### MUNICIPAL CODE - TOWN OF BERTHOUD

#### TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>CHAPTER</th>
<th>TITLE</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter 1</td>
<td>General Provisions</td>
<td>3</td>
</tr>
<tr>
<td>Chapter 2</td>
<td>Incorporation</td>
<td>5</td>
</tr>
<tr>
<td>Chapter 3</td>
<td>Administration</td>
<td>6</td>
</tr>
<tr>
<td>Chapter 4</td>
<td>Board of Trustees</td>
<td>10</td>
</tr>
<tr>
<td>Chapter 5</td>
<td>Police Department</td>
<td>12</td>
</tr>
<tr>
<td>Chapter 6</td>
<td>Water Department</td>
<td>13</td>
</tr>
<tr>
<td>Chapter 7</td>
<td>Sewer Department</td>
<td>19</td>
</tr>
<tr>
<td>Chapter 8</td>
<td>Health and Sanitation</td>
<td>46</td>
</tr>
<tr>
<td>Chapter 9</td>
<td>Police Court</td>
<td>54</td>
</tr>
<tr>
<td>Chapter 10</td>
<td>Finances</td>
<td>56</td>
</tr>
<tr>
<td>Chapter 11</td>
<td>Building Regulations-Contact Building Dept for current regulations</td>
<td></td>
</tr>
<tr>
<td>Chapter 12</td>
<td>Reserved for Future Use</td>
<td></td>
</tr>
<tr>
<td>Chapter 13</td>
<td>Licenses</td>
<td>58</td>
</tr>
<tr>
<td>Chapter 14</td>
<td>Businesses and Trades</td>
<td>76</td>
</tr>
<tr>
<td>Chapter 15</td>
<td>Streets and Sidewalks-Contact Public Works for current regulations</td>
<td></td>
</tr>
<tr>
<td>Chapter 16</td>
<td>Garbage, Refuse and Weeds</td>
<td>86</td>
</tr>
<tr>
<td>Chapter 17</td>
<td>General Offenses</td>
<td>89</td>
</tr>
<tr>
<td>Chapter 18</td>
<td>Animals and Fowls</td>
<td>115</td>
</tr>
<tr>
<td>Chapter 19</td>
<td>Traffic and Motor Vehicles</td>
<td>126</td>
</tr>
<tr>
<td>Chapter 20</td>
<td>Fines and Penalties</td>
<td>128</td>
</tr>
<tr>
<td>-----------</td>
<td>---------------------</td>
<td>-----</td>
</tr>
<tr>
<td>Chapter 21</td>
<td>Reserved for Future Use</td>
<td></td>
</tr>
<tr>
<td>Chapter 22</td>
<td>Cemeteries</td>
<td>129</td>
</tr>
<tr>
<td>Chapter 23</td>
<td>Sales Tax</td>
<td>130</td>
</tr>
<tr>
<td>Chapter 30</td>
<td>Development Code</td>
<td>137</td>
</tr>
</tbody>
</table>
# MUNICIPAL CODE - TOWN OF BERTHOUD

## CHAPTER 1
### GENERAL PROVISIONS

| 1.1 | Title and Scope | 1.6 | Severability |
| 1.2 | Numbering of Code | 1.7 | Repeal |
| 1.3 | Publication – Use as Evidence | 1.8 | Saving Clause |
| 1.4 | Meaning and Definition of Terms | 1.9 | Officers Continue |
| 1.5 | Amendments |

### 1.1 Title and Scope
The following Code constitutes a compilation, revision and codification of all the ordinances of the Town of Berthoud, Colorado, of a general and permanent nature, and it shall be known as the “Municipal Code of the Town of Berthoud” and may be cited under that name or as the “Berthoud Municipal Code.”

### 1.2 Numbering of Code
In this “Municipal Code of the Town of Berthoud” all paragraphs are numbered as sections. The digits to the left of the decimal point indicate the chapter; the digits to the right of the decimal point indicate the section of the chapter; and the digits to the right of the hyphen indicate the subsection.

### 1.3 Publication – Use as Evidence.
The Code is hereby ordered published in bound loose leaf form and copies thereof, duly certified by the Clerk and Mayor of the Town, shall be received without further proof as prima facie evidence of the provisions of this Code in all courts and administrative tribunals of this state. (C.R.S. 1963, 139-34-8) The Code shall also be published online from time to time and linked to the municipal web page. However, the online version shall be unofficial and may not contain recent changes.

### 1.4 Meaning and Definition of Terms
The following definitions and rules of construction shall be observed in interpreting this Code:

- **Town** The word “Town” shall mean the Town of Berthoud, a municipal corporation situated in Larimer and Weld Counties, and in the State of Colorado.

- **Board of Trustees** The word “Board” and the word “Trustees” shall mean the Board of Trustees of the Town of Berthoud.

- **Gender** When any subject matter, party or person is described or referred to by words importing the masculine, such words shall be deemed to include females as well as males and vice versa.

- **Number** When any subject matter, party or person is described or referred to by words importing the singular number, the plural shall be deemed to be included.

- **Person** The word “person” shall include a firm, partnership, corporation, association, or other organization acting as a group or unit as well as an individual.

- **Code** The term “Code” shall be deemed to mean the “Municipal Code of the Town of Berthoud” as published and subsequently amended, unless the context requires otherwise.

- **Effective Date** The term “Effective Date” shall be deemed to mean the date that this Code is adopted by the Board of Trustees with an emergency declaration making the provisions hereof immediately effective.

### 1.5 Amendments
Any additions or amendments to this Code shall be adopted as ordinances and resolutions under applicable provisions of the state law, and when passed in such form as to indicate the intention to make the same a part hereof, shall be deemed to be incorporated in this Code so that reference to it as the “Municipal Code of the Town of Berthoud” shall be understood as including such additions or amendments.
1.6 Severability
The provisions of this Code are hereby declared to be severable and if any section, provision, or part thereof shall be held unconstitutional or invalid, the remainder of this Code shall continue in full force and effect, it being the legislative intent that this Code would have been adopted even if such unconstitutional matter had not been included therein. It is further declared that if any provision or part of this Code, or the application thereof to any persons shall not be affected thereby.

1.7 Repeal
All Ordinances and parts of ordinances of a general and permanent nature adopted by the Town of Berthoud before the effective date of this Code are hereby repealed; provided, however, that any ordinances establishing salaries, establishing any contract right authorizing the issuance of any bonds or evidence of indebtedness of the Town of Berthoud, relating to the annual appropriation or the annual tax levy, expenditure of funds in excess of budget, granting any franchise, annexing territory to the Town of Berthoud, naming streets, dedicating or vacating streets or alleys, creating or assessing any local improvement district, or authorizing the sale, purchase or lease of property by the Town of Berthoud, shall not be considered to be ordinances of a general and permanent nature and the same are not hereby repealed.

1.8 Saving Clause
The repeal of any ordinance or part thereof by the adoption of this Code shall not affect, deny, abridge, or impair any right, action, or cause of action accruing or arising under the ordinance of section so repealed prior to the effective date, and such right, action or cause of action may be prosecuted to a final determination notwithstanding such repeal. No offense committed, and no fine, forfeiture or penalty incurred before any ordinance or part thereof is repealed by this Code, shall be affected, released or in any way discharged by such repeal, but the trial, conviction and punishment for any such offense, and the recovery of fines, forfeitures and penalties, shall be had in all respects as if the repealed provisions had remained in force.

1.9 Officers Continue
If any ordinance which creates an office or employment in the Town of Berthoud is repealed by the adoption of this Code, and the same office or employment is also provided for in this Code, then the present incumbent of the office of employment shall continue to hold such office or employment and to perform the duties and functions thereof until removed there from in accordance with this code or until his successor is elected or appointed and qualified.
# MUNICIPAL CODE - TOWN OF BERTHOUD

## CHAPTER 2
### INCORPORATION

<table>
<thead>
<tr>
<th></th>
<th>Incorporation</th>
<th>Corporate Seal</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1</td>
<td><strong>Incorporation</strong></td>
<td>2.3</td>
</tr>
<tr>
<td>2.2</td>
<td>Corporate Limits</td>
<td></td>
</tr>
</tbody>
</table>

#### 2.1 Incorporation
The Town of Berthoud was incorporated on October 3, A.D. 1888.

#### 2.2 Corporate Limits
The Town of Berthoud is located in Larimer County and Weld County, Colorado. For an accurate ascertainment and establishment of the corporate limits, reference shall be made to the map of the Town of Berthoud Zoning Map, drawn by Barkeen Landscape Design and revised on March 27, 2012, together with annexations subsequent to that time. The said map is declared to be official in all matters pertaining to corporate boundaries, and the said map shall be kept on file in the office of the Town Clerk.

#### 2.3 Corporate Seal
The corporate seal shall consist of a circular plate and disc with a diameter of one and three-fourths inches. The words “Town of Berthoud, Larimer and Weld Counties, Colorado” shall be in circular form around the outside and the words “Incorporated Oct. 3, A.D. 1888” and a figure of an eagle with the word “Seal” beneath it shall be within the circular inscription.
3.1 Mayor – Board of Trustees

The corporate authority of the Town of Berthoud is by state law vested in a Board of Trustees, consisting of one Mayor and six Trustees, who shall be qualified electors residing within the limits of the corporation. Members of the Board are elected for a four year term. Specific authority is given to the Board to appoint certain Town officers, and in addition thereto the Board is given the power to appoint such other officers as it may deem necessary for the good government of the corporation, prescribe their duties and fix their compensation. (C.R.S. 1963, chap. 139, art.6)

3.1-1 Compensation

Each member of the Board of Trustees who takes office on or after April 1, 2008 shall be paid $75.00 for each regular board meeting, special board meeting, or board study session which he or she attends. When more than one of the above meetings are scheduled, or take place, during one meeting session the compensation paid will be $75.00. Trustees do not receive additional compensation for meetings such as committee study sessions; attendance at seminars; participation in the activities of the Colorado Municipal league; interviewing prospective employees; intergovernmental meetings; or, public appearances where they are participating as members of the Board of Trustees. In addition to the above compensation, the Mayor shall be paid an additional $115.00 per month.

3.2 Town Clerk – Appointment

The Board of Trustees at its first regular meeting after each biennial election, shall appoint some qualified person as Town Clerk. In case of a vacancy in the office of Clerk, the Board shall appoint a Clerk for the unexpired term.

3.2-1 Oath

Before entering upon the duties of the office, the Clerk shall take an oath of office as required by C.R.S. § 31-4-401, and promise to faithfully discharge her duties as Town Clerk and that when she shall vacate such office she will turn over and deliver to her successor papers, property or thing belonging to the remaining in her charge as such Clerk.

3.2-2 Duty to Keep Records

The Town Clerk shall be authorized to countersign warrants drawn upon the treasury. (C.R.S. 1963, 139-40-1)

3.2-3 Authority to Countersign Warrants

The Town Clerk shall be authorized to countersign warrants drawn upon the treasury. (C.R.S. 1963, 139-40-1)

3.2-4 Other Duties

The Town Clerk shall perform such other duties as the Board of Trustees may prescribe.

3.3 Town Treasurer – Appointment
The Board of Trustees at its first regular meeting after each biennial election, shall appoint some qualified persons as Town Treasurer, which position may be filled by an officer of the Town holding another position within the Town.

3.3-1 **Oath**
Before entering upon the duties of the office, the Treasurer shall take an oath of office as required by C.R.S. § 31-4-401, and promise to faithfully perform their duties. No Bond shall be required, however, when either the Treasurer or Deputy Treasurer shall vacate such office they shall be required to turn over and deliver to their successor all moneys, books, papers, property or things belonging to the Town of Berthoud and remaining in their charge. (C.R.S. 1963, 139-39-1)

3.3-2 **Duty to Keep Records and Render Accounts**
The Treasurer shall receive all moneys belonging to the Town of Berthoud and give receipts therefore; shall keep his books and accounts in such manner as may be prescribed by ordinance or applicable law; shall keep a separate account of each fund or appropriation and the debts and credits belonging thereto; and shall report to the Board of Trustees at each regular monthly meeting thereof, the state of the treasury at the date of such account, and the balance of money in the treasury. He shall also accompany such statement of accounts with a statement of all moneys received in the treasury, and on what account, during the preceding month, together with all warrants redeemed and paid by him, and such warrants and their supporting vouchers shall be delivered and filed in the Clerk's office upon every day of such statement. All books and accounts of the Treasurer shall always be subject to inspection of any member of the Board. (C.R.S. 1963, 139-6-6)

3.3-3 **Other Duties**
The Treasurer shall perform all other duties, keep all records , and make all reports that are required by other provisions of this Code or by the laws of the State of Colorado.

3.4 **Town Attorney – Appointment**
The Board of Trustees at its first regular meeting after each biennial election, shall appoint some qualified attorney at law as the Town Attorney and shall fix his compensation. In case of a vacancy in the office of Town Attorney, the Board shall appoint a Town Attorney for the unexpired term.

3.4-1 **Duties**
It shall be the duty of the Town Attorney to attend Board meetings, to draw all ordinances, contracts and other instruments when requested to do so, to prosecute or defend all suits brought by or against the Town of Berthoud, and to render such legal advice to the Board and other town officers as they may require.

3.5 **Other Officers**
The Board of Trustees at its first regular meeting after each biennial election shall appoint qualified persons to serve as the Town Administrator, Chief of Police, and Municipal Judge which officers shall have the powers and duties and perform the functions as hereinafter provided or as provided by statute.

3.6 **Recall of Elected Officers**
Every elective officer of the Town of Berthoud may be recalled from office by the electors in the manner provided by state law. (C.R.S. 1963, 139-15-1 et seq)

3.7 **Removal of Officers**
The removal of the mayor, the clerk, the treasurer, members of the board of trustees, or any other officer of the town shall be in strict accord with the provisions of C.R.S. § 31-4-307.

3.8 **Municipal Elections**
3.8-1 **Write-in Candidate - Affidavit**
No write-in vote for any municipal office shall be counted unless an affidavit of intent has been filed with the clerk by the person whose name is written in prior to twenty (20) days before the day of the election indicating that such person desires the office and is qualified to assume the duties of that office if elected.

3.8-2 **Election May Be Canceled When**
If the only matter before the voters is the election of persons to office and if, at the close of business on the nineteenth (19) day before the election, there are not more candidates than offices to be filled at such elections, including candidates filing affidavits of intent, the clerk, if instructed by resolution of the Board of Trustees either before or after such date, shall cancel the elections and by resolution declare the candidates elected. If so provided by ordinance, upon such declaration the candidates shall be deemed elected. Notice of such cancellation shall be published, if possible, in order to inform the electors of the municipality, and notice of such cancellation shall be posted at each polling place and in not less than one other public place.
3.9 Disposition of Unclaimed Property Held by Town

3.9-1 Purpose
The purpose of this Section is to provide for the administration and disposition of unclaimed property which is not of insignificant value and is in the possession of or under the control of the municipality.

3.9-2 Definitions
Unless otherwise required by context or use, words and terms shall be defined as follows:

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 municipality and which has not been claimed by its owner for a period of more than five (5) years in the case of intangible property and one (1) year in the case of tangible property after it became payable or distributable.

Intangible Property Includes: Moneys, checks, drafts, deposits, interest, dividends and income; credit balances, customer overpayments, gift certificates, refunds, credit memos and unidentified remittances; stocks and other intangible ownership interests in business associations; moneys deposited to redeem stocks, bonds, coupons and other securities or to make distributions; amounts distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits; and, amounts due and payable under the terms of insurance policies.

Municipality Means the Town of Berthoud, Colorado.

Owner Means a person or entity, including a corporation, partnership, association, governmental entity other than this municipality, or a duly authorized legal representative or successor in interest of same, which owns unclaimed property held by the municipality.

Administrator Shall mean the Administrator of the Town of Berthoud or designee thereof.

3.9-3 Procedure for Disposition of Property.
A. Prior to disposition of any unclaimed property having an estimated value of $50.00 or more, the Administrator shall send a written notice by certified mail, return receipt requested, to the last known address, if any, of any owner of unclaimed property. The last known address of the owner shall be the last address of the owner as shown by the records of the municipal department or agency holding the property. The notice shall include a description of the property, the amount or estimated value of the property, and, when available, the purpose for which the property was deposited or otherwise held. The notice shall also state that if the owner fails to provide the Administrator with a written claim for the return of the property within sixty (60) days of the date of the notice, the property shall become the sole property of the municipality and any claim of the owner to such property shall be deemed forfeited.

B. Prior to disposition of any unclaimed property having an estimated value of less than $50.00 or having no last known address of the owner, the Administrator shall cause a notice to be published in a newspaper of general circulation in the municipality. The notice shall include a description of the property, the owner of the property, if known, the amount or estimated value of the property and, when available, the purpose for which the property was deposited or otherwise held. The notice shall state that if the owner fails to provide the Administrator with a written claim for the return of the property within sixty (60) days of the date of the publication of the notice, the property shall become the sole property of the municipality and any claim of the owner to such property shall be deemed forfeited.

C. If the Administrator receives no written claim within the above sixty (60) day claim period, the property shall become the sole property of the municipality and any claim of the owner to such property shall be deemed forfeited.

D. If the Administrator receives a written claim within the sixty (60) day claim period, the Administrator shall evaluate the claim and give written notice to the claimant within ninety (90) days thereof that the claim has been accepted or denied in whole or in part. The Administrator may investigate the validity of a claim and may request further supporting documentation from the claimant prior to disbursing or refusing to disburse the property.

E. In the event that there is more than one claimant for the same property, the Administrator may, in the Administrator's sole discretion, resolve said claims, or may resolve such claims by depositing the disputed property with the registry of the District Court in an interpleader action.

F. In the event that all claims filed are denied, the property shall become the sole property of the municipality and any claim of the owner of such property shall be deemed forfeited.
G. Any legal action filed challenging a decision of the Administrator shall be filed pursuant to Rule 106 of the Colorado Rules of civil Procedure within thirty (30) days of such decision or shall be forever barred. If any legal action is timely filed, the property shall be disbursed by the Administrator pursuant to the order of the court having jurisdiction over such claim.

H. The Administrator is authorized to establish and administer procedures for the administration and disposition of unclaimed property consistent with this Section, including compliance requirements for other municipal officers and employees in the identification and disposition of such property.

3.9-4 Sale of Unclaimed Property
The Administrator is authorized to sell or dispose of unclaimed property in the manner which is believed will provide the best net return to the municipality. The Administrator may, when appropriate, follow the procedure specified in Title 38, Article 13 of the Colorado Revised statutes.

3.10 Review and Modify Fees
3.10-1 Annual Administrative Review of Fees
A. The Town Administrator shall, at least annually, review the fees charged for the administrative services and products (Administrative Fees) provided by the Town to ensure that the direct and indirect costs of providing these services and products to the citizens and customers of the Town who benefit directly from these services and products are recovered by the Town.

B. The Administrative Fees include all fees charged by the Town but do not include the fees related to the Town's enterprise funds, which are currently water, wastewater, drainage and electric.

C. At least one month prior to the implementation of these revised Administrative Fees by the Town Administrator he shall provide to the Board of Trustees, for its review and comments at a regularly scheduled meeting, the list of the current fees and the revised fees, as well as his rationale for any adjustments.

3.10-2 Summary of Administrative Fees
A schedule of the Administrative Fees provided for herein and charged by the Town shall be listed in a separate section of the Town's Municipal Code in order that these fees can be evaluated and reviewed more efficiently. Such schedule may be updated by resolution at any time.
# MUNICIPAL CODE - TOWN OF BERTHOUD

## CHAPTER 4

### BOARD OF TRUSTEES

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.1</td>
<td>Meetings</td>
<td>4.5</td>
<td>Order of Business</td>
</tr>
<tr>
<td>4.2</td>
<td>Mayor and Clerk Pro Tem</td>
<td>4.6</td>
<td>Adoption of Ordinances</td>
</tr>
<tr>
<td>4.3</td>
<td>Quorum</td>
<td>4.7</td>
<td>Vote Required</td>
</tr>
<tr>
<td>4.4</td>
<td>Committees</td>
<td>4.8</td>
<td>Publication of Ordinances</td>
</tr>
</tbody>
</table>

### Meetings
The regular meeting of the Board of Trustees shall be held on the second Tuesday of each month at the hour of 6:30 p.m. Special meetings may be called by the Mayor, or in his absence, by the Mayor Pro Tem in his discretion. The Mayor, or in his absence the Mayor Pro Tem, shall preside at all meetings of the Board of Trustees.

### Mayor and Clerk Pro Tem
At its first meeting following each biennial election, the Board shall choose one of the Trustees as Mayor Pro Tem who, in the absence of the Mayor from any meeting of said Board, or during the Mayor’s absence from the Town, or his inability to act shall perform his duties. The Board shall also choose a Clerk Pro Tem to perform the duties of the Clerk during his absence or inability to act. (C.R.S. 1963-139-6-3)

### Quorum
Four members of the Board of Trustees shall be a quorum for the transaction of business. No business shall be transacted except when a quorum is present, but a smaller number may adjourn the meeting to another time. (C.R.S. 1963, 139-6-1)

### Committees
At the first regular meeting following each biennial election the Mayor shall appoint standing committees as the needs of the Board may require.

### Order of Business
The order of business of a meeting shall be established by printed agenda approved or modified by the Board at the beginning of each meeting. Such agenda shall normally include:

A. The reading of the minutes of the preceding meeting.
B. The approval or amendment of the minutes of the preceding meeting.
C. Treasurer’s report.
D. Approval of accounts payable.
E. Action on any old business.
F. A consideration of new business.

### Adoption of Ordinances
Ordinances shall be introduced, adopted, and implemented as provided by C.R.S. 31-16-101 et. seq.

### Vote Required
The mayor or, in his absence, one of the trustees, who may be elected mayor pro tem, shall have the same voting powers as any member of said board. All ordinances, all resolutions or orders for the appropriations of money, all resolutions or orders to enter into contract, and all appointments of officers, shall require for their passage or adoption the concurrence of a majority of all the members elected of the Board of Trustees. In all other matters a majority of the votes cast at a meeting where a quorum is present is sufficient for passage, except as otherwise required by statute. (C.R.S. 1963, 139-6-2, 139-33-3, 139-33-6)
4.8 Publication of Ordinances

All ordinances, as soon as may be after their passage, shall be recorded in a book kept for that purpose, and authenticated by the signature of the Mayor and Clerk. All ordinances of a general or permanent nature, and those imposing any fine, penalty or forfeiture, shall be published by title only in a newspaper published within the Town of Berthoud and in full on the Town webpage: www.berthoud.org. Such ordinances shall not take effect until thirty days after such publication, except for ordinances calling for special elections or necessary to the immediate preservation of the public health or safety and containing the reasons making the same necessary in a separate section. The excepted ordinances shall take effect immediately, provided that they shall have been passed by an affirmative vote of three-fourths of the members of the Board of Trustees. Codes may also be adopted by reference as provided by state law. (C.R.S. 1963, 139-33-5)
## MUNICIPAL CODE - TOWN OF BERTHOUD

## CHAPTER 5
### POLICE DEPARTMENT

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.1</td>
<td>Police Department</td>
</tr>
<tr>
<td>5.2</td>
<td>Chief of Police – Duties and Bond</td>
</tr>
<tr>
<td>5.3</td>
<td>Duties of Police Officers</td>
</tr>
<tr>
<td>5.4</td>
<td>Oath and Bond</td>
</tr>
<tr>
<td>5.5</td>
<td>Uniforms</td>
</tr>
<tr>
<td>5.6</td>
<td>Duty of Citizens to Aid</td>
</tr>
</tbody>
</table>

### 5.1 Police Department
The Town of Berthoud shall have a paid Police Department consisting of a chief of police and such number of policemen as in the judgment of the Board of Trustees may be necessary to the peace and good order of the Town.

### 5.2 Chief of Police – Duties and Bond
At its first regular meeting following each biennial election, the Board of Trustees shall appoint a Chief of Police who shall be the head of the Police Department. In addition to the duties imposed upon all members of the Police department, he shall, subject to the control of the Administrator, employ and exercise general supervision and control over the work of all other members of the Police Department, prescribe the number of hours and the times of day or night when police officers shall be on duty, and report to the Administrator any violation of duty on the part of any police officer or any failure to comply with any order of the Chief of Police. He shall have charge and control of the town jail.

### 5.3 Duties of Police Officers
All members of the police department shall have powers and duties as set forth in this Code and granted to them by state law. They shall perform all duties required of them by the Chief of Police, including but not limited to preserving the peace, and enforcing this Code.

### 5.4 Oath
Before entering upon the duties of his office, each police officer shall take and subscribe an oath that he will support the constitution and laws of the State of Colorado, and the ordinances of the Town of Berthoud, and that he will faithfully perform the duties of the office upon which he is about to enter.

### 5.5 Uniforms
Every police officer shall wear at all times while on duty, a uniform of the type and quality prescribed by the Chief of Police, with the approval of the Administrator.

### 5.6 Duty of Citizens to Aid
It shall be the duty of all persons, when called upon by any police officer, to promptly aid and assist such officer in the discharge of his duties.
MUNICIPAL CODE - TOWN OF BERTHOUD

CHAPTER 6
WATER DEPARTMENT

6.1 Creation of Water Department
There is hereby created and established a Water Department of the Town of Berthoud for the purpose of the management, maintenance, care and operation of the water works of said Town.

6.2 Superintendent – Powers
The Town Administrator shall be the Superintendent of the Water Works unless the Board of Trustees appoints a different qualified person to serve as Superintendent. The Superintendent shall have the immediate control and management of all things pertaining to the town water works system, and he shall perform all acts that may be necessary for the prudent, efficient, and economical management and protection of said water works, subject to the approval and confirmation of the Board of Trustees. The Board shall have the power by motion to prescribe such other and further rules and regulations governing the power and duties of the superintendent and the management of said water works department and such other rates, rules and regulations as are not herein contained. (C.R.S. 1963 6-4)

6.3 Receipts and Deposits
The Town Clerk or her designee shall keep a correct account of all receipts, make out all bills for water rents and materials furnished to consumers, and collect the same.

6.4 Inspections
Whenever in the judgment of the superintendent he deems it necessary, he or his designee may inspect the premises or buildings of any water consumer for the purpose of examining the condition of all pipes, motors, meters, and water fixtures, or the manner in which the water is used. He shall be vigilant to protect and remedy all abuses, whether from waste or other improper use of water.

6.5 Application for Water
Application for the use of water shall be made to the Building Official or his designee. The application must be made by the owner or agent of the property to be benefited, designating the location of the property and stating the purpose for which the water may be required. In the furnishing of water for any purpose other than domestic purposes, the Town shall not be responsible for the quality or quantity of the water furnished.

6.6 Tapping Charge – Method
Upon the application for a new tap and service connection by any consumer of the Town, the superintendent shall, before making such tap and connection, require payment to the Town Clerk of a tap fee set by resolution of the Board for a three-
Where a larger tap is permitted, the aforesaid fees shall increase proportionately by the size and location of the tap.

The aforesaid tap fees shall be charged for each residential dwelling and each residential dwelling unit (although a part of but one structure) to be served notwithstanding the fact that a lesser number of taps are installed to adequately service the particular location.

The aforesaid fees shall be imposed for each industrial or commercial structure, however, but one tap fee shall be charged for a three-fourths inch tap regardless of the number of users, lessees, sub-tenants or separate units having independent water and plumbing facilities so long as reasonable health and safety standards are met. All necessary pipe, fittings, valves, shut off and trenching, back filling must be at the expense of the applicant and under the supervision of the Water Superintendent or his designee. All water service connections and all water service extensions, both within and without the corporate limits, are subject to special fees as adopted by the Board of Trustees. Installation and connection of service line to corporation cock must be done by a licensed utility contractor or plumber.

6.7 Contract Required on Taps Outside Corporate Limits
An application for a tap outside the Town corporate limits shall not be granted until the applicant signs a contract agreeing to annex when property becomes contiguous to the corporate limits.

6.8 Size of Service Tap
No service tap shall be more than three-fourths inch in diameter unless an additional fee and dedication for a tap larger than three-fourths inch diameter is tendered to the Town, special permission is given by the Water Superintendent or his designee, and all plumbing through which water is used is installed by a licensed utility contractor or plumber.

6.9 Maintenance of Service Line
Owner shall be responsible for maintenance of service line from the building to the water meter. Owner will be responsible for any damage occurring to water meter and curb stop valve box as a result of modifying surrounding ground conditions.

6.10 Discontinuance of Service
Any consumer who desires to discontinue the use of water shall file written notice with the Town Clerk and pay all current and back charges for water used.

6.11 Separate Tap Connections Required
Only one residential dwelling or residential dwelling unit (although a part of but one structure) shall be supplied from one tap and for each such tap a shut-off cock shall be located where the superintendent of water directs.

6.12 Service Pipe Regulations
No consumer shall be permitted to conduct water pipes across lots of buildings to adjoining premises without the permission of the water superintendent. Water service to a portion of developed property shall not be permitted. Service must include all improvements on the property with no cross connections with any other water supply. Service pipes must be laid at least five feet below the surface of the ground. The Town shall not be responsible for the service pipes and fixtures. All owners at their own expense, must keep service pipes from the Town main and all their apparatus in good working order and properly protected from frost and other disturbances. No claim shall be made against the Town on account of the breaking of service pipes or apparatus or for failure in the supply of water. No reduction in the rates will be made for any time that service pipes or fixtures may be frozen. All service pipe shall be copper, or a material approved by the current building code which the Town has adopted by reference, from the main to shut off box.

6.13 Waste of Water Prohibited
Consumers shall prevent unnecessary waste of water and keep all outlets closed when not in actual use. Hydrants, urinals, water closets, bath tubs and other openings must not be left running for any purpose other than the use for which they were intended. In addition to the penalty provided herein for Code violations, the water supply may be turned off where any such waste occurs.

6.14-1 Restrictions of Water
No irrigation shall be permitted between the hours of 10:00 A.M. to 6:00 P.M. with the exception that micro-irrigation using hand watering, soaker hoses, drip irrigation and irrigation of newly laid sod and newly seeded lawns may be done at any time.
6.15 No Use During Fire Alarm
During all alarms of fire the use of hose and all outlets where a constant flow of water is maintained is positively forbidden.

6.16 Sprinkling Restrictions
In case of water shortage or scarcity, the Board may by resolution place any restrictions which it deems necessary upon the use of water for irrigation or sprinkling purposes.

6.17 Use Outside Corporate Limits
Use of water outside the corporate limits shall be subject to the paramount rights of users within the corporate limits, and in case there shall be insufficient water to provide for users both within and without the corporate limits, the Board may reduce, curtail or shut off the users outside the corporate limits during such period of water shortage or scarcity.

6.18 Repair and Extension of Mains
The Town reserves the right, upon reasonable notice, to shut off its mains for the purpose of making repairs or extensions or for any other purpose, and no claim shall be made against the town by reason of the breakage of any service pipe or service cock or from any other damage that may result from shutting off water for repairing and relaying mains, hydrants or other connections.

6.19 Metered Service
All service shall be metered.

6.20 Water Bills – Payment – Penalty
Water rates must be paid monthly in arrears, at the office of the Town Clerk. If not paid on or before the 25th day of the month, they become delinquent and a late fee of ten dollars ($10.00) must be added and collected as a part of the water rate, and if not paid on or before the 25th day of the following month, the water will be turned off. Should the occupant of the premises turn on the water or cause it to be turned on after it has been shut off at the curb cock, it will be turned off at the main and the owner of the premises shall be fined in an amount set by the Board of Trustees.

6.21 Delinquent Rent Must be Paid.
All water rents and rates shall be a charge and lien upon the premises to which the water is delivered from the date the same become due and until paid, and the owner of every building, premises, lot or house shall be liable for all water delivered to or taken and used upon his or her premises, which lien and liability may be enforced by the Town of Berthoud by an action at law or suit to enforce said lien. If from any cause any sums owing for water rent and rates shall become delinquent, the water may be shut off and in no case shall it be turned on to the same property until such delinquency shall have been paid in full. Change of ownership or occupancy shall not affect the application of this Section. This rule shall be deemed to include water users within or outside the corporate limits of the Town.

6.22 Water Account in Name of Owner
All accounts for water shall be kept in the name of the owner of the property and not in the name of any tenant, and the owner only, or his legally authorized agent, shall be held responsible for water rents.

6.23 Property Charged with Rent
All water rents shall be charged against the property served and against the owner thereof, and if for any cause any sums owing therefore become delinquent, the water may be cut off and in no case shall it be turned on to the same property until such delinquencies shall have been paid in full. Change of ownership or occupation shall not affect the application of this Section. This rule shall be deemed to include water users within or outside of the corporate limits.

6.24 Unlawful Acts
It shall be unlawful for any person to use or take water from the Town water works without a permit therefore, or to make any fraudulent representation for the purpose of obtaining water, or for any person to take or use water from the water works for a different purpose or purposes than provided in the customer’s permit, or for any person to violate any of the regulations set forth in this chapter. Each and every such unlawful act shall constitute a violation of this Code and shall be punishable as herein provided.

6.25 Regulations Part of Contract
All regulations contained in this chapter shall be considered a part of the contract of every person taking water from the water works of the Town, and every person taking water shall be considered as having expressly consented to be bound thereby.
6.26 **Schedule of Water Rates**
All rates and charges for water use shall be on a monthly basis.

6.27 **Rates for Town Users**
The Board of Trustees shall be authorized to set water rates from time to time by Resolution, which amounts shall be payable monthly by water consumers both within and without the corporate Limits of the Town.

6.28 **Non-Residential Cross-Connection Control Program**

6.28-1 **General Requirements**
A. This Section shall apply to non-residential building permits, the plans for which must be submitted to the Town of Berthoud Water Department and approved prior to the issuance of water service. Plans for nonresidential building permits must show:

1. Water service type, size and location
2. Meter size and location
3. Backflow prevention assembly size, type and location.
4. Fire sprinkling system(s) service line, size and type of backflow prevention assembly if applicable.

B. Backflow prevention assemblies are to be installed in an accessible location to facilitate maintenance, testing and repair. Drawings must show various installations.

C. All backflow prevention assemblies shall be installed immediately downstream of the water meter.

D. Before installing a backflow prevention assembly, pipelines should be thoroughly flushed to remove foreign material.

E. In no case will it be permissible to have connections or tees between the meter and service line backflow prevention assembly.

F. Backflow prevention valves are not to be used as the inlet or outlet valves of the water meter. Test cocks are not to be used as supply connections. (Not applied to residential dual check installations.)

G. In order to ensure that backflow prevention assemblies continue to operate satisfactorily, it will be necessary that they be tested at the time of installation and on an annual schedule thereafter. Such test, will be conducted in accordance with ASSE and/or USC-CCC.&HR performance standards and field-test procedures as directed by the Colorado Department of Public Health and Environment. This testing is not applicable to residential dual check installations. Dual checks will be tested at intervals set by the Board.

H. The Town of Berthoud Water Department will require inspection of all containment installations.

I. All costs for design, installation, maintenance, repair, and testing are to be borne by the customer.

J. No grandfather clause exists. All laws and regulations apply regardless of the age of the facility.

K. All fire sprinkler lines shall have a minimum protection of an approved double check valve for containment of the system.

1. All glycol (ethylene or propylene), or antifreeze systems shall have an approved Reduced Pressure Zone assembly for containment.
2. Dry fire systems shall have an approved double check valve installed upstream of the air pressure valve.
3. Single-family residences with a fire sprinkler system and domestic water combined shall have a double check valve when no chemicals are used.

L. All fire sprinkler systems shall conform to the applicable sections of the National Fire Protection Association Standard, in particular 13 and 25.
Standards for Backflow Prevention Assemblies

A. Any backflow prevention assembly required herein shall be of a model and size approved by the Town of Berthoud Water Department. The term "Approved backflow Prevention Assembly" shall mean an assembly that has been manufactured in full conformance with the standards established by the latest version of the Colorado Department of Public Health and Environment Cross-Connection Control Manual and by the Town of Berthoud. Final approval shall be evidence by a Certificate of Approval issued by an approved testing laboratory certifying full compliance with Colorado Department of Public Health and Environment Standards and ASSE or USC FCCC & HR specifications. ONLY APPROVED BACKFLOW PREVENTION ASSEMBLIES SHALL BE USED. The following testing laboratories are qualified to test and certify backflow prevention assemblies:

1. American Society of Sanitary Engineering (ASSE), 901 Canterbury, Suite A, Westlake, OH 44145
2. USC Foundation for Cross-Connection Control and Hydraulic Research, University Of Southern California, KAP-200 University Park MC-2 5 31, Los Angeles, CA 90089-2531

Exception: Residential containment may be accomplished with an assembly not approved by the Foundation for Cross-Connection Control and Hydraulic Research, but approved by the American Society of Sanitary and Mechanical engineers and designated by the Town of Berthoud Water Department.

B. Backflow preventers currently installed which are not approved shall be replaced with an approved assembly at the time they fail an operational test.

C. Backflow assemblies used on fire lines shall have 0.5. & Y. (outside stem & yoke) valves and be listed by the National Fire Protection Association.

6.28-3 Installations

A. Backflow prevention assemblies shall be installed in accordance with the 1997 Uniform Plumbing Code and Town of Berthoud Water Department guidelines.

B. Backflow prevention assembly installations shall be inspected and approved for use by the Town of Berthoud Building Inspector or Town of Berthoud Water Department.

C. All backflow assemblies shall be installed in the horizontal position. Vertical installation shall be acceptable when approved by ASSE or USC FCCC & HR specifications. A variance may be granted where installation of the backflow assembly, as required, is impractical or imposes an undue hardship.

D. A pressure vacuum breaker shall be used where the assembly is never subjected to backpressure and installed a minimum of twelve (12) inches above the highest piping or outlet downstream of the assembly in a manner to preclude backpressure.

E. An atmospheric vacuum breaker shall be used only where the assembly is:
   1. Installed as an isolation assembly.
   2. Never subjected to continuous pressure, i.e. more than 12 continuous hours.
   3. Installed with the air inlet in a level position and a minimum of six (6) inches above the highest piping or outlet it is protecting.

F. The single check valve is not considered a backflow prevention assembly.

G. Double check valve assemblies may be installed in below-grade vaults when these vaults are properly constructed in accordance with the Town of Berthoud Water Department. Vaults must be insulated to prevent assemblies from freezing.

H. Reduced pressure backflow preventers will be installed above ground. The unit should be placed at least twelve (12) inches above the finished grade to allow clearance for the repair work. A concrete slab at finish grade is recommended. Proper drainage should be provided for the relief valve and may be piped away from the location provided it is readily visible from above grade and provided the relief valve is separated from the drain line by a minimum of double the diameter of the supply line. A modified vault installation may be used if constructed with ample side clearances. Freezing is a major problem in the area. Precautions should be taken to protect above ground installations.
I. An air gap is the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, fixture or other assembly, and the flood level rim of the receptacle. The air gap separation must be at least twice the diameter of the supply pipe, as measured vertically above the flood level rim of the vessel. The distance will never be less than one (1) inch.

6.28-4 Testing and Maintenance
A. At least once per year, it will be the duty of the customer/user at any premise(s) where any back flow prevention assemblies are installed to have certified tests made of these assemblies. In those specific instances where the Town of Berthoud Water Department deems the hazard to be great enough, certified inspections and tests at more frequent intervals, may be required. These tests shall be at the expense of the water user and shall be performed by a certified technician approved by the Colorado Department of Public Health and Environment and the Town of Berthoud. An inspection of the assembly may be performed at any time complying with 5.0 of this document. However, these checks shall not applicable to dual check installations.

B. As necessary, the assembly shall be repaired or replaced at the expense of the customer/user whenever the assembly(s) is found to be defective. Records of all such tests repairs or replacement shall be kept by customer/user and The Town of Berthoud Water Department.

C. Existing assemblies shall be sealed by the technician performing the test at the completion of the test.

D. All testing equipment used in testing of backflow prevention assemblies shall be checked for accuracy yearly, or more often, and proof of compliance shall be submitted to The Town of Berthoud Water Department.

E. The Town of Berthoud Water Department retains the right to test or otherwise check the installation and operation of any containment assembly at any time to assure proper operation.

6.28-5 Right of Entry
A representative of The Town of Berthoud Water Department will carry proper credentials of his/her office. By previously arranged appointment and upon presentation of proper credentials, the Town of Berthoud Water Department representative shall have the right of entry to inspect any and all buildings and premises for cross-connections relative to possible hazards. This right of entry shall be a condition of water service in order to protect the health, safety and welfare of the people throughout the Town of Berthoud's Distribution system. Where building security is required, the backflow assembly(s) should be located in an area not subject to security. Questions regarding proper credentials should be directed to the Town of Berthoud Water Department.

6.28-6 Violation
A. Failure of the customer to cooperate in the installation, maintenance, testing or inspection of backflow prevention assemblies required by this resolution shall be grounds for the discontinuance of water service to the premises or the requirement for an air-gap separation from the public potable water system.

B. Service of water to any premises may be discontinued by the Town of Berthoud Water Department if unprotected cross-connections exist on any premises. When any defect is found in a installed backflow prevention assembly, or if the backflow prevention assembly has been removed or bypassed, the service may be discontinued. Service shall not be restored until such conditions or defects are corrected.

C. Discontinuance of service may be summary, immediate, and without written notice whenever, in the judgment of the Town of Berthoud Water Department, such action is necessary to protect the public potable water supply or the distribution system.

D. It shall be unlawful to commit any act prohibited or to fail to perform any act required. Each day of the violation shall constitute a separate criminal act. The penalty for violation shall be a fine of up to $300, incarceration up to 90 days, or both such fine and detention.
MUNICIPAL CODE - TOWN OF BERTHOUD

CHAPTER 7
WASTEWATER DEPARTMENT

7.1 Wastewater Department Created
There is hereby created and established within the town a Wastewater department which shall have charge and control of the construction, operation, maintenance, protection, regulation, and supervision of the Wastewater system of the town.

7.2 Authority of Wastewater System Operations
The Public Works Department in consultation with the Town Administrator and Town Engineer shall have charge of the maintenance and operation of the Wastewater system, supervise the laying of extensions and new Wastewaters, see that the provisions of this Code are complied with,

7.3 Buildings Must Be Connected With Wastewater
All buildings located within the town and within 400 feet of any established Wastewater line, which are used for residence or business purposes, or in which persons congregate or are employed, must be connected with the town sewage system, and all drainage or plumbing fixtures therein shall be connected therewith. It shall be unlawful for any person to maintain within the town any vault, closet, privy or cesspool, except temporary privies at construction sites authorized by building official. No down spout, roof or surface drainage may be connected with the town sewage system. (C.R.S. 1963, 139-789.3(7); 139-53-1 through 19)

7.4 Permit Required for Connection
It shall be unlawful for any person to open, uncover, or in any manner make connection with any Wastewater main or line of the town, or to lay drain or Wastewater pipes on any premises or in any street or alley in the town without obtaining a written permit therefore. (C.R.S. 1963, 139-54-12)

7.5 Application for Permit
Application for such permits shall be made to the building department by the licensed utility contractor and/or plumber who will perform the work, in writing on blanks furnished for that purpose. Such application must contain or be accompanied by plans and specifications covering the construction of the Wastewater and which are sufficient to determine whether such work will comply with the provisions of this Code. Upon the approval of the said application by the building department and the presentation of a receipt from the town clerk showing that the proper tapping fee has been paid, the Town shall issue the required Wastewater permit.
7.6 Tapping Fee, and Maintenance
Any person upon the application for a permit to connect with the town sewage system shall, at the time of making such application, pay to the Town Clerk the sum identical to the current water tap fees assessed to subject premises pursuant to Chapter 6 of the Municipal Code of the Town of Berthoud. Furthermore, the property owner shall install and maintain the entire service line to the town main at his sole expense together with the costs, if any, of the repairs to the oil or concrete surfacing of a street.

With regard to a Wastewater tap outside the corporate limits the aforesaid fee shall increase proportionately by the square of the diameter of the water tap serving the location in the event said water tap exceeds three fourths inch.

The aforesaid tap fees shall be charged for each dwelling or occupied unit to be served notwithstanding the fact that a lesser number of taps are installed to adequately service the particular location.

7.7 Requirements for Private Wastewaters
Every private Wastewater line which is connected with the town sewage system shall meet the requirements of the Town of Berthoud approved Design Standards and Specifications as set forth in the Municipal Development Code.

7.8 Only Town or licensed contractors and/or Plumbers Can Perform Work – Inspection Fee
No person other than Municipal employees or a licensed contractor and/or plumber shall be allowed to do any work in connection with any Wastewater, soil or waste pipe in the town, except the digging and backfilling of ditches. No person other than the town shall be allowed to make a tap in the town Wastewater main, unless the tap is inspected by the Town Engineer or her designee, and the applicable inspection fee is paid to the town.

7.9 Connections Outside Corporate Limits
No permit for a private Wastewater for serving lots or parcels of land outside of the corporate limits of the town to connect to the town Wastewater system shall be issued unless it is expressly agreed by the applicant that all provisions of the Uniform Building Code and the State Plumbing Code, as adopted herein, and all other provisions of this Code shall be complied with. Applicant must sign a contract agreeing to annex when property becomes contiguous to the corporate limits.

7.10 Duty to Make Wastewater Connections Before Paving
Before any street or alley in which a Wastewater line is laid shall be paved for hardsurfaced, the owners of all lots abutting thereon shall make proper sewage connection with such Wastewater, whether the immediate use thereof is required or not. Until used, such connecting Wastewater shall be supplied with a proper covering or cap sufficient to prevent the escape of Wastewater gas.

7.11 Wastewater Fee
Each property upon which there is located any building connected with the sewage system of the town shall be required to pay a quarterly usage fee as set by Resolution of the Board of Trustees.

7.12 Method of Collection
All Wastewater usage charges shall be added to and made a part of the monthly water rent bill and shall be paid in the same manner and shall be subject to the same rules, regulations and penalties as provided for payment of water bills. All Wastewater rental charges shall also constitute a lien upon any lots, land, building or premises served, and in the event said charges shall not be paid when due, the town clerk shall certify such delinquent charges to the county commissioners of Larimer County and said charges shall be collected in the manner as though they were part of the taxes. (C.R.S. 1963, 130-53-17)

7.13 Wastewater Fund
The revenue derived from the connections with the Wastewater system shall be placed in the treasury of the town and may be kept in a separate fund to be known as the “Wastewater Fund”. If said revenue is placed in such separate fund, it shall not be paid out or distributed except for the purpose of operating, renewing, improving or extending the sewage system and the payment of salaries of the employees engaged in operating said sewage system or for retiring the bonded indebtedness upon said sewage system; provided, however, that the board may by ordinance divert to the general fund any surplus monies in excess of the amounts reasonably required for the aforesaid purposes. (C.R.S. 1963, 139-53-16 and 139-53-19))

7.14 Stoppage or Wastewaters Prohibited
It shall be unlawful for any person to place or cause to be placed any solids or insoluble matter of any kind or nature whatsoever within any Wastewater belonging to the town, or any part thereof, or within any connection thereto.

7.15 Industrial Wastes
It shall be unlawful for any person to throw, deposit, or in any manner introduce into the town sewage system any petroleum products, volatiles, acids, highly alkaline solutions, industrial wastes, or any other matter or thing which shall in any way be injurious to the system or to the treatment process at the treatment plant, or which shall in any way unduly increase the cost of operation or maintenance of the system or the treatment plant; provided, however, that where any such materials will not injure the sewage system but will merely increase the cost of the operation and maintenance of the sewage plant, the board may charge a special fee for the purpose of recovering the added maintenance and operation costs occasioned thereby.

7.16 Industrial Pollutants
7.16-1 Industrial Pretreatment Program and Enforcement Response Plan
A. General Requirements

1. The Town of Berthoud establishes the Industrial Pretreatment Program, which sets forth uniform requirements for discharges into the Town of Berthoud Wastewater Treatment Facilities (TOBWWF) POTW. This program allows the Town of Berthoud to comply with all applicable state and federal laws under the Clean Water Act of 1977 (33 United States Code 1251 et seq.), the General Pretreatment Regulations for Source of Pollution (40 Code of Federal Regulations Part 403), and the Colorado Water Quality Control Act, sections 25-8-01 through 25-8-703 C.R.S., (1982 and 1985 under the following sections 25-8-202: 25-8-205: and 25-8-508 (1989 Repl. Vol. and 1992 Supp.) The objectives of the Program are to:

2. Prevent the introduction of pollutants into the TOBWWF that will interfere with the operation of the system or contaminate the resulting sludge;

3. Prevent the introduction of pollutants into the TOBWWF that will pass through TOBWWF, inadequately treated, into the receiving waters or the atmosphere, or otherwise be incompatible with TOBWWF.

4. Protect both TOBWWF personnel and the general public who may be affected by wastewater and sludge from the TOBWWF.

5. Promote reuse and recycling of industrial wastewater and sludge from the TOBWWF.

6. Provide for fees for equitable distribution of the cost of operation, maintenance, and improvement of TOBWWF; and

7. Enable the Town of Berthoud to comply with the National Pollutant Discharge Elimination System (NPDES) permit conditions, sludge use and disposal requirements, and any other federal or state laws to which TOBWWF is subject.

This program shall apply to all users of TOBWWF. The Regulation authorizes the issuance of wastewater discharge permits; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires user reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein. Except as otherwise provided herein, the Director of Public Works, Wastewater Superintendent, and Pretreatment Coordinator shall administer, implement and enforce the provisions of the Industrial Pretreatment Program.

7.16-2 Definitions
The following words, terms, and phases, when used in this Section 7.16, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Accidental discharge means any unintended or unplanned discharge in violation of the prohibitions and limitations of the Pretreatment Program, the town wastewater discharge permit, or the National Categorical Pretreatment Standards.

Act or the Act means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251 et seq.

Approval Authority means the Director of the Water Quality Control Division of the Colorado Department of Health or the Regional Administrator of the United States Environmental Protection Agency (EPA).

Authorized representative of industrial user means all reports and information submitted pursuant to the requirements of this pretreatment program shall be signed and certified by an authorized representative of the industrial user as follows:

a. A responsible officer of the corporation, specifically the president, secretary, treasurer, or vice president of the corporation in charge of principal business activity or decision making functions of the corporation:
b. A general partner or proprietor if the industrial user is a partnership or proprietorship, respectively; or
c. A duly authorized representative of an individual designated in this definition, if such representative is responsible for the overall operations of the facilities from which any direct or indirect discharge originates.

*Biochemical oxygen demand* (B.O.D.) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures in five (5) days at twenty (20) degrees centigrade, expressed in milligrams per liter.

*Categorical user* means an industrial user who is subject to National Categorical Pretreatment Standards under 40 CFR 403.6 and CFR Chapter I, Subchapter N.

A. *CDPS* means Colorado Discharge Permit System, which operates in lieu of the NPDES.

*CFR* means the Code of Federal Regulations, as amended, or as may be subsequently amended.

*Control Authority* means and shall refer to the approved town industrial pretreatment program, as administered by the Director, under the provisions of CFR 403.11.

*Director* means the Director of Public Works or Wastewater Superintendent of the Town, or, where appropriate, the term may also refer to a duly authorized official of the Town such as the Pretreatment Coordinator.

*Direct Discharge* means the discharge of treated or untreated wastewater directly into the waters of the state.

*Enforcement Authority* means the Regional Enforcement Division of the EPA or the Director of the Water Quality Control Division of the Colorado Department of Health.

*Environmental Protection Agency* or EPA means the United States Environmental Protection Agency, or, where appropriate, the term may also be used as a designation for the administrator or other duly authorized official of such agency.

*Existing Source* means any source of discharge, the construction or operation of which commenced prior to the publication by EPA of proposed categorical pretreatment standards, which will be applicable to such source if the standard is thereafter promulgated in accordance with Section 307 of the Act.

*Grab Sample* means a sample which is taken from a waste stream with regard to the flow in the waste stream and over a period of time not to exceed fifteen (15) minutes.

*Indirect Discharge* means the discharge or the introduction of nondomestic pollutants into the TOBWWF from any source regulated under section 307(b) or (c) of the Act (33 U.S.C. 1317).

*Industrial User* means the source of indirect discharge into the TOBWWF or anything other than domestic waste. This includes all significant industrial users, other industrial process, trade or business as distinct from domestic waste.

*Instantaneous Maximum Allowable Discharge Limit* means the maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composite sample collected, independent of the industrial flow rate and the duration of the sampling event.

*Interference* means a discharge which, alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the TOBWWF, its treatment processes or operations or its sludge processes, use or disposal, and therefore is a cause of a violation of the Town’s CDPS permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder, or any more stringent state or local regulations: Section 405 of the Act; the Solid Waste Disposal Act, including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

*Medical Waste* means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.
National Pollutant Discharge Elimination System (NPDES) Permit means a wastewater permit issued pursuant to Section 402(b) of the Act.

National Pretreatment Standard, Pretreatment Standard or Standard means any regulation containing pollutant discharge limits promulgated by EPA, in accordance with Section 307(b) and (c) of the Act, which applies to industrial users. The term includes prohibitive limits established pursuant to Section 403.5 [of 40CFR].

National Prohibited Discharge Standards or Prohibited Discharges means any regulation developed under the authority of Section 307 (b) of the Act and Section 403.5 of 40 CFR, and as outlined in Subsection 7.16-4 of this Section under prohibited discharges.

New Source means:

a. Any building, structure, facility, or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under section 307 (c) of the Act, which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:

   i. The building, structure, facility, or installation is constructed at a site at which no other source is located;

   ii. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

   iii. The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.

b. Construction on a site at which an existing source is located results in a modification, rather than a new source, if the construction does not create a new building, structure, facility, or installation meeting the criteria of subsection (1) b. or c. above, but otherwise alters, replaces, or adds to existing process or production equipment.

c. Construction of a new source, as defined under this paragraph, has commenced if the owner or operator has:

   i. Begun, or caused to begin, as part of a continuous on-site construction program:

      — Any placement, assembly, or installation of facilities or equipment; or

      — Significant site preparation work, including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

   ii. Entered into a binding contractual obligation for the purchase of facilities or equipment, which are intended to be used in its operation within a reasonable time. Options to purchase or contracts, which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies, do not constitute a contractual obligation under this paragraph.

Pass Through means an industrial user discharge that exits the TOBWWF to waters of the United States in quantities or concentrations which, alone or in conjunction with other discharges, causes a TOBWWF NPDES permit violation.

pH means a measure of how acidic or basic a substance is. The pH scale runs from 0 (most acidic) to 14 (most basic). The center of the range (7) indicates the substance is neutral, neither acidic nor basic.

Pollutant means any dredged spoil; solid waste; incinerator residue; sewage; garbage; sewage sludge; munitions; chemical wastes; biological materials; radioactive materials; heat, wrecked or discarded equipment; rock; sand; cellar dirt; and industrial, municipal, and agricultural waste discharged into water.

Pretreatment means the reduction of the amount of pollutants, the elimination of pollutants or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to, or in lieu of, discharging or otherwise
introducing such pollutants into the TOBWWF. The reduction or alteration can be obtained by physical process, biological process, or by other process or means, except as prohibited by Section 403.6(b) of 40 CFR.

Pretreatment Requirements means any substantive or procedural requirement related to pretreatment imposed on a user, other than a pretreatment standard.

Pretreatment Standards or Standards means prohibited discharge standards, categorical pretreatment standards, and local limits.

Prohibited Discharge Standards or Prohibited Discharges means absolute prohibitions against the discharge of certain substances; these prohibitions appear in Subsection 7.16-5 of this Section.

Publicly Owned Treatment Works or POTW means a treatment works as defined by Section 502(4) of the Act. The Town of Berthoud’s wastewater facility is a POTW.

Septic Tank Waste means any sewage from holding tanks, such as vessels, chemical toilets, campers, trailers, and septic tanks.

Sewage means human excrement and gray water (household showers, dishwashing operations, etc.)

Shall and may means “shall” is mandatory; “may” is permissive.

Significant Industrial User (SIU) means any industrial user of the town’s wastewater facilities who is:

a. A categorical user;

b. A user who discharges greater than five (5) percent of the average dry weather hydraulic or organic capacity of the TOBWWF; or

c. A user who discharges more than twenty-five thousand (25,000) gallons per day (GPD) of process wastewater (excluding noncontact process water, sanitary, cooling and boiler blow down) and who, although under twenty-five thousand (25,000) GPD, employs any process which generates any toxic pollutants or other substances suspected of having an adverse impact on the POTW, as determined by the EPA or the Director.

d. An industrial user may be reclassified as a significant industrial user at any time depending upon the severity of violations or changes in discharge characteristics, as well as promulgation of new categorical standards. These industrial users may be removed from the list of significant industrial users if a facility has no reasonable potential to violate any pretreatment standard and has achieved consistent compliance to the satisfaction of the director.

Slug Load or Slug means any discharge at a flow rate or concentration, which could cause a violation of the prohibited discharge standards in Subsection 7.16-4 of this Section.


Stormwater means any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snow melt.

Suspended Solids means the total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and which is removable by laboratory filtering.

Toxic Pollutant means any pollutant or combination of pollutants listed as toxic in regulations promulgated by the administrator of the EPA under the provisions of the Act, Section 307(a), or other federal, state, or local regulations.


User means any person using or connected to the Town’s POTW.

Wastewater means the spent water of a community, including garbage, industrial wastes, properly shredded garage, sewage, and the contents of sanitary sewers. From the standpoint of source, it may be any combination of liquid
and water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with any groundwater, surface water and stormwater that may be present.

Wastewater Discharge Permit means and shall refer to a discharge permit issued by the Town to the user who is a source of nondomestic pollutants introduced into the TOBWWF, which pollutants may interfere with, pass through, or be otherwise incompatible with such works, and the user is, therefore, an “industrial user”. Such permits will be issued for a specific period of time not to exceed three (3) years.

Wastewater Facilities means the structures, equipment and processes required to collect, carry away and treat domestic and industrial wastes and dispose of the effluent.

7.16-3 General Discharge Prohibitions

A. No user shall contribute or cause to be contributed, directly or indirectly, any pollutant or wastewater which will interfere with the operation or performance of the town’s wastewater facilities. These general prohibitions apply to all users of the POTW whether or not they are subject to categorical pretreatment standards or any other national, state, or local pretreatment standards or requirements. A user may not contribute the following substances to the town’s wastewater facilities:

1. Any liquids, solids, or gases which, by reason of their nature or quantity, are or may be sufficient, either alone or by interaction with other substances, to cause fire or explosion or be injurious in any other way to the wastewater facilities, including, but not limited to, waste streams with a closed cup flashpoint of less than sixty (60) degrees centigrade (one hundred forty (140) degrees Fahrenheit) using the test methods specified in 40 CFR 261.21. Prohibited materials include, but are not limited to gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromides, carbides, hydrides, sulfides or any other substance that the town, the state, or the EPA has notified the user is a fire or a hazard to POTW or any part of the town’s wastewater facilities.

2. Solid or viscous substances which may cause obstruction to the flow in a sewer or other interference with the operation of the wastewater treatment facilities, such as, but not limited to, grease; garbage with particles greater than one-half (½) inch in any dimension; animal guts or tissues; paunch manure; bones; hair; hides or meshings; entrails; whole blood; feathers; ashes; cinders; sand; spent lime; stone or marble dust; metal; glass; straw; shavings; grass clippings; rags; spent grains; spent hops; wastepaper; wood; plastics; gas; tar, asphalt residues; residues from refining or processing of fuel or lubricating oil; mud; or glass grinding or polishing wastes.

3. Any wastewater having a pH less than 5.5 or higher than 9.0, or wastewater having any other corrosive property capable of causing damage or hazard to structures, equipment or personnel of the wastewater facilities.

4. Any wastewater containing toxic pollutants and/or hazardous waste, as defined by the Resource Conservation Recovery Act (RCRA), in sufficient quantity, either singly or by interaction with other pollutants, so as to injure or interfere with any wastewater treatment process, which constitutes a hazard to humans or animals which creates a toxic effect in the receiving waters of the wastewater facilities, or which exceeds the limitations set forth in a categorical pretreatment standard.

5. Any corrosive, noxious or malodorous liquid, gas, or solid which, either singly or by interaction with other waste, is sufficient to create a public nuisance or hazard to life or health; or is sufficient to prevent entry into the sewers for maintenance and repair; or which releases obnoxious gases, forms suspended solids which interfere with the collection system, or which creates a condition deleterious to the structures or treatment processes of the wastewater facilities.

6. Any substance which may cause the wastewater facilities’ effluent, or any other product of the wastewater facilities such as residues, sludges or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case shall a substance be discharged to the wastewater facilities cause the town to be in noncompliance with sludge use or disposal criteria, guidelines or regulations developed under Section 405 of the Act; any criteria, guidelines or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, or the Toxic Substances Control Act of the United State Congress; or state criteria applicable to the sludge management method being used at the town’s POTW.

7. Any substance which is not amenable to treatment or reduction by the wastewater treatment works which will cause the town to violate its CDPS permit or the water quality standards for the Little Thompson River.

8. Any wastewater with objectionable color not removed in the treatment process, such as, but not limited to dye wastes, and vegetable tanning solutions.
9. Any wastewater having a temperature of fifty-four and four-tenths (54.4) degrees centigrade (one hundred thirty (130) degrees Fahrenheit) or more at the point of discharge to the wastewater facilities, or which will inhibit biological activity in the POTW, resulting in interference therewith.

10. Any pollutants including oxygen-tenanting pollutants, including but not limited to BOD, released at a flow rate or pollutant concentration which will cause interference with the wastewater facilities. In no case shall a slug be discharged having a flow rate or contained concentrations or quantities of pollutants that exceed, for any time period longer than fifteen (15) minutes, more than five (5) times the average twenty-four-hour concentration, quantities, or flow during normal operations.

11. Any wastewater containing any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the director in compliance with applicable state or federal regulations.

12. Wastewater containing more than one hundred (100) milligrams per liter of petroleum oil, non-biodegradable cutting oils or products of mineral oil origin; containing oil and grease concentrations or amounts from industrial facilities violating National Categorical Pretreatment Standards, if any; or containing floatable fats, wax, grease or oils.

13. Any wastewater containing iron, chromium, copper, zinc, and similar objectionable or toxic substances to such a degree that any such material received in the composite wastewater at the POTW exceeds the limits established by the director for such materials.

14. Wastewater which, alone or in combination with other wastewater, is not amenable to treatment or reduction by the POTW and the processes employed by the town, or which is amenable to treatment only to such degree that the POTW effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

15. Any wastewater, which causes a hazard to human life or creates a public nuisance.

16. Any trucked or hauled pollutant, except at discharge points designated by the POTW and in accordance with the regulations outlined in the town’s rules and regulations for trucked septic waste.

17. Sludges, screenings, or other residues from the pretreatment of industrial wastes.

18. Medical wastes, except as specifically authorized by the director or superintendent in a wastewater discharge permit.

19. Wastewater causing, alone or in conjunction with other sources, the treatment plant’s effluent to fail a toxicity test.

20. Detergents, surface-active agents, or other substances which may cause excessive foaming in the POTW.

21. Any pollutant in such quantity that, by itself or in conjunction with other indirect discharges, results in a violation of stream standards as set by the state water quality control commission.

22. Fats, oils, or greases of animal or vegetable origin in concentrations greater than one hundred (100) milligrams per liter.

23. Stormwater, surface water, groundwater, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, noncontact cooling water, and unpolluted wastewater, unless specifically authorized by the director or authorized representative of the town.

24. Wastewater causing two (2) readings on an explosion hazard meter at the point of discharge into the POTW, or at any point in the POTW, of more than five (5) percent or any single reading over ten (10) percent of the lower explosive limit of the meter.

Pollutants, substances, or wastewater prohibited by this Section shall not be processed or stored in such a manner that they could be discharged to the POTW.

B. The director may set limitations lower than the limitations established in this Subsection if, in his or her opinion, more severe limitations are necessary to meet the objectives of this Subsection. In forming his or her opinion as to the acceptability of the waste or wastewater, the director shall give consideration to such factors as the quantity of subject waste in relation to flows and velocities in the sewers, materials and construction of the sewers, the wastewater treatment process employed, capacity of the wastewater treatment works, degree of treatability of the waste in the wastewater treatment works, and other similar factors which he or she considers to be pertinent.
C. If the director determines that a user is discharging or proposes to discharge wastewater to the wastewater facilities which contains the substances or possesses the characteristics enumerated in paragraph (A) of this Subsection and which, in the judgment of the director, may have a deleterious effect upon the wastewater facilities, processing equipment or receiving waters, or which may otherwise create a hazard to life or health or constitute a public nuisance, the director may:

1. Reject the wastes;
2. Require pretreatment to an acceptable condition for discharge to the wastewater facilities.
3. Require control over the quantities and rates of discharge.

If the director chooses an option described in paragraph (c)(2) or (3) of this Subsection, he or she shall require the user to obtain a town wastewater discharge permit following the procedures provided in the Pretreatment Program.

7.16-4 National Categorical Pretreatment Standards
Upon the promulgation of the National Categorical Pretreatment Standards for a particular industrial subcategory, the national standard, if more stringent than limitations imposed under the Town of Berthoud Industrial Pretreatment Program for sources in that subcategory, shall immediately supersede the limitations imposed by the Pretreatment Program. The director shall notify all affected users of the applicable reporting requirements pursuant to 40 CFR 403.12. Such national standards, and as amended are hereby adopted by reference as if fully set forth herein. The categorical pretreatment standards found at 40 CFR Chapter I, Subchapter N, Parts 405 through 471 are hereby incorporated.

A. Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the director may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6 (c).

B. When wastewater subject to categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the director shall impose an alternate limit using the combined wastewater formula in 40 CFR 403.6 (e).

C. A user may obtain a variance from a categorical pretreatment standard if the user can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by the EPA when developing the categorical pretreatment standard.

D. A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15.

7.16-5 Compliance with State Requirements
Requirements and limitations on discharges established by the state shall apply in any case where they are more stringent than national requirements and limitations or those in this Pretreatment Program. Such state standards, and as amended, are located at 5 CCR 1002-20, and hereby adopted by reference as if fully set forth herein.

LOCAL LIMITATIONS AND DISCHARGE STANDARDS

A. The following pollutant limits are established to protect against pass through and interference. No person shall discharge wastewater containing in excess of the following maximum allowable discharge limits using twenty-four hour flow proportional composite sampling:

<table>
<thead>
<tr>
<th>Pollutant</th>
<th>Composite Sample (mg/l)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arsenic</td>
<td>0.036</td>
</tr>
<tr>
<td>Cadmium</td>
<td>0.026</td>
</tr>
<tr>
<td>Chromium</td>
<td>2.076</td>
</tr>
<tr>
<td>Copper</td>
<td>1.019</td>
</tr>
<tr>
<td>Lead</td>
<td>0.132</td>
</tr>
<tr>
<td>Mercury</td>
<td>0.0002</td>
</tr>
<tr>
<td>Molybdenum</td>
<td>0.081</td>
</tr>
<tr>
<td>Nickel</td>
<td>0.323</td>
</tr>
<tr>
<td>Selenium</td>
<td>0.028</td>
</tr>
<tr>
<td>Silver</td>
<td>0.554</td>
</tr>
<tr>
<td>Zinc</td>
<td>1.105</td>
</tr>
</tbody>
</table>

B. The town has established the following limits for benzene and BTEX referenced in the EPA publication, “Model NPDES Permit for Discharges Resulting for the Cleanup of Gasoline Released from Underground Storage Tanks”, June 1989.
Benzene: 50 ug/l

BETX: 750 ug/l

C. The town has established summer and winter mass load limits for ammonia and total Kjeldahl nitrogen. These load limits are “daily maximum” limits. The determining point as to which limit will be in effect is when the effluent ammonia reaches fifteen (15) milligrams per liter. When the ammonia concentration exceeds fifteen (15) milligrams per liter, the winter mass loading will be effective, and when the ammonia concentration is fifteen (15) milligrams per liter or below, the summer mass loading becomes effective:

<table>
<thead>
<tr>
<th>Pollutant</th>
<th>Load Limits (lbs / day)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ammonia (summer)*</td>
<td>0000</td>
</tr>
<tr>
<td>Total Kjeldahl Nitrogen (Summer)*</td>
<td>0000</td>
</tr>
<tr>
<td>Ammonia (winter)*</td>
<td>0000</td>
</tr>
<tr>
<td>Total Kjeldahl Nitrogen (Winter)*</td>
<td>0000</td>
</tr>
</tbody>
</table>

*Will be established in July 2002

D. The town has established mass load limits for BOD5, CBOD5, and TSS. Each parameter will have both a “7-day maximum average” (based on a calendar week) and a “daily maximum” limit. Oil & Grease limit is a “daily maximum” limit only.

<table>
<thead>
<tr>
<th>Pollutant</th>
<th>Load Limit (lbs/day)</th>
<th>Maximum</th>
</tr>
</thead>
<tbody>
<tr>
<td>CBOD5</td>
<td>1,300</td>
<td>Daily</td>
</tr>
<tr>
<td>CBOD5</td>
<td>1,300</td>
<td>7-Day Average</td>
</tr>
<tr>
<td>BOD5</td>
<td>1,300</td>
<td>Daily</td>
</tr>
<tr>
<td>BOD5</td>
<td>1,300</td>
<td>7-Day Average</td>
</tr>
<tr>
<td>TSS</td>
<td>1,300</td>
<td>Daily</td>
</tr>
<tr>
<td>TSS</td>
<td>1,300</td>
<td>7-Day Average</td>
</tr>
<tr>
<td>Oil and Grease</td>
<td>750</td>
<td>Daily</td>
</tr>
</tbody>
</table>

7.16-7 Town’s Right of Revision
The town may establish, by ordinance, more stringent limitations or requirements on discharges to the wastewater facilities, if the POTW finds it necessary to comply with the objectives of this Section. The limitations and requirements shall, upon passage of such ordinance, become part of all existing permits issued pursuant to this Section.

7.16-8 Confidentiality of Information
A. Information and data pertaining to a user obtained from reports, questionnaires, permit applications, permits and monitoring programs, and from inspections shall be available to the public or other governmental agencies without restriction, unless the user specifically requests and is able to demonstrate, to the satisfaction of the director, that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the user.

B. When requested by the person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available upon written request to governmental agencies for uses related to this Pretreatment Program, the CDPS permit, or National Categorical Pretreatment standards enforcement; provided, however, that such portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the persons furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information.

C. Information accepted by the director as confidential shall not be transmitted by the director to any governmental agency or to the general public until and unless a ten-day (10) notification is given the user.

7.16-9 Dilution of Discharge as Substitute for Treatment Prohibited
No user shall ever increase the use of process water or in any way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the National Categorical Pretreatment Standards or in any other pollutant specific limitation developed by the state or town.

7.16-10 Pretreatment Facilities, Accidental Discharges/Slug Control Plan
A. Users shall provide wastewater treatment as necessary to comply with this Pretreatment Program and shall achieve compliance with all categorical pretreatment standards, local limits, and the prohibitions set out in Subsection 7.16-3 of this Section within the time limitations specified by the EPA, the state, or the director, whichever is more stringent. Any
facilities necessary for compliance shall be provided, operated, and maintained at the user’s expense. Detailed plans describing such facilities and operating procedures shall be submitted to the director for review, and shall be acceptable to the director before such facilities are constructed. The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying such facilities as necessary to produce a discharge acceptable to the town under the provisions of the Pretreatment Program.

B. Each significant industrial user which users or produces harmful wastes in the course of its business or which is a source of indirect discharge shall provide protection from accidental or slug discharges of prohibited materials or other substances regulated by this Pretreatment Program. The director shall inspect and evaluate at least every two (2) years, to determine whether each SIU needs a plan to control such discharges. Facilities to prevent such discharge of prohibited materials and other substances, where required by the director, shall be provided and maintained at the owner’s or user’s own cost and expense. The plan shall contain, at a minimum, the following:

1. Description of discharge practices, including nonroutine batch discharges.
2. Description of stored chemicals.
3. Procedures for immediately notifying the director of any accidental or slug discharge.
4. Procedures to prevent adverse impact from accidental spills, including inspections and maintenance of stored areas, handling and transfer of material, loading and unloading operations, control of plant site runoff, workers training, building of containment structure or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures for emergency response.

C. The director, before construction of the facility, shall review such plan. No such users who commence contribution to the wastewater facilities after the effective date of the ordinance enacting this Pretreatment Program shall be permitted to introduce pollutants into the system until the director has reviewed the accidental discharge procedures. Review of such plans and operating procedures shall not relieve such user from the responsibility to modify the user’s facility as necessary to meet the requirements of this Pretreatment Plan. In the case of an accidental discharge, it is the responsibility of the user to immediately telephone and notify the director of the director of the incident. The notification shall include location of discharge, type of waste, concentration and volume, and corrective actions. Failure to notify the director is a violation of this Section.

D. Written Notice. Within five (5) days following an accidental discharge, the user shall submit to the director a detailed written report describing the cause of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage or other liability which may be incurred as a result of damage to the wastewater facilities, fish kills, or any other damage to a person or property; nor shall such notifications relieve the user of any fines, civil penalties or other liability which may be imposed by this Section or other applicable law.

E. A notice shall be permanently posted on such user’s bulletin board or other prominent place, advising employees of whom to call in the event of an accidental discharge. Employers shall ensure that all employees who may cause or suffer such an accidental discharge to occur are advised of the emergency notification procedure.

7.16-11 Hauled Waste

A. Septic tank waste may be introduced into the POTW only at locations designated by the director and at such times as are established by the director. Such waste shall not violate Subsection 7.16-3 of this Section or any other requirements established by the town. The director may require septic tank waste haulers to obtain wastewater discharge permits.

B. The director shall require haulers of industrial waste to obtain wastewater discharge permits. Unless such requirement is waived in writing by the town pretreatment coordinator, haulers of industrial waste shall notify the POTW a minimum of twenty-four (24) hours prior to the anticipated discharge at the POTW. The director may require generators of hauled industrial wastes to obtain wastewater discharge permits. The director may prohibit the disposal of hauled industrial waste. The discharge of hauled industrial waste is subject to all other requirements of this Section.

C. Industrial waste haulers may discharge loads only at locations designated by the director. No load may be discharged without prior consent of the director. The director may collect samples of each hauled load to ensure compliance with applicable standards. The director may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.

D. Industrial waste haulers must provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of
waste, and volume and characteristics of waste. The form shall identify the type of industry, known or suspected waste constituents, and whether any wastes are RCRA hazardous wastes.

7.16-12 Wastewater Discharge Permit Application and Issuance
A. Wastewater analysis. When requested by the director, a user must submit information on the nature and characteristics of its wastewater within thirty (30) days of the request. The director is authorized to prepare a form for this purpose and may periodically require users to update this information.

B. Wastewater discharge permit requirement
1. Required for significant users. All significant industrial users proposing to connect to, or to contribute to, the wastewater facilities shall obtain a city wastewater discharge permit before connecting to, or contributing to, the wastewater facilities.

2. The director may require other users to obtain wastewater discharge permits as necessary to carry out the purposes of this Section.

C. Wastewater discharge permitting: existing connections. Any user required to obtain a wastewater discharge permit who was discharging wastewater into the POTW prior to the effective date of this Section, and who wishes to continue such discharges in the future, shall, within sixty (60) days of the effective date, apply to the director for a wastewater discharge permit in accordance with Paragraph E of this Subsection, and shall not cause or allow discharges to the POTW to continue after sixty (60) days of the effective date of this Section, except in accordance with a wastewater discharge permit issued by the director; except that the provisions of this subsection shall not affect significant industrial users with currently existing contracts with the town until the expiration of the contracts.

D. Wastewater discharge permitting: new connections. Any user required to obtain a wastewater discharge permit who proposes to begin or recommence discharging into the POTW must obtain such permit prior to the beginning or recommencing of such discharge. An application for this wastewater discharge permit in accordance with Paragraph E of this Subsection, must be filed at least ninety (90) days prior to the date upon which any discharge will begin or recommence.

E. Permit application content. Users required to obtain a town wastewater discharge permit shall complete and file with the director an application in the form prescribed by the director. Current users shall apply for a town wastewater discharge permit within thirty (30) days after the effective date of the ordinance enacting this Section, and proposed new users shall apply at least ninety (90) days prior to connecting to, or contributing to, the wastewater facilities. In support of the application, the user shall submit, in units and terms appropriate for evaluation, the following information:

1. Name, address, and location, if different from the address.

2. Standard industrial classification number.

3. Wastewater constituents and characteristics as determined by a reliable analytical laboratory. Sampling and analysis shall be performed in accordance with procedures established by the EPA pursuant to Section 304(g) of the Act and contained in 40 CFR 136 as amended.

4. Time and duration of discharge.

5. Average daily and peak wastewater flow rates, including daily, monthly and seasonal variations, if any.

6. Site plans, floor plans, mechanical and plumbing plans and details to show all sewers, sewer connections and appurtenances by the size, location and elevation.

7. Description of activities, facilities and plant processes on the premises, including all materials, which are or could be discharged.

8. Where known, the nature and concentration of any pollutants in the discharge which are limited by any National Categorical Pretreatment Standard, state standard or town standard, and a statement regarding whether or not the pretreatment standards are being met on a consistent basis and, if not, whether changes in operation and maintenance or additional pretreatment is required for the user to meet applicable pretreatment standards.
9. **Requirements for notification of the director and the POTW in advance of any substantial change in volume or character of pollutants in their discharge, including the listed or characteristic hazardous waste for which the industrial user has submitted initial notification under 40 CFR 12(p).**
   a. The schedule shall contain dates for the commencement and completion of construction and operation of additional pretreatment facilities and procedures required for the users to meet the applicable pretreatment standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.).
   b. No increment referred to in paragraph (E)(9)(a) of this Section shall exceed nine (9) months.
   c. No later than fourteen (14) days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the director, including, as a minimum, whether or not the user complied with the increment of progress to be met on such date and, if not, the date on which the user expects to comply with this increment of progress, the reason for the delay, if any, and the steps being taken by the user to return the construction to the schedule established. In no event shall more than nine (9) months elapse between such progress reports to the director.

10. Each product produced, by type, amount, process, or processes and rate of production.

11. Type and amount of raw materials processed, in average and maximum per day.

12. Number and type of employees, hours of operation of the plant, and proposed or actual hours of operation of the pretreatment system.

13. Any other information, which is deemed by the director to be necessary to evaluate the permit application.

**F. Permit issuance.** The director shall issue a wastewater discharge permit to the applicant if the director finds that all of the following conditions have been met:

1. The proposed discharge of the applicant is in compliance with prohibitions and limitations of Subsections 7.16-3 through 7.16-22 of this Section.
2. The proposed discharge of the applicant would permit normal and efficient operation of the wastewater treatment system.
3. The proposed discharge of the applicant would not result in a violation by the town of the terms and conditions of its CDPS permit.

If the director finds that the conditions set out in Paragraph (F)(1) herein is not met, the director may issue a wastewater discharge permit to the applicant if the conditions set out in Paragraphs (F)(2) and (3) of this Subsection are met, and if the applicant submits and the director approves a schedule setting out the measures to be taken by the applicant and the dates that such measures will be implemented to insure compliance with the provisions of this Section.

**G. Application signatories and certification.** All wastewater discharge permit applications and user reports must be signed by an authorized representative of the user and contain the following certification statement:

> “I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

**H. Permit denial hearing.** In the event an application for a wastewater discharge permit is denied, the director shall notify the applicant in writing of such denial. Such notifications shall state the grounds for denial with that degree of specificity which will inform the applicant of the measures or actions which must be taken by the applicant prior to issuance of a permit.

Upon receipt of notification of denial of a permit application, the applicant may request and shall be granted a hearing to be held by the Town Administrator. At such hearing, the applicant shall have the burden of establishing that the conditions set
forth in this Subsection have been met, and that a permit should be issued. The Town Administrator may conduct the
hearing or may designate a representative to:

1. Issue, in the name of the Town Administrator, subpoenas requiring the attendance and testimony of witnesses and the
production of evidence relevant to any matter involved;

2. Take evidence;

3. Transmit a report of the hearing including transcripts and other evidence presented to the Town Administrator together
with recommendations for action.

Testimony taken at any hearing shall be under oath and recorded.

Upon review of the evidence by the Town Administrator, the Town Administrator shall make written findings of facts.
Thereupon, the Town Administrator may issue a wastewater discharge permit, or may direct that such permit shall not be
issued, or give such other or further orders and directives as necessary and appropriate.

I. Permit conditions. Town wastewater discharge permits shall be expressly subject to all provisions of this Section and all
other applicable regulations, user charges and fees established by the town.

1. Wastewater discharge permits must contain:

   a. A statement that indicates wastewater discharge permit duration, which in no event shall exceed five (5) years.

   b. A statement that the wastewater discharge permit is non-transferable without prior notification to the town, in
      accordance with Paragraph (M) of this Subsection, and provisions for furnishing the new owner or operator with a
      copy of the existing wastewater discharge permit;

   c. Effluent limits based on applicable pretreatment standards;

   d. Self-monitoring, sampling, reporting, notification, and record keeping requirements. These requirements shall
      include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type
      based on federal, state, and local law; and

   e. A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements,
      and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that
      required by applicable federal, state, or local law.

2. Wastewater discharge permits may contain, but need not be limited to, the following conditions:

   a. Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow
      regulation and equalizations;

   b. Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate
      containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment
      works;

   c. Requirements for the development and implementation of spill control plans or other special conditions, including
      management practices necessary to adequately prevent accidental, unanticipated, or nonroutine discharges;

   d. Development and implementation of waste minimization plans to reduce the amount of pollutants discharge to the
      POTW.

   e. The unit charge or schedule of user charges and fees for the management of the wastewater discharge to the
      POTW;

   f. Requirements for installation and maintenance of inspection and sampling facilities and equipment;

   g. A statement that compliance with the wastewater discharge permit does not relieve the permittee of responsibility
      for compliance with all applicable federal and state pretreatment standards, including
Other conditions as deemed appropriate by the director to ensure compliance with this Section, and state and federal laws, rules, regulations.

J. **Wastewater discharge permit appeals.** The director shall provide public notice of issuance of wastewater discharge permit. Any person, including the user, may petition the director to reconsider the terms of a wastewater discharge permit within thirty (30) days of notice of its issuance.

1. Failure to submit a timely petition shall be deemed to be a waiver of the administrative appeal.

2. In its petition, the appealing party must indicate the wastewater discharge permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the wastewater discharge permit.

3. The effectiveness of the wastewater discharge permit shall not be stayed pending the appeal.

4. If the director fails to act within sixty (60) days, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider a wastewater discharge permit, not to issue a wastewater discharge permit, or not to modify a wastewater discharge permit shall be considered final administrative actions for purposes of judicial review.

5. Aggrieved parties seeking judicial review of the final administrative wastewater discharge permit decision must do so by filing a complaint with the Eighth Judicial District Court of the State of Colorado.

K. **Permit modifications.** Upon promulgation of a National Categorical Pretreatment Standard and within the time prescribed therein, the town wastewater discharge permit of users subject to such standards shall be deemed to be revised to require compliance with any part thereof which is more strict than existing standards or conditions of the permit. Where a user subject to a National Categorical Pretreatment Standard has not previously submitted an application for a wastewater discharge permit, the user shall apply for a wastewater discharge permit within one hundred eighty (180) days after the promulgation of the applicable National Categorical Pretreatment Standard. In addition, the user with an existing wastewater discharge permit shall submit to the director, within one hundred eighty (180) days after the promulgation of an applicable National Categorical Pretreatment Standard, the information required by subsection (e) of this section.

L. **Permit duration.** Permits shall be issued for a specified time period, not to exceed five (5) years. A permit may be issued for a period less than a year or may state to expire on a specific date. The user shall apply for a permit reissuance a minimum of one hundred eighty (180) days prior to expiration of the user’s existing permit. The terms and conditions of the permit may be subject to modifications by the town during the term of the permit as limitations or requirements as identified in Paragraph (F) of this Subsection are modified or other just cause exists. The user shall be informed of any proposed changes in his permit at least thirty (30) days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

M. **Permit transfer.**

1. Wastewater discharge permits are issued to a specific user for a specific operation. A wastewater discharge permit shall not be reassigned or transferred or sold to a new owner, new user, different premises, or a new or changed operation without the written approval of the director.

2. Wastewater discharge permits may be transferred to a new owner or operator only if the permittee gives at least thirty (30) days’ advance notice to the director and the director approves the wastewater discharge permit transfer. The notice to the director must include a written certification by the new owner or operator which:

   a. States that the new owner and/or operator has no immediate intent to change the facility’s operations and processes;

   b. Identifies the specific date on which the transfer is to occur; and

   c. Acknowledges full responsibility for complying with the existing wastewater discharge permit.

Failure to provide advance notice of a transfer renders the wastewater discharge permit void as of the date of facility transfer.

3. Wastewater discharge permits shall be void upon cessation of operations or transfer of business ownership. All wastewater discharge permits issued to a particular user are void upon the issuance of a new wastewater discharge permit to that user.

7.16-13 **Reporting Requirements for Permittee Pretreatment Standards**
A. **Compliance date report.** Within ninety (90) days following the date for final compliance with applicable pretreatment standards or, in the case of a new source, following commencement of the introduction of wastewater into the wastewater facilities, any user subject to pretreatment standards or requirements and sources that become categorical users, subsequent to the promulgation of an applicable categorical standard, shall submit to the director a report indicating the nature and concentration of all pollutants in the discharge from the regulated processes which are limited by pretreatment standards or requirements and the average and maximum daily flow for these process units in the user facility which are limited by such pretreatment standards or requirements. The report shall state whether the applicable pretreatment standards or requirements are being met on a consistent basis and if not, what changes in operations and maintenance or additional pretreatment are necessary to bring the user into compliance with the applicable pretreatment standards or requirements. This statement shall be signed by an authorized representative of the industrial user and certified to by a qualified professional engineer registered with the state. Users described above shall submit the information set forth below.

1. **Identifying information.** The name and address of the facility, including the name of the operator and owner.

2. **Environmental permits.** A list of any environmental control permits held by or for the facility.

3. **Description of operations.** A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such user. This description should include a schematic process diagram, which indicates points of discharge to the POTW from the regulated processes.

4. **Flow measurement.** Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in 40 CFR 403.6(a).

5. **Measurement of pollutants.**
   a. The categorical pretreatment standards applicable to each regulated process.
   b. The results of sampling and analysis identifying the nature and concentration and/or mass, where required by the standard or by the director, of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long-term average concentrations or mass, where required, shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in Paragraph (I) of this Subsection.
   c. Sampling must be performed in accordance with procedures set out in Paragraph (I) of this Subsection.

6. **Certification.** A statement, reviewed by the user’s authorized representative and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.

7. **Compliance schedule.** If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this Subsection must meet the requirements set out in Paragraph (B) of Subsection 7.16-12.

8. **Signature and certification.** All baseline monitoring reports must be signed and certified in accordance with Paragraph (G) of Subsection 7.16-12.

B. **Compliance schedule progress reports.** The following conditions shall apply to the compliance schedule required by Paragraph (A) of this Subsection.

1. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);

2. No increment referred to above shall exceed nine (9) months.
3. The user shall submit a progress report to the director no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule; and

4. In no event shall more than nine (9) months elapse between such progress reports to the director.

C. Reports on compliance with categorical pretreatment standard deadline. Within ninety (90) days following the date for final acceptance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any user subject to such pretreatment standards and requirements shall submit to the director a report containing the information described in Paragraph (D) of this Subsection. For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the user’s long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user’s actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with Paragraph (G) of Subsection 7.16-12.

D. Periodic compliance reports.

1. Any user subject to a National Categorical Pretreatment Standard, after the compliance date of such pretreatment standard, or, in the case of new source, after commencement of the discharge into the wastewater facilities, shall submit to the director during the months of June and December, unless required more frequently in the pretreatment standard or by the director, a report indicating the nature and concentration of pollutants in the effluent which are limited by such pretreatment standards. In addition, this report shall include a record of all daily flows which during the reporting period exceeded the average daily flow reported pursuant to Paragraph (A) of this Subsection. At the discretion of the director, and in consideration of such factors as local high or low flow rates, holidays, budget cycles, and the like, the director may agree to alter the months during which the reports required by this subsection are to be submitted.

2. All significant industrial users shall, at a frequency determined by the director but in no case less than twice per year (in June and December), submit a report indicating the nature and concentration of pollutants in the discharge which are limited by pretreatment standards and the measured or estimated average and maximum daily flows for the reporting period. All periodic compliance reports must be signed and certified in accordance with Paragraph (G) of Subsection 7.16-12. The POTW may sample and analyze user discharges in lieu of, or in addition to, requiring the users to conduct sampling and analysis.

3. All wastewater samples must be representative of the user’s discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.

4. If a user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the director, using the procedures prescribed in Paragraph (I) of this Subsection, the results of this monitoring shall be included in the report.

5. The director may impose mass limitations on users, which are using flow equalization to meet applicable pretreatment standards or requirements, or in other cases where the imposition of mass limitations is appropriate. In such cases, the report required by Paragraph (D)(1) of this Subsection shall indicate the mass of pollutants regulated by pretreatment standards in the effluent of the user. These reports shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production and mass, where requested by the director, limited by the applicable pretreatment standards. The frequency of monitoring shall be as prescribed in the applicable pretreatment standard.

6. Additional information. The director may require any user of the wastewater facilities to provide information needed to determine compliance with this Section. These requirements may include:

   a. The wastewater discharge peak rate and volume over a specified time period;

   b. Chemical analysis of wastewaters;

      Information on raw materials, processes and products affecting wastewater volume and quality;

   c. A quantity and disposition of specific liquid, sludge, oil solvent or other materials important to sewer use control;
d. A plot plan of sewers on the user’s property showing sewer and pretreatment facility location;

e. Details of wastewater pretreatment facility.

f. Details of systems to prevent and control the losses of materials through spills to the municipal sewer.

E. Reports of changed conditions. Each user must notify the director of any planned significant changes to the user’s operations or system which might alter the nature, quality, or volume of its wastewater at least forty-five (45) days before the change.

1. The director may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under Subsection 7.16-12 of this Section.

2. The director may issue a wastewater discharge permit under Subsection 7.16-12 of the Section or modify an existing wastewater discharge permit under Paragraph (K) of Subsection 7.16-12 in response to changed conditions or anticipated changed conditions.

3. For purposes of this requirement, significant changes include, but are limited to, flow increases of twenty (20) percent or greater, and the discharge of any previously unreported pollutant.

F. Reports of potential problems

1. In the case of any discharge, including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, or a slug load, that may cause potential problems for the POTW, the user shall immediately telephone and notify the director of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.

2. Within five (5) days following such discharge, the user shall, unless waived by the director, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability, which may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to this Section.

3. A notice shall be permanently posted on the user’s bulletin board or other prominent place advising employees whom to call in the event of a discharge described in Paragraph (F)(1) above. Employers shall ensure that all employees who may cause such discharge to occur are advised of the emergency notification procedure.

G. Reports from unpermitted users. All users not required to obtain a wastewater discharge permit shall provide appropriate reports as the director may require.

H. Notice of violation/repeat sampling and reporting. If sampling performed by a user indicates a violation, the user must notify the director within twenty-four (24) hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the director within thirty (30) days after becoming aware of the violation. The user is not required to repeat the testing if the director monitors at the user’s facility at least once a month, or the director samples between the user’s initial sampling and when the user receives the results of the sampling.

I. Analytical requirements. All pollutant analyses, including sampling techniques, to be submitted as part of the wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136, unless otherwise specified in an applicable pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by the EPA.

J. Sample collection.

1. Except as indicated in subsection (2) below, the user must collect wastewater samples using flow proportional composite collection techniques. In the event flow proportional sampling is infeasible, the director may authorize the use of time proportional sampling or a minimum of four (4) grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged. In additions, grab samples may be required to show compliance with instantaneous discharge limits.
2. Samples for oil and grease, temperature, pH, cyanide, phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.

K. **Timing.** Written reports will be deemed to have been submitted on the date postmarked.

L. **Record keeping.** Users subject to the reporting requirements of this Section shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by the Section and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the user or the town or where the user has been specifically notified of a longer retention period by the director.

M. **Monitoring facilities.**

1. The director shall have the right to enter the premises of any user to determine whether the user is complying with all requirements of this Section and any wastewater discharge permit or order issued hereunder. Users shall allow the director ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

   a. Where a user has security measures in force which require proper identification and clearance before entry into its premises, the user shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the director is permitted to enter without delay for the purposes of performing specific responsibilities.

   b. The director shall have the right to set up on the user’s property of require installation of such devices as are necessary to conduct sampling and/or metering of the user’s operations.

   c. The director may require the user to install monitoring equipment as necessary. The facility’s sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the user at its own expense. All devices used to measure wastewater flow and quality shall be calibrated semiannually to ensure their accuracy.

   d. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the user at the written or verbal request of the director and shall be replaced. The costs of clearing such access shall be borne by the user.

   e. Unreasonable delays in allowing the director access to the user’s premises shall be a violation of this Section.

2. When required by the director, the owner of any property serviced by a building sewer carrying industrial waste shall install a suitable structure, together with such necessary meters and other appurtenances, in the building sewer to facilitate observation, sampling and measurement of the wastes. Such structures, when required, shall be accessibly and safely located and shall be constructed in accordance with plans approved by the director. The structure shall be installed by the owner at his expense, and shall be maintained by him so as to be safe and accessible at all times. The meters, appurtenances and structures shall be made available to the director at all times.

3. All holders of a town wastewater discharge permit shall provide and operate, at their own expense, monitoring facilities to allow inspection sampling and measurement of the building sewer or internal drainage systems. The monitoring facility should normally be situated on public property just outside the user’s lot line, but the director may, when such a location would be impractical or cause undue hardship on the user, allow the facility to be constructed in an alternate location.

4. There shall be ample room in or near such sampling manhole or facility to allow accurate sampling and preparation of samples for analysis. The facility, sampling, and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the user.

A. Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with the director’s requirements and all applicable portions of this Section. Construction shall be completed within ninety (90) days following written notification by the director, unless another date is specified in the wastewater discharge permit.
7.16-14 Inspection and Sampling
A. The town may inspect the facilities of any user to ascertain whether the purposes of this Section are being met and all requirements are being complied with. Persons or occupants of premises where wastewater is created or discharged shall allow the town or its representatives ready access at all reasonable times to all parts of the premises for the purpose of inspection, sampling, records examination or records copying in the performance of any of its duties. The town, the state department of public health and the environment and the EPA shall have the right to set up, within the user’s property, such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations. Where a user has security measures in force which would require proper identification and clearance before entry in the user’s premises, the user shall make necessary arrangements with the user’s security guard so that, upon presentation of suitable identification, personnel from the town, the state department of public health and the environment and the EPA will be permitted to enter, without delay, for the purposes of performing their specific responsibilities.

B. If the director has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this Section, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the town designed to verify compliance with this Section or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the director may seek issuance of a search warrant from the appropriate municipal court or Eighth Judicial District Court of the State of Colorado.

7.16-15 Pretreatment
A. Users shall provide wastewater pretreatment as required to comply with this Section and shall comply with all National Categorical Pretreatment Standards within the time limitations specified by the pretreatment regulations. Any facilities required to pretreat wastewater to a level acceptable to the director shall be provided, operated and maintained at user’s expense and shall be maintained continuously in satisfactory and effective operation. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the director for review, and shall be acceptable to the director before the construction of the facility. The review of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the director under the provisions of this Section. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be acceptable to the director prior to the user’s initiation of the changes.

B. All records relating to compliance with National Categorical Pretreatment Standards shall be made available to officials of the EPA or approval authority upon request, subject to any limitations contained in state statutes.

C. Information and data on a user obtained from reports, surveys, wastewater discharge permit applications, wastewater discharge permits, and monitoring programs, and from the director’s inspection and sampling activities, shall be available to the public without restriction, unless the user specifically requests, and is able to demonstrate to the satisfaction of the director, that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets under applicable state law. Any such request must be asserted at the time of submission of the information or data. When requested and demonstrated by the user furnishing a report that such information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available immediately upon request to governmental agencies for uses related to the CDPS program or pretreatment program, and in enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics and other “effluent data,” as defined by 40 CFR 2.302, will not be recognized as confidential information and will be available to the public without restriction.

7.16-16 Administration Enforcement Actions
The director may take the following types of enforcement actions in response to a user’s noncompliance with this Section, a wastewater discharge permit, or any other applicable federal, state, or local pretreatment standard or requirement. The remedies provided for in this section are not exclusive. The director may take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the town’s enforcement response plan; however, the director may take other action against any user when the circumstances warrant. Further, the director is empowered to take more than one (1) enforcement action against any noncompliant user.

A. Notice of violation. Whenever the director finds that any user has violated or is violating any provision of this Section or the town’s wastewater discharge permit, or any prohibition, limitation or requirement contained therein, the director may serve upon such person a written notice stating the nature of the violation. Within ten (10) days of the service of the notice, the user thereof shall submit a plan for the satisfactory permanent correction to the director. The provisions of this Subsection are not a prerequisite to the filing of any legal action regarding a violation of any Subsection of this Section or the town wastewater discharge permit, but may be used alternatively to, or concurrently with, the provisions of this Subsection.
B. Consent orders. The director may enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such documents will include specific action to be taken by the user to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to Paragraphs (D) and (E) of this Section and shall be judicially enforceable.

C. Show cause hearing. The director may order a user which has violated, or continues to violate, any provision of this Section, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, to appear before the director and show cause why the proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the user. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the user.

D. Compliance orders. When the director finds that a user has violated, or continues to violate, any provision of this Section, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the director may issue an order to the user responsible for the discharge directing that the user come into compliance within a specified time. If the user does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a pretreatment standard or requirement, nor does a compliance order relieve the user of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for taking any other action against the user.

E. Cease and desist orders. When the director finds that a user has violated, or continues to violate, any provision of this Section, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, or that the user’s past violations are likely to recur, the director may issue an order to the user directing it to cease and desist all such violations and directing the user to:

1. Immediately comply with all requirements; and
2. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.
3. Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the user.

F. Administrative Fines.

1. When the director finds that a user has violated, or continues to violate, any provisions of this Section, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the director may fine such user in an amount not to exceed one thousand dollars ($1,000.00), pursuant to C.R.S. Section 31-16-101 (2). Such fines shall be assessed on a per violation, per day basis. In the case of monthly or other long-term average discharge limits, fines shall be assessed for each day during the period of violation.

2. Falsifying information. Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this Section, or wastewater discharge permit, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this Section, shall, upon conviction, be punished by a fine of one thousand dollars ($1,000.00) and/or by imprisonment up to ninety (90) days.

3. Unpaid charges, fines, and penalties shall, after thirty (30) calendar days, be assessed an additional penalty of ten (10) percent of the unpaid balance, and interest shall accrue thereafter at a rate of one (1) percent per month. A lien against the user’s property will be sought for unpaid charges, fines, and penalties.

4. User’s desiring to dispute such fines must file a written request for the director to reconsider the fine along with full payment of the fine amount within thirty (30) days of being notified of the fine. Where a request has merit, the director may convene a hearing on the matter. In the event the user’s appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the user. The director may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine.
5. Issuance of an administrative fine shall not be a bar against, or prerequisite for, taking any other actions against the user.

G. **Emergency Suspensions.** The director may immediately suspend a user’s discharge, after informal notice to the user, whenever such suspension is necessary to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons. The director may also immediately suspend a user’s discharge, after notice and opportunity to respond, that threatens to interfere with the operation of the POTW, or which presents, or may present, an endangerment to the environment.

1. Any user notified of a suspension of its discharge shall immediately stop or eliminate its discharge. In the event of a user’s failure to immediately comply voluntarily with the suspension order, the director may take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The director may allow the user to recommence its discharge when the user has demonstrated, to the satisfaction of the director, that the period of endangerment has passed, unless the termination proceedings in Paragraph (H) of this Subsection are initiated against the user.

2. A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the director prior to the date of any show cause or termination hearing under Paragraph (C) of this Subsection.

Nothing in this Subsection shall be interpreted as requiring a hearing prior to any emergency suspension under this Subsection.

H. **Termination of discharge.** In addition to the other provisions of this Section, any user who violates the following conditions is subject to discharge termination:

1. Violation of wastewater discharge permit conditions;
2. Failure to accurately report the wastewater constituents and characteristics of its discharge;
3. Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;
4. Refusal of reasonable access to the user’s premises for the purpose of inspection, monitoring, or sampling; or
5. Violation of the pretreatment standards in Subsection 7.16-4 of this Section.

Such user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under Paragraph (C) of this Subsection why the proposed action should not be taken. Exercise of this option by the director shall not be a bar to, or a prerequisite for, taking any other action against the user.

I. **Revocation of permit.** The director may revoke a wastewater discharge permit for good cause, including but not limited to, the following reasons:

1. Failure to notify the director of significant changes to the wastewater prior to the changed discharge;
2. Failure to provide prior notification to the director of changed conditions pursuant to Paragraph (E) of Subsection 17.16-12;
3. Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;
4. Falsifying self-monitoring reports;
5. Tampering with monitoring equipment;
6. Refusing to allow the director timely access to the facility premises and records;
7. Failure to meet effluent limitations;
8. Failure to pay fines;
9. Failure to pay sewer charges;
10. Failure to meet compliance schedules;
11. Failure to complete a wastewater survey or the wastewater discharge permit application;
12. Failure to provide advance notice of the transfer of business ownership of a permitted facility;
13. Violation of any pretreatment standard or requirement, or any terms of the wastewater discharge permit or this Section; or
14. Failure to accurately report the wastewater constituents and characteristics of its discharge.

7.16-17 Publication of Violations
The director shall publish annually, in the local newspaper, a list of the users, which were in significant violation with any pretreatment requirements or standards at least once during the twelve (12) previous months. The notification shall also summarize any enforcement actions taken against the user during the same twelve (12) months. For the purpose of this provision, a significant violation is a violation which remains uncorrected forty-five (45) days after notification or which is part of a pattern of noncompliance over a twelve-month period, or which involves a failure to report accurately noncompliance or which results in the POTW exercising its emergency authority. In addition, any significant industrial user in significant noncompliance (SNC) shall be published. An industrial user is in SNC if:

A. Chronic violation. Sixty-six (66) percent or more of the measurements exceeded the same daily maximum limit or the same average limit for the same pollutant parameter in a six-month period.

B. Technical review criteria (TRC). Thirty-three (33) percent or more of the measurements for each pollutant equals or exceeds the same maximum limit or the same average limit multiplied by the applicable TRC in a six-month period. TRC = 1.4 B.O.D., TSS, fats, oil and grease and TRC = 1.2 for all other pollutants except pH.

C. Any discharge of pollutant that has imminent endangerment of human health/welfare or to the environment and has resulted in the POTW exercise of its emergency authority to halt or prevent such a discharge.

D. Failure to provide reports for compliance schedules, self-monitoring data, permit application data, or categorical standards (baseline monitoring reports, ninety-day compliance reports, and periodic reports).

E. Any other violation(s) of an effluent limit (average or daily maximum) that the control authority believes has caused, alone, or in combination with other discharge, interference (e.g. sludge loads) or pass through, or endangered the health of the POTW personnel or the public.

F. Failure to report noncompliance.

G. Violations of a compliance schedule milestone contained in a load control order, for starting construction, completing construction or attaining final compliance by ninety (90) days or more after the scheduled date.

H. Any other violation or group of violations, which the control authority determines adversely affects the operation or implementation of the local pretreatment program or the POTW considers to be significant.

7.16-18 Harmful Discharges
The director may suspend the wastewater treatment service and/or a wastewater discharge permit when such an actual or threatened discharge presents or may present imminent or substantial endangerment to the health or welfare of persons or to the environment, or causes interference to the POTW, or causes the town to violate any conditions of its CDPS permit.

7.16-19 Charges and Fees
The town may, by resolution of the board of trustees, adopt charges and fees, which may include:

A. Fees for reimbursement of costs of setting up and operating the program described herein;
B. Fees for monitoring, inspecting, and surveillance procedures;
C. Fees for reviewing accidental discharge procedures and construction;
D. Fees for permit applications;
E. Fees for filing appeals;
F. Other fees as the town may deem necessary to carry out the requirements contained herein.

These fees relate solely to the matters covered by this Section and are separate from all other fees chargeable by the town.

7.16-20 Measurements, Testing and Sampling Requirements
All measurements, sampling, testing and analyses of the characteristics of waters and wastewaters to which reference is made in this section shall be determined in accordance with the latest edition of Standard Methods for the Examination of Water and Wastewater or the EPA Manual of Methods for Chemical Analysis of Water and Waste.

7.16-21 Civil and Criminal Penalties
A. Injunction. When the director finds that a user has violated, or continues to violate, any provision of this Section, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the director may petition the Eighth Judicial District of the State of Colorado through the town’s attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by this Section on activities of the user. The director may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against the user.

B. Civil Penalties. Any user who is found to have failed to comply with any provision of this Section, or the orders, rules, regulations and permits issued thereunder, shall be fined a civil penalty in an amount up to ten thousand dollars ($10,000.00) per day for each violation or offense, pursuant to the authority of 25-8-608(1) C.R.S., as amended, and the Federal Water Pollution Control Act, commonly referred to as the “Clean Water Act”. Each day on which a violation shall occur or continue shall be deemed a separate and distinct offense. In determining the amount of civil liability, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the user’s violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires. In addition to the penalties provided herein, the town may recover reasonable attorney’s fees, court costs, court reporter’s fees and other expenses of litigation by appropriate suit at law against the person found to have violated this Section or orders, rules, regulations and permit issued pursuant to this Section.

C. Criminal Penalties.
1. A user who discharges any pollutant into the town’s POTW commits criminal pollution if such discharge violates any provision of this Section, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, and the discharge is made:
   a. With criminal negligence or recklessly, in which case the user shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than twelve thousand five hundred dollars ($12,500.00) per violation, per day, or imprisonment for not more than one (1) year.
   b. Knowingly or intentionally, in which case the user shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than twenty five thousand dollars ($25,000.00) per violation, per day, or imprisonment for not more than one (1) year.

2. A user who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this Section, wastewater discharge permit, or order issued hereunder, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this Section shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000.00) per violation, per day, or imprisonment for not more than six (6) months or both.

3. If two separate offenses under this section occur in two (2) separate occurrences during a period of two (2) years, the maximum fine for the second offense shall be double the amounts specified in Paragraphs (C)(1) and (C)(2) of this Subsection.

4. Performance Bonds. The director may decline to issue or reissue a wastewater discharge permit to any user who has failed to comply with any provision of this Section, a previous wastewater discharge permit, or order issued hereunder,
or any other pretreatment standard or requirement, unless such user first files a satisfactory bond, payable to the town, in a sum not to exceed the value determined by the director to be necessary to achieve consistent compliance.

5. Liability Insurance. The director may decline to issue or reissue a wastewater discharge permit to any user who has failed to comply with any provision of this Section, a previous wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, unless the user first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the POTW caused by its discharge.

6. Water supply severance. Whenever a user has violated or continues to violate any provision of this Section, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, water service to the user may be severed. Service will only recommence, at the user’s expense, after it has satisfactorily demonstrated its ability to comply.

7. Contractor listing. Users which have not achieved compliance with applicable pretreatment standards and requirements are not eligible to receive a contractual award for the sale of goods or services to the town. Existing contracts for the sale of goods or services to the town held by a user found to be in significant noncompliance with pretreatment standards or requirements may be terminated at the direction of the director.

D. Enforcement. The remedies provided for in this section are exclusive. The director may take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the town’s Industrial Pretreatment Program; however, the director may take other action against any user when the circumstances warrant. Further, the director is empowered to take more than one (1) enforcement action against any noncompliant user.

7.16-22 Affirmative Defenses to Discharge Violations
A. Upset.

1. For the purposes of this section, “upset” means an exceptional incident in which there is unintentional and temporary noncompliance with the categorical pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

2. An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of Paragraph (3), below, are met.

3. A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
   a. An upset occurred and the user can identify the cause(s) of the upset;
   b. The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures; and
   c. The user has submitted the following information to the director within twenty-four (24) hours of becoming aware of the upset (if this information is provide orally, a written submission must be provided within five (5) days):
      i. A description of the indirect discharge and cause of noncompliance.
      ii. The period of noncompliance, including exact dates and times, or, if not corrected, the anticipated time the noncompliance is expected to continue; and
      iii. Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

4. In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.

5. Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

6. Users shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.
B. Prohibited discharge standards. A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general and specific prohibitions in Subsection 7.16-21 of this Section if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either:

1. A local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass through or interference; or

2. No local limit exists, but the discharge did not change substantially in nature or constituents from the user’s prior discharge when the city was regularly in compliance with its CDPS permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

Pursuant to 40 CFR Section 403.5(a)(2), the affirmative defense outlined in Paragraph (B) of this Subsection does not apply to the specific prohibitions in Paragraphs (C)(1), (3), and (6) of Subsection 7.16-21.

C. Bypass.

1. For the purposes of this section;
   a. “Bypass” means the intentional diversion of waste streams from any portion of a user’s treatment facility.
   b. “Severe property damage” means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources, which can reasonably be expected to occur in the absence of a bypass. “Severe property damage” does not mean economic loss caused by delays in production.

