes and objectives of this title, the Fountain Comprehensive Development Plan and to permit the application of new technology and greater freedom of design in land development than may be possible under the application of standard zoning districts. Developments, however, must demonstrate that flexibility from the provisions of the existing

zoning will result in higher quality development and when one or more following purposes can be achieved:

- a. The provision of necessary commercial, recreational and educational facilities conveniently located to housing.
  - b. The provision of well located, clean, safe and pleasant industrial sites involving a minimum impact on transportation facilities.
  - c. The encouragement of innovations in residential, commercial, and limited industrial development and renewal so that the growing demands of the population may be met by greater variety in type, design, and lay-out of buildings and by the conservation and more efficient use of open space ancillary to said buildings.
  - d. The encouragement of a more efficient use of land and of public services, or private services in lieu thereof, and to reflect changes in the technology of land development so that resulting economies may inure to the benefit of those who need homes.
  - e. A better distribution of induced traffic on the streets and highways.
  - f. Conservation of the value of the land.
  - g. Preservation of the site's natural characteristics.
2. Conditions. The use of the PUD provisions must be in accordance with the Fountain Comprehensive Development Plan and is dependent upon the submission of an acceptable plan, and satisfactory assurances that the plan will be carried out. The PUD is an entire development program concept and shall be reviewed as a whole.
- a. The planned unit development shall be considered by the planning commission and city council from the point of view of the relationship and compatibility of the individual elements, which make up the development and, only after specifically and properly applied for, may be approved by the planning commission and city council in accordance with the provisions of this ordinance.
  - b. The parcel being considered for a PUD must have been legally created pursuant to the subdivision regulations.
  - c. The request for PUD approval is a voluntary act by the applicant and does not require or imply any acceptance or approval by the city. The proposed uses and densities may be deemed inappropriate after review by the city, and alternative action may be required of the applicant.
  - d. Staging of Development: Each stage within a PUD shall be so planned and so related to the existing surroundings and available facilities and services that failure to proceed to the subsequent stages will not have an adverse impact on the PUD or its surroundings at any stage of the development.
3. Standards Generally. The following standards and requirements shall govern the application of a planned unit development:
- a. The PUD shall be consistent with the intent of the Fountain Comprehensive Development Plan and the principles and policies therein.

- b. No PUD shall be approved without a plan setting forth the provisions for development of the PUD, including but not necessarily limited to easements, covenants and restrictions relating to use, location, and bulk of buildings and other structures, intensity of use or density of development, utilities, streets, roads, pedestrian areas, and parking facilities, common (or dedicated) open spaces, and other public facilities.
  - c. The design and construction of the PUD shall include adequate, safe and convenient arrangements for pedestrian and vehicular circulation, off-street parking and loading space.
  - d. While there may be no fixed setbacks and lot widths, the planning commission and city council may require such setbacks, lot widths and space between buildings as necessary to provide adequate access and fire protection, to ensure proper ventilation, light, air and snow melt between buildings, and to ensure that the PUD is compatible with other developments in the area. As a general guide, twenty feet (20') between buildings is considered minimum distance for both nonresidential and residential buildings that are over one (1) story.
  - e. Open space for the PUD shall be planned to produce maximum usefulness to the residents of the development for purposes of recreation and scenery and to produce a feeling of openness. All areas designated as common or public open space pursuant to the requirements of this section shall be accessible by proper physical and legal access ways.
  - f. The developer shall provide within the PUD central water and sewer facilities as required by the planning commission, city council, Fountain Sanitation District, the Fountain Water Code, the State Department of Public Health and the local health authorities.
  - g. The development shall be designed to provide for necessary commercial, recreational and educational facilities conveniently located to residential housing.
  - h. Clustered housing and other buildings shall be encouraged to promote maximum open space, economy of development and variety in type, design and layout of buildings.
  - i. Maximum height of structures shall be established in the approved PUD plan.
4. Relationship to the Subdivision Regulations. The uniqueness of each PUD may require that specifications for the width and surfacing of streets, public ways, public utility rights of way, curbs, and other standards may be subject to modifications from the specifications established in the subdivision regulations adopted by the City of Fountain, if the reasons for such exceptions are well documented. Modifications may be incorporated only with the approval of the planning commission and city council as a part of its review of the PUD. The modifications shall conform to acceptable engineering, architectural and planning principles and practices.



B. Evaluation Criteria. The following criteria shall be utilized by the planning commission and the city council in evaluating any plan for planned unit development:

1. Open Space - Residential Uses. A minimum of twenty-five percent (25%) of the total PUD area shall be devoted to open space for residential uses. No more than five percent (5%) of the required percentage of usable open space shall be in the form of water surfaces, floodplains, steep slopes, or storm water detention areas. The city may consider the provision of other site amenities in lieu of the full twenty-five (25%) requirement for open space. The open space requirement can be met through:
  - a. Development of active recreation uses such as traditional parks, play field, tennis courts, playground equipment, picnicking facilities, swimming pools, golf courses, greenways, trails and joint use school and park facilities.
  - b. Environmental preservation of significant natural areas such as bluffs and other geological formations, water bodies/ water resources such as irrigation ditches, wildlife habitat areas, fragile eco-systems (wetlands) and vegetative stands.
  - c. Preservation of lands which preserve significant views, provide transitions between different densities and uses (buffers) and otherwise serve to give shape and form to the proposed development and surrounding area.
2. Open Space - Nonresidential Uses. A minimum of fifteen percent (15%) of the total PUD area shall be devoted to open space for nonresidential uses. The city may consider the provision of other site amenities in lieu of a portion of the fifteen percent (15%) requirement for open space.
3. Residential density. Density shall be limited as required by the planning commission and city council upon consideration of the overall development plan and individual characteristics of the property.
4. Gross building floor area. The gross building floor area of uses other than residential may be limited as required by the city council upon consideration of the overall development plan and individual characteristics of the property.
5. Architecture. The following architectural standard is intended to prevent monotonous streetscapes and offer consumers a wider choice of housing styles. To avoid uniformity and lack of variety in design among housing units within the PUD, no home model elevation shall be repeated more than once every five (5) lots on the same side of the street (e.g., the first and fifth lots in a row may contain the same model elevation, but the second, third, and fourth lots must contain different model elevations). No home model elevation shall be repeated directly across the street from the same model elevation. Mirror images of the same home model shall not count as two (2) distinctly different models.
6. Mixed uses. The PUD shall be designed, insofar as practicable when considering the overall size of the PUD, to provide commercial, recreational and educational amenities to its residents to alleviate the necessity of increased traffic and traffic congestion. A PUD may include any uses permitted by right or as conditional use review, any other zoning district

except that any use that has been declared a nuisance by statute, ordinance or any court of competent jurisdiction shall not be permitted.

7. Minimum area. A PUD shall not be permitted on a parcel of land less than one (1) acre in area. The minimum area requirement may be waived upon adequate justification shown by the applicant.
8. Internal compatibility of design elements. It is recognized that certain individual land uses, regardless of their adherence to all the design elements provided for in this chapter, might not exist compatibly with one another. Therefore, a proposed PUD shall be considered from the point of view of the relationship and compatibility of the individual elements of the plan, and no PUD shall be approved which contains incompatible elements.
9. The PUD shall provide an adequate internal street circulation system designed for the type of traffic generated, safety, and separation from living areas, convenience and access.
10. Private internal streets may be permitted if adequate access for police and fire protection is maintained and provisions for using and maintaining such streets are imposed upon the private users and approved by the planning commission and city council. Bicycle traffic shall be provided for if appropriate for the land use.
11. The PUD shall provide parking areas in conformance with the minimum site development standards of this title in terms of number of spaces for each use, location, dimensions, circulation, landscaping, safety, convenience, separation and screening. The PUD shall strive for optimum preservation of the natural features on the site.
12. The PUD shall provide for a variety in housing types and densities, other facilities, and common open space.
13. The PUD shall provide adequate privacy between dwelling units.
14. The PUD shall provide pedestrian ways adequate in terms of safety, separation, convenience, and access to points of destination and attractiveness.
15. The maximum height of buildings may be increased above the maximum permitted for like buildings in other zoning districts in relation to the following characteristics of the proposed building:
  - a. Its geographic location.
  - b. The probable effect on surrounding slopes and terrain.
  - c. Unreasonable adverse visual effects on adjacent sites or other areas in the vicinity.
  - d. Potential problems for adjacent sites caused by shadows, loss of air circulation or loss of view.
  - e. Influence on the general vicinity, with regard to extreme contrast, vistas and open space.
  - f. Uses within the proposed building.
  - g. Fire protection needs.

#### C. Special Conditions.

1. No PUD shall be approved unless the city council, after planning commission review and recommendation, is satisfied that the landowner has provided for

or established an adequate organization for the ownership and maintenance of common open space and private roads, drives and parking which, in the opinion of the city council, is best calculated to ensure maintenance of such areas.

2. Lot area and coverage, setbacks and clustering. In a multi-lot PUD, the averaging of lot areas shall be permitted to provide flexibility in design and to relate lot size to topography, but each lot shall contain an acceptable building site. The clustering of development with usable common open areas shall be permitted to encourage provision for and access to common open areas and to save street and utility construction and maintenance costs. Such clustering is also intended to accommodate contemporary building types which are not spaced individually on their own lots but share common side walls, combined service facilities or similar architectural innovations, whether or not providing for separate ownership of land and buildings.
3. Maintenance provisions. In the event that the organization established to own and maintain common open space, or any successor organization, shall at any time after approval of the planned unit development fail to maintain the common open space in reasonable order and condition, the following procedures may be initiated by the city council:
  - a. The city council may serve written notice upon such organizations or upon the residents of the PUD setting forth the manner in which the organization has failed to maintain the common open space in reasonable condition, and the notice shall include a demand that such deficiencies of maintenance be cured within thirty (30) days thereof and shall state the time, date and place of a hearing thereon, which shall be held within fifteen (15) days of the date of notice.
  - b. At such hearing, the city council may modify the terms of the original notice as to deficiencies and may give an extension of time within which they shall be cured.
  - c. If the deficiencies set forth in the original notice and in the modifications thereof are not cured within the period set, the City, in order to preserve the taxable values of the properties within the PUD and to prevent the common open space from becoming a public nuisance, may enter upon the common open space and maintain the same for a period of one (1) year. Such entry and maintenance shall not vest in the public any rights to use the common open space except when it is dedicated to the public by the owners.
  - d. Prior to the expiration of the year of city maintenance, the city council shall call a public hearing upon notice to the organization responsible for the maintenance of the open space, or to the residents of the planned unit development, at which hearing the organization or the residents shall show cause why such maintenance by the city shall not continue for the succeeding year. If the city council determines that the responsible organization is not ready and able to maintain the open space in a reasonable condition, the city, in its discretion, may continue to maintain the open space during the next succeeding year,

and subject to a similar hearing and determination, in each year thereafter.

- e. The cost of maintenance by the city shall be paid by the owners of properties within the PUD that have a right of enjoyment of the open space, and any unpaid assessment shall become a tax lien in the office of the County Clerk and Recorder upon the properties affected by such lien to the city council and City Treasurer for collection, enforcement and remittance in the manner provided by law for the collection, enforcement and remittance of general property taxes.
4. Consent of landowners required. No PUD may be approved by the planning commission or city council without written consent or a letter of authorization of the landowner or landowners whose properties are included within the PUD. All owners of land within the proposed PUD shall sign each application form requesting consideration or approval of any PUD.

### **ARTICLE III. GENERAL REGULATIONS AND DEVELOPMENT STANDARDS**

#### **Chapter 17.30 Application of General Regulations and Development Standards**

**Section 17.300 Purpose.** In addition to the requirements contained elsewhere in this title, all uses of land and structures shall be governed by the general regulations and development standards contained in this article so as to promote the general health, safety and welfare of Fountain residents.

**Section 17.302 Intent.** The intent of this article is to encourage the creation of safe, adequate and attractive facilities and to minimize views of unattractive uses or activities through use of sound site design principles and the establishment of minimum requirements. The standards set forth herein are recognized as enhancing the compatibility of dissimilar uses and promoting stable property values.

#### **Section 17.304 Application**

A. The general regulations and development standards of this title shall not be retroactive on existing uses. However, these standards shall apply to all uses in all zoning districts under the following circumstances:

1. New buildings and uses of land that require a plot plan or site development plan.
2. Additions involving expansion of the gross floor area or developed site area by twenty percent (20%) or more above that in existence prior to the effective date of this title.
3. There is a change in the use of the building or land, which requires a change in the zoning district or a conditional use permit.
4. There is a change in the occupancy of a building or the land, which requires a new sign, or other site improvements addressed in this article.

B. Administration: Prior to issuance of a building permit, conditional use permit, or granting of a change in use in any zoning district for any property, the applicant shall demonstrate that the property will comply with the following applicable regulations:

1. All buildings, parking areas, landscaping, signs, and other improvements noted in the development standards in this title shall be constructed and installed in accordance with the approved plans prior to issuance of a certificate of occupancy for the building or use.
2. The Zoning Administrator may allow certain improvements to be constructed or installed within an agreed upon time allowing for seasonal changes. Such arrangements may involve cashiers checks, performance bonds or other methods as deemed appropriate by the Zoning Administrator to assure eventual compliance with this title.
3. The Zoning Administrator may permit in a particular district a permitted principal use and a temporary use not listed in this title provided that such use is of the same general type as the uses permitted by this title.

## **Chapter 17.32 Lot Area Regulations**

### **Section 17.320 General Lot Regulations**

A. Every building shall be located and maintained on a "lot" as defined in this title.

B. No lot shall be divided to contain more dwellings than are permitted by the regulations of the zoning district in which it is located.

C. No space needed to meet the width, yard, area, open space, lot coverage, parking, or other requirements of this title for a lot or building may be sold, transferred, or leased away from such lot or building.

D. No parcel of land which has less than the minimum width, depth and area requirements for the zoning district in which it is located may be divided from a larger parcel of land for the purpose, whether immediate or future, of building or development as a lot.

E. Each lot or parcel in separate ownership shall have at least twenty-five (25) lineal feet of frontage on a public street or an access easement approved by the planning commission and city council unless otherwise provided for elsewhere in this title or as part of an overall development plan.

F. Each principal building devoted wholly or in part to residential use shall be located on a lot contiguous to a public street with permanent access to the public street sufficient to allow ingress and egress for emergency vehicles providing emergency services to the principal building. A principal building devoted wholly or in part to residential use that is located within an approved planned unit development, may be accessed by a private street, if the private street meets the same standards of public streets.

G. No lot area, yard, open space, off-street parking or loading area which is required by this title for one (1) use shall be used to meet the required lot area, yard, open space, off-street parking or loading area of another use unless authorized by the Zoning Administrator and as provided under the parking regulations in Chapter 17.34.

#### **Section 17.322 Lot Area Requirements**

A. Basic Minimum Lot Area. Except as provided below, no lot shall be built upon unless containing at least the basic minimum lot requirements established in Article II.

B. Nonconforming Lots of Record. Where an individual lot was held in separate ownership from adjoining properties or was platted prior to the effective date of this title in a recorded subdivision approved by the city council and has less area or width than required in other sections of this title, such lot may be occupied according to the permitted uses and other requirements set forth in the district in which the lot is located, provided that no lot area or lot width is reduced more than one-third (1/3) the zoning requirements otherwise specified by this title. If a nonconforming lot ever comes under the same ownership as a contiguous parcel it shall no longer be the same nonconforming lot and such cessation shall be recorded in the El Paso County Clerk and Recorder's Office, and then no portion of the enlarged parcel shall be sold unless both the portion to be sold and the remainder shall be conforming parcels.

#### **Section 17.324 Land Quality Limitations**

A. No structure can be built within one hundred feet (100') of the one hundred (100) year flood plain.

B. Exceptions may be granted upon the applicant providing a study of the land area and surrounding land that may be impacted by potential development. The study shall be produced by a geo-technical engineer licensed in the State of Colorado. Such study shall contain an analysis of potentially unstable slopes, faulting, or soil conditions, etc., that may be unfavorable to development. The study shall also contain, where appropriate, recommendations for special mitigation measures and engineering precautions that shall be taken to overcome those limitations.

C. Any development that is granted an exception to this regulation and is within the one hundred (100) year floodplain or within one hundred feet (100') of the floodplain, shall be designed so as not to cause any adverse effects to the development or to any other properties from either increased flood heights, flow velocities, flow duration, rate of rise of flood waters, channel stability or sediment transport; provided, however, that any development shall not be considered as causing an adverse effect to any other properties by reason of increased flood heights if such development does not cause a rise of more than one-tenth (1/10th) of a foot in the base flood elevation of the floodplain.

**Section 17.326 Land Dedications.** Land designated as flood plain management or open space through dedication or reservation for any reason shall be indicated as such on the appropriate zoning district map. Such land and facilities shall be built and maintained either by a

unit of government, by a nonprofit corporation or by private interests as part of a subdivision or development of land for use by the inhabitants or general public thereof; ownership of the land may be deeded or reserved to a property owner's association or it may be dedicated to the public; or as required by any condition for granting of a subdivision plat, zoning district or planned development amendment including designation of a park, trail or other open recreation use.

### **Section 17.328 Setback Requirements.**

A. Transition. When a nonresidential use which is over fifteen feet (15') in height shares a common lot line with a residential use, the required side yard set back for the nonresidential use shall be at least twenty-five feet (25') and shall be maintained with landscaped plant material to include trees, shrubs, grasses and/or xeriscape plant material as determined by the Zoning Administrator.

#### **B. Setback Requirements for Accessory Structures.**

1. Accessory structures and uses shall be set back a minimum of twelve feet (12') from the rear lot line.
2. Accessory structures shall maintain the same side and front yard setbacks as required for the principal building located on the lot.
3. No part of any accessory structure shall be located closer than six feet (6') to any principal building, unless it is attached to or forms a part of such principal building.
4. Accessory structures and uses shall otherwise comply with the bulk regulations applicable in the district in which they are located.

C. Side Yards and Corner Lots. On corner lots, the side yard which is contiguous to a street shall not be less than ten feet (10') in width, except that a garage having perpendicular access to the street shall be set back at least eighteen feet (18') from the street property line.

D. Partially Developed Frontages. When a vacant lot is bordered on two (2) sides by previously constructed buildings both of which do not meet the required front yard setback applicable to the district, the required front yard setback for the vacant lot shall be established as the average front yard setback of the two existing adjacent buildings. Where a vacant lot is bordered on only one side by a previously constructed building which does not meet the required front yard setback for the district, the required front yard setback for the vacant lot shall be established as the average front yard setback of the adjacent building and the minimum required front yard setback for the district.

E. Irregular Shaped Lots. If a lot is not rectangular or square in shape, and a building is constructed so that one side of the building is parallel to an adjacent street or right-of-way, the setback between the building line and that lot line which is not parallel to the building line may be calculated as the average of the nearest and farthest distances between the building corners and the lot line, except that the minimum setback at any point shall not be less than five feet (5').

F. Features Allowed within Setbacks. The following structures and features may be located within required setbacks:

1. Trees, shrubbery or other features of natural growth.
2. Fences or walls, subject to permit approval that do not exceed the standards established in this article.
3. Driveways and sidewalks.
4. Signs, if permitted by the sign regulations of this title.
5. Bay windows, architectural design embellishments and cantilevered floor areas of dwellings that do not project more than two feet (2') into the required setback provided they do not encroach on public easements.
6. Eaves that do not project more than two and one-half (2-1/2) feet into the required setback.
7. Open outside stairways, entrance hoods, terraces, canopies and balconies that do not project more than five feet (5') into a required front or rear setback and/or not more than two feet (2') into a required side setback, provided they do not encroach on public easements.
8. Chimneys, flues and residential ventilating ducts that do not project more than two feet (2') into a required setback, and when placed so as not to obstruct light and ventilation, provided they do not encroach on public easements.
9. Utility lines, wires and associated structures, such as power poles.

### **Chapter 17.33 Access, Approaches, Driveways, and Curb Cuts**

**Section 17.330 Application.** The provisions of this chapter shall apply to all properties and public streets.

#### **Section 17.332 Permit and Standards.**

A. Permit - Issuance. A permit shall be required for the construction and maintenance of any access approach, driveway, or curb cut as specified in chapter 12.04 of the Fountain Municipal Code.

B. Permit - Safety Requirements. No access approach, driveway, or curb cut shall be constructed or maintained which creates a threat to the safety of persons or vehicles near the access approach, driveway, or curb cut. No permit for the construction of an access approach, driveway, or curb cut shall be issued unless the city engineer determines that the proposed access approach, driveway, or curb cut will not create a threat to the safety of persons or vehicles in the vicinity of the proposed access approach, driveway, or curb cut. In making this determination, the city engineer shall consider the following factors:

1. Whether the street to which access is sought is residential or commercial in character.
2. Whether the proposed access approach, driveway, or curb cut would cross a sidewalk.
3. Whether drivers of vehicles using the proposed access approach, driveway, or curb cut would have difficulty in seeing pedestrians or other vehicles in the vicinity.
4. Whether pedestrians or the drivers of other vehicles would have difficulty in seeing vehicles using the proposed access approach, driveway, or curb cut.



5. Whether the proposed access approach, driveway, or curb cut would result in increased noise, dirt, smoke, or fumes near the proposed access approach, driveway, or curb cut.
6. Whether the property for which an access approach, driveway, or curb cut is proposed is already served by an existing access approach, driveway, or curb cut.
7. Whether parking is permitted on the street to which access is proposed.
8. The width of the street to which access is sought.
9. The posted speed limit on the street to which access is sought.
10. The distance of the proposed access approach, driveway, or curb cut from the curb line of the nearest street, which intersects the street to which access, is proposed.
11. The proximity of the proposed access approach, driveway, or curb cut to residential neighborhoods and schools.

C. Construction Specifications - Location.

1. No access approach or curb cut shall be closer than fifty-five (55') to the curb line of any street that intersects the curb line of the street to which access is gained.
2. The width of any access approach, driveway or curb cut shall not exceed thirty-five feet (35') as measured along its intersection with the property line.
3. No two access approaches, driveways or curb cuts on the same lot shall be closer together than fifty-five feet (55') measured along their intersections with the curb line.
4. In business and commercial areas, no access approach, or curb cut shall be closer than fifteen feet (15') to a property line of an adjacent property except where there is shared access with the adjacent property.
5. The minimum distance at which the centerline of an access approach, driveway or curb cut shall be visible from the adjacent street (sight distance) shall be one hundred thirty feet (130'). If required for safety reasons, the city engineer may require a sight distance in excess of one hundred thirty feet (130').
6. The minimum sight distance shall be measured in the following manner:
  - a. The reference point on the adjacent street shall be located on the centerline of the traffic lane closest to the access point, driveway, or curb cut, and at a height of three and one half feet (3.5') above the street surface; the reference point on the access approach, driveway, or curb cut shall be located on its centerline, back a distance of fifteen feet (15') from the property line, and at a height of six inches (6") from the access approach, driveway, or curb cut surface.

D. Surfacing. All access approaches, driveways, and curb cuts shall be surfaced immediately upon completion. Surface material shall be gravel, asphalt, or concrete when adjacent to a gravel street, and asphalt or concrete when adjacent to an asphalt or concrete street. Surfacing within the right-of-way shall extend from the traveled portion of the street to the right-of-way line.

E. Drainage. The construction of access approaches, driveways, and curb cuts shall be accomplished so as not to cause water to enter onto the traveled portion of the street and so as not to interfere with the drainage system of the street right-of-way.

F. Inspection. The City Engineer shall be responsible for the inspection, monitoring and final acceptance of the construction of all access approaches, driveways, and curb cuts in accordance with the access permits issued by the City Engineer.

G. Maintenance. The owner of the property serviced by an access approach, driveway, or curb cut shall be responsible for its maintenance and for any removal of snow, ice, and sand, whether deposited by nature, by the traveling public, or by the city's snow removal or street maintenance operation.

### **Section 17.334 Visibility at Intersections- Application of Sight Triangle**

A. The intersection sight distance provisions contained in "A Policy on Geometric Design of Highways and Streets published by the American Association of State Highway and Transportation Officials" are adopted as the presumptive standard applicable to all controlled intersections within the city provided, however, that the city manager or his or her designee may, where consistent with public safety, specify greater or lesser intersection or sight distances. Unless otherwise required by the city engineer, all controlled intersections shall be designed, constructed and maintained in accordance with such sight intersection distance provisions. Additionally, no landscaping, fence, utility equipment, wall or other structure in excess of thirty-six inches (36") in height above the roadway (or which intrudes into the sight triangle at a height of less than eighty-four inches or so as to obscure or block the visibility of any traffic control device or sign located at such intersection) shall be constructed or maintained in the area identified as the sight triangle, nor shall any parking be allowed within the area of the sight triangle. For purposes of this section a "controlled intersection" means an intersection equipped with a stop sign, yield sign, traffic control device, or other suitable traffic control warning sign.

B. On corner lots located at uncontrolled intersections, no landscaping, fence, utility equipment, wall or other structure in excess of thirty-six inches (36") in height above the roadway (or which intrudes into the sight triangle at a height of less than eighty-four inches (84") or so as to obscure or block the visibility of any traffic control device or sign located at such intersection) shall be constructed or maintained within the triangular area bounded by intersecting property lines and a line connecting the point on each of the property lines which is twenty-five feet from the intersection of the property lines. Unless otherwise required by the city engineer or his or her designee, all uncontrolled intersections shall be designed, constructed and maintained in accordance with such sight intersection distance provisions. For purposes of this section, an "uncontrolled intersection" means an intersection that is not equipped with a stop sign, yield sign, traffic control device or other suitable traffic control warning sign.

### **Chapter 17.34 Off-Street Parking: Development Standards and Procedures**

**Section 17.340 Provisions.** Applicability, and Maintenance-Responsibility of Owner. This chapter imposes minimum standards for the development of parking areas in conjunction with the various uses permitted in this title. The purpose of this chapter is to require that the owner of a land use provide and maintain sufficient quantities of parking for land use. The extent of these standards is to require attractive, convenient, efficiently developed parking areas which provide sufficient quantities of parking spaces with ample area for fire lanes, maneuvering, snow storage, retention of drainage, landscaping and public safety. The required parking standards contained herein are minimum standards. "Provide and maintain" also means that the off-street parking area shall remain free from pavement deterioration, chuckholes, pavement failure, and cave-in.

