

## **SECTION 1 GENERAL PROVISIONS**

### **30-1-101 Title**

- A. 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, zoning, and land use and development 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, signage, dark sky compliance, parking and public infrastructure. This Code applies to development and redevelopment and both terms are used interchangeably.

### **30-1-102 Short title**

- A. 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."

### **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- B. Whenever a section of the Colorado Revised Statutes cited in this Code is later amended or superseded, this Code shall be deemed amended to refer to the amended section or section that most nearly corresponds to the superseded section.

### **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, subdivision, land use and development standards, 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.

### **30-1-105 Premature and Scattered Development**

- A. Nothing in this Chapter shall be construed to limit the existing authority of the Board of Trustees to provide against development that is scattered or premature, requires an excessive expenditure of public funds, or otherwise violates the Town of Berthoud land use regulations.

### **30-1-106 Purpose**

- A. The purpose of this Code is to preserve, protect and improve the health, safety and general welfare of Berthoud residents and to:
  1. Provide standards to achieve high-quality physical development and redevelopment.
  2. Encourage the most appropriate uses of land in the Town.

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3. Achieve the following standards:
  - a. Encourage redevelopment and new development to relate to the Town's historic development pattern; and
  - b. Create a vital, cohesive, well-designed community; and
  - c. Facilitate efficient provision of transportation, water, waste water treatment, stormwater management, schools, parks and other public requirements; and
  - d. Incorporate transect development place types and character districts for guiding Berthoud's physical development. (Transect development is a multi-tiered approach to plan for the community at various scales, starting from the Town-wide macro scale down to the block-level micro scale); and
  - e. Encourage street, trail, sidewalk, and non-motorized path alignment and arrangement in relation to existing and planned streets, trail, sidewalk and non-motorized paths and ensure that the same result in safe, efficient and pleasant walking, biking and driving experiences; and
  - f. Create livable and connected compact developments that are well-defined, sustainable, foster a sense of community, enhance the Town's character and reduce dependency on vehicle traffic; and
  - g. Encourage innovative, quality site design, architecture and landscaping.
4. Maintain and enhance property values by stabilizing expectations, fostering predictability in land development, and establishing transparent processes to efficiently and equitably apply this Code to individual sites. This requires balancing economic development with community values.
  - a. Provide a certain and consistent development review process with clear development and redevelopment standards.
5. Protect critical environmental resources, including agricultural lands and water, wetlands, riparian areas, view corridors, important wildlife habitats and special places of the Town of Berthoud.
6. Prevent or decrease the danger of life and property from flooding, geologic hazards and wildfire.

### **30-1-107 Interpretation**

- A. 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.

### **30-1-108 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.

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- 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 consistency with the Town of Berthoud Comprehensive Plan, and other Town of Berthoud master plans, policies and guidelines, and for compliance with adopted regulations.

### **30-1-109 Relationship to existing ordinances and resolutions**

- A. 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.

### **30-1-110 Relationship to Comprehensive Plan**

- A. It is the intention of the Town of Berthoud that this Code implements the vision and intent of the Comprehensive Plan for the Town and its extraterritorial planning area. The Comprehensive Plan is a visionary document and is not legislative; however, the vision and intent of the Comprehensive Plan should be integrated into the standards, expectations and guidelines provided in the Development Code. 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.
  - 3. When the Comprehensive Plan does not provide an amendment procedure, the amendment application submission and procedure shall follow those for a Neighborhood Master Plan, with such additional materials as shall be determined by the Town Administrator or designee.

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### **30-1-111 Enforcement**

- A. Purpose. This section establishes procedures through which the Town seeks to ensure compliance with the provisions of this Code and obtain corrections for violations of this Code. This section also establishes the remedies and penalties applicable to violations of this Code.
- B. Authority. The Town Board, or its designee, shall be responsible for enforcing the provisions of this Chapter. The term "Town Board" in this Section shall mean the Town Board or its designee. Any criminal enforcement shall be by the issuance of a complaint and summons to Municipal Court by a peace officer.
- C. *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 12 hours verbal or written notice, to ensure compliance with the provisions of this Code as provided in the Berthoud Municipal Code.
- D. The Town will not approve the issuance of a building permit unless the plans for the proposed use, development erection, construction, reconstruction, remodel, restoration, improvement, alteration, or change conform to the requirements of this Code.
- E. Violations. It shall be unlawful to violate any provision of this Chapter and undertake any of the following activities:
  - 1. Erecting, constructing, reconstructing, remodeling, altering, maintaining, expanding, demolishing, moving or using any building, structure, or sign; or to engage in development or alter or change the use of any real property or the improvements on such property; or to subdivide any land, in contravention of any other regulation of this Code, including terms and conditions of all approvals.
  - 2. Land disturbing activities inconsistent with this Code including excavating, grading, cutting, clearing, bringing in fill materials, 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. All land disturbing activities shall be consistent with the Town's stormwater quality requirements.
  - 3. 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.
  - 4. 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 Code.
  - 5. 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.
  - 6. 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.
  - 7. 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.
  - 8. Agreements to convey. Making any agreement to convey or the conveyance of any lot or undivided parcel of land contrary to the provisions of the 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.
  - 9. 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.

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*F. 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.

*G. 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:

1. *Notice of violation and corrective action order.*

- a. *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 30 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.
- b. *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 simultaneously 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.
- c. *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 90 days as it deems appropriate.

2. *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 the Board of Adjustment Section of this Code.

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3. *Revocation of permits.*
  - a. *Revocation by Town Board.* The Town may revoke any development permit, certificate or other authorization, for violation of this Code.
  - b. *Reconsideration of revocation.* The applicant may request a public hearing for reconsideration of the Town's revocation.
  - c. *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, or a hearing officer appointed by the Town Board, not less than seven days, nor more than 21 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.
  - d. *Findings.* Following the public hearing, the Town Board or the hearing officer 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.
  - e. *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.
4. *Stop work order.*
  - a. *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.
  - b. *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.
5. *Abatement or injunctive relief.* In addition to any other remedy, the Town 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.

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6. *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.
7. *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.
8. *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.
9. *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.
10. *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.
11. *Violations.* Violations of this Code 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 Code.
12. *Penalty.* Failure to comply with all of the provisions of this Code shall be unlawful and upon conviction is punishable by a fine of up to \$2,650.00 or imprisonment for a period not more than one year, or both. Each day that such violation continues to exist shall be considered a separate offense.
13. *Costs and attorney's fees for enforcement for abatement incurred by the Town.* Costs and attorney's 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 Code. The cost of abating a violation of this Code shall include all direct and indirect costs of such abatement, plus costs and compound interest at the rate of one percent 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 30 calendar days from the receipt thereof. If all costs are not paid within 30 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.

## **30-1-112 Vested Rights**

- A. *Purpose.* The purpose of this section is to implement the Colorado Vested Property Rights Statute.
- B. *Applicability.* A vested right is established under C.R.S. 24-68-101 et seq., as amended, upon approval of a site-specific development plan by the Town Trustees. Site-specific development plans are defined to be final plats for subdivisions and use by special review permits.
- C. *Approval.* A vested right is automatically created upon the approval or conditional approval of a site-specific development plan, following notice and a public hearing. Failure to abide by the terms and conditions of approval will result in a forfeiture of vested rights.
- D. *Notice.* The Director must publish a notice of the approval of the site-specific development plan in a newspaper of general circulation no later than 14 days after approval.

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- E. Term. A vested right created by approval of a site-specific development plan remains in effect for three years from the date of the Town Trustees' approval, unless the Trustees determine, as part of the site-specific development plan approval, that a longer period is warranted in light of relevant circumstances. Those circumstances may include, but are not limited to, the size and phasing of the development, economic cycles, and market conditions.
- F. Modification of the Plan. The Town Trustees' approval of any modification to a site-specific development plan does not extend the term of a vested right unless expressly authorized by the Trustees.
- G. Exceptions. A vested right does not preclude any zoning or land use action taken by the Town under the following circumstances:
  - a. With the consent of the affected property owner; or
  - b. Upon the discovery of natural or manmade hazards or in the immediate vicinity of the property, which hazards could not reasonably have been discovered at the time of the site-specific development plan approval, and which hazards, if uncorrected, would pose a serious threat to the public health, safety, and welfare; or
  - c. To the extent that the affected property owner receives just compensation for all costs, expenses, and liabilities incurred by the property owner after approval by the Town. These include, but are not limited to, costs incurred in preparing the site for development consistent with the site-specific development plan; all fees paid in consideration of financing; and all architectural, planning, marketing, legal, and other consultants fees, together with interest at the legal rate until paid. Just compensation does not include any diminution in the value of the property caused by such action.
- H. A vested right does not preclude the application of regulations that are general in nature and applicable to all property subject to land use regulations by the Town, including but not limited to, building, plumbing, electrical, and mechanical codes.

### **30-1-113 Nonconformities**

- A. Purpose. This section governs nonconformities which are uses, buildings, structures, lots, signs and site features (such as landscaping), that were legally established prior to the adoption of this Code and no longer comply with one or more requirements of this Code. The provisions of this section are intended to recognize the interests of property owners in continuing to use nonconformities in a productive manner, while encouraging and establishing processes to bring as many aspects of the nonconformity into conformance with this Code and master plans affecting the nonconformity.
- B. Determination of Nonconforming Status. The Town Administrator or their designee has the authority to determine whether a use, building, structure, lot or site feature is nonconforming. A property owner shall make a written request for the designation of a nonconformity status. The burden of proof for establishing the existence of a nonconformity shall be the responsibility of the applicant with the approval of the property owner. The Town Administrator's or designee's determination may be appealed pursuant to the Board of Adjustment Section of this Chapter.
- C. Regulations applicable to all Nonconformities.
  - 1. Any nonconformity 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.
  - 2. Ordinary repairs and maintenance of a nonconforming building or structure shall not be deemed an expansion of such nonconforming building or structure and shall be permitted.
  - 3. No nonconformity shall be altered, extended, or restored so as to displace any conforming use.

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4. A nonconformity which has been damaged by fire, flood, or other calamity may be restored to its original condition, provided that such work is commenced within six months of such calamity.
5. A nonconformity which has been damaged outside of a calamity may not be replaced to replicate the nonconformity.
6. When a nonconformity has been discontinued for a period greater than six months, such nonconformity shall not thereafter be reestablished and any future use shall be made in conformance with the provisions of this Code.
7. 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.
8. If the nonconformity was approved through special review or other use or site-specific permit process under a prior Land Use Code, that approval carries forward to this Code.
9. If the nonconformity was nonconforming under the previous Land Use Code and is conforming in this Code, it will lose its nonconforming status and be considered conforming.
10. If the nonconformity was nonconforming under the previous Land Use Code and requires special approval pursuant to this Code, it will remain nonconforming unless the property owner seeks to change the nonconformity, in which case the applicant will be required to either submit an application for approval of the nonconformity or cause the nonconformity to become conforming.

### **30-1-114 Construction Rules and Regulations**

- A. *Applicability and Purpose.* This section shall apply to all new development or re-development construction projects that include work visible to the public within the Town except for the renovation of an individual single-family home.
- B. To ensure all Construction Activity conducted within the Town is done in the most sensitive manner possible and to minimize impacts, the following Construction Regulations shall be enforced during the construction period of all development projects unless otherwise approved by the Town. This document shall be known as the "Construction Rules and Regulations" and may be referred to herein as the "Regulations." The Town has the power to amend these Regulations from time to time, following notice requirements outlined in this Chapter. Each Owner shall ensure that all Construction Activity on their Construction Site shall be performed in accordance with the following requirements. Anyone found in violation of these Regulations shall be subject to citation, fines and other enforcement actions as allowed by the Town Municipal Code and Development Code.
  1. Construction Activity is defined as any building, infrastructure, and/or construction related activity conducted outdoors at any time. Interior construction activity conducted entirely indoors, such as painting and some finishing work, is exempt from the requirements of this ordinance.
  2. Large Construction Vehicle is defined as vehicles with more than two axels engaged in activity related to Construction Activity.
- C. *Drainage, Erosion Control, and Vegetation Management.* The Town requires the owner or operator of a construction site to receive permit certification issued by the State of Colorado for any proposed construction activity that falls under the category of a General Construction Stormwater Permit as defined by the Colorado Department of Public Health and Environment (CDPHE). In addition, the town must review approve and permit a site-specific Stormwater Management Plan (SWMP) submitted by the owner of the construction site prior to the Town approving the construction activity. The owner of the construction site is responsible for preparing and submitting the SWMP to the Town. In no event shall silt, mud, debris, or other stormwater related issues be allowed to accumulate on lots, roads, Rights-of-Way (ROW), or other public areas for more than 72 hours.
  1. In addition to implementing, monitoring, and updating the SWMP throughout construction, the Owner shall not allow standing water exceeding an area of 25 square feet to remain in place longer than 72

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hours. Temporary pumps and associated piping may be used to remove areas of standing water and shall conform to best practices identified in the SWMP.

2. All open space areas in each phase of a development shall be seeded or landscaped pursuant to the approved SWMP, erosion control plan and approved Landscape Plans prior to the time when 51 percent of the building permits are issued in said phase. Delays associated with weather will not be granted.
3. Any material storage on site shall be done in such a way that proper vegetation management can continue unimpeded.

D. *Construction Equipment and Material Storage.* Each Owner or Owner's Representatives and their contractors shall ensure all construction material is stored in a designated materials storage area. Such storage area shall only be located on lots with approved permits and shall be located to minimize the visual impact from adjacent properties and roadways. Construction materials shall not be stored in the Right-of-way for more than 72 hours without prior approval from the Town. Any materials stored within Right-of-way shall not impede pedestrian and/or vehicular traffic and shall be marked with high visibility cones or other signage.

E. *Debris and Trash Removal.* Owners, Owner's Representatives, and their contractors shall be responsible for assuring:

1. At the end of each day, all trash and debris on the Construction Site is cleaned up and stored in proper containers and not permitted to be blown about the Site or adjacent property, and
2. At least once a week, all trash and debris are removed from the Construction Site to a proper dumpsite located off the Property.
3. All trash and debris containers shall be located on the Construction site, off the road right of way, and not on sidewalks, or adjacent property except for in pre-approved storage areas. Any trash and debris containers shall be set in such a way that they do not create visual barriers for traffic and pedestrians. Determination of such barriers shall be at the sole discretion of the Town.

F. *Construction Hours and Noise.* Construction Activities shall be limited to the following hours of operation:

1. Monday through Friday: 7:00 a.m.; 7:00 p.m. or Sundown, whichever occurs earlier
2. Saturday: 8:00 a.m. — 7:00 p.m. or Sundown, whichever occurs earlier
3. Sunday: 9:00 a.m. — 4:30 p.m.;
4. Entrance to Construction Sites for set-up only is permitted one half hour prior to hours of operation. (e.g. M—F 6:30 a.m.) During the half-hour set-up, the operation of heavy equipment, compressors, impact tools, or any activity that creates loud noise shall be prohibited. At all times each Owner shall use reasonable efforts to minimize external noise resulting from Construction Activity. No loud music shall be permitted.

G. *Large Construction Vehicle Routes.* Delivery and haul routes for all vehicles with more than two axels shall avoid all local or neighborhood roads outside of the construction site. Large Construction Vehicles as defined herein must obey all posted speed limits and traffic regulations within the Town.

H. *Prohibited General Practices.* All Owners will be responsible for the conduct and behavior of their Owner's Representatives in the Town. The following practices are prohibited within the Town and will result in an automatic fine:

1. Changing oil on any vehicle or equipment on the Construction Site without spill protection containment and safeguards. This activity shall take place in an approved containment area;
2. Allowing concrete suppliers and contractors to clean their equipment on any property within the Town of Berthoud lot, roadway, right-of-way, ditch, easement, or other property without prior approval;
3. Removing rocks, plant material, topsoil, or similar items from the property of others within Town;
4. Using disposal methods or units other than those approved by the Town;

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- 5. Careless disposition of cigarettes and other flammable materials;
- 6. Disturbing or removal of any native plant materials not identified for removal on the approved construction plans;
- 7. Disruptive activity including, but not limited to, public drinking, public nuisances, and disturbing the peace;
- 8. Working before or after the scheduled construction hours without prior permission;
- 9. Driving haul trucks with uncovered loads in the Town.
- 10. Storing building or landscape materials within the right-of-way, even prior to Town acceptance, for more than 72 hours.

I. *Roadway Maintenance.* Owners and their contractors and sub-contractors shall keep all Town roads and road rights-of-way free and clear of all materials, rubbish, and debris resulting from Owner's Construction Activity and shall repair and revegetate any damage to roads, road rights-of way, landscaping, and other streetscape improvements within the Town caused by Construction Vehicles used in connection with Construction Activity by Owner's or Owner's Representative. No road cuts, deletions, or additions shall be made without a permit from the Town Engineer, or their designee. Contractors must keep the Site driveway and all adjacent roads clean from dust, dirt, mud, and debris at all times. If a contractor fails to keep roads clean and if the Town arranges for cleaning, the cost of cleaning will be billed to the Owner, in care of the contractor, at a rate then set by the Town.

J. *Sanitary Facilities.* On-Site, enclosed, chemical toilets must be available at all times when Construction Activity is taking place on a Construction Site. Chemical toilets shall be located to minimize any adverse impacts on adjacent lots. In no instance shall chemical toilets be placed within any road right-of-way or on the road.

K. *Signage.* At least one temporary site sign, a minimum of 12 square feet and a maximum of 32 square feet in size, shall be located within the Site boundary and shall be easily visible and readable from the adjacent roadway or entry to the Site. The sign shall be either attached to construction fencing in a secure method; or posted separately with stable sign supports. Sign posting shall be done in a manner to withstand weather including wind. The sign is temporary and shall be removed following construction completion. The sign must contain the information shown below.

- 1. Project logo and/or name.
- 2. Work site address.
- 3. Developer/Owner name and phone number.
- 4. Contractor name and phone number.
- 5. Builder name and phone number.
- 6. CDPHE Number and phone number for CDPHE Inspector
- 7. Work Site Rules.

### **30-1-115 Effective date**

- A. The provisions of this Code were originally adopted on March 27, 2012 and repealed and replaced in their entirety on November 10, 2025. 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 nonconformity provisions of this Chapter.

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### **30-1-116 Application fees**

- A. Application fees for all land use 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.

### **30-1-117 Development review deposit and reimbursement of Town costs**

- A. Fees sufficient to cover the costs of administration, inspection, publication of notice and similar matters will be charged to applicants for all permits and land use 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 incurred by the Town through the warranty period expiration for development and through the issuance of certificates of occupancy for any building. 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 50 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.
- B. 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 30 days of written request by the Town.

### **30-1-118 Severability**

- A. 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.

### **30-1-119 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.

### **30-1-120 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.

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## **30-1-121 Definitions**

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.

*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.

*Accessory* means a use, activity, building or structure, or part of a building or structure that is subordinate and incidental to the principal activity or building or structure on the site.

*Accessory building or structure* means a subordinate building or structure detached from and located on the same lot as a principal building or structure. The use of an accessory building or structure must support the occupants and be accessory to the use of the principal building or structure and shall be under the same ownership in all respects. Accessory building or structures include but are not limited to storage sheds, detached garages, and gazebos.

*Accessory dwelling unit* means a residential dwelling unit located on the same lot as a single-family dwelling unit, either within the same building as the single-family dwelling unit or in a detached building, that provides complete independent living facilities, including but not limited to permanent facilities for sleeping, eating, cooking, and sanitation for one or more persons. Mobile homes and recreational vehicles shall not be included within the definition of the term Accessory Dwelling Unit. Accessory dwelling units shall be developed in accordance with the standards set forth in the Accessory Dwelling Unit section of this code and only in those zoning districts where the use is listed as a use by right. Also referred to as a 'Guest House' or 'Mother-in-Law Suite'.

*Accessory use* means a use of land or building or structure incidental to and subordinate to the principal use of the land or building or structure.

*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.

*Adjacent property owner* means an owner of record of any estate, right or interest in real property abutting the subject property.

*Affordable housing development* means a development in which: (1) at least 75 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 20 years.

*Affordable housing unit for rent* means a dwelling unit which is available for rent on terms that would be affordable to households earning 80 percent or less of the median income of that County's residents, as adjusted for family size, and paying less than 30 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 20 years.

*Affordable housing unit for sale* means a dwelling unit which is available for purchase on terms that would be affordable to households earning 80 percent or less of the median income of residents, as adjusted for family size

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and paying less than 38 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 20 years or more.

*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.

*Agricultural land* means land that is being used for agricultural activities.

*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, described in the Design Standards section of this Chapter.

*Alteration* means any change, addition or modification in construction, occupancy or use of a building or structure.

*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.

*Amphitheater, outdoor* means an outdoor space with tiers of seats for spectators at events.

*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.

*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.

*Animal boarding* means the operation of an establishment in which domesticated animals other than household pets are housed, groomed, boarded, trained, or sold. This term shall not include the operation of a kennel.

*Animals, domestic* means common household pets, such as dogs and cats, kept for amusement, companionship, decoration or interest.

*Animal, exotic* 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.

*Animals, farm* 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.

*Animals, food* means fish, fowl, cattle, swine, sheep, and others raised for the purpose of food consumption.

*Animal, 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, potbellied pigs, guinea pigs and similar rodents, fish, reptiles, rabbits, and such other species as would normally be sold at a pet shop.

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*Animals, livestock* means cows, horses, swine, goats, donkeys, mules, sheep, or chickens.

*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.

*Annexation* means the act of attaching, adding, joining, or uniting a parcel of land to the legal entity known as the Town of Berthoud.

*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.

*Appliance sales and service* means a retail establishment for the sale and service of appliances including portable devices or instruments used for domestic functions such as vacuum cleaners, kitchen appliances, radios, ovens/ranges, dishwashers, washers, driers, refrigerators, freezers, for example.

*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.

*Appurtenances* mean the visible, functional, or ornamental objects accessory to and part of a building.

*Aquifer recharge area* means an area where water is absorbed into a natural aquifer adding to the zone of saturation.

*Arcade* means a series of arches supported on piers or columns.

*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.

*Area of lot* means the total horizontal area within the lot line boundaries of a lot.

*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.

*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

*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.

*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 as an accessory use or component of other service, 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.

*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.

*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.

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*Banks and financial institutions* are open to the public and engaged in deposit banking, and that performs closely related functions such as making loans, investments, and fiduciary activities with or without drive through windows and/or an attached or stand-alone banking kiosk (Automated Teller Machine (ATM)).

*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.

*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).

*Beacon, revolving* means a rotating or blinking source of light or electronic simulation of a revolving source of light.

*Bed and breakfast* means an establishment operated in a principal dwelling or portion thereof, which provides temporary accommodations to overnight guests for a fee and which is occupied by the operator of such establishment. A bed and breakfast may provide accommodation to individuals or multiple separate parties concurrently on both a reservation or a walk-in basis. The "party" as used in this definition shall mean one or more persons who stay at a bed and breakfast as a single group pursuant to a single reservation and payment. The maximum number of guests allowed in a Bed and Breakfast shall be twelve (12).

*Bedroom* means a fully enclosed portion of a building, designed or intended to be used for sleeping purposes and meets the definition found in the Town's Building Code.

*Berm* means an earthen barrier of compacted soils preventing the passage of liquid materials, or providing screening from adjacent uses.

*Bicycle parking, enclosed* shall mean bicycle storage in lockers, a room, or other space within a parking structure or other building, including a shed or carport. All types of enclosed bicycle storage must be easily accessible to entrances and walkways, secure, lighted and protected from the weather. Each storage space shall provide a minimum of six square feet in area. The storage space shall not impede fire exits or be located so that parked bicycles interfere with public access.

*Bicycle parking, fixed* shall mean bicycle parking that allows the bicycle frame and both wheels to be securely locked to the parking structure. The structure shall be of permanent construction such as heavy gauge tubular steel with angle bars permanently attached to the pavement foundation. Fixed bicycle parking facilities shall be at least two feet in width and five and one-half feet in length, with additional back-out or maneuvering space of at least five feet.

*Bikeway* means a path designed for use by bicyclists, which may be used by pedestrians.

*Bike lane* means a dedicated lane of a street intended for use by bicycles.

*Billboard* means a sign advertising products not made, sold, used, or served on the premise displaying the sign.

*Blank wall* means an exterior building wall with no openings and a single material and uniform texture on a single wall plane.

*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.

*Board* means the governing body of the Town of Berthoud; also known as the Town of Berthoud Board of Trustees.

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*Board of Adjustment* means the Town of Berthoud Planning Commission acting as the Board of Adjustment.

*Boarding and rooming house* means a building or portion of which is used to accommodate, for compensation, four or fewer 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.

*Bollard* means a pole used to protect a building from impact or to close a road or path to vehicles above a certain width.

*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.

*Building code(s)* means the set of standards that must be followed in the construction and remodeling of buildings and structures.

*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.

*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.

*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.

*Building Official* means a person or persons charged with implementing and enforcing provisions of the Building Code.

*Bulb* means the source of electric light — to be distinguished from the whole assembly (See Luminaire).

*Bus shelters* means a small, roofed structure, usually having three walls and located near a street. The structure is designed primarily for the protection and convenience of bus passengers who are waiting to board transit.

*Business* means any lawful commercial endeavor to engage in the manufacturing, purchase, sale, lease, or exchange of goods and/or the provision of services.

*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.

*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 12 inches above the ground for larger sizes.

*Candela (cd)* means a unit of luminous intensity.

*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.

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*Cantilever* means an architectural element which projects from a structure and is supported at only one end.

*Car and motor vehicle sales* means storage and display of operational automobiles, motorcycles, RV's, boats, or trucks in the open or in an enclosed space for sale or trade.

*Car/motor vehicle washes* means a building or portion of a building used for the washing of automobiles, light trucks and vans, but not commercial fleet, buses, and heavy trucks. Operating functions are performed mechanically, manually (self-service), and some may include partial manual detailing by the operator/owner of the vehicle. Vacuum stations may be included.

*Caretaker Dwelling* means an accessory dwelling on a non-residential property, secondary to the non-residential use of the property, occupied by the person who oversees the non-residential operation 24 hours a day, and their family.

*Cash in lieu of water dedication* means a separate and distinct fee from water taps, as required in the Development Review and Impact Fee Section of this Chapter thereof, 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.

*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.

*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.

*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.

*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.

*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.

*Chapter* means Chapter 30 of the Berthoud Municipal Code, also referred to as the Berthoud Development Code, both also referred to as this Code.

*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.

*Child care center* shall have the same definition as C.R.S. §26-6-102 (1.5) in effect at the time of interpretation.

*Child care home* means a residential home providing care to no more than twelve children.

*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.

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*Clerestory* means a portion of an interior rising above adjacent rooftops and having windows admitting daylight to the interior.

*Clinic* means a building designed and used for the diagnosis and treatment of human patients that does not include overnight care facilities.

*Clinic, addiction treatment* means a building designed and used for the diagnosis and treatment of human patients with addictions and may include residential facilities licensed by the Colorado Department of Public Health and Environment, but excluding correctional and post-correctional facilities, juvenile detention facilities and temporary custody facilities. This definition does not include facilities which house more than one (1) individual who is required to register as a sex offender pursuant to State law.

*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.

*Commercial mineral deposits* mean oil, gas, gravel, and other natural deposits that may be extracted from a property for economic benefit.

*Commercial and retail businesses, indoor sales and service* – An establishment or place of business primarily engaged in selling merchandise or providing a service to individuals located indoors.

*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.

*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.

*Community Design Standards* means the standards set forth in the Design Section of this Chapter.

*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.

*Community garden* – A private or public facility used for the cultivation of fruits, flowers, vegetables, or ornamental plants by more than one person or family.

*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. Also known as the Future Land Use Area, Urban Growth Boundary, or Three-Mile Plan.

*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.

*Comprehensive Plan* means the adopted Town of Berthoud Comprehensive Plan, as amended.

*Compressed gravel* means gravel that has 95 percent compaction at standard proctor densities at two percent ± optimum moisture content.

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*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.

*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.

*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.

*Container* means a truck trailer body or a cargo or 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 are intended for the temporary and mobile transport of goods, and may not be permitted for permanent use as storage, or as a permanent building.

*Contractor's office/shop* means an establishment for the indoor repair, maintenance, or storage of contractor's vehicles, equipment or materials for use in the mechanical, plumbing, electrical, electronic repair, small engine, landscaping contracting industry, for example. A contractor's office/shop may include the business office.

*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.

*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.

*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.

*Cornice* means a continuous, molded projection that crowns a wall or other construction, or divides it horizontally.

*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.

*Cremation facility* means a business containing properly installed, certified apparatus intended for use in the act of cremation.

*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.

*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.

*Crosswalk* means a designated area for pedestrians to cross a street or other right-of-way.

*Cul-de-sac* means a local street with only one outlet and having the other end for the reversal of traffic movement.

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*Cultural assets* means buildings, locations and other features considered historically or socially significant to the community.

*Data Center* means A use consisting of buildings or structures specifically designed or modified to house networked computers and data and transaction processing equipment and related infrastructure support equipment, including power and cooling equipment. A data center may be used to provide data and transaction processing services, outsource information technology services and/or computer equipment colocation services. A data center may also include buildings or structures that support the operation of the data center including retrofit buildings, warehousing for logistics, independent network buildings, buildings for support staff, and emergency generators. A Data Center shall not include activities which consistently produce noise discernable at the property line. Should a Data Center produce noise discernable at the property line, it shall be classified as an Industrial use.

*Dedicated land* means land transferred to the Town by platting, title, deed or other legal method approved by the Town Attorney.

*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.

*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.

*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.

*Design standards* mean the standards that set forth specific requirements for buildings and infrastructure.

*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.

*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.

*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.

*Development* means the carrying out of any building activity or mining operation, the making of any material, a 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 or redevelopment.

- 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;

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- 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.

*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.

*Development plan* means the written and graphical documents that detail the provisions for development of a parcel of land . 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.

*Developmental disability* means a disability that manifests before the person reaches twenty-two years of age, that constitutes a substantial disability to the affected person, and that is attributable to an intellectual and developmental disability or related conditions, including Prader-Willi syndrome, cerebral palsy, epilepsy, autism, or other neurological conditions when the condition or conditions result in impairment of general intellectual functioning or adaptive behavior similar to that of a person with an intellectual and developmental disability. (C.R.S. 25.5-6-403)

*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.

*Dormer* means a projecting structure built out from a sloping roof, usually with a vertical window or vent.

*Downtown* means the central business district of the Town. The boundary of downtown may change as the Town grows.

*Drive aisle* means the lanes in a parking lot devoted to the passage of vehicles, as opposed to the parking stalls.

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The term drive aisle does not include lanes used only, or primarily for, drive-in customer service.

*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.

*Driveway* means a constructed vehicular access serving one or more properties and abutting a public or private road.

*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 through the Home Occupation permit process.

*Dwelling, factory-built* means a dwelling which is partially or entirely manufactured in a factory and designated for long-term residential use; built in multiple sections. Factory built homes must be constructed to the standards of the State of Colorado Factory Built Construction Certification Code (8 CRR 1302-3) and bear a certification insignia in compliance with those standards.

*Dwelling, 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 32 feet long; and is designed to be used as a dwelling without permanent foundation when connected to required utilities. A mobile home is a manufactured home produced prior to June 15, 1976. A mobile home does not include a factory built home, manufactured home, or a recreational vehicle (RV).

*Dwelling, Manufactured home* means a single-family dwelling which:

- a. Is partially or entirely manufactured in a factory;
- b. Is not less than 24 feet wide and 36 feet in length;
- c. Is permanently affixed to, and installed on an engineered permanent foundation at the entire perimeter of the dwelling;
- d. Is connected to the required utilities, and includes plumbing, heating, air conditioning and electrical systems;
- d. Has a pitched or cosmetically equivalent roof of at least 4/12 pitch;
- e. Has brick, wood, or cosmetically equivalent wood exterior siding; and
- e. Is certified pursuant to the "National Manufactured Housing Construction and Safety Standards Act of 1974", 42 U.S.C. 5401, et seq., as amended.

*Dwelling, 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." A model home is required to meet the architectural diversity requirements found in this Chapter as well as the lot development standards approved with the subdivision.

*Dwelling, multi-family* means a dwelling containing three or more dwelling units, not including hotels, motels, fraternity houses and sorority houses and similar congregate housing accommodations.

*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.

*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. Designed exclusively for occupancy by one family

*Dwelling, two-family* means a building designed for occupancy by two families living independently of each other.

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*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.

*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.

*Eave* means the overhanging lower edge of a roof.

*Eighty-five-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.

*Elevation* means the external vertical plane of a building.

*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.

*Engineer* means a professional engineer licensed by the State of Colorado.

*Entertainment facilities and theaters* mean a building or part of a building devoted to showing live performances.

*Environmentally sensitive areas* include aquifer recharge areas, significant wildlife habitat and migration corridors, unique vegetation and critical plant communities, rivers, lakes, ponds, streams, other water bodies not including irrigation ditches and stormwater infrastructure, and ridge lines.

*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.

*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.

*Electric Vehicle (EV)* means a motor vehicle which relies partially or entirely on electrical energy to power its movement, requiring periodic electrical current charging of its battery.

*EV Charging Station* means equipment that provides charging for EVs, located adjacent to dedicated space(s) for the vehicle(s) while they charge. One EV Charging Station may provide power for one or more vehicles.

*EV Supply Equipment (EVSE)* means all equipment necessary to provide electrical current charging for EVs, except for the EV Charging Station itself. This may include power conversion equipment, electrical distribution equipment, such as transformers, switchgear boxes, and distribution lines, and/or other supportive equipment.

*EV Charging, Principal Use* means DCFC EV Charging Stations and Equipment that serve as the primary function and land use on the subject lot. DCFC – or direct current fast charging – is high-speed charging that provides about 50-350+ kW of power per hour and uses a 480V three-phase outlet.

*EV Charging, Accessory Use* means DCFC EV Charging Stations and Equipment that are incidental and subordinate to the Primary Use on the subject lot. DCFC – or direct current fast charging – is high-speed charging that provides about 50-350+ kW of power per hour and uses a 480V three-phase outlet.

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*Exhaust pipe* means a pipe used to guide waste exhaust gases away from a controlled combustion inside an engine or stove.

*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.

*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.

*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.

*Façade* means the elevation or exterior face of a building.

*Family* as defined by Colorado State Statute means two or more persons, whether or not related by blood, marriage, or adoption, who live or expect to live together as a single household in the same home, or single person who is either at least sixty-two years of age or has a disability.

*Family care, elderly day care center* means a facility providing care for the elderly and/or functionally impaired adults in a protective setting for a portion of a 24-hour day. No overnight care is provided.

*Farmer's Market* means a temporary or occasional location for the outdoor retail sales of farm produce, art, fresh flowers, craft items, food and beverages from vehicles or temporary stands.

*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.

*FEMA* means Federal Emergency Management Agency.

*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.

*FHA* means Federal Housing Administration.

*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.

*Fire station* means a building used to store and maintain fire equipment and to house firefighters.

*Fireworks sales – temporary* means an establishment for the sale of fireworks on a temporary basis.

*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

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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.

*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.

*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.

*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.

*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.

*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.

*Flow line* means the low point within a street section wherein water collects and flows, typically the gutters along each edge of the pavement.

*Footprint*, also called *ground level footprint*, means the outline of a building's perimeter at ground level.

*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.

*Foster care home* shall have the same meaning as §26-6-903(10) of the Colorado Revised Statutes applicable at the time of interpretation.

*Frontage* means the length of property along one side of a street between property or lease boundary lines.

*Full cutoff fixture* means a fixture which, as installed, gives no emission of light above a horizontal plane.

*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.

*Gable* means the triangular portion of wall enclosing the end of a pitched roof from cornice or eaves to ridge.

*Garage* means a building or part of a building wherein motor vehicles are housed or stored.

*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.

*Geologic hazards* mean unstable or potentially unstable slopes, undermining, faulting, landslides, rock falls,

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flood, wildfire or similar naturally occurring dangerous features or soil conditions or natural features unfavorable to development.

*Glare* means intense light that results in discomfort and/or a reduction of visual performance and visibility.

*Grade* means the degree of rise or descent of a sloping surface.

*Grade, finished* means the final elevation of the ground surface after development.

*Grade, natural* means the elevation of the ground surface in its natural state, before man-made alterations.

*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 25,000 square feet. The term large grocery store is synonymous with supermarket.

*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 25,000 square feet.

*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.

*Group care facility* means a facility providing custodial care and treatment, or social services, in a protective living environment for persons residing in the facility either voluntarily or by court placement, including without limitation facilities commonly known as group homes for the aged, group homes for the developmentally disabled, group foster care homes, shelters for abused persons, safehouses, nursing homes, intermediate care facilities and residential care facilities licensed by the Colorado Department of Public Health and Environment, but excluding correctional and post-correctional facilities, addiction treatment clinics, juvenile detention facilities and temporary custody facilities. This definition does not include facilities which house more than one (1) individual who is required to register as a sex offender pursuant to State law.

*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 20 years. May also be referred to as the Future Land Use Map or the Three-Mile Plan.

*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.

*Health club* means a facility that provides physical fitness services and/or equipment to its members.

*Highway, corridor* means the area within and adjacent to the rights-of-way of Colorado Highway 56, Colorado Highway 287 and Interstate 25.

*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.

*Hip roof* means a roof having sloping ends and sides meeting at an inclined projecting angle.

*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.

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*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.

*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.

*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.

*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."

*Horticulture* means the growing of turf, fruits, vegetables, herbs, flowers or ornamental plants.

*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.

*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 12 or more guest rooms.

*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.

*I-25 corridor/Highway 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.

*Illuminance* means the amount of light that covers a surface, measured by foot-candle or lux.

*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 than 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.

*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.

*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.

*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.

*Illumination, external or indirect* means lighting by means of a light source directed at a reflecting surface in a

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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.

*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.

*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.

*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.

*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.

*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 12 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.

*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.

*Intra-neighborhood connections* mean connections (such as trails and roads) within the same neighborhood.

*Inter-neighborhood connections* mean connections (such as trails and roads) between neighborhoods.

*Irrigation ditch or canal* means a channel designed to transport irrigation water.

*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.

*Junkyard* means a building, structure or parcel of land, or portion thereof, used for collecting, displaying,

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storing, selling or reselling junk. Junkyards shall not include a recycling facility.

*Kennel (small animal)* means a facility licensed to house dogs, cats or other household pets and/or where grooming, boarding

or training of animals is conducted as business. Outdoor runs may be allowed when screened from view of adjacent properties and where sound mitigation is established.

*Laboratory and/or research facility* means a facility primarily engaged in scientific research, analysis, production, and/or experimentation of a product or for the research, development, testing, manufacturing, assembling, repair of goods and products. The facilities shall be free of dust, smoke, fumes, odors or unusual vibrations and noise. The waste shall meet the requirements of the appropriate health authority.

*Lamp or bulb* means the light-producing source installed in the socket portion of a luminaire.

*Landowner* means any owner of a legal or equitable interest in real property, and includes the heirs, successors, and assigns of such ownership interests.

*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.

*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.

*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.

*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.

*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 and/or State of Colorado.

*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.

*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.

*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.

*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.

*Lighting* means any or all parts of a luminaire that function to produce light.

*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.

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*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.

*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.

*Livability* refers to the factors related to the long-term wellbeing of individuals and communities. Livability encompasses factors like neighborhood amenities, including parks, open space, walkways, and businesses as well as environmental quality, safety, and health. Additionally, livability considers the availability and quality of public transport, educational institutions, and healthcare facilities. It also considers the overall cultural and social atmosphere of a place, including the presence of diverse recreational activities and community engagement opportunities. All these factors combined create an environment that enhances the overall quality of life for residents and contributes to creating a sense of place.

*Live work buildings* are used for both living and working. The particular building is officially designated to allow the occupant of the residential portion of the building to operate their business. An example is a professional or business office on the first floor and residential uses on the second floor.

*Lot* means an area of land, created through the subdivision process, plat or otherwise permitted by law, to be separately owned, used, developed, or built upon. An area of land occupied or intended for occupancy by one main use permitted in this code, including a principal building and its accessory buildings or as otherwise provided in this code. A lot shall meet all minimum requirements as established by this code including but not limited to minimum size and width, and shall have direct access to a public or private street. Also refer to the definition of Outlot and Tract.

*Lot, corner* means a lot or area 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.

*Lot depth* means the average distance between the front lot line and the rear lot line.

*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.

*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. Where the lot is accessed by an alley or is alley loaded, the front shall be defined as the lot line opposite the alley lot line.

*Lot line, rear* means the line opposite the front lot line.

*Lot, reverse corner* means a corner lot having its side street line substantially a continuation of the front lot line of the first lot to its rear.

*Lot line, side* means any lot lines other than the front lot line or rear lot line.

*Lot size* means the total horizontal area within the lot lines of a lot; synonymous with area of lot.

*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

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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.

*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.

*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.

*Luminaire* means the complete lighting unit, including the lamp, the fixture, and other parts.

*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.

*Machine shop* means a workshop where power-driven tools are used for making, finishing, or repairing machines or machine parts.

*Management Agency* means the agency in charge of the "208 Water Quality Plan" in the Berthoud area.

*Manager* means the Town Manager or Administrator of the Town of Berthoud.

*Manufacturing* means a business which makes products by hand or by machinery.

*Marina* means a waterfront establishment where docking, moorings and dry storage is offered for boats and marine sporting equipment. Retail sales of supplies may be included.

*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.

*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.

*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.

*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 20 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.

*Median* means an area in the approximate center of a street or highway which is used to separate the directional flow of traffic.

*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

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and osteopaths, where patients are not lodged overnight but are admitted for outpatient examination and/or treatment.

*Marijuana store, medical* means a person licensed pursuant to C.R.S. Title 44, Article 10, to operate a business as described in C.R.S. Section 44-10-501 that sells marijuana to registered patients or primary caregivers defined in section 14 of article XVIII of the state constitution.

*Marijuana store, retail* has the same meaning as defined in Section 16(2)(n) article XVIII of the state constitution.

*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. Section 12-43.3-404.

*Marijuana products manufacturer, retail* has same meaning as defined in section 16(2)(i) article XVIII of the state constitution.

*Marijuana cultivation facility, medical* means a person licensed pursuant to C.R.S. Title 12, Article 10 to operate a business as described in C.R.S. Section 44-10-502.

*Marijuana cultivation facility, retail* has the same meaning as defined in section 16(2)(h) article XVIII of the state constitution.

*Marijuana business, medical* has the same meaning as defined in C.R.S. Section 44-10-103(35).

*Marijuana business, retail* has the same meaning as defined in C.R.S. Section 44-10-103(58).

*Marijuana business, allowed* business as used in this Chapter 30 shall mean collectively and exclusively medical marijuana stores, retail marijuana stores, medical marijuana products manufacturers, retail marijuana manufacturers, medical marijuana cultivation facilities and retail marijuana cultivation facilities and excludes all other medical marijuana businesses and retail marijuana businesses.

*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.

*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.

*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.

*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.

*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.

*Model plans* means a set of standard plans for a home.

*Modified grid pattern* means a grid pattern of streets and blocks adapted to the topography, unique natural

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features, environmental constraints, and peripheral open space areas.

*Movie Theater:* A structure that contains audience seating, on one or more screens and auditoriums, and a lobby with or without a refreshment station. If more than one auditorium/theater will be in one overall structure, they shall share a box office/ticket office, lobby areas, parking facilities, restrooms, concession areas, signs, and other service and maintenance facilities.

*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.

*Municipality* means an incorporated city or town.

*Muntin* means a strip of wood or metal that separates and holds panes of glass in a window.

*Museum* means an institution devoted to the procurement, care, study, and display of objects of lasting interest or value.

*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.

*Natural Area* as it pertains to the Impact Fee Section of this Chapter shall mean 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.

*Natural Medicine Healing center* means a facility where an entity is licensed by the state licensing authority that permits a facilitator to provide and supervise natural medicine services for a participant. Natural Medicine Healing centers are regulated by the Natural Medicine Code, a Section of the Berthoud Land Development Code.

*Natural medicine business* means any healing center, natural medicine cultivation facility, natural medicine products manufacturer, or natural medicine testing facility, licensed to operate pursuant to the Colorado Natural Medicine Code. Natural Medicine Businesses are regulated by the Natural Medicine Code, a Section of the Berthoud Land Development Code.

*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.

*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.

*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).

*New construction* means structures for which the start of construction or remodeling commenced on or after

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the effective date of this Code.

*Nightclub* means a bar or tavern containing more than 100 square feet of dance floor area.

*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.

*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.

*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.

*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. Refer to the Town's Landscape Design Guidelines.

*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.

*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.

*Oil or gas well* means a well that produces oil or gas.

*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.

*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.

*Open space, functional* 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.

*Open space, public* means an open space area conveyed or otherwise dedicated to the Town for public recreational or conservation uses. Public open spaces are to be unencumbered by oil and gas wells, their appurtenances or other hazards to the public.

*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.

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*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.

*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 24 hours. Containers may not be permitted for use as permanent storage or building purposes without site plan and/or building permit approval.

*Outlot* means an area of land, created through the subdivision process that is not a building lot and for which no building permit shall be issued. An outlot is typically held in common ownership by a homeowner's association or similar and reserved for open space and other public purposes such as utility and/or drainage easements. Also refer to the definition of Lot and Tract.

*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.

*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.

*Parcel* means any legally described piece of land under common ownership, whether or not it is platted into one or more lots developed for a single use. A parcel is often created by a subdivision, deed, or other instrument recorded with the appropriate recorder. A parcel may be a Lot, Tract or Outlot or a combination thereof.

*Park* means an area open to the general public and reserved and usable for recreational, educational or scenic purposes.

*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.

*Parking garage* means an off-street parking area within a building.

*Parking lot* means an outdoor off-street parking area or vehicular use area.

*Parking space* means an area of at least 200 square feet with dimensions of ten feet by 20 feet exclusive of driveways, aisles or maneuvering areas. All parking spaces shall have direct unobstructed access to a street, drive aisle or alley.

*Parkway* means that portion of the public right-of-way between the curb line and the adjoining property line.

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*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.

*Passenger terminal or park-n-ride* means a [parking lot](#) with [public transport](#) connections that allows [commuters](#) to leave their vehicles and transfer to a [bus](#), [rail](#) system ([rapid transit](#), [light rail](#), or [commuter rail](#)), or [carpool](#).

*Pergola* is a structure of parallel colonnades supporting an open roof of beams and crossing rafters or trellis work.

*Permanent monument* means any structure of masonry and/or metal permanently placed on or in the ground, including those expressly placed for surveying reference.

*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.

*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.

*Phase* means a portion of property that is being platted and engineered for development at one time.

*Pilaster* means a rectangular support or pier treated architecturally as a column, with a base shaft and capital. *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. The PUD overlay is not a recognized development method in the Town of Berthod as of the adoption of Ordinance 1329. See the Zoning Section of this Chapter for additional information regarding existing PUD Districts. .

*Places of assembly (neighborhood scale)* means a facility smaller than 5,000 square feet in size used for social, educational, worship or recreational purposes.

*Place of assembly (medium)* means a facility, greater than 5,000 square feet and less than 15,000 square feet in size used for social, educational, worship, or recreational purposes.

*Places of assembly (large)* means a facility greater than 15,000 square feet in size used for social, educational, worship or recreational purposes.

*Plant nursery and greenhouse* means any land or structure used primarily to raise trees, shrubs, flowers or other plants for sale or for transplanting.

*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.

*Preliminary Plat* means a development review process outlined in this Chapter.

*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

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used currently to produce livestock and timber. It does not include land already in or committed to urban development or water storage.

*Principal use* means the main use of land or of a structure as distinguished from a subordinate or accessory use.

*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.

*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.

*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.

*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.

*Property* means all real property subject to development regulation by the Town.

*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.

*Property Owner* for purposes of the Use Specific Standards for Short Term Rentals means a person who owns property, and any person related to the property owner

*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.

*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.

*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.

*Public improvement* means any drainage ditch, roadway, parkway, sidewalk, pedestrian way, tree strip, landscaped open space, off-street parking area, lot improvement or other facility which benefits the public.

*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.

*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. A public utility includes main lines, transmission lines and substations.

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*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.

*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.

*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.

*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.

*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.

*Recreational vehicle park* means a parcel of land specifically developed for locating only recreational vehicles on lots on a short-term basis.

*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.

*Redevelopment* means any proposed expansion, addition, or major façade change to an existing building, structure, or property.

*Related to* means, with respect to a natural person, the spouse of the individual; the domestic partner of an individual, a brother, brother-in-law, sister, or sister-in-law of the individual; an ancestor or lineal descendant of the individual or the individual's spouse or domestic partner; and any other relative, by blood or marriage, of the individual or the individual's spouse or domestic partner who shares the same home with the individual.

*Related to means, with respect to a business entity*, if a partnership, all the partners of the partnership who are making an application for a license under this article. If any other type of business entity, all the officers, directors, and owners of at least ten percent of the entity making an application for a license under this article.

*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 or

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beneath the surface thereof, exposed or submerged.

*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.

*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.

*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.

*Rest stop* means a roadside facility safely removed from traffic with parking and such facilities for motorists including information and restrooms.

*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.

*Retail establishment, large* means a retail establishment, or any combination of retail establishments in a single building, occupying a total of more than 50,000 gross square feet of floor area, except that no supermarket shall be deemed to be a large retail establishment.

*Retail establishment, small* means a retail establishment, or any combination of retail establishments in a single building, occupying a less than 50,000 gross square feet of floor area.

*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.

*Retention basin* means a pond, pool or basin used for permanent storage of water runoff.

*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.

*Roadside or temporary retail stand/tent* means a temporary structure not permanently affixed to the ground and is readily removable in its entirety, which is used solely for the display or sale of farm products produced on the premises upon which such roadside stand is located. There shall be no more than one roadside stand on any

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one property. A building permit is required as necessary.

*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.

*Sales of farm implements, heavy equipment, mobile/manufactured homes* – An establishment for the sale of farm implements, heavy equipment or manufactured homes without repair facilities.

*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.

*Schools - public and private (preschool – grade 12)* means an institution for the teaching of children on a site that is operated as a school, and which contains all improvements required by local, state or federal regulations necessary for general academic instruction.

*Schools - colleges, vocational and technical training* means an institution for the teaching of adults including colleges, professional schools, dance schools, business schools, trade schools, art schools, and similar facilities on a site that is operated as a school, and which contains all improvements required by local, state, or federal regulations necessary for general academic instruction.

*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 is measured from the lot line.

*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

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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 opaque 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 150 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

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- 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 36 square feet in area.

*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.

*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.

*Side loaded garage* means a garage that is oriented so that the garage doors are perpendicular to the front street.

*Sidewalk* means the hard surface path within the street right-of-way for use by pedestrians and/or bicyclists.

*Short-term Rental* means a principal dwelling rented to transient guests who are part of one party for short-term lodging (30 days or less) when not occupied by the owner/operator. The term "party" as used in this definition shall mean one or more persons who stay at a short-term rental as a single group pursuant to a single reservation and payment.

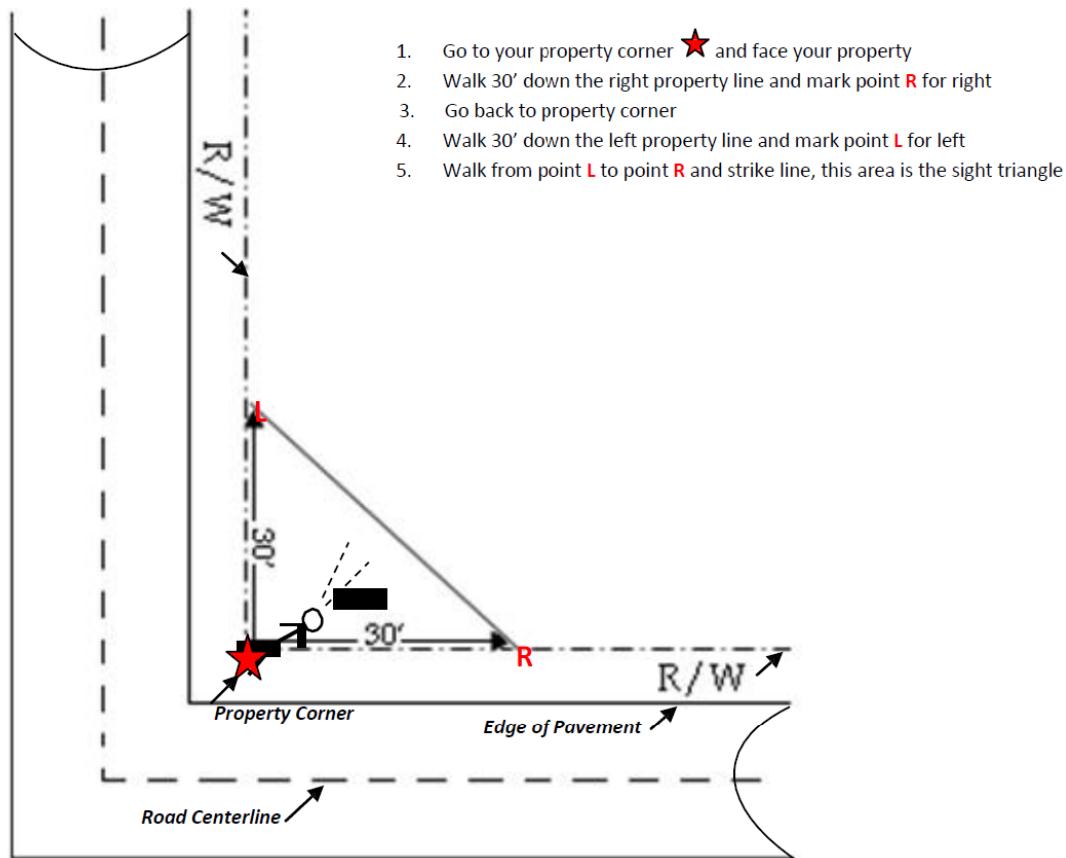
- a. Maximum Number of Guests: A Short-term Rental shall be limited to 10 or fewer guests who are part of one party or single group of renters.

*Sight distance triangle* means the area defined by the intersection of any two right-of-way lines of streets or railroads and a straight line intersecting those two right-of-way lines at points 30 feet from the intersection, no obstruction to vision between a height of two and one-half feet and 12 feet above the imaginary plane defined by those three points of intersection permitted, at the plane of the street. This includes structures, walls,

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fences, shrubbery or trees except that shade trees will be permitted where all branches are not less than eight feet above the street level.

**Simple directions to find sight triangle:**



1. Go to your property corner  and face your property
2. Walk 30' down the right property line and mark point **R** for right
3. Go back to property corner
4. Walk 30' down the left property line and mark point **L** for left
5. Walk from point **L** to point **R** and strike line, this area is the sight triangle

*Sign* means any device that is sufficiently visible to persons not located on the lot where the device is located, affixed or placed on a structure, land, or produced by painting on or posting or placing any painted, lettered, pictured, figured or colored material on any building structure or surface..

*Sign, abandoned* means a sign, including sign face and supporting structure which is unsafe, constitutes a hazard to safety or health by reason of inadequate maintenance, dilapidation, or obsolescence and/or is not kept in good repair; or which contains no sign copy on all sign faces for a continuous period of three months.

*Sign, animated* means a sign having an intermittent or continuing variation in the physical position of any part of the device, except such variations necessary for displaying time-of-day information or temperature information.

*Sign, awning* means a sign which is painted, stitched, sewn or stained onto the exterior of an awning.

*Sign, 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.

*Sign, canopy* 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.

*Sign, directional* means any sign that is designed and erected for the purpose of providing direction and/or

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orientation for pedestrian or vehicular traffic.

*Sign, handheld* means a temporary sign held, suspended or supported by a person. Handheld signs do not include handheld signs used for traffic control or safety purposes. Also known as a human directional, sign spinner, sign twirler or sign twister sign.

*Sign, incidental* means a small sign affixed to a residential or non-residential building or structure, machine, equipment, fence, gate, wall, gasoline pump, public telephone, or utility cabinet.

*Sign, monument* means a permanent freestanding sign supported by, or integrated into a base or pedestal at least two-thirds the dimension of the width and thickness of the sign it supports.

*Sign, freestanding* 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.

*Sign, off-premises* means a sign advertising a business, person, activity, good, products or services not Provided on the site upon which the sign is located, or that directs persons to any location not on that site.

*Sign, permanent* means any sign constructed of durable materials and affixed, lettered, attached to or placed upon a fixed, non-movable, non-portable supporting structure.

*Sign, projecting* means a sign supported by a building wall and projecting more than 12 inches from that wall. Also known as a blade sign.

*Sign, public* means a sign erected by the Town or by any federal, state or county government agency, including but not limited to traffic control and safety signs.

*Sign, roof* 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.

*Sign, sidewalk* means a movable advertising or business ground side constructed in such a manner as to form an "A" or a tent-like shape, hinged or not hinged at the top, with each angular face held at an appropriate distance by a supporting member.

*Sign, site* means a temporary freestanding sign constructed of vinyl, plastic, wood or metal and designed or intended to be displayed for a limited period of time on a site with an active listing for sale or for rent, or on properties with active building permits, e.g., a construction site.

*Sign, special event* means a temporary sign directing attention to an activity of limited duration.

*Sign, temporary* means any sign based upon its materials, location and/or means of construction, e.g., light fabric, cardboard, wallboard, plywood, paper or other light materials, with or without a frame, intended or designed to be displayed for a limited period of time.

*Sign, time and/or temperature* means a sign displaying the time and/or temperature and capable of being viewed from any public right-of-way, parking area, or neighboring property.

*Sign, vehicular* means a sign displayed on a truck, bus, trailer or other vehicle which is being operated or stored in the normal course of a business, such as signs which are located on moving vans, delivery trucks, rental trucks and trailers and the like, provided the primary purpose of such vehicles is not for the display of signs and provided they are parked or stored in areas appropriate to their use as vehicles.

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*Sign, wall* means any sign printed on, 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.

*Sign, wall accessory* means a sign that has less importance and prominence than the main sign on the wall in size, location, and design emphasis.

*Sign, window* means 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.

*Sign, yard* means a temporary freestanding sign constructed of paper, vinyl, plastic, wood, metal or other comparable material, and designed or intended to be displayed for a limited period of time on a lot containing one or more existing permanent structures.

*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](http://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.

*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. Further information is found in the Water Right Dedication Requirements Section of this Code.

*Single room occupancy boarding house* means a housing type consisting of one room, often with cooking facilities and with private or shared bathroom facilities.

*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.

*Site specific development plan* shall mean and be limited to the Final Plat of a subdivision, or a Use by Special Review when approved as a site specific development plan by the Planning Commission or Board.

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*Split garages* means having at least two separate garages that are oriented in different directions.

*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).

*Staff* means a full or part-time employee of the Town. Staff may also include professional firms and/or persons

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designated by the Town to act within a certain capacity including legal, engineering, planning, code enforcement, inspection and other professional fields.

*Start of construction for structures* means the date the building permit was issued, provided that the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the building permit issuance 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.

Start of construction except for start of construction for structures means the date the grading permit was issued, provided that the actual start of construction means the first activities of land preparation, such as clearing, grading and filling, installation of streets and/or walkways.

*Storage facilities - enclosed* means a building or a group of buildings, not consisting of containers as defined herein, comprised of 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.

*Storage facilities - outdoor* means property for use as storage for RV's, boats, trailers, etc. outdoors screened from adjacent properties. The facility shall be free of dust, smoke, fumes, odors, or unusual vibrations and noise. There shall be no waste disposal on site.

*Street* means a public thoroughfare which affords the principal means of vehicular access to abutting property. The term includes public or private streets.

*Street, arterial* means a street as described in the Design Standards section of this Chapter.

*Street, collector* means a street as described in the Design Standards section of this Chapter.

*Street, local* means a street as described in the Design Standards section of this Chapter.

*Street, rural* means a street as described in the Design Standards section of this Chapter.

*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.

*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.

*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.

*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.

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*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.

*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.

*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, 50 percent of the market value of the structure before it was damaged.

*Substantial improvement* means any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50 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:

- d. 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
- e. Any alteration of a structure listed on the National Register of Historic Places or the State Inventory of Historic Places.

*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.

*Swing-in garage* means a garage that is oriented so that the garage doors are perpendicular to the street.

*Tandem garage* means a garage that allows for the parking of one car in front of another.

*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.

*Tavern* see "Bar or tavern".