2. A user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Paragraphs (C)(3) and (C)(4) of this Subsection.

3. Notice
   a. If a user knows in advance of the need for a bypass, it shall submit prior notice to the director at least ten (10) days before the date of the bypass, if possible.
   b. A user shall submit oral notice to the director of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times; and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the bypass. The director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

4. Bypass is prohibited, and the director may take an enforcement action against a user for a bypass, unless:
   a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
   b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
   c. The user submitted notices as required under Paragraph (C)(3) of this Subsection.

The director may approve an anticipated bypass, after considering its adverse effects, if the director determines that it will meet the three (3) conditions listed in Paragraph (C)(4) of this Subsection.

7.27-1 Enterprise Fund

The revenue derived from the user fees, impact fees, and connection fees associated with the Storm Water (drainage) system shall be placed in the treasury of the town and shall be kept in a separate fund to be known as the “Storm Water
Enterprise Fund.” After said revenue is placed in such separate fund, it shall not be paid out or distributed except for the purpose of operating, renewing, improving or extending the drainage system and the payment of salaries of the employees engaged in operating said storm drainage system; provided, however, that the board may by ordinance divert to the general fund any surplus monies in excess of the amounts reasonably required for the aforesaid purposes. As used in this ordinance and throughout this Code, “Storm Water” and “drainage” shall encompass all drainage, retention, storm sewer, detention, and flow control of waters of the town.
# MUNICIPAL CODE - TOWN OF BERTHOUD

## CHAPTER 8
### HEALTH AND SANITATION

### 8.1 Board of Health

- 8.3-10 Monitoring of Discharges
- 8.3-11 Requirement to Prevent Control and Reduce Storm Water Pollutants by Use of Best Management Procedures
- 8.3-12 Water Course Protections

### 8.2 Dead Animals

### 8.3 Non-Storm Water in Storm Drainage System

#### 8.3-1 Purpose and Intent

#### 8.3-2 Definitions

#### 8.3-3 Applicability

- 8.3-6 Ultimate Responsibility

#### 8.3-4 Responsibility for Administration

- 8.3-5 Severability

#### 8.3-7 Discharge of Prohibitions

- 8.3-8 Suspension of Storm Water Discharge

#### 8.3-9 Industrial or Constructional Activity Discharges

### 8.1 Board of Health

The mayor and board of trustees shall constitute the board of health and shall have the power to compel the removal or abatement of any nuisance, source of filth, cause of disease, or unwholesome business or establishment within the town limits or within one mile of the outer boundaries thereof, and shall have such powers and perform such duties as now are, or may hereafter be prescribed by the laws of this State or the ordinances of this town. (C.R.S. 1963, 139-32-1(11), (48), (49).)

### 8.2 Dead Animals

It shall be unlawful for any person to bring through or allow to remain in the Town of Berthoud any dead animals or decaying animal matter; and any animal dying within the town shall be removed by the owner or keeper thereof within twenty-four hours after its death.

### 8.3 Non-Storm water in Storm Drainage System

#### 8.3-1 Purpose and Intent

The purpose of this Section is to protect, preserve and improve the health, safety, and general welfare of the citizens of the Town of Berthoud through the regulation of non-storm water discharges to the storm drainage system of the maximum extent practicable as required by federal and state law. This Section establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (storm-sewer) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this Section are:

- To regulate the contribution of pollutants to the municipal separate storm sewer system by storm water discharges by any user
- To prohibit illicit connections and discharges to the municipal separate storm sewer system
- To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this Section

#### 8.3-2 Definitions

For the purposes of this Section, the following shall mean:

*Town of Berthoud* The Town as a statutory municipality and shall include employees or designees of the Town of Berthoud designated to enforce this Section.

*Best Management Practices (BMPs)* Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or
storm water conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

**Clean Water Act** The federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), and any subsequent amendments thereto.

**CDPHE** means the Colorado Department of Public Health and Environment.

**Construction Activity** Activities subject to NPDES Construction Permits. These include construction projects resulting in land disturbance of one (1) acre or more. Such 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, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment.

**Illegal Discharge** Any direct or indirect non-storm water discharge to the storm drain system, except as exempted in this Section.

**Illicit Connections** Either of the following: Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-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 said drain or connection had been previously allowed, permitted, or approved by an Town of Berthoud; or any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by the Town of Berthoud.

**Industrial Activity** Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

**Municipal Separate Storm Sewer System (MS4)** means publicly owned facilities by which storm water is collected and conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, catch basins, inlets, piped storm drains, pumping facilities, retention and detention basins, and natural and human-made or -altered drainage ditches, channels lakes/reservoirs and other drainage structures.

**National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit** A permit issued by EPA (or by a State under authority delegated pursuant to 33 USC 1342 (by that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

**Non-Storm Water Discharge** Any discharge to the storm drain system that is not composed entirely of storm water.

**Person** Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

**Pollutant** Anything which causes or contributes to pollution. Pollutants may include, but are not limited to paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

**Premises** Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking areas.

**Storm Drainage System** Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human made or altered drainage channels, reservoirs, and other drainage structures.
**Storm Water** Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

**Storm Water Pollution Prevention Plan (SWPPP)** A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to storm water, Storm Water Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

**Wastewater** Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

**Watercourse** Means a channel, natural depression, slough, artificial channel, gulch, arroyo, stream, creek, pond, reservoir or lake, including major drainage ways, in which storm water runoff and floodwater flows, either regularly or infrequently.

8.3-3 **Applicability**
This Section shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by the Town of Berthoud.

8.3-4 **Responsibility for Administration**
The Town of Berthoud shall administer, implement, and enforce the provisions of this Section. Any powers granted or duties imposed upon the Town of Berthoud may be delegated in writing by the Town of Berthoud to persons or entities acting in the beneficial interest of or in the employ of the agency.

8.3-5 **Severability**
The provisions of this Section are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Section or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Section.

8.3-6 **Ultimate Responsibility**
The standards set forth herein and promulgated pursuant to this Section are minimum standards; therefore this Section does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

8.3-7 **Discharge Prohibitions**
A. Prohibition of Illegal Discharges. No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses 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, other than storm water. The commencement, conduct or continuance of any metal discharge to the storm drain system is prohibited except as described as follows:

1. The following discharges are exempt from discharge prohibitions established by this Section: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wet-land flows, swimming pools (if de-chlorinated typically less than one PPM chlorine), firefighting activities, and any other water source not containing pollutants.

2. Discharges specified in writing by the Town of Berthoud as being necessary to protect public health and safety.

3. Dye testing is an allowable discharge, but requires a written notification to the Town of Berthoud and written authorization for the test by the Town prior to the time of the test. A copy of the results will be provided to the Town upon completion.

4. The 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 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, and provided that written approval has been granted for any discharge to the storm drain system and a copy of the NPDES permit is provide to the Town.
B. Prohibition of Illicit Connections.

1. The construction, use, maintenance or continued existence of illicit connections to the storm drain system which have not been approved in writing by the Town of Berthoud is prohibited.

2. 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.

3. A person is considered to be in violation of this Section if the person connects a line conveying sewage to the storm drain or storm water system, or allows such a connection to continue.

8.3-8 Suspension of Storm Water Access
A. Suspension due to Illicit Discharges in Emergency Situations.
   The Town of Berthoud may, without prior notice, suspend storm drain or storm water system discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the storm drain or storm water system or waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the Town of Berthoud may take such steps as deemed necessary to prevent or minimize damage to the storm drain or storm water system or waters of the United States, or to minimize danger to persons.

B. Suspension due to the Detection of Illicit Discharge.
   Any person discharging to the MS4 in violation of this Section may have their storm drain or storm water system access terminated if such termination would abate or reduce an illicit discharge. The Town of Berthoud will notify a violator of the proposed termination of its storm drain or storm water system access. The violator may petition the Town of Berthoud for a reconsideration and hearing.
   A person commits an offense if the person reinstates storm drain or storm water system access to premises terminated pursuant to this Section, without the prior approval of the Town of Berthoud.

8.3-9 Industrial or Construction Activity Discharges
   Any person subject to an industrial or construction activity CDPS storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit will be required in a form acceptable to the Town of Berthoud prior to the allowing of discharges to the Storm drain or storm water system.

A. CDPS Permit required. It shall be unlawful for any person to conduct any activity resulting in the following total disturbed area without first obtaining a storm water quality permit:

1. One acre or more.

2. Less than one acre if such activities are part of a larger common plan of development, even though multiple, separate and distinct land development activities may take place at different times on different schedules.

3. The Town may also require a storm water quality permit regardless of the size of the total disturbed area in conjunction with approval of a final subdivision plat, special use permit, or site development plan, or if the construction activities are adjacent to a watercourse or wetlands.

B. Permit application: Applications for State storm water quality permits shall be filed with the Town.

1. The application shall include documentation of an application for a COPHE storm water general permit for construction activities and a completed SWMP.

C. Construction activities may not proceed until the Town approves the SWMP.

D. Construction storm water management plan.

1. A SWMP shall be prepared in accordance with the requirements of the most recent SWMP guidance document prepared by the CDPHE, and the engineering, hydrologic and pollution control practices outlined in Larimer County Storm water design standards and construction specifications.
2. The owner, occupant, or operator of any premises or facility shall have the approved SWMP on site at all times and shall be prepared to respond to maintenance of specific BMPs.

3. Based on inspections performed by the owner or by Town personnel, modifications to the SWMP will be necessary if at any time the specified BMPs do not meet the objectives of this Section. In this case, the owner shall meet with Town personnel to determine the appropriate modifications. Modifications shall be completed immediately within the referenced inspection and shall be recorded on the owner's copy of the SWMP.

4. SWMP review/changes. The operator shall amend the plan whenever there is a significant change in design, construction, operation, or maintenance, which has a significant effect on the potential for discharge of pollutants to the MS4. In this case, the owner shall meet with town personnel to determine the appropriate modifications. All modifications shall be completed within seven (7) days of the referenced inspection, and shall be recorded on the owner's copy of the SWMP.

5. Records of inspection are to be maintained on site with the SWMP and are to be available to the Town inspector upon request.

E. Technical standards and specifications. All BMPs designed to meet the requirements of this Section shall comply with Larimer County Stormwater Design Standards or its successor, and any other alternative methodology, which is demonstrated to be effective and approved by the Town.

F. Post-construction requirement of permanent BMPs.

1. Land development subject to this chapter must address stormwater runoff quality through the use of permanent BMPs which shall be maintained in perpetuity.

2. Structural BMPs, such as pipes and inlets, located on private property shall be owned and operated by the owner of the property on which the BMP is located, unless the Town in writing agrees that a person other than the owner shall own or operate such BMP.

3. As a condition of approval of the BMP, the owner shall also agree to maintain the BMP to its design capacity unless or until the Town relieves the property owner of that responsibility in writing. The obligation to maintain the BMP shall be memorialized on the subdivision plat, annexation plat, development agreement or other instrument or in a form acceptable to the Town and shall be recorded in the office of the county clerk and recorder.

G. Certification of permanent BMPs. Upon completion of a project, and before a certificate of occupancy shall be granted, the Town shall be provided a written certification stating that the completed project is in compliance with the approved final drainage plan. All applicants are required to submit "as built" plans for any permanent BMPs after final construction is completed. The certification and as-builts shall bear the stamp and Signature of a Colorado licensed professional engineer. A final inspection by the Town is required before the release of any performance securities can occur.

H. Ongoing inspection and maintenance of permanent BMPs.

1. Maintenance agreements. The owner must, unless an on-site storm water management facility or practice is dedicated to and accepted by the Town, execute a inspection and maintenance agreement, that shall be binding on all subsequent owners of the permanent BMPs.

2. Long-term inspection of permanent BMPs. Permanent BMPs shall be subject to ongoing inspections to document maintenance and repair needs and to ensure compliance with the requirements of any maintenance agreements.

8.3-10 Monitoring of Discharges

Whenever the Town has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this Section, the Town shall have the right to enter the premises at any reasonable time to determine if the discharger is complying with all requirements of this Section. In the event that the owner or occupant refuses entry after a request to enter has been made, the City is hereby empowered to seek assistance from a court of competent jurisdiction in obtaining such entry.

The Town shall have the right to set up on the property of any discharger to the municipal separate storm sewer system such devices that are necessary to conduct an investigation of such discharges. The investigation may include, but is not limited
to, the following: sampling of any discharge and/or process waters, the taking of photographs, interviewing staff on alleged violations, and access to any and all facilities or areas within the premises that may have any effect on the discharge.

Access to Facilities. The Town of Berthoud shall be permitted to enter and inspect facilities subject to regulation under this Section as often as may be necessary to determine compliance with this Section. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the Town of Berthoud.

Facility operators shall allow the Town of Berthoud ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an CDPS permit, to discharge storm water, and the performance of any additional duties as defined by state and federal law.

The Town of Berthoud shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the Town of Berthoud to conduct monitoring and/or sampling of the facility's storm water discharge.

The Town of Berthoud has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in an accessible, safe, and proper operating condition by the discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy. Records of calibration activities shall be maintained by the facility operator and be provided to the Town upon request.

Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Town of Berthoud and shall not be replaced. The costs of clearing such access shall be borne by the operator.

Unreasonable delays in allowing the Town of Berthoud access to a permitted facility is a violation of this Section. A person who is the operator of a facility with a COPS permit to discharge storm water associated with industrial activity; commits an offense if the person denies the Town of Berthoud reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Section.

If the Town of Berthoud has been refused access to any part of the premises from which an illicit discharge is detected, and he/she is able to demonstrate probable cause to believe that there may be a violation of this Section, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this Section or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Town of Berthoud may seek issuance of a search warrant from any court of competent jurisdiction.

8.3-11 Requirement to Prevent Control and Reduce Storm Water Pollutants by the Use of Best Management Practices

The Town of Berthoud will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the U.S. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement at said person's expense additional structural and non-structural BMPs to prevent the further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this Section. These BMPs shall be part of a SWPPP as necessary for compliance with requirements of the NPDES permit.

8.3-12 Water Course Protections

Every person owning a watercourse or easement for a watercourse including irrigation and drainage ditches, or such person's lessee, shall keep and maintain that part of the watercourse within the property 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 existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

8.3-13 Notification of Spills

Notwithstanding other requirements of law as soon as any 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 storm drain system, or water of the U.S. said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of
such a release of hazardous or non-hazardous materials said person shall immediately notify emergency response agencies of the occurrence by the most expedient and reliable communication available and shall continue these attempts of notification until it is successful. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Town of Berthoud within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

8.3-14 Enforcement

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Section. Any person who violates any of the provisions of this Section shall be subject to one or more of the enforcement actions outlined in this Section. Any violation or threatened violation may be restrained by injunction or otherwise abated in a manner provided by law.

In the event the violation constitutes an immediate danger to public health or public safety, the Town of Berthoud is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The Town of Berthoud is authorized to seek costs of abatement as outlined in Subsection 8.3-17.

A. Compliance Directive. In addition to any other remedy available to the Town, inspectors may issue compliance directives at the time of inspection to require a person to implement actions that will correct any violation of this Section.

B. Notice of Violation. Whenever the Town of Berthoud finds that a person has violated a prohibition or failed to meet a requirement of this Section, the Town of Berthoud may verbally warn the person the violation. If immediate action for compliance is not met, the Town will order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

1. The performance of monitoring, analyses, and reporting;
2. The elimination of illicit connections or discharges;
3. That violating discharges, practices, or operations shall cease and desist;
4. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; and
5. Payment to cover all administrative and remediation costs; and
6. The implementation of source control or treatment BMPs.
7. A stop work order will be issued by the Town of Berthoud.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remedy or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

8.3-15 Appeal of Notice of Violation

Any person receiving a Notice of Violation may appeal the determination of the Town of Berthoud. The notice of appeal must be received within seven (7) days from the date of the Notice of Violation dealing on the appeal before the appropriate authority or his/her designee shall take place within fourteen (14) days from the date of receipt of the notice of appeal.

8.3-16 Enforcement Measures After Appeal

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within seven (7) days of the decision of the municipal authority upholding the decision of the Town of Berthoud, then representatives of the Town of Berthoud shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.
8.3-17 Cost of Abatement of the Violation
Within forty-two (42) days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within seven (7) days. If the amount due is not paid within twenty-eight (28) days or longer, as determined by the decision of the municipal authority or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

Any person violating any of the provisions of this article shall become liable to the Town of Berthoud by reason of such violation. The liability shall be paid in not more than 12 equal payments. Interest at the rate of eight percent (8%) per annum shall be assessed on the balance beginning when the Town incurs any costs.

8.3-18 Injunctive Relief
It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Section. If a person has violated or continues to violate the provisions of this Section, the Town of Berthoud may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

8.3-19 Compensatory Action
In lieu of enforcement proceedings, penalties, and remedies authorized by this Section, the Town of Berthoud may impose upon a violator one or more alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

8.3-20 Violations Deemed a Public Nuisance
In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Section is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

8.3-21 Criminal Prosecution
In addition at all other remedies, any person that has violated or continues to violate this Section shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty of Three Hundred Dollars ($300) and up to ninety (90) days imprisonment. Each day a violation continues shall constitute a separate violation.

8.3-22 Remedies Not Exclusive
The remedies listed in this Section are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the Town of Berthoud to seek cumulative remedies.
9.1 Police Magistrate

The Board of Trustees at its first regular meeting following each biennial election of the board of trustees, shall appoint a municipal judge who shall preside over the police court for a term of two years and until his successor is duly appointed and qualified. He shall be a resident of Larimer or Weld County, Colorado and licensed to practice law. If a vacancy shall occur in such office, the same shall be filled by the board of trustees, by appointment for the unexpired term.

9.2 Acting Police Magistrate

In case of the temporary absence, sickness or other inability of the municipal judge to act, the mayor may appoint some competent person to act as such judge until the disability of the judge is removed. Such appointment must be in writing. (C.R.S. 1963, 139-85-2 as amended, 139-86-4).

9.3 Compensation of Municipal Judge

The Municipal Judge shall receive compensation for his services in an amount set by the Board of Trustees by Resolution. (C.R.S. 139-85-6 as amended)

9.4 Terms of Court

Court shall occur at least once a month on a day and time set at least thirty days before by the Municipal Judge and the Town Clerk.

9.5 Jurisdiction

The police court shall have exclusive original jurisdiction to hear, try and determine all causes arising under this code and any of the ordinances of the town, for a violation thereof, and there shall be no change of venue there (C.R.S. 1963, 139-86-4, as amended)

9.6 Powers

The Municipal Judge shall have all powers referenced in C.R.S. 13-10-112, which includes the full power and authority to make and adopt rules and regulations for conducting the business of his court, and shall have all powers incident to a Municipal Court, as that term is defined in C.R.S. 13-10-103, in relation to the attendance of witnesses, the punishment of contempt, and enforcement of orders.; (C.R.S. 1963, 139-84-11 and 19-86-4 as amended)

9.7 Statement of Ordinances

In all actions for the recovery of any fines or penalties incurred for the violation of this code or any ordinance or police regulation of the town it shall be sufficient to state in the complaint or affidavit, the Municipal Code Section number, or the title of the ordinance violated together with the date of its passage, without stating said ordinances or section in full or the substance thereof. (C.R.S. 1963, 139-85-13)

9.8 Commencement of Actions — Penalties — Juries — Witnesses — Appeal

All actions brought to recover any fine or to enforce any penalty under any ordinance or code of the Town of Berthoud, shall be brought in the name of the people of the State of Colorado as plaintiff. No prosecution, recovery, or acquittal for the violation of any such ordinance or code shall constitute a defense to any other prosecution of the same party for any other violation of any such ordinance or code, although the different causes of action existed at the same time, and if united, would have exceeded the jurisdiction of the Court or magistrate. No person shall be incompetent as judge, juror or witness in any action to which the town shall be a party, on account of his being a resident citizen or property owner within the Town of Berthoud. Appeals shall be allowed from a judgment of the police magistrate to the County Court, in cases arising under the ordinances and codes of the Town of Berthoud. (C.R.S. 1963, 139-86-1 as amended.)
9.8-1 Process – Penalty
In all actions for the violation of any ordinance or code of the Town of Berthoud, the first process shall be a summons; provided, that a warrant for the arrest of the offender may issue at the first instance upon the affidavit of any person that an ordinance or code has been violated, and that the person making the complaint has reasonable grounds to believe the party charged is guilty thereof.

Any person arrested upon such warrant shall be taken before the proper officer to be tried for the alleged offense without unnecessary delay. Any person upon whom any fine or penalty shall be imposed, upon the order of the Court or magistrate before whom the conviction is had, may be committed to the County Jail, or other place provided by the Town for the incarceration of offenders, until such fine, penalty, and cost shall be fully paid. No such imprisonment shall exceed ninety (90) days for any one offense.

9.9 Warrant Issued Upon Failure to Appear
In the event any person fails to appear or comply with a notice given to such person or attached to a vehicle, or fails to make appearance pursuant to a summons directing an appearance in the police magistrate’s court, the police department shall forthwith secure a warrant for his arrest. (C.R.S. 1963, 139-85-11)

9.10 Bail
When a cause for the violation of this Section is continued, the defendant shall give bail for his appearance at the time and place set for trial by depositing a cash bond or executing a written recognizance with sufficient sureties, in an amount fixed by the police magistrate, and thereupon such person shall be released. If such bail bond is not furnished, the defendant shall be committed to a jail until the time of trial. (C.R.S. 1963, 139-32-1 (61).)

9.11 Judgment on Bail Bond
If the defendant shall fail to appear at the time and place specified, or appearing shall depart the court without leave, the police magistrate may enter judgment against the defendant and forfeit any cash bond that has been posted, or he may enter judgment against the defendant and his sureties for the penalty of the bond. Upon the entering of such a judgment against the defendant and his sureties, the police magistrate shall issue a notice to the sureties requiring them to appear and show cause why the judgment should not be confirmed against them and execution issued. On the hearing thereunder the judgment may be set aside for good cause or it may be confirmed and execution issued.

9.12 Board of Trustees to Furnish Supplies
The board of trustees of the Town shall furnish the necessary books, stationery, forms, furniture and fuel required for the use of the police court, together with suitable rooms for the proper conducting of the business of said court.
CHAPTER 10
FINANCES

10.1 Fiscal Year
The fiscal year of the Town of Berthoud shall commence on the first day of January in each year, and end the 31st day of December of the same year.

10.2 Budget
The Board of Trustees shall adopt an annual budget for each fiscal year in accordance with the procedure set forth in The Local Government Budget Law of Colorado. (C.R.S. 1963, 88-1-1 et seq.)

10.3 Rate of Tax Levy
Subject to the requirements of state statutes and the Colorado Constitution, the Board of Trustees may by resolution fix the rate of tax to be levied upon all the taxable property within the Town for municipal purposes and, through the town clerk, shall officially certify the said levy to the County Commissioners of Larimer County and Weld County prior to the 15th day of December of each year. (C.R.S. 1963, 137-2-48.)

10.4 Annual Appropriation
The Board of Trustees shall pass an ordinance within the last quarter of each fiscal year, to be termed the annual appropriation ordinance for the next fiscal year. In such ordinance the Board shall appropriate such sums of money as are necessary to cover the items in its budget and to defray all necessary expenses and liabilities of the Town, specifying the objects and purposes for which such appropriations are made and the amount appropriated for each object or purpose. (C.R.S. 1963, 139-38-1.)

10.5 Publication of Financial Statements
The Board of Trustees shall, within twenty days after the adjournment of each regular or special meeting, publish such of its proceedings as relate to the payment of bills, stating for what the same are allowed, the name of the person to whom allowed and to whom paid. It shall also publish a statement concerning all contracts awarded and rebates allowed. Such Publication shall be deemed complete if made available to the Public on the Town’s website.

10.6 Deposits – Investments
The Town Treasurer shall deposit all of the funds and moneys which come into his possession by virtue of his office as town treasurer in one or more responsible banks located in the State of Colorado which have been designated by written resolution of the Town Board. The Town Board may also authorize the Town Treasurer, by written resolution, to invest all or part of such funds in securities which are authorized for such investment by state law. (C.R.S. 1963, 139-38-4) Such Publicaton shall be deemed complete if made available to the Public on the Town’s website.

10.7 Warrants Signed -- How
All warrants $5000 and over must be signed by the Mayor or Mayor Pro-Tem and countersigned by the Administrator or Town Clerk, stating the particular fund or appropriation to which the same is chargeable and the person to whom payable. All warrants under $5000 shall be signed by the Administrator or Town Clerk. No money shall be drawn except as provided in this Section. (C.R.S. 1963, 139-40-1.)

10.8 Treasurer’s Annual Report
Annually, by March 1 after the close of the fiscal year, the Town Treasurer shall make out and file with the Clerk a full and detailed account of all receipts and expenditures of the town, and all of his transactions as such Treasurer during the preceding fiscal year, and shall show in such account the state of the treasury at the close of the fiscal year. The Town Clerk shall immediately cause such account to be published in a newspaper published in the Town of Berthoud. (C.R.S. 1963, 139-39-8.)
10.9 **Annual Audit**

The Board of Trustees shall select a qualified person as auditor and cause to be made an annual audit of the financial affairs and transactions of the Town in accordance with the requirements of state law. (C.R.S. 1963, 110-1-2 et seq. as amended.)
CHAPTER 13
LICENSES GENERALLY

13.1 License Applications

The application for every license required by and issued under authority of the town shall contain:

a. The name of the person, firm, or corporation desiring such license;

b. The residence address of such applicant, or of each of the individual members of such firm, or of each of the directing officers of such corporation and its principal place of business;

c. The kind of license desired, stating the business, trade, or profession to be performed, practiced or carried on;

d. The street address, if any, where such business is to be carried on;

e. The year for which such license is sought; and

f. Any other relevant information required by the terms of the provision pertaining to the particular license sought.

13.2 Issuance of License

Upon the receipt of the application containing the information set forth in the preceding Section, proof that the annual fee therefore has been paid in advance, the execution and delivery of any bond or insurance that may be required, the approval of the application for license where the same is required, and the fulfillment of all other specific requirements relating to the issuance of the particular license, the town clerk shall issue and deliver to the applicant the license requested.

13.3 Contents of License

Each license shall show upon its face the name of the person to whom it has been issued, the street address where any business is to be carried on, the kind of license, the amount paid therefore, the year for which such license is issued, and any other information required by this Code to be displayed thereon.

13.4 Term of License
All licenses shall be issued on a calendar year basis only, and they shall expire with the calendar year for which they are issued.

13.5 Prorating License Fees
In case a license is issued after June 30th of any year, the license fee shall be one-half of the annual license fee; provided, however that license fees of $5.00 or less per year shall not be prorated and shall be charged for on the yearly basis; and provided further, that the license fee prorating system herein set out shall not apply to license fees for seasonal businesses or activities.

13.6 Record of Licenses
The clerk shall keep a record of all licenses issued, setting forth the name of every licensee, the place of business licensed, if any, and the kind of license issued.

13.7 Posting and Exhibition
Every license for a business to be conducted at a particular street address shall be posted therein during the period such license is valid. It shall be the duty of each and every person to whom a license has been issued by the town, to display the same in a conspicuous place.

13.8 Transfers
No license may be transferred from one person to another, or from one place to another, except where permitted by state law or the provisions of this Code relating to the particular license, and then only by the town clerk after written application therefore and the payment of the current transfer fee as set by resolution.

13.9 Renewals
Any licensee may make application for a new license for the succeeding year and pay the required fee therefore, on or before the expiration date of the license or licenses issued to him for the current year. Whenever any application and license fee payment therefore is not received on or before the expiration date of any license issued for the current year, and the licensee continues to engage in the business or activity for which the license was issued, a penalty of 10% of the amount of the license fee shall be imposed and collected and an additional 5% of the original fee shall be added on the last day of each calendar month after the expiration date. In addition to the above penalty provision, it shall be unlawful for a licensee to continue to engage in any business or activity after his license therefore has expired.

13.10 Revocation
The Town Administrator may, upon seven days written notice to a licensee stating the contemplated action, the general grounds therefore, and after a reasonable opportunity to be heard, revoke any license issued by the town if it finds that:

A. The licensee has failed to pay the annual license fee; or

B. The licensee has failed to file any reports or furnish any other information that may be required by the provisions relating to the specific license; or

C. The licensee has violated any of the terms of the provisions pertaining to his license or any regulation or order lawfully made relating thereto; or

D. Any fact or condition exists which, if it had existed or had been known to exist at the time of the application for such license, would have warranted the refusal of the issuance of such license.

13.11 Return of Fees
Upon refusal of any license, the fee therefore paid in advance shall be returned to the applicant. In the event that any license is revoked, all moneys paid therefore shall be and remain the moneys of the town, and no refund shall be made to any licensee.

13.12 General Fees

13.12-1 License Fees
All fees pertaining to licensing of businesses within the Town shall be set by resolution of the board of trustees and available for inspection from the Town Clerk.

13.12-2 Water Fees
When water is once turned on to any premises, there shall be no charge for turning the water off. Should the occupant of the premises turn on the water or cause it to be turned on after it has been shut off at the curb, it will be turned off at the main and there will be a charge for turning it on.

13.12-3 Transfer of Ownership Fee
The Town shall collect a transfer fee of $20.00 from both the selling owner and the buying owner as a transfer fee.

13.13 Medical Marijuana Code

13.13-1 Intent
A. Intent. The Town Board of Trustees intends to regulate the use, acquisition, production and distribution of medical marijuana in a manner that is consistent with Article XVIII, Section 14 of the Colorado Constitution (the "Medical Marijuana Amendment.")

1. The Medical Marijuana Amendment to the Colorado Constitution does not provide a legal manner for patients to obtain medical marijuana unless the patient grows the marijuana or the marijuana is grown by the patient's primary caregiver.
2. Use, sale, production, possession and transportation of medical marijuana remains illegal under federal law, and marijuana remains classified as a "controlled substance" by both Colorado and federal law.
3. The regulations for medical marijuana uses at the state level do not provide sufficient regulation or remedies for local government, making it appropriate for local regulation of the impacts of medical marijuana uses.
4. Nothing in this chapter is intended to promote or condone the production, distribution, or possession of marijuana in violation of any applicable federal or state law, or to be more restrictive than the Medical Marijuana Amendment.

B. Purpose. The purpose of this chapter is to implement the Medical Marijuana Amendment and to protect the public health, safety and welfare of the residents and patients of the Town by prescribing the manner in which medical marijuana businesses can be conducted in the Town. Further, the purpose of this chapter is to:

1. Provide for the safe sale and distribution of marijuana to patients who qualify to obtain, possess and use marijuana for medical purposes under the Medical Marijuana Amendment.
2. Protect public health and safety through reasonable limitations on business operations as they relate to noise, air and water quality, food safety, neighborhood and patient safety, security for the business and its personnel and other health and safety concerns.
3. Promote lively street life and high quality neighborhoods by limiting the concentration of any one type of business in specific areas.
4. Impose fees to cover the cost to the Town of licensing medical marijuana businesses in an amount sufficient for the Town to recover its costs of the licensing program.
5. Adopt a mechanism for monitoring compliance with the provisions of this chapter.
6. Create regulations that address the particular needs of the patients and residents of the Town and coordinate with laws that may be enacted by the state regarding the issue.
7. Facilitate the implementation of the Medical Marijuana Amendment without going beyond the authority granted by it.

C. Relationship to State Law. Any provisions in this Section that are different from the State Law are consistent with the Town’s responsibility to protect the public health, safety and welfare of its citizens. The Town intends that both State Law and this chapter apply within the Town of Berthoud. This Section is to be interpreted consistently with State Law, but where such an interpretation is not possible, State Law shall govern.

D. Waiver. Adoption of this Section is not intended to waive or otherwise impair any portion of any local option to prohibit Medical Marijuana businesses in the future.
E. Severability. If any provision of this Section or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

13.13-2 Definitions.

The definitions as set forth in the Colorado Medical Marijuana Code, at Colorado Revised Statute 12-43.3-104, are hereby incorporated by reference.

Business manager means the individual designated by the owner of the medical marijuana business as the person responsible for all operation of the business in the absence of the owner from the business premises.

Financier means any person who lends money to any person locally licensed under this chapter. Financier shall not include a bank, savings and loan association, credit union or industrial bank supervised and regulated by an agency of the state or federal government.

Medical Marijuana Business means those operations requiring a state license pursuant to the Colorado Medical Marijuana Code, and referred to therein as Medical Marijuana Centers, Medical Marijuana-Infused Products Manufacturers, and Optional Premises Cultivation Operations.

13.13-3 Licensing Authority.

A. For the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, and sale of medical marijuana in the Town of Berthoud, there is hereby created the Local Licensing Authority, which shall be a three person panel consisting of the municipal judge, as permanent chair, one Town staff member appointed by the Board of trustees, and one citizen representative appointed by the Board of trustees. Two members shall constitute a quorum, and the Authority shall be authorized to act by unanimous consent without meeting on uncontested administrative matters. The initial licensing of a Medical Marijuana Business shall always be conducted as a quasi-judicial proceeding after notice and opportunity to be heard to both the applicant and the public. Public notice shall be made in the same manner as required for liquor license applications.

B. Powers and Duties of Local Licensing Authority.

1. The Local Licensing Authority shall grant or refuse local licenses for the cultivation, manufacture, distribution, and sale of medical marijuana as provided by law; suspend, fine, restrict, or revoke such licenses upon a violation of this Section, or a rule promulgated pursuant to this Section; and impose any penalty authorized by this Section or any rule promulgated pursuant to this Section.

2. The Local Licensing Authority shall promulgate such rules and such special rulings and findings as necessary for the proper regulation and control of the cultivation, manufacture, distribution, and sale of medical marijuana and for the enforcement of this Section.

13.13-4 License Required

A. License Required. It shall be unlawful for any person to operate a medical marijuana business without obtaining a license to operate pursuant to the requirements of this chapter. This licensing requirement applies to all medical marijuana businesses regardless of whether the business was established before or after the Town adopted laws regarding medical marijuana.

1. Any medical marijuana business that commenced operation prior to August 2, 2010, and had obtained a valid sales and use tax license from the Town may continue in operation pending final action by the Local Licensing Authority on the application submitted pursuant to this chapter, provided that an application for a sales tax license for such medical marijuana business was submitted to the Town by 5 p.m. February 15, 2012.

2. Any existing medical marijuana business that does not meet the licensing requirements set forth in this chapter shall terminate its operation upon the effective date of this chapter.

B. Additional Licenses and Permits May be Required. The license requirement set forth in this chapter shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other federal, state or local law, including, by way of example, a State Medical Marijuana License, a retail sales and use tax license, a retail food establishment license or any applicable zoning or building regulations.
C. License Does Not Provide any Exception, Defense or Immunity from other Laws. The issuance of any license pursuant to this chapter does not create an exception, defense or immunity to any person in regard to any potential criminal liability the person may have for the production, distribution or possession of marijuana under State or Federal Law.

D. Separate License Required for Each Location. A separate license shall be required for each location from which a medical marijuana business is operated. Provided, however, that in the event that a medical marijuana business has more than one location, a medical marijuana business license shall not be required for the location at which:

1. No medical marijuana is produced, dispensed or possessed;
2. Neither patients nor caregivers other than the licensee go to the location for purposes related to the medical marijuana business;
3. No employees go to the location on a regular basis; and
4. Only peripheral operations of the business, including, without limitation, bookkeeping, administrative services or deliveries that do not include medical marijuana, occur at the location.

E. License Non-Transferable; Exceptions. A medical marijuana business license is not transferable or assignable, including without limitation, not transferable or assignable to a different location, to a different type of business, or to a different owner or licensee. A medical marijuana business license is valid only for the owner named thereon, the type of business disclosed on the application for the license, and the location for which the license is issued. The licensees of a medical marijuana business license are only those persons disclosed in the application or subsequently disclosed to the Town in accordance with this chapter. A transfer of a medical marijuana business shall be permitted in the following circumstance:

1. All new owner(s) and all licensees of the business have previously been approved by the Town as part of another medical marijuana business license application; and
2. The license transfer location is permitted under the land use provisions of the Town.

A. General Licensing Provisions. The general procedures and requirements for municipal sales tax licenses, as more fully set forth in the Berthoud Municipal Code Chapter 23 shall apply to medical marijuana business licenses. To the extent there is any conflict between the provisions of this Section and Chapter 23 the provisions of this Section shall control for medical marijuana sales tax licenses.

B. Defense to Criminal Prosecutions. Compliance with the requirements of this chapter shall not provide an exception, immunity or defense to criminal prosecution under any applicable law, except in the Berthoud Municipal Court for a violation of this chapter as specifically provided herein.

C. Insurance Required. Property and liability insurance in amounts determined by the licensing authority may be required for a license under this chapter.

D. Costs of Inspection and Clean-Up. In the event the Town incurs costs in the inspection or clean-up of any medical marijuana business, or any person producing, distributing or possessing marijuana, the business and responsible persons, including all persons with a financial interest in the business, shall be jointly and severally liable to reimburse the Town all actual costs incurred by the Town for such inspection or clean-up. Consent to this liability is a condition to the grant of any license hereunder.

E. Decisions on Application or Revocation Subject To Appeal. The decision of the Town Licensing Authority on an application for a medical marijuana business license, or the suspension or revocation thereof pursuant to this chapter may be appealed to the Town Board of Trustees convened as the Town Board of Appeals, acting as a quasi-judicial appellate panel. Determinations of the Licensing Authority shall be reversed only for misapplication of the laws and regulations of the Town, abuse of discretion, or manifest injustice. The determination of the Board of Appeals shall be the final decision of the Town subject only to judicial review pursuant to Colorado Rule of Civil Procedure 106(a)(4). No defense or objection may be presented for judicial review unless it is first presented to the Licensing Authority prior to its initial decision.

13.13-6 Application
A. Application Requirements. An application for a medical marijuana business license shall be made to the Town on forms provided by the Local Licensing Authority for that purpose. The applicant shall use the application to demonstrate its compliance with this chapter and any other applicable law, rule or regulation. In addition to the information required for all business licenses, the application shall include the following information:

1. Name and address of the owner or owners of the medical marijuana business in whose name the license is proposed to be issued.
   a. If the owner is a corporation, the name and address of any officer or director of the corporation and of any person holding issued and outstanding capital stock of the corporation.
   b. If the owner is a partnership, association or company, the name and address of any person holding an interest therein and the managing members. If a managing member is an entity rather than an individual, the same disclosure shall be required for each entity with an ownership interest until a managing member that is a natural person is identified.
   c. If the owner is not a natural person, the organizational documents for all entities identified in the application, identification of the natural person that is authorized to speak for the entity and contact information for that person.

2. Name and address of:
   a. Any business managers of the medical marijuana business, if the business manager is proposed to be someone other than the owner.
   b. All financiers of the medical marijuana business.
   c. All primary caregivers that will consult with patients or distribute medical marijuana at the medical marijuana business.

3. A statement of whether or not any of the named owners, members, business managers, financiers, primary caregivers or persons named on the application have been:
   a. Denied an application for a medical marijuana business license pursuant to this chapter or any similar state or local licensing law, rule or regulation, or had such a license suspended or revoked.
   b. Denied an application for a liquor license pursuant to Title 12, Article 47 or Article 46, C.R.S., or any similar state or local licensing law, or had such a license suspended or revoked.
   c. Convicted of a crime, other than a traffic offense, or completed any portion of a sentence due to a criminal conviction.
   d. Convicted of driving or operating other machinery under the influence of alcohol, drugs or medication, driving while impaired or driving with excessive alcohol content in violation of § 42-4-1301, C.R.S., or any comparable law, or a misdemeanor related to abuse of alcohol or a controlled substance.

4. Proof of ownership or legal possession of the licensed premises for a medical marijuana business for the term of the proposed license.

5. Proof of insurance as required by the licensing authority.

6. An operating plan for the proposed medical marijuana business, including the following information:
   a. A description of the products and services to be provided by the medical marijuana business.
b. A dimensioned floor plan, clearly labeled, showing:
   
i. The layout of the structure and the floor plan in which the medical marijuana business is to be located;

   ii. The principal uses of the floor area depicted on the floor plan, including but not limited to the areas where non-patients will be permitted, private consulting areas, storage areas, retail areas and areas where medical marijuana will be distributed;

   iii. Areas where any services other than the distribution of medical marijuana are proposed to occur on the licensed premises; and

   iv. The separation of the areas that will be open to persons who are not patients from those areas open to patients.

c. A neighborhood responsibility plan that demonstrates how the business will fulfill its responsibilities to the neighborhood, including neighborhood outreach, methods for future communication and dispute resolution.

d. For optional premises cultivation operations and medical marijuana-infused product manufacturers, a plan that specifies the methods to be used to prevent the growth of harmful mold and compliance with any applicable limitations on discharge into the wastewater system of the Town.

7. A security plan indicating how the applicant will comply with the requirements of this chapter and any other applicable law, rule or regulation. The security plan includes specialized details of security arrangements and will be protected from disclosure as provided under the Colorado Open Records Act, § 24-72-203(2)(a)(VIII), C.R.S. If the Town finds that such documents are subject to inspection, it will attempt to provide at least twenty-four-hour notice to the applicant prior to such disclosure.

8. A lighting plan showing the lighting outside of the medical marijuana business for security purposes and compliance with applicable Town requirements.

9. A zoning confirmation form from the Town, establishing compliance with land use requirements for such businesses.

10. Fingerprints and personal histories as set forth on the State licensing application, together with evidence of validly issued State licenses for each person required by state law to hold such a license. This requirement shall apply to all owners, business managers, financiers and caregivers employed by or under contract to provide services to the medical marijuana business, including all individuals who have an interest as described herein of any portion of the medical marijuana business, directly or as a member, partner or officer of a corporation, partnership, association or company.

11. A plan for disposal of any medical marijuana, harmful byproducts, waste or medical marijuana-infused product that is not sold to a patient or primary caregiver in a manner that protects any portion thereof from being possessed or ingested by any person or animal.

12. A plan for ventilation of the medical marijuana business that describes the ventilation systems that will be used to prevent any odor of medical marijuana off the premises of the business. For medical marijuana businesses that grow medical marijuana plants, such plan shall also include all ventilation systems used to control the environment for the plants and describe how such systems operate with the systems preventing any odor leaving the premises.

13. A description of all toxic, flammable or other materials regulated by a federal, state or local government with authority over the business that will be used or kept at the medical marijuana business, the location of such materials and how such materials will be stored.

B. Evidence of Rehabilitation May Be Submitted. In the event the criminal history of an owner, member, business manager, financier, primary caregiver or other person named on the application contains information regarding conviction of a crime or previous denial or revocation of a license, that person may include with the license application any information regarding
such conviction, denial or revocation. Such information may include, but is 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 date of the application.

C. Fee Required. Any application for a medical marijuana business permit shall be accompanied by the application fee, criminal background check fee, the annual license fee, and any other applicable fees, which fees shall be set by resolution of the Town Board annually. The Town Board is hereby authorized to determine the appropriate fees by resolution on an annual basis.

D. Inspection. An inspection of the proposed medical marijuana business by the Town’s designated agent shall be required prior to issuance of a license. Except for medical marijuana businesses already operating at the time of enactment of this Section, such inspection shall occur after the licensed premises are ready for operation, but prior to the stocking of the business with any medical marijuana, and prior to the opening of the business to any patients or the public. The inspection is to verify that the business facilities are constructed and can be operated in accordance with the application submitted and the applicable requirements of the code and any other applicable law, rule or regulation.

E. Investigation. For purposes of section 12-43.3-303(2), C.R.S., the investigation of the application by the Town is not complete until the Town Licensing Authority has (i) determined the application is complete, (ii) determined the medical marijuana business is prepared and able to operate in compliance with all applicable laws, (iii) conducted an inspection of the business, (iv) obtained all other information the Town Licensing Authority determines necessary to make a decision whether to approve or deny the license application, or approve it with conditions, and (v) the Town Licensing Authority has voted to approve the license application.

F. Approval Requirements. The Town Board Licensing Authority may issue a medical marijuana business license if the inspection, background checks and all other information available to the Town verify that the applicant has submitted a full and complete application, has made improvements to the business location consistent with the application and is prepared to operate the business with other owners and managers as set forth in the application, all in compliance with this Code and any other applicable law, rule or regulation. The Town Licensing Authority shall deny any application that does not meet the requirements of this chapter or any other applicable law, rule or regulation or that contains any false or incomplete information. The conditions of an approval of a medical marijuana business license shall include, at a minimum, operation of the business in compliance with all of the plans and information made part of the application.

13.13-7 Persons Prohibited as Licensees and Business Managers
A. It shall be unlawful for any of the following persons to have a financial interest in or manage a medical marijuana business, and no license provided by this chapter shall be issued to or held by, and no medical marijuana business shall be managed by:

1. Any person until the annual fee for the license has been paid;

2. Any person not of good moral character;

3. Any corporation, any of whose officers, directors or stockholders holding an ownership interest are not of good moral character;

4. Any partnership, association or company, any of whose officers or members holding an interest therein, or a managing member, are not of good moral character;

5. Any person employing, assisted by or financed in whole or in part by any other person who is not of good moral character;

6. Any person, unless such person's character, record and reputation are satisfactory to the Local Licensing Authority;

7. Any natural person who is under twenty-one years of age; or

8. Any person who operates or manages a medical marijuana business contrary to the provisions of this chapter, any other applicable law, rule or regulation, or conditions imposed on land use or license approvals, or contrary to the terms of the plans submitted with the license application, as such plans may be amended as provided in this chapter.

9. A licensed physician making patient recommendations;
10. A person licensed pursuant to this article who, during a period of licensure, or who, at the time of application, has failed to remedy an outstanding delinquency for taxes owed, or an outstanding delinquency for judgments owed to a government.

11. A sheriff, deputy, police officer, or prosecuting officer, or an officer or employee of the state licensing authority or a local licensing authority;

12. A person whose authority to be a primary caregiver as defined in § 25-1.5-106(2), C.R.S. has been revoked by the state health agency; or

13. A person that is a licensee for a location that is currently licensed as a retail food establishment or a wholesale food registrant.

B. In making the evaluation of the good moral character of an individual identified on an application or amendment thereof, the Local Licensing Authority shall consider the following:

1. A criminal conviction shall not, by itself, be grounds for denying an application;

2. Verification of or lack of ability to verify items disclosed by the individual;

3. When an individual has a criminal history or a history including denial, revocation or suspension of a license, the types and dates of violations; the evidence of rehabilitation, if any, submitted by the individual; whether the crimes are related to moral turpitude, substance abuse or other crimes that may directly affect the individual's ability to operate a medical marijuana business; or whether the crimes are unrelated to the individual's ability to operate such a business;

4. The evidence or lack of evidence regarding the ability of the individual to refrain from being under the influence of intoxicating or controlled substances while performing regular tasks and operating a medical marijuana business;

5. Rules adopted by the Local Licensing Authority to implement this chapter;

6. Law, rules and regulations applicable to evaluation of other types of licenses issued by governments that consider the good moral character of the applicants; and

7. Any additional information the Local Licensing Authority may request of the individual if the individual has a criminal history, an administrative or judicial finding of violation of laws regarding use of alcohol or controlled substances or items disclosed by the individual which require additional information in order for the Local Licensing Authority to make a determination regarding issuance of the license.

13.13-8 **Locations of Medical Marijuana Businesses.**

A. **Fixed Location Required.** It shall be unlawful to operate a medical marijuana business or to grow medical marijuana outside of an enclosed building. All medical marijuana business licenses shall be issued for a specific fixed location within an enclosed building. The portion of such premises upon which the floor plan shows medical marijuana may be produced, dispensed or possessed shall be considered the "licensed premises" portion of the business.

B. **Location – Permitted Use in Zoning District.** A medical marijuana business license may be issued only in the zones and pursuant to the restrictions set forth in Section 5 of Chapter 30 of the Berthoud Municipal code as amended by Ordinance 1132 on June 2, 2011.

C. **Distribution by Primary Caregiver.** All distribution of medical marijuana to a patient or primary caregiver shall be made directly to a patient or a primary caregiver upon the licensed premises or via personal delivery of the medical marijuana by the primary caregiver from the licensed premises to the patient at the patient's residence as provided in this chapter and pursuant to 5 CCR 1006-2, Regulation 11, which requires a waiver for primary caregivers to deliver medical marijuana products from a medical marijuana center.

13.13-9 **Non-Commercial Cultivation Regulations**

A. The cultivation, production, or possession of marijuana plants for medical use by a patient or primary caregiver as defined by Article XVIII, Section 14 of the Colorado Constitution, shall be allowed in residential structures subject to the following conditions:
1. Such marijuana plants are cultivated, produced, or possessed within a licensed patient's or registered caregiver's primary residence, and

2. Medical marijuana may be grown, cultivated, or possessed only within a licensed patient's or registered caregiver's primary residence. Medical marijuana may not be grown, cultivated or processed in the yard, curtilage, or other area outside the patient or primary caregiver's primary residence:
   a. Within a detached single-family residence unit, medical marijuana may be grown, cultivated, or processed only within a secure, defined, contiguous 150 square foot area.
   b. Within any residential structure other than a detached single-family residential unit, medical marijuana may be grown, cultivated, or processed only within a secure, defined, contiguous 100 square foot area; and
   c. Medical marijuana shall not be grown, cultivated, or processed within the common area of any real property that is devoted to a residential use.
   d. Primary caregivers who have registered with the state and Town may request a special exception to the above Subsections 9(a)(2)(A) and (B), which exception shall not be withheld so long as the primary caregiver can show to the satisfaction of the Town's Local Licensing Authority that additional space is necessary to adequately service the primary caregiver's patients and that the cultivation operation is otherwise compliant with state and local law.

3. The space within the primary residence where medical marijuana is grown, cultivated, or processed shall meet all applicable requirements of the Town's building codes and shall meet the requirements of all adopted water, sewer, and fire district regulations applicable; and

4. The cultivation, production, or possession of such marijuana plants must not be perceptible from the exterior of the primary residence, including by not limited to:
   a. Common visual observation, which would prohibit any form of signage;
   b. Unusual odors, smells, fragrances, or other olfactory stimulus;
   c. Light pollution, glare, or brightness that disturbs the repose of another;
   d. Undue vehicular or foot traffic, including excess parking within the residential zone; and
   e. Excessive noise from fans, reasonably likely to disturb surrounding property owners.

5. The smell or odor of marijuana growing within the primary residence shall not be capable of being detected by a person with a normal sense of smell from any adjoining lot, parcel, or tract of land not owned by the owner of the primary residence, or from any adjoining public right of way.

6. It is unlawful and a misdemeanor offense for a person to violate any provision of this Section. A person shall be guilty of a separate offense for each and every day during any portion of which any violation of the requirements of this Section is committed, continued, or permitted by such person.

B. Inspection; Inspection Warrant:

1. Subject to the requirements and limitations of this Section, any police or Code Enforcement officer of the Town shall have the right to enter upon any residential structure within the Town which is not in compliance with the provisions of the above Subsection 9(a) or state laws and regulations. However, no agent or employee of the Town shall enter upon any property to conduct such an inspection without either the permission of the landowner or occupant, or an inspection warrant issued pursuant to this Section.

2. If verbal permission to inspect the residential structure from the affected landowner or occupant is not obtained, or if the residential structure is locked and the Police Chief, Police Officer or Code Enforcement officer has been unable to obtain permission of the landowners or occupant, the Police Chief, Police Officer or Code Enforcement officer may
request that an inspection warrant be issued by the municipal court judge pursuant to rule 241 of the Colorado Municipal Court Rules of Procedure.

3. The municipal judge may impose such conditions on an inspection warrant as may be necessary in the judge’s opinion to protect the private property rights of the landowner of the property to be inspected, or to otherwise make the warrant comply with applicable law.

4. It shall be unlawful and a misdemeanor offense for any landowner or occupant to deny the Police Chief or other authorized person access to the property owned or occupied by such landowner or occupant if the Police Chief or other authorized person presents an inspection warrant issued pursuant to this Section.

C. Primary Caregiver Registration and Regulation.

1. Primary caregivers, as defined by Article XVIII, Section 14(1)(f) of the Colorado Constitution shall be required to register with the Town of Berthoud.

2. A primary caregiver with a medical marijuana license may not have their own primary caregiver.

3. Primary caregivers, although allowed by state law to care for up to five licensed patients, are subject to the cultivation restrictions of this Subsection 9.

4. A registration form, coupled with an annual fee must be filed with the Town of Berthoud. The registration form shall include:

   a. Complete contact information for the primary caregiver and the primary residence for which any growing, cultivating, or processing will be taking place.

   b. The medical marijuana patient registry identification card number for each of the caregiver’s patients.

13.13-10 Cultivation Requirements
A. Cultivation Requirements. Medical Marijuana Businesses operating within the Town of Berthoud shall be limited to cultivating and selling medical marijuana and any of its byproducts directly to medical marijuana patients through a Medical Marijuana Center located in the Town of Berthoud. It shall be unlawful for any Medical Marijuana Business within the Town of Berthoud to sell medical marijuana that it cultivates within the Town to Medical Marijuana Centers located outside of the Town of Berthoud.

13.14 Liquor Licensing Authority
The Local Licensing Authority, as defined in Subsection 13.13-3 of this Code, is hereby designated as the Local Licensing Authority authorized to grant or deny the issuance of certain liquor licenses within the Town pursuant to Title 12, Articles 46,47 and 48 of the Colorado Revised Statutes.

13.15 Vendor Licensing
13.15-1 Definitions
The following words, terms and phrases, when used in this Section13.15, shall have the meanings ascribed below:

   Block face shall mean the portion of a street between two (2) intersections, including all on-street parking within such boundaries.

   Commissary shall mean a commissary that is approved as such under the laws and regulations of the State and County that govern retail food establishments.

   Commissary-prepared shall mean prepared, cooked and assembled in a commissary, without further preparation, cooking or assembly after leaving said commissary.

   Community Events shall mean events held within Town limits which involve anticipated two or more total vendors, including both outdoor vendors and mobile food truck vendors.
Food shall mean a raw, cooked or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption.

Licensee shall mean a person who has been issued a license under the provisions of this Section.

Mobile food truck shall mean a motorized wheeled vehicle or towed wheeled vehicle designed and equipped to serve food. Mobile food truck shall include both "hot trucks," upon which food is cooked and prepared for vending, and "cold trucks," from which only commissary-prepared, ready-to-eat or packaged foods in individual servings are handled.

Mobile food truck vendor shall mean an outdoor vendor who operates from a mobile food truck.

Neighborhood mobile food vendor shall mean an outdoor vendor operating in locations on streets that are in neighborhood zone districts from a mobile food truck or pushcart licensed for use in the retail sale or service of only commissary-prepared, ready-to-eat or packaged food in individual servings. Neighborhood mobile food vendor shall not include a vendor operating from a mobile food truck or pushcart on which food is cooked.

Outdoor vendor shall mean any person, whether as owner, agent, consignee or employee, who sells or attempts to sell, or who offers to the public free of charge, any services, goods, wares or merchandise, including, but not limited to, food or beverage, from any outdoor location, except that outdoor vendor shall not include a person who:

a. Vends from private premises where the same or similar services or goods are also offered on a regular basis from an indoor location on such premises;

b. Vends from a public sidewalk pursuant to a Town encroachment permit if the person vending also vends the same or similar services or goods on a regular basis from an indoor location on premises immediately adjacent to such location;

c. Vends by or on behalf of the Town or at an outdoor event sponsored by the Town;

d. Vends from property owned by the Town, if such vending is pursuant to a concession agreement or other agreement with the Town;

e. Vends at a yard sale, lemonade stand, Girl Scout cookie sale, or similar event. f. Vends outdoor transportation services as a public utility under a certificate of public convenience and necessity issued by the Colorado Public Utilities Commission; or

g. Vends food or catering services at an individual private residence for a private event.

Outdoor vendor of miscellaneous goods and services shall mean an outdoor vendor who offers miscellaneous goods or services to the public on private property. Outdoor vendor of miscellaneous goods and services shall include, but not be limited to, Christmas tree lots, pumpkin patches and other temporary outdoor holiday sales; vehicle windshield chip repair; temporary car wash events; and temporary nonprofit fundraising sales.

Outdoor vendor of transportation services shall mean an outdoor vendor (not regulated by the Colorado Public Utilities Commission) who offers transportation services to the public. Outdoor vendor of transportation services shall include, but not be limited to, vendors of valet parking services; transportation services by pedal power such as pedi-cab or conference bicycle services; horse-drawn carriage rides; or other means of transportation service offered for hire.

Packaged shall mean bottled, canned, cartoned, securely bagged or securely wrapped, whether packaged in a food establishment or a food processing plant. Packaged shall not include a product in a wrapper, carry-out box or other nondurable container used to protect food during the service and receipt of the food by the consumer.

Private shall mean any location that is not a public right-of-way or public street, alley or sidewalk.

Pushcart shall mean a mobile vending cart, pushcart or trailer that is not motorized or attached to a vehicle for towing and that does not exceed ten (10) feet in length (excluding the length of the trailer hitch, if any), four (4) feet in width or eight (8) feet in height. A pushcart may be used to cook and prepare food for vending or to serve
commissary prepared, ready-to-eat or packaged food in individual servings.

*Pushcart vendor* shall mean an outdoor vendor operating from a pushcart.

*Ready-to-eat food* shall mean food that is edible and that is in the form in which it is reasonably expected to be consumed without further washing, cooking or additional preparation.

*Town Administrator shall mean the Town Administrator of the Town of Berthoud, the Town Planner, the Town Clerk, or any employee of the Town designated by any of the foregoing persons."

*Vend* or *vending* shall mean the sale, attempt to sell or offering to the public of any services, goods, wares or merchandise.

*Yard sale* shall mean the offering of goods for sale for no longer than a period of three (3) consecutive days, from an informal stand or display on an individual residential lot in a residential zone district by or on behalf of the owner or resident of the lot, provided that such owner or resident is not in the business of selling at retail or wholesale the goods offered at the yard sale. *Yard sale* shall include, but not be limited to, yard sales, garage sales, lemonade stands and bake sales.

### 13.15-2 License Required

It shall be unlawful for any outdoor vendor to engage in such business within the Town without first obtaining a license in compliance with the provisions of this Section. The requirements of this Section shall not apply to yard sales or Community Events.

A. The number and type of outdoor vendors to be allowed as part of a licensed event shall be determined by the Town Administrator based on the specific circumstances of the proposed event, including, but not limited to, the location of the event, the size of the lot where the event is held, the types of surrounding land uses and their proximity to the event, and any other potential impacts on public health, safety and welfare that the proposed event may have.

B. The application fee to be paid to the Town for the issuance, modification or renewal of any license pursuant to this Section shall be fifty dollars ($50) per year.

### 13.15-2.5 Community Events

A. Community Events shall have an Event Coordinator. Event Coordinator is responsible for compliance with all sections of the Code for themselves and all vendors at the Community Event.

1. License Requirements: Event Coordinator shall provide the following to the Town for the Community Event. Individual vendors shall apply through the Event Coordinator to vend at Community Event.
   a. Provide a copy of the Park Reservation Form.
   b. Provide the Town with proof of insurance for the event, listing the Town as an additional insured.
   c. Event Coordinator shall submit a completed event application within sixty (60) days before the event.
   d. Event Coordinator shall submit a Special Event Alcohol Permit Application a minimum of forty-five (45) days before the event date.
   e. Event Coordinator shall provide a list of all vendors for Community Event to the Town within ten (10) days of the event.
   f. License is only valid for the day(s) of the Community Event.
   g. Event Coordinator must contact the Town Clerk's office three (3) days before the event for final review.

B. Event Coordinator shall comply with the 13.15-7 regarding vendor operations at Community Events:

### 13.15-3 Application for License; License Modifications

A. An application for a license under this Section shall be submitted to the Town Administrator no less than Ten (10) working days prior to the first day of proposed operation.
B. A license shall be issued under this Section for each calendar year for individual vendors or for each event.

C. A request for a modification of a license to add new vehicles, operations or locations or to modify other license restrictions or conditions, as applicable, shall be submitted to the Town Administrator and shall meet all of the requirements and be reviewed in the same manner as an application for a license hereunder. The term of a license may not be modified to extend beyond the originally applicable period.

13.15-4 Contents of Application
A. The application shall contain the following information:
   1. Name, address and telephone number of the applicant and, if other than the applicant, name, address and telephone number of the person managing or supervising the applicant's business during the proposed period of operation; and, if a corporation, the state under which it is incorporated and appropriate evidence of good standing to do business in the State;
   2. Type of operation to be conducted, including the particular type of service, goods, wares or merchandise to be sold;
   3. A description of the design of any vehicle, pushcart, kiosk, table, chair, stand, box, container or other structure or display device to be used in the operation by the applicant, including the size and color, and the license plate and registration information for any vehicle to be used. Applicants are encouraged, but not required, to submit a photograph of the device to be used in the operation of the applicant when possible;
   4. The proposed period of operation;
   5. The proposed hours and days of operation;
   6. Each location on or abutting commercial private property for which the application is made;
   7. Written consent of the property owner if the location for which the application is made is on private property or abuts a privately owned business;
   8. Proof of liability insurance as required by Subsection 13.15-7(E) of this Section;
   9. A plan of each location on private property for which the application is made, showing the location of existing and proposed structures, access, equipment and parking;
   10. Documentation of a sales and use tax license in good standing issued by the Colorado Department of Revenue, the County and the Town; and
   11. For the vending of food, documentation of regulatory approval as a retail food establishment by the County and State.

B. The Town Administrator or his designee may request and require such additional information as he or she deems necessary in order to consider the application and make the required determinations as set forth in this Section. The time frame for review of any application shall be suspended during the pendency of any such request for additional information.

13.15-5 Review and Approval
A. Applications shall be considered individually and in chronological order as established by the date of receipt of a properly completed application. However, no application will be accepted for review more than sixty (60) days prior to the proposed period of operation. Within ten (10) working days of the filing of an application the Town Administrator or his designee shall review such application and shall make a determination as to whether the application contains the required information and, if so, whether the issuance of a license is consistent with the requirements of this Section and compatible with the public interest. In making such determination, the Town Administrator or his designee shall consider the following factors and may consider other factors the Town Administrator or his designee considers necessary to protect the health, safety and welfare of the public:

   1. The degree of congestion of any public right-of-way that may result from the proposed use and the design and location of any operating locations on private property, including the probable impact of the proposed use on the safe flow of vehicular and pedestrian traffic. Factors to be considered shall include but not be limited to, the width of streets and sidewalks, the volume of traffic and the availability of off-street parking;
2. The proximity, size, design and location of existing street fixtures and furniture at or near the specified locations, including, but not limited to, sign posts, lamp posts, bus stops, benches, telephone booths, planters and newspaper vending devices;

3. The probable impact of the proposed use on the maintenance, care and security of the specified location;

4. The recommendations of the Parks and Recreation Director, Administrator and Town Clerk, insofar as the specified locations may affect the operation of those service areas, based upon the factors recited herein; and

5. The level and types of outdoor vendor activity already licensed for the specific locations proposed in the application, and the impacts that the issuance of a license may have on surrounding properties.

   a. The Town Administrator or his designee shall also obtain the determination of the Community Development Director as to whether the proposed use conforms to the requirements of the Land Use Code as applied to any specified location. If the Community Development Director determines the proposed use is not in compliance with the requirements of the Land Use Code, the application shall not be approved.

   b. If the Town Administrator or his designee determines that the issuance of a requested outdoor vendor license would be consistent with the requirements of this Section, with or without additional conditions, the Town Administrator or his designee shall issue the license, subject to any such conditions. If the Town Administrator or his designee determines that the issuance of an outdoor vendor license would not be consistent with the requirements of this Section, the Town Administrator or his designee shall notify the applicant of his or her determination in writing, with an explanation of the reasons for such denial.

13.15-6 Requirements for Issuance
A. Each license shall be valid only for any location in the Town which meets all criteria of this Section and is not occupied by another vendor.

B. In addition to the licensee's name, address and telephone number, the license shall contain the following:

   1. The type of operation;

   2. The period of time for which the license was issued;

   3. The hours and days of operation;

   4. The areas within the Town where licensee intends to operate, including specified types of public rights-of-way, as applicable;

   5. A brief description of any vehicle, cart, kiosk, table, chair, stand, box, container or other structure or display device to be utilized by the licensee;

   6. Any special terms and conditions of issuance;

   7. A statement that the license is personal and is not transferable in any manner;

   8. A statement that the license is subject to the provisions of this Section.

13.15-7 Restrictions and Operation
A. No licensee may use, for the purpose of on-site storage, display or sale, any vehicle, cart, kiosk, table, chair, stand, box, container or other structure or display device not described on the face of the license.

B. No licensee may connect to public utilities.

C. No such vehicle, structure or device referred to in Subsection (A) above shall be located:

   1. In any on-street parking space that is not parallel to the adjacent street;
2. In any public park;

3. In any public parking space in a manner that does not comply with applicable parking regulations or a properly issued parking permit for the use of said parking space;

4. Upon a public sidewalk within the extended boundaries of a crosswalk;

5. Within ten (10) feet of the extension of any building entranceway, doorway or driveway;

6. Upon a public right-of-way, or public street, alley or sidewalk within a Town park or other Town facility (except as a concessionaire or pursuant to a permit issued for operation in a park or recreation area or on a trail, or for operation at another Town facility pursuant to a facility-specific permit issued by the Town); or

7. In any location in which the vehicle, structure or device may impede or interfere with or visually obstruct:
   a. The safe movement of vehicular and pedestrian traffic;
   b. Parking lot circulation; or
   c. Access to any public street, alley or sidewalk.

D. No licensee shall operate during the hours of 12:00 a.m. to 7:00 a.m.

E. Each licensee who, during the course of its licensed activities, operates within or enters upon a public right-of-way or publicly owned property shall maintain liability insurance, which shall name the Town as an additional insured party, in an amount to be determined by the Town Administrator with proof of the same to be presented at the time of submission of the application and posted at all times with the license required by this Section at the vending site. Any licensee who fails to provide proof of such insurance shall be prohibited from operating within or entering upon such property.

F. Each licensee shall pick up and dispose of any paper, cardboard, wood or plastic containers, wrappers or any litter which is deposited within twenty-five (25) feet of the designated location or within twenty-five (25) feet of the point of any sale or transaction made by the licensee if the radius of the designated location exceeds twenty-five (25) feet. The licensee shall carry a suitable container for the placement of such litter by customers or other persons.

G. Each licensee that operates in front of or abutting a private business shall only be authorized to vend at such location with the written permission of the business owner. Private businesses that authorize vendors to operate in front or abutting their business shall submit to the Town monthly schedules of vendors that it approves of operating in front of or abutting their business.

H. Each licensee shall maintain in safe condition any vehicle, structure or device as described in Subsection (A) above, so as not to create an unreasonable risk of harm to the person or property of others, and shall use flashing lights and other similar warning and safety indicators when stopped to vend services in any location in a street right-of-way.

I. No licensee shall leave unattended any vehicle, structure or device as described in Subsection (A) above, on a public right-of-way or at any licensed location, or place on public sidewalks or in public streets or alleys any structures, canopies, tables, chairs or other furniture or equipment.

J. Notwithstanding the location, days and hours of operation listed on a licensee’s license, no licensee shall operate at or abutting a community event, without the express written consent of the sponsor of the special event.

K. Notwithstanding the location, days and hours of operation listed on a licensee’s license, no licensee shall operate at or abutting a park during a time period in which the park is reserved for private use, without the express written consent of the private party that is reserving the park.

L. Each licensee shall prominently display the license issued hereunder in a location readily visible to the public on each vehicle, structure or device as described in Subsection (A) above.

M. Each licensee operating in an on-street location must serve the public only from the sidewalk and not from the street or adjacent parking spaces.
N. Each licensee shall comply with the provisions of all applicable ordinances of the Town as well as the requirements of all state and federal laws, including, but not limited to, Town noise restrictions, sign regulations, limitations on discharge of liquid waste, sales and use tax requirements and food safety and other related requirements established by State or County regulation.

O. No more than one (1) outdoor vendor of any specified type may operate at the same time on any lot, tract or parcel of land, except that this limitation shall not apply to special vending licenses and licenses for special events.

P. Each licensee shall have an affirmative and independent duty to determine the safety and suitability of any particular stopping point or location of operation, both in general and at any particular time and to operate in a manner reasonably calculated to avoid and prevent harm to others in the vicinity of the licensee's operations, including, but not limited to, potential and actual customers, pedestrians and other vendors or vehicles.

Q. The following additional requirements shall apply to particular types of outdoor vendor licensees, as specified:

1. Mobile food truck vendors shall:
   a. Vend only on lots in non-neighborhood zone districts or on streets in locations in non-neighborhood zone districts where parallel parking is allowed;
   b. Not stop to vend within two hundred (200) feet of the property boundary of any public or private school for students within the grade range of kindergarten through twelfth (12th) grade;
   c. Vend only food and nonalcoholic beverages; and
   d. Permanently affix or paint any signage on the mobile food truck, with no signs/banners in or alongside street right-of-way or across roadways.

2. Pushcart vendors shall:
   a. Vend only on lots in non-neighborhood zone districts or on streets in locations in non-neighborhood zone districts where parallel parking is allowed;
   b. Not stop to vend within two hundred (200) feet of the property boundary of any public or private school for students within the grade range of kindergarten through twelfth (12th) grade;
   c. Vend only food and nonalcoholic beverages; and
   d. Stop to vend only in locations that are no more than twelve (12) inches from a curb or edge of travel lane.

3. Neighborhood mobile food vendors shall:
   a. Vend only on streets in locations in residential zoned districts where parallel parking is allowed;
   b. Not stop to vend within two hundred (200) feet of the property boundary of any public or private school for students within the grade range of kindergarten through twelfth (12th) grade;
   c. Vend only during the hours of 9:00 a.m to 10:00 p.m.;
   d. Vend only food and nonalcoholic beverages;
   e. Stop to vend only in locations that are no more than twelve (12) inches from a curb or edge of travel lane; and
   f. Not stop to vend for more than fifteen (15) minutes in any particular cul-de-sac, or on any particular block face.

4. Outdoor vendors of miscellaneous goods and services shall operate only in nonresidential zone districts.

5. Outdoor vendors of transportation services shall:
a. Operate in accordance with all vehicular traffic laws and regulations, including, but not limited to, equipment requirements such as front and back lights and side reflectors;

b. Limit stopping and standing in street rights-of-way or alleys so as to avoid delay or obstruction of traffic;

c. Stop to vend services only in locations that are no more than twelve (12) inches from a curb or edge of travel lane; and

d. Operate so as to avoid obstruction of pedestrian traffic and not on sidewalks.

13.15-8 Renewal
Renewal of a license shall be treated as a new application under the provisions of this Section. Any violation by the licensee of the provisions of this Section shall be an additional factor to be considered in the review and approval procedure described in Subsection 13.15-5.

13.15-9 Transfer of License or Location
If the licensee requests the transfer of a license to a new licensee or to a new location, such request shall be treated as a new application.

13.15-10 Restrictions Due to Changed Conditions
Any Code Enforcement or Police Officer may suspend the vending operation of any licensee or all licensees at any designated location if he or she determines that the licensed activity in that location will no longer meet the requirements of this Section due to construction activity or other changed conditions affecting public health, safety or welfare. In such event, such Officer shall provide written notice to the affected licensee or licensees, and the authorization to operate in such location shall not be reinstated until such time, if at all, as the licensed operations may be safely resumed in the judgment of the Town Administrator. Any such suspension shall not extend the term of the affected license or licenses.

13.15-11 Revocation or Nonrenewal
The Town Administrator may temporarily suspend, or permanently revoke and shall not renew, any license issued pursuant to this Section if the Town Administrator determines that any of the following have occurred:

A. Fraud, material misrepresentation or false statement in the application for the license or any renewal application;

B. Failure to obtain a sales and use tax license as required by the Town or to remit any sales tax due the Town;

C. Failure to operate or supervise operations conducted under the license, so as to reasonably ensure that such operation is in compliance with the terms of the license, the provisions of this Section, and the Berthoud Municipal Code; or

D. Authorizing, condoning or knowingly tolerating any unlawful vending operations or any operation conducted in such a manner as to constitute a menace to the health, safety or general welfare of the public.

13.15-12 Violations and Penalties
In addition to the suspension, revocation or denial of any license issued hereunder, any person who violates the provisions of this Section may be punished by a fine in accordance with this Code.
MUNICIPAL CODE - TOWN OF BERTHOUD

CHAPTER 14
BUSINESSES AND TRADES

<table>
<thead>
<tr>
<th>14.1</th>
<th>Liquor License Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>14.1-1</td>
<td>Definitions</td>
</tr>
<tr>
<td>14.1-2</td>
<td>Classification</td>
</tr>
<tr>
<td>14.1-3</td>
<td>License Fee</td>
</tr>
<tr>
<td>14.1-4</td>
<td>Declaration of Policy and Purposes</td>
</tr>
<tr>
<td>14.1-5</td>
<td>Occupation Fee</td>
</tr>
<tr>
<td>14.1-6</td>
<td>Payment of Tax</td>
</tr>
<tr>
<td>14.1-7</td>
<td>Deficiency Not Grounds for Revocation</td>
</tr>
<tr>
<td>14.1-8</td>
<td>Tax Recovered by Suit</td>
</tr>
<tr>
<td>14.1-9</td>
<td>Unlawful Acts</td>
</tr>
<tr>
<td>14.1-10</td>
<td>Alcohol Tasting Standards</td>
</tr>
<tr>
<td>14.2</td>
<td>Auctions and Auctioneers</td>
</tr>
<tr>
<td>14.2-1</td>
<td>Auctioneer’s License Required</td>
</tr>
<tr>
<td>14.2-2</td>
<td>Auctioneer’s License Fee</td>
</tr>
<tr>
<td>14.2-3</td>
<td>License for Auction Required</td>
</tr>
<tr>
<td>14.2-4</td>
<td>Auction License Fee</td>
</tr>
<tr>
<td>14.2-5</td>
<td>Sales Excluded from License Provisions</td>
</tr>
<tr>
<td>14.3</td>
<td>Pawnbrokers</td>
</tr>
<tr>
<td>14.3-1</td>
<td>License Required</td>
</tr>
<tr>
<td>14.3-2</td>
<td>License Fee</td>
</tr>
<tr>
<td>14.3-3</td>
<td>Bond</td>
</tr>
<tr>
<td>14.4</td>
<td>Secondhand and Junk Dealers</td>
</tr>
<tr>
<td>14.4-1</td>
<td>License Required</td>
</tr>
<tr>
<td>14.4-2</td>
<td>Application and License Fee</td>
</tr>
<tr>
<td>14.4-3</td>
<td>Record of Purchases Required</td>
</tr>
<tr>
<td>14.4-4</td>
<td>Goods Retained for 72 Hours</td>
</tr>
<tr>
<td>14.4-5</td>
<td>Purchase From Certain Persons Prohibited</td>
</tr>
<tr>
<td>14.4-6</td>
<td>Purchase Restricted to Certain Hours</td>
</tr>
<tr>
<td>14.5</td>
<td>Trailer Courts</td>
</tr>
<tr>
<td>14.5-1</td>
<td>Definitions</td>
</tr>
<tr>
<td>14.5-2</td>
<td>Licenses</td>
</tr>
<tr>
<td>14.5-3</td>
<td>Applications For License</td>
</tr>
</tbody>
</table>

14.1 Liquor License Fees

14.1-1 Definitions
As used herein, the following words or phrases shall have the following meanings:

Malt Liquors Shall include beer and shall be construed to mean any beverage obtained by the alcoholic fermentation of any infusion or decoction of barley, malt, hops or any other similar products or any combination thereof in water, containing more than 3.2% of alcohol by weight.

Vinous Liquors Shall include wine and fortified wines not exceeding 21% of alcohol by volume and shall be construed to mean alcoholic beverages obtained by the fermentation of the natural sugar contents of fruits or other agricultural produce containing sugar.

Spirits Shall be construed to mean any alcoholic beverage obtained by distillation, mixed with water and other substances in solution, and includes among other things brandy, rum, whiskey, gin, and every liquid or solid, patented or not, containing alcohol and which are fit for use for beverage purposes. Any liquid or solid containing beer or wine in combination with any other liquor except as above provided shall not be construed to be malt or vinous liquors but shall be construed to be spiritual liquor.

3.2% Beer Shall be construed to mean malt liquor, as herein defined, containing not more than 3.2% of alcohol by weight.

Person Used in this Section shall include persons, partnerships, association, organizations or corporations.
Operator Means a person licensed by law to sell malt, vinous, and spirituous liquors, for beverage purposes at retail and who is engaged at any time during the calendar year in such operation within the Town of Berthoud.

14.1-2 Classification
The business of selling at retail, any malt, vinous or spirituous liquor, or 3.2% beer, for beverage purposes is hereby defined and separately classified as such occupation for the purposes of this Code as follows:

A. Hotel & Restaurant Operators: All operators who are licensed to sell beer, wine and spirituous liquors for consumption on the premises either as hotel or restaurants shall be Hotel & Restaurant Operators.

B. Hotel & Restaurant Operators with optional premises. Those Hotel & Restaurant operators who have established a “bar” type area of their business to primarily serve beer, wine, or spirituous liquors shall be classified as Hotel & Restaurant Operators with optional premises.

C. Beer & Wine Operators: All operators licensed to sell malt or vinous liquors only by the drink for consumption on the premises shall be Beer & Wine Operators.

D. Retail Liquor Store Operators: All operators licensed as retail liquor stores to sell in original containers malt, vinous or spirituous liquors for consumption off the premises shall be Retail Liquor Store Operators.

E. Liquor licensed Drugstore Operators: All operators licensed as drug stores to sell malt, vinous or spirituous liquors in original containers for consumption off the premises, shall be Liquor licensed Drugstore Operators.

F. Club License: All operators licensed to sell malt, vinous or spirituous liquors as clubs are Club Operators.

G. Retail 3.2% Beer On Premises Operators: All operators licensed to sell only 3.2% beer and who sell the same for consumption on the premises are Retail 3.2% Beer On Premises Operators.

H. Retail 3.2% Beer Off Premises Operators: All operators licensed to sell only 3.2% beer and who sell the same solely in the original package or container for consumption off the premises shall be Retail 3.2% Beer Off Premises Operators.

14.1-3 License Fee
The operators identified in Subsection 14.1-2 of this Section shall be required to pay an annual licensing fee to the town in the then current amount set by state statute. (C.R.S. 12-47-505)

14.1-4 Declaration of Policy and Purposes
The town board hereby finds, determines and declares that considering the nature of the business of selling at retail 3.2% beer, malt, vinous and spirituous liquors for beverage purposes, and the relation of such business to the municipal welfare, as well as the relation thereof to the expenditures required of the town, and all other matters proper to be considered in relation thereto, that the classification of said business as separate occupation is reasonable, proper, uniform and non-discriminatory and that the amount of fee hereby imposed is reasonable, proper, uniform and non-discriminatory.

14.1-5 Occupation Fee
There is hereby levied and assessed an annual occupation fee, in an amount to be determined by the town board, upon the business of selling 3.2% beer, malt, vinous or spirituous liquors, in the Town of Berthoud.

14.1-6 Payment of Fee
The occupation fee referenced in Subsection 14.1-5 is due and payable to the town clerk upon renewal of the annual liquor license. Upon receipt of such fee, it shall be the duty of the town clerk to execute and deliver to the operator paying the fee, a revenue receipt showing the name of the operator paying the fee, the date of payment, the annual period for which said fee is paid, and the place at which said operator conducts business. The operator shall, at all times during the year, keep the current receipt posted in a conspicuous place in his place of business.

14.1-7 Delinquency Not Ground for Revocation
No delinquency in payment of the occupation fee referenced in Subsection 14.1-5 shall be grounds for suspension or revocation of any license granted to any such operator by any licensing authority pursuant to the statutes by the general Assembly of Colorado, and in performance of any duties imposed upon the town board as a licensing authority by said statutes, the board shall exclude from consideration any delinquency in payment of the fee herein provided for.
14.1-8 Fee Recovered by Suit
The town shall have the right to recover all sums due by the terms of this code, by judgment and execution thereon in a civil action in any court of competent jurisdiction. Such remedy shall be cumulative with all other remedies provided herein for the enforcement of such payment.

14.1-9 Unlawful Acts
Failure to comply with the terms of this code by payment of fees, securing and posting a receipt therefore, and to otherwise comply with the terms of this Section, shall constitute an offense and violation of this Code. A violation for each calendar month shall constitute a separate offense. But no conviction for a violation of Subsection 14.1-5 shall be the basis for a revocation of the license of the defendant issued under the laws of the State of Colorado.

14.1-10 Alcohol Tasting Standards
Pursuant to Section 12-47-301 (10) of the Colorado Revised Statutes, the Town of Berthoud hereby establishes the following procedures and standards for conducting the tasting of alcoholic beverages:

A. Applications for tastings may only be submitted by licensed retail liquor stores on an application provided by the Town of Berthoud. The application may be rejected if the application fails to establish that the applicant is able to conduct tastings without violating the provisions of this Section or that it may create a public safety risk to the neighborhood.

B. The Town shall prepare an application form, with the application fee for the tastings to be $150.00.

C. Tastings shall be conducted only by a person who has completed a server training program that meets the standards established by the liquor enforcement division in the department of revenue and who is a retail liquor store licensee or an employee of a licensee, and only within a licensee's licensed premises.

D. The alcohol used in tastings shall be purchased through a licensed wholesaler, licensed brew pub, or winery licensed pursuant to § 12-47-403 of the Colorado Revised Statutes at a cost that is not less than the laid-in cost of such alcohol.

E. The size of an individual alcohol sample shall not exceed one (1) ounce of malt or vinous liquor or one-half (1/2) of one (1) ounce of spirituous liquor.

F. Tastings shall not exceed a total of five (5) hours in duration per day, which need not be consecutive.

G. Tastings shall be conducted only during the operating hours in which the licensee on whose premises the tastings occur is permitted to sell alcohol beverages, and in no case earlier than 1:00 P.M. or later than 7:00 P.M. Tastings may occur on no more than four (4) of the six (6) days from a Monday to the following Saturday, not to exceed one hundred four (104) days per year.

H. The licensee shall prohibit patrons from leaving the licensed premises with an unconsumed sample.

I. The licensee shall promptly remove all open and unconsumed alcohol beverage samples from the licensed premises or shall destroy the samples immediately following the completion of the tasting.

J. The licensee shall not serve a person who is under twenty-one (21) years of age or who is visibly intoxicated.

K. The licensee shall not serve more than four (4) individual samples to a patron during a tasting.

L. Alcohol samples shall be in open containers and shall be provided to a patron free of charge.

M. No manufacturer of spirituous or vinous liquors shall induce a licensee through free goods or financial or in-kind assistance to favor the manufacturer's products being sampled at a tasting. The licensee shall bear the financial and all other responsibility for a tasting.

14.2 Auctions and Auctioneers
14.2-1 Auctioneer’s License Required
It shall be unlawful for any person to sell any property, goods, wares or merchandise at public auction within the town without first having obtained an auctioneer’s license as provided herein.
14.2-2 **Auctioneer’s License Fee**
Each applicant for an auctioneer’s license shall pay to the town a license fee in an amount set by resolution of the town board.

14.2-3 **License for Auction Required**
It shall be unlawful for any person to sell or offer for sale at public auction within the town, any property, goods, wares or merchandise, either new or secondhand, without the owner having first procured a license for the holding of such auction.

14.2-4 **Auction License Fee**
Each applicant for an auction license shall pay to the town a license fee in an amount set by resolution of the town board.

14.2-5 **Sales Excluded From License Provisions**

No provision in this Section shall be construed to apply to sales made at public auction under and by virtue of any legal process or processing through or from a court of law or equity, or to sales under any mortgage or trust deed, or to any tax sales, or to sales under any provisions of this Code by any town officer, or when the proceeds thereof are to be used for religious or charitable purpose.

14.3 **Pawn Brokers**

14.3-1 **License Required**
It shall be unlawful for any person to establish or conduct any business of a pawn broker in the city without first obtaining a license therefore. The term “pawn broker” shall include any person who engages in the business of receiving property in pledge or as security for money or other thing advanced to the pawner or pledger. (C.R.S. 12-56-101 et seq.)

14.3-2 **License Fee**
The license fee for conducting the business of pawn broker in this town shall be in an amount set by resolution of the town board and shall be submitted with any application for a new license.

14.3-3 **Bond**
Every person applying for a pawn broker’s license shall give a surety bond in the sum of $2,000.00, to be approved by the board, conditioned upon the faithful carrying out of the provisions of C.R.S. 12-56-101, et seq., and the due observance of all provisions of this Code, and for the safe keeping and return of all articles held in pawn by such pawn broker.

14.4 **Secondhand and Junk Dealers**

14.4-1 **License Required**
No person shall engage in the business of keeping a secondhand store or a place for buying and selling secondhand goods, or engage in the business of a junk dealer or collector, without first obtaining a license therefore. This requirement shall not apply to dealers in automobiles or to any business primarily engaged in the sale of new merchandise where secondhand goods are obtained through trade-ins.

14.4-2 **Application and License Fee**
Any person desiring a license required by this Section shall apply to the town clerk therefore. Such application shall be in writing and shall set forth the full name of the applicant and the location at which such business is to be carried on. Each application for a license shall be accompanied by the payment of an annual fee for such license, in an amount set by resolution of the town Board of Trustees.

14.4-3 **Record of Purchases Required**
Every person licensed as a secondhand or junk dealer shall keep a record of the goods, article or thing purchased or traded, the time of the receipt of the same and the name, signature and address of the person selling or trading the same. Such book shall be open to inspection by the police department at all times.

14.4-4 **Goods Retained For 72 Hours**
No person licensed hereunder shall sell or remove from his place of business any goods or articles purchased or traded for by him until the same shall have been in his possession at least 72 hours.

14.4-5 **Purchase From Certain Persons Prohibited**
No person licensed hereunder shall purchase or trade any secondhand goods, article or thing from any person who, at the time is intoxicated, or from any person known by him to be a thief or a receiver of stolen property, or from any person whom he has a reason to suspect of being such, or from any person who is under the age of 21 without the written authorization of the
parent or guardian of such person, and where such person is under the age of 12 years such person must be accompanied by his parent or guardian in addition to such written authorization.

14.4-6 **Purchases Restricted to Certain Hours**
No person licensed hereunder shall make any purchases in connection with the licensed business between the hours of 8:00 p.m. and 6:00 a.m.

14.5 **Trailer Courts**

14.5-1 **Definitions**
As used in the following Subsections, the following words and phrases shall have the following meanings:

A. **Trailer Court Board** shall mean a board composed of the town building inspector, the town health officer, and one representative each from the departments of fire and police.

B. **License** shall mean a written license issued by the town clerk permitting a trailer court to operate under this Section.

C. **Trailer court** shall mean any plot of ground upon which two or more trailer coaches, occupied for dwelling or sleeping purposes, are located.

D. **Trailer coach** shall mean any vehicle so constructed that it can be used for dwelling or sleeping purposes, it had or has wheels attached thereto for movement on any street or highway, and it was or is subject to registration as a motor vehicle under the laws of the State of Colorado.

E. **Trailer coach space** shall mean a plot of ground within a trailer court designed for the accommodation of one trailer coach, said space to be known as a unit.

F. **Service building** shall mean a building housing toilet facilities with slop water closet or other satisfactory facilities and laundry facilities and with separate bath or shower accommodations for each sex.

14.5-2 **Licenses**
No person shall construct, maintain or operate a trailer court within the town without first obtaining a trailer court license therefore. Such license shall be issued by the town clerk if the applicant fully complies with the provisions hereof and the building inspector approves its issuance. The annual license fee shall be in an amount set by resolution of the town Board of Trustees.

14.5-3 **Applications For License**
Applications for a license shall contain the following:

A. The area and dimensions of the tract of land;

B. The number, location and size of all trailer coach spaces;

C. The location of service buildings and other proposed structures;

D. The location of water and sewer; and

E. Plans and specifications of all buildings and other improvements constructed or to be constructed within the trailer court.

14.5-4 **When License Revoked or Refused**
Whenever upon inspection of any trailer court the building inspector finds that conditions or practices exist which are in violation of any provision of this Code, the building inspector shall give notice in writing to the person to whom the license has been, or was to have been issued; and unless such conditions or practices are corrected within a reasonable period of time to be determined by the building inspector, but in no event less than 20 days, the license shall be revoked. At the end of such period, the building inspector shall re-inspect such trailer court, and if such conditions or practices have not been corrected, he shall give notice in writing to the person to whom the license is issued that the license has been revoked, or refused. Upon receipt of such notice, such person shall cease operation of such trailer court.

14.5-5 **Appeals Concerning License**
Any person whose application has been denied may request and shall be granted a hearing on the matter before the trailer court board. Any person whose license has been revoked, or who has received notice from the building inspector that his
license will be revoked unless certain conditions or practices at the trailer court are corrected, may request and shall be granted a hearing on the matter before the trailer court board; provided, that petition for such hearing shall be filed within ten days following the day on which such license was revoked.

14.5-6 Inspection of Trailer Courts

The trailer court board is hereby authorized and directed to make inspections to determine the condition of trailer courts located within the town in order that it may perform its duty of safeguarding the health of occupants of such courts and of the general public. It shall have the power to enter at reasonable times upon any property for the purpose of inspecting and investigating conditions relating to the enforcement of this Code, and it may inspect the record kept of all trailer coaches and occupants using the court.

14.5-7 Notices, Hearings and Orders

A. Whenever the trailer court board determines that there are reasonable grounds to believe that there has been a violation of any provision of this Code, it shall give notice of such alleged violation to the person responsible therefore as herein provided. Such notice shall:

1. Be put in writing;
2. Include a statement of the reasons for its issuance;
3. Allow a reasonable time for the performance of any act it requires;
4. Be served upon the owner or his agent, as the case may require, provided that such notice or order shall be deemed to have been properly served upon such owner or agent when a copy thereof has been sent by certified mail to the address stated upon the application for the permit, or when he has been served with such notice in the manner provided for service of summons in a civil action; and
5. Contain an outline of remedial action, which if taken, will effect compliance with the provisions of this Code.

B. Any person affected by any notice which has been issued in connection with the enforcement of any provision of this Section concerning trailer courts, may request and shall be granted a hearing on the matter before the trailer court board. Provided, that such person shall file with the building inspector a written petition requesting such hearing and setting forth a brief statement of the grounds therefore within 10 days after the day the notice was served. Upon receipt of such petition, the trailer court board shall set a time and place for such hearing and shall give the petitioner written notice thereof.

C. After such hearing the trailer court board shall sustain, modify, or withdraw the notice. The proceedings at such hearing shall be reduced to writing and entered as a matter of public record in the office of the building inspector. Any person aggrieved by the decision of the trailer court board may seek relief from the town board.

D. Whenever the trailer court board finds that an emergency exists which requires immediate action to protect the public health, it may without notice or hearing issue an order reciting the existence of such an emergency and requiring that action be taken as it may deem necessary to meet the emergency. Such order shall be effective immediately.

14.5-8 Trailer Court Plan

A. The court shall be located on a well drained site suitable for the purpose; shall have an entrance and exit well marked and easily controlled and supervised; shall have surfaced roads not less than 30 feet wide, well drained, plainly marked in the daytime, adequately lighted at night; and easily accessible to all trailer coaches, and walkways to the various building shall be surfaced and adequately lighted.

B. Each trailer coach space shall contain a minimum of 2,300 square feet, shall have unobstructed access to a public street, and each space shall be clearly defined. No trailer shall be within 5 feet of the boundaries of the coach space nor within 15 feet of any other coach.

To provide for temporary accommodation of “campers,” “pickup campers” and trailer coaches less than 20 feet in length, the following exception is made: Two small coaches of the above classification will be permitted to park in one coach space for not more than one week, providing all other requirements are met.

C. No trailer coach shall be allowed to remain in a trailer court unless a coach space is available to accommodate the same.

D. Playground areas shall be provided and shall be restricted to such use. A minimum of 100 square feet per coach shall be made available in one or more places for such playground areas.
E. Areas shall be provided for the parking of motor vehicles. These areas shall be provided for the parking of motor vehicles. These areas shall accommodate at least the number of vehicles as there are trailer coach spaces provided.

F. Storage lockers for the benefit of coach space occupants, if provided, shall be provided in space in addition to the coach space.

14.5-9 Service Buildings
Each trailer court shall be provided with one or more service buildings which shall:

A. Be located 15 feet or more from any trailer coach space;

B. Be of permanent construction and be adequately lighted;

C. Be of moisture resistant materials to permit frequent washing and cleaning;

D. Have adequate heating facilities to maintain a temperature of 70° F. during cold weather, and an adequate hot water supply;

E. Have all rooms well ventilated, with all openings screened;

F. Have separate toilet facilities for males and females, plainly marked by signs, and shall be separate rooms if in the same building. Each water closet shall be placed in a separate compartment at least 3 feet wide, properly separated from other water closets;

G. Be provided with water closets on the basis of one for every ten persons or less for all trailer coach space being occupied by trailer coaches using the service facilities. There shall be provided a minimum of one toilet for each sex if the trailer park is occupied only by trailer coaches using the service facilities and the space occupied by the trailer;

H. All floors in toilet, shower, lavatory and laundry buildings shall be cleaned daily;

I. All shower stalls shall be provided with an individual dressing compartment not less than 9 square feet in size;

J. Storage lockers may be provided as a part of the service building(s), not less than 6 square feet at the base and containing not less than 48 cubic feet of storage space. These lockers may be built to open inside or outside of the service building(s) so long as they conform to the town building and fire prevention codes.

14.5-10 Sewage Disposal
All plumbing and sewer lines in the trailer court shall comply with the plumbing laws and health regulations of this town.

14.5-11 Refuse Disposal
The storage, collection and disposal of refuse in the trailer court shall be so managed as to create no health hazards, rodent harborage, insect breeding areas, accident hazards, or air pollution. All garbage and rubbish shall be collected at frequently as necessary to prevent it from overflowing the available containers. Incinerators shall be fired only when attended by some person specifically authorized by the owner or operator of the trailer court.

14.5-12 Alterations and Additions
A. No additions of any kind shall be built onto, nor become a part of any trailer coach. Skirting of coaches is permissible, but such skirting shall not attach the coach permanently to the ground, and it shall be easily and quickly removable.

B. The wheels on the coach shall not be removed except temporarily when necessary for repairs.

C. Awnings are not considered additions.

D. Any action toward attaching the trailer to the ground by means of posts, piers, or foundations, shall subject the trailer to the requirements of the building code as well as this Code.

14.5-13 Registration of Occupants – Diseases
A. Every trailer court owner or operator shall maintain a register containing a record of all trailer coaches and occupants using the trailer court. Such register shall be available to any authorized person inspecting the court.
B. It shall be the duty of every owner, operator or attendant of a trailer park to report promptly to the Town Administrator or his designee, the full name, age and address of every person who is afflicted or suspected of being afflicted with any contagious or communicable disease.

14.5-14 Parking Outside of Trailer Park

No trailer coach shall be maintained upon any private or public property in the town when the same is used for a sleeping or living purpose unless the property is licensed as a trailer park.

14.6 Vendors and Peddlers

14.6-1 License Required

The following practices, and each of them, are hereby declared to be unlawful if and when conducted or engaged in within the Town of Berthoud, Colorado, without first having procured a license therefore as hereinafter provided from the town clerk of the Town of Berthoud, Colorado, to-wit:

A. The selling or offering for sale of any goods, wares, merchandise, commodities, magazines or other publications (except newspapers), or services, from or upon any street, alley, sidewalk, park, or property owned or controlled by the public or by the Town of Berthoud, except as may be authorized by the Town Board of said Town.

B. The pursuit of the business of or engagement in the usual practices of a huckster, hawk, peddler, fortune teller, phrenologist, shooting gallery, sidewalk artist, or any similar business or practices by any person within the Town of Berthoud.

C. The practice of going in and upon private residences and office buildings in the Town of Berthoud, Colorado, by solicitors, canvassers, peddlers, hawkers, itinerant merchants, and transient vendors of goods, wares, merchandise, books, pictures, periodicals, and photographs, not having been requested or invited to do so by the owner or owners, occupant or occupants, of said private residences or office buildings, for the purpose of soliciting orders for the sale of goods, wares, merchandise, books, pictures, periodicals, and photographs, or for the purpose of disposing of, peddling, or hawking the same; PROVIDED, HOWEVER, that the provisions of this Section shall not apply to the sale or soliciting of orders for the sale of milk, dairy products, poultry, eggs, so far as the sale of commodities named herein is now authorized by law.

14.6-2 Application for License

Any person, firm, or corporation desiring to engage in any of the vocations, occupations, or businesses set forth in 14.6-1 shall make an application in writing to the Town Clerk of the Town of Berthoud, Colorado, for a license, which application shall be filed with said Town Clerk not less than ten (10) days before such applicant shall be authorized to begin said vocation, occupation or business.

14.6-3 Necessary Information

Such application shall contain the name and residence of the applicant, the date, the name and address of the corporation, firm or company for which the applicant works, the nature of the product or services, the names and addresses of all persons who intend to engage in said vocation, occupation, or business, the names of three towns or cities in which said applicant, his employer and employees engaged in said business within thirty (30) days preceding the date of the application, the length of time for which the license is desired, and any other information which may be determined to be necessary by the Town Board or the Town Clerk.

14.6-4 Investigation

Upon receiving an application, as provided for herein, the Town Clerk, with the aid of the Police Department, shall conduct such investigation as is necessary to determine the truth of the facts set forth in the application and to ascertain whether the applicant, his employer and employees, are honest, reliable, and of good moral character; that if and when the Town Clerk determines from an investigation and other evidence that may be at his disposal that the applicant is honest, reliable, or of good moral character, and it will not be to the detriment of the Town of Berthoud or its inhabitants to have said vocations, occupation, or business conducted within the limits of said town, the Clerk shall issue the license on the conditions as hereinafter set forth.

14.6-5 Bond

No such licenses shall issue until there is deposited with the Town Clerk a bond payable to the Town of Berthoud for the use and benefit of all persons residing therein, in the sum of Five Hundred Dollars ($500.00) executed by a surety company which said bond shall be conditioned that all goods, wares, merchandise, books, pictures, periodicals, photographs, services, and other items for which orders are taken or solicited shall be delivered to the purchaser and shall be of the quality represented, and said bond is for the purpose of indemnifying and reimbursing any person dealing with the licensee, his employees or employer, for any damage such person, or persons, may have sustained by reason of non-delivery and/or misrepresentations as to the kind, character, and quality of the goods or services.
sold; any person so misled or aggrieved by the misrepresentations of any licensee hereunder, his employer or employees, shall have a right of action on the bond, whether for recovery of the amount of his or her payment, or payments, or damages suffered, or both.

14.6-6 Agent For Services.
Each applicant shall have a registered agent for service of process within Larimer, Weld or Boulder County, and shall provide to the Town Clerk proof of the same. In the event that an applicant does not have a registered agent for service of process within Larimer, Weld or Boulder County, no such license shall issue until there shall be filed with the Town Clerk an instrument in writing, signed by the applicant, nominating and appointing the Mayor of said Town his true and lawful agent, with full power and authority to acknowledge services of notice or process for and on behalf of said applicant, and service of Summons in any action brought upon said bond shall be deemed made when served upon the Mayor of the Town.

14.6-7 License Fee
Upon the filing of the application for license with the Town Clerk and upon the filing of a bond, and the approval by the Town Clerk, and upon the execution of a Power of Attorney to the Mayor of the Town, as provided, a license may be issued by the Town Clerk to such applicant upon the payment of a fee, which license shall be in full force and effect for the period designated in the application, but in no event for a period of more than one year from its date of issuance, and shall permit such licensee to carry on his or her vocation, occupation or business in accordance with this code and the ordinances of the Town of Berthoud.

14.6-8 Renewal of License
All such license fees shall be paid in advance, and if any such licensee desires to continue his vocation, occupation, or business after the expiration of such license, a new license shall be secured in the same manner and upon the same terms as the original license.

14.6-9 Written Orders Required
Every order or contract made by any licensee under the provisions of this Section shall be in writing and in duplicate, stating fully the terms thereof, together with the amount paid in advance and the balance remaining due, and one copy of such order or contract is taken.

14.6-10 Penalty
Any person, firm, or corporation violating any of the provisions of this code shall, upon conviction, be fined the amount of not more than three Hundred Dollars ($300.00), or imprisoned for not more than ninety (90) days, provided also that each day during which any such person, firm, or corporation engages in a vocation, occupation or business in violation of the provisions of this code shall be deemed and constitute a separate offense.

14.6-11 Cancellation of License
Any violation of any provision of this code shall be sufficient cause for cancellation of any license issued hereunder.

14.7 Trash Haulers
14.7-1 Definition of Trash
The word "trash" as used in this code shall mean and include ashes, rubbish, debris or other waste accumulations.

14.7-2 Trash Hauler's License Required
It shall be unlawful for any person to operate a vehicle used to haul or transport trash for hire within the town without first obtaining a license therefore.

14.7-3 Mandatory Recycling
Any company providing residential trash-hauling services within the town is required to include, at a minimum, every other week for recycling services for paper, cardboard, glass, plastic, aluminum and steel cans as part of their trash-hauling services, unlimited in volume for residential customers and at no additional cost to residential customers.

14.7-4 License Fee
The license fee to haul trash for hire shall be in an amount set by resolution of the town board.
14.7-5  **Revocation of License**
The town board may revoke any license issued hereunder upon the conviction of any licensee or his agent of a violation of any provisions of this code pertaining to trash and the hauling of the same.

14.8  **Milk Distributors**
14.8-1  **License Required**
It shall be unlawful for any person to sell, or offer for sale, or cause to be sold, or kept for sale or given away, any milk or cream for human food within the corporate limits of the Town of Berthoud, without first having obtained a license so to do as provided in this Code. It shall be unlawful for any person to ship or bring into the Town of Berthoud by freight, express or otherwise, any milk or cream for sale, without having obtained a license so to do as provided in this Code. Provided, however, that this Section shall not apply to hotels, restaurants or eating houses or other places of business that shall serve milk or cream to their customers obtained from regularly licensed milk distributors, nor to merchants who purchase milk or cream from regularly licensed milk distributors for the purpose of reselling the same.

14.8-2  **Application for License**
Application for a milk distributor's license shall be made to the town clerk in writing upon a form which shall be provided by the town clerk.

14.8-3  **License Fee**
The license fee shall be in an amount set by resolution of the town board.
# MUNICIPAL CODE - TOWN OF BERTHOUD

## CHAPTER 16

### GARBAGE, REFUSE AND WEEDS

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Subsection</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>16.1</td>
<td>Definition of Garbage</td>
<td></td>
<td>The following definitions shall be applicable to this chapter unless otherwise provided:</td>
</tr>
<tr>
<td></td>
<td>Garbage</td>
<td></td>
<td>All animal or vegetable matter subject to decay.</td>
</tr>
<tr>
<td></td>
<td>Person</td>
<td></td>
<td>Any natural person, or any partnership, corporation or other association acting as a unit as well as individuals.</td>
</tr>
<tr>
<td></td>
<td>Person In Charge Of Real Property</td>
<td></td>
<td>Any person being entitled to the possession or control of any real estate, leasehold, residence, building or premises within the Town, or any part thereof, including the agent or agents of such person or if the property is vacant the owner or owners of the real property.</td>
</tr>
<tr>
<td></td>
<td>Trash</td>
<td></td>
<td>All items of personal property located in a residentially zoned area, unless:</td>
</tr>
<tr>
<td></td>
<td>a. The personal property is presently capable of being used in its customary manner and its use is characteristically associated with the use of the premises as a residence; or,</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>b. The personal property is stored on the premises within the legally constructed structure or fenced area which conceals the property from being seen by passing pedestrians or by persons standing on neighboring lots; or,</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>c. The personal property consists of building materials stored on the premises while construction is actively and legally being pursued on the premises.</td>
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</tr>
<tr>
<td></td>
<td>d. Items of personal property stored for more than twelve (12) months without being used at least seasonally unless excepted under Section a. above shall be presumed to be trash.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Weeds</td>
<td></td>
<td>Weeds shall be construed in their customary and accepted sense and shall include plants, brush, or grass in excess of twelve inches (12&quot;) in height. This shall not include plants being grown in the customary manner but shall include plants which are customarily eliminated by herbicides such as dandelions, Canadian thistle and bind weed.</td>
</tr>
<tr>
<td>16.2</td>
<td>Receptacles Required</td>
<td></td>
<td>It shall be the duty of all persons in charge of real property, and all other persons producing or having garbage, to provide and keep watertight garbage containers of galvanized metal or other nonabsorbent material in which all garbage shall be kept. All garbage shall be placed and kept in such containers until it is hauled away not less often than every seven (7) days, unless disposed of in a garbage disposal unit properly connected to water and sewer lines.</td>
</tr>
<tr>
<td>16.3</td>
<td>Building Materials Removed From Construction Sites</td>
<td></td>
<td>All discarded or unused construction materials, to include, but not be limited to, plaster, concrete, bricks, cinder blocks, stones, wood, roofing material, wire, sacks or material of any kind resulting from wrecking shall be promptly removed at least every seven (7) days. During the term which the building permit is in effect, materials shall be stored in such a manner as to be safe, neat and not be scattered about the property.</td>
</tr>
<tr>
<td>16.4</td>
<td>Burning of Wastes Unlawfully</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16.5</td>
<td>Accumulation of Garbage or Trash Prohibited</td>
<td>16.5-1</td>
<td>Mandatory Recycling</td>
</tr>
<tr>
<td>16.6</td>
<td>Abatement of Unlawful Accumulation</td>
<td></td>
<td>Documentation as to Participation</td>
</tr>
<tr>
<td>16.7</td>
<td>Depositing Waste Matter on Private Property</td>
<td></td>
<td>Penalty</td>
</tr>
<tr>
<td>16.8</td>
<td>Cutting and Removal of Weeds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16.9</td>
<td>Town Removal and Assess Costs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16.10</td>
<td>Penalties</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16.11</td>
<td>Recycling</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

86
16.4 Burning of Wastes Unlawful
It shall be unlawful for any person to burn or cause to be burned any garbage or trash within the corporate limits of the town.

16.5 Accumulation of Garbage or Trash Prohibited
It shall be unlawful for any person in charge of real property to cause or permit garbage or trash to be left or accumulated in the Town unless it is contained in approved composting containers.

16.6 Abatement of Unlawful Accumulation
The Town Administrator or his designee is hereby authorized and empowered to examine or cause to be examined every premises suspected to contain an unlawful accumulation of such garbage, trash or weeds and if the same be found, to serve to the person responsible for the same or the person in charge of the real property upon which found, a written notice stating that an unlawful accumulation has been found upon the premises and directing the person to whom the notice is addressed to eliminate the violation within a reasonable time specified in such notice. The time so provided shall be commensurate with the work required to be done to correct the unlawful condition and the danger that which this accumulation presents. In any event, the time period shall not exceed fourteen (14) days after service.

16.7 Depositing Waste Materials on Private Property
It shall be unlawful for any person to discard or abandon garbage or trash upon the premises not owned or occupied by such person, without the consent of the owner thereof or the person occupying the same and it shall be presumed that permission was not granted where the depositor does not own or reside on the premises.

16.8 Cutting and Removal of Weeds
It shall be unlawful for the person in charge of real property to allow or permit weeds to grow or to remain grown upon said property. All plants shall be cut and removed before becoming weeds.

16.9 Town Remove and Assess Cost
If any person shall fail to comply with the preceding Sections of this code, in addition to the penalty provided therefore, a written notice may be served personally or by certified mail, return receipt requested, upon the owner of such property as currently shown in the records of the town or the county assessor's office, requiring the garbage, trash or weeds to be removed within fourteen (14) days after receipt of such notice. If not removed within the stated time, the town may remove the same and assess the whole cost thereof, including 15% for inspection and other incidental costs in connection therewith, upon the land and such assessment shall be a lien until paid. If any such assessment is not paid within thirty (30) days after it is made, the same shall be certified by the town clerk to the county treasurer and placed upon the tax list for the current year, and thereby collected in the same manner as other taxes are collected, with such additional costs as may be provided by statute.

16.10 Penalties
It shall be unlawful for any person to violate any of the provisions of this Section. In addition to abatement procedures provided herein, the person may be charged with a violation of this chapter and may be found guilty of a separate offense for each and every day, or portion thereof during which any violation continues. The person shall be punished by a fine of not more than three hundred dollars ($300). Abatement procedure and penalties shall be cumulative and are not mutually exclusive.

16.11 Recycling
16.11-1 Mandatory Recycling
Any company providing residential trash-hauling services within the Town of Berthoud is required to include, at a minimum, bi-weekly recycling services for paper, cardboard, glass, plastic, aluminum and steel cans as part of their trash-hauling services, unlimited in volume for residential customers, and at no additional cost to residential customers.