### **Section 17.341 Procedures and Administration**

A. Off-street parking shall be provided as set forth in this title in association with any use generating demand for parking. Nothing in this title shall deprive the owners or operators of property, generating a need for parking, the right to maintain control over such property devoted to off-street parking, not inconsistent with this title or to charge whatever fees they deem appropriate for such parking.

1. The proposed method of complying with this section shall be indicated on all plans required to be submitted to the city as a part of an application and on any site development plan submitted for a building permit.
2. When any addition to or enlargement of an existing building or use, or a change in use increases the building or the developed area of the use or the parking requirements of the building or structure, the parking requirements of this chapter must be met. Moreover, if the addition, enlargement, or change in use increases the building or the developed area of the use, or the required parking by twenty percent (20%) or more, then the parking for the entire building shall be brought into conformance with all requirements of this chapter, including required number of spaces, access, landscaping, lighting, screening, and other applicable standards.

B. Any change in the use of a building or lot which increases the off-street parking as required under this title, shall be unlawful and a violation of this title until such time as the off-street parking complies with the provisions of this title

### **Section 17.342 Number of Off-Street Parking Spaces Required**

A. Minimum Requirements. All uses shall provide the number of off-street parking spaces listed below. Buildings with more than one (1) use shall provide parking required for each use.

USE	NUMBER OF SPACES REQUIRED
<b>Residential Dwelling Units</b>	
Studio or 1 bedroom	1.5 per dwelling unit
2 or more bedrooms	2- per dwelling unit
In addition, multi-family dwellings	1 -- per guest space per 5 dwelling units
<b>Group Living</b>	
Housing exclusively for elderly care	3.3 per unit plus 1 space for each fulltime employee
Nursing homes	1 per 2.5 bed capacity
Residential facility for the disabled	4 per facility. 2 stalls are required to be where single-family parking is permitted and the remainder may be on-street curbside parking. If staff other than the resident manager or house parents is employed, 1 additional staff per employee is required
Dormitories, sororities, fraternities	1 per 2 beds
Boarding or lodging house	.75 per person to whom a room is rented
Bed and breakfast	2 per dwelling, plus 1 stall per guest room
<b>Commercial</b>	
Automobile service, repair and sales	
Gas stations	2 per service bay plus required stacking spaces
Service station, auto lube center	2 per service bay plus required stacking spaces
Convenience store	1 per 200 square feet of floor area plus stacking for drive up window
Auto repair or body shop	2 per repair bay, stalls for each bay may park tandem
Automobile sales	1 per 100 square feet of office area
Car wash, self-service	3 stacking spaces in front of each bay
Car wash, full-service	5 per bay plus required stacking spaces
<b>Retail, Entertainment and Office</b>	
Banks (including branch and drive through)	1-- per 300 square feet plus required stacking space for drive through
Dining and drinking establishments (including private clubs, restaurants)	1 per 75 square feet of dining and waiting area (Including private clubs, restaurants)
if dancing and/or entertainment is provided	1 per 50 square feet of dining, waiting and entertainment area
Funeral home, mortuaries and crematoriums	1-- per 300 square feet
General commercial and retail sales	1- per 300 square feet plus requirement for stacking areas listed above
Health & athletic clubs, aerobics, recreational amusement, and entertainment facilities	1-- per 125 square feet
Hotels and motels	1.12 per room, suite/individual exit
Medical offices, clinics	1--- per 135 square feet
Office (including finance, real estate, business professional offices, and telecommunication facilities with employees)	4.5 per 1000 square feet plus 1 space for each company owned vehicle
<b>Restaurants</b>	
(1) Serving food and beverages for consumption inside a building	1 per 100 square feet of building
(2) Serving food and beverages for consumption outside of a building	1 per 50 square feet of building plus required stacking
Stadiums or arenas	1 per 5 fixed seats
Theaters	1 per 40 square feet of gross floor area in the main assembly area
Warehouse with storage	1 per 1,000 square feet for the first 10,000 square feet then 1 stall per 10,000 square feet for the remaining area
<b>Public, Quasi Public and Institutional</b>	

USE	NUMBER OF SPACES REQUIRED
College: public or private	1 per 2 students
Community service facilities (e.g. post office, courts, community health building) All other community service facilities shall be determined by the Zoning Administrator based on an analysis of parking requirements for similar uses or on anticipated parking demands	1-- per 250 square feet
Day care or nursery	1-- per each employee, plus 1 space per five children
Hospitals	1 per 2 bed capacity
Library, museum or gallery	1-- per 300 square feet
Places of worship	1 per 3 seats in primary meeting room.
Public assembly and civic association halls (includes all facilities used for receptions and conventions)	1 per 40 square feet of gross floor area in the primary meeting room or assembly area
Schools (1) Through junior high. (2) High schools and colleges. (3) Schools auditoriums	2 per classroom 10 per classroom. One per three seats in auditorium
Utilities	1 per 300 square feet of office area plus one stall for each company vehicle.
<b>Manufacturing &amp; industrial uses</b>	
Contractors yards, business services	1-- per 500 square feet.
Junk or salvage yards, recycling or processing centers	1 per employee; minimum of 4 spaces for customers
Laboratories and research and Development	The greater of 1 per 300 square feet or 1 per employee on maximum shift
Manufacturing, processing or assembly	1 per 500 square feet
Self service storage facilities	1 per 5,000 square feet
Warehouse with freight movement	1 per 1,000 square feet of floor area
Wholesale sales	1 per 500 square feet of sales area

The Zoning Administrator shall determine parking requirements for uses not specifically listed based on an analysis of parking requirements for similar uses or on anticipated parking demands.

### **Section 17.343 Calculation of Parking Space Requirements**

A. Number of Spaces. Separate off-site parking space shall be provided for each use.

1. Where parking facilities are combined and shared by two (2) or more uses the off-street parking space required for two (2) or more uses having the same or different standards for determining the amount of required off-street parking spaces shall be the sum of the standards of all the various uses.
2. When any parking calculation results in a required fractional space, such fraction shall be rounded off to the next whole number.

B. Measurement of Floor Area. Floor areas used in calculating the required number of parking spaces shall be gross floor areas of the building calculated from the exterior outside wall without regard to a specific inside use. In mixed use facilities:

1. Calculations shall be based on gross square footage of each identifiable use within the building and the total square footage of each identifiable use shall be the same as the gross floor area calculated from outside wall to outside wall.
2. Uses, which serve more than one (1) of the uses such as bathrooms, mechanical rooms, stairwells, circulation, airshafts, storage areas, and elevators, shall be pro-rated based on the area of each identifiable use.

C. Joint Use of Parking Facilities or Shared Parking. When two (2) or more businesses, structures and or uses are served by the same parking area, the applicant may apply for special parking approval. The off-street parking area or shared parking facilities shall not exceed twenty percent (20%) of the required parking. Applicants wishing to utilize joint or shared parking facilities or areas shall provide satisfactory legal evidence is presented to the Zoning Administrator in the form of deeds, leases or contracts to establish joint use or shared parking. Upon submission of documentation by the applicant of how the project meets the following criteria, the Zoning Administrator may approve reductions of up to and including twenty percent (20%) of the parking requirements of Chapter 17.34, if he finds that:

1. The parking needs of the use will be adequately served.
2. A mix of residential uses with either office or retail uses is proposed, and the parking needs of all uses will be accommodated through shared parking.
3. If joint use of common parking areas is proposed, varying times of use will accommodate proposed parking needs.
4. The applicant provides an acceptable proposal for an transportation demand management program as approved by the Pikes Peak Regional Council of Governments, including a description of existing and proposed facilities and assurances that the use of alternate modes of transportation will continue to reduce the need for on-site parking on an ongoing basis.

D. Compact Parking. Up to thirty percent (30%) of all required off-street parking spaces may be designated as "compact car spaces". The dimensions for compact spaces are shown in Figure 1. Such spaces shall be appropriately marked to indicate the location of the spaces. Off-street parking spaces provided in excess of the required number of spaces for a building or use may be in the form of compact parking spaces.

E. Determination of Requirements for Uses Not Listed. Requirements for types of buildings and uses not specifically listed in this chapter shall be determined by the Zoning Administrator after study and recommendation which should include all relevant factors, including but not limited to:

1. Vehicle occupancy studies.
2. Comparable requirements from other relevant municipalities.
3. Requirements of comparable uses listed in this chapter.
4. Suitable and adequate means will exist for provision of public, community, group or common facilities.
5. Provision of adequate loading facilities and for a system for distribution and pickup of goods.

6. Use is in the interest of the area to be affected and in the interests of the city at large.
7. Use will not be detrimental to adjacent properties or improvements in the vicinity to the area.
8. That the proposed use will not confer any special privilege or benefit on the properties or improvements in the area, which privilege or benefit is not conferred upon similarly situated properties elsewhere in the city.

#### **Section 17.344 Handicap Parking Requirements**

A. Required Spaces. The required number of parking spaces intended for the physically handicapped shall be provided in accordance with ADA requirements at a rate of not less than two percent (2%), or a minimum of one space, whichever is greater, of the total parking capacity of two hundred (200) spaces or fewer, and one accessible parking space for every additional space over two hundred (200); but not less than one such space for each accessible or adaptable dwelling unit. The spaces required by this section shall be provided in addition to the number of parking spaces required elsewhere in this chapter.

1. The required spaces shall be located to provide the least travel distance to accessible facilities served. They shall be located, where feasible, to allow those parking in the spaces to access the associated building without crossing vehicle traffic area. The distance between the most remote principal entrance of a building and any one space shall not exceed two hundred feet (200').

B. Size. Required spaces shall be not less than eight feet (8') wide and shall have an adjacent access aisle not less than five feet (5') wide. Two (2) adjacent spaces may share a common access aisle. Such aisles shall provide an accessible route of travel to the building or facility entrance. Boundaries of the required parking spaces and aisles shall be marked to identify the use of such spaces.

C. Signage. Every parking space required by this section shall be identified by a sign centered from three feet (3') to five feet (5') above the ground at the head of the required space. The sign shall be marked with the international symbol of access and shall bear the words, "Reserved, Tow Away Zone." Such signage shall not be less than twelve inches (12") in height. The symbol shall be proportioned according to the Figure to the right. The lettering shall be not less than one inch (1") or more than two inches (2") in height and shall be on a background of contrasting value.

D. Surface. Parking spaces and access aisles shall slope not more than one inch (1") in forty-eight inches (48") and shall be firm, stable, smooth and slip resistant.

#### **Section 17.345 Restrictions**

A. Residential Weight Restrictions. Off-street parking spaces for residential uses shall be used by vehicles up to but not exceeding four (4) tons manufacturer's capacity rating.

B. Storage of Vehicles. Off-street parking spaces shall not be used for the parking or storage of automobile trailers, boats, detached campers or any other object that will render the parking space unusable according to the intent and purpose of this chapter.

C. Sale or Repair Uses. No off-street parking space shall be used for the sale, repair, dismantling or servicing of any vehicle, equipment, material or supplies.

D. Engine Idling.

1. It shall be unlawful for any person to idle or permit the idling of the motor of any stationary diesel fuel burning bus or motor vehicle or idle or permit the idling of the motor of any stationary motor vehicle of any kind whatsoever for a period in excess of fifteen (15) consecutive minutes in any hour, within the city limits at any time of the day or night. It is the intent of this section that an owner or operator may not circumvent the provisions of this section by the repeated turning on and off of a diesel engine at any time that the outside temperature is twenty-two (22) degrees Fahrenheit or above; provided, however, that unattended vehicles operated by diesel powered engines shall not be allowed to idle at any time. This shall not apply to stationary diesel generation stations.
2. This section shall not apply when an engine must be operated in the idle mode for safety reasons including, but not limited to, cranes and forklifts used in the construction and maintenance industry, ambulances or other public safety vehicles. Further, this section shall not apply to stationary diesel generation stations and public utility equipment.

**Section 17.346. Stacking Space for Drive-throughs, Parking Attendants or Paid Parking Collection Devices**

A. Submittal of Plans. The applicant's plan shall show the location, size and dimensions of all such facilities. The plan shall follow the stacking space schedule and shall demonstrate that such facilities will not result in the stacking of vehicles on public rights-of-way, and that an adequate area is reserved for the safe transfer of the motor vehicle between any parking attendant or valet and the driver of the vehicle. In no event shall a drive-through, parking attendants, paid parking collection devices, or areas associated with such uses be located in a public street or right-of-way, or interfere with vehicular or pedestrian traffic on a public street, sidewalk or other right-of-way.

B. Stacking Space Schedule.

Use	Minimum Stacking Space	Measured From
Bank teller lane	4	Teller or window
Automated teller machine	3	Teller
Restaurant, drive-through	8	Order box



Car wash stall, automatic	6	Entrance
Car wash stall, self-service	3	Entrance

### **Section 17.347 Parking Area Design Standards**

A. Dimensional Standards. Recreational vehicle parking spaces shall measure ten feet (10') x twenty-four feet (24').

B. All parking areas shall be properly graded for drainage and surfaced with concrete or asphalt concrete or other acceptable surfacing in conformance with specifications of the city. Areas shall be maintained in good condition, free of weeds, dust, trash, potholes, and debris.

C. No more than two (2) driveways will be permitted per parcel. In parcels accommodating twenty (20) or more parking spaces, driveways must be separated by at least two hundred fifty feet (250'). In parcels with less than twenty (20) parking spaces, driveways must be separated by at least one hundred feet (100'). Single-family and two-family homes are exempt from this requirement.

D. Every parking space shall be so designed that a vehicle does not back across or maneuver within any public right-of-way.

E. Vehicles shall not overhang any public property, public walkway, landscaped area, or bicycle path.

F. Lighting. All multi-family residential uses and nonresidential uses shall provide adequate lighting in off-street parking areas. Lighting shall conform to the following standards:

1. Light sources shall be concealed and fully shielded and shall feature sharp cut-off capability so as to minimize up-light, spill-light, glare and unnecessary diffusion on adjacent property.
2. Neither the direct or reflected light from any light source shall create a traffic hazard to operators of motor vehicles on public roads, and no colored lights may be used in such a way as to be confused or construed as traffic control devices. Parking areas and circulation drives shall be illuminated to as unobtrusively as possible to meet the functional needs of safe circulation and of protecting people and property.
3. The style of light standards and fixtures shall be consistent with the style and character of architecture proposed on the site. Poles shall be anodized or coated to minimize glare from the light source.
4. Light sources must minimize contrast with the light produced by surrounding uses, and must produce an unobtrusive degree of brightness in both illumination levels and color rendition. Incandescent and high-pressure sodium light sources all can provide adequate illumination with low contrast and brightness and are permitted light sources.

5. Maximum on-site lighting levels shall not exceed ten (10) foot-candles, except for loading and unloading platforms where the maximum lighting level shall be twenty (20) foot-candles.
6. Light levels measured twenty feet (20') beyond the property line of the development site (adjacent to residential uses or public rights-of-way) shall not exceed one-tenth (0.1) foot-candle as a direct result of the on-site lighting.
7. The height of light standards in parking lots shall not exceed twenty-five feet (25').

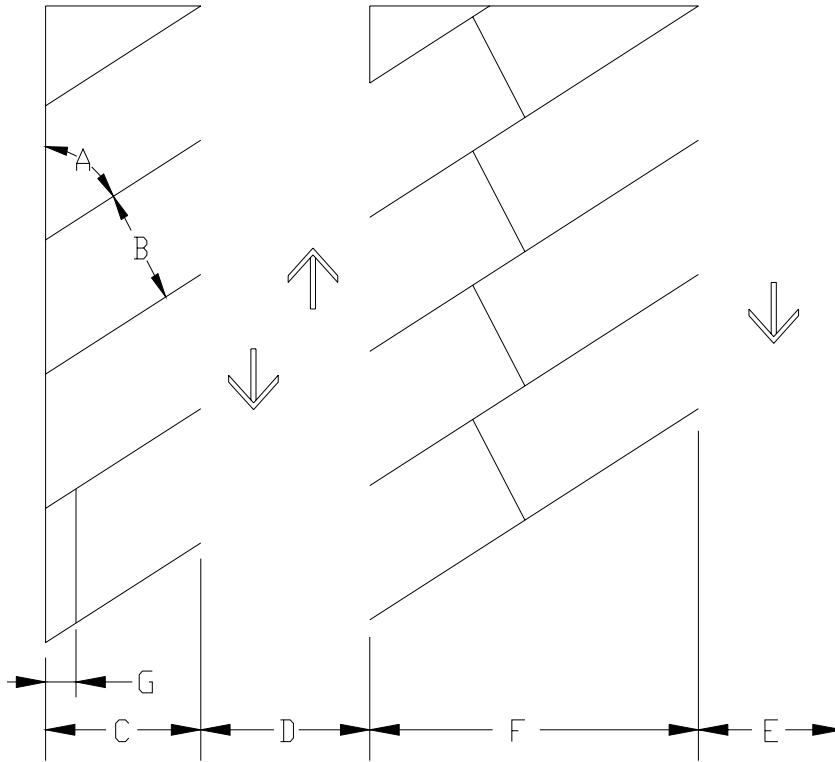
G. Vehicular ingress and egress to public major or minor arterials and collector streets from off-street parking areas shall be so combined, limited, located, designed and controlled with flared and/or channeled intersections as to direct traffic to and from such public right-of-way conveniently, safely and in a manner which minimizes traffic friction, and promotes free traffic flow on the streets without excessive interruption. Access shall be unobstructed and direct.

H. Sidewalks in parking areas can be no less than four feet (4') in width.

I. Parking spaces shall be double striped and maintained on the pavement. Other directional markings or signs shall be installed as permitted or required by the city to ensure the approved utilization of space, direction of traffic flow, and general safety.

J. Parking and loading dimensions are shown in Figure 1.

# PARKING & MANEUVERING DIMENSIONS



A PARKING ANGLE (DEGREES)	B WIDTH OF SPACE	C DEPTH OF SPACE	D WIDTH OF AISLES TWO WAY	E WIDTH OF AISLES ONE WAY	F DEPTH OF INTER LOCKING SPACES	G OVER- HANG	COMPACT SPACES			
							b	c	f	g
0	9	22	20	12	18	0	8	20	16	0
30	9	17	*	12	25	1.5	8	15	23	1.5
45	9	19	20	12	32	1.5	8	17	28.5	1.5
60	9	20	20	16	35.5	2	8	18	31.5	2
75	9	19.5	22	18	37	2	8	17.5	33	2
90	9	18	24	24	36	2	8	16	32	2

B THROUGH G ARE SHOWN IN FEET  
 \*NOT ALLOWABLE

FIGURE 1

### **Section 17.348 Parking Lot Landscaping**

A. A minimum of five percent (5%) of all parking lots shall be landscaped. Landscaping shall be distributed throughout the parking area.

B. A minimum of one deciduous (1) tree shall be provided for every eight- (8) parking spaces. All deciduous trees shall be a minimum of two and one half inch (2-1/2 ") caliper in size.

1. Any landscaped area used for vehicular overhang shall not be counted towards the required landscaping.
2. Screening for Parking Lots. Parking lots with twenty (20) or more spaces shall be screened from adjacent uses and from public streets. Screening from residential uses shall consist of a fence or wall six feet (6') in height in combination with plant material and of sufficient capacity to block at least seventy-five percent (75%) of light from vehicle headlights.

### **Chapter 17.35 Off Street Loading**

**Section 17.350 Requirements.** Whenever the normal operation of any development requires that goods, merchandise or equipment be routinely delivered to or shipped from that development, a sufficient off-street loading and unloading area must be provided in accordance with this section to accommodate the delivery or shipment operation in a safe and convenient manner.

#### **Section 17.352 Space Requirements and Standards**

A. Standards for Loading Berths.

1. Width and Clearance. Each loading berth shall not be less than ten feet (10') in width and shall provide not less than fourteen feet (14') vertical clearance.
2. Length. Each loading berth shall be at least forty-five feet (45') in length.
3. The loading and unloading area must be sufficient sized to accommodate the numbers and types of vehicles that are likely to use this area, given the nature of the development.
4. The Zoning Administrator may require more or less spaces if necessary to satisfy section 17.354.

#### **Section 17.354 Number of Loading and Unloading Spaces Required For Nonresidential Uses**

<b>Gross Floor Area of Building</b>	<b>Number of Spaces</b>
1,000—19,999	1
20,000—79,999	2
80,000—127,999	3
128,000—191,999	4
192,000—255,999	5

256,000—319,999	6
320,000—391,999	7
392,000 or more	7--plus one for every 72,000 square feet or fraction thereof

### **Section 17.356 Location**

A. Loading and unloading areas shall be located and designed so vehicles intended to use them can maneuver safely and conveniently to and from the public street right-of-way and complete their operations without interfering with any public right-of-way, parking space or parking lot aisle.

## **Chapter 17.37 Landscaping, Fencing and Screening**

### **Section 17.370 Landscaping Requirements**

A. Purpose. This section establishes minimum standards for landscaping and site design. The city encourages developers and landowners to exceed these minimums whenever possible.

B. Required Landscaping. All lots in all zoning districts not covered by impervious materials shall be landscaped to prevent land erosion, improper drainage, and damage to properties and unsightliness. All undeveloped building areas within partially developed commercial or industrial uses shall be landscaped with a ground cover to control dust and erosion.

C. Allowable Landscape Materials. Selection of plant materials shall be based upon Fountain's climate and soils. Native vegetation, or low water usage vegetation on water conserving design concepts shall be used whenever possible. Minimum sizes and other requirements for plant material shall be as follows:

1. Deciduous trees: Two and one half inch (2 1/2") caliper.
2. Evergreen trees: Six feet (6'). Shrubs: Five (5) -gallon containers.
3. Ground cover/perennial sizes shall be selected according to growth rate, spacing and the area to be covered.
4. Thorne plant material shall not be located adjacent to public walks.
5. Clear space above public walks shall be nine feet (9') or greater.
6. Artificial plants shall not be used to comply with the requirements of this section.
7. No more than fifty percent (50%) of an area can be covered by non-living landscaping material.
8. The planting of any trees of the Ulmus genus (elm) is prohibited.

D. Landscaped Strip Required.

1. Minimum landscaping requirements for property lying adjacent to an expressway, freeway, or arterial street shall be as follows:

- a. A landscaped strip at least fifteen feet (15') in width, excluding driveways and walkways, shall be required along the entire perimeter area adjacent to the public right-of-way.
  - b. Plant materials within the landscaped strip shall include one (1) tree and two (2) shrubs for every twenty feet (20') of street frontage.
2. Minimum landscaping requirements for property lying adjacent to a collector or local street shall be as follows:
    - a. A landscaped strip at least ten feet (10') in width, excluding driveways and walkways, shall be required along the entire perimeter area adjacent to the public right-of-way.
    - b. Plant materials within the landscaped strip shall include one (1) tree and two (2) shrubs for every twenty feet (20') of street frontage.
  3. Clustering of trees and shrubs in the landscaped strip is permitted, provided no tree shall be within five feet (5') of another.

E. Easements. The layout of the landscaping shall not interfere with the function, safety or accessibility of any utility easement.

F. Landscaped areas adjacent to streets, vehicular parking, and access areas shall be protected to minimize damage to landscaping areas by vehicular traffic.

G. The Zoning Administrator may modify any of the landscape standards set forth in this section if such standard is inappropriate to a design proposal and the intent of this section is not violated. The applicant shall make a written request to the Zoning Administrator justifying the requested modification. A record of requested modifications shall be kept on file at the city.

H. Maintenance.

1. All landscaping shall be reasonably maintained, and any plant material shall be replaced within thirty (30) days of its demise or by an agreed upon date if seasonal conditions prohibit replacement within the thirty (30) day time requirement.
2. The maintenance of landscaping in the public right-of-way in all zoning districts shall be the responsibility of the abutting property owner.

I. Enforcement; Assurances for Installation and Completion

1. Prior to the issuance of a certificate of occupancy for any structure or building where landscaping is required, all landscaping shall be installed according to the approved site development plan, and the work shall be inspected and approved by the Zoning Administrator. At the time of inspection for the certificate of occupancy, the Zoning Administrator shall check the quantities, sizes and locations of landscape materials. The developer shall warrant at the time of the issuance of a certificate of occupancy that the plants installed are of the species, quantities, locations and sizes specified on the approved site development plan.
2. A certificate of occupancy for a structure or building may be obtained prior to the completion of required landscape improvements, if the completion is not

possible due to seasonal or weather conditions and if the owner or developer escrows the necessary funds with the Zoning Administrator for the completion of the landscaping. Acceptable assurances for guaranteeing the completion of all landscape improvements include irrevocable letters of credit, certified checks, cash, or other assurances acceptable to the city in an amount equal to the cost of plant materials and installation work. Acceptable financial assurances shall be accompanied by written guarantees that such landscaping will be completed to the satisfaction of the Zoning Administrator within a specified period not to exceed nine (9) months from the date of occupancy.

### **Section 17.372 General Fence Regulations**

A. No fence shall be allowed that will inhibit visibility and cause a safety hazard at street or driveway intersections.

B. All fences shall be constructed in a substantial workmanlike manner and shall consist of standard fence material. All fences shall be maintained in a condition of reasonable repair and shall not be allowed to become and remain in a condition of disrepair, or constitute a nuisance.

C. No fence shall be higher than six feet (6'), unless it can be shown to the satisfaction of the Zoning Administrator, that adjacent use, views and vistas are not obstructed or there are other compelling reasons for the additional height.

D. Barbed wire or other sharp-pointed material shall not be used in the construction of any fence unless a conditional use permit is approved by the city council provided, however, this subsection shall not prohibit the use of such material when:

1. Located in commercial and industrial zoning districts, provided such barbed wire or other sharp-pointed material is securely affixed to the top of a soundly constructed fence or structural barrier which is at least six feet (6') above grade.
2. Used for agricultural purposes or fencing required for livestock, including horses, on areas five (5) acres or greater in size.

E. Electrified wire fences are allowed in all zoning districts.

F. A fence may be built on the property line, but shall not be allowed to encroach upon any public right-of-way. Knowledge of public rights-or-way is the responsibility of the property owner.

G. No fence shall be placed closer to a fire hydrant than thirty-six inches (36"), and it shall not restrict the operation or use of the hydrant.

### **Section 17.374 Screening Standards**

A. The intent of all required screening is to completely hide stored materials from view of persons standing on the ground outside the storage area in the locations described in the

particular section requiring the screening. If no particular location is specified it shall be interpreted as screened from view on all sides.

B. Height. All trash or refuse collection areas shall be enclosed by a six foot (6') high solid wood fence or masonry wall, styled to match the material of adjacent walls or the main building on the site. No materials stored within an outdoor storage area or behind a screening fence, wall or structure shall be stacked or stored in a manner in which they exceed the height of the walls, fence, or structure.