*Technical Review Committee (TRC)* means the committee established to review development proposals and subdivision applications on behalf of the Town.

*Temporary business or use* means a business or use 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 or use include, but are not limited to, Christmas tree sale lots, farmer's markets, circuses, carnivals, new home sales operations, etc. and shall obtain a vendor license, as applicable. A temporary business or use shall not include continuing a nonconforming building or use.

*Temporary directional sign* means a free-standing sign giving direction to an open house, house for sale, garage sale or a temporary business.

*Temporary lighting* means lighting that is intended to be used for a special event for seven days or less.

*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.

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*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 an area of land, created through the subdivision process that can be legally sold but cannot be developed until further legal subdivision. Tracts are typically identified for future development or investment purposes. Also refer to the definition of Lot and Outlot.

*Tree strip* 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 per the Land Use Table found in this Chapter.

*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.

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*Veterinary facilities, large 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 include those larger than dogs, cats or other comparable household pets, including but not limited to goats, horses, cattle, and others 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 one-fourth 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.

*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, upholstering, restoration of antiques and other art objects, or other similar uses, with or without sales occurring on site.

*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.

*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.

*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.

*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.

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*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."

*Zoning map* means the official zoning map adopted by the Town by ordinance, as amended.

### **30-1-122 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 the Hearing and Notifications Subsection 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 as specified in the Public Hearing and General Notice Provisions Table.
  - 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 the applicant by mailing a written notice not later than 15 days before the hearing. The applicant shall provide evidence of mailing to the Town.
  - 3. Where required by statute or ordinance to give notice to other parties of interest or referral agencies, notice shall be given as specified in the Public Hearing and General Notice Provisions Table.
  - 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 as specified in the Public Hearing and General Notice Provisions Table .
  - 5. When required by the notice of public hearing table (Public Hearing and General Notice Provisions Table ) in this section, the applicant must post a sign along each street frontage of the property. The Town will provide signs when a complete application is made. The applicant is responsible for erecting and maintaining the sign(s) for the time period specified and removing them after the last public hearing. Signs must be placed as near the property line as possible and in a manner that is readily visible from the street or road. Posting the property is a courtesy to the public and the failure of anyone to observe a sign does not invalidate any public hearing. The applicant shall pay a deposit to cover the cost of replacing the sign. When signs are returned in good condition, the deposit will be refunded.
  - 6. 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:

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- a. Notice shall be given to potentially interested persons by publishing a notice one time in a newspaper having general circulation in the area as specified in the Public Hearing and General Notice Provisions Table .
- 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. The applicant shall provide the required mailing list and map in a format acceptable to the Town with application materials. The applicant shall certify the source for the mailing list and map.

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). 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 meeting and Town Board hearing as appropriate.

**Public Hearing and General Notice Provisions Table**

Land Use Process	Referral agency notice	Hearing	Publication	Mailed notice	Post sign
Annexation	Upon acceptance of application for processing.	Before Planning Commission as regular agenda item. Before Town Board per C.R.S.	4 successive weeks starting at least 30 days prior to Statutory public hearing. The Resolution setting the Statutory public hearing shall be published.	Yes, to property owners within 500 feet no less than 25 days and no more than 30 days prior to Statutory Hearing. To Special Districts no less than 25 days prior to Statutory Hearing.	Yes, no less than 30 days prior to Statutory Hearing.
Zoning	Upon acceptance of application for processing.	Before Planning Commission as regular agenda item and Town Board as hearing.	No less than 15 days prior to hearing.	Yes, to property owners within 500 feet sent no less than 15 days prior to Commission meeting.	Yes, no less than 15 days prior to Commission meeting.
Rezoning	Upon acceptance of application for processing.	Before Planning Commission as regular agenda item and Town Board as hearing.	No less than 15 days prior to hearing.	Yes, to property owners within 500 feet sent no less than 15 days prior to Commission meeting.	Yes, no less than 15 days prior to Commission meeting.
Text Amendment to Development Code		Before Planning Commission as regular item and Town Board as hearing.	No less than 15 days prior to Commission meeting. .	No.	No.
Neighborhood Master Plan	Upon acceptance of application for processing.	Before Planning Commission as regular item and Town Board as hearing .	No less than 15 days prior to Commission meeting.	Yes, to property owners within 500 feet no less than 15 days prior to Commission meeting.	Yes, no less than 15 days prior to Commission meeting.
Preliminary Plat	Upon acceptance of application for processing.	Before Planning Commission as regular agenda item and Town Board as hearing.	No less than 15 days prior to Commission meeting.	Yes, to property owners within 500 feet no less than 15 days prior to Commission meeting.	Yes, no less than 15 days prior to Commission meeting.
Final Plat or a Replat	Upon acceptance of application for processing.	Administrative approval and public hearing options	No less than 15 days prior to either the Commission meeting Town Board meeting	No notice required unless public hearing is required and then, notice to be sent to property owners within 500 feet no less than 15 days prior to Board meeting.	Upon application acceptance to property owners within 500 feet
Minor Subdivision	Upon acceptance of application for processing.	Before Planning Commission as hearing. No Town Board hearing.	No less than 15 days prior to Commission hearing.	Yes, to property owners within 500 feet no less than 15 days prior to Commission hearing.	Yes, no less than 15 days prior to Commission meeting .
Amended PUD: Changes to a previously-approved PUD shall follow both the Change of Zone and Neighborhood Master Plan process as found in Chapter 30 and in this Table					
Comprehensive Plan Amendment		Before Planning Commission as regular agenda item and Town Board as hearing .	No less than 15 days prior to Commission meeting.	No	No
Variances and Appeals	Upon acceptance of application for processing.	Board of Adjustment (BOA) as hearing.	No less than 15 days prior to BOA hearing.	Yes, to property owners within 500 feet no less than 15 days prior to BOA hearing.	Yes, no less than 15 days prior to BOA hearing.
Use by Special Review	Upon acceptance of application for processing.	Before Planning Commission as regular agenda item and Town Board as hearing.	No less than 15 days prior to Commission hearing.	Yes, to property owners within 500 feet no less than 15 days prior to Commission meeting.	Yes, no less than 15 days prior to Commission meeting.
Use By Special Review Allowed Marijuana Business/Oil and Gas	Upon acceptance of application for processing.	Before Planning Commission as regular agenda item and Town Board as hearing.	No less than 15 days prior to Commission hearing.	Yes, to property owners within 500 feet, no less than 15 days prior to Commission meeting.	Yes, no less than 15 days prior to Commission meeting.
Site Plan Review and Action	Upon acceptance of application for processing.	Administrative approval unless referred to Planning Commission by Administrator.	No notice required	Upon application acceptance to property owners within 500 feet	Upon application acceptance.
Wireless Communications Facilities as Uses by Special Review	Upon acceptance of application for processing.	Before Planning Commission as regular agenda item and Town Board as hearing.	No less than 15 days prior to Commission hearing.	Yes, to property owners within 500 feet, no less than 15 days prior to Commission meeting.	Yes, no less than 15 days prior to Commission meeting.

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D. *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 their 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.

E. *Hearing continuations.* The Board of Trustees, Planning 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.

F. *Record.* A recording shall be made of all hearings, and transcripts of such hearings may be requested within 30 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.

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## **SECTION 2 DEVELOPMENT IMPACT FEES**

### **30-2-101 Intent**

A. This Section is enacted to establish the mechanism for the imposition of development impact fees to finance the capital costs of acquiring, establishing, upgrading, expanding and constructing public facilities that are necessary to accommodate such development. This Section is intended to assure that development bear an appropriate share of the cost of capital expenditures necessary to provide such public facilities within the Town of Berthoud and its service area as are required to serve the needs arising out of development. Therefore, it is the intent of this Section to accomplish the following:

1. Implement and be consistent with the Berthoud Comprehensive Plan;
2. Allocate a fair and equitable share of the operation and development costs associated with providing public facilities to new development and redevelopment;
3. Require new development and redevelopment to contribute its proportionate share of funds necessary to accommodate its impact on existing and future public facilities having a rational nexus to the proposed development, and for which the need is attributable to the proposed development.

### **30-2-102 Findings**

A. The Board of Trustees makes the following findings based on extensive consultation with all municipal departments, the recommendations of past and current impact fee studies, testimony offered at the public hearing and careful study of municipal facility needs.

1. The Town of Berthoud is responsible for and committed to the provision of public facilities and services at levels necessary to support residential and non-residential growth and development.
2. Such facilities and services have been and will be provided by the Town utilizing funds allocated at the direction of the Board of Trustees.
3. The growth experienced by the Town in recent years and projected growth rates require an excessive expenditure of public funds to maintain adequate facility standards.
4. Each type of land development described in this Chapter will create a need for the construction, equipping, or expansion of public capital facilities.
5. The imposition of development impact fees is one preferred method of ensuring that public expenditures are not excessive, and that development bears a proportionate share of the cost of public capital facilities necessary to accommodate such development. This must be done to promote and protect the public health, safety and welfare of current and future residents of the Town.
6. The fees established by this Section are derived from, are based upon, and are calculated not to exceed the costs of:
  - a. Providing additional public capital facilities required by the new land developments for which they have levied the fees; or
  - b. Compensating the Town of Berthoud for expenditures made for existing public facilities that they constructed in anticipation of new growth and development.

### **30-2-103 Applicability and Rules of Construction**

A. This Section shall be uniformly applicable to all new development that occurs within the corporate boundaries of the Town of Berthoud. Impact fees may be reviewed, assessed and amended as necessary. All required dedications and fees under the Berthoud Municipal Code shall remain in full force and effect.

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- B. The provisions of this Section shall be liberally construed to effectively carry out its purpose in the interest of the public health, safety and welfare.
- C. For the purposes of administration and enforcement of this Section, unless otherwise stated, the following rules of construction shall apply:
  - 1. In the case of any difference of meaning or implication between the text of this Section and any caption, illustration, summary table, or illustrative tables, the text shall control.
  - 2. The word "shall" is always mandatory and not discretionary; the word "may" is permissive.
  - 3. Words used in the present tense shall include the future, and words used in the singular number shall include the plural, and the plural the singular, unless the context clearly indicates the contrary.
  - 4. The phrase "used for" includes "arranged for," "designed for," "maintained for," or "occupied for."
  - 5. The word "person" includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity.
  - 6. Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the conjunction "and," "or" or "either ... or," the conjunction shall be interpreted as follows:
    - a. "And" indicates that all connected terms, conditions, provisions or events shall apply.
    - b. "Or" indicates that the connected terms, conditions, provisions or events may apply singly or in any combination.
    - c. "Either ... or" indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.
  - 7. The word "includes" shall not limit a term to the specific example but is intended to extend its meaning to all other instances or circumstances alike in kind or character.

### **30-2-104 Definitions**

- A. The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

*Assessment* means a determination of the amount of a development impact fee.

*Capital equipment* means equipment and furnishings with an expected life of at least five years and an aggregate value of at least \$5,000.00.

*Capital improvement* means any of the following facilities that have a life expectancy of five or more years and are owned and operated by or for a municipality:

- a. Storm water, drainage and flood control facilities;
- b. Roadway facilities located within the service area, including roads, bridges, bike and pedestrian trails, bus bays, rights-of-way, traffic signals, landscaping and any local components of state and federal highways;
- c. Parks, recreation buildings, outdoor recreational areas, open space, trails and related areas and facilities.
- d. Public buildings, equipment, and vehicles necessary to support the efficient operation of the Town and its services.

*Connection fee* means a reasonable fee for connection of a service line to an existing water, sewer or municipal utility.

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*Development impact fee* means a charge or assessment imposed by the Town on new development to generate revenue for funding or recouping the costs of capital improvements or facility expansions required by and attributable to the new development. The term includes amortized charges, lump sum charges, capital recovery fees, contributions in aid of construction, development fees and any other fee that function as described by this definition. The term does not include connection fees, dedication of rights-of-way or easements or construction or dedication of on-site or off-site water distribution, wastewater collection or drainage facilities, streets, sidewalks or curbs if previously approved agreements between the developer and the Town require the dedication or construction and is required by and attributable to the new development.

*Facility expansion* means the expansion of the capacity of an existing facility that serves the same function as an otherwise necessary new capital improvement, so the existing facility may serve new development. The term does not include the repair, maintenance, modernization or expansion of an existing facility to better serve existing development, including schools and related facilities.

*Fee* means a development impact fee.

*Fee payer* means a person applying for the issuance of a building permit, subdivision or site plan approval, variance or other local land use decision that will create new development.

*Land use assumptions* includes a description of the service area and projections of changes in land uses, densities, intensities and population in the service area over at least a five-year period.

*New Development* and redevelopment means any activity that results in a net increase in the demand for additional public capital facilities, as defined in this Chapter:

- a. The creation of a new single-family equivalent (SFE), except the replacement of existing units of the same size and density;
- b. A net increase in the gross floor area of any nonresidential building Or in the habitable portion of a residential building;
- c. The conversion of a legally existing use to another permitted use if such change of use would create an increase in the demand for additional public facilities, as defined by this ordinance.

*New Development* does not include:

- a. The reconstruction of a structure that fire or natural disaster has destroyed if there is no change nor change of use in the size and density of the structure;
- b. The replacement of a mobile home; or
- c. The construction of an accessory structure that would not increase the demand for facilities by the principal structure.

*Public capital facilities* means the undivided interest of the Town of Berthoud in the assets, facilities, and equipment owned and operated by the Town of Berthoud or cooperatively with other governmental entities that have a useful life of no less than five years. *Public capital facilities* do not include the costs associated with the operation, maintenance, repair of such facilities or with facility replacements that do not increase the capacity or level of service, but does include reasonable costs for planning, engineering, design, land acquisition, and other reasonable costs associated with such facilities.

*Qualified professional* means a professional engineer, surveyor, financial analyst, planner or other person providing services within the scope of his license, education or experience.

*Roadway facilities* mean arterial or collector streets or roads including bridges, bike and pedestrian trails, bus bays, rights-of-way, traffic signals, landscaping at any local components of state or federal highways.

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*Service area* means the area within the corporate boundaries or extraterritorial jurisdiction of a municipality to be served by the capital improvements or facility expansions specified in the capital improvements plan based on sound planning and engineering standards.

*Service unit* means a standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards for a category of capital improvements or facility expansions.

*Town Administrative Official* means the Town Administrator appointed by the Board of Trustees or the municipal officials that he or she may designate to carry out the administration of this ordinance.

### **30-2-105 Imposition of Development Impact Fees**

- A. Any person, who, after the effective date of this Section seeks to undertake new development within the Town of Berthoud is hereby required to pay development impact fees in the manner and amount set forth in this Section.
- B. No new building permit or new permit for any activity requiring payment of a development impact fee pursuant to the Computation of the Development Impact Fee section of this Chapter shall be issued unless and until the development impact fee hereby required has been paid.
- C. The Town collects a number of fees at the time of Building Permit. All fees are approved by Resolution and adopted annually with each budget.

### **30-2-106 Computation of the Development Impact Fee**

- A. The amount of the development impact fees shall be set forth in the current Town Fee Resolution and shall have been determined by the Town Board based on the most recent available cost and value of infrastructure, population, and capacity information. Such fees may be amended with the fee resolution based upon updates to any of the foregoing criteria. Except as specifically provided otherwise herein, all Impact Fees existing as of the date of this Section shall remain in full force and effect until modified by a Fee Resolution.
- B. In the case of new development created by a change of use, redevelopment, or expansion or modification of an existing use, the development impact fee shall be based upon the net positive increase in the development impact fee for the new use as compared to that which was or would have been assessed for the previous use. It is the property owner/business owner's responsibility to provide a consumptive use analysis, when requested to determine the change in impact.

### **30-2-107 Payment of Fees**

- A. The fee payer shall pay all development impact fees required by this Section to the Town of Berthoud before issuance of a building permit or other permit required for a proposed new development.
- B. All unpaid fees shall constitute a lien on the property and may be collected in the same manner as uncollected property taxes as provided by law.

### **30-2-108 Appeals**

- A. Any aggrieved party may appeal to contest the amount, collection or use of the development impact fee in the manner provided herein.
- B. It shall be a condition to the commencement of such an appeal that the development impact fee from which the developer appeals shall be paid as and when the fee becomes due and payable, and upon default in making any such payment, such appeal may be dismissed.
- C. The only questions appealable under this Section are the following:
  1. The amount of the fee charged and paid by the developer;

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- 2. The method of collection of the development impact fee;
- 3. The use to which the particular fee paid by the developer is made by the Town.

D. Appeals must be brought within 30 days of the date the development impact fee is payable.

E. The appellant shall pay a filing fee of \$500.00 at the time of filing of the appeal. They shall file the notice of appeal with the Town Clerk.

F. Following the filing of the notice of appeal, the Town Clerk shall compile a record of the ordinance imposing the development impact fee that is the subject of the appeal and a record of the management and expenditure of the proceeds of the development impact fee and shall transmit these documents to the Board of Trustees. In consultation with the Town departments, the Town Clerk shall also compile a report on each appeal in which the appellant is seeking a reduction or total refund in the development impact fee paid. This report shall specify the fiscal impact on the Town if the appeal overturns the development impact fee. If the fiscal impact report indicates that the appeal, if successful, will cause a revenue shortfall that otherwise was not budgeted with respect to the public facility, and if this revenue shortfall cannot be reconciled by reduction in impacts caused by development on the appellant's property, the report shall estimate whether it will be necessary for the Town to adjust development impact fees, or amend existing ordinances, to recover the proposed revenue shortfall.

G. The appellant shall prepare and submit to the Board of Trustees, an independent fee calculation study for the new development activity that they propose. The appellant shall pay all costs incurred by the Town for the review of such study.

H. The Board of Trustees shall hold a public hearing on the appeal at its earliest convenience, preceded by a notice published as provided by law not less than 15 days preceding the date of the hearing, providing fair opportunity for the appellant to be heard. The burden shall be on the appellant to establish illegality or impropriety of the fee from which they have taken the appeal. Following the close of the public hearing, the Board of Trustees shall deliberate upon the matter, and shall conduct such studies and inquiries as it deems appropriate to decide the appeal. The Board shall render their decision on the appeal within 30 days of the hearing, unless such time is extended by mutual consent of the Board and the appellant.

I. If the Board of Trustees determines that the appeal has merit, it shall determine appropriate remedies. These may include reallocation of the proceeds of the challenged development impact fee to accomplish the purposes for which the fee was collected, refunding the development impact fee in full or in part, along with interest collected by the Town thereon, or granting the appellant the opportunity to make the development impact fee payment in installments, or such other remedies as in its sole judgement it deems appropriate in a particular case.

### **30-2-109 Administration of Funds Collected**

- A. Interest earned on development impact fees shall become part of the account on which it is earned and shall be subject to all restrictions placed on the use of development impact fees under this Section.
- B. Money from fees may be spent only for the purposes for which the fee was imposed as shown by any capital improvements plan adopted by the Town or as authorized by this Section.
- C. The Town Treasurer shall have custody of all fee accounts and shall pay out the same only upon written orders of the Board of Trustees.
- D. Funds withdrawn from the development impact fee accounts shall be used solely for acquiring, constructing, expanding or equipping those public capital facilities identified in this Section.
- E. If bonds or similar debt instruments have been issued for public capital facilities constructed in anticipation of new development or are issued for advanced provision of capital facilities identified in this Section, development impact fees may be used to pay debt service on such bonds or similar debt instruments.

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## **30-2-110 Credits**

- A. Land and/or public capital facility improvements may be offered by the fee payer as total or partial payment of the required development impact fee. The offer must be determined to represent an identifiable dollar value computed in a manner acceptable to the Board of Trustees. If land or improvements are offered as payment, an independent appraisal acceptable to the Board shall determine the value of such land or improvements. The Board of Trustees, in its sole discretion, may authorize the fee payer a development impact fee credit in the amount of the value of the contribution.
- B. Any claim for credit must be made no later than the time of application for the building permit.
- C. Credits shall not be transferable from one project or development to another without written approval of the Board of Trustees.
- D. Credits shall not be transferable from one component of the public capital facility's development impact fee to any other component of this fee.

## **30-2-111 Additional Assessments**

- A. Payment of a development impact fee does not restrict the Town in requiring other payments from the fee payer, including such payments relating to the cost of the extensions of water and sewer mains or the construction of roads or streets or turning lanes to access the site or other infrastructure and facilities specifically benefitting the development as required by the land use review regulations contained in Chapter 16 of the Berthoud Municipal Code.

## **30-2-112 Review**

- A. The Board of Trustees shall review the Development Impact Fee Schedule in association with its annual fee resolution process. Such review may result in recommended amendments in one or more of the fees based on the most recent data as may be available from the Bureau of the Census, local property assessment records, market data reflecting interest and discount rates, current construction cost information for public capital facilities, etc. The Board of Trustees shall approve amendments to the impact fees following public hearings called for that purpose, no more frequently than annually, based on such data. Amendments to the amount of any fee may be by Resolution setting forth the basis for any change.

## **30-2-113 Water Right Dedication Requirements**

- A. *Titles.* This Section shall be known as the Town of Berthoud Water Dedication Requirements.
- 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:

*Accessory Dwelling* means a residential dwelling unit located on the same lot as a single-family dwelling unit, either within the same building as the single-family dwelling unit or in a detached building, that provides complete independent living facilities, including but not limited to provisions for sleeping, eating, cooking, and sanitation for one or more persons. Mobile homes and recreational vehicles shall not be included within the definition of the term Accessory Dwelling Unit. Accessory dwelling units shall be developed in accordance with the standards set forth in the Accessory Dwelling Unit Section of

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this code and only in those zoning districts where the use is listed as a use by right. Also referred to as a 'Guest House' or 'Mother-in-Law Suite'

*Acceptable Water Rights for Potable Purposes* means water rights acceptable to the Town pursuant to the applicable criteria set forth in Section I hereof, and deliverable to Berthoud Reservoir or directly to the Town's water treatment plant for water treatment.

*Acceptable Water Rights for Non-Potable Purposes* means water rights acceptable to the Town pursuant to the applicable criteria set forth in Section I hereof, and deliverable to a location acceptable to the Town.

*Annexation* means the act of attaching, adding, joining, or uniting a parcel of land to the legal entity known as the Town of Berthoud.

*Cash in lieu of water dedication* means a separate and distinct fee from water taps as required in section G, H and K 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.

*Certification of Water Dedication Credits* means a certificate issued by the Town for water dedication credits in exchange for cash in lieu of water dedication payments or water rights dedications for future development in the Town.

*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.

*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.

*Conveyance of water rights* means the process by which legal title to water rights are transferred by appropriate deed, stock assignment, allotment contract or other record transfer.

*Dedicate or dedication* means to appropriate an interest in land or water rights to some public use, made by the owner, and accepted for such use by or on behalf of the public.

*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.

*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.

*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.

*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.

*Historical Water Rights* mean those water rights associated with a particular parcel of land at the time of annexation and which have been applied to beneficial use on that land.

*Natural Area* as it pertains to this Section, 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

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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.

*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.

*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.

*Person* shall include any individual, partnership, association, organization, firm, district, corporation, group or other legal entity of any nature, public or private.

*Phase* means a portion of property that is being platted or has been platted.

*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.

*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.

*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.

*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.

*Town Administrator* means the Town Administrator of the Town of Berthoud, Colorado.

*Town Board* means the Town Board of Trustees of the Town of Berthoud, Colorado.

*Town water service* means treated water service or non-potable water furnished by the Town of Berthoud, Colorado.

*Transfer of water rights* means the conveyance of legal title to water rights to the Town of Berthoud, Colorado.

*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.

*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.

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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 or Dedication of Water Rights for Potable Purposes.*
  - 1. *Intent and Purpose.* It is the intent and purpose of this Section to require the dedication of Acceptable Water Rights for Potable Purposes or the payment of cash in lieu of water dedication for all potable uses. 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 development or to increase the water dedication requirements for developments 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.
    - a. *Dedication of Historical Water Rights.* As a condition of annexation of land to the Town, ownership of all Historical Water Rights associated with the land to be annexed shall be dedicated to the Town in accordance with section I hereof, and such dedication shall occur upon meeting all other conditions necessary for the finalization of annexation. For any other development or change in land use on lands already annexed to the Town, ownership of all Historical Water Rights associated with the land shall be dedicated to the Town in accordance with section I hereof, prior to the Town's approval of any final plat.

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3. From and after the effective date of this Section, any person who seeks approval of any of the following shall comply with this Section and the Town's Development Code:

- a. an extension of water service;
- b. annexation;
- c. subdivision;
- d. 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.

4. *Required Water Dedication or Cash in Lieu of Water Dedication for Potable Purposes.* Cash in lieu of water dedication or dedication of Acceptable Water Rights for Potable Purposes shall be required for all potable uses.

5. *Timing for Dedication of Water Rights or Payment of Cash in Lieu of Water Dedication for Potable Purposes.* Prior to issuance of a building permit, the person acquiring said building permit shall provide the required cash in lieu of water dedication or dedicate Acceptable Water Rights for Potable Purposes to the Town.

6. *Timing for Dedication of Water Rights or Payment of Cash in Lieu of Water Dedication for Potable Irrigation of Parks, Open Space, Golf Courses, Playing Fields and Similar Areas.* 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 Acceptable Water Rights for Potable Purposes to the Town necessary to provide for one-half of water necessary for the irrigation of parks, open space, golf courses, playing fields and similar areas within the Phase to be developed if said irrigation is to be supplied with potable water. The remaining one-half shall be due and owing upon issuance of one-half of the building permits for the Phase to be developed. No further building permits shall be issued for that Phase of development until the second one-half of cash in lieu of water dedication is paid or Acceptable Water Rights for Potable Purposes are dedicated to the Town. A person may also elect to dedicate water rights for non-potable irrigation as set forth in section H below.

7. *Amounts of Water Dedication and Cash in Lieu of Water Dedication for Potable Purposes.*

- a. *SFE Determinations for Residential Development.* The amount of water dedication required for residential development in which outdoor uses are not supplied by a separate irrigation tap or system shall be determined by the Town in accordance with the following SFE values:

Dwelling Unit	SFE Value
Single Family Dwelling Unit (up to 3,500 sq. ft. lot)	0.75 SFE
Single Family Dwelling Unit (3,501 sq. ft. to 11,999 sq. ft. lot)	1.0 SFE
Single Family Dwelling Unit (12,000 to 18,000 sq. ft. lot)	1.25 SFE
Single Family Dwelling Unit (greater than 18,000 sq. ft. lot)	At least 1.5 SFE or more, as calculated pursuant to sections G.8.c hereof.
Duplex (less than 12,000 sq. ft. lot)	2 SFE
Duplex (12,000 to 18,000 sq. ft. lot)	2.5 SFE
Duplex (greater than 18,000 sq. ft. lot)	At least 2.5 SFE, or more as calculated pursuant to sections G.8.c hereof.
Multi-Family (3 or more Units)	0.5 SFE per Unit for indoor use; Additional irrigation requirement calculated pursuant to sections G.8.c. hereof.
Accessory Dwelling	0.5 SFE

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- b. *SFE Determinations for Residential Development with No Irrigation or Separate Irrigation Tap:* The amount of water dedication required 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. This includes dwelling units in developments with all irrigated areas served by a separate irrigation tap.
- c. *SFE Determinations for Irrigation with Potable Water:* Except as set forth in section G.8.a. above regarding single family homes, duplexes, multi-family homes, and accessory dwellings, the amount of water dedication required for irrigation with potable water shall be determined by the Town based upon landscaping plans submitted to the Town in accordance with the Landscape Plan and Hydrozone Analysis requirements in this Chapter, applying the following irrigation demands:
  - i. Zero irrigation demand (0 SFE's) per acre for Natural Areas, Open Water and impervious surfaces; and
  - ii. A demand of 0.8 acre-feet (2 SFE's) per acre for Native Seed Areas; and
  - iii. 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
  - iv. 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.
  - v. The Hydrozone Analysis is a consumptive use analysis prepared by an applicant for development, that the Town shall analyze and the 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.
- d. *SFE Determinations for Commercial Development:* The amount of water dedication required for commercial use shall be based upon a calculation of the SFEs required to provide water service for said commercial use.
  - i. The Town shall analyze water requirements for a proposed commercial use at the time that the commercial use is defined.
  - ii. The person developing the property may also submit a written analysis by a qualified consultant sufficient to allow the Town to fully evaluate the probable water demand and consumptive use for the commercial 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 commercial water requirements.
  - iii. All commercial uses shall require a minimum of 0.5 SFE's. For multi-tenant commercial buildings, a water dedication fee for 0.5 SFE's per 1,000 square feet of building area shall be paid prior to issuance of a building permit.
  - iv. The Town may conduct an audit of any commercial uses to confirm the adequacy of the water original calculation of the SFEs required to provide water service for said commercial use, and the Town may require additional water dedication based on actual water usage. In the event that the Town and the Owner cannot reach an agreement regarding the additional water rights dedication based on actual water usage, the Town reserves all remedies at law and equity to resolve any such dispute.

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H. *Cash in Lieu of Water Dedication or Water Rights Dedication for Non-Potable Purposes.*

1. *Amount of Water Dedication and Cash in Lieu of Water Dedication for Non-Potable Purposes.* The amount of water dedication required for residential development in which outdoor uses are supplied by a non-potable irrigation tap or system shall be determined by the Town in accordance with the following SFE values:

NON-POTABLE IRRIGATION REQUIREMENTS

Dwelling Unit	SFE Value
Single Family Dwelling Unit (up to 3,500 sq. ft. lot)	0.25 SFE
Single Family Dwelling Unit (3,501 sq. ft. to 11,999 sq. ft. lot)	0.5 SFE
Single Family Dwelling Unit (12,000 to 18,000 sq. ft. lot)	0.75 SFE
Single Family Dwelling Unit (greater than 18,000 sq. ft. lot)	At least 1.0 SFE or more, as calculated pursuant to this section H.
Duplex (less than 12,000 sq. ft. lot)	1 SFE
Duplex (12,000 to 18,000 sq. ft. lot)	1.5 SFE
Duplex (greater than 18,000 sq. ft. lot)	At least 1.5 SFE, or more as calculated pursuant to this section H.
Multi-Family (3 or more Units)	Irrigation requirement calculated pursuant to this section H.

- a. Additional water necessary for outdoor irrigation for single family dwellings and duplexes on lots in excess of 12,000 square feet and 18,000 square feet shall require a minimum of 0.75 and 1.5 SFE's respectively and shall be determined by the Town's staff, with final approval by the Town Administrator pursuant to this section H.
- b. All other properties requiring outdoor irrigation shall require cash in lieu of water dedication or dedication of Acceptable Water Rights for Non-Potable Purposes in accordance with this section H based upon landscaping plans submitted to the Town in accordance with the Landscape Plan and Hydrozone Analysis requirements in this Chapter and based on the following irrigation demands:
  - i. Zero irrigation demand (0 SFE's) per acre for Natural Areas, Open Water and impervious surfaces; and
  - ii. Demand of 0.8 acre-feet (2 SFE's) per acre for Native Seed Areas; and
  - iii. 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
  - iv. 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.
  - v. The Hydrozone Analysis is a consumptive use analysis that the Town shall analyze and this analysis 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 non-potable 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.

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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 all costs and obligations of such feature, including 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 depletions, which amount Town staff determines, in its sole discretion, and all costs associated with the adjudication of a Plan for Augmentation 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 K hereof. A person may also elect to dedicate Acceptable Water Rights for Non-Potable Purposes in accordance with this section H for use within a non-potable system.
4. *Timing for Dedication of Water Rights or Payment of Cash in Lieu of Water Dedication for Non-Potable Purposes.* Prior to issuance of a building permit for any building in the Phase of development that will use non-potable water for irrigation, the person acquiring said building permit shall provide the required cash in lieu of water dedication or dedicate Acceptable Water Rights for Non-Potable Purposes.
5. *Timing for Dedication of Water Rights or Payment of Cash in Lieu of Water Dedication for Non-Potable Irrigation of Parks, Open Space, Golf Courses, Playing Fields and Similar Areas.* Prior to issuance of a Town Stormwater Discharge Permit for a Phase of development, a person shall dedicate Acceptable Water Rights for Non-Potable Purposes and/or pay all cash in lieu of water dedication including supplemental irrigation water to provide for one-half of the water necessary for non-potable irrigation of parks, open space, golf courses, playing fields and similar areas within the Phase to be developed. The remaining one-half shall be due and owing upon issuance of one-half of the building permits for the Phase to be developed. No further building permits shall be issued for that Phase of development until the second one-half of cash in lieu of water dedication is paid or water rights are dedicated to the Town.

I. *Water Rights Dedications.* In cases where a person desires to dedicate water rights rather than paying cash in lieu of water dedication, a written agreement with the Town shall be required and the following requirements shall apply.

1. *Potable Water Sources.* The amount and suitability of Acceptable Water Rights for Potable Purposes necessary to provide firm yield water shall be determined by the Town at its sole discretion. The person dedicating water rights for potable purposes shall pay for an analysis by the Town through a qualified water engineer with supporting data which shall include the following:
  - a. the quantity and quality of the water which will be delivered pursuant to said water rights;
  - b. the ability to deliver said water to Berthoud Reservoir or directly to the Town's water treatment plant for treatment;
  - c. the amount and suitability of a dry up covenant to change the use of said water rights in Water Court, as necessary; and
  - d. such other analysis as the Town deems necessary.
2. *Non-Potable Water Sources.* The amount and suitability of Acceptable Water Rights for Non-Potable Purposes 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 to address both the criteria set forth in section I.1. and the following:
  - a. a calculation of the volume of water which any non-potable system will be able to provide on a monthly basis;

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- b. the amount of potable supplemental irrigation water which will be required when water under non-potable water rights is not available;
  - c. the amount of required water storage, if any;
  - d. the proposed use of the water rights through the proposed facilities; and
  - e. compliance with this Chapter and the Section on Non-Potable Water Systems.
- 3. *Legal Criteria for Dedication Water Rights.* 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.
- 4. *Specific Water Rights.*
  - a. *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 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 I.1. and 2. above.
  - b. *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 I.1. shall not apply to the dedication of CBT Units.
- 5. *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.
- 6. *Water Rights Fee.* The person dedicating said water rights to the Town shall pay to the Town \$2,500.00/acre foot for any water rights which will need to be changed in Water Court to pay for Water Court fees, legal, engineering, ditch company, and Water Court fees incurred by the Town to change said water rights.

J. *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 use the Town's forms for such assignments, and the Assignor 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.

K. *Prices for Cash In Lieu of Water Dedication.* The Town shall apply the following prices for cash in lieu of water dedication:

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Use	Cash In Lieu of Water Dedication
Single Family Dwelling Unit (up to 3,500 sq. ft. lot) (0.75 SFE)	\$18,750 per Dwelling
Single Family Dwelling Unit (3,501 sq. ft. to 11,999 sq. ft. lot) (1 SFE)	\$25,000 per Dwelling
Single Family Dwelling Unit (12,000-18,000 sq. ft. lot) (1.25 SFE)	\$31,250 per Dwelling
Single Family Dwelling Unit (18,000 sq. ft. lot or greater) (at least 1.5 SFE or more, as calculated pursuant to section G.8 and H hereof)	a minimum of \$37,500 per Dwelling or more (calculated at rate of \$25,000 per SFE)
Duplexes (less than 12,000 square feet lot) (2.0 SFE)	\$50,000 per Duplex
Duplexes (greater than 12,000 square feet and less than 18,000 square foot lots) (2.5 SFE) <sup>1</sup>	\$62,500
Duplexes (18,000 square foot lot or greater) (at least 2.5 SFE or more, as calculated pursuant to section G.8 and H hereof)	A minimum of \$62,500 per duplex or more, as calculated at rate of \$25,000 per SFE
Multi-Family (3 or more Units) (0.5 SFE per Unit for indoor use). Additional irrigation requirement calculated pursuant to sections G.8 and H hereof.	A minimum of \$12,500 per Unit plus any additional water required for irrigation
Accessory Dwelling (0.5 SFE Per Dwelling)	\$12,500 per Unit
Commercial Use	\$25,000/SFE
Potable Irrigation, including Supplemental Irrigation Water	\$25,000/SFE
Non-Potable Irrigation	\$12,500/SFE

These prices may be amended at any time by the Board.

## SECTION 3 ANNEXATION

### 30-3-101 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.

### 30-3-102 Statement of policy and review standards

- A. 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. No future annexation will occur in the area outside the Berthoud Growth Management Area as designated as of December 31, 2012 without a majority of "yes" votes by the registered electors cast in ballots in that election.
  3. 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.
  4. 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.
  5. 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.
  6. 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.)
  7. The property owner shall comply with the Annexation Application requirements of this Chapter prior to submitting an annexation petition.
  8. The property owner shall comply with the Water Right Dedication Requirements section of this Code.

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### **30-3-103 Annexation application; zoning simultaneous with annexation**

- 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. The letter of intent shall contain the following information:
    - a. The property location and how the proposal will complement and be compatible with adjacent and surrounding land uses.
    - b. How the proposal is compatible with the Comprehensive Plan and land use designation on the Future Land Use Map.
    - c. How the proposed zoning is compatible with the Comprehensive Plan's Future Land Use Map, and how the proposed zoning designation meets the applicable standards found in the zoning section of this Code, including housing diversity standards, design requirements and neighborhood identity features.
    - d. How the proposal will meet the standards and requirements in the Architectural Guidelines, Landscape Design Guidelines, Open Space Plan, Trails Plan, and any other Town plans, and any overlay districts the property is located within.
    - e. If infrastructure will be financed through a Title 32 metropolitan district, the applicant shall include the letter of intent required by the Town. This letter of intent shall specify how the proposal will be consistent with the Town of Berthoud Policy for Reviewing Service Plan for Metrololitan Districts, as amended.
  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. The applicant shall include detailed site and development- specific information . The applicant shall provide an original petition to the Town along with the electronic sumittal.
  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.* An annexation that complies with the Annexation Map Technical Standards section of this Code. The map shall be accompanied by a legal description of the property in an electronic version (Word format).
  6. *Title commitment.* The applicant shall submit proof of ownership in the form of a current and complete title commitment issued by a title insurance company licensed by the State of Colorado, whose effective date shall be less than 30 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

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for annexation. The title commitment shall include all exhibits and shall be provided in a PDF or in a form acceptable to the Town.

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 list.* The Applicant shall provide a mailing address for surrounding property owners who have listed for taxation any real property located within the distance found in the Public Hearing and General notice section of this Code. The applicant shall provide the Town with a list of addresses, the applicant's affidavit showing the list was complete and generated from the Larimer and/or Weld County records and the parcel number for the subject property. The applicant shall include the following on the mailing list: the Board of County Commissioners, the County attorneys, any special district or school district having territory within the property to be annexed, irrigation ditch companies whose rights of way traverse the property to be annexed and owners of the mineral estate on the property to be annexed, and any other entity identified by the Town. The mailing list shall be provided in a form acceptable to the Town.
9. *Zoning of property to be annexed.* The property shall be zoned simultaneously with annexation. The petitioner must submit a complete zoning and as applicable, a neighborhood master plan application that complies with the zoning and neighborhood master plan sections of this Code.
10. The legal description of the property to be Annexed in a format acceptable to the Town including a Word document.
11. *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 including the financial impact to services provided by the Town as well as those provided by Special Districts. The financial impact shall include the impact at the time of building permit with the payment of impact fees, annual tax assessments, average sales tax per household, median household income, for example. These impact statements are understood to be estimates based on expected revenues and costs at the rates at the time of the report preparation.
  - b. The applicant shall provide information regarding the outcome of discussion with the school district and the proposed 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 in the immediate vicinity of the property as well as the overall community.
  - e. The impact to the existing storm water drainage system and a statement on how storm drainage will be managed.
  - f. Preservation of the flow of irrigation water on the site to the water's final destination.
  - g. The impact of additional residents on other public services such as but not limited to: fire and emergency services, library, public health, recreation, and other special districts.
  - h. How the proposal is compatible with the Comprehensive Plan and land designation on the Future Land Use Map.

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- i. How the proposed zoning is compatible with the Comprehensive Plans' Future Land Use Map, and how the proposed zoning designation meets the applicable standards in the zoning section of this Code, including housing diversity standards, design requirements and neighborhood identity features.
- j. How the proposal will meet the standards and requirements in the Architectural Guidelines, Landscape Design Guidelines, Open Space Plan, Trails Plan, and any other Town plans, and any overlay districts the property is located within.
- k. If a non-potable system is proposed, the entity that will own, operate and maintain the non-potable system in perpetuity and the source of water.
- k. 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.

### **30-3-104 Annexation process**

- A. *Annexation applications shall be processed and considered as follows:*
  - 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. *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.
- B. *Annexation petitions shall be processed and considered as follows:*
  - 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. Once the application has been certified as complete, the applicant shall pay all application fees and development review fees. Until fees are paid, the application shall not be processed.
  - 2. Staff shall forward the application for an Annexation and the accompanying zoning and neighborhood master plan applications, and any subdivision or land use application to referral agencies for comment.
  - 3. *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 and schedule the petition for the Town Trustees to determine whether the petition is in substantial compliance with the Act.
  - 4. *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 30 days nor more than 60 days from the effective date of the Resolution, subject to compliance with C.R.S. § 31-12-108, as amended.

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- 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.

5. *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 with information provided by the applicant in the Annexation Assessment Report. The Annexation Impact Report shall be filed with the County at least 25 days prior to the Statutory hearing.

7. *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 and the neighborhood master plan for the property. Notice of the Commission's review of the zoning request and neighborhood master plan shall be given in accordance with Public Hearing and General Notice section of this Code. The Planning Commission shall recommend to the Town Board approval with or without conditions, or recommend denial of the requested zoning.

8. *Town Board public hearing and action on the annexation.*

- a. The Town Board shall hold the public hearing on the petition for annexation, zoning and if necessary, the neighborhood master plan in conjunction with the annexation. The petitioners shall present evidence in support of the petition, zoning, and neighborhood master plan. 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 Code 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.

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### **30-3-105 Post-approval actions**

- A. After final passage of the annexation ordinance and the zoning ordinance, the applicant shall file with the Town final versions of all applicable documents including three mylars of the annexation map(s).
- B. The official zoning map shall be amended in accordance with the zoning ordinance.
- C. The applicant shall provide an electronic copy of the Annexation, Zoning and Neighborhood Master Plan in accordance with the electronic mapping standards established by the Town within 30 days of the adoption of the annexation ordinance and the zoning ordinance.

### **30-3-106 Public hearing notices**

- A. The Town shall publish notice of the public hearing for the zoning and neighborhood master plan 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.
- B. 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 15 days prior to the date of the public hearing(s). The petitioner's certification shall include a copy of the mailing along with the list of mineral owners and the source from which the list was derived.

### **30-3-107 Annexation agreement**

- A. An Annexation Agreement may be developed by the Town and if developed, the petitioner shall deliver the annexation agreement executed by petitioner prior to the public hearing before the Town Board of Trustees.

### **30-3-108 Annexation map technical standards**

- A. 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 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 inches by 36 inches 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. The document shall be in black and white only without grey. A margin line shall be drawn completely around each sheet leaving a margin at least one-half inch on three sides and a margin at least two 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 one inch equals 50 feet or one inch equals 100 feet. For annexations exceeding 100 acres an acceptable scale is one inch equals 200 feet.

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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 crowded.

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:

NAME OF 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, if needed by the County.
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

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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 feet 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 feet.
- 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 definitely 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.

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- 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.

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## 'SECTION 4 ZONING

### **30-4-101 Title**

The regulations contained in this Section shall be known and cited as the Berthoud Zoning Code.

### **30-4-102 Authority**

Pursuant to the authority conferred by Title 31, Article 23, Title 24, Article 67 and Title 29, Article 20, C.R.S., this Chapter is enacted for the purpose of promoting the health, safety, convenience and general welfare of the citizens of the Town.

### **30-4-103 Scope**

This Section shall apply to all public and private property situated within the incorporated portions of the Town.

### **30-4-104 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.

- A. *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.
- B. The Town's most recently adopted Building Codes and Fire Codes shall apply to all development and redevelopment as they relate to land use and siting of structures on property.
- C. *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.
- D. *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.
- E. *Zoning of annexed territory.*
  - 1. Zoning of land during annexation shall be done in accordance with the procedure and notice requirements of this Section and the Annexation Section of this Code. 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 concurrently, despite any legal review that may be made challenging the annexation.

### **30-4-102 Purpose**

The purpose of this Section is to create a vital, cohesive, well-designed community to enhance the Town's character and further the citizens' goals as identified in the Comprehensive Plan, Berthoud Zoning Code, Overlay Districts, and Master Plans and Guidelines. These zoning regulations are designed to:

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- A. Encourage the most appropriate use of land throughout the Town and ensure logical growth of the various physical elements of the Town so that the proposed zoning and use are compatible and complimentary to adjacent and surrounding land uses.
- B. Provide aide in determining the proposal's consistency with the Comprehensive Plan and land use designation on the Future Land Use Map and how the proposed zoning designation meets the applicable standards found in the zoning section of this Code, including housing diversity standards, design requirements and neighborhood identity features.
- 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. 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.

### **30-4-103 Zoning districts and boundaries**

- A. *Zoning Districts.* In order to carry out the provisions of this Code, the Town is divided into the zone districts listed below. A description of each zone district and the bulk requirements for each can be found after the Land Use Table.
  - 1. UR — Urban Residential District
  - 2. UC — Urban Commercial District
  - 3. SR — Suburban Residential
  - 4. SC — Suburban Commercial District
  - 5. CD — Conservation District
  - 6. AG — Agricultural District
  - 7. R1 — Single Family District
  - 8. R2 — Limited Multi-Family District
  - 9. R3 — Multi-Family District
  - 10. R4 — Mixed Use District
  - 11. R5 — Manufactured/Mobile Home District
  - 12. C1 — Neighborhood Commercial District
  - 13. C2 — General Commercial District
  - 14. M1 — Light Industrial District
  - 15. M2 — Industrial District
  - 16. T — Transitional District [After November 10, 2025, the Transitional District shall no longer be assigned]
  - 17. PUD — Planned Unit Development Overlay District

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B. *Official zoning map.* The boundaries and classifications of districts established are as depicted on a map entitled Town of Berthoud Official Zoning Map. The Zoning Map 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.

### **30-4-104 Zoning and land uses**

A. General application of uses. Uses contemplated in the Town's Zone Districts can be found in the Land Use Table. Those uses listed on the table with a "P" require approval of a Site Plan Permit; with an "S" require approval of a Use by Special Review Permit; and with a "B" require approval of a Building Permit following land use approval, as may be required. Those land uses not specifically listed on the Land Use Table shall be presumed to be prohibited. A change in land use may necessitate a land use permit as found in the Land Use Table.

Land Use Table

Land uses contemplated in the Town's Zone Districts are found in the table below. Those uses listed on the table with a "P" require approval of a Site Plan Permit; with an "S" requires approval of a Use by Special Review permit; and with a "B" require approval of a Building Permit following land use approval, as may be required. Those Land uses not specifically listed on the Table shall be presumed to be prohibited. A change in land use may necessitate a land use permit as listed below.

Land Use	Zone District														
	AG	CD	SR	SC	UR	UC	R1	R2	R3	R4	R5	C1	C2	M1	M2
<i>Residential Land Uses</i>															
Dwelling, single-family detached	B	B	B		B		B	B	B	B	B				
Dwelling, two family; Dwelling, single-family attached; Duplex/Paired Home			B		B		B	B	B	B					
Dwelling, Clustered home, Single-family detached or attached			B		B										
Dwelling, Townhome, Multi-family dwelling, Apartment, Condominium (3 or more units)			P	P	P			S	P	P					
Manufactured/mobile home and park											P				
Accessory dwelling unit associated with a permitted use, See Section regarding Accessory Uses	B	B	B, Dwelling, single family detached		B, Dwelling, single family detached		B	B, Dwelling, single family detached	B, Dwelling, single family detached	B, Dwelling, single family detached					

Land Use	Zone District														
	AG	CD	SR	SC	UR	UC	R1	R2	R3	R4	R5	C1	C2	M1	M2
<i>Mixed Land Uses</i>															
Bed and breakfast establishments	P		P		P in Single-Family Detached or Single Family Attached		S	S				S			
Boarding and rooming houses								S	S	S		S			
Single-room occupancy boarding house	P		P		P		P	P	P	P		P			
Caretaker dwelling												S	S		
Child care home (up to 12 persons)	B	B	B		B		B	B	B	B					
Family care, elderly day care homes	P	S	P, Dwelling, single family detached		P, Dwelling, single family detached		P	P	P	P		P			
Group care facility	P		P , Dwelling, single family detached		P , Dwelling, single family detached		P	P	P		P	P			
Live-work units and buildings					P	P				P		P	P	S	S
Mixed use buildings (residential, commercial, office, workshops, etc.)				P		P				P		P	P	S	S

Land Use	Zone District														
	AG	CD	SR	SC	UR	UC	R1	R2	R3	R4	R5	C1	C2	M1	M2
<i>Commercial, retail or service land uses</i>															
Adult-oriented use/sexually-oriented use															S
Agricultural activity	P	P		P											
Appliance sales and service				P					S		P	P	P	P	
Automotive repair - minor				S					S		S	P	P	P	
Automotive repair - major				S								S	P	P	
Banks and financial institutions with or without drive through and/or ATM kiosks				P		P			P		P	P	P	P	
Bars/taverns/micro-breweries				P		P			P		P	P	P	P	
Professional offices (professional offices for attorneys, realtors, service contractors, administrative services, and similar service providers)				P		P			P		P	P	P	P	
Car/motor vehicle washes				P								P	P	P	
Child care center	S			P			S	S	S	P		P	P		
Clinic, addiction treatment													P	P	
Cremation facility													S	S	
Commercial and retail businesses, indoor sales and service				P		P			P		P	P	P	P	
Contractor's office/shop				S					P		P	P	P	P	
Distillery including tasting room and retail sales				P					P		P	P	P	P	
Entertainment facilities, commercial theatres, etc.				P					P		P	P			
Equipment rental (small) establishments without outdoor sales											S	P	P	P	
Equipment rental (heavy) establishments with outdoor sales													S	P	
EV Charging, Principal Use	S		S	P	P	P	S	S	P	P		P	P	P	
EV Charging, Accessory Use	P		P	P	P	P	P	P	P	P		P	P	P	
Fireworks sales - temporary				P							P	P	P		
Gasoline station				P		S			S		S	P	P	P	

Land Use	Zone District														
	AG	CD	SR	SC	UR	UC	R1	R2	R3	R4	R5	C1	C2	M1	M2
<i>Commercial, retail or service land uses continued</i>															
Gas, oil and other hydrocarbon well drilling and production, See Oil and Gas section	S													S	S
Plant nursery and Greenhouses, public or private	P	P		P					P		P	P	P	P	
Grocery store, small (less than 25,000 square feet of floor area)			P		P				P		P	P	S	S	
Grocery store, large (greater than 25,000 square feet of floor area)			P		P				S		S	P	S	S	
Home Occupations, See Section regarding Home Occupation, "P" indicates a Home Occupation Permit is needed	P	P	P		P		P	P	P	P	P				
Hospital			P		P	S	S	S	S		P	P	P	S	
Hotel/motel/lodging establishment (no room limit)			P		P				S		S	P	P		
Inn (up to 12 rooms)			P		P				P		P	P	P		
Kennel - small animal	P		P		P				P		P	P		S	
Laundry and dry cleaning retail outlet			S						S		P	P	P		
Marina	P		S						P			P			
Medical and dental offices/clinics			P		P	S	S	S	P		P	P	S	S	
Allowed Marijuana Business, See Section regarding Marijuana Businesses													S	S	
Mixed Use Building (Building with a variety of uses including Commercial and Residential)			P		P										
Movie theater			P						P		P	P	P		
Parking lots and parking garages (as principal use)			P						S		S	P	P	P	

Land Use	Zone District														
	AG	CD	SR	SC	UR	UC	R1	R2	R3	R4	R5	C1	C2	M1	M2
<i>Commercial, retail or service land uses continued</i>															
Natural Medicine Healing Center, see Section on Natural Healing Centers and Other Natural Medicine Businesses												P	P		
Passenger terminal or park-n-ride				P						P		P	P	P	P
Personal and business service shops				P			S			P		P	P	P	P
Push-cart (sidewalk/mobile vending)						P				P		P	P	P	
Recycling facilities (including biofuel) processing and sales														S	S
Restaurant not including drive-through				P		P				P		P	P	P	P
Restaurant with drive-through				S		S			S		S	P	P	P	P
Retail sales building/center < = 50,000 gross square feet				P		P			P		P	P	P	P	P
Retail sales building/center > = 50,000 gross square feet				P		P			S		S	P	P	P	P
Retail and supply yard establishments with screened outdoor storage				S								S	S	S	
Roadside or temporary retail stand/tent	P			S						S		P	P	P	P
Sales of farm implements, heavy equipment, Mobile/ manufactured homes															P
Short-term Rental (max. 10 guests), See Section on Short Term Rental			P		P		P	P	P	P					
Storage facilities, outdoor storage for RV's, boats, trailers, etc.													S	S	
Storage facilities - enclosed													S	S	

Land Use	Zone District														
	AG	CD	SR	SC	UR	UC	R1	R2	R3	R4	R5	C1	C2	M1	M2
<i>Commercial, retail or service land uses continued</i>															
Truck depot				S									S	P	P
Vehicle sales including automobiles, motorcycles, RV's, boats and trucks				S									P	P	P
Veterinary facilities, small animal clinic with no outside kennels	P			P		P				P		P	P	P	P
Veterinary facilities, small animal clinic with outside kennels	P			S		S				S		S	S	S	S
Veterinary hospitals - small animals	P			P		P				P		P	P	P	P
Veterinary hospitals - large animals	P			S								S	S	S	S
<i>Public, quasi-public, other land uses</i>															
Accessory buildings and uses	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Alternative power generation facilities	S						S	S	S	S	S	S	S	S	S
Bus shelters	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Cemetery	P						S	S	S						
Clubs and lodges										P		P	P	P	
Community Garden	P	P	P	P	P	P	P	P	P	P	P	P	P		
Conference / convention center, see Places of Assembly															
Farmer's market				P		P				S		P	P	P	P
Fire station	P			P		P	S	S	S	S		P	P	P	P
Municipal uses without equipment yards										S		P	P	P	P
Municipal uses with equipment yards														P	P
Museum	P			P		P	P	P	P	P	P	P	P	P	
Parks and open space	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Amphitheater, outdoor	P		S	S	S										

Land Use	Zone District													
	AG	CD	SR	SC	UR	UC	R1	R2	R3	R4	R5	C1	C2	M1
<i>Commercial, retail or service land uses continued</i>														
Public utility	P		P	P	P	P	P	P	P	P	P	P	P	P
Places of assembly (neighborhood scale)	P		P	P	S	S	P	P	S	P	P	P	P	P
Places of assembly (medium)	P		S	P	P	P		S	P		P	P	P	P
Places of assembly (large)				S	P						P	P	P	P
Rest stop	P								P		P	P		
Schools - public and private (preschool - grade 12)	P		P	P	P	P	P	P		P	P	P	P	
Schools - colleges, vocational and technical training				P		P				S	P	P	P	P
Wireless telecommunications facility	P		S	P	S	P			S		S	P	P	P
<i>Industrial land uses</i>														
Data Center														S
Laboratory and/or research facility									S		S	P	P	
Industrial, light								S			P	P	P	
Industrial, heavy													P	
Manufacturing, including assembly, sales and service of commodities												P	P	
Other Natural Medicine Businesses, see Section on Natural Healing Centers and Other Natural Medicine Businesses												S	S	
Warehouse and distribution											S	P	P	
Workshops and custom small industry	S		S			P			P		P	P	P	P

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### 30-4-105 Zoning districts, area and bulk requirements

A. This section describes the intent of each Zone district and provides the area and bulk standards for each Zone district. The uses allowed in each Zone district can be found on the Land Use Table.

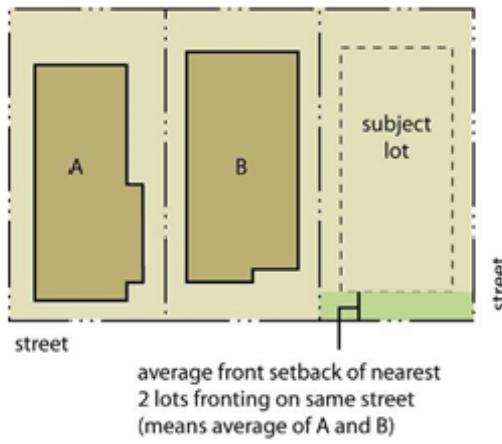
B. Measurement of residential density. Allowable or maximum residential densities as identified in this Code will be measured as gross densities where the number of residential units is divided by the total acreage of the subject property.

C. The Design Standards of this Code apply to all properties. Overlay Districts and Master Plans affecting individual properties shall be evaluated during the land use and subdivision processes. The independent Architecture Standards and the Landscape Design Guidelines shall apply to all development and redevelopment.

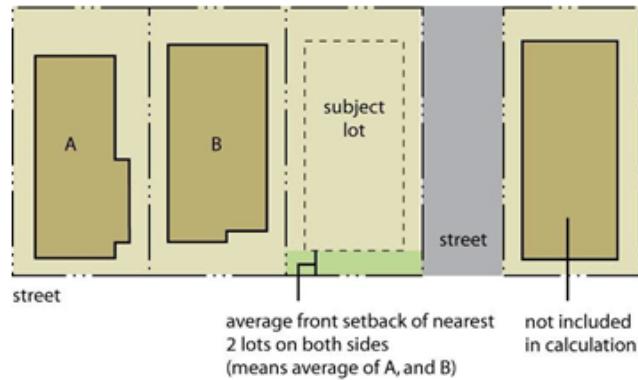
D. For all Zone Districts, refer to the latest Comprehensive Plan for details regarding the intent of each Character District. Refer to the statements below regarding each Zone District.