16.11-2 Documentation as to Participation
On or before December 31, 2007, and each year thereafter, each trash-hauling company providing services to the Town of Berthoud's residences shall provide documentation as to the following:

A. the nature of the recyclables they will accept, if greater than those mandated in paragraph 1.

B. whether the recyclables need to be sorted, and if so, how and whether containers will be provided; and,

C. the rate for the bundled trash pickup and recycling for residential homes, duplexes and apartments.

D. This information shall be provided by each trash-hauler annually with their renewal applications.
16.11-3 Penalty
The penalty for hauling trash for residential customers in the Town of Berthoud if the trash-hauling company fails to participate in including recycling services, as provided herein, shall be a fine of up to $300 per day per contracted residence for which these recycling services are not included in that resident's trash hauling services. Each day and each residence constitutes a separate offense.
# MUNICIPAL CODE - TOWN OF BERTHOUD

## CHAPTER 17

**GENERAL OFFENCES AGAINST MUNICIPAL HEALTH, SAFETY AND WELFARE**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>17.1</td>
<td>Penalties and Definitions</td>
</tr>
<tr>
<td>17.1.1</td>
<td>Penalties</td>
</tr>
<tr>
<td>17.1.2</td>
<td>Grammatical Interpretation</td>
</tr>
<tr>
<td>17.2</td>
<td>Obstructing Justice</td>
</tr>
<tr>
<td>17.2.1</td>
<td>Accessory to Crime</td>
</tr>
<tr>
<td>17.2.2</td>
<td>Aiding and Abetting</td>
</tr>
<tr>
<td>17.2.3</td>
<td>Confiscation</td>
</tr>
<tr>
<td>17.2.4</td>
<td>Impersonating an Officer</td>
</tr>
<tr>
<td>17.2.5</td>
<td>Duty of Citizens to Render Aid</td>
</tr>
<tr>
<td>17.2.6</td>
<td>Obstruction of Government Operations</td>
</tr>
<tr>
<td>17.2.7</td>
<td>Resisting or Obstructing an Officer</td>
</tr>
<tr>
<td>17.2.8</td>
<td>Failure to Obey a Lawful Order of a Police Officer</td>
</tr>
<tr>
<td>17.2.9</td>
<td>Failure to Obey a Lawful Order of a Fireman</td>
</tr>
<tr>
<td>17.2.10</td>
<td>Interference with a Police Officer or Fireman on Duty</td>
</tr>
<tr>
<td>17.2.11</td>
<td>Harassment of Police Officers</td>
</tr>
<tr>
<td>17.2.12</td>
<td>False Reporting to Authorities</td>
</tr>
<tr>
<td>17.3</td>
<td>Offenses Against the Person</td>
</tr>
<tr>
<td>17.3.1</td>
<td>Assault</td>
</tr>
<tr>
<td>17.3.2</td>
<td>Menacing</td>
</tr>
<tr>
<td>17.3.3</td>
<td>Harassment</td>
</tr>
<tr>
<td>17.3.4</td>
<td>Tampering</td>
</tr>
<tr>
<td>17.3.5</td>
<td>Reckless Endangerment</td>
</tr>
<tr>
<td>17.3.6</td>
<td>Fraud by Check</td>
</tr>
<tr>
<td>17.4</td>
<td>Offenses Against Public Decency</td>
</tr>
<tr>
<td>17.4.1</td>
<td>Indecent Exposure</td>
</tr>
<tr>
<td>17.4.2</td>
<td>Public Indecency</td>
</tr>
<tr>
<td>17.5</td>
<td>Offenses Against Public Place</td>
</tr>
<tr>
<td>17.5.1</td>
<td>Disturbing the Peace</td>
</tr>
<tr>
<td>17.5.2</td>
<td>Exceptions</td>
</tr>
<tr>
<td>17.5.3</td>
<td>Unlawful Assemblies</td>
</tr>
<tr>
<td>17.5.4</td>
<td>Disturbing Religious Worship or Public Congregation</td>
</tr>
<tr>
<td>17.5.5</td>
<td>Unlawful Presence on School Grounds</td>
</tr>
<tr>
<td>17.5.6</td>
<td>Loitering</td>
</tr>
<tr>
<td>17.5.7</td>
<td>Storage of Flammable Liquid</td>
</tr>
<tr>
<td>17.5.8</td>
<td>Explosives</td>
</tr>
<tr>
<td>17.5.9</td>
<td>Arson</td>
</tr>
<tr>
<td>17.6</td>
<td>Disorderly Conduct</td>
</tr>
<tr>
<td>17.7</td>
<td>Theft</td>
</tr>
<tr>
<td>17.7.1</td>
<td>Definition</td>
</tr>
<tr>
<td>17.7.2</td>
<td>Concealments</td>
</tr>
<tr>
<td>17.7.3</td>
<td>Evidence of Value</td>
</tr>
<tr>
<td>17.7.4</td>
<td>Theft by Receiving</td>
</tr>
<tr>
<td>17.8</td>
<td>Intoxication-Liquor Consumption and Sale</td>
</tr>
<tr>
<td>17.8.1</td>
<td>Soliciting Sale of Drinks</td>
</tr>
<tr>
<td>17.8.2</td>
<td>Open Display of Fermented Beverages</td>
</tr>
<tr>
<td>17.8.3</td>
<td>Underage Possession and Consumption of Alcohol</td>
</tr>
<tr>
<td>17.8.4</td>
<td>Special Events</td>
</tr>
<tr>
<td>17.8.5</td>
<td>Application</td>
</tr>
<tr>
<td>17.8.6</td>
<td>Special Events Permit</td>
</tr>
<tr>
<td>17.8.7</td>
<td>Enforcement</td>
</tr>
<tr>
<td>17.8.8</td>
<td>3.2% Beer Permit</td>
</tr>
<tr>
<td>17.9</td>
<td>Toxic Vapors</td>
</tr>
<tr>
<td>17.9.1</td>
<td>Definition</td>
</tr>
<tr>
<td>17.9.2</td>
<td>Abuse of Toxic Vapors Prohibited</td>
</tr>
<tr>
<td>17.9.3</td>
<td>Sales – From Commercial Establishments Only</td>
</tr>
<tr>
<td>17.9.4</td>
<td>Sales – Knowledge of Unlawful Use</td>
</tr>
<tr>
<td>17.10</td>
<td>Drug Paraphernalia and Drugs</td>
</tr>
<tr>
<td>17.10.1</td>
<td>Purpose</td>
</tr>
<tr>
<td>17.10.2</td>
<td>Definition</td>
</tr>
<tr>
<td>17.10.3</td>
<td>Sale Unlawful</td>
</tr>
<tr>
<td>17.10.4</td>
<td>Prosecution – Evidence</td>
</tr>
<tr>
<td>17.10.5</td>
<td>Possession of Drug Paraphernalia</td>
</tr>
<tr>
<td>17.10.6</td>
<td>Possession of Cannabis</td>
</tr>
<tr>
<td>17.10.7</td>
<td>Consumption of Cannabis</td>
</tr>
<tr>
<td>17.10.8</td>
<td>Sale and Transfer of Cannabis</td>
</tr>
<tr>
<td>17.10.9</td>
<td>Cultivation of Cannabis</td>
</tr>
<tr>
<td>17.10.10</td>
<td>Penalty</td>
</tr>
<tr>
<td>17.11</td>
<td>Offenses Against Property</td>
</tr>
<tr>
<td>17.12</td>
<td>Graffiti</td>
</tr>
<tr>
<td>17.12.1</td>
<td>Definition</td>
</tr>
<tr>
<td>17.12.2</td>
<td>Graffiti Prohibited</td>
</tr>
<tr>
<td>17.12.3</td>
<td>Abatement of Defaced Property</td>
</tr>
<tr>
<td>17.13</td>
<td>Distribution of Handbills</td>
</tr>
<tr>
<td>17.13.1</td>
<td>Purpose</td>
</tr>
<tr>
<td>17.13.2</td>
<td>Definition</td>
</tr>
<tr>
<td>17.13.3</td>
<td>Handbills, Broadcast in Public Places Prohibited</td>
</tr>
<tr>
<td>17.13.4</td>
<td>Placing in or on Vehicles is Prohibited</td>
</tr>
<tr>
<td>17.13.5</td>
<td>Distributing on Uninhabited/Vacant Private Premises Prohibited</td>
</tr>
<tr>
<td>17.13.6</td>
<td>Distribution on Inhabited Premises Prohibited</td>
</tr>
<tr>
<td>17.13.7</td>
<td>Distribution where Property Posted Prohibited</td>
</tr>
<tr>
<td>17.13.8</td>
<td>Exemptions</td>
</tr>
<tr>
<td>17.14</td>
<td>Trespassing</td>
</tr>
<tr>
<td>17.14.1</td>
<td>Trespassing on Private of Public Property</td>
</tr>
<tr>
<td>17.14.2</td>
<td>Unlawful conduct on Public Property</td>
</tr>
<tr>
<td>17.14.3</td>
<td>Trespassing or Interference in Public Buildings</td>
</tr>
<tr>
<td>17.14.4</td>
<td>Obstructing Highway or Other Passageway</td>
</tr>
<tr>
<td>17.14.5</td>
<td>Littering on Public or Private Property</td>
</tr>
<tr>
<td>17.14.6</td>
<td>Abandonment of a Motor Vehicle</td>
</tr>
<tr>
<td>17.15</td>
<td>Consumer Protection</td>
</tr>
<tr>
<td>17.15.1</td>
<td>Offenses by or Against Minors</td>
</tr>
<tr>
<td>17.16</td>
<td>Furnishing and Sale of Tobacco Products</td>
</tr>
<tr>
<td>17.16.1</td>
<td>Curfew</td>
</tr>
<tr>
<td>17.17</td>
<td>Possession or Use of Weapons</td>
</tr>
<tr>
<td>17.17.1</td>
<td>Carrying or Displaying a Weapon</td>
</tr>
<tr>
<td>17.17.2</td>
<td>Discharging – Exceptions</td>
</tr>
<tr>
<td>17.18</td>
<td>Fireworks</td>
</tr>
<tr>
<td>17.18.1</td>
<td>Fireworks Prohibited</td>
</tr>
<tr>
<td>17.18.2</td>
<td>Permit for Display</td>
</tr>
<tr>
<td>17.18.3</td>
<td>Insurance</td>
</tr>
<tr>
<td>17.18.4</td>
<td>Bond</td>
</tr>
<tr>
<td>17.18.5</td>
<td>Interpretation</td>
</tr>
<tr>
<td>17.18.6</td>
<td>State License Requirements</td>
</tr>
<tr>
<td>17.18.7</td>
<td>Seizure of Fireworks</td>
</tr>
<tr>
<td>17.19</td>
<td>Off Highway Vehicles</td>
</tr>
<tr>
<td>17.20</td>
<td>Parking and Use of Trailers and Coaches</td>
</tr>
<tr>
<td>17.20.1</td>
<td>Definition</td>
</tr>
<tr>
<td>17.20.2</td>
<td>Parking of Vehicles and Trailers on Public Property</td>
</tr>
<tr>
<td>17.20.3</td>
<td>Parking of Coaches and Vehicles on Public Streets</td>
</tr>
</tbody>
</table>
17.1 Penalties and Definitions

17.1-1 Penalties
It shall be unlawful to commit an act prohibited by this Chapter or to fail to perform an act required by this Chapter. Every violation and each day or portion thereof of a continuing violation shall constitute a separate violation. Each violation shall be punishable by a fine of up to three hundred dollars ($300) or ninety (90) days in prison or by both such fine and imprisonment.

17.1-2 Grammatical Interpretation
The following grammatical rules shall apply to this Municipal Code unless it is apparent from the context that a different construction is intended:

A. Any gender includes the other gender;

B. The singular number includes the plural and the plural includes the singular;

C. Words used in the present tense include the past and future tenses and vice versa, unless manifestly inapplicable.

17.2 Obstructing Justice

17.2-1 Accessory to Crime
A. A person is an accessory to crime if, with intent to hinder, delay or prevent the discovery, detection, apprehension, prosecution, conviction or punishment of another for the commission of a crime, he renders assistance to such person.

B. Render assistance means to:

1. Harbor or conceal the other;

2. Warn such person of impending discovery or apprehension; except that this does not apply to a warning given in an effort to bring such person into compliance with the law;

3. Provide such person with money, transportation, weapon, disguise other thing to be used in avoiding discovery or apprehension;

4. By force, intimidation or deception, obstruct anyone in the performance of any act which might aid in the discovery, detection, apprehension, prosecution or punishment of such person; or

5. Conceal, destroy or alter any physical evidence that might aid in the discovery, detection, apprehension, prosecution, conviction or punishment of such person.

17.2-2 Aiding and Abetting
Every person who commits, attempts to commit, conspires to commit, aids or abets in the commission of any act declared herein to be in violation of the ordinances of the Town or this Municipal Code, whether individually or in connection with one (1) or more persons, as a principal, agent or accessory, shall be guilty of such offense, and every person who fraudulently, forcibly or willfully induces, causes, coerces, requires, permits or directs another to violate any ordinance of the Town or this Municipal Code is likewise guilty of such offense.

17.2-3 Confiscation
In all cases of arrest under the terms of this chapter, the arresting officers are hereby authorized to confiscate the property involved and to deliver the same to the police department property storage room in care of the property/evidence officer, to be held by him until final determination of the prosecution of said offense. Upon a finding of guilt, the municipal judge may order forfeiture of such property and deliver the same to the property/evidence officer for destruction or for the account of the Town.

17.2-4 Impersonating a Police Officer
Any person who, without due authority, dresses in the uniform of, or in a uniform which is an imitation or colorable imitation of the uniform adopted and worn by a town police officer, who exercises or attempts to exercise the authority of a police officer, or who claims, pretends or holds himself out to be such a police officer is guilty of impersonating a police officer.

17.2-5 Duty of Citizens to Render Aid
It is the duty of all persons when called upon by the chief of police, any fireman or any police officer to promptly aid and assist such officer or member in the discharge of his duties.

17.2-6 Obstructing Government Operations
A. It is unlawful to obstruct government operations including public meetings, parades, displays, or the maintenance, repair or installation of public facilities.

1. A person commits obstructing government operations if he intentionally obstructs impairs or hinders the performance of a governmental function by a public official, employee or servant, by acting, speaking or by his conduct that he prevents or hinders governmental operations which shall include, but not be limited to, using or threatening to use violence, force or physical interference or obstacle.

17.2-7 Resisting or Obstructing an Officer
A. It is unlawful for any person to resist arrest by a police officer of the Town. A person commits resisting arrest if he knowingly prevents or attempts to prevent a police officer acting under color of his official authority from affecting an arrest of the actor or another by using or threatening to use physical force or violence against the police officer or another, or using any other means which creates a substantial risk of causing physical injury to the police officer or another.

1. It is no defense to a prosecution under this Section that the police 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 police 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 arrest should be made by him.

2. The term "police officer" as used in this chapter means a police officer in uniform, or, if out of uniform, one who has identified himself by exhibiting his credentials as such police officer to the person whose arrest is attempted.

B. It is unlawful for a person to obstruct a police officer. A person commits obstructing a police officer when, by using or threatening to use violence, force, or physical interference, or obstacle, he knowingly obstructs, impairs, or hinders the enforcement of the penal law or the preservation of the peace by a police officer acting under color of his official authority.

17.2-8 Failure to Obey a Lawful Order of a Police Officer
It is unlawful for any person to fail to obey the lawful order of a police officer. A lawful order is that order issued by a police officer in the exercise of his assigned duties relating to the enforcement of the penal law or the preservation of the peace or the protection of the safety of a person. A police officer may issue a lawful order while performing his assigned duties or preserving the peace or protecting the safety of a person when in uniform, or, if not in uniform, after having identified himself as a police officer.

17.2-9 Failure to Obey a Lawful Order of a Fire Department Member
It is unlawful for any person to fail to obey the lawful order of a fire department member. A "lawful order" is that order issued by a fire department member in the exercise of his assigned duties at the scene of a fire or other emergency or the preservation of the peace or the protection of the safety of a person. A fire department member may issue a lawful order only after having identified himself as a fire department member and after exhibiting his identification.

17.2-10 Interference with Police Officer or Firemen on Duty
It shall be unlawful for any person to hinder, obstruct, oppose or interfere with any member of the police department or fire department while he is in the performance of his duty.

17.2-11 Harassment of Police Canines
It is unlawful for any person intentionally to harass, alarm or annoy or attempt to harass, alarm or annoy a canine by taunting, teasing, frightening, agitating, hindering or striking such canine while such animal is serving a law enforcement or police purpose of the Town.

17.2-12 False Reporting to Authorities
A. A person commits false reporting to authorities, if:
1. He knowingly causes a false alarm of fire or other emergency to be transmitted to or within an official or volunteer fire department, ambulance service, or any other government agency which deals with emergencies involving danger to life or property; or

2. He makes a report or knowingly causes the transmission of a report to law enforcement authorities of a crime or other incident within their official concern when he knows that it did not occur; or

3. He makes a report or knowingly causes the transmission of a report to law enforcement authorities pretending to furnish information relating to an offense or other incident within their official concern when he knows that he has no such information or knows that the information is false; or

4. He knowingly provides false identifying information to law enforcement authorities.

B. For purposes of this Section, “identifying information” means a person’s name, address, birth date, social security number, driver’s license number or Colorado identification number.

17.3 Offenses Against the Person

17.3-1 Assault

A person commits the crime of assault if he knowingly or recklessly causes bodily injury to another person, or with criminal negligence he causes bodily injury to another person.

17.3-2 Menacing

A person commits the crime of menacing if, by any threat or physical action, he knowingly places or attempts to place another person in fear of imminent bodily injury.

17.3-3 Harassment

A. A person commits harassment if, with intent to harass, annoy, or alarm another person, he or she:

1. Strikes, shoves, kicks, or otherwise touches a person or subjects him/her to physical contact; or

2. In a public place directs obscene language or makes an obscene gesture to or at another person; or

3. Follows a person in or about a public place; or

4. Initiates communication with a person, anonymously or otherwise by telephone, computer, computer network, or computer system in a manner intended to harass or threaten bodily injury or property damage, or makes any comment, request, suggestion, or proposal by telephone, computer, computer network or computer system that is obscene; or

5. Makes a telephone call or causes a telephone to ring repeatedly, whether or not a conversation ensues, with no purpose of legitimate conversation; or

6. Makes repeated communications at inconvenient hours that invade the privacy of another and interferes in the use and enjoyment of another’s home or private residence or other private property; or

7. Repeatedly insults, taunts, challenges, or makes communications in offensively coarse language to another in a manner likely to provoke a violent or disorderly response.

B. As used in this Section, unless the context otherwise requires, “obscene” means a patently offensive description of ultimate sexual acts or solicitation to commit ultimate sexual acts, whether or not said ultimate sexual acts are normal or perverted, actual or simulated, including masturbation, cunnilingus, fellatio, anilingus, or excretory functions.

17.3-4 Tampering

A person commits the crime of tampering if he/she tampers with the property of another with intent to cause injury, inconvenience, or annoyance to that person or another, or if he/she knowingly makes an unauthorized connection with property or services of a utility or another person.

17.3-5 Reckless Endangerment

A person who recklessly engages in conduct which creates a substantial risk of serious bodily injury to another person commits reckless endangerment.
17.3-6 Fraud by Check

A. As used in this Section, unless the context otherwise requires:

**Check** Means a written, unconditional order to pay a certain sum in money, drawn on a bank, payable on demand, and signed by the drawer. Check, for the purposes of this Section only, also includes a negotiable order of withdrawal and a share draft.

**Drawee** Means 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.

**Drawer** Means a person, either real or fictitious, whose name appears on a check as the primary obligor, whether the actual signature is that of himself or of a person authorized to draw the check on himself.

**Insufficient Funds** Means 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 for insufficient funds.

**Issue** Person issues a check when he makes, draws, delivers or passes it or causes it to be made, drawn, delivered or passed.

**Negotiable Order of Withdrawal and Share Draft** Means negotiable or transferable instruments drawn on a negotiable order of withdrawal account or a share draft account, as the case may be, for the purpose of making payments to third persons or otherwise.

**Negotiable Order of Withdrawal Account** Means an account in a bank, savings and loan association or industrial bank, and share draft account means 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, industrial bank or 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.

B. Any person, knowing he has insufficient funds with the drawee who, with intent to defraud, issues or passes a check for a sum less than five hundred dollars ($500) for the payment of services, wages, salary, commissions, labor, rent, money, property or the thing of value, commits fraud by check, which is unlawful.

C. Any person having acquired rights with respect to a check which is not paid because the drawer has insufficient funds, shall have standing to file a complaint under this Section, whether or not he or she is the payee, holder or bearer of the check.

D. Any person who opens a checking account, negotiable order of withdrawal account or share draft account using false identification or an assumed name for the purpose of issuing fraudulent checks commits fraud by check, which is unlawful.

E. If deferred prosecution is ordered, the court as a condition of supervision may require the defendant to make restitution on all checks issued by the defendant which are unpaid as of the date of commencement of the supervision in addition to other terms and conditions appropriate for the treatment or rehabilitation of the defendant.

F. A bank, savings and loan association, industrial bank or credit union shall not be civilly or criminally liable for releasing information relating to the drawer’s account to a sheriff, deputy sheriff, under-sheriff, police officer, district attorney, assistant district attorney, deputy district attorney or authorized investigator for a district attorney investigating or prosecuting a charge under this Section.

H. This Section does not relieve the prosecution from the necessity of establishing the required culpable mental state. However, for purposes of this Section, the issuer’s knowledge of insufficient funds is presumed, except in the case of a postdated check or order, if he:

1. Has no account upon which the check or order is drawn with the bank or other drawee at the time he issues the check or order; or
2. Has insufficient funds upon deposit with the bank or other drawee to pay the check or order upon its issuance and delivery.

17.4 Offenses Against Public Decency
17.4-1 Indecent Exposure
It is unlawful for any person to expose his or her genital area, or, in the case of a woman, her breasts below the top of the nipple, or to expose his or her buttocks, in or near any public place or in any place open to public view.

17.4-2 Public Indecency
It is unlawful to commit public indecency. Any person who performs any of the following in a public place or where the conduct may reasonably be expected to be viewed by members of the public commits public indecency:

A. An act of sexual intercourse or deviate sexual intercourse;
B. A lewd exposure of the body done with intent to arouse or to satisfy the sexual desire of any person; or
C. A lewd fondling or caress of the body of another person.

17.5 Offenses Against Public Peace
17.5-1 Disturbing the Peace
A. It shall be unlawful for any person to:
   1. Disturb the public peace by knowingly performing or uttering boisterous, vulgar, profane, blasphemous, or other conduct or language which is likely to or does incite physical violence, incite imminent lawlessness or endanger the safety or property of others.
   2. While in operation of, or as a passenger in a motor vehicle, willfully creates, or operates a vehicle, which creates, any noise, which is unreasonably loud under the circumstances. Such noise will be considered unreasonably loud under the circumstances if:
      a. Such noise is clearly audible at a distance of twenty-five (25) feet;
      b. At a distance of twenty-five (25) feet, such noise is louder than that of a normal conversation between two (2) people, and;
      c. Such noise would be unreasonably loud and disturbing to the average member of the community under the circumstances;
      d. The revving or any engine or any vehicle while such vehicle is not in motion, except when done in the course of repairing, adjusting or testing it, on public or private property;
      e. Operate a radio, stereo, amplifier or other device which generates music or sound that is disturbing or unreasonably loud to a reasonable person who is occupying a location they have a right to occupy.
      f. It is unlawful for any person to use, operate or allow to be used or operated any loudspeaker, public address system, radio, tape player, disc player or other sound system amplifying equipment in or on a motor vehicle in such a manner as to be plainly audible at twenty-five (25) feet or more from the motor vehicle unless a permit has been issued by the town administrator pursuant to this Code and such person is in compliance with the provisions of such permit.
   3. Willfully create any noise originating from a residence or business, which is unreasonably loud under the circumstances. Such noise will be considered unreasonably loud under the circumstances if:
      a. Such noise is clearly audible at a distance of fifty (50) feet from the property line of that residence or business;
      b. At a distance of fifty (50) feet from the property line, if such noise is louder than that of a normal conversation between two (2) people; and
c. Such noise would be unreasonably loud and disturbing to the average member of the community under the circumstances.

4. To operate or cause to be operated a sound truck with radio or amplifier, or the operating, playing or producing a sound that is disturbing or unreasonably loud to a reasonable person outside the property, unit or location from which the noise emanates.

5. It is unlawful for any person to use, keep, have in his possession or harbor any domesticated animals which, by frequent howling, barking, meowing, squawking or otherwise, shall cause annoyance or disturbance to persons; provided, however, that the provisions of this Section shall not apply to hospitals licensed for the treatment of small animals or to premises occupied or used by the Town for sheltering animals.

   a. It shall be presumed that an animal frequently causes an annoyance or disturbance if it creates a clearly audible noise regularly during a period of fifteen (15) minutes.

6. It is unlawful for any person to cause to be emitted excessive fumes from a motor vehicle or other source causing a toxic odor. Such odor will be considered excessive and toxic if:

   a. Such odor disrupts the normal life of inhabitants of the neighboring areas or
   b. Such odor is a hazard to the community at large.

17.5-2 Exceptions
To the extent authorized by a validly issued permit, the following are not violations of Subsection 17.5-1:

A. Those events, activities or locations, which have been granted a permit by the Town of Berthoud.

B. Emergency vehicles or warning devices, any police or fire vehicle, any ambulance or any emergency horn, siren or whistle.

C. Fairground, park activities, provided they have been issued a permit and are acting within the reasonable scope of the permitted activities.

D. Those sounds traditionally associated with institutional religious expression such as church bells, external church speakers, etc.

E. Organized sports activities conducted outdoors in appropriate venues such as schools and parks.

F. Highway and utility maintenance and construction including necessary excavations in or repairs of bridges, streets or highways, or any public utility installation by or on behalf of the Town, or any public utility or any agency of the State, when the public safety, welfare and convenience necessitates the performance or the work at such time.

G. The noise from an exhaust system or engine of any vehicle which is factory equipped or constructed to prevent any disturbing or unreasonably loud noise.

17.5-3 Unlawful Assemblies
It is unlawful for any two (2) or more persons to assemble together in the Town with an intent to do an unlawful act, or, being assembled, mutually to agree or act in concert to do an unlawful act with force or violence against the person or property of another or against the peace and to the terror of others.

17.5-4 Disturbance of Religious Worship or Public Congregations
It is unlawful for any person to disquiet or disturb any public or religious congregation or assembly by making noises or by rude or indecent behavior or profane discourse within the place of worship or so near the same as to disturb the order or solemnity of the meeting.

17.5-5 Unlawful Presence on School Grounds
A. It is unlawful for any person to interfere with or disrupt the school program or to endanger school children, or to loiter in a school building or on school grounds or within one hundred feet of school grounds when persons under the age of eighteen are present in the building or on the grounds, not having any reason or relationship involving custody of, or responsibility
for, a pupil or any other specific, legitimate reason for being there, and having been asked to leave by a school administrator or his representative or by a peace officer.

B. For purposes of this Section, the word "loiter" means to be dilatory, to stand idly around, to linger, delay or wander about, or to remain, abide, or tarry in a public place.

C. It shall be an affirmative defense to this Section that the person's acts were lawful and he was exercising his rights of lawful assembly as a part of peaceful and orderly petition for the redress of grievances, either in the course of labor disputes or otherwise.

17.5-6 Loitering
A. The word loiter means to be dilatory, to stand idly around, to linger, delay or wander about or to remain, abide or tarry in a public place.

B. It is unlawful for a person to:
   1. Loiter for the purpose of begging;
   2. Loiter for the purpose of unlawful gambling with cards, dice or other gambling paraphernalia; or
   3. Loiter for the purpose of engaging or soliciting another person to engage in prostitution or deviate sexual intercourse;

C. It is an affirmative defense that the defendant’s acts were lawful and he was exercising his rights of lawful assembly as a part of a peaceful and orderly petition for the redress of grievances, either in the course of labor disputes or otherwise.

17.5-7 Storage of Flammable Liquids
It is unlawful to store or cause to be stored or parked, except for delivery, any tank vehicle carrying flammable liquids or gases upon any streets, ways or avenues of the Town or in any other part of the Town, except those areas zoned for such uses.

17.5-8 Explosives
It is unlawful for any person to store within the Town limits any amount of gunpowder, blasting powder, nitroglycerine, dynamite or other high explosive in excess of one (1) ten-pound box or in excess of five hundred (500) caps or other devices used for the detonation of such high explosives.

17.5-9 Arson
A person who knowingly or recklessly starts or maintains a fire or causes an explosion, on his own property or that of another or by so doing places a building, residence or property in danger of damage and if damaged is guilty of arson.

17.6 Disorderly Conduct
It is unlawful for any person to commit any act which constitutes disorderly conduct. Disorderly conduct is defined as follows:

   A. Fighting, brawling, or attempting by words or conduct to cause a fight or a brawl;
   B. The use of obscene gestures or language in or upon any place which is so situated that a reasonable person so acting or speaking knows, or would have reason to know, that such conduct or words will be observed or heard by members of the public;
   C. The attempt, by words or conduct, to induce or influence another person to commit a crime or violate an ordinance of the Town or this Municipal Code;
   D. To damage the property or reputation of another person with the intent thereby to induce the threatened person to do an act or refrain from doing a lawful act against his will;
   E. To urinate in or near any public place or in any place open to the public view.

17.7 Theft
17.7-1 Theft - Definition
A. It is unlawful for any person to knowingly obtain or exercise control over anything of value of another without authorization, or by threat or deception, and:

1. Intend to deprive the other person permanently of the use or benefit of the thing of value; or

2. Knowingly use, conceal, or abandon the thing of value in such manner as to deprive the other person permanently of its use or benefit; or

3. Demand any consideration to which he is not legally entitled as a condition of restoring the thing of value to the other person.

B. For the purposes of this Section, a thing of value is that of "another" if anyone other than the defendant has a possessory or proprietary interest therein.

17.7-2 Concealment

If any person willfully conceals un-purchased goods, wares, or merchandise owned or held by and offered or displayed for sale by any store or other mercantile establishment, whether the concealment be on his own person or otherwise and whether on or off the premises of said store or mercantile establishment, such concealment constitutes prima facie evidence that the person intended to commit the offense of theft.

17.7-3 Evidence of Value

A. For purpose of this Article, when theft occurs from a store, evidence of the retail value of the thing involved shall be prima facie evidence of the value of the thing involved. Evidence offered to prove retail value may include, but shall not be limited to, affixed labels and tags, signs, shelf tags, and notices.

B. For purposes of this Article, in all cases where theft occurs, evidence of the value of the thing involved may be established through the sale price of other similar property and may include, but shall not be limited to, testimony regarding affixed labels and tags, signs, shelf tags, and notices tending to indicate the price of the thing involved. Hearsay evidence shall not be excluded in determining the value of the thing involved.

17.7-4 Theft by Receiving

Every person who obtains control over any stolen thing of value, knowing the thing of value to have been stolen by another, may be tried, convicted, and punished whether or not the principal is charged, tried, or convicted.

17.8 Intoxication – Liquor Consumption and Sale

17.8-1 Soliciting Sales of Drinks

It is unlawful for any person to be employed in or to frequent or loiter in any tavern or place where fermented malt beverages, wine or intoxicating liquors are sold, for the purpose of soliciting others to purchase such drinks. It is also unlawful for the proprietor or operator of any such establishment to allow the presence of any such person in his/her establishment for such purpose. Nothing herein shall be construed to prohibit any person employed for the purpose of dispensing or serving such drinks from taking orders for such drinks.

17.8-2 Open Display of Fermented Malt Beverage, Malt, Vinous or Spirituous Liquor

A. Except as specifically permitted, it is unlawful to consume in public or to display openly any open container of fermented malt beverage, malt, vinous or spirituous liquor, which container has measurable amount of beer, wine or liquor remaining in the container, in or upon any street or highway or alley or parking lot, which lot is provided for public use, or in any Town park or recreation area. Fermented malt beverage, malt and vinous spirits may be consumed in a Town park or recreation area pursuant to a valid permit issued in accordance with municipal ordinances and regulations and this Municipal Code.

B. It is unlawful to keep an open container of fermented malt beverage, malt, vinous or spirituous liquor in any automobile except in a locked trunk, or in or upon any street, highway, alley or parking lot, which lot is provided for public use, within the Town.

C. It is unlawful to sell, serve or openly display any fermented malt beverage, malt, vinous or spirituous liquor in or upon the premises of any restaurant, lunch stand, store or other place of business within the Town, except at such places where the same may be sold lawfully, or sold and served as specifically designated by the laws of the state.

D. Fermented malt beverage, malt liquor, vinous liquor and spirituous liquor shall be defined as in the Colorado Beer Code and Colorado Liquor Code.
17.8-3  Underage Possession and Consumption of Ethyl Alcohol

A. It is unlawful for any person under twenty-one (21) years of age to:

1. Obtain or attempt to obtain any ethyl alcohol by misrepresentation of age or by any other method in any place where ethyl alcohol, beer, wine or spirituous liquor (hereinafter referred to as ethyl alcohol) is sold; or

2. Possess any ethyl alcohol in any store, restaurant, tavern or in any public place, including public streets, alleys, roads or highways or upon property owned by the Town of Berthoud or any subdivision thereof, or inside vehicles while upon the public streets, alleys, roads or highways; or

3. Possess any ethyl alcohol anywhere in the Town of Berthoud, Colorado, other than those locations specified in (A)(2) of this Section; or

B. A violation of any provision of Subsection 1 of this Section shall be a strict liability offense. It shall be an affirmative defense to the offenses described in Subsection (A)(1) through (A)(2), above that the ethyl alcohol was possessed or consumed by a person under twenty-one (21) years of age under the following circumstances:

1. While such person was legally upon private property with the knowledge and the consent of the owner or legal possessor of such private property and the ethyl alcohol was possessed or consumed with the consent of his parent or legal guardian who was present during such possession or consumption; or

2. When the existence of ethyl alcohol in a person's body was due solely to the ingestion of a confectionery which contained ethyl alcohol within the limits prescribed by Section 25-5-410(1)(i)(II), C.R.S., or the ingestion of any substance which was manufactured, designed or intended primarily for a purpose other than oral human ingestion, or the ingestion of any substance which was manufactured, designed or intended solely for medicinal or hygienic purposes, or solely from the ingestion of a beverage which contained less than one-half of one percent of ethyl alcohol by weight;

3. The possession or consumption takes place for religious purposes protected by the First Amendment to the United States Constitution.

C. Prima facie evidence of the violation of Subsection (A)(1) through (A)(3) of this Section shall consist of:

1. Evidence that the defendant was under the age of twenty-one (21) years and possessed or consumed ethyl alcohol anywhere in the Town of Berthoud, Colorado; or

2. Evidence that the defendant was under the age of twenty-one (21) years and manifested any of the characteristics commonly associated with ethyl alcohol intoxication or impairment while present anywhere in the Town of Berthoud, Colorado.

D. During any trial for a violation of a provision to this Section, any bottle, can or any other container with labeling indicating the contents of such bottle, can or container shall be admissible into evidence, and the information contained on any label on such bottle, can or other container shall be admissible into evidence and shall not constitute hearsay. The fact finder may consider the information upon such label in determining whether the contents of the bottle, can or other container were composed in whole or in part of ethyl alcohol. A label which identifies the contents of any bottle, can or other container as "beer", "ale", "malt beverage", "fermented malt beverage", "malt liquor", "wine", "champagne", "whiskey", "gin", "rum", "armagnac", "vodka", "tequila", "schnapps", "brandy", "cognac", "liqueur", "cordial", "alcohol", or "liquor" shall constitute prima facie evidence that the contents of the bottle, can or other container was composed in whole or in part of ethyl alcohol.

E. As used in this Section, unless the context otherwise requires:

Ethyl Alcohol    Means any substance which is or contains ethyl alcohol and includes fermented malt beverage, malt liquor, vinous liquor and spirituous liquor as defined in the Colorado Beer Code and Colorado Liquor Code.

Possession of Ethyl Alcohol Means that a person has or holds any amount of ethyl alcohol anywhere on his person, or that a person owns or has custody of ethyl alcohol, or has ethyl alcohol within his immediate presence and control.
Private Property  Means any dwelling and its curtilage which is being used by a natural person or natural persons for habitation which is not open to the public, and privately owned real property which is not open to the public. Private property shall not include any establishment which has or is required to have a license pursuant to Article 46, 47 or 48 of Title 12, C.R.S., or any establishment which sells ethyl alcohol or upon which ethyl alcohol is sold or any establishment which leases, rents or provides accommodations to members of the public generally.

F. Immediately upon a plea of guilty or no contest (except when such plea is entered in conjunction with a deferred sentence), or a verdict of guilty by the court or jury, to a violation of Subsections (A)(1) or (A)(2) of this Section, in addition to any other penalty, the court shall require the offender to immediately surrender his driver's, minor driver's or provisional driver's license to the court. The court shall forward to the Colorado Department of Revenue a notice of conviction, together with the offender's license, not later than ten (10) days after the conviction becomes final.

G. The court may, in its discretion and as part of the sentence to be imposed, require a person convicted of violating any portion of this Section to complete court-approved public service in an amount to be set by the court.

H. It is unlawful for any person to fail to surrender his license to the court within three days of his plea of guilty or no contest, or verdict of guilty to a violation of Subsections (A)(1) or (A)(2) of this Section.

1. Whenever the court requires that a person complete any amount of public service pursuant to Subsection (7) of this Section, the court shall also impose upon that person, in addition to any other fine, cost or penalty, a public service fee in an amount set by resolution of the Town Board.

I. It is unlawful for the parent, guardian or other adult person having the duty of care and custody of a minor under the age of eighteen years to knowingly allow or permit such minor to violate Subsection (1) of this Section.

17.8-4 Special Events

A. Notwithstanding the provisions of this Article making it unlawful to consume beer, wine, malt, vinous or spirituous liquor in the places described therein, an applicant may obtain a permit for the purpose of permitting the consumption of fermented malt beverages and vinous liquor in such places as provided in this Section.

B. An applicant may obtain a permit for the purpose of permitting the consumption of spirituous liquor provided the applicant has obtained a special events permit pursuant to Section 12-48-101 et seq., C.R.S.

C. If the special event is to take place in a Town park, roadway or recreation area, application shall be made to, and the special events permit may be granted by, the Town Clerk or designee. If such special event is to take place in any other place described in this Article, application shall be made to, and the special events permit may be granted by, the Town of Berthoud.

17.8-5 Application

Application for a special events permit shall be made upon forms supplied by the department responsible for issuing the permit. The applicant shall be required to provide the following information:

A. Name, address and phone number of responsible party;

B. Date, time and location of proposed event;

C. Description or nature of event;

D. Number of persons estimated to be in attendance;

E. Crowd control plans, if any;

F. Such other information as the issuing department may deem necessary to consider the permit application.

G. Road closures if applicable (e.g., parades, races, etc.)

17.8-6 Special Events Permit

A special events permit shall be granted upon application therefore; provided, that the following conditions are met:
A. The applicant shall have obtained a special events liquor license pursuant to Section 12-48-101 et. seq., C.R.S., if sale of fermented malt beverage, malt, vinous or spirituous liquor is made, or if the event is open to the public and fermented malt beverage, malt, vinous or spirituous liquor is to be consumed;

B. Application has been made at least thirty (30) days prior to the event;

C. The applicant shall have posted a damage and cleanup deposit in an amount necessary to assure the cleanup of the area in which the event is held, and repair of damage to public or private property. The amount of such deposit shall be determined by the department issuing the permit;

D. Such deposit shall be applied to the cost of cleanup of refuse and repair of damage to public or private property, if any, and the balance, if any, shall be refunded to the applicant. The applicant shall be responsible for payment of any costs in excess of the amount of the deposit, which payment shall be due and payable upon billing by the Town;

E. The permit shall be available for inspection at the site of the event, and shall be displayed upon request to any employee of the issuing department or of the police department;

F. The applicant shall have obtained a valid facility use permit for the park area for which application is made, or shall have obtained a required special event permit pursuant to this Code for the use of any other public area in the Town;

G. No glass bottles shall be allowed.

17.8-7 Enforcement
Any permit issued pursuant to this Section may be revoked for any obvious violation of any of the conditions specified in the permit, any other rules or ordinances applicable to the area in which the event is conducted or any laws of the state, and in the event of such revocation, the applicant shall immediately stop the serving and consumption of any liquids for which the permit was granted.

17.8-8 3.2% Beer Permit
Notwithstanding the provisions of this Article making it unlawful to consume 3.2% beer in the places described therein, an applicant may obtain a permit for the purpose of permitting the consumption of 3.2% beer in such places as provided in this Section 17.8. The permitting process for obtaining a 3.2% Beer Permit shall be the same in all respects as obtaining a Special Events Permit as described herein, except that the applicant shall not be required to obtain a special events liquor license pursuant to Section 12-48-101 et. seq., C.R.S.

17.9 Toxic Vapors
17.9-1 Definition
As used in this Article, the term "toxic vapor" means the following substances or products containing such substances:

- Alcohols, including methyl, isopropyl, propyl, or butyl;
- Aliphatic acetates, including ethyl, methyl, propyl, or methyl cellosolve acetate;
- Acetone;
- Benzene;
- Carbon tetrachloride;
- Cyclohexane;
- Freons, including freon 11 and freon 12;
- Hexane;
- Methyl ethyl ketone;
- Methyl isobutyl ketone;
- Naphtha;
- Perchloroethylene;
- Toluene;
- Trichloroethylene;
- Xylene.

17.9-2 Abuse of Toxic Vapors Prohibited
A. No person shall knowingly smell or inhale the fumes of toxic vapors for the purpose of causing a condition of euphoria, excitement, exhilaration, stupefaction, or dulled senses of the nervous system. No person shall knowingly possess, buy, or
use any such substance for the purposes described in this Article, nor shall any person knowingly aid any other person to use
any such substance for the purposes described in this Article.

B. In a prosecution for a violation of this Article, evidence that a container lists one or more of the substances described above
as one of its ingredients shall be \textit{prima facie} evidence that the substance in such container contains toxic vapors and emits
fumes thereof.

17.9-3 Sales - From Commercial Establishments Only
No person, except a person who is at the time of such sale actually employed by or engaged in operating a bona fide
commercial establishment at a fixed location, shall sell to any other person any substance releasing toxic vapors, and all sales of
such substance not made in or from such an establishment are unlawful.

17.9-4 Sales - Knowledge of Unlawful Use
It is unlawful for any person knowingly to sell or offer for sale, deliver, or give away to any other person any substance
releasing toxic vapors, where the seller, offerer or deliverer knows or has reason to believe that such substance will be used for
the purpose of inducing a condition of euphoria, excitement, exhilaration, stupefaction, or dulled senses or nervous system.

17.9-5 Exception
This Article shall not apply to the inhalation of anesthesia for medical or dental purposes.

17.10 Drug Paraphernalia

17.10-1 Purpose
The Town Board determines that items of drug paraphernalia encourage the illicit use of controlled substances, that the
availability, display, and sale of such items lends a permissiveness and apparent legitimacy to the unlawful use of controlled
substances, that the availability, display and sale of such items greatly threatens the peace, health, morals and safety of the
citizens of the community and that such activities should be prohibited.

17.10-2 Definitions
As used in this Article the following definitions shall apply:

\textit{Controlled Substance} \quad \text{Means a drug as defined in Section 18-18-102(5), C.R.S., as amended.}

\textit{Items or Item of Drug Paraphernalia} \quad \text{Means all equipment, products or materials of any kind which are used,
intended for use or designed for use in manufacturing, compounding, converting, producing, processing, testing, analyzing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of the laws of this state or the United States.}

17.10-3 Sale of Paraphernalia Unlawful
It is unlawful for any person to knowingly sell or offer for sale any item of drug paraphernalia, except as authorized by Article
XVIII of the Colorado Constitution and local ordinance.

17.10-4 Prosecutions - Evidence
In any prosecution for violation of this Section, the following factors shall be considered in determining whether the
defendant knowingly offered for sale or sold drug paraphernalia:

A. Statements by an owner or anyone in control of the item concerning its use;

B. The proximity of the item to a controlled substance;

C. Knowledge by the defendant of the use to which a purchaser or prospective purchaser intends to put the item

D. Oral or written instructions provided in connection with the item concerning its use;

E. Descriptive materials accompanying the object or displayed in connection with the item suggesting, explaining, or
depicting its use;

F. The circumstances and manner in which the item is displayed for sale;

G. The character and nature of other merchandise displayed or sold;
H. Knowledge by the defendant of a common use to which the item is put in the community;
I. The existence of common lawful uses for the item in the community;
J. Expert testimony concerning the use of the item;
K. All other relevant evidence showing the character and nature of the time, and the circumstances surrounding its sale or offering for sale.

17.10-5 Possession of Drug Paraphernalia
It shall be unlawful for any person to possess drug paraphernalia who knows, or reasonably should know, that the drug paraphernalia could be used under circumstances in violation of the laws of this state. Notwithstanding the foregoing, it shall not be unlawful for individuals with a State of Colorado Medical Marijuana Registry card, or who are twenty one (21) years of age or older, to possess “Marijuana Accessories” as that term is defined in Article XVIII of the Colorado Constitution.

17.10-6 Possession of Cannabis
A. For the purposes of this Section, the term cannabis shall include all parts of the plant Cannabis sativa L., whether growing or not; the seed thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt derivative, mixture or preparation of such plant, its seeds or resin; but shall not include the mature stalks of such plant, fiber produced from its stalks, oil or cake, or the sterilized seed of such plant, which is incapable of germination. The term cannabis concentrate means hashish, tetrahydrocannabinols or any alkaloid, salt derivative, preparation, compound or mixture, whether natural or synthesized, of tetrahydrocannabinols.
B. It is unlawful for anyone under twenty one (21) years of age who does not possess a current State of Colorado Medical Marijuana Registry Card to possess cannabis or cannabis concentrate, and upon conviction thereof, or plea of guilty or no contest thereto, punishment shall not be by imprisonment, but shall be by a fine as set forth in this Code.
C. It is unlawful for anyone to possess more than one ounce of cannabis or cannabis concentrate, except as authorized by Article XVIII of the Colorado Constitution, and upon conviction thereof, or plea of guilty or no contest thereto, punishment shall not be by imprisonment, but shall be by a fine as set forth in this Code.

17.10-7 Consumption of Cannabis
A. It is unlawful for any person who does not possess a current State of Colorado Medical Marijuana Registry Card and who is under twenty one (21) years of age to consume cannabis or cannabis concentrate.
B. It is unlawful openly and publicly, or in a manner that endangers others, to consume or possess cannabis or cannabis concentrate, and upon conviction thereof, or a plea of guilty or no contest thereto, punishment shall be as set out in this Code.

17.10-8 Sale and Transfer of Cannabis.
A. It is unlawful for any person to sell, or exchange to another person for remuneration, cannabis or cannabis concentrate, except as authorized by Article XVIII of the Colorado Constitution and local ordinance.
B. It is unlawful for any person to transfer, with or without remuneration, cannabis or cannabis concentrate to any person under twenty one (21) years of age, except as authorized by Article XVIII of the Colorado Constitution and local ordinance.

17.10-9 Cultivation of Cannabis.
A. It is unlawful for anyone under twenty one (21) years of age to cultivate cannabis, unless they are in possession of a current State of Colorado Medical Marijuana Registry Card and are otherwise authorized to cultivate cannabis.
B. It is unlawful for anyone twenty one (21) years of age or older to cultivate more than six marijuana plants, with three or fewer being mature, flowering plants, unless otherwise authorized by state law and local ordinance to cultivate additional cannabis.
C. It is unlawful to cultivate cannabis openly or publicly, or in a space that is not locked and enclosed.

D. The space within any residence where cannabis is grown, cultivated, or processed shall meet all applicable requirements of the Town’s building codes and shall meet the requirements of all adopted water, sewer, and fire district regulations applicable.

E. The cultivation of cannabis must not be perceptible from the exterior of the primary residence, including but not limited to:
   1. Common visual observation;
   2. Unusual odors, smells, fragrances, or other olfactory stimulus;
   3. Light pollution, glare, or brightness that disturbs the repose of another;
   4. Undue vehicular or foot traffic, including excess parking within the residential zone; and
   5. Excessive noise from fans, reasonably likely to disturb surrounding property owners.

F. The smell or odor of cannabis growing within any residence shall not be capable of being detected by a person with a normal sense of smell from any adjoining lot, parcel, or tract of land not owned by the owner of the residence, or from any adjoining public right of way.

17.10-10 Penalty (Drug Paraphernalia and Drugs)
A. In addition to the penalties imposed under Section 1 of Chapter 17 for a violation of this Section 10, the court may, in its discretion and as part of the sentence to be imposed, require a person convicted of violating any portion of this Section 10 to complete court-approved public service in an amount to be set by the court. Whenever the court requires that a person complete any amount of public service pursuant to this Section 10, the court shall also impose upon that person, in addition to any other fine, cost or penalty, a public service fee in an amount set by resolution of the Town Board.

B. It is unlawful for the parent, guardian, or other adult person having the duty of care and custody of a minor under the age of eighteen years to knowingly allow or permit such minor to violate this Section 10.

17.11 Offenses Against Property, Obstructing, Defacing or Injuring Property
17.11-1 Damaging Town Property
   It is unlawful for any person to willfully, maliciously, wantonly, negligently, or in any other manner damage, deface, or destroy real property or improvements thereon, or personal property, belonging to the Town.

17.11-2 Damaging Private Property
   It is unlawful for any person to willfully, maliciously or wantonly damage, deface, or destroy any real or personal property belonging to any other person.

17.11-3 Throwing Objects
   It is unlawful for any person to throw any stone, snowball or any other object at any vehicle, building, tree or other public or private property or at any person.

17.11-4 Damage or Removal of Street Signs
   It shall be unlawful for any person without proper authorization to remove, deface, or destroy any street sign or sign or any sign erected or placed in or adjacent to any street indicating the name of such street.

17.12 Graffiti
17.12-1 Definitions
   As used in this Article, the following definitions shall apply:

   Town Administrator Means the town administrator of the Town of Berthoud, Colorado, or the town administrator's designee.
Graffiti  Means the defacing of public or private property by means of painting, drawing, writing, etching, or carving with paint, spray paint, ink, knife, or any similar method without written permission of the owner of the property.

Owner  Means any person owning, leasing, occupying or having control or possession of any property in the Town.

Owner of Record  Means any person who is specified as the owner of property by the records of the Larimer County or Weld County Assessor or by current deed of record.

17.12-2  Graffiti Prohibited

A. It shall be unlawful for any person to paint, spray paint, draw, write, etch, carve or by any similar method whatsoever deface any public or private property, except with prior written permission of the owner of the property.

B. It shall be unlawful for any person to possess any paint, spray paint, or other substance or article adapted, designed, or commonly used for committing or facilitating the commission of the offense set forth in Section (1) of this Section, with the intent to use the substance or article, in the commission of such offense.

17.12-3  Abatement of Defaced Property

A. All property which is 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, morals, and general welfare, shall be abated as set forth in this Section.

B. Whenever any graffiti is found which is visible to public view, the town administrator may cause a written order to be sent to the owner of the property upon which the graffiti exists directing the owner to:

1. Remove or correct the same within ten (10) calendar days or such longer period as determined for good cause by the town administrator, at the owner's own expense, or

2. At the discretion of the town administrator the owner of record may provide written consent and agreement for the Town to enter upon the property to remove the same within ten (10) calendar days or such longer period as determined for good cause by the Town administrator, with the Town to pay not more than fifty percent (50%) of the out of pocket expenses of such removal, and the owner of record to pay the balance.

C. The Town administrator shall make a good faith effort to cause the written order to be sent to the owner of record in addition to any other owners the town administrator may choose as defined herein. The written order shall also advise the owner of his or her right to a hearing before the town administrator to present evidence as to why the owner is not subject to this Section. If the owner does not comply with the order of the town administrator, the Town may cause the graffiti to be removed or corrected and assess the whole cost thereof, including ten percent (10%) for inspection and other incidental costs in connection therewith, upon the owner. Such assessment shall be a lien upon the property until paid if the owner to whom the above order is sent is also the owner of record.

D. If any assessment is not paid within one (1) month after it is made and notice thereof is mailed to the owner who was ordered to abate the graffiti, the Town may:

1. Seek collection through any court of competent jurisdiction, and/or

2. Certify the assessment amount, plus a ten (10) percent collection fee, to the county treasurer for collection in the same manner as though it was part of the property taxes if the owner to whom the order described in Subsection (b) hereof, was sent is also the owner of record. Prior to certification, the owner of record shall be advised of his or her right to a hearing before the town administrator to present evidence as to why the amount of the assessment is not accurate.

E. Appeal and hearing. Upon the mailing of an order or notice made pursuant to this Section, an owner of record or alleged owner of record may request and be granted an informal hearing before the Town Board within ten (10) calendar days of such mailing. The town administrator shall schedule and conduct an informal hearing at which time the owner or alleged owner may present evidence as to his or her liability pursuant to this Section. All removal and collection activity as to the appealing owner or alleged owner shall be stayed until the formal hearing is concluded.

17.13  Distribution of Handbills

17.13-1  Purpose

To protect the people against the nuisance of and incident to the distribution of handbills and circulars, particularly commercial handbills, as defined in this Article, with the resulting detriment and danger to public health and safety, the public
interest, convenience and necessity requires the regulation thereof and to that end the purposes of this Article are specifically declared to be as follows:

A. To protect local residents against trespassing by solicitors, canvassers or handbill distributors upon the private property of such residents if they give notice that they do not wish to be solicited by such persons or do not desire to receive handbills or advertising matter;

B. To protect the people against the health and safety menace and the expense incident to the littering of the streets and public places by the uncontrolled distribution of advertising matter and commercial handbills;

C. To preserve to the people their constitutional right to receive and disseminate information by distinguishing between the nuisance created by the distribution of advertising and commercial circulars and the right to receive noncommercial handbills to all who are willing to receive the same.

17.13-2 Definitions
The following words, terms and phrases, when used in this Article, have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Commercial Handbill  Means and includes any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, paper, booklet, or any other printed or otherwise reproduced original or copies of any matter or literature:

a. Which advertises for sale any merchandise, product, commodity, or thing; or

b. Which directs attention to any business or mercantile or commercial establishment, or other activity, for the purpose of either directly or indirectly promoting the interest thereof by sales; or

c. Which directs attention to or advertises any meeting, theatrical performance, exhibition, or event of any kind, for which an admission fee is charged for the purpose of private gain or profit; but the terms of this clause shall not apply where an admission fee is charged or a collection is taken up for the purpose of defraying the expenses incident to any such event; or

d. Which while continuing reading matter other than advertising matter, is predominantly and essentially an advertisement, and is distributed or circulated for advertising purposes, or for private benefit and gain of any person so engaged as advertiser or distributor.

Newspaper  Means and includes any newspaper of general circulation as defined by general law, any newspaper duly entered with the United States postal service, in accordance with federal statute or regulation, and any newspaper filed and recorded with any recording officer as provided by general law; and, in addition thereto, means and includes any periodical or current magazine regularly published with not less than four issues per year, and sold to the public.

Noncommercial Handbill  Means and includes any printed or written matter, any sample or device, circular, leaflet, pamphlet, newspaper, magazine, paper booklet, or any other printed or otherwise reproduced original or copies of any matter or literature not included in the aforesaid definition of commercial handbill, and shall also include any newspaper as above defined.

Private Premises  Means and includes any dwelling, house, building, or other structure, designed or zoned either wholly or in part for private residential purposes which includes any yard, grounds, walk, driveway, porch, steps, vestibule or mailbox belonging or appurtenant to such dwelling, house, building, or other structure.

Public Place  Means and includes any and all streets, boulevards, avenues, lanes, alleys, or other public ways, in any and all public parks, squares, spaces, plazas, grounds and buildings.

17.13-3 Throwing Handbills, Broadcast in Public Places Prohibited
It is unlawful for any person to deposit, place, throw, scatter or cast any commercial handbill in or upon any public place within the Town; and it is also unlawful for any person to hand out or distribute or sell any commercial handbill in any public place; provided, however, that it is not unlawful for any person to hand out or distribute, without charge to the receiver thereof, any noncommercial handbill in any public place to any person willing to accept such noncommercial handbill.
It shall be unlawful for any person to attach, adhere or post any handbill on any pole, tree, sign fence, building or other property, whether public or private, which is not owned by the person casting the handbill.

17.13-4  **Placing in or on Vehicles Prohibited**

It is unlawful for any person to distribute, deposit, place, throw, scatter or cast any commercial or noncommercial handbill in or upon any automobile or other vehicle. The provisions of this Section shall not be deemed to prohibit the handing, transmitting or distributing of any noncommercial handbill to the owner or other occupant of any automobile or other vehicle, who is willing to accept the same.

17.13-5  **Distribution on Uninhabited or Vacant Private Premises Prohibited**

It is unlawful for any person to distribute, deposit, place, throw, scatter or cast any commercial or noncommercial handbill in or upon any private premises which are temporarily or continuously uninhabited or vacant.

17.13-6  **Distribution on Inhabited Premises Prohibited**

It is unlawful for any person to distribute, deposit, place, throw, scatter or cast any commercial or noncommercial handbill in or upon any private premises which are inhabited, except by handing or transmitting any such handbill directly to the owner, occupant, or any other person then present in or upon such private premises; provided, however, that in case of inhabited private premises which are not posted as provided in this Article, such person may, if properly licensed pursuant to Chapter 14 of this Code, and unless requested by anyone upon such premises not to do so, place or deposit any such handbill in or upon such inhabited private premises, if such handbill is so placed or deposited as to secure or prevent such handbill from being blown or drifted about such premises or elsewhere, except that mailboxes may not be so used when so prohibited by federal postal laws or regulations.

17.13-7  **Distribution Where Property Posted Prohibited**

It is unlawful for any person to distribute, deposit, place, throw, scatter or cast any commercial or noncommercial handbill upon any premises, if requested by anyone thereon not to do so, or if there is placed on said premises in a conspicuous position near the entrance thereof, a sign bearing the words: “No Trespassing”, “No Peddlers or Agents”, “No Advertisement” or any similar notice, indicating in any manner that the occupants of said premises do not desire to be contacted or to have their right of privacy disturbed, or to have any such handbills left upon such premises.

17.13-8  **Exemptions**

The provisions of this Article shall not be deemed to apply to the distribution of mail by the United States, nor to newspapers.

17.13-9  **Provisions of Article Additional to Current Code Provisions**

The restrictions, prohibitions and requirements of this Article are in addition to, and do not repeal or modify, any provisions in this Code prohibiting, regulating or licensing canvassers, hawkers, peddlers, transient merchants, or any person, using the public streets or places for any private business or enterprise, or for commercial sales.

17.14  **Trespassing**

17.14-1  **Trespassing on Private or Public Property**

A. A person commits the crime of criminal trespass if such person knowingly uses or occupies any privately owned real or personal property without the permission of the owner or person entitled to possession thereof. (Section 18-4-504 C.R.S.)

B. It is unlawful for any person to remain upon or to return to and be upon any privately owned real property after the owner or rightful occupant thereof has requested such person to leave the property.

C. It is unlawful for any person to knowingly use or occupy any publicly owned real or personal property when the property is not open for business with the public or when the property is not normally accessible to the public, without the permission of the owner or person entitled to possession thereof, or to remain thereon when directed to leave by the person in charge.

D. It is unlawful for any person to knowingly use or occupy any publicly owned real or personal property in any manner or for any purpose other than the manner or for the purpose for which the property was intended.

It shall not be a defense to any violation of the foregoing Subsections that the real or personal property involved is commonly used by the public or that the public is invited expressly or by implication to use the real or personal property.

17.14-2  **Unlawful Conduct on Public Property**

A. It is unlawful for any person to enter or remain in any public building or on any public property, or to conduct himself in or on them, in violation of any order, rule or regulation concerning any matter prescribed in this Section, limiting or prohibiting
the use, activities or conduct in such public building or on such public property, issued by any officer or agency having the power of control, management or supervision of the building or property. In addition to any authority granted by any other law, each such officer or agency may adopt such orders, rules or regulations as are reasonably necessary for the administration, protection and maintenance of such public buildings and property, specifically, orders, rules and regulations upon the following matters:

1. Preservation of property, vegetation, wildlife, signs, markers, statues, buildings, grounds and other structures, and any object of scientific, historical or scenic interest;

2. Restriction or limitation of the use of such public buildings or property as to time, manner or permitted activities.

3. Prohibition of activities or conduct within public buildings or on public property which may be reasonably expected to substantially interfere with the use and enjoyment of such places by others or which may constitute a general nuisance;

4. Camping or picnicking, public meetings and assemblages and other individual or group usages, including the place, time and manner in which such activities may be permitted;

5. Use of all vehicles as to place, time and manner of use; and

6. Control and limitation of fires and designation of places where fires are permitted.

B. No conviction may be obtained under this Section unless notice of such limitation or prohibition is prominently posted at all public entrances to such building or property or unless such notice is actually first given to the person by the office or agency, including any agent thereof, or by any law enforcement officer having jurisdiction or authority to enforce this Section.

C. Any person who violates this Section is guilty of unlawful conduct on public property.

17.14-3 Trespass or Interference in Public Buildings

A. No person shall so conduct himself or herself at or in any public building owned, operated or controlled by the Town as to willfully deny to any public official, public employee or invitee on such premises the lawful rights of such official, employee or invitee to enter, to use the facilities or to leave any such public building.

B. No person shall at or in any public building, willfully impede any public official or employee in the lawful performance of duties or activities through the use of restraint, abduction, coercion or intimidation or by force and violence or threat thereof.

C. No person shall willfully refuse or fail to leave any such public building upon being requested to do so by the Town officer charged with maintaining order in such public building, if the person has committed, is committing, threatens to commit or incites others to commit any act which did, or would if completed, disrupt, impair, interfere with or obstruct the lawful missions, processes, procedures or functions being carried on in the public building.

D. No person shall at any meeting or session conducted by any judicial, legislative or administrative body or official at or in any public building, willfully impede, disrupt or hinder the normal proceedings of such meeting or session by any act of intrusion into the chamber or other areas designated for the use of the body or official conducting the meeting or session or by any act designed to intimidate, coerce or hinder any member of such body or official engaged in the performance of duties at such meeting or session.

E. No person shall, by any act of intrusion into the chamber or other areas designated for the use of any executive body or official at or in any public building, willfully impede, disrupt or hinder the normal proceedings of such body or official.

F. The term public building, as used in this Section, includes any premises being temporarily used by a public officer or employee in the discharge of his or her official duties.

17.14-4 Obstructing Highway or Other Passageway

A. A person commits an offense if without legal privilege, he intentionally, knowingly or recklessly:

1. Obstructs a highway, street, sidewalk, railway, waterway, building entrance, elevator, aisle, stairway or hallway to which the public or a substantial group of the public has access or any other place used for the passage of persons, vehicles or conveyances, whether the obstruction arises from his acts alone or from his acts and the acts of others; or
2. Disobeys a reasonable request or order to move issued by a person he or she knows to be a peace officer, firefighter or person with authority to control the use of the premises, to prevent obstruction of a highway or passageway or to maintain public safety by dispersing those gathered in dangerous proximity to a fire, riot or other hazard.

B. For purposes of this Section, obstruct means to render impassable or to render passage unreasonably inconvenient or hazardous. Obstruction will include any signs, billboards, displays for marketing or merchandise displayed in a “sidewalk sale” manner in or on a public passageway without the permission of the Town of Berthoud.

17.14-5 Littering on Public and Private Property
A. It is unlawful to throw, abandon or deposit in any street, alley, sidewalk or public grounds in the Town any litter, refuse, junk, or discarded items, except in public receptacles and authorized private receptacles.

B. It is unlawful for any person, while a driver or passenger in a vehicle to throw or deposit litter upon any street or other public place within the Town or upon private property.

17.14-6 Abandonment of a Motor Vehicle
Any person who abandons any motor vehicle upon a street, highway, right-of-way or any other public property, or upon any private property without the express consent of the owner or person in lawful charge of that private property commits abandonment of a motor vehicle.

A. To abandon means to leave a thing with the intention not to retain possession of or assert ownership over it. The intent need not coincide with the act of leaving.

B. It is prima facie evidence of the necessary intent that:
   1. The motor vehicle has been left for more than seven (7) days unattended and unmoved;
   2. License plates or other identifying marks have been removed from the motor vehicle;
   3. The motor vehicle has been damaged or is deteriorated so extensively that it has value only for junk or salvage; or
   4. The owner has been notified by a law enforcement agency to remove the motor vehicle and it has not been removed within three (3) days after notification.

17.15 Consumer Protection – Defrauding Vending Machines
It is unlawful for any person to insert or attempt to insert into the coin box or money receptacle of any coin or cash operated machine, credit card vending machine device, any slug, or other article or substance, or to manipulate or operate in any manner whatever, any mechanism or device connected or commonly used therewith, in an attempt to obtain property, goods, gas, services or time there from without proper payment therefore.

17.16 Offenses by or Against Minors
17.16-1 Furnishing and Sale of Tobacco Products
A. It is unlawful for any person knowingly to sell, convey for valuable consideration, give or dispense tobacco products to a person under the age of eighteen (18) years.

B. It is unlawful for a person under the age of eighteen (18) years to be in possession of tobacco products.

C. When used herein, the term tobacco products shall include, but not be limited to, kinds and forms of tobacco prepared in such manner as to be suitable for chewing, smoking, or both.

17.16-2 Curfew
A. It is unlawful for any person under the age of eighteen (18) years to loiter, remain idle in essentially one location, be dilatory, tarry, wander, prowl, stroll or play in or upon any street, alley, sidewalk, park, playground, school yard or other public area after the hour of eleven o'clock (11:00) p.m., except as access to public parks is restricted herein or prior to the hour of five o'clock (5:00) a.m., Sunday through Thursday of each week hereafter, or after the hours of twelve o'clock (12:00) Midnight on Friday and Saturday, provided, however, that the provisions of this Subsection shall not apply to a minor who is:
   1. Engaged in lawful employment; or

108
2. Engaged in religious activities protected by the First Amendment to the United States Constitution; or

3. Accompanied by the parent, guardian or other person of the age of twenty-one years, having permission of the parent or guardian to have the custody and care of such minor; or

4. Accompanied by any person eighteen (18) years or older having in his or her possession written permission from the parent or guardian to have the care or custody of such child; or

5. Upon an emergency errand or legitimate business directed by the parent, guardian or other adult person having the care and custody of the minor; or

6. Traveling either on foot or in or upon any conveyance directly to or from any activity specified in the above Section (1)(a) through (e) and the person's residence.

B. It is unlawful for the parent, guardian or other adult person having the duty of care and custody of a minor under the age of eighteen (18) years to knowingly allow or permit such minor to violate Subsection (A) of this Section, provided, however, that the provisions of this Section shall not apply to those instances excepted in Subsections 2(A)(1) through 2(A)(6) above. Prior to a person being charged under this Section a written warning notice from a police officer or other Town employee must have been issued to such person.

17.17 Possession or Use of Weapons

17.17-1 Carrying or Displaying a Weapon
A. It is unlawful for any person to display in a threatening manner or to brandish any dangerous or deadly weapon, including, but not by way of limitation, any pistol, revolver, short-barreled rifle, shotgun, air gun, gas-operated gun, spring gun, slingshot, black jack, club, billy club, brass knuckles, knuckles of any material whatsoever, Bowie knife, dirk, dagger, or any other dangerous or deadly weapon.

B. Every person convicted of any violation of this Section shall forfeit to the Town such dangerous or deadly weapon so displayed.

17.17-2 Discharging - Exceptions
It is unlawful for any person, except a law enforcement officer in the performance of his duties, to fire or discharge within the Town a revolver or pistol of any description, shotgun or rifle, which may be used for the explosion of cartridges or shells, or any air gun, gas operated gun, spring gun or bows and arrows, except as otherwise allowed by this code. It shall be an affirmative defense to a violation of this Section that the person was reasonably exercising the use of physical force in defense of person, property or premises, as recognized by state law.

1. 17.18 Fireworks
2. 17.18-1 Fireworks Prohibited
It is unlawful in the Town for any person to offer for sale, have in his or her possession with intent to offer for sale, or to explode, any fireworks except those “permissible fireworks” enumerated in C.R.S. 12-28-101(8).

3. 17.18-2 Permits for Display
A. The Board of Trustees has the power to grant permits within the Town for supervised public displays of fireworks by the Town, fair associations, amusement parks and other organizations and groups and to adopt reasonable rules and regulations for the granting of such permits.

B. Application for a permit as provided for herein shall be filed with the Town Clerk, together with a license fee and nonrefundable inspection fee, in an amount set by resolution of the Town Board. The application shall contain at least the following information

1. The name and address of the person or organization sponsoring the display, together with the names and addresses of the person who will actually be in charge of the display.

2. The date and time of day at which the display is to be held;

3. The address and detailed description of the exact location planned for the display including a diagram of the location and surrounding area;
4. The names and addresses of the competent fireworks operators who are to supervise the discharge of the fireworks, and written evidence regarding their competency as fireworks operators;

5. The type and class of fireworks to be discharged;

6. The manner and place of storage of such fireworks prior to and during the display;

7. Proof that satisfactory compensation insurance is carried by the applicant for all of the applicant’s employees who will be working at the display; and

8. Proof that the applicant has public liability insurance with the limits and coverage as set forth in Subsection 17.18-3 of this Code, protecting the Town, fire district, applicant, manufacturer, wholesaler, seller, supplier, property owner and operators of the display from any liability or claims of damages arising out of or as a result of or related to the fireworks.

C. Such application shall be made in writing at least thirty (30) days in advance of the date of display. Every display shall be handled by a competent operator and shall be of such character and so located, discharged and fired as not to be hazardous to property or endanger any person. Before a permit is granted the operator and the location and handling of the display shall be approved, after investigation, by the Fire Chief and the Chief of police.

D. No person displaying fireworks under this Section shall fail to dispose of any unfired fireworks in a safe manner after the display is concluded.

E. No permit shall be transferable or assignable.

4. 17.18-3 Insurance
The Board of Trustees shall require a certificate of insurance to protect persons and property from death or injury as a result of any fireworks display for which a permit is issued, in an amount not less than one hundred thousand dollars ($100,000) per person injured and five hundred thousand dollars ($500,000) per incident. The insurance shall cover any liability of the Town or any employee or agent thereof arising out of or connected with the permit and the fireworks display permitted thereunder.

5. 17.18-4 Bond
Any permittee shall be required to obtain a performance bond in a sum not less than twenty-five thousand dollars ($25,000) conditioned on compliance with the provisions of this Article; except that the Town shall not be required to file such bond.

6. 17.18-5 Interpretation
This Article shall not be construed to prohibit:

A. Any person from using or exploding fireworks in accordance with the provisions of any display permit issued by the Town as provided in this Article or as part of a supervised public display at any county or district fair duly organized under the laws of the State;

B. Any person from offering for sale, exposing for sale, selling, having in his possession with intent to offer for sale or sell, or using or firing toy pistols, toy guns, sparklers or other devices in which caps manufactured in accordance with this Article are used;

C. Any person from offering for sale, exposing for sale, selling, having in his possession with intent to offer for sale or sell blank cartridges for a show or theater, or for a signal or ceremonial purposes in organized athletics or sports;

D. Any resident manufacturer from manufacturing and selling, or any resident wholesaler, dealer or jobber from selling or wholesale, such fireworks as are not prohibited under this Article, provided that the proper licenses for export have been issued by the Secretary of State pursuant to the provisions of Section 12-28-106, C.R.S.;

E. Any resident manufacturer from selling any kind of fireworks, provided that the same are to be shipped directly out of state in accordance with regulations of the United States Interstate Commerce Commission covering the transportation of explosives and other dangerous articles by motor, rail and water, and provided that such
manufacturing activities have been licensed by the Secretary of State pursuant to the provisions of Section 12-28-106, C.R.S.;

F. The use of fireworks by railroads or other transportation agencies for signal purposes or illumination;

G. The importation, purchase, sale or possession of fireworks which are used or to be used solely to prevent damage to crops by animals or birds, by the Board of Trustees with the assistance of other appropriate state departments and in accordance with Article 4 of Title 24, C.R.S.; or

H. The sale, delivery, consignment, or furnishing of fireworks among display retailers, wholesalers or exporters licensed under the state law.

7. **17.18-6 State Licensing Requirements**

   No person shall sell or offer for sale at retail any fireworks which are to be used for display purposes within the Town unless he first obtains a license to do so from the Secretary of State and from the Board of Trustees.

   No person shall manufacture or wholesale fireworks until he or she shall first obtain a license from the Secretary of State, pursuant to Section 12-28-104, C.R.S. the Secretary of State shall be the sole licensing authority for manufacturers’ and wholesalers’ licenses.

8. **17.18-7 Seizure of Fireworks**

   The police department may, for preservation of evidence or for destruction, seize, take and remove at the expense of the owner, all stocks of fireworks or combustibles offered or exposed for sale stored or held in violation of this Article.

17.19 **Off Highway Vehicles**

   The operation anywhere within the Town on any sidewalk or parking lot open to the public of any off-highway vehicle, motorbike, scooter, minibike or other such motorized vehicles not designed and equipped for operation on a public street or highway, is hereby declared and deemed a public nuisance, and it shall be unlawful for a person to cause or maintain such public nuisance, except in the following instances:

   A. Exemptions:

      1. On private property when authorized by the owner of such private property;

      2. When crossing streets or when crossing roads, highways, or railroad tracks at an angle of approximately 90 degrees to the direction of the road, highway or railroad tracks at a place where no obstruction prevents a quick and safe crossing.

      3. When traversing a bridge or culvert.

      4. During emergency conditions declared by the proper state or local authority.

      5. When using off-highway vehicle for agricultural purposes.

9. **17.20 Parking and Use of Trailers and Coaches**

   **17.20-1 Definitions**

   The definitions set forth in Article 1, of Title 42, Colorado Revised Statutes, as applicable, shall apply to this Section.

   **17.20-2 Parking of Motor Vehicles and Trailers on Public Property**

   It shall be unlawful for an owner or operator to store, park, place, or to permit to be stored, parked or placed, any earth moving machinery, semi-trailer, truck trailer, trailer with three (3) or more axles, detached trailer, truck tractor, unlicensed motor vehicle or inoperable motor vehicle, on a public roadway, street, alley, or other public property within the Town of Berthoud, unless one or more of the following exceptions apply:

   A. The vehicle is legally parked in a properly zoned area, or

   B. The vehicle or equipment is temporarily being used on a validly permitted construction site. Construction equipment, earth moving machinery, motor vehicles and trailers as described above which are not located on a
validly permitted construction site; or, within 100 feet thereof on a public roadway or easement shall be presumed to be in violation of this Section unless the vehicle or equipment was used for the purposes for which it was manufactured on that permitted construction site within seventy-two (72) hours prior to the issuance of the citation.

17.20-3 Parking of Trailer Coaches and Vehicles Prohibited on Public Streets
It shall be unlawful to park or permit to stand any trailer coach or other vehicle which is constructed or designed for dwelling or sleeping purposes upon any public roadway, street or alley for a period longer than four days or portions thereof during any thirty (30) consecutive days.

17.20-4 Parking of Motor Vehicles or Trailers on Private Property
A. Trailer coaches, trailers with boats, motor-homes, camper coaches or camper trailers or other vehicles designed for dwelling or sleeping purposes may be parked on any residential lot. Vehicles shall be parked only on the side or rear of the lot except as permitted in properly zoned areas and shall not be parked within the side or rear setbacks applicable to the residential lot.

B. Trailer coaches, camper coaches, motor-homes, trailers and camper trailers designed or constructed for dwelling or sleeping purposes shall not be used for such purposes on any residential lot for more than four (4) days or portions thereof during any thirty (30) consecutive days unless parked in an area zoned for such use.

1. If the camper coach, motor-home, trailer, trailer coach or camper trailer is connected to any utility such as water or electric at any time during any day of the four day period, it shall be evidence that it is being occupied for dwelling or sleeping purposes.

C. Extended parking of campers, coaches, trailer coaches or other vehicles designed for dwelling or sleeping purposes for more than four days or portions thereof in a residential zone may be permitted pursuant to a permit issued by the Town. Such permits shall be issued only to the owner or regular driver of such vehicle and shall not be transferred or assigned to another owner, driver or location. The duration of the initial permit shall not exceed ten (10) days. The permits may be issued where the parking of the trailer coach or other vehicle will not adversely affect the safety and health of the owners of adjoining property.

17.20-5 Inoperable Vehicles Prohibited
The outdoor placement or storage of any inoperable vehicle, as defined in paragraph (1) below, upon any street, alley or public right-of-way within the Town, is unlawful and is declared a nuisance.

Inoperable Vehicle means any automobile, truck, tractor, motorcycle, trailer, self-propelled construction equipment, self propelled excavation equipment or self-propelled vehicle which is unable to perform the functions or purposes for which it was originally constructed. The existence of any of the following conditions shall be prima facie evidence that a vehicle is inoperable and shall, upon proof by the Town that one or more of the following elements exist, require the owner or person on whose property the inoperable vehicle is parked, with their consent, to present proof that the alleged inoperable vehicle is operable:

a. The vehicle is in the same location for a minimum of fourteen (14) consecutive days. Proof of a pending insurance claim may be presented to rebut this evidence.

b. A vehicle displays no valid registration, license plates or valid state emissions sticker, if applicable.

c. An abandoned vehicle as defined in §42-4-1802(1), C.R.S. which states, Abandoned Motor Vehicle means:

a. Any motor vehicle left unattended on public property, including any portion of a highway right-of-way, outside the limits of any incorporated town or city for a period of forty-eight hours or longer;

b. Any motor vehicle left unattended on public property, including any portion of a highway right-of-way, within the limits of any incorporated town or city for a period longer than any limit prescribed by any local ordinance concerning the abandonment of motor vehicles or, if there is no such ordinance, for a period of forty-eight hours or longer;
c. Any motor vehicle stored in an impound lot at the request of a law enforcement agency and not removed from the impound lot within seventy-two hours after the time the law enforcement agency notifies the owner or agent that the vehicle is available for release upon payment of any applicable charges or fees;

d. A motor vehicle fitted with an immobilization device that is on public property and deemed to be abandoned pursuant to section 42-4-1105, C.R.S.; or

e. Any motor vehicle left unattended at a regional transportation district parking facility, as defined in section 32-9-119.9 (6), C.R.S., that is deemed to be abandoned pursuant to section 32-9-119.9 (4) (b), C.R.S.

**Abatement** Any vehicle constituting a nuisance as provided in this Article may be abated pursuant to the provisions of 42-4-1803, C.R.S., relative to the removal and disposition of vehicles by and under the authority of the Town. Abatement of such nuisance is in addition to any other remedies or penalties provided for in this Code.

a. Prior to the issuance of a summons and complaint the owner of the vehicle shall be given a written notice of the specific facts constituting the violation and three (3) days to remediate the violation.

b. If the vehicle cannot be moved without jeopardizing the health or safety of the citizens of the Town, specifically if the vehicle cannot or is not in compliance with Colorado's statutory vehicle emissions standards, then it must be towed from the property as opposed to being moved under its own power.

**Penalty** It shall be unlawful for any person to fail to comply with the provisions of this Section. Each day which the violation continues constitutes a separate offense. The maximum penalty for a conviction of violating this Section shall be a fine of up to Three Hundred Dollars ($300). Each day or portion thereof during which the nuisance continues shall be a separate violation.

17.20-6 **Operation of Neighborhood Electric Vehicles**

Low-Speed Electric Vehicle ("LEV") as such are defined under C.R.S. 42-1-102(48.6), may be operated on the streets and alleys of the Town of Berthoud subject to the following:

A. No LEV vehicle may be operated upon Mountain Avenue/Colorado State Highway S6 or any other street or highway within the limits of the Town that has a posted speed limit that exceeds thirty-five (35) mph. The speed of an LEV may not exceed twenty-five (25) mph. LEVs may cross Mountain Avenue/Colorado State Highway 56 and any other street or highway within the limits of the Town at designated street intersections.

B. All LEVs must be properly equipped and registered as provided by Colorado Revised Statutes.

C. LEVs are subject to this Municipal Code, all applicable ordinances and state statutes including, but not limited to, financial responsibility. Nothing in this Section shall relieve an owner of an LEV of any obligation imposed by Colorado state statutes applicable to LEVs, including, but not limited to those relating to financial responsibility.

D. LEVs shall be required to display the "slow moving vehicle" emblem.

E. LEVs shall not carry a greater number of persons or carry a greater load than that specified by the manufacturer. The driver and all passengers must be seated in seats substantially similar to those placed in the vehicle by the manufacturer.

F. No person shall operate an LEV on a Town-owned or maintained trail except as permitted and posted by the Town.

G. LEVs shall only be operated by persons holding a valid driver's license.

17.21 **Abatement of Nuisances**

The Town Administrator or his designee shall cause a notice to be served upon the owner, occupant or agent in charge of any lot, building or premises in or upon which any nuisance in relation to health or sanitation may be found, or who may be the cause of such nuisance, requiring him to abate the same within a reasonable time specified in such notice. If such owner, occupant or agent shall fail to comply with such notice, he shall be subject to fine as provided in this Code. In addition to, or in lieu of, prosecuting the said owner or occupant for a violation of this Section, if the said notice to abate is not complied with
within the required time, the town may cause such nuisance to be abated and shall assess the cost of such abatement against the property and shall notify the owner or occupant of such assessment and the amount thereof. Such assessment shall be a lien upon the said property until it shall be paid. If the said charges or assessment is not paid within 30 days after the receipt of such notice of assessment, the said charge or assessment shall be certified to the county treasurer, to be by him placed upon the tax list for the current year and collected in the same manner as other taxes are collected, with 10% penalty thereon to defray the cost of collection. (C.R.S. 1963, 139-32-1(15), 139-37-5)
MUNICIPAL CODE - TOWN OF BERTHOUD

CHAPTER 18
ANIMALS

18.1 Definitions
For the purpose of this chapter the following words and phrases shall be defined as set out below:

Abandon Means to either: (1) relinquish or give up an animal with the intent of never again exercising one’s right of ownership or control, or (2) leaving of an animal by its owner or other person having charge, care, custody or control without making effective provisions for its proper care.

Animal Means any live, vertebrate creature, domesticated or wild, excluding fish.

Animal Control Officer Shall mean any person commissioned by the Chief of Police as a special officer who is qualified to perform animal control duties and enforce the laws of the Town pertaining to animals, which may include police officers, reserve police officers, and employees of the Humane Society for Larimer County.

Animal Shelter Shall mean any facility operated by a humane society or the Town for the purpose of impounding or caring for animals held under the authority of the laws, regulations or ordinances of the State, County or Town.

At Large Shall mean outside of a fence or other enclosure which restrains the animal to a particular premise, whether on public or private property, or not under the control of the keeper. A dog or cat tethered to a stationary object with access to a street, sidewalk, alley, trail or other public property is deemed to be “at large.”

Competent Person Means an individual who has the present ability to physically restrain an animal or to whose voice the animal is trained to respond and in fact does respond.
Control Means the ability to immediately and consistently restrict, restrain, direct and command the actions of an animal which shall require the animal to be on a leash or lead. It shall be *prima facie* evidence that an animal is not in control if the animal is trespassing, or not immediately responding to the direction of its keeper. Cats are specifically excepted from the application of this definition, and their keepers are exempt from the provisions of this chapter requiring animals to be controlled, except to the extent that a cat trespasses onto the property of another without the consent of the property owner.

Dwelling Unit Shall mean one (1) or more rooms and single kitchen designed for or occupied as a unit by one (1) family or individual for living and cooking purposes.

Estray Means any bovine animal, horse, mule or ass found running at large upon public or private lands whose owner is either known or unknown in the section where found or which outside the limits of its usual range or pasture.

Estrus Means a period of sexual activity in the female animal initiated by swelling of the vulva, sanguineous discharge, and heightened estrogen secretions and terminated by a period of quiescence of the reproductive organs, with a fall in circulating hormonal levels and an absence of sexual behavior all of which causes the female animal to be capable of conception and attractive to the male animal for the purpose of mating.


Humane Trap Means a device designed to capture or contain an animal without causing injury.

Keeper Includes one or more of the following: a person at least twelve (12) years old having control or purporting to have control over any animal; the person named on the licensing records of any animal as the owner; the occupant of the premises where the animal is usually kept if such premises are other than the premises of the owner as shown on the licensing record, or any person in possession of, harboring or allowing any animal to remain about their premises for a period of five (5) consecutive days or more. If an animal has more than one keeper, all such persons are jointly and severally liable for the acts or omissions of the keeper under this chapter even if the animal was in the possession of or under the control of a keeper at the time of the offense.

Leash or Lead Means a thong, cord, rope, chain or similar device which holds an animal in restraint.

Livestock Shall include horses, cattle, mules, asses, goats, sheep, swine, buffalo and cattalo.

Neighborhood Means an area within one thousand feet of the property line of the property wherein the animal is kept or maintained.

Performing Animal Exhibition Means any spectacle, display, act or event, including circuses, in which animals are featured for entertainment.

Person Means an individual or legally created entity.

Pet Means any animal that has been bred and/or raised to live in or about the habitation of humans and is dependent on people for food and shelter.

Police Officer Means any member of the Police Department of the Town.

Restraint Shall mean: (1) secured by a leash or lead under the physical control of a competent person, (2) tethered to a stationary object not within reach of a street, sidewalk, alley, trail or other public access, or (3) within a fence or other enclosure which limits the animal to a particular premises.

Shelter Means a structure or environment, adequate to the species of pet animal, which provides protection from adverse weather conditions.

Show Animals Means animals such as livestock, domestic fowl, or rabbits kept primarily for purposes of display and exhibition at fairs and like events and not for commercial purposes.

Trap Means any mechanical device used for capturing, holding or killing an animal.
18.2 Licenses

18.2-1 License Required
A. The owner of any dog or cat kept within the Town shall secure from the Town, within 14 days of acquiring possession of the dog or cat, a license to keep the animal, which shall at all times be kept current by the owner. It is a defense to a charge of violating this Section that:

1. The owner of the dog or cat had not yet lived in the Town for 30 days; or
2. The dog or cat was four (4) months of age or less.

B. No person who owns or keeps a dog or cat within the Town shall fail to obtain the license required by this Section.

18.2-2 Application and Term of License
A. The applicant for an initial or renewal license under this Section shall apply on forms acceptable to the Town, and provide satisfactory evidence that the dog or cat has been vaccinated against rabies as required by Section 18.3-1. The applicant shall apply for a renewal license each year.

B. The initial license and any renewal license issued under this Section shall be valid until January 1st of the year following issuance of the license. In the event the license is issued after July 1st of any year, only half the license fee shall be due.

C. If ownership or custody of a dog or cat licensed under this Section changes, the new owner or keeper shall obtain a new license pursuant to the terms of this Section and the license issued to the prior owner or keeper shall not be valid.

18.2-3 License and Identification Tags
A. No person who owns or keeps a dog or cat within the Town shall fail to ensure that such dog or cat at all times wears a collar or harness made of a durable material to which is attached the appropriate license tag or identification tag required by this Section.

B. No person shall use any license or tag issued pursuant to the terms of this Section for any dog or cat other than the dog or cat for which the license or tag was issued.

C. If a license tag is lost or destroyed, the license holder may obtain a duplicate tag upon payment of a replacement fee.

18.2-4 Designation of Agents
The Town Administrator may designate agents for the purpose of the administration of this Article. The compensation and fees to be paid to such agents shall be determined by the Town Administrator.

18.2-5 License and Tag Issued.
Upon application for a dog or cat license, the furnishing of the required certificate of inoculation, and the payment of the required fee, the town clerk shall issue a dog or cat license. The license shall be numbered and also a metal tag bearing the same number as the license shall be issued. The tag shall be securely attached to the collar to be worn by the animal at all times.

18.2-6 License Fees
A. A license shall be issued upon compliance with the application requirements of Section 18.2-2 and payment of the applicable license fees as established by resolution of the Town Board.

B. The license fee shall be waived under the following circumstances:

1. The applicant is the keeper of an authorized police dog; or
2. The applicant is totally or partially blind, totally or partially deaf or otherwise physically disabled and is the owner of a guide dog or service dog as defined in Section 24-34-801, Colorado Revised Statutes, or other canine trained for the purpose of aiding such person; or
3. In recognition of the fact that dogs and cats often serve a greater companionship role for elderly individuals, which individuals are often less able to afford to pay licensing fees, the applicant is 62 years of age or older, and the dog or cat to be licensed is neutered or spayed.
C. Fee Schedule for animal licenses shall be as established by resolution of the Town of Berthoud.

18.2-7 Impoundment

Any dog or cat found within the Town away from its principal premises which does not have affixed to it by means of a collar, a valid and current license or identification tag, as required by this Section shall be impounded according to the provisions of Section 18.6-1. The owner of such dog or cat shall be responsible for payment of impound fees as set forth at Subsection 18.6-4 of this Chapter.

18.3 Rabies Control

18.3-1 Rabies Vaccination Required

A. No owner of a dog or cat over four months of age shall fail to have such dog or cat vaccinated against rabies when the dog or cat becomes four months of age and thereafter at intervals designated by the Colorado Department of Health. If any dog or cat is found in the Town without a current rabies vaccination tag affixed to its collar or harness, the owner of such dog or cat shall be presumed to have violated this Section.

B. No owner of any animal other than a dog or cat for which rabies vaccinations are recommended by the National Association of State Public Health Veterinarians shall fail to have such animal vaccinated against rabies in accordance with and at the intervals suggested by the current Compendium of animal Rabies Control published yearly by the National Association of State Public Health Veterinarians, Inc.

C. Every person moving into the Town from a location outside the Town shall comply with this Section within thirty (30) days after having moved to the Town.

D. Every person who owns or keeps an animal for which a rabies vaccination is required under this Section shall ensure that the animal wears a collar or harness to which its rabies tag shall be attached.

E. No person shall affix to the collar or harness of any animal, or permit to remain affixed, a tag evidencing inoculation for any other animal.

F. No person charged with violating Subsection (A) of this Section shall be convicted if the person produces in court a rabies vaccination certificate which was valid at the time of the alleged violation.

18.3-2 Reporting Bites Required

Any person having knowledge, or having had reported to him or her, that an animal other than a rodent, bird or reptile has bitten a human being, other than its keeper, so as to cause a break in the skin shall immediately report the occurrence to an animal control officer and shall provide further information requested by the animal control officer. For the purposes of this Section, rodents, birds and reptiles are not included under the definition of animals since they are not considered to be transmitters of the rabies virus. Bites inflicted by these animals need not be reported to the animal control officer.

18.3-3 Confinement Required

A. If any animal is suspected of having rabies or if any animal has bitten a human being other than its keeper, it shall be confined for a period of not less than ten (10) days from the date of the bite. The animal may be confined on the keeper’s premises, if deemed appropriate in the discretion of the animal control officer. In the event the keeper refuses to or is unable to confine the animal, the animal shall be confined at the animal shelter or a veterinary hospital. Such confinement shall be at the expense of the owner of the animal. During the ten (10) day observation period, no rabies vaccine shall be administered to the animal.

B. The owner of any animal that has been reported as having inflicted a bite on any person shall, on demand of the animal control officer, produce said animal for examination and confinement, as prescribed in this Section. If the owner of any such animal refuses to produce the animal, the owner shall be subject to immediate arrest if there is probable cause to believe the animal has inflicted a bite upon a person, and the owner is keeping or harboring the animal and willfully refuses to produce the animal upon such demand. Such persons shall be taken before a Judge of Municipal Court, who may order the immediate production of the animal. Each day of refusal to produce the animal shall constitute a separate and individual violation of this Section.

C. No person shall remove from the Town an animal that has been reported as having inflicted a bite on a person or destroy such animal before it can be properly confined by the animal control officer.

D. For purposes of this Section, “confined on the keeper’s premises” means that the animal is kept inside a secure building where no contact with animals or persons outside the keeper’s family can occur for a ten (10) day period. During such
period of such confinement, the animal shall not be let out to relieve itself without being on a leash and handled by a person capable of physically restraining the animal. If such animal is otherwise found outside the keeper’s residence during the confinement period, it shall be taken and confined at the animal shelter or at a veterinary hospital at the expense of the owner for the remainder of the confinement period.

18.3-4 Reporting of Rabies Cases and Bites Required
A. Every person having knowledge thereof shall report to the animal control officer any suspected or positively diagnosed occurrence of rabies and any biting by any suspected or confirmed rabid animal.

B. Every physician and other medical practitioner who treats a person or persons for bites inflicted by animals shall report such treatment to the animal control officer, giving the names and addresses of such persons.

18.3-5 Killing Rabid or Suspect Animals Authorized
No person shall kill any suspected or confirmed rabid animal except upon the prior written consent of the animal control officer, or in defense of a human being or other animal, or to prevent the escape of such suspected or confirmed rabid animal. This Section shall not apply to State or County health officials.

18.3-6 Body Removal; Approval Required
No person shall remove the dead body of any suspected or confirmed rabid animal from where the animal was killed or found without the prior written approval of the animal control officer. This Section shall not apply to State or County health officials.

18.3-7 Destruction of Rabid Animals
If rabies has been confirmed by the animal control officer, such animal shall be summarily destroyed and its brain tested for positive verification of rabies at the owner’s expense, and the animal or its body may be disposed of according to the law, regulation or order of the Department of Health.

18.4 Care and Treatment of Animals
18.4-1 Cruelty to Animals
A. No person shall knowingly commit or cause to be committed any act of mistreatment or harassment or mutilation to any animal or commit or to cause to be committed any act which would harm, injure or kill any animal; or omit any act the omission of which would result in the mutilation, harm, injury or death of any animal.

B. Upon receiving information from any source that an animal is being cruelly treated or appears to be neglected or abandoned, an animal control officer shall make prompt investigation of the animal involved and inquire into the facts of the case to determine whether the circumstances are likely to continue and, if so, whether the animal being cruelly treated, neglected or abandoned is in such serious condition that allowing it to remain in such circumstances will further endanger the life or health of the animal. The police officer or animal control officer may at any time provide such food and water as may be necessary and shall not be liable for any action for entry upon the property, other than the interior of a building, of the keeper of the animal.

C. If the animal control officer determines that such emergency situation exists and that caring for and feeding the animal at that location will not adequately protect the animal and that removal of the animal to another location for proper protection and care is advisable, the animal control officer may take such steps as are necessary for the removal of the animal in accordance with this chapter. All costs of removing, treating and maintaining the animal shall be at the expense of the owner of the animal.

18.4-2 Animal Abandonment Prohibited
No keeper of an animal shall abandon such animal.

18.4-3 Trapping
A. No person shall set or cause to be set any trap within the Town which trap is not so designed as to capture or contain an animal without causing injury to the animal and which trap has not been approved by the animal control officer. The prohibition of this Section shall not apply to any person who sets rodent snap traps baited with vegetable or dairy products for the purpose of catching rats or mice.

B. Humane traps approved for use by an animal control officer may be used for the trapping of animals. All animals trapped in an approved humane trap shall be surrendered to the animal control officer or the humane society. No person shall retain any animal captured in humane traps. Upon discovery of trapped animals, the police department or humane society shall be notified.
C. Animal control officers are authorized to use any tranquilizer guns, humane traps or other suitable devices to subdue or
destroy any animal that is deemed by the animal control officer, in the officer’s discretion, to be a danger to itself or to the
public health and safety. No firearm may be used in the capture or disposition of such animal except by a peace officer
trained in the use of the same under such circumstances as will not, in the judgment of said peace officer, unreasonably
endanger the safety of persons.

18.4-4 Failure to Provide Humane Treatment Unlawful
No person shall fail to provide an animal owned or in the custody of such person with adequate food and water, proper
shelter, veterinary care, when necessary, and humane care and treatment necessary to maintain the good health of the animal and
to prevent suffering by the animal.

18.4-5 Confining in Vehicle Unlawful; Impoundment
A. No person shall confine any animal within a parked, closed vehicle without allowing sufficient cross-ventilation to prevent
the animal from suffering heat exhaustion, heat stroke or death. Notwithstanding the foregoing, no person shall confine any
animal within a parked, enclosed vehicle if the external ambient temperature is 80 degrees Fahrenheit or greater.

B. In the event any animal has been confined in a parked, closed vehicle in violation of this Section, an animal control officer
may enter the vehicle by the least intrusive means reasonably necessary, leaving written notice in or on the vehicle, and
shall impound such animal to protect its well-being. If the vehicle cannot be secured following entry, a police officer shall
remove all items of value from the vehicle, maintain an inventory of said items and impound the vehicle in a safe and secure
location until the owner can be located. All fees for the impoundment of the animal and the vehicle shall be at the expense
of the keeper of the animal.

18.4-6 Taking Animal Without Permission
Unless otherwise authorized by this chapter, no person shall take an animal, not his or her own, from any premises,
enclosed lot or building not his or her own, unless said person has first received permission from the keeper of such animal.

18.4-7 Releasing from Restraint Without Permission; Exception
No person shall release any animal from restraint without consent of the keeper, except when necessary to preserve the
life of such animal; provided, however, that when an animal has been released under such necessity, the person making such
release shall immediately inform an animal control officer that he or she has done so, or in the alternative, shall immediately
return the animal to the custody of its keeper.

18.4-8 Leaving On or Near Public Way Unlawful
No person shall tie or otherwise physically fasten an animal to any object on a public way or so near to a public way
that the animal has access to the public way, while leaving the animal unattended.

18.4-9 Motor Vehicle Strike or Injury; Duties of Driver
Any person who, while driving a motor vehicle, strikes or injures any animal shall:
A. Stop and immediately report the accident to the keeper of the animal; or,
B. If, after a reasonable search, the driver cannot locate the keeper, immediately report the accident to an animal
control officer or the police.

18.4-10 Harassment of Animals
No person shall tease, tantalize or provoke any animal in a manner which causes the animal to bark excessively or to
attempt to escape from its enclosure or to act in an aggressive manner.

18.4-11 Injuring or Meddling with Police Dogs
No person shall tease, harass, interfere or meddle with any dog or horse used by a law enforcement agency while the
animal is being used by such agency or any member thereof in the performance of any of the functions or duties of such law
enforcement agency or of such members.

18.4-12 Artificially Treated Animals Prohibited
No person shall possess, display, sell or give away dyed, or colored baby chicks, ducklings, fowl, rabbits or any other
animals.
18.4-13 Poisoning of Animals
No person shall poison any animal or distribute poison in any manner whatsoever with the intent to poison, cause the poisoning of any animal except rats, mice and any rodents. This prohibition shall not apply to persons regularly engaged in the business of fumigation or pest extermination and licensed by the State of Colorado. The distribution of any poison or poisoned food (other than that for insect control or rat or mouse poisoning) shall be **prima facie** evidence of a violation of this Section.

18.4-14 Maltreatment of Performing Animals Prohibited
No person shall put on a performing animal exhibition in which an animal is induced or encouraged to perform through the use of chemical, mechanical, electrical or manual devices in a manner which will cause or is likely to cause physical injury or suffering to the animal.

18.4-15 Disposal of Dead Animals
A. If any animal dies in the Town, it shall be the duty of the keeper of the animal to cause the animal to be at once removed from the Town and buried at a sanitary landfill, cremated, or rendered at a professional rendering service facility. No person shall dispose of any dead animal by dumping said animal on any public or private property or disposing of the animal by any means other than those set forth in this Section.

B. In the event the owner of any such animal shall neglect or refuse to remove the same within 24 hours after its death, the Town may cause the animal to be removed at the expense of such owner.

18-5 Control
18.5-1 Animal at Large
A. No animal shall be at large or beyond the control of its keeper.

B. No animal owner, or any person who harbors an animal shall fail to prevent the animal from running at large in the yard of any multiple occupancy building which is occupied by other persons; or in the common areas of mobile home complexes, apartments, or condominium developments; or in open space areas of subdivisions; or in public parks, trails or fairgrounds, unless permission is posted by public authorities allowing animals at large.

C. Any unsprayed female animal in the state of estrus (heat) shall be confined during estrus in a house, building, or secured enclosure constructed so that no other animal of the same species may gain access to the confined animal, except for planned breeding. Keepers who do not comply with this Subsection may be ordered by an animal control officer to remove the animal to a boarding facility, veterinary hospital or the animal control center. All expenses incurred as a result of such confinement shall be paid by the owner. Failure to comply with the removal order of an animal control officer shall be a violation of this Section and any unsprayed female animal in estrus may be summarily impounded in the event of noncompliance with such a removal order.

D. It shall be **prima facie** evidence that an animal is at large if the animal is not under restraint by leash and collar, on the owner’s property, or within a confined or fenced in area, and the keeper is not aware of its location.

E. An animal injured on public property or the property of a third party shall be removed by the animal control officer and given adequate veterinary medical treatment if deemed necessary by the officer, pending notification to the owner. The owner of such an animal shall be responsible for all veterinary expenses, impoundment fees, and disposal fees if the animal dies.

18.5-2 Disturbance of Peace and Quiet
A. No keeper of an animal shall fail to prevent it from disturbing the peace and quiet of any other person by loud and persistent barking, baying, howling, yipping, crying, yelping, whining, or making any other noise in an excessive continuous or untimely fashion, whether the animal is on or off the keeper’s premises.

B. The provocation of an animal whose noise is complained of is an affirmative defense to any charge for violation of Subsection (A) of this Section.

C. No keeper of an animal which is alleged to have disturbed the peace and quiet of another person shall be charged with a violation of Subsection (A) of this Section unless a keeper or a member of said person’s household has received a written warning from a police officer or an animal control officer within the preceding 12 months.

D. The warning process to be employed prior to a charge being instituted for a violation of Subsection (A) of this Section shall be substantially as follows:
1. The warning must relate to an incident separate from the charged violation.

2. An animal control officer may issue a warning after receiving a complaint of a disturbance.

3. The complainant must identify himself or herself by stating his or her name, address and telephone number. The complainant shall further state, if known, the name of the animal’s keeper, and the keeper’s address and telephone number, a description of the animal, description of the offense, the date, time, place and duration of the offense.

4. A record or incident report shall be kept of any such complaint and investigation.

5. The warning shall state that a complaint has been received, recite the date of the alleged offense, and conclude that the keeper’s animal may have disturbed the peace of another individual. The warning shall advise the animal’s keeper of the possible penalties for a violation of this Section and advise the keeper that the next complaint may result in a summons being issued against the keeper. The warning shall be identified as being issued by any police or animal control officer.

E. A keeper shall be deemed to have received a warning under Subsection (A) of this Section if the warning is personally served upon the keeper, posted on the keeper’s premises, or placed in the U.S. mail, postage prepaid and addressed to the keeper of the animal according to the last address given by the keeper at the time the owner obtained a license certificate or license tag.

F. The identity of a complainant shall be kept confidential until a violation of this Section is charged. If a violation of this Section is charged, the complainant may sign an affidavit attesting to a violation, or may verify in writing the allegations of a complaint prior to its service upon the owner.

18.5-3 Vicious Animals
A. No person shall own or keep any vicious animal. A vicious animal is one that bites, claws, or attempts to bite or claw, any person; bites another animal; or approaches any person in an apparent attitude of attack, whether or not the attack is consummated or is capable of being consummated.

B. It is a defense to the charge of owning or keeping a vicious animal that the person or animal that was bitten; clawed or approached by the vicious animal was:

1. Attacking the animal, its young, or engaging in conduct reasonably calculated to provoke the animal to attack or bite;

2. Unlawfully engaging in entry into or upon a fenced or enclosed portion of the premises upon which the animal was lawfully kept or upon a portion of the premises where the animal was lawfully restrained.

3. Unlawfully engaging in entry into or in or upon a vehicle in which the animal was confined;

4. Attempting to assault another person;

5. Attempting to stop a fight between the animal and any other animal;

6. Attempting to aid the animal when it was injured; or

7. Attempting to capture the animal in the absence of the keeper.

C. For the purpose of this Section, a person is lawfully upon the premises of the keeper when such person is on the premises in the performance of any duty imposed by law or by the express or implied invitation of the owner of such premises or the owner’s agent.

D. If a complaint has been filed in Municipal Court of the Town against the owner of an impounded animal for a charge under this Section, the animal shall be restrained by the owner and shall not be released except on the order of the Municipal Judge. The Municipal Judge may, upon making a finding that such animal represents a clear and present danger to the citizens or to the other animals in the community, order said animal to be destroyed in an humane manner by a veterinarian of the owner’s choice, licensed in the State of Colorado, at the cost of the owner.
18.5-4 Public Nuisance
A. It shall be unlawful for any keeper of an animal to fail to exercise proper care and control of his or her animal to prevent it from becoming a public nuisance. For the purposes of this Section, a public nuisance includes an animal which is a safety or health hazard, unlawfully injures a person or another animal, or destrYS public property or the property of another, or creates offensive odors which materially interfere with or disrupt another person in the conduct of lawful activities at such person’s home.

B. In the prosecution of any charge under this Section, it shall not be necessary to prove notice or knowledge on the part of the animal keeper that such animal was violating any Section of this Chapter at the time and place charged, it being the intent of this Section to impose **strict liability** upon the animal keeper for the actions, conduct and condition of such animal.

18.5-5 Animal Waste Removal
A. It shall be unlawful for the keeper of any animal to fail to **IMMEDIATELY** remove any feces deposited by such animal on **ANY STREET, SIDEWALK, PARK, OR recreation areas** OR private property not owned by the keeper, or in any water immediately after the animal has deposited the fecal matter.

B. It is an affirmative defense to a violation of this Section if a competent person in immediate control of the animal immediately removes deposits of fecal matter deposited by an animal in an appropriate trash container.

C. Any person who is blind, as the term is defined in 26-2-103, C.R.S., and uses a guide dog, or any person using a certified service dog shall be exempt from the provisions of this Section.

18.6 Impoundment and Reclamation
18.6-1 Impoundment
A. Animal control officers and police officers are hereby authorized to take or capture animals deemed by them to be included in the following categories and impound them at the animal shelter or other appropriate location where the animals will be confined in a humane manner:

1. Animals at large, vicious animals, animals creating a disturbance, maltreated animals, abandoned and nuisance animals;

2. Animals which are not licensed or have not been vaccinated against rabies;

3. Animals which were being transported by a person involved in a vehicular accident when such person becomes unable to care for or maintain control over the animal as a result of the accident and there is no other keeper present to take possession of the animal;

4. Animals which will apparently be or have been left uncared for as a result of the death, injury, arrest, detention or other incapacitation of the keeper.

B. Such animal control officers and police officers may utilize a tranquilizer dart if necessary in order to capture an animal which appears to be vicious or destroy such animal if necessary to avoid physical harm to human beings.

18.6-2 Notice of Impoundment
If, by tags or other identification attached to the animal or any other information given to the animal shelter, the owner of an impounded animal can be identified, an animal control officer or other animal shelter representative shall attempt to notify the owner of the animal of such impoundment by telephone or mail.

18.6-3 Minimum Time for Impoundment
Unclaimed animals shall be kept at an animal shelter or other appropriate location for not less than five (5) days unless euthanasia prior to that time is deemed necessary or appropriate by the veterinarian advising the animal shelter personnel.

18.6-4 Impoundment Fees
A. The keeper having charge, care, custody or control of any animal shall be liable for all fees and charges incurred as a result of the impoundment of the animal. The Town or any independent contractor with whom the Town has agreed to provide impoundment facilities shall not release any animal impounded until all fees incurred are paid.

B. An owner or keeper reclaiming an impounded animal which is not validly licensed as required under this Section shall license the animal and present evidence thereof to the animal shelter prior to reclaiming the animal. If the animal does not
have a current rabies tag, the keeper shall present a current rabies vaccination certificate for such animal issued by a licensed veterinarian prior to reclaiming the animal.

C. Failure to reclaim an animal prior to the determination that it has become the property of the Town as set forth in Section 18.6-4 shall not relieve the keeper of the responsibility for all fees and costs incurred prior to said determination.

18.6-5 Euthanization or Adoption
Any animal not reclaimed by its owner within five (5) days after notice of impoundment is delivered to its owner or keeper shall become the property of the humane society and shall be placed for adoption or humanely euthanized. In the event the owner cannot be found within five (5) days after impoundment, then the animal shall become the property of the humane society and shall be placed for adoption or humanely euthanized. Any animal may be euthanized at any time pursuant to the direction or authorization of a licensed veterinarian or state or other health authorities if required for public safety or in the best interests of the animal.

18.6-6 Sterilization of Adopted Animals Required
No unclaimed dog or cat shall be released for adoption without being sterilized or without a written agreement from the adopter, guaranteeing that such animal be sterilized or is to be used for breeding purposes.

18.6-7 License Fee
The annual license fee shall be an amount set by resolution of the Board of Trustees and shall be reduced for spayed and or neutered cats and dogs.

18-7 Keeping of Animals
18.7-1 Limitations on the Number of Household Pets
No person shall keep, house or maintain, in or upon any dwelling unit or lot more than two (2) domesticated pets per genus per adult household member. Animals up to four (4) months of age which can be properly maintained in a healthy condition without presenting a health or safety hazard to the owner, keeper or others and without constituting a nuisance to the occupants of neighboring properties may be kept as long as the owner of the pet is not breeding the pet more frequently than every two (2) years or maintaining a kennel operation. Any person may petition the Town for a variance to this Section which may be granted by the Town Administrator or designee upon showing of good cause by the applicant. The variance may be revoked for good cause at the discretion of the Town Administrator or designee after notice and hearing.

18.7-2 Limitations on Livestock
Livestock are specifically permitted only on agriculturally zoned parcels.

18.7-3 Livestock at Large
No person shall permit any livestock to be running at large within the Town, except that horses being ridden or being led by the reins shall not be deemed to be running at large.

18-8 Enforcement and Penalties
18.8-1 Enforcement
Police officers, animal control officers and wildlife conservation officers are authorized to enforce the provisions of this chapter.