C. Materials. Screening walls, fences, or structures shall be constructed from durable materials, which will require low maintenance. Materials, which are architecturally compatible with the primary building on the site or with the streetscape or landscaping of the site, shall be used.

D. Colors. Screening devices shall blend into the landscaping and shall not be colored as to direct attention to the screen. Muted earth tones shall be used as opposed to bright colors.

E. Maintenance. All walls, fences, structures or landscaping shall be maintained in good condition.

### **Section 17.375 Buffering and Transition Between Land Uses**

A. Conditions Whereby Building Setbacks May Be Increased. The required minimum setbacks in any zoning district may be increased by the Zoning Administrator, planning commission or city council based on any of the following conditions:

1. The use creates an adverse effect on traffic and pedestrian circulation, where such circulation is necessary to ensure the safety of people and property in relationship to existing uses.
2. The use creates an adverse effect on solar access of surrounding properties.
3. The use creates adverse shadow problems on public rights-of-way.
4. The siting of the use adversely impacts the abutting property, and re-siting of the use will not decrease the total gross floor area of the proposed structure.
5. The use creates nuisances such as dust, litter, noise or glare of lights.

## **Chapter 17.38 Signs**

### **Section 17.380 Requirements**

A. Purposes. The purposes of this chapter are: to encourage the effective use of signs as a means of communication in the city; to maintain and enhance the aesthetic environment and the city's ability to attract sources of economic development and growth; to improve pedestrian and traffic safety; to minimize the possible adverse effect of signs on nearby public and private property; to provide a reasonable balance between the right of a business or individual to identify itself and its purpose, and the right of the public to be protected against the visual discord that results from the unrestricted proliferation of signs; and to enable the fair and consistent enforcement of these sign restrictions.



B. Application. A sign may be displayed, erected, placed, established, painted, created, altered or maintained in the city only in conformance with the standards, procedures, exemptions, and other requirements of this chapter. If any provision of this chapter conflicts with any other adopted city code that regulates signs, this chapter shall govern.

1. Signs shall be permitted in the various zoning districts as accessory uses in accordance with the regulations contained in this chapter.
2. Sign plans must be submitted to and approved by the Zoning Administrator under criteria set forth in this chapter for all new signs prior to being submitted to the Regional Building Department for issuance of a sign permit. Upon completion of the installation of a new sign, a request shall be made to the Zoning Administrator for a final inspection.
3. All sign plan applications shall include, as a minimum, the following information:
  - a. Street address of the proposed sign.
  - b. Actual shape and dimensions of the lot.
  - c. Building locations and height dimensions.
  - d. Size, height, location, setback and type of both existing and proposed sign.
  - e. Name, address and telephone number of owner and sign installer.
  - f. Existing zoning.
  - g. Elevation drawings of the proposed sign.
  - h. Location of existing signs on adjoining properties.

C. Common Sign Plan. For any lot on which the owner proposes to erect one (1) or more signs requiring a permit, the Zoning Administrator may require that the owner submit a common sign plan that shall consist of coordinated signs for the entire development or center. Signs in the common sign plan shall have mutually unifying elements, which may include uniformity in materials, color, size, height, letter style, sign type, shape, lighting, location on buildings, and design motif. If the owners of two (2) or more contiguous lots or the owner of a single lot with more than one (1) building (not including accessory building) submit a common sign plan conforming with the provisions of this section, a twenty-five (25) percent increase in sign area shall be allowed for each included lot. This bonus shall be allocated within each lot as the owner elects.

### **Section 17.381 Signs Exempt from Regulations**

A. The following signs are exempt from these regulations; provided, however, these exemptions shall not be construed as relieving the owner of the sign from the responsibility for its erection, public safety or maintenance:

1. Official governmental signs.
2. Change of copy or message on legally permitted cabinet signs. All other copy changes such as painted signs or channel lettering shall require sign plan approval.
3. Customer information signs.
4. Identification signs.

5. Ideological signs.
6. Any sign inside a building that is not visible through a window.
7. Murals or works of art.
8. Scoreboards in sports stadiums or fields.
9. Memorial signs.
10. Traffic control signs on private property.
11. Temporary decorations or displays, if they are clearly incidental to, customarily, and commonly associated with any national, state, local, or religious celebration.
12. Signs carried by a person and not set on or affixed to the ground.

### **Section 17.382 Prohibited Signs**

A. The following signs are prohibited except as noted:

1. All signs not expressly permitted under this chapter or exempt from regulation in accordance with the previous section are prohibited in the city.
2. Revolving, rotating, flashing, chasing, blinking or animated signs with intermittent or varying intensity of illumination, except for a sign indicating time, date and temperature.
3. Rooftop signs except those signs that do not project more than four feet (4') above the fascia wall of a flat roof.
4. Strings of light bulbs used in connection with commercial premises for commercial purposes, other than traditional holiday decorations between November 1 and February 1 only.
5. Balloons, blimps, searchlights or other devices used in connection with commercial premises for commercial purposes, except as provided for in Subsection 17.387 G.
6. Wind driven signs and ribbons.
7. Vehicles or trailers parked on public right-of-way or public property, or on private property, so as to be visible from public right-of-way which has attached thereto or located thereon any sign or advertising device for the basic purpose of providing advertisement of products or directing people to a business or activity located on the same or nearby premises. This provision applies where the primary purpose of a vehicle is for advertising purposes and is not intended to prohibit any form of vehicular sign, such as a sign attached to a truck or motor vehicle, which vehicle is primarily used for business purposes other than advertising.
8. Off-premise signs, except those temporary signs allowed in this chapter.
9. Signs that incorporate projected images or emit any sound, which is intended to attract attention.
10. Signs contributing to confusion of traffic control devices or which hide or interfere with the effectiveness of such devices.
11. Signs attached to trees or other plant materials.

### **Section 17.383 Nonconforming Signs**

A. Existing on-premise signs for which a sign permit was issued pursuant to the previous provisions of this chapter, and which have become nonconforming because of subsequent amendments to said chapter, shall be brought into conformance with the provisions of this section within fifteen (15) years from the date of the amendment which caused the nonconformity; provided, however, that during said fifteen (15) year period of amortization, such signs shall be maintained in good condition and no such sign shall be:

1. Structurally changed to another nonconforming sign, although its copy may be changed.
2. Structurally altered in order to prolong the life of the sign, except to meet safety requirements; altered to increase the degree of nonconformity of the sign; enlarged.
3. Re-established after damage or destruction if the estimated cost of reconstruction exceeds fifty (50) percent of the appraised replacement cost.

### **Section 17.384 Computation**

A. Computation of Area of Individual Signs. The area of a sign face (which is also the sign area of a wall sign or other sign with only one face) shall be computed by means of the smallest square, circle, rectangle, triangle, or combination thereof that will encompass the extreme limits of the writing, representation, emblem, or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed, but not including any supporting framework, bracing, or decorative fence or wall when such fence or wall otherwise conforms to the requirements of section 17.10.030 and is clearly incidental to the display itself.

B. Computation of Area of Multi-faced Signs. The sign area for a sign with more than one face shall be computed by adding together the area of all sign faces visible from any one point. When two identical sign faces are placed back to back, so that both faces cannot be viewed from any point at the same time, and when such sign faces are part of the same sign structure and are not more than forty-two inches (42" apart, the sign area shall be computed by the measurement of one of the faces.

C. Computation of Height. The height of a sign shall be computed as the distance from the base of the sign at normal grade to the top of the highest attached component of the sign. Normal grade shall be construed to be the lower of (1) existing grade prior to construction or (2) the newly established grade after construction, exclusive of any filling, berming, mounding, or excavating solely for locating the sign. In cases in which the normal grade cannot reasonably be determined, sign height shall be computed on the assumption that the elevation of the normal grade at the base of the sign is equal to the elevation of the nearest point of the crown of a public street or the grade of the land at the principal entrance to the principal structure on the lot, whichever is lower.

### **Section 17.385 Standards and Limitations for Residential Zoning Districts and Uses**

A. One (1) identification sign per single-family or two-family dwelling provided such sign does not exceed two (2) square feet in area.

B. One (1) identification sign per multi-family apartment complex provided such sign does not exceed twenty (20) square feet in area and has indirect illumination only.

C. One (1) identification sign per public or semi-public use provided such sign does not exceed thirty-five (35) square feet in area, eight feet (8') in height and has indirect illumination only.

D. One (1) identification sign per entrance to the property identifying a subdivision, housing project, or mobile home park, provided that such sign does not exceed thirty-five (35) square feet in area, six feet (6') in height and has direct illumination only.

E. One (1) identification sign per child-care center provided such sign does not exceed ten (10) square feet in area and is unlighted.

F. Home occupation signs must comply with section 17.10.060 of this title.

**Section 17.386 Standards and Limitations for Nonresidential Zoning Districts and Uses.** The following types of signs shall be permitted in commercial and industrial districts, including PUD districts:

A. Such signs as are permitted in section 17.385 where applicable to residential uses.

B. Flush wall signs, projecting wall signs or permanent window signs, provided such signs do not exceed one and one-half (1.5) square feet of area per lineal foot of exterior wall. The sign or signs shall be placed on the side of the building or structure from which it draws its allowed square footage.

C. No more than one (1) low profile sign per business or industrial establishment shall be allowed, provided such sign does not exceed six feet (6') in height, fifty (50) square feet in area and shall be set back a minimum of three feet (3') from any property line.

D. No more than one (1) freestanding sign not to exceed one hundred fifty (150) square feet in area shall be permitted for each legal lot of record; except, when development is located on more than one (1) legal lot, but constitutes a commercial or industrial complex through common use arrangements, only one (1) free-standing sign shall be permitted for the complex. However, in centers with three (3) or more acres, one (1) additional freestanding sign not to exceed one hundred fifty (150) square feet in area shall be allowed for each street frontage exceeding six hundred (600) lineal feet in length. All freestanding signs shall not exceed thirty-foot (30') in height and shall be setback a minimum of ten feet (10') from any property line.

**Section 17.387 Temporary Signs.**

A. Construction Signs. One (1) sign shall be allowed per lot. The sign shall not exceed thirty-two (32) square feet in area, and shall not be erected until a building permit has been issued for the building or structure on the lot. The sign shall be removed within fourteen (14)

days after the issuance of a certificate of occupancy for the building or structure. Signs for construction projects that do not require a certificate of occupancy are not allowed.

## B. Real Estate Signs.

### 1. Residential Zoning Districts and Uses:

- a. Less than one (1) acre: one (1) sign per street frontage not to exceed six (6) square feet per sign.
- b. One (1) to five (5) acres: one (1) sign per street frontage not to exceed thirty-two (32) square feet per sign.
- c. Five (5) to ten (10) acres: two (2) signs not to exceed thirty-two (32) square feet per sign, or one (1) sign not to exceed sixty-four (64) square feet.
- c. Greater than ten (10) acres: three (3) signs not to exceed thirty-two (32) square feet per sign, or two (2) signs not to exceed forty-eight (48) square feet, or one (1) sign not to exceed ninety-six (96) square feet.

### 2. Nonresidential Zoning Districts and Uses:

- a. Less than one (1) acre: one (1) sign per street frontage not to exceed thirty-two (32) square feet per sign.
- b. One (1) to five (5) acres: one sign per street frontage not to exceed sixty-four (64) square feet per sign.
- c. Five (5) to ten (10) acres: two (2) signs not to exceed sixty-four (64) square feet per sign, or one (1) sign not to exceed one hundred twenty-eight (128) square feet.
- d. Greater than ten (10) acres: three (3) signs not to exceed sixty-four (64) square feet per sign, or two (2) signs not to exceed one hundred twenty-eight (128) square feet per sign.

### 3. Signs are to be removed fourteen (14) days after sale or lease of property.

### 4. Off-premise signs directing the public to a home, or lot for sale or home for rent shall be allowed in any zone district, subject to the following requirements:

- a. No more than one (1) sign per home, or lot for sale or home for rent.
- b. The sign may not exceed four (4) square feet in area.
- c. The sign shall not be attached to any public sign or utility pole, nor placed in or on any street, sidewalk or other public right-of-way, or on any city property, unless a revocable permit is obtained from the City Clerk, or impede motor vehicle or pedestrian traffic.

C. Off Premise, Directional Sign Plazas. These signs are intended for the advertising of vacant lots or model homes that need traffic to be directed for sales purposes. Off premise, directional sign plazas that list homebuilders and directions to model homes and vacant lots are permitted in any zoning district subject to approval of the Zoning Administrator. Notwithstanding any other provisions of these regulations, the Zoning Administrator may approve and permit off premise, directional sign plazas subject to the following requirements and limitations:

1. Placement and installation of directional sign plazas must be in accordance with approved permit specifications.
2. Individual homebuilder signs are not allowed unless they are a part of an approved directional sign plaza.
3. Directional sign plazas shall not exceed six and one half feet (6 1/2') in height and four feet (4') in width in residential zoned districts, and ten feet (10') in height and five feet (5') in width in nonresidential-zoned districts.
4. Directional sign plaza structures shall not obstruct the use of sidewalks, walkways, bike and hiking trails; shall not obstruct the visibility of vehicles, pedestrians or traffic control signs; shall not be installed in the immediate vicinity of street intersections; and shall comply with sight triangle requirements, as specified in section 17.334.
5. Directional sign plaza structures shall be ladder type with individual sign panels of uniform design.
6. Directional sign plazas, or any part thereof, shall not be illuminated.
7. Directional sign plazas shall include a break away design.
8. Written permission from the adjacent property owner may be required.

D. Model Complex Signs. These signs shall be located on the project site and conform to the following requirements:

1. One (1) sign per complex not to exceed thirty-two (32) square feet.
2. One (1) sign per model not to exceed six (6) square feet.
3. Two (2)-traffic direction signs, not to exceed four (4) square feet each.
4. Signs are to be removed when complex ceases to be model home complex.

E. Political Signs.

1. One (1) sign per political candidate and one (1) sign per ballot issue shall be allowed per lot, or public right-of-way adjoining the lot. Each sign shall not exceed six (6) square feet for residentially zoned lots and thirty-two (32) square feet for all other lots. Political signs shall be in addition to any other sign permitted by this chapter.
2. All political signs shall be removed within five (5) days after the election for which the sign pertains.
3. These restrictions shall not apply to billboards.

F. Garage Sale Signs. Signs directing the public to a garage or yard sale shall be allowed in any zoning district and need not be located on the same lot as the permitted use, subject to the following specific additional requirements:

1. The sign may be posted only on the day or days of the sale as identified on the sign.
2. The sign may not exceed six (6) square feet in area.
3. The sign shall not be attached to any public sign or utility pole, nor placed in or on any street, sidewalk or other public right-of-way, or on any city property, or impede motor vehicle or pedestrian traffic.

G. Balloons, Blimps or Searchlights. Balloons, blimps, or searchlights are allowed for grand openings and special events within any nonresidential zoning district, provided that said events are limited to not more than once per calendar year and for a period not to exceed fourteen (14) consecutive days. Such signs shall be securely anchored to the ground.

### **Section 17.388 Sign Standards**

A. Projecting Signs. Signs projecting over private property shall not project more than six feet (6') from the face of the building, nor beyond the minimum required building setback for the zoning district in which located. Such signs shall not exceed fifteen (15) square feet per face.

B. Awning, Canopy, or Marquee Signs. These signs are allowed in all zoning districts and are in addition to any other sign permitted by this chapter. Awning, canopy or marquee signs shall meet the following regulations:

1. A maximum of one-half (0.50) square feet of signage for each linear foot of awning or canopy.
2. The sign or signs shall be placed on the side of the awning or canopy from which it draws its allowed square footage, and may not extend above, below, or beyond the awning or canopy.

C. Directional Signs. On-premise entrance, exit, and directional signs per an approved sign plan shall be allowed in all zone districts. They shall not exceed four feet (4') in height and six (6) square feet in sign area.

D. Flags. Any flag, pennant or insignia of any nation, group of nations, states, counties, cities, fraternal, religious, educational or civic organizations one hundred (100) square feet or less in size in nonresidential zoning districts is allowed; except no part of said flag, pennant or insignia may, when fully extended, protrude over any public right-of-way or property line in any direction. No flags, flagpoles, pennants or insignias shall exceed thirty feet (30') in height.

E. Off-Premise Signs. No off-premise signs, including billboards, shall be constructed in any zoning district with the exception of those temporary signs listed section 17.387.

F. Banners and Pennants. Banners and pennants shall not exceed one-fifth (0.20) square feet of area per lineal foot of property line on residentially zoned lots that contain four (4) or more dwelling units. Banners and pennants are permitted on residentially zoned lots that contain less than four (4) dwelling units. Banners and pennants shall not exceed one-half (0.50) square feet for each linear foot of exterior wall for all lots that are not zoned residentially. Banners and pennants shall be in addition to any other sign permitted by this chapter. Banners and pennants may be attached to buildings, structures, or fences. Banners and pennants shall be kept in good repair and remain firmly attached to the building, structure or fence. Banners and pennants shall consist of standard materials designed specifically for banners and pennants.

G. Window Signs. Window signs are permitted in nonresidential zoning districts. The total area of such signs shall not exceed fifty percent (50%) of the total window area.

H. Portable Signs. Only one (1) portable sign, not to exceed four feet (4') in height and sixteen (16) square feet in sign area, shall be permitted in nonresidential zoning districts. Any portable sign placed upon any property shall be securely anchored to the ground, a building, structure, or pole.

I. Identification. Each sign shall be identified by a label, nameplate or trademark identifying the manufacturer and/or installer of the sign, except those signs that do not require the submittal of a sign plan.

J. Owner Consent. No sign shall be placed on any property without written consent of the owner or the owner's authorized agent.

K. Lighting. The light from any light source intended to illuminate a sign shall be so shaded, shielded or directed so that the light intensity or brightness shall not adversely affect surrounding or facing premises, nor adversely affect safe vision of pedestrians or operators of vehicles moving on public or private streets, driveways or parking areas.

L. Overhangs. The lowest point of a sign that extends over an area intended for pedestrian use shall not be less than eight feet (8') above the finished grade below it. The lowest point of a sign that extends over an area intended for vehicular use shall not be less than fourteen feet (14') above the finished grade below it.

M. Setbacks. Sign setbacks shall mean that no part of a sign may protrude into the setback.

N. Corner Visibility. No sign shall be permitted which may obstruct the view in any direction at the intersection of a street or with an alley or driveway. All signs shall be, at a minimum, subject to the visibility provisions of section 17.334.

O. Signs on Public Property or Public Rights-of-Way. Temporary and permanent signs are prohibited on or from projecting onto public property including public rights-of-way unless a revocable permit is obtained from the City Clerk prior to the placement or erection of the signs. The revocable permit may contain such requirements as the City Clerk reasonably deems necessary to assure the sign and its placement are consistent with this title and safety and welfare of the city, including obtaining permission from adjacent landowners.

P. Discontinued Establishments; Removal of Signs. Whenever a business, industry, service or other use is discontinued, any sign or sign copy pertaining to the use shall be removed by the person or entity owning or having possession of the property within ninety (90) days after the discontinuance of such use.

Q. Design, Construction and Maintenance.

1. All signs shall be designed, constructed, and maintained in accordance with the following standards:

a. All signs shall comply with applicable provisions of the uniform building code at all times.



- b. Except for flags, banners, window signs, portable signs and temporary signs conforming to the requirements of this chapter, all signs shall be constructed of permanent materials and shall be permanently attached to the ground, a building, or another structure by direct attachment to a rigid wall, frame, or structure.
- c. All signs shall be maintained in good structural condition, in compliance with the building code, and in conformance with this chapter, at all times. All signs, including sign structures and sign faces, shall be kept neatly painted, including all metal parts and supports that are not galvanized or of rust-resistant metals, and in a general state of good repair. For the purposes of this section, good repair shall mean that there are no loose, broken or severely weathered portions of the sign structure or sign face. The Zoning Administrator may inspect any sign and shall have authority to order the painting, repair, alteration or removal of a sign that constitutes a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation or obsolescence.

## **Chapter 17.39 Supplemental Standards**

### **Section 17.391 Utilities**

A. All new residential and nonresidential electric distribution lines shall be placed underground, unless the Public Utilities Director approves overhead installation. Such authorization shall be granted if the Public Utilities Director finds that overhead installation is necessary, no reasonable alternative to overhead lines exists, and overhead installation will meet the purposes of this title. Nothing in this chapter shall be construed to prohibit construction or installation of a public utility use or structure necessary for transmission of commodities or services of a utility company, through mains or distribution lines, in any zoning district. Public utility storage facilities, maintenance facilities, substations, treatment facilities, regulator stations, exchanges and business offices shall be restricted and are considered a conditional use in any zoning district. Such uses shall be designed to be non-obtrusive and blend in with the surrounding area.

### **Section 17.392 Recreational Vehicles, Campers, Motor Homes, Trailers or Similar Vehicles**

A. No recreational vehicle, camper, motor home, trailer or similar vehicle shall be used for a dwelling unit, accessory building, home occupation or other use except when located in an approved development park for such uses and no business shall be conducted within such equipment while parked or stored unless the Zoning Administrator has given approval as a temporary use.

### **Section 17.393 Temporary Uses**

A. Designated. A temporary use permit may be issued for the following uses by the Zoning Administrator. Such permits shall be valid only for the period specified, and only two (2) renewals of the permit may be granted. Title 8, Health, and Safety Permits are subject to reasonable stipulations established at the time of application and review.

Use	Time Period Permitted for	Districts
Construction offices, which also can be used as security quarters incidental to construction on the premises.	Until completion of project	All
Carnival, circus bazaar, fair.	One Week	Nonresidential
Seasonal sale of farm produce or other food products (roadside stand). Any structures used for display shall be removed during the period when not in use.	Four months per year	All
Noncommercial batching plant	Shall be located within one hundred feet (100') of the construction site for which the concrete or asphalt is to be used	Nonresidential
Parking for another temporary use.	Same as temporary use for which it is permitted	All
Christmas tree sales.	Sixty (60) days	Nonresidential
Temporary offices, classrooms, and bank facilities in module units designed for that occupancy classification.	Not to exceed two (2) years after a site development plan is approved.	Nonresidential
Real estate offices and model homes incidental to a new housing development.	Not to exceed two (2) years after the first certificate of occupancy	All
Retail sales of specialty items.	Sixty (60) days	Nonresidential
Similar uses which in the opinion of the Zoning Administrator meet the definition of a temporary use.		

**Section 17.394 Architectural Review.** The purpose of architectural review is to promote the preservation of the visual character of the city, to guard against the construction of poorly designed structure, to prevent the use of improper or unsuitable materials, and in general, to provide adequately or a high quality of development. The Zoning Administrator, planning commission and city council may require architectural perspectives and building elevations as part of the review process for proposed developments or uses and may impose conditions. It is not the intent of this section to rigidly control architectural character so that individual initiative is stifled or to require additional expenses for development.

**Section 17.395 Side Yard, Corner Lots.** On corner lots, the side yard which is contiguous to a street shall not be less than ten (10) feet in width, except that a garage having perpendicular access to the street shall be set back at least eighteen feet (18') from the street property line.

**Section 17.396 Relocations of On-site Built Structures.** No residential or nonresidential on-site built structure shall be moved onto any lot within the city unless the structure was constructed at least ten (10) years prior to the effective date of this title.

## ARTICLE IV SPECIAL USE REQUIREMENTS AND DEVELOPMENT OPPORTUNITIES

### Chapter 17.40 Industrial and Commercial Performance Standards

#### Section 17.400 Application

A. All industrial and commercial businesses shall comply with the following standards so that such uses do not create any danger to public safety in surrounding areas, do not cause water pollution, and do not create offensive noise, vibration, smoke, dust, odors, heat, glare or other objectionable influences beyond the boundaries of the property in which such uses are located; and shall not be operated in any manner so as to constitute a public nuisance or hazard. The purpose of these standards is to permit potential industrial nuisances to be measured, factually and objectively; to ensure that all industrial or commercial uses will provide methods to protect the community from hazard and nuisances which can be prevented by control and nuisance elimination and to protect industries from arbitrary exclusion from the city based solely upon the nuisance production by any particular type of industry in the past.

1. Site Development Plan. All industrial uses shall be shown on a site development plan submitted to and approved by the Zoning Administrator.
2. Glare and Heat. Any operation producing intense glare or heat shall be conducted within an enclosed building or with other effective screening in such a manner as to make such glare or heat completely imperceptible from any point along the property line.
3. Vibration. Industrial or commercial operations shall cause no inherent and recurring generated vibration perceptible without instruments at any point along the property line. Temporary construction sites are excluded from this restriction.
4. Light. Exterior lighting, except for overhead street lighting and warning, emergency or traffic signals shall be installed in such a manner that the light source will be sufficiently obscured to prevent glare on public streets and walkways or into any residential area. The installation or erection of any lighting, which may be confused with warning signals, emergency signals or traffic signals, is prohibited.
5. Smoke. All industrial and commercial uses which produce smoke or any air contaminate shall be subject to the jurisdiction and regulations of the Colorado Air Quality Control Commission and the Colorado Air Quality Control Division. The city reserves the right, prior to approving any industrial or commercial application under this title, to require from the applicant evidence of compliance with applicable regulations of state government.
6. Odors. No industrial or commercial use shall cause to allow the emission of malodorous air contaminants from any single source such as to result in detectible odors, which are perceptible without instruments outside the property boundaries.
7. Noise. All industrial and commercial uses shall be conducted such that noise generated from such uses is controlled at its source or so attenuated

by the structure from which it radiates that it does not become objectionable outside its property lines.

8. Fugitive Dust. No industrial or commercial operation shall be allowed to produce fugitive dust in amounts, which are noticeable or appreciable outside of the property boundaries of the use.
9. Loading and Outdoor Storage Areas. All truck and other loading areas and outdoor storage areas shall be designed and operated to minimize any adverse effects upon traffic and adjacent properties.
10. Industrial and Commercial Wastes. All industrial and commercial operations shall confine liquid and solid wastes produced in connection with such operation within the property boundaries, and shall further insure that no such waste leave the property or enter any natural stream course. This shall not apply to the appropriate and proper disposal of liquid and solid waste.
11. Electromagnetic and Microwave Radiation. To the extent that the city may regulate pursuant to federal or state law, no electromagnetic or microwave radiation shall be permitted if such radiation causes adverse disturbances at or beyond the boundaries of the property.
12. Fire and Explosion. No activity shall be conducted or material of hazardous characteristics stored or used which may potentially cause a fire, explosion or other physical hazard to person or property, unless in conformance with the Uniform Fire Code and other applicable ordinances and criteria.
13. Storage and Handling of Hazardous Substances. The storage and handling of materials or substances determined to be hazardous substances as defined by C.R.S. 25-5-502, or determined after hearing by the city council, after planning commission review, to be hazardous to the health safety or welfare of the residents of the city shall not be allowed in conjunction with industrial and commercial uses except in accordance with applicable federal, state or city regulations. This subsection shall apply to the container of the hazardous substance as well as to the substance itself.