**E. Infill Requirements.**

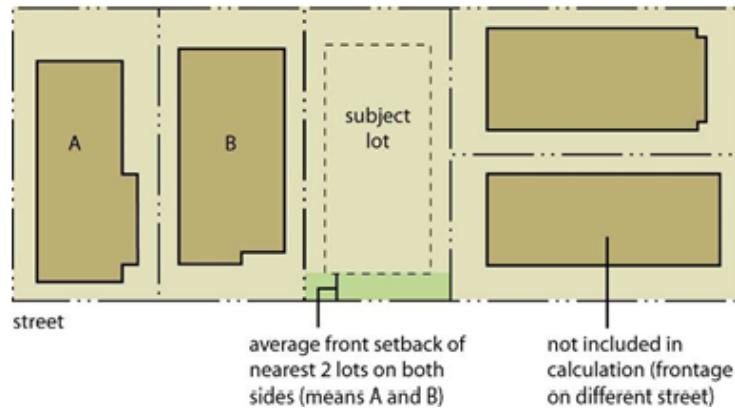
1. *Infill Front Setback:* Contextual front setbacks shall be as deep as the average front setback that exists on the nearest developed lots on the same block that front on the same side of the street as the subject lot, in accordance with the following figure:



2. Lots that front on a different street than the subject lot or that are separated from the subject lot by a street may not be used in computing the average. See the figure below:

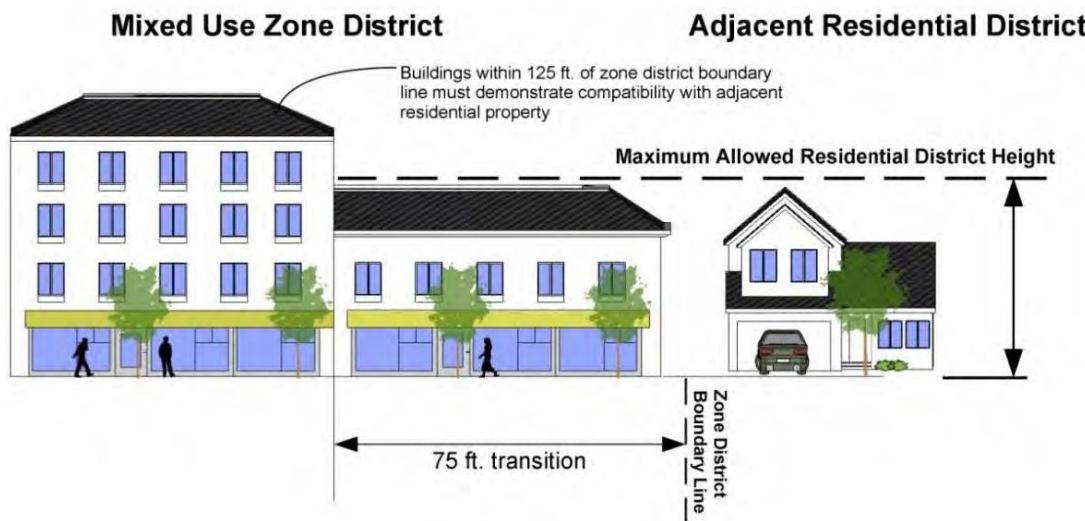


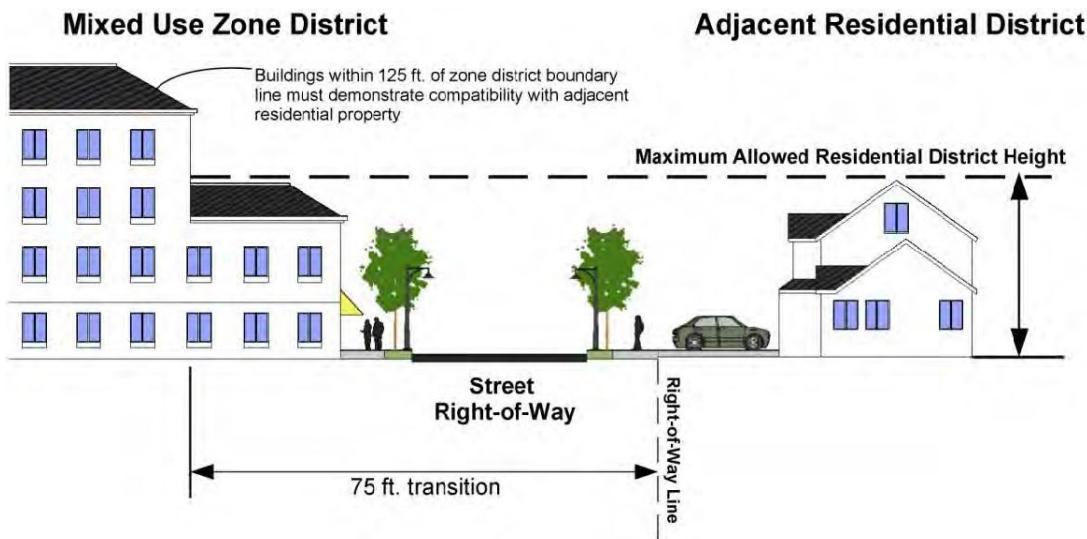
3. When the subject lot is a corner lot, the average setback will be computed on the basis of the two nearest developed lots that front on the same side of the street as the subject lot. Refer to the figure below:



4. When the subject lot abuts a corner lot fronting the same street, the average setback will be computed on the basis of the abutting corner lot and the nearest two lots that front on the same street as the subject lot.

F. *Height Transitions*. Any portion of a building located within the R-4, Mixed Use Zone District and within 75 feet of the boundary of a property zoned R-4, shall have a maximum height no greater than the maximum height allowed in the adjacent zoning district. Where a street separates the zoning districts, the measurement shall be from the street right-of-way line opposite the R-4 District. Refer to the following diagrams:





G. Zone District Descriptions, area and bulk standards.

1. *UR and UC, Urban Residential and Urban Commercial Districts.* The intent of the Urban Residential (UR) and Commercial (UC) Districts is to provide for a variety of housing types and limited commercial uses in a dense, walkable environment built at a human scale. The following Tables provide area and bulk requirements. Refer to the Land Use Table for different uses allowed in the Urban Residential and Urban Commercial Zone Districts through the development review process.

**Table: Urban Residential Dimensional and Bulk Standards**

	<i>Urban Residential Detached House</i>	<i>Paired Homes/ Duplex</i>	<i>Townhouse/ Row House</i>	<i>Clustered Home</i>	<i>Apartments/ Condos</i>
Maximum building height	30'	30'	30'	35'	40' and refer to height transition graphic
Maximum density of units per acre	14	16	22	24	5 buildings
Maximum lot coverage	80% for lots 3,500-6,000 sf, 70% for lots more than 6,000 sf and up to but not including 1 acre, 50% for lots 1 acre or greater	75%	85%	85%	70%
Side Wall Height, for Pitched Roof, within 15' Side Street (max)	25'	25'	24' max or 2 stories	24' max or 2 stories	24' max or 2 stories
Minimum lot width:	25'	20'	16'	For site: 100' for all buildings; 25' min. For each lot/unit Street-facing: 40'	50'
Front Yard setback :	8'-12'	8'-12'	8'-12'	—	20'
Rear yard setback with rear loaded garage	5 – 8'	5 – 8'	5 – 8'	10'	10' alley, 20' no alley
Side setback:	5'	0' attached, 5' side lot line	0' attached, 5' side lot line for end units	7.5'	20' all sides
Corner Side setback	10' unless greater is needed for utility easements. When adjacent to open space that is at least 10' wide, the lot is not considered a Corner lot and standard corner side setbacks shall apply.				<input type="checkbox"/>
Vehicle Access/Garage:	Alley'; if no alley, a 12' max side driveway to detached garage to the rear of the principal structure	Alley Only	Alley Only	Alley or Rear loaded	Internal to site No surface parking between primary street or side street

Pedestrian Access:	Through an entry feature such as porch or stoop to primary street.	Entry Feature such as porch or stoop to primary street.	Entry Feature such as porch or stoop to primary street	Entry Feature such as porch or stoop fronting shared common space	Entry feature such as porch/stoop fronting common space
Accessory Structures: Also see the Accessory Uses and Structures section of this Chapter					
Accessory Structure	Accessory Dwelling Unit (ADU)/ Detached Garage	Detached Garage	Detached Garage	Detached common garage structure or attached one-car garage per unit	Detached common garage structure
Max Height (not to exceed height of primary structure):	ADU: 25' Garage: 17' unless combined with ADU, then 25'	17' (1 story)	17' (1 story)	17' (1 story)	17' (1 story)
Side Setback:	ADU: 5' for one story, 10' for two stories Garage: 5'	0' (maintenance easement required for garages with a setback of 3' or less)	5'	10'	10'
Rear Setback:	ADU: 5'-8' Garage: 5'	5'	5'	10'	10'
Setbacks for all other Accessory Structures (pools, gazebos, etc.)	5'; however never allowed in an easement				
Garage Type	—	—	—	—	Attached garage, max one car per Dwelling Unit

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**Table: Urban Commercial Standards**

Maximum building height	40 for mix use building/30' for commercial only
Lot Size Minimum for all attached buildings	3,000 sq. ft
Lot width	24'
Front Setback/Build to Line Min/Max	75% to 0'; 10' max (courtyard only)
Side Wall Setback Height (end units abutting public street)	24' Max; or 2 stories
Side Setback	7.5'
Side Setback entire site and for interior abutting buildings	10'
Rear Yard	10' alley; 20' no alley
Parking	No surface parking between primary street or side street
Vehicle Access/Garage	Alley or Rear loaded Street only; no drive-throughs
Pedestrian Access	Entry Feature
Glazing/Transparency	60% primary street; 25% side facing street

2. *SR and SC, Suburban Residential and Suburban Commercial Districts.* The intent of the Suburban (SR) Residential and the Suburban Commercial (SC) Districts is to provide for neighborhoods with primarily single-family detached and single-family attached (townhomes and paired homes) residential structures, as well as limited commercial uses.
  - a. *Suburban Residential Sustainable Landscaping Standards.*
    1. . Any development or platted final plat with five or more units shall retain a licensed landscape architect to prepare landscape plans for front yards. To the greatest extend possible, these landscape plans should vary in design between adjoining lots. Refer to the Landscape Design Guidelines for all landscape requirements.
      - a. Front yard landscaping should visually integrate the adjacent natural landscape where applicable.
      - b. Trees must be planted ten feet away from utility lines.
      - c. Each front yard should have at least one ornamental tree. Front yard trees should be of at least one and one-half-inch caliper in size.
    2. See the Section regarding Encroachments into setbacks and easements for all districts in this Chapter for additional information.

**Table: Suburban Residential Standards**

	Suburban Detached House	Duplex/ Paired Home	Townhomes	Clustered Homes
Maximum building height	30'	30'	30'	35'
Minimum lot width at required front yard setback line	40'	20'	16'	For site: 100' for all buildings; 25' min. For each lot/unit Street-facing: 40'
Lot widths may be adjusted from the minimums listed above to accommodate meeting the housing diversity standards with Town approval.				
Maximum lot coverage	80% for lots 3,500-6,000 sf, 70% for lots more than 6,000 sf and up to but not including 1 acre, 50% for lots 1 acre or greater	75%	85%	85%
Front yard setback with Front loaded garage	20'	20'	N/A	N/A
Front Yard setback with Rear loaded or no garage	10'	10'	10'	10'
Front Yard setback with Side loaded garage (only for garage portion)	10'	10'	10'	N/A
Rear yard setback with front loaded garage	20'	20'	N/A	N/A
Rear yard setback with rear loaded or no garage	5-8'	5-8'	5-8'	5-8'
Side setback	5'	0' attached, 5' side lot line	0' attached, 5' side lot line for end units	7.5'
Corner Side setback	10' unless greater is needed for utility easements When adjacent to open space that is at least 10' wide excluding tree strips and sidewalks, the lot is not considered a Corner lot and may assume standard corner side setbacks.			
Buffering	On Arterial: A 30' perimeter buffer is required from all arterial streets. On Collectors: A 20' perimeter buffer is required from all collector streets.			
Maximum density per acres	14	11	22	28
Vehicle Access/Garage	Alley; if no alley, a 12' max side driveway to detached garage to the rear of the principal structure	Alley Only	Alley Only	Alley or Rear loaded
Pedestrian Access:	Through an entry feature such as porch	Entry Feature such as porch or	Entry Feature such as porch	Entry Feature such as porch or stoop

	or stoop to primary street.	stoop to primary street.	or stoop to primary street	fronting shared common space
Garage:	Garage doors shall not extend across more than 50% of the street facing façade of the primary residential structure		Alley/Rear-Loaded Only. Front access garages are prohibited.	
Setbacks for all other Accessory Structures (pools, gazebos, etc.)	5'; however never allowed in an easement			
Four-Sided Architecture:	Side or rear elevations shall not be a solid blank wall with no articulation; structures shall be designed so as to break up long walls by the use of offsets, shadow lines, façade treatments and the architectural theme on the front of the house shall be continued on the sides and rear of the structure to maintain the integrity of design throughout the structure.			

**Table: Suburban Commercial Standards**

Maximum building height	40' (see height transition)
Minimum Lot Area	4,000 sq. ft.
Front yard and Corner Lot Build to Line Min/Max	50% of Building within 10' min.
Side Build to Setback	50% of the Building within 10'
Rear yard	10'
Drive Thru	Shall not be accessed from primary street or be located in front or corner side yard.
Drive Thru Screening	Berm, garden wall or landscaping so drive aisle is not visible from ROW.
Surface Parking	No parking shall be located forward of the building, and only 20% of parking is permitted in the side yard.
Road Access:	Access shall be primarily from secondary streets; individual curb cuts shall be minimized to the greatest extent possible on primary streets.
Pedestrian Access:	Architectural emphasis from the street through use of a courtyard; or columns; or tower element; or a covered porch
Architecture/Design	See the Section on the Mountain Avenue East Architecture Guidelines

3. *CD Conservation District.* The Conservation District (CD) is intended to provide for primarily low-density housing types and large areas of conservation.

a. *Overall Layout, Density, and Process.*

- i. *Layout:* Sites should be designed in a rural style with buildings built far from the street and other property lines according with the requirements of this section.
- ii. *Approval:* The Town PORT Committee will review any conservation subdivisions which desire to dedicate open space to the Town and make a recommendation to the Town Planning Commission and Town Board.
- iii. *Water:* All Conservation Subdivisions will be required to either possess a non-pot water system or water rights to satisfactorily irrigate an

agricultural property of medium water usage crops. A water study will be required at the Town's discretion to ensure this requirement is satisfied.

- iv. *Trail Corridor:* All properties abutting the Little Thompson River, or a Town designated Regional Trail as per the Town's Comprehensive Plan and Trails Master Plan, shall dedicate the necessary easement or ROW for a regional trail, as determined by the Town.
- v. *Parks, Open Space Elements and Subdivision Identity:* Rural Residential and Conservation Districts are exempted from the Parks requirements, Open Space elements and Subdivision Identity Standard requirements found in the Design Section of this Chapter.
- vi. *Contiguous:* All property included within a conservation development shall be contiguous.
- vii. *Residual and Developed Land:* All conservation developments shall consist of two segments: (1) the development cluster or clusters, on which the residential units are located, and (2) the designated private residual land to be held in conservation. The minimum size for residual land is 35 acres.
- viii. *Percentage of Developable/Conversation Land:* The following minimum percentages of land are required in cluster and residual segments:

**Table: Conservation Development Site Allocation Standards**

1 The underlying density may increase by up to 30% more than the underlying density found in the Conservation Development Standards table		
Conservation Development Type	Required Residual Land in Conservation (%)	Permitted Developable Land in Cluster(s) (%)
No public water/sewer	80	20
Provides public sewer	80	20 <sup>1</sup>

- ix. *Density:* As per the Conservation Development Site Allocation Standards Table, 80 percent of the total project (35 min. acres) must be reserved as conserved residual land as provided in this Section. The remaining 20 percent can be developed with a density consistent with Larimer and Weld County septic standards (no less than two acres); i.e. for a quarter-section sized conservation subdivision, 128 acres would be required for open space, and the remaining 20 percent of 32 acres of developable area shall be developed at a density of two acres, or 16 dwelling units. On lots served by Town sewer, the number of development lots within the 20 percent developable area, may increase by 30 percent.
- x. *Residual Land:* All residual land shall be maintained and remain undeveloped in perpetuity in accordance with appropriate use plan for residual land and/or common area as provided in of this Code.

**Table: Conservation Development Standards**

Dimensions	Conservation Subdivision Primary Structure	Accessory Buildings
Individual Lot Size	Must comply with existing Larimer or Weld County Septic Standards (no less than 2 acres). If on sewer, no lot size requirement.	N/A
Density	80% of 35 acre minimum must be reserved in residual tract, remaining 20% can be developed with a density	N/A

	consistent with Larimer and Weld County septic standards (no less than 2 acres)	
Maximum lot coverage	20%	5%; Sum of lot coverage of primary structure and accessory building not to exceed 20%
Maximum Building Height	30'	0'
Front Yard Setback	See Building Envelope	Must be behind the principal structure
Rear Yard Setback:	See Building Envelope	15'
Side Yard Setback	See Building Envelope	10'
Conservation Easement Total Minimum Size	35 acres	N/A
Proportion in Conservation Easement/Dedicated Open Space	80%	
Access:	No direct individual driveway access on Primary Roads; private streets required for interior streets and access	

4. *AG Agricultural District.* 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.

a. *Maximum density.* Development in the AG District is limited to one residential 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.

5. *R1 Single Family District.* The R1 District provides for the development of low to moderate density single family residential dwellings.

6. *R2 Limited Multi-Family District.* The R2 District provides for the development of areas containing low to moderate density with both single and multi-family residential uses.

7. *R3 Multi-family District.* The R3 District is a moderate to higher-density residential zone that allows the development of multiple dwelling units on the same lot.

8. *R4 Mixed Use District.* 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.

**Table: Traditional Residential and Agricultural Standards**

Dimensions	R-1	R-2	R-3	R-4	R-5	AG
Maximum Density of dwelling units Per Gross Acre	6 Dwelling units	12 dwelling units	16 dwelling units	20 dwelling units	12 dwelling units. Additional Density for modular home, or tiny house/park model developments may be considered as a	1 dwelling unit (unless on septic)

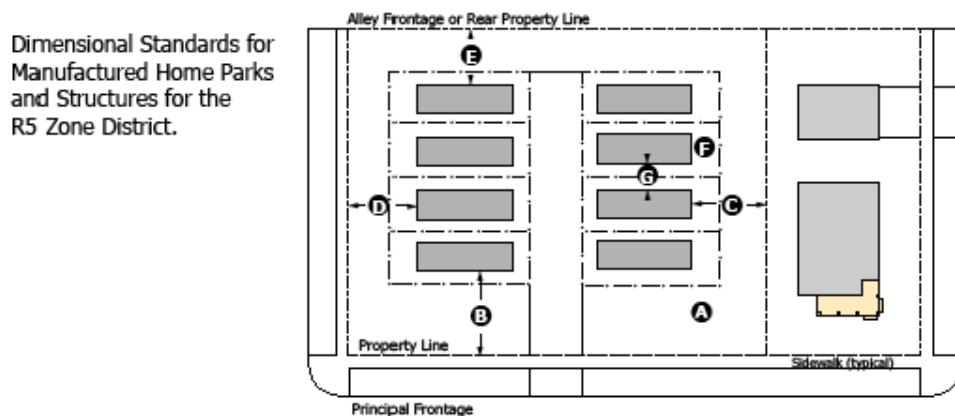
					use by Special Review.	
Maximum lot coverage	80% for lots 3,500-6,000 sf, 70% for lots more than 6,000 sf and up to but not including 1 acre, 50% for lots 1 acre or greater				70%	15%
Maximum building height	35'	35'	40'	50'. Height Transition required as provided in the Design Standards Section, as well as the Infill and Height Transition Sections	16'	40'
Minimum lot width at required front setback line :	30'	20'	16'	16'		150
Zero lot line: minimum lot width for each residential unit. Units may be located on the lot at zero feet from one side lot line, if there is a maintenance agreement by the owner of the lot adjacent. Off-setting setbacks, setbacks of 0 ft. and 10 ft. are allowed in each district.	N/A	20'	16'	16'	N/A	N/A
<b>Minimum setback</b>						
Front yard Front loaded (with garage)	For properties with a 7-foot or wider tree strip, the required front setback to a front porch may be reduced by 7 feet				25' (entire park)	25'
Front Yard Rear loaded (rear, or no garage)	15'	10'	10'	10'	25' (entire park)	25'
Rear yard with front loaded garage	20'. 10' setback on rear yards to any deck, including covered decks and patios.	10'	1'0	10'	15' (entire park)	25'
Rear yard with rear loaded garage	5-8'	5-8'	5-8'	5-8	15 (entire park)	25'
Side Multi-Family with 3 Stories	5'	5'	5 10'	5 10'	15' (entire park)	15'

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Side-loaded Garage	Side-loaded garages are allowed a 10' front setback for the garage portion.				
Corner Side.	10' unless greater is needed for utility easements When adjacent to open space that is at least 10' wide excluding tree strips and sidewalks, the lot is not considered a Corner lot and may assume standard corner side setbacks.			15' (entire Park)	15'
Infill Front	Infill Front setbacks as provided in Infill /Transition Sections				
Accessory Structures: Also see the Accessory structures section of this Chapter.					
Accessory Structure setback from all property lines.	5', however never allowed in an easement. Excludes garages with vehicle access on corner side lots, which will follow the regular setbacks of the zoning district				
Accessory Structure maximum height	30'	30'	30'	30'	30'
Front covered porches	10' setback, however never allowed in an easement.				
Buffer from adjacent streets, minimum depth depending on overlay district and utility easement requirements	On Arterial: A 30' perimeter buffer is required from all arterial streets. On Collectors: A 20' perimeter buffer is required from all collector streets. Measurement is made from the back of the curb including tree strip and sidewalk.				
Permanent buffer from adjacent residential zones				A permanent landscape buffer consisting of a hedge or evergreen plant material, or a solid wall or fence for Mixed Use buildings or commercial uses.	

9. *R5 Manufactured/Mobile Home Park District.* 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.

b. *Open space required.* Development in the R5 District shall provide public open space (parks, trails, open lands) per the Design Standards Section of this Code.



#### DIMENSIONAL STANDARDS

<b>A</b> Lot Width, Manufactured/Mobile Home Park:	N/A
<b>A</b> Lot Area, Manufactured/Mobile Home Park:	5 acres min.
<b>B</b> Setback, Front Yard, Manufactured/Mobile Home Park:	25' min.
<b>C</b> Setback, Side Yard, Manufactured/Mobile Home Park:	15' min.
<b>D</b> Setback, Corner Side Yard, Manufactured/Mobile Home Park:	15' min.
<b>E</b> Setback, Rear Yard, Manufactured/Mobile Home Park:	15' min.
<b>F</b> Lot Area, Individual Unit:	3,000 sq.ft. min.
<b>G</b> Setback, Individual Unit:	10' min. between structures <sup>1</sup>

#### BUILDING HEIGHT STANDARDS



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.

10. *C1 Neighborhood Commercial District.* 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.

11. *C2 General Commercial District.* The C2 District is intended to be a setting for the development of a wide range of service businesses, retail uses, offices and personal and business establishments.

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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.

12. *M-1 Light Industrial District.* 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.

13. *M2 Industrial District.* 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.

**Table: Traditional Commercial and Industrial Standards**

	C-1	C-2	M-1	M-2
Maximum Density Per Gross Acre	20 Dwelling units	16 dwelling units	N/A	N/A
Maximum building height	50'	50'	40'	50'
Minimum lot width at front yard setback line :	25'	50'	50'	50'
Minimum setback:				
Front yard (building must be built on/to front/street facing setback line)	0'	25' In the case of large buildings for employment, storage or auto-related uses where greater setbacks are needed, a minimum of 30 percent of the building shall be brought forward to the front/street facing setback line	25'	20'
Rear yard	0', or 20' when adjacent to zoning district boundary	35'	20'	20'
Side:	0', or 20' when adjacent to zoning district boundary	0', or 25' when adjacent to zoning district boundary	0', or 20' when adjacent to zoning district boundary	0' or 20' when adjacent to zoning district boundary
Corner Side	0'	0', or 25' when adjacent to zoning district boundary	20'	20'
Setback at property line from adjacent residential zones	35'	35'	35'	35'
Permanent buffer from adjacent residential zones	Required screening consists of a hedge or evergreen plant material, or a solid wall or fence.			

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14. *Transitional District.* The T, Transitional District is to accommodate properties which are in a transitional stage with regard to their ultimate use or plans for development.

a. 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:

- i. 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.
- ii. 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.

15. *Planned Unit Development (PUD) Overlay District.* The Planned Unit Development (PUD) Overlay District was used as an overlay zone to supplement one or more underlying standard zone districts as found in this Code. The PUD Overlay District is no longer available as an option to zoning. Previously-approved PUDs are recognized. Any unimproved property with an approved PUD is encouraged to rezone their property to a zone district recognized in the Town's Zoning Chapter of the Development Code. Amendments to an existing PUD Overlay District will require the applicant to rezone the property and provide a Neighborhood Master Plan. Further subdivision processes may be required.

### **30-4-107 Encroachments into setbacks and easements — all districts**

#### **A. General Rules**

1. Nothing may encroach into or overhang an easement unless specifically permitted in this section.

2. Setbacks and easements serve different purposes:

- a. *Setbacks* may allow certain building features to extend partially into them.
- b. *Easements* (utility, drainage, etc.) must remain generally clear, with very limited exceptions.

#### **B. Permanent features allowed in setbacks.** The following features may project into required setbacks only to the limits shown. They are never allowed within easements, unless stated otherwise.

1. Architectural features (cornices, canopies, eaves, similar) may encroach up to 2 feet into a required setback.
2. Balconies more than 10' above the sidewalk may encroach up to 5 feet into the front setback.
3. Bay or cantilevered windows more than 10' above the sidewalk may encroach up to 5 feet into the front setback and up to 2 feet into side/rear setbacks.
4. Steps, ramps, and landings to the principal building entrance may encroach up to 6 feet into a required setback.
5. Fire escapes and window wells may encroach up to 50% of the required setback dimension.
6. Uncovered patios, porches, decks less than 30" above finished grade may encroach up to 30% of the required setback depth.
7. HVAC units may encroach up to 2 feet into a required setback.

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8. Landscaping may encroach in any required setback
9. Fences and decorative walls, subject to height and design restrictions may encroach in any required setback
10. Accessory Use EV Charging and associated equipment is subject to all setback and screening requirements within this Chapter, unless the siting of such equipment outside of setbacks is demonstrated to be infeasible, in which case the applicant shall document in their application why they are requesting the setback exemption and that a decision will be made based on that justification through the associated permit review process for the project as noted in the use table. Accompanying Principal Uses are still subject to applicable setbacks and screening requirements

C. Permanent features allowed in easements

1. Utility service lines to a structure.
2. Utility lines, wires, and associated utility structures within a designated utility easement.

D. *Permanent features prohibited in easements.* The following are not allowed in any easement:

1. Window wells.
2. Building egress located below grade.
3. Any structure, fence, sidewalk, pathway, or other feature that blocks stormwater flow in a drainage easement or obstructs use of a utility easement.

E. *Drainage easements.* Drainage easements must remain completely clear of obstructions to ensure proper stormwater flow.

### **30-4-108 Zoning 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 an 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 15 days prior to the public hearing on such amendments.
- C. *Zoning amendment application process.*
  1. *Procedures.* See the Land Use Processes and Procedures Table and the Application Processes Section.
  2. Notice shall be given in accordance with the public hearing and general notice provisions found in this Chapter.
  3. *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. In the case of text amendments, no zoning amendment map is required. Application requirements shall include the following:
    - a. Application form, fee and memorandum of understanding.

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- b. A legal description for all property to be considered for rezoning to be provided in a form acceptable to the Town inclusive of a word processing format
- c. Current proof of ownership in the form of a title commitment issued within 30 days of submission of the application for zoning map amendments. The copy shall include a single document inclusive of all exemptions and referenced recorded documents.
- d. An amended map illustrating the area included in the proposed change (24 x 36 inches in size) containing the following information:
  - i. North arrow, scale (one inch equals 100 feet or one inch equals 200 feet), 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 un-subdivided 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. Provide a digital copy of the approved property boundary in a format acceptable to the Town.
- e. Narrative materials. A written statement describing the proposal and addressing the following points:
  - i. How the proposal meets the Intent Statements found in the Subdivision and Land Use Section of this Code as well as how the proposal meets the Criteria for Approval of a Zoning Amendment request.
  - ii. Rationale for the proposed rezoning;
  - 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;

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- vi. The relationship between the proposal and the intent of the Town Comprehensive Plan and Future Land Use Map;
- vii. Public benefits arising from the proposal;
- viii. Narrative materials shall respond to the intent section found in the Subdivision and Land Use Section of this Chapter and the Criteria for Approval Section found below.
- ix. Additional narrative materials for text changes, provide a written description of the proposed change including the citation of the text to be changed citing specific difficulties with the existing text and similar provisions in zoning codes of other jurisdictions that support the rationale of the proposed change.

- f. A list of surrounding property ownership in a format acceptable to the Town including the names and addresses of the surrounding property owners, 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.

4. *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 a copy of the approved and fully-executed zoning amendment map in a format acceptable to the Town 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 provide the final document in a format acceptable to the Town.

- e. Within 30 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:

- 1. In the establishment of zoning to be consistent with the vision of the Future Land Use Map found in the most recently adopted Comprehensive Plan; and
- 2. The intent section found in the Subdivision and Land Use Section of this Chapter has been met as applicable to the particular zoning request; and at least one of the following:
  - a. To correct a manifest error in an ordinance establishing the zoning for a specific property;
  - b. 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
  - c. 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

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- d. 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
- e. 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
- f. This declaration of criteria for zoning map amendments shall not control an amendment that occurs incidentally to a general revision of the zoning map; and

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
- 4. 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 this Chapter. Text amendments to previously approved Final Development Plans that seek to modify Design Standards in order to conform to the Design Standards 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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## SECTION 5 SUBDIVISION AND LAND USE REGULATIONS

### 30-5-101 Intent

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. The regulations contained in this Section shall be known and cited as the Berthoud Subdivision and Development Regulations and referred to in this Section 5 as the "Regulations". The term development when used in these Regulations means new development and redevelopment. Each new development application and each redevelopment application shall include a narrative describing how the proposal will:

- A. Complement the Town's historic development patterns and fit into the context of the existing and planned development on surrounding properties.
  1. Street, sidewalk and trail alignment with adjoining developments and properties to ensure safe, efficient and pleasant walking, biking and driving experiences.
  2. Decrease dependency on vehicles.
  3. Existing and planned parks and open spaces in the development as well as in Town shall be connected by sidewalks and trails.
  4. The Parks, Trails and Open Space Master Plans were utilized in the development of the project.
  5. Compact, well-defined, sustainable neighborhoods to enhance the Town's character, complements the existing neighborhood and surrounding area.
- B. Adhere to the vision established in the Comprehensive Plan, Land Development Code, Overlay Districts and Master Plans covering the property including:
  - a. The Land Use Code and underlying zone district.
  - b. The Land Use Code development and design standards.
  - c. Architectural Guidelines.
  - d. Landscape Design Guidelines.
  - e. Engineering Standards and Specifications.
  - f. Flood hazard mitigation.
  - g. Geologic hazard mitigation.
  - h. Other plans, specifications and guidelines that may impact the property.
- C. Ensure there is sufficient provision for public utilities, services and facilities. The development shall be designed with consideration of the future needs as well as adequately managing the impact of the proposed development on the surrounding area and Town in general. Hazardous conditions on- and off-site shall not be created by the proposal.
  - a. Water
  - b. Sanitary Sewer
  - c. Stormwater
  - d. Electric and Natural Gas
  - e. Schools

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- f. Fire Protection and Emergency Response
- g. Public Transit
- h. Traffic circulation
- i. Pedestrian movement
- j. Irrigation practices

D. Mitigate negative impacts of the development on the surrounding property:

- a. Light
- b. Air quality
- c. The Oil and Gas regulation section of this Chapter
- d. Sensitive natural, historic and environmental areas and properties
- e. Compatibility of uses

E. Address a need or desirability within Berthoud and the development proposal will help achieve a balance of land use, create a specific sense of place through place-making in each distinct neighborhood, provide a variety of housing types, meet architectural diversity standards, and integrate meaningful neighborhood identity features into the development according to Town goals.

F. Meet all applicable local, state and federal permits have been or will be obtained.

G. Address such other matters as the Town may deem necessary in order to protect the best interest of the public.

### **30-5-102 General procedures**

- A. The procedures of this Section shall apply to any and all proposals for the subdivision and the development of land within the municipal boundaries of the Town, unless expressly and specifically exempted or provided otherwise in this Code. No subdivision or development shall be undertaken without prior approval or authorization pursuant to the terms of this Code. All subdivision and development shall comply with the applicable terms, conditions, requirements, standards and procedures established in this Section and the Municipal Code. The submittal of an application for approval pursuant to the provisions of these Regulations constitutes consent to, and agreement to comply with all of its applicable provisions.
- B. This Section establishes procedural and substantive rules for reviewing applications for necessary approvals to develop land and construct buildings and structures. Development applications will be reviewed for how they conform to the vision of the Town Comprehensive Plan, Master Plans affecting the property, and applicable guidelines and policies, and how they comply with the Zoning Code, overlay districts applicable to the property, Engineering standards and specifications, and applicable regulations as amended. The submittal of subdivision application for consideration 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.
- C. The application requirements for each development and subdivision type can be found in the Application Materials Tables and the following descriptions in this Section. Where site specific circumstances warrant a deviation from one or more specific application requirement, the Community Development Director may grant a waiver of such requirement(s).
- D. The applicants are responsible for being fully familiar with all applicable provisions of these regulations. At the time of submittal, the applicant shall submit application materials in a form acceptable by the

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Town. The application review process for each development and subdivision type can be found in the Land Use Processes and Procedures Table in this Section.

- E. Should the applicant not provide a material response to staff comments within six months of the date of the most recent comments, the application shall be automatically closed and the applicant shall be required to reapply. Any unused development review fee funds shall be reimbursed within ninety (90) days of the application closure.
- F. Should the application be approved, except where a vested right has been established in accordance with the Berthoud Development Code, and activity toward commencement of the project does not proceed forward within twelve (12) months of the date of the approving Resolution, approving Ordinance, or the Notice of Decision found in the Staff Report for an Administrative Approval, the application shall be automatically voided.
- G. The applicant shall provide the Town with finalized documents within thirty (30) days of the final public hearing or the date found on the Notice of Decision found in the Staff Report for an Administrative Approval. Final documents shall be inclusive of plans, plats, mapping products, construction documents, easements, agreements and the Development Agreement.

### **30-5-103 Application Processes**

The Town has many different application processes for land development and the subdivision of land. Applications for land development and applications for subdivision are also referred to in these Regulations as land use applications. This Section of the Development Code provides a reference to what the common application process steps are and the Subdivision and Land Use Processes and Procedures Table is a guide to the required application processes. The description of each process or procedure is described below.

- A. Pre-application meeting: A pre-application meeting is required. The intent is to provide applicants with insight which may impact their applications, establish the process for application submittal, review application requirements and expectations, and to determine if the proposed use is consistent with the intent of the Land Use Code. The applicant shall provide an overview of their project and how the proposal meets the Town guidelines, standards, specifications and overlay district requirements. Staff may waive this requirement if the following applies:
  - 1. The required pre-application meeting for either a Preliminary Plat or a Final Plat may be waived if the preceding application is in process and close to completion, or received no material comments; and
  - 2. The required pre-application meeting for a Preliminary Plat is within four months of the approval of a Neighborhood Master Plan and the Neighborhood Master Plan received no material comments; or
  - 3. The required pre-application meeting for a Final Plat is within four months following the approval of a Preliminary Plat and the Preliminary Plat received no material comments.
- B. Administrative Review: Several land use applications may be reviewed through an Administrative Review process. Land use applications that may have an Administrative Review option are listed in the Subdivision and Land Use Processes and Procedures Table.
- C. Application Submittal: The applicant shall submit the application materials required. Refer to the required application materials be submitted as part of the application. The materials shall be submitted in a format and in the quantity required by the Town.
- D. Certification of Completeness: Within a reasonable period of time and upon receipt of a land use application, staff shall review the submitted materials in conformance with the pre-application meeting specifications, the Code requirements, requirements in Master Plans and applicable overlay districts, and to ensure materials are complete. Staff shall either certify the application is complete and in compliance with all submittal requirements or reject the submittal as incomplete and notify the applicant of any deficiencies. The Applicant shall then correct any deficiencies in the application package, if necessary, and resubmit the application to Town Staff who will review the submittal for completeness.

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- E. Notice to Surrounding/Affected Property Owners: Staff shall provide notice of a pending application and/or public hearing within the period of time established in the Hearing and Notification Section of this Chapter. The applicant shall provide a mailing list of all surrounding and affected property owners to the Town along with the source of information used to generate the mailing list. Staff shall determine the format of the mailing list to be submitted. The mailing list shall be updated and provided to Staff within the time frame determined by Staff in accordance with the Hearing and Notification Section of this Chapter.
- F. Public Review. The public may view the application and provide comments which shall be reviewed by Staff, provided to the Applicant, and provided in packet materials for the public hearing process. When written comments are received prior to the Public Hearing, the applicant shall address public comments in a report to be included with the record prior to the Public Hearing.
- G. Notice of the mineral estate is the responsibility of the applicant. The applicant shall provide notice according to C.R.S. §§ 24-65.5-101, et seq. The Town shall be provided with the list of the mineral estate owners, source of the generated list (attorney or certified landman), and a copy of the notice provided prior to the hearing and included with hearing materials.
- H. Referral Period: Within an appropriate timeframe following Certification of Completeness, Staff will send information about the application to parties of interest such as an established referral agency. Referral agencies shall have a set period of time to make comments. Comments shall be reviewed by Staff, provided to the applicant, and provided in packet materials for the public hearing process. When comments are received prior to the Public Hearing, the applicant shall address public comments in a report to be included with the record prior to the Public Hearing.
  - 1. The applicant shall address staff and referral agency comments within six (6) months of the date of the Staff Report. Should six months' time pass without adequate response from the applicant, the application shall be determined to be withdrawn. Remaining development fees shall be refunded.
  - 2. Technical Review Meeting. Staff may determine if a meeting with specific referral agencies or with the Town is required prior to proceeding forward with submittals or public hearings. In the event Staff determines that a meeting with specific referral agency or agencies is needed, such meeting is required to be held before Staff proceeds forward with development review. The applicant may request a Technical Review Meeting and staff shall accommodate this request. If requested by the applicant, the applicant shall coordinate the attendance of referral agencies that are not part of the Town organization.
  - 3. Criteria for Approval: Criteria for Approval is found in the Code section relative to each application process. Each new development application and each redevelopment application shall include a narrative describing how the proposal will meet the Intent section of these Regulations as well as the Criteria for Approval for specific application types.
- I. Public Hearing Publication: The Town shall publish notice in a newspaper of general circulation of the upcoming public hearing(s) according to the Hearing and Notification Section of this Chapter.
- J. Sign Posting: After providing the Town with a sign deposit, the Applicant shall post a sign along all public road frontages. Timing for the sign posting can be found in the Hearing and Notification Section of this Chapter. The Applicant shall return the sign to the Town following the last Public Hearing concerning the proposed application. If the sign is damaged, the deposit shall not be returned to the Applicant.
- K. Planning Commission Hearing: If required, the Planning Commission shall hold a Public Hearing to review the land use application. The Planning Commission shall make a recommendation to the Board of Trustees to approve, conditionally approve or deny the application. The Planning Commission is the final Public Hearing on final plats. Notwithstanding that, the applicant may request the Board of Trustees notice and hold a public hearing and such public hearing on the final plat is necessary for purposes of creating a vested right pursuant to the Berthoud Development Code.
- L. Town Board of Trustees Public Hearing: If required for the purpose of establishing a vested right, the Board of Trustees shall, after receiving the report and recommendation from the Planning Commission, hold a public hearing, after proper notice is given and act upon the proposed land use application. Following the Public Hearing, the Board shall consider the comments and evidence presented at the hearing, evaluate

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the application in accordance with the Criteria for Approval found in this Chapter and approve, approve with conditions or deny the application, in whole or in part.

M. Ordinance or Resolution: Land use applications receiving a Public Hearing shall be approved by either a Resolution or Ordinance as outlined in the Subdivision Land Use Processes and Procedures Table.

- N. Conditions of Approval and Recording: Prior to recording the documents for a land use application eligible for an administrative approval or those applications requiring a Public Hearing, the Applicant shall address all Conditions of Approval contained in the Staff Report and the Ordinance or Resolution, as required. Once staff is satisfied that the Conditions of Approval have been met, appropriate documents shall be recorded with the office of either the Larimer or Weld County Clerk and Recorder.
- O. Upon approval of any subdivision or land use application, the applicant has thirty days to finalize the materials and return documents to the Town for recording. If materials are not provided within this timeframe, the applicant may be considered void.

**Subdivision and Land Use Processes and Procedures Table**

Application Process	Pre-application meeting	Application Submittal	Certification of Completeness	Notice, Publication and Sign Posting	Mineral Notice	Referral Period	Administrative Option	Planning Commission	Town Board of Trustees	Criteria for Approval	Ordinance/Resolution	Conditions of Approval Addressed & Development Agreement	Record documents
<b>Application Type</b>													
Use by Special Review for Allowed Marijuana Business	Yes	Yes	Yes	Refer to the Hearing and Notification requirements Section of this Chapter of the Municipal Code	Yes	Yes	No	Yes	Yes	Yes	Resolution	Yes	Yes
Wireless Communication Facilities, use by right	Yes	Yes	Yes		No	Yes	Yes	No	No	Yes	No	Yes	Yes
Wireless Communication Facilities, Use by Special Review	Yes	Yes	Yes		No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Wireless Communication Facilities, Eligible Facilities	Yes	Yes	Yes		No	Yes	Yes	No	No	Yes	No	Yes	Yes
Site Plan	Yes	Yes	Yes		No	Yes	Yes	No	No	Yes	Administrative	Yes	Yes
Variance	Yes	Yes	Yes		No	Yes	No	Acting as BOA	Optional	Yes	Resolution	Yes	Record Resolution w/ Minutes as an attachment
Waiver	Yes	Yes	Yes		No	Yes	Optional	Yes	No	Yes	Resolution	Yes	Record Resolution w/ Minutes as an attachment
Annexation	Yes	Yes	Yes		Yes	Yes	No	No	Yes	Yes, also see C.R.S.	Ordinance	Yes	Yes
Zoning Amendment	Yes	Yes	Yes		No	Yes	No	Yes	Yes	Yes	Ordinance	Yes	Yes
Text Amendment to the Development Code	No	Yes	Yes		No	Optional	No	Yes	Yes	Yes	Ordinance	No	No
Neighborhood Master Plan	Yes	Yes	Yes		Yes	Yes	No, Minor Amendment Optional	Yes	Yes	Yes	Resolution	Yes	Yes
Preliminary Plat	Yes	Yes	Yes		Yes	Yes	No	Yes	Yes	Yes	Resolution	Yes	Yes
Final Plat See additional steps for vesting	Yes	Yes	Yes		No	Yes	Yes	Optional	No	Yes	Optional	Yes	Yes
Minor Sub Plat	Yes	Yes	Yes		Yes	Yes	No	Yes	No	Yes	Resolution	Yes	Yes
Administrative Adjustment to recorded plats	Yes	Yes	Yes		No	Optional	Yes	No	No	Yes	No	Yes	Yes
Replat	Yes	Yes	Yes		No	Yes	No	Yes	Yes	Yes	Resolution	Yes	Yes
Home Occupation	No	Yes	Yes		No	Optional	Yes	No	No	No	No	Yes	No
Short-term Rental	No	Yes	Yes	Refer to the Short Term Rental Section of this Chapter	No	No	Yes	No	No	Yes	No	No	No

NOTE: Processes with an "Optional" notation are for staff to determine the outcome of the step.

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### 30-5-104 Subdivision Application materials

A. Application submittal requirements: The following table outlines the submittal requirements and standards for each subdivision application type. A description of the application item follows the table below. At the discretion of the Community Development Director, and depending on the particular project and potential impacts to the community, the Town reserves the right to waive certain requirements and request additional materials based upon the details of the specific project. Waiver or the request of additional materials may be made at the Pre-Application meeting or during the development review process.

**Subdivision Application Materials Table**

Application item	Preliminary Plat	Final Plat	Minor Subdivision	Neighborhood Master Plan	Administrative Adjustment	Replat	Zoning
Application Forms and Fees	X	X	X	X	X	X	X
Property Ownership	X	X	X	X	X	X	X
Neighboring Property owner list	X	X	X	X	X	X	X
Plat/Mapping Products	X	X	X	X	X	X	X
Grading plan and drainage report	Preliminary	Final	Final	Concept	X		
Construction drawings	80%	100%	100%				
Landscape, irrigation, and open space plans	Preliminary	Final	Final	Concept			
Architectural Diversity Plan	Preliminary	Final	Final	Concept			
Narrative materials	X	X	X	X	X	X	X
Supporting Documents	Preliminary	Final	Final	Preliminary			X
Agreements	Preliminary	Final	Final	Concept			X

B. Descriptions of application materials for all Subdivision processes. The Town reserves the right to waive certain requirements and request additional materials based upon the details of the specific project. Waiver or the request of additional materials may be made at the Pre-Application meeting or during the development review process. All application materials shall be submitted in a method and format acceptable to the Town.

1. Application Forms and Fees
  - a. Application Form provided by the Town
  - b. Memorandum of Understanding for Development Review fees on a form provided by the Town
  - c. Fees. The required application fees and any development review deposit fees will be provided to the applicant at the pre-application meeting. Fees are due upon submittal of the application.
2. Evidence of property ownership
  - a. Title Commitment: Dated no more than 30 days from the date of application submittal.

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3. Neighboring Property owner list
  - a. A list of property owners and the source of the list in a format acceptable to the Town.
  - b. Refer to the public hearing and general notice provisions section of this Chapter.
4. General standards for all mapping and platting products. All Plat/Mapping products shall contain the following elements and follow the standards listed below:
  - a. Preparation
    - a. Prepared by a Professional Land Surveyor licensed to do business in the state and shall be a neat, clear, legible and reproducible document. The plat/map submitted for recording shall contain the original signatures and seals in permanent ink. If the County recording the document will accept electronic signatures, these may be provided.
    - b. All work shall comply with C.R.S. 38-50-101 and 38-51-101, et seq.
    - c. All work shall comply with the requirements of the Bylaws and Rules of Procedure of the State Board of Registration for Professional Engineers and Professional Land Surveyors and the Rules of Professional Conduct of the State Board of Registration for Professional Engineers and Professional Land Surveyors – Board Policy Statement.
  - b. Form for maps, plats, plans, engineering documents and report
    - a. The document to be recorded should the project be approved shall be delineated in permanent black ink on a dimensionally stable polyester sheet such as Mylar, or other material as approved by the Town.
    - b. Sheet specifications
      - a. Each sheet shall be twenty-four (24) inches in height and thirty-six (36) inches in width.
      - b. Drawn at a scale of one inch equals one hundred feet (1" = 100') or one inch equals two hundred feet (1" = 200').
      - c. Project title shall be at the top of each sheet including:
        - a. Project name
        - b. Section, Township, Range, County of either Larimer or Weld, State of Colorado
      - d. North arrow
      - e. A statement of known engineering scale and a bar-type scale
      - f. A statement defining lineal units
      - g. Date of preparation
      - h. Revision block which is updated with each submittal
      - i. A legend designating all abbreviations, line types and symbols
      - j. Names, telephone numbers, and addresses of the applicant, developer, engineer, surveyor and property owner. Application materials shall be signed by each prior to submittal
      - k. A scale drawing of all boundaries of the entire subject property on one sheet and written property description of the exterior boundary of the subject property.
      - l. Include acreage to the nearest one-hundredth (0.01) of an acre.
      - m. All distances shall be shown to the nearest one hundredth (0.01) of a foot and bearings to the nearest second. All distances shall be given in ground, not grid, distance.
      - n. All field-measured dimensions necessary to establish the boundaries on the ground and all dimensions for newly created lots necessary to establish the boundaries on the ground.
      - o. Bearing, distance, and curve data for all lot boundaries. All curve data shall include arc length, radius, central angle, chord bearing and chord distance. Boundaries shall be clearly indicated on the plat. Recorded bearings and distances that vary with measured bearings and distances shall be shown in parentheses along with measured bearings and distances.
      - p. The survey shown shall not have an error greater than one part in 10,000.

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- q. A basis of bearing statement.
- r. The exterior boundary shall be tied to two (2) or more monumented public land survey monuments.
- s. Location and a description of all monuments, both found and set, that mark the boundaries of the property.
- t. Any conflicting boundary evidence (fences, conflicting monuments, physical features, etc.).
- u. All recorded, proposed and apparent easements and rights-of-way, including the purpose, width, and location of all existing and proposed easements located on the property and adjacent to the property. A plat note may be necessary to provide complete information of the purpose of the easement. Proposed easements shall have bearings, distances, and curve data sufficient to allow them to be established on the ground. These shall be labeled and dimensioned.
- v. All existing and proposed trails and sidewalks on and adjacent to the property (labeled and dimensioned).
- w. The location of any oil and gas facilities within two thousand feet (2,000) of the project boundary, described by latitude and longitude.
- x. Hydrologic features, including, but not limited to, irrigation canals and ditches on the subject property.
- y. The limits of any Special Flood Hazard Area on the subject property, and the source of the information provided.
- z. Limits of any areas of Geologic Hazard on the subject property, and the source of the information provided.
- aa. Parcels excepted from inclusion noted as "not included in this subdivision" and the boundary completely indicated by bearings and distances.
- bb. The names of property owners with the parcel boundary, parcel number and zoning classification of adjoining properties.
- cc. Applicable plat certificates and notes provided by the Town.
- dd. Topography at 2' contour intervals. Source may be from the United States Geological Survey (USGS).
- ee. Metes and bounds legal description of the subject property with closure statement and total acreage. The exterior boundary of the project and boundaries of all lots, tracts and outlots shall have a closure accuracy of one-hundredth (0.01) foot.
- c. A land use table that details the following:
  - a. Total project acreage
  - b. Total number and total acreage of each lot, outlot, tract and block
  - c. Total acreage of each proposed zone district/character district
  - d. Total acreage of road rights-of-way
  - e. Total number of dwelling units for residential lots and dwelling density per acre and character district
  - f. Acreage of each different land use or zoning classification proposed
  - g. For commercial/industrial developments, include the floor area ratio and identify compliance with the Commercial and Industrial Standards section of this Code.
  - h. For residential developments include the housing diversity counts and percentages and identify compliance with the Residential Design Standards section of this Code.
  - i. Lot, track, outlot and block numbers shall be:
    - a. Numbered in ascending numerical and consecutive order beginning with "Lot 1," for example

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- b. Include square footage or acreage to two decimal places of each lot or tract
  - d. Vicinity map
    - a. Minimum scale of one inch equals two thousand feet (1" = 2,000')
    - b. Illustrate adjoining properties for a distance of one-quarter (1/4) mile
    - c. Provide a north arrow
    - d. Delineate the project boundary
    - e. Identify adjacent roads, municipal boundaries, ditches and irrigation systems, railroads, etc. which shall be labeled
    - f. Location of oil and gas facilities on the property and within one-half mile of the property boundary. The distances shall be dimensioned. If there are no facilities within this distance, note the source of findings.
    - g. The section and dashed quarter section lines shall be included and labeled
  - e. Development Overview Sheet. One sheet shall contain the following:
    - a. Street layout
    - b. Lot and Block arrangement
    - c. Floodplain/Floodway
    - d. Trails and sidewalks in relationship to neighboring properties and master plans impacting the project
    - e. Project phasing plan, if proposed.
  - f. Index sheet shall be one sheet and contain the following:
    - a. Street names
    - b. Block and Lot arrangement and numbers
    - c. Outlot and Tract numbers and arrangement
    - d. Overlapping match lines, if necessary
  - g. Existing site conditions map.
    - a. Show and label the physical characteristics and natural site constraints of the property and existing on-site structures, irrigation equipment, ditches, or laterals, utility lines, natural gas pipelines, overhead lines, railroads, easements and rights-of-way listed in title work, etc.
- 5. Construction Drawings
  - a. Completeness expectations. Unless specified otherwise, all Construction Drawings and engineering documents shall be prepared according to the following expectations:
    - a. 80% Plans will contain most civil engineering design elements such as site grading, drainage, utilities and roadways.
    - b. 100% plans are fully detailed with all civil engineering components finalized including precise calculations, material specifications and complete annotations for construction. All documents are to be fully-coordinated across disciplines inclusive of acreage cross-referencing, finalized alignment, profiles and details for elements like storm drains, roadways or retaining walls, for example.
  - b. Site improvements plan.
    - a. Show and label the anticipated amenities including but not limited to mailbox pedestals, development identification signs, bus stop locations and shelters, parks, trails, sidewalks, common open space, conservation areas, art, fixtures, neighborhood identity features, etc.
    - b. Street network and connectivity to the existing road network including all proposed access points; alley and road classification, plans and profiles.
    - c. Include a table indicating the name of the entity who will maintain and own the amenities after the site has been released of warranty.
    - d. Include an installation schedule.
    - e. Provide a draft deed for public lands for dedication of public sites for open space or other civic purposes.

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- c. Utility plan. Refer to the Town of Berthoud Engineering and Infrastructure Design Standards and Construction Specifications for the details required for application submittal.
- d. Grading Plan and Drainage Report. Refer to the Town of Berthoud Engineering and Infrastructure Design Standards and Construction Specifications for the details required for application submittal.
- e. Lighting Plan prepared in accordance with the Outdoor Lighting and Dark Skies Section of this Chapter.
- f. Geotechnical Report.
- g. 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 the following:
  - a. Site conditions
  - b. Geologic conditions
  - c. Engineering considerations and limitations
  - d. Additional investigations necessary per the CGS

6. Landscape, Irrigation, Parks and Open Space and Parking plan prepared in accordance with the Town's Landscape Design Guidelines and the Design Section of this Chapter and shall include:

- 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 two-foot contours (based on USGS datum).
- h. General grading concepts for improvements, typical cross-sections of streets and special treatment areas.
- i. Existing site features including ditches, trees, shrubs and groundcovers and any drainage ways, wetlands or wildlife habitat present on the site.
- j. 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.
- k. Natural features, wetlands, wildlife corridors, floodplains, streams, ditches and other waterways.
- l. 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.
- m. The location of existing and proposed utilities and easements. Utility lines can be 'ghosted' in on the landscape plan to vary the line types for cleaner drawings.
- n. Acreage and percentages of parks, trails and open spaces.
- o. Landscaping around signage, structures and site amenities.
- p. The extent and location of proposed trees, tree strips, shrubs, groundcovers, perennials turf, fences, walls, and other site amenities, for example. Plant materials are to be drawn at two-thirds of its mature size.
- q. Landscape schedule [i.e. a table] 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. Provide the percentage of each material to illustrate how the diversity standards are met.
- r. Location of fences, walks, etc.

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- s. 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.
- t. Detail drawings at 1" = 20' to illustrate typical perimeter treatment, buffering, front yard and any special treatment areas on site.
- u. Sight distance triangles must be shown at street intersections pursuant to this Code.
- v. 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.
- w. Proposed grading of the project site, including drainage swales, detention basins, retaining walls and any off-site infrastructure improvements.
- x. Notes for conservation and retention of top soil and landscape soil preparation.
- y. Restoration, revegetation or enhancement of disturbed natural areas or open space feature.
- z. Park structures, signage, play equipment, and other landscape or park amenities and appurtenances.
- aa. Buffering plan
  - a. Dimensioned buffer areas
  - b. Acreage of buffer areas
  - c. Proposed use of buffer areas
- bb. Park and open space plan
  - a. Park and open space distribution and location with acreages and percentages
  - b. Neighborhood identity features
  - c. Required buffer areas
  - d. Connection to regional trails, and trails and sidewalks located on adjacent properties
- cc. Pedestrian network
  - a. Location of all trails and sidewalks, and connection to the regional trails system and sidewalks and trails on adjacent properties
  - b. Plan for off-site sidewalk or trail improvements including  $\frac{1}{2}$  mile pedestrian shed beyond the project boundary.
  - c. Depiction of bike lanes or other multi-modal features.
- dd. Provide a landscape maintenance plan inclusive of irrigation practices for different planting areas, weed control, replacement of diseased or dead materials, and mowing. Refer to the Landscape Guidelines. The landscape maintenance plan shall be submitted with the Final Plat.
- ee. Irrigation Plan shall be prepared in accordance with the Town's Irrigation Plan Guidelines. The Irrigation Plan shall be submitted with the Final Plat.
- ff. Neighborhood identity features shall be identified and precedent images or product specifications are to be provided.
  - gg. Parking plan in compliance with the parking section of the Design Standards found in this Chapter.
- hh. Hydrozone analysis shall detail the proposed consumption of potable and non-potable water for both interior and exterior uses. Indicate the intended source of water for potable and non-potable water uses. A table shall be created and placed on the Landscape Plan illustrating acreage per consumption type outlined in the Water Rights Dedication section of this Chapter. A sample table is included below as an illustration of the data required:

Project Name Hydrozone for landscaping common spaces prepared by: Proposed source of water:										
	Project acreage	X	Water demand in acre feet/ acre	=	Total Acre-feet of water needed	Project acreage	X	Water demand in SFE/acre	=	Total number of SFE needed
Natural areas, open water, impervious surface			0					0		
Native seed area			0.8					2		
Lawn grass, playing fields, tree/shrub beds, etc.			3					7.5		
Non-turf vegetation			1.33					3.25		
Total quantity of acre-feet of water needed						Total quantity of SFE needed				

To complete the following table, refer to the Water Rights Dedication section of this Chapter and list the proposed lot sizes in the right hand column and then complete the table per the column titles.

Project Name Water Calculation for potable use prepared by: Proposed source of water:			
	If non-potable water is proposed for irrigation on individual lots, provide the quantity required in this column	If non-potable water is proposed for lot irrigation, provide the quantity of potable water required in this column	If potable water is proposed for both outdoor and indoor uses, provide the water required in this column
Lot size/ number of lots			
Lot size/ number of lots			
Lot size/ number of lots			
Lot size/ number of lots			
Total SFE required			

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.

7. Architectural diversity plan/common architectural guidelines for non-residential projects inclusive of signage shall be provided.

- Graphics or illustrations of proposed exterior elevations.
- Provide complete building elevations, drawn to scale, with illustrations of all colors and identifying major materials to be used in the structure(s).
- Building floor plans, sectional drawings, perspective drawings, models, and/or computer visualizations when the impacts of a proposal warrant such information.
- Architectural standards for the development. Standards in addition to those found in the Town's Architectural Guidelines and Design Standards section of this Chapter shall be provided to illustrate a sense of place for individual developments.
- Development sign plan.

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- i. Provide a plan illustrating a unified sign plan for the development. Illustrate how the sign will be integrated into the overall site inclusive of landscaping, sight distance, etc.
- 8. Narrative materials.
  - a. The applicant shall state how the requirements of the Intent Section will be met if not exceeded.
  - b. General description of the plan to manage drainage and stormwater
  - c. Statements regarding utility provision (potable and non-potable water, sanitary sewer, stormwater management, dry utilities). Describe utility capacity and the need to extend or upgrade lines. Describe the source of water and the quantity of water needed.
  - d. Duplicate the landscape plan hydrazone analysis in narrative materials.
  - e. Describe how the landscape and irrigation plans meet the requirements of this Chapter, the Landscape Design Guidelines, and any overlay district the property is located within.
  - f. Describe key findings in the Traffic Impact Study inclusive of anticipated on- and off-site improvements and phasing for these improvements.
- 9. Supporting documents.
  - a. Traffic Impact Study. This study must be prepared by a professional traffic engineer and identify the project 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.
  - b. Mineral, oil and gas 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. See C.R.S. . §§ 24-65.5-101, et seq.
  - c. Colorado Historical Society (CHS) records search. At the discretion of the Town and in consultation with the Berthoud Historic Preservation Advisory Committee (HPAC), 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 HPAC.
  - d. 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.
  - e. 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 to be accepted by the Town.
- 10. Agreements. The following agreement shall be secured and provided to the Town when requested.
  - a. Development Agreement. Prior to recording the final subdivision approval document, the applicant shall enter into a Development Agreement with the Town for all public improvements including on-site and off-site improvements which may include and not be limited to water, sanitary sewer, non-potable water, stormwater, sidewalks, street trees, traffic improvements, for example. The Town Board of Trustees hereby delegates to the Town Administrator the authority to approve and sign all development agreements between the applicant and the Town. See the Development Agreement and the Construction of Public Improvements Sections of this Chapter.
  - b. Floodplain use permit from the Town.
  - c. Agreement with irrigation companies.
  - d. Other agreements that may be necessary to allow the subdivision of land to occur.
- 1. Additional materials. At the Town's discretion and depending on the proposed subdivision and its potential impact to the community, the Town may request additional materials.

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## 30-5-105 Subdivision types

The Town of Berthoud has many different application types of subdivisions, each of which will be described in this section. The required application materials will be listed in the Subdivision Application Materials Table and narrative found in this section.

A. For all subdivisions, the following applies:

1. Application Process. Refer to the Land Use Processes and Procedures Table and narrative section.
2. Public Notice. Refer to the Public Hearing and General Notice Provisions Table.
3. Application Materials. Refer to the Subdivision Application Materials Table and narrative section.

4. Criteria for Approval. Refer to the Intent section as well as additional Criteria for Approval in each individual application type found below. The Criteria for Approval is used to evaluate if the application can be approved.

B. Minor Subdivision.

1. The Minor Subdivision provides a streamlined land division process that allows the creation of no more than six total lots, from one parent tract or lot that meet the requirements of this Code.

2. To be eligible for the Minor Subdivision process, the following shall apply:

- a.
  - a. The property has been previously platted within the Town; and
  - b. The proposed project includes no additional public right-of-way dedication necessary for access to the development.

3. If denied, the applicant may appeal the Planning Commission's decision to the Town Board of Trustees.

*4 Timeframe related to approval of Minor Subdivision.* A Minor Subdivision is in full force and effect for one year from date of recordation. Applicants may request a single, one-year extension from the Town prior to termination of Minor Subdivision approval.