18.8-2 Interference with Animal Control Officer
No person shall interfere with, hinder, or prevent a peace officer, a wildlife conservation officer, an animal control officer or such officer’s authorized representative in the discharge of the officer’s duties as prescribed in this chapter. No person shall fail to obey a lawful order of any such officer.

18.8-3 Inspection Powers
Whenever necessary to make an inspection to enforce any of the provisions of this Section, or whenever a police officer or animal control officer or authorized representative has probable cause to believe that there exists in any building or upon any premises any animal which is afflicted with rabies, or is being mistreated or neglected, the police officer, animal control officer or authorized representative may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the officer by this chapter; provided, that if such building or premises is occupied, the police officer, animal control officer or authorized representative shall first present proper credentials and request entry; and if such building or premises is unoccupied, the police officer, animal control officer or authorized representative shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused, or the owner or person having control cannot be located, the police officer, animal control officer or authorized representative shall secure entry pursuant to a warrant regularly issued.
18.8-4  **Humane Society Personnel Designated Peace Officers**

Animal control personnel, officers, agents and employees of the Humane Society of Larimer County, Inc. are hereby authorized to enforce the provisions of this chapter to the extent provided in the current contract, then in force, between the Town and the Humane Society. Under such circumstances, the officers, agents and employees of the Humane Society are peace officers within the Colorado Municipal Court Rules of Procedures, for purposes of issuing summonses and complaints relating to the enforcement of this chapter. Nothing in this chapter shall be construed to, and in no way does, limit the authority of police officers to enforce this chapter.

18.8-5  **Penalties**

A. It is unlawful for any person to violate any of the provisions stated in this chapter.

B. Every person found guilty of violating any provision of this chapter, whether by acting in a manner declared to be unlawful or by failing to act as required, may be punished as provided in this Code, and sentenced to serve up to 90 days in jail, or pay a fine of up to $300, or both such fine and imprisonment.
MUNICIPAL CODE - TOWN OF BERTHOUD

CHAPTER 19
TRAFFIC AND MOTOR VEHICLES

19.1 Model Traffic Code Adopted
Pursuant to parts 1 and 2 of article 16 of title 31 and part 4 of article 15 of title 30, C.R.S., there is hereby adopted by reference the 2010 edition of the "Model Traffic Code" promulgated and published as such by the Colorado Department of Transportation, Safety and Traffic Engineering Branch, 4201 East Arkansas Avenue, EP 700, Denver, CO 80222. The subject matter of the Model Traffic Code relates primarily to comprehensive traffic control regulations for the Town. The purpose of this Section 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 Town of Berthoud, Colorado, and may be inspected during regular business hours.

19.1-1 Penalties
The following penalties, herewith set forth in full, shall apply to this Section: (a) It is unlawful for any person to violate any of the provisions adopted in this Section. (b) Every person convicted of a violation of any provision adopted in this Section shall be punished by a fine not exceeding Three Hundred dollars ($300), or by imprisonment not exceeding Ninety (90) days, or by both such fine and imprisonment.

19.1-2 Application
This Section shall apply to every street, alley, sidewalk area, driveway, park, and to every other public way or public place or public parking area, within the corporate limits of this municipality or county, the use of which this municipality or county has jurisdiction and authority to regulate. The provisions of Sections 1401, 1402, 1413, and part 16 of the adopted Model Traffic Code, respectively concerning reckless driving, careless driving, eluding a police officer, and accidents and accident reports shall apply not only to public places and ways but also throughout this municipality.

19.1-3 Validity
If any part or parts of this Section are for any reason held to be invalid such decision shall not affect the validity of the remaining portions of this Section. The Town Board of Trustees hereby declares that it would have passed this Section and each part or parts thereof, irrespective of the fact that anyone part or parts be declared invalid.

19.2 Restrictions on Tire Equipment on Streets
A. Vehicle Defined. Every device in, upon or by which any person or property is or may be transported or drawn upon a public roadway, excepting devices usually moved by human power or used exclusively upon stationary rails or tracks.
B. Every solid rubber tire on a vehicle shall have rubber on its entire traction surface at least one inch thick above the edge of the flange of the entire periphery.
C. No person shall operate or move on any street any vehicle having any metal tire in contact with the roadway.
D. No tire on a vehicle moved on a street shall have on its periphery any block stud, flange, cleat, or spike or any other protuberances of any material other than rubber which projects beyond the tread on the traction surface of the tire except that it shall be permissive to use farm machinery with tires having protuberances which will not in the opinion of the Town damage the street, and except also that it shall be permissible to use tire chains or stud tires upon any vehicle when required for safety because of snow, ice or other conditions tending to cause a vehicle to skid.

19.3 No Right Turn on Red Signal When Marked
No right turn shall be permitted at any intersection within the limits of the Town of Berthoud at a time when any traffic control light at said intersection indicates red when a traffic control sign is posted at said intersection prohibiting a right turn on
red. Said sign shall bear the words “no right turn on red” and shall be posted in a conspicuous place at or near the traffic control signal light.

19.3-1 Exception
The provisions of this Section shall not apply to authorized emergency vehicles.

19.3-2 Penalties
Every person convicted of a violation of this Section shall be punished by a fine not exceeding $300.00 or by imprisonment not exceeding ninety (90) days or by both such fine and imprisonment.

19.4 Impounded Vehicles
19.4-1 Post-Storage Hearings for Impounded Vehicles
As to any vehicle impounded pursuant to the Municipal Code of the Town of Berthoud or Colorado Revised Statutes by or at the request of the Town of Berthoud its agents or employees, a person who has a legal entitlement to possession of the vehicle has a right to a post-seizure administrative hearing to determine whether there was probable cause to impound the vehicle if such person files a written demand, on forms so provided for such a hearing with the Town of Berthoud within ten (10) days of the postmarked date of the Report of Abandoned Motor Vehicles. A Report of Abandoned Motor Vehicles shall be sent certified mail to the legal owner of record, if ascertained, and any lienholder if ascertained, and to the towing carrier within five (5) working days of the receipt of the report from the State of Colorado Department of Revenue indicating the name of the owner of record, the lienholder and all other pertinent information.

19.4-2 Conduct of Hearing
Upon receipt of a written request for hearing by the police department of the Town of Berthoud a hearing shall be conducted before the Town Administrator or a hearing officer designated by the Administrator within forty-eight (48) hours of receipt of the written demand therefor from the person seeking the hearing unless such person waives the right to a speedy hearing. Saturdays, Sundays, and Town holidays are to be excluded from the calculation of the 48-hour period. The hearing officer shall be someone other than the person who directed the impounding and storage of the vehicle. The sole issue before the hearing officer shall be whether there was probable cause to impound the vehicle in question.

"Probable cause to impound" shall mean such a state of facts as would lead a person of ordinary care and prudence to believe that there was sufficient breach of local, state or federal law to grant legal authority for the removal of the vehicle.

The hearing officer shall conduct the hearing on an informal manner and shall not be bound by technical rules of evidence. The person demanding the hearing shall carry the burden of establishing that such person has the right to possession of the vehicle. The Police Department shall carry the burden of establishing that there was probable cause to impound the vehicle in question. 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 demanding the hearing and the registered owner of the vehicle (if not the person requesting the hearing). The hearing officer's decision in no way affects any criminal proceeding in connection with the impound in question and that any criminal charges involved in such proceeding may only be challenged in the appropriate court. The decision of the hearing officer is final. Failure of the registered or legal owner, or their agent to request or attend a scheduled post-seizure hearing shall be deemed a waiver of the right to such hearing.

19.4-3 Decisions of the Hearing Officers and Their Effect
The hearing officer shall only determine that as to the vehicle in issue either (a) there was probable cause to impound the vehicle or (b) there was no such probable cause, in the event that the hearing officer determines that there was no probable cause, the hearing officer shall prepare and date a Certificate of No Probable Cause, copies of which shall be given to the possessor of the vehicle and the Police Department. Upon receipt of the possessor's copy of such certificate, the Official Police Garage having custody of the vehicle shall release the vehicle to its possessor. Upon a finding of no probable cause, towing and storage fees shall be paid by the Town in accordance with arrangements made between the Town and the Official Police Garages. If the possessor fails to present such certificate to the Official Police Garage having custody of the vehicle within twenty-four (24) hours of its receipt, excluding such days when the Official Police Garage is not open for business, the possessor shall assume liability for all subsequent storage charges. Such certificate shall advise the possessor of such requirement.
# MUNICIPAL CODE - TOWN OF BERTHOUD

## CHAPTER 20

### FINES AND PENALTIES

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>20.1</td>
<td><strong>Required Obedience to Code</strong></td>
<td>It shall be a violation of this Code for any person to do any act which is forbidden or declared to be unlawful, or to fail to do or perform any act required, in this Code.</td>
</tr>
<tr>
<td>20.2</td>
<td><strong>Fines and Penalties</strong></td>
<td>Any person who shall be convicted on a violation of this Code shall be fined in a sum of not less than $1.00 nor more than $300.00, or imprisoned for a term not exceeding ninety (90) days, or by both fine and imprisonment for each offense. Where any violation is a continuing offense, each day that the violation continues shall be considered and held to be a separate and distinct offense. (C.R.S. 1963, 139-32-1 (79), 139-33-1)</td>
</tr>
<tr>
<td>20.3</td>
<td><strong>Municipal Court Costs</strong></td>
<td>Assessment of Costs. The judge of Berthoud's Municipal Court shall assess costs of $15.00 against any defendant who pleads guilty or nolo contendere or who enters into a plea agreement or who, after trial, is found guilty of an ordinance violation or violation of this Municipal Code.</td>
</tr>
</tbody>
</table>
## CHAPTER 22
### CEMETERIES

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>22.1</td>
<td>Creation and Control</td>
</tr>
<tr>
<td>22.1-1</td>
<td>Hours Open to Public</td>
</tr>
<tr>
<td>22.2</td>
<td>Sale of Lots</td>
</tr>
<tr>
<td>22.3</td>
<td>Issuance of Deed</td>
</tr>
<tr>
<td>22.4</td>
<td>Definition of Perpetual Care</td>
</tr>
<tr>
<td>22.5</td>
<td>Perpetual Care Fund</td>
</tr>
<tr>
<td>22.6</td>
<td>Records Kept</td>
</tr>
<tr>
<td>22.7</td>
<td>Monuments</td>
</tr>
<tr>
<td>22.8</td>
<td>Plantings and ornamentals</td>
</tr>
</tbody>
</table>

### 22.1 Creation and Control
The Town of Berthoud has created and established a municipally owned cemetery, known as Greenlawn Cemetery. The Town Board of Trustees shall have the supervision and control of the operation thereof and the sale and care of the lots therein, and it shall make rules and regulations governing the maintenance, care and control of such cemetery. (C.R.S. 1963, 139-32-1 (32).)

### 22.1-1 Hours Open to Public
It shall be unlawful for any person to enter upon the said cemetery grounds, except when open to the public, without first obtaining permission from the police department. The said cemetery shall be open to the public during posted hours.

### 22.2 Sale of Lots
The Board of Trustees shall from time to time, by resolution, establish the price at which lots in the said cemetery shall be sold. No lot or part of a lot shall hereafter be sold unless the purchaser thereof also pays for its perpetual care. The Town Board of Trustees shall from time to time, by resolution, establish the amount of the fee to be paid for such perpetual care.

### 22.3 Issuance of Deed
Upon the payment to the Town Clerk of the purchase price of any lot and the sum charged for perpetual care, the mayor and the town clerk shall execute and deliver proper deeds of conveyance therefore, which deed shall state that the owner is entitled to perpetual care as provided in the rules and regulations governing such cemetery.

### 22.4 Definition of Perpetual Care
The term “perpetual care” shall mean the cutting and watering of the grass at reasonable intervals; the raking and cleaning of the lots; the general care and pruning of the trees and shrubs that may be placed along the walks, roadways and boundaries; meaning and intending the general preservation of the lots and the grounds, walks, roadway, boundaries and structures to the end that said grounds shall remain and be reasonably cared for as cemetery grounds forever. The term “perpetual care” shall not include the maintenance, repair or replacement of any grave stones, monuments or memorials; nor the planting of flowers or ornamental plants; nor the maintenance or doing of any special or unusual work in the cemetery; nor the construction or reconstruction of any marble, granite bronze, or concrete work on any lot where the same is damaged from any cause whatsoever.

### 22.5 Perpetual Care Fund
There is hereby created a fund to be known as the “Perpetual Care Fund” and all monies received on account of charges for perpetual care shall be paid into such fund. The said fund shall be kept separate and apart from all other funds of the town in a specially dedicated fund.

### 22.6 Records Kept
Accurate records shall be kept of all lots or parts of lots sold, and accurate records shall also be kept on plat of such cemetery showing the location of each burial made therein.

### 22.7 Monuments
No monument can be set without first obtaining permission from the town.

### 22.8 Plantings and Ornamentals
No plantings or ornamentals may be made until first obtaining permission from the caretaker of the cemetery. No plantings are allowed in the flat marker sections of the cemetery.
22.9  Reserved

22.10  Private Burials Prohibited

The burial of a human body on private property within the boundaries of the Town of Berthoud shall be prohibited except on parcels of five acres or more. On such parcels, all requirements of Colorado Revised Statutes 25-2-111 shall be observed in all respects.
CHAPTER 23
SALES TAX

23.1 Sales Tax

23.1-1 Definition

23.1-2 General Provisions

23.1-3 Sales Tax Collection

23.1-4 Sales Tax Vendor’s Fee

23.2 Use Tax

23.2-1 Definition

23.2-2 Use Tax Imposed

23.2-3 Exemptions

23.2-4 Motor and Other Vehicle Use Tax Collection

23.2-5 Collection, Administration and Enforcement of Construction and Building Material Use Tax

23.3 Notice of Deficiency

23.3-1 Notice

23.3-2 Hearing

23.4 Use of Revenue

23.5 Amendments

23.6 Penalty Clause

23.7 Saving Clause

23.8 Telecommunication Fees

23.8-1 Business and Operating Telephone Utility Tax

23.8-2 Telephone Service Tariff

23.8-3 Emergency Wireless Access Charge

23.1 Sales Tax

23.1-1 Definitions

For the purposes of this article the definition of the words herein contained shall be as said words are defined in sections 39-26-102 and 39-26-201, Colorado Revised Statutes, (C.R.S.), as they currently exist or may hereafter be amended, and the definitions are incorporated in this Section by specific reference.

23.1-2 General Provisions:

A. There is imposed on the sale of tangible personal property at retail or the furnishing of services as provided in section 29-2-105(1) (d), C.R.S., a sales tax equal to three percent (3%) of the gross receipts (the "sales tax") . The tangible personal property and services taxable under this Section shall be the same as the tangible personal property and services taxable pursuant to section 39-26-104, C.R.S., and subject to the same exemptions as those specified in section 39-26-114, C.R.S.; provided that the exemption for the sales of food as defined in section 39-26-102(4.5), C.R.S., pursuant to section 39-26-114(1) (a) (XX), CORPS.; and, the exemption for sales of electricity, coal, wood, gas, fuel oil or coke sold to occupants of residences pursuant to section 39-26-114(1) (a) (XXI), C.R.S., shall not apply to the sales tax, and the sale of such items is expressly made taxable under this Section. The imposition of the sales tax on individual sales shall be in accordance with schedules set forth in the rules and regulations promulgated by the Department of Revenue. If any vendor, during any reporting period, shall collect as the sales tax an amount in excess of the amount of the sales tax imposed by this Section, he shall remit to the Executive Director the full amount of the sales tax imposed in this Section and also such excess.

1. Although the sale of food is subject to the taxation, no sales or use tax shall apply to the sale of food purchased with food stamps. Food, for this purpose is defined as provided in 7 U.S.C. section 2012(g) as such section exists on October 1, 1987 or is thereafter amended.

2. Although the sale of food is subject to the taxation, no sales or use tax shall apply to the sale of food purchased with funds provided by the special supplemental food program for women, infants, and children. Food, for this purpose defined as provided in 42 U.S.C. section 1786, as such section exists on October 1, 1987 or as thereafter amended.

B. For the purpose of this sales tax Section, all retail sales are consummated at the place of business of the retailer, unless the tangible personal property sold is delivered by the retailer or his agent to a destination outside the limits of the town or to a common carrier for delivery to a destination outside the limits of the town. The gross receipts from such sales shall include delivery charges when such charges are subject to the state sales and use tax imposed by Article 26 of Title 39, C.R.S., regardless of the place to which delivery is made. If a retailer has no permanent place of business in the town, or has more than one place of business, the place at which the retail sales are consummated for the purpose of the sales tax shall be determined by the provisions of Article 26 of Title 39, C.R.S., and by rules and regulations promulgated by the Department of Revenue.

C. The sales tax shall not apply to the sale of construction and building materials if such materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to the town evidencing that a local use tax has been paid or is required to be paid.
D. The amount subject to the sales tax shall not include the amount of any sales or use tax imposed by Article 26 of Title 39, C.R.S.

E. All sales of personal property on which a specific ownership tax has been paid or is payable shall be exempt from the sales tax when such sales meet both of the following conditions:

1. The purchaser is a nonresident of, or has his principal place of business outside the limits of the town; and

2. Such personal property is registered or required to be registered outside the limits of the town under the laws of the state.

F. The sales tax shall not apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule municipality equal to or in excess of the rate provided in this Section. A credit shall be granted against the sales tax with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule municipality. The amount of the credit shall not exceed the rate provided in this Section.

23.1-3 Sales Tax Collection
The collection, administration, and enforcement of the sales tax shall be performed by the Executive Director of the Department of Revenue of the state (Executive Director) in the same manner as the collection administration and enforcement of the Colorado states sales tax. Unless otherwise provided by Article 2 of Title 29, C.R.S., the provisions of Article 26 of Title 39, C.R.S., shall govern the collection, administration, and enforcement of the sales tax.

23.1-4 Sales Tax Vendor's Fees
The vendor shall be entitled as collection agent for the town to withhold an amount equal to three and one-third percent of the total amount to be remitted by the vendor to the Executive Director each month to cover the vendor's expense in the collection and remittance of the sales tax. If any vendor is delinquent in remitting the sales tax, other than in unusual circumstances shown to the satisfaction of the Executive Director, the vendor shall not be allowed to retain any amounts to cover expenses in collecting and remitting the sales tax, and an amount equivalent to the full amount of the sales tax imposed by this Section shall be remitted to the Executive Director by any such delinquent vendor.

23.2 Use Tax
23.2-1 Definitions
For the purposes of this Section, the words contained herein shall have the meanings set forth in sections 39-26-102 and 39-26-201, Colorado Revised Statutes (C.R.S.), as they currently exist or may hereafter be amended, and the definitions are incorporated in this Section by specific reference.

23.2-2 Use Tax Imposed
There is imposed and there shall be paid and collected a use tax upon the privilege of using or consuming within the Town of Berthoud any construction and building materials purchased at retail and for the privilege of storing, using or consuming in the town motor and other vehicles on which registration is required, purchased at retail, such use tax to be in the amount of three percent (3%) of the retail costs thereof (the “use tax”). The use tax shall be collected in accordance with the schedules set forth in the rules and regulations promulgated by the Department of Revenue.

23.2-3 Exemptions
In no event shall the use tax apply:

A. To the storage, use or consumption of any tangible property the sale of which is subject to a retail sales tax imposed by the town;

B. To the storage, use or consumption of any tangible personal property purchased for resale in the town, either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of a business;

C. To the storage, use or consumption of tangible personal property brought into the town by a nonresident thereof for his own storage, use or consumption while temporarily within the town; however, this exemption does not apply to the storage, use or consumption of tangible personal property brought into this state by a nonresident to be used in the conduct of a business in this state;
D. To the storage, use or consumption of tangible personal property by the United States government or the State of Colorado, or its institutions or its political subdivisions, in their governmental capacities only or by religious or charitable corporations in the conduct of their regular religious or charitable functions;

E. To the storage, use or consumption of tangible personal property by a person engaged in the business of manufacturing or compounding for sale, profit or use any article, substance or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded or furnished and the container, label or the furnished shipping case thereof;

F. To the storage, use, or consumption of any article of tangible personal property the sale or use of which has already been subjected to a legally imposed sales and use tax of another statutory or home rule town, city or county and county equal to or in excess of the use tax imposed by this Section. A credit shall be granted against the use tax with respect to a person's storage, use or consumption in the town of tangible personal property purchased by him in a previous statutory or home rule municipality or city and county. The amount of the credit shall be equal to the tax paid by him by reason of the imposition of a sales or use tax of another statutory or home rule town, city, or city and county on his purchase or use of the property. The amount of the credit shall not exceed the amount of the use tax imposed by this Section;

G. To the storage, use or consumption of tangible personal property and household effects acquired outside of the town and brought into it by a nonresident acquiring residency;

H. To the storage or use of a motor vehicle if the owner is or was, at the time of purchase, a nonresident of the town and he purchased the vehicle outside of the town for use outside of the town and actually so used it for a substantial and primary purpose for which it was acquired and he registered, titled and licensed the motor vehicle outside of the town.

23.2-4 Motor and Other Vehicle Use Tax Collection
A. The use tax shall be applicable for every motor or other vehicle for which registration is required by the laws of the state. No registration shall be made of any motor or other vehicle for which registration is required, and no certificate of title shall be issued for such vehicle by the Department of Revenue of the state, or its authorized agents, until any use tax due upon the use, storage or consumption thereof has been paid.

B. The use tax on motor or other vehicles shall be collected by the authorized agent of the Department of Revenue of the state in the county, pursuant to agreement between the town and the Executive Director pursuant to sections 29-2-106(3) (b) and 39-26-208, C.R.S.

C. In the event that the Executive Director of the Department of Revenue fails or refuses to collect the sales or use taxes imposed by this Section, the board shall be authorized to provide for the collection, administration or enforcement of such sales and use taxes to the extent permitted by law or to amend this Section to comply with the requirements of the Department of Revenue.

23.2-5 Collection, Administration, and Enforcement of Construction and Building Materials Use Tax
The collection, administration and enforcement of the use tax on construction and building materials shall be performed by the town clerk. The town board is authorized to adopt all rules and regulations which may be necessary or appropriate for the collection, administration, and enforcement of the use tax on construction and building materials.

A. Purpose. The purpose of this Section is to impose a use tax on the privilege of storing, using or consuming in the Town of Berthoud construction and building materials and motor and other vehicles on which registration is required, purchased at retail.

B. Definitions:

Person As used in this Section means an individual, corporation, partnership, firm, joint adventure, association, estate, trust, receiver or any other group acting as a unit and the plural as well as the singular number.

Storage or Storing Means any keeping or retention of, or exercise of dominion or control over, tangible personal property in this Town.
C. *Tax Levied.* There is hereby levied and there shall be collected from every person in this Town a tax or excise for the privilege of storing, using or consuming in this Town any construction and building, purchased at retail.

D. *Exemptions.* The tax hereby imposed shall not apply:

1. To the storage, use or consumption of any tangible personal property, the sale of which is subject to a retail sales tax imposed by the Town;

2. To the storage, use or consumption of any tangible personal property purchased for resale in the Town, either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of a business;

3. To the storage, use or consumption of tangible personal property brought into the Town by a nonresident thereof for his own storage, use or consumption while temporarily within the Town;

4. To the storage, use or consumption of tangible personal property by the United States government or the State of Colorado or its institutions or its political subdivisions in their governmental capacities only or by religious or charitable corporations in the conduct of their regular religious or charitable functions;

5. To the storage, use or consumption of tangible personal property by a person engaged in the business of manufacturing, compounding for sale, profit or use any article, substance or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded or furnished and the container, label or the furnished shipping case thereof;

6. To the storage, use or consumption of any article of tangible personal property the sale or use of which has already been subjected to a sales or use tax of another county, city, or town equal to or in excess of that imposed by this Section. A credit shall be granted against the use tax imposed by this Section with respect to a person's storage, use or consumption in the town of tangible personal property purchased by him elsewhere. The amount of the credit shall be equal to the tax paid by him by reason of the imposition of a sales or use tax of another county, city or town on his purchase or use of the property. The amount of the credit shall not exceed the tax imposed by this Section.

7. To the storage, use or consumption of tangible personal property and household effects acquired outside of the Town and brought into it by a nonresident acquiring residency;

8. To the storage or use of a motor vehicle if the owner is or was, at the time of purchase, a nonresident of the Town and he purchased the vehicle outside of the Town for use outside the Town and actually so used it for a substantial and primary purpose for which it was acquired and he registered, titled and licensed said motor vehicle outside of the Town.

9. To the storage, use or consumption of any construction and building materials and motor and other vehicles on which registration is required, if a written contract for the purchase thereof was entered into prior to the effective date of this use tax.

10. To the storage, use or consumption of any construction and building materials required or made necessary in the performance of any construction contract bid, let or entered into at any time prior to the effective date of this use tax Section.

11. To purchases by tax exempt entities which would be otherwise taxable under this Section. The furnishing to the Town Clerk of a certified exemption shall be prima facie evidence of such tax exempt status, and the use tax otherwise due shall not be collected at the time the building permit is secured or the vehicle is purchased.

E. *Collection, Administration and Enforcement.*

1. The tax herein imposed on motor or other vehicles on which registration is required shall be collected, administered and enforced as provided by Colorado Revised Statutes 39-16-201 et. seq.

2. The tax herein imposed on the privilege of storing, using or consuming in the Town of Berthoud any construction and building materials, purchased at retail shall be collected as follows:
a. Said use tax shall be paid to the Town Clerk and shall be collected at the time building permits are issued for building and construction by the Town. The payment of said tax shall be the responsibility of the person applying for the building permit. For the purposes of this Section the value of the construction and building materials to be stored, used or consumed as part of any project shall be deemed to be an amount equal to fifty percent of the total valuation of the construction project as stated on the building permit issued. If the tax is paid in this way, no further sales or use tax information will be required for final building inspection on the project.

b. The Town Clerk is hereby authorized to promulgate such additional rules and regulations as may be necessary for the proper administration and enforcement of this Section.

F. **Tax A Lien On Taxpayer's Property.** If any tax imposed herein is not paid within ten days after it is due, the Town Clerk shall issue a notice, setting forth the name of the taxpayer, the amount of the tax, the date of the accrual thereof and that the Town claims a first and prior lien therefor on the real and personal property of the taxpayer except as to preexisting liens on a bona fide mortgagee, pledge, judgment creditor or purchase whose right has attached prior to the filing of the notice as hereinafter provided.

This notice shall be on forms prepared by the Town Clerk; and when filed in the office of the clerk and recorder of any county in this state in which the taxpayer owns real or personal property, such notice shall create a lien on aforesaid on such property in that county and constitute a notice thereof.

G. **Penalty.** It shall be unlawful for any person to violate any of the terms of this Section and any person convicted of violating any of the provisions of this Section shall be punished by a fine not to exceed three hundred dollars, or imprisonment for a maximum of ninety days or by both such fine and imprisonment.

H. **Severability.** If any provision of this Section or the application thereof to any person or situation is determined to be invalid, such invalidity shall not affect other provisions or applications of the Section which can be given effect without the invalid provision or application and to this end the provisions of this Section are declared to be severable.

### 23.3 Notice of Deficiency

#### 23.3-1 Notice

When the town asserts that use taxes are due in an amount greater than the amount paid by a taxpayer, the town shall mail a deficiency notice to the taxpayer pursuant to section 29-2-106.1(2) (a), C.R.S. The taxpayer shall have thirty days from the mailing thereof within which to pay the taxes or to request a hearing as provided in Subsection 23.3-2 of this Section. Failure to request a hearing within such time shall constitute an admission that such taxes are due. The deficiency notice shall contain a warning that failure to request a hearing, pursuant to Subsection 23.3-2 of this Section, shall constitute an admission that taxes are due. The deficiency notice shall also contain notification in clear and conspicuous type, that the taxpayer has the right to a hearing before the local government and then to appeal that decision to a state hearing on the deficiency pursuant to section 29-2-106.1, C.R.S. Such notice shall be sufficient if mailed by certified mail to the taxpayer at his last known address.

#### 23.3-2 Hearing

The taxpayer shall have a right to a hearing, upon a request timely made, before an independent panel appointed by the Town. Such 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 town may submit a brief. The hearing shall be held and a final decision shall be issued thereon within ninety days after the town's receipt of the taxpayer's written request therefor, except the town may extend such period if the delay in holding the hearing or issuing a decision thereon was occasioned by the taxpayer, in which case the hearing shall be held and the decision issued within one hundred eighty days of the taxpayer's request in writing therefor.

### 23.4 Use of Revenue

There is established a special fund of the Town to be known as the Town of Berthoud Sales and Use Tax Special Fund ("fund"). The 1% increase in each of the sales and use taxes shall be used exclusively for: Maintenance, improvements, paving,overlaying and repairing of streets; for the purchase of land and construction of a building for a municipal recreation center; for the purchase of land to be used as open space and as buffer areas; operation, maintenance, repairs and improvements to the Berthoud Public Library; and for the operation, maintenance, repair and improvements of the Berthoud Area Transportation System.

### 23.5 Amendments

Except as to the sales and use tax rates provided for herein, the items taxed and exempted from the sales and use taxes under this Chapter, and the use of the tax revenue provided for in Section 23.4, the town board may amend, alter, delete or change the provisions of this Chapter by the adoption of an amending ordinance in accordance with law. Such amendment, alteration, deletion, or change need not be submitted to the electors of the town for their approval.
23.6 **Penalty Clause**

Any person convicted of violating any of the provisions of this Chapter shall be punished by a fine not to exceed three hundred dollars or by imprisonment for not more than ninety days, or by both such fine and imprisonment.

23.7 **Saving Clause**

If any section, subsection, sentence, clause or phrase of this Chapter is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this Chapter. The board of trustees hereby declares that it would have passed this Chapter, and each section, subsection, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

23.8 **Telecommunication Fees**

23.8-1 **Business and Operating Telephone Utility Tax**

A. **Levy of Tax.** There is hereby levied on and again to each telephone utility company operating within the Town of Berthoud, (hereinafter called the "Town") a tax on the occupation and business of maintaining a telephone exchange and lines connected therewith in the Town and of supplying local exchange telephone service to the inhabitants of the Town. The amount of the tax levied hereby shall be in an amount set by resolution of the Town Board.

B. **Time Payment of Tax.** The tax levied by this Section shall be due and payable in twelve equal monthly installments, each installment to be paid on the last business day of each calendar month.

C. **Filing Statement.** Within thirty (30) days after the date on which the tax begins to accrue as provided in 23.8-2, each telephone utility company subject to this Code shall file with the Town Clerk, in such form as the Clerk may require, a statement showing the total telephone accounts for which local exchange telephone service was provided within the corporate limit of the Town on said date. Such statement shall be filed within thirty (30) days after each anniversary of the date on which the tax begins to accrue, showing such accounts on the anniversary date.

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

E. **Penalty Clause.** If any officer, agent or manager of a telephone utility company which is subject to the provisions of this Section shall fail, neglect, refuse to make or file the annual statement of accounts provided in 23.8-3, the said officer, agent, manager or person shall, on conviction thereof, be punished by a fine not less than twenty-five dollars ($25.00) nor more than three hundred dollars ($300.00); provided, that each day after said statement shall become delinquent during which the said officer, agent, manager or person shall so fail, neglect, or refuses to make and file such statement shall be considered a separate and distinct offense.

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

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

H. **Tax in Lieu of Other Business and Occupation Taxes, etc.** The tax herein provided shall be in lieu of all other occupation taxes or taxes on the privilege of doing business in the Town on any telephone utility company subject to the provision of this Section and in addition shall be in lieu of any free service furnished the Town by any said telephone utility.

23.8-2 **Telephone Service Tariff**

A. The Mayor is authorized to enter into an intergovernmental agreement with other governing bodies located in Larimer County to create the Larimer Emergency Telephone Authority (LETA) to establish and maintain an emergency telephone service system offering enhanced 911 capability in Larimer County.

B. The telephone service supplier shall include on its monthly user billing a telephone exchange access facility charge of two percent (2%) of the tariff rate established by the Public Utilities Commission or the amount set by LETA per month per
exchange access facility, whichever is less. The telephone service supplier shall remit the amount collected each month to the Larimer Emergency Telephone Authority.

C. Upon recommendation of the Larimer Emergency Telephone Authority, the Board of Trustees by resolution may raise or lower the telephone exchange access facility charge. Such charge shall not exceed two percent (2%) of the tariff as approved by the Public Utilities Commission.

D. Telephone service suppliers providing telephone service in the Town of Berthoud are hereby authorized to collect the emergency telephone charge imposed by this Section in accordance with section 29-11-101, C.R.S.

23.8-3 Emergency Wireless Access Fee (check fee)
Commencing on April 1, 1998, a wireless service user access facility charge shall be established at the rate of forty-five cents ($0.45) per month per wireless line user access facility.

Wireless telephone service suppliers providing wireless telephone service in the Town of Berthoud are authorized to collect the access facility charge in accordance with § 29-11-100.5, et seq., C.R.S.
### CHAPTER 30 – BERTHOUD DEVELOPMENT CODE
#### SECTION 1 – GENERAL PROVISIONS

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>30-1-101</td>
<td>Title</td>
</tr>
<tr>
<td>30-1-102</td>
<td>Short Title</td>
</tr>
<tr>
<td>30-1-103</td>
<td>Authority</td>
</tr>
<tr>
<td>30-1-104</td>
<td>Jurisdiction</td>
</tr>
<tr>
<td>30-1-105</td>
<td>Purpose</td>
</tr>
<tr>
<td>30-1-106</td>
<td>Interpretation</td>
</tr>
<tr>
<td>30-1-107</td>
<td>Applicability of Code</td>
</tr>
<tr>
<td>30-1-108</td>
<td>Relationship to existing ordinances &amp; resolutions</td>
</tr>
<tr>
<td>30-1-109</td>
<td>Relationship to Comprehensive Plan</td>
</tr>
<tr>
<td>30-1-110</td>
<td>Effective date</td>
</tr>
<tr>
<td>30-1-111</td>
<td>Application fees</td>
</tr>
<tr>
<td>30-1-112</td>
<td>Development review deposit &amp; reimbursement of Town Costs</td>
</tr>
<tr>
<td>30-1-113</td>
<td>Severability</td>
</tr>
<tr>
<td>30-1-114</td>
<td>Computation of time</td>
</tr>
<tr>
<td>30-1-115</td>
<td>Miscellaneous</td>
</tr>
<tr>
<td>30-1-116</td>
<td>Definitions</td>
</tr>
<tr>
<td>30-1-117</td>
<td>Public hearing and general notice provisions</td>
</tr>
</tbody>
</table>

Adopted March 27, 2012
Amended on June 23, 2015
Amended October 27, 2015
10. **30-1-101  Title**
This ordinance establishes the regulations and standards governing the use and development of land within the Town of Berthoud. Included are provisions for the annexation, subdivision and zoning of land, as well as the administrative procedures governing the submission of applications, administrative and public reviews, and appeals. Also included are the Town of Berthoud’s standards for site and building design, landscaping, parking and public infrastructure.

11. **30-1-102  Short title**
This ordinance shall be known and may be cited as the Town of Berthoud Development Code. Within this ordinance the Town of Berthoud Development Code shall simply be referred to as “this Code.”

12. **30-1-103  Authority**
A. This Code is adopted pursuant to the authority contained in the Colorado Revised Statutes (C.R.S.). Local governments are provided broad authority to plan for and regulate the use of land within their jurisdictions, as authorized in Title 29, Article 20, et seq. and Title 31, Article 23, et seq. of the C.R.S., as amended. Additional statutory authority may also exist for specific types of development regulation.

B. Whenever a section of the Colorado Revised Statutes cited in this Code is later amended or superseded, this Code shall be deemed amended to refer to the amended section or section that most nearly corresponds to the superseded section.

13. **30-1-104  Jurisdiction**
A. This Code shall be effective throughout the Town of Berthoud’s municipal boundaries. The Town of Berthoud’s planning jurisdiction includes all land within the Town of Berthoud, and where applicable, the lands within three miles of the Town of Berthoud’s boundaries per C.R.S. §31-12-105(e) (I). For purposes of zoning and subdivision, this Code only applies to lands within the Town of Berthoud’s municipal boundaries.

B. A copy of a map showing the boundaries of the Town of Berthoud and the area within the three-mile planning jurisdiction shall be available for public inspection in the Town of Berthoud’s offices.

C. Except as specifically provided herein, this Chapter does not create rights in third parties as beneficiaries. It is intended to create an enforceable relationship between only the Town and the property owners or citizens to whom its provisions directly apply.

14. **30-1-105  Purpose**
A. The purpose of this Code is to create a vital, cohesive, well-designed community in order to enhance the Town’s character and further the citizens’ vision, goals and objectives as identified in the Town of Berthoud Comprehensive Plan (Comprehensive Plan). This Code is designed to:

1. Encourage the most appropriate uses of land in the Town;
2. Encourage innovative, quality site design, architecture and landscaping;
3. Encourage new development to relate to the Town’s historic development pattern;
4. Promote compact, well-defined, sustainable neighborhoods that enhance the Town’s character;
5. Create livable neighborhoods that foster a sense of community and reduce dependency on private vehicles;
6. Encourage the proper arrangement of streets in relation to existing and planned streets and ensure that streets facilitate safe, efficient and pleasant walking, biking and driving;
7. Protect agricultural lands, sensitive natural and historic areas and the Town of Berthoud’s environmental quality;
8. Integrate a high quality natural environment into the developed portions of the community;
9. Facilitate adequate and efficient provision of transportation, water, waste water treatment, schools, parks and other public requirements;
10. Provide protection from geologic, flood and fire hazards and other dangers; and
11. Promote the health, safety, morals and general welfare of Town of Berthoud and its residents.

15. 30-1-106 Interpretation
The provisions of this Code shall be interpreted and applied as the minimum requirements for the promotion of the public health, safety and welfare. Whenever the requirements of this Chapter are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the more restrictive, or that imposing the higher standard, shall govern.

16. 30-1-107 Applicability of Code

A. The provisions of the Town of Berthoud Development Code shall apply to any and all development of land within the municipal boundaries of the Town unless expressly and specifically exempted or provided otherwise in this Code. No development shall be undertaken without prior and proper approval or authorization pursuant to the terms of this Code. All development shall comply with the applicable terms, conditions, requirements, standards and procedures established in this Code.

B. Except as herein provided, no building, structure or land shall be used and no building or structure or part thereof shall be excavated, erected, constructed, reconstructed, altered, repaired, moved or structurally altered except in conformance with the regulations herein specified for the zone district in which it is located, nor shall a yard, lot or open space be reduced in dimensions or area to an amount less than the minimum requirements set forth herein.
C. Whenever both the provisions of this Code and provisions of any other law cover the same subject matter, whichever is more restrictive shall govern.

D. This Code establishes procedural and substantive rules for obtaining the necessary approval to develop land and construct buildings and structures. Development applications will be reviewed for compliance with the Town of Berthoud Comprehensive Plan and with adopted regulations, policies and other guidelines.

17. 30-1-108 Relationship to existing ordinances & resolutions
All ordinances, resolutions or motions of the Town of Berthoud Board of Trustees or parts thereof in conflict with this Code are, to the extent of such conflict, hereby superseded and repealed, provided that no such repeal shall repeal the repealer clauses of such ordinance, resolution or motion, nor revive any ordinance, resolution or motion thereby. The adoption of this Code shall not adversely affect the Town of Berthoud’s right to seek remedies for any violation of previous ordinances that occurred while those ordinances were in effect.

18. 30-1-109 Relationship to Comprehensive Plan
A. It is the intention of the Town of Berthoud that this Code implements the planning policies adopted in the Comprehensive Plan for the Town and its extraterritorial planning area. While this relationship is reaffirmed, it is the intent of the Town of Berthoud that neither this Code nor any amendment to it may be challenged on the basis of any alleged nonconformity with the Comprehensive Plan.

1. Requirement for Comprehensive Plan amendment. Where a development proposal is not in conformance with the Comprehensive Plan, an amendment to the Comprehensive Plan will be required prior to any zoning or subdivision approvals. Conformance exists when a development proposal matches the designations of the Preferred Land Use Plan.

2. Criteria for evaluating amendment proposals. Amendments to the Comprehensive Plan resulting from development proposals under this Code shall be evaluated according to the criteria and procedure outlined in the Comprehensive Plan.

19. 30-1-110 Effective date
The provisions of this Code were originally adopted on March 27, 2012. Subsequent revisions to this Code are noted at the beginning of each Chapter with the relevant Ordinance number and effective date of change. Development plans approved under previous regulations that received vested property rights through a site specific development plan shall be valid for the duration of that vested property right provided that all terms and conditions of the site specific development plan are followed. Existing legal uses that may become nonconforming by adoption of this Code shall become legal nonconforming uses subject to the provisions of Chapter 30-3: Zoning.

20. 30-1-111 Application fees
Application fees for all annexation, zoning and development applications shall be paid according to the Town of Berthoud fee schedule. The fee schedule may be revised by Board resolution and is available from the Town Clerk.
21. **Development review deposit & reimbursement of Town costs**  
Fees sufficient to cover the costs of administration, inspection, publication of notice and similar matters will be charged to applicants for permits, plat approvals, zoning or zoning amendments, site plans, annexations, plan approvals, sign permits, variances, administrative relief and all other applications provided herein. In addition to the standard fees, the applicant and/or the owner of the property which is the subject of the application shall be required to pay any actual costs and fees incurred by the Town for review of the application by consultants, including but not limited to engineering, surveying, legal and planning plus actual costs for Town staff administrative costs and supplies. The Town may require a deposit from applicants to offset the Town's costs for review prior to consideration of any application submittal pursuant to this Code. Subsequent deposits may be required when the initial deposits are eighty-five percent depleted. These deposits may exceed the total amount of fees collected using the standard schedule of fees. The Town shall not continue processing of any application for which the applicant or the property owner has not deposited the funds to cover the Town's cost of review.

Any funds deposited in excess of the standard fees remaining after paying the actual costs incurred by the Town shall be refunded to the owner or applicant as appropriate. The Town may certify to the County Treasurer any amount due pursuant to this paragraph as a lien on the property for which the application is submitted to be due and payable with the real estate taxes for the Town if the applicant or the property owner does not pay such amount within thirty days of written request by the Town.

22. **Severability**  
If any part, section, subsection, sentence, clause or phrase of this Code is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the Code.

23. **Computation of time**

A. In computing a period of days, the first day and the last day are included.

B. If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day which is not a Saturday, Sunday or legal holiday.

C. If a number of months is to be computed by counting the months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period ends on the last day of that month.

24. **Miscellaneous**

A. As used in this Code, words used in the singular include the plural and words used in the plural include the singular.

B. The words “must,” “shall” and “will” are mandatory; “may,” “can,” “should” and “might” are permissive.

C. The word “lot” shall include the words “building site”, “site”, “plot” or “tract”.

D. A “building” or “structure” includes any part thereof.

E. Words used in the present tense include the future tense.
25. 30-1-116 Definitions

A. The words and phrases used in this Code shall have the meanings defined below unless otherwise specifically provided or unless clearly required by the context. Questions of definition or wording usage shall be interpreted by the Town Administrator based on the context of their usage and the intention of the section of this Code in which they occur.

1. **Access drive** means a street or right-of-way providing ingress and egress to properties adjacent to a regional thoroughfare, arterial street, collector street, or local street.

2. **Accessory building or structure** means a detached subordinate and smaller building which is:
   a. Integrally related to the principal use on the lot;
   b. Subordinate and clearly incidental to the principal building or use of the lot;
   c. Customarily incidental to the principal building or use of the lot;
   d. Located on the same lot as the principal building;
   e. Used only at the same time as the principal building is active and operational;
   f. Not detrimental or an alteration of the character of the area in which the building is located; and
   g. Not used for living or sleeping quarters

   An accessory building or structure shall include, but not be limited to, storage sheds and detached garages in residential and non-residential zoning districts. Microwave dishes, antennas and similar devices which have a surface area of six square feet or larger shall also be considered accessory structures and shall comply with requirements for accessory buildings and structures, including height and setback requirements of Section 3 of this Chapter.

3. **Accessory dwelling** means an apartment integrated within a single-family dwelling, or located in a detached accessory building, such as carriage houses or agricultural-type outbuildings, located on the same lot as a single-family dwelling. Accessory dwellings shall be limited to eight hundred fifty square feet in floor area. For purposes of calculating residential density, each accessory dwelling shall count as one-third of a dwelling unit. There shall not be more than one accessory dwelling located on a lot in addition to the principal single-family dwelling.

4. **Accessory use** means a use of land or structure incidental to or subordinate to the principal use of a lot which is:
   a. Integrally related to the principal use on the lot;
   b. Subordinate and clearly incidental to the principal use of the lot;
   c. Customarily incidental to the principal use of the lot;
   d. Located on the same lot as the principal use;
   e. Used only at the same time as the principal use is active and operational; and
   f. Not detrimental nor an alteration of the character of the area in which the use is located.
5. **Adjacent** means meeting or touching at some point, or separated from a lot or parcel by one of the following: a street, alley, or other right-of-way, lake, stream or open space.

6. **Adjacent property owner** means an owner of record of any estate, right or interest in real property abutting the subject property.

7. **Affordable housing development or project** means a development or project in which: (1) at least seventy-five percent of the gross acreage to be developed under the plan is to be developed as residential dwelling units or mobile home park spaces; (2) at least ten percent of said dwelling units or spaces (the “affordable housing units”) are to be available for rent or purchase on the terms described in the definitions of **affordable housing unit for rent** or **affordable housing unit for sale** (as applicable); (3) the construction of the dwelling units or spaces is to occur as part of the initial phase of the project and (i) prior to the construction of the market rate units or (ii) on a proportional basis, according to the same ratio as the number of affordable units bears to the number of the market rate units; and (4) the units will be required by binding legal instrument acceptable to the Town and duly recorded with that County’s Clerk and Recorder, to be occupied by and affordable to low-income households for at least twenty years.

8. **Affordable housing unit for rent** means a dwelling unit which is available for rent on terms that would be affordable to households earning eighty percent or less of the median income of that County’s residents, as adjusted for family size, and paying less than thirty percent of their gross income for housing, including rent and utilities. The unit must be occupied by and be affordable to such low-income household(s) for a period of at least twenty years.

9. **Affordable housing unit for sale** means a dwelling unit which is available for purchase on terms that would be affordable to households earning eighty percent or less of the median income of Larimer or Weld County residents, as adjusted for family size and paying less than thirty-eight percent of their gross income for housing, including principal, interest, taxes, insurance, utilities and homeowners’ association fees. The unit must be occupied by and affordable to such low-income household(s) for a period of at least twenty years or more.

10. **Agricultural activity** means farming, including plowing, tillage, cropping, seeding, cultivating or harvesting for the production of food and fiber products; horticulture, the grazing or raising of livestock (except in feedlots); aquaculture; sod production; orchards; Christmas tree plantations; nurseries; and the cultivation of products as part of a recognized commercial enterprise. Agricultural activity shall not include the cultivation of marijuana.

11. **Agricultural land** means land that is being used for agricultural activities.

12. **Alley** means a public or private minor or secondary way which is used primarily for vehicular service access to the back or side of properties that otherwise abut a street, as described in Section 30-2-105.

13. **Alteration** means any change, addition or modification in construction, occupancy or use.

14. **Alternative power generation facilities** means any use of land in which alternative energies are produced. Alternative energies are those energy sources that are an
alternative to fossil fuels, including but not limited to: solar, wind, biofuel, and hydrogen.

15. **Amusement center** means an establishment providing primarily enclosed recreation activities including, but not limited to bowling, roller skating or ice skating, billiards, swimming pools, motion picture theaters, and related amusements. Accessory uses may include the preparation, serving and sale of food and/or sale or rental of equipment related to the uses.

16. **Amusement park** means an outdoor enterprise whose main purpose is to provide the general public with entertaining activity, where tickets are sold or fees collected at the activity. Commercial amusements include miniature golf courses, outdoor arcades, Ferris wheels, children’s rides, roller coasters, skateboard parks, go-cart tracks, water parks and similar uses.

17. **Animal boarding** means the operation of an establishment in which domesticated animals other than household pets are housed, groomed, bred, boarded, trained or sold. This term shall not include the operation of a kennel.

18. **Animals, domestic** means common household pets, such as dogs and cats, kept for amusement, companionship, decoration or interest.

19. **Animals, food** means fish, fowl, cattle, swine, sheep and others raised for the purpose of food consumption.

20. **Animals, wild** means animals, such as wolves, tigers, lions and snakes that are not normally a domestic animal or farm animal and would ordinarily be confined in a zoo or found in the wild.

21. **Animated sign** means a sign having an intermittent or continuing variation in the illumination or physical position of any part of the device, except such variations necessary for displaying time-of-day information or temperature information.

22. **Annexation** means the act of attaching, adding, joining, or uniting a parcel of land to the legal entity known as the Town of Berthoud.

23. **Appeal** means a request by an applicant to the Board of Adjustment or Town Board for a review of an administrative interpretation of any provision of this Chapter or a request for a variance.

24. **Applicant** means the owner of land; the owner’s authorized representative, or the optionee of the land, as well as mineral owners and lessees; or the Developer applying for an approval by the Town pursuant to this Chapter.

25. **Appurtenances** mean the visible, functional, or ornamental objects accessory to and part of a building.

26. **Aquifer recharge area** means an area where water is absorbed into a natural aquifer adding to the zone of saturation.

27. **Arcade** means a series of arches supported on piers or columns.

28. **Area light** means a light that produces over 2,050 lumens. Area lights include, but are not limited to, street lights, parking lot lights and yard lights.

29. **Area of lot** means the total horizontal area within the lot line boundaries of a lot.

30. **Area of special flood hazard** means the area covered by the floodwaters of the base flood, and are typically delineated on National Flood Insurance Program (NFIP) maps.

31. **Automatic timing device** means a device that automatically controls the operation of a light fixture or fixtures, circuit or circuits. Photocells and light and or motion sensors should be considered automatic-timing devices.
32. **Automotive repair, (major)** means an establishment primarily engaged in the repair or maintenance of commercial and heavy truck motor vehicles, trailers and similar large mechanical equipment, including paint, body and fender and major engine and engine part overhaul, provided it is conducted within a completely enclosed building. Such use shall not include the sale of fuel, gasoline or petroleum products.

33. **Automotive repair, (minor)** means an establishment primarily engaged in the repair or maintenance of passenger and light truck motor vehicles, trailers and similar mechanical equipment, including brake, muffler, upholstery work, tire repair and change, lubrication, tune ups and transmission work, car washing, detailing, polishing or the like, provided it is conducted within a completely enclosed building. Such use shall not include the sale of fuel, gasoline or petroleum products.

34. **Average footcandle** means the level of light measured at an average point of illumination between the brightest and darkest areas. The measurement can be made at the ground surface or at four to five feet above the ground.

35. **Awning** means a fixed or movable roof-like cover of canvas or other material extending in front of a doorway or window, or over a deck, to provide protection from the sun or rain.

36. **Awning sign** means a sign which is painted, stitched, sewn or stained onto the exterior of an awning.

37. **Banner** means any sign intended to be hung either with or without frames, possessing characters, letter, illustrations or ornamentations applied to paper, plastic, vinyl or fabric of any kind.

38. **Bar or tavern** means an establishment providing or dispensing fermented malt beverages, and/or malt, vinous or spirituous liquors and in which the sale of food products such as sandwiches or light snacks is secondary.

39. **Base flood** means the flood having a one percent chance of being equaled or exceeded in any given year, also known as the 100-year flood, and is a standard used by the National Flood Insurance Program (NFIP).

40. **Beacon, revolving** means a rotating or blinking source of light or electronic simulation of a revolving source of light.

31. **Bed and breakfast** means an establishment operated in a private residence or portion thereof, which provides temporary accommodations to overnight guests for a fee and which is occupied by the operator of such establishment.

32. **Berm** means an earthen barrier of compacted soils preventing the passage of liquid materials, or providing screening from adjacent uses.

33. **Bikeway** means a path designed for use by bicyclists, which may be used by pedestrians.

34. **Bike lane** means a dedicated lane of a street intended for use by bicycles.

35. **Billboard** means a sign advertising products not made, sold, used, or served on the premise displaying the sign.

36. **Blank wall** means an exterior building wall with no openings and a single material and uniform texture on a single wall plane.

37. **Block** means a unit of land, or a group of lots, bounded by streets or by a combination of streets and public lands, or other rights-of-way other than an alley, waterways or any barrier to the continuity of development, or land which is designated as a block on any recorded subdivision tract.

38. **Board** means the governing body of the Town of Berthoud; also known as the Town of Berthoud Board of Trustees.
39. **Board of Adjustment** means the Town of Berthoud Planning Commission acting as the Board of Adjustment.

40. **Boarding and rooming house** means a building or portion of which is used to accommodate, for compensation, four 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.

41. **Bollard** means a pole used to protect a building from impact or to close a road or path to vehicles above a certain width.

42. **Building** means any permanent or temporary structure built for the shelter or enclosure of persons, animals, chattels or property of any kind, which is governed by the following characteristics:
   a. Is permanently affixed to the land, or
   b. Has one or more floors and a roof.

43. **Building code(s)** means the set of standards that must be followed in the construction and remodeling of buildings and structures.

44. **Building envelope** means the two dimensional (horizontal) space within which a building or structure is permitted to be built on a lot. The size of a building envelope is typically defined by setbacks, easements, and floor-area ratio.

45. **Building frontage** means the horizontal, linear dimension of that side of a building, which abuts a street, a parking area, a mall, or other circulation area open to the public and has either a main window display or a public entrance to the building.

46. **Building height** is measured from the average of finished grade at the center of all walls of the building to the top of the parapet or highest roof beam (whichever is higher) on a flat or shed roof, to the top of the parapet or deck level (whichever is higher) of a mansard roof, or the average distance between the highest ridge and its eave of a gable, hip, or gambrel roof.

47. **Building Official** means a person or persons charged with implementing and enforcing provisions of the Building Code.

48. **Bulb** means the source of electric light - to be distinguished from the whole assembly (See Luminaire).

49. **Business** means any lawful commercial endeavor to engage in the manufacturing, purchase, sale, lease or exchange of goods and/or the provision of services.

50. **CBT Unit** means a Unit of the Colorado Big Thompson Project. A CBT Unit shall be defined to have a firm yield of 0.6 acre feet.

51. **Caliper** means the American Association of Nurserymen standard for trunk measurement of nursery stock, as measured at six inches above the ground for trees up to and including four-inch caliper size, and as measured at twelve inches above the ground for larger sizes.

52. **Candela (cd)** means a unit of luminous intensity.

53. **Canopy** means an ornamental or functional roof-like structure which is supported from the façade of a building. It may or may not be supported by columns.

54. **Canopy sign** means a sign that is permanently affixed to a roofed shelter attached to and supported by a building, by columns extending from the ground or by a combination of a building and columns.
55. **Cantilever** means an architectural element which projects from a structure and is supported at only one end.

56. **Cash in lieu of water dedication** means a separate and distinct fee from water taps, as required in Section 30-1-105 hereof, which fee shall be utilized primarily to acquire water rights and necessary facilities for all beneficial uses within the Town. The Town shall issue a Certification of Water Dedication Credits for cash in lieu of water dedication payments for future development of the Town.

57. **Cash-in-lieu** (also known as “fee-in-lieu”) for all purposes except water dedication means that the applicant, at the discretion of Town staff with final approval by the Town Administrator, shall pay the Town money instead of dedicating land in those cases where such delivery or dedication is required.

58. **Cemetery** means land used or intended to be used for the burial of the dead and dedicated for cemetery purposes, including mausoleums and mortuaries when operated in conjunction with, and within the boundaries of, such cemetery.

59. **Center line** means a line running midway between the bounding right-of-way lines of a street or alley. Where the bounding lines are irregular, the center line shall be determined by the Town Planner or Town Engineer.

60. **Certificate of occupancy** means a certificate issued by the Town only for the benefit of the Town after final inspection and upon a finding that the building, structure, site and/or development complies with all provisions of the applicable Town codes, permits, requirements and approved plans.

61. **Change in use or Change in Land Use** means a change in the purpose or activity for which a particular piece of land or its buildings is designed, arranged or intended or for which it is occupied or maintained as provided in the zoning regulations for the zone district in which the land is located.

62. **Chapter** means Chapter 30 of the Berthoud Municipal Code, also referred to as the Berthoud Development Code, both also referred to as this Code.

63. **Character** means those attributes, qualities and features that make up and distinguish a building or development and give it a sense of purpose, function, definition and uniqueness.

64. **Child care center** shall have the same definition as C.R.S. §26-6-102 (1.5) in effect at the time of interpretation.

65. **Child care home** means a residential home providing care to no more than six children.

66. **Child care home, large** means a family child care home that provides care for seven to twelve children.

67. **Church or place of worship and assembly** means a building containing a hall, auditorium or other suitable room or rooms used for the purpose of conducting religious or other services or meetings of the occupants of such structure. Church or place of worship and assembly shall include churches, synagogues or the like, but shall not include buildings used for commercial endeavors, including, but not limited to, commercial motion picture houses or stage productions.

68. **Clerestory** means a portion of an interior rising above adjacent rooftops and having windows admitting daylight to the interior.

69. **Clinic** means a building designed and used for the diagnosis and treatment of human patients that does not include overnight care facilities.

70. **Clubs and lodges** means organizations of persons for special purposes or for the promulgation of sports, arts, literature, politics or other common goals, interests or
activities, characterized by membership qualifications, dues or regular meetings, excluding clubs operated for profit and/or places of worship or assembly.

71. **Commercial mineral deposits** mean oil, gas, gravel and other natural deposits that may be extracted from a property for economic benefit.

72. **Common area** means an area of land and buildings within a residential development which is developed for the use and enjoyment of all residents of the project, as distinguished from land designated for their individual, private use.

73. **Common equestrian stabling and grazing** means shared pastures and/or common barns for horses in a conservation subdivision and which is owned and maintained by a homeowner’s association.

74. **Community Design Standards** means the standards set forth in Chapter 30, Section 2: Design Standards.

75. **Community facility** means a publicly owned facility or office building which is primarily intended to serve the recreational, educational, cultural, and administrative or entertainment needs of the community as a whole.

76. **Community influence area (CIA)** means the area extending three miles or more beyond the Town’s municipal boundaries, for which the Town may be statutorily required to undertake general land use planning activities.

77. **Compatibility** means the characteristics of different uses or activities or design which allow them to be located near or adjacent to each other in harmony. Some elements affecting compatibility include height, scale, mass and bulk of structures. Other characteristics include pedestrian or vehicular traffic, circulation, access and parking impacts, landscaping, lighting, noise, odor and architecture. Compatibility does not mean "the same as." Rather, compatibility refers to the sensitivity of development proposals to nearby existing and proposed development.

78. **Comprehensive Plan** means the adopted Town of Berthoud Comprehensive Plan, as amended.

79. **Compressed gravel** means gravel that has ninety-five percent compaction at standard proctor densities at two percent ± optimum moisture content.

80. **Condominium** means a single dwelling unit in a multiple unit structure or a commercial/industrial building which is separately owned and which may be combined with an undivided interest in the common areas and facilities of the property.

81. **Conservation easement** means a right to prohibit certain acts with respect to the property in order to maintain the property in a manner that will preserve its value for recreation, education, habitat, open space, or historical importance.

82. **Construction documents** means the written specifications and drawings showing the specific location and design of improvements to be installed for the subdivision or development project in accordance with all applicable requirements and land uses.

83. **Container** (also known as cargo or shipping container) means a truck trailer body or a shipping container that can be detached from the chassis for loading into a vessel, a rail car or stacked in a container depot. Containers may be ventilated, insulated, refrigerated, flat rack, vehicle rack, open top, bulk liquid or equipped with interior devices. Containers may not be permitted for permanent use as storage or building purposes without site plan and/or building permit approval.

84. **Convenience retail store** means a retail store containing less than 5,000 square feet of gross floor area which sells everyday goods and services which may include, without limitation, ready-to-eat food products, groceries, over-the-counter drugs and sundries.
85. Convenience shopping center means a shopping and service center located in a complex which is planned, developed and managed as a single unit, and located within and intended to primarily serve the consumer demands of adjacent employment areas and residences.

86. Cooperative Planning Area (CPA) means the broader region within which land use activities are deemed to potentially impact the Town. While the Town may not have land use jurisdiction over much of this area, it is considered to be an area of significant planning influence.

87. Cornice means a continuous, molded projection that crowns a wall or other construction, or divides it horizontally.

88. Covenant means a private written agreement outlining regulations specific to a development. It is not enforced by the Town. No covenant shall be construed to be a waiver or modification of a requirement of this Code.

89. Critical feature of Flood Control System 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.

90. Critical plant community means vegetation which is essential to the conservation of threatened or endangered species and which may require special management considerations or protection.

91. Crosswalk means a designated area for pedestrians to cross a street or other right-of-way.

92. Cul-de-sac means a local street with only one outlet and having the other end for the reversal of traffic movement.

93. Cultural assets means buildings, locations and other features considered historically or socially significant to the community.

94. Dedicated land means land transferred to the Town by platting, title, deed or other legal method approved by the Town Attorney.

95. Dedication means any grant to a public entity by a landowner of a right to use that land for public purposes. It involves a transfer of property rights and an acceptance of the dedicated property by the appropriate public agency.

96. Density (gross) means the overall average number of dwelling units located in a development and calculated on a per-acre basis. Gross density is calculated by dividing the total number of residential units by the total acreage contained within a development.

97. Density (net) means the number of dwelling units located in a development divided by the developable area. Developable area includes the entire residential portion of the development, except land dedicated for public and private streets, detention ponds, third-party easements, rights-of-way, parks, open space, and other land areas open to the public.

98. Design standards mean the standards that set forth specific requirements for buildings and infrastructure.

99. Detached structure means any structure having no party wall or common wall with another structure. Bridges, tunnels and other similar means of connecting one structure to another shall not be considered to constitute a party wall or a common wall.

100. Detention basin means a man-made or natural water collection facility designed to collect surface and sub-surface water in order to impede its flow and to release the
water into natural or manmade outlets at a rate that is not greater than the rate of flow prior to the development of the property.

101. **Developer** means any person, partnership, joint venture, limited liability company, association or corporation who participates as owner, promoter, developer or sales agent in the planning, platting, development, promotion, sale or lease of a development.

102. **Development** means the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into two or more parcels. When appropriate in context, development shall also mean the act of developing or the result of development.

a. Development shall also include:
   i. Any construction, placement, reconstruction, alteration of the size, or material change in the external appearance of a structure on land;
   ii. Any change in the intensity of use of land, such as an increase in the number of dwelling units in a structure or on a tract of land or a material increase in the intensity and impacts of the development;
   iii. Any alteration of a shore or bank of a river, stream, lake, pond, reservoir or wetland;
   iv. The commencement of drilling oil or gas wells, mining, stockpiling of fill materials, filling or excavation on a parcel of land;
   v. The demolition of a structure;
   vi. The clearing of land as an adjunct of construction;
   vii. The deposit of refuse, solid or liquid waste, or fill on a parcel of land;
   viii. The installation of landscaping within the public right-of-way, when installed in connection with the development of adjacent property;
   ix. The construction of a roadway through or adjoining an area that qualifies for protection as a wildlife or natural area; and
   x. Any manmade 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.

b. Development shall not include:
   i. Work by a highway or road agency or railroad company for the maintenance or improvement of a road or railroad track, if the work is carried out on land within the boundaries of the right-of-way;
   ii. Work by any public utility for the purpose of inspecting, repairing, renewing or constructing on established rights-of-way any mains, pipes, cables, utility tunnels, power lines, towers, poles, or other infrastructure. This exemption shall not include work by a public entity in constructing or enlarging mass transit or fixed guide way mass transit depots or terminals or any similar traffic-generating activity;
   iii. The maintenance, renewal, improvement, or alteration of any structure, if the work affects only the interior or the color of the structure or the decoration of the exterior of the structure;
   iv. The use of any land for an agricultural activity;
   v. A change in the ownership or form of ownership of any parcel or structure; or
vi. The creation or termination of rights of access, easements, covenants concerning development of land, or other rights in land.

103. Development agreement means an agreement by a developer with the Town which clearly establishes the developer’s responsibility regarding project phasing, the provision of public and private facilities and improvements and any other mutually agreed to terms and requirements.

104. Development plan means the written and graphical documents that detail the provisions for development of a Planned Unit Development (PUD). These provisions may include, and need not be 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, private and public streets, ways, roads, pedestrians, areas, and parking facilities; common open space, and other public facilities.

105. Developmental disability means a disability that is manifested before the person reaches twenty-two years of age; constitutes a substantial handicap to the affected individual; and is attributable to mental retardation or related conditions which include cerebral palsy, epilepsy, autism or other neurological conditions when such conditions result in impairment of general intellectual functioning or adaptive behavior similar to that of a mentally retarded person.

106. Distillery means any establishment where spirituous liquors are manufactured. Distilleries may include a tasting room and retail sales where such manufactured liquors may be sold and consumed on-site. Distilleries are regulated and licensed in accordance with the Colorado Department of Revenue Liquor Enforcement Division.

107. Dormer means a projecting structure built out from a sloping roof, usually with a vertical window or vent.

108. Downtown means the central business district of the Town. The boundary of downtown may change as the Town grows.

109. Drive aisle means the lanes in a parking lot devoted to the passage of vehicles, as opposed to the parking stalls. The term drive aisle does not include lanes used only, or primarily for, drive-in customer service.

110. Drive-through use means an establishment which by design, physical facilities, service, product or packaging procedures encourages or permits customers to receive services, obtain goods or be entertained while remaining in their motor vehicles.

111. Driveway means a constructed vehicular access serving one or more properties and abutting a public or private road.

112. Dwelling means a building used primarily for residential occupancy, including single-family dwellings, two-family dwellings and multi-family dwellings. Dwellings may include home occupations as defined by this Code.

113. Dwelling, multi-family means a dwelling containing three or more dwelling units, not including hotels, motels, fraternity houses and sorority houses and similar group accommodations.

114. Dwelling, single-family means a building designed exclusively for occupancy by one family, but not including mobile homes, except as otherwise provided herein.

115. Dwelling, single-family attached means a residential building containing dwelling units, each of which primary ground floor has access to the outside and which are attached to each other by party walls without openings. The term is intended primarily for such dwelling types as townhouses and duplexes.
116. **Dwelling, single-family detached** means a single-family dwelling which is not attached to any other dwelling or building by any means, excluding mobile homes.

117. **Dwelling, two-family** means a building designed for occupancy by two families living independently of each other.

118. **Dwelling unit** means any building or a portion thereof which contains living facilities, including provisions for sleeping, eating, cooking, and sanitation, as required by the International Building Code or the International Residential Code, as locally amended.

119. **Easement** means a right generally established in a real estate deed or on a recorded plat to permit the use of land by the public, a corporation or particular persons for specified uses.

120. **Eave** means the overhanging lower edge of a roof.

121. **Eighty-five (85) degree full cut-off type fixtures** means fixtures that do not allow light to escape above an 85-degree angle measured from a vertical line from the center of the lamp extended to the ground.

122. **Elevation** means the external vertical plane of a building.

123. **Employment campus** means an area characterized by single and multi-tenant uses commonly including corporate headquarters, research and development facilities, laboratories, offices and light industrial uses.

124. **Engineer** means a professional engineer licensed by the State of Colorado.

125. **Entertainment facilities and theaters** mean a building or part of a building devoted to showing live performances.

126. **Environmentally sensitive areas** mean aquifer recharge areas, significant wildlife habitat and migration corridors, unique vegetation and critical plant communities, and ridge lines.

127. **Equipment (small) rental establishments without outdoor sales** means the display of equipment entirely within a building for sale or rent, and outdoor storage or display of equipment is not permitted. Equipment allowed through this definition are typically hand-operated, intended to be stored indoors, and geared to the general public and not the construction industry, such as ladders, blowers, mowers, saws, generators, etc.

128. **Equipment rental (heavy) establishments with outdoor sales** means the display of heavy equipment outside of a building for sale or rental purposes. Examples of such equipment includes, but is not limited to tractors, dozers, cranes, harvesters, etc.

129. **Exhaust pipe** means a pipe used to guide waste exhaust gases away from a controlled combustion inside an engine or stove.

130. **Exhaust vent** means a continuous open passageway from the flue collar or draft hood of the appliance to the outside atmosphere for the purpose of removing flue gases.

131. **Exotic animals** means all animals raised or boarded that are not commonly classified as household pets or livestock, but are wild in nature and may have the ability to inflict bodily harm on humans, including snakes in excess of four feet in length.

132. **Extension of water service** means any extension of the Town water service for which a tapping charge is assessed or any increase in Town water service resulting from a Change in Land Use.

133. **Exterior lighting** means temporary or permanent lighting that is installed, located or used in such a manner to cause light rays to shine outside. Fixtures that are installed indoors that are intended to light something outside are considered exterior lighting.

134. **Façade** means the elevation or exterior face of a building.
Family means an individual living alone, or either of the following groups living together as a single housekeeping unit and sharing common living, sleeping, cooking and eating facilities:

a. Any number of persons related by blood, marriage, adoption, guardianship or other duly authorized custodial relationship; or

b. Any unrelated group of persons consisting of:
   i. Not more than three persons; or
   ii. Not more than two unrelated adults and their children, if any; or
   iii. Not more than eight developmentally disabled persons and appropriate staff occupying a dwelling unit and living as a single, housekeeping unit; or

c. Not more than one (1) individual related by blood, marriage or adoption who is required to register as a sexual offender under the provisions of Colorado law.

Farm animals means animals commonly raised or kept in an agricultural, rather than urban, environment including but not limited to, chickens, pigs, sheep, goats, horses, cattle, llamas, emus, ostriches, donkeys and mules.

Feedlot means any tract of land or structure, pen or corral, wherein cattle, sheep, goats, emus, ostriches or swine are maintained in close quarters for the purpose of raising such livestock.


Fence means any structure that is comprised of posts, boards, wire, stakes, rails or any combination of similar elements that provides a physical barrier, enclosure or boundary.

Fence sign means a sign affixed in any way to or painted on any part of a fence.

FHA means Federal Housing Administration.

Final acceptance means the acknowledgement by the Town that the guaranty or warranty period for public improvements has expired and there are no outstanding items to be corrected under the provisions of the guaranty or warranty.

Final Development Plan (FDP) means a development review process under previous versions of the Land Development Code.

Final plat means a completed map of a subdivision setting forth fully and accurately all legal information, survey certification and any accompanying materials as required by this Code.

Fixture means the assembly that holds the lamp in a lighting system. It includes the elements designed to give light output control; such as a reflector (mirror) or refractor (lens), the ballast, housing, and the attachment parts.

Flood or flooding means a temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland waters or the unusual and rapid accumulation of runoff or surface waters from any source.

Floodplain or flood hazard area means areas which have been designated by the Board, the Colorado Water Conservation Board or FEMA as susceptible to flooding.

Floodprone means areas subject to flooding which have not been designated as a floodplain or flood hazard area by the Board, the Colorado Water Conservancy Board or FEMA.

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 0.5 foot.
150. **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.

151. **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.

152. **Flood light** means light that produces up to 1,800 lumens and is designed to "flood" a well-defined area with light. Generally, floodlights produce from 1,000 to 1,800 lumens.

153. **Floor area**, also called **gross floor area**, means the total square footage of the building measured along the outside walls of the building and including each floor level, but not including open balconies, garages or other enclosed automobile parking areas and basement storage areas, and not including one-half of all storage and display areas for durable goods.

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

155. **Flow line** means the low point within a street section wherein water collects and flows, typically the gutters along each edge of the pavement.

156. **Footprint**, also called **ground level footprint**, means the outline of a building’s perimeter at ground level.

157. **Foot-candle** means the illumination produced on a surface one foot from a uniform point source of one candela. Foot candles will be measured by a light meter.

158. **Foster care home** shall have the same meaning as §26-6-102(4.5) of the Colorado Revised Statutes applicable at the time of interpretation.

159. **Freestanding sign** means a sign which is supported by one or more columns, uprights, poles or braces extended from the ground, or which is erected on the ground and shall also include a monument sign and pole signs but does not include a sign attached to a structure.

160. **Frontage** means the length of property along one side of a street between property or lease boundary lines.

161. **Full cutoff fixture** means a fixture which, as installed, gives no emission of light above a horizontal plane.

162. **Functional open space** means open space which is large enough to serve a practical purpose such as recreation, wildlife habitat or preservation of areas of agricultural, archeological or historical significance and shall exclude areas used for off-street parking, off-street loading, service driveways and setbacks from oil and gas wells or their appurtenances, or other hazards to the public.

163. **Funeral home** means a building used for the preparation of deceased persons for burial or cremation, for the display of deceased persons and/or for ceremonies or services related thereto, including cremation and the storage of caskets, funeral urns, funeral vehicles and other funeral supplies.

164. **Gable** means the triangular portion of wall enclosing the end of a pitched roof from cornice or eaves to ridge.

165. **Garage** means a building or part of a building wherein motor vehicles are housed or stored.
166. **Gasoline station** means any building, land area, premises or portion thereof, where gasoline or other petroleum products or fuels are sold and in which light maintenance activities such as engine tune-ups, lubrication and minor repairs may be conducted. Gasoline stations shall not include premises where heavy automobile maintenance activities such as engine overhaul, automobile painting and body and fender work are conducted.

167. **Geologic hazards** mean unstable or potentially unstable slopes, undermining, faulting, landslides, rock falls, flood, wildfire or similar naturally occurring dangerous features or soil conditions or natural features unfavorable to development.

168. **Glare** means intense light that results in discomfort and/or a reduction of visual performance and visibility.

169. **Grade** means the degree of rise or descent of a sloping surface.

170. **Grade, finished** means the final elevation of the ground surface after development.

171. **Grade, natural** means the elevation of the ground surface in its natural state, before man-made alterations.

172. **Grocery store, large** means a retail establishment which primarily sells food, but also may sell other convenience and household goods, and which occupies a space greater than twenty-five thousand square feet. The term large grocery store is synonymous with supermarket.

173. **Grocery store, small** means a retail establishment primarily selling food, as well as other convenience and household goods, which occupies a space of not more than twenty-five thousand square feet.

174. **Gross square footage (GSF)** means the total floor area designed for occupancy and use, including basements, mezzanines, stairways and upper floors, if any, expressed in square feet and measured from the centerline of joint partitions and from outside wall faces.

175. **Group home, developmentally disabled** means a group home, licensed by the state, for the exclusive use of not more than eight developmentally disabled persons and the appropriate staff.

176. **Group home, elderly** means an owner-occupied or nonprofit group home for the exclusive use of not more than eight persons sixty years of age or older and the appropriate staff.

   a. “**Nonprofit group home**” means a group home for the elderly which is owned and operated by a person or organization as provided by 31-23-303, C.R.S., 1973.

   b. “**Owner-occupied group home**” means a group home for the elderly which is owned and operated by an individual or individuals who actually reside at and maintain their primary place of residence in the group home.

177. **Group home, mentally ill** means a group home, licensed by the state, for the exclusive use of not more than eight mentally ill persons and the appropriate staff.

178. **Growth Management Area (GMA)** means the existing incorporated area of the Town as well as additional areas outside of the current Town limits determined to be feasible for development at greater than county densities within the next twenty years.

179. **Guaranty** means any form of security in an appropriate amount and form satisfactory to the Town. “Guaranty” shall cover construction performance and warranty term provisions.
180. **Guest house** means an accessory structure which is physically detached from a single-family dwelling unit, is serviced through the same utility meters or connections as the principal use, and is intended for temporary occupancy by visitors to the family residing in the single-family dwelling.

181. **Health club** means a facility that provides physical fitness services and/or equipment to its members.

182. **Highway, corridor** means the area within and adjacent to the rights-of-way of Colorado Highway 56, Colorado Highway 287 and Interstate 25.

183. **High intensity activity node** means a land use that caters to the needs of local residents and visitors alike and may contain a wide palette of uses that include commercial, office, residential, civic and transit amenities.

184. **Hip roof** means a roof having sloping ends and sides meeting at an inclined projecting angle.

185. **Historic district** means an area related by historical events or themes by visual continuity or character or by some other special feature that helps give it a unique historical identity. Such area may be designated a historic district by local, state, or federal government and given official status and protection.

186. **Historic site** means a structure or place of historical significance. Such structure or place may be designated a historic site by local, state, or federal government and given official status.

187. **Holiday lighting** means festoon type lights, limited to small individual bulbs on a string, where the output per bulb is no greater than 15 lumens.

188. **Home occupation** means an occupation or business activity conducted by the resident which results in a product or service and which is actively conducted by a person on the same lot on which the person resides.

189. **Homeowners association** means the association set up to enforce the covenants and to maintain all common areas and buildings for a development. Also known as an “Owners Association.”

190. **Horticulture** means the growing of turf, fruits, vegetables, herbs, flowers or ornamental plants.

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

192. **Hotel/motel/lodging establishment** means a building intended and used for occupancy as a temporary abode for individuals who are lodged with or without meals, in which there are twelve or more guest rooms.

193. **Household pet** means any animal that has been bred or raised to live in or about the habitation of humans and is dependent on people for food and shelter, not including animals defined as livestock, exotic animals or animals capable of inflicting substantial physical harm to humans. Includes dogs, domestic cats, canaries, parrots, pygmy goats, hamsters, ferrets, pot bellied pigs, guinea pigs and similar rodents, fish, reptiles, rabbits and such other species as would normally be sold at a pet shop.

194. **Human scale (pedestrian scale)** means the proportional relationship between the dimensions of a building or building element, street, outdoor space or streetscape element and the average dimensions of the human body, taking into account the perceptions and walking speed of a typical pedestrian.
195. **I-25 corridor/Hwy. 56 gateways** means the land near this intersection that may include bridge enhancements, entrance monumentation and special landscape treatments designed to announce entrance into the community.

196. **Illuminance** means the amount of light that covers a surface, measured by foot-candle or lux.

197. **Illuminating device** means the following:
   1. Light fixture types
      a. Full cutoff fixture types - A fixture which, as installed, gives no emission of light above a horizontal plane.
      b. Floodlights and spotlights - Fixtures defined as having a full beam width or beam spread of less then 110 degrees.
   2. Lamp types
      a. Incandescent lamps - Lamps which produce light via an electrically heated metallic filament.
      b. Fluorescent lamps - Lamps that use fluorescence of a phosphor to produce visible light.

198. **High intensity discharge (HID) lamps** mean lamps, which produce visible light directly by the electrical heating or excitation of a gas. Examples of such lighting include, but are not limited to, Metal Halide, High Pressure Sodium, Low Pressure Sodium and Mercury Vapor. Fluorescent lights are not considered HID lighting.

199. **Illumination, concealed** means an artificial light source either internal to a sign structure or shielded from public view and from the surrounding properties used to illuminate only the face of a sign and not any area beyond the face.

200. **Illumination, direct** means lighting by means of an unshielded light source (including neon tubing) which is effectively visible as a part of the sign, where light travels directly from the source to the viewer's eye.

201. **Illumination, indirect** means lighting by means of a light source directed at a reflecting surface in a way that illuminates the sign from the front, or a light source that is primarily designed to illuminate the entire building facade upon which a sign is displayed. Indirect illumination does not include lighting which is primarily used for purposes other than sign illumination; e.g., parking lot lights, or lights inside a building that may silhouette a window sign but are primarily installed to serve as inside illumination.

202. **Illumination, internal** means lighting by means of a light source that is within a sign having a translucent background, silhouetting opaque letters or designs, or which is within letters or designs that are made of a translucent material.

203. **Industrial, Heavy** means uses engaged in the processing and manufacturing of materials or products predominantly from extracted or raw materials, or a use engaged in storage of, or manufacturing processes using flammable or explosive materials, or storage or manufacturing processes that potentially involve hazardous conditions. Heavy industrial also means those uses engaged in the cleaning of equipment or work processes involving solvents, solid waste or sanitary waste transfer stations, recycling establishments, truck terminals, public works yards, and container storage.

204. **Industrial, light** means uses engaged in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales or distribution of products,
provided all manufacturing activities are contained entirely within a building and noise, odor, smoke, heat, glare and vibration resulting from the manufacturing activity are contained entirely within the building. Light industrial shall also mean uses such as the manufacture of electronic instruments, preparation of food products, pharmaceutical manufacturing, research and scientific laboratories or the like. Light industrial shall not include uses such as mining and extracting industries, petrochemical industries, rubber refining, and primary metal or related industries.

205. **Informational sign** means a noncommercial sign the sole purpose of which is to convey information or directions with respect to the premises on which it is maintained.

206. **Infrastructure** means those man-made structures which serve the common needs of the population, such as: potable water systems; wastewater disposal systems; solid waste disposal sites or retention areas; storm drainage systems; electric, gas or other utilities; bridges; roadways; bicycle paths or trails; pedestrian sidewalks, paths or trails; and transit stops.

207. **Initial acceptance** means an acknowledgment by the Town that to the best of the Town's knowledge, all work has been completed in accordance with the plans and specifications.

208. **Inn** means a building intended and used for occupancy as a temporary abode for individuals who are lodged with or without meals, in which there are less than twelve guest rooms. **Integrate** means to combine or coordinate separate elements (such as housing, recreation, jobs, and shopping) to provide a harmonious, interrelated whole; organized or structured so that constituent parts function cooperatively.

209. **Intra-neighborhood connections** mean connections (such as trails and roads) within the same neighborhood.

210. **Inter-neighborhood connections** mean connections (such as trails and roads) between neighborhoods.

211. **Irrigation ditch or canal** means a channel designed to transport irrigation water.

212. **Junk** means scrap brass, iron, lead, tin, zinc; all other scrap metals and the alloys; bones; rags; used cloth, rope, rubber, tinfoil, bottles; old or used machinery of any type; used tools; used appliances; used lumber or crates; building materials; industrial equipment, fabrication of any material; used pipe or pipe fittings; used conduit or conduit fittings; used automobile parts; derelict vehicles, farm and heavy equipment construction vehicles; used tires and other manufactured goods that are so worn, deteriorated or obsolete as to make them unusable in their existing condition.

213. **Junkyard** means a building, structure or parcel of land, or portion thereof, used for collecting, displaying, storing, selling or reselling junk. Junkyards shall not include a recycling facility.

214. **Kennel** means a facility licensed to house dogs, cats or other household pets and/or where grooming, breeding, boarding or training or selling of animals is conducted as business.

215. **Laboratory and/or research facility** means a facility primarily engaged in scientific research, analysis, production, and/or experimentation of a product.

216. **Lamp or bulb** means the light-producing source installed in the socket portion of a luminaire.

217. **Landowner** means any owner of a legal or equitable interest in real property, and includes the heirs, successors, and assigns of such ownership interests.
218. **Landscaping** means any combination of living plants such as trees, shrubs, plants, vegetative ground cover or turf grasses, and may include structural features such as walkways, fences, benches, works of art, reflective pools or fountains. Landscaping shall also include irrigation systems, mulches, topsoil and soil preparation, re-vegetation and the preservation, protection and replacement of existing trees.

219. **Land improvements** means physical changes made to land and/or structure placed on or under the land surface in order to change the natural or preexisting conditions of the land.

220. **Lane** means a private street, portion of a roadway delineated for a single line of vehicles; or a secondary means of access to the lots abutting a street and not intended for general traffic circulation.

221. **Laundry and dry-cleaning retail outlet** means a laundry or dry-cleaning business which consists primarily of serving retail customers, provided that any laundry and dry-cleaning processing that occurs on the premises is limited to items which are brought directly to the premises by the retail customer.

222. **Legal building site** means a lot that can be developed within the provisions of this Code and within other rules and regulations adopted by the Town.

223. **Levee** means a manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding.

224. **Levee system** means a flood protection system which consists of a levee or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

225. **Light pollution** means any adverse effect of manmade light including, but not limited to, light trespass, up-lighting, the uncomfortable distraction to the eye, or any man made light that diminishes the ability to view the night sky. Often used to denote urban sky glow.

226. **Light trespass** means any light emitted by a luminaire falls where it is not wanted or needed or shines beyond the property on which the luminaire is installed.

227. **Lighting** means any or all parts of a luminaire that function to produce light.

228. **Lighting, indirect** when applied to the lighting of signs, shall mean reflected light only from a concealed light source outside the sign face which reflects from the sign face only or from the sign face and sign copy.

229. **Limited indoor recreation facility** means a place where recreation activities occur completely within an enclosed structure including but not limited to bowling alleys, skating rinks, pool halls, and video and pinball parlors.

230. **Limited outdoor recreation facility** means a place with outdoor activities including but not limited to miniature golf, batting cages, water slides, skateboard parks, driving ranges, and go-cart tracks.

231. **Livestock** means cows, horses, swine, goats, donkeys, mules, sheep or chickens.

232. **Long-term care facility** means any of the following:
   a. **Convalescent center** means a health care institution that is planned, organized, operated and maintained to offer facilities and services to inpatients requiring restorative care and treatment and that is either an integral patient care unit of a general hospital or a facility physically separated from, but maintaining an affiliation with, all services in a general hospital.
b. **Nursing care facility** means a health care institution planned, organized, operated and maintained to provide facilities and health services with related social care to inpatients that require regular medical care and twenty-four hour per day nursing services for illness, injury or disability. Each patient shall be under the care of a physician licensed to practice medicine in the State of Colorado. The nursing services shall be organized and maintained to provide twenty-four hour per day nursing services under the direction of a registered professional nurse employed full time.

c. **Intermediate health care facility** means a health-related institution planned, organized, operated and maintained to provide facilities and services which are supportive, restorative or preventive in nature, with related social care, to individuals who because of a physical or mental condition, or both, require care in an institutional environment but who do not have an illness, injury or disability for which regular medical care and twenty-four hour per day nursing services are required.

233. **Lot** means a designated parcel, tract or area of land established by plat or subdivision of at least a sufficient size to meet minimum requirements for use, street frontage coverage and area, and to provide required yards and other open spaces in the zoning district in which the lot is located, and which has direct access onto a public or private street.

234. **Lot, corner** means a lot or parcel of land abutting upon two or more streets at their intersection, or upon two parts of the same street forming an interior angle of less than 135 degrees. All corner lots shall have one front yard, one back or rear yard and two side yards. The Town Planner and Building Official shall designate these yards and will base their decision on the orientation of the structure on the lot and the street to which the structure is addressed to.

235. **Lot depth** means the average distance between the front lot line and the rear lot line.

236. **Lot, flag** means a lot so shaped and designed that the main building site area is set back from the street on which it fronts and includes a narrow access strip connecting the main building site with the frontage street.

237. **Lot line, front** means the property line dividing a lot from a street. On a corner lot only one street line shall be considered as a front line, and the shorter street frontage shall be considered the front line.

238. **Lot line, rear** means the line opposite the front lot line.

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

240. **Lot line, side** means any lot lines other than the front lot line or rear lot line.

241. **Lot size** means the total horizontal area within the lot lines of a lot; synonymous with area of lot.

242. **Lot width** means the distance parallel to the front lot line, measured at the front building setback line. Lot width on a curving front lot line means the distance parallel to the tangent of the front lot line at the building setback line. The lot width and the lot frontage may have different lengths on an irregularly shaped lot as they are measured at different points on the lot.

243. **Lowest floor** means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's
lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Chapter.

244. **Lumen** means a unit of luminous flux; the flux emitted within a unit solid angle by a point source with a uniform luminous intensity of one candela. One foot-candle is one lumen per square foot. One lux is one lumen per square meter.

245. **Luminaire** means the complete lighting unit, including the lamp, the fixture, and other parts.

246. **Luminance** means at a point and in a given direction, the luminous intensity in the given direction produced by an element of the surface surrounding the point divided by the area of the projection of the element on a plane perpendicular to the given direction. Units: candelas per unit area. The luminance is the perceived brightness that can be seen, the visual effect of the illuminance, reflected, emitted or transmitted from a surface.

247. **Machine shop** means a workshop where power-driven tools are used for making, finishing, or repairing machines or machine parts.

248. **Management Agency** means the agency in charge of the “208 Water Quality Plan” in the Berthoud area.

249. **Manager** means the Town Manager or Administrator of the Town of Berthoud.

250. **Manufactured home** means a single-family dwelling which:
   a. Is partially or entirely manufactured in a factory;
   b. Is at least twenty-four feet wide and thirty-six feet long;
   c. Is permanently affixed to and installed on an engineered permanent foundation at the entire perimeter of the dwelling.
   d. Has a pitched or cosmetically equivalent roof of at least 4/12 pitch, and brick, or cosmetically equivalent wood exterior siding; and

251. **Manufacturing** means a business which makes products by hand or by machinery.

252. **Massing** means the distribution of the volume of a structure or landscape and the visual weight relationships of the various forms of a structure or landscape to one another and to the structure or landscaping as a whole.

253. **Master plan** means a development plan that shows how an entire site is proposed for development in a general fashion including a delineation of proposed construction phases.

254. **Mean sea level** means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

255. **Measurement of luminance** means a lamp output with the following characteristics:
   a. **Total output**: Measurement of total output is in lumens. This should be understood to be the initial lumen value for the lamp.
   b. **Illuminance**: Measurements of illuminance are expressed in initial lumens per square foot. (A desktop illuminance of twenty initial lumens per square foot is adequate for most purposes.)

   In measuring illuminance, the light detector or meter should be pointed directly at the light source or sources. The intervening light path should be free of obstruction.
256. **Median** means an area in the approximate center of a street or highway which is used to separate the directional flow of traffic.

257. **Medical and dental office or clinic** means an establishment operated by one or more duly licensed members of the human health care professions including, but not limited to, physicians, dentists, chiropractors, psychiatrists and osteopaths, where patients are not lodged overnight but are admitted for outpatient examination and/or treatment.

258. **Medical marijuana center** means a person licensed pursuant to C.R.S. Title 12, Article 43.3, to operate a business as described in C.R.S. 12-43.3-402 that sells medical marijuana to registered patients or primary caregivers as defined in section 14 of article XVIII of the state constitution, but is not a primary caregiver.

259. **Medical marijuana-infused products manufacturer** means a person licensed pursuant to C.R.S. Title 12, Article 43.3 to operate a business as described in C.R.S. 12-43.3-404.

260. **Medical Marijuana Optional premises cultivation operation** means a person licensed pursuant to C.R.S. Title 12, Article 43.3 to operate a business as described in C.R.S. 12-43.3-403.

261. **Meeting place and place for public assembly** means a hall, auditorium or other suitable room or rooms used for the purpose of conducting meetings of the membership and guests of the owner of such structure. The same shall not include commercial endeavors such as commercial movie picture houses, stage productions or the like.

262. **Micro-brewery** means any establishment that manufactures malt liquors or fermented malt beverages on-site, including the sale and consumption of such beverages on-site. Micro-brewery can also mean brew pub, where food is permitted to be served for consumption on-site. Breweries and brew pubs are regulated and licensed in accordance with the Colorado Department of Revenue Liquor Enforcement Division.

263. **Mini-storage warehouse** means a building or a group of buildings containing separate, individual self-storage units divided from the floor to ceiling by walls, each with an independent entrance from the exterior of the building and that are designed to be rented or leased on a short-term basis to the general public for private storage of personal goods, materials and equipment.

264. **Mixed use** shall mean the development of a lot tract or parcel of land, building or structure with two or more different uses including but not limited to residential, office, retail, public uses, personal service or entertainment uses, designed, planned and constructed as a unit.

265. **Mixed use building** means a building designed, planned and constructed as a unit, used partially for residential use and partly for commercial uses including, but not limited to, office, retail, public uses, personal service or entertainment uses.

266. **Mixed use dwelling unit** means the dwelling unit in a mixed use building. For purposes of calculating residential density, each dwelling unit shall count as one-half dwelling unit.

267. **Mobile home** means a unit partially or entirely manufactured in a factory, built on a permanent chassis, and which is designed to be transported on streets to the place where it is to be occupied as a dwelling unit, is at least eight feet wide and thirty-two feet long; and is designed to be used as a dwelling without permanent foundation when connected to required utilities. A mobile home does not include a factory built home, manufactured home, or a recreational vehicle (RV).

268. **Model home** means a dwelling temporarily used as a sales office or demonstration home for a residential development under construction, said dwelling being used as an
example of a product offered for sale to purchasers (by a realtor, building developer or contractor). The dwelling may be furnished but not occupied as a residence while being used as a “model home.”

269. **Model plans** means a set of standard plans for a home.

270. **Modified grid pattern** means a grid pattern of streets and blocks adapted to the topography, unique natural features, environmental constraints, and peripheral open space areas.

271. **Mullion** means a slender vertical member dividing the opening for a pair of double doors, sometimes removable to permit the passage of large objects, or also, a vertical member between the lights of a window.

272. **Municipality** means an incorporated city or town.

273. **Muntin** means a strip of wood or metal that separates and holds panes of glass in a window.

274. **Native Seed Area** means an area that is planted using broadcast native or drought-tolerant seed mix, resulting in a drought-tolerant turf. These areas have a water dedication requirement of 0.8 acre-feet per acre.

275. **Natural Area** means an area that (a) is appropriately vegetated and free of weeds; (b) is capable of maintaining the existing vegetation without irrigation; (c) has been dedicated to and accepted by the Town; and (d) is a wetland under the criteria in the Wetlands Delineation Manual utilized by the U.S. Army Corps of Engineers and U.S. Environmental Protection Agency in effect at the time of dedication to the Town. All Natural Areas shall be encumbered by a conservation easement. Natural Areas do not require any irrigation. In order to qualify as a Natural Area, the Developer must pay the Town’s fees and expenses incurred in determining whether the area is a wetland and appropriately vegetated, and the Natural Area must be accepted by the Town at the Town’s sole discretion by and through the Town Administrator.

276. **Natural preserve/open lands** means areas identified on the Town Comprehensive Plan Preferred Land Use map or related maps including but not limited to: parks, bodies of water, the Hwy. 287 buffer area, trail corridors, conservation easements, irrigation ditches, floodplains and flood ways, natural drainage and water ways, significant native trees and vegetation, wildlife travel corridors, special habitat features, remnant native prairie habitat, plains cottonwood galleries, and any wetland greater than one-quarter acre in size.

277. **Neighborhood** means a geographical area, the focus of which are residential uses, but also may include a mixture of activities that people need to live. A neighborhood may include a diversity of housing types, schools, parks, shopping and jobs (frequently service-type), and civic buildings.

278. **Neighborhood commercial center** means a shopping center which contains businesses that are intended to provide goods and services to the immediate neighborhood (within a one-quarter mile radius).

279. **New construction** means structures for which the start of construction or remodeling commenced on or after the effective date of this Code.

280. **Nightclub** means a bar or tavern containing more than one hundred square feet of dance floor area.

281. **Noncommercial sign** means a sign that does not commercially advertise and which references any noncommercial activity or event.
282. **Nonconforming building** means a building or structure, or portion thereof, that does not conform to the regulations of this Code, but that was lawfully constructed under the regulations in force at the time of construction.

283. **Nonconforming sign** means a sign which does not conform to the regulations within this Code but was lawfully erected under the regulations in force at the time it was erected.

284. **Nonconforming use** means a use that does not conform to the use regulations of this Code, but that was lawfully established under the regulations in force at the time the use was established and has been in regular use since that time.

285. **Noxious weeds** means plants that are determined by the State of Colorado, Larimer or Weld County, or the Town as a noxious weed or an alien plant that is aggressively invasive including but not limited to Leafy Spurge, Russian Knapweed, Spotted Knapweed, Diffuse Knapweed, Canada Thistle, Musk Thistle, Field Bindweed, Volunteer Rye, and Jointed Goatgrass.

286. **Nursing facility** means a facility, or a distinct part of a facility, which meets the state nursing home licensing standards, is maintained primarily for the care and treatment of inpatients under the direction of a physician, and meets the requirements in federal regulations for certification as a qualified provider of nursing facility services. “Nursing facility” includes private, nonprofit, or proprietary intermediate nursing facilities for the mentally retarded or developmentally disabled.

287. **Off-site improvement** means any improvement on property wholly or partly located outside the area of the property being subdivided, whether or not in the same ownership of the entity doing the subdivision.

288. **Oil and gas operation** means any structure, facility or activity which is constructed on or disturbs land in association with oil or gas drilling, production or waste treatment and disposal, including but not necessarily limited to wells, tanks or tank batteries, pits, access roads for ingress and egress and pipelines.

289. **Oil or gas well** means a well that produces oil or gas.

290. **Open space** means any land or water area with its surface open to the sky, which serves specific uses of providing park and recreation opportunities, conserving natural areas and environmental resources and protecting areas of agricultural, archeological or historical significance. Open space shall not be considered synonymous with vacant or unused land. Usable open space shall exclude areas used for off-street parking, off-street loading, service driveways, setbacks from oil and gas wells and their appurtenances, or other hazards to the public, native open areas on steep slopes, floodways, or easements for utilities.

291. **Open space, common** means a parcel of land, an area of water, or a combination of land and water within a development designed and intended primarily for the use or enjoyment of residents, occupants and owners of that development.

292. **Open space, public** means an open space area conveyed or otherwise dedicated to the Town for public recreational or conservation uses. Public opens spaces are to be unencumbered by oil and gas wells, their appurtenances or other hazards to the public.

293. **Open Water** means a body of water, such as a pond or reservoir, whether existing or created and whether for purposes of water storage, aesthetic, or recreation, that has an adequate physical and legal water supply to maintain the open water condition year round, and that has been accepted by the Town for Open Water land use.

294. **Outdoor light fixture** means when an outdoor illuminating device, outdoor lighting or reflective surface, luminous tube, lamp or similar device, permanently installed or
portable, used for illumination, decoration, or advertisement. Such devices include, but are not limited to, lights used for:

a. parking lot lighting;
b. roadway lighting;
c. buildings and structures;
d. recreational areas;
e. landscape lighting;
f. billboards and other signs (advertising or other);
g. product display area lighting;
h. building or structure decoration; or
i. building overhangs and open canopies.

295. **Outdoor storage** means the keeping, in an unenclosed area, of any equipment, goods, junk, material, merchandise or vehicles, including boats, RV’s and trailers, in the same place for more than twenty-four hours. Containers may not be permitted for use as permanent storage or building purposes without site plan and/or building permit approval.

296. **Outlot** means a measured piece of land contained within subdivided land that is not a building lot. An outlot may be conveyed to the public for open space or other public purposes, be retained by the developer for merger with a later subdivision, or be conveyed to an owners association.

297. **Overall Development Plan (ODP)** means a development plan that shows how an entire site is proposed for development and which may be processed as a Planned Unit Development in accordance with the previous Land Development Code.

298. **Owner** means any person who alone, jointly or severally with others, or as an agent, trustee, executor or other representative capacity, has legal or equitable title to any property.

299. **Parapet** means a low, protective wall at the edge of a terrace, balcony or roof, especially that part of an exterior wall, fire wall, or party wall that rises above the roof.

300. **Parcel** means a tract or plot of land.

301. **Park** means an area open to the general public and reserved and usable for recreational, educational or scenic purposes.

302. **Park, pocket** means an approximately one-half acre park including playground equipment that is developed, owned and maintained by persons other than the Town of Berthoud.

303. **Parking area (off-street)** means all off-street areas and spaces designed, used, required or intended to be used for the parking, storage, maintenance, service, repair, display or operation of motor vehicles, including driveways or access ways in and to such areas, but not including any outdoor storage area used principally as a “recreational vehicle, boat or truck storage” use, storage areas for landscaping and other bulk items or public streets and rights-of-way.

304. **Parking garage** means an off-street parking area within a building.

305. **Parking lot** means an outdoor off-street parking area or vehicular use area.

306. **Parking space** means an area of at least two hundred square feet with dimensions of ten feet by twenty feet exclusive of driveways, aisles or maneuvering areas. All parking spaces shall have direct unobstructed access to a street, drive aisle or alley.
307. **Parkway** means that portion of the public right-of-way between the curb line and the adjoining property line.

308. **Partially shielded light** means when the bulb of the fixture is shielded by a translucent siding and the bulb is not visible at all. Light may be emitted at the horizontal level of the bulb.

309. **Pergola** is a structure of parallel colonnades supporting an open roof of beams and crossing rafters or trellis work.

310. **Permanent monument** means any structure of masonry and/or metal permanently placed on or in the ground, including those expressly placed for surveying reference.

311. **Person** means a natural person, joint venture, stock company, partnership, association, club, company, corporation, business, trust or organization or the manager, lessee, agent, representative, officer or employee of any of the foregoing entities, acting as a unit.

312. **Personal and business service shops** means shops primarily engaged in providing services generally involving the care of the person or such person's appearance or rendering services to business establishments such as laundry or dry-cleaning retail outlets, portrait/photographic studios, beauty or barber shops, employment service, or mailing and copy shops.

313. **Phase** means a portion of property that is being platted and engineered for development at one time.

314. **Pilaster** means a rectangular support or pier treated architecturally as a column, with a base shaft and capital.

315. **Planned Unit Development (PUD) Overlay** means an overlay zone that may be used to modify permitted or conditional land uses and specific standards including lot size, building bulk, gross density, and lot coverage or floor area ratios. A PUD overlay may only be used to modify the existing zoning of a parcel.

316. **Plant nursery and greenhouse** means any land or structure used primarily to raise trees, shrubs, flowers or other plants for sale or for transplanting.

317. **Plat** means a map of certain described land showing property and lot boundaries, location of public utilities, easements and other information prepared in accordance with the requirements of this Code, approved by the Town and recorded in the records of the respective County Clerk and Recorder.

318. **Preliminary Development Plan (PDP)** means a development review process under previous versions of the Land Development Code.

319. **Prime farmland** means land that has the best combination of physical, water supply and chemical characteristics for producing food, feed, forage, fiber and oilseed crops, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor and without intolerable soil erosion, as determined by the Secretary of Agriculture. Prime farmland includes land that possesses the above characteristics but is being used currently to produce livestock and timber. It does not include land already in or committed to urban development or water storage.

320. **Principal use** means the main use of land or of a structure as distinguished from a subordinate or accessory use.

321. **Private school** means a school that does not derive its support, in whole or in part, from moneys raised by a city, town, state, county or school district tax.

322. **Professional office** means 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, except as accessory to the professional services.

323. **Program deficiency** means a defect in a community's floodplain management regulations or administrative procedures that impairs effective implementation of those floodplain management regulations or of the National Flood Insurance Program standards.

324. **Proof of ownership** means ownership as specified in a current title insurance commitment, title policy, certification of title issued by a title insurance company licensed by the State of Colorado or recorded deed or copy of current property taxes.

325. **Property** means all real property subject to development regulation by the Town.

326. **Property line** means the boundary of any lot, parcel or tract as the same is described in the conveyance of such property to the owner; and does not include the streets or alleys upon which the said lot, parcel or tract abuts.

327. **Public areas** means streets, parks, open spaces and other property designated or described for public use on a map or plat approved by the Town and for which fee title is vested in the Town or other public entity.

328. **Public facilities** means those constructed facilities, including but not limited to, transportation systems or facilities, water systems or facilities, wastewater systems or facilities, storm drainage systems or facilities, fire, police and emergency systems or facilities, electric, gas, telecommunication utilities or facilities, and publicly owned buildings or facilities.

329. **Public hearing** means a meeting called by the Board of Trustees, Planning Commission, or the Board of Adjustment for which public notice has been given and which is held in a place at which interested parties may attend to hear issues and to express their opinions.

330. **Public improvement** means any drainage ditch, roadway, parkway, sidewalk, pedestrian way, tree lawn, landscaped open space, off-street parking area, lot improvement or other facility which benefits the public.

331. **Public school** means a school that derives all or a portion of its support from moneys raised by a general state, county or school district tax and is controlled and operated by the Thompson R2J or Weld County School District.

332. **Public utility** means a common carrier supplying electricity, wire telephone service, natural gas, water, wastewater or storm water service or similar public services, but shall not include railroads or other forms of rail mass transit or depots or terminals supporting the same; or wireless telecommunication facilities.

333. **Push cart** means a mobile vending cart, pushcart or trailer that is not motorized or attached to a vehicle for towing and that does not exceed ten feet in length, four feet in width or eight feet in height. A pushcart may be used to cook and prepare food for vending or to serve commissary prepared, ready-to-eat or packaged food in individual servings.

334. **Raw water** means water rights acceptable to the Town for domestic purposes after treatment, or water rights acceptable to the Town that may be used for irrigation of public facilities.

335. **Raw Water Credit** means the number of S.F.E.’s for which dedication credits are certified by the Town in exchange for cash in lieu of water dedication payments or water rights dedications to the Town.
336. **Recessed light** means when a light is built into a structure or portion of a structure such that the light is fully cut-off and no part of the light extends or protrudes beyond the underside of a structure or portion of a structure.

337. **Recreational vehicle (RV)** means a vehicle primarily designed as temporary living quarters for recreational, camping or travel use, which either has its own motive power or is drawn by another vehicle. The following shall be considered a recreational vehicle:
   a. Camping trailer or tent trailer means a folding structure, constructed of canvas, plastic or similar water repellent material designed to be mounted on wheels and designed for travel and recreation.
   b. Motorized camper, motor home, recreational conversion van or bus means a recreational vehicle consisting of a portable, temporary dwelling to be used for travel, recreation and vacation uses, and constructed as an integral part of a self-propelled vehicle.
   c. Pick-up camper means an enclosure designed to be mounted on or loaded into a pick-up truck chassis for use as a temporary dwelling for travel and recreation.
   d. A tent, meaning a portable or temporary cover or shelter, with or without side panels, which is supported by poles and is made of canvas, plastic or similar materials.
   e. A travel trailer, meaning a towed vehicle designed as a temporary dwelling for travel and recreation. Travel trailer, self-contained, means a trailer which can operate independently of connections to sewer, water and electric systems. It contains a water-flushed toilet, lavatory, shower or bath and kitchen sink, all of which are connected to water storage and sewage holding tanks located within the trailer.

338. **Recreational vehicle park** means a parcel of land specifically developed for locating only recreational vehicles on lots on a short-term basis.

339. **Recreational vehicle site** means a plot of ground within a recreational vehicle park intended for the accommodation of a recreational vehicle, tent or other individual camping unit on a temporary basis.

340. **Recycling facility** means a building or lot used for the collection and/or processing of recyclable material. Processing shall mean the preparation of material for efficient shipment by such means as baling, compacting, flattening, grinding, crushing, mechanical sorting or cleaning. Such a facility, if entirely enclosed within a building or buildings, shall be considered a warehouse.

341. **Religious assembly (neighborhood scale)** means any structure or place wherein religious worship, ceremonies, rituals, and education are held for a congregation, and one that is not considered a community scale religious assembly.

342. **Religious assembly (community scale)** means any structure or building larger than 25,000 square feet in size wherein religious worship, ceremonies, rituals, and education are held.

343. **Resource extraction, processing and sales** means removal or recovery by any means whatsoever of sand, gravel, soil, rock, minerals, mineral substances or organic substances other than vegetation, from water or land on or beneath the surface thereof, exposed or submerged.

344. **Restaurant, drive-through** means any establishment in which the principal business is the sale of foods and beverages to the customer in a ready-to-consume state and in which the design or principal method of operation of all or any portion of the business is
to allow food or beverages to be served directly to the customer in a motor vehicle without the need for the customer to exit the motor vehicle.

345. **Restaurant, fast food** means any establishment in which the principal business is the sale of food and beverages to the customer in a ready-to-consume state, and in which the design or principal method of operation includes the following characteristics.
   a. Food and beverages are usually served in paper, plastic or other disposable containers;
   b. The consumption of food and beverages is encouraged or permitted within the restaurant building, within a motor vehicle parked upon the premises, or at other facilities on the premises outside the restaurant building; or the food and beverages are available for carry-out or pick up from drive-through facilities.

346. **Restaurant, standard** means any establishment in which the principal business is the sale of food and beverages to customers in a ready-to-consume state; where fermented malt beverages, and/or malt, special malt or vinous and spirituous liquors may be produced on the premises as an accessory use; and where the design or principal method of operation includes one or both of the following characteristics:
   a. Customers are served their food and/or beverages by a restaurant employee at the same table or counter at which the items are consumed; or
   b. Customers are served their food and/or beverages by means of a cafeteria-type operation where the food or beverages are consumed within the restaurant building.

347. **Resubdivision** means the changing of any existing lot or lots, street rights-of-way or easements of a subdivision plat previously recorded with the Larimer or Weld County Clerk and Recorder.

348. **Retail establishment, large** means a retail establishment, or any combination of retail establishments in a single building, occupying a total of more than fifty thousand gross square feet of floor area, except that no supermarket shall be deemed to be a large retail establishment.

349. **Retail establishment, small** means a retail establishment, or any combination of retail establishments in a single building, occupying a less than fifty thousand gross square feet of floor area.

350. **Retail and supply yard establishments with outdoor storage** means any use where building supply products such as lumber or landscape materials are offered for sale, and are displayed and stored in an unenclosed area.

351. **Retention basin** means a pond, pool or basin used for permanent storage of water runoff.

352. **Right-of-way** means 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, irrigation ditch 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 that public use on the plat on which such right-of-way is established.
Roof, gable means a roof sloping downward in two parts from a central ridge, so as to form a gable at each end.

Roof, hip means a roof having sloping ends and sides meeting at an inclined projecting angle.