## **Chapter 17.41 Residential Cluster Development**

### **Section 17.410 Purpose and Intent**

A. The purpose and intent of this chapter is to permit an administratively uncomplicated method for cluster development, to promote imaginative, well-designed developments which preserve open space, respect physical qualities of the land and reduce overall development costs. More specifically, this option is intended to permit cluster development, which will:

1. Result in improved living and working environments.
2. Allow for flexibility in design and maximum effective density, in exchange for increased preservation of open space to serve recreational,

scenic and public service purposes, within the densities established by the zoning district.

3. Promote more economically efficient development layout by reducing street lengths, utility installations, and energy savings in street and utility line maintenance.
4. Encourage ingenuity in design to promote a variety of housing types.
5. Establish criteria for identifying those parcels of land and/or sites, which are eligible for cluster design.
6. Insure that approval of residential cluster development is granted only if the subject parcel is large enough to make innovative and creative site planning possible.
7. Insure applicants for residential cluster development have professional capability to produce a creative plan.
8. Insure the public interest in achieving goals stated in the Fountain Comprehensive Development Plan will be better served by the residential cluster development than the application of conventional zoning regulations.
9. Insure that the advantages to land owners afforded by the residential cluster development will be balanced by public benefits.
10. Insure that the dwelling units are concentrated on the most buildable portion of a parcel, so that natural drainage systems, open space, and other significant natural features that help control runoff and soil erosion are preserved.

**Section 17.411 Use and Density Requirements.** Every residential cluster development shall conform to the use and density requirements set forth in the underlying zoning district. In no case, shall the density specified for the underlying district increase, nor shall the other applicable regulations or use limitations be modified or changed.

**Section 17.412 Density Transfer.** In each zoning district allowing residential cluster development, the lot size may be reduced from the general lot size of the underlying zoning district, to a specific minimum lot size for cluster development. All such lot reductions shall be justified and compensated for by an equivalent amount of land in cluster open space to be reserved as permanent open space and maintained for its scenic value.

### **Section 17.413 Dimensional Requirements**

A. Modification and variation of yard and lot dimensional requirements may be permitted.

1. Minimum Lot Area. Lots may be reduced in areas below the minimum lot size required by the underlying zoning district, provided that the average lot size of the total lots created within the development is not below the minimum lot size required by the underlying zoning district. Open space shall not be included in the total gross average used for determining the average lot size.
2. Yard Requirements. The minimum yard requirements established by the underlying zoning district may be reduced, upon finding by the planning

commission and city council that the applicant has satisfactorily justified all requested yard modifications. Front yards shall have a minimum depth of eighteen feet (18'). Front yards shall be staggered to provide a maximum variety in the size of such yards.

3. Lot Frontage. The minimum lot frontage established by the underlying zoning district may be reduced as determined appropriate.
4. Lot Coverage. The maximum lot coverage ratio for any lot of record shall not exceed eighty percent (80%).

### **Section 17.414 Eligibility Criteria**

A. A residential cluster development shall meet the following eligibility criteria:

1. Land Ownership. The applicant shall own or control the land subject to the residential cluster development application.
2. Development Team. An appropriate development team of design professionals (i.e. architect, landscape architect/planner, civil engineer, soils engineer, drainage engineer, etc.,) has been retained by the applicant, with the expertise and experience to carry out the intent of this development and applicable standards.
3. Phased Development. All proposed phased developments must be accompanied by a schedule establishing approximate dates when each phase will be completed. Each phase of the development shall include its pro rata share of total planned common open space, facilities and services, as applicable. Amenities serving the entire development may be required to be constructed in the earliest phase of the development.
4. Provisions, Operation and Maintenance of Common Areas. Where common areas or facilities are proposed, an operation and maintenance program shall be prepared, administered and enforced through approved covenants, conditions and restrictions.
5. Development Agreements. Completion time and complexity of proposed cluster developments may make desirable a development agreement between the project applicant and the city in order to provide assurance to the city that an approved project will proceed in accordance with the policies, rules and regulations existing at the time of the agreement and subject to conditions of approval.
6. Subdivision Plat Required. A request for residential cluster development must be accompanied by a subdivision plat, which meets the requirements set forth by the city. If land was subdivided prior to , it is exempt from meets and bounds requirements.
7. Denial of Application. If an application for a residential cluster development is denied, a substantially similar application, as determined by the planning commission and city council, cannot be submitted for a period of one (1) year from the date of denial.

**Section 17.415 Location.** Cluster development may occur in the LLR, RA, R1, MF and RMU residential zoning districts.

**Section 17.416 Open Space Lands.** The amount of open space required for a cluster development shall be equal to the amount that is equivalent to the total reduction in lot size for all lots in development. Land reserved for open space shall be preserved and maintained for scenic value, recreation or conservation, schools, community buildings or related uses. Improvements shall be limited to such purposes. Cluster open space shall not include areas devoted to public or private vehicular streets or any land, which had been or is to be conveyed to a public agency via a purchase agreement (i.e. schools, parks or other public facilities). Cluster open space shall be made available to all residents unless the city finds that the area, configuration, and location of such open spaces would make public use undesirable or unnecessary. If dedicated to the city, the land shall be conveyed in fee simple absolute title by warranty deed. If the cluster open space is not dedicated to public use, it shall be protected by legal arrangements, satisfactory to the planning commission and city council, sufficient to assure its maintenance and preservation for the purpose intended. Covenants or other legal arrangements shall specify the owner and maintenance responsibility.

**Section 17.417 Utilities.** Cluster developments shall be served by municipal water and public sanitation.

**Section 17.418 Streets.** Streets may be designed as public or private streets in accordance with city standards.

**Section 17.419 Design Requirements.**

- A. A variety of architectural styles shall be encouraged.
- B. Where the city determines necessary, sidewalks are encouraged to be detached.
- C. Each dwelling unit shall be provided with an enclosed double garage.

**Section 17.420 Findings.**

A. Before recommending approval or approving any residential cluster development, the planning commission and city council shall make the following findings:

1. That the residential cluster development is consistent with the purpose, intent and criteria set forth in this chapter.
2. That the residential cluster development is in harmony with the Fountain Comprehensive Development Plan, subdivision regulations, and this chapter.
3. That the residential cluster development is compatible with the surrounding areas and that the project will not result in undue adverse effects upon adjacent property, the character of the neighborhood, traffic conditions, parking or utility facilities.
4. That an exception from typical residential design is warranted by virtue of the design and amenities incorporated into the plan, including planned

variations to district regulations, which serve a public purpose, and provide amenities and benefits to an equivalent or higher degree than would ordinarily be achieved.

5. That the amenity level of the development and the amount of open space provided is greater than what would have been required under conventional zoning regulations.
6. That the usability of cluster open space intended for recreation or public use is easily accessible to pedestrians, and is suitable for the intended purposes.
7. That the residential cluster development creates a desirable and stable environment and makes possible an innovative and efficient use of the property.
8. That the proposed development will not result in the destruction, loss, or damage of any natural scenic, or historic feature of significant importance to the community.
9. That individual lots, buildings, dwelling units and parking areas are situated to avoid where possible, adverse effects of shadows, noise, and traffic on the residents of the site.
10. That the existing and proposed streets are suitable and adequate to carry anticipated traffic within the residential cluster development and near the residential cluster development.
11. That the existing and proposed utility services are adequate for the residential cluster development.

## **Chapter 17.43 Adult-oriented Uses – Regulated**

### **Section 17.432 Location Requirements**

A. Adult-oriented uses shall be established, operated and maintained only within the Planned Industrial District and shall be separated from the most proximate and directly measured legally described property line of any residential zoning district, place of worship, park and/or school by not less than one thousand feet (1,000'), and other adult-oriented uses by not less than three hundred feet (300').

B. Public streets, sidewalks, driveways, easements and other public rights-of-way shall be included in measuring the distances prescribed in this chapter.

### **Section 17.434 Appeal Process**

A. The Zoning Administrator shall deny an application for any building permit or other approval necessary for the location or operation of an adult-oriented business upon a finding of noncompliance with the standards and requirements of this chapter. Nothing in this chapter shall be construed to require such issuance or approval of an adult oriented business failing to comply with the standards of the city, which may be otherwise generally applicable. Redress for any denial not made pursuant to this chapter shall be governed by the procedures otherwise available in the context of such denial. Within ten (10) business days of the city after the submission of an



appropriate written application for the approval of the location of an adult-oriented business, the Zoning Administrator shall in writing approve or deny the same. In the event of denial, the Zoning Administrator shall in writing set forth the basis under this chapter of such denial.

B. Within ten (10) calendar days from the date of such written denial, the applicant may file with the City Clerk a notice of appeal (pursuant to Section 17.593) stating with particularity the basis of the exception taken with such denial. A copy of such document shall be concurrently submitted to the office of the City Attorney.

### **Section 17.436 Variance Procedures for Adult-Oriented Uses**

A. The City Council may grant a variance pursuant to a request for variance duly filed with the City Clerk upon a finding that, at the time of the filing of the request and continuing until the time of the hearing, no occupancy of any location is available to applicant for use as an adult-oriented business through acquisition by purchase or lease in a Planned Industrial Zoning District, as contemplated in this section. For the purposes of this chapter, the applicant shall have the burden of proof to establish through diligent inquire, the unavailability of suitable property in compliance with the location requirements. Economic hardship incurred in locating and maintaining such use in compliance with the location requirements shall not constitute the basis of establishing unavailability under this chapter.

B. Upon receipt of the request for variance duly filed by the applicant for a variance, the city council shall schedule a public hearing in conformance with the procedures set forth in Chapter 17.61 of this title.

C. In the event the city council should, in consideration of the evidence presented at the public hearing find that no location, as defined in this chapter, is available in a Planned Industrial Zoning District in compliance with the location requirements set forth in this section, the city council shall grant a variance to the applicant to locate the adult-oriented use within three hundred feet (300') of an existing adult-oriented use. In the event that the applicant establishes that no location is available anywhere in a Planned Industrial Zoning District as required by this chapter, the city council shall grant a special variance to locate in an otherwise appropriately commercially zoned location specifically identified in the request for variance. Such property shall be situated no closer than one thousand feet (1000') from the property line of any existing residential use, church, school or park.

D. Relief sought from the decision of the city council shall be subject to the provisions of Rule 106 (a)(4) of the Colorado Rules of Civil Procedure. Failure to request and exhaust the administrative procedure provided in this chapter shall preclude judicial review, and shall be deemed to constitute an abandonment of any right or claim to a variance under this section.

E. Notice. Any notice to be given to the city by the applicant, or to the applicant by the city under this chapter, shall be effective upon the mailing thereof to the attention of the Zoning Administrator, and to the applicant at the address set forth in any notice or request presented under this title.

## **Chapter 17.44 Telecommunications and Antennae**

### **Section 17.440 Design Standards for CMRS Telecommunications Sites**

A. All CMRS telecommunications sites are subject to a design review process and fees as specified by the city council. The review process varies according to the type of facility proposed and the zoning district in which the facility is located. The purpose of design review for CMRS telecommunications sites is to ensure that the necessary antennae, equipment, and equipment shelters are sited and screened in a way that minimizes visual and physical impacts on the surrounding area. The following design criteria and requirements shall apply to all CMRS telecommunication antennae, equipment, and equipment shelters:

1. All CMRS telecommunications antennae, equipment, and equipment shelters shall be designed to be compatible with surrounding buildings and existing or planned uses in the area. This may be accomplished with compatible architectural elements such as color, texture, scale, and character.
2. Siting and installation of CMRS telecommunications antennae, equipment, and equipment shelters shall preserve or enhance the existing character of the topography and vegetation of a site. Existing vegetation, if any, and if suitable with natural features, shall be preserved and/or improved to provide screening for the facility. If existing topography of the site does not adequately screen equipment from view, fencing may be required. Fencing should not be used exclusively but instead be supplemented with vegetation. Any security fencing shall be of a design that blends into the character of the existing environment and meet the height limitation for the zoning district in which the fencing is located.
3. All CMRS antennae and equipment shall be no taller than necessary for the efficient operation of the CMRS antennae and equipment.
4. Applicants shall demonstrate that the CMRS telecommunications site is a necessary component of the applicant's overall communication network and communication plan for the community. Such demonstration shall require that the applicant establish at least one of the following criteria: (1) the site is necessary to provide appropriate signal coverage quality; (2) the site is made necessary pursuant to the applicant's FCC license; and (3) the site is necessary to handle increased capacity due to caller volume. In addition, the applicant shall demonstrate: (1) existing topography and/or structures in the surrounding area preclude other locations in the same area and (2) technical and engineering factors require the site to be in the desired location in relation to other existing sites and system constraints such as frequency requirements, availability of electric power and interconnection to telephone land lines, and site access.
5. All CMRS telecommunications antennae, equipment, and equipment shelters shall be sited, designed, and screened to minimize the visibility of such equipment from surrounding properties, public streets and neighborhoods.
6. The colors of all CMRS telecommunication antennae, equipment, and equipment shelters shall minimize the visibility of the facility.

7. To minimize the visual and physical impact on the surrounding area caused by freestanding and building mounted CMRS telecommunications facilities, the city encourages innovative and multiple use of building and structures for the location of CMRS telecommunications facilities, antenna, and equipment.

**Section 17.442 Design Standards for Structure or Building Mounted CMRS Telecommunications Facilities**

A. All structure or building mounted CMRS antennae and equipment shall be designed and constructed to blend with and enhance the architectural characteristics of the accompanying building or structure.

1. Panel Antennae Standards:

- a. Panel antennae shall not protrude horizontally more than two feet (2') from the building wall and shall be painted or treated to match the building or structure to which the panel is attached.
- b. Panel antennae attached to the side of a building shall not exceed the height of the parapet or the roofline, whichever is greater.
- c. Panel antennae mounted on an existing penthouse or existing rooftop mounted service equipment for the building shall not exceed the height of the penthouse or service equipment to which the antennae is attached.
- d. Panel antennae shall not be mounted in a freestanding, sled, or rack-mounted fashion on the top of a building unless: (1) there exists unscreened service equipment on the roof, which will be screened from view along with the panel antennae. (2) the screening of the antennae and equipment will be architecturally compatible with the building. (3) a waiver is obtained from the Zoning Administrator. The construction of artificial penthouses or artificial service equipment on a roof for attaching CMRS telecommunication facilities is prohibited.
- e. No panel antenna shall exceed the maximum height limitation for the zoning district in which the panel is located.

2. Whip Antennae Standards

- a. Single whip antennas shall not extend more than fifteen feet (15') above the building height.
- b. Where more than one whip antenna is attached to one building, such antennae shall maintain a minimum separation of fifteen feet (15') between antennas owned by different CMRS telecommunication providers.
- c. No whip antenna shall exceed the maximum height limitation for the zoning district in which the antenna is located.

**Section 17.444 Design and Performance Standards for Freestanding CMRS Telecommunications Facilities**

A. The following design and performance standards shall apply to all freestanding CMRS telecommunication facilities:

1. The height of any freestanding CMRS communication facility shall conform to the height limit of the zoning district in which the facility is located.
2. All freestanding CMRS telecommunications facilities shall meet the landscaping requirements set forth in this title, including screening of such facilities with vegetation. As a condition of approval of any freestanding CMRS telecommunication facility, the city may require the applicant to provide a performance bond or other surety to the city which is adequate to ensure the completion of all planned and required landscaping and screening associated with the approved CMRS telecommunication facility. Where the CMRS telecommunications facility is located on a parcel of land that is leased by the applicant and which is part of a larger parcel of land under single ownership, reasonable landscaping improvements in accordance with this title may be required within the larger unleased parcel where such improvements will bring the facility into conformance with the requirements of this chapter, mitigate the impacts of the telecommunication facility, or enhance the visual qualities and aesthetics of the larger parcel.
3. A freestanding CMRS telecommunications facility shall not be located closer than one thousand feet (1,000') from any other freestanding CMRS telecommunications facility established or proposed by the same or another provider unless a waiver from this requirement is obtained from the city council, after planning commission review and recommendation. Co-location of CMRS telecommunication facilities on the same freestanding facility is therefore strongly encouraged. No facility owner, lessee, or employee thereof shall act to exclude or attempt to exclude any other provider from the same location. A service provider, lessee, or employee thereof shall cooperate in good faith to achieve co- location or antennae with other providers. Should co-location not be acceptable to existing providers, the service provider wanting to locate on the existing facility shall be required to prove to the satisfaction of the city that co-location is not feasible.

B. To obtain a waiver from the requirements of this chapter, the applicant shall demonstrate: (1) the site is necessary to provide appropriate signal coverage quality; (2) the site is made necessary pursuant to the applicant's FCC license; (3) the site is necessary to handle increased capacity due to caller volume; (4) existing topography and/or structures in the surrounding area preclude other locations in the same area; (5) technical and engineering factors require the site to be in the desired location in relation to other existing sites and system constraints such as frequency requirements, availability of electric power and interconnection to telephone land lines, and site access; and (6) screening and design of the freestanding facility will make the site compatible with surrounding land uses.

**Section 17.446 Design and Performance Standards for CMRS Telecommunications Equipment**

A. Equipment Shelters. All CMRS telecommunications equipment shelters shall be screened so they are not visible from any adjacent public streets or public areas.

1. Equipment Shelters Associated with Structure or Building Mounted CMRS Antennae. Shelters associated with roof or building mounted antennae are encouraged to be located in one of the following areas, which are listed in order of preference from most (a) to least (g) preferred:
  - a. Inside the building or structure to which the panel or whip antennae are attached.
  - d. Inside an existing equipment penthouse on the roof of a building whenever possible.
  - e. Immediately adjacent to the exterior of an existing equipment or elevator penthouse if the shelter can be visually incorporated into the penthouse structure by the use of screening of similar style and color to the penthouse.
  - f. If no penthouse exists, consideration may be given to the creation of a penthouse, or a screen which is deemed architecturally compatible with the associated building by the Zoning Administrator, that screens both the equipment shelter and the existing service equipment associated with the building such as heating and air-conditioning equipment.
  - g. Outside of a penthouse on the roof of a building if a parapet exists that is taller than the CMRS equipment shelter. If the parapet is not taller than the CMRS equipment shelter, consideration will be given to increase the height of the parapet provided that the building materials used are the same as those existing and if the design of the parapet is found acceptable to city standards and the parapet extension is architecturally compatible with the building.
  - h. Painted or treated the same color and located in such a manner that an additional protrusion is not created on the roof.
  - i. On the ground and screened according to the design criteria for CMRS telecommunications facilities.
2. Freestanding CMRS Equipment Shelters. CMRS telecommunications equipment shelters whether or not associated with freestanding CMRS shall:
  - a. Be located in an enclosed building that is architecturally compatible with the surrounding environment.
  - b. Be screened completely with an architecturally compatible wall or fence so the shelter is not visible from adjacent properties, streets or public areas.
  - c. In addition, all CMRS telecommunications equipment shelters associated with freestanding CMRS telecommunications facilities shall:
    - i. Have enclosed buildings, walls, or fencing, the appearance of which is enhanced by vegetation.
    - ii. Be grouped as closely as technically possible to each other and the freestanding facility.

- iii. Cover a surface area not to exceed four hundred and fifty (450) square feet per provider.
- iv. Use designs, materials, and colors compatible with structures and vegetation on the same parcel and adjacent parcels.
- v. Not reduce the parking or landscaped areas below the minimum district requirements for other principal uses on the parcel.

**Section 17.448 Approval Procedures for CMRS Telecommunications Facilities in Specific Zoning Districts**

A. CMRS telecommunications facilities shall be reviewed as follows:

*Review of CMRS Telecommunications Facilities*

<b>Zoning District</b>	<b>STRUCTURE OR BUILDING MOUNTED FACILITY</b>	<b>FREESTANDING FACILITY</b>
All residential zoning districts	Zoning Administrator	Planning commission and city council
All nonresidential districts	Zoning Administrator	Planning commission only

1. Structure or building mounted telecommunication facilities are permitted on nonresidential structures within residential districts and also permitted on multi-family residential buildings provided that the antenna and equipment are located no closer to a dwelling unit than the distance deemed safe or appropriate by the Federal Communication Commission or other appropriate federal regulatory agency for radio frequency radiation or emissions.
2. Any freestanding CMRS telecommunications facilities shall be entirely enclosed within an attached architectural element of a building or structure that is compatible in design, color, and materials with the adjacent uses to the CMRS telecommunications site.

**Chapter 17.45 Animal Raising and Keeping**

**Section 17.450 General Provisions**

A. Location Requirements. The housing, keeping, or sheltering of any animal or livestock, excluding household pets, shall be allowed in the LLR, RA, POS, and PUD Zoning Districts only. Animals shall be limited to domestic livestock, farm animals and fowl as listed below. Other similar animals are allowed, however, the Zoning Administrator shall designate an animal unit ratio for similar animals using the Stockman's Handbook or similar reliable source.

B. Purpose. It is the purpose of these regulations to limit under specific circumstances the number of animals allowed and the methods by which animals are kept on private property. It is the intent of this chapter to minimize potential adverse impacts on adjoining properties, the

neighborhood and persons in the vicinity from improper management of such animals. Such adverse impacts include, but are not limited to the propagation of flies and other disease vectors, dust, noise, offensive odors, drainage, soil erosion and sedimentation.

### **Section 17.452 Specific Animal Standards**

A. Application of Standards. The following requirements shall apply to the keeping or raising of specific types of animals, in addition to all other applicable standards of this chapter. More than one (1) type of animal may be kept on a single lot, subject to the provisions of this chapter. Where this chapter limits the number of animals allowed on such a lot, such limitations shall not apply to offspring that are not weaned.

B. Number of Animals. Domestic livestock and farm animals limited to swine, sheep, cattle, horses, mules, goats, rabbits and fowl are allowed at an animal density according to the following chart of animal units. Animal unit is a common animal denominator based on feed consumption.

1. Animal Units. The following schedule lists animal units by type of domestic livestock and farm animals. When any animal unit calculation results in a fraction, fractional values less than .5 shall be rounded down to the nearest whole number and fractional values .5 and greater shall be rounded up to the next whole number.

<b>Type of Livestock</b>	<b>Animal Unit</b>
<b>Cattle</b>	
1 cow or bull over 2 years old	1.0
1 weaned calf, yearling, young cow	0.7
<b>Horses/Mules</b>	
1 horse, mature	1.3
1 yearling	1.0
1 weaning colt or filly	0.75
2 ponies	1.0
1 mule	1.0
1 miniature	.25
<b>Lamas</b>	<b>.30</b>
<b>Sheep</b>	
5 mature ewes or rams	1.0
5 yearling	0.8
5 weaned lambs to yearlings	0.6
<b>Goats – 7 goats</b>	<b>1.0</b>
<b>Swine</b>	
1 Sow or boar	0.5
1 Pig to 200 lbs.	0.2
<b>Rabbits- 56 rabbits*</b>	<b>1.0</b>
<b>Fowl</b>	
65 chickens*	1.0
40 turkeys or 35 breeders*	1.0

\*Subject to the issuance of a conditional use permit in Chapter 17.56.

2. Minimum Area Standards. Domestic livestock, farm animals and fowl shall be permitted, temporary or permanent on lots of at least one (1) acre in size according to the following minimum area standards, except that offspring of animals may be kept until weaned.
  - a. Non-irrigated land - one (1) animal unit per acre, except that two (2) horses are allowed for the first acre.
  - b. Irrigated land planted in wheat, barley, oats, vetch, alfalfa, clovers, or similar adapted grasses and legumes for pasture lands - two (2) animal units per acre.

C. Standards.

1. All domestic livestock, farm animals and fowl shall be kept in a fenced area.
2. Private poultry houses and pigeon coops, with no more than four hundred (400) square feet of gross floor area; and chinchilla hutches with no more than two hundred (200) square feet of gross floor area shall be permitted.
3. All buildings, riding rings, corrals, poultry houses, pigeon coops, chinchilla hutches and fenced areas wherein animals are kept shall not be located within twenty feet (20') of any property line.
4. Premises upon which animals are kept shall be maintained in such a condition as not to be foul, hazardous or detrimental to the health, safety or welfare of humans or animals. Manure shall not be allowed to accumulate to cause a hazard to the health, welfare or safety of humans or animals. The outside storage of manure shall be screened from view and comply with the setback requirements of the zoning district.
5. No direct water run-off shall be allowed onto adjacent properties. Drainage facilities and erosion control measures shall be established on-site to protect adjacent properties from run off containing contaminants or organic waster.
6. Violations of this chapter shall be subject to nuisance abatement procedures.
7. Beehives:
  - a. Colonies of bees shall be maintained in moveable frame hives, constructed to meet the specifications for beehives set by the American Beekeepers Federation.
  - b. The name and telephone number of the beekeeper shall be branded, painted, or otherwise clearly marked on the structure of at least two (2) hives and placed at opposite ends of the hive. Instead of marking the hives, the beekeeper may conspicuously post a sign setting forth the name and telephone number of the beekeeper. This signage is a defense to prosecution under this subsection that a colony is kept on the same tract that the owner resides.
  - c. Hives shall be properly shaded from adjacent night lighting on adjoining properties.
  - d. Hives shall not be located within twenty-five (25') of any property line, public street, sidewalk, or alley.
  - e. Adequate space must be provided in each hive to prevent overcrowding and swarming.



- f. Colonies must be requeened following any swarming or aggressive behavior.
- g. Abandoned colonies, diseased bees, or bees living in trees, buildings, or any other space except in movable frame hives are considered a public nuisance and shall be subject to abatement set forth in Chapter 17.16.
- h. All bees shall be kept on residential zoned lots of one (1) acre or more.
- i. Eight (8) hives shall be permitted on residential lots from one (1) acre to less than two and one half (2-1/2) acres.
- j. Twenty-five (25) hives shall be permitted on residential lots from two and one half (2 1/2) to five (5) acres.
- k. The number of beehives is not limited on residential lots of five (5) or more acres.