C. Neighborhood Master Plan.

1. The Neighborhood Master Plan is a concept design of the development and shall be submitted with a Zoning, Rezoning or Preliminary Plat application that includes a residential component, and depicts what the applicant envisions for the overall development, including zoning, transportation, pedestrian network, parks, open space, subdivision identity standards and other amenities, as well as precedent images. The Neighborhood Master Plan shall convey how the applicant has integrated the Town's master plans, architectural guidelines, landscape design guidelines, residential diversity standards, and neighborhood identity features, for example into their development proposal. The Neighborhood Master Plan is the method to describe how a proposed development fits into the context of Berthoud as a whole and the immediate surrounding areas, A Neighborhood Master Plan is not required for a Minor Subdivision.

*a. Previously approved concept plans.* Concept plans approved before the amendment of this section of the ordinance shall not be entitled to any vested development rights.

*b. Timeframe related to approval of Neighborhood Master Plan.* A Neighborhood Master Plan is in full force and effect for one year from date of Town Board action. Applicants may request a single, one-year extension from the Town prior to termination of the Neighborhood Master Plan approvalNeighborhood Master Plan and the Preliminary Plat approval.

*c. Minor amendments.* Minor amendments to the Neighborhood Master Plan may be approved administratively under the following conditions:

1. Does not change any land use, or location of any land use.
2. Does not change the number of lots or density by more than ten percent.

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3. Does not contain significant changes in arterial or collector street alignment and/or access points, or other major public elements such as drainage improvements, utility lines or facilities.
4. Does not change any measurable standard (other than above), such as open space, or park area, by more than ten percent.

D. Preliminary Plat.

1. A Preliminary Plat is used to depict preliminary engineering studies, lot lines and construction documents. A Preliminary Plat illustrates how a subdivision meets the design and development requirements found in the Town Code inclusive of infrastructure, landscaping, traffic and lot lay-out.
2. *Preliminary Plat Required:* A Preliminary Plat is required for all subdivisions. No Final Plat will be processed or approved without prior Preliminary Plat approval.
3. *Phasing.* A Preliminary Plat shall designate the boundaries of phases for which separate Final Plats may 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.
4. The Preliminary Plat shall be in substantial compliance with the approved Neighborhood Master Plan. For the purposes of this Code, "substantial conformance" includes design adjustments made to meet any conditions of the Neighborhood Master Plan approval, and is determined as follows:
  - a. Does not change any land use.
  - b. Does not change the number of lots or residential density by more than 5%.
  - c. Does not contain changes which would render the preliminary plan 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 percent.
  - f. Preliminary Plats determined by the Community Development Director to have changes that exceed the definition of "substantial conformance" as above shall not be processed until a new Neighborhood Master Plan has been approved.

5. Every approval of a Preliminary Plat by the Board of Trustees shall constitute the Board's delegation to the Mayor to sign the final plat accepting the dedications set forth therein.
6. In order to establish the three-year statutory vested right, the applicant must request a required public hearing on a site specific development plan before the Board of Trustees. The public hearing on the Preliminary Plat satisfies this requirement provided that the Final Plat is identical to the approved Preliminary Plat. This means that the Final Plat is identical to the Preliminary Plat as submitted for the Public Hearing and incorporates only those modifications and conditions expressly provided for in the Preliminary Plat approving resolution. Notwithstanding any contrary provision, a Preliminary Plat is not a site specific development plan and no vested right is established by the approval of a Preliminary Plat.

E. Final Plat.

- 1 A Final Plat is used to complete the final engineering studies, lot lines and construction documents. A Final Plat illustrates how a subdivision meets the design and development requirements found in the Town Code inclusive of infrastructure, landscaping, traffic and lot lay-out.
- 2 The Final Plat must be in substantial conformance with the approved Preliminary Plat to receive an administrative review. For the purposes of this Code, "substantial conformance" includes design adjustments made to meet any conditions of the preliminary plan approval, and is determined as follows:
  - a. Does not change any land use.

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- b. Does not change the number of lots or residential density.
- 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 parks, open space, public spaces, drainage improvements, utility lines or facilities.
- e. Does not change any measurable standard (other than above) by more than 5 percent.
- f. How the Applicant has addressed conditions of approval, if any were imposed during the Preliminary Plat by the Planning Commission and/or the Town Board of Trustees.
- g. Final Plats determined by the Community Development Director to have changes that exceed the definition of "substantial conformance" as above shall be processed through to the Planning Commission for a public hearing for a Preliminary Plat. .

1. The Final Plat must be in substantial conformance with the approved Preliminary Plat when proceeding forward with a traditional public hearing. For the purposes of this Code, "substantial conformance" includes design adjustments made to meet any conditions of the preliminary plan approval, and is determined as follows:
  - a. Does not change any land use.
  - b. Does not change the number of lots or residential density by more than five (5) percent.
  - 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 parks, open space, public spaces, drainage improvements, utility lines or facilities.
  - e. Does not change any measurable standard (other than above) by more than 15 percent.
  - f. How the Applicant has addressed conditions of approval, if any were imposed during the Preliminary Plat by the Planning Commission and/or the Town Board of Trustees.
2. Final Plats determined by the Community Development Director to have changes that exceed the definition of "substantial conformance" as above shall be processed through to the Planning Commission for a public hearing for a Preliminary Plat. .
3. *Timeframe related to approval of Final Plat.* Unless a vested right is established in accordance with the Berthoud Development Code, a Final Plat is in full force and effect for one year from date of recordation. Final Plat Applicants may request a single, one-year extension from the Town prior to termination of Final Plat Subdivision approval.
4. *Vesting; Final Plat Identical to Preliminary Plat.* In the event the Final Plat is identical to the approved Preliminary Plat, no additional public hearing is needed for the purposes of establishing a vested right. In such cases the Final Plat may be administratively approved and a vested property right of three years shall be deemed established upon the administrative approval of the Final Plat except that the period of time permitted by law for the exercise of rights or referendum and judicial review shall begin to run until the date of publication, in a newspaper of the Town granting the approval.
5. *Vesting; Final Plat Not Identical to Preliminary Plat.* In the event the Final Plat is not identical to the approved Preliminary Plat, and the applicant desires that the Final Plat establish a vested right, the applicant may request the Board of Trustees notice and hold a public hearing on the final plat and where applicable in cases where the applicant request rights exceeding three years, the proposed development agreement, for purposes of establishing a vested right pursuant to the Berthoud Development Code.
  - i. The following application materials are required:
    - i. Application Forms and Fees

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1. Application Form provided by the Town
2. Memorandum of Understanding for Development Review fees on a form provided by the Town
3. Fees. The required application fees and any development review deposit fees will be provided to the applicant at the pre-application meeting. Fees are due upon submittal of the application.

- ii. Evidence of property ownership
  1. Title Commitment: Dated no more than 30 days from the date of application submittal.
- iii. Neighboring Property owner list
  1. A list of property owners and the source of the list in a format acceptable to the Town.
  2. Refer to the public hearing and general notice provisions section of this Chapter.
- iv. Letter of request for vesting
- v. Approved Final Plat
- vi. Approved Development Agreement
  1. Where the applicant requests rights be vested for a period exceeding three years, a Development Agreement providing for such rights to be vested for a period exceeding three years may only be approved by the Town Board in its legislative discretion pursuant to the factors provided in C.R.S. Section 24-68-104.

- ii. The following process shall be followed for a vesting request of a Final Plat:
  - i. The standards established in the Public Hearing and General Notice Provisions Table shall be followed.
  - ii. After proper notice, a public hearing shall be held before the Town Trustees. The Town Board of Trustees may approve, approve with conditions, or deny the final plat.

5. *Early grading.* After submittal of the Final Plat, an applicant may request approval to proceed with preliminary grading of the project area under the following circumstances. The Town reserves the right to approve or deny the request. This is an option to be approved by the Town.

- a. The construction documents must be signed and stamped by a professional engineer licensed to practice in the State of Colorado. The plans shall include a construction plan set for grading and drainage and approved by the Town Engineer; and
- b. The Town Engineering issues a memo authorizing specific grading work; and
- c. The applicant accepts the risk of early grading and stormwater management / water quality feature installation; and
- d. The applicant understands there is no presumption of any Final Plat approval expressed or implied by any authorization of early grading; and
- e. The applicant shall enter into an Agreement with the Town including posting surety in a form acceptable to the Town along with a cost estimate of the work to be performed, the cost of restabilizing the disturbed property, and other work should the applicant not proceed with the development post disturbance; and
- f. The applicant shall provide the Town with a Stormwater Management Plan approved by the Town Engineer and an approved Construction Stormwater Discharge Permit issued by the State of Colorado, if needed; and

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g. The applicant shall hold a Pre-Construction meeting with Town representatives two weeks prior to work proceeding on site.

F. Replat

1. The Replat process provides for modifications to recorded plats. This process shall not be used to convey or create additional lots or tracts than originally existed.

2. This process shall be required for the following modifications to a recorded plat:

- a. Any change to a condition or note on a plat;
- b. The vacation of any right-of-way that results in a new lot configuration;
- c. The vacation of rights-of-way and easements of record over which the Town Board of Trustees have jurisdiction that are no longer needed after complete review by all appropriate agencies; or
- d. The relocation or dedication of new right-of-way within a previously recorded subdivision.

### **30-5-106 Administrative adjustment to recorded plats**

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. Consolidation of any number of lots into a single lot,
- b. Modification or reconfiguration of the common property line between contiguous legal lots to reflect the generally recognized use of the property, or where they conform to the historic usage of the property.
- c. Minor corrections to recorded plats that do not involve lot consolidations or changing lot boundaries.

C. *Administrative Adjustment prohibited.* The Town Administrator is not authorized to approve, execute and record plats where the following occurs:

- a. Result in the creation of additional lots;
- b. Affect access, drainage or utility easements or rights-of-way serving the property or other properties in the area;
- c. Create nonconforming resultant lots that do not meet the required minimum lot size standard of the applicable zone district;
- d. Create a nonconforming setback for any existing building;
- e. A change to a condition or note on a plat; or
- f. 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

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D. . *Application materials.* In addition to the application materials listed in the Subdivision Application Materials Table, 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 subject to the proposed administrative adjustment request. . The petition shall also contain such additional information that the Town may deem appropriate.

### **30-5-107 Land Use Application Materials**

A. The Town of Berthoud has many different types of applications to authorize use of property. Each type of land use application process will be described in this section. The required application materials will be listed in the Land Use Application Materials Table and narrative found in this section.

B. For all land use applications, the following applies:

1. Application Process. Refer to the Land Use Processes and Procedures Table and narrative section.
2. Public Notice. Refer to the Public Hearing and General Notice Provisions Table.
3. Criteria for Approval. Refer to the Intent section as well as additional Criteria for Approval in each individual application type found below. The Criteria for Approval is used to evaluate if the application can be approved.
4. Upon approval of any land use application, the applicant has thirty days to finalize the materials and return documents to the Town for recording. If materials are not provided within this timeframe, the applicant may be considered void.
5. The Town Administrator, the Community Development Director, or their designee may waive certain application requirements, or may require additional application requirements, for land use applications for development or redevelopment of property within either the Mountain Avenue Overlay District or the Innovation Overlay District. Rationale for waiving such requirements shall be documented in writing and filed with application materials with the application record. Rationale shall be relative to site-specific conditions, not due to inconvenience or applicant/owner-induced hardships.

C. Application materials for a Site Plan and Use by Special Review applications are listed below.

1. Application Forms and Fees
  - a. Application Form provided by the Town
  - b. Memorandum of Understanding for Development Review fees on a form provided by the Town
  - c. Fees. The required application fees and any development review deposit fees will be provided to the applicant at the pre-application meeting. Fees are due upon submittal of the application.
2. Evidence of property ownership
  - a. Title Commitment: Dated no more than 30 days from the date of application submittal.
3. Neighboring Property owner list
  - a. A list of property owners and the source of the list in a format acceptable to the Town.
  - b. Refer to the public hearing and general notice provisions section of Chapter 30 of the Berthoud Municipal Code.
4. General standards for all mapping products found in the subdivision section of this Code shall be used as a guideline for land use mapping products. Depending on the nature of the land use permit, some of the requirements for a subdivision are not applicable for land use. Each applicant should work with the Community Development Department regarding expectations of the mapping products for land use permitting.
5. Construction Drawings at the 100% level are required to be submitted with land use applications. These plans are to be fully detailed with all civil engineering components finalized including precise calculations, material specifications and complete annotations for construction. All documents are to be fully-coordinated across disciplines inclusive of accurate cross-referencing, finalized alignment, profiles and details for elements like storm drains, roadways or retaining walls, for example. Applications should review the Construction Drawings requirements found in the Subdivision

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requirements section of this Code and shall be used as a guideline for land use construction drawings. Depending on the nature of the land use permit, some of the requirements for a subdivision are not applicable for land use. Each applicant should work with the Community Development Department regarding expectations of the mapping products for land use permitting.

- a. Site improvements plan.
- b. Utility plan. Refer to the Town of Berthoud Engineering and Infrastructure Design Standards and Construction Specifications for the details required for application submittal.
- c. Grading Plan and Drainage Report. Refer to the Town of Berthoud Engineering and Infrastructure Design Standards and Construction Specifications for the details required for application submittal.
- d. Lighting Plan prepared in accordance with the Outdoor Lighting and Dark Skies Section of this Chapter.
- e. Geotechnical Report.
- f. 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 the following:
  - i. Site conditions
  - ii. Geologic conditions
  - iii. Engineering considerations and limitations
  - iv. Additional investigations necessary per the CGS

6. Landscape, Irrigation, Parks and Open Space and Parking plan prepared in accordance with the Town's Landscape Design Guidelines and the Design Section of this Chapter and shall include:

- i. Project name.
- ii. Scale, north arrow and date of preparation.
- iii. Existing and proposed streets and street names.
- iv. Lot lines, easements and public rights-of-way as shown on the subdivision plat, including gross and net area of all parcels.
- v. Location of proposed building footprints and parking areas.
- vi. Location of storage, loading and service areas.
- vii. Existing and proposed two-foot contours (based on USGS datum).
- viii. General grading concepts for improvements, typical cross-sections of streets and special treatment areas.
- ix. Existing site features including ditches, trees, shrubs and groundcovers and any drainage ways, wetlands or wildlife habitat present on the site.
- x. 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.
- xi. Natural features, wetlands, wildlife corridors, floodplains, streams, ditches and other waterways.
- xii. 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.
- xiii. The location of existing and proposed utilities and easements. Utility lines can be 'ghosted' in on the landscape plan to vary the line types for cleaner drawings.
- xiv. Acreage and percentages of parks, trails and open spaces.
- xv. Landscaping around signage, structures and site amenities.
- xvi. The extent and location of proposed trees, tree strips, shrubs, groundcovers, perennials turf, fences, walls, and other site amenities, for example. Plant materials are to be drawn at two-thirds of its mature size.

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- xvii. Landscape schedule [i.e. a table] 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. Provide the percentage of each material to illustrate how the diversity standards are met.
- xviii. Location of fences, walks, etc.
- xix. 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.
- xx. Detail drawings at 1" = 20' to illustrate typical perimeter treatment, buffering, front yard and any special treatment areas on site.
- xxi. Sight distance triangles must be shown at street intersections pursuant to this Code.
- xxii. 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.
- xxiii. Proposed grading of the project site, including drainage swales, detention basins, retaining walls and any off-site infrastructure improvements.
- xxiv. Notes for conservation and retention of top soil and landscape soil preparation.
- xxv. Restoration, revegetation or enhancement of disturbed natural areas or open space feature.
- xxvi. Park structures, signage, play equipment, and other landscape or park amenities and appurtenances.
- xxvii. Buffering plan
- xxviii. Park and open space plan
  - a. Park and open space distribution and location with acreages and percentages
  - b. Neighborhood identity features
  - c. Required buffer areas
  - d. Connection to regional trails, and trails and sidewalks located on adjacent properties
- xxix. Pedestrian network
  - a. Location of all trails and sidewalks, and connection to the regional trails system and sidewalks and trails on adjacent properties
  - b. Plan for off-site sidewalk or trail improvements including ¼ mile pedestrian shed beyond the project boundary.
  - c. Depiction of bike lanes or other multi-modal features.
  - d.
- xxx. Provide a landscape maintenance plan inclusive of irrigation practices for different planting areas, weed control, replacement of diseased or dead materials, and mowing. Refer to the Landscape Guidelines.
- xxxi. Irrigation Plan shall be prepared in accordance with the Town's Irrigation Plan Guidelines.
- xxxii. Neighborhood identity features shall be identified.
- xxxiii. Parking plan in compliance with the parking section of the Design Standards found in this Chapter.
- xxxiv. Hydrozone analysis shall detail the proposed consumption of potable and non-potable water for both interior and exterior uses. Indicate the intended source of water for potable and non-potable water uses. A table shall be created and placed on the Landscape Plan illustrating acreage per consumption type outlined in the Water Rights Dedication section of this Chapter. A sample table is included below as an illustration of the data required:

Project Name Hydrozone for landscaping common spaces prepared by: Proposed source of water:										
	Project acreage	X	Water demand in acre feet/ acre	=	Total Acre-feet of water needed	Project acreage	X	Water demand in SFE/acre	=	Total number of SFE needed
Natural areas, open water, impervious surface			0					0		
Native seed area			0.8					2		
Lawn grass, playing fields, tree/shrub beds, etc.			3					7.5		
Non-turf vegetation			1.33					3.25		
Total quantity of acre-feet of water needed						Total quantity of SFE needed				

To complete the following table, refer to the Water Rights Dedication section of this Chapter and list the proposed lot sizes in the right hand column and then complete the table per the column titles.

Project Name Water Calculation for potable use prepared by: Proposed source of water:			
	If non-potable water is proposed for irrigation on individual lots, provide the quantity required in this column	If non-potable water is proposed for lot irrigation, provide the quantity of potable water required in this column	If potable water is proposed for both outdoor and indoor uses, provide the water required in this column
Lot size/ number of lots			
Lot size/ number of lots			
Lot size/ number of lots			
Lot size/ number of lots			
Total SFE required			

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.

7. Architectural diversity plan/common architectural guidelines for non-residential projects inclusive of signage shall be provided.
  - a. Graphics or illustrations of proposed exterior elevations.
  - b. Provide complete building elevations, drawn to scale, with illustrations of all colors and identifying major materials to be used in the structure(s).
  - c. Building floor plans, sectional drawings, perspective drawings, models, and/or computer visualizations when the impacts of a proposal warrant such information.
  - d. Architectural standards for the development. Standards in addition to those found in the Town's Architectural Guidelines and Design Standards section of this Chapter shall be provided to illustrate a sense of place for individual developments.
  - e. Development sign plan.

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- j. Provide a plan illustrating a unified sign plan for the development. Illustrate how the sign will be integrated into the overall site inclusive of landscaping, sight distance, etc.
- 8. Narrative materials.
  - a. The applicant shall state how the requirements of the Intent Section will be met if not exceeded.
  - b. General description of the plan to manage drainage and stormwater
  - c. Statements regarding utility provision (potable and non-potable water, sanitary sewer, stormwater management, dry utilities). Describe utility capacity and the need to extend or upgrade lines. Describe the source of water and the quantity of water needed.
  - d. Duplicate the landscape plan hydrazone analysis in narrative materials.
  - e. Describe how the landscape and irrigation plans meet the requirements of this Chapter, the Landscape Design Guidelines, and any overlay district the property is located within.
  - f. Describe key findings in the Traffic Impact Study inclusive of anticipated on- and off-site improvements and phasing for these improvements.
- 9. Supporting documents.
  - a. Traffic Impact Study. This study must be prepared by a professional traffic engineer and identify the project 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.
  - b. Mineral, oil and gas 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. See C.R.S. §§ 24-65.5-101, et seq
  - c. Colorado Historical Society (CHS) records search. At the discretion of the Town and in consultation with the Berthoud Historic Preservation Advisory Committee (HPAC), 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 HPAC.
  - d. 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.
  - e. 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 to be accepted by the Town.
- 10. Agreements. The following agreement shall be secured and provided to the Town when requested.
  - e. Development Agreement. Prior to recording the final subdivision approval document, the applicant shall enter into a Development Agreement with the Town for all public improvements including on-site and off-site improvements which may include and not be limited to water, sanitary sewer, non-potable water, stormwater, sidewalks, street trees, traffic improvements, for example. See the Development Agreement and the Construction of Public Improvements Sections of this Chapter.
  - f. Floodplain use permit from the Town.
  - g. Agreement with irrigation companies.
  - h. Other agreements that may be necessary to allow the subdivision of land to occur.
- 2. Additional materials. At the Town's discretion and depending on the proposed subdivision and its potential impact to the community, the Town may request additional materials.

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### 30-5-108 Land Use Application Types

- A. The Town of Berthoud has many different application types of land use applications, each of which will be described in this section. The required application materials are listed in the Land Use Application Materials Section.
  - 1. Plot Plan. Plot plans illustrate the relationship of a building to the property. A plot plan is required to apply for a building permit and is a part of the building permit process. The plot plan shows where the proposed building or structure will be located on the lot as well as the architectural design of the structure so the Town can establish that the proposed location will comply with all applicable regulations. A plot plan must illustrate the building in relationship to the property including: the building footprint, the tree strip, utility lines, driveways and curb cuts, sidewalks, utility boxes, irrigation lines, street signs, for example. Land use applications and a subdivision process may be required prior to application for a building permit.
  - 2. Site Plan. Site Plans illustrate the relationship of a building, access, site circulation, landscaping, easements, lighting, and parking, for example. 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. Approval of a Site Plan review application is a prerequisite to applying for a building permit for all new multi-family (excluding duplexes), commercial, and industrial developments. Refer to the Land Use Table for uses that may be contemplated through the Site Plan permit process. The standard administrative Site Plan review process is found in the Land Use Processes and Procedures Table. There are three alternatives to the administrative Site Plan and these are listed below.
    - a. The Site Plan Review application process may also be a requirement for redevelopment properties and the change of use of a property or structure. The Town Administrator, the Community Development Director, or their designee may waive certain application requirements for redevelopment of property within either the Mountain Avenue Overlay District or the Innovation Overlay District. Rationale for waiving such requirements shall be documented in writing and filed with application materials with the application record. Rationale shall be relative to site-specific conditions, not due to inconvenience or applicant/owner-induced hardships.
    - b. Site Plan applications may be referred 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.
      - i. The application and notice of the referral shall be sent to the Planning Commission for its review within a Public Hearing and action.
      - ii. 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 this Section
      - iii. *Board consideration of appeals.* The Board of Trustees shall consider any appeal within 45 days of the close of the 14-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.
    - b. Fast Track Site Plan applications for Multi-Family affordable housing developments and Mixed Use developments containing an affordable housing component.
      - i. Multi-family residential developments containing a minimum of fifty (50) percent of the units to be developed for affordable housing are eligible for the expedited review process outlined in the Town of Berthoud Expedited Site Plan Guidelines. Developers may utilize this fast track process or developers may utilize the standard Site Plan process when proposing an Affordable Housing development.

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- j. If a Variance is needed, the Variance Section of this Chapter shall be followed and processed concurrently with the Fast Track Site Plan utilizing the Fast Track processing standards.
- ii. See the definition of Affordable housing in C.R.S. 29-32-101(2) and 29-32-105(2).
- iv. To qualify for the Town's fast track Site Plan process, the developer shall provide documentation on how the affordability and Area Median Income (AMI) standards shall be maintained in perpetuity in a form acceptable to the Town. This information shall be provided during the pre-application process.
- v. Fast Track Site Plan Review (and Variance process, if needed) begins at the time the applicant submits a complete application following the required pre-application process.
  - 1. A complete application shall include the submittal of all Site Plan application materials listed in this Section inclusive of the 100% Construction Document Plans. These materials shall be completed according to site-specific directions provided during the pre-application process.
  - 2. Staff shall have ten business days to determine if the application is complete. If the application is not complete, the applicant is afforded time to provide all necessary application materials.
  - 3. The staff review time of 90 days shall start when the application is determined to be completed.
  - 4. The Standard site plan review process shall be followed for referral agency review, public notice and preparation of the staff report.
  - 5. The applicant shall receive a Notice of Decision found in the Staff Report for an Administrative Approval from the Community Development Director after the review period and the decision shall contain whether the application is approved or denied.
  - 6. Modifications to an approved Fast Track Site Plan may require a new application to be made.
- vi. The applicant shall enter into a Development Agreement, if necessary per the Development Agreement Section of this Chapter and the site-specific improvements necessary for the development. The process to enter into the Development Agreement shall not exceed 90 days. Required elements of the Development Agreement shall be provided by the Town during the Site Plan pre-application process.
- vii. The Building Permit process shall not exceed 90 days for review.
- viii. Extensions to development review, development and finalization of a Development Agreement, and the Building Permit processing for a Fast Track project may be granted as described below:
  - a. The applicant may request a one-time 90-day extension;
  - b. An extension may be granted to allow time to comply with a state law or court order, which time shall be determined by the state law or court order;
  - c. An extension may be granted to allow time to address comments from an agency that has approval authority over the project and the review timeline adherence is outside the control of the Town of Berthoud;
  - d. The Town may extend its review period by an additional 30 days in order to address additional comments or concerns that arise during development review. The Town may extend its review period by multiple increments of 30 days, however it is not the intent of the

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Town to unnecessarily delay Fast Track development review. The applicant is encouraged to respond within five business days' receipt of the need to extend development review.

3. Use by Special Review. Certain uses listed in the Land Use Table are more intensive and are subject to the granting of a Use by Special Review permit. Use by Special Review. Because of their unusual or special characteristics, Uses by Special Review review require additional evaluation so that they may be located properly with respect to their effects on surrounding properties. Refer to the Land Use Table for uses that may be contemplated through the Use by Special Review permit process.
  - a. Uses by Special Review may be permitted subject to such conditions and limitations as the Town may prescribe to ensure that the location and operation of the use will be in accordance with the Intent section of this Chapter. The scope and elements of any Use by Special Review 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.
4. *Post approval actions for Site Plan and Use by Special Review Permits.*
  - a. *Building Permit.* A building permit shall be issued only when the land use permit has been approved. However, with the approval of the Town, an applicant may submit a building permit application concurrent with the land use application. Building permits shall not be issued for any development that is not in conformance with the approved land use application.
  - b. Development Agreement. Depending on the nature of the Land Use Permit and extent of public improvements needed, a Development Agreement may be needed. See the Development Agreement section of this Chapter.
  - c. *Amendments to approved Land Use Permits.*
    - i. 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.
    - ii. Changes 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 application. A complete application shall be prepared and submitted in compliance with the requirements set forth in this Section.

### **30-5-109 Accessory Uses and Structures**

A. Purpose. This section establishes minimum standards for accessory uses and structures that are incidental and subordinate to principal uses. These standards are intended to minimize adverse impacts on surrounding properties and the community.

B. Intent. Accessory uses and structures are intended to allow property owners the full use of their property while maintaining the integrity of and character of the neighborhood and community. To accomplish these goals, accessory uses and buildings shall be erected and used only for purposes that are clearly secondary and incidental to the principal use of the property and shall be located on the same lot with the principal use.

C. Accessory Use and Structures Criteria. An accessory use or structure is normally incidental to a principal use. Accessory uses and structures shall comply with all the following criteria:

1. The accessory use shall be clearly incidental to and consistent with the principal use in the following measurements:
  - a. Lot/floor area devoted to the use or structure;
  - b. Economic production of the accessory use,
  - c. Traffic generation to the site, and
  - d. Customer/visitor generation

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2. The accessory use shall be commonly associated with the operation of the principal use;
3. The accessory building/use shall be built and/or constructed only in conjunction with the principal use;
4. The accessory use shall be operated and maintained under the same ownership as the principal use; and
5. The accessory building shall not be used for living or sleeping unless the use meets the criteria of an Accessory Dwelling Unit as defined in the Additional Standards for Accessory Dwelling Units section below.

D. General Standards for All Accessory Uses and Structures.

1. Size. Accessory uses and structures shall not violate the dimensional, parking, landscaping, or open space standards of the applicable zoning district when taken together with the principal use or structure.
2. Timing. Accessory uses or structures are not allowed until the principal use or structure is established unless otherwise stated.
3. The accessory building shall adhere to the Dimensional and Bulk Standards of this Chapter.

E. Additional Standards for Accessory Dwelling Units. Unless otherwise noted in the Land Use Table of this Chapter an accessory dwelling unit in a detached building or in a portion of a single-family dwelling unit is allowed in those zoning districts where the use is listed as a use by right and where the use meets the following requirements:

1. Occupancy.
  - a. The accessory living area may be occupied by one additional family as defined by this code, separate from the principal dwelling unit.
2. Number, Size, and Type.
  - a. Only one accessory dwelling unit is permitted per lot.
  - b. The total square footage of the accessory dwelling unit shall not exceed 850-square feet.
  - c. The accessory dwelling unit shall be located not forward of the principal dwelling, shall match the design of the principal dwelling, and shall follow the accessory structures setback standards.
  - d. Mobile homes and recreational vehicles shall not be used as accessory dwelling units.
  - e. The single-family character of the property shall be maintained.
  - f. Accessory dwelling units are exempt from meeting parking requirements addressed in the parking section of this code.

b. Refer to the Impact Fee section of this Chapter.

5. Additional Standards for Home Occupations.

- a. Purpose: The purpose of the Home Occupation Section is to regulate the conduct of operating business activity in a residence or other structure on the same property as a residence.
- b. Home occupations must meet the following standards:
  - i. 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.
  - ii. The home occupation shall not exceed 1,000 square feet or 30 percent of the total floor area of the dwelling, whichever is less, or can be located in an accessory building not to exceed 500 square feet. The home occupation shall be conducted entirely within the dwelling or designated accessory building.

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- iii. 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.
- iv. 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.
- v. 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.
- vi. 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.
- c. 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:
  - i. Marijuana businesses including allowed marijuana business as defined in this Chapter;
  - ii. Natural Medicine Center or Natural Medicine Business as defined in this Chapter;
  - iii. Auto repair or motorized implement repair;
  - iv. Dance, music or other types of instruction (if more than four students being instructed at one time);
  - v. The painting of vehicles, trailers or boats;
  - vi. Private schools with organized classes;
  - vii. Welding shops;
  - viii. Nursing facility(ies);
  - ix. 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).
- d. All exterior aspects of the home occupation operation shall not disrupt the residential character of the area.
- e. The maximum number of vehicle trips per day for clients which may visit the home occupation per day is 15.
- f. A Home Occupation must maintain a Town of Berthoud Business License.

F. Additional Standards for Storage Buildings and Detached Garages.

- 1. Each lot may include detached storage buildings and detached garages for the sole use of the occupants of the principal building and the principal use on the lot.
- 2. Only those buildings that are designed, constructed, and approved by the Town of Berthoud Building Division as storage buildings or detached garages may be used for this purpose.
- 3. Manufactured homes cannot be used as storage buildings, barns, or garages.
- 4. Semi-trailer with attached running gear (i.e., axels, wheels) cannot be used as storage buildings or detached garages.
- 5. Conex containers cannot be used as storage buildings or detached garages.
- 6. The total combined ground floor area of all accessory storage buildings and detached garages shall not exceed ten percent of the lot's net area.

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## 30-5-110 Board of Adjustment

A. *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, waiver requests, 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.

B. 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 the Design Standards, Zoning, and Sign regulation sections of this Chapter, where the strict enforcement of this title would create a situation which would result in unreasonable application of these standards. When considering variances, the Board of Adjustment shall consider the following criteria:
  - a. The intent statements found in this Section have been met; and
  - b. The hardship was not created by the actions of the proponent; and
  - c. 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
  - d. 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
  - e. That the requested variance shall not authorize any permanent use not permitted in the zoning district; and
  - f. In circumstances where the property owners affected most directly, e.g. neighbors, concur in writing with the variance that fact shall be given significant (but not conclusive) weight in favor of the request.
3. To authorize, as variances, alterations in nonconforming uses and buildings. An altered nonconforming use previously authorized that has been discontinued for at least six months that has not been resumed or replaced by another nonconforming unless an extension of time is requested in writing prior to the expiration of the six month period. Nonconforming uses resuming after the six month expiration period will be required to apply for the use through a new application and approval process. Alterations in nonconforming uses and buildings shall be authorized provided the Board of Adjustment determines:
  - a. That the intent statements found in this Section have been met; and
  - b. That the hardship on which the request for variance is based is not self-inflicted; and
  - c. That the altered nonconforming use will not be greater in size, area, or impact than the original nonconforming use, and
  - d. 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 authorize, as waivers, all or portions of the following processes in regards to platting, zoning and design standards for multiple lots from the Development Code of the Town of Berthoud with respect to the requirements of the following chapters only: Design Standards, Zoning, or Signs.

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- a. Zoning regulations limited to setback encroachments or height limitations in conjunction with a Preliminary Plat approval, and;
  - b. Design Standards limited to Site Plan, Preliminary Plat, or Use by Special Review application and approval criteria.
- 5. *Waivers.* Waivers shall be considered provided that the following procedures and considerations are met;
  - a. *Waiver applications.* The applicant shall submit the following to the Town in conjunction with another application (re-zoning or Site Plan, Use by Special Review or Preliminary Plat only). All other cases shall follow the variance procedures.
    - i. 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.
  - b. The Subdivision and Land Use Process and Procedures Table shall be followed.
  - c. Notice shall be given in accordance with the public hearing and general notice provisions found in this Chapter.
  - c. Unless otherwise stated in the Resolution, all waivers granted shall be commenced within six months of the time such waiver is granted; otherwise the waiver shall be null and void.
- 6. 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.

C. The Board of Trustees reserves the authority to act as the Board of Adjustment with respect to all matters in the Development Code and as allowed per Section 31-23-307 C.R.S, specifically:

- 1. All variances not related to Design Standards; Zoning, and Signs.
- 2. All appeals not related to Design Standards; Zoning, and Signs.
- 3. Appeals of Final Plats: Appeals of actions of staff regarding Final Plats shall be taken to the Planning Commission after the filing of an appeal to the Town within ten days of the date of staff's decision on the Final Plat. Appeals may be filed by the applicant or any abutting property owner and shall specifically state the grounds for appeal. The Planning Commission shall consider the appeal as a new matter and act to approve, approve with conditions, or deny the Final Plat based on the review and approval criteria that apply to all Final Plats. Any timely appeal received must be scheduled immediately for review at the next available Planning Commission meeting, but in no event later than 30 days.

D. *Procedures generally.* The board of adjustment shall hold a public hearing on all applications and appeals, subject to the following:

- 1. The procedures found in the Subdivision and Land Use Process and Procedures Table shall be followed.
- 2. Notice shall be given in accordance with the public hearing and general notice provisions found in this Chapter.
- 3. Unless otherwise stated in the Resolution, all variances granted shall be commenced within six months of the time such variance is granted; otherwise the variance shall be null and void.
- 4. The concurring vote of a majority of the board of adjustment shall be necessary to reverse any order, requirement, decision, or determination of any administrative official, or to decide in favor of the applicant in order to implement a variance.
- 5. *Criteria for approval of variances and waivers.* The condition of any variance or waiver authorized shall be stated in writing in the minutes of the Board with the justifications set forth. Waivers and variances may be granted only if they meet one of the following criteria:

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- a. That the hardship on which the request for variance or waiver is based is not self-inflicted.
- b. The variance or 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.
- c. The variance or waiver, if granted, is the minimum variance or waiver of applicable Code provision that will afford relief and is the least modification possible of the Code provisions which are in question.
- d. That such practical difficulties or unnecessary hardship has not been created by the applicant.
- e. The variance or waiver would substantially alleviate an existing, defined and described problem of Town-wide concern or would result in a substantial benefit to the Town by reason of the fact that the proposed project would address an important community need.
- f. The plan as submitted will promote the general purpose of the standard for which the modification is requested, equally well or better than a plan which complies with the standard for which a modification is requested.

C. *Appeal procedures.* Every appeal to the 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 30 days from the date of the order, requirement, decision, or determination.

D. *Administrative Variances.* The Community Development Director is authorized to approve administrative variances from setback requirements up to ten percent of the required setback after finding the proposed setback is consistent with the intent and purpose of this code, and the requirements of this Section.

### **30-5-111 Development agreements**

- A. *Agreements and Improvements.* A Development Agreement stating that the applicant covenants and agrees to construct any required public improvements shown in the land use or subdivision Final Plat documents together with security in a form approved by the Town is required. No subdivision plat 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 to ensure that all improvements will be completed in a timely, quality and cost-effective manner.
- B. 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.
- C. As required by this Code and all applicable laws, rules and regulations, the applicant shall 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.

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- 6. Storm sewers or storm drainage system, as required.
- 7. Potable water distribution system.
- 8. Non-potable water distribution system.
- 9. Fire hydrants.
- 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, telecommunications, cable, 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 strips.
- 18. Under drains.
- 19. Trails, trail heads and associated improvements.
- 20. Required floodway improvements.
- 21. Required irrigation ditch improvements.
- 22. Required off-site improvements.
- 23. Any and all improvements not mentioned above.

E. *Time for completion.* Unless a vested right is established in accordance with the Berthoud Development Code, commencement of construction of all or a portion of the approved Final Plat shall occur within one year 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 two 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 30 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 percent of the cost of improvements plus 15 percent 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 percent 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.

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- 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.
- J. *Platting Required.* No Final Plat shall be recorded until the Developer and, if applicable, the Metropolitan District have executed a satisfactory Development Agreement with the Town providing for the installation of all public infrastructure required for the development as set forth in the Plat. In addition, no Development Agreement shall be recorded until all on and off-site easements and rights of way necessary for all public improvements have been acquired, and a Landscape Plan has been approved by the Town.

### **30-5-112 Pre-Construction Activities and Responsibility of Construction of Public Improvements**

- B. Prior to the pre-construction meeting, the issuance of a building permit or the issuance of a grading permit, the following documents shall be provided to the Town as needed for the particular development:
  - 1. Surety or collateral in a form acceptable to the Town in the amount and form stipulated in the Development Agreement and 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 percent of the estimated cost of public improvements or a Letter of Credit or other acceptable collateral in the amount of 25 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. Oil and gas surface use agreement.
    - a. Raw water dedication. The applicant shall provide payment or water to the Town in accordance with the Water Rights Dedication Section of this Code.
  - 2. List of contractors. List of all contractors that will be performing the improvements.
  - 3. Proof of insurance. Proof of workman's comprehensive insurance and liability insurance for each contractor.
    - a. An approved adjudication of water rights and a plan of augmentation.
    - b. A FEMA approved application (i.e., Conditional Letter of Map Revisions [CLOMR] or Letter of Map Revisions [LOMR]).
    - c. A Town-approved Flood Development Permit.
  - 2. Documentation identifying who will own and maintain open spaces. Funding mechanism for maintenance of open space including type of management of such open space.
    - a. Fully-executed deed for public lands for dedication of public sites for open space or other civic purposes.
  - 3. Right-of way permits from the Town.
  - 4. A State Highway utility permit from CDOT.
  - 5. A State Highway access permit from CDOT.
  - 6. A construction dewatering permit from the Colorado Department of Public Health and Environment.
  - 7. SWMP
  - 8. A 404 Permit from the Army Corps of Engineers.
  - 9. An Air Pollution Emission Notice (APEN) from the Colo. Department of Public Health and Environment.
  - 10. A permit for work in any ditch right-of-ways from individual ditch companies.
  - 11. 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.

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12. 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.
13. Other agreements, certificates, affidavits, enforcements or deductions as required by the Town.

B. Failure to comply with the Town's Municipal Separate Storm Sewer System (MS4) requirements shall result in stop-work orders and an inability to receive building permits and development review and subdivision approvals for future development.

## **30-5-113 Certification Blocks**

### **A. Preliminary Plat, Final Plat and Replat Applications**

#### **LEGAL DESCRIPTION AND DEDICATION:**

KNOW ALL PERSONS BY THESE PRESENTS: That the undersigned, being the owners of \_\_\_\_\_, located in Section \_\_\_\_\_, Township \_\_\_\_\_, Range \_\_\_\_\_ of the 6<sup>th</sup> 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. The sole right and authority to release or convey all or any such easements and right-of-way shall remain exclusively vested in the Town of Berthoud. All easements shall retain the right of ingress and egress for construction and maintenance of improvements. No permanent structures except fencing upon Town approval shall be allowed on any easement.

If owner is an individual(s):

Owner: John Doe

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If owner is a corporation, limited liability company, partnership, association or other business entity:

Owner: The ABC Corporation, a Colorado corporation

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By: John Doe, President

If owner is a trust:

Owner: The Jane Smith Trust

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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.

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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)  
(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: ONLY FOR FINAL PLATS AND USES BY SPECIAL REVIEW WHICH VESTED RIGHTS HAVE BEEN ESTABLISHED IN ACCORDANCE WITH THE PROCEDURES AND APPROVALS REQUIRED BY THE BERTHOUD DEVELOPMETN CODE.

This plan/final plat 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, 807 Mountain Ave., 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

Approved by the Planning Commission of the Town of Berthoud, Colorado this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_ Chairperson

The foregoing map is approved for filing and accepted by the Town of Berthoud, Colorado this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

ATTEST: \_\_\_\_\_  
Town Planner

**B. Zoning Map Amendment Applications**

LEGAL DESCRIPTION:

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KNOW ALL PERSONS BY THESE PRESENTS: That the undersigned, being the owners of \_\_\_\_\_, located in Section \_\_\_\_\_, Township \_\_\_\_\_, Range \_\_\_\_\_ of the 6<sup>th</sup> Principal Meridian, Town of Berthoud, County of \_\_\_\_\_, State of Colorado, more particularly described as follows:

(LEGAL DESCRIPTION)

This is to certify that the rezoning of the above-described property was approved by Ordinance No. \_\_\_\_\_ of the Town of Berthoud, passed and adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and that the Mayor of the Town of Berthoud as authorized by said ordinance on behalf of the Town of Berthoud hereby for all acknowledges and adopts the said rezone upon which the certificate is endorsed for all purposes indicated hereon.

Approved by the Board of Trustees of the Town of Berthoud, Colorado this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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Mayor

The foregoing map is approved for filing and accepted by the Town of Berthoud, Colorado this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

ATTEST: \_\_\_\_\_

Town Clerk

Approved by the Planning Commission of the Town of Berthoud, Colorado this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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Chairperson

The foregoing map is approved for filing and accepted by the Town of Berthoud, Colorado this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

ATTEST: \_\_\_\_\_

Town Planner

**C. Neighborhood Master Plan and Use by Special Review Applications**

Approved by the Town of Berthoud, Colorado this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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Mayor

The foregoing map is approved for filing and accepted by the Town of Berthoud, Colorado this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

ATTEST: \_\_\_\_\_

Town Clerk

Approved by the Planning Commission of the Town of Berthoud, Colorado this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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Chairperson

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The foregoing map is approved for filing and accepted by the Town of Berthoud, Colorado this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

ATTEST: \_\_\_\_\_  
Town Planner

**D. Administrative Amended Plat and Site Plan Review Applications**

Approved by the Town Administrator of the Town of Berthoud, Colorado, this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
Town Administrator

Approved by the Engineer of the Town of Berthoud, Colorado, this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
Town Engineer

The foregoing plat is approved for filing and accepted by the Town of Berthoud, Colorado this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

ATTEST: \_\_\_\_\_  
Community Development Director

**E. Development Construction Plans**

Town of Berthoud Engineer Approval Statement

Town of Berthoud Approval

All work shall be constructed to the Town standards and specifications. These plans have been reviewed by the Town of Berthoud for concept only and general conformance with the Town standards and specifications. The review by the Town of Berthoud does not imply responsibility by the Town of Berthoud or the Town Engineer for accuracy and correctness of the plans and calculations.

These Plans are hereby approved for one year from the date of the Town Engineer's approval.

Approved By:

\_\_\_\_\_  
Town Engineer

\_\_\_\_\_  
Date

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## SECTION 6 DESIGN STANDARDS<sup>1</sup>

### 30-6-101 General provisions

- A. Applicability. All development shall comply with the standards contained in this Section.
- B. Purpose. These requirements are established to guide and direct future development to reinforce 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 development or redevelopment within the Town.
- C. Relationship to zone district standards. In the event of a conflict between a standard or requirement contained in the Zoning and the Design sections of this Chapter, the Zoning section shall prevail.
- D - Consistency with the Comprehensive Plan. Development and redevelopment projects shall be consistent with the vision established in the Comprehensive Plan. The Comprehensive Plan provides guidance to coordinate development and accommodate while maintaining the Town's distinctive character.
- E - Consistency with Adopted Plans and Guidelines – Development projects shall be consistent with adopted design guidelines, overlay district, and area plans.
  - 1. Architectural design guidelines. The Board of Trustees has adopted the "Character District Design Guide Place Types: Town of Berthoud Design Guidelines" ("Architectural Design Guidelines") by resolution. The Architectural Design Guidelines are intended to assist developers, builders, consultants, and the Town of Berthoud in creating basic guidance for the desired built form and may be amended from time to time by resolution of the Board of Trustees.
  - 2. Landscape Design Guidelines. The Board of Trustees has adopted the "Landscape Design Guidelines" by resolution. The Landscape Design Guidelines are intended to assist developers, builders, consultants, and the Town of Berthoud in creating basic guidance for the desired landscaping and water conservation principles and may be amended from time to time by resolution of the Board of Trustees.
  - 3. Mountain Avenue Overlay District. The Board of Trustees has adopted the "Mountain Avenue Corridor Design and Signage Plan" by resolution. The Corridor Plan is referenced in the Mountain Avenue Overlay District Section of this Chapter and the Guidelines are intended to assist developers, builders, consultants, and the Town of Berthoud in developing and redeveloping property within this District and may be amended from time to time by resolution of the Board of Trustees.
  - 4. 1<sup>st</sup> Street Corridor Plan. The Board of Trustees has adopted the "1<sup>st</sup> Street Corridor Plan" by resolution. The Corridor Plan is referenced in the First Street Overlay District Section of this Chapter and the Guidelines are intended to assist developers, builders, consultants, and the Town of Berthoud in developing and redeveloping property within this District and may be amended from time to time by resolution of the Board of Trustees.
- F. Site design and compatibility. - All development and redevelopment shall be designed, engineered, and planned to:
  - 1. Ensure compatibility with adjacent existing land uses and neighborhoods;
  - 2. Provide interconnectivity throughout the community; and

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- 3. Improve the overall visual quality of the Town.
- G. Streets, trails, sidewalks, parks, and open spaces shall be interconnected between neighborhoods. Neighborhoods shall be distinctly identifiable through signage, unifying design themes, and required neighborhood identity features.
- H. Preservation of Historic Character. The preservation of historical structures and property features, and the integration of such elements into future development or redevelopment, is encouraged. Preserved elements shall be incorporated in a manner that reflects the historical character of the property and reinforces the Town's sense of place.
- I. Density Transitions - Where proposed residential development includes densities that differ from those of adjacent existing residential neighborhoods, the applicant shall:
  - 1. Provide a physical buffer between developments; and
  - 2. Incorporate a gradual transition from higher density to lower density.The responsibility for providing and demonstrating compatibility rests with the developer of the higher-density neighborhood. Compatibility shall be established through measures including, but not limited to, landscaping, buffer depth, berthing, and the reduction of density at the perimeter of the development.
- J. Agricultural heritage - The historic agricultural heritage is important to the Town of Berthoud. The Right to Farm Policy adopted by the Town shall be adhered to.

### **30-6-102 Design standards and construction specifications**

Pursuant to parts 1 and 2 of article 16 of title 31, C.R.S., there is hereby adopted by reference Engineering and Infrastructure Design Standards and Construction Specifications, 2025 Edition as published by the Town of Berthoud, 807 Mountain Avenue, Berthoud, Colorado 80513 ("Standards and Specifications"); provided that any penalty provisions are expressly not adopted. These Standards and Specifications may be amended in whole or in part. The subject matter of the Standards and Specifications relates primarily to the design and construction of public and private improvements. The purpose of this Section and the Standards and Specifications adopted herein is to provide minimum standards for safety, health, and general welfare of the Town by regulating the design, construction, choice of materials, location, maintenance and use of all Public and Private Improvements. Three copies of the Standards and Specifications 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.

### **30-6-103 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.

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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.

### **30-6-104 Lots and blocks**

- 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.
- 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 400 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 25 percent of the lot depth. Flag lots are prohibited unless otherwise approved as outlined in the Application of Design Standards Section of this Chapter..
    - 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 as outlined in the Application of Design Standards Section of this Chapter.
    - 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 30 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. The slope of all driveways shall be no more than ten degrees.

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## 30-6-106 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.

- A. *Complete streets.* To encourage all forms of transportation in Berthoud, and to lessen the reliance on automobile traffic, all new or redeveloped streets shall be developed as Complete Streets. Complete Streets include accommodations for each mode of travel recognizing that all streets are different and that the needs of various users will need to be balanced in a flexible manner. The standards as adopted within Larimer County Urban Area Street Standards (LCUASS), shall support the accommodation of all travel modes. Implementation may be flexible to respond to the context and character of corridors, with the ultimate intent of safely accommodating all modes.
- B. *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.
- C. *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.
  - 1. 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. Ten-foot tree strips are required on arterial and collector streets.
  - 2. Street stubs shall be required in instances a proposed development is adjacent to an undeveloped property.
  - 3. Streets in new developments shall be designed to connect to the adjoining street network and/or adjoining street stubs.
  - 4. Internal access easements shall be required on all commercial and industrial developments, unless waived by the Town Engineer.
- D. *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.
- E. *Visibility at intersections.* No shrubs, ground cover, berms, fences, structures, or other materials or items between 24 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.
- F. *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.
- G. *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.
- H. *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.

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- I. *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.
- J. *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.
- K. *General design standards.* Design of streets, curbs and gutters shall be in accordance with the Larimer County Urban Area Street Standards (LCUASS) (Loveland only) as amended, and with the Americans with Disabilities Act (ADA) standards.  
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 strips and yards that abut streets.

### **30-6-107 Parking**

- 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 30 percent of the parking amounts called for in the Required Parking Table 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:

Required Parking Table

	R1, R-2 zones, RR, SR	R3, R5 zones	R4, UR zone	C1, C2, SC, UC zones	M1, M2 zones
Residential. (Alley loaded homes with less than 1,250 sq ft of total floor area (including unfinished) are only required 1 parking space per dwelling unit.)	2.0 per dwelling — 2.0 per unit in R3	1.5 per dwelling unit	1.5 per dwelling. For residential units without direct street frontage, an extra 0.20 spaces of off-street visitor parking per unit will be required within the overall development. Driveway spaces located directly behind garages or parking pads will not be counted towards this requirement.	1.0 per dwelling	—
Lodging	1.0 per bedroom	—	1.0 per bedroom	1.0 per bedroom	1.0 per bedroom
Office	3.0/1,000 sq. ft.	—	3.0/1,000 sq. ft.	3.0/1,000 sq. ft.	2.0/1,000 sq. ft.
Retail	—	—	3.0/1,000 sq. ft	3.0/1,000 sq. ft.	3.0/1,000 sq. ft.
Restaurant: sit down	—	—	1 per 4 seats or 1 per 100 s.f. of gross floor area	1 per 4 seats or 1 per 100 s.f. of gross floor area	1 per 4 seats or 1 per 100 s.f. of gross floor area
Restaurant: drive through. For food/drink establishments, a minimum of 12 stacking spaces will be required in the drive-thru. For all other drive-thru uses, a minimum of 7 stacking spaces will be required.	—	—	1 per 100 sq. ft., plus 3 stacking spaces for drive thru window	1 per 100 sq. ft.	1 per 100 sq. ft.
Industrial	—	—	—	1.0 space per 1,000 s.f. gross floor area	1.0 space per 1,000 s.f. gross floor area
Civic	To be determined on project basis				
Other	To be determined on project basis				

2. At least one Electric vehicle charging space is required to be installed with new development or redevelopment . These spaces count towards the total space requirement

3. All parking spaces served by an EV Charging Station and/or any parking space used to site EV Charging Equipment shall count as one standard space toward the total parking requirements. All van-accessible parking spaces designed to accommodate a person in a wheelchair and used as an EV Charging Station

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and are not reserved only for use by persons with a disability, shall count as two standard spaces towards the total parking requirements.

4. For non-residential uses, the larger of either 10 spaces greater than the minimum required or 25% greater than the minimum required

*5. All parking spaces served by an EV Charging Station and/or any parking space used to site EV Charging Equipment shall count as one standard space toward the total parking requirements. All van-accessible parking spaces designed to accommodate a person in a wheelchair and used as an EV Charging Station and are not reserved only for use by persons with a disability, shall count as two standard spaces towards the total parking requirements.*

6. 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.

a. The location of required off-street parking facilities for other than residential uses shall be within 400 feet of the building they are intended to serve when measured from the nearest point of the building or structure.

7. Commercial uses either renovating or expanding existing properties fronting on Massachusetts Ave. between 3<sup>rd</sup> and 5<sup>th</sup> Streets, Mountain Ave. between 1<sup>st</sup> and 5<sup>th</sup> Streets or Welch Avenue between 1<sup>st</sup> and 5<sup>th</sup> Streets are exempt from the parking requirements of this Section.

8. Large retail centers are subject to the below minimum parking standards:

- a. Centers with 75,000-150,000 sq. ft: 1 space per 350 sq.ft.
- c. Centers with more than 150,000 sq. ft: 1 space per 400 sq.ft.

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 22 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. For handicap parking spaces, the developer shall provide parking in accordance with the Americans with Disabilities Act.

1. When EV Charging Stations are provided on the subject lot, the same proportion of handicap parking spaces shall be provided as noted in Table 2.3, per the total number of parking spaces served by an EV Charging Station. For example, if between 1 and 25 parking spaces are served by an EV Charging Station, at least one of those spaces must be handicapped. Handicap spaces served by EV Charging Stations may or may not be reserved for use only by persons with a disability. All other provisions in this section related to the design of handicap parking spaces apply.

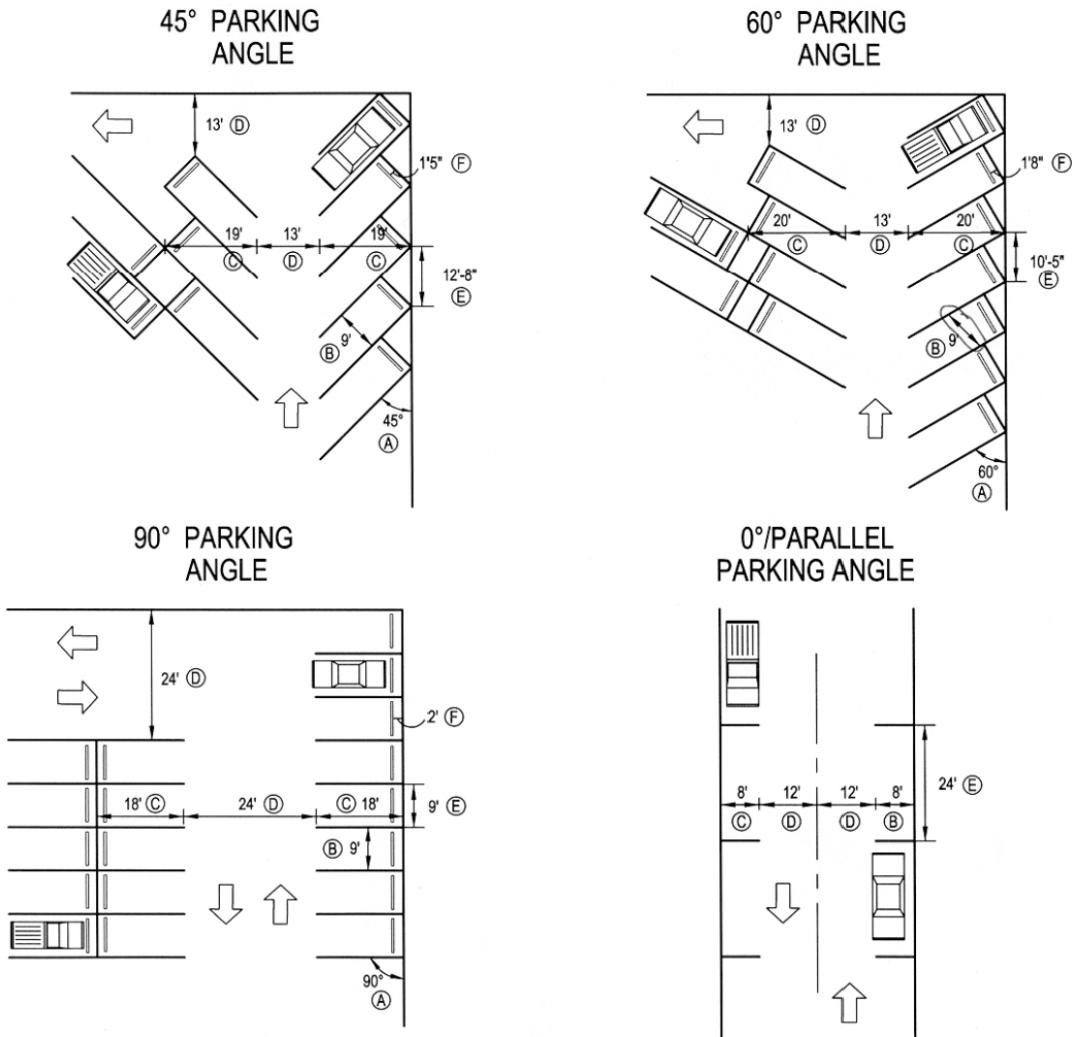
G. *Parking stall dimensions.* Parking stalls for automobiles shall meet the following standards. All dimensions represent the minimum requirement for any required parking space.

Table 2.4: Parking stall dimensions

Parking Stall Dimensions					
Parking Angle	Stall Width	Stall to Curb	Aisle Width	Curb Length	Over- hang
45°	9'	19'	13'	12' 8"	1' 5"
60°	9'	20'	13'	10' 5"	1' 8"

90°	9'	18'	24'	9'	2'
0°(parallel)	8', Except along local streets where seven feet is permitted.	8', Except along local streets where seven feet is permitted.	12'	24'	0'

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 ten percent of the total number of automobile parking spaces provided by the development, but not less than one space. Multi-family or mixed-use developments will be required to have at least 50 percent of their bicycle parking spaces be enclosed.

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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.

#### I. EV Charging

1. Parking spaces served by EV Charging Stations and/or Electric Vehicle Supply Equipment (EVSE) are required per the Town's Building Regulations - National Electrical Code, 2023 Edition or may also be developed voluntarily, per the use allowances in the Zoning Section of this Code and associated application review processes in this Code and definitions for Principal Use and Accessory Use EV Charging in Section 30-1-121. Principal Use EV Charging may be accompanied by other supportive uses, such as convenience retail, public restrooms, etc. All proposed EV Charging Stations that do not meet these definitions are allowed by-right and are not subject to land use permitting but do require applicable building and electrical permits.
2. When Accessory Use EV Charging is proposed on a subject lot within an existing designated parking area where no changes to the existing Principal Use(s) are proposed, the existing Principal Use(s) shall be exempt from any site improvements or other requirements to conform with applicable land use regulations as conditions of approval for the Accessory Use EV Charging permit.
3. Appropriate safety and access distances shall be provided for all EV Supportive Equipment (EVSE), per the National Fire Protection Association (NFPA) standards and the National Electric Safety Code (NESC), providing space free of obstruction between the equipment and any adjacent structure or landscaping.
4. Accessory Use EV Charging is subject to the standards found in the Design Section of this Chapter as well as the procedures found in the Subdivision and Land Use Section of this Chapter.

### **30-6-108 Sidewalks, walkways, trails, and bikeways**

- 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. For detailed cross-sections, refer to the latest Specifications and Standards engineering document. Adherence to the Town's master plan and regional master plans shall be made.
- 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

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storefronts in commercial areas shall be ten to 15 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 20 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.

### **30-6-109 Easement and utility standards**

- A. *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.
- B. *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.

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- C. *Street lighting.* Street lighting shall be full cut-off and installed as provided in the Lighting Section 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.
- D. *Utility Services.* Utility services shall be located underground. Exceptions to the requirements of underground utilities are:
  1. Major electric transmission lines responsible for transporting power through the area rather than to the area; or
  2. Where the Community Development Director and/or Public Works Director determines that the underground utility location is not practical, above grade utilities shall be located behind structures in a utility "alley" easement approved by the applicable utility authority where practical.