Roof sign means a sign erected above the highest point of the coping of a flat roof; or to the deck line of a mansard roof; or to the average height of a gable, pitched or hipped roof. Also, any sign mounted on a pitched or sloping wall and extending higher than the lowest portion of the adjoining roof shall constitute a roof sign.

Salvage or wrecking yard means a place where motor vehicles and parts are wrecked, disassembled, repaired and resold, a place where secondhand goods including waste paper, bottles, automobile tires, clothing, other scrap materials and salvage are collected to be stored and a place where used lumber and used building materials are stored for sale or resale.

Sanitary facilities mean toilets, urinals, lavatories, showers, utility sinks and drinking fountains, and the service buildings containing these units.

Sanitary waste station means a facility used for removing and disposing of waste from self-contained camping vehicle sewage holding tanks.

Senior housing means multifamily residential structures that provide housing for an elderly population, and typically include minimum age restrictions.

Searchlight means an apparatus used to project a beam of light.

Service building means a structure housing toilet, lavatory, bath, laundry, service sink and other such sanitary facilities as may be required.

Setback means the required unoccupied space between the nearest projection of a structure and the property line of the lot on which the structure is located.

Setback, front yard means the distance a building or structure must be placed from the front lot line.

Setback, rear yard means the distance a building or structure must be placed from the rear lot line.

Setback, side yard means the distance a building or structure must be placed from the side lot line.

Sexually-oriented or adult-oriented use means 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 arcade means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas.

b. Adult bookstore, adult novelty store or adult video means a commercial establishment which devotes a significant or substantial portion of its stock-in-trade or interior floor space to, or has as one of its principal business purposes, the sale, rental or viewing, for any form of consideration, of (a) any books,
magazines, periodicals or other printed matter or photographs, films, motion pictures, videocassettes, slides, or other visual representations which are characterized by the depiction or description of specified sexual activities or specified anatomical areas, or (b) any instruments, devices or items which are designed or intended for use with or in specified sexual activities.

c. Adult cabaret means a nightclub, bar, restaurant, concert hall, auditorium or similar commercial establishment which features:
   i. Persons who appear in a state of nudity;
   ii. Live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or
   iii. Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

d. Adult motel means a hotel, motel or similar commercial establishment which offers private rooms to the public and provides patrons live performances or closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas and has a sign visible from a public right-of-way which advertises the availability of this adult type of photographic reproductions.

e. Adult motion picture theater means a commercial establishment which is distinguished or characterized by showing of films, motion pictures, videocassettes, slides or similar photographic reproductions with an emphasis on depicting or describing specified sexual activities or specified anatomical areas which are regularly shown for any form of consideration.

f. Adult theater means a theater, concert hall, auditorium or similar business which, for any form of consideration, regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities.

g. Adult photo studio means any establishment which, upon payment of a fee, provides photographic equipment and/or models for the purpose of photographing "specified anatomical areas."

h. Commercial establishment with respect to the regulation of sexually oriented businesses may have other principal business purposes that do not involve the depicting or describing of specified sexual activities or specified anatomical areas and still be categorized as a sexually oriented business. Such other business purposes will not serve to exempt such commercial establishments from being categorized as a sexually oriented business so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe specified sexual activities or specified anatomical areas. The term commercial establishment includes clubs, fraternal organizations, social organizations, civic organizations or other similar organizations with paid memberships.

i. Nude model studio means any place where a person who appears in a state of nudity or displays specified anatomical areas is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculpted, photographed or similarly depicted by other persons.
j. **Nudity or state of nudity** means:
   i. The appearance of human bare buttock, anus, male genitals, female genitals or the areola or nipple of the female breast; or
   ii. A state of dress which fails to opaquely and fully cover human buttocks, anus, male or female genitals, pubic region or areola or nipple of the female breast.

k. **Peep booth** means a viewing room, other than a private room, of less than one hundred fifty square feet of floor space upon the premises of a sexually oriented business where there are exhibited photographs, films, motion pictures, video cassettes or other video reproductions, slides or other visual representations which depict or describe specified sexual activities or specified anatomical areas.

l. **Private room** means a room in an adult motel that is not a peep booth, has a bed in the room, has a bath in the room or adjacent to the room, and is used primarily for lodging.

m. **Sexual encounter establishment** means a business or commercial establishment which, as one of its primary business purposes, offers for any form of consideration, a place where two or more persons may congregate, associate or consort for the purpose of specified sexual activities or the exposure of specified anatomical areas, when one or more of the persons exposes any specified anatomical area.

n. **Sexually oriented business** means an adult arcade, adult bookstore, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, nude model studio, sexual encounter establishment or other similar business and includes:
   i. The opening or commencement of any sexually oriented business as a new business;
   ii. The conversion of an existing business, whether or not a sexually oriented business, to a sexually oriented business;
   iii. The addition of any sexually oriented business to any other existing sexually oriented business;
   iv. The relocation of any sexually oriented business; or
   v. The continuation of a sexually oriented business in existence on the effective date of the initial ordinance codified herein.

o. **Specified anatomical areas** means:
   i. Less than completely and opaquely covered: human genitals, pubic region, buttocks, and female breast below a point above the top of the areola.
   ii. Human male genitals in a discernibly turgid state even if completely and opaquely covered.

p. **Specified sexual activities** means acts, simulated acts, exhibitions, representation, depictions or descriptions of:
   i. Human genitals in a state of sexual stimulation or arousal.
   ii. Fondling or other erotic touching of human genitals, pubic region, buttocks or female breast.
iii. Intrusion, however slight, of any object, any part of an animal's body, or any part of a person's body into the genital or anal openings of any person's body or into the body of an animal.

iv. Cunnilingus, fellatio, anilingus, masturbation, bestiality, lewd exhibition of genitals or excretory function.

v. Flagellation, mutilation or torture for purposes of sexual arousal, gratification or abuse.

q. Stage means a raised floor or platform at least three feet above the surrounding floor measured perpendicularly from the edge of the stage to the surrounding floor and at least thirty-six square feet in area.

367. Shielded light means when the light emitted from the fixture is projected below a horizontal plane running through the lowest point of the fixture where light is emitted. The bulb is not visible with a shielded light fixture, and no light is emitted from the sides of the fixture. Also considered a full cut-off fixture.

368. Shopping center means a group of retail and service establishments located in a complex which is planned, developed, owned or managed as a unit, with off-street parking provided on the property.

369. Sidewalk means the hard surface path within the street right-of-way for use by pedestrians and/or bicyclists.

370. Sight distance triangle means the area at the corner of an intersection that is to be kept free of shrubs, ground covers, berms, fences, structures, or other visual obstructions or materials or items between a height of twenty four inches and ten feet above the adjoining street level.

371. Sign means any device that is sufficiently visible to persons not located on the lot where the device is located, to accomplish either of the following objectives: (a) is designed to attract the attention of such persons; or (b) communicate information to them.

372. Sign, projecting means any sign supported by a building wall and projecting from that wall.

373. Sign, wall means any sign painted on, incorporated in or affixed to the building wall, or any sign consisting of cut-out letters or devices affixed to the building wall with no background defined on the sign other than the building wall itself.

374. Sign, window is a sign that is painted on, applied or attached to a window or that can be read through the window from the public right-of-way.

375. Significant wildlife habitat and migration corridors are areas designated by the Colorado Division of Wildlife and/or the Colorado Natural Diversity Information Source (www.ndis.nrel.colostate.edu) as areas of landscape that provide food, cover and water sufficient to meet the needs of a given species to survive and reproduce.

376. Single Family Equivalent Unit (“SFE” or S.F.E.”) means a number related to the volume of water necessary to meet the demand and use requirements including systems losses and consumptive use requirements, of an average single family dwelling unit which is defined herein as 0.4 acre feet. An S.F.E. shall be defined as 0.4 acre feet for all purposes. The S.F.E. unit value assigned to such average dwelling unit is 1.0.

377. Single room occupancy boarding house means a housing type consisting of one room, often with cooking facilities and with private or shared bathroom facilities.

378. Site plan means a scale drawing of a lot, showing the actual measurements, the size and location of any existing or proposed buildings, the location of the lot in relation to abutting streets, and other details such as parking areas, access points, landscaped area,
building areas, setbacks from lot lines, building heights, floor areas, densities, utility locations and easements.

379. **Site specific development plan** shall mean and be limited to the Final Plat of a subdivision, Conveyance Plat, a Final Development Plan of a PUD, or a Site Plan when approved as a site specific development plan by the Planning Commission or Board.

380. **Special event sign** means a temporary sign directing attention to an activity of limited duration.

381. **Split garages** means having at least two separate garages that are oriented in different directions.

382. **Spotlight or floodlight** means any lamp that incorporates a reflector or a refractor to concentrate the light output into a directed beam in a particular direction (see definition for floodlight).

383. **Staff** means a full or part-time employee of the Town. Staff may also include professional firms and/or persons designated by the Town to act within a certain capacity including legal, engineering, planning, code enforcement, inspection and other professional fields.

384. **Start of construction** includes substantial improvement, and means the date the building permit was issued, provided that the actual start of construction, repair, reconstruction, placement or other improvement was within one hundred eighty days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

385. **Street** means a public thoroughfare which affords the principal means of vehicular access to abutting property. The term includes public or private streets.

386. **Street, arterial** means a street as described in Section 30-2-105.

387. **Street, collector** means a street as described in Section 30-2-105.

388. **Street, local** means a street as described in Section 30-2-105.

389. **Street, rural** means a street as described in Section 30-2-105.

390. **Street furniture** means constructed objects, such as outdoor seating, kiosks, bus shelters, sculpture, tree grids, trash receptacles, fountains and telephone booths, that have the potential for enlivening and giving variety to streets, sidewalks, plazas and other outdoor spaces open to and used by the public.

391. **Streetscape** means the distinguishing character of a particular street, within the public right-of-way, including paved materials, and the adjacent space extending along both sides of a street including landscaping, sidewalks, medians, lighting, street furniture, and signage.

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

393. **Subdivider or developer** means any person, partnership, joint venture, limited liability company, association or corporation who participates as owner, promoter, developer or
sales agent in the planning, platting, development, promotion, sale or lease of a development.

394. **Subdivision** means the platting of a lot or the division of a lot, tract or parcel of land into two or more lots, plots or sites.

395. **Subsidence** means a local mass movement that involves the downward settling or sinking of the solid Earth’s surface. Subsidence may be due to natural geologic processes or man’s activity such as coal mining.

396. **Substantial damage** means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would be equal to, or exceed, fifty percent of the market value of the structure before it was damaged.

397. **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:
   a. Before the improvement or repair is started; or
   b. If the structure has been damaged and is being restored, before the damage occurred.
   c. For the purpose 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. Substantial improvements shall be calculated cumulatively over a period of the previous ten years.

The term does **not**, however, include either:
   a. 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
   b. Any alteration of a structure listed on the National Register of Historic Places or the State Inventory of Historic Places.

398. **Supplemental Irrigation Water** means additional potable water which will be required for irrigation at times when water is not available through a non-potable irrigation system.

399. **Swing-in garage** means a garage that is oriented so that the garage doors are perpendicular to the street.

400. **Tandem garage** means a garage that allows for the parking of one car in front of another.

401. **Tandem parking** means parking two cars in a driveway or parking space so that one car is right in front of the other and the front car cannot move until the back car is moved.

402. **Tavern** see “Bar or tavern”.

403. **Technical Review Committee (TRC)** means the committee established to review development proposals and subdivision applications on behalf of the Town.

404. **Temporary business** means a business commonly recognized as being conducted for regularly scheduled or occurring portions of a year – not to exceed four consecutive months. Examples of a temporary business include, but are not limited to, Christmas tree sale lots, farmer’s markets, circuses, carnivals, new home sales operations, etc.

405. **Temporary directional sign** means a free-standing sign giving direction to an open house, house for sale, garage sale or a temporary business.

406. **Temporary lighting** means lighting that is intended to be used for a special event for seven days or less.
Temporary use means a prospective use intended for limited duration, is to be located in a zoning district not permitting such use, and shall not include continuing a nonconforming use or building.

Title commitment means formal documentation from a title insurance company licensed by the State of Colorado listing the name of the owner of the property under consideration, the legal description of the property and any encumbrances of the property such as easements, rights-of-way, liens or mineral interests.

Tourist facility means an establishment set up to primarily provide local tourist information to visitors.

Town means the Town of Berthoud, a municipal corporation of the State of Colorado. The Town may act through the Board or an official of the Town specifically authorized to perform the act.

Town Administrator means the Town Administrator of the Town of Berthoud, Colorado.

Tract means a parcel platted in a subdivision set aside as unsuitable for development or for a public or community-wide purpose which shall be shown on the plat. A public or community-wide purpose may include a drainage area, stormwater detention or retention areas, areas for signs, parks, open space, utilities, or land areas reserved for other public facilities. Except for restricted tracts, a tract is further defined as having been dedicated to the Town or a quasi-public agency having an easement to the Town or quasi-public agency, or as being owned by a homeowners’ association for the subdivision in which the tract is located.

Tree lawn means a strip of landscaping within the right-of-way, generally between the street and an adjacent sidewalk.

Truck depot means an establishment engaged primarily in the fueling, servicing, repair or parking of tractor trucks or similar heavy commercial vehicles, including the sale of accessories and equipment for such vehicles. A truck stop may also include overnight accommodations, showers or restaurant facilities primarily for the use of truck crews.

Undermining means land that has been mined under the surface of the ground.

Uplighting means lighting that is directed in such a manner as to shine light rays above the horizontal plane.

Use by right means a use that is permitted by the zoning district regulations.

USGS datum means United States Geological Survey basis of elevations.

Vacant land means land that does not have structures or other development on it.

Variance means a grant of relief from the requirements of this Code which permits construction in a manner that would otherwise be prohibited by this Code.

Vegetation means plants growing in a place, including, but not limited to trees, shrubs, vines, grasses and groundcover.

Vehicle trip means a single or one-way vehicle movement to or from a property or study area. Vehicle trips can be added together to calculate the total number of vehicles expected to enter and leave a specific development or site over a designated period of time.

Vested property right means the right to undertake and complete the development and use of property under the terms and conditions of a site specific development plan approved as provided in this Code.

Veterinary hospital means any facility which is maintained by or for the use of a licensed veterinarian in the diagnosis, treatment or prevention of animal diseases.
Veterinary facilities, small animal clinic means any facility maintained by or for the use of a licensed veterinarian in the diagnosis, treatment or prevention of animal diseases wherein the animals are limited to dogs, cats or other comparable household pets and wherein the overnight care of said animals is prohibited except when necessary in the medical treatment of the animal.

Walkable means a distance of ¼ mile or within a five to ten minute walk.

Walkway means:

a. A right-of-way dedicated to public use that is not within a street right-of-way, to facilitate pedestrian access through a subdivision block by means of a hard surface path; or

b. Any portion of a parking area restricted to the exclusive use of pedestrian travel.

Walkway, connecting means:

a. Any street sidewalk; or

b. Any walkway that directly connects a building entrance(s) to a sidewalk adjoining a street sidewalk, and connects other origins and destinations for pedestrians, including but not limited to commercial establishments, schools, parks, dwellings, work places and transit stops, without requiring pedestrians to walk across parking lots or driveways, around buildings or following parking lot outlines which are not aligned to a logical route.

Warehouse and distribution means storage, wholesale, and distribution of manufactured products, supplies or equipment, including accessory offices or showrooms, including incidental retail sales, but excluding bulk storage of materials that are inflammable or explosive or that create hazardous or commonly recognized offensive conditions.

Warehousing means a business which stores or stocks merchandise or commodities.

Water right means a decreed right to use in accordance with its priority a certain portion of the waters of the State by reason of the appropriation of the same. It shall include both direct flow and storage rights. Water right shall also be used in the context of water right dedications to include allotment contracts with the Northern Colorado Water Conservancy District and its Municipal Subdistrict.

Water surface elevation means the height, in relation to the NGVD of 1929 (or other datum where specified) of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

Wetland means lands as defined by Federal standards where there is a transition between terrestrial and aquatic systems, where the water table is usually at or near the surface, or the land is covered by shallow water.

Wireless telecommunication equipment means any equipment used to provide wireless telecommunication service which is not affixed to or contained within a wireless telecommunication facility, but is instead affixed to or mounted on an existing building or structure that is used for some other purpose. Wireless telecommunication equipment also includes a ground mounted base station used as an accessory structure that is connected to an antenna mounted on or affixed to an existing building.

Wireless telecommunication facility means any freestanding facility, building, pole, tower or structure used to provide only wireless telecommunication services, and which consists of, without limitation, antennae, equipment and storage and other accessory structures used to provide wireless telecommunication services.
436. **Wireless telecommunication services** means services providing for the transmission of wireless communications utilizing frequencies authorized by the Federal Communications Commission for paging systems, enhanced specialized wireless telecommunication, television, personal communication services or cellular telephone.

437. **Workshop and custom small industry** means a facility wherein goods are produced or repaired by hand, using hand tools or small-scale equipment, including small engine repair, furniture making and restoring, upholstery, restoration of antiques and other art objects, or other similar uses.

438. **Yard** means that portion of the open area on a lot extending open and unobstructed from the ground upward from a lot line for a depth or width specified by the regulations for the zone district in which the lot is located.

439. **Yard, front** means a yard extending across the full width of the lot between the front lot line and the nearest line or point of the building.

440. **Yard, rear** means a yard extending across the full width of the lot between the rear lot line and the nearest line or point of the building.

441. **Yard, side** means a yard extending from the front yard to the rear yard between the side lot line and the nearest line or point of the building.

442. **Zone district** means a zone district of the Town as established in Section 3 of this Chapter, unless the term is used in a context that clearly indicates that the term is meant to include both the zone district(s) of the Town and the zone district(s) of an adjoining governmental jurisdiction. Also referred to as “zoning district.”

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

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26. **30-1-117 Public hearing and general notice provisions**

**A. Specific purposes**

Public hearings are open meetings conducted by local boards to gather information from the public and to survey public opinion as part of the local rule-making process. Public hearings are required by either the State of Colorado or Town of Berthoud and will be conducted before the Planning Commission, the Board of Trustees or the Planning Commission acting as the Board of Adjustment as appropriate. Public hearings will be conducted under the following general conditions:

1. Before reviewing an application for a permit that requires a public hearing, said hearing shall be scheduled within a reasonable time as allowed by the schedules of Town officials and staff. Town staff is responsible for the scheduling of all public hearings.

2. Subject to Subsection C below, the hearing shall be open to the public and all persons interested in the outcome of the appeal or application shall be given an opportunity to present evidence and arguments.

3. The Board of Trustees, Planning Commission or Board of Adjustment conducting the hearing may place reasonable and equitable limitations on the presentation of evidence, arguments and the cross-examination of witnesses.

**B. Public notice requirements**
The Town shall give notice of any public hearing required as provided below. The applicant shall be responsible for all costs of such notice.

1. Where required by statute or ordinance to give notice to surrounding property owners, notice shall be given by mailing a written notice not later than five days before the hearing to those persons who have listed for taxation any real property located within three hundred feet of the lot, parcel or property area that is the subject of the application or appeal.

2. Where required by statute or ordinance to give notice to other interested property owners such as mineral interest owners of record, mineral and oil and gas lessees for the property, and appropriate ditch companies notice shall be given by mailing a written notice not later than fifteen days before the hearing.

3. Where required by statute or ordinance to give notice to other parties of interest or referral agencies, notice shall be given by mailing a written notice not later than fifteen days before the hearing.

4. Where required by statute or ordinance to give notice of annexation hearings to special districts, school districts and Larimer or Weld County Commissioners and the Larimer or Weld County Attorney, notice shall be given by a certified mailing of a written notice not later than twenty five days before the hearing.

5. If notice by posting of the property is required by statute or ordinance, such notice shall occur by prominently posting signs on the property that is the subject of the proposed action. Such signs shall be posted no less than fifteen days prior to the hearing and shall be easily legible from the nearest public streets. Sign shall be in the format available from the Town.
   a. Posting shall be required for all properties seeking annexation, zoning, rezoning, major subdivision, minor subdivision or PUD approvals and any amendments to such approvals.

6. If posting was done by the applicant, the applicant shall provide (prior to the hearing) an affidavit showing the property was posted within the specified time.

7. The Town shall give notice of any public hearing required as follows:
   a. Notice shall be given to potentially interested persons by publishing a notice one time in a newspaper having general circulation in the area not less than fifteen days prior to the hearing.
   b. This notice shall state the date, time and place of the hearing, reasonably identify the lot, parcel or property that is the subject of the application or appeal, and give a brief description of the action requested or proposed. Proof of publication shall be made part of the record at the time of the public hearing.

C. Hearing and notification requirements

Listed below are the notification requirements in the Town of Berthoud. Abbreviations used below include C.R.S. (Colorado Revised Statutes) and Hearing (Public Hearing). Hearings will be noticed per the Town of Berthoud in most instances, but notice
requirements for annexation must follow provisions of the Colorado Revised Statutes. Mailed notices identified below would normally include notice of both the Planning Commission and Town Board meeting/hearings as appropriate.

<table>
<thead>
<tr>
<th>Hearing</th>
<th>Publication</th>
<th>Mailed notice</th>
<th>Post sign</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Annexation</strong></td>
<td>Before Commission as regular agenda item. Before Town Board per C.R.S.</td>
<td>4 successive weeks starting at least 30 days prior to Statutory Hearing.</td>
<td>Yes, no less than 30 days prior to Statutory Hearing.</td>
</tr>
<tr>
<td><strong>Zoning</strong></td>
<td>Before Commission as regular agenda item and Town Board as hearing.</td>
<td>No less than 15 days prior to Commission meeting.</td>
<td>Yes, no less than 15 days prior to Commission meeting.</td>
</tr>
<tr>
<td><strong>Rezoning</strong></td>
<td>Before Commission as regular agenda item and Board as hearing.</td>
<td>No less than 15 days prior to hearing.</td>
<td>Yes, no less than 15 days prior to Commission meeting.</td>
</tr>
<tr>
<td><strong>Concept Plan</strong></td>
<td>Before both Commission and Board as regular agenda items.</td>
<td>No less than 15 days prior to Commission meeting.</td>
<td>Yes, no less than 15 days prior to Commission meeting.</td>
</tr>
<tr>
<td><strong>Preliminary Plat</strong></td>
<td>Before Planning Commission as regular agenda item and Board as hearing.</td>
<td>No less than 15 days prior to meeting.</td>
<td>Yes, no less than 15 days prior to Commission meeting.</td>
</tr>
<tr>
<td><strong>Final Plat</strong></td>
<td>Before Planning Commission as Hearing. No Board meeting</td>
<td>No less than 15 days prior to Commission meeting.</td>
<td>Yes, no less than 15 days prior to Commission meeting.</td>
</tr>
<tr>
<td>Planning Action</td>
<td>Hearing</td>
<td>Publication</td>
<td>Mailed notice</td>
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<tr>
<td>Conveyance Plat</td>
<td>Before Commission as regular agenda item and Board as hearing.</td>
<td>No less than 15 days prior to Commission meeting.</td>
<td>Yes, to property owners within 300 feet, and referral agencies no less than 15 days prior to Commission meeting.</td>
</tr>
<tr>
<td>PUD or amendment to PUD</td>
<td>Before Commission as regular agenda item and Board as hearing.</td>
<td>No less than 15 days prior to hearing.</td>
<td>Yes, to property owners within 300 feet, and referral agencies no less than 15 days prior to Commission meeting.</td>
</tr>
<tr>
<td>Comprehensive Plan Amendment</td>
<td>Before Planning Commission as hearing and Board as regular agenda item.</td>
<td>No less than 15 days prior to Commission meeting.</td>
<td>No</td>
</tr>
<tr>
<td>Zoning Amendment</td>
<td>Before Planning Commission as regular item and Town Board as hearing.</td>
<td>No less than 15 days prior to hearing.</td>
<td>Yes, to property owners within 300 feet no less than 15 days prior to BOA hearing.</td>
</tr>
<tr>
<td>Variances &amp; Appeals</td>
<td>Board of Adjustment (BOA) as hearing</td>
<td>No less than 15 days prior to hearing.</td>
<td>Yes, to property owners within 300 feet no less than 15 days prior to BOA hearing.</td>
</tr>
<tr>
<td>Conditional Use</td>
<td>Before Planning Commission as regular agenda item, Town Board as</td>
<td>No less than 15 days prior to hearing.</td>
<td>Yes, to property owners within 300 feet, and referral agencies no less than 15</td>
</tr>
<tr>
<td>Minor Subdivision</td>
<td>Before Planning Commission as hearing.</td>
<td>No less than 15 days prior to hearing.</td>
<td>Yes, to property owners within 300 feet no less than 15 days prior to Commission hearing.</td>
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</tr>
<tr>
<td>Site Plan Review &amp; Action</td>
<td>Administrative approval unless referred to Planning Commission by Administrator</td>
<td>No notice required,</td>
<td>No notice required,</td>
</tr>
</tbody>
</table>

### 4. Modification of application at hearing

1. In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by the Board of Trustees, Planning Commission or Board of Adjustment, the applicant may agree to modify his or her application, including the plans and specifications submitted.

2. Unless such modifications are so substantial or extensive so as to materially change the plans, the hearing body may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to the Town for review and approval as an administrative act.

### 5. Hearing continuations

The Board, Commission or Board of Adjustment may continue the hearing to a subsequent meeting at a certain date and time or may close the hearing and continue the meeting to deliberate the issues until a final decision is made. If a hearing is continued to a certain date and time, no further notice of a continued hearing or meeting need be published.

### 6. Record

A tape recording shall be made of all hearings, and transcripts of such hearings may be requested within thirty days of the close of the hearing. Transcripts shall be provided within a reasonable time after deposit of the cost of the preparation of the transcript with the Town.

30-1-118 to 30-1-xxx Reserved.
### CHAPTER 30 – BERTHOUD DEVELOPMENT CODE

#### SECTION 2 – DESIGN STANDARDS

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>30-2-101</td>
<td>General provisions</td>
<td>185</td>
</tr>
<tr>
<td>30-2-102</td>
<td>Design standards based on Comprehensive Plan</td>
<td>185</td>
</tr>
<tr>
<td>30-2-103</td>
<td>Application of design standards</td>
<td>185</td>
</tr>
<tr>
<td>30-2-104</td>
<td>Lots and blocks</td>
<td>186</td>
</tr>
<tr>
<td>30-2-105</td>
<td>Streets and alleys</td>
<td>188</td>
</tr>
<tr>
<td>30-2-106</td>
<td>Parking</td>
<td>196</td>
</tr>
<tr>
<td>30-2-107</td>
<td>Sidewalks, walkways, trails and bikeways</td>
<td>203</td>
</tr>
<tr>
<td>30-2-108</td>
<td>Easements and utility standards</td>
<td>208</td>
</tr>
<tr>
<td>30-2-109</td>
<td>Parks, trails and open space</td>
<td>209</td>
</tr>
<tr>
<td>30-2-110</td>
<td>Contribution for public school sites</td>
<td>212</td>
</tr>
<tr>
<td>30-2-111</td>
<td>Public sites and dedication requirements</td>
<td>212</td>
</tr>
<tr>
<td>30-2-112</td>
<td>Landscape design</td>
<td>213</td>
</tr>
<tr>
<td>30-2-113</td>
<td>Tree species</td>
<td>224</td>
</tr>
<tr>
<td>30-2-114</td>
<td>Commercial &amp; industrial buffering &amp; screening techniques</td>
<td>229</td>
</tr>
<tr>
<td>30-2-115</td>
<td>Fences and walls</td>
<td>230</td>
</tr>
<tr>
<td>30-2-116</td>
<td>Residential design standards</td>
<td>232</td>
</tr>
<tr>
<td>30-2-117</td>
<td>Commercial and industrial standards</td>
<td>234</td>
</tr>
<tr>
<td>30-2-118</td>
<td>Outdoor lighting and dark sky standards</td>
<td>238</td>
</tr>
<tr>
<td>30-2-119</td>
<td>Environmental considerations</td>
<td>241</td>
</tr>
<tr>
<td>30-2-120</td>
<td>Sustainability</td>
<td>242</td>
</tr>
<tr>
<td>30-2-121</td>
<td>Sanitary sewer</td>
<td>243</td>
</tr>
<tr>
<td>30-2-122</td>
<td>Potable water</td>
<td>243</td>
</tr>
<tr>
<td>30-2-123</td>
<td>Storm water drainage facilities</td>
<td>243</td>
</tr>
<tr>
<td>30-2-124</td>
<td>Fire hydrants</td>
<td>245</td>
</tr>
<tr>
<td>30-2-125</td>
<td>Project specific master plans</td>
<td>245</td>
</tr>
<tr>
<td>30-2-126</td>
<td>Project construction documents</td>
<td>246</td>
</tr>
</tbody>
</table>
30-2-127 Water and wastewater line extension policy 246
30-2-128 Reimbursement policy and procedure 248
30-2-129 Line oversizing policy 250
30-2-130 Non-potable water systems 253

Adopted March 27, 2012

Amended October 27, 2015
30-2-101 General provisions

A. Applicability. All development shall comply with the applicable standards contained in this Section.

B. Purpose. These requirements are established to guide and direct future development in a way that reinforces and builds upon the existing character of the Berthoud community. The requirements will enable persons wishing to develop or redevelop property to have sufficient direction to enable them to properly plan proposed residential subdivisions, mixed use projects, new or renovated commercial properties and industrial lands within the Town.

C. Relation to zone district standards. In the event of a conflict between a standard or requirement contained in Chapter 30, Section 3: Zoning, and material in this Section 2, the standards in Section 3: Zoning shall prevail.

30-2-102 Design standards based on Comprehensive Plan

The intention of the Town in enacting this Section is to clearly describe the Town’s vision for the physical development of land in Berthoud. The Design Standards in this Section are intended to further the goals and objectives in the Town of Berthoud Comprehensive Plan and create a vital, cohesive, well-designed community that preserves and enhances the small-town character of this community. Those interested in developing property in the Town of Berthoud are encouraged to review the full Town of Berthoud Comprehensive Plan, 2007 (as amended) with a particular focus on the following Goals and Objectives:

- Land use and growth management
- Circulation and transportation
- Community character and urban design
- Public infrastructure

30-2-103 Application of design standards

Town staff in its discretion, with final approval by the Town Administrator, and the Planning Commission will evaluate each proposal based on these standards and the context within which each project is located. The standards are intended to be specific enough to guide development but not so specific as to preclude creative design solutions. Applicants must conform to the design standards in this Section.
unless it can be demonstrated that an acceptable alternative meets one or more of the following conditions:

1. The alternative better achieves the stated intent;
2. The intent cannot be achieved by application of the standard in the specific circumstance;
3. The effect of other standards will be improved by not applying a particular standard;
4. Strict application or unique site features make the standard impractical;
5. An innovative or creative proposal better meets the goals of the Berthoud community.

In the event of any conflict between these standards and any more restrictive zoning, subdivision, or other Development Code requirement, the more restrictive regulation shall apply unless specific variance(s) are granted by the Town.

<table>
<thead>
<tr>
<th>30-2-104</th>
<th>Lots and blocks</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Intent. The intent of the block and lot standards is to continue the Town’s existing block pattern in a manner that is compatible with site-specific environmental conditions.</td>
<td></td>
</tr>
</tbody>
</table>

B. General provisions.

1. Blocks. Streets shall be designed to create blocks that consider interconnectedness, topography, solar orientation, views, energy efficiency, and other design features. Block size shall be designed to create blocks that are generally a rectilinear or modified rectilinear shape. Amorphously shaped blocks are discouraged except where topography or other conditions necessitate that type of configuration.

2. Lot dimension and configuration.
   a. Blocks shall be set within a street layout that includes a maximum average length of four hundred feet from street centerline to street centerline.
   b. Lot size, width, depth, shape, and orientation and building setback lines or build-to lines shall conform to this Chapter 30 and shall facilitate the placement of buildings with sufficient access, outdoor space, privacy and view.
   c. Depth and width of properties shall be adequate to provide for off-street parking, landscaping, and loading areas required by the type of use and development contemplated.
d. Lot frontage. Street frontage shall typically not be less than twenty-five percent of the lot depth. Flag lots are prohibited unless otherwise approved by the Town per Section 30-2-103.

e. Corner lots. Corner lots for residential use shall have extra width to accommodate the required building setback and utility easements on both street frontages. For a corner lot, the front of the lot is defined as the side where the property is addressed. In the case of a reverse corner lot, both sides abutting a street shall maintain a front yard setback.

f. Double frontage. Residential lots that front on two streets (double frontage) shall not be permitted unless otherwise approved by the Town per Section 30-2-103.

g. Side lot lines. Side lot lines shall be substantially at right angles or radial to road right-of-way lines or centerlines.

h. Residential lot access to adjacent or nearest public street.

i. All lots shall have access to the public street system.

ii. Driveway access to a local or collector street from a single-family detached residential lot shall be limited to one driveway curb-cut or driveway access. A circular drive in which each access to the local or collector street is less than ten feet in width, separated by at least thirty feet and which is constructed as an integral part of the overall architectural design of the single family residence may be considered as a single driveway access.

iii. Driveway access to a local street from a single-family detached residential lot shall be greater than thirty feet from the intersection of the local street and a collector street or fifty feet from the intersection of the local street and an arterial street as measured from the intersecting right-of-way lines.

iv. Driveway access to a collector street from a single-family detached residential lot shall be greater than fifty feet from the intersection of the collector street and a local street, another collector street, or an arterial street as measured from the intersecting right-of-way lines.

i. Commercial, business and industrial lot access to adjacent street.

i. Driveway access to a local or collector street from a multi-family residential, commercial, business or industrial lot shall be greater than one hundred twenty-five feet from any street intersection as measured from the intersecting right-of-way lines;

ii. Driveway access to an arterial street from a commercial, business or industrial lot shall be not less than one hundred feet from
any intersection on the arterial street, or from another commercial, business or industrial lot’s access as measured from the intersecting right-of-way lines, or driveways; or

iii. Driveway access to a local street, collector street, or arterial street from a multi-family residential, commercial, business or industrial lot may be allowed by the Town at its sole discretion.

### 30-2-105 Streets and alleys

**Intent.** The intent of the street standards is to establish a safe, efficient, attractive transportation system that promotes all modes of transportation and is sensitive to the environment.

**General provisions.** The local street system of any proposed development shall be designed to be safe, efficient, convenient and attractive. The local street system shall consider vehicular, bicycle, pedestrian, and transit elements in the design of the system. Streets shall be developed as an inviting public space and are an integral part of the overall community design in Berthoud.

1. **Street connections.** All streets shall be aligned to join with planned or existing streets consistent with the Town Comprehensive Plan and Master Street Plan as amended. All streets shall be designed to bear a logical relationship to the topography of the land. Intersections of streets shall be at substantially right angles unless otherwise approved by the Town.

2. **Tree-lined streets.** All streets shall include street trees on both sides of the street with the exception of rural roads and alleys. Allowances may be made in commercial, mixed use and industrial districts to group trees or reduce the number of trees as appropriate in order to allow view corridors that are framed by street trees into those types of developments.

3. **Street layout.** The street layout shall form an interconnected system of streets where feasible, primarily in a grid or modified pattern adapted to the topography, unique natural features, environmental constraints and open space areas. The street layout shall emphasize the location of neighborhood focus points, other internal open space areas, gateways, and vistas. The use of cul-de-sacs and other roadways with a single point of access shall be minimized. The integration of traffic calming features within and adjacent to residential areas shall be utilized when appropriate.
4. **Controlling street access.** A strip of land between a dedicated street and adjacent property shall not be reserved for the purpose of controlling access to such street from such property.

5. **Visibility at intersections.** No shrubs, ground cover, berms, fences, structures, or other materials or items between twenty-four inches and eight feet in height at maturity shall be planted, created or maintained at street intersections within the site distance triangle. Trees shall not be planted within the site distance triangle and the linear street distance included within a sight triangle shall not be part of the calculation for the total number of street trees needed in that project. Sight distance triangles shall be created as set forth in the table below:

**Table 2.1: Sight distance triangle**

<table>
<thead>
<tr>
<th>Type of street</th>
<th>X distance</th>
<th>Y distance</th>
<th>Safe sight distance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arterial</td>
<td>Right 135 feet</td>
<td>15 feet</td>
<td>500 feet</td>
</tr>
<tr>
<td></td>
<td>Left 270 feet</td>
<td>15 feet</td>
<td></td>
</tr>
<tr>
<td>Collector</td>
<td>Right 120 feet</td>
<td>15 feet</td>
<td>400 feet</td>
</tr>
<tr>
<td></td>
<td>Left 220 feet</td>
<td>15 feet</td>
<td></td>
</tr>
<tr>
<td>Local</td>
<td>Right 100 feet</td>
<td>15 feet</td>
<td>300 feet</td>
</tr>
<tr>
<td></td>
<td>Left 150 feet</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
6. Pedestrian crossings at street intersections and mid-block. Pedestrian crossings shall be accessible to handicapped individuals and mid-block crossings may be required at the direction of the Town.

7. Access. Access to all subdivisions shall be from a public street system and driveways shall not access Colorado Highway 56 except as identified in the State Highway 56 Corridor Access Control Plan as amended.

8. Street right-of-way dedication. The full width of right-of-way for all streets being platted must be conveyed to the Town after final acceptance unless otherwise approved by the Town.

9. Perimeter and dead-end streets. When a street is dedicated which ends on the plat, the street right-of-way must be dedicated to the boundary of the plat. Dead end streets are prohibited except in unique situations and then only with approval of the Town.

10. Street names. Names of new streets shall not duplicate names of existing streets in Berthoud. However, new streets which are extensions of, or which are in alignment with, existing streets within the Town shall bear the names of such streets. Street naming and property address numbering will be coordinated between the applicant, Town of Berthoud and Larimer or Weld County as appropriate.

Street & alley standards. Streets shall conform to the specifications listed below and all other applicable laws, rules and regulations.

11. General design standards.

Design of streets, curbs and gutters shall be in accordance with the Americans with Disabilities Act (ADA) standards.

Street designs not identified in this Section shall be in accordance with the Larimer County Urban Area Street Standards (LCUASS) as amended.

Street and alley cross-sections shall conform to the adopted Town of Berthoud typical street sections as amended.

The layout of arterial and collector streets shall be per the Town’s Master Street Plan unless otherwise approved by the Board.

Utility pedestal locations shall be minimized in tree lawns and yards that abut streets.
12. **Arterial street design.**

Arterials shall be at a minimum of one mile intervals in both north-south and east-west directions.

Arterials shall be designed to accommodate present and future transportation requirements.

Arterial streets shall align and connect across intersecting arterials to distribute traffic and provide continuity of travel across the community.

Examples of arterial street cross-sections are below.

**Figure 2.1: Arterial street, 2 lanes**

![Arterial street, 2 lanes diagram](image)

**ARTERIAL STREET**

(2 TRAVEL LANES WITH BIKE LANES)

**Figure 2.2: Arterial street, 4 lanes**

![Arterial street, 4 lanes diagram](image)
13. **Collector streets.**

Within each one mile arterial segment, collector streets shall divide the north-south and east-west arterials at approximately the half mile point.

Intersections of collector streets and arterial streets shall be aligned to distribute traffic and provide continuity for bike routes.

Examples of collector street cross-sections are below.

**Figure 2.3: Collector street with parking**
14. **Local streets.**

Local streets shall follow a modified grid pattern adapted to the topography, unique natural features, environmental constraints, and peripheral open space areas. These streets shall generally parallel the arterial and collector street system, provide a variety of route options, interconnect to allow traffic to disperse in an equitable manner and be as narrow as possible without sacrificing the ability to accommodate expected traffic and services.

Local streets must provide for both intra- and inter-neighborhood connections. Examples of local street cross-sections are found below.

**Figure 2.5: Local residential street**
15. **Rural local street.**

Rural local streets are intended to serve rural locations as approved by the Town.

An example of a rural street cross-section is found below.
16. **Alleys.**

Alleys shall be treated as public ways and any lot having access from an alley shall also front upon a public street.

Garages, accessory dwellings above garages and rear yards may access the collector and local street system via an alley.

An example of an alley cross-section is found below.

Figure 2.9: Residential alley
17. **Tree lawns.**

   Where developed, tree lawns must be a minimum of seven feet in width. Tree lawns are required in auto-oriented commercial areas. Required tree plantings in auto-oriented commercial areas may be grouped in order to allow visibility into the commercial areas.

   The area intended for tree lawns in pedestrian-oriented and mixed use or commercial areas may be hard surfaced. Street trees within these areas may be placed in grates or tree wells not less than four feet in diameter or in planter areas.

---

<table>
<thead>
<tr>
<th>30-2-106</th>
<th>Parking</th>
</tr>
</thead>
</table>

**A. Intent.** The intent of this section is to provide adequate parking for motor vehicles while minimizing the visual impact of parking lots and structures.

**B. General provisions.**

In all mixed use, commercial or industrial zone districts, off-street parking facilities for the storage of motor vehicles for the use of occupants, employees and patrons of the building or structures hereafter erected, altered or extended shall be provided and maintained as herein prescribed.
1. **Surface.** All parking and driveway areas and primary access to parking facilities shall be surfaced with asphalt, concrete or similar materials.

2. **Integrate parking lots with surroundings.** Parking lots shall not dominate the frontage of pedestrian-oriented streets, interfere with designated pedestrian or bicycle routes, or negatively impact surrounding neighborhoods. The pedestrian character of streets and buildings shall be maximized through continuity of buildings and landscape frontage.

3. **Landscaping.** Parking lots shall be landscaped, screened and buffered as provided in this Section.

4. **Shared-access.** Where feasible, parking lots shall share access drives and cross-access easements with adjacent properties having similar land uses.

5. **Off-street parking design.** Any off-street parking area shall be designed so that vehicles will exit without backing onto a public street unless no other practical alternative is available. Off-street parking areas shall be designed so that parked vehicles do not encroach upon or extend onto public rights-of-way, sidewalks or strike against or damage any wall, vegetation, utility or other structure.

6. **Circulation area design.** Circulation lanes within parking lots shall support the safe movement of vehicles without endangering pedestrians or impeding use of the parking area.

7. **Striping.** All parking lots shall be striped to identify individual parking spaces.

8. **Lighting.** All parking area lighting shall be full cutoff type fixtures. Any light used to illuminate parking areas or for any other purpose shall be so designed as to direct the light away from nearby residential properties and passing motorists.
9. **Shared off-street parking.** When there are opportunities to support parking demand through shared off-street parking for compatible uses (such as a movie theater and an office building), a parking study and shared parking agreements may be used to demonstrate the adequacy of the parking supply as a substitute for standard parking requirements. Reductions of between ten percent and thirty percent of the parking amounts called for in Table 2.2 are possible.

10. **Adjacent on-street parking in commercial and mixed use districts.** In order to promote a pedestrian scale and encourage a perception of safety in the commercial and mixed use zoning districts, parking may be satisfied using adjacent on-street parking or shared rear-lot parking areas. A parking study and shared parking agreements shall be used to demonstrate the adequacy of the parking supply as a substitute for standard parking requirements.

C. **Paved off-street parking requirements.**

1. Paved off-street parking shall be provided according to the minimum requirements as specified below:

**Table 2.2: Required parking**

<table>
<thead>
<tr>
<th></th>
<th>TN, R1, R2, R3, R5 zones</th>
<th>R4 zone</th>
<th>C1, C2 zones</th>
<th>M1, M2 zones</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential</td>
<td>2.0 per dwelling - 2.0 per unit in R3</td>
<td>1.5 per dwelling</td>
<td>1.0 per dwelling</td>
<td>2.0 per dwelling</td>
</tr>
<tr>
<td>Lodging</td>
<td>1.0 per bedroom</td>
<td>1.0 per bedroom</td>
<td>1.0 per bedroom</td>
<td>1.0 per bedroom</td>
</tr>
<tr>
<td>Office</td>
<td>3.0/1,000 sq. ft.</td>
<td>3.0/1,000 sq. ft.</td>
<td>3.0/1,000 sq. ft.</td>
<td>2.0/1,000 sq. ft.</td>
</tr>
<tr>
<td>Retail</td>
<td>-</td>
<td>4.0/1,000 sq. ft.</td>
<td>4.0/1,000 sq. ft.</td>
<td>3.0/1,000 sq. ft.</td>
</tr>
<tr>
<td>Restaurant: sit down</td>
<td>-</td>
<td>1 per 4 seats or 1 per 100 s.f. of gross floor area</td>
<td>1 per 4 seats or 1 per 100 s.f. of gross floor area</td>
<td>1 per 4 seats or 1 per 100 s.f. of gross floor area</td>
</tr>
<tr>
<td>Restaurant: drive</td>
<td>-</td>
<td>1 per 100 sq. ft.,</td>
<td>1 per 100 sq. ft.,</td>
<td>1 per 100 sq. ft.,</td>
</tr>
</tbody>
</table>
### Table

<table>
<thead>
<tr>
<th>Category</th>
<th>Through</th>
<th>plus 3 stacking spaces for drive thru window</th>
<th>plus 3 stacking spaces for drive thru window</th>
<th>plus 3 stacking spaces for drive thru window</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industrial</td>
<td>-</td>
<td>-</td>
<td>1.0 space per 1,000 s.f. gross floor area</td>
<td>1.0 space per 1,000 s.f. gross floor area</td>
</tr>
<tr>
<td>Civic</td>
<td>To be determined on project basis</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>To be determined on project basis</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2. Off-street parking for commercial uses shall be sufficient to provide parking for employees of all proposed uses as well as long-term customer parking. Spaces reserved for employees shall be designated as such by means of striping and signage. Parking shall be located at the rear and sides of buildings to the greatest extent possible and screened from the view of streets as provided in this Section. Required parking in the commercial and mixed use zone districts can be met with on-street and shared parking.

3. The location of required off-street parking facilities for other than residential uses shall be within four hundred feet of the building they are intended to serve when measured from the nearest point of the building or structure.

4. Commercial uses either renovating or expanding existing properties fronting on Massachusetts Ave. between 3rd and 5th Streets, Mountain Ave. between 1st and 5th Streets or Welch Avenue between 1st and 5th Streets are exempt from the parking requirements of this Section.

### D. Location of spaces for residential uses.

1. Off-street parking facilities for residential uses shall be provided and located on the same lot as the building they are intended to serve.

2. Front or side - loading garages shall be set back at least twenty-two feet from the back of the sidewalk or property line, whichever is more restrictive. Required off-street parking spaces shall not encroach upon any sidewalk or into the public right-of-way.
E. **Handicap parking spaces.**

1. Handicap parking spaces shall be required for all retail, office, business, multi-family, industrial and institutional uses.

2. Handicap parking spaces shall be designated as being for the handicapped with painted symbols and standard identification signs.

3. Handicap parking spaces shall be located as close as possible to the nearest accessible building entrance.

4. Number of required handicap parking spaces are as shown in Table 2.3:

   **Table 2.3: Handicap parking spaces**

<table>
<thead>
<tr>
<th>Total parking spaces in lot</th>
<th>Min. required handicap parking spaces</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-25</td>
<td>1</td>
</tr>
<tr>
<td>26-50</td>
<td>2</td>
</tr>
<tr>
<td>51-75</td>
<td>3</td>
</tr>
<tr>
<td>76-100</td>
<td>4</td>
</tr>
<tr>
<td>101-150</td>
<td>5</td>
</tr>
<tr>
<td>151-200</td>
<td>6</td>
</tr>
<tr>
<td>201-300</td>
<td>7</td>
</tr>
<tr>
<td>301-400</td>
<td>8</td>
</tr>
<tr>
<td>401-500</td>
<td>9</td>
</tr>
<tr>
<td>501-1,000</td>
<td>2% of total spaces</td>
</tr>
</tbody>
</table>

For every eight handicap parking spaces there must be at least one van-accessible space. If there is only one handicap parking space, that space must be van-accessible.

F. **Handicap parking space dimensions**

1. Parking spaces must be eight feet by eighteen feet with a five foot wide access aisle.

2. Van-accessible spaces must be eight feet by eighteen feet with an eight foot wide access aisle.
3. Parking spaces for the physically handicapped that are parallel to a pedestrian walk which is handicap accessible may have the same dimensions as those for standard vehicles.

G. Parking stall dimensions. Parking stalls for automobiles shall meet the following standards. All dimensions represent the minimum requirement for any required parking space.

Table 2.4: Parking stall dimensions

<table>
<thead>
<tr>
<th>Parking Angle (A)</th>
<th>Stall Width (B)</th>
<th>Stall to Curb Width (C)</th>
<th>Aisle Width (D)</th>
<th>Curb Length (E)</th>
<th>Overhang (F)</th>
</tr>
</thead>
<tbody>
<tr>
<td>45°</td>
<td>9'</td>
<td>19'</td>
<td>13'</td>
<td>12' 8&quot;</td>
<td>1' 5&quot;</td>
</tr>
<tr>
<td>60°</td>
<td>9'</td>
<td>20'</td>
<td>13'</td>
<td>10' 5&quot;</td>
<td>1' 8&quot;</td>
</tr>
<tr>
<td>90°</td>
<td>9'</td>
<td>18'</td>
<td>24'</td>
<td>9'</td>
<td>2'</td>
</tr>
<tr>
<td>0° (parallel)</td>
<td>8' *</td>
<td>8' *</td>
<td>12'</td>
<td>24'</td>
<td>0'</td>
</tr>
</tbody>
</table>

*Except along local streets where 7' is permitted.

Figure 2.10: Parking area dimensions
H. **Bicycle parking spaces.** Commercial, industrial, civic, employment, multi-family and recreational uses shall provide bicycle facilities to meet the following standards:

1. A minimum number of bicycle parking spaces shall be provided, equal in number to two percent of the total number of automobile parking spaces provided by the development, but not less than one space.

2. For convenience and security, bicycle parking facilities shall be located near building entrances. Within downtown commercial areas, however, a grouping of spaces shall be provided as directed by the Town.

3. Bicycle parking facilities shall be designed to allow the bicycle frame and both wheels to be securely locked to a structure which is permanently attached to the pavement.

4. Bicycle parking facilities shall be located so as not to interfere with pedestrian traffic or access to buildings.
A. **Intent.** The intent of the standards for sidewalks, walkways and trails is to assure a safe, convenient, and attractive pedestrian/bicycle system that minimizes conflicts between vehicles, bicycles and pedestrians.

B. **Sidewalks and walkways.**

1. **Interconnected network.** A sidewalk network that interconnects all dwelling units with other dwelling units, non-residential uses, and common open space shall be provided throughout each development. Sidewalks and/or walkways shall be separate and distinct from motor vehicle circulation routes. The pedestrian circulation system shall include gathering/sitting areas and provide benches, landscaping and other street furniture where appropriate.

2. **Sidewalks required.** In all zone districts, except for the AG: Agricultural or T: Transition districts, sidewalks are required along both sides of a street. In areas featuring a rural street cross-section, trails may replace sidewalks.

3. **Sidewalk width.** Sidewalks shall be a minimum of five feet wide when adjacent to local streets; a minimum of five feet wide along collector streets; and a minimum of eight feet wide along arterial streets. If a detached sidewalk is installed it must be at least four feet in width. Sidewalks adjacent to storefronts in commercial areas shall be ten to fifteen feet in width or consistent with the average sidewalk width on a block if building in an area with existing sidewalks.

4. **Sidewalk location.** Sidewalks shall be located within the right-of-way unless otherwise authorized by the Town.

5. **Sidewalk materials.** Sidewalks shall be constructed of concrete, concrete containing accents of brick, or some combination thereof that is compatible with the style, materials, colors, and details of the surrounding buildings. Concrete sidewalks four to six feet wide shall be a minimum of four inches thick and concrete sidewalks crossing driveways shall be a minimum of six inches thick. Asphalt shall not be used for sidewalks.
Sidewalks must be constructed of approved materials of sufficient strength to support light maintenance vehicles. If used as a secondary emergency access, sidewalks must also be able to support the weight of fire apparatus.

6. **Sidewalk installation.** Sidewalks and related improvements shall be installed or constructed by the applicant, land owner or developer in accordance with plans and specifications approved by the Town and, after installation or construction; they shall be subject to inspection, approval and acceptance by the Town.

7. **Accessibility.** Sidewalks and walkways shall be accessible to disabled individuals as required by this Code and the Americans with Disabilities Act.

8. **Walkways.** Walkways are sidewalks within a park setting or connections through any subdivision that allow easier access between areas. Within a park setting a walkway shall be at least six feet in width. When cutting through a subdivision a walkway shall be at least six feet in width and located within dedicated open space of not less than twenty feet in width and shall be flanked with appropriate landscaping. Walkways along buildings and within parking lots shall be raised and curbed where suitable. A direct pedestrian connection to building entries, public space and parking areas shall be provided from public sidewalks. Walkways shall be constructed of the same materials as sidewalks; except that walkways internal to asphalt surfaced parking lots may be of asphalt construction. Walkways crossing driveways in parking lots shall be clearly delineated by a change in pavement color, texture, or paint striping.

9. **Lighting.** Where lighting is necessary, all sidewalks and other walkways shall have appropriate Dark Sky compliant lighting using poles and fixtures consistent with the overall design theme for the development.

C. **Trails and bikeways.**

Berthoud’s Parks, Recreation and Open Space (PORT) Plan identifies the following types of trails and bikeways:

1. **Park Trail:** Two types of trails make up this category. These are multipurpose trails located within greenways, parks or natural resource areas. The focus is on recreational value and harmony with the natural environment.
**Type I Park Trail:** Separate hard-surfaced trails at a minimum of eight feet in width for pedestrians, bicyclists, in-line skaters or other appropriate users.

**Type II Park Trail:** Nature trails of an indeterminate width for pedestrians that may be hard or soft-surfaced.

2. **Connector Trail:** These are multipurpose trails that emphasize safe travel for pedestrians to and from parks and around the community. The focus is as much on transportation as it is on recreation.

   **Type I Connector Trail:** Hard surfaced trails for pedestrians, bicyclists, in-line skaters or others located in an independent right-of-way or easement (e.g., old rail line, ditch road, etc.). These trails are intended to be ten feet in width.

   **Type II Connector Trail:** Multipurpose, hard surfaced trails for pedestrian, bicyclists, in-line skaters or others located within the road right-of-way. These trails are intended to be as wide as appropriate within the right-of-way or ten feet in width.

3. **On-street bikeways:** These are paved segments of roadways that serve as a means to safely separate bicyclists from vehicular traffic.

   **Bike route:** Designated portions of the roadway for the preferential or exclusive use of bicyclists.

   **Bike lane:** Shared portion of the roadway that provide separation between motor vehicles and bicyclists, such as paved shoulders.

4. **All-terrain bike trail:** An off-road trail for all-terrain (mountain) bike. Usually a single purpose loop trail located in larger parks and natural resource areas.
5. **Equestrian trail**: Trails developed for horseback riding which are usually a loop trail located in larger parks and natural areas. Sometimes developed as multipurpose with hiking and all-terrain biking where conflicts can be controlled.

**Figure 2.11: Concrete trail cross-section**

![Concrete trail cross-section](image)

**Figure 2.12: Gravel trail**

![Gravel trail](image)
Figure 2.13: Trail replacement

Figure 2.14: Trail at underpass or bridge
### 30-2-108 Easement and utility standards

**A. Utility easement width.** Utility easements shall measure at least five feet on each side of abutting rear lot lines when an easement is placed in that location. In the event that the location of utility easements adjacent to rear property lines is unsuitable for use by utility companies due to drainage, irrigation ditches or other obstructions, the applicant or developer shall provide like width easements adjacent to said areas of obstruction. Side lot line easements, where necessary, shall measure ten feet in full width; five feet either side of a lot line is acceptable. Front lot line easements shall measure ten feet in width. Easements may be more or less than widths stated if the specific utility indicates in writing a width other than those required by this Code. Utility easements shall be subject to the approval of the Town.

**B. Multiple installations within easements.** Easements shall be designed so as to provide efficient installation of utilities. Public utility installations shall be located as to permit multiple installations within the easements. The developer will establish final utility grades prior to utility installations.

**C. Underground utilities.** Telephone lines, electric lines, cable television lines and other like utility services shall be placed underground. The applicant or developer shall be responsible for complying with the requirements of this Section, and shall make the necessary arrangements including any construction or installation charges with each utility provider for the installation of such underground facilities. Transformers, switching boxes, meter cabinets, pedestals, ducts and other facilities necessarily appurtenant to such underground utilities shall be placed underground or on the surface but not on utility poles. Screening or fencing is required subject to approval of the Town. Electric transmission and distribution feeder lines and necessary appurtenances thereto may not be placed above ground unless they are carrying greater than 115 kV. Upon approval of the Town, such facilities shall be placed within easements or rights-of-way provided for particular facilities.

**D. Street lighting.** Street lighting shall be full cut-off and installed as provided in Section 30-2-118 of this Code and as specified in the Town of Berthoud Construction Specifications for Public Improvements. Lighting will be in compliance with Berthoud’s Dark Sky standards. Minimum lighting requirements and spacing of light fixtures is per the applicable electric utility.

### 30-2-109 Parks, trails and open space

**A. Intent.** To ensure that a comprehensive, integrated network of parks and open space is developed and preserved consistent with any adopted Parks, Open Space and Recreation (PORT) Plan as the Berthoud community grows.

**B. Parks, Trails and open space.**

**1. Irrigation.** Areas dedicated to and accepted by the Town as parks and open space shall require irrigation in accordance with Section 30-2-112(B)(7) and Section 30-10-105 of this Code.
2. **Pocket park.** Berthoud does not require the development of small “pocket” parks within neighborhoods. Should a developer choose to provide and maintain a pocket park per Town standards and that park is open the general public; the Town will credit that pocket park land area towards the overall park and open space dedication requirement.

3. **Neighborhood park.** Every residential development shall provide land for and/or develop a neighborhood park. Cash-in-lieu of developed park land may be required by the Town. A homeowners’ association, the landowner, or the Town, at its discretion, shall be responsible for the ownership, operation and maintenance of the neighborhood park. A neighborhood park shall be at least three acres in size and include active play areas, shelter(s), paths and irrigation necessary to establish landscaping and maintain it in a live condition.

4. **Community park.** Community parks serve the residents of several neighborhoods. Community parks are to be located on or near arterial streets, at the edge of residential areas or in non-residential areas. The developer shall dedicate land and build the park including all improvements. Cash-in-lieu of developed park land may be required by the Town. A community park shall be at least ten acres in size and include active play area(s), ball fields, shelter(s) and paths. It shall feature irrigated landscaping in accordance with Section 30-2-112(B)(7) and Section 30-10-105 of this Code. Community parks are intended to be dedicated to and maintained by the Town.

5. **Regional park.** Regional parks serve a broader purpose than the other park types listed above. Regional parks focus on meeting community and regional recreation needs as well as preserving unique landscapes and open space. They should maintain a balance between programmed sports activities (approx. 50%) and other community activity areas such as urban forests, gardens, historic features, performance areas, festival spaces, etc. Regional parks are intended to be dedicated to and maintained by the Town.

6. **Trails.** The trail system shall link neighborhoods, parks, schools, open spaces, employment centers, community facilities and neighboring communities. The Berthoud trail system will provide important transportation connections as well as recreational opportunities and access across the community. Developers shall dedicate and build trail connections to both the Town’s trail system and destinations within the neighborhood.

7. **Regional open space.** Berthoud’s regional open space system includes: drainage ways, floodplains, natural areas, natural area buffer zones, wetlands, agriculture preservation areas and lands of archeological or historic significance. Public access to these areas will generally be limited to trails, educational signs and similar improvements.
8. **Storm drainage facilities.** Storm drainage facilities, including stormwater detention and stormwater retention ponds, may function as open space for active recreation, trail corridors, or habitat enhancement areas if they are designed and constructed to support those recreational uses. Credit toward the open space dedication requirements will be considered on a case by case basis at the earliest stage of the development review process. Credit toward the open space dedication where storm water facilities are a part of the design will be finalized by the Town at the time of final platting of those storm drainage facilities.

C. **General provisions.**

1. **Public access.** Areas designated as public open space shall be both visibly and physically accessible to the community. Adequate public access shall be provided to all public open space, natural and developed, directly from the public street and trail system. Pocket parks and plazas shall be integrated into the neighborhood design and be accessible to pedestrians and bicyclists.

2. **Buffering.** Appropriate buffering and setbacks shall be used between environmental resources and proposed development to ensure that the proposed development does not degrade the existing habitat. Developers shall provide an open space buffer zone around all natural areas unless otherwise authorized by the Town.

3. **Ownership and maintenance of open space.** Ownership and maintenance of public open space shall be determined by the Town on a case by case basis through the review process.

   a. Generally, the Town shall own and maintain community parks, regional parks and public trails. Town ownership and maintenance of neighborhood parks will be decided on a case-by-case basis.

   b. Pocket parks, plazas, outlots and private recreational facilities shall be owned and maintained by a homeowners’ association or the landowner.

   c. Environmentally sensitive, archaeological and historic resources may be dedicated to and maintained by the Town at Town’s discretion.

   d. Stormwater detention and retention areas that function as open space shall be owned and maintained by a homeowners’ association or the landowner, unless otherwise approved by the Town.

   e. Areas designated as open space shall be maintained according the designated function of the area. Applicants shall develop a management plan which addresses: irrigation, revegetation, erosion control, and weed management. If the area is to remain in private ownership, a mechanism which will assure maintenance will be funded must be in place at the time of final plat.
4. **Open space protection.** Areas designated as open space shall be protected by conveyance to the Town as provided on the plat and by this Chapter, deed restriction or other appropriate method to ensure that they remain open and cannot be subdivided or developed in the future without approval of the Town.

D. **Open space requirements.**

1. **Functional open space includes:**
   a. Areas within the community designated for the common use of the residents of an individual development and/or the community at large;
   b. Areas designated for preservation and protection of environmental resources including floodplains, natural drainage ways, and wetland areas;
   c. Storm drainage facilities if designed to support community park and recreation uses and approved by the Town;
   d. Areas designated for agricultural preservation;
   e. Areas of archeological and historic significance; and
   f. Areas of critical or important habitat as defined by the Colorado Division of Wildlife.

2. The following shall not be considered functional open space:
   a. Required setback areas around oil and gas production facilities;
   b. Disconnected remnants of land created by division of sites into lots or parcels that do not qualify as functional open space or that preserve environmental resources, unless approved by the Town;
   c. Private yards of any homes or tree lawns if present in a subdivision;
   d. Required parking lot landscaping associated with all uses, except parking specifically designated for access to open space areas and within commercial/industrial projects.

3. **Amount of park and functional open space required.** The overall park and functional open space dedication requirement is based on the latest Berthoud area population estimates as developed by the Colorado State Demographer at 7.5 acres of parkland per 1,000 residents that is further defined as:
   - 3.0 acres per 1,000 residents for neighborhood parks
   - 4.5 acres per 1,000 residents for community/regional parks

<table>
<thead>
<tr>
<th>30-2-110</th>
<th>Contribution for public school sites</th>
</tr>
</thead>
</table>

To meet the increased need for schools as a result of increased housing, the applicant shall dedicate land areas or sites suitable for school purposes, or provide cash-in-lieu of land in the amount specified for every dwelling unit which may be constructed within the subdivision to serve the elementary, middle, and high school public school needs of the residents of such dwelling units. The Town may elect that public school sites may be transferred and conveyed to the Town or school district pursuant to stipulations in intergovernmental agreements between the Town and respective school district.
The developer of residential projects shall dedicate public sites for open space, parks, schools, or other civic purposes in accordance with the requirements of this Section to serve the proposed subdivision and future residents thereof. Acceptance of all land proposed for dedication is at the discretion of the Town.

1. **Land dedication.** Payments and dedications made under the requirements of this Section shall be made payable or dedicated to the Town. Dedication of such sites and land areas to the Town shall be free and clear of all liens and encumbrances. The applicant shall provide for the installation of the streets adjacent to the park and school sites, the installation of water, sewer and other public utilities to the park and school sites, and overlot grading of the park and school sites.

2. **Fee-in-lieu of dedication.** If there is not sufficient property on the plat to provide land for the entire school or park facility required, with the approval of the Town, the applicant may, in lieu of dedication of all or part of the land requirements, pay fees in lieu of the equivalent land areas which would have been dedicated to public facilities. Fees are to be calculated in the following manner:

   a. Fees shall be calculated based on the full market value of the land assuming the plat has been approved and proper zoning exists.

   b. Full market value shall be determined by mutual agreement between the applicant and the Town. In the event of inability of any of the above parties to agree on the value of the subject land, the applicant shall submit to the Town a written appraisal from a qualified appraiser meeting the value requirements set forth herein. Said appraisal shall be made by an individual or entity that does not have a financial interest in the subdivision and shall be a member of the Appraisal Institute (MAI), a member of the Society of Real Estate Appraisers (SRA), or such other qualified person mutually agreeable to the Town Administrator and the applicant. The applicant shall pay the cost of said appraisal.

   c. Such appraisal may be submitted during the review period of the final plat. If the Town believes that the appraised value is not accurate, it may obtain its own appraisal from a qualified appraiser at the applicant’s cost, or determine the fair market value by such procedure as the Town deems appropriate.
d. All fees-in-lieu of dedications are to be paid at issuance of a Building Permit unless otherwise agreed to by the Town.

e. For subdivisions that are platted in phases, the above calculations can be made on a phase-by-phase basis through methods to be devised by the Town realizing that by virtue of developing one phase, the value of the undeveloped adjacent phase will increase. The applicant has the option of paying the fees for all phases upon the due date of fees for the first phase.

### 30-2-112 Landscape design

**A. Intent.** To preserve Town’s special character and integrate new development by promoting quality landscape design that:

1. Reinforces the identity of the community and each neighborhood;

2. Provides tree-lined streets with canopy tree species in urban areas;

3. Anchors new buildings within the landscape;

4. Provides tree canopies within paved areas; and

5. Is environmentally sensitive by preserving existing trees, using water conservation techniques, planting native species (when appropriate), and enhancing valuable habitat.

**B. General provisions.** All land development applications except for building permits for individual single-family residences shall be accompanied by an appropriate landscape plan. New landscaping within the community shall comply with the intent of these regulations.

1. **Tree lawns or trees along public streets.** While tree lawns are not required in Berthoud, historically they have been accepted in order to meet the requirement in Section 30-2-105 of this Code that there be tree-lined streets in the community. Landscape improvements in urban settings shall create an orderly, managed landscape and all urban neighborhoods shall have tree-lined streets. Tree lawns require water dedication or cash-in-lieu of water dedication based on an irrigation demand of 1.33 acre-feet per acre in accordance with Section 30-10-105 of this Code.
2. If tree lawns are provided, trees in those areas shall include a mix of species, be aligned in straight rows, and shall be placed within the right-of-way. Spacing of trees shall allow for their mature spread. Trees installed along streets without a tree lawn shall include a mix of species, be generally aligned along the street frontage and may be placed outside of the public right-of-way. Trees installed along streets that will be widened in the future shall take into account plans for future widening of streets so that established trees will not be disturbed during future construction.

Landscape improvements in environmentally sensitive areas and lower density, rural developments shall be informal. Trees along rural streets shall be planted to create irregular clusters of trees to reinforce the design and character of each project and frame views. Landscape improvements within commercial or industrial settings may be clustered in order to frame views into commercial and industrial properties as appropriate.

3. Site landscape design. Landscape improvements shall be an integral part of the overall site design for each property. Landscape improvements shall be designed to complement and enhance the character of neighborhoods and shall follow these guidelines:

a. Configured to maximize connections within the site to Natural Areas and to landscaped areas in adjacent developments. Small, isolated islands of landscaping should be avoided except as required in parking lots and for screening along roadways.

b. Enhance functional open space through the creation of outdoor “rooms” appropriate to the location and purpose of the open space within the development. This can be accomplished through a combination of plantings, fencing and berms and by using natural features on the site.

c. Consistent with the character of the proposed development and the surrounding area to reinforce neighborhood identity.

d. Enhance natural features, drainage ways and environmental resources.

e. Designed for mature landscapes and shall provide appropriate visibility for cars and pedestrians.

f. Preserve and frame views both into and out of the neighborhood.

g. Incorporate the elements of gateway, path and destination into the design of landscapes. Gateways are entries that provide transitions from one space to another. Pathways are routes that lead to a destination. Destinations are focal points that can include anything from a garden bench at the end of a path to a civic building at the end of a street.

h. No more than twenty-four inches high when located in a sight distance triangle.

4. Environmental considerations.

a. Landscapes shall use the following xeriscape design principles to facilitate water conservation:

i. Well-planned planting schemes;

i. Appropriate turf selection to minimize the use of bluegrass;
ii. Use of mulch to maintain soil moisture and reduce evaporation;
iii. Placement of plant materials according to their microclimatic needs and water requirements;
iv. Improve the soil with organic matter if needed;
v. Efficient irrigation systems; and
vi. Proper maintenance and irrigation schedules.

b. All landscapes shall strive to maximize the use of native species. Where native material is not appropriate for the intended use or appearance, plant species that are regionally adapted and noninvasive may be used.
c. Landscapes shall consist of a variety of species to enhance biodiversity. No one species may make up more than twenty-five percent of the total non-grass plant materials on the site.
d. Buildings and parking areas shall be located to preserve and promote the health of existing trees, environmental resources and natural drainage ways. No healthy tree shall be removed without good cause. If a healthy tree is removed with cause it must be replaced with comparable trees per a tree mitigation plan. This requirement is not intended to prevent the removal of unhealthy trees in conjunction with site development.
e. Where possible, trees shall be located to provide summer shade and limit winter shade on walks and streets.
f. A combination of plantings, berms, walls and fences shall be used as appropriate to buffer sensitive habitat.
g. Weed control will be practiced on all areas disturbed by construction and those areas shall be reseeded to prevent erosion. Native, noninvasive grasses shall be used for revegetation where practical. Weed control is the responsibility of the landowner on all reseeded areas and preservation areas. Weed control shall be a continual responsibility of the owner during all phases of land clearing and construction.
h. All automatic irrigation systems must be installed with moisture sensors.
i. Every effort shall be made to prevent the spread of noxious weeds.

5. **New buildings and paved areas.** Provide trees, shrubs and groundcover plantings along all sides of new buildings. The size and intensity of plantings shall be appropriate to the building or structure.

a. Integrate adjacent land uses of different intensities through a combination of berming, plantings and fencing. Use opaque screening only when necessary to mitigate the impact of noise, light, unattractive aesthetics and traffic. A fence shall not be the only screening material used.
b. Use landscaping to provide a transition from developed, managed landscape to more natural areas and vegetation.
c. Provide a tree canopy by installing shade trees within and adjacent to paved areas.
d. Landscaped areas in commercial parking lots are limited to drip irrigation for trees and shrubs and shall feature no impact or spray irrigation heads. For grass areas within parking lots, only drought tolerant grasses shall be permitted.

   a. The minimum planting sizes on all required landscaping shall be two inch caliper deciduous trees, one and one-half inch caliper ornamental trees, six foot tall evergreen trees and five gallon shrubs.
   b. Plants shall be healthy, well-branched vigorous stock with a growth habit normal to the species and variety and free of diseases, insects and injuries. A variety of plant species should be installed to prevent the spread of disease.
   c. All plants shall conform to standards for measurements, grading, branching, quality, ball and burlapping as stated in the current edition of the American Standard for Nursery Stock, American Association of Nurserymen, Inc., (AAN-ASNS) and the Colorado Nursery Act of 1965 (CNA).

7. Irrigation. This Code mandates landscaping and installation of permanent automatic underground sprinkler systems containing moisture sensors in all parks and open spaces within new developments, except for (i) Natural Areas, (ii) Open Water, (iii) all impervious surfaces, and (iv) as allowed in Section 7.c below. All irrigated landscaping shall be established and maintained in a live and weed-free condition. Irrigation shall be appropriate to the type and scope of the improvements.
   a. Water Dedication Requirements. Water dedication for irrigation purposes shall be in accordance with Section 30-10-105 of this Development Code.
   b. Criteria and process for determining Natural Areas and Open Water. Town staff in its discretion, with final approval of the Town Administrator, may determine that areas qualify as Natural Areas or Open Water in accordance with the definitions in Chapters 30-1-116 and 30-10-105.
   c. Use of non-treated water for irrigation is encouraged if a permanent, suitable supply is available. Gravity flow irrigation using irrigation ditches for Native Seed Areas may be permitted as an alternative to installing permanent automatic underground sprinklers where deemed acceptable and appropriate by the Town staff in its discretion, with final approval by the Town Administrator.
   d. Sleeving for the future installation of irrigation lines shall be provided under walkways and paved areas where irrigation may be installed in order to prevent or minimize damage and replacement to paved areas.
   e. Irrigation systems shall be drip irrigation where possible in planting beds and for shrubs, trees, etc. All irrigation systems shall be designed to prevent overspray and runoff onto paved or other non-landscaped areas.

8. Guarantee of installation. Required landscape improvements shall be installed prior to issuance of a Certificate of Occupancy for all structures. If weather conditions prevent installation, the developer, builder or applicant shall post a financial guarantee for the improvements. This guarantee shall be released by the Town upon completion of the installation of the landscaping and expiration of any warranty period.

9. Maintenance & replacement. All property owners/occupants shall be responsible for maintenance and replacement of landscaping within the portion of the public right-of-way between the back of the curb or street
pavement and the adjacent property. All property owners/occupants of mixed use, commercial or industrial property with an approved Final Development Plan or Site Plan are responsible for the maintenance and replacement of landscaping as shown on that approved plan.

B. Landscaping design standards.

6. Landscaping within the right-of-way and required common open space. The developer or assigns shall provide:

a. Tree lined streets or tree lawns – live groundcover as appropriate with an average of at least one deciduous or ornamental tree for every forty linear feet of block frontage or portion thereof. Trees planted within any tree lawn shall have a 3 foot diameter mulch ring and adequate spacing to allow for the mature spread of the trees.

b. Collector and local streets – live groundcover as appropriate including a combination of grass, trees, flowers, grass or shrubs. In commercial areas this area may be paved if it functions as pedestrian access to storefronts and is integrated into the overall design of the other improvements on the site. Trees planted within paved environments shall have a four foot wide tree well with grate.

c. Arterial streets – live groundcover as appropriate to the use and function of the area, including a combination of grass, trees, flowers, paving and one shrub for every one hundred fifty square feet of landscape area clustered into planting beds. Developer shall also install an automatic irrigation system for all landscaping within arterial rights-of-way.

d. Landscaping for required common open space – such as pocket parks and along trails. Landscaping shall be appropriate to the use and function of the area and include trees, shrubs, groundcover, irrigation (where necessary) and paving. Native grass is appropriate for trail corridors while Kentucky bluegrass is appropriate for more active park areas and some open spaces.

e. A mechanism for long-term maintenance of common open space and arterial and collector street right-of-way landscaping – such as a homeowners’ association and covenants.

7. Business/commercial and industrial development landscaping standards.

a. Landscape improvements within the R4, C1, C2, M1 and M2 districts shall be designed to enhance the overall appearance of the development and to integrate the project with adjacent land uses and into the surrounding neighborhood. A minimum of fifteen percent of the site (gross) shall be landscaped area.

b. The developer or assigns shall provide:

i. Site trees – plant a minimum of one tree per one thousand square feet of landscaped area, distributed on the site.

ii. Shrubs – plant a minimum of one shrub per one hundred fifty square feet of landscaped area. Group shrubs and distribute throughout the site. Trees may be substituted for up to one-half of the
required shrubs at the rate of one tree for six shrubs.

iii. Groundcover – establish irrigated grass turf maintained to appropriate standards for active recreation in areas that will function for active recreation. Where appropriate, use native grass for areas that will not function as active recreation areas. There shall be a minimum of seventy-five percent live materials between the building and the street unless otherwise approved by the Town.

iv. Landscape setback to parking lots – fifteen feet from streets to provide a buffer between the street and parking areas.

v. Screen loading areas – Loading areas (including vehicles being loaded), service and storage areas visible from the public right-of-way or adjacent property must be screened from view with an opaque screen that is an integral part of the building architecture, or by landscaping. Chain link fencing with or without slats, tires, or used building materials is not acceptable as screening material.

c. The property owner or occupant shall maintain the yard and landscaping within adjacent road right-of-way in accordance with Town regulations.

8. State Highway corridor landscaping standards. The developer or assigns shall provide:

a. Landscape setback to parking lots – provide a fifteen foot landscape setback from the highway right-of-way. The purpose of the setback is to provide a buffer between the highway and parking areas. Signage may be included in this setback.

b. Shrubs – a minimum of one shrub per one hundred fifty square feet of landscaped setback. Group shrubs and distribute throughout the landscape setback. Trees may be substituted for up to one-half of the required shrubs at the rate of one tree for six shrubs.

9. Downtown landscaping standards. Downtown landscaping is intended to provide an attractive environment for people to walk and shop.

a. The developer or assigns shall provide:

i. Streetscape – a combination of window boxes, planters, trees, benches, etc. as appropriate to enhance building entries and the streetscape.

10. Parking lot landscaping standards. Parking lot landscaping is intended break up large expanses of pavement, create shade, buffer views of parking lots from adjacent streets and development and enhance the overall appearance of each project. All parking lots with ten spaces or more shall be subject to these requirements. The developer or assigns shall provide:

a. Site trees – a minimum of one tree per five parking spaces. Group trees together in islands which are a minimum of nine feet wide. Use the landscaping to break up large expanses of pavement and to create a tree canopy for summer shade.

b. Shrubs – a minimum of one shrub per one hundred fifty square feet of landscaped area. Group plantings in landscape islands.

c. Groundcover – limit areas of irrigated turf. Grass is discouraged in areas less than ten feet wide.
Install a grass buffer (native grass where possible) around the perimeter to filter runoff and improve water quality.

d. Landscape setback to parking lots – fifteen feet from arterials and other streets. The purpose of the setback is to provide a buffer between the street and parking areas and to screen the parking from the street.

e. Provide a mechanism for long-term maintenance of landscaping – all landscaping within and adjacent to parking lots shall be owned and maintained by the landowner.

**Figure 2.15: Small tree planting**

![Small tree planting diagram](image1)

**Figure 2.16: Evergreen planting**

![Evergreen planting diagram](image2)
Figure 2.17: Shrub planting
11. **Storm drainage facilities as public open space or park lands.** For drainage facilities proposed as open space or park lands the following requirements apply.

   a. If a proposal is made to dedicate a Detention basin or Retention basin to the Town, the Town shall determine if it serves the public interest. Public interest shall be based on ease of maintenance, potential use of the area for open space or recreation uses by the public, whether the area would complement the Town’s park or greenway system, and/or whether the applicant shall provide for ongoing maintenance of the facility.

   b. If the Town accepts dedication of a Detention basin or Retention basin, or if the Detention basin or Retention basin is intended to be part of a pocket park or common open space area, regardless of ownership or maintenance, the following standards shall apply:

      i. Slopes shall comply with Town standards but in no case shall exceed a slope of 6:1.

      ii. Adequate access shall be provided to the detention basin or Retention basin for pedestrians, the physically disabled and for maintenance equipment.

      iii. Drainage structures shall be designed and located to facilitate maximum use of the detention area for recreational use.

   c. Amenities such as benches, play equipment, game courts and playing fields appropriate to the size and location of the detention pond shall be required and based upon proposed/existing adjacent uses unless the detention pond location or design does not reasonably accommodate the amenities. On one acre or less, fewer amenities are required. The applicant shall be responsible for installing all amenities per Town standards.

12. **Submittal standards for landscape plans.** Land development applications listed below will be accompanied by the appropriate landscape plan:

    **Table 2.5: Submittals necessary for Landscape Plans**

    | TYPE OF APPLICATION       | PRELIMINARY LANDSCAPE PLAN | FINAL LANDSCAPE PLAN |
    |---------------------------|----------------------------|----------------------|
    | Preliminary Plat/PDP      | Yes                        |                      |
    | Final Plat/FDP            |                            | Yes                  |
    | Minor Subdivision         |                            | At Town discretion   |
    | Conditional Use Review    |                            | Yes                  |
13. **Preliminary landscape plan.** (submit with preliminary plat) Intent: to illustrate the master landscape plan for the development.

   a. Describe the design intention and how the proposal is consistent with the purpose and intent of these regulations.

   b. Information required on the plan is listed in Table 2.6 below.

14. **Final landscape plan.** (submit after final plat) Intent: to ensure each phase of the final landscape plan is consistent with the master landscape plan for the development and to illustrate the specific landscaping details for each phase.

   a. Describe the design intention and how the proposal is consistent with the preliminary landscape plan.

   b. The final landscape plan must be on a separate page from the final plat map and should be included with the final open space plan. The scale shall not greater than 1”=50’.

   c. Information required on the plan is listed in Table 2.6 below.

### Table 2.6: Information required on Landscape Plans

<table>
<thead>
<tr>
<th>INFORMATION REQUIRED</th>
<th>PRELIMINARY</th>
<th>FINAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scale, north arrow, site boundary.</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Existing and proposed streets.</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Existing and proposed utilities and easements.</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Existing contours (2’ intervals).</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>General grading concepts for improvements, typical cross-sections of streets and special treatment areas.</td>
<td>Y</td>
<td></td>
</tr>
<tr>
<td>Proposed contours (2’ intervals).</td>
<td></td>
<td>Y</td>
</tr>
<tr>
<td>Describe the design intention.</td>
<td>Y</td>
<td>Y</td>
</tr>
</tbody>
</table>
Existing site features including ditches, trees, shrubs and groundcovers and any drainage ways, wetlands or wildlife habitat present on the site. Indicate which plants will be preserved, the method of preservation and which will be removed. | Y | Y |

Proposed landscaping including: trees, shrubs, groundcover, walks and fences. Show which plantings are deciduous and evergreen. | Y |

Indicate areas to be irrigated and the irrigation method. | Y | Y |

**INFORMATION REQUIRED**

Typical detail drawings at 1"=20' to illustrate perimeter treatment, buffering, typical front yard, and any special treatment areas on the site. | Y |

Define areas to be considered open space and if public or private. Indicate how open space will be maintained including: erosion control, revegetation, and weed management during and after construction. | Y | Y |

Detailed planting plan indicating location, species, size and quantity of all proposed plantings and groundcover. Improvements shall be shown in their final location and mature size. Include a plant list in chart form and description of the type and location of groundcover, walks, fences, and mulches. Include a cost estimate (separate sheet) for improvements. |  |

**30-2-113 Tree species**

**Intent.** The Town of Berthoud has a long, rich heritage of tree-lined streets. Today street trees and their conditions are a concern to those involved in urban forestry and the Town has the authority and obligation to assure that vegetation planted on public rights-of-way meets certain standards. Tree plantings should be made with the same methodical planning that is used when making substantial financial investments.

Tree planting is a significant, long-term investment in property and the entire community. That
investment should compliment a home and increase in value over time. Fast-growing trees, conifers, shrubs and other unsuitable plants, when planted on public rights-of-way, pose maintenance issues for homeowners and Town staff and actually create a negative value to the property. The intent of this Section is to promote the traditional street tree plantings on rights-of-way with appropriate species, proper alignment and proper spacing of trees. Trees unsuitable for right-of-way planting may only occur on private property. It is not the Town’s intent to limit freedom of choice in plantings but instead to mold and influence the future of Berthoud’s urban forest for the benefit of future generations.

The following list identifies tree species allowed on public lands or within the public right-of-way in the Town of Berthoud as of the adoption of this Code. Additional tree species may be permitted if approved by the Town arborist as appropriate. Trees marked with an asterisk are drought tolerant.

A. Large deciduous trees allowed along rights-of-way or on public lands.

<table>
<thead>
<tr>
<th>Plant Name</th>
<th>Height/Spread</th>
<th>Plant Name</th>
<th>Height/Spread</th>
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</thead>
<tbody>
<tr>
<td>Canadian Red Cherry</td>
<td>30’ 20’</td>
<td>Golden Rain Tree*</td>
<td>25’ 20’</td>
</tr>
<tr>
<td>Hackberry*</td>
<td>50’ 40’</td>
<td>Catalpa*</td>
<td>50’ 40’</td>
</tr>
<tr>
<td>Elms*</td>
<td>50’ 30’</td>
<td>Fastigiate English Oak</td>
<td>40’ 15’</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Including Triumph</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Crimson Spire Oak</td>
<td>40’ 15’</td>
</tr>
<tr>
<td>Accolade, Discovery, Brandon, Regal, Prospector</td>
<td>35’ 20’</td>
<td>Ohio Buckeye*</td>
<td>35’ 20’</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Red Barron Crabapple</td>
<td>18’ 8’</td>
</tr>
<tr>
<td>English Oak*</td>
<td>50’ 40’</td>
<td>Texas Red Oak</td>
<td>50’ 40’</td>
</tr>
<tr>
<td>Imperial Honeylocust</td>
<td>40’ 30’</td>
<td>Shademaster Honeylocust*</td>
<td>50’ 40’</td>
</tr>
<tr>
<td>Skyline Honeylocust</td>
<td>50’ 40’</td>
<td>American Linden</td>
<td>60’ 50’</td>
</tr>
<tr>
<td>Greenspire Linden</td>
<td>40’ 30’</td>
<td>Glenleven Linden</td>
<td>45’ 30’</td>
</tr>
</tbody>
</table>
### C. Large deciduous trees suitable for public lands not including street rights-of-way.

<table>
<thead>
<tr>
<th>Plant Name</th>
<th>Height/Spread</th>
<th>Plant Name</th>
<th>Height/Spread</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mayday Tree</td>
<td>30’ 20’</td>
<td>Chinkapin Oak</td>
<td>35’ 35’</td>
</tr>
<tr>
<td>Plains Cottonwood</td>
<td>60’ 50’</td>
<td>Narrowleaf Cottonwood</td>
<td>30’ 20’</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Lanceleaf Cottonwood</td>
<td>40’ 30’</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Limited to native tree, cottonless, male only selections</td>
<td></td>
</tr>
</tbody>
</table>

### D. Small deciduous trees suitable for wider tree lawns (10 feet or more) or larger roadway medians as well as on Public Park or open space land.

<table>
<thead>
<tr>
<th>Plant Name</th>
<th>Height/Spread</th>
<th>Plant Name</th>
<th>Height/Spread</th>
</tr>
</thead>
<tbody>
<tr>
<td>Toba Hawthorn</td>
<td>15’ 15’</td>
<td>Goldenrain Tree</td>
<td>20’ 30’</td>
</tr>
<tr>
<td>Amur Chokecherry</td>
<td>25’ 20’</td>
<td>Russian Hawthorn*</td>
<td>20’ 15’</td>
</tr>
<tr>
<td>Washington Hawthorn*</td>
<td>20’ 15’</td>
<td>Cockspur Hawthorn*</td>
<td>20’ 15’</td>
</tr>
<tr>
<td>Thornless Hawthorn*</td>
<td>25’ 20’</td>
<td>Downy Hawthorn*</td>
<td>25’ 25’</td>
</tr>
<tr>
<td>Japanese Tree Lilac*</td>
<td>20’ 20’</td>
<td>Coralburst Crabapple</td>
<td>15’ 15’</td>
</tr>
<tr>
<td>Coralburst Crabapple</td>
<td>15’ 15’</td>
<td>Dolgo Crabapple</td>
<td>30’ 30’</td>
</tr>
<tr>
<td>Spring Snow Crabapple</td>
<td>25’ 25’</td>
<td>Thunderchild Crabapple</td>
<td>15’ 20’</td>
</tr>
<tr>
<td>Indian Magic Crabapple</td>
<td>15’ 20’</td>
<td>Radiant Crabapple</td>
<td>20’ 25’</td>
</tr>
<tr>
<td>Red Jewel Crabapple</td>
<td>10’ 15’</td>
<td>Tina Sargent Crabapple</td>
<td>8’ 10’</td>
</tr>
<tr>
<td>Gambel Oak</td>
<td>8’ 6’</td>
<td>Newport Plum</td>
<td>25’ 15’</td>
</tr>
<tr>
<td>Autumn Blaze Pear</td>
<td>30’ 25’</td>
<td>Cleveland Select Pear</td>
<td>30’ 25’</td>
</tr>
<tr>
<td>Plant Name</td>
<td>Height/Spread</td>
<td>Plant Name</td>
<td>Height/Spread</td>
</tr>
<tr>
<td>-------------------------</td>
<td>---------------</td>
<td>-------------------------</td>
<td>---------------</td>
</tr>
<tr>
<td>Autumn Brilliance Serviceberry</td>
<td>25' 15'</td>
<td>Royal Star Magnolia</td>
<td>10' 15'</td>
</tr>
<tr>
<td>Hotwings Maple</td>
<td>15' 20'</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

E. Evergreen trees.

F. Trees prohibited for any new planting within the Town of Berthoud right of way or on public lands.

Unless otherwise authorized, the following species and types of trees and woody plants shall not be planted or allowed to grow upon public street rights-of-way or public lands within the Town of Berthoud.
1. Any of the poplar species (*Populus* spp.), including but not limited to Cottonwood, Aspen, Silver Poplar, Lombardy Poplar

2. Any of the Willow species (*Salix* spp.)

3. The Box Elder tree (*Acer negundo*)

4. The Siberian (Chinese) Elm (*Ulmus pumila*)

5. Any weeping or pendulous type tree (i.e. Weeping Birch).

6. Any shrub or hedge which by its habit of growth would obstruct, restrict, or conflict with necessary and safe use of the public rights-of-way

7. Conifers or evergreens which would eventually grow over the sidewalks or streets

8. Any Honeylocust (*Gleditsia triacanthos*) that bears either seed pods or thorns


G. **Regulations for spacing of trees to be planted on public rights-of-way**

1. All newly-planted street trees shall be planted midway between the sidewalk and the curb. Trees shall be spaced to allow for safe, healthy, attractive growth.

2. No trees will be planted closer than 5' to any driveway or alley, nor shall it be planted in such a manner that eventual growth cannot be reasonably maintained to avert interference with, or obstruction of, any improvements installed for the public benefit such as traffic and street signs and lights, fire hydrants, overhead utility wires, street lights, utility poles, etc.

3. At edges of streets where a space of less than 5' in width exists between the curb and the abutting private property line, no trees or woody plants shall be planted on the public area so involved.

4. Where an attached sidewalk has been installed, no tree plantings are to be made closer than 5' from the edge of any concrete installation.
5. Trees are not to be planted within 10’ of either side of water, sewer, or storm drain main lines, or within 5’ of either side of water or sewer service lines.

6. No more than six (6) of the same plant genus may be used consecutively in a row-type planting.

H. Trees to avoid.

Planting of the trees listed below should be avoided by homeowners due to the issues that develop with these plants over time.

- Red Maple
- Aspen
- Lombardy Poplar
- Silver Maple
- Birch
- Siberian Elm
- Russian Olive
- Box Elder
- Cottonwoods
- Sunburst Honeylocust
- Willows
- Tamarisk
- Mountain Ash
- Tree of Heaven

<table>
<thead>
<tr>
<th>30-2-114</th>
<th>Commercial &amp; Industrial buffering and screening techniques</th>
</tr>
</thead>
</table>

A. **Intent.** To integrate adjacent land uses and provide seamless transitions from one use to another through the use of building orientation and access, landscaping, appropriate architectural elements, and non-buildable buffer areas.

B. **General provisions.**

1. Special consideration shall be given to adjacent land uses of different intensities. It shall be the responsibility of the developer of the more intensive use to ensure that the transition from one use to another is attractive, functional and minimizes conflicts between the current and planned uses.

2. It is the responsibility of the developer of the higher intensity use to demonstrate that the uses will be compatible. This can be accomplished through the effective use of shared access and parking, appropriate building orientation and setbacks, landscaping, architectural treatment, buffer areas, and limited use of fencing and screening walls. Special consideration shall be given to the impact of aesthetics, noise, lighting and traffic.

3. Buffering of up to one hundred feet of non-buildable area may be required between any development and adjacent natural or environmentally sensitive areas or different uses. The actual amount of any buffer area will be determined on a case by case basis.
C. Location and screening of required loading and service areas.

1. Loading docks, solid waste facilities, recycling facilities and other service areas shall be placed to the rear or side of buildings in visually unobtrusive locations.

2. Screening, buffering and landscaping shall be incorporated to prevent direct views of the loading areas and their driveways from adjacent properties or from the public right-of-way. Screening and landscaping shall also prevent spill-over glare, noise, or exhaust fumes. Screening and buffering shall be achieved through walls, architectural features, and landscaping; and shall be visually impervious. Recesses in the building or depressed access ramps may be used.

D. Screening of roof elements.

1. All air conditioning units, HVAC systems, exhaust pipes or stacks, elevator housing and satellite dishes, other telecommunications receiving devices and any other apparatus placed on the roof of a building shall be thoroughly screened from view from the public right-of-way and from adjacent properties by using walls, fencing, roof elements including pipe chases, and landscaping.

E. Trash dumpsters & recycling stations

1. Every development that is required to provide one or more dumpsters for solid waste collection shall provide sites for such dumpsters that are:

   a. Located to facilitate collection and minimize any negative impact on persons occupying the development site, neighboring properties, or public rights-of-way; and

   b. Constructed to allow for collection without damage to the development site or the collection vehicle.
      
      c. Provide an area for recycling as well as disposal of solid waste.

2. All such dumpsters shall be screened to prevent them from being generally visible to:

   a. Persons located within any dwelling unit on residential property other than that where the dumpster is located;

   b. Occupants, customers, or other invitees located within any building on nonresidential property other than that where the dumpster is located; and

   c. Persons traveling on any public street, sidewalk or other public way.
A. **Intent.** To ensure that walls and fences are attractive and in character with the neighborhood. The creation of fence “canyons” along streets and fence “walls” adjacent to parks or other public areas where the majority of the view from the public right-of-way is of fences, is prohibited.

B. **General provisions.**

1. **Compatibility.** Walls and fences along collector or arterial streets or at edges of developments and constructed as part of the development shall be made visually interesting by integrating architectural elements such as brick or stone columns, varying the alignment or setback of the fence, softening the appearance of fence lines with plantings, or through similar techniques. A fence or wall may not consist of a solid, unbroken expanse for more than fifty feet.

2. **Prohibited fence materials.** Security fencing such as concertina or razor wire, barbed wire, or electrically-charged fences is prohibited unless specifically allowed by the Town. No stranded wire, barbed wire, or electrified fence shall be installed in any residential district. In commercial and manufacturing districts, the Town may grant a permit for the installation of security arms and barbed wire strands atop protective fences or walls.

3. **Retaining walls.** Retaining walls shall be designed to resist loads due to the lateral pressure of retained material in accordance with accepted engineering practice and shall not be unsightly or detrimental to abutting property.

4. **Height limitations.** Fences or walls shall be:

   a. On corner lots, each yard adjacent to a public right-of-way, excluding alleys, shall be designated as a side or front yard based upon the orientation of the house and the street address of the building. For purposes of this section, the side yard is that portion of a lot which is located between the primary structure and the side property line adjacent to the street. The designated side yard on a residential property will have a maximum fence height of four feet unless such fence is located at least fifteen feet from the edge of the curb closest to the building or two feet from the edge of the sidewalk closest to the building or at the property line, whichever distance is greater; however, in no case shall a fence be located closer than two feet from the edge of the sidewalk. For properties whose rear property line abuts an alley, an eight foot site distance triangle must be maintained or the fence shall be a maximum of four feet in height for a distance of eight feet along the rear and side property lines.
b. On all corner lots, no fence or wall shall be placed or maintained within the triangular yard space formed by the intersection of the curb lines of the intersecting streets, or flow line if there is no curb, and a line joining points on said curb or flow line thirty feet from the point of intersection of said lines.

c. In commercial and manufacturing districts with Town approval, security arms and barbed wire strands atop protective fences or walls, provided that the lowest strand of barbed wire is maintained at least six feet above the adjoining ground level outside the fence. Agricultural districts may use stranded wire, barbed wire, or electrified fencing for agricultural purposes.

d. No fencing or improvements may be installed on right of ways or easements owned or shared by the Town without first obtaining a building permit. The issuance of the building permit and the construction of any improvements shall only be done with the understanding and agreement by the owner(s) that the improvements will be immediately removed at the owner(s)' sole expense at the request of the Town.

Table 2.7: Fence requirements

<table>
<thead>
<tr>
<th>ZONE DISTRICT</th>
<th>FRONT YARD</th>
<th>SIDE YARD</th>
<th>REAR YARD</th>
<th>BEHIND STRUCTURE</th>
<th>SIDE YARD OF CORNER LOT 0'/15' FROM LOT LINE ABUTTING A STREET</th>
</tr>
</thead>
<tbody>
<tr>
<td>TN</td>
<td>4'</td>
<td>6'</td>
<td>6'</td>
<td>6'</td>
<td>4'/6'</td>
</tr>
<tr>
<td>R1</td>
<td>4'</td>
<td>6'</td>
<td>6'</td>
<td>6'</td>
<td>4'/6'</td>
</tr>
<tr>
<td>R2</td>
<td>4'</td>
<td>6'</td>
<td>6'</td>
<td>6'</td>
<td>4'/6'</td>
</tr>
<tr>
<td>R3</td>
<td>4'</td>
<td>6'</td>
<td>6'</td>
<td>6'</td>
<td>4'/6'</td>
</tr>
<tr>
<td>R4</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>R4</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>R5</td>
<td>4'</td>
<td>6'</td>
<td>6'</td>
<td>6'</td>
<td>4'/6'</td>
</tr>
<tr>
<td>C1</td>
<td>3'</td>
<td>6'</td>
<td>6'</td>
<td>6'</td>
<td>3'/6'</td>
</tr>
<tr>
<td>C2</td>
<td>3'</td>
<td>6'</td>
<td>6'</td>
<td>6'</td>
<td>3'/6'</td>
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<tr>
<td>M1</td>
<td>4'</td>
<td>8'</td>
<td>8'</td>
<td>8'</td>
<td>4'/8'</td>
</tr>
<tr>
<td>M2</td>
<td>4'</td>
<td>8'</td>
<td>8'</td>
<td>8'</td>
<td>4'/8'</td>
</tr>
</tbody>
</table>
5. **Maintenance.** Dilapidated, unsightly or dangerous fences shall be removed or repaired when so ordered by the Town.

6. Permits for fences that encroach onto the public right-of-way shall be revocable at the discretion of the Town.

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### 30-2-116 Residential design standards

<table>
<thead>
<tr>
<th>AG</th>
<th>6'</th>
<th>6'</th>
<th>6'</th>
<th>6'</th>
<th>4'/6'</th>
</tr>
</thead>
</table>

**A. Purpose.** The Board of Trustees of Berthoud have determined that residential development is a primary component of land use in this community and that the appearance of single or multi-family dwellings from the street is intrinsically related to the preservation of neighborhood character and quality of life.

**B. Applicability.** All residential development in Berthoud shall achieve a balance between repetition and variety in the architecture of both single and multi-family dwellings. Repetitive front elevation dwellings shall not be located adjacent to or directly across the street. The requirements of this Section shall not apply to the rebuilding of a structure not in conformance with this Section that has been damaged or destroyed by fire or natural disaster.

**C. Compliance required for building permit.** Compliance with this Section, as determined by the Planning Director, shall be required as a condition of the issuance of a building permit for any single or multi-family residential dwelling. A decision by the Planning Director may be appealed by the applicant to the Town Administrator and the decision of the Administrator on any appeal is final.

**D. Single-family dwelling standards.** The intent of this section is to foster new residential development with architectural designs that create diversity and variety along residential streets.

1. **Housing model diversity.** Diversity in housing models shall be demonstrated by applicants either for a phase of any subdivision or on a case-by-case basis.

2. **Relationship of home & garage.** The front façade of any home and the associated garage may be in the same building plane if a roofed porch integral to the architecture of the residence of at least 4 feet in width and 8 feet in length is constructed along the front façade. If no porch is present, the garage plane must shift at least 2 feet in any dimension from the residential portion of the structure.
3. **Garages.** For properties with garages that access the street the following requirements apply:

a. All garages shall be located a minimum of 22 feet from the back of sidewalk or property line, whichever is more restrictive.

b. Garages may make up no more than 60% of the length of the façade except when located on a lot within a cul-de-sac.

c. If more than 3 garage doors are included in the façade, only 2 garage doors may be in the same building plane. Additional garage doors must be offset at least 2 feet further back.

d. For any side-load garage orientation, a minimum of 2 windows of at least 4 sq. ft, each must be installed on the street-facing façade.

e. For lots with over 115 feet of street frontage or over ½ acre in size, the provisions in this Section 30-2-116.D.3 do not apply except for the 22 foot setback standard in 3.a. above.

C. **Multi-family stacked units, including condominiums and apartments.** Applicants seeking to build multi-family units shall achieve a balance between repetition and variety in the architecture of these buildings. Each multi-family dwelling containing more than three dwelling units shall provide quality architectural design that includes variation in the design of the dwellings and garages including changes in roof lines, façade planes, building materials and colors, trim and accent features, window and door placement, entry features, or other features that provide sufficient variation in design. The following specific standards shall apply to multi-family units including condominiums and apartments:

1. **Articulation.** Each multi-family dwelling or condominium shall be articulated with projections, recesses, offsets, projecting chimneys, covered doorways, balconies, box or bay windows and/or other similar features, dividing large facades and walls into human-scaled proportions.

2. **Roofs.** Each multi-family building shall feature a combination of primary and secondary roofs.

3. **Garages.** No street-facing facade shall contain more than four garage fronts. Resident garages or parking that is internal to the development is encouraged. On-street parking should be made available for visitors.
A. **Intent.** The Town has distinctly different downtown, commercial and industrial types of development contemplated within the community.

B. **General provisions for commercial & industrial proposals.**

1. **Connections.** Commercial developments must be linked with surrounding areas by extending Town streets, sidewalks, and/or paths directly into and through the development, thereby providing convenient, direct pedestrian, bicycle and vehicle access to and from all sides of the development.

2. **Accessibility.** Developments must be accessible to pedestrians and bicyclists as well as motorists and the emphasis must not be placed solely on parking and drive-thru functions. Site plans shall equally emphasize the following:
   
   a. pedestrian access to the site and buildings;
   
   b. gathering areas for people; and
   
   c. auto access and parking lots.

3. **Walkways.** Walkways must be located and aligned to directly and continuously connect areas or points of pedestrian origin and destination, and not be located and aligned solely based on the outline of a parking lot configuration that does not provide such direct pedestrian access.

4. **On-street parking.** Streets and other elements of the site plan shall be designed so that on-street parking is a functional part of the development (except along arterial streets).

5. **Building orientation.** Buildings in the C1 Zone District shall be located to front on and relate primarily to streets. Building setbacks from local and collector streets should be minimized in order to establish a visually continuous, pedestrian-oriented street frontage. In the case of large buildings for employment, storage or auto-related uses where greater setbacks are needed, a minimum of thirty percent of the building shall be brought to the setback line. If a minimized setback is not maintained, the larger setback area shall have landscaping, low walls or fencing, a tree canopy and/or other site improvements along the sidewalk designed for pedestrian interest, scale and comfort.

6. **Pedestrian scale.** The establishment of buildings on isolated “pad sites” surrounded by parking lots and driveways, and that offer mainly auto-oriented signage to define entrances, are not allowed in the C1 Zone District.
7. Location of parking lots. Parking requirements in the C1 and C2 Zone Districts shall be provided to the greatest extent possible by spaces at the rear or sides of the building.

8. Wall articulation.
   a. Walls shall not have an uninterrupted length exceeding seventy five feet. Pilasters, texture transitions, windows, stepping of the wall plane, and/or landscaping accomplishing the same effect are required.
   b. All exterior elevations shall maintain the integrity of the adjacent dwellings architectural character and detailing.
   c. Continuous cornice lines or eaves are encouraged between adjacent buildings.
   d. Buildings with flat roofs shall provide a parapet with an articulated cornice.

9. Facade treatment. The architectural treatment of the front facade shall be continued, in its major features, around all visibly exposed sides of a building. Blank walls at side and/or rear elevations visible to the general public are not allowed unless the Town determines there are adequate building or landscape features to conceal the view of the blank wall.

10. Windows. Windows shall be vertically proportioned wherever possible.

11. Awnings. Fixed or retractable awnings are permitted. Canvas is the preferred material, although other water proofed fabrics may be used; metal, wood or aluminum awnings shall not be used unless otherwise approved by the Board.

C. C1: Limited Commercial District architectural standards.

   With respect to the Downtown business district (C1 zone) these buildings have established a pattern of downtown development where buildings are located close to the sidewalk and form a generally continuous street facade. Pedestrian movement is the primary focus. Building height, architectural details, front setbacks, parking location, wall articulation, and sidewalks establish the architectural edges that define this area as a walkable commercial corridor.

1. Setbacks. Building facades shall be placed at the front property line. Building facades may be recessed if an arcade or similar structure abuts the front setback. Architectural projections including cornices, balconies, canopies and entry features may encroach into public rights-of-way, subject to permits as required.
2. **Multi-story, mixed-use structures.** Commercial uses shall be contained in multi-story (two to three stories) mixed-use structures with commercial/retail uses on the ground level and above and/or apartment dwellings or offices on the upper levels. Such building shall vary in terms of footprint and architectural elevations. The maximum ground level footprint of a commercial building shall be five thousand square feet.

3. **Facade treatments.** Large buildings shall be designed to resemble the character and scale of the original downtown buildings with entries, windows, awnings, and canopies used to build upon the original style of downtown buildings.

D. **C2: General Commercial District architectural standards.**

The C2 zone commercial district has been created to provide for the larger commercial uses that may not be appropriate in the original downtown (Mountain Ave.) area of Berthoud.

1. **Design of developments with internal orientation.** In multiple-building developments, where setbacks are increased to accommodate independent development with internal orientation, primary building entrances shall face walkways, plazas, or courtyards that have direct, continuous linkage to the street. However, it may be necessary for such direct pedestrian access ways to cross drive aisles. Driveway crossings must place priority on the pedestrian access.

2. **Connections.** Where it is not possible or appropriate to extend a town street or sidewalk directly into development or bring the building up to a town sidewalk, buildings shall create direct connections to adjacent land uses.

3. **Requirement for four-sided design.** A building’s special architectural features and treatments shall not be restricted to a single facade. All sides of a building open to view by the public, whether viewed from public or private property shall have level of quality and architectural interest that makes them compatible with adjacent land uses. Landscaping may be used along side or rear facades to meet this requirement.

4. **Building form.** The design of all buildings shall avoid monolithic shapes.
5. **Exterior building materials and colors.** Intense, bright or fluorescent colors shall not be used as the predominant color on any wall or roof of any primary or accessory structure. These colors may be used as building accent colors.

6. **Orientation of pedestrian entries.** All office, hotel and motel entry features shall be oriented so that pedestrian entries face the nearest adjacent street.

F. **Industrial (M1 and M2) architectural standards.**

1. **Intent.** Industrial architectural standards are intended to create attractive public frontages for these uses while supporting the more utilitarian aspects of modern industrial operations. In addition, the following standards shall apply:

   a. A building’s special architectural features and treatments shall be featured on the front facade. Other sides of a building open to view by the public when viewed from public right-of-way may feature a lower level of architectural interest, features and treatments.

   b. **Building massing and form:**

      i. Where multiple buildings are proposed on a development parcel, buildings shall be oriented to allow views into the project and shall preserve high quality views through the project (e.g. views of the mountains).

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**30-2-118 Outdoor lighting and dark sky standards**

A. **Intent.** The Berthoud outdoor lighting and dark sky standards regulate outdoor lighting in order to reduce or prevent light pollution, glare and light trespass while fostering the conservation of energy and the safety and security of residents, businesses and visitors to the community. These standards should result in exterior lighting that is functional, aesthetically pleasing, and complimentary to the architectural style of buildings or setting. These standards are also specifically intended to support the continued use, enjoyment and success of the Berthoud Little Thompson Observatory and its operations.

B. **General provisions.**

1. **Evaluation of exterior lighting.** Exterior lighting shall be evaluated in the development review process to ensure that the functional and security needs of the project are met in a way that does not adversely affect the adjacent properties or neighborhood. The degree to which exterior night lighting affects a property owner or neighborhood will be examined by considering the light source, level of illumination,
hours of illumination, and need for illumination in relation to the effects of the lighting on the adjacent property owners and the neighborhood.

2. **Light style.** The style of lights shall be consistent with the style and character of architecture proposed on the site. Light fixtures that illuminate signage shall be compatible with the architecture of the building on which they are placed.

3. **Concealed light source.** Light sources shall be concealed or shielded to the maximum extent feasible to minimize the potential for glare or unnecessary diffusion on adjacent property. All lights shall be directed downward and the light source shall be equipped with “cut-off” devices so that do not negatively impact any adjacent property and to ensure that ambient skyward light is eliminated.

4. **Excessive illumination.** Lighting within any lot that unnecessarily illuminates any other lot and substantially interferes with the use or enjoyment of such other lot is prohibited. Lighting unnecessarily illuminates another lot if it clearly exceeds the standards set forth in this Section, if the light shines directly into or toward a residence, or if the standards set forth in this Section could reasonably be achieved in a manner that would not substantially interfere with the use or enjoyment of neighboring properties.

5. **Exemption for outdoor recreational uses.** Because of their limited hours of operation and their unique requirements for nighttime visibility, ball diamonds, playing fields, tennis courts, and other similar outdoor recreational uses (both public and private, unless otherwise restricted by the Town) shall be exempt from the general provisions of this section. However, exterior lighting for such uses shall be extinguished no later than 10:00 p.m. The Berthoud Town Administrator shall have the authority to grant an exemption from these requirements for special events.