## **ARTICLE V: ADMINISTRATION AND PROCEDURES**

### **Chapter 17.50 Administration**

#### **Section 17.500 Intent**

A. It is the intent and purpose of this article to provide for the efficient, reasonable, and impartial enforcement of Title 17. This article establishes and prescribes the basic duties and operating procedures of the administrative individuals responsible for administering and enforcing this title and establishes the requirements development applications and building permit applications with regard to the following:

1. Administration
2. Certificates of Occupancy
3. Plot Plans for Single-Family and Two-family Homes
4. Planned Unit Developments
5. Site Development Plans (Preliminary and Final)
6. Residential Cluster Development
7. Conditional Use
8. Impact Assessment Report
9. Rezoning Procedures and Amendments to the Zoning Ordinance
10. Variances and Appeal
11. Nonconforming Uses, Structures and Lots, and Parking Specifications
12. Notice of Public Hearings.

#### **Section 17.501 Zoning Administrator**

A. There is hereby established the office of "zoning administrator". The zoning administrator shall be appointed by the City Manager and shall be charged with the responsibility for interpretation of and enforcement of this Title. Interpretation of this title includes but is not limited to, clarification of intention, classification of land uses not specified in this title, clarification of zoning district boundaries, and delegation of procedure.

B. No oversight or dereliction or error on the part of the zoning administrator or on the part of any other official or employee of the City of Fountain shall legalize, authorize, or excuse the violation of any provisions of this Title.

C. Right of Entry. The zoning administrator shall have the right to enter any premises or structures at any reasonable time for making an inspection as may be necessary to carry out his duties in the enforcement of this title.

**Section 17.502 Building Official.** The Building Official, as described in Title 16 of the Fountain Municipal Code, shall have duties including the inspection of plans for structures to determine compliance with the provisions of Title 16 and for issuance of permits for building construction and site improvements, certificates of occupancy and other duties as herein authorized. In meeting the responsibilities of the above duties, the Building Official may solicit the assistance of other city officials, other agencies or consultants as deemed necessary.

**Section 17.503 Planning Commission**

A. Affirmation: The planning commission is created pursuant to and under the authority of the City Charter. (Refer to Title 2, Chapter 2.16 Planning Commission).

B. Powers and Duties. The planning commission shall have all powers, discretion and duties established by the Title 2, Chapter 2.16, Planning Commission.

**Section 17.504 Board of Adjustment**

A. Appointment of The Board of Adjustment. In accordance with the powers and authority of the City Charter, the city council has established a board of adjustment as specified by Chapter 2.15 of the City of Fountain Municipal Code.

B. The board of adjustment shall have the power and duty to:

1. Hear and decide appeals from and review any order, requirement, decision or determination made by the Zoning Administrator relating to interpretations of the official zoning map and the intent or meaning of any wording within this title. The board of adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination as ought to be made; and to that end, shall have all the powers of the Zoning Administrator.
2. Hear and decide, grant or deny variances from the provisions of this title as set forth in Chapter 17.59.

C. The board of adjustment shall not have the power to change this title or to change the official zoning map.

**Chapter 17.51 Certificates of Occupancy**

**Section 17.510 When Required.** After the effective date of this title, no change in the use or occupancy of land, nor any change of use or occupancy in an existing building or structure other than for detached single-family residences or for farming or gardening shall be made, nor shall any new building or structure be occupied for any purpose other than for detached single-family residential use until a certificate of occupancy has been issued by the Building Official. No certificate of occupancy shall be issued by the Building Official unless the proposed use of the building, structure or land, and improvements thereto, conforms to the requirements of this title.

## **Chapter 17.52 Plot Plans for Single and Two-Family Homes**

### **Section 17.520 Plot Plan Requirements**

A. Every building permit application for detached single-family and two-family dwelling units shall be accompanied by two (2) copies of a plot plan (for uses other than detached single-family and two-family dwelling units, please refer to the Site Development Plan requirements set forth in Chapter 17.54). The plot plan shall be drawn to scale and show the following information in sufficient detail to enable the Zoning Administrator to ascertain whether the proposed excavation, construction, conversion, moving or alteration is in conformance with the title:

1. The actual shape and dimensions of the lot.
2. The location, size, shape and intended use of all the structures.
3. The height, setbacks and building coverage of all structures.
4. Any other information required by the uniform building code or Zoning Administrator, concerning the lot or adjoining lots as may be essential for determining whether the provisions of this title are being observed.

### **Section 17.521 Public Improvements**

A. The Zoning Administrator shall review the plot plan to determine whether any public improvements or conveyances such as streets, street paving, curb and gutter, driveway approaches, sidewalks, rights-of-way or easements shall be required for detached single-family and two-family dwelling units. If it is determined that such public improvements or conveyances are necessitated by the proposed development of the property, the developer or property owner shall be required to construct or convey such public improvements or conveyances to the city. The cost of any such public improvements or conveyances shall be borne by the developer or property owner and the construction or conveyance thereof shall be at the sole risk and expense of the developer or property owner. The city council, after planning commission review and recommendation, may defer any public improvements or conveyances until the city council may require the completion of said public improvements or conveyances. In making the determination to defer any public improvements or conveyances, the city council and planning commission shall consider the following criteria:

1. The deferral will not be detrimental to the public good or surrounding properties.
2. Deferral of the public improvements and conveyances would be more practical due to existing conditions in the neighborhood.

3. In granting any deferral, the city council may attach such reasonable conditions and safeguards, as it may deem necessary to implement the intent and purpose of this title.

**Section 17.522 Issuance of Permits.** All requirements of this title shall be met prior to the issuance of any permit issued in conflict with the provisions of this title shall be null and void and may not be construed as waiving any provision of this title.

## **Chapter 17.53 Planned Unit Developments**

### **Section 17.530 General Provisions**

A. Scope and Intent. Applications for planned unit developments may be made for any lands located within the boundaries of the city or any lands in the process of being annexed to the city. The planned unit development approach for a specific project will only be approved if it is in accordance with the guidelines set forth in the Fountain Comprehensive Development Plan, and purpose set forth in Section 17.248 A.

B. Zone Changes. The planning commission, city council, or property owners of record can initiate a PUD process.

C. Amendments to Official Zoning Map. A Planned Unit Development Zoning District is to be permitted as an amendment to the official zoning map upon approval of an application for zoning or rezoning.

D. Control of Amenities in Phased Development. Each development phase shall provide its proportionate share of open space, recreational facilities and common amenities. The overall development plan shall include mechanisms to coordinate the provision and improvement of open space, recreational facilities and common amenities with the construction of dwelling units or other land uses.

E. Modification or Waiver Standards. In order to allow maximum flexibility and to encourage creative design, the city council, after planning commission review and recommendation, may waive or modify the standards set forth herein for a PUD provided that unusual circumstances exist, a higher level of amenities is provided and the design of the development meets the provisions outlined in this chapter.

F. Subdivision of Land Required. No building permits shall be applied for or granted on any portion of property, which is zoned to planned unit development until and unless the property is platted, as applicable, in accordance with the Title 16 (Subdivision).

### **Section 17.531 Application Process**

A. General. The planned unit development process requires the preparation of an overall development plan for any project proposed for PUD zoning designation in addition to a preliminary site development plan and/or final site development plan for each phase of the PUD.

An overall development plan is the first step in the PUD process. This document establishes the permitted uses, siting restrictions and overall development controls and standards for the entire PUD area. The overall development plan constitutes the overall zoning plan for the property. Overall development plans are dynamic and flexible documents that may be adjusted over time by the city council, after planning commission review and recommendation, to reflect changing conditions.

B. Pre-application meeting. The applicant is required to have a meeting with the Zoning Administrator and other city staff. The meeting shall occur prior to submitting a zoning or rezoning application for a planned unit development. The purpose of this meeting is:

1. To review the general feasibility of the proposal.
2. To inform the applicant about procedures, process and submittal requirements.
3. To review applicable development standards and provide the applicant with any other information necessary to ensure the formal application furthers the intentions stated within the Fountain Comprehensive Development Plan and meets the objectives and requirements of the city.
4. To allow the applicant to ask questions to determine all known issues and concerns about the proposal.
5. City staff's opinions presented during the pre-application meeting are intended to be informational only and do not represent a commitment on behalf of the city regarding the acceptability of the proposal.

**Section 17.532 Submission Requirements for the Overall Development Plan.** The following constitutes the submission requirements for any PUD:

A. Application Form and Application Fee Schedule. Application forms and an application fee schedule shall be provided to the applicant by the Zoning Administrator.

B. Overall Development Plan. The plan document shall have an outer dimension of 24" x 36", and shall also be duplicated in 11"x17" reproducible size; and contain the following information:

1. Parcel size stated as gross acres and square footage.
2. Existing topographical character of the land with elevation contours at five feet (5') intervals or less, showing all water bodies and courses, wetlands, floodplains, unique natural features, and existing vegetation, critical wildlife habitat as identified by existing habitat conservation plans and/or the Colorado Division of Wildlife.
3. Approximate acreage and gross density of each area proposed for residential and nonresidential uses; number and type of residential units; and estimated floor area and types of commercial and industrial uses.
4. Total land area and approximate location and amount of open space, as defined in Section 17.246.
5. Approximate alignment of proposed and existing arterial and collector streets and pedestrian and bicycle routes, including major points of access.
6. Approximate location and number of acres of any public use such as parks, school sites, and other public or semi-public uses.

7. Height, yard, lot and other development standards.
8. Location of existing and proposed primary utility lines.
9. Areas beyond the property lines to a distance of at least one hundred and fifty feet (150'), exclusive of public right-of-way, at the same scale as the overall development plan, to include the following:
  - a. Existing and proposed land uses, principal structures and other features.
  - b. Density of adjacent residential uses.
  - c. Traffic circulation.
  - d. General topographic mapping of the area.
  - e. Significant environmental amenities.
  - f. Topography, drainage ways, and other natural features.
  - g. An "existing conditions" map of the area surrounding the site to a distance of at least one (1) mile showing the following:
    - i. Zoning districts.
    - ii. Traffic circulation systems.
    - iii. Major public facilities.
  - h. Location of existing municipal boundaries, service and school district boundaries.

C. Written Narrative. The following written information shall be provided by the applicant:

1. A statement of planning objectives.
2. A statement of proposed ownership of public and private open space areas.
3. A proposed development-phasing schedule.
4. Master development drainage plan.
5. General utility report indicating the providers and general system requirements for water, sewer, gas, electric and communication utilities.
6. Additional information as may be required by the Zoning Administrator, planning commission, or city council, which is necessary to evaluate the character and impact of the overall development plan area. This includes by way of example a traffic impact analysis.

D. Copies. The number of copies required for each required item, will be determined by the Zoning Administrator.

E. Review Criteria. Overall development plans shall be reviewed to ensure that the general public health safety and welfare are safeguarded and for substantial conformance to the following applicable review criteria:

1. The overall development plan is consistent with the Fountain Comprehensive Development Plan and other adopted plans.
2. The overall development plan achieves the stated objectives of the Planned Unit Development District, by allowing for the mixture of uses and greater diversity of building types, promoting environmental protection, limiting sprawl, improving design quality and a higher-quality living environment,

encouraging innovation of design and a variety of housing types, and managing the increase in demand for public amenities.

3. The overall development plan design achieves the stated development concept.
4. The proposed land uses are compatible with other land uses in the development and with surrounding land uses in the area.
5. The type, density, and location of proposed land uses are appropriate based on the findings of any required report or analysis.
6. The street design and circulation system are adequate to support the anticipated traffic and the proposed land uses do not generate traffic volumes, which exceed the capacity of existing transportation systems, or that adequate measures have been developed to effectively mitigate such impacts.
7. The overall development plan adequately mitigates off-site impacts to public utilities and facilities.
8. The fiscal impacts have been satisfactorily addressed and the city will be able to provide adequate levels of service for police and fire protection, street maintenance, snow removal and other public services, or that adequate measures have been developed to effectively mitigate such impacts.
9. Higher levels of amenities, including open spaces, parks, recreational areas, trails and school sites will be provided to serve the projected population.
10. The overall development plan preserves significant natural features and incorporates these features into parks and open space areas.
11. There are special physical conditions or objectives of development that the proposal will satisfy to warrant a departure from the standard regulation requirements.
12. The adjacent and nearby developments will not be detrimentally affected by the proposed PUD and approval period.
13. The applicant adequately demonstrates that the proposal is feasible.

F. Upon approval by the city council, after planning commission review and recommendation, the applicant shall have one hundred eighty (180) days to submit a final mylar of the overall development plan to the Zoning Administrator for signature by the Mayor. In its discretion and for good cause shown by the applicant, the planning commission may extend the time a maximum of sixty (60) days. Upon lapse of the two hundred forty (240) day period and any time extension, the approval of the overall development plan shall be void. The overall development plan is valid for a period not to exceed three (3) years unless the applicant proceeds to a site development plan or preliminary plat on any portion or phase of the subject property.

### **Section 17.533 Amendments to Approved Overall Development Plan**

A. Intent. From initial concept and approval to final construction, unforeseen changes and ordinary refinements occur which may require changes to the approved overall development plan. In order to streamline the review process and to eliminate unnecessary delays, the intent of this section is to establish a procedure for approving minor overall development plan revisions. It is also the intent of this section to establish a procedure to review and approve significant changes to the approved overall development plan.

B. Minor Amendments. Minor amendments to an approved overall development plan may be approved administratively by the Zoning Administrator.

1. Minor amendments shall not represent more than a fifteen percent (15%) change in the location, height, yard, lot and other development standards, and can only be granted if required by engineering or other circumstances not foreseen at the time the overall development plan was approved so long as no modification violates any standard or regulation set forth in this title.
2. The applicant shall make a written request to the Zoning Administrator justifying the proposed minor amendment and clearly showing on the overall development plan that portion which is proposed for amendment. A record of such approved minor amendment shall be kept on file in City Hall.

C. Major Amendments.

1. Major amendments to an approved overall development plan shall be processed in the same manner as the original overall development plan. Approval of a major amendment to an approved overall development plan shall be by ordinance. Major plan amendments include, but are not limited to the following:
  - a. A change in land use or development concept.
  - b. An increase in residential density levels or building coverage of commercial and industrial uses.
  - c. A realignment of major circulation patterns or a change in functional classification of major streets.
  - d. A reduction in approved open space or common amenities.
  - e. An increase in problems with public utilities, facilities or services.
  - f. Other significant changes which involve policy questions or issues of overriding importance to the community.
2. A request for a major amendment shall be accompanied by the same type and quality of information as was necessary for the original final approval and passage, in addition to the following:
  - a. A map of the entire overall development plan's area, which clearly defines that portion which is proposed for amendment.
  - b. A justification of the proposed amendment, including a discussion of any changes in impact, which would result from the amendment.

### **Section 17.534 Obsolete Overall Development Plans**

A. An overall development plan, referred to as a master plan prior to the effective date of this title, may be considered obsolete if the Zoning Administrator, planning commission or city council finds that any of the following conditions exist:

1. Surrounding conditions including, but not limited to, land use, zoning or public facilities, have changed significantly since the master plan was approved or last amended.
2. The original development concept has not been followed.



3. The overall development plan has been inactive and no final site development plans have been approved and filed for the past three (3) years, or no building permits have been issued for the past five (5) years.
4. The overall development plan is in substantial conflict with the Fountain Comprehensive Development Plan.
5. Information upon which the overall development plan was based is outdated.

B. In the event an overall development plan is found to be obsolete, a new overall development plan shall be approved pursuant to the requirements of this section.

C. The Zoning Administrator, planning commission or city council may establish those milestones and/or other deadlines on the overall development plan to fairly establish the obsolescence of a specific overall development plan.

#### **Chapter 17.54 Site Development Plan (Preliminary and Final)**

**Section 17.541 Intent and Purpose.** A site development plan is a detailed development plan for a property, which generally permits an evaluation of the intended use, and such design elements as circulation, parking and access; open space and landscaping; building location and configuration; grading and drainage; setbacks and screening; public improvements; and other elements, which determine if the proposal has been planned consistently with the intent of this title. The site development plan is intended to provide a review procedure so the city may evaluate the impacts of site development plans on a particular parcel and on the surrounding area. It is also intended to ensure that the proposal meets certain minimum standards to enhance the physical and aesthetic integrity of the community.

**Section 17.542 Application Process.** A site development plan shall be required for all uses located in all zoning districts with the exception of detached single-family and two-family dwelling units. The procedures set forth herein shall apply to all site development plan requests submitted pursuant to this chapter. After the applicant has held a pre-application meeting with city staff, the applicant may, with consent of the Zoning Administrator, choose to proceed with submission of the application for a final site development plan.

**Section 17.543 Enforcement.** No building permit for any use other than detached single-family and two-family dwelling units shall be issued for the construction of any new building, structure, parking area, or loading area, or any substantial alteration thereto without first obtaining the approval of a site development plan from the Zoning Administrator. No certificate of occupancy shall be issued for any structure or building, with the exception of detached single-family and two-family dwelling units, unless all improvements and common amenities allocated to that phase of development are completed in conformance with the approved site development plan. A temporary certificate of occupancy may be issued with the consent of the Zoning Administrator.

#### **Section 17.544 Pre-application Meeting**

A. The applicant is required to have a meeting with the Zoning Administrator and other applicable city staff, prior to submitting a site development plan application for any requests made pursuant to this chapter. The purpose of this meeting is:

1. To review the general feasibility of the proposal.
2. To inform the applicant about all the procedures, process and submittal requirements.
3. To review applicable development standards and provide the applicant with any other information that is necessary to ensure the formal application is in harmony with the overall development plan, official zoning map, Fountain Comprehensive Development Plan, and the objectives and requirements of the city.
4. To allow the applicant to ask questions to determine all known issues and concerns about the proposal.

B. The opinions of city staff presented during the pre-application meeting are intended to be informational only and do not represent a commitment on behalf of the city regarding the acceptability of the proposal.

**Section 17.545 Preliminary Site Development Plan Submittal Requirements.** The following constitutes the submission requirements for a preliminary site development plan:

A. Application form and application fee.

B. Legal description of the site.

C. A current list of the names and addresses of all owners of record of real property within four hundred feet (400') of the property lines of the site exclusive of public right-of-way.

D. A preliminary site development plan to be at an appropriate scale, as determined by the Zoning Administrator, with a minimum outer dimension of twenty four inches (24") by thirty inches (30"), and duplicated in eleven inches (11") by seventeen inches (17") reproducible size to contain the following information:

1. Name by which the proposed development is to be referred.
2. Date of preparation, the scale and a symbol designating true north.
3. Parcel size stated in gross acres and square feet.
4. Topographic contours at two-foot (2') intervals or less.
5. Total number, type and density per type of dwelling unit.
6. Total floor area for nonresidential uses and ratio of floor area to lot area with a breakdown by type of land use.
7. Location and square footage of each area designated for passive and active recreational use.
8. Location and acreage of common areas and all public land uses, including public parks, recreation areas and similar uses.
9. Proposed coverage of buildings and structures including the following:
  - a. Percentage and square footage of building coverage.
  - b. Percentage and square footage of driveway and parking.

- c. Percentage and square footage of public street right-of-way.
    - d. Percentage and square footage of open space and landscaped area.
  10. Number and location of off-street parking spaces, including automobile, handicapped, and bicycle, with typical dimensions for each type.
  11. Existing and proposed streets, designation of streets to be public or private and any private access ways to be dedicated as public utility and/or access easements.
  12. Location of existing and proposed pedestrian circulation system, including sidewalks.
  13. Existing zoning.
  14. Proposed treatment of the perimeter of the development, including materials and techniques used, such as screens, fences, walls, and landscaping.
  15. A vicinity map of the areas surrounding the site to a distance of at least one-half (1/2) mile showing the following:
    - a. Zoning districts.
    - b. Traffic circulation systems.
    - c. Major public facilities.
    - d. Location of existing municipal boundaries, service district boundaries and school district boundaries.
  16. Owner's certification of acceptance of conditions and restrictions as set forth on the preliminary development plan.
  17. Proof of ownership, which includes a current or updated title policy or commitment, no more than sixty (60) days old.
  18. Signature block certification of approval of the preliminary site development plan.
  19. Any additional information as may be required by the Zoning Administrator or planning commission, which is necessary to evaluate the character and impact of the preliminary site development plan.
- E. Preliminary subdivision plat, or final subdivision plat, if required. The subdivision plat may be combined with the preliminary site development plan.
- F. Other documentation as determined by Zoning Administrator or planning commission.
- G. Preliminary utility report and plan to include sanitary sewers, storm sewers, water, electric, gas, and fire hydrant locations. Plans must be prepared by a registered engineer, consistent with the related reports submitted with the final plat, if applicable.
- H. Street cross-section schematics provided for each category of street, including the proposed right-of-way and pavement width, curb, gutter and sidewalk locations.
- I. Preliminary drainage plan, consistent with the approved master development drainage plan, if applicable. Plans must be prepared by a registered engineer.

J. Conceptual plans of all buildings, including representative architectural elevations, sufficient to convey the intent of the proposed development.

K. The Zoning Administrator may waive or modify any application submittal requirements, if the intent of this chapter is not violated. The applicant shall make a written request to the Zoning Administrator justifying the requested waiver or modifications. A record of requested waivers and modifications shall be kept on file at the city.

#### **Section 17.546 Preliminary Site Development Plan - Review Process**

A. Within seven (7) days of receipt of the preliminary site development plan, the Zoning Administrator will inform the applicant in writing if the application is incomplete. If the application is deemed incomplete, no further processing will occur until the deficiencies are corrected.

B. Following the determination that the application is complete, the Zoning Administrator and other city staff shall review the application to determine whether it is in conformance with the requirements of this title, and all other applicable regulations and meets the intentions of the Fountain Comprehensive Development Plan.

C. Copies of the application materials shall be forwarded to all affected referral agencies for a twenty one (21)-day review and comment period. The purpose of this review period is to collect information in order to identify issues (including but not limited to environmental, physical, technical and other issues), determine the extent of the impact and devise solutions to eliminate or lessen the impacts before consideration by the planning commission. If necessary, the application materials are also sent to technical consultants, hired by the city, for their review and comment. Failure of a referral agency to respond within the prescribed time frame shall deem the application approved by the referral agency.

D. Upon the close of the review period, the Zoning Administrator shall make a report of the findings and city staff's recommendations to the planning commission, and schedule the matter with the planning commission.

E. The planning commission shall review the application. The planning commission shall consider the findings and recommendations of the Zoning Administrator and other city staff or referral agencies in making its recommendation, and shall approve, with or without conditions, disapprove or table the application to a date certain.

F. Review Criteria. The preliminary site development plan shall be reviewed to ensure that the general public health safety and welfare are safeguarded and for substantial conformance to the applicable review criteria set forth in this title. Applicable review criteria shall mean such criteria contained in this title as the planning commission determines is necessary to properly review the preliminary site development plan.

#### **Section 17.547 Final Site Development Plan - Submittal Requirements**

A. After the applicant has held a pre-application meeting with the Zoning Administrator and other city staff, the applicant, with the consent of the Zoning Administrator, may choose to proceed with submission of the application for a final site development plan. The final site development plan application must contain the following information:

1. Application form completed and signed by all owners of record.
2. Proof of ownership, which includes a current or updated title policy or commitment, no more than sixty (60) days old.
3. Non-refundable application and review fee.
4. Final site development plan exhibit, prepared in accordance with this section.
5. Required technical reports (including but not limited to a final drainage report, utility plan, traffic impact study, and environmental assessment study).
6. Project tracking information. Each final site development plan located within a larger overall development plan, shall include a summary of the development to date in tabular form, to assist the city in tracking density, open space conveyances and other pertinent development data.

B. The number of required copies of documents to be submitted by the applicant will be determined by the Zoning Administrator.

C. The Zoning Administrator may waive or modify any application submittal requirements, if the intent of this chapter is not violated. The applicant shall make a written request to the Zoning Administrator justifying the requested waiver or modifications. A record of requested waivers and modifications shall be kept on file at the city.

D. No application shall be considered accepted until all required information is submitted.

E. Final Site Development Plan Exhibit. The final site development plan shall consist of a black ink drawing with an minimum outer dimension of twenty four inches (24") by thirty inches (30"), and duplicated in eleven inches (11") by seventeen inches (17") reproducible size, and shall contain the following:

1. Date, north arrow, scale (one inch (1") = fifty feet (50') or larger), name and address of project, and legal description of the land area.
2. Vicinity map with north arrow.
3. Existing contours and proposed finished grade topography at two (2) foot intervals or less.
4. Adjacent streets, curb cut and driveway locations, drive aisles including dimensions.
5. Off-street parking locations, dimensions, type of surfacing and total number of parking spaces by type.
6. Locations and dimensions of all existing access points on immediately adjacent properties.
7. The graphic location, dimensions, maximum heights, and gross floor area of all existing and proposed commercial structures, the uses to be contained within and the location of entrances and loading points.
8. Finished floor elevations.

9. Elevation details for proposed site facilities, including curbs, parking lots, drainage swales, etc. using spot elevations, cross-sections and construction details.
10. Type of building construction and occupancy classification.
11. The graphic location, dimensions, maximum heights and density of all existing and proposed residential structures.
12. Existing and proposed easements and rights-of-way.
13. Specific natural features, such as mature trees, drainage ways, floodplains, and slopes over fifteen percent (15%) grade.
14. Existing and proposed drainage facilities, including dimensions, surface treatment, volume capacity and size of outlet restrictor.
15. Location and size of existing and proposed public and private water, sewer, gas and electrical service connections.
16. Location, type and height of lighting standards and enclosed trash receptacles.
17. Construction details for enclosed trash receptacles, curb, gutter, light pole bases, handicap signs, drainage facilities, pedestrian ramps, etc.
18. Location of existing and proposed fire hydrants.
19. Location and height of fences and screening used to divide properties and to obscure outside storage.
20. A landscape plan showing the location, type, size and quantity of plant materials and other landscaping materials. Percentage of parking area devoted to landscaping, if ten (10) or more parking spaces. Delineation of visibility triangles at street intersections and access points with streets.
21. The location, height and area of freestanding and/or low profile signs.
22. Representative architectural elevations of proposed structures.
23. Owner of record signature block.
24. Additional information as may be required by the Zoning Administrator.

#### **Section 17.548 Final Site Development Plan - Review Process**

A. Within seven (7) days of the receipt of the formal application, the Zoning Administrator shall inform the applicant in writing whether the application is not complete. If the application is deemed not complete, no further processing will occur until the deficiencies are corrected.