## **30-6-110 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 plans regarding parks, trails and open spaces as the Berthoud community grows. Parks, trails and open spaces on adjacent properties shall connect.
- B. *Park standards and requirements.*
  1. *Intent.* The Town of Berthoud reaffirms its belief that high quality useable parks and open spaces contribute to the overall life for Berthoud residents. The Town prioritizes diversity of park amenities throughout the community as development occurs.
  2. *Park development requirements.*
    - a. Developed parks shall be required for a residential subdivision if the subdivision totals more than six acres or has more than 50 dwelling units. The amount of developed park required shall be calculated at a ratio of one acre of parkland per 100 dwelling units, and must satisfy the requirements of the Parks Standards and Requirements Section.
    - b. Park areas shall be surrounded by public right-of-way not by private lots, to the greatest extent feasible.
  3. *Park types and requirements.*
    - a. *Pocket park.* A pocket park is a small outdoor recreational space intended to serve the immediate neighborhood. Pocket parks shall be a minimum of one-third acre in size and less than two acres. These spaces shall be accessible by walking and biking and located within a one-quarter mile radius of the intended users. These spaces do not typically require off-street parking. Pocket parks shall be owned and maintained by an HOA or Metro District and shall remain open to the public. No credit for Park Development impact fees shall be granted by the Town for the construction of pocket parks.
    - b. *Neighborhood park.* Neighborhood parks are the basic unit of the park system and serve as the recreational and social focus for the neighborhood. A neighborhood park shall be a minimum of two acres in size and less than five acres. Neighborhood parks are generally intended to serve a resident population living within a one-mile radius of the neighborhood park. Neighborhood parks should have high visibility to surrounding streets for public safety. Depending upon available on-street parking, neighborhood parks may require off-street parking spaces of seven off-street parking spaces, at least one of which shall be ADA accessible. Depending upon the

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types of amenities included, and at the discretion of the Town, neighborhood parks may be owned and maintained by an HOA or Metro District or may be dedicated to the Town upon completion of construction and acceptance by the Town. In all instances, neighborhood parks shall remain open to the public. Credit for park development impact fees may be granted by the Town up to 25 percent of the impact fee if the Town accepts dedication of the park, but in no case shall credit total more than the cost to construct the park.

- c. *Community park.* Community parks are large recreation facilities serving a population within a several miles radius. A community park shall be a minimum of five-acres and less than 20-acres. Community parks are intended to provide recreational opportunities of community interest such as sport fields, courts, or other unique recreation amenities. Locations of community parks must be approved by the Town. Due to their size, community parks may not have high visibility to surrounding streets and should be designed with public safety in mind. This may be accomplished with access control, video surveillance, enhanced lighting, or other creative design ideas to increase public safety. Off-street parking is required for all community parks and requirements will be established by the Town based upon the amenities provided. All community parks shall be designed in accordance with all applicable Town standards and dedicated to the Town upon completion of construction and acceptance by the Town. Credit for park development impact fees shall be granted by the Town up to 100 percent of the impact fee, totaling no more than the cost to construct the park.
- d. *Regional park.* Regional parks are intended to serve the entire Town and surrounding communities. They are not typically constructed by developers but in rare instances may be included as part of a large master planned community. Regional parks are greater than 20-acres in size and must be planned, approved, and accepted by the Town.

4. *Park development required elements.* All proposed parks must have the following elements:

Required infrastructure (all parks)	<ul style="list-style-type: none"><li>• Electricity</li><li>• Irrigation</li><li>• Trash receptacles (min. two per acre)</li><li>• Dog waste stations (min. two per acre)</li><li>• Water service</li><li>• Bike racks</li><li>• Landscaping</li><li>• Public art</li><li>• Sign with park name and address</li></ul>
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<p>Pocket parks (1/3-2 acres) must include</p>	<p>All required infrastructure items, and at least 3 of the following elements:</p> <p>Group picnic shelter (min 500 sf with three tables)      Two individual shelters with one picnic table each      15,000 sf minimum turf play area (one element per 15,000 sf)      10,000 sf minimum natural area (one element per 10,000 sf)      Concrete loop walk (minimum length 2000 linear feet, minimum width 6')</p> <p>And at least 3 of the following pocket park elements (each item is counted as one element and additional instances shall not be counted as additional elements):</p> <ul style="list-style-type: none"> <li>• Spray pad or splash area</li> <li>• Racquet sports court (tennis, handball, pickleball, etc.)</li> <li>• Water feature (A passive water-based amenity that provides a visual focal point such as fountains, ponds, or waterfalls)</li> <li>• Trail head with a minimum of four parking spaces</li> <li>• Interactive Public Art</li> <li>• Permanent picnic tables with Chess/Checkers Board<sup>1</sup></li> <li>• Lawn games area (shuffleboard, bocce ball, horseshoe pits, etc.)<sup>1</sup></li> <li>• Fitness course</li> <li>• Interpretive/educational signage, with guidance and approval from Town on content</li> <li>• Commercial-grade playground or nature-inspired/nature-based playground</li> <li>• Sensory play area</li> <li>• Rain garden</li> <li>• Demonstration garden</li> <li>• Free book exchange box</li> <li>• BBQ grills and picnic tables (min. one per every two tables)</li> <li>• Benches (min. two per half-acre)</li> <li>• Drinking fountains</li> <li>• Additional trees planted at a ratio of 20 trees/acre (counted as one element)</li> <li>• Other components chosen by the applicant and approved by the Town</li> </ul>
<p>Neighborhood parks (2-5 acres) must include</p>	<p>All required infrastructure items and 6 total pocket park elements, and 3 of the following neighborhood park elements:</p> <ul style="list-style-type: none"> <li>• Community garden with management plan</li> <li>• Sports facility (one full basketball court, volleyball court, soccer field, etc.)</li> <li>• Fully fenced off-leash dog area (minimum size one acre)</li> <li>• Practice backstop (with turf size adequate for min. 200 ft. foul lines. May be on required turf area)</li> <li>• Restrooms with plumbing (counts as three items)</li> <li>• Incorporation of historic elements (architectural salvage, structures, materials, etc.)</li> <li>• Rock wall/rock climbing structure</li> <li>• Shade structures</li> <li>• EV charging station</li> </ul>
<p>Community parks (5-20 acres) must include;</p>	<p>All required infrastructure items, a permanent restroom building, satisfaction of pocket park and neighborhood park requirements, and an additional 3 elements from the pocket park elements, neighborhood park elements, and/or below:</p> <ul style="list-style-type: none"> <li>• BMX or mountain bike skills course</li> <li>• Disc golf course (at least 6 holes)</li> <li>• Boating facilities</li> <li>• Fishing facilities</li> <li>• Outdoor pool</li> <li>• Skate park</li> <li>• Community building</li> </ul>

	<ul style="list-style-type: none"> <li>Other components chosen by the applicant and approved by the Town</li> </ul>
Regional parks (20 acres or greater) must include;	<p>All required infrastructure items, a permanent restroom building, the following elements:</p> <ul style="list-style-type: none"> <li>Three group picnic shelters (min 500 sf with three tables)</li> <li>Five individual shelters with one picnic table each</li> <li>15,000 sf minimum turf play area</li> <li>Natural area to include waterwise native plant species</li> <li>Concrete loop walk (minimum 6' wide)</li> </ul> <p>And at least 10 of the following elements (each item is counted as one element and additional instances shall not be counted as additional elements)::</p> <ul style="list-style-type: none"> <li>Sports facility (each court/field may be counted as a separate item: full basketball court, volleyball court, soccer field, etc.)</li> <li>Spray pad or splash area</li> <li>Racquet sports court (Each may be counted as a separate item: tennis, handball, pickleball, etc.)</li> <li>Disc golf course (9 or 18 holes)</li> <li>Off-leash dog area - fenced (min size - one acre with separated fenced areas for different uses and dog sizes)</li> <li>Practice backstop (with turf size adequate for min. 200 ft. foul lines, May be on required turf area)</li> <li>Water feature (A passive water-based amenity that provides a visual focal point such as fountains, ponds, or waterfalls)</li> <li>Trail head with a minimum of ten parking spaces, including at least one EV charging space</li> <li>Interactive Public Art</li> <li>Interpretive/educational signage, with guidance and approval from Town on content</li> <li>Lawn games area (shuffleboard, bocce ball, horseshoe pits, etc.)<sup>1</sup></li> <li>Fitness course</li> <li>Permanent picnic tables with Chess/Checkers Board<sup>1</sup></li> <li>Commercial-Grade Playground or nature-inspired/nature-based playground</li> <li>Community garden with management plan</li> <li>Sensory play area</li> <li>Rain garden and creative drainage paths</li> <li>Demonstration garden</li> <li>Free book exchange box</li> <li>BMX or mountain bike skills course</li> <li>Boating facilities</li> <li>Fishing facilities</li> <li>Outdoor pool</li> <li>Skate park</li> <li>Community building</li> <li>Incorporation of historic elements (architectural salvage, structures, materials, etc.)</li> <li>Rock wall/rock climbing structure</li> <li>Shade structures</li> <li>BBQ grills and picnic tables (min. one per every two tables)</li> <li>Benches (min. two per half-acre)</li> <li>Drinking fountains (min. one per every four acres)</li> <li>EV charging station</li> <li>Other components chosen by the applicant and approved by the Town</li> </ul>
<sup>1</sup>	The necessary equipment for these features must be provided and made available to the public.

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C. *General provisions for Parks and Open Spaces.*

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.
3. *Ownership and maintenance.* Ownership and maintenance 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, metro district 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, metro district, 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.

D. *Open space requirements.*

1. Open space is defined as:
  - a. Areas designated for preservation and protection of environmental resources including floodplains, natural drainage ways, and wetland areas;
  - b. Storm drainage facilities
  - c. Areas designated for agricultural activities or preservation;
  - d. Areas of archeological and historic significance; and
  - e. Areas of critical or important habitat as defined by the Colorado Division of Wildlife.
  - f. Common landscaped areas incorporated into properties zoned R-2, R-3, R-4, C-1, C-2.
2. Areas not counted as Open space:
  - a. Required Park improvements shall not be counted towards the ten percent open space requirement.
  - b. Required setback areas around oil and gas production facilities;
  - c. Disconnected remnants of land created by division of sites into lots or parcels that do not qualify as open space, unless approved by the Town;
  - d. Private yards of any homes or tree strips if present in a subdivision;
  - e. Required parking lot landscaping associated with all uses, except parking specifically designated for access to open space areas and within commercial/industrial projects.
3. *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

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that they remain open and cannot be subdivided or developed in the future without approval of the Town.

4. Open space requirement. Open space shall be required for ten percent of the total area of any project as approved in a Neighborhood Master Plan, and each filing or plat must also possess at least ten percent open space. Commercial use and industrial use only properties shall not be required to satisfy the open space requirements.
5. Required open space elements. Developments will be required to satisfy the following functional open space elements as per the following acreage requirements:
  - a. Developments consisting of five acres to 50 acres in total size, shall be required to satisfy two elements;
  - b. Developments of 50 acres to 200 acres shall be required to satisfy three functional open space elements, and;
  - c. Developments of 200 acres or more, shall be required to satisfy four (4) functional open space elements.
6. Functional open space elements. The following open space elements shall be considered when planning adherence to this requirement. Each element listed below counts as one regardless of quantity.
  - a. Useable detention areas : The area around a detention pond or water quality feature that is a minimum of one continuous acre in size, and includes the required park infrastructure listed above with irrigated vegetation (turf, trees, shrubs) and other amenities such as benches or picnic tables, and a continuous loop trail to be perpetually maintained by the development, shall count as one element.
  - b. Additional pocket park: An additional pocket park(s) from that which is required under the park standards found in this development code, ranging from a third of an acre to two acres in gross size which meet the park standards herein.
  - c. Agricultural preservation : A farm placed in a permanent conservation easement of at least ten continuous acres in size, with proof of a permanent water source .
  - d. Habitat Area: Preservation of a natural habitat area, of at least five acres in size. Existing Habitat areas to be considered, must provide an ecological study, verifying that it is a natural habitat. All habitat areas shall provide a 150-foot setback / buffer from any development. Habitat areas shall not require water dedication.
  - e. Greenway: A permanent greenway 40 continuous feet in width, and at least a third of an acre in size, with an eight-foot crusher refine trail or eight-foot concrete trail. All improved greenway areas shall have water dedication calculated in accordance with a hydrozone analysis and the water dedication section of this Chapter.
  - f. Green Area: Informal gathering area with irrigated turf, at least 50 continuous feet wide, and half an acre in size for unstructured recreational activities . Green areas shall include an amphitheater, trees along the perimeter, pollinator gardens or community gardens. Green areas shall be flat, unless otherwise approved by the Town. All improved green areas shall have water dedication calculated in accordance with a hydrozone analysis and the water dedication section of this Chapter.
  - g. Trailhead : A trailhead built with five permanent parking spaces (one handicap), a bench, and garbage receptacles. The trailhead must connect to an existing or proposed trail network. No water dedication shall be required for trailhead areas without public amenities requiring water provision.

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- h. Plaza for Mixed Use Developments (for Suburban and Urban zoning, C-1, C-2, R-3, and R-4) : Open spaces available for civic purposes and commercial activities intended to add vibrance to the downtown or central areas of neighborhoods within mixed use developments. Plaza's must be at least 2,000 square feet in size, and 50 feet wide . Trees and other landscaping will complement a mostly hardscape development pattern.
- i. Community lawn: Green Irrigated areas of over one continuous acre in size, and 75 feet in width, in the center of the development, in which building frontages orient to the lawn, and trees are planted within the perimeter. Building frontages must be rear or side loaded to receive credit. Water dedication for all community lawn areas (including trees and shrub areas) will be established in accordance with a hydrozone analysis and the water dedication section of this Chapter.
- j. Buffer areas: Continuous 60-foot wide buffer areas along the entire perimeter of the development. These buffer areas shall include fencing that satisfies the Subdivision Identity Standards, and a landscaped berm inclusive of pollinator plant selection. Buffer areas shall be irrigated and the water requirement shall be calculated in accordance with a hydrozone analysis and the water dedication section of this Chapter
- k. Preservation of historically important or landmark properties and/or sites: The preservation of any landmark building and or site, or those sites and structures with historical significance to the Town's development, under the Historic Resources requirement section found in this Code.

### **30-6-111 Contribution for public school sites**

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.

### **30-6-112 Public sites and dedication requirements**

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

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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.

### **30-6-113 Landscape design**

- A. *Intent.* To preserve Town's special character and integrate new development by promoting quality landscape design. The standards found in the Town of Berthoud Landscape Design Guidelines shall be incorporated into landscape plans, and also reflect the following:
  - 1. Reinforces the identity and creates a sense of place for 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.
  - 5. Preserve existing trees, utilize water conservation techniques, and support the planting of native species (when appropriate), to enhance the natural habitat.
  - 6. Enhances natural features, and drainage ways.
  - 7. Enhance functional open space through the creation of natural areas appropriate to the location and purpose of the open space within the development.
  - 8. Maximizes connections within development sites to natural areas and to landscaped areas in adjacent developments.
  - 9. Reinforces neighborhood identity, creates a sense of place, and creates consistency between proposed developments and the surrounding areas.
  - 10. Incorporate the elements of gateway, path and destination into the design of landscapes.
    - a. Gateways are entries that provide transitions from one space to another.
    - b. Pathways are routes that lead to a destination.
    - c. 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.
- B. *General provisions.* All land development applications except for building permits for individual attached or detached single-family residences shall be accompanied by an appropriate landscape plan. New landscaping within the community shall comply with the following regulations as well as those in the most recent version of the Town's Landscape Design Guidelines.

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1. *Site landscape design regulations.* Landscape improvements shall be an integral part of the overall site design for all residential common areas, multi-family developments, and any non-residential development/property. Landscape improvements shall be designed to complement and enhance the character of the existing neighborhood and shall follow these guidelines.
2. Any development or platted final plat with five or more units shall retain a licensed landscape architect to prepare landscape plans for front yards. To the greatest extent possible, these landscape plans should vary in design between adjoining lots. See the Landscape Design Guidelines for all landscape requirements.
  - a. Front yard landscaping should visually integrate the adjacent natural landscape where applicable.
    - i. Trees must be planted ten feet away from utility lines.
    - ii. Each front yard should have at least one ornamental tree. Front yard trees should be of at least one and one-half-inch caliper in size.
3. *Environmental considerations.* Landscapes shall use the following water conserving principles:
  - a. Well-planned planting schemes;
  - b. Appropriate turf selection to minimize water consumption and the use of bluegrass;
    1. Irrigated turf grass with a high water requirement may only be planted according to planned use, only in areas or spaces used for recreation or for civic or community purposes. Such purposes may include playgrounds, sports fields or other athletics programming, picnic grounds, amphitheaters, portions of parks, and playing areas of golf courses. Such purposes do not include, and irrigated turf grass with a high water requirement must not be planted in, parking lots or medians. Irrigated turf grass with a high water requirement may only be planted for recreation, civic or community purposes. Irrigated turf grass with a high water requirement refers to high- or moderate-hydrozone sod forming grasses including species such as *Poa pratensis* (Kentucky bluegrass), and turf-type tall fescue (*Festuca arundinacea*) and their varieties and cultivars.
    2. Irrigated turf grass species with a low water requirement may be located on a site as appropriate for the species and planned activity. Well-maintained irrigated turf grass with a low or very-low water requirement and that also does not meet the definition of "turf" set forth in C.R.S 37-60-135(2)(i) and well-maintained regionally adapted or native grass species are not subject to the irrigated turf limits.
  - c. Use of mulch to maintain soil moisture and reduce evaporation;
  - d. Placement of plant materials according to their microclimatic needs and water requirements;
  - e. Improve the soil with organic matter if needed;
  - f. Efficient irrigation systems that reduce spray over and conserves water;
  - g. Proper maintenance and irrigation schedules; and
  - h. Group plantings of similar water requirements together.
  - i. All landscapes shall strive to maximize the use of native species as specified in the Town's Landscape Design Guidelines. Where native material is not appropriate for the intended use or appearance, plant species that are regionally adapted and noninvasive may be used.
  - j. Landscapes shall consist of a variety of species to enhance biodiversity.
  - k. 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

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per a tree mitigation plan. This requirement is not intended to prevent the removal of unhealthy trees in conjunction with site development.

- I. Where possible, trees shall be located to provide summer shade and limit winter shade on walks and streets.
- m. A combination of plantings, berms, walls and fences shall be used as appropriate to buffer sensitive habitat.
- n. 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.
- o. Native grasses shall not be planted immediately adjacent to fences, buildings, sidewalks, or concrete trails. A minimum landscaped buffer of 10 feet shall exist between areas of native grass areas and fences, buildings, sidewalks, or concrete trails.

4. *Plant material standards.*
  - 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).
  - d. Plants shall be no more than 24 inches in height at plant maturity when located in a sight distance triangle.
5. *Irrigation.* This Code mandates landscaping and installation of permanent automatic underground sprinkler systems containing rain/freeze sensors and WPA Watersense weather-based (ET) irrigation controllers in all parks and open spaces within new developments, except for (i) Natural Areas undisturbed by development, (ii) Open Water, and (iii) all impervious surfaces. 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. Refer to the Town's Irrigation Plan guideline.
  - a. Water Dedication Requirements. Water dedication for irrigation purposes shall be in accordance with the Imposition of Development Fees Section 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 found in the Definitions and in the Imposition of Development Impact Fees Sections of this Chapter.
  - c. Use of non-treated water for irrigation is encouraged if a permanent, suitable supply is available. Gravity flow irrigation using irrigation ditches for areas planted with native seed 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. Areas planted with native seed are to be irrigated until the area is well established.

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- 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.
- f. All automatic irrigation systems must be installed with moisture sensors.

6. *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.

7. *Maintenance, removal, and replacement.* All property owners/occupants, Homeowner's Associations and Metro Districts shall be responsible for maintenance, removal and replacement of trees and landscaping within the portion of the public right-of-way between the back of the curb or street pavement and the adjacent property as defined in the approved land use application in perpetuity. 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.

- a. Seventy-five percent of all landscape areas shall be covered with living ground cover. The recommended ground cover should be attained within three years of the date of planting. The use of non-living ground cover, such as rocks, gravel and bark, should be used sparingly; non-living ground cover is generally most suitable as accent treatment.
- b. Notwithstanding any other provision in this code, any street tree that is diseased, is dying or has died shall be removed from the public rights-of-way in consultation with the Town Forester and the Street Tree Work Permit provisions of this Code. The Tree shall be replaced by the adjacent homeowner in consultation with the Town Forester within the same growing season of removal, as practical due to weather.

8. *Weed control.* Weed control shall be a continual responsibility of the owner, developer, Homeowners Association or Metro District from site construction and grading to occupation of the business or residence.

- a. Every effort shall be made to prevent the spread of noxious weeds.

C. *Landscaping design standards.*

- 1. *Landscaping in common open space areas.* Common open space areas are lands meant to be enjoyed by the general population, includes lands reserved for pocket parks and along trails. Landscaping shall be appropriate to the use and function of the area and include trees, shrubs, groundcover, irrigation and paving. Native grass is appropriate for trail corridors while Kentucky bluegrass is appropriate for more active park areas and some open spaces.
  - a. A mechanism for long-term maintenance of common open space and arterial and collector street right-of-way landscaping is required, inclusive of the long-term viability and efficiency of the irrigation system. This may take the form of an approved maintenance plan by the developer, a Homeowners' Association or Metro District.
- 2. *Tree-lined streets.* 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 and is maintained, as approved in perpetuity. Tree plantings should be made with the same methodical planning that is used when making substantial financial investments. To comply with the

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Streets and Alleys Section of the Design Guidelines Section of this Code there are three options to achieve this requirement:

- a. *Tree strips with detached sidewalks:*
  - i. Tree strips are recommended in all developments.
  - ii. Tree strips along Local streets shall be a minimum of six feet in width to ensure adequate room for root growth. Tree strips along Collector or Arterial streets shall be a minimum of ten feet in width.
  - iii. Trees shall be aligned in straight rows, located in the middle of the tree strip, and spaced between thirty feet and forty feet (as appropriate given the species) on center in order to allow for mature spread. If two or more consecutive residential lots along a street each measure between 40 and 60 feet in street frontage width, one tree per lot may be substituted for the 30-foot to 40-foot spacing requirement. Such street trees shall be placed at least five feet away from the edges of driveways and alleys, and 40 feet away from any streetlight and to the extent reasonably feasible, be positioned at evenly spaced intervals.
- b. *No tree strips, attached sidewalks:*
  - i. In limited cases attached sidewalks will be allowed.
  - ii. Trees installed along streets without a tree strip shall include a mix of species, be generally aligned along the street frontage and may be placed outside of the public right-of-way.
  - iii. Trees shall be irrigated from the adjacent private property owner.
  - iv. 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.
  - v. Street trees along rural streets where there is no sidewalk may be planted to create irregular clusters to reinforce the design and character of the project and frame views. Downtown streets — The properties generally located within the boundary of Massachusetts Avenue, Welch Ave, 1<sup>st</sup> Street, and LCR 17 are encouraged to provide decorative hardscaping, window boxes, planters, tree boxes, benches and street art, in order to attract pedestrian activity. Trees planted within paved environments shall have a minimum four-foot wide square tree well with grate.
- c. *General regulations for trees to be planted on public right-of-way:*
  - i. 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.
  - ii. No trees will be planted closer than five feet to an 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.
  - iii. At edges of streets where a space of less than five feet 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.
  - iv. Where an attached sidewalk has been installed, no tree plantings are to be made closer than five feet from the edge of any concrete installation.
  - v. Trees are not to be planted within ten feet of either side of water, sewer, or storm drain main lines or within five feet of either side of water or sewer service lines.

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vi. No more than six of the same plant genus may be used consecutively in a row-type planting.

3. *Minimum species diversity.* To prevent uniform insect or disease susceptibility and eventual uniform senescence on a development site or in the adjacent area or the district, species diversity is required and extensive monocultures are prohibited. The following minimum requirements shall apply to any development plan.

Number of trees on site	Maximum percentage of any one species
10—19	50%
20—39	33%
40—59	20% species; 30% genus; 40% family
60 or more	15% species; 20% genus; 30% family

4. *Tree species and minimum sizes.* The Applicant shall provide a proposed list of trees from the Landscape Design Guidelines, to be reviewed by the Town Forester and Community Development Department which shall be acceptable to satisfy the requirements for landscape plans, including approved canopy shade trees that may be used as street trees. The following minimum sizes shall be required except as provided in the section below regarding trees permitted within rights-of-way below.

Type	Minimum Size
Canopy Shade Tree	2.0" caliper balled and burlapped or equivalent
Evergreen Tree	6.0' height balled and burlapped or equivalent
Ornamental Tree	1.5" caliper balled and burlapped or equivalent
Shrubs	5 gallon or adequate size consistent with design intent
Canopy Shade Tree as a street tree on a Residential Local Street Only	1.5" caliper container or equivalent

i. Any tree plantings that are in addition to those that are made as part of the approved landscape plan are exempt from the foregoing size requirements.

ii. Ornamental trees shall be planted in substitution for the canopy shade trees required where overhead lines and fixtures prevent normal growth and maturity. Ornamental trees shall be placed at least 15 feet away from any streetlight.

iii. A permit issued by the Town Forester, will be required prior to the planting of any Street Tree (or tree on public land). Any violations will follow the provisions found in the Enforcement Section of this Chapter, and may result in the Town withholding permits and Certificates of Occupancy.

iv. The caliper shall be measured six inches above the tree-line.

5. *Trees permitted within rights-of-ways.*

a. Refer to the Town of Berthoud Landscape Design Guidelines for the most current list of tree species allowed on public lands or within the public right-of-way (seven feet in width or larger).

b. *Trees in public lands:* Refer to the Town of Berthoud Landscape Design Guidelines for the most current list of tree species permitted to be planted within parks, common areas, open spaces, and other public lands.

c. Refer to the Town of Berthoud Landscape Design Guidelines for the most current list of prohibited tree species within the Town of Berthoud right of way or on public lands.

D. *Business/commercial and industrial development shall meet the following standards in addition to those within the Town of Berthoud Landscape Guidelines.*

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1. *New buildings and paved areas.* Provide trees, shrubs and groundcover plantings along front and sides of new buildings. The size and intensity of plantings shall be appropriate to the building or structure.
2. Integrate adjacent land uses of different intensities through a combination of berthing, 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.
3. Use landscaping to provide a transition from developed, managed landscape to more natural areas and vegetation.
4. Provide a tree canopy by installing shade trees within and adjacent to paved areas.

E. Residential R-3, R-4 and Commercial and Industrial zone districts shall include landscaping standards to meet the Town of Berthoud landscape Guidelines. Landscape improvements 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

1. The developer or assigns shall provide:
  - i. A minimum of 15 percent of the site (gross) shall be landscaped area.
  - ii. *Site trees* — plant a minimum of one tree per 1,000 square feet of landscaped area, distributed on the site, exclusive of right-of-way landscaping.
  - iii. *Shrubs* — plant a minimum of one shrub per 150 square feet of landscaped area, exclusive of right-of-way landscaping. 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.
  - iv. *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 75 percent live materials between the building and the street unless otherwise approved by the Town.
  - v. *Landscape setback to parking lots* — 15 feet from streets to provide a buffer between the street and parking areas.
  - vi. *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.
    1. Utility Boxes, loading docks, outside trash receptacles and dumpsters, storage areas, and any other outdoor storage areas shall be screened in the following manner: Whenever plants are used as a screen the plants should be coniferous. They should provide an opaque screen within three years of the time they are planted.
    2. Utility boxes, including, but not limited to, electric transformers, switch gear boxes, and telephone pedestals, and boxes should be screened on all sides not used for service access.
    3. The materials and colors of the screen should blend with the site and the surroundings.
    4. Trash enclosures should be placed around dumpsters and any other proposed receptacles of trash. The dumpster should be screened entirely from view. The enclosure shall prevent trash from being scattered by wind or animals. The dumpster should be placed on a concrete pad, enclosed by an opaque wall at least six feet in height, with opaque gates. The enclosure should be sturdy and built quality wood and or/masonry materials. The trash enclosures should be sited so the garbage truck has convenient access to the enclosure and has room to maneuver without backing onto a public right-of-way.

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2. The property owner or occupant shall be responsible for landscaping located within adjacent road right-of-way and tree strips in accordance with Town regulations, which includes the maintenance, removal, and replacement of trees, shrubs, and groundcover.
3. *Parking lot landscaping standards shall meet the following standards in addition to those within the Town of Berthoud Landscape Guidelines.*
  - i. The developer or assigns shall provide:
    1. At least five percent of all parking lot areas shall be landscaped (this requirement is in addition to the overall 15 percent landscaping requirement for the site. Parking lot landscaping is intended to 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.
    - 2.. *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.
    3. *Shrubs* — a minimum of one shrub per 100 square feet of landscaped area. Group plantings in landscape islands.
    4. *Groundcover* — Irrigated turf grass with a high water requirement shall not be used in parking lot landscaping per C.R.S 37-60-135(2)(i).
    - 5.. *Landscape setback to parking lots* — 15 feet from all arterials, collectors, 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.
    6. *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.
    7. *Screening*: whenever there are more than three parking spaces on the property, the parking lot should be screened for at least two-thirds of the length of the parking lot, and shall satisfy the following standards:
      - a. Berms, walls, fences, plants, planters or similar means should be used to create the parking lot screen. Whenever structures such as walls or fences are used to create a screen, plants should be located on the sides of the structure which can be seen from surrounding streets, walks, parks, trails and other properties which are used by the public.
      - b. The screen around the parking area should be at least three feet higher than the surface area of the parking lot. Whenever plants are used to create a screen, the plants should create a three-foot screen within three years from the time planted.
    8. *Landscape islands*: Two feet at the end of each landscape island should remain unplanted, as the end points of islands are often run over by cars. The use of cobbles, patterned concrete, or brick pavers should be considered.
    9. Landscape areas in parking lots shall be no smaller than 80 square feet each, and shall contain at least one tree and five shrubs for each island. Islands larger than 80 square feet shall contain one additional shrub for each additional 20 square feet of area, and one additional tree for each additional 200 square feet of area.
    10. Pedestrian and/or vehicular access ways should be extended to the property line in order to interconnect with other adjacent commercial/industrial parking lots, sidewalks, and/or trails, with landscaping to enhance such connections.

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4. Storm drainage facilities as public open space or park lands and shall follow the Town of Berthoud Landscape Design Guidelines. For drainage facilities proposed and accepted 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. The bottom of the pond shall be planted with turf grass or similar, in order to provide an active playing field, and irrigated at 3 AF/Ac.
    - ii. Slopes shall comply with Town standards but in no case shall exceed a slope of 6:1. Slopes shall be planted with either native seed and irrigated according to the Town's Engineering Specifications and Standards and provisions found in the Berthoud Development Code.
    - iii. Trees shall be planted at the top of the retention pond at a distance of one tree every 40 linear feet, and irrigated at 1.33 AF/ac. Ground cover may include native seed and shrubs.
    - iv. Adequate access in the form of sidewalks and/or trails shall be provided to the detention basin or Retention basin for pedestrians, the physically disabled and for maintenance equipment.
    - v. 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.

F. Submittal standards for landscape plans can be found in the Subdivision and Land Use Regulations section of this Chapter.

G. *Street Tree Work Permit.*

1. *Intent.* The Town of Berthoud Street Tree Work Permit is intended to promote a more overall healthy and sustainable urban forest by allowing Forestry Staff to develop a greater understanding of management needs and maintenance being performed on trees that are located within tree strips as that term is defined in Definitions Section of this Code. This program is intended only for trees located within tree strips for which property owners/occupants are responsible for maintaining, removing, and replacing pursuant to the Development review deposit and reimbursement of Town costs Section as well as this Street Tree Work Permit Section after developments are out of warranty; not trees located on private property.
2. *Definitions.* As used in this Section and in the Development review deposit and reimbursement of Town costs Section, the following words will have the meanings indicated:
  - a. *Applicant* means an individual who is a natural person who owns a Property, and by virtue of said ownership is required to maintain, remove, and replace trees located within the tree strip adjacent to Applicant's Property.
  - b. *Property* means a parcel of real estate within the Town of Berthoud, Colorado, which is adjacent to a tree strip .

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- c. *Tree Strip* shall have the same meaning as defined in the definition section of this Chapter.
- d. *Right-of-Way*, as defined in the Definition Section of the Berthoud Development Code, is 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.
- e. *Street Tree Work Permit* means a permit for performing maintenance on a tree that is located within a tree strip .
- f. *Maintenance* includes pruning, chemical treatments of pesticides, fungicides, or fertilizers, replacement, removal or any other actions that may affect the health of a tree.

3. *Procedure.* The following procedure shall apply when an Applicant desires to apply for a Street Tree Work Permit:

- a. Any Applicant may apply by filling out a Street Tree Work Permit Application ("Street Tree Work Permit Application") and submitting the Street Tree Work Permit Application to the Forestry Department. The Street Tree Work Permit Application shall be created and approved by the Town's Forestry Department, and may be amended from time to time in the sole discretion of the Forestry Department. There shall be no cost for obtaining a Work Permit Application.
- b. Town Staff is authorized to review and either approve or disapprove Applicant's Street Tree Work Permit Application, and may contact Applicant if any additional information is required. Town Staff will review each Street Tree Work Permit Application for conformance with standards set by the Town Forestry Department, and which standards may be amended from time to time.
- c. If Applicant's Street Tree Work Permit Application is approved, the Applicant will be contacted for further instructions. Street Tree Work Permit Applications are valid for 60 days after approval date. A follow-up site evaluation may be conducted and recorded after tree maintenance has been performed.

4. *Requirements.* The following requirements, in addition to any other requirements imposed by Town staff in their discretion, must be met prior to Applicant being granted a Street Tree Work Permit:

- a. Tree maintenance, removal, and replacement must be performed by a Town of Berthoud Licensed Tree Service, or Applicant.
- b. Applicant shall be responsible for all costs associated with maintenance, removal, and replacement of the tree(s) within tree strips. .
- c. Tree pruning shall consist of crown raising, crown reduction, crown thinning (no more than 25 percent of live crown), crown cleaning, and root reduction.
- d. Chemical treatments shall identify tree species and size, targeted insect/disease/deficiency, and product applied/application rate/application method.
- e. Trees must be removed with good cause. Good cause, as used in this section, shall mean the subject tree is dead, dying, hazardous, in poor health, incorrectly planted, is of a prohibited species, or per part of a management plan.
- f. After removal, stumps must be properly removed six to eight inches below ground level and all wood material must be removed from the work site within 48 hours.
- g. New trees to be planted within tree strips shall comply with the Town's Tree Planting Standards. The Town's Tree Planting Standards are attached to this Ordinance, and may be amended from time to time in the sole discretion of the Town.
- h. New trees to be planted within tree strips shall meet species, size, diversity, and spacing requirements per the Development review deposit and reimbursement of Town costs Section of the Berthoud Development Code.

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5. A Street Tree Work Permit must be acquired prior to performing any maintenance, removal, or planting of any tree located in a tree strip.
6. Town Staff is hereby authorized and directed to develop an appropriate Street Tree Work Permit Application form to be submitted by an Applicant when such Applicant wishes to obtain a Street Tree Work Permit.
7. Town Staff is hereby authorized to inspect, conduct surveys, and perform maintenance as needed on any tree within tree strips.
8. Any violation of any provision contained in this section shall be punishable by a fine up to \$2,500.00.

### **30-6-114 Fences and walls**

- 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, trails and sidewalks, open space areas, and 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 50 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 15 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 30 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 rights-of-way 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

Zone District	Front Yard	Side Yard	Rear Yard	Behind Structure	Side Yard Of Corner Lot 0'/15' from Lot Line Abutting a Street
TN	4'	6'	6'	6'	4'/6'
R1	4'	6'	6'	6'	4'/6'
R2	4'	6'	6'	6'	4'/6'
R3	4'	6'	6'	6'	4'/6'
R4	Height to be determined by use				
R5	4'	6'	6'	6'	4'/6'
C1	3'	6'	6'	6'	3'/6'
C2	3'	6'	6'	6'	3'/6'
M1	4'	8'	8'	8'	4'/8'
M2	4'	8'	8'	8'	4'/8'
AG	6'	6'	6'	6'	4'/6'

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.

### 30-6-115 Residential design standards

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.* The design standards stated in this "section" are intended to implement strategies for residential development, and promote quality design of an urban environment. In an effort to avoid monotonous streetscapes, all residential development (including PUDs and development on individual lots or parcels) shall include a mixture of different lot sizes, dimensions, and housing models, as provided and described in this section, unless expressly exempt by this section. In addition to the requirements of this section, applicants will be required to follow *the Town of Berthoud Architectural Design Guidelines*. 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.

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- 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 Planning Commission on appeal, acting as the Board of Adjustment. Architectural elevations shall be submitted with all site plans. Block diversity plans shall also be submitted as required herein, during the building permit process.
- D. *Suburban Residential Design standards.* The intent of this section is to foster new residential development with architectural designs that create diversity and variety along residential streets.
  - 1. *Street Patterns and Pedestrian and Bicycle Connectivity.*
    - i. *Type:* Street Patterns may have either a Suburban curvilinear character or a gridded pattern.
    - ii. *Walkability and bike-ability:* shall be guiding principles in the design of the overall subdivision pattern.
    - iii. *Arterial and Collector Streets:* All arterial and collector streets shall provide dedicated bike lanes, and bike parking or racks should be provided where public or private amenities (Subdivision Identity, Open Space Elements, or Parks) are provided. All arterial and collector streets shall provide a minimum of ten-foot tree strips. No residential lots shall load onto arterial or collector streets.
    - iv. *Local Streets:* All streets must provide seven-foot detached tree strips and five-foot minimum sidewalks along both sides of each road. Sidewalks shall be interconnected throughout, and connect to any nearby trails, parks, or open spaces. Painted bike lanes or shared bike lanes are encouraged on local streets.
  - 2. *Architectural design of dwellings.* All dwellings and accessory structures shall provide quality architectural design that takes into consideration building massing and style, roof lines, window and door placement, exterior materials and colors and other architectural features. Also see *Town of Berthoud Architectural Design Guidelines* for all design guidelines.
    - a. *Exterior colors of residential dwellings.* Residential subdivisions and developments shall include a variety of exterior color palettes to provide diversity within the subdivision or development. Color palettes shall be included in the design guidelines submitted with a subdivision or development. Fluorescent or intense colors shall not be used on any wall or roof of any dwelling or accessory structure.
  - 3. *Lot diversity:* Housing types, block dimensions, garage placement, lot sizes and lot dimensions shall be significantly and substantially varied to avoid repetitive rows of housing and monotonous streetscapes.
    - a. *Mix of housing.* A mix of permitted housing types shall be included in any individual development plan. All housing types shall be distributed evenly (of equal percentage distribution) throughout the development. In order to promote such variety, the following minimum standards shall be met:
      - i. A minimum of three housing diversity types shall be required in residential development containing 20 acres or less, including such plans that are part of a phased overall development;
      - ii. A minimum of four housing diversity types shall be required in residential development containing more than 20 and less than 40 acres, including such plans that are part of a phased overall development;
      - iii. A minimum of six housing diversity types shall be required in residential developments containing between 40 and 80 acres including such plans that are part of a phased overall development; or more;

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vi. A minimum of eight housing diversity types shall be required in residential developments containing 80 or more acres, including such plans that are part of a phased overall development.

b. The following is a list of Housing Diversity types in the Town of Berthoud, to be used to meet the requirements listed above, contingent upon the Land Use Table allowances. :

1. Rowhomes or Townhouses
2. Paired Homes, Duplex with separate accesses points visible from the street
3. Paried Homes, Duplex with a common entry
4. Live/Work units
5. Clustered Homes (type of residential development where homes are built close together—typically on smaller lots than traditional subdivisions—with centralized shared open space)
6. Tiny Single Family Residential Lots (less than 30' wide)
7. Small Single Family Residential Lots (30'-40' wide)
8. Standard Single Family Residential Lots (40'-70' wide)
9. Large Single Family Residential Lots (over 70' wide)
10. Any Residential Lot can be diversified by providing driveway access with either rear yard garage placement or alley loaded garage placement
11. Multifamily (single stair) with common entry
12. Multifamily (elevator)

4. *Housing elevation diversity:*

a. Different housing elevations are distinct in exterior massing and architectural detail. The following housing elevation diversity requirements apply

- Diversity type count 100 and above - **twelve** different housing elevations for that diversity type will be required.
- Diversity type count 51 - 99 - **eight** different housing elevations for that diversity type will be required
- Diversity type count 21 – 50 - **six** different housing elevations for that diversity type will be required
- Diversity type count 8 – 20 – **four** different housing elevations for that diversity type will be required
- Diversity type count 2-7 - **two** different housing elevations for that diversity type will be required

b. Exterior elevations shall be distinct in exterior massing and architectural detail as outlined in the Town's Architectural Guidelines.

c. Housing elevation requirements per street:

	# of Lots between on same side of street*	Lots Across the Street*	Cul-de-sacs
Elevation (must be distinct in nature to be considered a separate	Every 4 (3 lots between)	Not across the street	Spaced not across, plus one down (or

elevation-minor aesthetic changes will not be counted as separate elevations)			cattycorner) left and right on each side
Material Palette (also must be a distinct color difference to be counted)	Every 4 (3 lots between)	Not across the street	Not across, plus one down (or cattycorner) left and right on each side
Front Porch/Staggered Setbacks	Front porches can be utilized instead of line of house, for staggered setbacks	Not applicable.	Staggered setbacks not required on cul de sacs

\* Adjacent lots shall include abutting lots, or those lots separated by a street, alley, auto court, loop lane, or other common private drive.

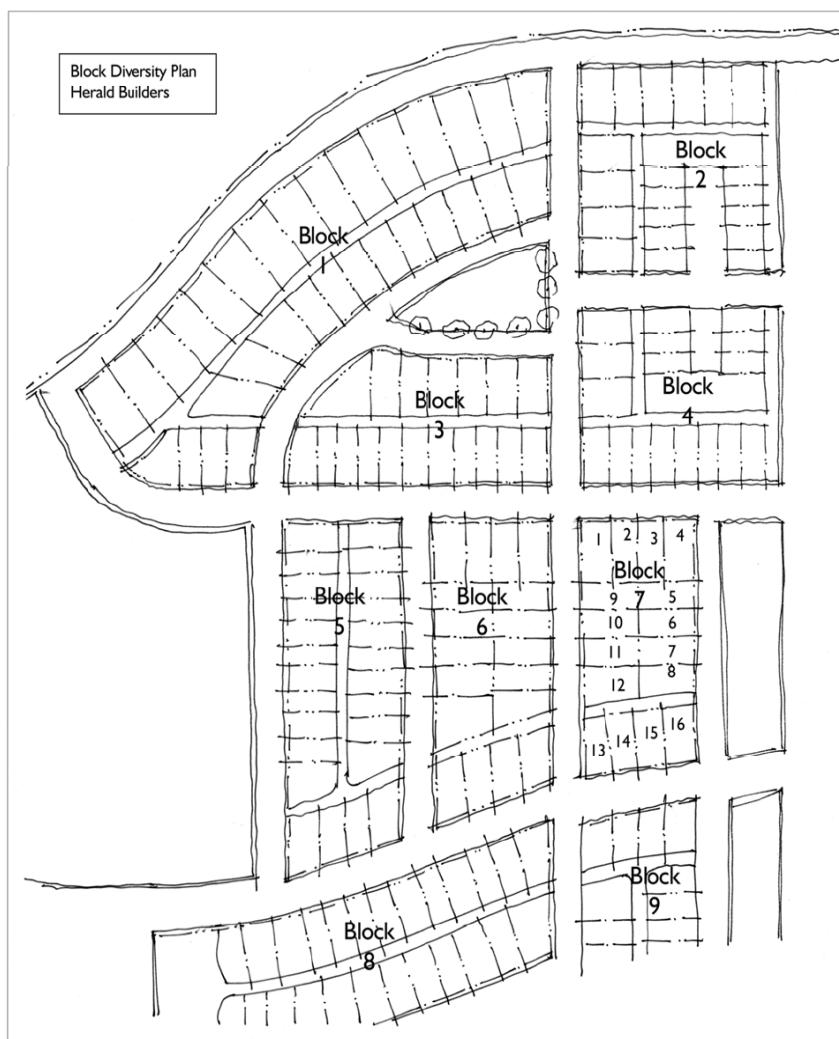
d. The following shall apply to all single family development, as applicable

1. Corner lots should have side yard to street elevations with improved exterior details and massing as suitable for a street side elevation.
2. Garages should not exceed 50% of the street frontage of any housing model.
3. Lots less than fifty (50) feet wide on the street frontage shall have either a rear-loaded garage, a side-loaded garage, or a single-lane driveway with a garage located at the rear of the lot.
4. Garages should be recessed from the front elevation by a minimum of 2'
5. Front setbacks on adjacent lots shall vary by at least two feet to provide for a varied streetscape, and verification of this standard shall be provided by the Applicant in the Block Diversity Plan.

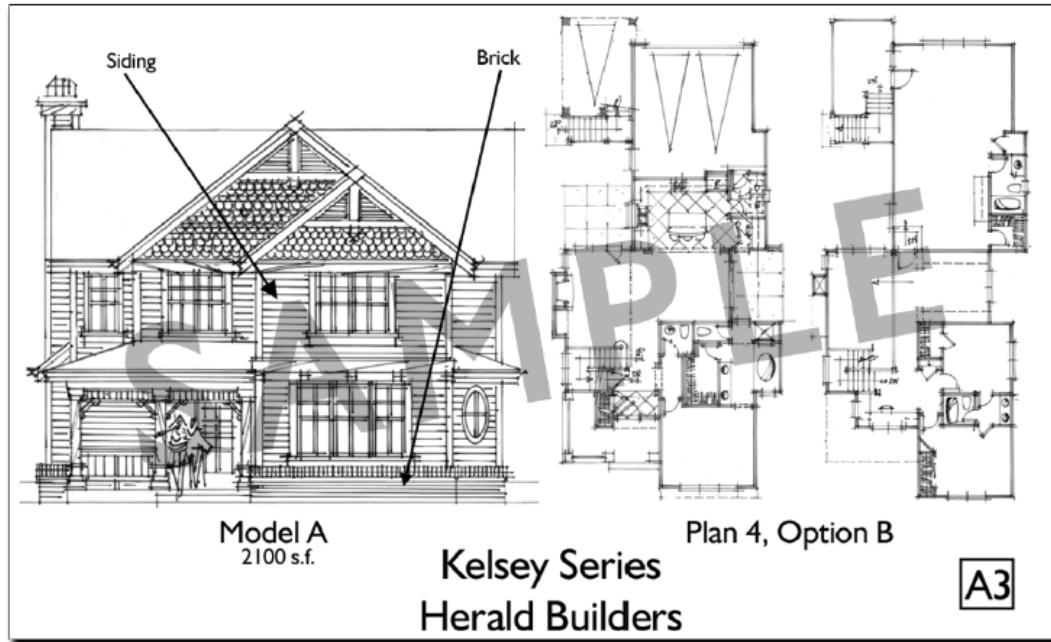
5. *Block Diversity Plan.* The Block Diversity Plan is an opportunity for applicants to provide the Town with visual and graphic images showing the type of residential architecture that is to be constructed on each block of the proposed development. Applicants shall provide the Town with exterior elevations of proposed residential structures with the location of each structure depicted on the Final Plat (examples of the Block Diversity Plan format follow). Applicants can chose to submit Development Neighborhood Design Guidelines in place of a Block Diversity Plan . Guidelines should enforce the requirements of this section and shall be accompanied by the method of how the guidelines will be approved by a HOA or District prior to building permit application submittal.

- i. *Applicability.* Every phase that would include five or more residential building permits must complete a Block Diversity Plan. The Block Diversity Plan will be submitted as part of the building permit process.
- ii. *Review and Approval.* Review of any Block Diversity Plan will be based upon conformance to the intent of the architectural and design policies found in this Section. Review and approval will be conducted and determined by Town Staff.

## Sample Block Diversity Key



**Sample Block Diversity Map to be submitted by the Builder/Developer, to illustrate housing mix.**



#### Sample Elevation and Floor Plan Submittal

7. *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 feature a variety of massing proportions, wall plane proportions, roof proportions and other characteristics. The following specific standards shall apply to multifamily stacked units, including condominiums and apartments:

1. *Individual building identity.* For all developments consisting 100 or more multi-family stacked dwelling units, a floor plan may be repeated; however, identical building facades must not be replicated more than twice within the development. During the site plan approval process, the applicant shall illustrate how the development will comply with the requirements set forth in this section.
2. *Articulation.* The intent of this section is to require building design that achieves balanced and articulated building composition, a perceived intimate scale of buildings, and pedestrian interest. façade. Buildings over 60' in width shall provide variety in segments less than or equal to 40'. Each segment shall vary by the type of dominant material, or by color, scale or orientation of that material and by at least two of the following:
  - i. Recesses, projections or significant offsets in the wall plane;
  - ii. Distinct individualized entrances;
  - iii. roof type, plane, or material;
  - iv. Balconies

Window placement or scale.

  - v. Height differentiation between buildings.
3. *Roofs.* Each multi-family building shall feature a combination of primary and secondary roofs. Primary pitched roofs shall be articulated by at least one of the following elements:
  - i. Changes in plane and elevations;
  - ii. Dormers, gables or clerestories;

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- iii. Transitions to secondary roofs over entrances, garages, porches, or bay windows.
- 4. *Color.* For all developments, there shall be no more than two similarly colored structures placed next to each other along a street or major walkway.
- 5. *Garages.* Garages should be internal to the development and concealed from the right of way. When garages are visible from the public right of way or adjacent property, the architecture should follow the design intent and quality of the primary structure.

1. *CD Conservation District.* The Conservation District (CD) is intended to provide for primarily low-density housing types and large areas of conservation.

- a. *Street Patterns and Pedestrian and Bicycle Connectivity.*
  - i. *Land Pattern:* Development should occur in a rural style, including larger lot sizes, sizeable setbacks, and expansive areas dedicated to conservation. Dead end streets and cul-de-sacs are discouraged in favor of looping and connected street patterns. Conservation subdivisions should follow conservation design development concepts, where a significant portion of the property is permanently protected as open space and a small percentage is developed for low density residential lots that are placed to minimize impacts to environmental resources.
  - ii. *Arterial and Collector Streets:* All arterial and collector streets shall be built to the Town of Berthoud's standards. Conservation District subdivisions should have direct access to these roadways via a local road and all residential lots should have a substantial buffer. No lots should have a direct access to an arterial or collector street.
  - iii. *Local Streets:* Streets are intended to be rural in nature, characterized by borrow ditches and no curb and gutter or sidewalks. Street trees and streetlights will not be required.
  - iv. *Bicycle and Pedestrian Connectivity:* Painted bike lanes or shared bike lanes are required on local streets. Bike racks should be provided where public or private amenities (Subdivision Identity, Open Space Elements, or Parks) are provided. Crusher fines off-street trails as transportation or leisure routes are heavily encouraged. Trails identified in the current Trails Master Plan are required to be constructed along with the development.

c. *Site Design.*

- i. *Lot Size and General Layout.* Even within the development cluster, the highest priority for site layout shall be the preservation of environmentally sensitive areas and agricultural uses. The location of home sites and the corresponding layout of lots and streets shall have a lower priority and shall be designed to create a compact development pattern. No minimum lot size is required in the development cluster, except for those developments and lots that use on-lot septic systems or wells where the minimum lot size is two acres (87,120 square feet).
- ii. Site layout shall be oriented to:
  - 1. Achieving the best possible relationship between development and features of the land;
  - 2. Minimizing alteration of the natural site features and topography;
  - 3. Relationship to surrounding properties;
  - 4. Improving the view from and the view of buildings; and
  - 5. Reducing the area devoted to roads and utilities.

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iii. Flexibility in lot size is encouraged to:

1. Promote a design that is sensitive to the natural environment;
2. Adapt to the natural topography of the site;
3. Accommodate the mix of residential land uses and housing types proposed within the development;
4. Design for compatibility with agricultural uses and other existing and allowed uses.
5. To the extent practical, home sites should be located to enhance visual access to residual land both from the proposed development and from adjacent lands.

iv. *Residual Lands.*

1. Residual land in conservation developments shall be designed to achieve the maximum contiguous amount of open space possible while avoiding the creation of small, isolated, and unusable areas.
2. Roads, pedestrian walkways, and trails may connect through the residual land.
3. Where practical, residual land should be located contiguous to and be connected with other residual land on the site or residual land adjacent to the conservation development boundaries. Connectivity is based on visual connections for residents of the development and, where applicable, physical connections for wildlife habitat.
4. Residual land may include such uses as pedestrian and bicycle areas, buffer areas and common area devoted exclusively to the use of the residents of the conservation development and their guests.
5. Residual land areas containing environmentally sensitive areas or features can not contain any structure or improvements, except walkways or trails, provided such areas are determined to be appropriate for walkways or trails and they can be constructed with minimal disturbance to environmentally sensitive areas.
6. Residual land areas shall not include road rights-of-way or parking areas, except in projects with a ratio of 20 percent developed area to 80 percent residual land, the road right-of-way, up to 70 feet in width, may be included in the calculation of the required residual land.
7. Uses in residual land are limited to such uses, accessory structures, and improvements necessary for agricultural uses or for the educational, cultural, recreational, or social enjoyment of the residents of the conservation development and their guests, and any utility services, including community sewer systems, providing the coverage of all structures and improvements in the residual land does not exceed five percent of the residual land.
8. All residual land not developed as part of the conservation easement must be held or dedicated as a perpetual conservation easement, or as open space to the Town of Berthoud.
9. Residential conservation tracts shall not be subdivided.

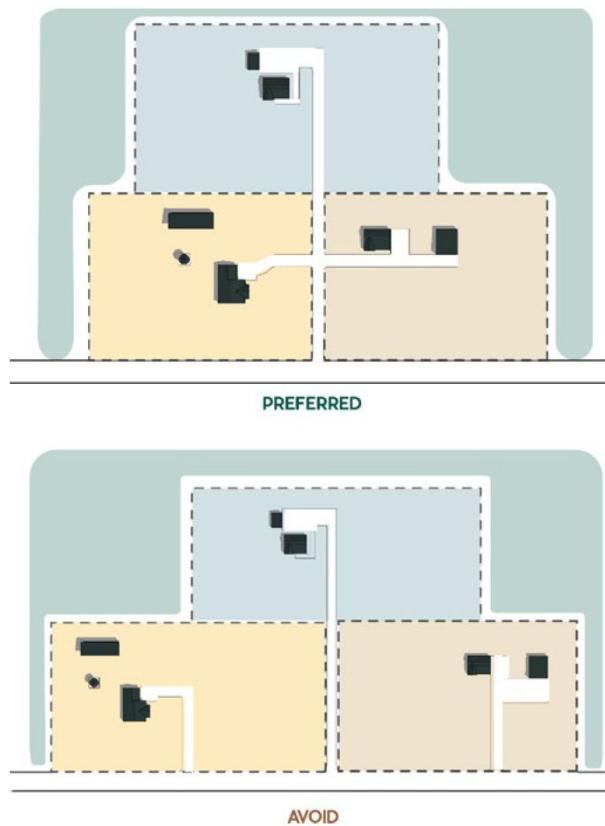
d. *Design Requirements.*

1. Structures shall be sited to optimize the shape and configuration of farmable parcels and fields. Fragmented farmland and wildlife habitat shall be avoided to the maximum extent practicable.
2. Structures shall be located at the edges of farmland to allow the creation of cohesive farm fields.

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- 3. New structures or development shall be located at the edge of existing developed areas in compact configurations. Where possible, development should be located at the edge of farmland or natural features such as a ridgeline, tree stand, bluff, or stream.
- 4. Fence rows shall be used where practicable to define productive parcels and developed areas.
- 5. Driveways shall be located along fencerows or other natural features that are not incorporated into farm fields. The distance and number of driveways shall be minimized to the maximum extent practicable. See Figure below.

**Figure Driveway Site Design**



- e. *Multiple-lot residential development.*
  - 1. Multi-lot conservation development shall be clustered in the form of a typical farmstead and served by a cul-de-sac road. See Figure regarding Cluster Development with Cul-de-Sac.
  - 2. Developed land adjacent to farmland shall be minimized to prevent the loss of farmland.
  - 3. Development shall be designed and sited to minimize the perimeter of developed areas adjacent to farmland.
  - 4. Large, isolated lots shall be avoided to the maximum extent practicable.

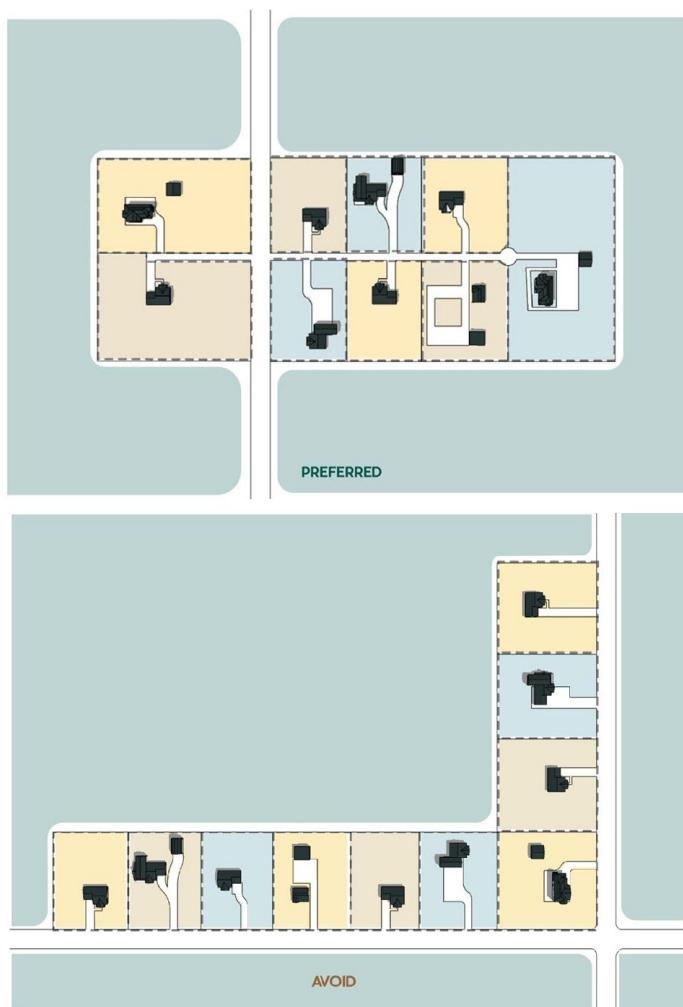
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5. Development Sited Away from Roadway: Homes and outbuildings shall be set back from the road and shall not be designed to line the roadway with structures and driveways as shown in the figure below.

**Figure Development Sited Away from Roadway**



**Figure Cluster Development with Cul-de-Sac**



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f. *Building Envelopes.*

1. In lieu of setbacks, building envelopes may be designated for each lot to identify the area where all buildings shall be constructed and to provide adequate separation between buildings and uses or activities.
2. Building envelopes shall be designed to avoid hazard areas, the tops of ridgelines or slopes, view corridors, open fields, sensitive environmental areas, and agricultural infrastructure.
3. To the maximum extent feasible, all building envelopes shall be located at least one-quarter mile (1,320 feet) from the edge of the Interstate 25 or Highway 287 right-of-way.
4. The placement of buildings within building envelopes along the street frontage should be varied to minimize uniformity.
5. If building envelopes are used, agricultural buildings may be located outside the building envelope on the residual lot if specified as part of an approved development. Applicable base zoning district setbacks shall still be applicable.
6. A building envelope may be used to limit the location of various types of structures. When so used, the types of structures limited to the building envelope shall be clearly stated as part of an approved development with the implication that all other types of structures may be located outside the building envelope

g. *Buffering.*

1. Perimeter buffering of a development cluster is required to minimize visual and noise impacts where adjacent land uses are of a different type (e.g., residential adjacent to commercial or industrial) or are of a substantially different residential density; or where the cluster is adjacent to a county road, state or federal highway or a railroad.
2. Where the proposed cluster abuts an existing or approved residential, mixed-use, or commercial development, the buffer shall be at least equal to the required rear yard depth of the adjacent lots. Where the proposed cluster abuts a county road, state or federal highway or a railroad, the buffer is measured from the edge of the existing right-of-way and shall be of a width and design to reduce visual and noise impacts from the road, highway, or railroad.
3. Buffering may be accomplished through the use of increased separation between land uses and/or by using native or drought resistant vegetation, fencing, walls, or a combination of these measures.
4. The traditional concept of using windbreak plantings around a farmstead may be desirable for the design of buffering between a cluster and agricultural uses.

h. *Fencing.*

1. Privacy fencing may be used in conservation developments when the backs of lots are adjacent to a county road or state highway, or on individual lots to provide privacy or enclosure for the lot or a portion of the lot. Such privacy fencing shall be constructed of wood.
2. Fencing should be designed to conform to the topography and be of a color that blends with the natural environment.
3. Plastic and fiberglass fencing is prohibited

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### 30-6-116 Subdivision identity and place standards

A. *Intent.* Subdivision identity and place elements shall be provided with all development proposals containing a residential component. The Subdivision identity and place standards ensure spaces are created for gathering, recreation, and design features. These spaces are required to create a unique character or sense of identity within each subdivision. Subdivision identity and place elements may include a pocket park, trail system, pedestrian plaza and/or courtyard, community building or pool, community garden or pollinator garden, artwork/water features, playground or picnic/barbeque area, signage, fencing, and other approved elements which substantially improves the character of the subdivision.