C. **Standards.**

1. **Area lights.** All area lights, including street lights and parking area lighting, shall be full cut-off fixtures.

2. **Illumination levels.** Illumination levels and uniformity shall be in accordance with currently recommended practices of the Illuminating Engineering Society and those recommended standards shall not be exceeded.

3. **Temporary lighting.** Temporary lighting that conforms to the requirements of this Chapter shall be allowed. Nonconforming temporary exterior lighting will be permitted by the Town staff only after considering 1) the public and/or private benefits which will
result from the temporary lighting; 2) any annoyance or safety problems that may result from the use of the temporary lighting; and, 3) the duration of the temporary nonconforming lighting. The applicant shall submit a detailed description of the proposed temporary nonconforming lighting to the Town for review and authorization.

4. **Light spillover.** All outdoor lighting systems shall be designed and operated so that the area 10 feet beyond the property line of the premises receives no more than one quarter of a foot-candle of light from the premises lighting system.

5. **Towers.** All radio, communication, and navigation towers that require lights shall have dual lighting capabilities. For daytime, the white strobe light will be used, and for nighttime, only red lights shall be used.

6. **Exceptions.** Residential fixtures consisting of lamp types with an output of 2050 lumens or less are exempt from these regulations. Examples include:
   - a. Standard incandescent or compact fluorescent.
   - b. Midbreak Tungsten-Halogen (quartz).
   - c. T-12 Cool White Fluorescent.
   - d. Low Pressure Sodium.
   - e. Light emitting diode (LED) or equivalent.
   - f. Federally funded and state funded roadway construction projects are exempted from the requirements of this division only to the extent it is necessary to comply with federal and state requirements.
   - g. Fossil fuel light produced directly or indirectly by the combustion of natural gas or other utility-type fossil fuels are exempt from these standards.
   - h. Full cutoff street lighting as part of a federal, state, or municipal installation.
   - i. Holiday lighting within 30 days before and after the holiday.
   - j. Specialized lighting necessary for safety, such as temporary lighting associated with emergency operations, road hazard warnings, etc.
   - k. Traffic control signals and devices.

D. **Submittals.**
1. All applications for building permits or land use planning review which include installation of outdoor lighting fixtures shall include lighting plans conforming to the provisions of this Section. Town staff has the authority to request additional information in order to achieve the purposes and intent of this Section.

A. The submittal shall contain the following information and be submitted as part of the site plan to the Planning and Building departments for approval.

1. Plans indicating the location, type, intensity, and height of luminaries including both building and ground-mounted fixtures;

2. A description of the luminaries, including lamps, poles or other supports and shielding devices, which may be provided as catalogue illustrations from the manufacturer;

3. Photometric data, such as that furnished by the manufacturer, showing the angle of light emission and the foot-candles on the ground; and

4. Additional information as may be required by the Town in order to determine compliance with this Chapter.

B. Applications for single/multi-family residential or other projects where any single outdoor light fixture exceeds 2050 lumens output shall be required to comply with this Chapter.

30-2-119 Environmental considerations

A. Intent.

The intent of this section is to ensure that new development limits or mitigates impact to wildlife and wildlife habitat, and that environmental impacts from development are minimized.

B. General provisions.

1. Protection of wildlife and natural areas. Development shall be designed to ensure that disturbances which occur to any Natural Area as a result of development shall be minimized through the use of natural buffer zones. If any development materially disturbs a Natural Area, the development project
shall mitigate such lost natural resource either on- or off-site and any such mitigation shall be roughly proportional to the loss suffered as a result of the disturbance. The Town shall encumber Natural Areas accepted by the Town with conservation easements.

a. Natural Areas are defined to include: floodplains and floodways, natural drainage and waterways, significant native trees and vegetation, wildlife travel corridors and habitats, special habitat features such as raptor nest sites, key nesting, breeding or feeding areas for birds; fox and coyote dens, remnant native habitat, cottonwood galleries, and any wetland greater than one-quarter acre in size as identified on the 1975 National Wetland Inventory.

b. The natural area buffer zone shall be used between Natural Areas and proposed development to ensure that the proposed development does not degrade the Natural Area. The size of the buffer zone shall be determined by the Town which may choose to consult with other agencies or individuals. The Town may decrease this buffer when strict application of this subsection can be proven to impose an exceptional hardship upon the property owner and appropriate mitigation measures approved by the Town are taken.

c. Exceptions. The Board may allow disturbance or construction activity within the Natural Area or natural area buffer zone for the following limited purposes: mitigation of development activities, restoration of previously degraded areas, emergency public safety activities and utility installations when such activities and installations cannot reasonably be contained within other nearby developed areas, construction of a trail that will provide public access for educational or recreational purposes, or the enhancement of the habitat value and/or other natural resource values of a Natural Area.

d. Ecological characterization. If the Town determines that the site likely includes areas with wildlife, plant life, and/or other natural characteristics in need of protection, the Town may require the developer to provide a report prepared by a professional qualified in the areas of ecology, wildlife biology, or other relevant discipline. The ecological characterization report should be included with the open space plan and describe the following:

i. The wildlife use of the natural area showing the species of the wildlife using the area, the times or seasons the areas is used by those species and the “value” (meaning feeding, watering, cover, nesting, roosting, perching) that the area provides for such wildlife species;

ii. The boundary of wetlands in the area and a description of the ecological functions and characteristics provided by those wetlands;

iii. Any prominent views from or across the site;

iv. The pattern, species, and location of any significant native trees and other native site vegetation;

v. The bank, shoreline and high water mark of any perennial stream or body of water on the site;

vi. Wildlife travel corridors, and

vii. The general ecological functions provided by the site and its features.

e. Wildlife conflicts. If wildlife that may create conflicts for the future occupants of the development are known to exist in areas adjacent to or on the development site, then the development plan must, to the
extent reasonably feasible, include provisions to minimize conflicts that might occur between such wildlife and the developed portion of the site.

### 30-2-120 Sustainability

#### A. Intent.

The intent of this section is to ensure that the Town encourages the integration of sustainable practices in development in the community. These include: solar power and solar access, alternative storm water management practices and alternative street widths as appropriate. Compliance with nationally certified energy efficiency programs including the “Energy Star” program is encouraged in order to help ensure the long-term sustainability of the Berthoud community. Comparable non-certified energy efficiency standards are also acceptable.

#### B. General provisions.

1. Developments shall consider the use of raw or non-potable water for irrigation. Any non-potable spray irrigation system must be managed to minimize odors that may occur during spray irrigation.

2. Developments shall incorporate water-saving measures into both building and landscaping design.

3. Developments shall investigate the use of alternative storm water management techniques that address both water quality and quantity.

### 30-2-121 Sanitary sewer

All residential, commercial and industrial uses which have human occupancy shall have sanitary sewer. The sanitary sewer system shall be connected to an existing public sanitary sewer system and shall consist of a closed system of sanitary sewer mains and lateral branch connections to each structure or lot upon which a structure is to be built. Sanitary sewer lines are to be of sufficient size and design to collect all sewage from all proposed or portable structures within the subdivision or development. All sanitary sewer system design and construction must conform to City of Denver Sewer Design and Construction Standards as amended.
30-2-122 Potable water

All residential, commercial, and industrial uses which have human occupancy, shall have potable water served by the Town or appropriate water district. The water system shall be of sufficient size and design to supply potable water to each structure or lot upon which a structure is to be built. All potable water system design and construction must conform to Denver Water Engineering Design and Construction Standards as amended.

30-2-123 Storm water drainage facilities

1. **Intent.** To promote innovative and effective land and water management techniques that protect and enhance water quality. Regional storm water detention facilities meeting provisions of the Town of Berthoud Master Storm Water Plan, as amended, may be part of any overall storm water plan for a particular development.

2. **Urban Drainage Design Standards.** All storm water facilities shall be designed per the Urban Drainage Design Standards, as amended.

3. **Water Quality Standards.** All storm water facilities must be designed in order to meet or exceed the Larimer County, Colorado standards, as amended, for water quality.

4. **The Town supports staged, or timed, storm water detention and release as long as appropriate studies and documentation are completed and approved.** These studies would include a Basin Study for the applicable area.

5. **General provisions.**

   a. All storm water drainage facilities shall be appropriately landscaped. Landscaping associated with storm drainage facilities shall be integrated into the overall design of the project.

   b. Storm drainage facilities shall enhance the overall appearance of the project, prevent erosion and improve water quality of storm water runoff whenever possible.

   c. Storm drainage facilities may function as open space for active recreation, trail corridors or habitat enhancement areas if they are designed appropriately and approved by the Town.

   d. The use of planting strips and shallow landscaped depressions (bio-swales) in parking lots and along roads may be utilized to help trap and remove pollutants from storm water runoff.
6. **Minimum requirements.**
   
a. All facilities shall be seeded to grass appropriate to the function of the area. Areas to be maintained for habitat enhancement shall be seeded to native grasses and wildflowers. Developer is responsible for establishment of a complete, weed free stand of grass. Trail corridors may be seeded to native grasses if appropriately integrated with adjacent improvements. Areas to be used for active recreation shall be seeded to a turf type mix or other drought tolerant grass acceptable to the Town and irrigated with a permanent irrigation system.

b. Maximum side slope on drainage facilities shall be 4:1, minimum slope of the bottom of a drainage facility shall be one-half percent.

c. Landscape improvements shall be designed to enhance the function of the facility. Areas designed for recreation shall include clusters of trees to provide shade, located so they do not impair the function of the facility.

d. Habitat and water quality enhancement including wetland plantings in low wet areas is encouraged.

7. **Ownership and maintenance.**
   
a. All drainage facilities shall be owned and maintained by the landowner or occupant unless otherwise approved by the Town.

8. **Storm water drainage fees set by Resolution.**
   
a. Storm water drainage fees are set by the Board of Trustees and are charged based on the square footage of impervious surface on a given property.

9. **Properties exempt from storm water drainage fees.**
   
a. The following properties are exempt from the imposition of storm water drainage fees:

   i. All public park land;

   ii. All public or private ponds, lakes, reservoirs, rivers, creeks, natural water courses, wetlands or irrigation ditch/canal rights-of-way;

   iii. All public streets, highways, rights-of-way and alleys;

   iv. All railroad rights-of-way except railroad property not utilized for railroad purposes;

   v. All cemeteries; and

   vi. All lands actively used for agriculture and larger than 2 acres in size.
The developer or builder of any subdivision shall install fire hydrants at street intersections and at other points as per the requirements of the Berthoud Area Fire Protection District and the Town of Berthoud.

Each applicant shall submit and receive approval of separate drainage and utility master plans for their project. Said master plans shall be prepared in conformance with the applicable Town master plan and the appropriate reference criteria manual. The intent is that these preliminary documents be reviewed, modified as appropriate and approved as completed design documents. These documents then can be expanded to provide more detail, documentation and to describe any refinements at the final report stage. These preliminary reports must address immediate, phased development (if any) and full buildout aspects of utility and drainage handling. They must address short and long term impacts and the need for any additional utility and common use municipal facilities. The utility plan must specifically address the load (conveyance and treatment) placed on municipal facilities and must document acceptance by the respective enterprises of their willingness to satisfy these loads.

The design and construction of infrastructure improvements is the responsibility of the developer. The design must be documented in writing, should be made part of the final drainage or utility master plan as appropriate, and should be reflected in the construction documents. The construction documents are typically done as one package with distinctive sheets dedicated to utilities and drainage and a common set of specifications. These construction documents must be prepared to a condition of completeness suitable for competitive bid even if competitive bidding is not utilized. The plans and specifications can be separately bound or, in the case of a minor subdivision, for example, the specifications can be made on the drawings. Specifications must follow CSI or another commonly accepted industry standard and technical referrals must be to current standards.

It is the purpose of this policy to provide a fair and equitable distribution of the costs of installing water and wastewater lines to all the parties benefiting from their installation. This policy covers most cases, but recognition is made that special cases may occur. When special cases do occur, deviations may be made from the specifics of the policy, provided
the final arrangements maintain this fair and equitable intent. Such arrangements can be made through the mutual consent of the Town Administrator and the developer of the property. Such arrangements shall be contained in a development agreement executed by the developer and the Town. This ordinance shall be interpreted and enforced to ensure that a development will pay all direct costs and their proportionate share of indirect costs.

B. **Line installation policy.** In order to facilitate the orderly continuation of the Town’s water distribution and wastewater collection systems, water and wastewater mains shall be installed to the furthest point or points of a property. The developer shall install lines on more than one side of the property and/or through more than one internal easement or right-of-way if it is determined that those lines are needed to provide service to other properties beyond the subject property.

C. All mains which are necessary for the service to or within a property or as required above, shall be installed at the cost of the developer, except for the following conditions:

1. Mains larger than those required to serve the property but required by the Town shall be subject to the provisions of this Code.

2. Prior to construction, plans and specifications for the water and wastewater systems to be installed shall be reviewed and approved by the Town Administrator after consultation with the appropriate engineering and other appropriate staff.

D. The developer shall be responsible for payment of the Town’s review, inspection and associated costs. Such costs shall be in accordance with the actual costs. Payment of such costs shall be made prior to acceptance by the Town of the improvements by the Town.

E. Upon completion of the work and written acceptance by the Town the water distribution and wastewater collection systems shall become the property of the Town.

F. The Town shall own and maintain the water mains, water main appurtenances, and fire hydrants and appurtenances therein. The property owner shall maintain the service line attachment to
the main line, meter, meter pit, vaults and all other appurtenances from the main line. For fire service lines the Town’s ownership ends at the valve on the main or the point of connection to the last domestic service off the line.

G. The Town shall own and maintain the wastewater mains, manholes and regional wastewater lift stations. The property owner shall maintain the wastewater service line and attachment to the main line. Where a lift station is built to provide service to a specific development or area the Town may either establish a special monthly assessment to cover maintenance, overhead and depreciation or require a property owners’ association to cover these costs.

H. All workmanship and materials shall be warranted in writing by the developer against any defects for a period of one year from the date of acceptance by the Town. Any repair or reconstruction performed during such warranty period as a result of defects in material and/or workmanship shall be warrantied for a period of one year from the acceptance of such repair or reconstruction by the Town.

I. Properties which are served by private lines that were not constructed according to Town approved plans and specifications shall have mains complying to Town standards installed and extended to serve the property. The cost thereof shall be paid by the owners served, or assessed against the owners in accordance with applicable laws.

J. No mains shall be extended outside the Urban Service Area, except as may be necessary to serve the property within the Town or upgrade service to existing customers, without the prior express written consent and approval of the Board of Trustees.

<table>
<thead>
<tr>
<th>30-2-128 Reimbursement policy and procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A. Reimbursement for line extension through undeveloped property.</strong> In accordance with the Comprehensive Plan, development is encouraged in areas directly adjacent to the Town. In the event a development is not located adjacent to the Town a developer may find it necessary to install a water or wastewater lines through undeveloped property to obtain service. Such person may request the establishment of a reimbursement agreement to recover a portion of the line installation costs from subsequent future development along the line.</td>
</tr>
</tbody>
</table>
1. The establishment of a reimbursement agreement is optional and must be requested by the developer prior to construction of the line.

2. The developer shall obtain three independent written quotes or bids for the line. The lowest bid shall be the bases for establishing a reimbursable amount, regardless of whether the low bidder performs the work or not. The quotes or bids shall be obtained for doing the work in a reasonable but not an accelerated time period.

3. The reimbursable amount shall not be increased or decreased to reflect fluctuations in construction costs and shall not be increased for interest or decreased for depreciation. The date of the construction quote or bid shall establish the initial index value.

4. The reimbursement agreement shall expire after a period of ten years from the acceptance of the line unless extended in writing by the Board of Trustees.

5. Reimbursement payments shall be due and payable prior to the installation of any service or line extension to the undeveloped parcel.

6. If the line is installed through or adjacent to more than one property, the future developers shall pay for their proportional share based on the usage of the line generated through their property.

B. **Reimbursement for line extension through previously developed areas.** A developer may find it necessary to replace and existing undersized or otherwise inadequate line to obtain service. The developer may be eligible to establish a reimbursement agreement in the following cases:

1. If a property adjacent to the replacement line had a tap on the original undersized line and is later subdivided, the developer of this second property shall reimburse the original developer an amount determined pursuant to the provisions of this ordinance. To be eligible for such reimbursement, the developer must establish a reimbursement agreement as provided in this Code.
2. If the line to be replaced is in such a condition or configuration that it would in the opinion of the Town Administrator be eligible for replacement, the Town may pay the portion of the cost that it would incur to replace or upgrade the line as calculated, subject to fund availability. Such Town participation shall be administered in accordance with this Code.

C. Reimbursement for major structures. A developer may find it necessary to install a major structure to obtain water or wastewater service. The developer may be eligible to establish a reimbursement agreement.

1. A reimbursement agreement may be established if the major structure is a component of the water distribution or wastewater collection system that will bring direct benefits to an identifiable area. Examples are:
   a. Wastewater lift stations;
   b. Water booster pump stations;
   c. River or highway crossings.

2. The cost of the utility line or structure required by the project itself shall be paid by the Developer. The cost of the remainder of the utility line required by the Town shall be paid by the Town.

3. To be eligible for reimbursement, the developer shall establish a reimbursement agreement as provided in this Code.

30-2-129 Line oversizing policy

A. General. The purpose of the line oversizing policy is to enable a developer to recover the costs incurred to install an oversized water or wastewater line. The “oversized” portion is the difference between the line size required by the property and the line size required by the Town.
to meet future growth demands. The developer is required to bear the full costs for installing 8 inch wastewater lines, or larger if required to serve that development, and for installing all water lines 6 inches in diameter, or larger if required to serve that development.

B. **Line sizing.** The actual size of the water or wastewater line required shall be initially established by the developer with supporting documentation to verify that the sizes of the water or wastewater lines, or both, meet the Town’s specifications. Final evaluation and design shall be determined by the Town. Criteria to be used for this determination shall include, but shall not be limited to the following:

1. Utility Master Plan requirements.

2. Potential future demand on the water or wastewater system as related to the proposed development.

3. Hydraulic design criteria of the water or wastewater system.

C. **Town participation in oversizing project.** The Town may require a developer to install an oversized water or wastewater line. If an oversized line is required, the Town will participate in the project costs if the oversizing is required to provide service to the Town’s existing customers.

D. **Developer reimbursement.** When the Town requires a developer to oversize either water or wastewater lines to meet the needs of anticipated development, the developer may request the Town to enter into a reimbursement agreement. The agreement may provide that the developer will be reimbursed the cost of the required oversizing from future developments which make use of the oversizing. The reimbursement agreement shall expire upon repayment to the developer of the oversizing costs or the expiration of 10 years from the completion of the installation.

E. **Determination of eligible project costs.**
1) Only those components of the water or wastewater line project that are specifically related to the oversizing shall be included for oversizing participation. Eligible costs include those costs to furnish and install the oversiz ed pipe, fittings, valves and service saddles. The costs for design installation, service lines, manholes, surface repairs and connected lines and appurtenances are not eligible. Wastewater manholes will be included if larger than a 4 foot diameter manhole is needed because of the wastewater line size.

2) **Construction quotes.** If the developer is aware that there will be oversizing required and that the cost of the oversizing is less than $5,000, the developer shall obtain a minimum of three written quotes from qualified contractors for construction of the oversized line. The quotations shall be based on construction of the line in a reasonable but not an accelerated time period. The Town and the developer shall agree on a reasonable time frame to be included in the request for quotations. The lowest quote shall be the basis for determining eligible oversizing costs.

3) **Competitive bids.** If the cost of the oversizing is estimated to be greater than $5,000, the developer shall obtain competitive bids for the construction of the oversized line, in accordance with the State laws and Town procedures for capital projects. The bids shall be based on construction of the line in a reasonable but not an accelerated time period. The Town and the developer shall agree on a reasonable time frame to be included in the request for quotation. The Town and the developer have the right to reject any and all bids, for cause.

4) **Determination of final costs.** The developer’s engineer shall submit to the Town a summary of the final eligible project costs. The final costs shall be based on the lower of the actual installation costs or the bid received for the project.

F. **Water and wastewater development agreement.** If the Town agrees to participate in an oversizing project, the developer shall prepare a Water and Wastewater Development Agreement which will include:

1. An estimate of the oversized line project costs, prepared by a Professional Engineer. Itemization of the cost estimate shall be attached to the agreement.
2. Distribution of project costs between the Town and the developer.

3. Time schedule or phasing plan(s) which the developer agrees to comply with.

4. Any reimbursement agreements between the developer and future developers along the oversized line.

5. The Water and Wastewater Development Agreement shall be reviewed and signed by the Utility Superintendent, the Town Attorney, and the Developer.

Section 30-2-130.

Sections:

1  TITLE
2  INTERPRETATION
3  SIZE AND DESIGN STANDARDS
4  APPROVALS OF NON-POTABLE WATER SYSTEM

1  TITLE

This chapter shall be known as the TOWN OF BERTHOUD NON-POTABLE WATER SYSTEMS ORDINANCE.

2.  INTERPRETATION

This chapter shall be interpreted and construed so as to effectuate its general purposes to make uniform the terms and conditions for the development and use of non-potable water systems. However, this chapter shall not be applied in a manner inconsistent with annexation agreements in existence prior to the effective date hereof.

3.  SIZE AND DESIGN STANDARDS
All non-potable water systems shall be of sufficient size and design to supply non-potable water to the lands to be irrigated with said system. All non-potable water system design and construction must conform to Denver Water Engineering Design and Construction Standards as amended, as applicable to non-potable water systems.

4. **APPROVALS OF NON-POTABLE WATER SYSTEM**

A. **Applications.** The person developing the property who wishes to utilize a non-potable irrigation system shall provide the following to the Town:

   (1) The proposed manner of delivery, including duration and volume of water;

   (2) The reliability of the system;

   (3) The plan for system maintenance and the entity to be responsible for such maintenance;

   (4) The proposed manner in which the non-potable water irrigation system will be connected to the Town’s treated water system so that treated water can be used for irrigation when the supply of non-potable water is unavailable or insufficient including, but not limited to backflow devices;

   (5) A calculation of the volume of water which a non-potable system will be able to provide on a monthly basis in lieu of the usage of treated water for irrigation purposes;

   (6) The amount and location of water storage as necessary to provide water from the non-potable water system;

   (7) The analysis required by the Town of Berthoud Development Code Section 30-10-105.8.(D); and

   (8) Such other analysis as the Town deems necessary.

B. **Approval.** The person who wishes to utilize a non-potable water system shall pay for an analysis by the Town through a qualified engineer to review the information set forth in Section 4(A) above. No non-potable water systems shall be utilized without written approval from the Town.

**PART III –GENERAL PROVISIONS**

1. **INTERPRETATION**

   This Ordinance shall be so interpreted and construed as to effectuate its general purpose to make uniform the terms and conditions for the sale of treated water from the Town water system contained herein. However, this Ordinance shall not be applied in a manner inconsistent
with annexation agreements in existence prior to the effective date of this Ordinance. Section headings of this Ordinance shall not be deemed to govern, limit, modify or in any way or manner affect the scope, meaning intent or extent of the provisions of any article or section thereof.

2. **VALIDITY**

If any part or parts of this Ordinance is/are, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town Board hereby declares that it would have codified these provisions and each part or parts thereof, irrespective of the fact that any one part or parts be declared invalid.

3. **REPEAL OF OLD ORDINANCES**

Existing Ordinances or parts of Ordinances and Town of Berthoud Development Code Sections covering the same matters as embraced in this codification including but not limited to Section 30-10-105 of the Development Code are hereby repealed and all Ordinances or parts of Ordinances and Town of Berthoud Development Code Sections inconsistent with the provisions of this Ordinance are hereby repealed.

Section 30-2-131 to 30-2-xxx Reserved.

**CHAPTER 30 – BERTHOUD DEVELOPMENT CODE**

**SECTION 3 – ZONING**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>30-3-101</td>
<td>General Provisions</td>
<td>255</td>
</tr>
<tr>
<td>30-3-102</td>
<td>Purpose</td>
<td>256</td>
</tr>
<tr>
<td>30-3-103</td>
<td>Zoning districts and boundaries</td>
<td>256</td>
</tr>
<tr>
<td>30-3-104</td>
<td>Principal and conditional uses permitted by zoning district</td>
<td>257</td>
</tr>
<tr>
<td>30-3-105</td>
<td>Setbacks and encroachments-all districts</td>
<td>284</td>
</tr>
<tr>
<td>30-3-106</td>
<td>Conditional uses, use by special review</td>
<td>285</td>
</tr>
<tr>
<td>30-3-107</td>
<td>Nonconforming uses/buildings</td>
<td>287</td>
</tr>
<tr>
<td>30-3-108</td>
<td>Appeals and variances</td>
<td>288</td>
</tr>
<tr>
<td>30-3-109</td>
<td>Waivers</td>
<td>290</td>
</tr>
<tr>
<td>30-3-110</td>
<td>Amendments</td>
<td>290</td>
</tr>
<tr>
<td>30-3-111</td>
<td>Wireless telecommunication services, facilities &amp; equipment</td>
<td>295</td>
</tr>
<tr>
<td>30-3-112</td>
<td>Home occupations</td>
<td>299</td>
</tr>
<tr>
<td>30-3-113</td>
<td>Medical Marijuana</td>
<td>300</td>
</tr>
</tbody>
</table>
30-3-101 General provisions

In their interpretation and application, the provisions of these zoning regulations shall be held to be minimum requirements adopted for the promotion of the public health, safety, convenience, comfort, prosperity and general welfare of the community.

D. Uniformity of regulations. The regulations established by this Section within each zone shall apply uniformly to each class or type of structure or land. Unless exceptions are specified in this Section, the following interpretations shall apply:

1. No buildings, structure, or land shall be used or occupied, and no building or structure or part thereof shall be erected, changed, constructed, moved, demolished or structurally altered unless in conformance with all of the regulations herein specified for the zone in which it is located. Where a lot is divided by a zoning district boundary line by the current official zoning map or by subsequent amendments to the zoning map and there is confusion as to which zone district regulations apply, the zoning requirements of the lower/more restrictive zone district may be extended within the lot for a distance of not more than twenty-five feet.
2. No part of a yard, other open space, or off-street parking or loading space required about or in connection with any building for the purpose of complying with this Code shall be included as part of a yard, open space, or off-street parking or loading space similarly required for any other building unless specific exception therefore is stated in this Section.

3. No yard or lot existing or approved at the time of passage of this Code shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this Code shall meet at least the minimum requirements established by this Code.

4. Any use not permitted in a zone either specifically or by interpretation by the Board as provided in this Code is hereby specifically prohibited from that zone.

E. **Conflict with other provisions of law.** Whenever the requirements of this Section are inconsistent with the requirements of any other lawfully adopted rules, regulations or ordinances, the more restrictive standards shall govern.

F. **Conflict with private covenants or deeds.** In case of a conflict between this Code and any private restrictions, the provisions of this Code shall control for purposes of enforcement by the Town. The Town shall have no responsibility to enforce private covenants or deed provisions.

G. **Zoning of annexed territory.**

1. Zoning of land during annexation may be done in accordance with the procedure and notice requirements of this Section. The proposed zoning ordinance shall not be passed before the date when the annexation ordinance is passed.

2. Any area annexed shall be brought under the provisions of this Section and the Zoning Map within 90 days from the effective date of the annexation ordinance, despite any legal review that may be made challenging the annexation. If the property is not zoned during such ninety-day period, or such portion thereof as is required to zone the territory, the Town shall not issue a building permit for any portion, or all of, the newly annexed area.

### 30-3-102 Purpose

The purpose of this Section is to create a vital, cohesive, well-designed community in order to enhance the Town’s small-town character and further the citizens’ goals as identified in the Comprehensive Plan. These zoning regulations are designed to:

B. Encourage the most appropriate use of land throughout the Town and ensure logical growth of the various physical elements of the Town.

C. Regulate and restrict the location and use of buildings, structures and land for residence, business, trade, industry or other purposes.

D. Regulate and determine the size of building lots, yards and other open spaces.
E. Prevent the overcrowding of land, promote quality development, ensure efficiency in land use, lessen congestion and increase safety in travel and transportation, and encourage development that supports the long-term stability and livability of the Town.

F. Promote the health, safety and general welfare of Town residents.

<table>
<thead>
<tr>
<th>30-3-103</th>
<th>Zoning districts and boundaries</th>
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</thead>
<tbody>
<tr>
<td><strong>A. Zoning Districts.</strong> In order to carry out the provisions of this Code, the Town is divided into the following zoning districts:</td>
<td></td>
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<tr>
<td>1. AG – Agricultural District</td>
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<tr>
<td>2. TN - Traditional Neighborhood District</td>
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<tr>
<td>3. R1 – Single Family District</td>
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<td>4. R2 – Limited Multi-Family District</td>
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<td>5. R3 – Multi-Family District</td>
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<td>6. R4 – Mixed Use District</td>
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<td>7. R5 - Manufactured/Mobile Home District</td>
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<td>8. C1 – Neighborhood Commercial District</td>
<td></td>
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<td>9. C2 – General Commercial District</td>
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<td>10. M1 – Light Industrial District</td>
<td></td>
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<td>11. M2 – Industrial District</td>
<td></td>
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<tr>
<td>12. T – Transitional District</td>
<td></td>
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<tr>
<td>13. PUD – Planned Unit Development Overlay District</td>
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</tr>
</tbody>
</table>

| **B. Official zoning map.** The boundaries and classifications of districts established are as depicted on a map entitled Town of Berthoud Official Zoning Map as may from time to time be revised, updated or redrafted. The Zoning Map adopted and to be used for reference shall be that map bearing the most recent date of publication which has been signed by the Chair of the Planning Commission and the Mayor. |
| 1. Interpretation of zoning district boundaries. |
| a. In the event uncertainty exists on the zoning map, district boundaries shall be on section lines, lot lines, the center lines of highways, streets, alleys, railroad rights-of-way or such lines extended; municipal corporation lines; natural boundary lines such as streams; or other lines to be determined by the use of scales shown on the map. |

| 2. Amendment upon zoning or modification. Upon enactment of any ordinance annexing and establishing zoning or modifying existing zoning for any property, and upon date the ordinance is effective, the Town shall amend the prior existing Zoning Map to include the annexed area with the proper zoning classification or show the amended classification. Such updated official map shall contain, in table form, the date and number of the ordinance amending it, the title of the change, the date the map was amended to reflect each amendment and the initials of the person who checked and approved the change to the map. |
3. **Cost for amending zoning.** Any person who petitions zoning for property being annexed or petitions to modify existing zoning shall bear the entire cost of amending the Zoning Map, including all notification costs. The Town shall provide applicants with a copy of the current fee schedule and a fee agreement form upon request.

4. **Public inspection; storage of original.** A copy of the Zoning Map shall be available and on display at the Town Hall during normal business hours. In addition one copy of the current Zoning Map, and all prior Zoning Maps that have been adopted, shall be held in a secure place by the Town Clerk, who shall act as custodian thereof, and the map shall not be amended, changed, updated or otherwise modified or let out of direct control of the Town Clerk for any reason whatsoever. The secured map is to be released for inspection only upon authorization of the Town Clerk.

<table>
<thead>
<tr>
<th>30-3-104</th>
<th>Principal and conditional uses permitted by zoning district</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A.</strong> General application of uses.** Uses designated as “principal uses” are allowed in a zone district as a matter of right. Uses classified as “conditional uses” are permitted upon approval of a conditional use permit per this Code. Unless a use is designated as a “principal use” or “conditional use” or is classified as a legal “non-conforming” structure or use, it is not permitted. Land uses not otherwise identified in this Code may be proposed. In order to allow such uses, the new or unlisted land use must be determined to be “similar” to either a principal or conditional use listed within that zone district. “Similar” shall mean that the use can be reasonably interpreted to fit into a similar use category as identified in this Code. Town Administration will make a written determination regarding any request for a land use not listed in this Code. If a determination is made that the proposed use is similar to either a listed principal or conditional use, it will be processed as a conditional use under the provisions of this Code.**</td>
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<tr>
<td><strong>B.</strong> Measurement of residential density.** Allowable or maximum residential densities as identified in this Code will be measured as gross densities where the number of residential units is divided by the total acreage of the subject property.**</td>
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<td><strong>C.</strong> AG Agricultural District.</td>
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<tr>
<td><strong>Intent.</strong> The AG District provides for the continuation of agricultural activities on property annexed to the Town. Newly annexed areas that are predominately used for agricultural purposes may be zoned AG until other zoning is requested by the property owner. Agricultural zoning is intended to either support the continued agricultural activity on open farmlands near the Berthoud community or be used as a temporary “holding” zone until development at an urban scale is proposed.**</td>
<td></td>
</tr>
<tr>
<td><strong>1. Principal or Conditional uses.</strong> Principal or conditional uses for the AG District are found on Table 3.1.**</td>
<td></td>
</tr>
</tbody>
</table>
2. **Area and Bulk Requirements.** See Figure 3.1.

3. **Maximum density.**
Development in the AG District is limited to 1 unit per acre where connection to public water and wastewater systems is present, and one unit per 2.29 acres for properties without connection to public water or wastewater systems.

**D. TN Traditional Neighborhood District.**
Intent. The TN District provides for the development of low to moderate density single family residential dwellings with alleys. New residential development in this District shall feature garages that are accessed from a twenty foot wide alley.

1. **Principal or Conditional uses.** Principal or conditional uses for the TN District are found on Table 3.1.

2. **Area and bulk requirements.** See Figure 3.2.

3. **Maximum density.**
Development in the TN District may not exceed 6 units per gross acre. Accessory dwelling units in the TN District count as .33 units towards the overall project density.

4. **Open space required.**
Development in the TN District shall provide public open space (parks, trails, open lands) per Chapter 30, Section 2 of this Code.

5. **Tree lawn requirement.** Developments within the TN District must include a 10 foot wide tree lawn along all streets.

**E. R1 Single Family District**
Intent. The R1 District provides for the development of low to moderate density single family residential dwellings.

1. **Principal or Conditional uses.** Principal or conditional uses for the R1 District are found on Table 3.1.

2. **Area and bulk requirements.** See Figure 3.3.

3. **Maximum density.**
Development in the R1 District may not exceed 6 units per gross acre. Accessory dwelling units in the R1 District count as .33 units towards the overall project density.

4. **Open space required.**
Development in the R1 District shall provide public open space (parks, trails, open lands) per Chapter 30, Section 2 of this Code.
Figure 3.1: AG – Agricultural District

Dimensional Standards for Single Family Residential, Accessory Structures and Detached Garages for the AG Zone District.

**DIMENSIONAL STANDARDS**

- **Lot Width:**
  - Lot Area:
  - **Setback, Front Yard:** 150’ min.
  - **Setback, Side Yard:** 1 acre or 2.29 acres without public water or sewer
    - 25’ min.
  - **Setback, Corner Side Yard:** 5’ min; Bldg greater than 22’ in height 7’6” min.
    - 15’ min.
    - 25’ min.
  - **Setback, Accessory Bldg, Side Yard:** 5’ min; Bldgs greater than 22’ in height, 7’6” min.
    - 15’ min.
  - **Setback, Accessory Bldg, Corner Side Yard:** 4’, or a minimum of 20’
    - 3’ min.
  - **Setback, Detached Garage Facing Alley:**
  - **Setback, Detached Garage Not Facing Alley:**

**BUILDING HEIGHT STANDARDS**

- Principal Building 40’ max.
- Accessory Building 30’ max.

**RESIDENTIAL DESIGN STANDARDS**

Refer to Section 30-2-116
Figure 3.2: TN – Traditional Neighborhood District

Dimensional Standards for Single Family Residential, Accessory Structures and Detached Garages for the TN Zone District.

**DIMENSIONAL STANDARDS**

A Lot Width: 35’ min.
A Lot Area: 3,500 sq.ft. min.
B Setback, Front Yard: 15’ min.
C Setback, Side Yard: 5’ min; Bldgs greater than 22’ in height, 7’6” min.
D Setback, Corner Side Yard: 15’ min.
E Setback, Rear Yard: 20’ min.
F Setback, Accessory Bldg, Side Yard: 5’ min; Bldgs greater than 22’ in height, 7’6” min.
G Setback, Accessory Bldg, Corner Side Yard: 15’ min.
H Setback, Accessory Bldg, Rear Yard: 5’ min; Bldgs greater than 22’ in height, 7’6” min.
I Setback, Detached Garage Facing Alley: 4’, or a minimum of 20’.
J Setback, Detached Garage Not Facing Alley: 3’ min.

**BUILDING HEIGHT STANDARDS**

Principal Building 40’ max. Accessory Building 30’ max.

**RESIDENTIAL DESIGN STANDARDS**

Refer to Section 30-2-116
Figure 3.3: R1 – Single Family District

Dimensional Standards for Single Family Residential, Accessory Structures and Detached Garages for the R1 Zone District.

**DIMENSIONAL STANDARDS**

- **Lot Width:** 35' min.
- **Lot Area:** 3,500 sq.ft. min.
- **Setback, Front Yard:** 15' min, 22' min. from front of garage.
- **Setback, Side Yard:** 5' min; Bldgs greater than 22' in height, 7'6" min.
- **Setback, Corner Side Yard:** 15' min.
- **Setback, Rear Yard:** 20' min.
- **Setback, Accessory Bldg, Side Yard:** 5' min; Bldgs greater than 22' in height, 7'6" min.
- **Setback, Accessory Bldg, Corner Side Yard:** 15' min.
- **Setback, Accessory Bldg, Rear Yard:** 5' min; Bldgs greater than 22' in height, 7'6" min.
- **Setback, Detached Garage Facing Alley:** 4', or a minimum of 20'
- **Setback, Detached Garage Not Facing Alley:** 3' min.

**BUILDING HEIGHT STANDARDS**

**RESIDENTIAL DESIGN STANDARDS**

Refer to Section 30-2-116.
F. **R2** Limited Multi-Family District

**Intent.** The R2 District provides for the development of areas containing low to moderate density with both single and multi-family residential uses.

1. **Principal or Conditional uses.** Principal or conditional uses for the R2 District are found on Table 3.1.

2. **Area and bulk requirements.** See Figure 3.4.

3. **Maximum density.** Development in the R2 District may not exceed 8 units per gross acre. Accessory dwelling units in the R2 District count as .33 units towards the overall project density.

4. **Open space required.** Development in the R2 District shall provide public open space (parks, trails, open lands) per Chapter 30, Section 2 of this Code.

G. **R3** Multi-family District.

**Intent.** The R3 District is a moderate to higher-density residential zone that allows the development of multiple dwelling units on the same lot.

1. **Principal or Conditional uses.** Principal or conditional uses for the R3 District are found on Table 3.1.

2. **Area and bulk regulations.** See Figure 3.5.

3. **Maximum density.** Development in the R3 District shall not exceed 12 units per gross acre. Accessory dwelling units in the R3 District count as .33 units towards the overall project density.

4. **Open space required.** Development in the R3 District shall provide public open space (parks, trails, open lands) per Chapter 30, Section 2 of this Code.
Figure 3.4: R2 - Limited Multi-Family District

**DIMENSIONAL STANDARDS**

- **Lot Width:** 35' min.
- **Lot Area:** 3,500 sq.ft. min.
- **Setback, Front Yard:** 20' min.
- **Setback, Side Yard:** 5' min; Bldgs greater than 22' in height, 7'6" min.
- **Setback, Corner Side Yard:** 15' min.
- **Setback, Rear Yard:** 20' min.
- **Setback, Accessory Bldg, Side Yard:** 5' min; Bldgs greater than 22' in height, 7'6" min.
- **Setback, Accessory Bldg, Corner Side Yard:** 15' min.
- **Setback, Accessory Bldg, Rear Yard:** 5' min; Bldgs greater than 22' in height, 7'6" min.
- **Setback, Detached Garage Facing Alley:** 4', or a minimum of 20'.
- **Setback, Detached Garage Not Facing Alley:** 3' min.

**BUILDING HEIGHT STANDARDS**

- Principal Building: 40' max.
- Accessory Building: 30' max.

**RESIDENTIAL DESIGN STANDARDS**

Refer to Section 30-2-116
Figure 3.5: R3 - Multi-Family District

Dimensional Standards for Multi Family Residential, Accessory Structures and Detached Garages for the R3 Zone District.

**DIMENSIONAL STANDARDS**

- **A** Lot Width: 35' min.
- **B** Lot Area: 3,500 sq.ft. min.
- **C** Setback, Front Yard: 20' min.
- **D** Setback, Side Yard: 5' min; Bldgs greater than 22' in height, 7'6" min.
- **E** Setback, Corner Side Yard: 15' min.
- **F** Setback, Rear Yard: 20' min.
- **G** Setback, Accessory Bldg, Side Yard: 5' min; Bldgs greater than 22' in height, 7'6" min.
- **H** Setback, Accessory Bldg, Corner Side Yard: 15' min.
- **I** Setback, Accessory Bldg, Rear Yard: 5' min; Bldgs greater than 22' in height, 7'6" min.
- **J** Setback, Detached Garage Facing Alley: 4', or minimum of 20'.
- **K** Setback, Detached Garage Not Facing Alley: 3' min.

**BUILDING HEIGHT STANDARDS**

- Principal Building: 50' max.
- Accessory Building: 30' max.

**RESIDENTIAL DESIGN STANDARDS**

Refer to Section 30-2-116.
H. **R4 Mixed Use District.**

**Intent.** The purpose of the R4: Mixed Use Zone District is to allow for the development of variety of residential, commercial, business and employment land uses within pedestrian-oriented neighborhoods.

1. **Principal or Conditional uses.** Principal or conditional uses for the R4 District are found on Table 3.1.

2. **Area and bulk regulations.** See Figure 3.6.

3. **Maximum density or lot coverage.**

   a. Residential development in the R4 District shall not exceed 14 units per gross acre. Accessory dwelling units in the R4 District count as .33 units towards the overall project density.

   b. Commercial or retail development in the R4 District shall not exceed a floor area ratio of 1.6:1.

4. **Open space required.**

   Development in the R4 District shall provide public open space (parks, trails, open lands) per Chapter 30, Section 2 of this Code.

I. **R5 Manufactured/Mobile Home Park District.**

**Intent.** The intent of this district is to provide for the development of manufactured home parks and subdivisions. Mobile Home Parks or subdivisions are also included within this District.

1. **Principal or Conditional uses.** Principal or conditional uses for the R5 District are found on Table 3.1.

2. **Area and bulk requirements.** See Figure 3.7.

3. **Maximum density.**

   Development in the R5 District shall not exceed 12 dwelling units per gross acre.

4. **Open space required.**

   Development in the R5 District shall provide public open space (parks, trails, open lands) per Chapter 30, Section 2 of this Code.
Figure 3.6: R4 – Mixed Use District

Dimensional Standards for Residential and Non-Residential uses, Accessory Structures and Detached Garages for the R4 Zone District.

**DIMENSIONAL STANDARDS**

- **Lot Width:** 35' min. for single family, 25' min. for two family
- **Lot Area:** 3,500 sq.ft. min. for single family, 2,500 sq.ft. min. for two family
- **Setback, Front Yard:** 20' for residential uses, 0' for all others
- **Setback, Side Yard:** 5' min; Bldgs greater than 22' in height, 7'6" min.
- **Setback, Corner Side Yard:** 15' min. for residential uses, 0' for all others
- **Setback, Rear Yard:** 20' min.
- **Setback, Accessory Bldg, Side Yard:** 5' min; Bldgs greater than 22' in height, 7'6" min.
- **Setback, Accessory Bldg, Corner Side Yard:** 15' min.
- **Setback, Accessory Bldg, Rear Yard:** 5' min; Bldgs greater than 22' in height, 7'6" min.
- **Setback, Detached Garage Facing Alley:** 4', or a minimum of 20'.
- **Setback, Detached Garage Not Facing Alley:** 3' min.

**BUILDING HEIGHT STANDARDS**

- Principal Building: 50' max.
- Accessory Building: 30' max.

**RESIDENTIAL DESIGN STANDARDS**

Refer to Section 30-2-116.
Figure 3.7: R5 – Manufactured/Mobile Home Park District

Dimensional Standards for Manufactured Home Parks and Structures for the R5 Zone District.

**DIMENTIONAL STANDARDS**

A Lot Width, Manufactured/Mobile Home Park: N/A
B Lot Area, Manufactured/Mobile Home Park: 5 acres min.
C Setback, Front Yard, Manufactured/Mobile Home Park: 25’ min.
D Setback, Side Yard, Manufactured/Mobile Home Park: 15’ min.
E Setback, Corner Side Yard, Manufactured/Mobile Home Park: 15’ min.
F Setback, Rear Yard, Manufactured/Mobile Home Park: 15’ min.
G Lot Area, Individual Unit: 3,000 sq.ft. min.
H Setback, Individual Unit: 10’ min. between structures

**BUILDING HEIGHT STANDARDS**

Principal Building 16’ max.

1. Manufactured homes may be set up anywhere within the confines of the pad site, provided there is a minimum of ten feet between all buildings.
J. **C1 Neighborhood Commercial District.**

**Intent.** The Neighborhood Commercial District is intended to provide for the development of mixed use, retail, commercial and service businesses to support residential neighborhoods. New development or redevelopment in this district should be scaled in size to fit the adjacent neighborhood. This District does not support larger retail, public, religious or other uses commonly referred to as “big box” type uses.

1. **Principal or Conditional uses.** Principal or conditional uses for the C1 District are found on Table 3.1.

2. **Area and bulk requirements.** See Figure 3.8.

3. **Maximum density or lot coverage.**
   a. Residential development in the C1 District shall not exceed 10 dwelling units per acre.
   b. Uses in the C1 District shall not exceed a floor area ratio of 2:1.

4. **Open space required.**
   Development in the C1 District shall provide public open space (parks, trails, open lands) per Chapter 30, Section 2 of this Code.

K. **C2 General Commercial District.**

**Intent.** The C2 District is intended to be a setting for development of a wide range of service businesses, retail uses, offices and personal & business establishments. This District supports both smaller (neighborhood) commercial and retail uses as well as larger uses (commercial, retail, religious, etc.) commonly referred to as “big box” uses.

1. **Principal or Conditional uses.** Principal or conditional uses for the C2 District are found on Table 3.1.

2. **Area and bulk requirements.** See Figure 3.9.

3. **Maximum density or lot coverage.**
   Residential development in the C2 District shall not exceed 10 dwelling units per acre. The floor area ratio for commercial development in the C2 District shall not exceed .75:1.

4. **Open space required.**
   Development in the C2 District shall provide public open space (parks, trails, open lands) per Chapter 30, Section 2 of this Code.
Figure 3.8: C1 - Neighborhood Commercial District

Floor Area Ratio (FAR) and Dimensional Standards for Commercial Buildings within the C1 Zone District.

**DIMENSIONAL STANDARDS**

1. Lot Width: 25' min.
2. Lot Area (FAR): 2:1 max.
3. Setback, Front Yard: 0'
4. Setback, Side Yard: 0', 20' min. from adjacent zone district boundary
5. Setback, Corner Side Yard: 0'
6. Setback, Rear Yard: 0', 20' min. from centerline of alley or adjacent zone district boundary

**BUILDING HEIGHT STANDARDS**

Commercial Building 40' max.

**COMMERCIAL DESIGN STANDARDS**

Refer to Section 30-2-117

1. For residential uses in the C1 and C2 zone district, please refer to Table 3.4.
Figure 3.9: C2 - General Commercial District

Floor Area Ratio (FAR) and Dimensional Standards for Commercial Buildings within the C2 Zone District.

**DIMENSIONAL STANDARDS**

- Lot Width: 50' min.
- Lot Area (FAR): 0.75:1 max.
- Setback, Front Yard: 25' min.
- Setback, Side Yard: 0', 25' min. from adjacent zone district boundary
- Setback, Corner Side Yard: 25' min.
- Setback, Rear Yard: 35' min.

**BUILDING HEIGHT STANDARDS**

- Commercial Building 50' max.

**COMMERCIAL DESIGN STANDARDS**

Refer to Section 30-2-117

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1. For residential uses in the C1 and C2 zone district, please refer to Table 2.4.
L. **M-1  Light Industrial District.**  
   **Intent.** This district is intended to provide locations for a variety of workplaces including light industrial uses, research and development offices and institutions. This district is also intended to accommodate secondary uses that complement and support the primary workplace uses, such as hotels, restaurants, convenience shopping, and child care.

1. **Principal or Conditional uses.** Principal or conditional uses for the M1 District are found on Table 3.1.

2. **Area and bulk requirements.** See Figure 3.10.

3. **Maximum density or floor area ratio.**  
   Residential development in the M1 District shall not exceed 10 dwelling units per acre. The floor area ratio for industrial development in the M1 District shall not exceed .6:1.

M. **M2  Industrial District.**

**Intent.** This zoning district is intended to provide a location for a variety of employment opportunities such as manufacturing, warehousing and distributing, indoor and outdoor storage and a wide range of commercial and industrial operations.

1. **Principal or Conditional uses.** Principal or conditional uses for the M2 District are found on Table 3.1.

2. **Area and bulk requirements.** See Figure 3.10.

3. **Maximum density or floor area ratio.** Residential development in the M2 District shall not exceed 10 dwelling units per acre. The floor area ratio for industrial development in the M2 District shall not exceed 1:1.
Figure 3.10: M1 – Light Industrial and M2 – Industrial Districts

Floor Area Ratio (FAR) and Dimensional Standards for Industrial Buildings within the M1 and M2 Zone Districts.

**DIMENSIONAL STANDARDS**

A Lot Width: 50’ min.
A Lot Area (FAR): M1 - 0.6:1, M2 - 1:1
B Setback, Front Yard:
B Setback, Side Yard: 0’, 20’ min. from adjacent zoning district boundary
D Setback, Corner Side Yard: 20’ min.
E Setback, Rear Yard: 20’ min.

**BUILDING HEIGHT STANDARDS**

Industrial Building

M1 - 40’ max, M2 - 50’ max.

**INDUSTRIAL DESIGN STANDARDS**

Refer to Section 30-2-117
N. **Transitional District**

**Intent.** The intent of the T: Transitional District is to accommodate properties which are in a transitional stage with regard to their ultimate use or plans for development.

1. **Permitted uses.** The following uses are permitted by right in the T district:

   No use shall be permitted except such use as existed on the date the property was placed in this zoning district. No permanent structures shall be constructed on any land in this district, except that which is expressly authorized by the Town Board at the time of zoning property into this district. The Town Board of Trustees may grant a variance permitting expansion of any existing use, or installation or enlargement of a permanent structure to be used in connection with the use of the property, at the time of such zoning upon the following conditions:

   a. The owner of the property, prior to the Town Board meeting at which the zoning is to be heard, shall submit a site plan showing in reasonable detail the proposed expansion of current use or installation of permanent structure on the property.

   b. The Town Board shall grant such variance upon a finding that the strict application of the zoning ordinance would result in exceptional or undue hardship upon the owner of the property and that the variance may be granted without substantial detriment to the public good and without substantially impairing the intent and purposes of this code.

2. **Change of zoning.** The owner of any property in the T District may at any time petition the Town to remove the property from this zoning district and place it in another zoning district, in accordance with the procedures and requirements of this code.

O. **Planned Unit Development (PUD) Overlay District.**

**Intent.** This Planned Unit Development (PUD) Overlay District is intended to be used as an overlay zone that supplements one or more underlying standard zone districts as found in this Code. The PUD Overlay District is intended to permit greater flexibility in the application of specific zoning standards and greater freedom in the allowable range of land use types.

1. **Permitted uses.** Uses permitted in the PUD Overlay District shall be those uses permitted in the underlying standard zone district(s) for the property. An applicant for a PUD Overlay District may request modifications to the permitted uses of the underlying zone district to remove those uses that may be deemed incompatible or inappropriate for the overall PUD development or add additional uses compatible with the overall intent of the project. Conditional uses may be permitted in the PUD Overlay District if it can be demonstrated that such uses meet the conditional use review criteria for the underlying zone district(s).
2. **PUD Overlay District general requirements.** Properties utilizing the PUD Overlay District shall be subject to the following:

   a. All PUD applications shall include a gross land area of not less than 5 acres.

   b. The area of land for the PUD may be controlled by one or more landowners and must be developed under unified control or a unified plan of development. No PUD may be approved by the Town without the written consent of the landowner(s) whose property is included within the PUD.

   c. All requirements set forth in this Code and the underlying zone districts otherwise applicable to the area of land proposed for a PUD shall govern, except to the extent that the PUD Overlay District as approved modifies permitted or conditional land uses, and change specific standards including lot size, building bulk, type of use, gross density, lot coverage or floor area ratio.

3. **PUD approval procedure.** All PUD Overlay District applications shall be submitted and processed simultaneously with the processing of annexation, base zone district or subdivision applications for the property. An application for a PUD Overlay District amendment to the Zoning Map shall be processed and subject to public hearings in the same manner as for other amendments to the Zoning Map, as outlined in this Code.

   Approval of a PUD Overlay District shall require the Town to adopt an ordinance establishing the PUD Overlay District for the property.

4. **PUD amendment procedure.** All PUD Overlay District’s may be amended upon application by the property owner. An application for a PUD Overlay District amendment shall be processed as a text amendment to the Zoning section of this Code.

5. **Relationship of PUD zoning to approved Overall Development Plans (ODP), Preliminary Development Plans (PDP), and Final Development Plans (FDP).**

   The use of PUD zoning as an overlay zone district, when combined with the subdivision procedures of concept plan, preliminary plat and final plat; removes the need for ODP, PDP, and FDP submittals under this Code. Traditional ODP, PDP and FDP submittal materials are included within the concept, preliminary and final plat processes and requirements found in Chapter 30, Section 6 of this Code.

   ODP, PDP and FDP applications approved prior to the adoption of this Code will remain in full force and effect per the regulations or agreements in place at the time of the Town action to approve such ODP, PDP or FDP.
### Table 3.1: Principal and conditional uses by zone district

<table>
<thead>
<tr>
<th>Residential land uses</th>
<th>AG</th>
<th>TN</th>
<th>R1</th>
<th>R2</th>
<th>R3</th>
<th>R4</th>
<th>R5</th>
<th>C1</th>
<th>C2</th>
<th>M1</th>
<th>M2</th>
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<td>Accessory dwelling (incl. &quot;carriage units&quot;) assoc. with a permitted use</td>
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<td>Bed &amp; breakfast establishments</td>
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<td>Boarding and rooming houses</td>
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<td>Child care home</td>
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<td>Child care home, large</td>
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<td>Class A Recreational vehicles</td>
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<td>Family care, elderly day care homes</td>
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<td>Flex buildings (start as residential and shift to commercial over time)</td>
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<td>Group homes</td>
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<td>Long-term care facilities</td>
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<td>Manufactured/mobile home and park</td>
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<td>Multi family dwellings (4 or more units)</td>
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<td>Multi family dwellings (less than 4 units)</td>
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<td>Safe house for adults or children up to 8 persons</td>
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<td>Senior housing</td>
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<td>Single family detached dwellings</td>
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<td>Single room occupancy boarding house</td>
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<td>Two family (duplex) dwellings</td>
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<td>Zero lot line single or 2 family dwellings</td>
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<tr>
<th>Mixed land uses</th>
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<th>TN</th>
<th>R1</th>
<th>R2</th>
<th>R3</th>
<th>R4</th>
<th>R5</th>
<th>C1</th>
<th>C2</th>
<th>M1</th>
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<tr>
<td>Live/work units and buildings</td>
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<td>Mixed use buildings (residential, commercial, office, workshops, etc.)</td>
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<th>Commercial, retail or service land uses</th>
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<th>TN</th>
<th>R1</th>
<th>R2</th>
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<th>R5</th>
<th>C1</th>
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<th>M1</th>
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<td>Administrative, office and research facilities</td>
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<td>Adult entertainment</td>
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<td>Agricultural uses: ranching, farming, grazing, etc.</td>
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<td>Automobile service and repair - minor</td>
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<td>Automobile service and repair - major</td>
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<td>Banks and financial institutions</td>
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<td>Bars/taverns/micro-breweries</td>
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<td>Business offices (contractors, electronic repair, small engine, motorcycle)</td>
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<td>Car/motor vehicle washes</td>
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<td>Child care center</td>
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<td>Cremation facility</td>
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<td>Land Use Description</td>
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<td>Commercial and retail businesses, indoor sales and service</td>
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<td>Distillery including tasting room and retail sales</td>
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<td>Entertainment facilities, comm. theaters, etc.</td>
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<td>Equipment (small) rental establishments without outdoor sales</td>
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<td>Equipment rental (heavy) establishments with outdoor sales</td>
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<td>Fireworks sales - temporary</td>
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<td>Gasoline/fueling station</td>
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<td>Gas, oil and other hydrocarbon well drilling and production</td>
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<td>Greenhouses, whether public or private</td>
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<td>Grocery store of less than 25,000 sq. ft. of floor area</td>
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<td>Grocery store of more than 25,000 sq. ft. of floor area</td>
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<td>Home occupations</td>
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<td>Hotel/motel (no room limit)</td>
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<td>Kennel - small animal</td>
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<td>Laundromat and dry cleaning retail outlets</td>
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<td>Medical and dental offices and clinics</td>
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<td>Medical marijuana optional premises cultivation operation</td>
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<td>Mini-storage facilities - enclosed</td>
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<td>Parking lots and parking garages (as principal use)</td>
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<td>Passenger terminal or park-n-ride</td>
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<td>Push cart (sidewalk vending)</td>
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<td>Recycling facilities (including biofuel) processing and sales</td>
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<td>Vehicle sales including automobiles, motorcycles, RV's boats and trucks</td>
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<td>Veterinary clinic for small animals with no outside kennels</td>
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<td>Veterinary hospitals - large animals</td>
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<td>Public, quasi-public, other land uses</td>
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<td>Parks and playgrounds - neighborhood</td>
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279
A. Setback requirements (all districts).

1. On corner lots, one side of the lot (generally that with the shortest length) with street frontage shall meet the applicable front yard setback.

2. For residential properties with a 7 foot or wider tree lawn, the required front setback to a front porch may be reduced by 7 feet.

3. For purposes of setback calculations, a two-family dwelling shall be construed as one building occupying one lot.

4. On a vacant lot bordered on two sides by previously constructed legal nonconforming buildings which do not meet the required front yard setback for the zoning district, the required front yard setback for the vacant lot shall be calculated as the average front yard setback of the two adjacent buildings. Where a vacant lot is bordered on only one side by such a legal nonconforming building, the required front yard setback shall be calculated as the average of the front yard setback of the adjacent building and the minimum front yard setback for the zoning district.

5. Permanent features allowed within setbacks shall include:

   i. Cornices, canopies, eaves or other similar architectural features if they extend no more than two feet into a required setback and if they do not encroach into or overhang an easement;

   ii. Steps or ramps to the principal entrance and necessary landings, provided they do not extend more than six feet into the required setback;

   iii. Utility service lines to a structure and utility lines, wires and associated structures within a utility easement;
iv. Fire escapes, provided they do not extend more than six feet into the required setback;

v. Uncovered patios, porches and decks not more than thirty inches above grade, provided they do not extend more than thirty percent of the required setback distance into the required setback area; and

vi. Open or covered patios, porches, and decks attached to residential dwellings greater than thirty inches in height may extend no more than five feet into a required front or rear setback or five feet into a required side yard setback adjacent to a street, provided they do not encroach into or overhang an easement or property line and do not obstruct any sight distance triangle.

6. Permanent features allowed within both setbacks and easements include:
   i. Landscaping; and
   ii. Fences and decorative walls, subject to height and other restrictions of this Chapter.

| 30-3-106 | Conditional uses, use by special review |

A. **Purpose.** In order to provide flexibility and to help diversify uses within a zoning district, specified uses are permitted in certain districts subject to the granting of a conditional use or use by special review permit. For purposes of this Section, the term conditional use applies to both conditional uses and uses by special review.

   Because of their unusual or special characteristics, conditional uses require review and evaluation so that they may be located properly with respect to their effects on surrounding properties. The review process prescribed in this Section is intended to assure compatibility and harmonious development between conditional uses, surrounding properties and the Town at large. Conditional uses may be permitted subject to such conditions and limitations as the Town may prescribe to ensure that the location and operation of the conditional uses will be in accordance with the conditional use criteria. The scope and elements of any conditional use may be limited or qualified by the conditions applicable to the specific property. Where conditions cannot be devised to achieve these objectives, applications for conditional use permits shall be denied.

B. **Conditional Use review process.**

1. **Optional pre-application conference.** The applicant may attend a pre-application conference with a representative from the Town. The purpose of the meeting is to discuss the conditional use submittal requirements and review process.

2. **Conditional Use application submittal.** The applicant shall submit the complete conditional use application package to the Town and shall request that the application be reviewed by the Planning Commission and Board. Conditional use requests shall include:
   a. Land use application form.
   b. Title commitment. The title commitment must be current and dated no more than thirty days
from the date of conditional use application submittal.

c. Written statement and any graphics necessary to describe the precise nature of the proposed use and its operating characteristics and to illustrate how all conditional use review criteria have been satisfied.

d. A map showing the proposed development of the site, including topography, building locations, parking, traffic circulation, usable open space, landscaped area and utilities and drainage features.

e. Preliminary building plans and elevations sufficient to indicate the dimensions, general appearance and scale of all buildings.

f. Such additional material as the Town may prescribe or the applicant may submit pertinent to the application.

g. Surrounding and interested property ownership report - Provide the Town with a current set of mailing labels (not more than thirty days old) of the names and addresses of the surrounding property owners (within three hundred feet of the property), mineral interest owners and mineral and oil and gas lessees of record for the property, and appropriate ditch companies. The applicant shall certify that the report is complete and accurate.

3. Conditional Use application certification of completion. Within a reasonable period of time, Staff shall either certify the application is complete and in compliance with all submittal requirements or reject it as incomplete and notify the applicant of any deficiencies. Applicant shall then correct any deficiencies in the application package, if necessary, and submit the required number of copies of the application to the Town. The original application and all documents requiring a signature shall be signed in blue ink.

4. Set Conditional Use public meeting & hearing dates and notify public. The Town shall send notice of the public meeting with the Planning Commission and public hearing with the Town Board to the applicant, all property owners of record within three hundred feet of the property in question, all mineral interest owners of record, oil and gas lessees for the property, and to the appropriate referral agencies per this Code. The referral information shall include the time and place of the public meeting and hearing, the nature of the meeting/hearing, the location of the subject property, appropriate background information and the applicant’s name. The Town shall publish notice for both the meeting and hearing in a newspaper of general circulation. The Town shall also prepare a notification sign to be posted on the property by the applicant. If the conditional use request is accompanying another application which is scheduled for a public meeting or hearing, such public meeting or hearing may be combined on both applications.

5. Planning Commission review of the Conditional Use application. The Planning Commission shall hold a meeting to review the application and determine if the application complies with the conditional use review criteria. The Planning Commission will then recommend to the Board approval, approval with conditions or denial.

6. Board public hearing and action on the Conditional Use. The Board shall hold a public hearing on the conditional use application. Following the public hearing, the Board may approve, conditionally approve or deny the conditional use application based on the conditional use review criteria. A conditional use permit may be revocable, may be granted for a limited time.
period, and may be granted subject to such other conditions as the Board may prescribe. Conditions may include, but shall not be limited to: requiring special setbacks, open spaces, fences or walls, landscaping or screening, street dedication and improvement, regulation of vehicular access and parking, signs, illumination, hours and methods of operation, control of potential nuisances, any standards for maintenance of buildings and grounds, and any development schedules.

C. **Conditional Use review criteria.** The Town may approve a conditional use application if it finds that each of the following criteria are satisfied:

1. The conditional use will satisfy all applicable provisions of the zoning code and subdivision regulations unless a variance is being requested.

2. The conditional use will conform with or further the goals, policies and strategies set forth in the Town of Berthoud Comprehensive Plan.

3. The conditional use will be adequately served with public utilities, services, and facilities (i.e. water, sewer, electric, schools, street system, fire protection, public transit, storm drainage, refuse collection, parks system, etc.) and not impose an undue burden above and beyond those of the permitted uses of the district.

4. The conditional use will not substantially alter the basic character of the district in which it is in or impair the development or redevelopment potential of the district.

5. The conditional use will result in efficient on- and off-site traffic circulation which will not have a significant adverse impact on the adjacent uses or result in hazardous conditions for pedestrians or vehicles in or adjacent to the site.

6. Potential negative impacts of the conditional use on the rest of the neighborhood or of the neighborhood on the conditional use have been mitigated through setbacks, architecture, screen walls, landscaping, site arrangement or other methods. The applicant shall, at a minimum, satisfactorily address impacts including: traffic; activity levels; light; noise; odor; building type, style and scale; hours of operation; dust; and erosion control.

7. The applicant has submitted evidence that all applicable local, state and federal permits have been or will be obtained.

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**30-3-107 Nonconforming uses/buildings**

A. **Nonconforming uses/buildings.** Except as provided in this Section, the lawful use of any building or land existing at the time of enactment of this Chapter, or of any amendments to this Chapter, may be continued even though such use does not conform to the requirements of this Chapter. Nonconforming uses and buildings include: signs, lots, uses, buildings, landscaping or activities that do not comply with the current requirements of this Chapter.
B. General provisions:
   1. Whenever a nonconforming use or building has been discontinued for a period of six months, such use shall not thereafter be reestablished and any future use shall be in conformance with the provisions of this Section.

   2. Any building or structure for which a building permit has been issued prior to the date of enactment of this Section may be completed and used in accordance with the plans, specifications and permits on which said building permit was granted, if construction is commenced within two months after the issuance of said permit and diligently pursued to completion.

   3. No nonconforming use or building shall be altered, extended or restored so as to displace any conforming use.

   4. Ordinary repairs and maintenance of a nonconforming building shall not be deemed an expansion of such nonconforming building and shall be permitted.

   5. A nonconforming building which has been damaged by fire or other causes may be restored to its original condition, provided that such work is commenced within six months of such calamity.

   6. Any nonconforming building or portion thereof declared unsafe by the Building Official which may be replaced, strengthened or restored to a safe condition by order of the Building Official.

30-3-108 Appeals and variances

B. Purpose. Pursuant to §31-23-307(1), C.R.S., the Board of Trustees hereby appoints the Planning Commission of the Town of Berthoud to serve as the Board of Adjustment. The Board of Adjustment shall hear and decide variances and appeals from and review any order, requirement, decision, or determination made by any administrative official charged with the enforcement of any ordinance with respect to the Development Code of the Town of Berthoud with respect to Chapter 30-2, Design Standards, Chapter 30-3, Zoning; or Chapter 30-7, Signs. The Board of Trustees reserves the authority to act as the Board of Adjustment with respect to all other matters which may be brought before the Board of Adjustment. The Board of Adjustment shall have the following powers and duties, all of which shall be subject to and in compliance with the laws of the state, in harmony with the purpose and intent of this code and the most appropriate development of the neighborhood:

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

   2. To authorize variances from the terms of this code where the strict enforcement of this title would create a situation which would result in unreasonable application of these standards, or in circumstances where the property owners affected most directly, eg.
neighbors, concur in writing with the variance, provided that such relief may be granted without substantial detriment to the neighborhood or the public good and without substantially impairing the intent and purposes of this code, and further provided that there are exceptional circumstances applying to the specific piece of property which do not generally apply to the remaining property in the same zoning area or neighborhood; and further provided that no variance shall authorize any use other than the uses permitted in the zoning district. If the hardship on which the request for variance is based, in whole or in part, is self-inflicted, that will be a highly significant fact which is a material element bearing on the issue, and will weigh heavily against the owner or applicant seeking the variance.

3. To authorize, as variances, alterations in nonconforming uses and buildings, provided the board of adjustment determines:
   a. That the total area devoted to the altered nonconforming use will not be greater than the total area devoted to the current nonconforming use, and
   b. The altered nonconforming building or use will not have any greater adverse impact on the neighborhood than the current nonconforming building or use.

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

B. Procedures generally. The zoning board of adjustment shall hold a public hearing on all applications and appeals, subject to the following:

1. Notice shall be given in accordance with the provisions of section 30-1-117 of this code.

2. Unless otherwise stated in the zoning board of adjustment's minutes, all variances granted shall be commenced within six months of the time such variance is granted; otherwise the variance shall be null and void.

3. The concurring vote of four members of the zoning board of adjustment shall be necessary to reverse any order, requirement, decision, or determination of any administrative official, or to decide in favor of the applicant in order to implement a variance.

C. Appeal procedures.

Every appeal to the zoning board of adjustment shall be filed in writing not later than one month from the date of the order, requirement, decision, or determination being appealed. The board shall have no jurisdiction on any appeal not brought within thirty days from the date of the order, requirement, decision, or determination.
30-3-109 Waivers

B. **Purpose.** The Board of Trustees may authorize waivers from the Code in cases where, due to exceptional conditions peculiar to the site, practical difficulties or an unnecessary hardship is placed on the landowner. Such waiver shall not be granted if it would be detrimental to the public good, create a conflict with the Town Comprehensive Plan, or impair the intent and purpose of this Code.

C. **Processes suitable for waiver request.**

Applicants may seek a waiver from all or portions of the following processes identified in this Code:

a. Subdivision procedures including portions of Concept, Preliminary or Final platting requirements, and

b. Zoning regulations limited to setback encroachments or height limitations.

D. **Waiver application.**

1. **Waiver request in conjunction with other applications.** The applicant shall submit the following to the Town in conjunction with another application (i.e. zoning amendment):

   a. Explanation letter – identifying the waiver being requested and explaining what exceptional condition, practical difficulty, or unnecessary hardship exists to require the waiver. The letter shall also address how the waiver, if granted, will not be detrimental to the public good, create a conflict with the Town Comprehensive Plan or impair the intent and purpose of this Code.

E. **Waiver criteria for approval.** The condition of any waiver authorized shall be stated in writing in the minutes of the Board with the justifications set forth. Waivers may be granted only if they meet the following criteria:

   1. The waiver, if granted, will not alter the essential character of the neighborhood or district in which the property is located, nor diminish the value, use or enjoyment of adjacent property.

   2. The waiver, if granted, is the minimum waiver of applicable Code provision that will afford relief and is the least modification possible of the Code provisions which are in question.

   3. That such practical difficulties or unnecessary hardship has not been created by the applicant.

30-3-110 Amendments

A. **Initiation of amendments to text or official zoning map.** The Board may from time to time, amend, supplement, change or repeal the regulations and provisions of this Section. Amendments to the text of this Code may be initiated by the Board, Town Staff or the Planning Commission. Amendments to the zoning district map may be initiated by the
Board, Town Staff, Planning Commission, or by a real property owner in the area to be included within the proposed amendment.

B. **General rezoning of the Town.** Whenever the zoning district map is in any way to be changed or amended incidental to or as part of a general revision of the zoning code, whether such revision be made by repeal of the existing zoning code and enactment of a new zoning code or otherwise, the requirement of a accurate survey map or other sufficient legal description of, and the notice to and listing of names and addresses of owners of real property in the area of the proposed change, shall be waived. However, the proposed zoning map shall be available for public inspection in the Town Hall during regular business hours for a minimum of fifteen days prior to the public hearing on such amendments.

C. **Zoning amendment application process.**

1. **Optional pre-application conference.** The applicant may attend a pre-application conference with a representative from the Town. The purpose of the meeting is to discuss the zoning amendment, submittal requirements and review process.

2. **Zoning amendment application submittal.** The applicant shall submit the complete zoning amendment application package to the Town and shall request that the application be reviewed by the Planning Commission and Board. Note: In the case of text amendments, no zoning amendment map is required.
   a. Completed land use application form, zoning amendment, application fee and fee agreement;
   b. A written description of the proposed change to the text of this Section, including the citation of the portion of the Section to be changed and the wording of the proposed change. The description must provide the rationale for the proposed change, citing specific difficulties with the existing text and similar provisions in zoning codes of other jurisdictions that support the rational of the proposed change.
   c. A legal description for all property to be considered for rezoning;
   d. Current proof of ownership in the form of a title commitment issued within thirty days of submission of the application (for zoning map amendments only).
   e. A zoning amendment map of the area included in the proposed change, 24 inches high by 36 inches wide, with the following information:
      i. North arrow, scale (1" = 100' or 1" = 200'), and date of preparation.
      ii. The subdivision or block and lot name of the area to be zoned (if applicable) at the top of each sheet.
      iii. Legal description of area to be zoned (entire area and individual zoning districts). In unsubdivided property, zone boundaries shall be determined by a metes and bounds description or by lot and blocks if applicable.
      iv. Location and boundaries, including dimensions, of the property(s) proposed for rezoning. Note: zone boundaries are to be the center
lines of physical streets, roads, highways, alleys, railroad rights-of-way, and channelized waterways, or such lines extended.

v. The acreage or square footage contained within the property proposed for rezoning.

vi. All existing land uses in the proposed rezoning area.

vii. Zoning and existing land uses on all lands adjacent to the proposed rezoning.

viii. The location and dimensions for all existing easements and public rights-of-way including streets, fee properties, and centerlines of water-courses within and adjacent to the rezoning.

ix. The names of all adjoining subdivisions with lines of abutting lots, and departing property lines of adjoining properties not subdivided.

x. Certificate blocks for Surveyor, Planning Commission, Board, and Larimer or Weld County Clerk and Recorder.

xi. An AutoCAD™ drawing file (release 12 or higher) of the zoning amendment map on acceptable electronic transfer.

f. A written statement describing the proposal and addressing the following points:

i. Rationale for the proposed rezoning;

ii. Present and future impacts on the existing adjacent zone districts, uses, and physical character of the surrounding area;

iii. Impact of the proposed zone on area accesses and traffic patterns;

iv. Availability of utilities for any potential development;

v. Present and future impacts on public facilities and services, including, but not limited to, fire, police, water, sanitation, roadways, parks, schools, and transit;

vi. The relationship between the proposal and the Town Comprehensive Plan; and

vii. Public benefits arising from the proposal.

g. Surrounding property ownership mailing labels - Provide the Town with a two current sets of mailing labels not more than thirty days old of the names and addresses of the surrounding property owners (within three hundred feet of the property), mineral interest owners of record, mineral and oil and gas lessees for the property and appropriate ditch companies. The applicant shall certify that the report is complete and accurate.

3. Zoning amendment application certification of completion. Within a reasonable period of time after the filing of the application, Staff shall either certify the application is complete and in compliance with all submittal requirements or reject it as incomplete and notify the applicant of any deficiencies. Applicant shall then correct any deficiencies in the application package, if necessary, and
submit the required number of copies of the application to the Town. The original application and all documents requiring a signature shall be signed in blue ink.

4. **Set zoning amendment public meeting & hearing and complete public notification process.** The Town shall send notice of public meetings and hearings to the applicant, all property owners of record within three hundred feet of the property in question, all mineral interest owners and oil and gas lessees of record and to referral agencies. The Town shall also publish notice in a newspaper of general circulation. For zoning map amendments, the Town shall prepare a public hearing notification sign to be posted on the property by the applicant.

If the zoning amendment request is accompanying another application which is scheduled for public hearings before the Planning Commission and Board, one public hearing may be held on both applications.

5. **Planning Commission public meeting and recommendation on the zoning amendment.** The Planning Commission shall hold a public meeting to review the zoning amendment. The Commission shall then make a recommendation to the Board to approve, conditionally approve, or deny the application.

6. **Board public hearing and action on the zoning amendment.** The Board shall, after receiving the report and recommendations from the Planning Commission, hold a public hearing and act upon the proposed amendment. Following the required hearing, the Board shall consider the comments and evidence presented at the hearing and evaluate the application in accordance with the criteria listed below and approve, approve with conditions, or deny the application, in whole or in part.

7. **Post approval actions.**
   a. Upon approval of an amendment to the official zoning map by the Board, the Town shall cause an appropriate revision of the official zoning map to be prepared. In the event the zoning amendment was initiated by an interested party, the petitioner shall pay the Town’s cost for the preparation of the revision to the official zoning map.
   b. Upon approval of an ordinance amending, changing or repealing part of the text of this Section, the Town shall certify a copy of the ordinance and place it in the official records of the Town and make appropriate supplements to this Section.
   c. The applicant initiating the official zoning map amendment shall have one month after approval of the amendment by the Board to submit to the Town two original mylar plats of the approved zoning amendment map for recording, along with the recording fees and all other costs billed by the Town relative to the zoning amendment.

The zoning amendment map shall be prepared by a licensed surveyor or engineer. Inaccurate, incomplete or poorly drawn plans shall be rejected. In addition, the petitioner shall submit one 11” x 17” reduction of the
zoning amendment map and an AutoCAD™ drawing file (release 12 or higher).

d. Within thirty days of receipt of an applicant-initiated zoning amendment map, the Town shall review the document(s) for compliance with the Board approval, obtain the Town Officials’ signatures and submit the approved zoning amendment map and the ordinance amending the official zoning map to the Larimer or Weld County Clerk and Recorder’s Office for recordation.

D. **Criteria for amendments to the official zoning map.** For the purpose of establishing and maintaining sound, stable and desirable development within the Town, the Zoning Map shall not be amended except:

3. To correct a manifest error in an ordinance establishing the zoning for a specific property;

4. To rezone an area or extend the boundary of an existing district because of changed or changing conditions in a particular area or in the Town generally; or

5. The land to be rezoned was zoned in error and as presently zoned is inconsistent with the policies and goals of the Town Comprehensive Plan; or

6. The proposed rezoning is necessary to provide land for a community-related use that was not anticipated at the time of the adoption of the Town Comprehensive Plan, and the rezoning will be consistent with the policies and goals of the Comprehensive Plan; or

7. The area requested for rezoning has changed or is changing to such a degree that it is in the public interest to encourage development or redevelopment of the area; or

8. A rezoning to Planned Unit Development overlay district is requested and approved per provisions of this Code.

This declaration of criteria for zoning map amendments shall not control an amendment that occurs incidentally to a general revision of the zoning map.

E. **Criteria for text amendments to the zoning code.** For the purpose of establishing and maintaining sound, stable and desirable development within the Town, the text of this Section shall not be amended except:

1. To correct a manifest error in the text of this Section; or

2. To provide for changes in administrative practices as may be necessary to accommodate changing needs of the community and the Town Staff; or

3. To accommodate innovations in land use and development practices that were not anticipated at the adoption of this Section; or
To further the implementation of the goals and objectives of the Town Comprehensive Plan.

F. **Map – Amendment upon zoning establishment or modification.** Upon enactment of any ordinance annexing and establishing zoning or modifying existing zoning for any property, and after the effective date thereof, the Town shall amend the prior existing official maps to include the annexed area with the proper zoning classification or show the amended classification, as the case may be. Such updated Zoning Map shall contain, in table form, the date and number of the ordinance amending it, the date the Map was amended to reflect each amendment and the initials of the person who checked and approved the change to the map.

G. **PUD Text Amendment to use current Design Standards.** It is anticipated that subdivisions previously approved with PUD zoning will seek amendments to those approved PUD documents in order to allow the subdivision to follow Design Standards as identified in Chapter 30, Section 2 of this Code. Text amendments to previously approved Final Development Plans that seek to modify Design Standards in order to conform to Chapter 30, Section 2 of this Code will be processed as an Administrative act of the Town. Any such PUD amendments will be recorded at the respective County Clerk and Recorder.

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**30-3-111 Wireless telecommunication services, facilities and equipment**

**D. Permitted zoning district.** Wireless telecommunication services facilities shall be permitted in the AG, T, R4, C1, C2, M1, M2 Districts with or without a PUD overlay.

**E. Use permitted by conditional review.** Unless co-located on an existing permitted facility, it is unlawful for any person to install or operate such a wireless telecommunication services facility unless a use by conditional review has first been approved by the Board as provided in this Section. The approval of such use by conditional review does not relieve the operator from otherwise complying with all applicable regulatory requirements of the Town, state and federal government.

**F. Application requirements.**

1. **Site plans.** The site plans for a wireless telecommunication service facility shall be submitted on one or more plats or maps, at an appropriate scale, showing the following information:
   
a. The proposed size, location and boundaries of the commercial mobile radio service facility site, including existing and proposed topography at two foot intervals, referenced to USGS data, state plane coordinates and a legal description of the proposed site;

b. Elevations of all towers and equipment, indicating materials, overall exterior dimensions and colors;

c. True north arrow;
d. Locations and size of existing improvements, existing vegetation, if any; location and size of proposed improvements, including any landscaping;

e. Existing utility easements and other rights-of-way of record, if any;

f. Location of access roads;

g. The names of abutting subdivisions or the names of owners of abutting, unplatted property within three hundred feet of the site; zoning and uses of adjacent parcels; and

h. Proof of ownership in a form acceptable to the Town.

i. The location in both latitude/longitude and UTM meters.

2. Vicinity maps. The vicinity maps submitted with an application under this Section shall include one or more maps showing the location of existing and planned commercial mobile radio service facilities belonging to the applicant, within five miles of the proposed facility. Planned facilities may be identified in general terms and need not be address specific.

3. Written narrative. The application shall include the following in narrative form:

a. The applicant’s and surface owner’s names, addresses, signatures and designation of agent, if applicable;

b. An explanation of the need for such a facility, operating plan and proposed coverage area;

c. Camouflage provisions (if applicable);

d. If a freestanding facility is proposed, an analysis of alternatives to a freestanding facility within a one-mile radius of the facility;

e. A list of all permits or approvals obtained or anticipated to be obtained from local, state or federal agencies other than the Federal Communications Commission (FCC);

f. Affirmation that the proposed facility, alone or in combination with other like facilities, will comply with current FCC standards for cumulative field measurements of radio frequency power densities and electromagnetic fields;

g. Affirmation that the facility will comply at all times with current FCC regulations prohibiting localized interference with reception of television and radio broadcasts;

h. Affirmation that the facility will not interfere with any public safety frequencies servicing the Town and its residents;

i. Affirmation that, if approved, the applicant and surface owner will make the facility available, on a reasonable basis, to other service providers; and

j. An explanation of compatibility with the Town Comprehensive Plan.

G. Review criteria. The recommendation of the Planning Commission and the decision of the Board shall be based on whether the applicant has demonstrated that the proposed wireless telecommunications services facility meets the following standards:
1. The site plan complies with the foregoing requirements;
2. The vicinity map complies with the foregoing requirements;
3. The application addresses camouflage of the facilities from public view as appropriate;
4. The narrative for the application complies with the foregoing requirements;
5. When applicable, compliance with the setback and height requirements;
6. When applicable, compliance with the accessory building requirements; and
7. When applicable, compliance with conditional mitigation co-location requirements as set forth.

The review criteria shall be included in the ordinance granting approval of the conditional use.

H. **Height and setback requirements.** In all performance districts where wireless telecommunications service facilities are allowed as uses by conditional review, the following apply:

1. Roof- or building-mounted commercial mobile radio service facilities may protrude no more than five feet above the parapet line of the building or structure, nor more than two and one-half feet outside of the building wall unless sufficient screening methods are demonstrated and accepted as part of the approval;

2. Roof- or building-mounted whip antenna(s) of no more than three inches in diameter, in groupings of five or less, may extend up to twelve feet above the parapet wall; and

3. Applicable zoning setback requirements of this Section must be met. At a minimum, all freestanding facilities shall be set back at least 300 feet from all residentially zoned properties or residential structures on properties otherwise zoned.

I. **Accessory buildings requirements**

1. Accessory buildings located on the ground shall be no larger than four hundred square feet and must be constructed of durable, low maintenance materials, architecturally compatible and integrated with existing buildings and structures. Sites with greater than 100 cubic feet of cabinet area, visible from a public right-of-way or residentially zoned or used area, must enclose the equipment in accessory buildings.

2. Accessory buildings and facilities are to be screened, to the extent possible, from public streets and sidewalks, either by screening, landscaping, location or other techniques deemed sufficient by the Town.

J. **Building or roof-mounted facilities requirements.** Building- or roof-mounted facilities are to be concealed from public view, either by screening, location or other techniques deemed sufficient.
K. Freestanding wireless telecommunications facilities requirements. All freestanding wireless telecommunications facilities shall be designed and constructed in such a manner that they are:

1. Capable of serving, through original construction, expansion or replacement, a minimum of two users;
2. Constructed as a monopole, which tapers toward the top of the pole to the degree allowed by structural requirements, unless some other decorative type of structure is proposed and approved;
3. Of a neutral color, including fencing, buildings and cabinets, or to match existing buildings;
4. Hold only lighting required by the Federal Aviation Administration; and no signage;
5. No higher than fifty feet from the ground, with an additional twenty feet per co-locating user permitted, up to seventy feet. Exceptions may be granted upon request by the applicant; and
6. Constructed in accordance with a certified engineer’s specifications and in compliance with all applicable provisions of the adopted Building and Electrical Codes.

L. Conditional mitigation measures co-location

1. The Town encourages co-location of wireless telecommunications facilities to minimize the number of sites in the community.
2. No wireless telecommunications facility owner or operator shall unfairly exclude a competitor from using the same facility or location. Unfair exclusion of use by a competitor may result in the revocation of the use by conditional review or site development plan. Unfair exclusion is shown, in part, when the owner/operator charges more than the proportional costs to a co-locator.

M. Application fees. Each applicant shall pay a non-refundable processing fee to reimburse the Town for the legal, engineering and land planning costs of reviewing the application. Legal publication costs are in addition to the fee and will be billed separately by the Town. No permit will be issued until all fees are paid.

N. Abandonment. At the request of the Town, the operator must furnish a statement to the Town indicating the operational status of the facility. If the use has been discontinued, the date on which the facility was last used shall also be provided. Commercial mobile radio service facilities not used for a continuous period of six months shall be disassembled within twelve months of the last use.

O. Penalty. Any person who constructs, installs or uses, or who causes to be constructed, installed, or used any wireless telecommunications facility in violation of any provision of this Section or of the conditions and requirement of the conditional use permit, may be punished as provided in Section 6 of this Code. Each day of unlawful operation constitutes a separate violation.

M. Civil action. In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered or used or any land is or is proposed to be used in violation of any provision of this Section or the conditions and requirements of the
commercial mobile radio service facility special use permit, the Town Attorney, in addition to the other remedies provided by law, ordinance or resolution, may institute an injunctive, mandamus, abatement or other appropriate action or proceeding to the prevent, enjoin, abate or remove such unlawful construction, reconstruction, alteration, or use.

**30-3-112 Home occupations**

Home occupations must meet the following standards:

1. In addition to the family occupying the dwelling containing the home occupation, there shall not be more than one outside employee working at the site of the home occupation.

2. The home occupation shall not exceed one thousand square feet or thirty percent of the total floor area of the dwelling, whichever is less, or can be located in an accessory building not to exceed five hundred square feet. The home occupation shall be conducted entirely within the dwelling or designated accessory building.

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

4. There shall be no change in the outside appearance of the building or premises or other visible evidence of the conduct of such home occupation, including advertising signs larger than two square feet in total size. No other displays or advertising that solicit or direct persons to the address other than the single sign limited to two square feet in total area is permitted.

5. There must be no exterior storage on the premises of material or equipment used as a part of the home occupation, unless it is enclosed and lot coverage requirements for accessory uses are met.

6. No equipment or process shall be used in such home occupation which creates any glare, fumes, odors, smoke, noise or other conditions detectable to the normal senses off the lot, if the occupation is conducted in a single-family dwelling, or outside the dwelling unit if conducted in other than a single-family dwelling.

7. The following uses because of their tendency to go beyond the limits permitted for home occupations and thereby impair the use and value of the residential area shall not be permitted as home occupations: medical marijuana center, medical marijuana optional premises cultivation operation, medical marijuana infused products manufacturing, auto repair or motorized implement repair; dance, music or other types of instruction (if more than four students being instructed at one time); the painting of vehicles, trailers or boats; private schools with organized classes; welding shops; nursing homes; and, any retail or wholesale sales to consumers upon the premises not incidental to the home occupation (e.g. hair care products at a hair stylist are incidental sales).
8. All exterior aspects of the home occupation operation shall not disrupt the residential character of the area.

9. The maximum number of vehicle trips per day for clients which may visit the home occupation per day is fifteen.

### 30-3-113 Medical Marijuana

**A. Defined.** This section applies to medical marijuana related operations within the Town of Berthoud and incorporates the definitions set forth in Section 12-43.3-104 C.R.S. as amended. Those regulations which are and will be adopted by the Colorado Department of Health and Environment and Colorado Department of Revenue are incorporated herein by this reference.

**B. Review process.** Applications for a Conditional Use - Use by Special Review for any facility, operation or premises for the cultivation, manufacture, processing, distribution and/or sale of Medical Marijuana, Medical Marijuana-Infused products or related activities must be submitted in conformance with the provisions of this Code and Section 30-5-106 as amended. This includes applications for Medical Marijuana Centers, Optional Premises Cultivation Centers, and Medical Marijuana-Infused Products Manufacturer Premises whether co-located or not.

**C. Permitted zoning districts.** Applications for all uses identified above shall only be accepted for properties located in the M1: Limited Industrial and M2: Industrial zone districts as designated north of Mountain Avenue, south of Bunyan Avenue, east of the rail line, and west of 1st Street.

**D. Conditional use – use by special review criteria.**

In their review of applications for a Conditional Use - Use by Special Review of any medical marijuana premises or facilities, the Planning Commission and the Board of Trustees shall consider, at a minimum, the following factors:

a. The number, type, and availability of medical marijuana premises or facilities located in or near the location under consideration;

b. That the location must be over 1,000 feet away from established schools, rehabilitation facilities, licensed daycare centers and non-profit centers for the care of minors with such distance measured in a linear (straight line) manner from edge of property to edge of property;

c. That any medical marijuana premise or facility may be no closer than 1,000 feet from any other medical marijuana premise or facility with such distance to be measured in a linear (straight line) manner from edge of property to edge of property;

d. The size of the premises or facility;

e. The proposed security plans;

f. The character, experience and criminal history of all persons involved as management, employees and owners;

g. Sanitary issues, health safety issues, fire safety issues, building code issues and waste water effluent issues;

h. The needs and desires of the community with respect to the requested special use and specifically, why those needs are not and cannot be met by the existing facility(ies) in the Town of Berthoud at that time. It shall be incumbent upon all applicants to document how the needs of the Berthoud
community are not being met by existing premises and/or facilities and to provide data to adequately address this issue.

30-3-114 to 30-3-xxx Reserved.
CHAPTER 30 – BERTHOUD DEVELOPMENT CODE

SECTION 4 – VESTING OF PROPERTY RIGHTS

30-4-101 Purpose 299
30-4-102 General provisions 299

Adopted March 27, 2012
This Section specifies procedures necessary to implement Article 68 of Title 24, C.R.S., as amended, which establishes a vested property right to undertake and complete development of real property under the terms and conditions of an approved site specific development plan. No vested rights shall be created within the Town except through a site specific development plan.

### General provisions

**G. Request for site specific development plan approval.** Landowners wishing the creation of vested property rights pursuant to Article 68 of Title 24, C.R.S., as amended, shall request that approval in writing at least thirty days prior to the date that the approval is to be considered. Failure of the landowner to request such an approval renders the plan not a “site specific development plan,” and no vested property rights shall be deemed to have been created.

**H. Notice and hearing.** No site specific development plan shall be approved until notice of such hearing has been published by the Town at least five days before the hearing, and after a public hearing called for that purpose. Such notice may, at the Town’s option, be combined with any other required notice. At such hearing, interested persons shall have an opportunity to be heard.

**I. Approval, conditional approval, effective date, amendments, referendum and review.**

1. A site specific development plan shall be deemed approved upon the effective date of the Town action granting final approval of the plan. For purposes of this code, a site specific development plan shall be limited to the following: Final Subdivision Plat, Minor Subdivision Plat, Conveyance Plat, Site Plan, Final Development Plan for a Planned Unit Development and/or a Development Agreement that creates a vested property right and is adopted as a legislative act of the Town. Zoning and annexation shall not result in the creation of vested property rights, other than as accompanied by the approval of a site specific development plan. The vested property right shall attach to and run with the applicable property and shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the site specific development plan including any amendments thereto.

2. The Town Board may approve a site specific development plan with terms and conditions as may reasonably be necessary to protect the public health, safety and welfare. Such conditional approval will result in a vested property right, although failure to abide by all of such terms and conditions shall result in a forfeiture of the vested property rights.

3. In the event amendments to a site specific development plan are 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.
plan, unless the Town Board specifically finds to the contrary and incorporates such findings in its approval of the amendment.

4. The approval of vested property rights shall be subject to all rights of referendum and judicial review.

5. The approval of a vested property right by the Town voids any and all pre-existing vested property rights on the same real property.

D. Notice of approval.

1. Each plat or site plan constituting a site specific development plan by this Article shall contain the following notice: “This plan constitutes a site specific development plan as defined in Article 68 of Title 24, C.R.S., as amended, and Chapter 30 of the Berthoud Development Code available at the Berthoud Town Hall, 328 Massachusetts Avenue, Berthoud, Colorado 80513.” Failure to contain this statement shall invalidate the creation of the vested property right.

2. The developer shall publish a notice describing generally the type and intensity of the approved use, the specific parcel or parcels of property affected, the terms and conditions of any approval, and a statement that a vested property right has been created. The notice shall be published once, not more than fourteen days after approval of the site specific development plan in the newspaper of general circulation in Berthoud chosen by the Town for publishing public notices. Failure of the developer to publish the notice constitutes a waiver of the vested right by the developer.

E. Duration of vested property right. A property right which has been vested as provided herein shall, upon compliance with the terms and conditions of the approval thereof, remain vested for a period of three years; except that the Town Board may, in its sole discretion, grant vested property rights for a longer period within a Development Agreement when warranted in light of all relevant circumstances, including but not limited to, the size and phasing of the development, economic cycles and market conditions. The vesting period shall not be extended by any amendments to a site specific development plan unless expressly authorized by the Town Board in an ordinance approving such amendments. For purposes of this code, completion of a development phase shall include installation of all engineered improvements (water, wastewater, streets, curb, gutter, sidewalks, fire hydrants, and storm drainage improvements) in accordance with the Town rules and regulations.

F. Extensions. A vested property right may be extended for one year by the Town Board. The property owner must request an extension in writing not later than thirty days prior to the date of expiration of the vested right. Prior to the expiration of the original three year timeframe or the one year extension identified above (four years total), an applicant may formally request an additional extension if substantial progress has been made on installation of public improvements. In considering whether or not to grant an extension, the Town Board shall apply the following criteria:
1. That there is no conflict with the Town Code, or that any conflict with the code can be corrected by an amendment to the plan, which shall be presented with the request for extension;

2. That the applicant has demonstrated that the plan continues to be compatible with adjacent properties and the surrounding areas, or that compatibility may be established by an amendment to the plan, which shall be presented with the request for extension; and

3. That the applicant has demonstrated that the plan is consistent with the Town’s Comprehensive Plan.

G. **Other provisions unaffected.** Approval of a site specific development plan shall not constitute an exemption or waiver of any other provisions or requirements of this Code or the Town pertaining to the development or use of property, adopted or applicable before or after the approval of the site specific development plan.

H. **Payment of costs.** In addition to any and all other fees and charges imposed by this Code, the applicant for approval of a site specific development plan shall pay all costs incurred by the Town related to such application including, but not limited to, publication of notices, public hearing costs, county recording fees and third-party review costs.

I. **Limitations.** This Section is enacted pursuant to the provisions of Article 68 of Title 24, C.R.S., as amended. In the event of the repeal of said Article or a judicial determination that said Article is invalid or unconstitutional, this Section shall be deemed to be repealed, and the provisions hereof no longer effective.

J. **Disclosure of previously granted vested property rights and hazards.**

   1. Any petition for annexation to the Town shall describe all vested property rights approved by any county or municipal government in effect at the time of the petition, if any, and be accompanied by all site specific development plans approved by any local government. Failure to so identify any previously approved vested property right and provide all approved site specific development plans shall constitute a waiver of the vested rights created by any other local government upon annexation to the Town unless specifically provided otherwise in the ordinance of annexation adopted by the Town.

   2. The applicant shall be required to include with any plan submitted for approval as a site specific development plan notice of any natural or manmade hazards on or in the immediate vicinity of the subject property which are known to the applicant or could reasonably be discovered at the time of submission of the plan. Should a hazard on, or in the immediate vicinity of, the property be discovered subsequent to the approval of a site specific development plan which would impose a serious threat to the public health, safety and welfare and is not corrected by the applicant, the vested property right created by such site specific development plan shall be forfeited by the applicant.

K. **Development agreement.** Nothing herein shall be construed to limit the authority of the Town and a landowner to enter into a Development Agreement vesting property rights in the landowner. Such agreement shall be construed in accordance with the terms and
conditions of said agreement and not be limited or expanded by the provisions of this Code.

30-4-103 to 30-4-xxx Reserved.
CHAPTER 30 – BERTHOUD DEVELOPMENT CODE

SECTION 5 – ENFORCEMENT

30-5-101 Enforcement 304

Adopted March 27, 2012
Amended on June 23, 2015
H. **Responsible enforcement entity.** The Town Board, or its designee, shall be responsible for enforcing the provisions of this Chapter. Any criminal enforcement shall be by the issuance of a complaint and summons to Municipal Court by a peace officer.

I. **Authorization for inspections.** By annexing into Berthoud, the property owner, successors and assigns give their consent that the Town may enter any building, structure, real property, or premises during ordinary business hours and upon twelve hours verbal or written notice, to ensure compliance with the provisions of this Code as provided in the Berthoud Municipal Code.

J. **Violations and enforcement procedures.**

K. 1. **Violations.** As set further below, it shall be unlawful to violate any provision of this Chapter.

2. **Specific activities violating this Chapter.** It shall be unlawful to undertake any of the following activities:
   a. *Activities inconsistent with Code.* Erecting, constructing, reconstructing, remodeling, altering, maintaining, expanding, demolishing, moving, or using any building, structure, or sign, or to engage in development or subdivision of any land in contravention of any zoning, subdivision, sign, or other regulation of this Code, including terms and conditions of all required approvals.
   b. *Land disturbing activities inconsistent with Code.* Excavating, grading, cutting, clearing, or undertaking any other land disturbance activity contrary to the provisions of this Code or without first obtaining all requisite land use approvals required by this Code or other applicable regulations.
   c. *Nonconforming uses or structures inconsistent with Code.* Creating, expanding, replacing, or changing a nonconforming use, structure, lot, or sign except in compliance with this Code.
   d. *Making lots or setbacks nonconforming.* Reducing or diminishing the lot area, setbacks, or open space below the minimum required by this Code, except as may otherwise be permitted under the provisions of this Chapter.
   e. *Increasing intensity of use.* Increasing the intensity of use of any land or structure, except in accordance with the procedural and substantive standards of this Code.
   f. *Activities inconsistent with permit.* Engaging in any development, use, construction, remodeling, or other activity of any nature in any way inconsistent with the terms and conditions of any permit, approval, or other form of authorization required to engage in such activity.
g. **Activities inconsistent with conditions of approval.** Failure to comply with any terms, conditions, or limitations placed by the Town upon any final development plan, subdivision plat, permit, or other form of approval by the Town.

h. **Agreements to convey.** Making any agreement to convey or the conveyance of any lot or undivided parcel of land contrary to the provisions of this Chapter or prior to approval of a final plat by the Town. It shall be a separate violation for each lot or parcel of land sold or agreed to be sold.

i. **Activities inconsistent with an order of the Town.** Failure to comply with any stop work order, abatement order, or any other order issued by the Town pursuant to this Code.

3. **Separate violations.** Any person who violates or causes the violation of any of the provisions of this Chapter, shall be guilty of a separate offense for each and every day, or portion thereof, during which a violation is committed, permitted, or continues.

4. **Remedies and enforcement powers.** Violations of this Chapter may be enforced in the Berthoud Municipal Court or any other court with jurisdiction, by any appropriate equitable action, by abatement, by issuance of stop work orders, by injunction and/or restraining order, by revoking any permits or approvals issued, and by assessing any amounts due or to cover delinquent costs, fees, penalties and/or taxes. Any one, all or any combination of the foregoing penalties and remedies may be used to enforce this Chapter. In addition, the Town shall have the following civil remedies and powers to enforce this Code:

a. **Notice of violation and corrective action order.**

   i. **Non-emergency violations.** In the case of violations of this Code that do not constitute an emergency or require immediate attention, written notice of the nature of the violation and required corrective action to be taken may be given by the Town to the owner, occupant, applicant for any relevant permit, person in charge of construction or other work on the property, or any other person in possession of or involved in the illegal activity on the property. Notice shall be given in person, by certified U.S. Mail (return receipt requested) or by posting notice on the premises. The notice shall specify the Code provisions allegedly in violation, and shall state that the individual has a period of thirty days from the date of the receipt of the notice in which to correct the alleged violations before further enforcement action shall be taken. Failure to provide notice shall not constitute waiver of the violation by the Town.

   ii. **Emergency violations.** In the case of violations of this Code that lead to safety or public concerns, or violations that will create
increased problems or costs if not remedied immediately, the Town may use the enforcement powers available under this Code without prior notice, but shall attempt to give notice simultaneous with commencement of enforcement action or as soon thereafter as practicable. Notice may be provided to the property owner, agent, occupant, or to the applicant for any relevant permit. Furthermore, at the Town’s discretion, the Town may proceed to abate the danger and assess the costs as a lien on the property and/or certify those sums to the Larimer or Weld County Treasurer to be collected from the violator with respect to the taxes on the subject property.

iii. Extension of time for correction. The Town Board may grant an extension of the time to cure an alleged violation, up to a total of ninety days as it deems appropriate.

b. Deny/withhold approvals or permits. The Town may deny and withhold all approvals, permits, certificates, or other authorization to use or develop any land, structure, or improvements thereon including the vacation of plats in whole or in part until the alleged violation related to such property, use, or development is corrected. This provision shall apply whether or not the current owner or applicant for the permit is responsible for the violation.

Where a property owner, agent, or other person has a record of an outstanding violation of this Code, the Town shall be authorized to deny or withhold all permits, certificates of occupancy, or other forms of authorization for any use or development activity undertaken by such person until all outstanding violations are corrected. This provision shall apply whether or not the property for which the permit or other approval is sought is the property in violation.

The denial or withholding of a permit by the Town may be appealed to the Board of Adjustment as provided in 30-3-108 of this Code.

c. Revocation of permits.

i. Revocation by Town Board. The Town may revoke any development permit, certificate or other authorization, for violation of this Code.

ii. Reconsideration of revocation. The applicant may request a public hearing for reconsideration of the Town's revocation.

iii. Notice of public hearing. The public hearing on the reconsideration of revocation shall be conducted during a regular or special meeting of the Town Board not less than seven days, nor more than twenty-one days from the date the notice of the hearing is given. Notice of hearing shall be deemed given to the owner, the owner’s agent or other person to whom the development permit
was issued, upon deposit of said notice in the U.S. Mail, by certified mail, return receipt requested, addressed to the last known address of said person. Additional methods of service may also be utilized to give notice of the public hearing.

iv. Findings. Following the public hearing, the Board shall reinstate the permit revoked unless it finds any of the following:

- There is a departure from the approved plans, specifications, or conditions of approval; or
- There is a violation of any provision of this Code; or
- The development permit was obtained by false representation; or
- The development permit was issued in error.

v. Notice of revocation. Written notice of the findings shall be served upon the owner, the owner's agent, applicant, or other person to whom the permit was issued by certified mail, return receipt requested, or such notice may be posted in a prominent location at the place of the violation. No work or construction or use of the property shall proceed after service of the revocation notice.

d. Stop work order.

i. Issuance of stop work order. The Town may issue a written order to stop work on any property on which there is an uncorrected violation of either a provision of this Code or a provision of a land use approval or development permit, building permit or other form of authorization. The stop work order shall specify the violation(s). Service of the order shall be given in person, by certified U.S. Mail (return receipt requested) or by posting notice on the premises. After any such order has been served, no work shall proceed on any building, other structure, or tract of land covered by such order, except to correct such violation or comply with the order. The notice shall also state any appeal and/or variance procedures available pursuant to this Code.

ii. Timing/notice. The stop work order may be issued in conjunction with a notice of violation or subsequent to such notice. The stop work order may also specify a shorter time for correction of the violation if the Town determines a shorter time is necessary to protect the health, safety, or welfare of people or property in Berthoud. It shall be unlawful to violate the terms of a stop work order.

e. Abatement or injunctive relief. In addition to any other remedy, the Board may initiate injunctive or abatement proceedings or other appropriate legal action in the Berthoud Municipal Court or other court of competent jurisdiction to abate, remove, or enjoin such violation and to recover
damages, costs, and reasonable attorney’s fees incurred in the abatement and removal of such violation.

5. **Persons responsible.** The owner, tenant or occupant of any building or land or part thereof, may be held responsible for the violation and suffer the penalties and be subject to the remedies provided herein.

6. **Remedies cumulative.** The remedies provided for violations of this Code, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law or equity, and may be exercised in any order. Each day or portion thereof is considered a separate violation under this Chapter.

7. **Continuation of prior enforcement actions.** Nothing in this Code shall prohibit the continuation of previous enforcement actions undertaken by the Town pursuant to previous regulations.

8. **Appeals of enforcement actions.** Appeals of any order, requirement, decision, or determination made by an administrative official in the enforcement of this Chapter shall be made to the Board of Adjustment in accordance with this Code.

9. **Liability of Town of Berthoud.** This Code shall not be interpreted as establishing standards nor may it be construed to establish a basis to hold the Town responsible for any damages to persons or property by reason of the inspection or reinspection, or failure to inspect or reinspect, or by reason of issuing a building permit, or by reason of pursuing or failing to pursue an action for injunctive relief.

10. **Violations.** Violations of this Chapter may be enforced in the Berthoud Municipal Court or another court of competent jurisdiction, by any appropriate legal or equitable action, by abatement, by issuance of stop work orders, by injunction or restraining order, by revoking any permits or approvals issued, and by assessing any amounts due or delinquent fines. Any one or any combination of the foregoing penalties and remedies may be used to enforce this Chapter.

11. **Penalty.** Failure to comply with all of the provisions of this Chapter shall be unlawful and upon conviction is punishable by a fine of three hundred dollars or imprisonment for a period of not more than ninety days or both. Each day that such violation continues to exist shall be considered a separate offense.

12. **Costs and attorneys fees for enforcement for abatement incurred by the Town.** Costs and attorneys fees associated with said abatement shall be charged to the owner of the property where the violation occurred and any other person responsible for the violation as defined in this Chapter. The cost of abating a violation of this Chapter shall include all direct and indirect costs of such abatement, plus costs and compound interest at the rate of one percent (1%) per month. Notice of the bill for abatement of the violation shall be mailed to the last known address of said property owner by certified mail, and is payable within
thirty calendar days from the receipt thereof. If all costs are not paid within thirty days of the notice, such costs may be liened against the property and/or certified to the Larimer or Weld County Treasurer and collected along with the taxes on the property.

30-5-102 to 30-5-xxx Reserved.
<table>
<thead>
<tr>
<th>Section 30-6-101</th>
<th>General provisions</th>
<th>311</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 30-6-102</td>
<td>Intent</td>
<td>312</td>
</tr>
<tr>
<td>Section 30-6-103</td>
<td>Subdivision types &amp; process outlines</td>
<td>313</td>
</tr>
<tr>
<td>Section 30-6-104</td>
<td>Concept plan</td>
<td>316</td>
</tr>
<tr>
<td>Section 30-6-105</td>
<td>Preliminary plat</td>
<td>321</td>
</tr>
<tr>
<td>Section 30-6-106</td>
<td>Final plat</td>
<td>327</td>
</tr>
<tr>
<td>Section 30-6-107</td>
<td>Minor subdivision plat</td>
<td>338</td>
</tr>
<tr>
<td>Section 30-6-108</td>
<td>Conveyance plat</td>
<td>344</td>
</tr>
<tr>
<td>Section 30-6-109</td>
<td>Administrative adjustment to recorded plats</td>
<td>347</td>
</tr>
<tr>
<td>Section 30-6-110</td>
<td>Site plan</td>
<td>348</td>
</tr>
<tr>
<td>Section 30-6-111</td>
<td>Amendments and exceptions</td>
<td>354</td>
</tr>
<tr>
<td>Section 30-6-112</td>
<td>Development agreements</td>
<td>355</td>
</tr>
<tr>
<td>Section 30-6-113</td>
<td>Sales prior to recording of final plat</td>
<td>357</td>
</tr>
</tbody>
</table>

Originally adopted March 27, 2012

Section 30-6-109 Amended in whole by Ord. #1146, Sept. 25, 2012

Section 30-6-110.B.7 Amended in whole by Ord. #1148, Nov. 27, 2012

Section 30-6-104.B.4 Amended in whole by Ord. #1151, Jan. 22, 2013

Section 30-6-110.B.3 public notice provisions deleted per Ord. #1151, Jan. 22, 2013 Section 30-6-110.B.1.c.xxxix to make conforming changes to certifications per Ord. #1151, Jan. 22, 2013
General provisions

The provisions of this Section shall apply to any and all subdivision of land within the municipal boundaries of the Town, unless expressly and specifically exempted or provided otherwise in this Code. No development shall be undertaken without prior approval or authorization pursuant to the terms of this Code. All development shall comply with the applicable terms, conditions, requirements, standards and procedures established in this Section and the Code. The submittal of an application for approval pursuant to the provisions of these Subdivision Regulations constitutes consent to and agreement to comply with all of its applicable provisions.