B. Following the determination that the application is complete, the Zoning Administrator and other city staff shall review the application to determine whether it is in conformance with the requirements of this chapter, and all other applicable regulations or overall development plan and the intentions of the Fountain Comprehensive Development Plan.

C. In addition, copies of the application materials shall be forwarded to all affected referral agencies for a fourteen (14) day review and comment period. The purpose of this review period is to collect information in order to identify issues (including but not limited to environmental, physical, and technical issues), determine the extent of their impact and propose solutions to eliminate or lessen the impacts before final determination by the Zoning

Administrator. Failure of a referral agency to respond within the prescribed time frame shall deem the application approved by the referral agency.

D. Within fourteen (14) days of the close of the referral period, the Zoning Administrator shall approve or deny the final site development plan.

E. An approved final site development plan shall be null and void if a building permit has not been issued within one (1) year from the date of approval unless the final site development plan receives vesting, pursuant to this title. The Zoning administrator for good cause may grant an extension. No extension shall be granted for any final site development plan that does not conform to the requirements of this title.

F. Final Site Development Plan - Review Criteria.

1. The Zoning Administrator shall base the final decision on the following review criteria, where applicable:
  - a. The application is complete in form and contains all required information.
  - b. The proposal meets the objectives of the overall development plan, if applicable, and the intent of the Fountain Comprehensive Development Plan or any other adopted plans.
  - c. The final site development plan is consistent with the requirements and development standards of the particular zoning district and other regulations of this title.
  - d. There is an appropriate relationship to the surrounding area.
  - e. The circulation is designed for the type of traffic generated, safety, and separation from living areas, convenience, access, handicap access, noise, and exhaust control.
  - f. All utilities been approved by the appropriate agencies.
  - g. The access points, off-street parking facilities, loading areas and pedestrian ways are designed to promote safety, convenience, separation and ease of traffic flow both on-and off-site.
  - h. Functional open space and recreational amenities have been provided, if applicable.
  - i. Building types and designs are appropriate in terms of density, bulk, and height.
  - j. Building design, in terms of orientation, spacing, material storage and lighting are appropriate.
2. Public Improvements. In addition to the review criteria set forth above, the Zoning administrator shall review the site development plan to determine whether any public improvements or conveyances such as streets, street paving, curb and gutter, sidewalks, rights-of-way or easements shall be required. If it is determined that such public improvements or conveyances are necessitated by the proposed development of the property, the owner shall be required to construct or convey such public improvements or conveyances to city standards and shall dedicate public improvements or conveyances to the city. The cost of any such public improvements or conveyances shall be

borne by the owner and the construction or conveyance thereof shall be at the sole cost, risk and expense of the owner.

3. Appeals. If a site development plan is denied by the Zoning Administrator, the applicant may appeal the decision pursuant to Chapter 17.59 Variances and Appeals. During the time an appeal is pending, no building permit shall be issued.
4. Modifications or Waivers of Submittal Requirements. The Zoning Administrator may modify or waive specific submittal requirements. Such requirements may be modified or waived only if the intent of this title is not violated.
5. Amendments to Approved Site Development Plan. Minor changes to an approved site development plan may be approved administratively by the Zoning Administrator in an abbreviated manner as set by office policy. Major amendments shall be subject to the same application, review and appeal processes applicable to the original site development plan.

## **Chapter 17.55 Residential Cluster**

### **Section 17.550 General Provisions**

- A. The following provisions shall apply to all residential cluster development projects:
  1. Minimum size. A residential cluster development project shall comprise at least four (4) acres. However, the minimum land area required may be reduced to two (2) acres or less if special circumstances exist, as determined by the city council, after planning commission review and recommendation.
  2. Ownership. The applicant shall be required to prove to the satisfaction of the city that he owns or controls the land subject to the residential cluster development application.
  3. Development Team. An appropriate development team of design professionals (i.e. architect, landscape architect/planner, civil engineer, soils engineer, drainage engineer, etc.,) has been retained by the applicant, with the expertise and experience to carry out the intent of this development and applicable standards.
  4. Phased Development. All proposed phased development be accompanied by a schedule establishing approximate dates when each phase will be complete. Each phase of the development shall include its pro rata share of total planned common open space, facilities and services, as applicable. Amenities serving the entire development may be required to be constructed in the earliest phase of the development.
  5. Provisions, Operation and Maintenance of Common Areas. Where common areas or facilities are proposed, an operation and maintenance program shall be prepared, administered and enforced through approved covenants, conditions and restrictions.
  6. Development Agreements. Completion time and complexity of proposed cluster developments may make desirable a development agreement between the project applicant and the city in order to provide assurance to the city that



an approved project will proceed in accordance with the policies, rules and regulations existing at the time of the agreement and subject to conditions of approval.

7. **Subdivision Plat Required.** A request for residential cluster development must be accompanied by a subdivision plat, which meets the requirements set forth by Title 16.
8. **Building Permits.** No building permits shall be issued for a cluster development unless a final site development plan has been approved in accordance with Chapter 17.54.

**Section 17.552 Application Process.** The application process for cluster development shall be the site development plan process as set forth in Chapter 17.54.

### **Chapter 17.56 Conditional Use**

**Section 17.560 Intent.** The purpose of conditional use review is first, to recognize that some uses may or may not be appropriate in a particular district depending upon the circumstances of the individual case and, second, to allow review of such cases so that the city is assured that these uses are compatible with their locations and surrounding land uses and will further the purposes of this title. Uses which require a conditional use permit are those which may be allowed in the zoning district in which they are listed if it can be demonstrated that the use, in the proposed location, is compatible with the district characteristics, purposes, dimensional regulations and development standards for the zoning district in which the use is proposed of the zoning purposes of the district, the particular site and the surrounding area. Uses stipulated in this title as requiring a conditional use permit shall only be allowed with prior issuance of such permit by the city council as described below.

#### **Section 17.561 Procedures for Application Processing**

A. **Who may apply.** Both the owner of the property on which the proposed use will be conducted and the operator of the use for which a conditional use permit is required, or their authorized representative(s), shall be party to the application for a conditional use permit.

B. **Process.** The application shall be submitted on forms provided by the city and shall contain the following minimum information:

1. Name, address, telephone number, fax number and e-mail address of the property owner and applicant.
2. Legal description of the property and street address, if applicable.
3. Lot size, existing zoning and tax schedule number.
4. Description of the proposed conditional use.
5. A plot plan of the property as described in Chapter 17.52.
6. The names and addresses of all property owners of record within four hundred feet (400') of the property in question.
7. Justification as to why the requested conditional use should be approved.

C. Prior to the planning commission public hearing, the Zoning Administrator shall request interested city departments and other agencies to comment on the application. Comments received shall be submitted to the planning commission.

D. The Zoning Administrator shall study the application and shall make a report of his findings to the planning commission.

E. The application shall be processed in the same manner as a request for initial zoning and rezoning set forth in Chapter 17.58, except that approval by the city council shall be by resolution.

F. Fees. The application shall be signed by the property owner or his duly authorized agent and shall be accompanied by a nonrefundable fee as determined by the city council to cover costs related to the application.

G. An application shall not be considered accepted until all required information is submitted.

H. Transferable. Conditional use permits allow a particular use for which it is granted to operate on the specific property listed in the permit in accordance with approved plans. A conditional use permit may be transferred to any other person to operate the same use per the same terms of the permit, upon notification to the Zoning Administrator, but may not be transferred to any other property or building.

I. Duration. A conditional use permit shall remain in full force and effect as long as the use for which the permit is granted continues or for the term specified on the permit.

#### **Section 17.562 Review Criteria, Conditions, and Modifications**

A. No approval of a conditional use shall be granted unless the conditional use conforms to the minimum development requirements and regulations of the applicable zoning district. In reviewing the conditional use, the planning commission and city council shall consider the following review criteria, where applicable:

1. Is the use consistent with the intent and purpose of this title as declared in Chapter 17.10?
2. Is the use consistent with the intent of the zoning district in which the applicant intends to locate such use?
3. Is the use compatible with other uses in the area? Will the impacts generated by the use be abated through the utilization of mitigation measures, such as increased setbacks, screening or buffering?
4. Is the use consistent with the Fountain Comprehensive Development Plan and other approved plans?
5. Will the use create any adverse environmental influences on the surrounding area? For example: will the use generate excessive dust, odors, fumes, noise, glare or vibration?
6. Will the use generate traffic hazards or congestion in the area?

7. Will existing transportation systems be overburdened by the use?
8. Are ingress and egress points appropriately and safely located?
9. Have adequate water, sewer, drainage, and other utility facilities been provided?
10. Is the physical appearance of the site, including building orientation, scale, and architectural treatment and landscaping, sensitive to other uses in the area?
11. Is the use reasonably related to the overall needs of the community?
12. Is the conditional use consistent with the intent and purpose of this title?

B. In reviewing a conditional use application for other uses similar to the permitted uses, but not listed in the zoning district, the planning commission and city council shall consider the development standards in Article III in addition to the review criteria set forth in this section.

C. In approving an application for conditional use, the planning commission or city council may impose conditions or modifications, which it deems reasonably necessary to secure the intent and purpose of this title.

**Section 17.563 Abandonment of Right.** Approval of a conditional use in accordance with this chapter shall expire in one (1) year from date of approval (unless a final site development plan has been approved pursuant to Chapter 17.54) if the rights and privileges granted thereby have not been exercised or utilized, or if construction work is involved, the work has actually not commenced on the premises. If, thereafter, any discontinuance of the exercise of any rights or privileges occurs for a continuous period of one (1) year, the conditional use shall be considered abandoned.

**Section 17.564 Revocation of Conditional Use Approval.**

A. All conditions or modifications imposed by the city council shall be maintained in perpetuity with the conditional use. If at any time the conditions or modifications are not complied with by the owner or are found to have been altered in scope, application or design, the use shall be in violation of conditional use approval.

B. If and when any use is determined to be in violation of conditional use approval, the Zoning Administrator shall notify the applicant in writing of said violation and of a thirty (30) day period in which to rectify the violation. The notice shall state a time and place after the thirty (30) day period at which a revocation hearing will be held if the violation is not timely rectified.

C. Within thirty (30) days after notification of violation of conditional use approval, the applicant shall rectify the violation. Upon completion of any required changes, the applicant shall notify the Zoning Administrator in writing that said changes have been made.

D. Failure of the applicant to rectify said violations within thirty (30) days shall be cause for cancellation and revocation of the conditional use approved by the city council. A revocation hearing shall be conducted by the city council prior to any revocation. Notice of the hearing

shall be provided as required by subsection (B) above. The revocation of the conditional use approval shall require the applicant to vacate the premises of or stop the use authorized by the conditional use approval. After revocation, the applicant may reapply for approval of a conditional use pursuant to the procedures outlined in this chapter.

E. Resubmittal of Denied Application. Same as the reconsideration requirements for zoning and rezoning requests.

## **Chapter 17.57 Environmental Assessment Study**

### **Section 17.570 Purpose of Provisions**

A. The purpose of an environmental assessment study is to determine if a land development proposal may affect to any significant degree the quality of the environment in the city. The provisions of this chapter achieve the following objectives:

1. To ensure that complete information on the effects of the proposed development is available to the Zoning Administrator, the planning commission, city council and the public.
2. To ensure that long-term protection of the environment is a criterion to be considered in development planning, and that land use and development decisions, both public and private, take into account the relative merits of possible alternative actions.
3. To provide procedures for local review and evaluation of the impacts of proposed projects prior to granting of permits or other authorization for commencement of building and development.

### **Section 17.571 Required When; Applicable Projects Designated**

A. The Zoning Administrator, planning commission or Zoning Administrator may require an environmental assessment study for any land development application. Conditions under which an environmental assessment study may be necessary include but are not necessarily limited to any significant impact defined as:

1. A major or unnecessary altering of an ecological unit or landform, such as a ridgeline, saddle, draw, ravine, hillside, cliff, slope, creek, marsh, watercourse or other natural landform feature.
2. A direct or indirect affect on an identified wildlife habitat, feeding ground or nesting ground.
3. An impact on the appearance or character of a significant scenic area, cultural or historic resource as identified by the Colorado State Historical Society or other recognized preservation organization.
4. Earth moving or other landform change that will cause landslides, or further the siltation, settlement, or flooding and thereby create a greater hazard to health and safety.
5. Hydrologic conditions, such as surface drainage and watershed characteristics, groundwater and soil permeability characteristics, natural water features and characteristics and any potential changes or impacts.

6. Geologic conditions, such as landforms, slope, soil characteristics, potential hazards and any potential changes or impacts.
7. Circulation and transportation conditions, such as volumes and traffic-flow patterns, alternative transit systems and potential changes or impacts to the region's investment or planned investment in transportation systems.
8. The discharge of toxic or thermally abnormal substance or use of herbicides or pesticides, or the emission of smoke, gas, steam, dust or other particulate matter.
9. Any waste treatment, cooling or settlement pond, or transportation of solid or liquid wastes to a treatment or disposal site.
10. The discharging of significant volumes of solid or liquid wastes.
11. A substantial increase in demand on existing or planned sewage disposal, storm drainage or other utility systems to a level, which is likely to cause an adverse impact on the environment or require new plant investments or improvements.

#### **Section 17.572 Preparation**

A. An independent, qualified professional consultant or personnel shall prepare the environmental assessment study.

B. The range of studies needed to develop the technical data for an environmental assessment study require natural systems and other studies as determined by the Zoning Administrator. Where feasible, studies may include secondary data from such sources as the Colorado Department of Transportation, the Colorado Division of Wildlife, data collected and updated by the Pikes Peak Regional Council of Governments, studies commissioned by the Regional Flood Management District, USGS or other studies.

C. The environmental assessment study shall summarize the findings and recommendations of the technical and other supporting studies in terms that can be assessed and evaluated by city officials and the general public. Technical data shall be submitted as supporting documentation. Technical data prepared as a part of any other procedure or requirement of this or of any ordinances or federal, state, county or city regulation also may be used to support the environmental assessment study.

D. Contents.

1. The environmental assessment report study shall contain information and analysis, in sufficient detail and adequately supported by technical studies, to enable the Zoning Administrator, planning commission and the city council to judge the impact of the proposal and to judge measures proposed to reduce or negate any harmful impacts.
2. The environmental assessment study shall include a general statement identifying and describing the proposed project and its purpose.
3. To the extent that such items are not otherwise included in other materials submitted with any application or preliminary site development plan

descriptive materials, maps and plans shall be submitted showing the following information:

- a. Project boundaries and boundaries of the area within which environmental impact is likely to be significant, (may include areas outside of the project boundaries if there is reasonable cause to believe the project is likely to have impacts greater than the project boundaries).
  - b. Present and proposed uses of the site.
  - c. Present and proposed zoning of the site.
  - d. Quantitative information relative to the development, such as site area, numbers of residential units, proposed height and bulk of buildings, building floor area in square feet and such other data as will contribute to a clear understanding of the scale of the development.
  - e. A list of regulatory or review agencies and the specific regulations to which the proposed development will be subject.
4. The environmental assessment study shall include an inventory, providing reasonably complete information on the environmental setting existing prior to the proposed development and containing sufficient information to permit independent evaluation by reviewers of factors that could be affected by the proposed development.
  5. The analysis portion of the environmental assessment study shall assess the following items in reasonable detail:
    - a. Adverse effects, which cannot be avoided if the proposal is implemented.
    - b. Mitigating measures proposed to minimize the impact.
    - c. Cumulative and long-term effects of the proposal, which significantly reduce or enhance the state of the environment.
    - d. Possible alternatives to the proposed action.
    - e. Irreversible environmental changes resulting from implementation of the proposal.

E. Cost. The applicant shall pay the cost of preparing the environmental assessment study for the proposed development.

F. Submission. When required, the environmental assessment study, shall be submitted to the Zoning Administrator with any land development application. The Zoning Administrator shall prescribe the number of copies to be submitted. The Zoning Administrator shall transmit the report to applicable federal, state or county agencies for review and comment.

## **Chapter 17.58 Rezoning Procedures and Amendments**

### **Section 17.580 Initiation of Procedures**

A. The procedure for rezoning property may be initiated by the city council, planning commission, Zoning Administrator, any citizen of the city, or any landowner within the city.

1. The city may from time to time amend the number, shape or boundaries of any zoning district, the uses permitted within a zoning district, any regulation of or within a zoning district, or any other provision of this title.
2. All territory annexed to the city shall be zoned in accordance with the zoning classifications established by this title and in accordance with the procedures in this Section. All annexed land shall be zoned at the time of annexation.
3. Planned unit developments as described under Chapter 17.53 shall be processed as amendments to the official zoning map.

#### **Section 17.581 Who May Apply**

A. A request for an amendment to the official zoning map may be presented to the city council by person(s) owning real property within the City of Fountain.

B. Property owners requesting the addition of a land use into a zoning district in which it is not enumerated in this title, or persons appealing a determination of the Zoning Administrator regarding the classification of a use, or pursuing a classification for which the determination of the Zoning Administrator has been appealed, may apply to the city council, after planning commission review, for consideration of the proposed amendments to the zoning district.

C. The city council or the planning commission may initiate an amendment to the official zoning map. Any property owner may suggest to the city council or to the planning commission that an amendment be given consideration.

#### **Section 17.582 Protest of the Proposed Amendment**

A. An amendment to the official zoning map shall not become effective except by favorable vote of three fourths (3/4) of all voting members of the city council if a valid protest against the amendment is presented at or prior to the public hearing at which the amendment is heard. A protest is valid only if signed by either:

1. The owners of twenty percent (20%) or more of the area of the lots included in such proposed amendment, or;
2. The owner of twenty percent (20%) or more of the area of those lots located within one hundred feet (100') of the boundary of the area in the proposed amendment, excluding any distance for public rights-of-way.

**Section 17.583 Zoning and Rezoning Procedure.** The procedures for the initial zoning and rezoning of property within the city shall be as provided herein.

A. Pre-application Conference. Prior to submittal of an application to zone or rezone any property, the applicant shall meet with the Zoning Administrator concerning the procedures and requirements governing approval of zoning and rezoning. The applicant may submit information regarding proposed uses, general design, density and size of the property.

B. Submittal Requirements. An application for approval of zoning or rezoning may be initiated only by the fee owner of the property for which the zoning or rezoning is requested or

his duly authorized agent. The application shall be submitted on forms provided by the city and shall contain, at a minimum, the following information:

1. Name, address, telephone number, fax number and e-mail address of the property owner and applicant.
2. Legal description of the property and street address, if applicable.
3. Property size, existing zoning and tax schedule number.
4. Map or plan of the property including all municipal, service and school district boundaries.
5. The name and addresses of all adjoining property owners of record.
6. Justification as to why the zoning or rezoning request should be approved.
7. Pertinent information about adjacent properties and uses needed in evaluating the rezoning request.
8. An overall development plan or alternatively a preliminary site development plan for determination that the zoning or rezoning request conforms to the review criteria set forth in this title.
9. The application shall be signed by the property owner or his duly authorized agent and shall be accompanied by a nonrefundable fee as determined by the city council to cover costs related to the application. An application shall not be considered accepted until all required information is submitted.

C. Review.

1. Prior to the planning commission public hearing, the Zoning Administrator shall request interested city departments and other agencies to comment on the application.
2. The Zoning Administrator shall study the application and shall make a report of his findings to the planning commission.
3. Notice of the planning commission public hearing shall be given in accordance with Chapter 17.61 at least fifteen (15) days in advance.
4. Failure to give full notice as required by the terms of this section due to a clerical or administrative oversight or omission shall not affect the validity of any hearing or decision if it does not substantially and materially impact due process rights. A hearing, once commenced, may be continued to a definite date, time and place without any additional public notice being required.
5. The planning commission shall hold a public hearing on the application. Following the public hearing, the planning commission shall make recommendations to the city council concerning the application.
6. Notice shall be given in accordance with Chapter 17.61 and by publication pursuant to the ordinance requirements of the City Charter. Following the public hearing, the city council shall deny the application, approve the application by ordinance, continue the application to a definite date or refer it to the planning commission for further study. An ordinance may impose conditions on zoning or rezoning.

**Section 17.584 Review Criteria**



A. No approval of an application for zoning or rezoning shall be granted unless the application meets the minimum development requirements and regulations of the applicable zoning district and unless at least one of the following review criteria are found:

1. The request is consistent with the overall development plan of the property, if applicable, and the Fountain Comprehensive Development Plan.
2. The request is compatible with the surrounding zoning and land uses.
3. There has been a material change in the character or conditions of the neighborhood or in the city generally, such that the request would be in the public interest and consistent with the change.
4. The property was previously zoned in error.

**Section 17.585 Initial Zoning of Annexed Areas.** An application for initial zoning of land annexed to the city shall be processed as set forth in this section. Such application for initial zoning may be filed concurrently with the petition for annexation, but the proposed zoning ordinance shall not be passed on final reading prior to the date when the annexation ordinance is passed on final reading. If there is no request for initial zoning by the applicant for annexation, the land annexed to the city shall be zoned by the city within ninety (90) days after the effective date of the annexation ordinance.

**Section 17.586 Reconsideration-Time Limit.** A proposed zoning or rezoning request for a similar zoning district and/or area to one already denied by the city council shall not be reconsidered by the city council within one (1) year of the date of such city council action. Submission by a different applicant or minor changes in boundaries shall not be adequate reason to circumvent this requirement. However, if evidence is presented showing that there has been a substantial change of circumstances, the city council, after planning commission review, may reconsider said application.

## **Chapter 17.59 Variances and Appeals**

**Section 17.590 Who May Apply.** Any person aggrieved by the inability to obtain a building permit, (except where inability to obtain a building permit is due to denial of a conditional use or rezoning application by the city council), or by decision of any administrative officer in the city based upon or made in the course of the administration of or enforcement of the provisions of this title may appeal that decision pursuant to the terms of this Chapter 17.59. Appeals may also be made by any officer, department, board or bureau of the city affected by the grant or refusal of the building permit, or by other decision of the administrative officer or agency, based on or made in the course of administration or enforcement of this regulation.

**Section 17.591 Time Limit and Procedure for Appeals.** Appeals shall be made in writing and filed in accordance with Chapter 2.15 Board of Adjustment.

**Section 17.592 Stay Of Proceedings.** An appeal stays all proceedings and furtherance of the action appealed from unless the officer from whom the appeal is taken, certifies to the board of adjustment or planning commission, after the notice of appeal shall have been filed with him or it, that by reason of facts stated in the certificate, a stay would, in his or its opinion, cause imminent peril of life and property, in which case proceedings shall not be stayed otherwise than

by a restraining order which may be granted by the board of adjustment, the planning commission or a court of record on application, and on notice to the officer from whom the appeal is taken and on due cause shown.

### **Section 17.593 Appeals**

A. Appeals from Administrative Decisions to the Board of Adjustment. Any person aggrieved by an administrative decision made by the Zoning Administrator on a matter involving an interpretation of this title or the official zoning map may appeal such decision to the board of adjustment pursuant to Chapter 2.15 Board of Adjustment. The board of adjustment may affirm, modify or reverse (wholly or partially) the administrative decision made by the Zoning Administrator.

B. Appeals from Administrative Decisions to the Planning Commission. Any person aggrieved by an administrative decision made by the Zoning Administrator on a matter that may not be appealed pursuant to section 17.593 (A) otherwise to be appealed to the board of adjustment pursuant to subsection A of this section, may appeal such decision to the planning commission within thirty (30) days from the date of the decision. The appeal shall be in writing and briefly state the grounds upon which the appeal is based. The planning commission may affirm, modify or reverse (wholly or partially) the administrative decision made by the Zoning Administrator.

C. Appeals from the Planning Commission's Decisions. Any person may appeal to the city council any action of the planning commission in relation to this title, where such action was adverse to such person by filing with the City Clerk a written notice of appeal. Such notice of appeal shall be filed with the City Clerk no later than fifteen (15) days after the action from which appeal is taken, and shall briefly state the grounds upon which the appeal is based. The city council may refer any matter so appealed back to the planning commission for further consideration, affirm the action of the planning commission, reverse the action of the planning commission or modify said action.

**Section 17.594 Variances.** Requests for relief from the regulations and development standards of this title may be taken to the board of adjustment pursuant to Chapter 2.15.115 when the strict application of this title will deprive a property of the privileges enjoyed by other property of the same zoning classification in the same zoning district because of special circumstances applicable to a property, including its size, shape, topography, location or surrounding.

### **Section 17.596 Standard of Review for Variance Requests**

A. For any requests for variance pursuant to Chapter 17.594, the board of adjustment may, after public hearing, modify the application of the regulations or provisions of this title relating to the construction, or alteration of buildings or structures if it finds that all of the following exist:

1. Due to exceptional and extraordinary circumstances unique to the property or structure for which the variance is sought, the strict enforcement of the provisions of this title would cause an unnecessary hardship to the applicant.
  2. The circumstances causing the unnecessary hardship were not created by an owner or user of the property or by the applicant for the variance.
  3. The hardship is not established based on lack of knowledge of the restrictions upon constructing or altering a structure; nor by the purchasing of a property without knowledge of applicable restrictions; nor by showing, that greater profit would result if the variance were granted.
  4. The circumstances causing the unnecessary hardship are particular to the land or structure for which the variance is sought and do not apply generally to land and buildings in the zoning district in which the property is located.
  5. The variance requested is the minimum deviation from the title necessary to allow the same and no greater use as that allowed of other land or structures in the same zoning district.
  6. The granting of the variance will not injure the appropriate use of adjacent conforming properties, will not impair an adequate supply of light and air, will not impair the view from the adjacent property, and will not substantially diminish or impair property values within the surrounding area.
  7. The granting of the variance will be consistent with the spirit, purpose, and intent of this title and will not create a situation, which alters the character of the area surrounding the property for which the variance is granted.
  8. The granting of the variance will secure and in no way diminish the public safety and welfare; not impair prevention of or increase risk of fire, flood, traffic congestion or other hazard.
  9. The granting of the variance is necessary to cause substantial justice to be done.
  10. The granting of the variance will not allow uses or densities not permitted in the zoning district in which it is granted nor shall the variance allow the expansion or establishment of a nonconforming use.
- B. In granting a variance, the board of adjustment may prescribe any safeguard that it deems necessary to secure substantially the objectives of the regulations or provisions to which the variance applies and may impose such conditions on the use of the property for which the variance is sought as are consistent with the purposes of this title. If such safeguards or conditions are imposed, the variance shall not become effective until the owner of the property and the applicant agree to abide by such conditions.