Except as otherwise provided herein, no credit for one of the required features, shall be given for items that are otherwise required by other provisions of this Development Code, such as landscaping, park or open space requirements. A mechanism shall be defined and established by the developer to ensure perpetual maintenance of all subdivision identity and place features. Where such mechanism involves a homeowners' association or metro district, there shall be clear language provided of their responsibility on all plats and development agreements.

B. *Applicability.* Subdivision identity and place features are required in all developments which include residential use, including un-platted phases of existing developments. In new developments, the required subdivision identity standards will be counted for the entire development; in existing developments with un-platted phases, all new phases will require elements as per the number of units/acreage of the remaining phase proposed. Where the number of acres and the number of dwelling units proposed in a development results in two different numbers of required subdivision identity and place elements, the larger number of required elements shall be used. The following table specifies the quantity of elements required per the number of units or acreage of the development.

Subdivision Identity and Place Element Table

Number of Units/Acreage of Development	Elements Required (22 total possible)
5 to 20 Dwelling units; or 2-5 acres	4
21 to 50 dwelling units; or 6-11 acres	7
51 to 100 dwelling units; or 11-50 acres	8
101 to 200 dwelling units; or 51-100 acres	9
201 to 300 dwelling units; or 101-200 acres	10
Over 301 dwelling units; or 201 acres or more	11

C. *Elements.*

1. *METRO/HOA Responsibility.* All elements shall be the responsibility of the Metro district or HOA, unless otherwise agreed upon by the Town.
2. *Element Category Eligibility.* Combining elements of one category or offering multiple elements in one of the element categories below, will not count towards the total required elements outlined in the Table above (ex. five playgrounds which satisfy the requirements below, will only be entitled for credit for one element for playground features, and not be credited for five elements); each element category may be counted towards the overall total only once.
3. *Element Category Credits.* One credit shall be given for the following subdivision identity and place elements:
  - a. *Trails* shall be designed to provide areas for walking, bicycling and/or riding in areas separate from and in addition to traditional sidewalks. Trails are to be avoided along collector and arterial streets and should include meandering pathways or trails rather than linear sidewalk. Trails shall be designed and constructed using one of the following designs appropriate for the location as determined by the Trails Master Plan in the Berthoud PORT Plan, and as determined by Town Staff:

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- i. Ten-foot-wide paved concrete multi-modal trail .
- ii. Eight-foot-wide crusher fines trail with collared edges, or as per the parks master plan, whichever is greater .
- b. *Pocket Park*: A pocket park(s) ranging from one-third of an acre to two acres in gross size. Pocket Parks ranging from two acres to five acres in size, shall count as two elements.
- c. *Artwork*: Artwork such as sculptures, fountains, water features, informational placards.
- d. *Playground*: Any playground(s) with commercial grade playground equipment, picnic/barbeque areas with commercial grade equipment, or court games (tennis, volleyball or basketball), provided the area is at least 1,000 square feet in size, and the detail of the playground equipment, must be included with the site plan/landscape plan.
- e. *Pollinator Gardens*: A pollinator garden(s) with collars to define edges, and a minimum of 1,000 square feet (aggregate) of size for 21 to 50 dwelling units and/or 11 acres or less; and 1,000 square feet of additional pollinator garden area per the graduated subdivision dwelling unit and acreage size .
- f. *Pool*: An in-the-ground swimming pool at least 20 feet by 40 feet in size .
- g. *Community Building*: A community building at least 4,000 square feet in size to serve the subdivision with meeting rooms, restrooms, changing/locker rooms, and/or fitness facilities or any combination of the above.
- h. *Entryway*: An integrated entryway system, including retaining walls, walls, landscaped area, medians, lighting and/or subdivision signs crafted of brick, stucco or wrought iron.
- i. *Buffer Areas*: Buffer yards along arterial and collectors, adjoining subdivisions, and/or the perimeter of the subdivision of no less than 30 feet. Buffer areas shall be comprised of berms, turf, trees, and/or shrubs.
- j. *Fencing and Walls*: Enhanced fencing or walls which may include masonry, brick, wrought iron and/or unique alignments such as serpentine, off-sets, sculptural effects and/or more frequent placement of columns or posts. Vinyl fencing will not be eligible for element credit.
- k. *Useable Detention Areas*: A useable or improved detention pond(s) a minimum of 5,000 continuous square feet in size, with turf, natural grass, trees, shrubs and other amenities such as benches or picnic tables that do not impede detention capacity, including a permanent irrigation system and higher quality construction materials (i.e., decorative rock for riprap), and/or ability for use as athletic fields, to be perpetually maintained by the development.
- l. *Existing Trees*: Protecting or retaining existing trees of sufficient calipers and will require the submittal of an existing tree survey to qualify.
- m. Useable Open Space: Open space (above the already required ten percent) that is comprised of a continuous 10,000 square foot turf area which can be easily utilized for recreational activities, such as a disc golf course. Pollinator garden areas may be included in the useable open space calculation.
- n. *Alley Loaded Streets*: Alley loaded streets along any arterial, collector, or lots fronting onto a neighborhood park and/or open space if maintained by the HOA or Metro District.

### **30-6-117 Mixed Use Commercial and industrial standards**

- A. *Intent*. The Town has distinctly different downtown, commercial and industrial types of development contemplated within the community. . In addition to the requirements of this section, applicants will be required to follow the *Town of Berthoud Architectural Design Guidelines* specific to the place type assigned to the property.

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B. *General provisions for commercial and 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, or within the exempt Downtown parking areas as defined in the Parking Section of this Chapter).
5. *Building orientation.* Buildings in the C1, and R-4 Zone District shall be at the front property/built-to line as required in the Commercial and Industrial Standards Section of this Chapter. Buildings within the R-4 Mixed-Use district are strongly encouraged to place the building and facades at the front property line, to form a continuous street façade. Building setbacks from local and collector streets should be minimized in order to establish a visually continuous, pedestrian-oriented street frontage.
6. *Wall articulation.*
  - a. Walls shall not have an uninterrupted length exceeding 50 feet. Pilasters, texture transitions, windows, stepping of the wall plane, and/or landscaping accomplishing the same effect are required to satisfy this standard as specified in the Commercial and Industrial Standards Section of this Chapter.
  - b. Blank wall or service area treatment of side and/or rear elevations visible from to the general public is not allowed unless the Community Development Director determines there are adequate building or landscape features to conceal the view of the blank wall.
7. *Facade treatment.* The architectural treatment of the front facade shall be continued, in its major features, around all visibly exposed sides of a building visible from adjacent residential and commercial zoned districts. Blank walls at side and/or rear elevations visible to the general public are prohibited adjacent to any residential or commercial zoned district.
8. *Windows.* Windows shall be vertically proportioned wherever possible.
9. *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.
10. *Screening of HVAC.* 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, and landscaping. In addition, all trash facilities, loading and parking areas shall be screened from public view by landscaping, building elements or approved fencing.
11. *Containers.* Storage Containers as defined herein shall not be located on any industrial or commercial property in a permanent manner, or for longer than a six month basis.

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C. *C1, C2 and R-4 Mixed Use District design standards.* With respect to the Downtown business district (C1 zone), , and the Mixed-use (R-4) District 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. In addition to the requirements of this section, applicants will be required to follow the *Town of Berthoud Architectural Design Guidelines* specific to the place type assigned to the property.

b. *Street Patterns and Pedestrian and Bicycle Connectivity.*

- i. *Land Pattern:* Development should occur in a "New Urbanist" style, including gridded street patterns, shorter blocks, and alley-loaded products. Dead end streets and cul-de-sacs should be avoided at all costs. Mixed-Use buildings are encouraged throughout the neighborhood, especially at street corners or along busier roadways.
- ii. *Arterial and Collector Streets:* All arterial and collector streets shall be built to the Town of Berthoud's standards. These road types should be concentrated on the periphery of Urban Residential developments and should rarely provide direct access to individual lots.
- iii. *Local Streets:* All streets must provide seven-foot detached tree strips and minimum four-feet wide sidewalks along both sides of each road. Sidewalks shall be interconnected throughout, and provide natural connections to any nearby trails, parks, or open spaces. Painted bike lanes or shared bike lanes are encouraged on local streets.
- iv. *Bicycle Connectivity:* Painted bike lanes or shared bike lanes are encouraged on local streets. Bike racks should be provided where public or private amenities (Subdivision Identity, Open Space Elements, or Parks) are provided. Off-street trails as transportation routes are heavily encouraged.
- v. *Pedestrian Connectivity:* The size of buildings, street blocks, and amenities should be built to a pedestrian scale. Pedestrian street crossings should be plentiful, allowing for pedestrians to cross at natural locations. Off-street trails as transportation routes are heavily encouraged.

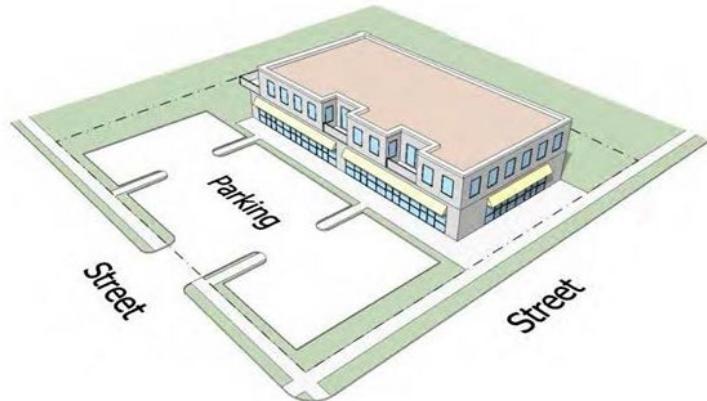
c. *Site Design*

- i. *Layout:* Sites should be designed in a "New Urbanist" style with buildings built close to the sidewalk at a pedestrian scale.
- ii. *Parking:* For buildings that include commercial and multi-family units, off-street parking should be located in the rear or interior of the building footprint. For single-family buildings access to the driveway and garage should come from the rear alley or side street.
- iii. *Design:* All sides of a building that front a street should be activated architecturally. Corner buildings' side yards should continue the elements found in the front yard. This includes the building facade materials, architectural features, landscaping, etc.

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iv. *Ground Floor Residential Uses:* Where present, ground floor residential uses fronting a public street or walkway should be separated from the street by landscaping, steps, porches, grade changes, and low ornamental fences/walls.

**Figure 1: Example of Suburban Development Pattern Not Permitted in this District**



**Figure 2: Example of Urban Development Pattern, Required by this District**



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. In addition to the requirements of this section, applicants will be required to follow *the Town of Berthoud Architectural Design Guidelines* specific to the place type assigned to the property.

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.

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9. *Setback Requirements:* In the case of large buildings for employment, storage or auto-related uses, where greater setbacks are needed, a minimum of 30 percent of the building shall be brought forward to the front/street facing 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.
10. *Location of parking lots.* Parking shall be provided to the greatest extent possible by spaces at the rear or sides of the building. If parking must be placed in the front, the front parking area shall have additional landscaping, low walls, an expanded tree strip and canopy, and/or other site improvements along the sidewalk designed for pedestrian interest, scale and comfort.
12. *Screening.*
  - i. Screening will be required for commercial activities including loading areas and docks that abut a residential area unless the activities and related storage are contained within a building or otherwise adequately screened from view from the residential area.
  - ii. A minimum 15 foot deep landscaped yard shall be provided along all arterial streets, and along any district boundary line that does not adjoin a residential land use. If a district boundary line abuts upon or is within a street right-of-way, then the required landscaped yard shall commence at the street right-of-way line on the district side of the street, rather than at the district boundary line.
13. *Storage and Operational Areas.*
  - i. Storage, loading and work operations shall be screened from view along all district boundary lines and along all public streets.
  - ii. Within internal district areas, buildings may be surrounded by paving for vehicle use. To the extent reasonably feasible, side and rear yards in interior block locations shall be used for vehicle operations and storage areas, and front yards shall be used for less intensive automobile parking. At district edges, side yards shall be used for vehicle operations and storage areas, in order to allow for a finished, attractive rear building wall and a landscaped rear yard.
14. *Gas pumps.* No gas pumps shall be located forward of the principal structure, or fronting any arterial or collector roadway.

E. *Industrial (M1 and M2) architectural design 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 to the requirements of this section, applicants will be required to follow *the Town of Berthoud Architectural Design Guidelines* specific to the place type assigned to the property. c. *Screening.*
  - i. Screening will be required for Industrial activities and shipping areas/docks that abut a residential area unless the activities and related storage are contained within a building or otherwise adequately screened from view from the residential area.
  - ii. A minimum 25 foot deep landscaped yard shall be provided along all arterial streets, and along any district boundary line that does not adjoin a residential land use. If a district boundary line abuts upon or is within a street right-of-way, then the required landscaped yard shall commence at the street right-of-way line on the district side of the street, rather than at the district boundary line.
  - iii. A minimum 80-foot deep landscaped yard shall be provided along any boundary line that adjoins a residential land use or a zone district (whether within or beyond the City's jurisdictional boundary) that is predominately characterized by residential uses as permitted uses. This residential buffer yard may be reduced to 25 feet if the adjoining

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residential land use or zone district (whether within or beyond the Town's jurisdictional boundary) is separated by a public street.

- d. *Storage and Operational Areas.*
  - i. Storage, loading and work operations shall be screened from view along all district boundary lines and along all public streets.
  - ii. Within internal district areas, buildings may be surrounded by paving for vehicle use. To the extent reasonably feasible, side and rear yards in interior block locations shall be used for vehicle operations and storage areas, and front yards shall be used for less intensive automobile parking. At district edges, side yards shall be used for vehicle operations and storage areas, in order to allow for a finished, attractive rear building wall and a landscaped rear yard.

### **30-6-118 Commercial and Industrial buffering and screening techniques**

- 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 100 feet of non-buildable area may be required between any development and adjacent or different uses. A minimum of 150 feet of non-buildable area may be required between any development and adjacent natural or environmentally sensitive areas. The actual amount of any buffer area will be determined on a site-specific basis by the Community Development Director or the Town Administrator.
- C. *Location and screening of required loading and service areas.*
  - 1. Loading docks, solid waste facilities, recycling facilities, storage areas 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, storage, and service areas and their driveways from adjacent residential or commercial zoned districts 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 and 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.

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- 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.

### **30-6-119 Outdoor lighting and dark sky standards**

#### **A. Preface.**

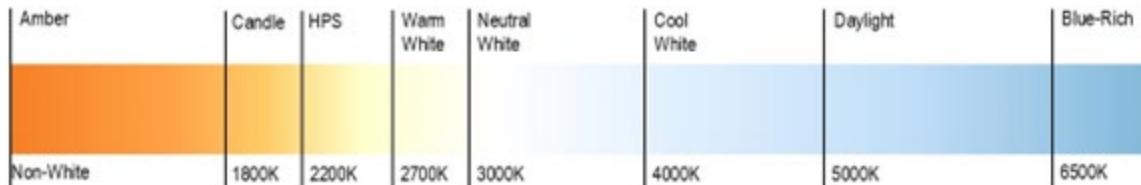
- 1. **Authority.** On behalf of the Town of Berthoud, this outdoor lighting code is enacted on the effective date pursuant to, and in accordance with, the authority of the Town of Berthoud Town Board.
- 2. **Purpose.** This outdoor lighting code is intended to protect the health and welfare of all residents within the Town of Berthoud, enhance its [character and quality of life], prevent inappropriate and poorly installed outdoor lighting, reduce lighting conflicts between property owners, prevent the increase of potentially harmful sky glow, and preserve the naturally dark sky for the benefit of residents, visitors, wildlife, and the environment. The purpose of this ordinance is to provide regulations for outdoor lighting that will:
  - a. Permit the use of outdoor lighting that does not exceed the levels specified in International Engineering Society (IES) recommended practices for night-time safety, utility, security, productivity, enjoyment, and commerce.
  - b. Minimize adverse offsite impacts of lighting such as light trespass, and obtrusive light 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.
  - c. Curtail light pollution, reduce sky glow and improve the nighttime environment for astronomy, intended to support the continued use, enjoyment, and success of Berthoud's Little Thompson Observatory and Bunyan Observatory at the Pioneer Museum and their operations.
  - d. Help protect the natural environment from the adverse effects of night lighting from gas and oil extraction activities or electric services.
  - e. Conserve energy and resources to the greatest extent possible.
  - f. These standards should result in exterior lighting that is functional, aesthetically pleasing, and complimentary to the architectural style of buildings or setting.
  - g. Light style. The style of lights shall be consistent with the style and character of architecture proposed on the site.
  - h. 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 they do not negatively impact any adjacent property and to ensure that ambient skyward light is eliminated.
- 3. **The Five Principles for Responsible Outdoor Lighting** will guide the Town of Berthoud's outdoor lighting decisions because:
  - a. Whereas, outdoor uses of Artificial Light at Night (ALAN) often include inappropriate and bright sources of light that cause an unsafe reduction in human visual performance; and
  - b. Whereas, excessive, unnecessary, and misdirected ALAN contributes to Light Pollution and wastes energy resources that would, if corrected, generate tangible cost savings; and

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- c. Whereas, increased use of ALAN has contributed to an escalation of Light Pollution, thus increasing the brightness of the night sky by 10% annually and rendering the current night sky orders of magnitude (often hundreds of times) brighter than the natural and original sky background; and
- d. Whereas, Light Pollution from ALAN is known to cause adverse effects on the health and well-being of birds, wildlife, nocturnal ecosystems, vegetation, and under certain circumstances, human health;
- i. Now, therefore, let it be resolved that the Town of Berthoud, which has the authority to protect natural resources and maintain a healthy environment for present and future generations, chooses to enact this outdoor lighting code.

4. **Definitions.** The following definitions apply to terms used in this Code:

- a. **ANSI:** American National Standards Institute.
- b. **ANSI/IES Lighting Standards:** Applicable outdoor lighting standards and metrics include but are not limited to outdoor retail spaces, outdoor sports and recreational areas, outdoor industrial areas, roadway and parking facilities, and outdoor pedestrian areas.
- c. **ALAN (artificial light at night):** Light that is created from human technology, rather than a naturally occurring process. Also known as anthropogenic lighting.
- d. **Candela (cd):** The unit of measure for luminous intensity.
- e. **CCT (correlated color temperature):** The measured color appearance of light emitted by a light source described using a nominal value stated in kelvins (K). Lower CCTs (1800 K to 2200 K) appear very warm or amber. Medium CCTs (2700 K to 3000 K) appear “warm white,” similar to standard incandescent bulbs. High CCTs (4000 K and higher) appear “cool white” or “blue.”



- f. **DarkSky Approved Outdoor Sports Lighting:** A standalone program put forth by DarkSky International to guide and/or certify sports lighting that meets stringent glare and *Light Trespass* requirements.
- g. **Five Principles for Responsible Outdoor Lighting:** Co-authored and published by DarkSky International and the Illuminating Engineering Society: 1) Use light only if needed; 2) distribute light only where it is needed; 3) use light that is no brighter than needed; 4) control light so it is on only when needed; and 5) use warmer color light when possible.
- h. **Fully Shielded:** A *Luminaire* designed or shielded in such a manner that no light is emitted, either directly or indirectly, at or above a horizontal plane running through the lowest light-emitting part of the luminaire.

- i. **IES (Illuminating Engineering Society):** An ANSI-recognized Standards Development Organization. ANSI/IES Recommended Practices are universally recognized as authoritative references for lighting applications.
- j. **Illuminance:** Measured in *Lux* or footcandles, the total luminous flux incident at a point on a surface.
- k. **Light Level:** The maintained *Luminance* or *Illuminance* value.
- l. **Light Pollution:** ALAN traveling into areas where it is not needed or wanted. This can be in the form of *Light Trespass*, glare, or atmospheric sky glow.
- m. **Light Trespass:** ALAN illuminating past property lines without permission. Unless specified otherwise, light trespass limits are measured at any location along a property line both horizontally at the ground plane facing upward and vertically at 1.5 meters (5ft) above grade with the meter aimed toward the light source in question.
- n. **Lighting Zones:** An ANSI/IES/DarkSky system describing the luminous environment and related lighting conditions based on land uses and expected tasks. These range from natural and intrinsically dark zones to very bright zones.
- o. **Lumen (lm):** A unit of measure of the *luminous flux* of a light source.
- p. **Luminaire:** A complete lighting unit, including the light source, housing, optics, electronics, and other necessary components for the purpose of providing outdoor illumination.
- q. **Luminance:** The intensity of light emitted from a surface per unit area in a given direction.
- r. **Lux (lx):** The SI metric system unit of measure for *Illuminance*. Measured as 1 lumen per square meter (3 square feet)
- s. **Nadir:** A downward vertical vector directly beneath a luminaire, opposite to zenith.



- t. **Nighttime Hours:** The time between [10] PM and sunrise, or 7 AM (whichever comes earlier). For businesses and events with operating hours later than [10] PM, nighttime hours will begin one hour after closing.
- u. **Non-essential:** Lighting that is not directly associated with the physical safety of motor vehicle and pedestrian threats, including but not limited to: landscape lighting, illuminated signage, or advertising after business hours, façade lighting, vacant sports fields, and seasonal lighting.
- v. **Residential Use:** Municipal zoning districts dedicated exclusively to places of low-rise (i.e., 3 stories or less) human residence and dwelling. Examples include single family, duplex, dual family, multi-family, apartment, townhouse, and mobile home. This does not include mixed-use or commercial districts with combined dwellings.

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- w. **Seasonal Lighting:** Outdoor or site lighting that is portable, temporary, decorative, and used in connection with holidays and traditions. This includes but is not limited to string lighting, icicle lighting, and lighted inflatables, none of which are intended for general illumination.
- x. **Security Lighting:** Illumination used specifically to protect people, property, and infrastructure from criminal threat.
- y. **Shielding:** A *Luminaire* design, optical intervention, or physical accessory (such as a louver) preventing light emission from traveling into a particular area, angle, or region.

## 5. **Applicability**

- a. The lighting standards of this Chapter shall be applicable to all exterior lighting within the Town. All exterior lighting installed after the effective date of this ordinance codified herein shall conform to the standards established by this Chapter. The effective date of Ordinance 1336 for Oil and Gas regulations shall conform to the standards established by this Chapter. This code applies to all sources of outdoor lighting installed or replaced within the Town of Berthoud after enactment date. This includes, but is not limited to, newly permitted development and construction projects involving homes, dwellings, roadways, public right-of-way, signage, billboard, buildings, facilities, properties, landscape, parking lots, hardscape, non-habitable structures, and monuments.
- b. Existing outdoor lighting lawfully installed prior to the adoption of these regulations and not meeting the requirements of this code shall be considered legal and repairable but non-conforming. All non-conforming Luminaires may continue to be used and maintained until one of the following occurs:
  1. A determination by the Town of Berthoud that an outdoor light source constitutes a hazard to public safety or constitutes a nuisance.
  2. When a property is re-zoned for a new land use, at which time all outdoor lighting on the property shall meet the requirements of this code before the new use commences.
  3. A 10-year amortization period exists from the date the light code become effective to the date whereupon all lighting must conform to this Code.

## 6. **Exemptions**

- a. **Lawful:** Lighting requirements mandated by a legal jurisdiction with broader authority (e.g., federal, state, or territorial) than the Town of Berthoud, including but not limited to:
  1. Navigational lighting systems regulated by the Federal Aviation Administration and the US Coast Guard.
  2. Any contradictory building code or Department of Transportation illumination requirements.
  3. Lighting for worker safety as mandated by the Occupational Safety and Health Administration.
- b. **Safety:** Luminaires installed for the benefit of public safety, including but not limited to:
  1. Security Lighting as determined by a municipal official with authority.
  2. Temporary lighting used by authorized first responders during emergency procedures.
- c. **Historic:** Luminaires replicating time period historical character and lighting effect that are protected by historical registration, or otherwise permitted by an authority having jurisdiction.
- d. **Permitted:** Temporary and semi-permanent lighting approved by municipal permit for special events, festivals, and community benefit, provided the permitted lighting still meets light trespass requirements and does not add further disruption to ecological migration or habitat.
- e. **Flags:** Lighting of national, state, or local municipal flags that is shielded from the sides to a narrow beam of no more than 15 degrees. Nighttime illumination of other flags is not allowed. When possible, lowering and removing flags from sunset to sunrise is encouraged so illumination is not needed. The use of top of pole, downward-directed lights is encouraged.

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- f. Seasonal: Seasonal string lighting of a temporary nature is allowed between October 15 and March 15. Seasonal string lighting shall not create dangerous glare on adjacent streets or properties, shall be maintained in an attractive condition, and shall not constitute a fire hazard. Multicolored lighting is acceptable.
  - 1. When seasonal lighting is white, it shall not exceed a CCT of 3000K.
  - 2. Lightbulbs shall not exceed 3 inches in size.
  - 3. Lighting shall be in a singular strand along no more than two (2) of the following features:
    - i. The building roof eave line;
    - ii. The building window trim;
    - iii. Building columns; or
    - iv. Railings.
  - 4. Seasonal lighting is subject to the following curfew hours. During these times, all seasonal lighting shall be extinguished.
    - i. Residential: 10:00 p.m. to 7:00 a.m.
    - ii. Non-Residential: Curfew hours of 10:00 p.m. to 7:00 a.m. shall apply to all businesses unless normal operating hours end or begin within the hours of curfew. If so, the curfew applies until one (1) hour after closing or one (1) hour before opening.

## 7. Prohibitions

- a. ALAN must not interfere with the safe movement of motor vehicles. Any lighting that distracts or disables the vision of a motor vehicle operator (e.g., excessively bright or rapid blinking, flashing, and/or motion video) or contributes to traffic control confusion (e.g., sources resembling or imitating traffic or railroad signals) is prohibited.
- b. Beacons and searchlights, except for emergency use by authorized first responders.

## B. Outdoor Lighting Requirements

### 1. General

- a. Legal: All outdoor Luminaires and Luminaire installations shall comply with federal and state law; county and municipal codes; applicable energy and building codes; product safety labeling; the requirements of this [Code]; and shall be subject to the appropriate permit and inspection requirements thereof.
- b. Light Level: Unless otherwise specified in this Code, lighting installed for an outdoor use shall not exceed 25% more than the Light Level recommended by the applicable ANSI/IES Lighting Standard, or a state approved alternate, as published by effective date.
- c. Distribution: Unless otherwise specified in this Code, Luminaires emitting more than 1,000 Lumens shall be Fully Shielded and shall emit no more than 5% of their total Lumen output above 80 degrees from Nadir. Exceptions are:
  - 1. Festoon string lighting where no individual lamp emits more than 50 lumens, and the lumen density of the string is no greater than 25 lumens per foot.
  - 2. Directional Luminaires used for façade illumination which are shielded and aimed to hit their target such that the light is contained by architectural elements.
- d. Trespass: Unless otherwise specified in this Code, Light Trespass shall meet the following:
  - 1. Luminaire light sources shall not be visible from federal or state designated wilderness, natural area, habitat, or reserves, and Light Trespass shall measure no greater than 0.1 Lux.
  - 2. Light Trespass onto Waters of the United States shall measure no greater than 1 Lux.

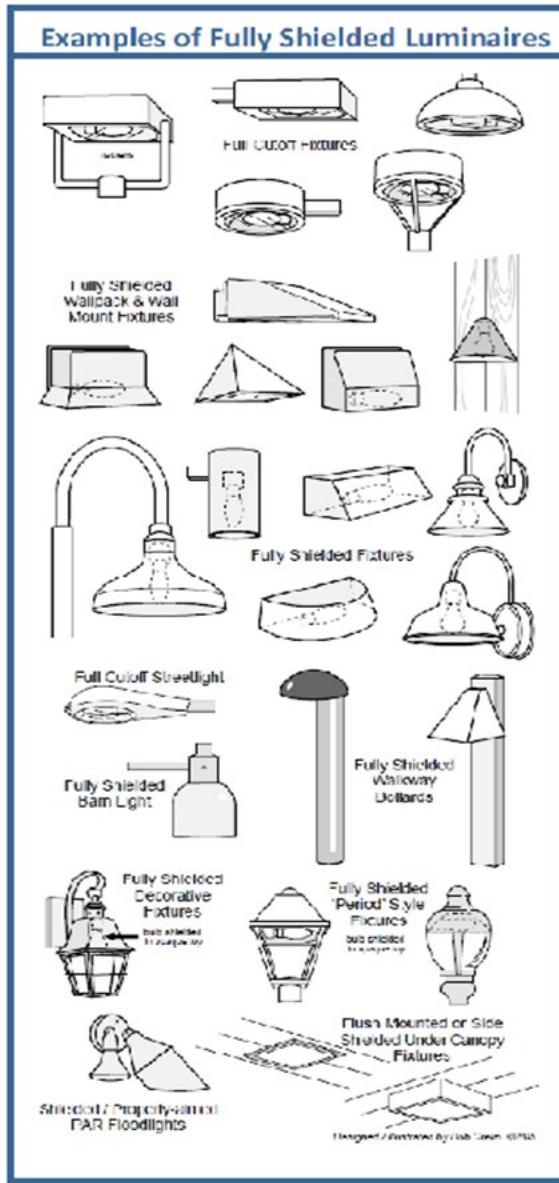
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- 3. Light Trespass onto Residential Use property shall measure no greater than 1 Lux.
- e. Curfew: Non-essential outdoor lighting, including but not limited to landscape and decorative lighting elements, shall be extinguished during Nighttime Hours.
  - 1. When applicable, outdoor lighting shall dim or be extinguished during Nighttime Hours as prescribed by an adopted energy code.
- f. Controls: Luminaires activated by motion detection shall automatically turn off or return to their dimmed state no more than [5] minutes after activity is no longer detected.
- g. Spectrum: Unless otherwise specified in this Code, the maximum allowable correlated color temperature (CCT) for outdoor Luminaires is 3000 Kelvin.
  - 1. Exception: CCT exemptions are allowed if a public safety need is documented.

## 2. Residential Use

The following requirements are supplementary to the General Outdoor Lighting Requirements (**Section 2.1** and its subsections) and shall further regulate outdoor lighting on Residential Use property:

- a. Lighting for Residential Use, excluding roadway, parking, and public right-of-way, shall be exempt from the requirement in **Section 2.1(B)** provided no single Luminaire exceeds 1,000 lumens and the total installed lumens per dwelling are limited to:
  - 1. No single Luminaire exceeds 1,000 lumens
  - 2. Residential uses (1 unit only): 6,500 lumens per net acre
  - 3. Residential uses (2 units or greater): 20,000 lumens per net acre
- b. Light Trespass leaving Residential Use property shall be no greater than 1 Lux.
- c. *Tree, garden and landscape lighting is subject to curfew hours and shall be turned off between the hours of 10:00 p.m. and 7:00 a.m.*
- d. Pole Lights. Pole mounted lighting for multi-family common areas or any parking lot adjacent to a residential use are allowed up to twelve (12) feet from finished grade. This allowance shall not exceed light trespass limits.
- e. When needed, Residential Use roadway Luminaires shall be a maximum 2400 Kelvin.
- f. All area lights, including street lights and parking area lighting, shall have a maximum BUG rating of B2-U0-G1 according to the guidelines set forth by the Illuminating Engineering Society (IES) TM15-11. Examples of these luminaires can be found in example below:



### 3. Non-Residential Use

The following requirements are supplementary to the General Outdoor Lighting Requirements (Section 2.1 and its subsections) and shall further regulate outdoor lighting on non-residential property. The total allowable site lumens for nonresidential properties are based on the square footage of the facade and other elements of the developed structure, landscape buffer, and hardscape. A site shall calculate a maximum site lumen allowance by choosing a maximum of four (4) of the following lighting types and adding their limits:

- Non-Residential Use lighting shall be exempt from the requirement in Section 2.1(B), provided there is no Luminaire installed on the property capable of exceeding a total output greater than 3,000 Lumens.
- Building Entrance: 1,000 lumens per door. Luminaires shall be located within 20 feet of the door.

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- c. Building Facades: 10 lumens per square foot of building façade that is illuminated. Luminaires shall be aimed at the façade and capable of illuminating it without obstruction.
- d. Nighttime Service Loading: 4,000 lumens per service loading door. Luminaires shall be located within 20 feet of the door.
- e. Outdoor At-grade Parking Lot: 500 lumens per parking space. See 180-6.16.4.A. Parking Lot Lighting Standards.
- f. Gas Station Canopy: 5,000 lumens per fuel pump. Each side of a two-sided pump qualifies for an allowance.
- g. *Tree, garden and landscape* lighting is subject to curfew hours and shall be turned off between the hours of 10:00 p.m. and 7:00 a.m.
- h. Outdoor Dining: 8 lumens per square foot of illuminated hardscape for outdoor dining. Luminaires shall be within 6 feet of the hardscape area of outdoor dining.
- i. Pole Lights: Pole mounted lighting for non-residential parking lots is allowed up to twenty (20) feet tall from finished grade, provided it is not directly adjacent to residential property. This allowance shall not exceed light trespass limits.
- j. Light Trespass leaving non-Residential Use property onto adjacent public right-of-way shall be no greater than 3 Lux when measured 20 feet past the property line.
- k. Adaptive Controls and Curfews: All future non-Residential outdoor lightings will use adaptive controls and or lighting curfews to control and ALAN.
- l. *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.

#### **4. Security Lighting**

Motion sensor lights shall be permitted if they are fully shielded and downcast per the requirements of this section. All motion sensor lights, or proposed security surveillance systems shall meet the following criteria.

- a. Multi-Family residential and nonresidential common areas with increased density and activity may require increased illumination at primary points of entrances or exits. Light intensity shall not exceed 50 lux average at grade.
- b. Shielded floodlights controlled by a motion sensor shall be limited to motion within the owner's property lines and turned off no more than five (5) minutes after such motion was detected.
- c. Security lighting shall be properly installed/commissioned so it shall not be oversensitive to surroundings and be triggered repeatedly in an unreasonable or disruptive manner by naturally occurring causes (such as wind in foliage).
- d. It is located in such a manner as to prevent glare and lighting onto properties of others or into the public right of way.

#### **5. Signage**

The purpose of the sign design standards is to promote a high level of quality and creativity, in keeping with the architectural goals and the character of Berthoud. The goal of the guidelines is also to encourage sign design that is eclectic, artistic, and original.

- a. *Illumination.* The illumination of signs is intended to minimize the undesirable side effects of excessive illumination such as glare, sky glow, and light pollution. The following standards shall apply to sign illumination:

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1. *Light Source.* All exterior sign lighting shall be fully shielded and down-directed so that light is directed only onto the sign face and not aimed at the sky, adjacent streets, roads, or properties. All upward-directed sign lighting is prohibited.
2. *Luminance levels.* Luminance levels for signs shall not exceed 100 nits (100 candelas per square meter) between sunset and sunrise, as measured under the conditions of a full white display.
3. During the first hour after sunset and during the last hour immediately preceding sunrise, sign luminance shall not exceed 100 nits (100 candelas per square meter, cd/m<sup>2</sup>)
4. Signs may only be illuminated while the associated activity is taking place; for businesses, sign illumination must be extinguished completely during the hours the business is closed.
5. The luminous or illuminated surface area of an individual sign must not exceed 18.6 square meters (200 square feet).
6. *Curfew.* Sign illumination shall be extinguished completely one (1) hour after sunset or one-half (1/2) hour after the end of normal business hours, whichever is later, and remain off until at least one (1) hour before sunrise.
7. *Adaptive controls.* Sign lighting shall be controlled by a light sensor, timer, or equivalent system in order to properly adjust the sign luminance and minimize the duration of illumination. Should an electronic problem prevent normal function, the sign shall default to night mode or remain unlit.
8. *Component Painting.* All light fixtures, conduit, and shielding must be concealed and shall be painted to match either the building or the supporting structure that serves as the background of the sign.
9. *Externally Illuminated Signs.* Externally lit signs shall be illuminated only with steady, stationary, shielded light sources directed solely onto the sign without causing glare. Light bulbs or lighting tubes used for illuminating a sign shall be simple in form and should not clutter the building or structure. Light bulbs or lighting tubes should be shielded so as to not be physically visible from adjacent properties and public rights-of-way.
10. *Internally Illuminated Signs.* Internally illuminated signs with light colored backgrounds, including, but not limited to, white, off-white, light gray, cream and yellow are discouraged.
11. *Fixtures.* Lighting fixtures shall be simple in form and should not clutter the building. The fixtures must be directed only at the sign. Lighting for front lit signs shall be housed in fixtures and installed in a manner that will serve to substantially shield exposed bulbs and lighting tubes from public view. Gooseneck or other building mounted fixtures are encouraged.

## 6. Sports Lighting

The following requirements are supplementary to the General Outdoor Lighting Requirements (Section 2.1 and its subsections) and shall further regulate outdoor lighting for sports and recreational areas to provide essential requirements for safe play and light trespass mitigation. Following ANSI/IES RP-6 guidelines.

- a. Lighting for sports and recreational areas shall also meet the following requirements:
  1. Eighty-five percent (85%) of the lumens generated by sports lighting luminaires shall be confined to within 10 meters (33 feet) or a distance of one pole height, whichever is greater, of the playing field or the spectator track or bleacher area, whichever is greater.
  2. Lighting installations for aerial sports are allowed a maximum of 8% of the total lumen output to be emitted above 80 degrees from Nadir.
  3. When the recommended sports field Light Level is higher than 100 lux, installed lighting shall not exceed 10% more than the Light Level recommended by the applicable ANSI/IES lighting standard, or a state approved alternate, as published by the effective date.

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4. The maximum CCT for outdoor sports lighting should be the lowest possible for the sport, class of play, and viewing audience as defined by the relevant ANSI/IES lighting standard, or any state approved alternative, but never exceeding 5700 K.
5. The maximum luminous intensity from any luminaire lighting a sports field shall not exceed 10,000 candelas (cd) as measured along a perimeter that is 46 meters (150 feet) from the edge of the field, at 1.5 meters (5 feet) above grade
6. A 10 pm curfew exists for all sports and recreational outdoor field lighting, or one hour after play ends.
7. Timers shall be installed for all sports and recreational outdoor lighting to prevent lights being left on overnight.

## C. Administrative Requirements

### 1. Permit Application

- a. Submittal: Whenever a building, subdivision, site plan, or outdoor lighting permit is applied for, an outdoor lighting plan must be submitted along with a compliance statement that the proposed work will comply with all code requirements. 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.

The outdoor lighting plan must follow one of the following:

1. The submittal shall contain the following information and be submitted as part of the site plan to the Planning and Building departments for approval.
  - i. Plans indicating the location, type, intensity, and height of luminaires including both building and ground-mounted fixtures;
  - ii. A description of the luminaires, including lamps, poles or other supports and shielding devices, which may be provided as catalogue illustrations from the manufacturer;
  - iii. Photometric data, such as that furnished by the manufacturer, showing the angle of light emission and the foot-candles on the ground. Area and roadway lighting requires compliance with the BUG rating with this data; and
  - iv. Additional information as may be required by the Town in order to determine compliance with this Chapter.
- b. Review: Submitted spreadsheets, site lighting plans, and compliance affidavits shall be subject to review and approval by the administrator, or designee. The administrator shall have the authority to refer an application to the planning and zoning commission or the historic commission if deemed appropriate.
- c. Appeals: Any appeals related to decisions regarding outdoor lighting shall be made to the administrator, or designee.

### 2. Enforcement and Penalty

- a. Enforcement: Unless otherwise noted in this code, the administrator, or designee, shall be responsible to implement, administer, and enforce this code, including investigations of alleged violation. A private right of action may also constitute enforcement of the requirements within this code.
1. The administrator charged with enforcing this chapter shall have the authority to grant partial waiver of specific code requirements for up to one year if a property owner demonstrates that

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compliance creates unreasonable hardship, as balanced against the potential impacts of non-compliance, or results in conditions that are materially detrimental to health, safety or welfare.

- b. **Penalty:** Any property owner that does not meet the requirements of this code shall be in violation. A person, firm, or corporation found to have violated, disobeyed, omitted, neglected, or refused to comply with any provisions of this code shall be issued a notice and administrative citation as provided by the municipal code. Any person, firm, or corporation found to have violated any portion of this code shall correct the violations within ninety (90) days of the citation date. Each day a violation continues beyond ninety (90) days of the citation date without having been corrected shall be a separate offense.
- c. **Private Action:** Any person adversely affected by lighting that does not meet the requirements of this code shall have a private cause of action for nuisance against the person, firm, or corporation responsible for such lighting.

### **30-6-120 Environmental considerations**

- A. *Intent.* The intent of this section is to ensure that new development limits or mitigates impact to environmentally sensitive areas.
- B. *General provisions.*
  - 1. *Protection of environmentally sensitive areas as defined in this Chapter.* Development shall be designed to ensure that disturbances which occur to any environmentally sensitive area as a result of development shall be minimized through the use of natural buffer zones. If any development materially disturbs an ESA, 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 as approved by the Town.
    - a. A buffer zone shall be required between proposed development and environmentally sensitive areas to ensure that the proposed development does not degrade the natural area. The size of the buffer zone shall a minimum be 300 feet, as 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.
    - b. *Exceptions.* The Board may allow disturbance or construction activity within the environmentally sensitive area or 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 an environmentally sensitive area.
    - c. *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;

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- iii. Any prominent mountain or lake 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. The boundary of any floodplain and floodway and a description of the ecological and flood control functions and characteristics provided by these designations.
- vii. Wildlife travel corridors, and
- viii. The general ecological functions provided by the site and its features.

d. *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.

### **30-6-121 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.

### **30-6-122 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 the Town of Berthoud Engineering and Infrastructure Standards and Construction Specifications as the same may be amended from time to time.

### **30-6-123 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 the Town of Berthoud Engineering and Infrastructure Design Standards and Construction Specifications as the same may be amended from time to time.

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## **30-6-124 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:

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- 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 two acres in size.

### **30-6-125 Fire hydrants**

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.

### **30-6-126 Project specific master plans**

- A. 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 documents be reviewed, modified as appropriate and approved as completed preliminary documents. These documents then can be expanded to provide more detail, design documentation and to describe any refinements at the final report stage. These 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 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.

### **30-6-127 Project construction documents**

*Intent.* 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.

### **30-6-128 Water and wastewater line extension policy**

- A. *Statement of purpose.* It is the purpose of this policy to provide a fair and equitable distribution of the costs of installing water and wastewater lines 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

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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 warranted 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.

### **30-6-129 Reimbursement policy and procedure**

- A. *Reimbursement for line extension through undeveloped property.* 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.
  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

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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 an existing undersized or otherwise inadequate line to obtain service. The developer may be eligible to establish a reimbursement agreement in the following cases:

1. If a property adjacent to the replacement line had a tap on the original undersized line and is later subdivided, the developer of this second property shall reimburse the original developer an amount determined pursuant to the provisions of this 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.

### **30-6-130 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 eight-inch wastewater lines, or larger if required to serve that development, and for installing all water lines six 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,

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meet the Town's specifications. Final evaluation and design shall be determined by the Town. Criteria to be used for this determination shall include, but shall not be limited to the following:

1. Utility Master Plan requirements.
2. Potential future demand on the water or wastewater system as related to the proposed development.
3. Hydraulic design criteria of the water or wastewater system.

C. *Town participation in oversizing project.* The Town may require a developer to install an oversized water or wastewater line. If an oversized line is required, the Town will participate in the project costs if the oversizing is required to provide service to the Town's existing customers.

D. *Developer reimbursement.* When the Town requires a developer to oversize either water or wastewater lines to meet the needs of anticipated development, the developer may request the Town to enter into a reimbursement agreement. The agreement may provide that the developer will be reimbursed the cost of the required oversizing from future developments which make use of the oversizing. The reimbursement agreement shall expire upon repayment to the developer of the oversizing costs or the expiration of ten 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 oversized 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 four-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 \$5,000.00, 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 \$5,000.00, 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.

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5. The Water and Wastewater Development Agreement shall be reviewed and signed by the Utility Superintendent, the Town Attorney, and the Developer.

### **30-6-131 Non-Potable Water Systems**

1. *Title.* This section shall be known as the Town Of Berthoud Non-Potable Water Systems Regulations.
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 a Non-Potable Water Irrigation System Plan to the Town, which plan shall include the following information:
    - (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;
    - (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 Design Standards Section; 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 Non-Potable Water Irrigation System Plan containing the information set forth in Section 4(A) above. No non-potable water systems shall be utilized without written approval from the Town.

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## SECTION 7 SIGNS

### 30-7-101 General provisions

A. *Purpose.* The regulations in this Section are intended to coordinate the use, placement, physical dimensions, and design of all signs within the Town. These regulations are established to safeguard the health, safety, convenience, order and welfare of all residents of the Town. The Town recognizes that signs may act as a visual means of communication between the public and businesses and those businesses have an expectation of using signs to identify and advertise themselves. In addition, 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 their 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.
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.
8. Ensure signs adhere to the Town's Dark Sky regulations.
9. Enhance property values and business opportunities.
10. Assist in wayfinding.
11. Provide fair and consistent permitting and enforcement.

B. *Intent.* It is the intent of these regulations to provide for the proper control of signs in a manner consistent with the First Amendment guarantee of free speech. It is not the intent of these regulations to regulate signs based on the content of their messages. Rather, these regulations advance important, substantial, and compelling governmental interests.

1. The incidental restriction on the freedom of speech that may result from the regulation of signs hereunder is no more than is essential to the furtherance of the important, substantial, and compelling interests that are advanced by these regulations.
2. The Town has an important and substantial interest in preventing sign clutter (which is the proliferation of signs of increasing size and dimensions as a result of competition among property owners for the attention of passing motorists and pedestrians), because sign clutter:
  - a. Creates visual distraction and obstructs views, potentially creating a public safety hazard for motorists, bicyclists, and pedestrians;
  - b. May involve physical obstructions of streets or sidewalks, creating public safety hazards;

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- c. Degrades the aesthetic and essential historic character of the Town, making the Town a less attractive place for tourism, commerce, and private investment; and
- d. Dilutes or obscures messages displayed along the Town's streets through the proliferation of distracting structures and competing messages.

- 3. The Town has a substantial and/or compelling interest in preventing traffic accidents.
- 4. The Town has a substantial and/or compelling interest in preventing negative impacts associated with temporary signs. Temporary signs may be degraded, damaged, moved, or destroyed by wind, rain, snow, ice, and sun, and after such degradation, damage, movement, or destruction, such signs harm the safety and aesthetics of the Town's streets if they are not removed.

C. *Relationship to other regulations.* The provisions of these regulations shall apply to the display, construction, erection, alteration, use, maintenance, and location of all signs within the Town.

- 1. Nothing contained in this Section shall be deemed a waiver or variance of the provisions of any other provisions of the Development Code as applicable to signs.
- 2. If any provision of this Section conflicts with any other adopted Town code that regulates signs, the more restrictive standard shall apply provided, however, to the extent an approved, unexpired and currently effective Planned Unit Development as described in Section 30-3-104 R *Planned Unit Development (PUD) Overlay District* includes specific sign allowances and/or restrictions that directly conflict with these regulations, the approved PUD regulations shall apply to the extent of the conflict. In lieu thereof, the property owner may elect to fully comply with these regulations in the area of the conflict.
- 3. The Town recognizes other regulations pertaining to signage (i.e., State of Colorado, Department of Highways, "Rules and Regulations Pertaining to Outdoor Advertising," effective January 1, 1984, and as may be amended).
- 4. The content of signs related to marijuana businesses is restricted by state laws and regulations, and both the advertising and sale of marijuana are prohibited by federal law. The Town has no authority to supersede state or federal marijuana laws.
- 5. Nothing in this Section shall be construed as a defense to a violation of applicable state or federal law.
- 6. Where any provision of this Section covers the same subject matter as other Town, state or federal regulations, the more restrictive regulation shall apply.

### **30-7-102 Sign permits**

- 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 under Section 30-7-103 *Exempt signs*.
- 1. In multiple tenant buildings, a separate permit shall be required for each business entity's sign(s).
- 2. Separate building and electrical permits may be required for signs and will be determined on a case-by-case basis.
- 3. Changing or replacing the copy on an existing sign shall not require a permit.

- B. *Comprehensive sign plan.* A comprehensive sign plan is required as a part of the development review process for all commercial projects with multiple lots or buildings or multiple tenants. Comprehensive sign plans are also required for all new signs on multiple tenant buildings or centers with multiple lots.
- 1. For any multi-tenant center, industrial park or other unified form of commercial site development or redevelopment, the applicant shall submit a comprehensive sign plan with a sign permit application that consists of coordinated and/or shared signage for the entire development.

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- 2. A comprehensive sign plan shall be in accordance with the following criteria:
  - a. Signs shall meet the design criteria established in Section 30-7-106 *Sign design*.
  - b. After reviewing an applicant's submittal of a comprehensive sign plan, the Manager may vary standards for area, height and number of individual signs during sign permit review.
  - c. The Manager may approve up to a twenty percent (20%) change in one or more dimensional or numerical standards based on the applicant demonstrating the change is warranted by a comprehensive sign plan which represents exceptional design.
- C. Applications for sign permits shall be made in writing on forms furnished by the Town. The application shall contain:
  - 1. The location by street number of the proposed sign structure;
  - 2. Names and addresses of the owner and the person or company erecting the sign;
  - 3. Legible site plans which include the specific location of the sign and setbacks to adjacent property lines and buildings;
  - 4. 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 monument or projecting sign;
  - 5. A description of the lighting to be used, if applicable and a narrative detailing how the proposed lighting will be compliant with the Town's Dark Sky regulations;
  - 6. If the sign is to be located off the premises in compliance with Section 30-7-111 *Off-Premise sign standards*, a written lease or permission from the property owner of the site on which the sign will be located; and
  - 7. Sign permit fee as established by the current fee schedule.
- D. *Staff review and approval.*
  - 1. Within five days of the receipt of a completed 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 in writing of any deficiencies. The applicant shall address deficiencies and resubmit application materials.
  - 2. 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.
- E. *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;
  - 8. Sign meets the Town's Dark Sky regulations;

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9. Sign would not add to an over-proliferation of signs on a property or area; and
10. Sign structure and location are consistent with the purpose and intent of this Section.

F. *Appeal.* 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. *Exemptions from required sign regulations.* 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 public 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 from any public thoroughfare or right-of-way, 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. *Bulletin board.* Bulletin board signs not exceeding 12 square feet in gross surface area accessory to a religious institution, school, or other public or nonprofit institution.
  3. *Site sign.* Site signs as defined in Sec. 30-1-116 *Definitions* and subject to the standards in Section 30-7-110 *Temporary Sign Standards*.
  4. *Directional.* On-premises directional and instructional signs not exceeding six square feet in area each.
  5. *Incidental signs.* Incidental signs as defined in Sec. 30-1-116 *Definitions* which do not exceed three square feet in area.
  6. *Flags.* Exempt flags include:
    - a. for residential properties up to two flagpoles no more than 18 feet high with a combined total of 48 square feet of flag area.
    - b. for commercial areas up to two flagpoles of no more than 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 total sign area permitted for the subject property.
  7. *Yard sign.* Yard signs as defined in Sec. 30-1-116 *Definitions* and subject to the standards in Section 30-7-110 *Temporary sign standards*.
  8. *Temporary window signs.* Temporary window signs as defined in Sec. 30-1-116 *Definitions*, limited to 25 percent or less of any individual window area.
  9. *Text.* No permit shall be required for text or copy changes; provided that no structural changes are made to the sign.
  10. *Time and temperature.* Signs displaying only time and temperature, not to exceed 6 square feet. Time and temperature devices shall not be included within the measurement of maximum sign area permitted by Section 30-7-109 B *Sign allowance*.
  11. *Public signs* as defined at Section 30-1-116 *Definitions*.
  12. *Vehicular signs.* Vehicular signs as defined at Section 30-1-116 *Definitions*, 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.

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- a. *Projection.* Signs on vehicles shall not project beyond the surface of the vehicle in a manner which creates a hazard to pedestrians, cyclists or other vehicles.
- b. *Prohibitions.* It shall be unlawful to place or store a vehicle with a sign on it in such manner as to increase the permitted sign area or number of signs either on-site or off-site for a non-residential use. Also see Section 30-7-104 A. 12 *Prohibited Signs*.
- 13. *Handheld signs.* Handheld signs as defined at Section 30-1-116 *Definitions* shall not exceed 20 square feet in area. No person shall place, maintain or otherwise utilize a handheld sign in a manner which obstructs or makes hazardous the free passage of pedestrians and motor vehicles on any street, sidewalk or public right-of-way.

### **30-7-104 Prohibited signs**

- A. *Prohibited signs.* The following 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
  - 2. Electronic messaging signs, except signs which convey a static digital message such as a price sign at a fueling station or a time and temperature device.
  - 3. 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.
  - 4. Mechanical or electrical appurtenances, such as "revolving beacons", that are designed to compel attention.
  - 5. Roof signs.
  - 6. Internally illuminated signs. See Section 30-7-107 *Sign illumination*.
  - 7. Pole signs.
  - 8. 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.
  - 9. Off-premises signs, except for temporary sidewalk signs. See Section 30-7-111 *Off-premise sign standards*.
  - 10. 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.
  - 11. Any sign located in such a way as to intentionally deny visual access to an adjoining property owner's existing sign.
  - 12. Vehicular signs that are on stationary or immobile vehicles or trailers for over seven 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. Vehicular 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 removed.
  - 13. Searchlights.

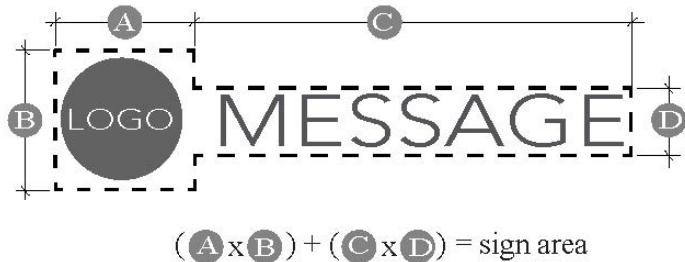
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14. Signs with optical illusion of movement by means of a design which presents a pattern capable of reversible perspective, giving the illusion of motion or changing of copy.
15. Abandoned signs, as defined in Section 30-1-116 *Definitions*, (together with its supporting structure). If the sign or sign structure is covered or the identifying symbols or letters removed, an extension of time may be granted by the Director 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).
16. 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.
17. Any sign or sign structure which:
  - a. ;
  - b. In any 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;
  - c. Creates in any 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.

### **30-7-105 Sign measurement**

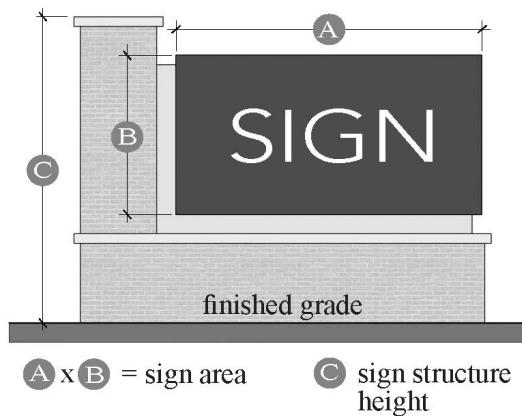
- A. *Sign area*. The area of a geometric shape enclosing any message, logo, symbol, name, photograph or display face shall be measured using standard mathematical formulas.
  1. *Sign support*. Supporting framework or bracing that is clearly incidental to the display itself shall not be computed as sign area.
  2. *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.
  3. *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 is the largest display surface visible from any single direction.
  4. *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, with the following exception: colors used behind or around a sign to differentiate it from the building façade shall be included in the sign area.

**Figure 7.1: Sign area measurement**



B. *Sign height.* The height of a sign shall be measured from the highest point of a sign structure to the finished grade. 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 area and height measurement**



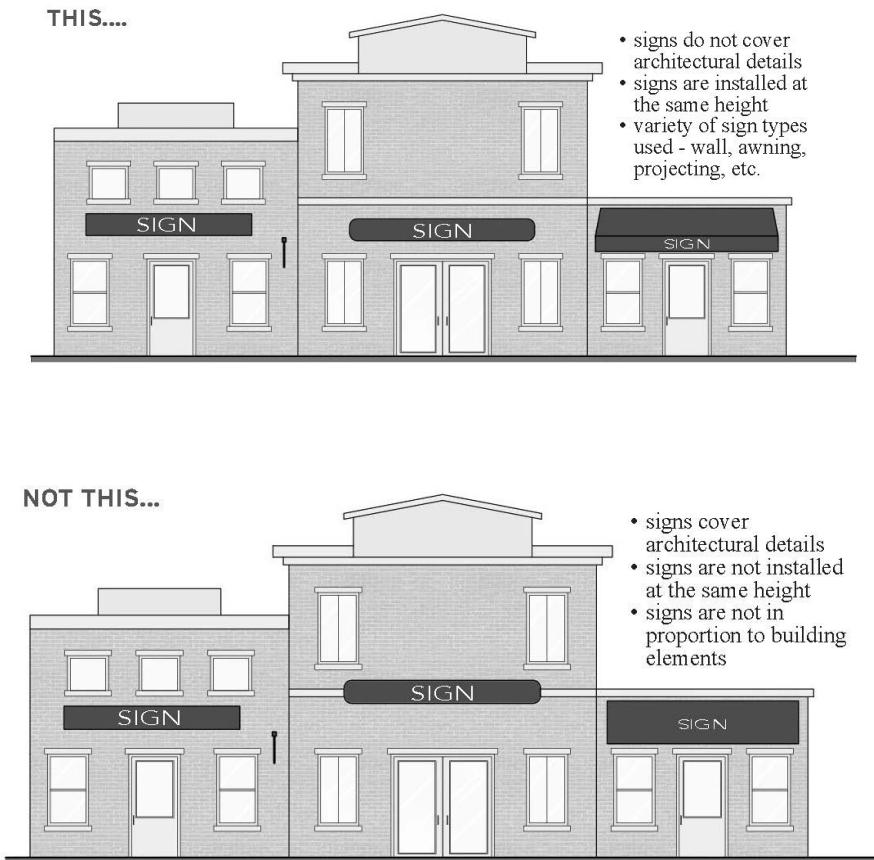
### 30-7-106 Sign design

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. *Additional design considerations.*
  - a. *Visibility.* Signs shall not visually overpower nor obscure architectural features.
  - 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. *Pedestrian-oriented signs.* Pedestrian-oriented signs are encouraged. It is desirable to include a pedestrian-oriented sign as one of the permanent 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.

**Figure 7.3: Sign placement**



4. *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.
5. *Reduce sign impact.* Because residential and commercial uses generally exist in close proximity, the foundation and support structure for signs shall be designed, located and/or screened with landscaping so that they minimize impact on adjacent residential neighborhoods, without impairing the communicative purpose of the sign. Small-scale signs are encouraged.

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### 30-7-107 Sign illumination

- A. *External illumination.* Unless otherwise specified, all signs that use illumination shall use indirect lighting as defined in Sec. 30-1-116 *Definitions*.
  - 1. All signs that use illumination shall have their lighting directed in such a manner as to illuminate only the face of the sign without causing glare.
  - 2. Any external light source must be downcast and fully shielded.
  - 3. Projecting light fixtures shall be simple and unobtrusive in appearance and shall not obscure the graphics of the sign.
- B. *Internal illumination prohibited.* Signs shall not be internally illuminated, with the following exceptions:
  - 1. Neon tubing and LED light ropes are acceptable methods of sign design or sign illumination in the commercial and industrial zone districts.
  - 2. The portion of a sign face dedicated to text or characters may be halo lit, as shown in Figure 7.4. No sign cabinets or light boxes with push through lettering shall be internally illuminated.