This Section establishes procedural and substantive rules for obtaining the necessary approval to develop land and construct buildings and structures. Development applications will be reviewed for compliance with the Town Comprehensive Plan, the Parks, Open Space and Trails (PORT) Master Plan, this Code and applicable regulations, policies and other guidelines as amended. The submittal of an application for approval pursuant to the provisions of these Subdivision Regulations constitutes an agreement and the implied consent of the owner or applicant to comply with all of its applicable provisions.

Scheduling of the review of development applications before the Planning Commission or Town Board is at the discretion of the Town of Berthoud. Any change to a development application by an Applicant after formal submittal of that application to the Town constitutes a decision by the Applicant that may result in the Town deciding to vacate the Hearing and/or void the pending application. The Town may then reschedule or cancel the review of the development application at its discretion.

Prior to formal submittal of any subdivision application identified in this Section, the Planning Department will typically provide to an applicant an individualized submittal checklist indicating the documents and information needed, quantities of those documents to be submitted, and the referral agencies that will be involved in the review process. The applicants are responsible for being fully familiar with all applicable provisions of these Subdivision Regulations. At the time of submittal, the applicants will provide sufficient pre-packaged packets that are ready for mailing to the list of recipients provided by the Town. Upon determination by staff that a submittal constitutes a complete development application, the Town will forward the packets to each referral agency.
L. This Section is designed and enacted for the purposes of promoting the health, safety, convenience, order, prosperity and welfare of the present and future inhabitants of the Town by:

1. Encouraging new subdivision developments that complement the Town’s historic development pattern.

2. Promoting compact, well-defined, sustainable neighborhoods that enhance the Town’s character.

3. Creating livable neighborhoods that foster a sense of community and reduce dependency on private vehicles.

4. Encouraging the proper arrangement of new streets in relation to existing or planned streets and ensuring streets facilitate safe, efficient and pleasant walking, biking and driving.

5. Allowing and supporting alley-loaded residential properties while not mandating any specific amount or level of alley-loaded residential property in any development.

6. Providing for a variety in garage setbacks and orientation for residential properties that access the street from the front.

7. Providing for a variety of lot sizes and housing types in every neighborhood.

8. Protecting the Town’s sensitive natural, historic and environmental areas.

9. Providing for adequate roadways, utilities, access for fire apparatus, recreation, convenient open spaces, light, air quality and the avoidance of congestion of population.


11. Providing adequate spaces for educational facilities.

12. Providing adequate spaces for commercial and industrial land uses.

13. Providing protection from geologic hazards and flood prone areas.


15. Regulating such other matters as the Town may deem necessary in order to protect the best interest of the public.
A. **Major Subdivisions.**

1. **Definition.** A major subdivision is a subdivision which includes one or more of the following:
   
   a. Dedication of public right-of-way, public infrastructure or other public tracts; or
   
   b. The subdivision consists of seven or more lots or tracts.

2. **Process.** The major subdivision process is as follows:

   a. **Concept Plan.**
      
      i. Pre-application conference and site visit with staff.
      
      ii. Application submittal.
      
      iii. Staff certifies application is complete and sends to referral agencies for review.
      
      iv. Planning Commission – Neighborhood meeting with recommendation to Town Board from Commission.
      
      v. Staff compiles a record of the Planning Commission & neighborhood meeting review and provides it to the applicant with all comments related to the concept plan.
      
      vi. Town Board review and action at regular meeting.

   b. **Preliminary Plat.**
      
      i. Pre-application conference with staff.
      
      ii. Application submittal.
      
      iii. Staff certifies application is complete.
      
      iv. Town schedules Planning Commission and Town Board agendas and completes public notification process.
      
      v. Staff refers application to parties of interest.
      
      vi. Final staff review and report to Planning Commission.
      
      vii. Planning Commission public meeting and recommendation.
      
      viii. Town Board Public Hearing and action.
      
      ix. Applicant addresses any conditions of approval.

   c. **Final Plat.**
      
      i. Application submittal.
ii. Staff certifies application is complete.

iii. Staff refers application to parties of interest.

iv. Final staff review and report to Planning Commission.

v. Town schedules Planning Commission review as Public Hearing.


vii. Applicant addresses Planning Commission conditions (if any).

viii. Applicant submittal of all documents in final form.

ix. Post approval submittal of documents and final administrative actions.

x. Town records Final Plat and Development Agreement with County Clerk and Recorder.

B. **Minor Subdivisions.**

1. **Definition.** A minor subdivision is a subdivision which includes any one or more of the following:

   a. The property has previously been platted;
   
   b. There is no public right-of-way dedication; or
   
   c. The resulting subdivision consists of six or fewer lots or tracts.

2. **Process.** The minor subdivision process is as follows:

   a. Pre-application conference with staff.
   
   b. Application submittal.
   
   c. Staff certifies application is complete.
   
   d. Staff refers application to parties of interest.
   
   e. Letters of support and commitment to serve from applicable utilities.
   
   f. Town schedules public hearing and completes public notification process.
   
   g. Planning Commission public hearing and action.
   
   h. Applicant submittal of all documents in final form.
   
   i. Record Minor Subdivision Plat with County Clerk and Recorder.

C. **Conveyance Plat.**

1. **Definition.** A conveyance plat is a subdivision of land that creates lots that can be conveyed by the property owner. Any conveyance plat must conform to and be based upon an approved concept plan that will be processed concurrently with the
conveyance plat. The property must be a minimum of thirty five acres. Each lot created by any conveyance plat must be at least ten acres in size. No more than twelve lots may be created by any conveyance plat.

2. **Process.** The conveyance plat process is as follows:
   a. Pre-application conference with staff.
   b. Application submittal.
   c. Staff certifies application is complete.
   d. Staff refers application to parties of interest.
   e. Letters of support and commitment to serve from applicable utilities.
   f. Town schedules public hearing and completes public notification process.
   g. Planning Commission public meeting and recommendation.
   h. Town Board public hearing and action.
   i. Applicant submittal of all documents in final form.
   j. Record Conveyance Plat with County Clerk and Recorder.

D. **Administrative Subdivisions.**

1. **Definition.** An administrative subdivision is an amendment of all or a portion of a recorded subdivision. This administrative subdivision may include Boundary Line Adjustments between lots, Lot Line Mergers, and other plat amendments for the purpose of any of the following:
   a. Correct a drafting or other technical error on a recorded subdivision plat; or
   b. Adjust one or more lot lines on a recorded subdivision plat where:
      i. The boundaries of six or fewer lots are changed;
      ii. No dedicated easements or rights-of-way are changed;
      iii. No lots are created that will require a zoning variance or an exception to the Subdivision Regulations; and
      iv. No lots are created which do not support the existing land use on the property.
   c. Adjustments in the number of lots or any other measurable standard so long as the proposed change is less than ten percent of the previously approved amount.

2. **Process.** The administrative subdivision process is as follows:
   a. Final Plat.

315
i. Pre-application conference and site visit with staff.

ii. Application submittal.

iii. Staff certifies application is complete.

iv. Staff reviews application and prepares comments.

v. Applicant addresses staff comments.

vi. Applicant submits complete final plat for administrative approval by Town Administrator.

vii. Town records final plat with County Clerk and Recorder

E. Optional processing of Major Subdivisions.

1. Concept Plan directly to Final Plat. The Town of Berthoud will consider modifications to the platting process identified above after consultation between staff and applicants. For Major Subdivisions as defined above, the Town may consider waiving the Preliminary Plat submittal and allowing a major subdivision to proceed directly from Concept Plan to Final Plat. This option is summarized below:

   a. All Major Subdivisions complete Concept Plan process as identified in this Code.

   b. Option to not submit and complete the Preliminary Plat process for a Major Subdivision as identified in this Code. This is an administrative decision by the Town after an applicant makes this request and staff is in agreement that the request to move directly from Concept Plan to Final Plat is in the best interests of the community.

   c. If a Major Subdivision is authorized to move from Concept Plan directly to Final Plat, review of the Final Plat and all associated documents will be at Public Hearings to be held before both the Planning Commission and Board of Trustees.

A. Concept Plan purpose. The concept plan is a broad concept that describes in general terms what the applicant envisions. The purpose of the concept plan is three-fold.

   First, it provides the applicant with a clear understanding of the Town’s vision for the Berthoud community.

   Second, it gives the applicant an opportunity to discuss his/her development plans, explain how the plans will further the community’s vision and obtain input and direction from neighboring property owners, the Planning Commission and Town Board early in the process.

   Third, it gives the applicant an opportunity to hear preliminary (non-binding) comments and concerns from the Planning Commission, Town Board and general public prior to
engaging in project design. The ultimate goal of this process is to help the applicant develop a plan that reflects the Town’s vision for the community.

B. **Concept Plan application process.**

1. Pre-application conference and site visit with staff. A pre-application conference and site visit with representatives from the Town is required before the applicant may submit a concept plan application. The purpose of the meeting is to allow the applicant to discuss the ideas for developing the property and to give the Town the opportunity to communicate the community’s vision to the applicant. Topics to be discussed will include:

   a. Applicant’s goals for the property.
   b. Town vision and expectations as identified in the Berthoud Comprehensive Plan and PORT Plan.
   c. The requirements of this Code.
   d. The character and quality of development the Town is seeking.
   e. Town regulations and standards.
   f. The application and review process.
   g. Submittal requirements.
   h. Proposed schedule.

2. Concept plan application submittal. The applicant shall submit the completed concept plan application package to the Town. The concept plan application package shall be formatted and packaged per the application submittal checklist provided by the Town and include the following items:

   a. Development application form.
   b. Application fee and Memorandum of Understanding (MOU) for payment of review and development expenses incurred by the Town.
   c. Title commitment. The title commitment must be dated no more than thirty days from the date of Concept plan application submittal.
   d. Neighboring property owner list. Mailing labels with current names and addresses of all property owners within three hundred feet of the proposed subdivision.
   e. Concept Plan. This plan may be on a single sheet or a set of drawings. Electronic files of all drawings, reports, submittals and narratives must be submitted as part of the concept plan. The concept plan shall clearly show:
      i. Title of project.
ii. North arrow, scale (not greater than 1" = 200’) and date of preparation.

iii. Vicinity map.

iv. Legal description.

v. Acreage of property.

vi. USGS topographic contours.

vii. Location and approximate acreage of proposed land uses.

viii. Existing easements and rights-of-way on or adjacent to the property.

ix. Existing streets on or adjacent to the property (show and label street name).

x. Note or table indicating how public dedication requirements will be met.

xi. Table providing the following information for each proposed land use area: total acreage; proposed density or floor area ratio and proposed number of dwelling units.

xii. Discuss compliance with lot area size, dispersion of lots, setback variation and garage placement in proposed residential subdivisions as identified in Section 30-2-116 of this Code.

xiii. Location and acreage of proposed parks, trails, regional trail connections, playgrounds, schools or other public uses.

xiv. Proposed street system (as line [not engineered] drawing).

xv. General locations of existing utilities on or adjacent to the property.

xvi. Graphic and/or written explanation of how the property will be served with utilities including any issues or proposed changes to service provider boundaries.

xvii. Location of any proposed sewer lift stations.

xviii. Floodplain boundary with a note regarding the source of information (if a floodplain does not exist on the property, this must be stated).

xix. Geologic hazard areas.

xx. Existing and proposed zoning on and around the property.

f. General development information. Provide a written description of the existing conditions on the site and the proposed development. Include the following items in the description:
i. Design rationale - discuss how the development is connected to/integrated with surrounding area, how it responds to site features/constraints and how it is consistent with this Code.

ii. General description of plan for drainage and storm water management.

iii. Water supply information including: the number of water taps needed; the amount of raw water that will be provided to the Town and the source of the water.

iv. Initial road and traffic impact study/evaluation of the street system, road connectivity and road impacts of the proposal.

v. Utility (electric, cable, natural gas, telephone, etc.) information including capacity and any line extensions or upgrades that may be necessary. Include “will serve” letters from each utility.

vi. Statement indicating whether or not any commercial mineral deposits are located on the site.

vii. Description of any floodplain hazards on the site (only if additional information is needed than what is shown on the concept plan map).

viii. Description of how the proposed development complies with the Town Comprehensive Plan.

3. Application certification of completion. Within a reasonable time period, generally five working days, Staff shall either certify the application is complete and in compliance with all submittal requirements or reject it as incomplete and notify the applicant of any deficiencies. Applicant shall then correct any deficiencies in the application package and re-submit the application to the Town.

4. Notice to neighboring property owners. The Town shall send notice of the Planning Commission and Neighborhood meeting, and the Town Board meeting by regular mail to neighboring property owners within three hundred feet of the property per this Code.

5. Planning Commission – Neighborhood Meeting. This is intended to be a collaborative meeting among the Town staff, Planning Commission, the public and the applicant to ensure that all new development is consistent with community goals and important issues are identified early in the development process. Topics that shall be addressed in this meeting include:
a. How the proposed project is consistent with adopted Town planning documents and this Code.

b. The applicant’s goals and vision for the project.

c. The overall character and style of the project.

d. How the proposed development will incorporate provisions of Section 30-2: Design Standards into the proposal.

e. How the proposed development will incorporate site and architectural quality in the design of commercial or industrial properties.

f. How the proposed subdivision will be connected to, buffered from and integrated with surrounding natural and developed areas.

g. How the project will impact neighboring properties (i.e., water drainage, traffic circulation, environmental impacts, view corridors, etc.).

h. How the design is cost-effective and environmentally responsive to site features and constraints and how potential impacts to natural systems will be mitigated.

i. How the proposal promotes the efficient use of land, public streets, utilities and governmental services.

j. How the proposal will address water resources and wastewater services.

k. Applicants should bring the following items to the meeting:

i. Context/vicinity map – which shows the proposed development in relation to the surrounding area.

ii. Base map – which shows the site features (such as topography, ditches, drainage ways, wildlife habitat, existing trees and view corridors).

iii. Conceptual plan for the property in terms of basic street network, development areas, park or open space areas, etc.

iv. Anything else that illustrates what the applicant is trying to create with this development.

6. Town Board public meeting. This is also intended to be a collaborative meeting where the Town Board, public and the applicant ensure that the new development is consistent with community goals and important issues are confirmed at this stage of the development process. Items that may be addressed in this meeting include results and any recommendations from the Neighborhood - Planning Commission meeting. The Town Board shall review and act upon the concept plan as a regular agenda item. The Town Board may choose to approve, approve with conditions or deny the concept plan.
C. **Concept Plan review criteria.** The Town shall use the following criteria in addition to other applicable provisions of this Code to evaluate the applicant’s concept plan application:

1. The land use mix within the project conforms to Berthoud’s Zoning District Map and Comprehensive Plan Preferred Land Use Map and furthers the goals and policies of the Comprehensive Plan.

2. The concept plan represents a functional system of land use and is consistent with the rationale and criteria set forth in this Chapter, the Town Comprehensive Plan, and the Parks, Open Space and Recreation (PORT) Plan as amended.

3. The utility and transportation design is adequate, given existing and planned capacities of those systems.

4. Negative impacts on adjacent land uses have been identified and satisfactorily mitigated.

5. There is a need or desirability within the community for the development and the development will help achieve a balance of land use and/or housing types within Berthoud according to Town goals.

6. The project has shown efforts to preserve wetlands, view corridors and natural features of the site.

D. **Timeframe related to approval of Concept Plan.** A concept plan is in full force and effect for a period of two years from date of Town Board action to approve or approve with conditions. Approval will automatically expire at the end of two years unless the applicant submits a completed preliminary plat application for the property or requests a one-year extension at least thirty days prior to the expiration date. Two one-year extensions are possible.

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<th>30-6-105 Preliminary plat</th>
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**A. Preliminary Plat purpose.** The purpose of the preliminary plat is to provide the Town with an overall plat and the associated preliminary engineering for the proposed development.

**B. Preliminary Plat application process.**

1. **Pre-application conference.** A pre-application conference with a representative from the Town is required before the applicant may submit a preliminary plat application. Topics to be discussed will include:
a. The provisions of this Code and the applicable requirements;
b. The application and review process;
c. Submittal requirements; and
d. Changes or modifications based on direction from the Town at concept plan.

2. Preliminary Plat application submittal. Following approval or conditional approval of the concept plan, the applicant may submit the complete preliminary plat application to the Town. The preliminary plat application package shall be formatted and packaged per the application submittal checklist provided by the Town and include the following items in both printed and electronic formats:

a. Development application form.
b. Application fee.
c. Title commitment. The title commitment must be current and dated no more than thirty days from the date of preliminary plat application submittal.
d. Surrounding property ownership report. Provide the Town with a list and set of mailing labels not more than thirty days old, of the names and addresses of the surrounding property owners within three hundred feet of the property, mineral interest owners of record, mineral and oil and gas lessees for the property and appropriate ditch companies. The applicant shall certify that the report is complete and accurate.
e. Preliminary Plat. The preliminary plat shall provide the following information:
i. Title of project.
ii. North arrow, scale (not greater than 1” = 100’) and date of preparation.
iii. Vicinity map.
iv. Names and addresses of owners, applicant, designers, engineers and surveyors.
v. Legal description.
vi. Total acreage of property.
vii. Existing contours at two foot intervals (based on USGS datum).
viii. Name and location of abutting subdivisions or owners of abutting property (if land is not platted)
ix. Lots, blocks, and street layout (with cross-sections), dimensions and square footage for each lot. Dimensions and square footages may be rounded to the nearest whole number.
x. Consecutive numbering of all lots and blocks.
xi. Residential developments shall provide information identifying compliance with Section 30-2-116 of this Code.
xii. Existing and proposed easements (including rights-of-way) on and adjacent to the property.
xiii. Existing and proposed zoning on and adjacent to property.

xiv. Approximate location and size of existing sewer lines, water lines and fire hydrants.
Approximate location of proposed sewer lines, water lines, and fire hydrants.

xv. Location by field survey or aerial photography of existing and proposed water courses and bodies of water such as irrigation ditches and lakes. Water courses shall include direction of flow.

xvi. Floodplain boundary with a note regarding source of information (if a floodplain does not exist on the property, state this on the plan).

xvii. The boundaries of proposed phases of the subdivision if the final plat is intended to be submitted in multiple phases.

xviii. General location of existing surface improvements such as buildings, fences, oil or gas facilities, or other structures which will remain on the property as part of the subdivision.

xix. Location and acreage of proposed parks, trails, playgrounds, schools or other public uses.

xx. Location, function, ownership and manner of maintenance of any private open space.

xxi. Land use table including: land uses, approximate acreage of each land use type, percentage of each land use type density (net and gross) and how public dedication requirement will be met.

xxii. Total number of lots.

xxiii. Number of each type of dwelling unit proposed.

xxiv. An AutoCad drawing file of the Preliminary Plat on compact disc in a format specified by the Town Engineer.

xxv. Surveyor’s certificate.

f. Preliminary Plat drawing standards. The preliminary plat drawing shall comply with the following standards:

i. The preliminary plat shall be prepared by or under the direct supervision of a registered land surveyor, shall be signed and stamped by said surveyor, and shall meet applicable State of Colorado requirements.

ii. Except for parcels separated by easements (including public rights-of-way), public tracts, or railroads, parcels not contiguous with each other shall not be included in one plat, nor shall more than one plat be made on the same sheet. Contiguous parcels owned by different parties may be included on one plat, provided that all owners join in the dedication and acknowledgment.

iii. Lengths on the preliminary plat boundary shall be shown to the nearest hundredth of a foot and bearings shall be shown in degrees, minutes and seconds.

iv. The perimeter survey description of proposed subdivision shall include at least one tie to an existing section monument of record and a description of monuments. The survey shown shall not have an error greater than one part in ten thousand.

v. Bearings, distances and curve data of all perimeter boundary lines shall be indicated outside the boundary line, not inside, with the lot dimensions.
vi. Names and signatures of all owners of equitable interest in the property shall be on the preliminary plat and shall be made in black drawing ink.

g. General development information. A written description of the existing conditions on the site and the proposed development, including the following items:

i. Explanation of how the preliminary plat is consistent with the concept plan and how the items of concern expressed by the Planning Commission, Town Board and the public at the time of concept plan have been addressed.

ii. Explanation of how the plan is consistent with this Code, the Comprehensive Plan and the PORT Plan.

h. Preliminary grading and drainage plan and report. This plan and report must be certified by a Colorado registered professional engineer and include approximate earthwork quantities (how earthwork on the site is “balanced”), storm drainage concepts such as locations of pipe and other conveyance facilities, locations for on-site detention or downstream structural improvements, and soil erosion and sedimentation control plans & specifications. It must also discuss the impacts on and to any existing floodways and/or floodplains both on and adjacent to the site as well as any FEMA applications or approvals that may be required.

i. Preliminary water and sewer plan & study. This plan shall be prepared by a registered professional engineer. It is necessary that the engineer consult with the appropriate utility service providers regarding the design of all utilities through the subdivision.

j. Geologic study. If upon referral to the Colorado Geologic Survey (CGS), the CGS requires a geologic study; then this report must be prepared by a registered professional engineer or professional geologist and shall address: site conditions, geologic conditions, engineering considerations and any limitations or additional investigations that might be necessary.

k. Preliminary landscape and open space plan. The landscape plan must address the treatment of all exterior spaces. Landscape plans are to be designed to meet the requirements of this Code and show approximate locations of trees, shrubs, groundcovers, turf, buffering, fences, walls and other site amenities that will be included in the plan. Applicants are to consult with the Town arborist regarding tree planting schemes and the Berthoud Tree Board will be given an opportunity to review and comment upon the tree plan for the property.

l. Traffic study. This study must be prepared by a professional traffic engineer and identify the projected impacts to the local and regional traffic system. The direct roadway impacts and proposed share in the cost of regional improvements and intersections must be identified for the project.

m. Mineral, oil and gas rights documentation. Evidence that the surface owner has contacted all lessees of mineral, oil and gas rights associated with the site. Included in the evidence must be the name of the current contact person, their phone number, and mailing address for each of the mineral owners or lessees. Said evidence may be provided in a mineral interests report prepared by a certified landman, title company, or attorney.
n. Colorado Historical Society (CHS) records search. At the discretion of the Town and in consultation with the Berthoud Historic Preservation Advisory Committee (HPC), an applicant may be required to provide the Town with a CHS records listing historically or archaeologically significant findings on the property being subdivided at their expense. If a listing shows a significant finding, a site-specific historic survey per the requirements of the CHS is required. If, in coordination with the applicant, the Town Board decides to protect any historic resource, a protection plan must be developed in consultation with the HPC.

o. General ecological resource survey. Prepared by a qualified biologist, geologist, ecologist, or similar qualified professional, a survey identifying the potential/absence/habitat of a threatened or endangered species and wetlands or other ecologically sensitive area. Said survey shall make practical recommendations regarding treatment or mitigation of the findings.

3. **Application certification of completion.** Within a reasonable time period, generally five working days, Staff shall typically certify the application is complete and in compliance with all submittal requirements or reject it as incomplete and notify the applicant of any deficiencies. Applicant shall then correct any deficiencies in the application package, if necessary, and submit the required number of copies of the application to the Town.

4. **Schedule Preliminary Plat public meeting at Planning Commission and public hearing at Town Board and complete public notification process.** The Town shall schedule a public meeting before the Planning Commission for the purpose of developing a recommendation for consideration at a public hearing before the Town Board. The Town shall publish notice in a newspaper of general circulation and post the property with at least one sign clearly visible from a public roadway. Publication and posting shall be consistent with this Code.

5. **Refer application to parties of interest.** The Town shall send summary information about the application by regular mail to the mailing list provided by the applicant that includes neighboring property owners, utility and service providers and other parties of interest. The referral information shall include the time and place of the Planning Commission meeting and Town Board public hearing, the nature of the meeting or hearing, the location of the property, the applicant’s name, and background information about the proposal.

6. **Staff review and report to Planning Commission.** Staff will complete a final review of the application and then prepare a report to the Planning Commission explaining how the application is or is not consistent with the preliminary plat review criteria.

7. **Planning Commission public meeting and recommendation.** The Planning Commission shall hold a public meeting to review the application based on the preliminary plat
review criteria. The Planning Commission shall then make a recommendation to the Town Board to approve, conditionally approve, or deny the application.

8. **Town Board public hearing and action.** The Town Board shall review and act on the Preliminary Plat as part of a public hearing. The Town Board may choose to approve, approve with conditions, or deny the Preliminary Plat.

9. **Applicant addresses any conditions placed on the proposal.** The applicant shall revise the preliminary plat based only on conditions of approval (if any) placed on the proposal by the Town Board.

C. **Preliminary Plat review criteria.** In addition to all provisions of this Code, the Town shall use the following criteria to evaluate the applicant’s request:

1. The preliminary plat represents a functional system of land use and is consistent with the rationale and criteria set forth in this Code.

2. The application is consistent with the approved concept plan and incorporates the Town’s recommendations and any conditions of approval.

3. The land use mix within the project conforms to Berthoud’s Zoning District Map and Preferred Land Use Map and furthers the goals and policies of the Comprehensive Plan and PORT Plan.

4. The utility and transportation design is adequate, given existing and planned capacities of those systems.

5. Negative impacts on adjacent land uses including, but not limited to: solar access, heat, dust, glare, traffic and noise have been identified and satisfactorily mitigated.

6. There is a need or desirability within the community for the applicant’s development and the development will help achieve a balance of land use and/or housing types within Berthoud.

D. **Phasing.** A preliminary plat shall designate the boundaries of phases for which separate final plats will be presented for approval. Each phase, either alone or in conjunction with previously approved and recorded phases, must meet all of the requirements of this Code.

E. **Early grading.** After approval of a Preliminary Plat, Applicant may proceed with preliminary grading of the project area if a construction plan set for grading and drainage is approved and memo authorizing grading work is issued by the Town Engineer. Early grading is at the risk of the Applicant and no presumption of any Final Plat approval at the Planning Commission is expressed or implied by any authorization of early grading.
F. Timeframe related to approval of Preliminary Plat. A preliminary plat is in full force and effect for a period of three years from date of Town Board action to approve or approve with conditions. Approval will automatically expire at the end of three years unless an applicant formally requests a one-year extension from the Town Board prior to termination or submits a completed final plat application for all or a portion of the property. An applicant may request one extension of one year.

| 30-6-106 | Final plat |

A. Final Plat purpose. The purpose of the final plat is to complete the subdivision of land consistent with the technical standards of the Town.

B. Final Plat application process.

1. Final Plat application submittal. The final plat application shall substantially conform to the preliminary plat as approved at the public hearing and shall meet all conditions of approval. The applicant shall submit the completed final plat application package to the Town. The final plat application shall be formatted and packaged per the application submittal checklist provided by the Town and include:

   a. Development application form.

   b. Application fee.

   c. Title commitment. An updated title commitment, dated no more than thirty days from the date of final plat application submittal.

   d. Final Plat. The final plat drawing shall comply with the following standards:

      i. The plat shall be prepared by or under the direct supervision of a registered land surveyor, shall be signed and stamped by said surveyor, and shall meet applicable State of Colorado requirements.

      ii. Except for parcels separated by public rights-of-way, public tracts or railroads, parcels not contiguous with each other shall not be included in one plat, nor shall more than one plat be made on the same sheet. Contiguous parcels owned by different parties may be included on one plat, provided that all owners join in the dedication and acknowledgment.

      iii. Lengths shall be shown to the nearest hundredth of a foot and bearings shall be shown in degrees, minutes and seconds.

      iv. The perimeter survey description of proposed subdivision shall include at least one tie to an existing section monument of record and a description of monuments. The survey shown shall not have an error greater than one part in ten thousand.

      v. Bearings, distances and curve data of all perimeter boundary lines shall be indicated outside the boundary line, not inside, with the lot dimensions.

      vi. Names and signatures of all owners of equitable interest in the property shall be on the plat and shall be made in black drawing ink.
vii. The final plat shall provide the following information:

a) Title of project.

b) North arrow, scale (not greater than 1"=100') and date of preparation.

c) Vicinity map.

d) Legal description.

e) Basis for establishing bearing.

f) Names and addresses of owners, applicant, designers, engineers and surveyors.

g) Total acreage of subdivision.

h) Bearings, distances, chords, radii, central angles and tangent links for the perimeter and all lots, blocks, rights-of-way and easements.

i) Lot and block numbers, numbered in consecutive order, and square footage or acreage to two decimal places of each lot or tract.

j) Parcels excepted from inclusion should be noted as “not included in this subdivision” and the boundary completely indicated by bearings and distances.

k) Existing and proposed easements (including rights-of-way) in and adjacent to property (labeled and dimensioned).

l) Existing and proposed street names for all streets on and adjacent to the property.

m) Location and description of monuments.

n) Floodplain boundary with a note regarding source of information (if a floodplain does not exist on the property, please state this on the plat).

o) The following certification language, completed with signature lines and including any amendments required by the Town:

**LEGAL DESCRIPTION AND DEDICATION:**

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, being the owners of __________________, Township________N, Range_______W of the 6th Principal Meridian, Town of Berthoud, County of _____________, State of Colorado, more particularly described as follows:
(LEGAL DESCRIPTION)

Have laid out, platted, and subdivided the above described land, under the name and style of _________________, and by these presents do dedicate to the Town of Berthoud in fee simple the street and public “rights-of-way” as shown on the plats, and grant to the Town of Berthoud such easements and rights-of-way as are created hereby and depicted or, by note, referenced hereon, along with the right to install, maintain, replace and operate mains, transmission lines, service lines, and appurtenances, either directly or through the various public utilities, as may be necessary to provide such utility, cable television, water, electric, natural gas and sanitary services within this subdivision or property contiguous thereto, through, over, under, and across streets, utility and other easements, and other public places as shown on the plat.

If owner is an individual(s):

Owner:  John Doe

If owner is a corporation, limited liability company, partnership, association or other business entity:

Owner:  The ABC Corporation, a Colorado corporation

By:  John Doe, President

If owner is a trust:

Owner:  The Jane Smith Trust

By: (John Doe, as trustee of the Jane Smith Trust)
If owner is a trust:

Owner: The Jane Smith Trust

By: John Doe, as trustee of the Jane Smith Trust

LIENHOLDER’S DEDICATION: The undersigned mortgagee, for good and valuable consideration does by these presents, hereby subordinate all of its rights to such fee simple dedications and grants of easements to the Town of Berthoud as are depicted and referenced hereon and to the terms and conditions of the development agreement and this final plat and agrees that the development agreement and this final plat shall constitute a first and prior lien upon the (project name) to the same extent as though it were actually executed and recorded prior to said lien or deed of trust.

DATE: _____________________

LENDER’S NAME

BY: ______________________

TITLE: ____________________

SURVEYOR’S CERTIFICATE:

I, _____________________ a Registered Land Surveyor in the State of Colorado, do hereby certify that the survey of __________________ was made under my supervision and the accompanying plat accurately and properly shows said subdivision and is in compliance with the Subdivision Regulations of the Town of Berthoud.

________________________________

(Name, Registered Land Surveyors)
RIGHT TO FARM STATEMENT: The Town of Berthoud has adopted a “Right to Farm” policy. All new and existing residents are expected to read and understand the policy. For a copy of the policy, please contact the Town of Berthoud.

SITE SPECIFIC DEVELOPMENT PLAN:

This plan constitutes a site specific development plan as defined in Article 68 of Title 24, C.R.S., as amended, and Chapter 30 of the Berthoud Development Code available at the Berthoud Town Hall, 328 Massachusetts Avenue, Berthoud, Colorado 80513.

APPROVAL CERTIFICATES:

Approved by the Town of Berthoud, Colorado, this ______day of ________________, 20____.

____________________________
Mayor

The foregoing plat is approved for filing and accepted by the Town of Berthoud, Colorado, this ______day of ________________, 20____.

ATTEST: ______________________
Town Clerk

e. General development information. Provide a written description confirming that the final plat conforms to the preliminary plat. In addition, the description shall address how the proposed development conforms to this Code, the Town Comprehensive Plan and the PORT Plan.

f. For developments with single-family or two-family residential lots, show that the Final Plat is in conformance with Section 30-2-116 of this Code.
g. Update of any plans or reports provided with the Preliminary Plat for which there is a change of conditions.

h. Special documents (as needed)

i. Special agreements.

ii. Oil & gas surface use agreement.

iii. Floodplain use permit from the Town.

iv. Prior to commencement of construction; a State Highway utility permit from CDOT.

v. Prior to commencement of construction, a State Highway access permit from CDOT.

vi. Prior to commencement of construction, a construction dewatering permit from the Colorado Department of Public Health and Environment.

vii. Prior to commencement of construction, a 404 Permit from the Army Corps of Engineers.

viii. Prior to commencement of construction, an Air Pollution Emission Notice (APEN) from the Colo. Department of Public Health and Environment.

ix. Prior to commencement of construction, a permit for work in any ditch right-of-ways from individual ditch companies.


xi. Prior to commencement of construction, acceptable collateral in the amount and form stipulated in the DA.

xii. Prior to commencement of construction, an approved adjudication of water rights and a plan of augmentation.

xiii. Prior to commencement of construction, a FEMA approved application (i.e., Conditional Letter of Map Revisions [CLOMR] or Letter of Map Revisions [LOMR]).

xiv. Documentation identifying who will own and maintain open spaces.

xv. Deed for public lands for dedication of public sites for open space or other civic purposes.

i. Notification mailing list. Provide one set of mailing labels for appropriate referral agencies and property owners of record within three hundred feet of the property.

2. Application certification of completion. Within a reasonable timeframe, typically five working days, Staff shall either certify the application is complete and in compliance with all submittal requirements or reject it as incomplete and notify the applicant of any deficiencies. Applicant shall then correct any deficiencies in the application package, if necessary, and submit the required number of copies of the application to the Town. The original application and all documents requiring a signature shall be signed in blue ink.

3. Notice. In order to provide an opportunity for referral agencies and the public to review any final plat for changes, the Town shall send a notice of the Planning Commission public hearing, with appropriate final plat materials for review.
4. **Staff review and report to Planning Commission.** Staff will complete a final review of the application and then prepare a report to the Planning Commission explaining how the application is or is not consistent with the final plat review criteria.

5. **Planning Commission public hearing and action.** The Planning Commission shall hold a public hearing to review the final plat based on the Town’s final plat review criteria. It shall then approve, conditionally approve, or deny the final plat application by resolution. The applicant may appeal a decision to deny the application by the Planning Commission to the Town Board.

6. **Applicant addresses Planning Commission conditions.** The applicant shall revise the final plat based on any Planning Commission conditions of approval and submit it to the Town.

7. **Original plats.** The applicant shall submit to the Town Clerk three original, signed mylars of the final plat ready for the Mayor and clerk to sign and record, and final executed copies of all agreements. Original mylars and documents shall become the property of the Town.

8. **Complete engineering plans and specifications.** After Final Plat approval the applicant shall prepare and submit the following for administrative approval by the Town prior to commencement of construction:

   a. **Construction plans and profiles.** The plans and profiles shall be prepared by a registered professional engineer licensed in the State of Colorado. Plans shall be twenty-four inches high by thirty-six inches wide and provide the following information:

      i. The horizontal to vertical scales shall be chosen to best depict the aspects of the design.

      ii. Minimum horizontal scale: 1"=100'.

      iii. Minimum vertical scale: 1"=10'.

   iv. The typical road geometric and structural cross-section is to be shown on each plan sheet.

   v. The plan must show right-of-way lines and widths, road names, lot lines, tangent lengths and bearings, curve radii, delta angles, curve lengths, chord lengths and bearings, stationing at all beginning of curves and end of curves, intersections, structures, angles, curb lines, cross pans, traffic control devices (islands, striping, signs, etc.), drive cuts, curb returns and radii, and all other features to enable construction in accordance with approved standards and standard engineering practice. Stationing may be centerline if approved by the Town Engineer. Construction plans shall include water lines and appurtenances, sewer lines and appurtenances, and storm water lines and appurtenances and any other wet utilities such as non-potable water systems and irrigation ditches.
vi. The profiles shall include existing and proposed grade at curb and gutter or centerline of street elevation at point of intersection of vertical curves, intersections, grade breaks, point of curb return (PCR), point of reverse curve (PRC), and other critical points, structures, and all other features required to enable construction in accordance with the Larimer County Urban Area Street Standards (LCUASS), as amended, or as the Town Engineer may approve.

vii. Signature blocks for all utility providers unless otherwise provided in agreement form.

viii. Structure details. Sufficient data shall be given to construction of major structures and road appurtenances such as bridges, culverts, gutters, drives, walks, cross pans, etc; detail shall include orientation line and grade, cross-sections, dimensions, reinforcement schedules, materials, quality specification, etc., or as the Town Engineer may approve.


xi. Sewage collection and water supply distribution plans, profiles and specifications. The plans, profiles and specifications shall be prepared by a registered professional engineer and shall be accompanied by written approvals from the applicable water and sanitation district.

xii. Final drainage plans and reports. Based upon the approved preliminary drainage plan, a final report is to be submitted in accordance with Larimer County Drainage & Design Criteria, as amended or as the Town Engineer may approve. The plan and report must provide:

a) Cross-sections of each water carrier showing high water elevations for one hundred year run-off and adjacent features that may be affected thereby.

b) Written approvals, as may be required, from other agencies or parties that may be affected by the drainage proposals (i.e., FEMA, Larimer and Weld County, ditch companies).

c) Supporting calculations for run-offs, times of concentration, flow capacity with all assumptions clearly stated with proper jurisdiction when needed or requested.

d) Erosion control plans, when required.

e) Sizing of all pipes, inlets, conveyance ways, and other appurtenances.

xiii. Final grading plan. The final grading plan shall be twenty-four inches high by thirty-six inches wide and illustrate existing and proposed contours and lot and block grading details.

xiv. Soils report. The soils report shall detail pavement design and construction requirements and shall be submitted after overlot grading is complete.
b. Final landscape and open space plan. The landscape plan must address the treatment of all exterior spaces. Landscape plans are to be designed to meet the requirements of this Code and PORT Plan and show trees, shrubs, groundcovers, turf, buffering, fences, walls and other site amenities that will be included in the plan. All plant materials must be adapted to the physical limitations of the local climate and specific conditions of the landscape plan. All plant materials must meet specifications of the American Association of Nurseryman for number one grade. All street trees must be selected from the Town of Berthoud recommended tree list.

1. Landscape Plan drawn to scale (not greater than 1" = 50') on twenty four by thirty six inch sheets which includes:
   a. Project name.
   b. Scale, north arrow and date of preparation.
   c. Existing and proposed streets and street names.
   d. Lot lines, easements and public rights-of-way as shown on the subdivision plat, including gross and net area of all parcels.
   e. Location of proposed building footprints and parking areas.
   f. Location of storage, loading and service areas.
   g. Existing and proposed 2’ contours (based on USGS datum).
   h. Natural features, wetlands, wildlife corridors, floodplains, streams, ditches and other waterways.
   i. The location of existing and proposed utilities. Utility lines can be ‘ghosted’ in on the landscape plan to vary the line types for cleaner drawings.

2. All existing trees within the proposed site and adjacent to the site must be accurately identified on the plan. Existing trees must be labeled as to their size, species and if they are intended to remain, be removed or transplanted. All replacement mitigation trees will need to be shown separately on the plan. Tree protection standards for existing trees to remain shall be included on the plan.

3. The extent and location of proposed trees, shrubs and perennials and quantities of each species. Plant materials are to be drawn at two-thirds of its mature size.

4. Landscape schedule including the represented plant symbol, Latin name, common name, planting size and number of individual plants.
All plant materials are to meet the minimum size requirements as provided in this Code.

5. Proposed treatment of all ground surfaces must be clearly indicated, including turf, paving, mulch, native grass, seeded grass, etc. Grass areas are to be specified as seed or sod, and a seed mix/rate specified.

6. Sight distance triangles must be shown at street intersections pursuant to this Code.

7. Project specific landscape notes and details to ensure the proper planting, establishment and survival of plant materials. Additional notes detailing the warranty for plant materials and continued maintenance shall be included.

8. Open space trail network and pedestrian circulation system.

9. Areas to be irrigated and method of irrigation.

10. Proposed grading of the project site, including drainage swales, detention basins, retaining walls and any off-site infrastructure improvements.


12. Restoration, revegetation or enhancement of disturbed natural areas or open space feature.

13. Park structures, signage, play equipment, and other landscape or park amenities and appurtenances.

c. A “pdf” file and an AutoCad drawing file of the final plat in an electronic format specified by the Town Engineer.

9. Development Agreement. Prior to commencement of construction, the applicant shall provide to the Town collateral in a form approved by the Town, guaranteeing adequate safe closure or completion of all public improvements for each phase of construction necessary for the subdivision. The amount of the security shall be either a Payment and Performance Bond in the amount of 100% of the estimated cost of public improvements or a Letter of Credit or other acceptable collateral in the amount of twenty-five percent of the estimated cost as approved by the Town Engineer for constructing all public improvements, unless otherwise provided for in an approved Development Agreement as described in Section 30-6-112 of this Code.

10. Deed for public lands. The applicant shall submit to the Town a warranty deed and title insurance for all lands dedicated on the final plat and accepted by the Town.
11. **Raw water dedication.** Prior to the issuance of a building permit, the applicant shall provide to the Town funds to purchase sufficient raw water or rights thereto for that permit. At the time of final plat, all water necessary for irrigation of parks, open space, golf courses, playing fields, and similar public areas shall be dedicated to the Town per this Code.

12. **Post approval actions.** Prior to issuance of a building or grading permit, the applicant shall submit the following documentation to the Town:

   a. List of contractors. List of all contractors that will be performing the improvements.
   
   b. Proof of insurance. Proof of workman’s comprehensive insurance and liability insurance for each contractor.
   
   c. Open space deed restriction. Areas designated as open space shall be protected by a deed restriction or other appropriate method to ensure that they cannot be subdivided or developed in the future and will remain as open space until the use is modified by the Town.
   
   d. Construction traffic control plan. Applicant will develop a plan for Town Engineer review that addresses construction traffic, construction water, temporary road closures, street repairs, dust, noise and other construction-related concerns.
   
   e. Funding mechanism for maintenance of open space including type of management of such open space.
   
   f. Other certificates, affidavits, enforcements or deductions as required by the Town.

C. **Final Plat review criteria.** In addition to all provisions of this Code, the Town shall use the following criteria to evaluate the applicant’s final plat application:

1. The Final Plat is in substantial conformance with the approved Preliminary Plat. For the purposes of this Code, “substantial conformance”, includes design adjustments made to meet any conditions of preliminary plat approval, and is determined as follows:

   a. Does not change any land use of the proposed plat.
   
   b. Does not change the number of lots or residential density by more than 5%.
   
   c. Does not contain changes which would render the final plat in nonconformance with requirements of this Code.
   
   d. Does not contain significant changes in street alignment and/or access points, or other public elements such as drainage improvements, utility lines or facilities.
   
   e. Does not change any measurable standard (other than above) by more than 15%.

Final Plats determined by the Planning Director to have changes that exceed the definition of “substantial conformance” as above shall be processed as a
Preliminary Plat and shall be reviewed and acted upon as identified in Section 30-6-105 unless withdrawn by the applicant.

2. The development complies with this Code, the Comprehensive Plan and the PORT Plan.

3. All applicable technical standards including the provision of water in sufficient amount and quality have been met.

D. **Timeframe related to approval of Final Plat.** A final plat is in full force and effect for a period of three years from date of recordation unless a longer timeframe is specifically allowed by the Town in an approved Development Agreement or unless public improvements are completed and accepted on all or a portion of the final plat. Applicants may formally request a single, one year extension from the Town prior to termination of final plat approval. Prior to the expiration of the original three year timeframe or the extension (four year total) timeframe, an applicant may formally request an additional extension if substantial progress has been made on installation of public improvements.

| 30-6-107 | Minor subdivision plat |

A. **Minor Subdivision Plat purpose.**

1. The purpose of the Minor Subdivision Plat is to complete the subdivision of land consistent with the technical standards when the following conditions exist:

a. The property has previously been platted within the Town; and

b. The resulting subdivision will produce six or fewer lots.

B. **Minor Subdivision Plat application process.**

1. **Pre-application conference.** A pre-application conference with a representative from the Town is required before the applicant may submit a Minor Subdivision Plat application. Topics to be discussed will include:

a. Town regulations and standards.

b. The application and review process.

c. Submittal requirements.

d. Proposed schedule.

2. **Minor Subdivision plat application submittal.** The applicant shall submit the complete Minor Subdivision plat application package to the Town and request that the application be reviewed by the Planning Commission. The application shall be formatted and packaged per the application submittal checklist provided by the Town and include:

a. Development application form.
b. Application fee and MOU.
c. Title commitment. A current title commitment, dated no more than thirty days from the date of minor subdivision plat application submittal.
d. Minor Subdivision plat. The plat drawing shall comply with the following standards:
i. The plat shall be prepared by or under the direct supervision of a registered land surveyor and meet applicable State of Colorado requirements.
ii. Except for parcels separated by public rights-of-way, public tracts, or railroads, parcels not contiguous shall not be included in one plat, nor shall more than one plat be made on the same sheet. Contiguous parcels owned by different parties may be included on one plat, provided that all owners join in the dedication and acknowledgment.
iii. Lengths shall be shown to the nearest hundredth of a foot and bearings shall be shown in degrees, minutes and seconds.
iv. The perimeter survey description of proposed subdivision shall include at least one tie to an existing section monument of record and a description of monuments. The survey shown shall not have an error greater than one part in ten thousand.
v. Bearings, distances and curve data of all perimeter boundary lines shall be indicated outside the boundary line, not inside, with the lot dimensions.
vi. All signatures shall be made in black drawing ink.
vii. The Minor Subdivision plat shall provide the following information:
a) Title of project.
b) North arrow, scale (not greater than 1”=100’) and date of preparation.
c) Vicinity map.
d) Legal description.
e) Basis for establishing bearing.
f) Names and addresses of owners, applicant, designers, engineers and surveyors.
g) Total acreage of subdivision.
h) Bearings, distances, chords, radii, central angles and tangent links for the perimeter and all lots, blocks, rights-of-way and easements.
i) Lot and block numbers, numbered in consecutive order, and square footage or acreage to two decimal places of each lot or tract.
j) Parcels excepted from inclusion noted as “not included in this subdivision” and the boundary completely indicated by bearings and distances.
k) Existing rights-of-way in and adjacent to subject property (labeled and dimensioned).

l) Existing and proposed street names for all streets on and adjacent to the property.

m) Existing easements and their type in and adjacent to subject property (labeled and dimensioned).

n) Location and description of monuments.

o) Floodplain boundary with a note regarding source of information (if a floodplain does not exist on the property, please state this on the plat).

p) Single-family or two-family residential developments shall provide tables and other information identifying compliance with Section 30-2-116 of this Code.

q) Certificates blocks for signatures of owner, surveyor, utility providers, and Town approval, as applicable.

LEGAL DESCRIPTION AND DEDICATION:

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, being the owners of __________________, Township_________N, Range_______W of the 6th Principal Meridian, Town of Berthoud, County of ______________, State of Colorado, more particularly described as follows:

(LEGAL DESCRIPTION)

Have laid out, platted, and subdivided the above described land, under the name and style of ________________, and by these presents do dedicate to the Town of Berthoud in fee simple the street and public rights-of-way as shown on the plat, and grants to the Town of Berthoud such easements as are created hereby and depicted or, by note, referenced hereon, along with the right to install, maintain, and operate mains, transmission lines, service lines, and appurtenances, either directly or through the various public utilities, as may be necessary to provide such utility, cable television, and sanitary services within this subdivision or property contiguous thereto, through, over, under, and across streets, utility and other easements, and other public places as shown on the plat.
**If owner is an individual(s):**

Owner: John Doe

---

**If owner is a corporation, limited liability company, partnership, association or other business entity:**

Owner: The ABC Corporation, a Colorado corporation

By: John Doe, President

---

**If owner is a trust:**

Owner: The Jane Smith Trust

By: (John Doe, as trustee of the Jane Smith Trust)

---

**DEED OF TRUST’S DEDICATION:** The undersigned mortgagee, for good and valuable consideration does by these presents, hereby subordinate all of its rights to such fee simple dedications and grants of easements to the Town of Berthoud as are depicted and referenced hereon and to the terms and conditions of the development agreement and this final plat and agrees that the development agreement and this final plat shall constitute a first and prior lien upon the (project name) to the same extent as though it were actually executed and recorded prior to said deed of trust.

DATE: _____________________
LENDER’S NAME

BY: ______________________

TITLE: ____________________

SURVEYOR’S CERTIFICATE:

I, ______________________ a Registered Land Surveyor in the State of Colorado, do hereby certify that the survey of _________________ was made under my supervision and the accompanying plat accurately and properly shows said subdivision.

____________________________________
(Name, Registered Land Surveyors)

(Number)

RIGHT TO FARM STATEMENT: The Town of Berthoud has adopted a “Right to Farm” policy. All new and existing residents are expected to read and understand the policy. For a copy of the policy, please contact the Town of Berthoud.

SITE SPECIFIC DEVELOPMENT PLAN:

This plan constitutes a site specific development plan as defined in Article 68 of Title 24, C.R.S., as amended, and Chapter 30 of the Berthoud Development Code available at the Berthoud Town Hall, 328 Massachusetts Avenue, Berthoud, Colorado 80513.

APPROVAL CERTIFICATES:

Approved by the Planning Commission of the Town of Berthoud, Colorado, this ______day of ________________, A.D., 20____.

____________________________________
Chairman

The foregoing plat is approved for filing and accepted by the Town of Berthoud, Colorado, this ______day of ________________, A.D., 20____.
e. General development information. A written description addressing how the proposed Minor Subdivision conforms to this Code, the Comprehensive Plan and the PORT Plan.

f. Additional materials. At Town discretion and depending on the size of the Minor Subdivision and its potential impact to the community, the Town may request the following additional materials:

- Traffic study
- Drainage map and study
- Geotechnical report
- Utility map and study

3. Application certification of completion. Within five working days, Staff shall either certify the application is complete and in compliance with all submittal requirements or reject it as incomplete and notify the applicant of any deficiencies. Applicant shall then correct any deficiencies in the application package, if necessary, and submit the required number of copies of the application to the Town.

4. Refer application to parties of interest. Within an appropriate timeframe, staff shall send information about the application by regular mail to: surrounding property owners within three hundred feet, mineral interest owners of record, mineral and oil and gas lessees for the property, and other parties of interest.

5. Schedule Planning Commission public hearing and complete public notification process. The Town shall schedule a public hearing for the purpose of taking action on the Minor Subdivision. The Town shall publish notice and post the property with a sign legible from an adjacent public right-of-way within a reasonable time prior to the hearing. All notices and posting shall be consistent with this Code.

6. Planning Commission public hearing and action. The Planning Commission shall hold a public hearing to review the application based on the Minor Subdivision review criteria. The Planning Commission shall then move to approve, conditionally approve, or deny the application by resolution. An applicant may appeal denial by the Planning Commission to the Town Board.

7. Applicant addresses Planning Commission conditions. The applicant shall revise the Minor Subdivision plat based on any Planning Commission conditions of approval and submit it to the
8. **Record Minor Subdivision Plat.** Three original signed mylars of the minor subdivision plat shall be delivered to the Town. The Town will record the minor subdivision plat in the office of the Larimer or Weld County Clerk and Recorder.

C. **Minor Subdivision Plat review criteria.** The Town shall use the following criteria to evaluate the request:

   The minor subdivision plat is in compliance with this Code, the Town Comprehensive Plan, and the PORT Plan.

| 30-6-108 | Conveyance plat |

**A. Conveyance Plat purpose.**

A conveyance plat is a subdivision of land that creates lots that can be conveyed by the property owner. Any conveyance plat must conform to and be based upon an approved concept plan processed concurrently with the conveyance plat. The property must be a minimum of thirty five acres. Each lot created by any conveyance plat must be at least ten acres in size. No more than twelve lots may be created by any conveyance plat.

Conveyance plats do not require satisfaction of the full raw water requirement applicable to the lots created. Final approval authorizing development of any portion of the property including but not limited to: a final plat, subdivision, final development plan, or site plan requires satisfaction of all water dedication requirements in accordance with the Berthoud Development Code as amended.

The conveyance plat does not create new lots of record for purposes of development and is intended only to facilitate conveyance or sale of all or a portion of the subject property. Approval of a conveyance plat does not provide the subject property to any development entitlements. Subsequent development of the property will require Town approval of a preliminary and final plat, preliminary and final development plan, and/or a site plan under this Code.

**B. Conveyance Plat application process.**

The Planning Commission shall hold a public meeting on the conveyance plat and shall recommend approval, denial, or conditional approval to the Town Board. If the recommendation is for conditional approval, the conditions under which the conveyance plat would be acceptable shall be set forth. Following the public meeting by the Planning Commission, the Town Board shall hold a public hearing on the conveyance plat and shall adopt a resolution of approval, deny the application, or refer it back to the Planning Commission for further consideration. Staff shall give notice per the Minor Subdivision provisions in this Code.
Amendments to any conveyance plat of less than twenty five percent of any measurable area or dimension may be processed administratively. Amendments of twenty five percent or more of any measurable area or dimension shall be reviewed in accordance with the above process to originally adopt that conveyance plat.

C. **Submittal Requirements**

1. **Conveyance Plat submittal based upon Concept Plan.** A conveyance plat shall be based upon a concept plan submitted concurrently with the conveyance plat application. Please refer to Section 30-6-104-B-2 of this Chapter for Concept Plan application submittal requirements.

2. **Conveyance Plat drawing requirements:**
   - Title block
   - Legend, if abbreviations or symbols are used
   - Contact information for owner, applicant, surveyor
   - Location/vicinity map
   - North arrow and written & graphic scale
   - Legal description and total acreage
   - Property boundary with dimensions and bearings
   - Property tie to original survey and abstract corner
   - Lot dimensions
   - Lot identification numbers
   - Location of proposed streets and alleys with right-of-way widths
   - 100 year floodplain or language “no floodplain exists on the site”
   - Right-of-way dedications or reservations
   - Utility easements including separate instruments
   - Filing information for all existing easements or rights-of-way
   - Complete curve data
   - Locations, material, and size of all monuments
   - Outline of all property proposed for dedication for public use
- Adjacent properties – subdivision name or owner name
- Surveyor’s certificate
- Town approval signature block
- Certificate of Ownership and notary block
- Dedication language for easements
- Additional documents or information as requested
- Plat notes to be added to any conveyance plat include:
  
  **i. Right to Farm statement**
  
  **ii.** All conveyance plats must be titled “Conveyance Plat” and carry the following wording:

  “A conveyance plat is a record of property approved by the Town of Berthoud, Colorado, for the purpose of sale or conveyance in its entirety or interests thereon defined. No building permit shall be issued for a conveyance plat parcel until a final plat is approved, filed of record and public improvements accepted in accordance with the provisions of the Development Code of the Town of Berthoud. Selling a portion of this property by metes and bounds is a violation of Town ordinances and Colorado law and is subject to fines and withholding of utility services and building permits.”

3. **Standards for Approval.**

   **a.** Conformance with concept plan for property. All conveyance plats must be based upon and conform to a concept plan for the entire parcel being placed under a conveyance plat.

   **b.** Access. All lots created by a conveyance plat shall have frontage and access to an existing or proposed public street.

   **c.** Reservation of rights-of-way. Conveyance plats must provide for the reservation of future rights-of-way of planned roadways. Reservation of right-of-way does not grant any right or interest in the property to the Town or other entity. The final alignment may be adjusted upon final platting in order to meet engineering design standards.
d. Dedication of rights-of-way. Dedication of a right-of-way shall be required where a conveyance plat is used to record the remainder of a tract created by the final platting of a portion of the property.

<table>
<thead>
<tr>
<th>30-6-109</th>
<th>Administrative adjustment to recorded plats</th>
</tr>
</thead>
</table>

A. **Administrative Adjustment purpose.** The purpose of the administrative adjustment is to allow adjustments to recorded final plats where there is anticipated to be no significant impact to the Town. The Town Administrator may determine that the Planning Commission should make the decision as to the adjustment of internal or external boundary lines if the adjustment would have a significant impact on the Town or the neighborhood.

B. **Administrative Adjustment allowed.** The Town Administrator is authorized to approve, execute and record plats where the following occur:

a. Merger of any number of lots into a single lot,

b. Division of any lot into multiple lots,

c. Modification or reduction of interior lot lines to reflect the generally recognized use of the property, or

d. Boundary line adjustments where they conform to the historic usage of the property and are agreed to in writing by all parties.

C. **Administrative Adjustment prohibited.** The Town Administrator is not authorized to approve, execute and record plats where the following occurs:

a. Where there is a change in land use or in the intensity of residential land use including for example:

   i. From single-family to multi-family,

   ii. From residential to commercial,

   iii. From commercial to industrial, or

   iv. Any other like change in land use.

b. Where lots are created that will require a zoning change or a zoning variance.

D. **Administrative Adjustment process.** In order to process any request for an administrative adjustment, the following steps shall be completed:

1) Proof of ownership. All owners of the property shall provide evidence satisfactory to
the Town Administrator that they are the holders of equitable title to the property. Evidence of ownership required by the Town may include, but not be limited to: the recorded deed, or the title policy to the property and a copy of the billing by Larimer or Weld Counties for real property taxes. It shall not be necessary to have the holders of the legal title to the property included as petitioners with those persons holding equitable title to the property.

2) Petition for administrative adjustment. All owners of legal and equitable title shall execute before a Notary Public a petition stating they are the owners of equitable title to the property and that they wish to merge two or more adjoining lots into one lot. The petition shall also contain such additional information that the Town may deem appropriate.

3) Procedure for administrative adjustment.

   a. Upon compliance with the above requirements, the Town Administrator or his duly designated representative is authorized to execute the document merging any number of lots into one lot. The petition for an administrative adjustment shall specify the subdivision, lot and block numbers (where applicable) and the number of the lot created as a result of the proposed action.

E. Additional measures. Any administrative adjustment shall be recorded with the Clerk and Recorder of the proper county, and the appropriate adjustment shall be made to the Final Plat retained at the Town of Berthoud. If additional documentation as to the authority of the Town Administrator is required by the Clerk and Recorder’s office or by a title company, the Town Administrator is also authorized to execute these documents or such other documents as may be required to formalize the administrative adjustment.

<table>
<thead>
<tr>
<th>30-6-110 Site plan</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Site Plan Purpose. The site plan is a prerequisite to a building permit for all multi-family (excluding duplexes), commercial, and industrial developments. The site plan shows how the lot will be developed so that the Town can ensure that the site design will be in compliance with all Town regulations and this Code.</td>
</tr>
<tr>
<td>B. Site Plan process.</td>
</tr>
<tr>
<td>1. Site Plan application.</td>
</tr>
<tr>
<td>a. Land use application form.</td>
</tr>
<tr>
<td>b. Application fee and fee agreement.</td>
</tr>
<tr>
<td>c. Site Plan map - The site plan map shall be a minimum of eighteen inches</td>
</tr>
</tbody>
</table>
by twenty-four inches and shall provide the following information:

i. Title of project.

ii. North arrow, scale (no greater than 1"=50') and date of preparation.

iii. Vicinity map.

iv. Address of project.

v. Legal description of property.

vi. Name, address and phone number of property owner.

vii. Name, address and phone number of person or firm responsible for plan.

viii. Lot size (square footage).

ix. Bearings and distances of all lot lines.

x. Existing and proposed easements and rights-of-way.

xi. Existing and proposed paved areas and sidewalks on the site and in the adjacent rights-of-way, all dimensioned, showing how pedestrians will have access to the site and buildings.

xii. Gathering areas for people.

xiii. Existing and proposed curb cuts on the site and in the adjacent rights-of-way (on both sides of perimeter streets), all dimensioned.

xiv. Existing and proposed two foot contours.

xv. Existing waterways on or adjacent to the site.

xvi. Finished floor elevations for all structures.

xvii. Footprint (including roof overhangs and eaves, decks, balconies, outside stairs and landings) of all proposed structures and their use with their dimensions and locations noted with respect to the property lines.

xviii. Existing structures and their use.

xix. Square footage of the proposed building(s) and the footprint of the proposed building(s).

xx. Proposed structure height.

xxi. For commercial and industrial uses, the type of activity and number of employees.

xxii. For multi-family residential, the number of residential units and bedrooms per unit.

xxiii. Location of proposed signs and lights.
xxiv. Specifications for the signs and lights, including type, height and general conformance to the Code. For commercial and industrial uses, a photometric plan prepared by a qualified electrical or lighting engineer shall be submitted that depicts all lighting fixtures and the light spread (in footcandles) of these fixtures across the site to all property boundaries.

xxv. Proposed traffic controls and striping for parking areas (all lanes, driveways, and parking spaces must be dimensioned).

xxvi. Trash disposal areas and enclosures including specifications for enclosures.

xxvii. Location and size of existing and proposed water and sewer service connections and tap sizes (including those for irrigation systems).

xxviii. Location and size of water and sewer lines to which the service connections will be or are made.

xxix. Location and size of water meter(s).

xxx. Location and size of backflow-prevention devices.

xxxi. Indication of how and where perimeter drain will drain (if one exists).

xxxii. Location of existing electrical lines and poles on or adjacent to the site.

xxxiii. Location of proposed electrical service connection and meter location.

xxxiv. Location of electric transformer.

xxxv. Location of all fire hydrants. If none exist on site, note distance and direction of the closest hydrant adjacent to the site within five hundred feet.

xxxvi. Location of detention/retention areas and storm sewer infrastructure with the required drainage easements.

xxxvii. The distance from the proposed building(s) or structure(s) to adjacent lot lines, easements, and adjacent structures.

xxxviii. A land use chart (table).

xxxix. Certificate blocks for signatures of owner, surveyor, utility providers, and Town approval, as applicable.

LEGAL DESCRIPTION

350
(LEGAL DESCRIPTION)

OWNER & PROFESSIONAL INFORMATION:

OWNER  ENGINEER  ARCHITECT  OTHER
Name      "        "        "        "
Address   "        "        "        "
Phone #   "        "        "        "

RIGHT TO FARM STATEMENT: The Town of Berthoud has adopted a “Right to Farm” policy. All new and existing residents are expected to read and understand the policy. For a copy of the policy, please contact the Town of Berthoud.

APPROVAL CERTIFICATES:

Approved by the Town Administrator of the Town of Berthoud, Colorado, this _______day of ________________, A.D., 20_____.

____________________________
Town Administrator

Approved by the Engineer of the Town of Berthoud, Colorado, this _______day of ________________, A.D., 20_____.

____________________________
Engineer

The foregoing plan is approved for filing and accepted by the Town of Berthoud, Colorado, this _______day of ________________, A.D., 20_____.

ATTEST:

____________________________
Planning Technician
SITE SPECIFIC DEVELOPMENT PLAN:

This plan constitutes a site specific development plan as defined in Article 68 of Title 24, C.R.S., as amended, and Chapter 30 of the Berthoud Development Code available at the Berthoud Town Hall, 328 Massachusetts Avenue, Berthoud, Colorado 80513.

d. Community design standards - Demonstrate in written or graphic form how the proposed structure(s) is consistent with Chapter 30, Section 2 of this Code.

e. Certified drainage report - A certified drainage report, including an erosion control study and plan, as applicable, must be reviewed and approved by the appropriate sanitation district (if applicable) prior to submittal of the report to the Town as part of the site plan application.

f. Final landscape and open space plan. Provide an existing and proposed landscape and open space plan consistent with this Section.

g. Exterior elevations of proposed structures/graphic visual aids. Provide complete building elevations, drawn to scale, with illustrations of all colors and identifying major materials to be used in the structure(s). In addition, Staff may require building floor plans, sectional drawings, perspective drawings, models, and/or computer visualizations when the impacts of a proposal warrant such information.

2. Application certification of completion. Within a reasonable period of time, Staff shall either certify the application is complete and in compliance with all submittal requirements or reject it as incomplete and notify the applicant of any deficiencies. Applicant shall then correct any deficiencies in the application package, if necessary, and submit the required number of copies of the application to the Town Clerk. The original application and all documents requiring a signature shall be signed in blue ink.

3. Staff reviews application and prepares comments. Staff will review the site plan map to ensure it is consistent with the site plan review criteria. Following the review, Staff will prepare a written report outlining any changes that the applicant must make before the site plan can be recommended for approval. This report will be forwarded to the applicant.

4. Applicant addresses staff comments. Applicant shall make all necessary changes to the site plan and resubmit a revised copy to the Town.

5. Development Agreement. Staff may require that the applicant execute a Development Agreement as detailed in Section 30-6-112 of this Code to assure the construction of on-site and off-site improvements as a condition of approval of
the site plan.

6. **Review and action.** The Town Administrator and Planner shall be responsible for processing all applications for Site Plan Reviews within the Town of Berthoud. The Town Administrator and Planner shall also have the responsibility of ensuring that all applications and submittal requirements are met prior to initiating any official action as listed above. The authority and responsibility for making the decision to approve, disapprove or approve with conditions all requests for a site plan review will rest with the Town Administrator.

The Town Administrator may refer a site plan application to the Planning Commission for the Commission's review and action, based on a determination that the proposed development's complexity, projected impacts, or proximity to conflicting land uses merits such action. The application and notice of the referral shall be sent to the Planning Commission for its review within a Public Hearing and action. Appeals of any Planning Commission final decision may be made to the Town Board acting as the Board of Appeals using the appeal procedures found in Section 30-3-108 B and C

7. **Board consideration of appeals.** The Board of Trustees shall consider any appeal within forty-five days of the close of the fourteen day appeal period, except an appeal associated with a concurrent development application requiring Board review or approval, shall be considered with final action on the concurrent development application. The Board shall apply the site plan review criteria to uphold, modify, or reverse an earlier decision.

8. **Post approval actions.**

   a. **Building Permit.** A building permit shall be issued only when a site plan has been approved. However, with the approval of the Town, an applicant may submit a building permit application concurrent with the site plan application. Building permits shall not be issued for any development that is not in conformance with the approved site plan.

   b. **Phasing and expiration of approval.** The site plan shall be effective for a period of three years from the date of approval, unless stated otherwise in the written site plan approval. Building permits shall not be issued based on site plans that have an approval date more than three years old. For multi-phased plans, building permits shall not be issued based on an approval date more than three years from the date of Phase I approval.

C. **Site Plan review criteria.** In addition to all requirements of this Code, the site plan must meet the following review criteria:
1. All of the information required on a site plan is shown.

2. The lot size and lot dimensions are consistent with what is shown on the approved final plat.

3. No buildings or structures infringe on any easements.

4. The proposed site grading is consistent with the requirements of any applicable adopted storm drainage criteria or master drainage plans.

5. The density and dimensions shown conform to Section 3: Zoning.

6. The applicable provisions of this Chapter have been met and the proposed improvements conform to this Chapter and the Comprehensive Plan.

D. Amendments to approved Site Plans.

1. Minor variations in the location of structures, improvements, or open space areas caused by engineering or other unforeseen difficulties may be reviewed and approved by the Town Staff. Such changes shall not exceed ten percent of any measurable standard or modify the use, character, or density of an approved site plan. All plans so modified shall be revised to show the authorized changes and shall become a part of the permanent records of the Town.

2. Changes to approved site plans that exceed the ten percent threshold, or other major modifications (such as changes in building size or footprint, relocation of access points, changes to required parking, etc.), shall be considered as a new site plan application. Such amendments shall require Planning Commission review and approval to become effective. A complete site plan application shall be prepared and submitted in compliance with the requirements set forth in this Section.

### 30-6-111 Amendments and exceptions

A. Amendments. Amendments to any lots, tracts or parcels, or the relocation or addition of streets within a previously recorded subdivision, shall be considered a resubdivision (also known as a “replat”) and shall be prepared and submitted in compliance with the requirements as set forth in this Code. Concept plan, preliminary plat and final plat requirements related to a replat may be waived in part at the discretion of the Town Board of Trustees.

B. Exceptions. The Town Board after providing public notice including mailed notice to property owners within three hundred feet of the property, posting notice of a public hearing and publishing notice in the newspaper of record; may in its discretion, grant
exceptions, modifications and/or waivers ("Exceptions") from the regulations set forth in this Chapter 30, Section 6 with respect to a particular parcel of property upon the following findings:

1. That there are special circumstances or conditions affecting such property which create exceptional difficulties with the property itself (and not self-imposed by the applicant), or that development of the property for which such Exceptions are sought is of such extraordinary commercial, social or cultural merit that the potential benefits to the Town outweigh the tangible and intangible costs to the Town created by the Exceptions; and

2. That the granting of the Exceptions will not be materially detrimental to the public welfare, will not materially diminish the rights set forth in the Development Code of other property in the area in which the property is situated and will consistent with the purposes and objectives of the Town Comprehensive Plan and PORT Plan.

In granting such Exceptions, the Town Board may impose such conditions as deemed necessary to substantially secure the objectives of the regulations from which the Exceptions are granted.

### 30-6-112 Development agreements

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
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<tbody>
<tr>
<td>A.</td>
<td>Agreements and Improvements. A Development Agreement stating that the applicant agrees to construct any required public improvements shown in the final plat documents together with security in a form approved by the Town is required. No subdivision plat (except for Conveyance) shall be signed by the Town or recorded at the office of the Larimer or Weld County Clerk, and no building permit shall be issued for development until a Development Agreement between the Town and the applicant has been executed. Such agreement shall include a list of all agreed-upon public improvements and landscaping, an estimate of the cost of such improvements, the form of guarantee for the improvements, and any other provisions or conditions deemed necessary by the Board to ensure that all improvements will be completed in a timely, quality and cost-effective manner.</td>
</tr>
<tr>
<td>B.</td>
<td>Other agreements or contracts setting forth the plan, method and parties responsible for the construction of any required public improvements shown in the final plat documents may also be required.</td>
</tr>
<tr>
<td>C.</td>
<td>As required by this Code and all applicable laws, rules and regulations, the applicant shall</td>
</tr>
</tbody>
</table>
apply to the Town for inspection of improvements.

D. The following improvements shall typically be constructed as determined by the Town.

1. Road grading and surfacing.
2. Curbs.
3. Street lights.
4. Sidewalks.
5. Sanitary sewer collection system.
6. Storm sewers or storm drainage system, as required.
7. Potable water distribution.
8. Non-potable water distribution.
10. Utility distribution system for public parks and open space.
11. Street signs at all street intersections.
12. Permanent reference monuments and monument boxes.
13. Underground telephone, electricity and gas lines.
14. Berm or fence along major arterial and collector streets.
15. Required landscaping including on open space.
16. Required landscaping including park improvements.
17. Tree lawns.
18. Under drains.
19. Trails, trail heads and associated improvements.
20. Required floodway improvements.
22. Required off-site improvements.
E. **Time for completion.** Commencement of construction of all or a portion of the approved final plat shall occur within three years from the date of recordation of said final plat. The required time for the completion of all required improvements for all or a portion of said final plat shall be three years from Town’s issuance of a grading or other permit to commence construction. However, the Board may, for good cause shown, extend such time for commencement or completion of the required improvements upon request from the applicant. Upon completion of such improvements within the required time and approval thereof by the Town, the Town shall cause the cash or letter of credit to be released within thirty days of the Town’s acceptance of such improvements and receipt of the required as-built drawings. When such improvements are not completed within the required time, the Town may cause the proceeds of the cash, letter of credit or other financial guarantee to be used to close or complete the required improvements in accordance with the terms and provisions of the Development Agreement.

F. **Type and amount of security.** The Town will accept security or collateral in the following types and amounts:

1. Payment and performance bonds in the amount of 100% of the cost of improvements plus 15% contingency, or

2. Cash, certified funds, irrevocable letter of credit, or other form of security as approved by the Town in the amount of 25% of the cost of improvements plus contingency.

G. **No partial release of security.** No portion of the security for improvements will be released until the expiration of the warranty period. The required warranty period shall commence upon completion and initial approval of all required improvements and landscaping in accordance with the terms and provisions of the Development Agreement.

H. **Warranty.** All workmanship and materials for required improvements shall be warranted for a minimum period of two years as specified in the Development Agreement and this Code.

I. **Exception for trees within public right-of-way.** Builders or owners of residential properties shall plant street trees per this Code prior to the issuance of any certificate of occupancy. If weather prevents timely planting of street trees, funds in an amount and form acceptable to the Town for planting of such trees at a later time must be placed in escrow with the Town prior to issuance of a certificate of occupancy. Warranty for all street trees shall be one year from date of planting.

### 30-6-113 Sales prior to recording of Final Plat

A. **Applicability.** Except as provided in this section, it is unlawful for any subdivider or agent of a subdivider to transfer or sell or advertise, offer, or agree to transfer or sell any separate interest in property before a conveyance plat or final plat for such subdivided
property has been approved in accordance with the provisions of this article and recorded in the office of the County Clerk and Recorder.

30-6-114 to 30-6-xxx Reserved.
<table>
<thead>
<tr>
<th>30-7-101</th>
<th>Purpose &amp; intent</th>
<th>360</th>
</tr>
</thead>
<tbody>
<tr>
<td>30-7-102</td>
<td>Sign permits and administration</td>
<td>360</td>
</tr>
<tr>
<td>30-7-103</td>
<td>Exempt Signs</td>
<td>362</td>
</tr>
<tr>
<td>30-7-104</td>
<td>Enforcement</td>
<td>365</td>
</tr>
<tr>
<td>30-7-105</td>
<td>Prohibited signs</td>
<td>366</td>
</tr>
<tr>
<td>30-7-106</td>
<td>Measurement of sign area and height</td>
<td>367</td>
</tr>
<tr>
<td>30-7-107</td>
<td>Sign design</td>
<td>369</td>
</tr>
<tr>
<td>30-7-108</td>
<td>Sign installation and maintenance</td>
<td>374</td>
</tr>
<tr>
<td>30-7-109</td>
<td>Allowable sizes and specifications by type of sign</td>
<td>374</td>
</tr>
</tbody>
</table>

Adopted March 27, 2012
The regulations in this Section are intended to coordinate the use, placement, physical dimensions, and design of all signs within the Town. The purpose of these regulations is to:

1. Recognize that signs are a necessary means of visual communication for the convenience of the public and provide flexibility within the sign review/approval process to allow for unique circumstances and creativity.

2. Recognize and ensure the right of those concerned to identify businesses, services and other activities by the use of signs, and not limit signs which are accessory and incidental to the use on the premises where such signs are located.

3. Provide a reasonable balance between the right of an individual to identify his or her business and the right of the public to be protected against the visual discord resulting from the unrestricted proliferation of signs and similar devices.

4. Protect the public from damage or injury caused by signs that are poorly designed or maintained and from distractions or hazards to pedestrians or motorists caused by the indiscriminate placement or use of signs.

5. Ensure signs are well-designed and contribute in a positive way to the Town’s visual environment, express local character, and help develop a distinctive image for the Town of Berthoud.

6. Encourage signs that are responsive to the aesthetics and character of their particular location, adjacent buildings and uses, and the surrounding neighborhood. Ensure signs are compatible and integrated with the building’s architectural design and with other signs on the property.

7. Ensure signs are appropriate for the type of street on which they are located.

Sign permits and administration

A. Sign permit required. To ensure compliance with the regulations of this Section, a sign permit shall be required in order to erect, move, alter, reconstruct or repair any permanent or temporary sign, except signs that are exempt from permits. In multiple tenant buildings, a separate permit shall be required for each business entity’s sign(s). Separate building and electrical permits may be required for signs and will be determined on a case-by-case basis. Changing or replacing the copy on an existing lawful sign shall not require a permit, provided the copy change does not change the nature of the sign or render the sign in violation of this Section.

B. Special Events. For the purposes of this Section, the term special event shall mean a parade, circus, fair, carnival, festival, farmers’ market or other similar event of less than
10 days duration that is different in character from the customary or usual activities generally associated with the property upon which the special event is to occur.

C. Application for a sign permit.

1. Sign permit application requirements. Applications for sign permits shall be made in writing on forms furnished by the Town. The application shall contain:
   a. The location by street number of the proposed sign structure;
   b. Names and addresses of the owner, sign contractor and sign erectors;
   c. Legible site plans which include the specific location of the sign and setbacks to adjacent property lines and buildings;
   d. A detailed drawing indicating the dimensions, materials, and colors of the proposed sign structure. A certification by a registered professional structural engineer may be required by staff for a freestanding or projecting sign;
   e. A graphic drawing or photograph of the sign copy;
   f. A description of the lighting to be used, if applicable;
   g. If the sign is to be located off the premises advertised, a written lease or permission from the property owner of the site on which the sign will be located; and
   h. Sign permit fee as established by the current fee resolution.

2. Sign permit application certification of completion. Within a reasonable period of the date of application submission, staff shall either certify the application is complete and in compliance with all submittal requirements or reject it as incomplete and notify the applicant in writing of any deficiencies.

3. Staff review and approval. When staff has determined the application to be complete, staff shall review the sign permit in accordance with the established review criteria and has the authority to approve, approve with conditions or deny the sign permit. Upon staff’s approval of the sign permit, the sign permit and any building or electrical permits required for the sign shall be issued to the applicant.

D. Sign permit review criteria. The following review criteria will be used by the Town to evaluate all sign permit applications:

1. Sign meets the requirements of this Section;
2. Sign conforms to the requirements of the building and electrical code;
3. Sign conforms to the size, height, material and location requirements of the Zoning Code for the zoning district in which it is located;
4. Sign would not interfere with pedestrian or vehicular safety;
5. Sign would not detract from the character of an architecturally significant or historic structure;
6. Sign would not be located so as to have a negative impact on adjacent properties;
7. Sign would not detract from the pedestrian quality of a street or area, if applicable; and
8. Sign would not add to an over-proliferation of signs on a property or area.

D. Appeal of sign permit denial or approval with conditions. Any appeal of Town’s denial of a sign permit or approval with conditions shall be made to the Board of Adjustment as provided in Chapter 30, Section 3: Zoning, of the Development Code.

### 30-7-103 Exempt signs

**A. Exempt signs.** The following types of signs are exempt from permit requirements of this Section and may be placed in any zoning district subject to the provisions of this Section. Such signs shall otherwise be in conformance with all applicable requirements contained in this Section. All such signs (except government signs) shall be located outside a street right-of-way. Signs shall not interfere with traffic signs or the sight distance triangle at intersections. Evidence of permission to install a sign may be required as the Town investigates compliance with this Section. All other signs shall be allowed only with permit and upon proof of compliance with this Section.

1. **General.** Signs that are not visible beyond the boundaries of the lot or parcel upon which they are located and/or from any public thoroughfare or right-of-way shall be exempt from the provisions of this Section, except that such signs shall be subject to the safety regulations of the adopted version of the Uniform Building Code and all other Codes (electrical, mechanical, etc.) governing building construction in the Town.

2. **Address.** Non-illuminated signs less than two square feet in area which identify the address and/or occupants of a dwelling unit or of an establishment.

3. **Banners.** Banners applied to paper, plastic or fabric used to decorate or attract attention to a business establishment, provided:
   a. It is displayed in conjunction with a grand opening celebration for a period not to exceed thirty days, or
   b. It is displayed in conjunction with a special sale for a period not to exceed thirty days in a one year period.
   c. It is displayed no more than two times per calendar year per establishment.
   d. It is securely attached to the wall of the establishment, freestanding signs or light poles on private property.
   e. One single-sided banner per street frontage per establishment shall be permitted.

4. **Building identification, historical markers.** Non-illuminated signs which are permanently affixed to buildings or structures for the purpose of identifying the name of a building, date of construction, or other historical information as approved by the Town.

5. **Bulletin board.** Bulletin board signs not exceeding fifteen square feet in gross surface area accessory to a church, school, public or nonprofit institution.

6. **Construction.** Temporary construction signs provided that:
a. Signs in conjunction with any residential use shall not exceed eight square feet each.
b. Signs in conjunction with all other uses shall have a maximum area of thirty-two square feet each.
c. Only one such sign oriented per street front per premises shall be erected. Any two such signs located on the same premises shall be located at least one hundred feet apart as measured using a straight line.
d. Such signs shall not be illuminated.
e. Such signs shall only appear at the construction site.
f. Such signs shall be removed within seven days after completion of the project.

7. **Directional.** On-premises directional and instructional signs not exceeding six square feet in area each.

8. **Doors.** Signs affixed to door surfaces which identify the name and/or address of an establishment.

9. **Flags.** Exempt flags include:
   a. for residential properties up to 2 flagpoles no more than 18 feet high with a combined total of 48 square feet of flag area. Staff may authorize additional flags on a premise provided that the flags are not used as a sign and are compatible within the context of the surrounding neighborhood.
   b. for commercial areas up to 2 flagpoles of no more that 36 feet high with a combined total of 144 square feet of flag area. Additional flag installations shall be subject to a sign permit and the square footage of any additional flag shall be included in the sign measurement for a freestanding sign.

10. **Garage, estate, yard sale or farm auction.** Signs, placed on private property, which advertise a private garage or yard sale provided such signs are displayed no more than twice per year per dwelling unit for a period not to exceed five days (for auctions, 30 days). Any such sign shall be removed within twenty four hours after the end of the sale or auction.

11. **Home-based businesses.** Signs identifying a properly permitted home-based business with non-illuminated sign limited to no more than 2 square feet in size.

12. **Notice boards.** Notice boards for public or religious institutions or other uses as approved by Staff and primarily intended for view by pedestrians on or adjacent to the property.

13. **Political.** Political signs displayed on private property in accordance with an official election or signs erected on behalf of candidates for public office provided:
   a. The size of any such sign(s) on a private residential lot does not exceed six square feet per sign.
   b. All such signs may be erected no sooner than sixty days in advance of the election for which they were made, or, at the commencement of early voting for that election.
   c. The signs are removed within five days after the election for which they were made.
d. The property owner upon whose land the sign is placed shall give permission for the placement of said signs and will be responsible for violations.

14. **Religious symbols.** Religious symbols located on a building or lot used for organized religious services.

15. **Regulatory signs.** Regulatory signs erected on private property, such as “no trespassing” signs, which do not exceed two square feet per face or four square feet in total surface area, limited to four such signs per use or per building, whichever is the greater number.

16. **Sale, lease, rent.** Temporary signs used to offer for sale, lease or rent the land or buildings upon which the sign is located provided:

   a. One sign per street frontage advertising real estate ("For Sale", "For Rent", "For Lease" or "For Development") not greater than eight square feet in area in a residential district and thirty-two square feet in area in nonresidential districts. If the property so advertised lies on a corner lot or double frontage lot, then a second sign may be oriented along the second street so long as the two signs are at least one hundred feet apart as measured by the shortest straight line.

   b. In addition to the on-site real estate sign(s), a maximum of three directional signs, each not exceeding four square feet in area, shall be permitted off the subject premises. Such signs must be placed outside all existing right-of-ways. The message of said signs shall be limited to the name of the property or development being advertised, an address, a telephone number, a directional arrow, mileage to the subject property, and the terms "Lot/Home For Sale", "For Rent", "For Lease", "For Development", etc.

   c. No more than three temporary directional signs advertising a specific planned commercial or mixed use development, subdivision, multi-family development, etc. may also be permitted offsite. Each such sign may have a maximum area of four square feet and shall be placed outside all existing right-of-ways.

   d. All such temporary signs shall be removed within seven days after the real estate closing or lease transaction.

   e. No sign allowed under this subsection shall be lighted.

17. **Special events.** Temporary special event signs and banners for religious, charitable, civic, fraternal or similar non-profit or not-for-profit organizations provided that:

   a. Signs shall be erected no sooner than thirty days prior and removed no later than five days after the event.

   b. No such sign shall exceed sixty square feet.

   c. No such sign shall be illuminated.

   d. All such signs shall be located off the street right-of-way, unless otherwise granted permission for such location by the Town or the Colorado Department of Transportation (CDOT). In no case may any such sign impede the view or travel of any motorists or pedestrians or be attached to any structure within the right-of-way (government signs, telephone poles, etc.).

18. **Text.** No permit shall be required for text or copy changes on conforming or legal nonconforming signs specifically designed to permit changes of the text or copy; provided that
no structural changes are made to the sign, and provided that the name of the business to which the sign belongs is not changed.

19. **Time and temperature.** Signs displaying time and temperature provided they are not related to a product.

20. **Town sponsored signs.** Entrance, promotional or informational signs or monuments sponsored by and funded in whole or in part by the Town.

21. **Vehicular signs.** Signs displayed on trucks, buses, trailers or other vehicles which are being operated or stored in the normal course of a business, such as signs indicating the name of the owner or business which are located on moving vans, delivery trucks, rental trucks and trailers and the like, shall be exempt from the provisions of this Article, provided that the primary purpose of such vehicles is not for the display of signs, and provided that they are parked or stored in areas appropriate to their use as vehicles.

22. **Vending machine signs.** A sign permit shall not be required for vending machine signs provided that the advertisement upon the vending machine sign is limited to the product vended from that machine.

### 30-7-104 Enforcement

**A. Discontinued establishments; removal of signs.** Whenever a business, industry, service or other use is discontinued, the sign(s) pertaining to the use shall be removed or obscured by the person or entity owning or having possession over the property within sixty days after the discontinuance of such use.

**B. Illegal Signs.**

1. **Penalties.** Illegal signs shall be subject to administrative remedies of the Code.

2. **Removal of illegal signs in the public right-of-way.** The Town may cause the removal of any sign within the public right-of-way or on property that is otherwise abandoned that has been placed there without first complying with the requirements of this Section.

3. **Repair and removal of poorly maintained signs/signs in violation of Code.** The Town may cause the repair or removal of any sign that has become a hazard to public safety due to poor construction or maintenance. Signs in violation of any other provision of this Code may also be removed by the Town.

4. **Storage of removed signs.** Signs removed in compliance with this Section shall be stored by the Town for thirty days, during which they may be recovered by the owner only upon payment to the Town for costs of removal and storage. If not recovered within the thirty day period, the sign and supporting structure shall be declared abandoned and title shall vest with the Town. The costs of removal and storage (up to thirty days) may be billed to the owner.
A. **Prohibited signs.** The following privately owned or sponsored signs are inconsistent with the purposes and standards in this Section and are prohibited in all zoning districts.

1. Flashing, rotating, blinking or moving signs, animated signs, signs with moving, rotating or flashing lights or signs that create the illusion of movement, except for time and temperature devices.

2. Any sign that is erected in such a location as to cause visual obstruction or interference with motor vehicle traffic, bicycle traffic or traffic-control devices including any sign that obstructs clear vision in any direction from any street intersection or driveway.

3. Mechanical or electrical appurtenances, such as “revolving beacons”, that are designed to compel attention.

4. Roof signs.

5. Any sign other than traffic control signs erected, constructed, or maintained within, over or upon the right-of-way of any road or highway, except in the case of a sign for which a permit has been issued with the requirements of this Section.

6. Off-premises advertising signs or any other sign not pertinent and clearly incidental to the permitted use on the property where located, except for temporary subdivision directional signs and political signs, and except for signs permitted in Section 30-7-109.H: Off premises signs.

7. Any sign which interferes with free passage from or obstructs any fire escape, downspout, window, door, stairway, ladder or opening intended as a means of ingress or egress or providing light or air.

8. Any sign located in such a way as to intentionally deny visual access to an adjoining property owner’s existing sign.

9. Vehicle-mounted signs that are on stationary or immobile vehicles or trailers for over 7 days including but not limited to, signs painted on or attached to semi-trailers or cargo containers when exhibited on public property or private property adjacent to public right-of-way for the purpose of advertising a business, service, or product for sale or rent. Vehicle-mounted signs used in connection with a special event and construction trailers are exempted from the requirements of this section during the duration of the special event or construction project only. Upon the conclusion of the special event, such signs must be dismantled.

10. Searchlights except as related to a special event as described in 30-7-102.B.
11. Signs with optical illusion of movement by means of a design which presents a pattern capable of reversible perspective, giving the illusion of motion or changing of copy.

12. Any sign (together with its supporting structure) now or hereafter existing which, sixty days or more after the premises have been vacated, advertises an activity, business, product or service no longer produced or conducted upon the premises upon which such sign is located. If the sign or sign structure is covered or the identifying symbols or letters removed, an extension of time may be granted by the Town upon good cause for such extension being shown. (This provision shall not apply to permanent signs accessory to businesses which are open only on a seasonal basis, provided that there is clear intent to continue operation of the business).

13. Any sign or sign structure which:
   a. Is structurally unsafe;
   b. Constitutes a hazard to safety or health by reason of inadequate maintenance or dilapidation;
   c. Is not kept in good repair; or
   d. Is capable of causing electrical shocks to persons likely to come in contact with it.

14. Any sign or sign structure which:
   a. In any other way obstructs the view of, may be confused with or purports to be an official traffic sign, signal or device or any other official sign;
   b. Uses any words, phrases, symbols or characters implying the existence of danger or the need for stopping or maneuvering a motor vehicle or bicycle;
   c. Creates in any other way an unsafe distraction for motor vehicle or bicycle operators; or
   d. Obstructs the view of motor vehicle or bicycle operators entering a public roadway from any parking area, service drive, private driveway, alley or other thoroughfare.

### 30-7-106 Measurement of sign area and height

**A. Sign surface area.** The area of a geometric shape enclosing any message, logo, symbol, name, photograph or display face shall be measured using standard mathematical formulas. Time and temperature devices shall not be included within the measurement of maximum sign area.

**Figure 7.1: Sign area measurement**
B. **Sign support.** Supporting framework or bracing that is clearly incidental to the display itself shall not be computed as sign area.

C. **Back-to-back (double-faced) signs.** Back-to-back signs shall be regarded as a single sign only if mounted on a single structure, and the distance between each sign face does not exceed two feet at any point.

D. **Three-dimensional signs.** Where a sign consists of one or more three-dimensional objects (i.e. balls, cubes, clusters of objects, sculpture), the sign area shall be measured as their maximum projection upon a vertical plane.

E. **Wall signs.** If a sign is attached to a wall, only that portion of the wall onto which the sign face or letters are placed shall be calculated in the sign area.

F. **Sign height.** The height of a sign shall be measured from the highest point of a sign to the ground surface beneath it. When berms are used in conjunction with signage, the height of the sign shall be measured from the mean elevation of the fronting street.

**Figure 7.2: Sign measurement**
A. **Design compatibility.**

1. **Creative design encouraged.** Signs shall make a positive contribution to the general appearance of the street and commercial area in which they are located. A well-designed sign can be a major asset to a building. The Town encourages imaginative and innovative sign design.

2. **Proportionate size and scale.** The scale of signs shall be appropriate for the building or property on which they are placed and the area in which they are located. Building signs shall be harmonious in scale and proportion with the building facade they are mounted upon.

3. **Sign location and placement.**
   a. **Visibility** – Signs shall not visually overpower nor obscure architectural features.

   **Figure 7.3: Sign location and placement**
b. *Integrate signs with the building and landscaping* – Carefully coordinate the sign with the architectural design, overall color scheme and landscaping. Signs shall be designed to complement or enhance the other signs for a building.

c. *Unified sign band* – Whenever possible, signs located on buildings with the same blockface shall be placed at the same height, in order to create a unified sign band. Locate wall signs at the first floor level only for retail uses.

d. *Monument signs* – Locate monument signs in a planter setting within a landscaped area at the primary entries to residential, commercial and industrial subdivisions to provide an overall project identity. A maximum of one monument sign per entry is permitted.

e. *Pedestrian-oriented signs* – Pedestrian-oriented signs are encouraged. It is desirable to include a pedestrian-oriented sign as one of the permitted signs for a business. These signs are designed for and directed toward pedestrians so they can easily and comfortably read the sign as they stand adjacent to the business.

f. *Road right-of-way* – No sign shall be erected within the road right-of-way or near the...
intersection of any road(s) or driveways in such a manner as to obstruct free and clear vision of motorists, bicyclists or pedestrians or at any location where, by reason of the position, shape or color, it may interfere with, obstruct the view of, or be confused with any authorized traffic sign, signal or device. Signs located at an intersection must be outside of the sight distance triangle.

5. **Landscaping.** Freestanding signs shall be landscaped at their base in a way harmonious with the landscape concept for the whole site. Landscaping shall form an attractive, dense cluster at the base of the sign that is equally attractive in winter and summer. A landscape plan for the sign base shall be provided.

*Figure 7.4: Signs and landscaping*

*Staff note: need to fix the size of the image above.*
6. **Reduce sign impact.** Because residential and commercial uses generally exist in close proximity, signs shall be designed, located and/or screened with landscaping so that they have little or no impact on adjacent residential neighborhoods. Small-scale signs are encouraged.

**Figure 7.5: Reduce sign impact**

![Reducing Sign Impact Diagram]

B. **Sign Illumination.**

1. Use illumination for any sign only if necessary.

**Figure 7.6: Use of existing illumination**

![Use of Existing Illumination Diagram]

2. All sign illumination shall meet the Town of Berthoud “Dark Sky” regulations.

3. Sign illumination shall complement the design of the site.

4. Use a direct light source. All lighted signs shall have their lighting directed in such a manner as to illuminate only the face of the sign. When external light sources are directed at the sign surface, the light source must be concealed from pedestrians’ and motorists’ “lines of sight.”
5. Signs must be illuminated in a way that does not cause glare onto the street and adjacent properties. Signs shall be lighted only to the minimum level for nighttime readability and shall not be so bright as to overpower an area.

6. All lighted signs shall meet all applicable electrical codes and the electrical components used shall bear the label of an approval agency. Electrical permits shall be obtained for electric signs.

7. Flashing, moving, blinking, chasing or other animation effects shall be prohibited on all signs.

8. Neon tubing is an acceptable method of sign design or sign illumination in the commercial and industrial zone districts.

9. All commercial signs within 150 linear feet of a pre-existing residential structure or use, and visible from that structure, shall be dimmed to ½ the standard illumination level between the hours of 11:00 p.m. and 6:00 a.m. unless the hours outside those listed above are part of the normal business operation. A residence shall be deemed “pre-existing” for purposes of this Section if it has a valid building permit in effect for construction of said structure or if construction of said structure was complete on or prior to the effective date of this Section. Signage facing residential property must be able to extinguish or dim any lighting during the period listed above in order to avoid an unreasonable impact to residential properties.
**30-7-108 Sign installation and maintenance**

**A. Installation.**

1. Where possible, signs shall be mounted so that the mounting brackets and associated mounting hardware are concealed.

2. Projecting signs shall be mounted so they generally align with others in the block.

3. All signs and all components thereof, including sign structures and sign faces, shall be kept neatly painted, in a good state of repair and in compliance with all building and electrical codes in force at the time of installation. The Town may inspect any sign governed by this Section and shall have the authority to order the painting, repair, alteration or removal of a sign which constitutes a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation or obsolescence.

**B. Maintenance.**

1. The owner of a sign and the owner of the premises on which such sign is located shall be jointly and severally liable to maintain such sign, including any illumination sources in neat and orderly condition, and in a good working order at all times, and to prevent the development of any rust, corrosion, rotting or other deterioration in the physical appearance or safety of such sign. The sign must also be in compliance with all building and electrical codes.

2. The owner of any sign regulated by this Section shall be required to keep signs and supporting hardware, including temporary signs and time/temperature signs structurally safe, clean, free of visible defects and functioning properly at all times. Repairs to signs shall be equal to or better in quality of materials and design than the original sign.

3. The Town may inspect any sign governed by this Section and shall have the authority to order the painting, repair, alteration or removal of a sign which constitutes a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation or obsolescence.

**30-7-109 Allowable sizes and specifications by type of sign**

**A. Allowable sign areas.**

1. **Business signs.** All businesses within the Town are allowed the following total square footage for signage in any form on the property: All sign types (pole, wall, projecting, canopy, etc.) may be allowed per this Code within the square footage totals identified below and other limitations of this Section.

   a. 2 sq. ft. for each linear foot of building up to 200 linear feet of building frontage and an additional 1 sq. ft. for each linear foot of building frontage over 200 feet. The maximum size of any single sign is 288 sq. ft. (12 ft. by 24 ft.). Any request for a larger single sign will be reviewed by the Planning Commission as a
variance to this Section 7.

b. Where the linear frontage of all buildings are less than 30% of the total lot frontage; allowable sign sizes are 2 sq. ft. of sign for each linear foot of building and an additional 1 sq. ft. of sign for each linear foot of property frontage (less the linear building frontage).

c. Where owners of property over 10 acres in size with no building upon it are seeking a sign, up to 1 sq. ft. of sign area is allowed for each linear foot of property frontage. Such requests will be processed administratively unless Staff determines that the proposal does not fit within the context of the site or neighborhood; at which time the request will be reviewed by the Planning Commission as a variance to this Section 7.

2. Residential signs. All home based business or other signs allowed within residential districts are limited to no more than 2 square feet in size.

B. Sign examples. The illustrations in Figure 7.8: Sign examples below identify the types of signs permitted per this Section.

Figure 7.9: Sign examples, continued
C. **Awning signs.** An awning sign is a sign which is painted, printed, stitched, sewn or stained onto the exterior of an awning. An awning is a movable or permanent shelter supported entirely from the exterior wall of a building and composed of non-rigid materials except for the supporting framework.

1. **Location.** Signs may be placed only on awnings that are located on first- and second-story building frontages, including those fronting a parking lot or pedestrian way. No awning sign shall project outside the face of an awning.

2. **Required maintenance.** Awnings shall be regularly cleaned and kept free of dust, debris and visible defects.

3. **Awning sign specifications.** Specifications regulating awning signs include:
   
   a. **Quantity**
      
      1 per window
   
   b. **Width**
      
      max. is width of window
   
   c. **Height**
      
      n/a
   
   d. **Depth/projection**
      
      max. 7 feet from building façade
   
   e. **Clearance**
      
      minimum 8 feet
   
   f. **Letter height**
      
      variable
   
   g. **Valance height**
      
      max. 12 inches
   
   h. **Illuminated**
      
      Allowed
   
   i. **Allowed zones**
      
      R4, C1, C2, M1, M2, PUD

D. **Billboard signs.** No new billboard signs are allowed within the Town of Berthoud.
E. **Canopy signs.** A canopy sign is a wall sign that is permanently affixed to a roofed shelter attached to and supported by a building, by columns extending from the ground, or by a combination of a building and columns.

1. **Maximum area and height.** No canopy, with or without signage, shall extend above the roof line of any building. No canopy sign shall project above the top of the canopy upon which it is mounted. Under-canopy signs which are perpendicular to the face of the building shall be deemed to be projecting or blade wall signs. Under-canopy signs which are parallel to the face of the building shall be a minimum of eight feet above grade and shall be deemed to be flush wall signs.

2. **Required maintenance.** Canopies shall be regularly cleaned and kept free of dust, debris and visible defects.

3. **Canopy sign specifications.** Specifications regulating canopy signs include:
   a. Quantity 1 per canopy face
   b. Width 25 feet
   c. Height 18 inches
   d. Depth/projection max. 20 feet from face of building
   e. Clearance minimum 12 feet from finished grade
   f. Letter height min. 5 inches, max. 12 inches
   g. Illuminated Allowed under canopy & directed downward
   h. Allowed zones R4, C1, C2, M1, M2, PUD

F. **Electronic signs.** An electronic sign uses display techniques that contain alphanumeric characters, graphics or symbols defined by a small number of matrix elements using different combinations of light emitting diodes (LED’s), fiber optics, light bulbs or other illumination device within the display area, including computer programmable, microprocessor controlled electronic displays and projected images or messages with these characteristics onto the sign face. Any sign utilizing electronic display techniques in whole or in part must meet Berthoud Dark Sky standards as well as the following operational standards.

1. **Duration.** In all zone districts where allowed, the full sign image or any portion thereof must have a minimum duration of 15 seconds and must be a static display. No portion of the image may flash, scroll, twirl, change color, in any manner imitate movement, or meet the characteristics of a flashing sign.

2. **Transition.** In all zone districts where a sign image changes, the change sequence must be accomplished by means of instantaneous re-pixalization.

3. **Brightness.** Any electronic sign may not exceed a maximum illumination of 5,000 nits (candelas per square meter) during daylight hours and a maximum illumination of 600 nits (candelas per square meter) between 11:00 p.m. and 6:00 a.m. as measured from the sign’s face. If normal business hours are outside of those listed above then the higher level of illumination may be allowed until close of business but no later than 1:00 a.m.

4. **Dimmer control.** Electronic signs must have an automatic dimmer control to control brightness.
for nighttime viewing. The intensity of the light source shall not produce glare, the effect of which constitutes as traffic hazard or is otherwise detrimental to the public health, safety or welfare.

5. **Audio or pyrotechnics.** Audio speakers or any form of pyrotechnics are prohibited.

6. **Fluctuating or flashing illumination.** No portion of any sign may fluctuate in light intensity or use intermittent, strobe or moving light or light that changes in intensity in sudden transitory bursts, streams, zooms, twinkles, sparkles or in any manner creates the illusion of movement.

7. **Video display.** No portion of any sign may change its message or background in a manner or by a method of display characterized by motion or pictorial imagery, or depicts action or a special effect to imitate movement, or the presentation of pictorials or graphics displayed in a special effect to imitate movement, or the presentation of pictorials or graphics displayed in a progression of frames that give the illusion of motion or the illusion of moving objects, moving patterns or bands of light or expanding or contracting shapes.

G. **Freestanding and monument signs.** A freestanding sign is a sign which is supported by one or more columns, uprights, poles or braces extended from the ground, or which is erected on the ground. A freestanding sign shall also include monument signs and pole signs but not a sign attached to any structure.

1. **Location.** The sign may be located only on a site frontage adjoining a public street. No freestanding sign in any zoning district can be erected closer than eight feet from any curbline, nor closer than four feet to any building. No freestanding signs in business and industrial districts may be located less than twenty-five feet from any property line adjacent to a residential zoning district line.

2. **Sign mounting.** The sign shall be mounted on one or more posts or have a solid monument-type base. Posts shall not have a diameter greater than twelve inches.

3. **Pole signs.** Pole signs shall not be so large as to obscure the patterns of front facades and yards.

4. **Monument sign design.** The design of a monument sign shall be consistent with the overall scale of the building. The design and placement of the sign shall not obstruct traffic safety sight distance areas. Project monument signs shall contain only the name and address of the project which it identifies.

5. **Monument sign landscaping requirements.** Landscaping shall be provided at the base of the supporting structure equal to twice the area of one face of the sign. For example, twenty square feet of sign area equals forty square feet of landscaped area. The Planning Commission may reduce or waive this requirement if it is determined that the additional landscaping would not contribute significantly to the overall aesthetic character of the project.

6. **Freestanding and monument sign specifications.** Specifications regulating freestanding and monument signs include:

   a. **Quantity** 1 per project entrance

   b. **Width** n/a
c. Height less than 12 feet
d. Depth/projection n/a
e. Clearance outside of right of way
f. Illuminated allowed
g. Allowed zones: freestanding signs R4, C1, C2, M1, M2, PUD
   Allowed zones: monument signs all zone districts

H. Off-premises signs. Off-premises signs, also known as off-site signs, are permitted with a conditional use permit.

1. Business or historic district identification signs. A business district identification sign is an off-premises sign for the identification of a historic district, specific business district, activity node as identified in the Comprehensive Plan, or a business improvement or redevelopment area approved by the Town. Business or historic district signs shall not:
   a. Interfere with pedestrian or vehicular safety;
   b. Detract from the pedestrian quality of the surrounding area; or
   c. Add to an over-proliferation of signs on one property or in an area.

2. Church and civic club off-premise signs. A church or civic club off-premise sign is intended to direct people to the church or civic club and/or state meeting dates and times. Such signs shall not:
   a. Interfere with pedestrian or vehicular safety;
   b. Detract from the pedestrian quality of the surrounding area;
   c. Add to an over-proliferation of signs on one property or in an area;
   d. Be allowed for any organization that does not have "non-profit" status;
   e. Measure more than four square feet; or
   f. Number more than five for any organization.

3. Subdivision or development directional signs. The Town may work with an applicant to provide directional signs to subdivision and neighborhood developments while those developments are in active development. Directional signs may be placed outside of the right-of-way along arterial and/or collector roadways within the Town. The location and form of all off-site subdivision or development signs requires approval by the Town. The message of said signs shall be limited to the name of the property or development being advertised, an address, a telephone number/website address, a directional arrow, mileage to the subject property and the terms “Lot(s)/Home(s) for sale”.

4. Sandwich board signs. Up to one sandwich board type sign is allowed along Mountain Avenue for businesses in the C1 or C2 zone districts located further than one block north or south of Mountain Avenue between 2nd Street and 5th Street, or within the one block dimension but outside of the normal line-of-sight of motorists on Mountain Avenue. Sandwich boards must be removed upon close of business each day and may be replaced the following day. Sandwich board sign
specifications include:

a. Quantity 1
b. Area max. 8 square feet
c. Width max. 24 inches
d. Height max. 48 inches
e. Depth/projection n/a
f. Clearance n/a
g. Illuminated no
h. Allowed zones within area described above

I. **Projecting (blade) signs.** A projecting or blade sign is any sign supported by a building wall and projecting at least twelve inches or more horizontally beyond the surface of the building to which the sign is attached.

1. **Location.** Projecting or blade signs shall be placed only on a ground floor facade, except for businesses located above the ground level with direct exterior pedestrian access. Mount projecting or blade signs so that they align with others in the block and fit with architectural details of the structure.

2. **Sign structure.** Sign supports and brackets shall be compatible with the design and scale of the sign.

3. **Projecting or blade sign specifications.** Specifications regulating projecting or blade signs include:

   a. Quantity 1 per façade, 2 maximum
   b. Area max. 6 square feet
c. Width max. 4 feet
d. Height no higher than wall that it projects from or no higher than bottom of second story window framing
e. Depth/projection max. 4 feet from face of building unless part of approved canopy or awning
f. Clearance minimum 8 feet
g. Letter height max. 10 inches
h. Illuminated allowed
i. Allowed zones R4, C1, C2, M1, M2

J. **Standard brand-name signs.** A standard brand-name sign is any sign devoted to the advertising of any standard brand-name commodity (Coca-Cola, Pepsi, etc.) or service (carpet cleaning) which is not the principal commodity or service being sold or rendered on the premises, or are not a part of the name or business concern involved.

1. **Maximum area.** Not more than twenty percent of the total allowable sign area for any permitted use shall be devoted to the advertising of any standard brand-name commodity or service.

K. **Special event - business.** Temporary signs and banners for grand openings or special events by for-profit organizations. For a business special event, signage will be authorized by permit from the Town and may include the following:
a. portable signs, promotional tents or signs not permanently affixed or attached to the ground or to any structure,

b. inflatable freestanding signs or forms of any size or shape including but not limited to: wind puppets, sky guys, sky dancers, air dancers, advertising balloons, inflatable product replicas, blimps, spheres, etc.

c. Wind signs including but not limited to wind wavers, feather flags, banana flags, flex blades, etc.

Business special event signage is allowed under the following provisions:

a. It is displayed in conjunction with a grand opening celebration for a period not to exceed thirty days, or

b. It is displayed in conjunction with a special sale for a period not to exceed thirty days in a one year period.

c. It is displayed no more than two times per calendar year per establishment.

d. It is securely attached to the ground on private property.

e. All such signs shall be located off the street right-of-way, unless otherwise granted permission for such location by the Town or the Colorado Department of Transportation (CDOT). In no case may any such sign impede the view or travel of any motorists or pedestrians or be attached to any structure within the right-of-way (government signs, telephone poles, etc.).

L. Time and/or temperature signs. A time and/or temperature sign is any sign intended to be displayed for a limited period of time and capable of being viewed from any public right-of-way, parking area or neighboring property.

1. Maximum area. Time and/or temperature signs which do not exceed ten square feet shall not be required to be included in the allowable sign area permitted by this Section; provided however, that any identification or advertising which is attached to or made part of the same sign structure shall be included in the allowable sign area for the premises.

2. Design. The sign shall be designed in a manner that is compatible with other signs on the site and with the structure on which it is placed.

3. Maintenance. It shall be the responsibility of the owner of such signs to maintain such signs and insure that they are kept accurate. If these conditions are not met, the sign shall be repaired or removed at owner’s expense per this Code.

M. Wall signs. A wall sign is any sign painted on, incorporated in or affixed to the building wall, or any sign consisting of cut-out letters or devices affixed to the building wall with no background defined on the building wall.

1. Location. The sign shall not be placed to obstruct any portion of a window, doorway or other architectural detail. Wall signs on buildings at the first floor level are allowed for businesses on higher floors that have a principal entrance on the first floor.
2. **Design.** Wall signs shall identify the individual business, building or building complex by name or trademark only.