**Section 17.597 Not Transferable.** Each variance shall apply specifically to the property or structure described in the approval and shall not be transferable to any other property or structure.

**Section 17.598 Duration.**

A. Unless limited by its terms, a variance shall remain in full force and effect as long as the use for which the variance is sought continues. However, failure to apply for a building permit to carry out the work involved in the variance, within one (1) year from the date the variance was granted, shall constitute abandonment of the variance.

B. Discontinuance of the use for which the variance was granted for a period of one (1) year or more shall constitute abandonment of the variance. Upon abandonment, the variance shall automatically cease to exist with no further action by the board of adjustment.

## **ARTICLE VI. INTERPRETATION AND DEFINITIONS**

### **Chapter 17.60 Nonconforming Uses, Structures, Lots And Parking Specifications**

**Section 17.600 Purpose.** The purpose of these provisions shall govern the use and improvement of a nonconforming lot and the modification, expansion, reconstruction, alteration, abandonment and continued occupancy of a nonconforming structure.

#### **Section 17.601 Nonconforming Uses**

A. Any use of a building, sign or land lawfully existing at the time of the enactment of this title which does not conform to the regulations of the zoning district in which it is located or with the applicable development standards of this title is a non-conforming use.

B. The continuance, modification, expansion, improvement or abandonment, of all nonconforming uses shall strictly comply with the regulations set forth below in this section, in addition to all other applicable regulations of this title and the uniform building code.

C. The continuation of existing legal nonconforming uses shall be subject to the following conditions:

1. If a legal nonconforming use exists as of the effective date of this title, such use may be continued in accordance with the provisions of this section.
2. Mobile homes or manufactured homes located in zoning districts not permitting their use may continue to be used as a residential dwelling after the effective date of the title, unless abandoned as a dwelling for the period of 3 (three) months or more.

D. The expansion of a use not permitted in the zoning district in which it is located shall be subject to the following conditions:

1. Any expansion of a nonconforming use in a conforming structure requires a conditional use permit from the Zoning Administrator and shall meet the following criteria:
  - a. All expansion of the nonconforming use in a conforming structure shall be confined to and conducted wholly within the structure or portion thereof, which is in existence as of the effective date of this title.

- b. The total cumulative area of all expansions of the nonconforming use occurring after the effective date of this title shall not increase the gross floor area of the nonconforming use by more than twenty percent (20%) above that in existence prior to the effective date of this title, except for existing residential structures expanded within conforming setbacks not resulting in more units than permitted by the zoning district in which such residential use is located.
  - c. All new site improvements necessitated by an expansion shall comply with the development standards of the zoning district in which the use is located or governing the use whichever is more restrictive.
  - d. The total number of parking spaces required by this title for the area of any expansion must be provided in accordance with the parking standards set forth in the title.
2. Expansion of a nonconforming use in a nonconforming structure shall not be permitted.

E. Change of a use not permitted in a zoning district in which it is located to any use permitted in the applicable zoning district is allowed in accordance with the following conditions:

1. The change shall not create any additional nonconforming situations nor increase the extent of nonconformance.
2. Any new improvements, other than maintenance of existing facilities, necessitated by the change in use shall conform to all applicable regulations of the zoning district in which it is located. Existing site improvements, which do not conform to the applicable regulations of the zoning district, are not required to be brought into compliance except as required in below or in other applicable parts of this title.
3. Any expansion involved with the change in use shall comply with the applicable regulations of this title.
4. New uses, which require a conditional use permit shall be allowed only if, all proposed and existing improvements, other than existing nonconforming structures, comply with all applicable regulations and development standards of the zoning district in which the use is located as specified in this title.

F. Any use which is not allowed in the zoning district in which it is located and which is discontinued for a period of one (1) year or more shall be deemed abandoned and such nonconforming use shall not be renewed.

### **Section 17.602 Nonconforming Structures**

A. All nonconforming structures shall comply with the provisions of the uniform building code and with all other provisions of the Fountain Municipal Code not inconsistent herewith.

B. The continued use of any structure shall be subject to the following conditions:

1. Continued use of a nonconforming structure is allowed if the structure is non-conforming as of the effective date of this title.
2. If use of a nonconforming structure is ancillary to the primary use on the site, changing the use in the nonconforming structure to any primary use allowed in the zoning district will be considered an increase in intensity of the nonconformance and will not be permitted unless a variance is granted for the nonconforming structure.

C. Expansion by increasing the size of the exterior of a nonconforming structure is allowed if the expansion does not increase the extent not the intensity of nonconformance, and does not expand or create a nonconforming use. Without limiting the foregoing:

1. If the structure exceeds applicable lot coverage requirements, expansion shall not be allowed.
2. If the structure is located on a lot which does not meet the minimum lot area required in the applicable zoning district, expansion may be allowed if it can be accomplished in compliance with all other regulations of this title applicable to the use including but not limited to: setback, lot coverage, and site development standards.
3. If the structure is located on a lot and encroaches in a required setback area, expansion of the structure may be allowed only to the extent that the expansion does not encroach into required setback or yard areas.
4. If the structure's height is nonconforming, expansion is allowed if the expansion does not create any other nonconforming condition and if the newly constructed portion does not exceed applicable height limitations.
5. If the required number of off-street parking spaces is provided for the proposed expansion in accordance with this title.

### **Section 17.603 Alteration, Repairs Or Replacement**

A. All interior remodeling or any alteration wholly within a nonconforming structure is allowed if the external configuration of the structure is not changed provided that: such alteration does not create any nonconforming use or situations not increase the intensity of the nonconformance as described above, and all other applicable regulations of this chapter and title are met.

B. Ordinary repairs and maintenance of a nonconforming structures shall be allowed and are encouraged.

C. Any nonconforming structure extensively damaged by sudden destruction beyond the control of the user or by fire may be reconstructed or replaced if such destruction does not exceed seventy percent (70%) of the total structure (as determined by the Building Official). Such reconstruction shall occur on the same lot and with the same external configuration, only if all provisions of this title and other provisions of the Fountain Municipal Code are met and appropriate variances are granted regarding the external configuration of the structure. Prior to the granting of said variance it shall be demonstrated that reconstructing the structure in accordance with the provisions of this title would deprive the owner use of the property in a manner which is equitable to other uses in the same zoning district.

D. Alterations or remodeling of a nonconforming structure which changes the use of the non-conforming structure from an ancillary use to a similar to the primary use shall not be permitted unless a variance is obtained for the structure.

#### **Section 17.604 Non-conforming Site Or Lot**

A. Any use in existence at the time of the effective date of this title on a lot which does not conform with the development standards of the zoning district in which it is located shall be allowed to be continued, provided the use is not discontinued for a period of six (6) months or more in which case the use shall be deemed abandoned and such use shall not be renewed except in conformance with all applicable City of Fountain regulations.

B. Non-conforming Lots of Record. Where an individual lot was held in separate ownership from adjoining properties or was platted prior to the effective date of this title in a recorded subdivision approved by the city council and has less area or width than required in other sections of this title, such lot may be occupied according to the permitted uses and other requirements set forth in the district in which the lot is located, provided that no lot area or lot width is reduced more than one-third (1/3) the zoning requirements otherwise specified by this title. If a non-conforming lot ever comes under the same ownership as a contiguous parcel it shall no longer be the same non-conforming lot and such cessation shall be recorded in the El Paso County Clerk and Recorder's Office, and then no portion of the enlarged parcel shall be sold unless both the portion to be sold and the remainder shall be conforming parcels.

#### **Section 17.605 Nonconforming Parking**

A. Any parking spaces and/or access to public rights-of-way lawfully existing on the effective date of this title which do not conform to the parking requirements, development standards, and access standards of this title are nonconforming and may continue to be used subject to the following:

1. Expansion of any conforming or nonconforming use or structure shall not be permitted unless the total number of parking spaces provided for any proposed expansions on the site is provided as stipulated in the parking standards set forth in this title.
2. Any change or cumulative changes of use in a nonresidential district which increases the total number of required parking spaces by more than twenty percent (20%) above that which is required by the uses existing at the time of adoption of this title shall necessitate the provision of the total number of parking spaces required for all uses.
3. Non-conforming parking shall not be expanded or enlarged. When additional parking spaces are necessitated by expansion, modification, change in use or by new uses, all new parking areas shall comply with the development standards of this title and the access to the lot from public right-of-ways including access to existing parking areas, shall be brought into compliance with this title and other standards adopted by the city.

4. When any addition to or enlargement of an existing building or use, or a change in use increases the building or the developed area of the use or the parking requirements of the building or structure, the parking requirements of this title must be met. Moreover, if the addition, enlargement, or change in use increases the building or the developed area of the use, or the required parking by twenty percent (20%) or more in a nonresidential district or thirty percent (30%) or more in a residential district, then parking for the entire building shall be brought into conformance with all requirements of this title, including required number of spaces, access, landscaping, lighting, screening, and other applicable standards. However, the requirement set forth above shall not apply if the owner in a residential district can demonstrate that his property is used exclusively for one (1) single-family dwelling unit. Once the owner of a dwelling in a residential district is granted a conditional use permit, he must immediately comply with this title.
5. All parking and access is subject to permits and requirements of the Fountain Municipal Code or State Highway Access Code.

## **Chapter 17.61 Public Notice Requirements**

### **Section 17.610 Purpose**

A. All land use applications that require a public hearing before the planning commission, city council or board of adjustment shall be subject to the requirements contained in this section. It is intended to provide for adequate notification ensuring the opportunity for public participation of land use proposals within the city.

### **Section 17.611 Responsibility**

A. It is the responsibility of the applicant to meet these requirements prior to the established hearing date. The planning commission, city council, or board of adjustment may continue the hearing to a date certain and may keep the hearing open to take additional information to the point a final decision is made. No further notice of a continued hearing need be pursued by the applicant unless a period of six (6) weeks or more elapses between the hearing dates, before the same board. In situations where this time period has passed, the applicant shall be required to publish the "notice of public hearings" again.

B. These public notice requirements apply to all land within the jurisdiction of the city.

C. No public hearing shall commence, nor testimony taken until these procedures are met by the applicant.

### **Section 17.612 Public Notice Procedures**

A. At least fifteen (15) days prior to a public hearing, a notice shall be published at least one time in the legal notice section of a general circulation newspaper within the City of



Fountain. A publisher's affidavit shall be submitted to the Zoning Administrator prior to the hearing date to verify the publication of the required notice.

B. At least fifteen (15) days prior to a public hearing, a notice shall be posted on the property for which the land use application is made. The notice shall consist of at least one (1) sign facing each adjacent public right-of-way. In the case of a variance request only one (1) sign shall be posted on site in the general vicinity the variance is being considered. These notices shall be in the form of signs measuring not less than twenty-four inches by twenty-eight inches (24" X 28"), with lettering a minimum of one-half inch (1/2") high and on posts no less than four feet (4') above the ground.

C. Notice of the public hearing shall be given by first-class mail to the record owners of property within four hundred feet (400') of the property in question at least fifteen (15) days in advance of the public hearing.

D. The content and wording of all notices of public hearing shall be as specified by city administrative guidelines.

## **ARTICLE VI. INTERPRETATION AND DEFINITIONS**

### **Chapter 17.70 General Interpretation**

#### **Section 17.700 Purpose**

A. For the purposes of this title, the words and terms used, defined, interpreted or further described herein shall be construed as follows:

1. The particular controls the general.
2. In case of any difference of meaning or implication between the text of these regulations and the captions for each section, the text shall control.
3. The word shall is always mandatory. The word may is permissive.
4. Words used in the singular number include the plural, and words used in the plural number include the singular, unless the context clearly indicates the contrary.
5. Words used in the present tense include the future, unless the context clearly indicates the contrary.
6. The masculine shall include the feminine.
7. The phrase used for includes arranged for, designed for, intended for, maintained for, and occupied for.

B. Where not defined herein, the words used in this title shall have the common and customary meaning.

### **Chapter 17.71 Definitions**

#### **Section 17.710 Meanings Defined**

A. As used within this title, except where otherwise specifically defined, or unless the context otherwise requires, the following terms, phrases, words and their derivations shall have the following meanings:

1. **Accessory Structure.** A building or structure on the same lot with the building or structure housing the principal use, but housing a use incidental to and associated customarily with the principal use.
2. **Accessory Use.** A use subordinate to and exclusively for a purpose incidental to the principal use on the lot. Such uses shall not substantially alter the character of the permitted principal use or structure.
3. **Adult-oriented use.** A use of property where the principal use, or a significant or substantial adjunct to another use of the property, is the sale, rental, display or other offering of live entertainment, dancing or material which is distinguished or characterized by its emphasis on depicting, exhibiting, describing or relating to "specified sexual activities" or "specified anatomical areas" as the primary attraction to the premises, including, but not limited to:
  - a. Adult bookstore or gift shop: any establishment which principally sells or rents adult material including, but not limited to, books, magazines, newspapers, movie films, slides or other photographic or written material, video tapes and/or other items or devices;
  - b. Adult cabaret, restaurant or place of business: a cabaret, restaurant or place of business which features waitresses, waiters, dancers, go-go dancers, exotic dancers, strippers, male or female impersonators or similar entertainers attired in such manner as to display "specified anatomical areas."
  - c. Adult car wash means any place of business or facility engaged in the washing of motor vehicles that features topless and/or bottomless males or females functioning in any capacity in the operation or management of a car wash.
  - d. Adult hotel or motel: an hotel or motel in which the presentation of adult material is the primary or principal attraction;
  - e. Adult mini-motion picture theater: any fully enclosed theater with a capacity of less than fifty (50) persons in which the presentation of adult material is the primary or principal attraction;
  - f. Adult motion picture theatre: any fully enclosed theater with a capacity of fifty (50) or more persons in which the presentation of adult material is the primary principal attraction;
  - g. Adult photo studio: any establishment, which, upon payment of a fee, provides photographic equipment and/or models for photographing "specified anatomical areas."
  - h. Other adult amusement or entertainment: any other amusement, entertainment or business which is distinguished or characterized by an emphasis on acts or material depicting, describing or relating to "specified sexual activities" or "specified anatomical areas."
4. **Adult Material.** Any material including, but not limited to, books, magazines, newspapers, movie films, slides or other photographic or written materials,

video tapes and/or other items or devices which are distinguished or characterized by their emphasis on depicting, describing or relating to "specified anatomical areas" or "specified sexual activities."

5. **Agricultural Activity.** Farming including plowing, tillage, cropping, installation of best management practices, seeding, cultivating or harvesting for the production of food or fiber products (except commercial logging and timber harvesting operations); the grazing or raising of livestock (except in feed lots); aquaculture; sod productions; orchards; Christmas tree plantations; nurseries; and the cultivation of products as part of a recognized commercial enterprise.
6. **Agricultural Building.** Any building or accessory structure which is less than thirty-five feet (35') in height and is used for farm operations such as, but not limited to, a barn, grain bin, silo, and farm implement storage building.
7. **Agricultural Business.** A commercial facility, which offers for sale agricultural products or equipment.
8. **Alternative Tower Structure.** Any man-made trees, clock towers, bell steeples, light poles, water towers and similar alternative design mounting structures that have the capacity to camouflage or conceal the presence of antennas or towers.
9. **Amendment.** A change in the wording, context, or substance of Title 17 of the Fountain Municipal Code or a change in the zoning district boundaries.
10. **Amusement Center.** An indoor place of business where amusement devices are maintained or operated for commercial purposes.
11. **Amusement Device.** A coin-operated device primarily for the entertainment of the customer, the use of which results in electronic or mechanical displays and/or operation, or the production of musical entertainment.
12. **Animal - Household Pet.** A small animal customarily permitted to be kept in a dwelling for company or pleasure, including, but not limited to, dogs, cats, pot-bellied pigs, gerbils, hamsters, tropical fish, or common house birds, provided that such animals are not kept to supplement food supplies or for any commercial purpose.
13. **Antenna.** Any exterior apparatus designed for telephonic, radio or television communications through the sending and/or receiving of electromagnetic waves.
14. **Applicant.** The owner or duly authorized agent of land for which an amendment, conditional use, variance, site development plan review, building permit, or certificate of occupancy has been requested.
15. **Auction.** A public sale in which real property, personal property or livestock is sold to the highest bidder.
16. **Auto Service/Repair.** Establishments primarily engaged in the sale, rental, service, and repair of automobiles and trucks. Uses include freestanding department stores; auction rooms; automobile service stations; repair facilities, car washes; boat, car, trailer, motorcycle showrooms, sales and repair, and other uses which are of the same general character.
17. **Automobile.** See definition of vehicle.

18. **Banner.** A flexible material (e.g. cloth, paper, vinyl, etc.) on which a sign is painted or printed.
19. **Bed and Breakfast Inn.** An establishment that provides temporary accommodations to overnight guests for a fee.
20. **Boarding and Rooming House.** A building or portion thereof which is used to accommodate, for compensation, six (6) or more boarders or roomers, not including members of the occupant's immediate family who might be occupying such building. The word compensation shall include compensation in money, services, or other things of value.
21. **Building.** A structure, either temporary or permanent, having a roof, supported by columns or walls and built for the shelter or enclosure of persons, animals or property of any kind. The term shall also include the term structure.
22. **Building Coverage.** Any area of a portion of a lot, which is covered by all buildings or structures on that lot.
23. **Building Height.** The vertical distance measured from the average elevation of the finished grade adjoining the building to the highest point of the roof surface, if a flat roof; to the deck line of mansard roofs; and to the mean height level between eaves and ridges for gable, hip and gambrel roofs.
24. **Building Permit.** A permit issued by the Regional Building Department, for building development, after compliance with this title, the uniform building code and other codes or ordinances adopted by the city.
25. **Building, Principal.** A building in which is conducted the main or principal use of the lot on which said building is situated.
26. **Campground, Commercial.** An area for recreational vehicles, tents or similar accommodations, providing sanitary facilities, laundry facilities, and disposition of waste, rubbish and debris crated or deposited by its patrons.
27. **Child Care Facilities.** Any facility, by whatever name known, which is licensed by the State of Colorado and maintained for compensation, for the whole or any part of the day, for the care of greater than six (6) or more children, under the age of sixteen (16) years who are not related to the owner, operator or manager thereof, who do not reside in the facility, and who do not stay overnight. This term includes, without limitation, facilities commonly known as day-care centers, nursery schools, preschools, day camps, and summer camps.
28. **Clinic, Medical and Dental.** An establishment where patients are admitted for special study and treatment by two (2) or more licensed physicians and/or dentists and their professional associates, as distinguished from a professional office for general consultation purposes. This term shall not include bed-patient care.
29. **Cluster Development (Residential).** A development design technique that concentrates buildings in specific areas on a site within the density range established for the gross tract. The technique allows the remaining land to be used for desirable and proper recreation, common open space, and preservation of environmentally sensitive areas including scenic vistas. It is

often combined with certain administrative procedures into planned unit development provisions.

30. **Commercial.** An economic activity involving the provision of material goods and commodities or personal or professional skills for economic gain.
31. **Commercial Accommodations.** A building or group of buildings containing guest units providing transient accommodations to the general public for compensation, and as an accessory use not more than a single dwelling unit. Includes hotel, motel, tourist home, boarding house, lodging house, and dormitories, but not room and board as an accessory use.
32. **Commercial Mobile Radio Services (CMRS) Telecommunications Site.** Any use of property for antennae, equipment, and equipment shelter(s) employed in the reception, switching, and/or transmission of wireless telecommunication services including, but not limited to, paging, enhanced specialized mobile radio, personal communication services, microwave link antennae, cellular telephone, and other related technologies.
33. **CMRS Telecommunications Provider.** A public or private company providing any type of CMRS or other related technology.
34. **Corral.** An enclosure for confinement of livestock.
35. **CMRS Telecommunications Equipment Shelter.** An unattended structure such as a small building or cabinet(s) used to house equipment of a CMRS telecommunication facility or a structure or building mounted CMRS telecommunications facility
36. **Commercial Vehicle or Tractor.** A large vehicle, with a driving cab, engine, and coupling for trailers, weighing more than eighteen hundred (1,800) pounds or has a commercial license.
37. **Common Open Space.** A parcel of land or water or combination of both located within the site designated for a planned unit development, designed for leisure and/or recreational use and intended primarily for the use or enjoyment of the residents of the planned unit development. The term shall not include space devoted to streets, parking areas, loading areas and accessory buildings. Such common open space is generally owned and maintained through a homeowner's association.
38. **Community Center.** A meeting place used by members of the community for social, cultural, or recreational purposes.
39. **Comprehensive Development Plan, City of Fountain.** Unless otherwise stated, it is the comprehensive development plan as adopted by the planning commission and approved by the city council to provide long-range development recommendations, policies, and programs for the community.
40. **Conditional Use.** A use other than those permitted which must meet certain conditions to insure compatibility with the land uses in a zoning district before such a use may be approved and permitted by the city council.
41. **Construction Equipment.** See definitions of vehicle and heavy equipment.
42. **Construction Equipment Business.** An operation, which includes sales, a storage yard, and/or a repair garage for construction equipment.

43. **Density (Gross).** The number of dwelling units that may be constructed per acre. The calculation of gross residential density shall be performed in the following manner:
- a. Determining the gross acreage. The gross acreage of all the land within the boundaries of the development shall be included in the density calculation except:
    - (1) Land previously dedicated, purchased or acquired for any public use; and
    - (2) Land devoted to nonresidential uses such as commercial, office, and industrial or civic uses.
  - b. The foregoing gross acreage calculation shall be shown in a table format on the development plan and shall form the basis for calculating the gross residential density.
  - c. The total number of dwelling units shall be divided by the gross residential acreage. The resulting gross residential density shall also be shown in a table format on the development plan.
44. **Detoxification Center.** A residential facility, which provides twenty-four (24) hour medical supervision, lodging, and meals to individuals who need help to remove the effects of alcohol or drugs.
45. **Development.** Any man-made change to improved or unimproved real estate, including but not limited to structures, mining, dredging, filling, grading, paving, excavation or drilling operations.
46. **Development Agreement.** An agreement entered into between the applicant for site specific development plan review and the city, following a public hearing on the application therefore, which may extend the period of time for which the approval of a site specific development plan establishes vested rights. The term or period of such an agreement shall not be less than three years. A development agreement shall, as a minimum, include the following:
- a. Description of the land subject to the development agreement.
  - b. Specification of the permitted uses of the property, the density or intensity of use, the phasing of the development project, and the maximum height and size of proposed buildings.
  - c. Provision, where appropriate, for reservation or dedication of land for public purposes as may be required or permitted pursuant to ordinances, resolutions, regulations, and policies in effect at the time of entering into the agreement.
  - d. Identification of the terms and conditions relating to financing of necessary facilities by the applicant.
  - e. Description of all permits needed to be approved for the development of the property.
  - f. Provision for commencement dates and completion dates.
  - g. Provision for review of compliance with the terms and conditions of the development agreement, on a periodic basis.
  - h. Provision for modification, termination, cancellation and enforcement of the development agreement.

- i. Description of any requirements determined to be necessary to protect the public health, safety and welfare.
  - j. The development agreement may also cover any other matters consistent with section 24-68-101, et seq., C.R.S., or not prohibited by law.
47. **Drinking Establishment.** A place, which is primarily engaged in the sale of, fermented malt beverages, vinous and spirituous liquors for consumption in the premises. Drinking establishments shall include nightclubs, beer gardens, cocktail lounges, bars, cabarets, discotheques, saloons, and taverns.
48. **Driveway.** A private access roadway that leads to a single lot.
49. **Dwelling, Multi-Family.** A building or portion thereof, designed for or occupied by three (3) or more families, living independently of one another and having separate entrances for each dwelling unit. This definition includes townhouses, apartments and condominiums, but not motels or hotels.
50. **Dwelling, Single-Family.** A detached principal building arranged, designed, and intended to be occupied by not more than one (1) family.
51. **Dwelling, Two-Family or Duplex.** A detached principal building arranged, designed and intended to be occupied by not more than two (2) families, living independently of one another and having separate entrances for each dwelling unit.
52. **Dwelling Unit.** A building, or portion thereof, which is used exclusively for residential occupancy by one (1) family, which contains cooking, living, sleeping and sanitary facilities and having a separate entrance.
53. **Educational Institution.** Public schools, non-public schools, schools administered and operated by the State, colleges or universities and proprietary schools. The following definitions shall apply to the various types of education institutions:
- a. **Public Schools.** Those schools administered by legally organized school districts.
  - b. **Non-Public Schools.** All private, parochial and independent schools, which provided for the education of compulsory school age pupils comparable to that provided in the public schools of the State. The term comparable shall mean a schedule of at least one hundred eighty (180) teaching days or its equivalent, at least a five and one-half (5 1/2) hour school day, and at least fifty percent (50%) of the school's full-time teaching staff holding valid Colorado teaching certificates.
  - c. **Proprietary Schools.** Schools such as art schools, business colleges, trade schools and secretarial colleges.
  - d. **College or Universities.** Such education institutions under charter or license from the State of Colorado.
54. **Elderly.** A person over the age of sixty (60) years.
55. **Emergency Health Care Facility.** Establishments having as its sole purpose the provision of emergency health care and emergency medical treatment for human ailments. No overnight accommodations for patients are available.

56. **Environmental Assessment Study.** A report, which may be required of general plans, which assesses all the environmental characteristics of an area and determines what effects or impacts will result if the area is altered or disturbed by a proposed action.
57. **Exterior Elevations.**
58. **FAA.** The Federal Aviation Administration.
59. **FCC.** The Federal Communications Commission.
60. **Fabrication.** The construction of a specific good through the assembly of pre-manufactured parts, which require no processing modification.
61. **Factory Built Home.** A single-family dwelling which is partially or entirely manufactured in a factory and designed for long-term residential use; built in multiple sections, each on a chassis which enables it to be transported to its occupancy site. Factory built homes must be constructed to the standards of the State of Colorado Factory Built Housing Construction Certification Code (8, CCR 1302-3) and bear a certification insignia in compliance with those standards.
62. **Family.** An individual or two (2) or more persons related by blood or marriage or a group of not more than five (5) persons who need not be related by blood or marriage living together as a single housekeeping unit in a dwelling unit.
63. **Family Care Home.** A State licensed facility for child care in a place of residence of a family, person or persons, for the purpose of providing family care and training for a child or children under the age of eighteen (18) years, who are not related to the head of such home. The term includes any home receiving a child or children for regular twenty-four (24) hour care and any home receiving a child or children from any State operated institution for child care, or from any child replacement agency. The term family care home shall include family foster home, receiving home and specialized group home as defined by appropriate State agencies.
64. **Floodplain.** The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulative increasing the water elevation more than one foot. That part of the flood plain subject to a one-percent chance of flooding in any given year is designated as an area of special flood hazard by the Federal Insurance Administration.
65. **Floor Area (Gross).** The sum of the gross horizontal area of all the floors or a building utilized for principal and accessory uses.
66. **Floor Area Ratio (F.A.R.).** The quotient of the gross floor area of all buildings on a lot divided by the area of said lot, for example:
- a. Floor area = 15,000 square feet.
  - b. Land area = 43,560 square feet.
  - c. F.A.R = .34
67. **Garage, Private.** An accessory portion of a main building, designed for the shelter and storage of motor vehicles owned or operated by the occupants of the principal building only and which is not used for the storage, care or repair of motor vehicles for commercial purposes.