**Figure 7.4: Sign illumination**



NOT THIS...



- C. *Compliance.*
  - 1. All sign illumination shall meet the Town of Berthoud "Dark Sky" regulations established in Sec. 30-2-118 *Outdoor lighting and dark sky standards*.
  - 2. 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.
- D. *Hours of operation.* All illuminated signs shall be turned off at close of business, or 9:00 pm, whichever occurs first.

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### **30-7-108 Sign installation, maintenance, alteration and removal**

A. *Sign 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. The Town may inspect any sign governed by this Section and shall have the authority to order the 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. *Sign maintenance.*

1. All signs and all components thereof, including sign structures and sign faces, shall be maintained in compliance with all building and electrical codes in force at the time of installation.
2. 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.
3. 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.

C. *Sign alteration.*

1. Any alteration to an existing sign, other than for a change of copy or for maintenance, shall require a new sign permit pursuant to Section 30-7-102 *Sign permits*.
2. Sign alterations shall include, without limitation:
  - a. Changing the size of the sign.
  - b. Changing the shape of the sign.
  - c. Changing the material of which the sign is constructed.
  - d. Changing or adding lighting to the sign.
  - e. Changing the location of the sign.
  - f. Changing the height of the sign.

D. *Sign removal*

1. *Discontinued establishments.* 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 90 days after the discontinuance of such use.
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 abandoned 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. Signs in violation of any other provision of this Code may also be removed by the Town.

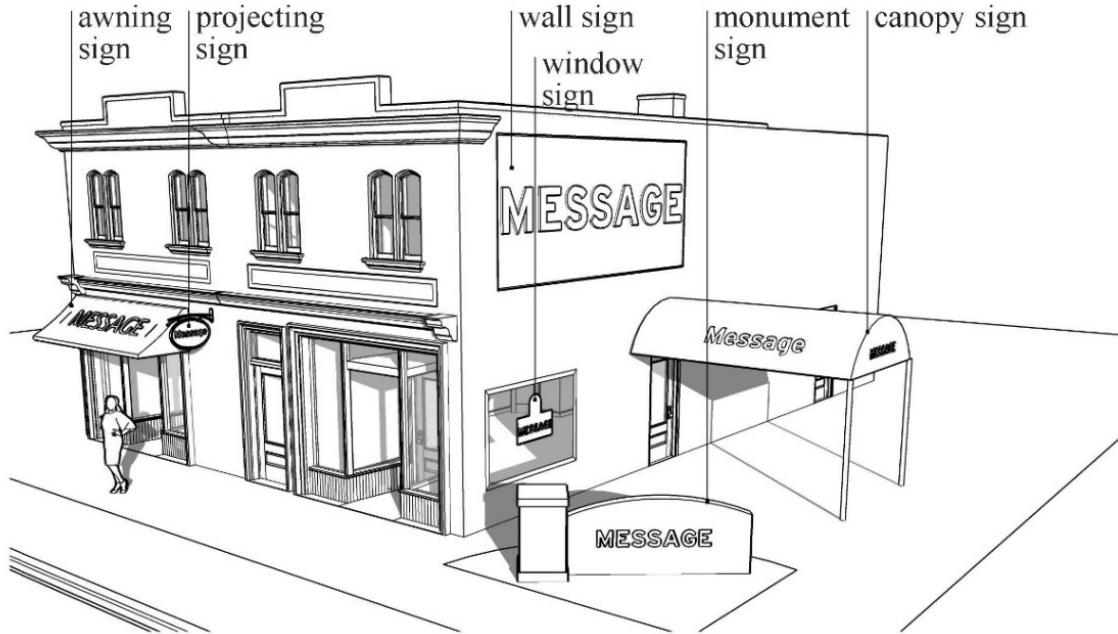
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4. *Storage of removed signs.* Signs removed in compliance with this Section shall be stored by the Town for 30 days, during which they may be recovered by the owner only upon payment to the Town for costs of removal and storage. If not recovered within the 30-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 30 days) may be billed to the property owner.
5. *Inspection.* The Town may inspect any sign governed by this Section and shall have the authority to order the 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.
6. *Penalties.* Signs which are not permitted by this Code shall be subject to administrative remedies contained herein.

### **30-7-109 Permanent sign standards**

- A. *Permitted permanent sign types.* The illustration in Figure 7.5 identifies the types of permanent signs permitted per this Section.
  1. All permanent 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).

**Figure 7.5: Permanent Sign Types**



- B. *Sign allowance.*
  1. *Non-residential signs.* All businesses and other non-residential properties within the Town are allowed permanent signage of any type (monument, wall, projecting, canopy, awning, etc.) within the square footage totals identified below and other limitations of this Section:
    - a. Two square feet for each linear foot of building up to 200 linear feet of building frontage and an additional one square foot for each linear foot of building frontage over 200 feet. Unless

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specifically stated otherwise in this Section, the maximum size of any single sign is 288 square feet (12 feet by 24 feet). Any request for a larger single sign will be reviewed by the Planning Commission as a variance to this Section, in accordance with Section 30-3-108 *Board of Adjustment*.

- b. Where the linear frontage of all buildings is less than 30 percent of the total lot frontage, allowable sign sizes are two square feet of sign for each linear foot of building and an additional one square foot of sign for each linear foot of property frontage (less the linear building frontage).
- c. Accessory wall signs count toward the total sign allowance and are limited to no more than 20% of the total wall sign allowance each.

2. *Residential signs.* All residential properties within the Town are allowed permanent signage of any type (monument, wall, projecting, canopy, awning, etc.) within the square footage totals identified below and other limitations of this Section:
  - a. The sign allowance for multi-family residential or mixed-use development shall be within the same limits as non-residential signage; see subsection B 1. above, with the following exception: all home-based business signs are limited to no more than two square feet in size.
  - b. All home-based business signs or other signs on lots with single-family or two-family dwellings are limited to no more than two square feet in size.

C. *Awning signs.*

1. *General standards.* The following standards apply to all awning signs:
  - a. 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.
  - b. No awning sign shall project outside the face of an awning.
2. *Awning sign specifications.* Specifications regulating awning signs are shown on Table 7.1:

**Table 7.1 Awning sign standards**

Zones Allowed	R4, C1, C2, M1, M2, SC, UC, PUD
Sign Permit Required	Yes
Maximum Number	One per window
Maximum Area	Within sign allowance
Maximum Width	Width of window
Maximum Letter Height	Variable
Maximum Valance Height	12 inches
Maximum Projection	Seven feet
Minimum Clearance	Eight feet
Illumination Allowed	Yes; under awning and directed downward

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Figure 7.6 Awning sign detail

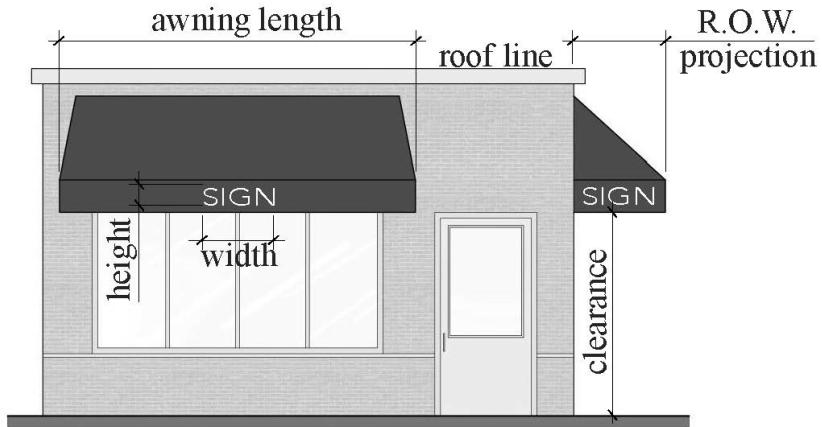


Figure 7.7 Awning sign example



D. *Canopy signs.*

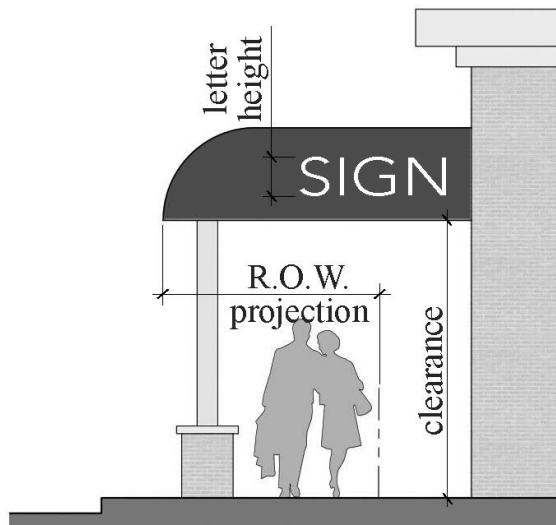
1. *General standards.* The following standards apply to all canopy signs:
  - a. No canopy, with or without signage, shall extend above the roof line of any building.
  - b. No canopy sign shall project above the top of the canopy upon which it is mounted.
  - c. Under-canopy signs which are perpendicular to the face of the building shall be deemed to be projecting signs.
  - d. Under-canopy signs which are parallel to the face of the building shall be a minimum of eight feet above finished grade and shall be deemed to be wall signs.
2. *Canopy sign specifications.* Specifications regulating canopy signs are shown on Table 7.2:

**Table 7.2 Canopy sign standards**

Zones Allowed*	R4, C1, C2, M1, M2, SC, UC, PUD
Sign Permit Required	Yes
Maximum Number	One per canopy face
Maximum Area	38 square feet
Maximum Width	25 feet
Maximum Height	18 inches
Letter Height	Min. five inches/max. 12 inches
Maximum Valance Height	12 inches
Maximum Projection	20 feet from face of building
Minimum Clearance	12 feet from finished grade
illumination Allowed	Yes; under canopy and directed downward

\*Canopy signs are not permitted in the Residential Conversion or Downtown Commercial character areas within the Mountain Avenue Overlay District

**Figure 7.8 Canopy sign detail**



**Figure 7.9 Canopy sign example**



E. *Monument signs.*

1. *General standards.* The following standards apply to all monument signs:
  - a. *Location.*
    - i. A monument sign may be located only on a site frontage adjoining a public street.
    - ii. No monument sign in any zoning district can be erected closer than eight feet from any curbline, nor closer than four feet to any building.
    - iii. No monument signs in any business or industrial district may be located less than 25 feet from any property line adjacent to a residential zoning district line.
  - b. *Sign mounting.* The sign shall be mounted on a solid monument-type base. The sign base shall not be greater than 50% of the sign area.
  - c. *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.
  - d. *Monument sign landscaping requirements.*
    - i. Monument 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.
    - ii. Landscaping shall be provided at the base of the supporting structure equal to twice the area of one face of the sign. For example, 20 square feet of sign area equals 40 square feet of landscaped area.
    - iii. 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.
2. *Monument sign specifications.* Specifications regulating monument signs are shown on Table 7.3 and Table 7.4:

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**Table 7.3 Monument sign standards**

Zones Allowed	All, except Downtown Commercial character area within the Mountain Avenue Overlay District
Sign Permit Required	Yes
Maximum Number	One per street frontage, up to a total of two signs, per subdivision or development entrance. One per commercial lot.
Maximum Area: Residential Subdivisions * (height x width)	35 square feet
Maximum Area: Non – Residential and Mixed-use Uses* (height x width)	100 sq. ft.
Maximum Height *	12 feet
Illumination Allowed	Yes; indirect only
*See Table 7.4 for Mountain Avenue Overlay District character areas	

**Table 7.4 Monument sign area, height and setbacks– Mountain Avenue Overlay District**

	Berthoud West	Residential Conversion	Berthoud East	Agriculture	New Berthoud
Maximum Area	100 square feet	35 square feet	100 square feet	100 square feet	135 square feet
Maximum Height	10 feet	5 feet	10 feet	10 feet	12 feet
Mountain Ave/Highway 56 Setback	5 feet	5 feet	5 feet	10 feet	12 feet
Note: Monument signs are prohibited in the Mountain Avenue Downtown Commercial character district					

**Figure 7.10 Monument sign detail**

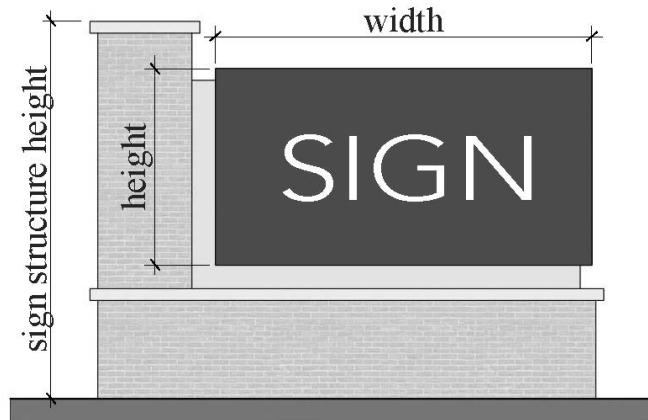


Figure 7.11 Monument sign example: Residential Use

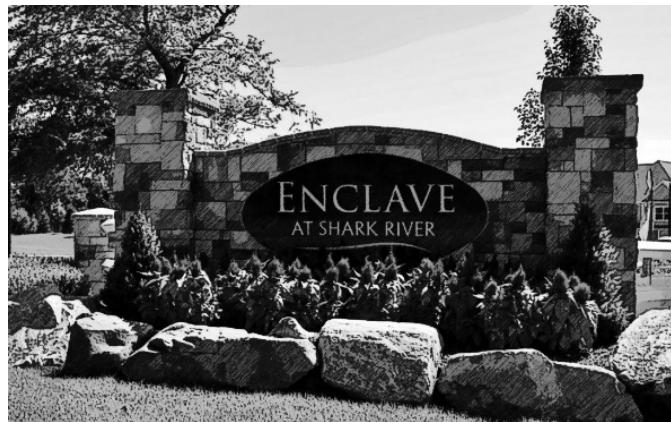


Figure 7.12 Monument sign example: Non-Residential Use



F. *Projecting signs.*

1. *General standards.* The following standards apply to all projecting signs:
  - a. Projecting signs shall be placed only on a ground floor facade, except for businesses located above the ground level with direct exterior pedestrian access.

b. Projecting signs shall be no higher than wall that it projects from or no higher than bottom of second story window framing

c. Mount projecting signs so that they align with others in the block and fit with architectural details of the structure.

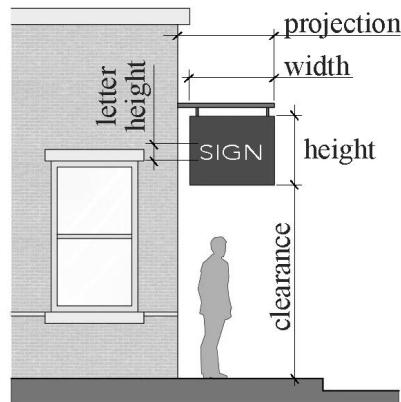
d. Sign supports and brackets shall be compatible with the design and scale of the sign.

2. *Projecting sign specifications.* Specifications regulating projecting signs are shown on the Projecting Sign Standards Table:

**Table 7.5 Projecting sign standards**

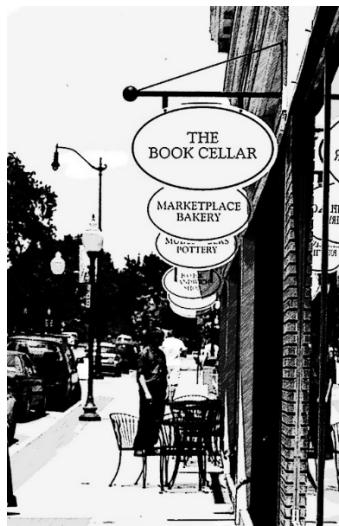
Zones Allowed	R4, C1, C2, SC, UC, M1, M2
Sign Permit Required	Yes
Maximum Number	One per façade; two max.
Maximum Area (height x width)	Six square feet
Maximum Letter Height	10 inches
Maximum Projection	Four feet from face of building
Minimum Clearance	Eight feet from finished grade
Illumination Allowed	Yes; indirect only

**Figure 7.13 Projecting sign detail**



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Figure 7.14 Projecting sign example



G. *Wall signs.*

1. *General standards.* The following standards apply to all wall signs:
  - a. The sign shall not be placed to obstruct any portion of a window, doorway or other architectural detail.
  - b. 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.
  - c. Wall signs plus accessory wall signs shall be in accordance with Section 30-7-109.B *Sign allowance.*
2. *Wall sign specifications.* Specifications regulating wall signs are shown on Table 7.6 and Table 7.7:

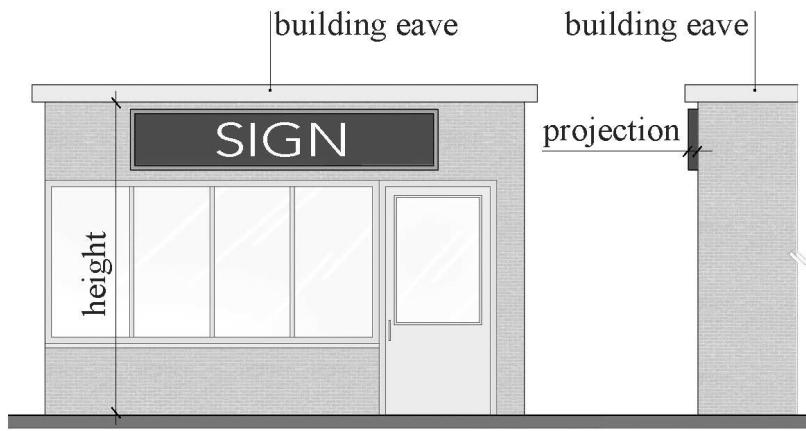
**Table 7.6 Wall sign standards**

Zones Allowed	R4, C1, C2, SC, UC, M1, M2
Sign Permit Required	Yes
Maximum Number	One per street frontage per unit, plus three accessory wall signs
Maximum Area*	Within sign allowance
Maximum Height	No higher than building eave or 25 feet above grade
Maximum Projection	12 inches from face of building
Illumination Allowed	Yes; indirect only
*See Table 7.7 for Mountain Avenue Overlay District character areas	

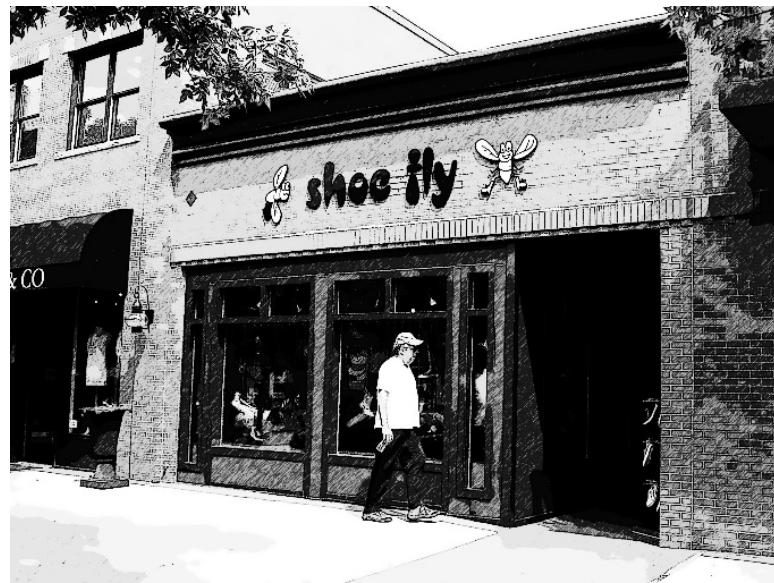
**Table 7.7 Wall sign area – Mountain Avenue Overlay District**

	Berthoud West	Residential Conversion	Downtown Commercial	Berthoud East	Agriculture	New Berthoud
Maximum Area	100 square feet	35 square feet	60 square feet	100 square feet	100 square feet	135 square feet

**Figure 7.15 Wall sign detail**



**Figure 7.16 Wall sign example**



**H. Window signs.**

1. *General standards.* The following standards apply to all permanent window signs:
  - a. Permanent window signs shall be located only in those windows of the unit or space occupied by a business.
  - b. Permanent window signs shall not be displayed in windows above the ground floor level.

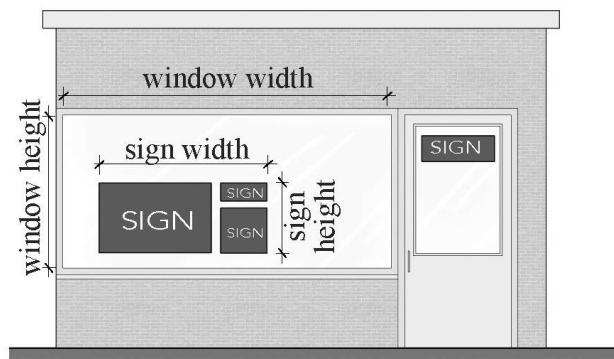
- c. Permanent window signs shall not be animated.
- d. When determining the maximum permitted number and the maximum permitted area of permanent signs, temporary window signs shall not be taken into account unless otherwise specified or regulated in this Development Code. However, in no case shall a permanent, temporary, or combination of such window signs cover more than 25 percent of any individual window area.

2. *Window sign specifications.* Specifications regulating window signs are shown on Table 7.8:

**Table 7.8 Window sign standards**

Zones Allowed	C1, C2, SC, UC, M1, M2
Sign Permit Required	Yes
Maximum Number	Unlimited, within maximum area
Maximum Area	25 percent of any individual window area
Maximum Height	Top of ground floor window
Illumination Allowed	Neon only

**Figure 7.17 Window sign detail**



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Figure 7.18 Window sign example



### 30-7-110 Temporary sign standards

A. *Permitted temporary sign types.* The illustrations in Figure 7.19 identify the types of temporary signs permitted per this Section.

1. All temporary 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 (i.e., may not be attached to a government sign, telephone pole, etc.).

B. *Duration.* The purpose of temporary signs is to display messages for a temporary duration. Temporary signs shall not be used to circumvent the regulations that apply to permanent signs or to add permanent signage to a property in addition to that which is allowed by these regulations. In general, a temporary sign shall be removed as of the date that:

1. It becomes an abandoned sign;
2. It falls into disrepair; or
3. The expiration of the number of days in the tables below.

Figure 7.19: Temporary Sign Types



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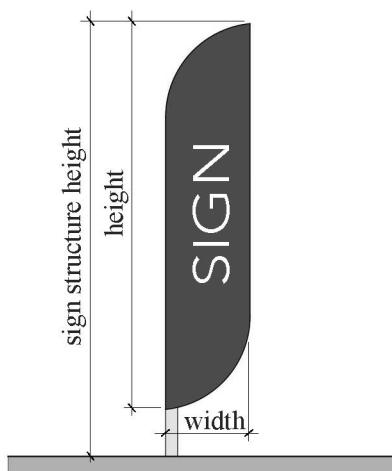
C. *Banner signs.*

1. *Special event limitation.* Temporary banner signs are limited to special events as defined in Sec. 30-1-116 Definitions. This limitation also extends to portable signs, promotional tents or other signs not permanently affixed or attached to the ground or to any structure, with the exception of site signs, yard signs and sidewalk signs as regulated in this Section.
2. *General standards.* The following standards apply to all banner signs:
  - a. Banner signs shall be erected no sooner than 15 days prior and removed no later than five days after the event.
  - b. Banner signs shall be securely attached to the wall of the establishment or light poles on private property.
  - c. Wind banner signs shall be securely attached to the ground on private property.
3. *Banner sign specifications.* Specifications regulating banner signs are shown on Table 7.9:

**Table 7.9 Banner sign standards**

Zones Allowed	All
Sign Permit Required	Yes
Maximum Number	One per street frontage
Maximum Area (height x width)	60 square feet
Illumination Allowed	No
Maximum Time Permitted	15 days; no more than once quarterly per calendar year

**Figure 7.20 Banner sign detail – ground mount**



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**Figure 7.21 Banner sign example – ground mount**



**Figure 7.22 Banner sign example – wall mount**



D. *Sidewalk signs.*

1. General standards. The following standards apply to all sidewalk signs:
  - a. A sidewalk sign shall be placed only on the property of the business displaying such sign, or on the adjacent sidewalk. See Section 30-7-111 Off-premise sign standards regarding sign permits issued prior to April, 2024 for off-premise sidewalk signs.
  - b. 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).
  - c. Sidewalk signs must be removed upon close of business each day and may be replaced the following day.
  - d. A sidewalk sign shall not obstruct pedestrian or vehicular circulation. Any sidewalk sign that is deemed unsafe for pedestrians or motorists may be removed by the Town.
  - e. Sidewalk signs must be anchored to the ground or weighted sufficiently to prevent movement by wind.
2. Sidewalk sign specifications. Specifications regulating sidewalk signs are shown on Table 7.10:

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**Table 7.10 Sidewalk sign standards**

Zones Allowed	C1, C2, SC, UC
Sign Permit Required	Yes
Maximum Number	One
Maximum Area (height x width)	Eight square feet
Maximum Height	48 inches
Maximum Width	24 inches
Min. Pedestrian Clearance	Four feet
Illumination Allowed	No
Maximum Time Permitted	Daily; subject to C. 1.c. above

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Figure 7.23 Sidewalk sign detail

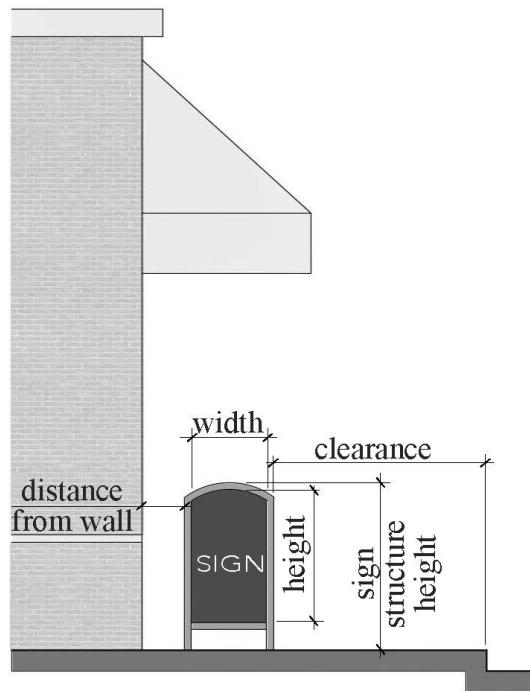


Figure 7.24 Sidewalk sign example



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E. *Site Signs.*

1. *General standards.* The following standards apply to all site signs:
  - a. Site signs are only allowed on properties with active listings for sale or for rent, or on lots under construction with active building permits, and are not permitted on parcels with existing or built-out residential or non-residential uses.
  - b. 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 100 feet apart as measured using a straight line.
  - c. See Sec. 30-5-102 J *Signage* for construction rules and regulations associated with site signs.
2. *Site sign specifications.* Specifications regulating site signs are shown on Table 7.11:

**Table 7.11 Site sign standards**

Zones Allowed	All
Sign Permit Required	No
Maximum Number	One per street frontage
Maximum Area: Residential Zone	Eight square feet, unless otherwise specified in E. 1. c above
Maximum Area: Non – Residential Zone	32 square feet
Illumination Allowed	No
Maximum Time Permitted	Seven days after active listing or building permit has expired.

**Figure 7.25 Site sign example**



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F. *Yard signs.*

1. *General standards.* The following standards apply to all yard signs:
  - a. Yard signs shall not be erected or placed in parks, alleys or in a street or other public right-of way or place.
  - b. Unless otherwise specified herein, yard signs shall be displayed not more than twice per year per dwelling unit.
  - c. An unlimited number of yard signs are permitted within 60 days before and five days after any general or special election.
2. *Yard sign specifications.* Specifications regulating yard signs are shown on Table 7.12:

**Table 7.12 Yard sign standards**

Zones Allowed	All
Sign Permit Required	No
Maximum Number	One per street frontage, unless otherwise specified in F. 1 above
Maximum Area: Residential Use	Eight square feet
Maximum Area: Non – Residential Use	32 square feet
Illumination Allowed	No
Maximum Time Permitted	Five days, or seven days after an active listing has expired, unless otherwise specified in F. 1. above

**Figure 7.26 Yard sign examples**



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### **30-7-111 Off-Premise sign standards**

- A. *General requirements.*
  - 1. Off-premises signs, also known as off-site signs, are permitted with a Use by Special Review permit.
  - 2. Off-premises 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; or
    - d. Measure more than 4 square feet in area, except for sidewalk signs.
- B. *Billboard signs.* No new billboard signs are allowed within the Town of Berthoud after May 3, 2012. Billboard signs in existence on May 3, 2012 are considered legal and non-conforming, subject to the requirements of this Code with respect to non-conforming uses.
- C. *Off-premise sidewalk signs.* Sign permits issued prior to the effective date of Ordinance 1334 remain in effect for existing off-premise sidewalk signs associated with businesses 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. After the effective date of Ordinance 1334 no additional sign permits for off-premise sidewalk signs will be issued. No new off-premise sidewalk signs are allowed.

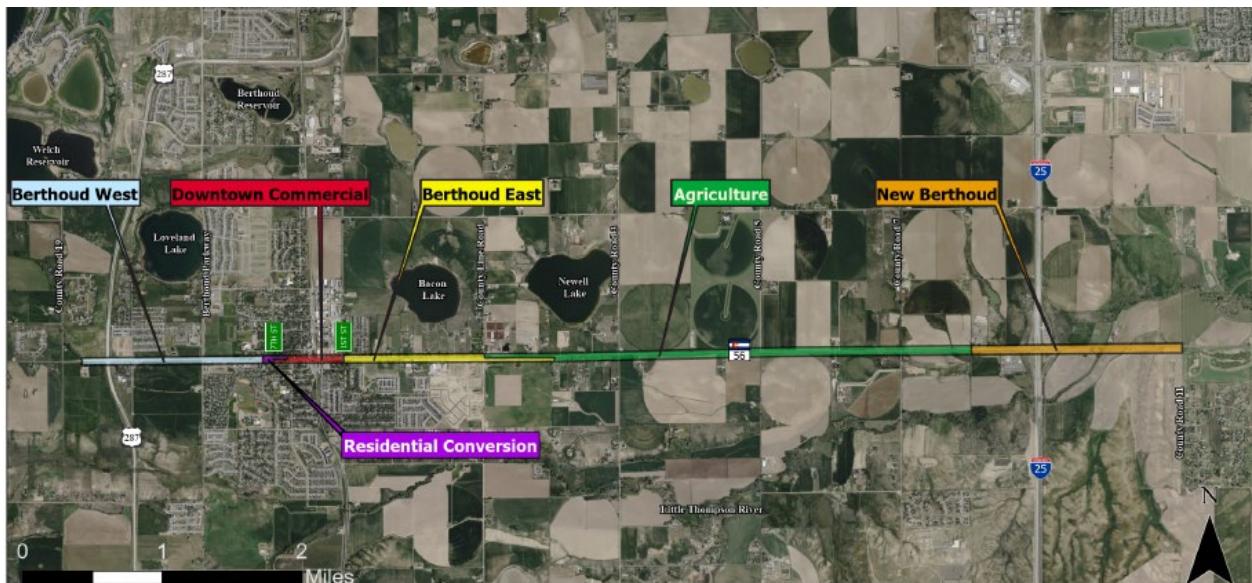
## SECTION 8 MOUNTAIN AVENUE OVERLAY DISTRICT STANDARDS

### 30-8-101

A. *Intent:* The Mountain Avenue Overlay District was developed to protect and enhance the existing historical districts and direct the general character of new development and redevelopment along Mountain Avenue/Highway 56. The overlay district defines and emphasizes unique character districts along the corridor and sets specific guidelines as to architecture, site planning, parking, urban design and streetscapes within this area. The underlying zoning remains, and specific design, architecture and setback requirements are governed by the overlay district. In addition to the requirements of this section, applicants will be required to follow the Mountain Avenue Corridor Design & Signage Plan, the Town of Berthoud Architectural Guidelines and the Town of Berthoud Landscape Guidelines.

B. *Applicability/Boundaries:*

1. *Boundary of Mountain Avenue Overlay District.* The boundary of this Mountain Avenue Overlay District (herein referred to as the "Mountain Avenue Overlay District") shall be the area so labeled and depicted in the map below, and as approved in the official zoning map, which is incorporated herein by reference; which generally extends along HWY 56 and is applicable to all properties within 150 feet of the centerline of Hwy 56, Larimer County Road 8, and Weld County Road 44 within Town Limits.



2. *Applicability.* All of the regulations and requirements of this Section shall fully apply when any of the following occur (the property must be brought into full compliance with this Article when any of the following occur):
  - a. Construction of any new Structure.
  - b. Parking area reconfiguration (repair and restriping of existing parking lot is exempt).
  - c. Structural Alterations. Any structural alteration shall follow the Mountain Avenue Overlay District regulations as follows:
    - i. *Exterior Walls.* When any change is made to the façade or an exterior wall of an existing structure, all of the façade visible from Mountain Avenue, shall be brought into full compliance with the Mountain Avenue Overlay District found herein.
    - ii. *Addition(s):* Any addition must be in full compliance with the Mountain Avenue Overlay.

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- d. See the Section on Signs in this Mountain Avenue Overlay District regulations as well as the separate Section on Signs in this Chapter.
  - e. Change of Use. Any change of use will require compliance with applicable standards of the Mountain Avenue Overlay District.
- 3. *Exemptions:*
  - a. General property maintenance and/or general property repair, such as roof repairs, interior remodels and repair, paint, and any other non-structural repair, or;
  - b. The maintenance, repair, upgrading or replacement of any water, sewer, HVAC, or electrical facilities will not trigger a requirement that such property or structure be brought into compliance with the Mountain Avenue Overlay District.
  - c. Existing single-family homes are exempt from the requirements of this overlay and shall follow the development standards of the underlying zoning district.
- 4. *Legal Non-conformities.*
  - a. Except as provided in this District to the contrary; all nonconforming uses, nonconforming structures and nonconforming lots, shall be governed by the Section regarding Nonconformities in this Chapter.

C. *Overlay Requirements—Character Districts.* The 7.75-mile corridor passes through several distinct environments, each with a unique and definable character that separate them from other places along the corridor. These districts are often defined by architecture, land uses, scale, density, streetscapes, and landscaping. This Overlay protects and enhances the character of each district.

- 1. *Berthoud West Character District.* This is a largely undeveloped district with views of the Rocky Mountains, and in close proximity to downtown and Highway 287. This area is envisioned as a vibrant walkable commercial district with opportunities for shopping, employment and other services. Though this district is in close proximity to the town core, it will build on the unique characteristics of downtown, but not replicate it. The District extends from the western boundary of the Town limits to 8<sup>th</sup> Street.
- 2. Residential Conversion District. This district is characterized by charming older homes occupied by businesses and commercial uses. Majestic street trees create a seemingly continuous canopy over Mountain Avenue, and expanded green spaces surrounding the homes and detached walks with tree strips create a walkable neighborhood. The Residential Conversion character district extends along Mountain Avenue between 8<sup>th</sup> Street and 7<sup>th</sup> Street on the south side of Mountain Avenue. The Residential Conversion character district extends along Mountain Avenue between 8<sup>th</sup> Street and the western half of the block between 5<sup>th</sup> and 6<sup>th</sup> Streets. Refer to the Mountain Avenue Overlay District map found in this Section.
- 3. *Downtown Commercial Character District.* Berthoud's Downtown District represents a concentration of character and personality, and shapes much of the Town's identity. Its buildings give a sense of history, its businesses and restaurants show the liveliness of the town, and its quirks set it apart from other towns in Northern Colorado. The Downtown Commercial character district extends along Mountain Avenue between 7th Street and 1st Street on the south side of Mountain Avenue and between the east half of the block between 5<sup>th</sup> and 6<sup>th</sup> Street to 1<sup>st</sup> Street on the north side of Mountain Avenue in the downtown area. Refer to the Mountain Avenue Overlay District map found in this Section.
- 4. *Berthoud East Character District.* A transition district from the rural agrarian areas to the downtown core. The undeveloped land on the south side of Hwy 56 is envisioned as a vibrant walkable residential district with a mixed-use area near the intersection of County Line Road 1 providing opportunities for shopping, dining, employment and other services. Appropriate land use, scale and density transitions from existing residential neighborhoods are critical. The parcels that are located within this district are found on the Mountain Avenue Overlay District map found in this Section. Generally, the boundary is described as from 1<sup>st</sup> Street to County Line Road 1 on the north side of Mountain Avenue/ State

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Highway 56 and from 1<sup>st</sup> Street to one – half mile east of County Line Road on the south side of Mountain Avenue/ State Highway 56.

5. *Agricultural Character District.* Farms, big skies, distant views, and scattered farmsteads provide a pleasant separation between Interstate 25 and the Town which adds to Berthoud's small-town appeal. The primary goal of this district is to retain the rural and agrarian character and to protect the iconic views to the Rocky Mountains. The Agriculture Character District extents vary on the north and south frontages. Refer to the Mountain Avenue Overlay District map found in this Section. In general, the District extends from County Line Road 1 to one-half mile west of Interstate 25 on the north side of Mountain Avenue/ Highway 56 and one-half mile east of County Line Road 1 to one-half mile west of Interstate 25 on the south side of Highway 56.
6. *New Berthoud Character District.* New Berthoud straddles the I-25/Hwy 56 interchange and is the gateway into Town. The lasting impression should relate to "Berthoud Proper" and offer a fresh new twist. The New Berthoud Character District extends one-half mile west of Interstate 25 to County Road 11. Refer to the Mountain Avenue Overlay District map found in this Section

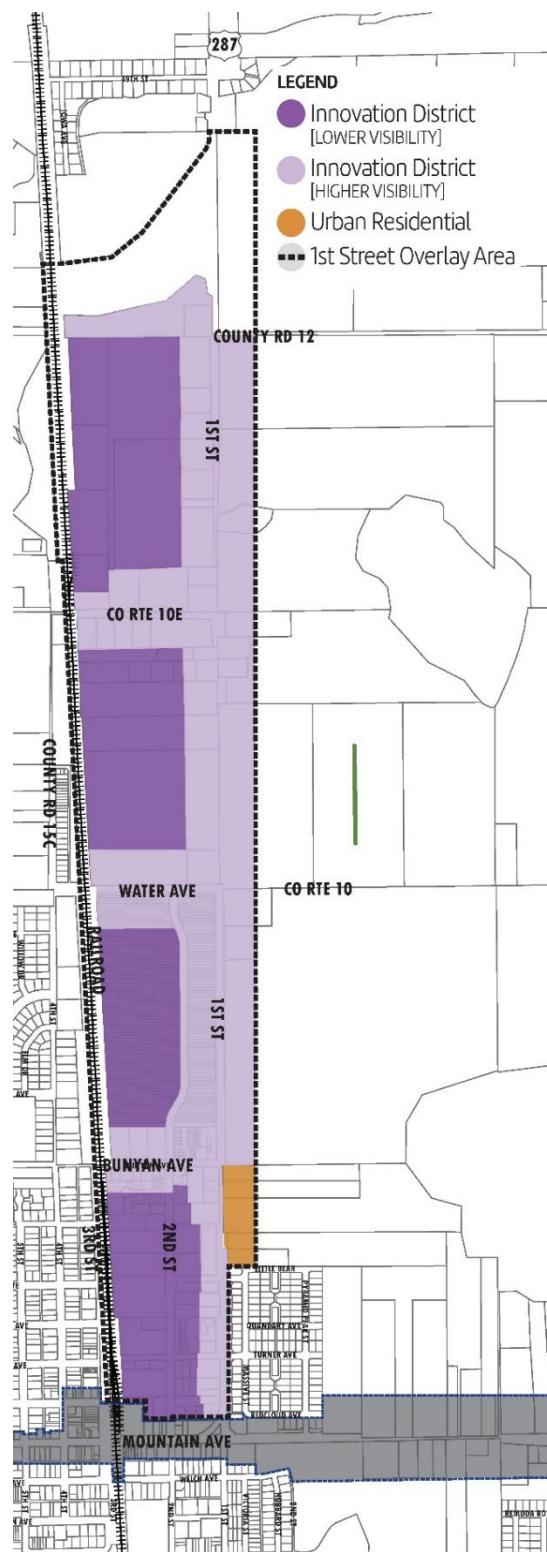
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## SECTION 9 INNOVATION DISTRICT OVERLAY STANDARDS

### 30-9-101 1<sup>st</sup> Street Corridor Overlay District

- A. *Intent.* The 1<sup>st</sup> Street Corridor Overlay District was developed to create an Innovation District within Berthoud that is distinct and unique in its form and functions from other areas in Town. The focus of this Overlay is to direct the general character of new development and redevelopment within the Overlay District boundaries in accordance with the plan adopted by Resolution 2023-09. Where conflicts exist between the 1<sup>st</sup> Street Overlay District and the remainder of the Berthoud Municipal Code and in particular Chapter 30, the language and intent of the 1<sup>st</sup> Street Overlay District shall take precedence. This includes architecture, site planning, the development of infrastructure and road cross sections.
- B. *Boundaries.*
  - 1. *General.* The boundary of this 1<sup>st</sup> Street Corridor Overlay District (herein referred to as the 1<sup>st</sup> Street Overlay) shall be the area so labeled and depicted in the Figure below, and as approved in the official zoning map, which is incorporated herein by reference. The 1<sup>st</sup> Street Overlay is applicable to all properties within the 1<sup>st</sup> Street corridor within Town Limits.
  - 2. *Districts.* As depicted in the Figure below, the 1<sup>st</sup> Street Overlay is comprised of two Character Districts: the Innovation District and the Urban Residential District. The Innovation District is a distinct business district encompassing a majority of the 1<sup>st</sup> Street Overlay area. The Urban Residential District supports potential commercial and employment opportunities in the Innovation District.
  - 3. *Visibility Areas.* As depicted in the Figure below, the Innovation District is comprised of a Higher Visibility Area and a Lower Visibility Area.
    - a. Higher Visibility Areas are defined within 300 feet of the centerline of 1<sup>st</sup> Street, Bunyan Avenue, Water Avenue, CR10, CR10E, and CR12.
    - b. Lower Visibility Areas are the remaining areas outside the Higher Visibility Areas.

## **Innovation District Overlay Boundaries**



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C. *Applicability.* All of the regulations and requirements of this Section shall fully apply when any of the following occur on property within the 1st Street Overlay:

1. Construction of any new principal structure.
2. Parking area reconfiguration.
3. Structural Alterations. Any structural alteration shall follow the 1st Street Overlay regulations as follows:
  - a. Exterior Walls. When a change is made affecting ten percent (10%) or more of the façade or an exterior wall of an existing structure within a Higher Visibility Area, all of the façade shall be brought into full compliance with the 1st Street Overlay found herein.
  - b. Addition(s): Any addition to an existing structure which expands the original structure footprint by ten percent (10%) or more within a Higher Visibility Area must be in full compliance with this 1st Street Overlay.
4. Sign Permits. The expansion, change, or removal and replacement of an existing sign shall require the sign to be brought into compliance with the Development Code Section regarding Sign regulations.
5. Change of Use. Any change of use resulting in increased traffic, parking requirements, demand on utilities, lighting, or other site – specific modification will necessitate land development review and require compliance with applicable standards of this Code and the 1st Street Overlay regulations.

D. *Exemptions.* The following exemptions to the regulations and requirements of this Section are applicable to property within the 1st Street Overlay:

1. General property maintenance and/or general property repair, such as roof repairs, interior remodels and repair, exterior painting, parking lot repair/restriping, and any other non-structural repair, or;
2. The maintenance, repair, upgrading or replacement of any water, sewer, HVAC, or electrical facilities will not trigger a requirement that such property or structure be brought into compliance with this 1st Street Overlay.
3. Existing single-family residential uses are exempt from the requirements of this 1st Street Overlay and shall follow the development standards of the underlying zoning district.

E. *Legal Nonconformities.* Except as provided in this 1st Street Overlay to the contrary; all nonconforming uses, nonconforming structures and nonconforming lots, shall be governed by the *Nonconforming use/buildings* section of this Chapter.

F. *Architectural Standards/Guidelines.* All applicable development within the 1st Street Overlay shall be in accordance with the architectural standards of this Code and the Architectural Design Guidelines.

1. All applicable development within the Urban Residential District shall be in compliance with the *Residential design standards* section of this Chapter.
  - a. During the land development approval process, and specifically the sections regarding *Site plan* and *Use by Special Review* applications in this Chapter as applicable, an applicant proposing development within the Urban Residential District shall illustrate how the development will comply with the requirements set forth in the Architectural Design Guidelines for the Urban Residential Character District.
2. All applicable development within the Innovation District shall be in compliance with *Commercial and industrial standards* section of this Chapter.
  - a. During the land development approval process, and specifically the sections of the Development Code regarding *Site plan* and *Use by Special Review* as applicable, an applicant proposing development within a Higher Visibility area shall illustrate how the development will comply with the requirements set forth in the Architectural Design Guidelines for the Urban Industrial Character District.

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b. During the land development approval process, and specifically the sections regarding *Site plan* and *Use by Special Review* permits as applicable, an applicant proposing mixed use development shall illustrate how the development will comply with the requirements set forth in the Architectural Design Guidelines for the Urban Downtown Character District.

G. *Use and Dimensional Standards.* All applicable development within the 1st Street Overlay shall be in accordance with the land use and dimensional standards in the following Table titled 1<sup>st</sup> Street Corridor Overlay District Use and Dimensional Standards:

**1<sup>st</sup> Street Corridor Overlay District Use and Dimensional Standards Table**

Uses Allowed	Per Underlying Zoning
Mixed-Use Standards	Per R-4 Zoning
Maximum Density	Per Underlying Zoning
Maximum Building Height: Innovation District	3 Stories (40 feet)
Maximum Building Height: Urban Residential District	Per Underlying Zoning
Minimum Lot Size	Per Underlying Zoning
Minimum Lot Width	Per Underlying Zoning
Building Setbacks	Per Underlying Zoning
Building Orientation	Parallel to Front lot line
Maximum Parking and Driveway Frontage	40% of lot frontage shall include parking and/or driveway frontage

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## SECTION 10 HISTORIC RESOURCES<sup>9</sup>

### 30-10-101 Intent

- A. The intent of this chapter is to:
  1. Survey, identify, designate, preserve, protect, enhance, and perpetuate those sites, structures, objects, and districts that reflect important elements of the Town's cultural, artistic, social, economic, political, architectural, archaeological, or other heritage;
  2. Foster civic pride in the art, architecture, and accomplishments of the past;
  3. Stabilize or improve aesthetic and economic vitality and values of such sites, structures, objects, and districts;
  4. Promote the use of important historical, archaeological, or architectural sites, structures, objects, and districts for the education, stimulation, and welfare of the people of the Town;
  5. Protect and enhance the Town's historic cultural and environmental resources to preserve its attraction to tourists and visitors;
  6. Promote thoughtful community planning and design;
  7. Promote economic, social, and environmental sustainability through the ongoing use, maintenance, and rehabilitation of existing buildings.

### 30-10-102 Background

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 Local Historic Landmarks and Districts; providing information on public incentives for the preservation of Local Historic Landmarks; and land use regulations regarding the alteration, moving or demolition of Local Historic Landmarks and properties on the State or National Register of Historic Places. 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. Resolution 2019-02 updated the membership, organization, procedure, functions, and duties of all non-statutory advisory committees including the Historic Preservation Advisory Committee.

### 30-10-103 Definitions

The following definitions apply to terms used in this Section. Terms not defined have their commonly construed meaning.

*Alteration* — An addition, removal, change, or reconfiguration which alters the exterior character of a Local Historic Landmark including new construction in Historic Districts.

- i. *Minor alterations* shall include painting, repair or replacement of roof using the same or similar materials as the existing roof, or foundation repair.
- ii. *Major alterations* shall include window or door replacement, additions, and removal or alteration of architectural elements, including but not limited to alterations of any land surface, including the addition or removal of any improvement to or from any land surface that is within or part of any designated resource.

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*Building* — Construction for purposes of shelter or habitation, e.g. house, barn, store, theater, train station, garage, school and other similar structures.

*Contributing Property* — a building or object adding to the historic significance of a District.

*Demolition* — The razing, destruction, or dismantling of a resource to the degree that its historic character is substantially obliterated.

*Designated Local Historic Landmark* — A property officially recognized by the Town of Berthoud, Colorado, as important to its history.

*State or National Register of Historic Places* — Buildings, structures, objects, sites, and districts which are listed on the State Register of Historic Properties or National Register of Historic Places.

*District* — A significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development.

*Historic Context* — An organizing structure for interpreting history that groups information about historic properties which share a common theme; common geographical location, and common time period. The development of historic contexts is a foundation for decisions about the planning, identification, evaluation, registration, and treatment of historic properties based upon comparative significance.

*Historic Integrity* — The authenticity of a property's historic identity, evidenced by the survival of physical characteristics that existed during the property's prehistoric or historic period and the composite of its location, design, setting, materials, workmanship, feeling and association.

*Historic Significance* — The importance of a property to the history, architecture, archaeology, engineering, or culture of a community, achieved by meeting one or more standards of 30-9-105.4.

*Listing of Historic Resources* — The record of information in the form of surveys about resources potentially significant to the history of the Town of Berthoud, Colorado, but have not been designated as a local landmark.

*Local Historic Landmarks (LHL's)* — are locally significant historic places designated by the Town of Berthoud because they possess exceptional value or quality in illustrating or interpreting the heritage 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.

*Preservation* — focuses on the maintenance and repair of existing historic materials and retention of a property's form as it has evolved over time (see minor alterations).

*Relocation* — The removal of a resource from its historic context or site to another location.

*Rehabilitation* — The process of returning a property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the property which are significant to its historic, architectural, and cultural values.

*Resource* — any building, structure, site, or object that is part of or constitutes a historic property.

*Site* — location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing ruined, or vanished, where the location itself possesses historic, cultural, or archaeological value regardless of the value of any existing structure which may include underground features, e.g. battlefield, campsite; or natural features, food-gathering areas, etc.

*Structure* — Construction made for functions other than shelter or habitation, e.g. bridge, windmill, dam, highway, silo, kiln.

*Survey* — The process of identifying, documenting and evaluating or re-evaluating properties to determine their potential for eligibility and designation as a Local Historic Landmark.

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## **30-10-104 Authority and 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 History Colorado.
2. The Historic Preservation Advisory Committee shall also make recommendations to Town staff and the Town Board of Trustees 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 a Designated Local Historic Landmark.
  - (e) Matters related to preserving the historic character of the Town.
  - (f) Support or financial assistance for preservation-related programs.
  - (g) Removal of properties from the register for reasons including, but not limited to, acts of God, undue hardship and public health/safety concerns.
  - (h) Application fees for applications made by citizens applying for historic designation or who are applying to alter or demolish a historically designated property.
3. Advise and assist owners of historic properties on physical and financial aspects of reservation, renovation, rehabilitation, and reuse, including nominations to the Local, State or National Registers of Historic Places within the Town limits.
4. Initiate 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.
5. Survey historic properties for the purpose of defining those of historic significance, and to prioritize the importance of identified historic properties and areas.

## **30-10-105 Listing Standards**

- A. *Listing.*
  1. The Committee shall determine and periodically revise priorities for the identification and evaluation of historic resources.
  2. Unless the Committee finds extraordinary historic importance, only properties over 50 years of age shall be considered for inclusion in the Register of Local Historic Landmarks.
  3. The Committee shall apply criteria based on historic integrity and significance, for evaluating historic resources. The criteria shall be used to identify historic resources as eligible, potentially eligible, or ineligible for listing on the Designated Local Historic Landmarks Register. Owners of surveyed properties will be notified of these findings by the Committee.
  4. Documentation of properties in the Listing of Historic Resources shall be in a format compatible with forms developed by History Colorado, and upon completion, copies of the forms shall be supplied to History Colorado by the Committee.
  5. Records concerning the locations of any archaeological sites shall be filed with History Colorado by the Committee to ensure the safety and security of an archaeological site.

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### **30-10-106 Designated Local Historic Landmark register**

- A. Properties listed on the State Register of Historic Properties and National Register of Historic Places, including all properties within State or National Register Historic District boundaries, are eligible for automatic listing on the Designated Local Historic Landmark Register.
- B. No property shall be designated without the written consent of the owner. In the case of the formation of a Historic District where there are multiple ownerships, a majority of the owners within the area of the proposed District may form the District but the regulations of that District shall only apply to properties that are identified as contributing within the District at the time of formation, or later as approved by the Town Board of Trustees on a case by case basis.
- C. Upon acceptance of a completed application, the Town Staff shall schedule two public hearings; one before the Committee for a recommendation, and one before the Town Board of Trustees pursuant to applicable state laws.

In order to be included or maintained on the Local Historic Landmark Register, the Committee may recommend and the Town Board of Trustees must find that:

The quality of significance in Berthoud history, architecture, archaeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

- 1. That are associated with events that have made a significant contribution to the broad patterns of our history; or
- 2. That are associated with the lives of significant persons in Berthoud's past; or
- 3. That embody the distinctive characteristics of a type, period, or method of construction; represent the work of a master; or possess high artistic values; or represent a significant and distinguishable entity whose components may lack individual distinction; or
- 4. That yielded or may be likely to yield, information important in history or prehistory.

- D. The Committee in making a recommendation and the Town Board of Trustees in making a decision shall develop findings based upon the criteria set forth in this Code, to support its recommendation and decision. These findings shall indicate those elements of a property, including any landscape, and archaeological features that are included in the designation and subject to regulation under the provisions of this ordinance.

### **30-10-107 Designation of Local Historic Landmarks**

- A. Recommendations for designation of Local Historic Landmarks. Pursuant to the procedures set forth in this Section, the Committee shall make written recommendation to the Board of Trustees that a site, building, structure, object, or district be designated as a Local Historic Landmark for preservation, meeting the criteria set forth in this Section. Each such recommendation shall include a description of the characteristics of the site, building, structure, object, or district's historic significance and integrity, which justify its designation and shall include a legal description of the property. The recommendation shall indicate alterations that would have a significant impact on, or be potentially detrimental to, the historic features of the site, building, structure, object, or district. Any such designation shall be in furtherance of and in conformance with the purposes and standards of this Section.
- B. Procedures for designating Local Historic Landmarks.
  - 1. *Applications.* Applications for designation of Local Historic Landmarks must be made to the Town Staff on forms provided by the Town. Applications shall be made only by the owners of 100 percent of the property for which the application is submitted, except as provided in Section 30-9-105.2.
  - 2. *Staff review.* The Town Staff shall review applications for designation of Local Historic Landmarks for

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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 make recommendations 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 written notice of their recommendations to the Town Board of Trustees. 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 of Trustees action.* After a recommendation by the Committee, and with public notice given as provided in the Notice and Publication Section of the Land Development Code, the Town Board of Trustees shall by resolution approve, approve with conditions, or shall deny the proposed Local Historic Landmark designation.
5. *Withdrawal of applications.* Prior to action on an application by the Town Board of Trustees, an Applicant may withdraw the application by submitting a written request to the Town Clerk.
6. *Recording.* The resolution designating a site, building, structure, object, or district as a Local Historic Landmark shall be recorded in the records of the Larimer or Weld County Clerk as appropriate.

### **30-10-108 Limitation on Resubmission and Reconsideration**

Whenever the Town Board of Trustees denies an application for Local Historic Landmark designation, or whenever an owner withdraws an application, no application for the same site property may be submitted within one year of the disapproval or withdrawal.

### **30-10-109 Amendment of Designation**

The designation of a Local Historic Landmark may be amended to add additional features to the property according to the application process described in Section 30-9-106 for new designations.

### **30-10-110 Alteration of a Designated Local Historic Landmark**

All modifications to designated Local Historic Landmarks shall be done in conformance with the Secretary of the Interior's Standards for Rehabilitation as published by the U.S. Department of the Interior, National Park Service.

### **30-10-111 Notification of intent to alter a Designated Local Historic Landmark**

The owner of a Local Historic Landmark agrees to notify the Town Staff of the owner's intention to alter (any defined minor or major alteration), demolish, move or remove the Landmark and provide plans for the work at least 30 days prior to beginning such work. This notification requirement shall run with the land and shall bind successors and assigns. The Town Staff shall, upon receipt, forward the notification and plans to the Committee for review and recommendation. The Committee shall review the plans and may advise the owner on the potential effect of the plans on the Local Landmark designation. The Committee may forward a recommendation to the Town Board that, based on the plans, the historic designation be modified or revoked.

### **30-10-112 Alterations, relocations or demolitions**

- A. No exterior, landscape, or archaeological element of a designation Local Historic Landmark which is specified as significant in its designation shall be altered, removed, or demolished without authorization issued by the Town Staff pursuant to this Section and a building permit issued, if required under the currently adopted building code.

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- B. No minor exterior alteration, relocation, or demolition of a designated Local Historic Landmark or a Contributing Structure in an approved Historic District shall be allowed without authorization issued by the Town Staff pursuant to this Section.
- C. No major exterior alterations, relocation, or demolition of a designated Local Historic Landmark or a Contributing Structure in an approved Historic District shall be allowed without authorization issued by the Town Board of Trustees with a recommendation by the Committee.
- D. Prior to submitting an application for a permit pursuant to this section, the Applicant(s) is encouraged to request a pre-application conference with Town Staff and/or the Committee to review concepts and proposals. The Committee may form ad-hoc sub-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.
- E. In cases requiring a public hearing for the relocation or demolition of a Designated Local Historic Landmark, or a Contributing Structure in an approved Historic District, the Committee shall review and recommend to the Town Board of Trustees and the Board shall take action upon such applications. The burden of proof, as per the factors found in Section 30-9-111 6, lies with the Applicant. Applications may be approved, approved with conditions, or denied by the Town Board of Trustees. The Town Staff shall include any conditions imposed by the Town Board of Trustees in permits issued pursuant to this section.
- F. Preservation, reuse, relocation, and/or salvage of historic resources whenever possible is encouraged.
- G. Minor or Major Alterations:
  - 1. Authorization from the Town Staff is required for work identified as minor alterations as defined in this Section. Authorization from the Town Board of Trustees with a recommendation from the Committee is required for work identified as major alterations to the exterior as defined in this Section. In order to approve an application for an alteration of a Local Historic Landmark, or a Contributing Structure in an approved Historic District, the approving authority shall 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 approved by the Town Staff.
    - h. Archaeological resources should be protected and preserved in place. If such resources must be

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disturbed, mitigation measures should be encouraged.

- 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.
- k. In order to approve an application for the relocation or demolition of a Local Historic Landmark, or a Contributing Structure in an Historic District, the Committee and the Town Board of Trustees must find that:
  - 1. No prudent and feasible alternative exists, or
  - 2. The designated property is deteriorated beyond repair, or
  - 3. The value to the community of the proposed use of the property outweighs the value of retaining the Local Historic Landmark.
- l. At the public hearing of an application to relocate or demolish a Local Historic Landmark, or a Contributing Structure in an Historic District the Town Board of Trustees, upon recommendation by the Committee, may, in the interest of exploring reasonable alternatives, delay issuance of a permit for up to 90 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 recommend to the Board of Trustees a delay for an additional period of up to 90 days.
- m. In approving an application for the demolition of a Local Historic Landmark, or a Contributing Structure in an Historic District the Committee may recommend to the Town Board of Trustees and the Board may impose the following conditions:
  - 1. Photographic, video, or drawn recordation of the property to be demolished, and/or
  - 2. Salvage and curation of significant elements, and/or
  - 3. Other reasonable mitigation measures.
- n. In the review process, the unique circumstances of each application is considered. Therefore, previous approval of a separate application in one setting and set of circumstances does not necessarily set a precedent for the approval of future applications that may be similar but present their own unique setting and set of circumstances.
- o. No provision of this Section shall be construed to prevent the ordinary repair or maintenance of a Local Historic Landmark, or a Contributing Structure in an Historic District, when such action does not involve a change in design, materials or appearance.
- p. No provision in this Section shall be construed to prevent the alteration, demolition or relocation of a Designated Local Historic Landmark, or a Contributing Structure in an approved Historic District when the Building Official certifies that such action is required for the public safety.