3. **Wall sign specifications.** Specifications regulating wall signs include:
   
   a. **Quantity** 1 (2 for corner buildings)
   b. **Width** max. 90% of building facade
   c. **Height** no higher than building eave or 25 feet above grade
   d. **Depth/projection** max. 12 inches
   e. **Clearance** minimum 7 feet
   f. **Illuminated** allowed
   g. **Allowed zones** R4, C1, C2, M1, M2

   **30-7-110 to 30-7-xxx Reserved.**
CHAPTER 30 – BERTHOUD DEVELOPMENT CODE

SECTION 8 – ANNEXATION

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>30-8-101</td>
<td>Purpose</td>
<td>384</td>
</tr>
<tr>
<td>30-8-102</td>
<td>Statement of policy and review criteria</td>
<td>384</td>
</tr>
<tr>
<td>30-8-103</td>
<td>Annexation application</td>
<td>384</td>
</tr>
<tr>
<td>30-8-104</td>
<td>Annexation process</td>
<td>386</td>
</tr>
<tr>
<td>30-3-105</td>
<td>Post-approval actions</td>
<td>388</td>
</tr>
<tr>
<td>30-8-106</td>
<td>Public hearing notices</td>
<td>388</td>
</tr>
<tr>
<td>30-8-107</td>
<td>Annexation agreement</td>
<td>389</td>
</tr>
<tr>
<td>30-8-108</td>
<td>Annexation map technical standards</td>
<td>389</td>
</tr>
</tbody>
</table>

Adopted March 27, 2012
Amended on June 23, 2015
27. 30-8-101  Purpose

The purpose of this Chapter is to establish a procedure to bring land under the jurisdiction of the Town in compliance with the Colorado Municipal Annexation Act of 1965 (Act), C.R.S. §§ 31-12-101, to -123, as amended. This Chapter, in part, provides supplemental requirements for annexation pursuant to the Act, and is not to be construed as altering, modifying, eliminating or replacing any requirement set forth in that Act, or any requirements set forth in other portions of the Berthoud Development Code. In the event of a conflict between the Act, the provisions of this Chapter, or any requirements set forth in other portions of the Berthoud Development Code, it is the expressed intent of the Town Board that the more stringent provision shall control.

30-8-102  Statement of policy and review criteria

N. It shall be the general policy of the Town with respect to annexations, the annexation application, and the consideration of annexation petitions that:

1. Annexation is a discretionary act. With the exception of a petition initiated by the Town for the annexation of an enclave, the Town Board shall exercise its sole discretion in the annexation of territory to the Town.

2. The land to be annexed and the uses proposed for the land shall conform to the goals, policies and strategies of the Town of Berthoud Comprehensive Plan and to the land uses depicted on the Preferred Land Use Map, as amended. Furthermore, all annexation proceedings shall comply with the Colorado Municipal Annexation Act of 1965, as amended.

3. At the time development occurs, certain public facilities and amenities are necessary and must be constructed as part of any territory annexed to and developed within the Town in order that the public needs may be served by such facilities. These facilities include, but are not limited to, arterial streets, bridges, public parks and recreation areas, water and sanitary sewer facilities, school sites, fire and police station sites, and storm drainage facilities. Typically, the annexation of lands to the Town shall be shown not to create any additional cost or burden on the then-existing residents of the Town to provide such public facilities in any newly annexed area.

4. Typically, the petitioner for annexation shall be responsible for paying application fees and the Town’s full cost for processing the annexation applications and petition; from initial discussion with Town Staff before submittal of the petition, through the approval and recording of the final annexation documents.

5. Annexed areas will not typically divide tracts of land to prevent further annexation of adjoining parcels. (For example, leaving a “gap” or a “strip” of land between property to be annexed and the adjoining property.)

6. The property owner shall comply with the Annexation Application requirements of this Chapter prior to submitting an annexation petition.

28. 30-8-103  Annexation application
A. **Annexation application.** An annexation application is necessary for the Town to evaluate the impacts on the Town of annexing the property identified in the application. The annexation application shall include the following information:

1. **Letter of intent.** The applicant shall provide a letter of intent addressed to the Board to serve as a cover letter to the formal petition, introducing the applicant(s) to the Board, requesting annexation of the petitioner’s property and describing any development plans for the property, if it is annexed.

2. **Annexation application form.** The Town’s annexation application form shall be completed, signed, and dated. The application fee as provided by this Code must be included.

3. **Annexation Petition.** The applicant shall submit a petition for annexation complying with the requirements of C.R.S. § 31-12-107, as amended. The Town of Berthoud will provide the applicant with the standard form of this Petition. One original and three copies of the Annexation Petition shall be submitted to the Town.

4. **Memorandum of Understanding (MOU) for payment of development review expenses.** The application shall be accompanied by a signed standard form MOU for the payment of Development Review Expenses incurred by the Town and the appropriate deposit of funds.

5. **Annexation map.** Per a checklist provided by the Town, copies of the annexation map at twenty four by thirty six inches and reductions sized at eleven by seventeen inches are to be provided with the initial submittal. The annexation map(s) shall comply with the technical drawing requirements contained in Section 30-8-108 of this Code. The map shall be accompanied by a written legal description of the property including an electronic version in Word format.

6. **Title commitment.** The applicant shall submit proof of ownership in the form of a current title commitment issued by a title insurance company licensed by the State of Colorado, whose effective date shall be less than thirty days prior to the date of submittal of the annexation petition. Ownership **must** match the ownership listed in the petition. If the legal description of the area to be annexed as shown on the annexation map does not match the legal description of the property owned, because of road rights-of-way or other reasons, then the title policy must certify that the property owned is wholly contained within the described area on the annexation map. If the applicant is not the owner, there shall be provided, in addition to the title commitment naming the owner as the insured, a notarized affidavit by the owner stating the applicant is authorized by the owner to make application for annexation. The applicant is to provide a word processing file of the legal description contained in the title commitment.

7. **Property tax statement.** A copy of the prior year’s property tax statement and paid receipt for all property to be annexed.

8. **Mailing labels.** The Applicant is to provide mailing address labels for Larimer and/or Weld County Commissioners and County Attorneys, special districts, school districts, irrigation companies, mineral interest owners and adjacent property owners as required by this Chapter.

9. **Zoning of property to be annexed.** If zoning is requested simultaneously with annexation, the petitioner must submit a completed Zoning application form including a Zoning map for the property. If zoning is not requested simultaneously with annexation, the property is required by statute to be brought under the Berthoud’s Development Code and Zoning Map within ninety days of the completion of the annexation process. Refer to Section 30-3-110 for zoning requirements.
10. **Annexation assessment report.** The application is to be accompanied by a narrative report assessing the effect of the proposed annexation upon the community and existing services and facilities. It shall detail the need for any expansion of those services and facilities to accommodate the development proposed for the property being annexed. The narratives shall fully explain the needs, concepts and proposed solutions for each of the following:

a. The economic impact to the municipality of the proposed annexation;

b. The school impact including an estimate of the number of students to be generated by development of the property;

c. The anticipated sources of water, sanitary sewer and other utilities to be used to serve the property and the impact on the water and sanitary sewer systems anticipated to serve the property;

d. The impact on the existing transportation system;

e. The impact of other public services such as but not limited to: fire and emergency services, library, public health, recreation;

f. The compatibility of the proposed development with the Berthoud Comprehensive Plan and any plan amendments that may be necessary for the proposed development;

g. A review of existing and adjacent land uses, areas of compatibility or conflict, and possible mitigation measures that may be required for the proposed development.

11. **Application submittal checklist.** The Town will provide all applicants with a checklist identifying the form and number of copies for each submittal.

29. **30-8-104 Annexation process**

J. Annexation applications shall be processed and considered as follows:

1. **Step 1: Annexation pre-application conference.** The application process begins with a pre-application conference with Town Staff to determine the feasibility of the annexation request. Following this informal meeting, the applicant may submit a Letter of Intent requesting annexation, the annexation application form and petition maps and supporting documents.

2. **Step 2: Town evaluation of annexation application.** Town Staff shall analyze the feasibility of annexing the proposed property, including but not limited to, the ability to serve with streets, water, sanitary sewer, storm sewer, parks and recreation, schools, police and fire protection; compliance with the Comprehensive Plan; sources of revenue from the property; the Town’s costs to serve the proposed development; and other related matters.

K. Annexation petitions shall be processed and considered as follows:
1. **Step 1: Annexation petition certification and completion.** The petition for annexation and all other documents submitted shall be reviewed by Staff for completeness and compliance with the provisions of the Act and the Berthoud Development Code. The applicant shall typically be notified within five working days of any deficiencies or inadequacies in the materials submitted. An incomplete submission shall not be processed, nor referred to the Town Board for a determination of substantial compliance.

2. **Step 2: Annexation petition referral to Town Board.** Upon Staff’s determination that the petition and supporting documentation are complete and in compliance with provisions of the Act and the Berthoud Development Code, Town staff shall refer the petition to the Town Board.

3. **Step 3: Board determination of substantial compliance.** The Town Board shall take the appropriate steps to determine if the petition is in substantial compliance with the Act.
   a. If the petition is found to be in substantial compliance with the Act, the Town Board may, by the adoption of a Resolution of Substantial Compliance, set the annexation (and zoning if requested) for public hearing on a specified date, time, and place, not less than thirty days nor more than sixty days from the effective date of the Resolution, subject to compliance with C.R.S. § 31-12-108, as amended.
   b. If the petition is found to not be in compliance with the Act, no further action shall be taken, except that the determination shall be made by resolution of the Town Board.
   c. If the Town Board, in its sole discretion, finds that the annexation is not in the best interest of the Town, it may deny the petition by resolution.

4. **Step 4: Annexation impact report.** An annexation impact report conforming to C.R.S § 31-12-108.5, as amended, is required for areas of ten or more acres and will be completed by Town Staff.

5. **Step 5: Planning Commission review and recommendations.** The Planning Commission shall review, as a regular agenda item, the annexation application at a regular or special meeting to be held prior to the date of the public hearing before the Town Board. The Commission will make a recommendation by motion to the Town Board regarding the overall annexation of the property to the Town. The Commission’s motion may be to recommend approval, approval with conditions, or denial of the annexation.

   At this same meeting, the Commission may review the requested zoning of the property. Notice of the Commission’s review of zoning shall be given in accordance with the requirements for an amendment to the zoning map. The Planning Commission shall recommend to the Town Board approval with or without conditions, or recommend denial of the requested zoning.

6. **Step 6: Town Board public hearing and action on the annexation.**
   a. The Town Board shall hold the public hearing on the petition for annexation, and zoning, if requested in conjunction with the annexation. The petitioners shall
present evidence in support of the petition and zoning if applicable. Town Staff shall testify as to the elements required by statute to be present for annexation and any comments received from governmental entities affected by the annexation. Any person may appear at the hearing and present evidence on any matter related to the annexation petition as determined by the Town Board. The Town Board may continue the hearing to another date without additional notice as provided by applicable law. At the conclusion of the public hearing, the Town Board shall adopt a resolution containing the findings of fact and conclusions, including:

i. Whether or not the requirements of C.R.S. § 31-12-104 and -105 and this Section have been met;
ii. Whether or not additional terms and conditions are to be imposed; and
iii. Whether or not an election is required, either as result of a petition for election or the imposition of additional terms and conditions.

b. If the Town Board finds that the area proposed for annexation does not comply with the requirements of C.R.S. § 31-12-104 and -105, the annexation proceeding will be terminated.

c. If the Town Board finds the following:
   i. The annexation is in compliance with the requirements of C.R.S. § 31-12-104 and -105;
   ii. That an election is not required under C.R.S. § 31-12-107 (2); and
   iii. No additional terms and conditions are to be imposed;

The Town Board may annex the land by ordinance without election and approve any annexation agreement. The zoning of the property, if requested with annexation, shall be approved by separate ordinance.

30. 30-8-105 Post-approval actions

A. After final passage of the annexation ordinance, the applicant shall file with the Town final versions of all applicable documents including three mylars of the annexation map(s).

B. In the event that zoning was requested with the annexation, zoning shall be granted by ordinance and the official zoning map shall be amended accordingly. In the event that zoning was not requested with annexation, the Town shall bring the area annexed under the zoning ordinance and map within ninety days after the effective date of the annexation ordinance in the manner provided by this Code. In the event that the property owner does not request and process its zoning request within such ninety day period, the zoning of the annexed property shall be deemed to be T: Transitional District as defined in this Code.

31. 30-8-106 Public hearing notices

A. The Town shall publish and send by certified mail, notice of the public hearing for annexation, together with the Resolution of Substantial Compliance, petition and
annexation map, to the County Commissioners, County Attorney and to any special district or school district having territory within the area to be annexed in accordance with Colorado law. In the case of a “flagpole” annexation, the Town shall also provide notice to abutting property owners as specified in C.R.S. § 31-12-105, as amended. Notice shall also be given as required in Section 30-1-117, and Subsection C below.

B. Petitioner’s responsibilities - mailing labels, notice to mineral estate owners and lessees.

1. The petitioner shall provide the Town with a set of standard mailing labels containing the owners of real property within five hundred feet of the property to be annexed, the mineral interest owners and lessees for the property to be annexed, and irrigation ditch companies whose rights-of-way traverse the property to be annexed. The petitioner shall also certify that the required address list of owners of real property is complete.

2. The petitioner shall be responsible for providing notice of each public hearing (Planning Commission and/or Town Board) to the owners of the mineral estate on the property to be annexed, and to their lessees, as required by C.R.S. §§ 24-65.5-101, to -105. The petitioner shall certify to the Town Clerk conformance with this notice requirement not less than fifteen days prior to the date of the public hearing(s).

32. 30-8-107 Annexation agreement

The Town of Berthoud does not develop an annexation agreement with applicants as a matter of Town policy.

33. 30-8-108 Annexation map technical standards

B. The annexation map shall be prepared by or under the supervision of a registered professional land surveyor licensed with the State of Colorado. The annexation map shall conform to the following drafting standards and contain the following information. It shall be a neat, clear, permanent, legible and reproducible document. Inaccurate, incomplete or poorly drawn maps shall be rejected.

1. The annexation map shall be an original drawing on 24" x 36" flat, spliceless, tapeless and creaseless sheet(s) of double matte mylar film with a uniform thickness of not less than .003 of an inch, using only permanent black ink that will adhere to drafting films, or an acceptable "fix-line" photographic reproduction (emulsion down), or a computer generated reproduction of the original drawing. A margin line shall be drawn completely around each sheet leaving a margin at least one-half (½) inch on three sides and a margin at least two (2) inches on the left (short) side, entirely blank. Unless otherwise specified, text and numbers are to be large enough to be clearly legible at the scale drawn.

2. The annexation map shall be drafted at a scale that best conveys the detailed survey, and confines the drafting error to less than one percent. Acceptable scales are 1"=50' or 1"=100'. For annexations exceeding one hundred acres an acceptable scale is 1"=200'. In special instances another scale may be approved by the Town. When an annexation requires multiple sheets, an index shall be provided that delineates the boundaries and identifies each sheet number. The scale of a composite map may be different from the
individual sheets, as approved by the Town. A “title sheet” containing the certifications
and signature blocks shall be provided in the event that the annexation map sheet is too
packed.

3. The title shall be centered at the top of the sheet, along the long dimension of each
sheet and shall include the name of the proposed annexation. A general legal
description stating the section, township, range, th P.M., Town of Berthoud, Larimer
and Weld County, Colorado, shall be included under the name. On the title sheet (Sheet
#1), under the general legal description, include the total acreage. Annexation names
may not duplicate existing annexation names.

**Example of annexation map title:**

**NEW ANNEXATION**

TO THE TOWN OF BERTHOUD, COLORADO

A Part of the xx of Section xx, Township __ North,
Range __ West, __ th P.M., Town of Berthoud, Larimer and Weld County, Colorado

xx.xx Acres

4. There shall be a title block in the lower right-hand corner, or along the right-hand margin
that contains the name, address and telephone number of the land owner, the
developer, and the engineer or surveyor preparing the drawing, an appropriate title for
the drawing, the preparation date, sheet number, the preparer’s project identification
numbers, revision dates, draftsman’s initials, and the electronic drawing file name
(matching the AutoCAD drawing file provided to the Town).

5. Adjacent to the title block, in the lower right-hand corner, there shall be a legend block
which shall include a description of lines, points and symbols, a double-headed north
arrow designated as true north and a written and graphic scale.

6. Adjacent to the right margin, or in a column to the right of the center of the title page if
the page is crowded, there shall be the Town’s standard statement of ownership
containing a written metes and bounds legal description of the land to be annexed
(including the full width of abutting roadways not already within the Town) followed by
the owner’s signature block(s) and notary block(s), one for each owner or mortgagee.

7. Immediately following the ownership certificate, there shall be the Town’s standard
Surveyor’s certificate, signed, dated and sealed by a licensed surveyor or engineer.

8. Immediately following the Surveyor’s certificate, there shall be the Town’s standard
certificate block for the Town Board.

9. Immediately following the Board’s approval certificate, there shall be the Town’s
standard recording certificate block for the Larimer and/or Weld County Clerk and
Recorder.

10. A vicinity map that depicts the area to be annexed and the area which surrounds the
proposed annexation within a two mile radius superimposed on a current USGS
*Topographical Map*, maintaining the same scale shall be placed on the left side of
annexation map, outside the boundary of the area being annexed, or on the left side
of the title sheet.

11. The annexation map drawing shall contain the following:

   a. Show the outline of area to be annexed with boldest line.

   b. For all references, show book, page, map number, etc., and place where publicly
      recorded.

   c. Show all recorded and apparent rights-of-way lines of roads both within and
      without the periphery of land to be annexed; these roads are those which are
      adjacent, adjoining, contiguous, and/or coincident with the boundary. Provide
all road names, rights of-way widths at each leg of an intersection, at the point of curve and point of tangent, at dead ends and at angle points; and rights of-way lines with accurate bearings and dimensions including chord lengths and bearings, central angles and radii of all curves. Whenever the centerline of a road has been established or recorded, the date and recording information shall be shown on the Annexation Map.

d. Show on the annexation map, next to the boundary of the area proposed to be annexed, a drawing of the contiguous boundary of the Town and the contiguous boundary of any other municipality abutting the area proposed to be annexed. A hatched boundary line shall be used to depict the boundary contiguous to the Town (example: //////////).

e. Show section, quarter section, and other monument corners. Display ties to section corners and to the State grid, if available, which show dimensions of all primary boundary survey control points with complete monument and location descriptions, all parcel lines showing dimensions with lengths, bearings, and curve data, including chord lengths and bearings, basis of bearings and relation to true meridian and similar data. Only circular curves shall be used. No spirals, parabolas, etc. shall be used. All dimensions are to be shown to the nearest 0.01' or in the case of degrees, to the nearest second. An accuracy of 1:50,000 (second order) minimum for linear and angular (bearing) closure shall be required for the boundary. All internal lots, tracts, or parcels shall have a closure accuracy of 0.01'.

f. Provide a description of all monuments, both found and set, which mark the boundaries of the property and of all control monuments used in conducting the survey.

g. Show the location of each ownership tract in unplatted land, and if part or all of the area is platted, the boundaries and plat numbers of plots or of lots and blocks.

h. Show the names and locations of all abutting subdivisions. The locations of all abutting unplatted parcels and public lands shall be depicted and designated as such.

i. The ownership identity of all mineral rights shall be designated on the map.

j. Show the purpose, widths, location (with fine dashed lines) and ownership of all easements and all abutting easements, including but not limited to utility, oil and gas gathering and transmission lines and irrigation ditches (fee or prescriptive). If any easement already of record cannot be definitely located, a statement of its existence, the nature thereof and its recorded reference must appear on the title sheet. The widths of all easements and sufficient data to definitively locate the same with respect to the parcel to be annexed must be shown. All easements must be clearly labeled and identified. If an easement shown on the annexation map is of record, its recorded reference must be given.

k. All lines, names and descriptions on the annexation map which do not constitute a part of the annexation shall be shown in dashed or screened lines. Any area enclosed by the annexation, but not a part thereof, shall be labeled “Not a Part of This Annexation.”
l. Accurately locate 100-year floodplains, all existing and proposed watercourses, retention and detention areas, wetlands, aquifer recharge areas, streams, lakes, or inlets on the affected property.

m. Show clearly the length and bearing of all lines described in the written description.

n. Show section numbers, quarter section quadrants, township and range lines, and label each.

o. Show all lines, calls, arcs, etc., described in written description.

p. Circle or place an ellipse around each location where a detail drawing will be provided, and provide designation for each detail such as “See Detail A.”

q. Show “Point of Beginning” in bold letters with an arrow.

r. Show “True Point of Beginning” with bold letters and arrow, when appropriate.

s. A map note shall indicate the total perimeter of the annexation boundary, the contiguous length to the existing Town boundary and the length representing one-sixth of the total annexation boundary perimeter.

12. A word processing file of the legal description for the annexation and all submittal narratives shall be provided electronically as a Word document.

30-8-109 to 30-8-xxx Reserved.
CHAPTER 30 – BERTHOUD DEVELOPMENT CODE
SECTION 9 – HISTORIC RESOURCES

30-9-101 Intent 394
30-9-102 Definitions 394
30-9-103 Authority & duties 395
30-9-104 Inventory and identification standards 396
30-9-105 Designated landmark register 397
30-9-106 Designation of historic sites 398
30-9-107 Limitation on resubmission and reconsideration 399
30-9-108 Amendment of designation 399
30-9-109 Alteration of a designated historic landmark 399
30-9-110 Notification of intent to alter a designated historic landmark 399
30-9-111 Alterations, relocations or demolitions 400
30-9-112 Revocation of designation 402

Adopted March 27, 2012
The Town of Berthoud recognizes that certain significant historic resources located within its boundaries contribute to the unique character of the community and are irreplaceable, and as such, merit preservation. Ordinance #920 established a Historic Preservation Commission; a program for the identification, evaluation, and designation of historic resources and areas as landmarks; public incentives for the preservation of Designated Resources; and land use regulations regarding the alternation, moving or demolition of Designated Historic Resources, Landmarks and Historic Resources of Local, Statewide, and National Significance. In 2011, the title of the Historic Preservation Commission was changed to the Berthoud Historic Preservation Advisory Committee by Resolution 4-11. Resolution 4-11 also identified procedures and operations for the Historic Preservation Advisory Committee.

The following definitions apply to terms used in this Section. Terms not defined have their commonly construed meaning.

**Alteration** - An addition, removal, or reconfiguration which significantly changes the character of an historic resource including new construction in historic districts.

**Building** - Construction made for purposes of shelter or habitation, e.g. house, barn, store, theater, train station, garage, school.

**Contributing Structure** – a building that has been designated as contributing to an approved District.

**Demolition** - The razing, destruction, or dismantling of a resource to the degree that its historic character is substantially obliterated.

**Designated Landmark** - A property officially recognized by the Town of Berthoud, Colorado as important in its history.

**Designated State or National Landmark Register** - The list of, and record of information about properties officially designated by the Historic Preservation Advisory Committee of the Town of Berthoud, Colorado as important in its state and national history.

**District** - A geographically defined area possessing a significant concentration of buildings, structures, objects, and/or sites which are unified historically by plan or physical development, e.g. downtown, residential neighborhood, military reservation, ranch complex.

**Extraordinary Historic Importance** - The quality of historic significance achieved outside the usual norms of age, association, or rarity.
**Historic Integrity** - The quality of wholeness of the historic location including its design, setting, materials, workmanship, feeling, and/or association of a resource, as opposed to only its physical condition.

**Historic Landmark** - A building, structure, object, site, or district which meets the significance and integrity criteria for designation as a landmark.

**Historic Landmarks of Significance** - Designated buildings, structures, objects, sites, and districts which are listed on the State or National Register of Historic Places.

**Inventory of Historic Landmarks** - The record of information (surveys) about resources potentially significant to the history of the Town of Berthoud, Colorado.

**Object** - Construction which is primarily artistic or commemorative in nature and not normally movable or part of a building or structure, e.g. statue, fountain, milepost, monument, sign.

**Relocation** - The removal of a resource from its historic context or site.

**Site** - The location of a significant event, use, or occupation which may include associated standing, ruined, or underground features, e.g. battlefield, campsite, cemetery, natural feature, garden, food-gathering area, etc.

**Structure** - Construction made for functions other than shelter or habitation, e.g. bridge, windmill, dam, highway, silo, kiln.

### 30-9-103 Authority & duties

1. The Historic Preservation Advisory Committee shall conduct all activities necessary and appropriate to maintain Berthoud’s Certified Local Government status with the State of Colorado and Colorado Historical Society.

2. The Historic Preservation Advisory Committee shall also make recommendations to staff of the Town of Berthoud concerning:

   (a) Criteria for review of historic resources and for review of proposals to demolish designated resources.

   (b) Resources to be nominated for designation as either a historic structure or historic district and designation of those resources qualifying for such designation.

   (c) Application for alterations to the exterior of designated historic structures or elements of historic districts.

   (d) Application for moving or demolishing an historic structure.

   (e) Advice and assistance to owners of historic properties on physical and financial aspects of preservation, renovation, rehabilitation, and reuse, including nominations to the Local, State or National Registers of Historic Places within both the Town and the greater Berthoud area.
(f) Public education programs including, but not limited to, walking tours, brochures, marker programs for historic properties, lectures and conferences within both the Town and the greater Berthoud area.

(g) Conduct surveys of historic properties for the purpose of defining those of historic significance, and to prioritize the importance of identified historic properties and areas.

(h) Matters related to preserving the historic character of the Town.

(i) Support of financial assistance for preservation-related programs.

(j) Removal of properties from the register for reasons including, but not limited to, acts of God, undue hardship and public health/safety concerns.

(k) Application fees for applications made by citizens applying for historic designation or who are applying to alter or demolish a historically designated property.

<table>
<thead>
<tr>
<th>30-9-104</th>
<th>Inventory &amp; identification standards</th>
</tr>
</thead>
</table>

**A. Inventory**

1. The Committee shall determine and periodically revise priorities for the identification and evaluation of historic landmarks.

2. Unless the Committee finds extraordinary historic importance, only properties over fifty years of age shall be considered for inclusion in the Inventory of Historic Landmarks.

3. The Committee shall develop or adopt a system, based on historic integrity and significance, for evaluating historic landmarks. The system shall rank surveyed historic landmarks as eligible, potentially eligible, or ineligible for listing on the Designated Landmarks Register. Owners of surveyed properties will be notified of these findings.

4. Documentation of properties in the Inventory of Historic Landmarks shall be on forms compatible with Statewide Inventory of Historic Properties, and upon completion, copies of the forms shall be supplied to the State Historic Preservation Office.

5. Records concerning archaeological sites shall be protected to insure the safety and security of an archaeological site.

**B. Standards for designation of sites for preservation**

In order to qualify for designation as an historic site pursuant to this Code, the Committee must determine that it has historic significance due to one or more of the following factors:

1. It has character, interest or value, as part of the historical development, heritage or culture of the community, state, or nation.

2. Its location is a site of a significant historic event.
3. Its identification with a person or persons who significantly contributed to the culture and development of the Town.

4. Its exemplification of the cultural, economic, social, or historic heritage of the Town.

5. Its portrayal of the environment of a group of people in an era of history characterized by a distinctive architectural style.

6. Its embodiment of distinguishing characteristics of an architectural type or specimen.

7. Its identification as the work of an architect or master builder whose individual work has influenced the development of the Town.

8. Its embodiment of the elements of architectural design, detail, materials, or craftsmanship that represent a significant architectural innovation.

9. Its relationship to other distinctive areas that are eligible for preservation according to a plan based on an historic, cultural, or architectural motif.

10. Its unique location or singular physical characteristic representing an established familiar visual feature of a neighborhood or of the Town.

### Designated landmark register

1. Properties listed on the National Register of Historic Places, including all properties within National Register Historic District boundaries, are eligible for automatic listing on the Designated Historic Landmark Register. As Historic Resources of Statewide Significance, all such properties are subject to the regulations in this Code regardless for their listing on the Designated Historic Landmark Register. However, only properties listed on the Designated Historic Landmark Register shall be eligible for public incentives and code considerations pursuant to this ordinance.

2. Any individual or group, including the Committee acting on its own initiative, may nominate an historic landmark for inclusion on or removal from the Designated Historic Landmark Register by submitting a completed application to the Committee. The burden of proof lies with the applicant. No property shall be so designated without the written consent of the owner. In the case of the formation of a Historic District where there is multiple ownerships, a majority of the owners within the area of the proposed District may form the District but the regulations of that District will only apply to properties electing to be contributing properties within the District at the time of formation or later as approved on a case by case basis.

3. Upon acceptance of a completed application, the Town shall schedule a public hearing before the Committee pursuant to applicable state laws.

4. In order to be included or maintained on the Designated Historic Landmark Register, the Committee must find that the historic landmark is over fifty years of age or of extraordinary historic importance, and possesses sufficient historic integrity, and:
a. is associated with events that have made a significant contribution to the broad patterns of local, state, or national history; or
b. is associated with the lives of persons, or groups of people, significant in local, state, or national history; or
c. embodies the distinctive characteristics of an architectural type, style, period, or method of construction or that represents the work of a master, or that possesses high artistic values, or that represents a significant and distinguishable entity whose components may lack individual distinction; or
d. has yielded or is likely to yield information which is important in local, state, or national history.

5. The Committee shall develop findings to support its decisions. These findings shall indicate those elements of a property, landscape, and archaeological features that are included in the designation and subject to regulation under the provisions of this ordinance.

<table>
<thead>
<tr>
<th>30-9-106</th>
<th>Designation of historic sites</th>
</tr>
</thead>
</table>

A. Recommendations for designation of historic sites. Pursuant to the procedures set forth in this Section, the Committee may make written recommendation to the Board of Trustees that a site be designated as an historic site for preservation, meeting the criteria set forth in this Section. Each such recommendation shall include a description of the characteristics of the site which justify its designation and shall include a legal description of the site. The recommendation may indicate alterations that would have a significant impact on, or be potentially detrimental to, the historic features of the site. Any such designation shall be in furtherance of and in conformance with the purposes and standards of this Section.

B. Procedures for designating historic sites.

1. **Applications.** Applications for designation of historic sites must be made to the Town staff on forms provided by the Town. Applications shall be made only by the owners of one hundred percent of the site for which the application is submitted.

2. **Staff review.** The Town staff shall review applications for designation of historic sites for content and for completeness. The staff shall, within a reasonable time of receipt, forward complete applications and staff recommendations to the Committee.

3. **Committee review.** The Committee shall consider and act upon applications at regularly scheduled or special meetings within a reasonable time of receipt of staff recommendations. The Committee shall recommend approval, approval with conditions, or disapproval of applications, and shall immediately forward notice of their recommendations to the Town Board. In the event of failure of the Committee to act in a timely manner, the Town Board may proceed without a Committee recommendation.
4. **Town Board action.** Within a reasonable time of action by the Committee, the Town Board shall by resolution approve, approve with conditions, or shall deny the proposed historic designation.

5. **Withdrawal of applications.** Prior to action on applications by the Town Board, applicants may withdraw applications by submitting a written request to the Town Clerk.

6. **Recording.** The resolution designating a site as a local historic landmark shall be recorded in the records of the Larimer or Weld County Clerk.

### 30-9-107 Limitation on resubmission and reconsideration

Whenever the Town Board denies an application for historic designation, or whenever an owner withdraws an application, no person shall submit an application for the same site within one year of the disapproval or withdrawal.

### 30-9-108 Amendment of designation

Designation of an historic site may be amended to add features or property to the site according to the application process described in this Section for new designations.

### 30-9-109 Alteration of a designated historic landmark

All modifications to designated historic landmarks shall be done in conformance with the *Secretary of the Interior’s Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* as published by the U.S. Department of the Interior, National Park Service.

### 30-9-110 Notification of intent to alter a designated historic landmark

Any owner filing an application for designation of a site shall, as a part of the application, agree that any time after a site is designated as a historic site to notify the Town of the owner’s intention to alter, demolish, move or remove the site and provide plans for the work at least thirty days prior to beginning such work. This notification requirement shall run with the land and shall bind successors and assigns. The Town shall, upon receipt, forward the notification and plans to the Committee for review. The Committee shall review the plans and may advise the owner on the potential affect of the plans on the historic designation. The Committee may forward a recommendation to the Town Board that, based on the plans, the historic designation be modified or revoked.

### 30-9-111 Alterations, relocations or demolitions
1. No exterior, landscape, or archaeological element of a Designated Landmark which is specified as significant in its designation shall be altered, removed, or demolished without a permit issued pursuant to this Section.

2. No major exterior alteration, relocation, or demolition of a Historic Landmark of Statewide Significance or a Contributing Structure in an approved Historic District shall be allowed without a permit issued pursuant to this Section. A permit is required for work identified in this #2 including repainting, staining, window replacement and related efforts whether or not the currently adopted building codes of the Town require a building permit for that work.

3. Prior to submitting an application for a permit pursuant to this section, proponents are encouraged to request a pre-application conference to review concepts and proposals. The Committee may form ad-hoc committees for this purpose. Committee members participating in pre-application conferences shall disclose their ex-parte contact at the time of any public hearing on the proposal.

4. In cases requiring a public hearing, the Committee shall review and act upon applications for the alteration, relocation, or demolition of a Designated Historic Landmark, a Contributing Structure in an approved Historic District or the major exterior alteration, relocation or demolition of a Historic Landmark of Statewide Significance. The burden of proof lies with the applicant. Applications may be approved, approved with conditions, or denied. The Town of Berthoud, Colorado shall include any conditions imposed by the Committee in permits issued pursuant to this section.

5. In order to approve an application for the alteration of a Designated Historic Landmark, a Contributing Structure in an approved Historic District or the major alteration of an Historic Landmark of Statewide Significance, the Committee must find that the proposal meets the following standards:

   a. A property shall be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.

   b. The historic character of a property shall be retained and preserved. The relocation of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property shall be avoided.

   c. A property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, shall be discouraged.

   d. Changes to a property that have acquired historic significance in their own right shall be retained and preserved.

   e. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.
f. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and, where possible, materials. Replacement of missing features shall be substantiated by documentary and physical evidence.

g. Chemical and physical treatments, if appropriate, shall be undertaken using the gentlest means possible. Treatments that cause damage to historic materials shall not be used unless otherwise accepted by the Committee.

h. Archaeological resources shall be protected and preserved in place. If such resources must be disturbed, mitigation measures shall be undertaken.

i. New additions, exterior alterations, or related new construction shall not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and shall be compatible with the historic materials, features, size, scale and proportions, and massing to protect the integrity of the property and its environment.

j. New additions and adjacent or related new construction shall be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

6. In order to approve an application for the relocation or demolition of a Designated Historic Landmark, a Contributing Structure in an approved Historic District, or Historic Resource of Statewide Significance the Committee must find that:

   a. No prudent and feasible alternative exists, or

   b. The designated property is deteriorated beyond repair, or

   c. The value to the community of the proposed use of the property outweighs the value of retaining the Designated Historic Landmark or Historic Landmark of Statewide Significance.

7. At the hearing of an application to relocate or demolish a Designated Historic Landmark, a Contributing Structure in an approved Historic District or a Historic Landmark of Statewide Significance the Committee may, in the interest of exploring reasonable alternatives, delay issuance of a permit for up to ninety days from the date of the hearing. If, ten days prior to the expiration of the delay period the Committee finds that there are still reasonable alternatives to explore, it may apply to the Board of Trustees for permission to continue the delay for an additional period of up to ninety days.

8. In approving an application for the demolition of a Designated Historic Landmark, a Contributing Structure in an approved Historic District or a Historic Landmark of Statewide Significance, the Committee may impose the following conditions:
a. Photographic, video, or drawn recordation of the property to be demolished, and/or

b. Salvage and curation of significant elements, and/or

c. Other reasonable mitigation measures.

9. No provision of this Section shall be construed to prevent the ordinary repair or maintenance of a Designated Historic Landmark, a Contributing Structure in an approved Historic District or a Historic Landmark of Statewide Significance, when such action does not involve a change in design, materials or appearance.

10. No provision in this Section shall be construed to prevent the alteration, demolition or relocation of a Designated Historic Landmark, a Contributing Structure in an approved Historic District or Historic Landmark or Historic Landmark of Statewide Significance, when the Building Official certifies that such action is required for the public safety.

### 30-9-112 Revocation of designation

The Town Board may by resolution revoke or modify the designation of a site, after ten days notice to the owner and after public hearing, if any of the following conditions exist:

O. If any owner of a designated site fails to provide notification as required in this Section, or if alterations to the site will significantly alter the historic character of the site;

P. If an owner of a designated historic site submits a written request to the Town for revocation of a historic designation;

Q. If the Committee makes a recommendation for modification or revocation based on an owner’s written intent to alter a designated historic site; or

R. If modifications are made to an historic landmark that are found by the Committee to not be in accordance with the standards specified in this Section.

### 30-9-113 to 30-9-xxx

Reserved.
CHAPTER 30 – BERTHOUD DEVELOPMENT CODE

SECTION 10 – DEDICATIONS AND FEES

30-10-101 Public Sites, Reservations, and Dedications .......................................................... 404
30-10-102 Acceptance of Improvements .................................................................................. 404
30-10-103 Submittal Review Fees ............................................................................................ 404
30-10-104 Payment of Impact Fees .......................................................................................... 408
30-10-105 Water Right Dedication Requirements .................................................................. 409
30-10-106 Residential Parkland Dedication and Development Fees ........................................ 419
30-10-107 Drainage Fee ............................................................................................................ 421
30-10-108 Public Facilities Investment Fee .............................................................................. 422
30-10-109 Capital Facility Expansion Fee ................................................................................ 422
30-10-110 Water and Wastewater Tap Fees ........................................................................... 422
30-10-111 Density Transfer Fee ............................................................................................... 423
30-10-112 School Site Dedication or Payments in Lieu Of ...................................................... 424
30-10-113 Road Impact Fees .................................................................................................... 425

Adopted November 29, 2005
Most recently amended October 27, 2015
30-10-01 Public Sites, Reservations, and Dedications

An applicant shall be required to dedicate easements for public streets, drainage and utility easements as needed to serve the area being developed. In cases where any part of an existing road is in the tract being developed or subdivided, the applicant shall be required to dedicate such additional right of way as may be necessary to increase such roadway to the minimum width required in this code. Reservation of sites for flood control purposes and other municipal uses shall be mutually agreed upon between the applicant and the Town Board.

30-10-02 Acceptance of Improvements

A. During the progress of construction of facilities which will be dedicated to the Town, the developer shall conduct those tests which are specified in the construction documents and the Subdivision Agreement, and those which are otherwise necessary as a part of standard construction quality control. Results of those tests shall be provided to the Town within two days of the day of the test.

B. All facilities will remain in the ownership of the developer until officially accepted by the Town in writing. Acceptance can be made in part for fully functional portions of the development, but normally will be made for all proposed dedications as a whole. Conditional acceptance may be given for nonessential components (e.g., open space trails, etc.) on a case-by-case basis as mutually agreed to by the applicant and town. Interim inspections of work in progress are desirable, especially for those items which are otherwise not easily viewed or for which field modifications may be necessary.

C. Review for acceptance by the Town is initiated by the developer. At the time he judges that the facilities are substantially complete he will request of the Town a certificate of completion acceptance. That request shall be accompanied by a statement from his engineer that all the facilities have been constructed in substantial conformance with Town standards and the plans and specifications, and a set of as-built drawings which highlight any modifications from the original construction documents. The Town will conduct its review of the facilities to be dedicated and either accept, reject or conditionally accept them. Once acceptance is made or confirmation that acceptance conditions have been met occurs, the Town acquires ownership. At that time the developer shall provide a one year guarantee of all facilities. During that year, the developer shall promptly repair or replace any facilities which the Town determines to be deficient. When any such restoration is complete the warrantee will be judged to be fulfilled, the Town becomes the full owner and any remaining bond/retainage is returned to the developer. Performance bonding, retainage, fees etc. will be as defined in the Subdivision Agreement.

30-10-03 Submittal Review Fees

The Board of Trustees has determined that the fiscal impact of annexation, subdivision and
development should properly be borne by those parties who receive the benefits. Therefore, the following fees shall apply to all development applications submitted to the Town.

A. Application Fees.

<table>
<thead>
<tr>
<th>Fee Description</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sketch Plan</td>
<td>$150.00</td>
</tr>
<tr>
<td>Appeal to Administrative Decision</td>
<td>$100.00</td>
</tr>
<tr>
<td>Comp Plan Amendment</td>
<td>$250.00 - less than 5 acres</td>
</tr>
<tr>
<td></td>
<td>$500.00 - more than 5 acres</td>
</tr>
<tr>
<td>Vested Rights</td>
<td>$200.00 - more than the 3 year</td>
</tr>
<tr>
<td>Telecommunications</td>
<td>$500.00</td>
</tr>
<tr>
<td>Temporary Use</td>
<td>$100.00</td>
</tr>
<tr>
<td>Out of town utility request</td>
<td>$300.00</td>
</tr>
<tr>
<td>Plat Amendment (replat)</td>
<td>$250.00</td>
</tr>
<tr>
<td>Time Extension for Plat/Plan</td>
<td>$100.00</td>
</tr>
<tr>
<td>Vacation of Plat</td>
<td>$250.00</td>
</tr>
<tr>
<td>Master Planning (a one-time fee)</td>
<td>$40.00 per acre - Collected at annexation, rezoning, or amendment to a plan.</td>
</tr>
</tbody>
</table>

- Master Planning fee is a one-time fee per property. It is to be collected at time of annexation, rezoning and/or submittal of a master plan, site plan or the original land use plan for a planned unit development, including an overall development plan (ODP), preliminary development (PDP) or a final development plan (FDP). In the instance a request to amend an approved PUD is submitted to the Town, the master planning fee shall be imposed, if not previously collected. An amendment shall trigger the collection of the master planning fee, if it includes a change in use(s), density (residential), and/or intensity (nonresidential) as well as involves a need to alter transportation or utilities, if such features are identified in any of the Town’s master plans, including parks, open lands, recreation, trails, streets, storm water or utilities.

B. Development Review Deposit Schedule. In addition to the Application Fee(s), the following development review deposit(s) shall be provided to the Town at the time of submittal of a Development Review Application:
<table>
<thead>
<tr>
<th>Service</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sketch Plan</td>
<td>$150.00</td>
</tr>
<tr>
<td>Annexation</td>
<td>$500.00 + $15/acre</td>
</tr>
<tr>
<td>Master Plan</td>
<td>$500.00 + $15/acre</td>
</tr>
<tr>
<td>Preliminary Subdivision Plat*</td>
<td>$750.00 + $15/unit and $15/acre if non-residential</td>
</tr>
<tr>
<td>Final Subdivision Plat**</td>
<td>$750.00 + $20/unit and $20/acre if non-residential</td>
</tr>
<tr>
<td>Minor Subdivision Plat</td>
<td>$500.00</td>
</tr>
<tr>
<td>PUD – Overall Development Plan</td>
<td>$500.00 + $15/acre</td>
</tr>
<tr>
<td>PUD – Preliminary Development Plan</td>
<td>$750.00 + $15/unit and $15/acre if non-residential</td>
</tr>
<tr>
<td>PUD – Final Dev. Plan (with C.D.’s)</td>
<td>$750.00 + $20/unit and $20/acre if non-residential</td>
</tr>
<tr>
<td>Rezoning/Zoning Up to 10 acres</td>
<td>$250.00</td>
</tr>
<tr>
<td>10 &lt; 40 acre</td>
<td>$500.00</td>
</tr>
<tr>
<td>40 &lt; 160 acres</td>
<td>$750.00</td>
</tr>
<tr>
<td>160 + acres</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>Final Site Plan (with C. D.’s)***</td>
<td>$750.00 + $15/unit and $15/acre if non-residential</td>
</tr>
<tr>
<td>Special Use Review</td>
<td>$750.00 + $15/unit and $15/acre if non-residential</td>
</tr>
<tr>
<td>Variance</td>
<td>No Deposit</td>
</tr>
<tr>
<td>R.O.W. and Easement Vacation</td>
<td>$500.00 per Vacation</td>
</tr>
<tr>
<td>Lot Line Merger</td>
<td>$150.00</td>
</tr>
<tr>
<td>Comp Plan Amendment</td>
<td>$150.00</td>
</tr>
<tr>
<td>Appeals of Administrative Decision</td>
<td>$150.00</td>
</tr>
<tr>
<td>Vested Rights</td>
<td>$150.00</td>
</tr>
<tr>
<td>Telecommunications</td>
<td>$1,500.00 – new freestanding facility</td>
</tr>
<tr>
<td></td>
<td>$1,000.00 – referred to PC &amp; BOT</td>
</tr>
<tr>
<td></td>
<td>$500.00 – administrative review</td>
</tr>
<tr>
<td>Amendment to PUD – Text/Architecture</td>
<td>$300.00</td>
</tr>
<tr>
<td>Amendment to PUD – Plan</td>
<td>$1,500.00</td>
</tr>
<tr>
<td>Amendment to Preliminary Plat</td>
<td>$500.00</td>
</tr>
<tr>
<td>Amendment to Final Plat</td>
<td>$500.00</td>
</tr>
<tr>
<td>Amendment to Plan</td>
<td>$1,500.00</td>
</tr>
<tr>
<td>Review of Preliminary Drainage Plan</td>
<td>$250.00 if less than 1 acre</td>
</tr>
<tr>
<td></td>
<td>$500.00 if 1 &lt; 20 acres</td>
</tr>
<tr>
<td></td>
<td>$1,000.00 if 20 &lt; 100 acres</td>
</tr>
<tr>
<td>Service</td>
<td>Fee Description</td>
</tr>
<tr>
<td>----------------------------</td>
<td>--------------------------------------</td>
</tr>
<tr>
<td>Review of Final Drainage Plan</td>
<td>$1,500.00 100 + acres</td>
</tr>
<tr>
<td></td>
<td>$1,000.00 if 1 &lt; 20 acres</td>
</tr>
<tr>
<td></td>
<td>$2,000.00 if 20 &lt; 100 acres</td>
</tr>
<tr>
<td></td>
<td>$2,500.00 100 + acres</td>
</tr>
<tr>
<td>Review of Preliminary T.I.S.</td>
<td>$500.00 if less than 1 acre</td>
</tr>
<tr>
<td></td>
<td>$1,000.00 if 1 &lt; 20 acres</td>
</tr>
<tr>
<td></td>
<td>$1,500.00 100 + acres</td>
</tr>
<tr>
<td>Review of Final T.I.S.</td>
<td>$500.00 if less than 1 acre</td>
</tr>
<tr>
<td></td>
<td>$1,000.00 if 1 – 20 acres</td>
</tr>
<tr>
<td></td>
<td>$2,000.00 if 20 – 100 acres</td>
</tr>
<tr>
<td></td>
<td>$2,500.00 if over 100 acres</td>
</tr>
<tr>
<td>Metro District</td>
<td>$2,500.00</td>
</tr>
<tr>
<td></td>
<td>* Waived if processed concurrently with a PDP</td>
</tr>
<tr>
<td></td>
<td>** Waived if processed concurrently with an FDP</td>
</tr>
<tr>
<td></td>
<td>*** $300 if property is less than 1 acre</td>
</tr>
</tbody>
</table>

**C. Calculation of Fees.** It is the applicant’s responsibility to bear all costs related to the processing of a Development Review Application, including costs for review by consultants hired by the Town to assist with technical review of development projects. These consultants include, but are not limited to, engineering, planning, transportation, and legal. In order to keep track of the expenses incurred by the Town, the Town’s staff, including, but not limited to, public works, planning, and administration, shall keep track of the time expended by each person involved in the process precipitated by the submittal of a Development Review Application. The applicant is also responsible for paying incidental costs such as postage, recording, mileage and publication fees.

The following hourly rates have been established for each staff person for reimbursement of staff time spent on development projects:

- Arborist: $55.00
- Planning Technician: $55.00
- Senior Planner/Engineer: $70.00
- Building Official: $90.00
- Parks and Recreation Director: $75.00
- Planning Director: $90.00
- Public Works Director: $90.00
- Town Administrator: $110.00
- Consultants: $30.00 - $160.00 depending on position

Due to numerous unforeseen factors, it is impossible to determine the actual expenses that may be incurred for review of development proposals. Therefore, at such time as expenses are in excess of the development review fee deposit amount, subsequent deposits shall be requested by the Planning Director. This amount will be based upon the status of the project.
and outstanding issues. In no event will review of a project continue once deposited development review fees have been exhausted until the Town has received a further deposit sufficient to cover anticipated expenses. Once final review is completed, any remaining development review fee deposit funds will be reimbursed to the applicant. The Town will provide regular statements to the Developer which shall describe in detail the dates, times and types of services being provided. In the event these fees or costs are disputed, the Developer may, within two (2) months of the date of the Town’s statement, file with the Town a written request for review which shall specify the fees or costs being disputed. Within one (1) month after the receipt of the written request for review, the Town Administrator shall meet with the Developer to provide the Developer with an opportunity for hearing with respect to the disputed fee or cost. The Town Administrator shall send to the Developer a written response within two (2) weeks of the hearing.

The Town Administrator or Board of Trustees may waive all or any portion of the deposit and administrative expenses for an annexation, zoning, or variance when it is determined that the deposit is extremely disproportionate to the Town’s anticipated actual costs or it is in the Town’s best interest not to charge a fee.

### 30-10-104 Payment of Impact Fees

A. The following impact fees shall be paid at the time of building permit issuance.
   1. Water System Investment Fee
   2. Wastewater System Investment Fee
   3. School District PILO Fee
   4. Raw Water System Investment Fee

B.

1. All other impact fees are due and payable within six (6) months of issuance of the building permit or at the time of issuance of the Certificate of Occupancy, whichever occurs first. To the extent that any impact fee is not paid at the time a building permit is issued, the permit holder will be required to pay the full amount of the impact fee which is in effect at the time the fee is paid. If the payment is not made prior to the effective date of any increased fee, the applicant is required to pay the fee in effect at the time payment of the balance of the deferred fees are paid.

2. In the event the recipient of the building permit fails to pay the required fees as specified above, the Town shall have the following remedies which may be enforced separately or cumulatively:
   a. Interest on the unpaid balance shall commence retroactively from the date the building permit was initially issued at 1.5" per month (18" per annum).
   b. The Town shall be entitled to collect, in addition to the interest at 1 8", its costs, legal fees, administrative expenses and all other costs of collection.
   c. The Town may elect not to issue any further building permits and/or deny the
defaulting party the opportunity to defer fees if the Town does elect to issue building permits to them.

30-10-105 Water Right Dedication Requirements

A. **Titles.** This section shall be known as the TOWN OF BERTHOUD WATER DEDICATION ORDINANCE.

B. **Interpretation.** This section shall be interpreted and construed so as to effectuate its general purposes to make uniform the terms and conditions for the dedication of water rights and cash in lieu of water dedication to the Town for development within the Town. However, this section shall not be applied in a manner inconsistent with annexation agreements in existence prior to the effective date hereof.

C. **Definitions.** Whenever in this section, the words hereinafter defined or construed in this section are used, they shall, unless the context requires other uses, be deemed to have the following meanings:

1. “Accessory Dwelling” means an apartment integrated within a single-family dwelling, or located in a detached accessory building, such as carriage houses or agricultural-type outbuildings, located on the same lot as single-family dwellings. Accessory dwellings shall be limited to eight hundred fifty square feet in floor area. There shall not be more than one accessory dwelling located on a lot in addition to the single-family dwelling.

2. "Annexation" means the act of attaching, adding, joining, or uniting a parcel of land to the legal entity known as the Town of Berthoud.

3. "Cash in lieu of water dedication" means a separate and distinct fee from water taps as required in section G hereof and related sections of this Code, which fee shall be utilized primarily to acquire water rights and necessary facilities for all beneficial uses within the Town. The Town shall issue a Certification of Water Dedication Credits for cash in lieu of water dedication payments for future development in the Town.

4. "Certification of Water Dedication Credits" means a certificate issued by the Town for raw water credits in exchange for cash in lieu of water dedication payments or water rights dedications for future development in the Town.

5. "CBT Unit" means a Unit of the Colorado Big Thompson Project. A CBT Unit shall be defined to have a firm yield of 0.6 acre feet.

6. "Change in Land Use" means a change in the purpose or activity for which a particular piece of land or its buildings is designed, arranged or intended or for which it is occupied or maintained as provided in the zoning regulations for the zone district in which the land is located which change requires water resources.

7. "Conveyance of water rights" means the process by which legal title to water
8. "Dedicate" or "dedication" means to appropriate an interest in land or water rights to some public use, made by the owner, and accepted for such use by or on behalf of the public.

9. "Development" means any change in the intensity of use of land, such as an increase in the number of dwelling units in a structure or on a tract of land, a material increase in the intensity and impacts of a development, the installation of landscaping within a public right of way, when installed in connection with a development of adjacent property and any man-made change to improved or unimproved real estate which requires additional water resources.

10. "Dwelling unit" means any building or portion thereof which contains living facilities, including provisions for sleeping, eating, cooking, and sanitation, as required by the International Building Code or the International Residential Code, as locally amended.

11. "Extension of water service" means any extension of the Town water service for which a tapping charge is assessed or any increase in Town water service resulting from a Change in Land Use.

12. “Native Seed Area” means an area that is planted using broadcast native or drought-tolerant seed mix, resulting in a drought-tolerant turf. These areas have a water dedication requirement of 0.8 acre-feet per acre.

13. “Natural Area” means an area that (a) is appropriately vegetated and free of weeds; (b) is capable of maintaining the existing vegetation without irrigation; (c) has been dedicated to and accepted by the Town; and (d) is a wetland under the criteria in the Wetlands Delineation Manual utilized by the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency in effect at the time of dedication to the Town. All Natural Areas shall be encumbered by a conservation easement. Natural Areas do not require any irrigation. In order to qualify as a Natural Area, the Developer must pay the Town’s fees and expenses incurred in determining whether the area is a wetland and appropriately vegetated, and the Natural Area must be accepted by the Town at the Town’s sole discretion by and through the Town Administrator.

14. “Open Water” means a body of water, such as a pond or reservoir, whether existing or created and whether for purposes of water storage, aesthetic, or recreation, that has an adequate physical and legal water supply to maintain the open water condition year round, and that has been accepted by the Town for Open Water land use.

15. "Owner" shall be any person owning water using property and/or any person owning real property either corporeal or incorporeal, connected or not connected to the Town water system.

16. “Person” shall include any individual, partnership, association, organization,
firm, district, corporation, group or other legal entity of any nature, public or private.

17. "Phase" means a portion of property that is being platted or has been platted.

18. "Raw Water Credit" means the number of S.F.E.s for which dedication credits are certified by the Town in exchange for cash in lieu of water dedication payments or water rights dedications to the Town.

19. "Single Family Equivalent Unit" ("SFE" or "S.F.E.") means a number related to the volume of water necessary to meet the demand and use requirements including systems losses and consumptive use requirements, of an average single family dwelling unit which is defined herein as 0.4 acre feet. An S.F.E. shall be defined as 0.4 acre feet for all purposes. The S.F.E. unit value assigned to such average dwelling unit is 1.0.

20. "Sufficient priority" means that a water right has a date as of which it is entitled to use water in relation to other water rights deriving their supply from the same source which is sufficiently senior that it may reasonably be expected to provide a dependable water supply for the requirements of this section. Factors to be considered in making this determination shall include, but not by way of limitation, the appropriation date and adjudication date of the water right, the decreed use(s), the historical use of the water right, the physical flow available, and the administrative practices of the office of the State Engineer.

21. "Supplemental Irrigation Water" means additional potable water which will be required for irrigation at times when water is not available through a non-potable irrigation system.

22. "Town" means the Town of Berthoud, Colorado, or the Town of Berthoud acting by and through a water activity enterprise owned by the Town of Berthoud.

23. "Town Administrator" means the Town Administrator of the Town of Berthoud, Colorado.

24. "Town Board" means the Town Board of Trustees of the Town of Berthoud, Colorado.

25. "Town water service" means treated water service or non-potable water furnished by the Town of Berthoud, Colorado.

26. "Transfer of water rights" means the conveyance of legal title to water rights to the Town of Berthoud, Colorado.

27. "Water Court Transfer Fee" means the cost of court filing fees, publication fees, professional fees and other reasonable and customary costs associated with required proceedings in the Water Court for the Town to make full and lawful use of water rights dedicated to or acquired by the Town for use in its municipal water system.

28. "Water right" means a decreed right to use in accordance with its priority a
certain portion of the waters of the State by reason of the appropriation of the same. It shall include both direct flow and storage rights. Water right shall also be used in the context of this section to include allotment contracts with the Northern Colorado Water Conservancy District and its Municipal Subdistrict.

D. Agreement to Comply with this Section and Development Code Requirements. No person may use water from the Town's water utility or provide non-potable water to new development within the Town unless such person agrees to abide by all provisions of this section, the Town's Development Code, all other applicable ordinances of the Town, and all the rules and regulations of the Town pertaining to the water utility and water utility services. Such agreement to abide by all the provisions of this section and the Development Code shall include the reasonable right of an authorized Town representative to enter upon the water user's property and to gain access to a building or structure for inspection purposes as set forth in this section. Acceptance of water service from the Town shall be deemed to constitute such agreement on the part of the water user.

E. Other Water Systems. No person shall operate, own, manage, control or possess a commercial water system obtaining its water supply from any source for the purpose or with the effect of distributing water therefrom to any water using property or water-using unit for any development within the Town approved after the adoption of this section without first entering into an agreement therefore with the Town in the manner provided by, through, and under the laws of the State of Colorado.

F. Obtaining Water.

1. Other Water Sources: Except as the Town Board may otherwise by appropriate resolution allow, no person residing or situated within the Town corporate boundaries shall use or obtain water for usual and ordinary water use purposes for any development within the Town approved after the adoption of this section except (1) by, through, and from the Town; or (2) through other systems specifically approved by the Town in writing.

2. Other Water Sources Within Town of Berthoud’s System: No person or owner shall in any way, at any time connect or introduce water in, to, or with the Town water system, without the Town’s previous written approval.

G. Cash in Lieu of Water Dedications for Potable Purposes.

1. Intent and Purpose. It is the intent and purpose of this section to require the dedication of CBT Units or the payment of cash in lieu of water dedication for all potable uses. For non-potable uses, a person may elect to either pay such cash in lieu of water dedication or dedicate water rights to the Town. Any payment of cash in lieu of water dedication hereunder or dedication of water rights shall be sufficient to satisfy any new or additional demands for Town water service resulting from the extension of water service, or any
Change in Land Use, within or outside the limits of the Town, which will require new or additional water supply from the Town, and thereby to assure an adequate and stable supply of water to all Town water users, to ensure the financial stability of the Town water utility, and to promote the general welfare of the public.

2. **Water Right Dedication Requirement.** It is not the intent of the Town to allow the recalculation of water dedications for existing subdivisions or to increase the water rights requirements for subdivisions for which a final plat has already been approved as of the effective date of this section. The requirements herein shall apply to all new development, unless otherwise agreed to in an applicable annexation or development agreement with the Town.

3. **From and after the effective date of this section, any person who seeks approval of any of the following:**

   a. an extension of water service;

   b. subdivision;

   c. any Change in Land Use, within or outside the limits of the Town, if such Change in Land Use will increase the demand for Town water service;

shall comply with this section and the Town's Development Code.

4. **Required Cash in Lieu of Water Dedication.** Cash in lieu of water dedication or dedication of CBT Units shall be required for all potable uses.

5. **SFE Determinations.** The number of SFE's required for development shall be determined by the Town in accordance herewith. All single family dwelling units shall be assigned an SFE value of 1.0, all duplexes shall be assigned an SFE value of 2.0 and all accessory units shall be assigned an SFE value of 0.5, except as provided herein. Single family dwellings and duplexes on lots sized between 12,000 square feet and 18,000 square feet shall be assigned SFE values of 1.25 and 2.5 respectively. Single family dwellings and duplexes on lots in excess of 18,000 square feet shall require dedication of 0.5 SFE’s and 1.0 SFE’s respectively for indoor use and the number of SFEs necessary for outdoor irrigation shall be determined at Town staff’s sole discretion, with final approval by the Town Administrator. In no event shall the total combined indoor and outdoor uses for single family homes and duplexes on lots in excess of 18,000 square feet be less than 1.25 SFE’s and 2.5 SFE’s respectively.
6. **Cash in Lieu of Water Dedication for Phases of Development.** Prior to issuance of the first building permit for an approved development with 7 dwelling units or more, or commercial use with potable water requirements of 7 SFE’s or more, the person developing said development shall provide the required cash in lieu of water dedication or dedicate CBT Units to the Town for the Phase of the development at which said building permit is to be issued. If said Phase has more than 50 dwelling units or 50 SFE’s for commercial use, cash in lieu of water dedication shall be required for a minimum of 50 SFE’s. In such case, no additional building permits shall be issued until such time as cash in lieu of water dedication are paid for the lesser of 50 SFE’s, the remainder of said first Phase of development or the next Phase of development. In addition, any person may choose to pay cash in lieu of water dedications for a Phase of a subdivision with less than 7 dwelling units or a commercial development with less than 7 SFE’s prior to issuance of the first building permit, at the price set forth in section J hereof.

7. **Cash in Lieu of Water Dedication for Individual Building Permits.** If a development requires less than 7 SFE’s of water for potable uses, cash in lieu of water dedication shall be allowed to be paid for each building permit prior to issuance of said permit in accordance with section G(9) hereof.

8. **Cash in Lieu of Water Dedication for Irrigation.** Prior to issuance of a Town Stormwater Discharge Permit for a Phase of a development, the person developing the property shall pay cash in lieu of water dedication or dedicate CBT Units to the Town necessary for the irrigation of parks, open space, golf courses, playing fields and similar areas. A person may also elect to dedicate water rights for non-potable irrigation as set forth in section H below.

9. **Price of Cash in Lieu of Water Dedication.**

   a. The price per SFE for developments in which cash in lieu of water dedication are paid pursuant to section G(6) above is set forth in section J hereof.

   b. The price per SFE for cash in lieu of water dedication pursuant to section G(7) above shall be based upon all costs of acquisition of CBT Units based upon a yield of 0.6 acre feet per CBT Unit and average costs of CBT Units as determined by the Town Administrator based upon the terms of sales which are available to the Town.

   c. The price per SFE of cash in lieu of water dedication for dwelling units with no outdoor irrigation from the water taps for said dwelling units shall be based upon a requirement of 0.5 SFE’s (0.2 acre feet) per dwelling unit, as
set forth in section J hereof. This includes dwelling units in developments with all irrigated areas served by a separate irrigation tap.

d. Except as set forth in section G(5) above regarding single family homes, duplexes and accessory units, a person developing a property shall pay cash in lieu of water dedication or dedicate CBT Units for irrigation with potable water based upon landscaping plans submitted to the Town in accordance with the Berthoud Development Code, section 30-2-112, applying the following irrigation demands: (1) zero irrigation demand (0 SFE’s) per acre for Natural Areas, Open Water and impervious surfaces; (2) a demand of 0.8 acre-feet (2 SFE’s) for Native Seed Areas; (3) a demand of 3.0 acre feet (7.5 SFE's) per acre for lawn grass, which shall include, but shall not be limited to playing fields, parks, turf areas within golf courses and similar situations; and (4) a demand of 1.33 acre feet (3.325 SFE's) per acre for non-turf vegetation except Natural Areas and Native Seed Areas, including but not limited to areas planted with trees, shrubs, flower beds, and low water use ground cover.  The Town shall analyze the landscaping plans and the acreages, which analyses shall be paid for by the person developing the property. The person developing the property may also submit a written analysis by a qualified landscape architect or an irrigation specialist sufficient to allow the Town to fully evaluate the probable water demand and consumption for irrigation uses for the development. In the event that a person elects to submit a written analysis, the Town shall review said analysis, which analysis shall be paid for by the person developing the property. The Town Administrator shall have the authority to make all final determinations of said irrigation water requirements. The price for cash in lieu of water dedication for irrigation with potable water is set forth in section J hereof.

e. The price of cash in lieu of water dedication for commercial use shall be based upon a calculation of the SFE's required to provide water service for said commercial use multiplied by the applicable price set forth in section J hereof. All commercial uses shall require a minimum of 0.5 SFE’s.

H. Water Rights Deductions for Non-Potable Purposes

1. Water Dedication Requirements. A person developing a property shall pay cash in lieu of water dedication or dedicate water rights for irrigation with non-potable water based upon a requirement of 0.5 SFE’s (0.2 acre-feet) per single-family detached dwelling unit and 1.0 SFE (0.4 acre-feet) per duplex, except as provided herein. Single family dwellings and duplexes on lots sized between 12,000 square feet and 18,000 square feet shall be assigned an SFE value for irrigation of 0.75 and 1.5 respectively. Single family dwellings and duplexes on lots of excess of 18,000 square feet shall require a minimum of 0.75 and 1.5 SFE’s for irrigation respectively and such additional water necessary for outdoor irrigation as determined by the Town’s
staff, with final approval by the Town Administrator. All other properties requiring outdoor irrigation shall require cash in lieu of water dedication or dedication of water rights in accordance with this section H based upon landscaping plans submitted to the Town in accordance with the Berthoud Development Code, section 30-2-112 and based on the following irrigation demands: (1) zero irrigation demand (0 SFE’s) per acre for Natural Areas, Open Water and impervious surfaces; (2) a demand of 0.8 acre-feet (2 SFE’s) per acre for Native Seed Areas; (3) a demand of 3.0 acre feet (7.5 SFE’s) per acre for lawn grass which shall include, but shall not be limited to playing fields, parks, turf areas within golf courses and similar situations in which irrigation water is supplied through a separate non-potable irrigation tap or system; and (4) a demand of 1.33 acre feet (3.325 SFE’s) per acre for non-turf vegetation except Natural Areas and Native Seed Areas, including but not limited to areas planted with trees, shrubs, flower beds, and low water use ground cover. The Town shall analyze the landscaping plans and the acreages, which analyses shall be paid for by the person developing the property. The person developing the property may also submit a written analysis by a qualified landscape architect or irrigation specialist sufficient to allow the Town to fully evaluate the probable water demand and consumption for irrigation uses for the development. In the event that a person elects to submit a written analysis, the Town shall review said analysis, which analysis shall be paid for by the person developing the property. The Town Administrator shall have the authority to make all final determinations of said irrigation water requirements. The price of cash in lieu of water dedication for irrigation with non-potable water is set forth in section J hereof.

2. **Water Dedication for Augmentation Purposes.** The person dedicating any feature to the Town that requires augmentation or replacement water shall be solely responsible for any ongoing water augmentation or replacement obligations that may be required by dedicating to the Town an adequate amount of water to replace out-of-priority evaporative losses and paying all costs associated with the adjudication of a Plan for Augmentation, which amount Town staff determines, in its sole discretion, with final approval of the Town Administrator and with the assistance of consultants and/or attorneys as needed, on a case-by-case basis.

3. **Water Dedication Alternatives.** A person who will be developing or using a non-potable irrigation system may elect to pay cash in lieu of water dedication based upon the prices set forth in section J hereof. A person may also elect to dedicate water rights in accordance with this section H for use within a non-potable system.

4. **Time for Non-Potable Water Dedication.** Prior to issuance of a Town Stormwater Discharge Permit for a Phase of development, a person shall dedicate all water rights and pay all cash in lieu of water dedication including supplemental irrigation water for non-potable irrigation of parks, open space, golf courses, playing fields and similar areas.

5. **Water Rights Dedication.** In cases where a person desires to dedicate water rights rather than paying cash in lieu of water dedication for use within non-potable
irrigation systems, a written agreement with the Town shall be required and the following requirements shall apply.

a. **Water Sources.** The amount and suitability of a given water right necessary to provide firm yield water shall be determined by the Town at its sole discretion. The person dedicating water rights for non-potable purposes shall pay for an analysis by the Town through a qualified water engineer with supporting data which shall include the following:

   (1) the quantity and quality of the water which will be delivered pursuant to said water rights;

   (2) a calculation of the volume of water which the non-potable system will be able to provide on a monthly basis;

   (3) the amount of potable supplemental irrigation water which will be required when water under non-potable water rights is not available;

   (4) the amount of required water storage, if any;

   (5) the proposed use of the water rights through the proposed facilities;

   (6) the amount and suitability of a dry up covenant to change the use of said water rights in Water Court, as necessary;

   (7) compliance with Chapter 30-2-130 hereof; and

   (8) such other analysis as the Town deems necessary.

The person dedicating water rights shall also pay for an analysis by the Town by an attorney who specializes in water law as to whether the use of the non-potable water as it is presented will be in full compliance with the adjudicated usage of the decreed water rights, or will need a change in the use of the water rights.

b. **Handy Ditch Shares.** The amount of water for which a person will receive credit relative to the shares in the Handy Ditch Company ("Handy") will be based upon four and four-tenths (4.4) acre feet per share if the historic use of the specific shares to be dedicated support said yield at the Town's sole discretion pursuant to section H(5)(a) above.

c. **CBT Units.** The amount of water for which a person will receive credit relative to a CBT Unit shall be 0.6 acre feet per Unit. The analyses set forth in section (H)(5)(a)(1) and (6) shall not apply to the dedication of CBT Units for non-potable purposes.

d. **Conveyance of Water Rights to the Town.** Conveyance of any water to the
Town must be made in a manner that warrants free and clear title to the water. The Town shall also require documentation evidencing said free and clear title. Said water rights shall be conveyed to the Town by general warranty deed and assignment of an original share certificate for the water rights or as determined by the Town in its sole discretion. A dry-up covenant for the lands historically irrigated shall also be required if deemed necessary by the Town.

e. **Non-Potable Water Rights Fee.** The person dedicating said water rights to the Town shall pay to the Town $1,250/acre foot for any water rights which will need to be changed in Water Court to pay for Water Court fees.

I. **Certifications of Water Dedication Credits**

Upon payment of cash in lieu of water dedication or the dedication of water rights, the Town shall issue a Certification of Water Dedication Credits to the person so paying said cash in lieu of water dedication or dedicating water rights which shall set forth the amount of water dedication credits which are available for future development in the Town. The water dedication credits under any such certificate shall be fully transferrable and shall be usable for water dedication purposes anywhere within the Town of Berthoud. However, a water certificate holder shall not be entitled to encumber said certificate in any manner and the Town will not recognize any encumbrances, including but not limited to liens, financing statements, rights of first refusal, or use of said certificate for collateral. This limitation shall not apply to certificates issued prior to the enactment of this section. The person paying cash in lieu of water dedication or dedicating water right shall be responsible for any legal fees incurred by the Town in issuing said Certificate. In the case of any assignment of Water Dedication Credits, the Assignor of said credits shall be responsible for any legal fees incurred by the Town in preparing said Assignment and issuing a new Certificate. The Town may suspend any Water Dedication Credits for failure to pay said legal fees and suspend the issuance of any new building permits associated with said Water Dedication Credits until such legal fees are paid in full.

J. **Prices for Cash In Lieu of Water Dedication**

The following prices for cash in lieu of water dedication shall apply based on 0.4 acre feet/SFE:

<table>
<thead>
<tr>
<th>Use</th>
<th>Cash In Lieu of Water Dedication</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family Dwelling Unit (less than 12,000 sq. ft. lot) (1 SFE)</td>
<td>$12,500 per Dwelling¹</td>
</tr>
<tr>
<td>Single Family Dwelling Unit (12,000-18,000 sq. ft. lot) (1.25 SFE)</td>
<td>$15,625 per Dwelling¹</td>
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<tr>
<td>Single Family Dwelling Unit (18,000 sq. ft. lot or greater) (at least 1.25 SFE or more, as calculated pursuant to section H hereof)</td>
<td>a minimum of $15,625 per Dwelling or more (calculated at rate of $12,500 per SFE)¹</td>
</tr>
<tr>
<td>Duplexes (less than 12,000 square feet lot)</td>
<td>$25,000 per Duplex¹</td>
</tr>
<tr>
<td>Description</td>
<td>Fee</td>
</tr>
<tr>
<td>----------------------------------------------------------------------------</td>
<td>----------------------------</td>
</tr>
<tr>
<td>Duplexes (12,000 – 18,000 square foot lots) (2.5 SFE)</td>
<td>$31,250 (^1)</td>
</tr>
<tr>
<td>Duplexes (18,000 square foot lot or greater)</td>
<td>A minimum of $31,250 per duplex or more, as calculated pursuant to section H hereof</td>
</tr>
<tr>
<td>Multi-Family (3 or more Units) (1/2 SFE per Unit for indoor use). Additional irrigation requirement calculated pursuant to section H hereof.</td>
<td>$6,250 per Unit</td>
</tr>
<tr>
<td>Accessory Dwelling (0.5 SFE Per Dwelling)</td>
<td>$6,250 per Unit</td>
</tr>
<tr>
<td>Commercial Use</td>
<td>$12,500/SFE</td>
</tr>
<tr>
<td>Potable Irrigation, including Supplemental Irrigation Water</td>
<td>$12,500/SFE</td>
</tr>
<tr>
<td>Non-Potable Irrigation</td>
<td>$6,250/SFE</td>
</tr>
</tbody>
</table>

\(^1\) The price for cash in lieu of water dedication which is paid at time of each building permit in accordance with section G(7) hereof shall be calculated in accordance with section G(9)(b) hereof.

These prices may be amended at any time by the Board.

### 30-10-106 Residential Parkland Dedication and Development Fees

Upon the use of land for residential purposes the following dedications and/or fees shall be effective. Any property that has already met the requirements for park-land dedication or park-land development shall only be responsible for fees or dedications not yet paid or dedicated to the Town.

Park-land shall include land acquired for parks, trails and open space.

**A. Park Development Fee.** The fee for park development shall be $2,178.00 for single family equivalent (SFE) unless prior contractual arrangements have been made which provide that a credit shall be applied against this fee.

**B. Park Land Dedication.** The park-land dedication (acquisition) fee for single family equivalent (SFE) is seven percent (7%) of the appraised value of raw land in the development unless dedication of seven percent (7%) of the land in the subdivision is accepted by the Board of Trustees, or unless it is a parcel in the already developed part of Town, in which case it is $800 per SFE. This fee shall be assessed where the structure or portion thereof is primarily used for residential uses.
C. **Location:** The land to be dedicated to the Town must be located on the site to be developed and should conform to the greatest extent possible to the Town’s Parks and Open Space Plan. Another location may be acceptable if it is approved by the Town Board in writing.

D. **Acceptance of Park-land Dedication:** The Town Board shall have the authority to accept or reject all or any portion of the proposed park-land dedication and require cash in-lieu of land for the remainder of the seven percent (7%).

E. **Cash in Lieu Option:** If determined by the Town Board that the proposed 7% park-land dedication is not in the best interests of the citizens of Berthoud, the Town may request a smaller amount of land or no land and payment-in-lieu for the portion not dedicated. The amount of the payment in lieu of land shall be determined as follows:

1. If the parties cannot agree on the value of the land to be dedicated for park-land, and appraisal will be acquired by the Town and the petitioner shall be responsible for payment of this appraisal.

2. The total appraised value of the property to be dedicated for residential uses shall be multiplied by seven percent (7%). This value will be the total park-land dedication fee collected for this property. (Total appraised value of the land to be developed for residential uses x 7% = Total cash in-lieu of land to be collected).

3. Cash in lieu of land shall be payable to the Town for each new dwelling unit and the fee shall be determined as follows: Seven percent (7%) of the total appraised value of the property to be developed for residential purposes divided by the number of dwelling units on the property = the park-land fee for each dwelling unit.

4. In the event a building permit for a new dwelling unit is requested for a lot existing in the Town upon the effective date of this ordinance, the park land acquisition fee of $800.00 shall be due in lieu of park-land dedication.

F. **Conditions of Acceptance:**

1. All park land dedicated to the Town should be free of natural hazards (e.g., flood plains, steep slopes, water bodies), and manmade facilities (e.g., detention or retention basins, gas wells, etc.) which inhibit the optimum development and utilization of the park-land for park uses, unless otherwise agreed upon in writing.

2. All park-land shall be dedicated to the Town without restrictions and free and clear of any and all liens, restrictions and covenants.

3. Park-land to be dedicated to the Town shall be preserved, protected and maintained by the developer during the development process until the subdivision has installed infrastructure for the phase that the parkland is located.
4. The developer shall not disturb the topsoil or vegetation on the park-land during the development process unless different arrangements are agreed to in writing by the Town.

5. All construction debris and other foreign matter shall be removed from the site prior to dedication.

6. The Town may request a Phase 1 Environmental Assessment for the area to be dedicated to the Town for park-land.

G. **Review of Fees:** These fees shall be reviewed by the Board of Trustees not less frequently than annually and revised in necessary by resolution during the first quarter of each calendar year.

<table>
<thead>
<tr>
<th>30-10-107 Drainage Fee</th>
</tr>
</thead>
</table>

A. **Drainage Fee.** Each property containing any structures shall be assessed a monthly drainage fee for the square footage of all structures located on the property. This fee shall be billed in conjunction with the monthly water and wastewater utility billing.

B. **Drainage Fund.** The money collected through the drainage fee assessment shall be deposited in a fund to be used exclusively for the resolution of drainage related problems in the Town.

C. **Enforcement.** In the event the drainage fee assessment is unpaid and a delinquency is created the clerk of the Town, its treasurer or its designated representative may certify the delinquencies to the office of the treasurer of Larimer County. The treasurer then may proceed to collect these delinquencies through the applicable statutory tax sale procedure. The Town may also proceed to collect the unpaid fee by terminating utility service for water or sanitary sewer or both, or by litigation or through a combination of these remedies.

D. **Drainage Assessment**

1. For each property containing structures which have a total of 1,000 or less square feet of structural footprint, a minimum fee of $3.50 per month will be assessed. The square footage of the structural footprint for the structures on a parcel of property shall be established by calculating the square footage based upon the outside exterior walls of the structures located on the property. For example, a structure having exterior measurements of 30 feet by 40 feet would have a structural footprint of 1,200 square feet, regardless of whether it was a one-story or multi-story structure.

2. Any property containing structures whose structural square footage is in excess of 1,000 square feet will be assessed an additional $.25 for each 100 square feet, or fraction thereof. The calculation for structural square footage shall be made as follows: Structural square footage up to fifty shall be rounded to the lowest 100 square feet and structural square footage of fifty or more shall be
rounded to the next highest 100. (e.g. properties with structures whose structural square footage is less than 1,050 will be $3.50 per month, but those structures whose structural square footage is more than 1,050 but less than 1,100 would pay $3.75.)

3. The Town Board of Trustees reserves the right to consider the individual financial situation of the property owners and the factual circumstances regarding drainage on the specific property. In appropriate cases, and after establishment of the necessary administrative guidelines, the drainage fee may be deferred, waived, reduced, or increased.

<table>
<thead>
<tr>
<th>30-10-108 Public Facilities Investment Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>A public facilities investment fee shall be due and payable to the Town in the amount of $1,524.00.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>30-10-109 Capital Facility Expansion Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Reserved)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>30-10-110 Water and Wastewater Tap Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Each person requesting a building permit for construction of a new single family equivalent structure shall pay the following fees:</td>
</tr>
</tbody>
</table>

- **Section 1.A.1. Water Tap Fees**

<table>
<thead>
<tr>
<th>Meter Size (inches)</th>
<th>Meter Capacity (gpm)</th>
<th>Meter Capacity Ratio</th>
<th>Water Tap Fees ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>5/8</td>
<td>10</td>
<td>1.0</td>
<td>$ 5,500</td>
</tr>
<tr>
<td>3/4</td>
<td>15</td>
<td>1.5</td>
<td>$ 8,250</td>
</tr>
<tr>
<td>1</td>
<td>25</td>
<td>2.5</td>
<td>$13,750</td>
</tr>
<tr>
<td>1 1/2</td>
<td>50</td>
<td>5.0</td>
<td>$27,500</td>
</tr>
<tr>
<td>2</td>
<td>80</td>
<td>8.0</td>
<td>$44,000</td>
</tr>
<tr>
<td>Over 2</td>
<td>Based on connector’s estimated water characteristics.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- **Section 1.A.2. Wastewater Tap Fees**

<table>
<thead>
<tr>
<th>Meter Size (inches)</th>
<th>Meter Capacity (gpm)</th>
<th>Meter Capacity Ratio</th>
<th>Wastewater Tap Fees Without Lift Station ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>5/8</td>
<td>10</td>
<td>1.0</td>
<td>$ 6,255</td>
</tr>
<tr>
<td>3/4</td>
<td>15</td>
<td>1.5</td>
<td>$ 9,382</td>
</tr>
<tr>
<td>1</td>
<td>25</td>
<td>2.5</td>
<td>$15,637</td>
</tr>
</tbody>
</table>
Section 2. Raw Water System Investment Fees

At the time a building permit is issued which requires either the payment of a new water system investment fee or the increase of an existing water system investment fee, there shall also be due and payable a raw water system investment fee in the amount of $245.00. This fee shall primarily be used for the collection, delivery and storage of raw water.

### 30-10-111 Density Transfer Fee

B. There is hereby implemented a fee to provide for the purchase of residential development units from agricultural areas, environmentally significant areas, and community separator areas to the Town of Berthoud. This may be accomplished by the purchase of the property in fee title or through restrictions on development or conservation easements or any combination of these or other rights, which would preserve or promote the open space aspects of the real property.

C. The preservation of open space and agricultural areas primarily benefits the residents of the community with minimal impact upon or benefit to commercial or industrial users and is therefore applicable only to residential developments.

D. A re-zoning of land from either a residential, agricultural, or transitional zoning district to a district that allows a higher residential density triggers payment of the fee. The total fee for a subdivision will be determined at the final development plan stage and then allocated to each unit for payment with the building permit. The total fee will be the sum of the total number of units in the final development plan, minus credits earned as listed below:

1. One single-family unit credit is given for each single-family unit allowed by right with the prior County zoning or Town zoning if applicable. Multi-family credit can be earned in a similar manner. When calculating allowable prior zoning density, gross acres will be used. This will be measured using the centerline of exterior roads and will include all areas except for water bodies, floodplains, and area for road right-of-ways.

2. For every acre of permanent open space provided in the subdivision, one single-family unit equivalent credit is given. Qualifying permanent open space includes deed-restricted land that is used for agricultural, environmental, or equivalent open space purposes. It does not include parkland required by the Town or buffer strips. Credit can also be earned for equivalent open space acquired off-site in areas approved by the Board of Trustees.

3. Additional factors that increase or decrease the amount of credit given will be determined by the Planning Director, subject to the purposes and intent set forth in the preface to this ordinance. Appeals of his or her decision will be heard by the Town Board.
E. New parcels created from fee paid lots through subdivision of said lot will be subject to this fee.

F. If the Town increases the allowable density within a zoning district to the extent that a property could be subdivided for an additional unit, then the fee would apply and be assessed at such time as additional building permits for new residences are requested.

G. The fee for a single-family house is $3,000 and $1,500 per dwelling unit for multi-family structures. Calculation of the fee is provided in a document entitled “Density Transfer Fee Calculation Guidelines”.

H. Six percent of the total Density Transfer fee collected will be used for administration of this process. The balance of these fees shall be exclusively used for the open space acquisition and preservation purposes as described in this Ordinance. These fees shall be separately accounted for within the Town's annual budget.

30-10-112 School Site Dedication or Payments in Lieu Of

The Town of Berthoud has entered into an Intergovernmental Agreement with the Thompson School District R2-J and the Weld County School District RE-5J concerning annexations and school site dedication or payments in lieu thereof for school purposes.

A. Prior to the issuance of a building permit for residential construction, the Town will require proof that the appropriate dedication of land for school purposes has been made to the school district or that the school district has received a payment in lieu thereof. Any payments made shall be retained by the school district and administered in accordance with the Intergovernmental Agreement.

B. Exemptions

1. Because the following are not considered to have an adverse effect of the school district’s ability to provide adequate educational opportunities, they shall be exempted from and dedication requirement or in-lieu payment requirements:

   a. Alteration or expansion of a residential dwelling unit not exceeding a net increase of 1,000 square feet of the existing dwelling unit.
   b. Replacement of a residential dwelling unit in which the replacement does not exceed a net increase 1,000 square feet of the dwelling unit being replaced.
   c. Construction of a non-dwelling unit, accessory building, or structure.
   d. Construction of an accessory dwelling unit according to Berthoud Municipal Code.
   e. Nursing homes as defined in the Town Code.
   f. Town-approved planned residential developments that are subject to recorded covenants restricting the age of the residents of said dwelling units such that the
dwellings units may be classified as “housing for older persons” pursuant to the Federal Fair Housing Amendments Act of 1988.

2. Any claim or exemption provided in this section must be made no later than the time of application for a building permit. Any claim not so made shall be deemed waived.

### 30-10-113 Road Impact Fees

There shall be imposed a road impact fee for all new construction within the Town of Berthoud in accordance with the Fee Schedule as set forth on Exhibit “A”, which is attached hereto and incorporated herein by reference. The fee is applied in increments of 1,000 square feet. The fee will be prorated according to the actual square footage of the new construction.

There shall be no fee due when the building permits are issued for remodeling, when the construction does not increase the square footage of the structure in excess of 1000 square feet.

Retail establishments and restaurants shall also be exempt from the fee when it can be shown that their sales will generate sales tax revenues comparable to the competitive retail and restaurants which are already operating within the Town. It is the intent of this provision to recognize and give credit for sales tax revenues which will be generated by new businesses and which are, pursuant to the Town’s current sales tax ordinance, directed toward special purposes such as repair and replacement of streets.
## ROAD IMPACT FEE
### EXHIBIT “A”

<table>
<thead>
<tr>
<th>LAND USE TYPE</th>
<th>UNIT</th>
<th>FEE/UNIT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family Detached</td>
<td>Dwelling</td>
<td>$2095.70</td>
</tr>
<tr>
<td>Multi-Family</td>
<td>Dwelling</td>
<td>$1440.21</td>
</tr>
<tr>
<td>Mobile Home Park</td>
<td>Site</td>
<td>$1041.11</td>
</tr>
<tr>
<td>Hotel/Motel</td>
<td>Room</td>
<td>$1787.24</td>
</tr>
</tbody>
</table>

### AUTO SALES/AUTO REPAIR AND SERVICE/BANKS

<table>
<thead>
<tr>
<th>Activity</th>
<th>Size</th>
<th>FEE/1000 sq. ft.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Auto Sales</td>
<td>1000 sq. ft.</td>
<td>$4096.73</td>
</tr>
<tr>
<td>Auto Service/Repair/Tire Store</td>
<td>1000 sq. ft.</td>
<td>$2750.26</td>
</tr>
<tr>
<td>Bank</td>
<td>1000 sq. ft.</td>
<td>$7764.95</td>
</tr>
<tr>
<td>Movie Theater</td>
<td>1000 sq. ft.</td>
<td>$7619.19</td>
</tr>
</tbody>
</table>

### OFFICE/INSTITUTIONAL

<table>
<thead>
<tr>
<th>Activity</th>
<th>Size</th>
<th>FEE/1000 sq. ft.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Office/General &lt; 100,000 sq. ft.</td>
<td>1000 sq. ft.</td>
<td>$3508.54</td>
</tr>
<tr>
<td>Office/General &lt; 200,000 sq. ft.</td>
<td>1000 sq. ft.</td>
<td>$2628.80</td>
</tr>
<tr>
<td>Office/General 200,000 sq. ft. +</td>
<td>1000 sq. ft.</td>
<td>$2151.63</td>
</tr>
<tr>
<td>Office, Medical</td>
<td>1000 sq. ft.</td>
<td>$7837.81</td>
</tr>
<tr>
<td>Hospital</td>
<td>1000 sq. ft.</td>
<td>$3638.68</td>
</tr>
<tr>
<td>Nursing Home</td>
<td>1000 sq. ft.</td>
<td>$1058.47</td>
</tr>
<tr>
<td>Church/Synagogue</td>
<td>1000 sq. ft.</td>
<td>$1978.10</td>
</tr>
<tr>
<td>Day Care Center</td>
<td>1000 sq. ft.</td>
<td>$2061.40</td>
</tr>
<tr>
<td>Elementary/Secondary School</td>
<td>1000 sq. ft.</td>
<td>$645.49</td>
</tr>
</tbody>
</table>

### INDUSTRIAL

<table>
<thead>
<tr>
<th>Activity</th>
<th>Size</th>
<th>FEE/1000 sq. ft.</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Light Industrial</td>
<td>1000 sq. ft.</td>
<td>$1509.61</td>
</tr>
<tr>
<td>Warehouse</td>
<td>1000 sq. ft.</td>
<td>$1075.81</td>
</tr>
<tr>
<td>Mini-Warehouse</td>
<td>1000 sq. ft.</td>
<td>$541.38</td>
</tr>
</tbody>
</table>
CHAPTER 30 – 11 – OIL AND GAS DRILLING AND PRODUCTION

30-11-101 Purpose

30-11-102 Definitions

30-11-103 Requirements and procedures
   (a) Proposed new wells, re-drilling certain wells and other specific enhancements
   (b) Inspections
   (c) Use tax
   (d) Application fee

30-11-104 Application elements

30-11-105 Review criteria

30-11-106 Notice to proceed

30-11-107 Building permit

30-11-108 Development setbacks from wells & facilities

30-11-109 Compliance with state environmental requirements

30-11-110 Geologic hazard, floodplain, floodway location restrictions

30-11-111 Access roads

30-11-112 Public roads impact

30-11-113 Wildlife impact mitigation
   (a) Wildlife
   (b) Endangered species

30-11-114 Emergency response costs

30-11-115 Violation and enforcement
   (a) Unlawful to construct or install unapproved oil and gas facilities
   (b) Penalty
   (c) Civil action
   (d) False or inaccurate information
   (e) Prospective application
   (f) Recovery of fines

These regulations are enacted to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the present and future residents of the Town. It is the Town's intent by enacting these regulations to facilitate the development of oil and gas resources within the Town, while mitigating potential land use conflicts between such development and existing, as well as planned, land uses. It is recognized that, under Colorado law, the surface and mineral estates are separate and distinct interests in land and that one (1) may be severed from the other. Owners of subsurface mineral interests have certain legal rights and privileges, including the right to use that part of the surface estate reasonably required to extract and develop their subsurface mineral interests, subject to compliance with the provisions of these regulations and any applicable statutory and regulatory requirements. The State has a recognized interest in fostering the efficient development, production and utilization of oil and gas resources, and in the prevention of waste and protection of the correlative rights of common source owners and producers to a fair and equitable share of production profits. Similarly, owners of the surface estate have certain legal rights and privileges, including the right to have the mineral estate developed in a reasonable manner, and municipal governments have a recognized, traditional authority and responsibility to regulate land use within their jurisdiction. These regulations are intended as an exercise of this land use authority.

30-11-102. Definitions.

(a) All terms used in this Section that are defined in the Act or in Commission regulations, and not otherwise defined in this Section, are defined as provided in the Act or in such regulations as of the effective date of this Section. All other words used in this Section are given their usual customary and accepted meaning; and all words of a technical nature, or peculiar to the oil and gas industry, shall be given that meaning which is generally accepted in the oil and gas industry. When not otherwise clearly indicated by the context of the matter, the following words and phrases used in this Section have the following meanings:

**Act** means the Oil and Gas Conservation Act of the State.

**Commission** or **OGCC** means the Oil and Gas Conservation Commission of the State. **Day** means a period of twenty-four (24) consecutive hours.

**Injection well** means any hole drilled into the earth into which fluids are injected for the purposes of secondary recovery, storage or disposal, pursuant to authorizations granted by the Commission.

**Inspector** means any person designated by the Town or the Town's designee, who shall have the authority to inspect well sites to determine compliance with this Section and other applicable ordinances of the Town.

**Oil and gas well** means any hole drilled into the earth for the purpose of exploring for or extracting oil, gas or other hydrocarbon substances.
Operating plan means a general description of a well site or a production site identifying purpose, use, typical staffing, seasonal or periodic considerations, routine hours of operating, source of services/infrastructure and any other information related to regular functioning of that facility.

Operator means the person designated by the working interest owners as operator and named in Commission Form 2 or a subsequently filed Commission Form 10.

Owner means a person possessing a mineral interest or a leasehold interest in minerals.

Production site means the area surrounding proposed or existing production pits or other accessory equipment required for oil and gas production, at which may also be located tanks and tank batteries, exclusive of transmission and gathering pipelines.

Reentering means accessing an existing well bore for either the original or amended purpose, provided that such well has not been abandoned.

Sidetracking means entering the same well head from the surface, but not necessarily following the same well bore, throughout its subsurface extent when operations deviation from such well bore is necessary to reach the objective depth because of an engineering problem.

Twinning means the drilling of a well within a radius of fifty (50) feet from an existing well bore when the well cannot be drilled to the objective depth or produced because of an engineering problem, such as a collapsed casing or formation damage.

Use tax means the tax paid by a consumer for using, storing, distributing or otherwise consuming tangible personal property or taxable services inside the Town.

Well means an oil and gas well or an injection well.

Well head means the equipment attaching the surface equipment to the well bore equipment at the well.

Well site means that area surrounding a proposed or existing well and accessory structures and equipment necessary for drilling, completion, recompletion, work-over, development and production activities.

(b) All terms used herein that are defined in the Act or in Commission rules and regulations and are not otherwise defined in Subsection (a) above shall be defined as provided in the Act or in such rules and regulations.

30-11-103. Requirements and procedures.

(a) Proposed new wells, redrilling certain wells and other specific enhancements.

(1) It shall be unlawful for any person to drill a well that has not been previously permitted under this Section, reactivate a plugged or abandoned well or perform initial installation of accessory equipment or pumping systems (in cases where a well is not being drilled) unless a conditional use permit has first been granted by the Town in accordance with the procedures defined in this Section.
(2) The granting of such conditional use permit shall not relieve the operator from otherwise complying with all applicable regulatory requirements of the Town, the State and the United States.

(3) When a conditional use permit has been granted for a well, reentry of such well for purposes of sidetracking, twinning, deepening, recompleting or reworking shall not require a separate conditional use permit.

(4) The conditional use permit is limited to the current proposed facilities as shown in the approved plan. To the extent the applicant desires, after initial completion of a well, to place additional equipment on a tank battery or wellhead location which was not shown in the approved plan, the applicant must, except in a situation where additional equipment is necessary for a period of fourteen (14) days or less, notify the Town of installation of such additional equipment.

(5) Within thirty (30) days after completion of operations, the applicant shall provide to the Town "as-built" drawings showing all facilities, pipelines, flow lines and gathering lines which the applicant has placed on the land subject to this permit.

(b) Right of Entry. For the purpose of implementing and enforcing this Section, duly authorized Town personnel or contractors may enter onto the subject property upon notification of the operator, permittee, lessee or other party holding a legal interest in the property. If entry is denied, the Town shall have the authority to discontinue application processing, revoke approved permits and applications, or obtain an order from a court to obtain entry.

(c) Inspection.

(1) The operator or applicant shall provide the telephone number of a contact person who may be reached twenty-four (24) hours a day, seven (7) days a week, for purposes of being notified of any proposed Town inspection under this Section or in case of emergency. Any permitted oil and gas operations and facilities may be inspected by the Town at any time, to ensure compliance with the requirements of the approved permit, provided that at least one (1) hour’s prior notice is given to the contact person at the telephone number supplied by the operator or applicant. Calling the number (or leaving a message on an available answering machine or voice mail service at the number) at least one (1) hour in advance of the proposed inspection shall constitute sufficient prior notice if the contact person does not answer. By accepting the Town’s approved conditional use permit, the operator or applicant consents to such inspections. The cost of any Town inspection deemed reasonable and necessary to implement or enforce this Section shall be borne by the operator or applicant.

(d) Use tax. All operators must conform to applicable provisions of this Code and the Municipal Code relating to taxation.

(e) Application fee. A nonrefundable fee of one thousand dollars ($1000.00) shall accompany the application.

30-11-104. Application elements.

An application for a conditional use permit pursuant to this Section shall be filed with the Town Clerk and shall include the following information:
(1) Application requirements, site plan. The site plans for a well site submitted with an application for a use by conditional review shall be submitted on one (1) or more plats or maps, at a scale not less than one (1) inch to fifty (50) feet, showing the following information:

   a. The proposed location of production site facilities or well site facilities associated with the well in the event production is established, if applicable. Future development of the resource shall be considered in the location of the tank battery. Existing tank batteries and transmission and gathering lines within six hundred sixty (660) feet of the well site shall be shown.

   b. The location of layout, including without limitation the position of the drilling equipment and related facilities and structures, if applicable.

   c. True north arrow.

   d. Existing improvements, if any, within a radius of six hundred sixty (660) feet of the proposed well.

   e. Existing utility easements and other rights-of-way of record, if any, within a radius of six hundred sixty (660) feet of the proposed well.

   f. Existing irrigation or drainage ditches within four hundred (400) feet of the well site or production site, if any.

   g. The applicant's drainage and erosion control plans for the well site or production site and the area immediately adjacent to such site, if applicable.

   h. Location of access roads.

   i. Well site or production site and existing lease boundaries.

   j. The names of abutting subdivisions or the names of owners of abutting, unplatted property within four hundred (400) feet of the well site or production site.

   k. The name and address of the operator and the name of the person preparing the site plan or map.

(2) Application requirements, vicinity maps. The vicinity maps for a well site or production site submitted with an application for a use permitted by conditional review shall be submitted on one (1) or more plats or maps showing the following information:

   a. Location of all existing water bodies and watercourses, including direction of water flow. This information shall be submitted on USGS 7.5 minute series or assessor base maps which indicate topographic detail and show all existing water bodies and watercourses with a physically defined channel within a four-hundred (400) foot radius of the proposed well.
b. Location of existing oil and gas wells as reflected in OGCC records. This information shall be submitted on a map and shall include any and all wells within a one-thousand (1000) foot radius of the proposed location for the well.

c. Location of drill site. The information to be submitted shall be Commission Form 2 and shall include the Parcel Tax Identification Number.

(3) Application requirement narrative. In addition to the site plans and the vicinity maps required in Subsection (1) and (2) above, the application shall include the following:

a. The operator's and surface owner's names and addresses, copies of any required OGCC Form 2 and designation of agent, if applicable.

b. An operating plan.

c. A list of all permits or approvals obtained or yet to be obtained from local, state or federal agencies other than OGCC.

d. An emergency response plan that is mutually acceptable to the operator and the appropriate fire district that includes a list of local telephone numbers of public and private entities and individuals to be notified in the event of an emergency, the location of the well and provisions for access by emergency response entities.

e. A plan for weed control at the well site.

f. A fire protection plan that is mutually acceptable to the operator and the appropriate fire district that includes planned actions for possible emergency events and any other pertinent information. Prior to application to the Town, a proposed fire protection plan and emergency response plan shall be submitted to and reviewed by the fire district.

g. Sanitary facilities must comply with Section 602(f) of the OGCC regulations.

30-11-105. Review criteria.

(a) The Board of Trustees shall approve an application for a use permitted by conditional review for a well site if the application submitted by the applicant conforms to the following requirements:

(1) The site plans for a well site application comply with the requirements of 30-11-104(1), above.

(2) The vicinity maps for a well site application comply with the requirements of 30-11-104(2), above.

(3) The narrative for a well site application complies with the requirements of 30-11-104(3), above.
(4) When applicable, compliance with the provisions for geologic hazards, floodplains or floodway required in 30-11-110, below.

(5) When applicable, compliance with the provisions for wildlife mitigation procedures required in 30-11-113, below.

(b) The Board of Trustees' decision shall be based upon evidence presented in the application and at a public hearing. Following the conclusion of the public hearing, the Board of Trustees may proceed to render its provisional decision orally on the application, or it may take the matter under advisement until an announced date certain not to exceed twenty-one (21) days, at which time it shall orally render its decision. In the event that an application is granted with conditions, the applicant may, within fourteen (14) days of the Board's decision, request a rehearing to demonstrate that removal or modification of one (1) or more of the conditions is necessary to prevent waste or protect owners of correlative rights in a common source to a fair share of production profits, or that the decision is otherwise inconsistent with state laws and regulations. Following the Board of Trustees' oral announcement of its decision and any subsequent rehearing, a written resolution shall be adopted as its final action or decision on the application. This written resolution shall set forth the findings of the Board of Trustees. The Town Attorney shall prepare the written resolution for the Board of Trustees' consideration within fourteen (14) days of the oral decision or any subsequent rehearing. Such written resolution shall be adopted within twenty-one (21) days of the announcement of the Board of Trustees' oral decision, unless the applicant requests rehearing, in which case the written resolution shall be adopted within thirty (30) days of the oral decision. For the purposes of judicial review, the Board of Trustees' final action or decision on an application shall be deemed to have been made as of the date upon which the Board of Trustees executes the written resolution, which shall constitute the final decision of the Board of Trustees.

30-11-106. Notice to proceed.

Prior to commencement of operations for which a use permitted by conditional review has been approved, a "Notice to Proceed" shall be obtained from the Town Clerk. The Town Clerk shall issue the "Notice to Proceed" upon receipt of the following:

(1) A copy of the resolution approving a use permitted by conditional review for a well or wells.

(2) A copy of the approved site plan.

(3) A copy of an approved extra legal vehicle or load permit issued by the Town Clerk pursuant to this Code, if applicable.

(4) Copies of any necessary state or federal permits issued for the operation, if not previously submitted.


Building permits must be obtained for all aboveground structures to which the International Building Code applies.
30-11-08. Development setbacks from wells and facilities.

(a) When wells are existing, buildings shall not be constructed within the following distances:

1. Buildings not necessary to the operation of the well shall not be constructed within two hundred (200) feet of any such well.

2. Any building to be used as a place of assembly, institution or school shall not be constructed within three hundred fifty (350) feet of any well.

(b) When wells are existing, lots and roads shall not be platted within the following distances:

1. Lots shall not be platted within one hundred fifty (150) feet of an existing oil or gas well or its production facilities.

2. Lots intended to be used as a place of assembly, institution or school shall not be platted to allow a building site within three hundred fifty (350) feet of an existing oil or gas well or its production facilities.

3. Streets shall not be platted within seventy-five (75) feet of an existing oil or gas well or its production facilities; provided, however, that streets may cross collection flowlines at right angles.

4. Lots and streets may be platted over well and production sites that have been abandoned and reclaimed. Such platting shall only occur after the completion of the abandonment and reclamation process.

30-11-09. Compliance with state environmental requirements.

The approval of an oil and gas conditional use permit shall not relieve the operators from complying with all current applicable state and federal regulations and standards concerning air quality, water quality and waste disposal.

30-11-10. Geologic hazard, floodplain, floodway location restrictions.

All equipment at well sites and production sites in geological hazard and floodplain areas shall be anchored to the extent necessary to resist flotation, collapse, lateral movement or subsidence and to the extent necessary to comply with the Federal Emergency Management Act.


All private roads used to maintain access to the tank batteries or the well site shall be improved and maintained according to the following standards:

1. Tank battery access roads. Access roads to tank batteries shall be subject to review by the Town Engineer in accordance with the following minimum standards:

   a. A graded gravel roadway having a prepared subgrade and an aggregate base course surface a minimum of six (6) inches thick compacted to a minimum
density of ninety-five percent (95%) of the maximum density determined in accordance with generally accepted engineering sampling and testing procedures. The aggregate material, at a minimum, shall meet the requirements for Class 3, Aggregate Base Course as specified for aggregate base course materials in the Colorado Department of Transportation's "Standard Specifications for Road and Bridge Construction," latest edition.

b. Graded so as to provide drainage from the roadway surface and constructed to allow for cross-drainage of waterways (such as roadside swales, gulches, rivers, creeks and the like) by means of an adequate culvert pipe. Adequacy of the pipe is subject to approval of the Town Engineer.

c. Maintained so as to provide a passable roadway free of ruts at all times.

(2) Wellhead access roads. Access roads to wellheads shall be subject to review by the Town Engineer in accordance with the following minimum standards:

a. A graded, dirt roadway compacted to a minimum density of ninety-five percent (95%) of the maximum density determined in accordance with generally accepted engineering sampling and testing procedures and approved by the Town Engineer.

b. Graded so as to provide drainage from the roadway surface and constructed to allow for cross-drainage of waterways by means of an adequate culvert pipe. Adequacy of the pipe shall be subject to approval by the Town Engineer.

c. Maintained so as to provide a passable roadway generally free of ruts.

(3) Public access roads. An extra-legal vehicle or load permit shall be required for all extralegal vehicles or loads as defined in Sections 42-4-401 through 42-4-414, C.R.S., as amended, which use Town streets. Said permit, if required, shall be obtained from the Town Clerk prior to such use. The applicant shall comply with all Town and state regulations regarding weight limitations on streets within the Town, and the applicant shall minimize extralegal truck traffic on streets within the Town.

30-11-112. Public roads impact.

(a) Every permit issued by the Town shall require the applicant or operator to pay a fee that is sufficient to pay the estimated cost for all impacts which the proposed operation may cause to facilities owned or operated by the Town or used by the general public, including, but not limited to:

(1) Repair and maintenance of roads,

(2) Bridges and other transportation infrastructure;

(3) Improvements made or to be made by the Town to accommodate the operations and to protect public health, safety and welfare;
(4) Costs incurred to process and analyze the application, including the reasonable expenses paid to independent experts or consultants;

(b) The Town shall establish a mechanism to assess and obtain payment of such fees, subject to the right of the Town to request additional funds if the fees prove to be insufficient, or to refund surplus funds to the operator if the fees paid exceed the true cost of the impacts.

(c) The Town may further require that the applicant or operator, or both, post a bond in an amount to be set during the site plan phase, as security in the event additional damages occur to facilities owned or operated by the Town or used by the general public.

(d) As a condition of issuance of the permit and on an as-needed basis, the Town may require that additional site-specific measures be undertaken by the applicant or operator in order to protect and preserve facilities owned or operated by the Town or used by the general public.


(a) Wildlife. When a well site or production site is located within a designated moderate (blue) or high impact zone (red) on the 1987 Cumulative Impact Maps prepared by the Colorado Division of Wildlife, the applicant shall consult with the Colorado Division of Wildlife to obtain recommendations for appropriate site specific and cumulative impact mitigation procedures. The operator shall implement such mitigation procedures as are recommended by Colorado Division of Wildlife after consultation with the Town.

(b) Endangered species. The applicant shall not engage in activities which, in the opinion of the Colorado Division of Wildlife, threaten endangered species.

30-11-114. Emergency response costs.

The operator shall reimburse the Town or the responsible fire district for any emergency response costs incurred by the Town or the responsible fire district in connection with activity at the well site or production site, except that the operator shall not be required to pay for emergency response costs where the response was precipitated by the mistake of the Town.

30-11-115. Violation and enforcement.

(a) Unlawful to construct or install unapproved oil and gas facilities. Except as otherwise provided in this Section, it is unlawful to construct, install or cause to be constructed or installed any oil and gas facility within the Town unless approval has been granted by the Board of Trustees. The unlawful drilling or redrilling of any well or the production therefrom is a violation of this Section.

(b) Penalty. Any person, firm, corporation or legal entity which constructs, installs or uses or causes to be constructed, installed or used, any oil, gas or injection well, well site or production site, or commits any act or omission in violation of any provision of this Section or of the conditions and requirements of the oil and gas conditional use permit, may be punished by a fine of not more than three hundred dollars ($300.00) or by imprisonment for not more than ninety (90) days, or by both such fine and imprisonment. Each day of such unlawful operation constitutes a separate violation.
(1) Suspension of Permit. If the Town determines at any time that there is a violation of the conditions of the conditional use permit or that there are material changes in an oil and gas operation or facility as approved by the permit, the Town may, for good cause, temporarily suspend the conditional use permit. In such case, upon oral or written notification by the Town, the operator shall cease operations immediately. The Town shall provide the operator with written notice of the violation or identification of the changed condition(s). The operator shall have a maximum of fifteen (15) days to correct the violation. If the violation is not timely corrected, the permit may be further suspended pending a revocation hearing. The operator may request an immediate hearing before the Town Board or committee regarding the suspension, which shall hold the hearing within ten (10) days of the operator’s written request.

(2) Revocation of Permit. The Town Board or committee may, following notice and hearing, revoke a Town approved conditional use permit granted pursuant to this Section if any of the activities conducted by the operator violates the conditions of the permit or this Section, or constitutes material changes in the oil and gas operation approved by the Town. The Town shall provide written notice to the operator of the violation or the material changes, and the time and date of the hearing. No less than thirty (30) days prior to the revocation hearing, the Town shall provide written notice to the permit holder setting forth the violation and the time and date for the revocation hearing. Public notice of the revocation hearing shall be published in a newspaper of general circulation not less than thirty (30) days prior to the hearing. Following the hearing, the Town may revoke the permit or may specify a time by which action shall be taken to correct any violations of the permit to avoid revocation.

(3) Transfer of permit. A conditional use permit may be transferred only with the written consent of the Town.

(4) Judicial review. Any action seeking judicial review of a final decision of the Town shall be initiated within thirty (30) days after the decision was made, in the district or county court in and for the Town of Berthoud, Colorado.

c) Civil action. In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered or used, or any land is or is proposed to be used, in violation of any provision of this Section or the conditions and requirements of the oil and gas conditional use permit, the Town Attorney, in addition to the other remedies provided by law, ordinance or resolution, may institute an injunction, mandamus, abatement or other appropriate action or proceeding to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alteration or use.

d) False or inaccurate information. The Board of Trustees may revoke an oil and gas conditional use permit if it is determined after an administrative hearing held on at least ten (10) days' notice to the applicant that the applicant provided information and/or documentation upon which approval was based, which the applicant, its agents, servants or employees knew, or reasonably should have known, was materially false, misleading, deceptive or inaccurate.
(e) Prospective application. Unless specifically provided otherwise, this Section shall apply only to wells which are drilled in the Town on and after the date that this Section is adopted. The reentering of a well in existence prior to the date of adoption of this Section for purposes of deepening, recompleting or reworking shall not require approval of a use permitted by conditional review.

(f) Recovery of fees. Should the Town prevail in any action for legal or equitable relief for a violation of the provisions of this Section, in addition to any other penalties or remedies which may be available, the Town shall be entitled to recover any damages, costs of action, expert witness fees and reasonable attorneys’ fees incurred.