68. **Garbage Service Company.** Buildings and yards where vehicles used for the transport of garbage are stored maintained or cleaned.
69. **Greenhouse or Nursery, Commercial.** An enclosed structure used for cultivating plants in a controlled climate for commercial purposes.
70. **Group Home.** A state licensed group home for residents for the purpose of providing special care or rehabilitation due to homelessness, physical condition or illness, mental condition or illness, elderly age, or social, behavioral or disciplinary problems as those terms are defined by 31-23-203 C.R.S., as amended, or 42 USC 3602, and an owner occupied or nonprofit group home for the exclusive use of residents who are qualified as being persons sixty (60) years of age or older (the elderly). Group homes shall be classified under two general categories as follows: Type A group home shall consist of up to eight (8) qualified residents, not including service providers and up to four (4) nonqualified, non-service providing residents. Type B group homes shall consist of more than eight (8) qualified residents or more than twelve (12) total residents.
71. **Hazardous Waste.** Any material, which is defined as such by federal or state law.
72. **Hazardous Waste Facility.** A facility used for the storage and treatment of hazardous waste.
73. **Health Care Support Facility.** A residential facility where lodging, meals and counseling services are provided to families of individuals diagnosed with a terminal illness or an illness requiring long-term hospital care.
74. **Heavy Equipment.** Large machinery and equipment used for construction and building purposes. This definition shall include, but is not limited to, bulldozer, tractors, graders, caterpillars, dump trucks and trailers. This term shall also include the term construction equipment. See definition of vehicle.
75. **Home-based Business.** Any nonresidential use conducted entirely within a dwelling unit and carried on solely by the inhabitants thereof, which use is clearly incidental and secondary to the use of the dwelling unit for dwelling purposes, has no exterior indication of the nonresidential use, and does not occupy more than thirty-five percent (35%) of the total floor space of the dwelling unit.
76. **Home Improvement Center.** A business, which offers for sale hardware, tools, lumber, electrical and plumbing supplies, or similar construction materials.
77. **Home Occupation.** A gainful occupation or profession conducted as an accessory use in a residential district.
78. **Identification Sign.** A sign, which establishes the identity of a building or subdivision by name of symbol only.
79. **Industry, Heavy.** Those industries whose processing of products results in the emission of atmospheric pollutants, light flashes, glare, odor, noise, or vibration which may be heard or felt off the premises, and those industries which constitute a fire or explosion hazard.
80. **Impervious Surface.** Any material that substantially reduces or prevents the infiltration of storm water into previously undeveloped land. Impervious

surface shall include any surface that has been compacted or covered with a layer of material so that it is highly resistant to infiltration by water.

81. **Industry, Light.** Those industries whose processing or products results in none of the conditions described for heavy industry.
82. **Institutional Use.** A use having a social, educational, cultural, or religious purpose and founded to promote some cause.
83. **Junk.** Any used broken, discarded, or abandoned materials. This term shall include wood, paper, glass, rags, rubber, metal, concrete or other personal property, whether of value or valueless, and which may or may not be partly or wholly assembled into motor vehicles, machinery or other useful objects of any kind. It shall also include motor vehicles, appliances and any parts thereof, which are no longer in an operable condition, and mobile homes or travel trailers which are abandoned, being dismantled or partially dismantled.
84. **Junkyard or Salvage Yard.** The use of any lot or tract of ground for the sale, storage, display, dismantling, demolition, abandonment or discarding of junk in the open air.
85. **Kennel.** Any building, structure or open space used in whole or in part for the purpose of boarding, breeding or sale of household pets or for the raising or harboring of four (4) or more dogs above the age of four (4) months.
86. **Landscaping.** The improvement of a parcel of land with any combination of living plants, such as trees, shrubs, vines, ground covers, flowers or lawns; natural features and non-living ground covers such as rock, stone and bark; and structural features, such as foundations, reflecting pools, art works, screening, fences and benches that are native or adaptable to the climatic conditions of the City of Fountain area.
87. **Lot.** A parcel of land of at least sufficient size to meet minimum zoning requirements for use, coverage, area, and to provide such yards and other open spaces as are required by this title. Such lot shall have frontage on an improved public street, and may consist of:
  - a. A single lot of record.
  - b. A portion of a lot of record.
  - c. A combination of complete lots of record, of complete lots of record and portions of lots of record, or of portions of lots of record.
  - d. A parcel of land described by metes and bounds.
88. **Lot Area.** The area of a horizontal plane bounded by the front, side and rear lot lines.
89. **Lot Depth.** The distance between the midpoints of the front lot line and the mid-point of the rear lot line.
90. **Lot Line, Front.** That boundary of a lot, which abuts a dedicated public street. In the case of a corner lot, it shall be the shortest dimension on a public street. If the dimensions of a corner lot are equal, the front line shall be designated by the owner and filed with the Regional Building Department.
91. **Lot Line, Rear.** The line opposite the front lot line.
92. **Lot Line, Side.** Any lot lines other than the front lot line or rear lot line.

93. **Lot of Record.** A lot, which is part of a subdivision recorded in the office of the El Paso County Clerk and Recorder, or a lot or parcel described by metes and bounds, the description of which has been so recorded.
94. **Lot Width.** The distance parallel to the front lot line, measured between side lot lines at the front building setback line.
95. **Manufacturing.** Establishments engaged in the mechanical or chemical transformation of materials or substances into new products including the assembling of component parts, the manufacturing of products, and the blending of materials such as lubricating oils, plastics, resins or liquors.
96. **Manufactured Home.** A structure which is designed primarily for long-term occupancy as a residence, is partially or wholly manufactured in a factory or at a location other than the site of the completed home, contains sleeping areas, a flush toilet, a tub or shower bath and kitchen facilities, has plumbing and electrical connections provided for attachment to outside systems, is transportable in one or more sections, can be installed on a permanent foundation, and meets all established snow loads. "Manufactured home" does not include park trailers, camper trailers, travel trailers, or other similar vehicles.
- a. **Type I:** A manufactured home which is transportable in two or more sections, has brick, wood or cosmetically equivalent exterior siding and a pitched roof, is not less than 24 feet wide at its narrowest dimension and 36 feet long and has a minimum floor area of 1000 square feet, and is certified pursuant to the "National Manufactured Housing Construction and Safety Standards Act of 1974," 42 U.S.C. 5401 et seq., as amended, and all regulations enacted pursuant thereto or is certified by the State of Colorado as being in compliance with the requirements of the uniform building code as adopted by the State of Colorado and enforced and administered by the Colorado Division of Housing.
  - b. **Type II:** A single-section manufactured home which is designed to be transported on its own or detachable wheels or on a trailer, is eight (8) feet or more in width at its narrowest dimension and 32 feet or more in length, and bears a label certifying that it is built in compliance with the Federal Manufactured Home Construction and Safety Standards Act of 1974, which became effective June 15, 1976. Except where the context requires a different interpretation, "Type II Manufactured Home" shall be deemed synonymous with "Mobile Home."
97. **Manufactured Housing Park.** A parcel of land containing two or more spaces with required improvements and utilities that are leased for the long-term placement of manufactured homes.
98. **Manufactured Housing Subdivision.** A parcel of land subdivided into lots, each lot individually owned and utilized as the site for placement of a single-family manufactured home or single-family factory built home.
99. **Mining Operation.** Activities conducted on the surface or underground for the exploration, development or extraction of minerals and natural resources including, but not limited to, sand, gravel, top soil, limestone

and coal from their natural occurrences and the cleaning, concentrating, sorting, crushing, refining or other processing or preparation and locating for transit of crude natural products at or near the mine site.

100. **Module Structure.** A factory fabricated, transportable building or major component designed for use by itself or for incorporation with similar units on-site into a structure for residential, commercial, educational, or industrial use. Their lack of an integral chassis or permanent hitch to all future movement distinguishes them from manufactured housing.
101. **Mobile Home.** A structure having the physical characteristics of a Type II Manufactured Home, but which was constructed before the effective date of the Federal Manufactured Home Construction and Safety Standards Act of 1974, which became effective June 15, 1976. Except where the context requires a different interpretation, "Mobile Home" shall be deemed synonymous with "Type II Manufactured Home."
102. **Mobile Home Park.** Any park, trailer park, trailer court, camp, site, lot, parcel, or tract of land designed, maintained or intended for the purpose of supplying a location or accommodations for any mobile home, manufactured home or factory built home and upon which any mobile home, manufactured home or factory built home is parked and shall include all buildings used or intended for use as part of the equipment thereof whether a charge is made for the use of the mobile home park and its facilities or not. Mobile Home Park shall not include automobile or trailer sales lots on which unoccupied trailers or mobile homes are parked for purposes of inspection and sale.
103. **Mobile Home Subdivision.** A parcel of land subdivided into lots, each lot individually owned and utilized as the site for placement of single-family mobile homes, manufactured homes and factory built homes. Such a subdivision shall not be included in the definition of a Mobile Home Park.
104. **Nursing Home.** A state licensed health care facility which provides essential care on a twenty-four (24) hour basis by medical professionals to provide short term convalescent or rehabilitative care or long term care to individuals who by reason of advanced age, chronic illness or infirmity are unable to care for themselves.
105. **Office, Administrative, Business or Service.** An establishment where business is transacted or which is the headquarters of an enterprise or organization; the sale of merchandise is secondary and incidental to the performance of a service.
106. **Office, Professional.** An office for professionals such as physicians, dentists, lawyers, architects, engineers, artists, musicians, designers, teachers, accountants and others who through training are qualified to perform services of a professional nature and where no storage or sale of merchandise exists.
107. **Open Space, Residential.** Any parcel or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for the public or private use or enjoyment or for the use and enjoyment of owners and

occupants of land adjoining or neighboring such open space. The types of lands and reasons for preservation include, but are not limited to the following:

- a. **Health and Safety.** Lands that may be needed for the health and safety of the community: areas required for the recharge of groundwater, reservoirs and surrounding lands, lands with vegetation ensuring better air quality, high wildfire danger zones, steep slopes, floodplains, buffers around airports and similar facilities.
  - b. **Community Resource.** Lands that might be a resource for the community: farmland, rangeland, lakes, streams, rivers, wetlands, forests, mines, etc.
  - c. **Ecological Value.** Lands that might be ecologically valuable areas: habitat for animals and plants, unique ecosystems, etc.
  - d. **Diversity of Activities.** Lands that could provide a diversity of activities for the public: public parks, areas with outstanding historical, educational, cultural, or archaeological value, areas providing access to lake shores, beaches, rivers and streams, privately owned recreation areas.
  - e. **View sheds.** Lands that may provide view sheds and/or aesthetically pleasing experiences: lands that provide aesthetic relief and pleasure to the public.
  - f. **Community Separators.** Lands that may provide or act as community separators providing a buffer between communities.
108. **Open Space, Nonresidential.** The gross area of a lot or tract of land minus all streets, driveways, parking lots, and building areas, which is to be or has been landscaped or developed for use by the public, owners or tenants of the lot or tract of land for private, common, or public enjoyment. Open space may include landscaping, internal walkways, bike paths, pedestrian access and outdoor seating areas.
109. **Parcel.** A lot or tract, or contiguous groups or portions of such lots or tracts.
110. **Parking Area.** The total area encompassed by off-street parking spaces, which are available to customers, employees, residents, and visitors to the designated area, with or without time limits, as well as the total area encompassed within all access and egress routes designed for use by motor vehicles. A parking area includes emergency access lanes and loading area spaces.
111. **Parking Facilities.** An area, striped for parking that is primarily used for parking vehicles for any given period. Related facilities and definitions include but are not limited to the following:
- a. **Surface Parking Lot.** An uncovered, off-street, hard-surface lot striped for parking.
  - b. **Parking Garage.** A parking lot, typically multi-level, that offers covered parking.

112. **Pasture.** An area of land on which there is a growth of forage that animals may graze. Pastures may include fencing only for rotating livestock while grazing but will not allow fencing for corral purposes.
113. **Perimeter Landscape Area.** A minimum landscaped strip on private property along the entire perimeter area adjacent to a public street right-of-way. The required landscape strip shall be measured from the property line. Driveways and sidewalks may traverse this area in order to allow limited access.
114. **Person.** The word person shall also include association, firm, co-partnership or corporation.
115. **Planned Unit Development (PUD).** A development to be construed by a single owner or group of owners acting jointly, involving a related group of buildings and associated uses planned as an entity and developed and regulated as one complex land unit rather than as a mere aggregation of individual buildings located on separate unrelated lots. A planned unit development consists of, at a minimum, a map and adopted ordinance setting forth the regulations governing, and the location and phasing of all proposed uses and improvements to be included in the development.
116. **Preliminary Site Development Plan.** A proposed site plan and any accompanying materials as required by this title, which provides sufficiently detailed information so that the applicant and City of Fountain may reach preliminary agreement as to the form and content of the plan within the objectives of this title.
117. **Race Track.** An establishment which provides a course for racing animals or motor vehicles, an area for spectators, stables or kennels for animals and parking lots.
118. **Recreational Vehicle.** A vehicle used for temporary habitation and used for travel, vacation, and recreation purposes. This term shall include, but is not limited to, travel trailers, campers, motor homes, truck campers, and similar vehicles.
119. **Religious Institution.** Establishment for the conduct of religious activities, including accessory housing. This term includes the terms church, temple, seminary, retreat, monastery, and similar terms.
120. **Repair Garage.** A building used for vehicle repair and accessory storage or parking of vehicles, which are awaiting service or pickup, but excluding automobile body and paint shops and the storage of junk vehicles. The term includes more specific repair garages for particular vehicles such as automobile repair garage, recreational vehicle repair garage, and truck repair garage.
121. **Restaurant.** An establishment whose primary business is the sale of food in a ready to consume state.
122. **Retail Sale.** A sale to the ultimate consumer for direct consumption and not for resale.
123. **Retirement Home.** A residential facility other than a hotel, where for compensation paid either directly or indirectly, lodging and meals are

provided for the elderly (over sixty (60) years old). No continuous medical or personal care is provided by the operators of the home.

124. ***Self-storage Facilities.*** A building or portion thereof dividable into separate compartments, which are individually rented or leased for storing the renter's or lease holder's property. Goods stored within the self-storage facility shall not be offered or displayed for sale at the facility. Accessory uses may include the exterior storage of camping trailers, motorized homes, boats, etc., in areas designated and approved for such storage.
125. ***Service Station.*** An establishment which provides routine daily service and maintenance to vehicles including, but not limited to, gasoline filling, oil changes, tune-ups, engine lubrication, tire changing and repair and muffler repair, but does not include removing engines or transmissions, painting or body work.
126. ***Setback.*** The shortest distance between a front property line and the building restriction line or structure projected to the side lot lines, and including driveways and parking areas, except where otherwise restricted by this title.
127. ***Shelter for the Homeless.*** A residential facility, which provides temporary group lodging and meals to individuals in need due to poor economic circumstances or social disability.
128. ***Sign.*** Any advertisement, announcement, direction or communication produced in whole or in part by the construction, erection, affixing or placing of a structure or object on any land or on any other structure or produced by painting on or posting or placing any printed, lettered, pictured, figured or colored material on any building, structure or surface; Any device, fixture, placard, or structure that uses any color, form, graphic, illumination, symbol, or writing to advertise, announce the purpose of, or identify the purpose of a person or entity, or to communicate information of any kind to the public.
  - a. ***Abandoned Sign and Sign Structure.*** Any sign or sign structure that has not been used in a bona fide manner as a sign as defined by this section for a consecutive period of one (1) year shall be conclusively deemed as abandoned. In no event shall the time for calculating this one-year period begin to run before the effective date of this ordinance.
  - b. ***Awning, Canopy, or Marquee Sign.*** Any sign attached to or painted on a freestanding canopy or awning or a sign placed on an awning, which projects more than twenty-four inches (24") from a building.
  - c. ***Banner.*** A flexible material (e.g. vinyl, plastic, canvas etc.) on which a sign is painted or printed.
  - d. ***Construction Sign.*** A temporary sign erected on the premises on which construction is taking place, during the period of such construction, indicating the names of the architects, engineers, landscape architects, contractors or similar artisans, and the owners, financial supporters, sponsors, and similar individuals or

firms having a role or interest with respect to the structure or project.

- e. **Customer Information Sign.** A sign which identifies, as a courtesy to customers, items such as credit cards accepted, menus, prices, hours of operation, lotto tickets sold here, or similar items that attached to or painted on a building or window not exceeding six (6) square feet in size.
- f. **Directional Sign.** A noncommercial sign limited to directional messages (e.g. enter, exit, drive-through-lane, parking, handicap, sign required by local, state or federal agencies, or similar signs). Logos and business names will be permitted as needed to complete the directional message.
- g. **Freestanding Sign.** Any nonmoveable sign not affixed to a building.
- h. **Identification Sign.** A sign which establishes the identity of the occupant by listing their name or professional title, which establishes the identity of a building or building complex by name or symbol only, or which indicates street address and name. The term identification sign shall not include signs identifying commercial or industrial uses or a commodity or service offered on the premises.
- i. **Ideological Sign.** A sign communicating a message or ideas for noncommercial purposes, and which does not constitute any of the following: construction sign; directional sign; mural; off-premise or billboard; on-premise sign; real estate sign; political sign; model complex sign; garage sale signs; banners; or home occupation signs.
- j. **Low Profile Sign.** A freestanding sign not exceeding six feet (6') in height from the finished grade (as shown on the approved site development plan) to the top of the sign. On slopes, this height is measured at the mid-point of the sign; however, the area of the copy may not be greater than six feet (6') in height.
- k. **Mural or Works of Art.** A picture or graphic illustration applied directly to a wall of a building that does not advertise or promote a particular business, service or product.
- l. **Nonconforming Sign.** Any sign that does not conform to the requirements of this chapter.
- m. **Off-Premise Sign.** A sign or billboard which is used or intended for use to advertise, identify, direct or attract the attention of the public to a business, institution, product, organization, event or location offered or existing elsewhere than upon the same lot, tract or parcel of land where such sign or billboard is displayed.
- n. **On-Premise Sign.** A sign, which advertises or directs attention to a business, product, service, or activity that is available on the premises or within the zoning district where the sign is located.



- o. **Parapet Wall Sign.** Any part of any exterior wall of a building that is located entirely above the roofline.
  - p. **Permanent Sign.** Any sign constructed of permanent materials and permanently attached to the ground, a building, or another structure by direct attachment to a rigid wall, frame, or structure.
  - q. **Political Sign.** A temporary sign pertaining to any national, state, or local election.
  - r. **Portable Sign.** A sign that is not permanently affixed to a building, structure, or the ground.
  - s. **Projecting Sign.** A sign that is wholly or partly dependent upon a building for support and which projects more than twelve inches (12") from such building or a sign attached to or painted on an awning which projects less than twenty-four inches (24') from a building.
  - t. **Real Estate Sign.** A temporary sign intended to advertise the financing, development, sale, transfer, lease, exchange, or rent of real property.
  - u. **Roof Sign.** Roof sign shall mean a sign on or above a roof of a building or structure.
  - v. **Sign Structure.** Any supports, uprights, braces, or framework of a sign.
  - w. **Temporary Sign.** A sign, banner or similar device or display which is intended for a temporary period of display and consisting of real estate signs, construction signs, subdivision directional signs, political signs, garage sale signs and banners.
  - x. **Wall Sign.** A sign fastened to or painted on the wall or parapet wall of a building or structure in such a manner that the wall becomes the supporting structure for, or forms the background surface of the sign and which does not project more than twelve inches (12") from such building or structure.
  - y. **Window Sign.** A sign that is applied or attached to the exterior or interior of a window. A window sign does not include merchandise or models of products or services incorporated in a window display or customer information signs.
129. **Sign Area.** The total area enclosed by the shortest line that can be drawn around the entire sign or sign structure, including all parts and appurtenances thereof. Frames and structural matter, not bearing lights or advertising matter, shall be excluded in computation of sign area. All sides of a sign, which are visible from any one (1) vantage point, shall be measured in determining the area of the sign.
130. **Site Development Plan/Final Development Plan.** A plan describing with reasonable certainty the type and intensity of use proposed for a specific parcel or parcels of property. Such plan shall constitute the final approval step, irrespective of title, which occurs prior to building permit application. For detached one-family and two-family dwelling units, the final plat shall constitute a site development plan. For all other uses, a site

development plan, pursuant to Chapter 17.54, shall constitute a site-specific development plan.

131. **Solid Waste.** Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial or commercial operations or from community activities. Solid waste does not include any solid or dissolved materials in domestic sewage, or agricultural wastes, or solid or dissolved materials in irrigation return flows, or industrial discharges which are point sources subject to permits under the provisions of the Colorado Water Quality Control Act, Article 8 of Title 25, C.R.S., or materials handled at facilities licensed pursuant to the provisions on radiation control in Article 11 of Title 25, C.R.S.
132. **Solid Waste Disposal Site and Facility.** The location and facility at which the deposit and final treatment of solid wastes occur.
133. **Stable, Commercial Riding.** A building where horses are boarded for remuneration and/or where horses are kept for sale or hire.
134. **Stable, Private.** A building where horses are boarded and owned by the occupant of the premises and are not kept for remuneration, sale or hire.
135. **Storage Areas, Outdoor.** The keeping outdoors of any equipment, goods, material, merchandise, or supplies, in the same place for more than twenty-four (24) hours.
136. **Striping.** The act or process of marking or delineating parking spaces. All required off-street parking and loading spaces shall be marked and maintained with durable paint in stripes a minimum of two inches (2") wide and extending all but one foot (1') of the length of the parking space.
137. **Structure.** Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. Among other things, structures include buildings, mobile homes and signs, but do not include fences or walls six feet (6') or less in height.
138. **Structural Alteration.** Any change which would tend to prolong the life of the supporting members of a structure, such as bearing walls, columns, beams or girders.
139. **Structural Height.** The vertical distance measured from grade to the highest point of the structure. It does not include onsite built structures.
140. **Structural Setbacks.** A line marking the minimum distance a building may be erected from a street, alley, or lot line, as measured from the nearest line or point of the building, including eaves, cantilevered areas, or other extensions from the main portion of the building.
141. **Tower.** Any structure that is designed and constructed primarily for supporting one or more antenna, including self supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, alternative tower structures, and the like.

142. ***Tower Height (Average).*** When referring to a tower or other structure, the distance measured from the average ground level to the highest point on the tower or other structure, even if said highest point is an antenna.
143. ***Trash Transfer Station.*** A facility at which refuse, awaiting transportation to a disposal site, is transferred from one type of collecting vehicle and placed into another.
144. ***Truck.*** See definition of vehicle.
145. ***Use.*** The purposes for which land or a building is designed or intended or for which either land or a building is or may be occupied or maintained.
146. ***Use, Principal.*** The primary purpose or function that a lot serves or is intended to serve.
147. ***Use, Temporary.*** Any activity, occupation, business, or operation carried on, or intended to be carried on, in or from a tent, movable stand, portable equipment, or any temporary structure, or in or from any automobile, for a short period of time.
148. ***Useable Open Space.*** Ground area, which satisfies visual, recreational, and psychological, needs of residents in a development for light and air. Useable open space may include, but is not limited to, lawns, vegetation, open balconies, open patios, walkways, active and passive recreational areas, fountains, swimming pools, wooded areas, water surfaces, floodplains, drainage-ways, steep slopes and drainage detention areas. Useable open space does not include public rights-of-way, parking lots, driveways, or buildings and structures. Such space shall be available for entry and use by the residents involved.
149. ***Vehicle.*** Any device which is capable of self-propulsion or being otherwise moved from place to place upon wheels or endless tracks, excepting a device moved exclusively upon stationary rails, a device designed to move primarily through the air or a device designed to move primarily through human muscular power. The term includes automobiles, motor vehicles, trucks, recreational vehicles, construction equipment, motorcycles, heavy equipment and similar vehicles.
150. ***Vehicle Stacking.*** The minimum required length of an on-site drive aisle necessary to allow for the movement of vehicles within a parking lot to a drive-up window service or other drive-through services without impeding the flow of traffic on-site and off-site. Vehicle stacking distance shall be measured from the point of service and within a designated drive aisle. The required vehicle stacking distance may be distributed between accesses serving the site, provided a minimum vehicle stacking distance of twenty feet is provided at each access point.
151. ***Vested Property Right.*** The right to undertake and complete the development and use of property under the terms and conditions of a site-specific development plan.
152. ***Visibility Clearance at Intersections (Visibility Triangle).*** A space, triangular, on a corner lot, in which nothing shall be built, placed, or grown in a way that would impede visibility. Its purpose is to assure that vehicles and pedestrians have adequate safe visibility. The cut-off is

usually defined by either a straight line or a curved line, joined at specific distances from the corner.

153. **Warehouse.** A building, or portion thereof, used and appropriated by the occupant for the deposit and safe keeping or selling of his own goods at wholesale or by mail order, or for the purpose of storing the goods of others placed there in the regular course of commercial dealings and trade to be again removed or reshipped.
154. **Wholesale.** The sale of goods to a retailer.
155. **Yard.** That portion of the open area on a lot extending open and unobstructed from the ground upward, except as otherwise provided in this title.
156. **Yard, Front.** A yard extending across the full width of the lot between the front lot line and the principal building, the depth of which shall be the least distance between the front lot line and the nearest portion of the principal building.
157. **Yard, Rear.** A yard extending the full width of the lot between the rear most portion of the principal building and the rear lot line, the depth of which shall be the least distance between the rear lot line and the nearest portion of the principal building.
158. **Yard, Side.** A yard between the principal building and the side lot line, extending from the front yard to the rear yard, the width of which shall be the least distance between the side lot line and the principal building.