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### **30-10-113 Revocation of Local Historic Landmark designation**

The Town Board of Trustees may, by resolution, revoke or modify the designation of a Local Historic Landmark, after ten days' notice to the owner and after public hearing, and with a recommendation by the Committee if any of the following conditions exist:

- A If any owner of a Local Historic Landmark fails to provide notification as required in this Section, or if alterations to the Landmark will significantly alter the historic character and/or integrity of the Landmark;
- B If an owner of a Local Historic Landmark submits a written request to the Town for revocation of a designation;
- C If the Committee makes a recommendation to the Town Board of Trustees for modification or revocation based on an owner's written intent to alter a Local Historic Landmark; or
- D If modifications are made to a Local Historic Landmark that are found by the Committee and the Town Board of Trustees to not be in accordance with the standards specified in this Section.

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## SECTION 11: FLOOD MITIGATION PLAN

### 30-11-101. TITLE AND PURPOSE

The Legislature of the State of Colorado has, in Title 29, Article 20 of the Colorado Revised Statutes, delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses. Therefore, the Town Board of Trustees of the Town of Berthoud, Colorado, does hereby adopt the following floodplain management regulations:

*A. Findings of fact.*

1. The flood hazard areas of the Town of Berthoud are subject to periodic inundation, which can result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the health, safety and general welfare of the public.
2. These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.

*B. Statement of Purpose*

It is the purpose of this ordinance to promote public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

1. Protect human life and health;
2. Minimize expenditure of public money for costly flood control projects;
3. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. Minimize prolonged business interruptions;
5. Minimize damage to critical facilities, infrastructure and other public facilities such as water, sewer and gas mains; electric and communications stations; and streets and bridges located in floodplains;
6. Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and
7. Insure that potential buyers are notified that property is located in a flood hazard area.

*C. Methods of reducing flood losses.* In order to accomplish its purposes, this ordinance uses the following methods:

1. Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;
2. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
3. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;
4. Control filling, grading, dredging and other development which may increase flood damage;
5. Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

### 30-11-102. DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

**100-YEAR FLOOD** - A flood having a recurrence interval that has a one-percent chance of being equaled or exceeded during any given year (1-percent-annual-chance flood). The terms "one-hundred-year flood" and "one

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percent chance flood" are synonymous with the term "100-year flood." The term does not imply that the flood will necessarily happen once every one hundred years.

**100-YEAR FLOODPLAIN** - The area of land susceptible to being inundated as a result of the occurrence of a one-hundred-year flood.

**500-YEAR FLOOD** - A flood having a recurrence interval that has a 0.2-percent chance of being equaled or exceeded during any given year (0.2-percent-chance-annual-flood). The term does not imply that the flood will necessarily happen once every five hundred years.

**500-YEAR FLOODPLAIN** - The area of land susceptible to being inundated as a result of the occurrence of a five-hundred-year flood.

**ADDITION** - Any activity that expands the enclosed footprint or increases the square footage of an existing structure.

**ALLUVIAL FAN FLOODING** - A fan-shaped sediment deposit formed by a stream that flows from a steep mountain valley or gorge onto a plain or the junction of a tributary stream with the main stream. Alluvial fans contain active stream channels and boulder bars, and recently abandoned channels. Alluvial fans are predominantly formed by alluvial deposits and are modified by infrequent sheet flood, channel avulsions and other stream processes.

**AREA OF SHALLOW FLOODING** - A designated Zone AO or AH on a community's Flood Insurance Rate Map (FIRM) with a one percent chance or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**BASE FLOOD** – The flood which has a one percent chance of being equaled or exceeded in any given year (also known as a 100-year flood). This term is used in the National Flood Insurance Program (NFIP) to indicate the minimum level of flooding to be used by a community in its floodplain management regulations.

**BASE FLOOD ELEVATION (BFE)** - The elevation shown on a FEMA Flood Insurance Rate Map for Zones AE, AH, A1-A30, AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/AO, V1-V30, and VE that indicates the water surface elevation resulting from a flood that has a one percent chance of equaling or exceeding that level in any given year.

**BASEMENT** - Any area of a building having its floor sub-grade (below ground level) on all sides.

**CHANNEL** - The physical confine of stream or waterway consisting of a bed and stream banks, existing in a variety of geometries.

**CHANNELIZATION** - The artificial creation, enlargement or realignment of a stream channel.

**CODE OF FEDERAL REGULATIONS (CFR)** - The codification of the general and permanent Rules published in the Federal Register by the executive departments and agencies of the Federal Government. It is divided into 50 titles that represent broad areas subject to Federal regulation.

**COMMUNITY** - Any political subdivision in the state of Colorado that has authority to adopt and enforce floodplain management regulations through zoning, including, but not limited to, cities, towns, unincorporated areas in the counties, Indian tribes and drainage and flood control districts.

**CONDITIONAL LETTER OF MAP REVISION (CLOMR)** - FEMA's comment on a proposed project, which does not revise an effective floodplain map, that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodplain.

**CRITICAL FACILITY** – A structure or related infrastructure, but not the land on which it is situated, as specified in the Section regarding Standards for Critical Facilities, that if flooded may result in significant hazards to public health and safety or interrupt essential services and operations for the community at any time before, during and after a flood. See the Section regarding Standards for Critical Facilities.

**DEVELOPMENT** - Any man-made change in improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

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**DFIRM DATABASE** - Database (usually spreadsheets containing data and analyses that accompany DFIRMs). The FEMA Mapping Specifications and Guidelines outline requirements for the development and maintenance of DFIRM databases.

**DIGITAL FLOOD INSURANCE RATE MAP (DFIRM)** - FEMA digital floodplain map. These digital maps serve as "regulatory floodplain maps" for insurance and floodplain management purposes.

**ELEVATED BUILDING** - A non-basement building (i) built, in the case of a building in

Zones A1-30, AE, A, A99, AO, AH, B, C, X, and D, to have the top of the elevated floor above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the flow of the water and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1-30, AE, A, A99, AO, AH, B, C, X, and D, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters.

**EXISTING MANUFACTURED HOME PARK OR SUBDIVISION** - A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

**EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION-**

The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**FEDERAL REGISTER** - The official daily publication for Rules, proposed Rules, and notices of Federal agencies and organizations, as well as executive orders and other presidential documents.

**FEMA** - Federal Emergency Management Agency, the agency responsible for administering the National Flood Insurance Program.

**FLOOD OR FLOODING** - A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of water from channels and reservoir spillways;
2. The unusual and rapid accumulation or runoff of surface waters from any source; or
3. Mudslides or mudflows that occur from excess surface water that is combined with mud or other debris that is sufficiently fluid so as to flow over the surface of normally dry land areas (such as earth carried by a current of water and deposited along the path of the current).

**FLOOD INSURANCE RATE MAP (FIRM)** - An official map of a community, on which the Federal Emergency Management Agency has delineated both the Special Flood Hazard Areas and the risk premium zones applicable to the community.

**FLOOD INSURANCE STUDY (FIS)** - The official report provided by the Federal Emergency Management Agency. The report contains the Flood Insurance Rate Map as well as flood profiles for studied flooding sources that can be used to determine Base Flood Elevations for some areas.

**FLOODPLAIN OR FLOOD-PRONE AREA** - Any land area susceptible to being inundated as the result of a flood, including the area of land over which floodwater would flow from the spillway of a reservoir.

**FLOODPLAIN ADMINISTRATOR** - The community official designated by title to administer and enforce the floodplain management regulations.

**FLOODPLAIN DEVELOPMENT PERMIT** - A permit required before construction or development begins within any Special Flood Hazard Area (SFHA). If FEMA has not defined the SFHA within a community, the community shall require permits for all proposed construction or other development in the community including the placement of manufactured homes, so that it may determine whether such construction or other development is proposed

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within flood-prone areas. Permits are required to ensure that proposed development projects meet the requirements of the NFIP and this floodplain management ordinance.

**FLOODPLAIN MANAGEMENT** - The operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

**FLOODPLAIN MANAGEMENT REGULATIONS** - Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

**FLOOD CONTROL STRUCTURE** - A physical structure designed and built expressly or partially for the purpose of reducing, redirecting, or guiding flood flows along a particular waterway. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

**FLOODPROOFING** - Any combination of structural and/or non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

**FLOODWAY (REGULATORY FLOODWAY)** - The channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. The Colorado statewide standard for the designated height to be used for all newly studied reaches shall be one-half foot (six inches). Letters of Map Revision to existing floodway delineations may continue to use the floodway criteria in place at the time of the existing floodway delineation.

**FREEBOARD** - The vertical distance in feet above a predicted water surface elevation intended to provide a margin of safety to compensate for unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood such as debris blockage of bridge openings and the increased runoff due to urbanization of the watershed.

**FUNCTIONALLY DEPENDENT USE** - A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

**HIGHEST ADJACENT GRADE** – The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**HISTORIC STRUCTURE** - Any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - a. By an approved state program as determined by the Secretary of the Interior or;
  - b. Directly by the Secretary of the Interior in states without approved programs.

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**LETTER OF MAP REVISION (LOMR)** - FEMA's official revision of an effective Flood Insurance Rate Map (FIRM), or Flood Boundary and Floodway Map (FBFM), or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the Special Flood Hazard Area (SFHA).

**LETTER OF MAP REVISION BASED ON FILL (LOMR-F)** – FEMA's modification of the Special Flood Hazard Area (SFHA) shown on the Flood Insurance Rate Map (FIRM) based on the placement of fill outside the existing regulatory floodway.

**LEVEE** – A man-made embankment, usually earthen, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding. For a levee structure to be reflected on the FEMA FIRMs as providing flood protection, the levee structure must meet the requirements set forth in 44 CFR 65.10.

**LEVEE SYSTEM** - A flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

**LOWEST FLOOR** - The lowest floor of the lowest enclosed area (including basement). Any floor used for living purposes which includes working, storage, sleeping, cooking and eating, or recreation or any combination thereof. This includes any floor that could be converted to such a use such as a basement or crawl space. The lowest floor is a determinate for the flood insurance premium for a building, home or business. An unfinished or flood resistant enclosure, usable solely for parking or vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of Section 60.3 of the National Flood Insurance Program regulations.

**MANUFACTURED HOME** - A structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

**MANUFACTURED HOME PARK OR SUBDIVISION** - A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**MEAN SEA LEVEL** - For purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD) of 1988 or other datum, to which Base Flood Elevations shown on a community's Flood Insurance Rate Map are referenced.

**MATERIAL SAFETY DATA SHEET (MSDS)** – A form with data regarding the properties of a particular substance. An important component of product stewardship and workplace safety, it is intended to provide workers and emergency personnel with procedures for handling or working with that substance in a safe manner, and includes information such as physical data (melting point, boiling point, flash point, etc.), toxicity, health effects, first aid, reactivity, storage, disposal, protective equipment, and spill-handling procedures.

**NATIONAL FLOOD INSURANCE PROGRAM (NFIP)** – FEMA's program of flood insurance coverage and floodplain management administered in conjunction with the Robert T. Stafford Relief and Emergency Assistance Act. The NFIP has applicable Federal regulations promulgated in Title 44 of the Code of Federal Regulations. The U.S. Congress established the NFIP in 1968 with the passage of the National Flood Insurance Act of 1968.

**NEW CONSTRUCTION** - Structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

**NEW MANUFACTURED HOME PARK OR SUBDIVISION** - A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

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**NO-RISE CERTIFICATION** – A record of the results of an engineering analysis conducted to determine whether a project will increase flood heights in a floodway. A No-Rise Certification must be supported by technical data and signed by a registered Colorado Professional Engineer. The supporting technical data should be based on the standard step-backwater computer model used to develop the 100-year floodway shown on the Flood Insurance Rate Map (FIRM) or Flood Boundary and Floodway Map (FBFM).

**PHYSICAL MAP REVISION (PMR)** - FEMA's action whereby one or more map panels are physically revised and republished. A PMR is used to change flood risk zones, floodplain and/or floodway delineations, flood elevations, and/or planimetric features.

**RECREATIONAL VEHICLE** - means a vehicle which is:

1. Built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projections;
3. Designed to be self-propelled or permanently towable by a light duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**SPECIAL FLOOD HAZARD AREA** – The land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year, i.e., the 100-year floodplain.

**START OF CONSTRUCTION** - The date the building permit was issued, including substantial improvements, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**STRUCTURE** - A walled and roofed building, including a gas or liquid storage tank, which is principally above ground, as well as a manufactured home.

**SUBSTANTIAL DAMAGE** - Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure just prior to when the damage occurred.

**SUBSTANTIAL IMPROVEMENT** - Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before "Start of Construction" of the improvement. The value of the structure shall be determined by the local jurisdiction having land use authority in the area of interest. This includes structures which have incurred "Substantial Damage", regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary conditions or
2. Any alteration of a "historic structure" provided that the alteration will not preclude the structure's continued designation as a "historic structure."

**THRESHOLD PLANNING QUANTITY (TPQ)** – A quantity designated for each chemical on the list of extremely hazardous substances that triggers notification by facilities to the State that such facilities are subject to emergency planning requirements.

**VARIANCE** - A grant of relief to a person from the requirement of this ordinance when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise

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prohibited by this ordinance. (For full requirements see Section 60.6 of the National Flood Insurance Program regulations).

**VIOLATION** - The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Section

60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

**WATER SURFACE ELEVATION** - The height, in relation to the North American

Vertical Datum (NAVD) of 1988 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

### **30-11-103. GENERAL PROVISIONS**

- A. *Lands to which this Ordinance applies.* The ordinance shall apply to all Special Flood Hazard Areas and areas removed from the floodplain by the issuance of a FEMA Letter of Map Revision Based on Fill (LOMR-F) within the jurisdiction of Berthoud, Colorado.
- B. *Basis for establishing the special flood hazard area.* The Special Flood Hazard Areas identified by the Federal Emergency Management Agency in a scientific and engineering report entitled, "Flood Insurance Study, Larimer County, Colorado, and Incorporated Areas, Effective January 15, 2021"; and "Flood Insurance Study, Weld County, Colorado, and Incorporated Areas, Effective September 26, 2024", with accompanying Flood Insurance Rate Maps and/or Flood Boundary-Floodway Maps (FIRM and/or FBFM) and any revisions thereto are hereby adopted by reference and declared to be a part of this ordinance. These Special Flood Hazard Areas identified by the FIS and attendant mapping are the minimum area of applicability of this ordinance and may be supplemented by studies designated and approved by the Town of Berthoud. The Floodplain Administrator shall keep a copy of the Flood Insurance Study (FIS), DFIRMs, and FIRMs on file and available for public inspection.
- C. *Establishment of floodplain development permit.* A Floodplain Development Permit shall be required to ensure conformance with the provisions of this ordinance.
- D. *Compliance.* No structure or land shall hereafter be located, altered, or have its use changed within the Special Flood Hazard Area without full compliance with the terms of this ordinance and other applicable regulations. Nothing herein shall prevent the Town of Berthoud from taking such lawful action as is necessary to prevent or remedy any violation. These regulations meet the minimum requirements as set forth by the Colorado Water Conservation Board and the National Flood Insurance Program.
- E. *Abrogation and greater restrictions.* This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, nor deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- F. *Interpretation.* In the interpretation and application of this ordinance, all provisions shall be:
  - 1. Considered as minimum requirements;
  - 2. Liberally construed in favor of the governing body; and
  - 3. Deemed neither to limit nor repeal any other powers granted under State statutes.
- G. *Warning and disclaimer of liability.* The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur and flood heights may be increased by man-made or natural causes.

This ordinance does not imply that land outside the Special Flood Hazard Area or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the Community or any official or employee thereof for any flood damages that result from reliance on this Ordinance, or any administrative decision lawfully made thereunder.

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H. *Severability.* This ordinance and the various parts thereof are hereby declared to be severable. Should any section of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.

#### **30-11-104. ADMINISTRATION**

- A. *Designation of the Floodplain Administrator.* The Town Engineer, or their assignee is hereby appointed as Floodplain Administrator to administer, implement and enforce the provisions of this ordinance and other appropriate sections of 44 CFR (National Flood Insurance Program Regulations) pertaining to floodplain management.
- B. *Duties and responsibilities of the Floodplain Administrator.* Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:
  - 1. Maintain and hold open for public inspection all records pertaining to the provisions of this ordinance, including the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures and any floodproofing certificate required by the Section on Permit Procedures.
  - 2. Review, approve, or deny all applications for Floodplain Development Permits required by adoption of this ordinance.
  - 3. Review Floodplain Development Permit applications to determine whether a proposed building site, including the placement of manufactured homes, will be reasonably safe from flooding.
  - 4. Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.
  - 5. Inspect all development at appropriate times during the period of construction to ensure compliance with all provisions of this ordinance, including proper elevation of the structure.
  - 6. Where interpretation is needed as to the exact location of the boundaries of the Special Flood Hazard Area (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation.
  - 7. When Base Flood Elevation data has not been provided in accordance with the Section on the Basis for Establishing the Special Flood Hazard Area, the Floodplain Administrator shall obtain, review and reasonably utilize any Base Flood Elevation data and Floodway data available from a Federal, State, or other source, in order to administer the provisions of the Section on Provisions for Flood Hazard Reduction.
  - 8. For waterways with Base Flood Elevations for which a regulatory Floodway has not been designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one-half foot at any point within the community.
  - 9. Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevation of the base flood by more than one-half foot, provided that the community first applies for a conditional FIRM revision through FEMA (Conditional Letter of Map Revision), fulfills the requirements for such revisions as established under the provisions of Section 65.12 and receives FEMA approval.
  - 10. Notify, in riverine situations, adjacent communities and the State Coordinating Agency, which is the Colorado Water Conservation Board, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to FEMA.
  - 11. Ensure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

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C. *Permit Procedures.* Application for a Floodplain Development Permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to Special Flood Hazard Area. Additionally, the following information is required:

1. Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;
2. Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;
3. A certificate from a registered Colorado Professional Engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria found in the Section of Provisions for Flood Hazard Reduction and specifically Specific Standards for Construction;
4. Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development.
5. Maintain a record of all such information in accordance with the Section on the Duties and Responsibilities of the Floodplain Administrator.
6. Approval or denial of a Floodplain Development Permit by the Floodplain Administrator shall be based on all of the provisions of this ordinance and the following relevant factors:
  - a. The danger to life and property due to flooding or erosion damage;
  - b. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - c. The danger that materials may be swept onto other lands to the injury of others;
  - d. The compatibility of the proposed use with existing and anticipated development;
  - e. The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - f. The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;
  - g. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;
  - h. The necessity to the facility of a waterfront location, where applicable;
  - i. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
  - j. The relationship of the proposed use to the comprehensive plan for that area.

D. *Variance Procedures.*

1. The Appeal Board, as established by the Community, shall hear and render judgment on requests for variances from the requirements of this ordinance.
2. The Appeal Board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this ordinance.
3. Any person or persons aggrieved by the decision of the Appeal Board may appeal such decision in the courts of competent jurisdiction.
4. The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
5. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in Section C of this Article have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
6. Upon consideration of the factors noted above and the intent of this ordinance, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this ordinance as stated in the Statement of Purpose Section.

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7. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
8. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
9. Prerequisites for granting variances:
  - a. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
  - b. Variances shall only be issued upon:
    - i. Showing a good and sufficient cause;
    - ii. A determination that failure to grant the variance would result in exceptional hardship to the applicant, and
    - iii. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
  - c. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the Base Flood Elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
10. Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a Functionally Dependent Use provided that:
  - a. The criteria outlined in the Administration Section and Specifically the Variance Procedures Section, and
  - b. The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

E. *Penalties for noncompliance.* No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this Chapter and Title 30 of the Berthoud Municipal Code. Violation of the provisions of this Chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall proceed through the Enforcement procedures outlined in the Municipal Code.

#### **30-11-105. PROVISIONS FOR FLOOD HAZARD REDUCTION**

- A. *General Standards.* In all Special Flood Hazard Areas the following provisions are required for all new construction and substantial improvements:
  1. All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
  2. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
  3. All new construction or substantial improvements shall be constructed with materials resistant to flood damage;
  4. All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
  5. All manufactured homes shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not

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limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

6. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
7. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and,
8. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

B. *Specific Standards.* In all Special Flood Hazard Areas where base flood elevation data has been provided as set forth in (i) the General Provisions Section, Basis for establishing the Special Flood Hazard Area; (ii) the Administrative Section, Duties and Responsibilities of the Floodplain Administrator item 7; or (iii) the Provisions for Flood Hazard Reduction Section, Standards for Subdivision Proposals, the following provisions are required:

1. **RESIDENTIAL CONSTRUCTION.**  
New construction and Substantial Improvement of any residential structure shall have the lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), elevated to one foot above the base flood elevation. Upon completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered Colorado Professional Engineer, architect, or land surveyor. Such certification shall be submitted to the Floodplain Administrator.
2. **NONRESIDENTIAL CONSTRUCTION**  
With the exception of Critical Facilities, outlined in Article 5, Section H, new construction and Substantial Improvements of any commercial, industrial, or other nonresidential structure shall either have the lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), elevated to one foot above the base flood elevation or, together with attendant utility and sanitary facilities, be designed so that at one foot above the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.  
A registered Colorado Professional Engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. Such certification shall be maintained by the Floodplain Administrator, as proposed in the Administration Section, Permit Procedures.
3. **ENCLOSURES**  
New construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access, or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.  
Designs for meeting this requirement must either be certified by a registered Colorado Professional Engineer or architect or meet or exceed the following minimum criteria:
  - a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
  - b. The bottom of all openings shall be no higher than one foot above grade.
  - c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

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#### 4. MANUFACTURED HOMES

All manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home, electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), are elevated to one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

All manufactured homes placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A1-30, AH and AE on the community's FIRM that are not subject to the provisions of the above paragraph, shall be elevated so that either:

- a. The lowest floor of the manufactured home, electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), are one foot above the base flood elevation, or
- b. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

#### 5. RECREATIONAL VEHICLES

All recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either:

- a. Be on the site for fewer than 180 consecutive days,
- b. Be fully licensed and ready for highway use, or
- c. Meet the permit requirements of the Administration Section, Permit Procedures, and the elevation and anchoring requirements for "manufactured homes" in paragraph (4) of this section.

A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

#### 6. PRIOR APPROVED ACTIVITIES

Any activity for which a Floodplain Development Permit was issued by the Town of Berthoud or a CLOMR was issued by FEMA prior to the effective date of the Flood Damage Prevention Ordinance adopting the Berthoud Flood District may be completed according to the standards in place at the time of the permit or CLOMR issuance and will not be considered in violation of this ordinance if it meets such standards.

C. *Standards for areas of shallow flooding (AO/AH Zones).* Located within the Special Flood Hazard Area established in the General Provisions Section, Basis for Establishing the Special Flood Hazard Area, are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of 1 to 3 feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

##### 1. RESIDENTIAL CONSTRUCTION

All new construction and Substantial Improvements of residential structures must have the lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), elevated above the highest adjacent grade at least one foot above the depth number specified in feet on the community's FIRM (at least three feet if no depth number is specified). Upon completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered Colorado Professional

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Engineer, architect, or land surveyor. Such certification shall be submitted to the Floodplain Administrator.

## 2. NONRESIDENTIAL CONSTRUCTION

With the exception of Critical Facilities, outlined in Section regarding Provisions for Flood Hazard Reduction and Standards for Critical Facilities, all new construction and Substantial Improvements of non-residential structures, must have the lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), elevated above the highest adjacent grade at least one foot above the depth number specified in feet on the community's FIRM (at least three feet if no depth number is specified), or together with attendant utility and sanitary facilities, be designed so that the structure is watertight to at least one foot above the base flood level with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy. A registered Colorado Professional Engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this Section, as proposed in the Administration, Permit Procedures Section, are satisfied.

Within Zones AH or AO, adequate drainage paths around structures on slopes are required to guide flood waters around and away from proposed structures.

- D. *Floodways.* Floodways are administrative limits and tools used to regulate existing and future floodplain development. The State of Colorado has adopted Floodway standards that are more stringent than the FEMA minimum standard (see definition of Floodway in the Definition Section). Located within Special Flood Hazard Area established in the General Provisions, Basis for Establishing the Special Flood Hazard Area, are areas designated as Floodways. Since the Floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:
  - 1. Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory Floodway *unless* it has been demonstrated through hydrologic and hydraulic analyses performed by a licensed Colorado Professional Engineer and in accordance with standard engineering practice that the proposed encroachment would not result in any increase (requires a No-Rise Certification) in flood levels within the community during the occurrence of the base flood discharge.
  - 2. If the Section on Provisions for Flood Hazard Reduction, Floodways above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of the Section on Provisions for Flood Hazard Reduction.
  - 3. Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in Base Flood Elevations, provided that the community first applies for a CLOMR and floodway revision through FEMA.
- E. *Alteration of a watercourse.* For all proposed developments that alter a watercourse within a Special Flood Hazard Area, the following standards apply:
  - 1. Channelization and flow diversion projects shall appropriately consider issues of sediment transport, erosion, deposition, and channel migration and properly mitigate potential problems through the project as well as upstream and downstream of any improvement activity. A detailed analysis of sediment transport and overall channel stability should be considered, when appropriate, to assist in determining the most appropriate design.
  - 2. Channelization and flow diversion projects shall evaluate the residual 100-year floodplain.
  - 3. Any channelization or other stream alteration activity proposed by a project proponent must be evaluated for its impact on the regulatory floodplain and be in compliance with all applicable Federal, State and local floodplain rules, regulations and ordinances.

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- 4. Any stream alteration activity shall be designed and sealed by a registered Colorado Professional Engineer or Certified Professional Hydrologist.
- 5. All activities within the regulatory floodplain shall meet all applicable Federal, State and Berthoud floodplain requirements and regulations.
- 6. Within the Regulatory Floodway, stream alteration activities shall not be constructed unless the project proponent demonstrates through a Floodway analysis and report, sealed by a registered Colorado Professional Engineer, that there is not more than a 0.00-foot rise in the proposed conditions compared to existing conditions Floodway resulting from the project, otherwise known as a No-Rise Certification, unless the community first applies for a CLOMR and Floodway revision in accordance with Section D of this Article.
- 7. Maintenance shall be required for any altered or relocated portions of watercourses so that the flood-carrying capacity is not diminished.

F. *Properties removed from the floodplain by fill.* A Floodplain Development Permit shall not be issued for the construction of a new structure or addition to an existing structure on a property removed from the floodplain by the issuance of a FEMA Letter of Map Revision Based on Fill (LOMR-F), unless such new structure or addition complies with the following:

- 1. **RESIDENTIAL CONSTRUCTION**  
The lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), must be elevated to one foot above the Base Flood Elevation that existed prior to the placement of fill.
- 2. **NONRESIDENTIAL CONSTRUCTION**  
The lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), must be elevated to one foot above the Base Flood Elevation that existed prior to the placement of fill, or together with attendant utility and sanitary facilities be designed so that the structure or addition is watertight to at least one foot above the base flood level that existed prior to the placement of fill with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.

G. *Standards for Subdivision proposals.*

- 1. All subdivision proposals including the placement of manufactured home parks and subdivisions shall be reasonably safe from flooding. If a subdivision or other development proposal is in a flood-prone area, the proposal shall minimize flood damage.
- 2. All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Floodplain Development Permit requirements of General Provisions, Basis for Establishing the Special Flood Hazard Area; Administration, Permit Procedures; and the provisions of the Section on Provisions for Flood Hazard Reduction of this ordinance.
- 3. Base Flood Elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than 50 lots or 5 acres, whichever is lesser, if not otherwise provided pursuant to the General Provisions and Administration sections of this ordinance.
- 4. All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
- 5. All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

H. *Standards for critical facilities.* A Critical Facility is a structure or related infrastructure, but not the land on which it is situated, as specified in Rule 6 of the Rules and Regulations for Regulatory Floodplains in

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Colorado, that if flooded may result in significant hazards to public health and safety or interrupt essential services and operations for the community at any time before, during and after a flood.

1. Classification of critical facilities. It is the responsibility of the Town of Berthoud to identify and confirm that specific structures in their community meet the following criteria:
  - a. Critical Facilities are classified under the following categories: (a) Essential Services; (b) Hazardous Materials; (c) At-risk Populations; and (d) Vital to Restoring Normal Services.
  - b. Essential services facilities include public safety, emergency response, emergency medical, designated emergency shelters, communications, public utility plant facilities, and transportation lifelines.
  - c. These facilities consist of:
    - i. Public safety (police stations, fire and rescue stations, emergency vehicle and equipment storage, and, emergency operation centers);
    - ii. Emergency medical (hospitals, ambulance service centers, urgent care centers having emergency treatment functions, and non-ambulatory surgical structures but excluding clinics, doctors offices, and non-urgent care medical structures that do not provide these functions);
    - iii. Designated emergency shelters;
    - iv. Communications (main hubs for telephone, broadcasting equipment for cable systems, satellite dish systems, cellular systems, television, radio, and other emergency warning systems, but excluding towers, poles, lines, cables, and conduits);
    - v. Public utility plant facilities for generation and distribution ( hubs, treatment plants, substations and pumping stations for water, power and gas, but not including towers, poles, power lines, buried pipelines, transmission lines, distribution lines, and service lines); and
    - vi. Air Transportation lifelines (airports (municipal and larger), helicopter pads and structures serving emergency functions, and associated infrastructure (aviation control towers, air traffic control centers, and emergency equipment aircraft hangars).
  - d. Specific exemptions to this category include wastewater treatment plants (WWTP), non-potable water treatment and distribution systems, and hydroelectric power generating plants and related appurtenances.
  - e. Public utility plant facilities may be exempted if it can be demonstrated to the satisfaction of the Town of Berthoud that the facility is an element of a redundant system for which service will not be interrupted during a flood. At a minimum, it shall be demonstrated that redundant facilities are available (either owned by the same utility or available through an intergovernmental agreement or other contract) and connected, the alternative facilities are either located outside of the 100-year floodplain or are compliant with the provisions of this Article, and an operations plan is in effect that states how redundant systems will provide service to the affected area in the event of a flood. Evidence of ongoing redundancy shall be provided to the Town of Berthoud on an as-needed basis upon request.
  - f. Hazardous materials facilities include facilities that produce or store highly volatile, flammable, explosive, toxic and/or water-reactive materials. These facilities may include:
    - i. Chemical and pharmaceutical plants (chemical plant, pharmaceutical manufacturing);
    - ii. Laboratories containing highly volatile, flammable, explosive, toxic and/or water-reactive materials;
    - iii. Refineries;
    - iv. Hazardous waste storage and disposal sites; and
    - v. Above ground gasoline or propane storage or sales centers.
  - g. Facilities shall be determined to be Critical Facilities if they produce or store materials in excess of threshold limits. If the owner of a facility is required by the Occupational Safety and Health Administration (OSHA) to keep a Material Safety Data Sheet (MSDS) on file for any chemicals stored or used in the work place, AND the chemical(s) is stored in quantities equal to or greater

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than the Threshold Planning Quantity (TPQ) for that chemical, then that facility shall be considered to be a Critical Facility. The TPQ for these chemicals is: either 500 pounds or the TPQ listed (whichever is lower) for the 356 chemicals listed under 40 C.F.R. § 302 (2010), also known as Extremely Hazardous Substances (EHS); or 10,000 pounds for any other chemical. This threshold is consistent with the requirements for reportable chemicals established by the Colorado Department of Health and Environment. OSHA requirements for MSDS can be found in 29 C.F.R. § 1910 (2010). The Environmental Protection Agency (EPA) regulation "Designation, Reportable Quantities, and Notification," 40 C.F.R. § 302 (2010) and OSHA regulation "Occupational Safety and Health Standards," 29 C.F.R. § 1910 (2010) are incorporated herein by reference and include the regulations in existence at the time of the promulgation this Ordinance but exclude later amendments to or editions of the regulations. Specific exemptions to this category include the following:

- i. Finished consumer products within retail centers and households containing hazardous materials intended for household use, and agricultural products intended for agricultural use.
- ii. Buildings and other structures containing hazardous materials for which it can be demonstrated to the satisfaction of the local authority having jurisdiction by hazard assessment and certification by a qualified professional (as determined by the local jurisdiction having land use authority) that a release of the subject hazardous material does not pose a major threat to the public.
- iii. Pharmaceutical sales, use, storage, and distribution centers that do not manufacture pharmaceutical products.

These exemptions shall not apply to buildings or other structures that also function as Critical Facilities under another category outlined in this Article.

- h. At-risk population facilities include medical care, congregate care, and schools. These facilities consist of:
  - i. Elder care (nursing homes);
  - ii. Congregate care serving 12 or more individuals ( day care and assisted living);
  - iii. Public and private schools (pre-schools, K-12 schools), before-school and after-school care serving 12 or more children);
- i. Facilities vital to restoring normal services including government operations. These facilities consist of:
  - i. Essential government operations (public records, courts, jails, building permitting and inspection services, community administration and management, maintenance and equipment centers);
  - ii. Essential structures for public colleges and universities (dormitories, offices, and classrooms only).

These facilities may be exempted if it is demonstrated to the Town of Berthoud that the facility is an element of a redundant system for which service will not be interrupted during a flood. At a minimum, it shall be demonstrated that redundant facilities are available (either owned by the same entity or available through an intergovernmental agreement or other contract), the alternative facilities are either located outside of the 100-year floodplain or are compliant with this ordinance, and an operations plan is in effect that states how redundant facilities will provide service to the affected area in the event of a flood. Evidence of ongoing redundancy shall be provided to the Town of Berthoud on an as-needed basis upon request.

2. *Protection for critical facilities.* All new and substantially improved Critical Facilities and new additions to Critical Facilities located within the Special Flood Hazard Area shall be regulated to a

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higher standard than structures not determined to be Critical Facilities. For the purposes of this ordinance, protection shall include one of the following:

- a. Location outside the Special Flood Hazard Area; or
- b. Elevation of the lowest floor or floodproofing of the structure, together with attendant utility and sanitary facilities, to at least two feet above the Base Flood Elevation.

3. *Ingress and egress for new critical facilities.* New Critical Facilities shall, when practicable as determined by the Town of Berthoud, have continuous non-inundated access (ingress and egress for evacuation and emergency services) during a 100-year flood event.

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## SECTION 12 SHORT TERM RENTALS STANDARDS

### 30-12-101 – Short-Term Rentals

- A. Purpose. The purpose of these regulations is to allow short-term rentals through a licensing process within the regulatory boundaries of the Town. These regulations are to assist in protecting the health, safety, and welfare of property owners, neighbors, and occupants.
- B. Applicability. These regulations apply to all uses meeting the definition of short-term rental. Private covenants running with the land may restrict or prohibit short-term rentals; it is the responsibility of the property owner, not the Town, to ensure compliance with restrictive covenants.
- C. License Required. No person shall rent a principal dwelling as a short-term rental as defined in this Chapter to a transient guest(s) without first obtaining a short-term rental business license issued by the Town and complying with any conditions or restrictions thereof. A short-term rental business license may be issued by the Town Administrator, or Designee, upon finding that the requirements of this Section (30-3-113) are met.
  - 1. The short-term rental business license shall be valid for one year and is subject to annual license renewal as prescribed by the Town. Failure to complete the license renewal shall be cause for revocation of the license approval and may subject the short-term rental to the limitations of the cap.
  - 2. In determining whether to renew a short-term rental business license, the Town Administrator, or Designee, will consider the history of any violations of the short-term rental business license and any documented complaints from nearby property owners or lessees.
  - 3. The short-term rental business license is not transferable to any person upon sale or other transfer of ownership of the property nor is a short-term rental business license transferable from one property to another without first receiving written approval from the Town.
  - 4. A property owner shall obtain no more than two (2) short-term rental business licenses in the Town at any given time.
  - 5. A copy of the business license shall be prominently displayed within the short-term rental unit (such as next to the front entrance).
  - 6. The short-term rental business license number shall be included in all advertisements with any lodging or booking agency or website designed to find customers.
- D. General Standards.
  - 1. The maximum number of short-term rentals in the Town shall not exceed fifty (50). An application for a new short-term rental shall be processed on a first-come-first-served basis. No applications for a short-term rental will be accepted if the maximum number has been met.
  - 2. A short-term rental must be a minimum of 200 feet from another short-term rental. This distance is measured from center of principal dwelling to center of principal dwelling.
  - 3. Only one short-term rental shall be allowed on a property. A short-term rental shall not be allowed in multi-family apartment dwellings, as defined by this code.
  - 4. A short-term rental shall only be conducted in a legally constructed dwelling unit.
  - 5. The total number of occupants or guests of the short-term rental unit shall not exceed two (2) persons per bedroom plus two (2) additional persons per property, but in no instance shall the maximum number of occupants or guests exceed ten (10) total persons.
  - 6. The required minimum number of guest parking spaces for the short-term rental, noted in the table below, shall be provided on-site in a garage, on the driveway, or in a parking lot for multi-unit buildings or developments. One (1) on-street parking space located within one block of the short-term rental shall be counted toward the required minimum number of on-site parking spaces for those properties that do not have a garage and/or driveway. If the short-term rental does not have the required minimum number of on-site guest parking spaces, as required in the table below, but can provide a portion of the required number, the provided number of guest

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parking spaces shall determine the maximum number of allowed guests. The minimum number of off-street parking spaces required are as follows:

Number of Bedrooms in STR Unit	Number of Off-Street Parking Spaces
1-2	1
3-4	3
5	4

7. In multi-unit buildings or developments, only parking spaces that are specifically designated for the dwelling unit shall be used for the short-term rental guest parking. Guest or overflow parking for the development shall not be used as parking for the short-term rental.
8. No person shall be permitted to stay overnight in any motor vehicle, including but not limited to a recreational vehicle, travel trailer, tent, or other outdoor structures on the short-term rental property.
9. The short-term rental shall not be used and/or advertised as an event space, be it a commercial event or large social gathering such as weddings, commercial or corporate events.
10. There shall be no change to the outside appearance of the dwelling or premises or other visible evidence of the conduct of such short-term rental and shall not disturb the neighborhood character.

E. Safety Standards.

1. The short-term rental must undergo and pass a life-safety inspection or other required building inspections at the time of initial licensing and on an annual basis accompanying the annual license renewal to ensure compliance with the Town's Building Code. The Life Safety Inspection shall be conducted by the Town Building Official, or Designee.
2. Unless already equipped with an approved automatic fire sprinkler system or installing one with a building permit and/or fire permit, approved fire extinguishers shall be installed in readily accessible and visible locations for immediate use in the following locations within the short-term rental:
  - a) In each room with a cooking appliance, fireplace, heating appliance, or water heater.
  - b) Inside and adjacent to the door leading to a deck, porch, or patio with such appliances.
  - c) At least one on each story.
3. The property owner shall ensure that the short-term rental contains the following on the premises at all times:
  - a) The required number of smoke detectors in good working order;
  - b) The required number of carbon monoxide detectors in good working order;
  - c) Adequate and functional building egress from each sleeping room in the dwelling; and
  - d) Posted egress maps.
4. A sign containing the following information shall be posted at each interior entrance and exit of the short-term rental:
  - a) The property address.
  - b) The maximum number of occupants or guests permitted to stay in the short-term rental as approved by the Town.
  - c) Contact information for the Fire Department and Police/Sheriff Department.
  - d) Contact information for the short-term rental property manager or property owner.
5. The short-term rental shall be equipped with an operations manual/users guide that is in a visible location (such as a kitchen counter or entry table). The operations manual shall include standard contents as determined and approved by the Town at the time of application.
6. The property owner shall designate a local property manager who shall be available 24 hours per day, 7 days per week to respond to complaints about or violations of law or of license terms.

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*Local* as used herein means having a permanent address within a 20-mile radius from the short-term rental property and a 24-hour contact phone number. The designated local property manager must be able to affirmatively respond to complaints within one hour of notification of such complaint. The designated local property manager's contact information shall be posted in the operations manual located in the short-term rental. Changes to the contact information for the designated local property manager shall be provided to the Town Community Development Department within five business days of the change in contact information. The designated local property manager may be the owner of the property if they meet the *local* criteria.

7. The property owner shall provide a written notice, on a form approved by the Town, of the short-term rental approval to all property owners within 500 feet of the subject property. Such notice shall be mailed within ten (10) days following the date of short-term rental approval.
8. The property owner shall maintain and provide proof of property liability insurance adequate for a short-term rental or provide proof that property liability coverage is provided by any and all hosting platforms through which the owner will rent the short-term rental unit.

F. Taxes, Records, Enforcement.

1. A short-term rental is subject to lodging, sales, and other applicable taxes. A short-term rental business license holder who fails to collect and remit lodging taxes on a short-term rental during the license period shall not be permitted to renew the license for the following two-years, and the property may become subject to the limitations of the cap.
2. The property owner shall maintain records of occupancy for the short-term rental unit, including total number of nights the short-term rental was rented to a guest and the dates in which the short-term rental was rented by a guest. The records shall be made available to the Town, upon request, for review and inspection at any time.
3. A short-term rental business license constitutes a permit, and this Section shall be enforced in accordance with Section 5 of the Berthoud Development Code.

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## **SECTION 13: NATURAL MEDICINE CODE**

### **30-13-101 Natural Medicine Code**

- A. The Town Board of Trustees hereby finds and declares that it has the power to adopt this Section and the prohibitions set forth herein pursuant to Part 1 of Article 50 Colorado Natural Medicine Code of Title 44 of the Colorado Revised Statutes, and Part 3 of Article 50 License Types of Title 44 of the Colorado Revised Statutes; the Town of Berthoud Municipal Code; and Article 20 of Title 29 Local Government Regulation of Land Use, Article 15 Exercise of Municipal Powers, and Part 3 of Article 23 Zoning of Title 31 of the Colorado Revised Statutes, as may be amended from time to time.
- B. This Section is known and may be cited as the "Berthoud Natural Medicine Code." Reference to the Berthoud Natural Medicine Code and the applicable section or sections thereof shall be sufficient when citing the provisions of this Section in any legal document, including, but not limited to, summons, subpoena, pleading, summons and complaint, and memorandum.
- C. All natural medicine businesses shall meet the requirements of the Colorado Natural Medicine Code, all other applicable state laws, the Colorado Regulated Natural Medicine Rules, as promulgated by the department of revenue and the Natural Medicine License Rules and Regulations, as promulgated by the department of regulatory agencies. The Colorado Regulated Natural Medicine Rules and the Natural Medicine License Rules and Regulations as either or both may be amended are collectively referred to in this Section as the Colorado Natural Medicine Rules.
- D. All persons cultivating natural medicine, and operating natural medicine cultivation facilities, testing facilities, products manufacturing facilities, and natural medicine healing centers shall meet the requirements of the Town of Berthoud Development Code, as provided in Chapter 30 of the Berthoud Municipal Code, including all applicable overlay district provisions and standards. For example, a person redeveloping any land for any such shall meet the requirements of the then current site design, architectural and landscaping standards.

### **30-13-102 Purpose**

The Town Board of Trustees declares that the purpose of this Section is to provide for the regulation of natural medicine businesses within the Town for the purpose of protecting the health, safety, and welfare of Berthoud residents and guests.

### **30-13-103 Definitions**

As used in this Section, unless the context clearly requires otherwise, the following words and terms shall have the meanings set forth in this Section. Other definitions not specifically enumerated in this Section shall be as defined, as applicable, in the Colorado Natural Medicine Code, and the Colorado Natural Medicine Rules.

*Administration session* means a session conducted at a healing center, or other location if permitted by the Colorado Natural Medicine Code or Colorado Natural Medicine Rules, during which a participant consumes and experiences the effects of natural medicine under the supervision of a facilitator.

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*Colorado Natural Medicine Code* means Article 50 of Title 44 of the Colorado Revised Statutes, as may be amended from time to time.

*Colorado Natural Medicine Rules* means those rules governing state-licensed natural medicine businesses and state-licensed facilitators as set forth in the Colorado Code of Regulations, 1 CCR 213-1 and 4 CCR 755-1, as may be amended from time to time.

*Facilitator* means an individual who is 21 years of age or older; has the necessary qualifications, training, experience, and knowledge, as required pursuant to the Colorado Natural Medicine Rules, to perform and supervise natural medicine services for a participant(s); and is licensed by the director of the department of regulatory agencies division of professions and occupations to engage in the practice of facilitation.

*Healing center* means a facility where an entity is licensed by the state licensing authority that permits a facilitator to provide and supervise natural medicine services for a participant.

*Micro-healing center* means a healing center licensee tier which is not permitted to store more than 750 milligrams of total psilocin on site.

*Natural medicine business* means any healing center, natural medicine cultivation facility, natural medicine products manufacturer, or natural medicine testing facility, licensed to operate pursuant to the Colorado Natural Medicine Code.

*Natural medicine cultivation facility* means a facility licensed by the state licensing authority where regulated natural medicine is grown, harvested, and prepared in order to be transferred and distributed to either a healing center, facilitator, a natural medicine products manufacturer, or to another natural medicine cultivation facility.

*Natural medicine products manufacturer* means a person licensed by the state licensing authority who manufactures regulated natural medicine products for transfer to a healing center, facilitator, or to another natural medicine products manufacturer.

*Natural medicine services* means a preparation session, administration session, and a post-administration integration session.

*Natural medicine testing facility* means a public or private laboratory licensed or approved by the department of revenue division of natural medicine to perform testing and research on regulated natural medicine and regulated natural medicine products.

*Participant* means a person who is 21 years of age or older and who receives natural medicine services performed by or under the supervision of a facilitator.

*Regulated natural medicine* means natural medicine that is cultivated, manufactured, tested, stored, distributed, transported, transferred, or dispensed pursuant to the Colorado Natural Medicine Code.

*State licensing authority* means the executive director of the Colorado Department of Revenue.

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**30-13-104 Location of licensed natural medicine businesses.**

- A. *Where natural medicine cultivation facilities, testing facilities, and products manufacturers permitted.* Natural medicine cultivation facilities, natural medicine testing facilities, and natural medicine products manufacturers are permitted only in the Industrial M1 and M2 zone districts and on land appropriately zoned and only on land located 100' north of Mountain Avenue, south of Bunyan Avenue, east of the rail line and west of 1<sup>st</sup> Street. The distance of which is measured in a linear (straight line) manner from edge of property to edge of property.
- B. *Where healing centers permitted.* Natural medicine healing centers and micro-healing centers are permitted only in the Commercial C1 and C2, and Suburban and Urban Commercial/Business zone districts except for those located on Mountain Avenue between 6<sup>th</sup> Street and 1<sup>st</sup> Street, and in addition, must be at least 1,000 feet from any childcare center, residential childcare center, preschool, elementary school, middle school, or high school. The distance shall be computed by direct measurement from the nearest property line of the land used for a school or facility to the nearest portion of the building in which natural medicine services are provided, using a route of direct pedestrian access. The distance of which is measured in a linear (straight line) manner from edge of property to edge of property.
- C. *Separation of similar uses.* There shall be a distance of at least 1,000 feet between natural medicine cultivation facilities, natural medicine testing facilities, and natural medicine products manufacturers. The distance shall be computed by direct measurement from the nearest property line of the land used for a facility or manufacturer to the nearest portion of the building in which the facility or manufacturer is housed, using a route of direct pedestrian access.
- D. *Permanent location required.* Natural medicine businesses must be operated from a permanent location. Natural medicine businesses are prohibited from operating from or storing regulated natural medicine or natural medicine products in a moveable, mobile, or transitory location.
  - 1. All storage of natural medicine and natural medicine product shall be in a secured and locked container. Natural medicine cultivation facilities shall ensure that any natural medicine under cultivation is kept in an enclosed locked area.
  - 2. No natural medicine business shall be operated as a home occupation; this does not preclude facilitators from providing natural medicine services at a person's residence in compliance with the Colorado Natural Medicine Rules and other applicable state regulations.
  - 3. Healing centers and micro-healing centers shall not operate outside of the hours of 7 a.m. to 7 p.m., Monday through Saturday.
- E. *Public View.* All doorways, windows and other openings of a natural medicine business shall be located, covered or screened in such a manner as to prevent a view into the interior of said businesses. All activities associated with natural medicine businesses shall occur indoors.
  - 1. The primary entrance shall face the street.

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F. *Processing.* The processing of natural medicine that includes the use of hazardous materials, including, without limitation, and by way of example, flammable and combustible liquids, carbon dioxide, and liquified petroleum gases, such as butane, is prohibited.

1. Nonhazardous materials used to process natural medicine shall be stored in a manner so as to mitigate and ensure odors are not detectable beyond the property boundaries on which the processing facility is located or the exterior walls of the processing facility associated with the processing of natural medicine.
2. The processing of natural medicine shall meet the requirements of all adopted Town building and life/safety codes.
3. The processing of natural medicine shall meet all of the requirements of all adopted water and sewer regulations promulgated by the applicable water and sewer provider.

G. *Lighting.* All facility lighting shall comply with the lighting standards of the Berthoud Municipal Code. In addition, primary entrances, parking lots and exterior walkways shall be clearly illuminated with downward facing lights to provide for after-dark visibility for all patrons, employees and the general public.

H. *Security.* The following shall apply to all natural medicine healing centers and all other natural medicine businesses.

1. A security plan for the secure storage of natural medicine and natural medicine products approved by the Colorado Natural Medicine Division shall be provided to the Town prior to beginning operation, and shall provide any updated plans to the Town within ten (10) business days.
2. Video surveillance recordings shall be retained for a minimum of sixty (60) days and shall be in a digital format that can be easily accessed for viewing and that ensures authentication of the recording as the full unedited version.
  - a. Video surveillance shall provide coverage of all facility entrances and exits.
  - b. Video surveillance recordings shall be maintained in a locked area on the licensed premises.
  - c. Video surveillance recordings shall be duplicated and stored at a secure off-site location or through a network (cloud) service that provides on-demand access to the recordings. The off-site location or network service provider shall be included in the security plan submitted to the Town and updated within seventy-two (72) hours of any change to the location or provider.
  - d. Video surveillance records and recordings must be made available immediately upon request of the state licensing authority, or Town police department.
  - e. If video surveillance or storage equipment becomes inoperable or storage network service becomes disabled, the natural medicine healing center or other natural medicine business shall cease all transactions and require all patrons to exit the building until the equipment or network service is made operable.

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- 3. A monitored security alarm shall be present to provide coverage of all facility entrances and exits, rooms with exterior windows, rooms with interior walls or walls shared with other building tenants, roof hatches, skylights, and storage rooms containing safes or vaults.
- I. *Odor from Natural Medicine Business.* An air filtration and ventilation system shall be designed and installed to ensure the odors from a natural medicine business are confined to the premises and are not detectable or discernible beyond the property boundaries of the land on which the licensed premises is located.
- J. *Nuisance.* It is unlawful and deemed a nuisance under this Code to dispose of, discharge out of or from, or permit to flow from any facility associated with natural medicine, any foul or noxious liquid or substance of any kind whatsoever, including, without limitation, by-products of the natural medicine process, into or upon any adjacent ground or lot, into any street, alley or public place, or into any municipal storm sewer, sanitary sewer, potable water, or non-potable water system in the Town.
- K. *Waste product, remnants or byproduct.* Natural medicine businesses shall provide for secure disposal of natural medicine waste product, remnants or byproduct. Natural medicine waste, remnants and/or byproduct shall not be placed in the facilities' exterior waste container, nor shall it be in any way accessible to the public.
- L. *Unlawful conduct.*

It shall be deemed unlawful for any natural medicine business to violate any provision of the Berthoud Natural Medicine Code. It shall further be deemed unlawful for any natural medicine business to administer natural medicine to a minor, a visibly intoxicated person, or anyone who is not otherwise eligible or appropriate for administration of natural medicine under state laws.

M. *Unlawful cultivation of natural medicine*

- 1. It shall be unlawful for any person to knowingly cultivate natural medicine that cumulatively exceeds an area of more than twelve- (12) feet wide by twelve- (12) feet long in one or more cultivation areas on private property.
- 2. It shall be unlawful for any person that owns, occupies, or controls private property to knowingly allow the cultivation of natural medicine that cumulatively exceeds an area of more than twelve- (12) feet wide by twelve- (12) feet long in one or more cultivation areas on such private property.
- 3. It shall be unlawful for any person to knowingly cultivate natural medicine on private property outside of an enclosed and locked space.
- 4. It shall be unlawful for any person that owns, occupies, or controls private property to knowingly allow the cultivation of natural medicine on such private property outside of an enclosed and locked space.

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5. It shall not be a violation off Subsections (c) and (d) above if the person cultivating natural medicine is twenty-one (21) years of age or older, if the cultivation area is locked in a dwelling on the private property; provided that if a person under twenty-one (21) years of age lives at the dwelling, the cultivation area itself is enclosed and locked; or if a person is under twenty-one (21) years of age enters a dwelling that contains external locks, the person cultivating the natural medicine shall ensure that access to the cultivation area is reasonably restricted for the duration of the person under twenty-one (21) years of age's presence in the private property.

N. *Severability.*

If any clause, sentence, or paragraph, or part of this ordinance shall be held invalid, the validity of the remainder of this ordinance shall not be invalidated or effected thereby.

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## SECTION 14 MARAJUANA BUSINESSES

### 30-14-101 Authority; relationship to other laws

- A. Allowed/Disallowed. It shall be unlawful to operate a marijuana business in the Town of Berthoud unless it is an allowed marijuana business as defined in the definition section of this Chapter. Unless the context requires otherwise, the term "marijuana business" as used in the definition section of this Chapter means an allowed marijuana business. It shall be unlawful to operate a retail marijuana cultivation facility or a retail marijuana products manufacturing business that is not co-located on the same parcel of land as a retail marijuana store. It shall be unlawful to operate a medical marijuana cultivation facility or a medical marijuana products manufacturing business that is not co-located on the same parcel of land as a medical marijuana store.
- B. Compliance with State laws. This section applies to allowed marijuana businesses within the Town of Berthoud and terms not defined herein shall have the meaning set forth in Section 44-10-103 C.R.S., as amended. All marijuana businesses shall be comply with all applicable state statutes, as the same may be amended, and those regulations which are and will be adopted by the Colorado Department of Health and Environment and Colorado Department of Revenue .
- C. Review process. Applications for Use by Special Review for any allowed, marijuana business must be submitted in conformance with Use by Special Review Permit application process and provision of this Code including the procedures found in the Subdivision and Land Use Process and Procedures Table.
- D. This includes applications for allowed marijuana businesses whether co-located or not.
  - 1. Notice shall be given in accordance with the public hearing and general notice provisions found in this Chapter.
  - 2. Unless otherwise provided in the resolution approving it, the allowed marijuana business shall be commenced within six months of the date of such approval; otherwise, the allowed marijuana business Special Use Permit shall be null and void.
- E. 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 1<sup>st</sup> Street. Allowed marijuana businesses shall not be permitted on properties located on Mountain Avenue.
- F. Use by Special Review criteria. In their review of applications for any premises or facilities, the Planning Commission and Board of Trustees shall consider, at a minimum, the following factors:
  - 1. The number, type, and availability of allowed marijuana businesses located in or near the location under consideration;
  - 2. 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;
  - 3. That any allowed marijuana business 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;
  - 4. The size of the building housing the marijuana business;
  - 5. The proposed security plans;
  - 6. The character, experience and criminal history of all persons involved as management, employees and owners;

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7. Sanitary issues, health safety issues, fire safety issues, building code issues and waste water effluent issues;
8. The needs and desires of the community with respect to the requested Use by Special Review permit 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.

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## SECTION 15 OIL AND GAS DRILLING AND PRODUCTION

### 30-15-101: Purpose, authorities, and application to existing facilities

- A. Intent. The intent of this section of the Berthoud Municipal Code is to protect public health, safety, welfare, the environment, and wildlife resources within the Town of Berthoud by establishing a regulatory framework for new and existing oil and gas operations that are located in the Town. The Town hereby declares the adoption of the regulations in this section to be necessary and reasonable for the protection of public health, safety, welfare, the environment, and wildlife resources.
- B. Criteria for approval or denial. The Town will approve oil and gas operations only in locations and in a manner that does not adversely impact the health, safety and welfare of the Town's residents in their workplaces, their homes, their schools, and public places in order to protect the public's health, safety, and welfare, and to safeguard the environment and wildlife resources. The Town will deny applications where the proposed oil and gas operations cannot be conducted in a manner that protects and minimizes adverse impacts to public health, safety, and welfare, and the environment and wildlife.
- C. Authority. These regulations are authorized by C.R.S. § 25-8-101 *et seq.*, 29-20-101 *et seq.*, § 30-28-101 *et seq.*, § 34-60-101 *et seq.*, § 25-7-101 *et seq.*, § 30-15-401, Colorado common law related to public nuisances, and other authority as applicable.
- D. Severability. If any section, clause, provision, or portion of these regulations should be found to be unconstitutional or otherwise invalid by a court of competent jurisdiction, the remainder of the regulations in this section shall not be affected thereby and the continued adoption of the remainder of the regulations is hereby declared to be necessary for the public health, safety, and welfare, and for the protection of the environment and wildlife resources.
- E. Preexisting facilities. Oil and gas operations approved prior to the effective date of this Section may continue operating at their established locations and are subject to the public health, safety, welfare, and environmental requirements as specified in this section within one year of the effective date of this section (Ordinance 1336 was adopted on July 9, 2024).
  1. Modifications of existing facilities. Any modification of oil and gas operations or facilities that the Town determines to be substantial requires a separate Use by Special Review permit pursuant to the Subdivision and Land Use Section of this Chapter. A substantial modification is any physical change not required by law that substantially increases the site footprint, air emissions, traffic, noise, or risk of spills, or will significantly change the operations of the oil and gas facility. Use of a drilling rig or hydraulic fracturing equipment to re-enter, deepen, or recomplete an existing well into a new geologic formation is a substantial modification. Maintenance activities, the replacement of existing equipment, installation of emission control equipment, and the addition of equipment to fulfill mandated regulatory requirements are not substantial modifications.
  2. Annual Operator Registration. Operators with existing oil and gas operations in the Town prior to the effective date of this section will submit the Annual Operator Registration submittal requirements within 90 days after the effective date of this section; or, if not already operating wells in the Town, within 60 days after assuming responsibility for operating existing oil and gas facilities. Operator registration must be updated and renewed annually by January 15. Annual Operator Registration submittal requirements shall include:
    - a. An updated Emergency Response Plans as required by the New Oil and Gas Operation Applications and Use by Special Review Permit Section;
    - b. An updated Leak Detection and Repair Plan as required by the New Oil and Gas Operation Applications and Use by Special Review Permit Section;
    - c. A list of all wells and production information within the Town within the past three years;
    - d. A list of any reportable safety events at the Operator's facilities within the Town over the past three years as defined by ECMC Rule 602(g) or successor rules. The Operator shall also list any root cause analyses conducted and corrective actions taken in response to the incidents, including internal changes to corporate practices or procedures;

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- e. A list of any spills or releases at the Operator's facilities within the Town over the previous three years; and
- f. A list of any notices of alleged violations issued by the ECMC or CDPHE related to the Operator's facilities within the Town over the previous three years.

### 30-15-102: Definitions

Abandonment: the permanent decommissioning of an oil and gas facility, including any single well or portion of pipeline.

Applicant: an Operator submitting an application for a new oil and gas operation pursuant to Use by Special Review processes.

APCD: the Air Pollution Control Division within the Colorado Department of Public Health and Environment.

AQCC: the Air Quality Control Commission within the Colorado Department of Public Health and Environment.

Best Management Practices ("BMPs"): practices that are designed to prevent or reduce impacts caused by oil and gas operations to air, water, soil, or biological resources, and to minimize adverse impacts to public health, safety and welfare, including the environment and wildlife resources.

CDPHE: the Colorado Department of Public Health and Environment.

Child care center: a child care center as defined in § 26-6-903(5), C.R.S. A child care center will include any associated outdoor play areas adjacent to or directly accessible from the center and is fenced or has natural barriers, such as hedges or stationary walls, at least four (4) feet high demarcating its boundary.

Class II water disposal wells: wells that inject fluids which are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection.

Completions or completion phase: the period of hydraulic fracturing, coiling, re-fracturing, installation of tubing, and flowback of one or more wells.

Crude oil transfer line: a piping system that is not regulated or subject to regulation by the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to 49 C.F.R. § 195 Subpart A, and that transfers crude oil, crude oil emulsion or condensate from more than one well site or production facility to a production facility with permanent storage capacity greater than 25,000 barrels of crude oil or condensate or a PHMSA gathering system.

Cumulative impacts: the effects on public health and the environment, including the impacts to air quality, water quality, climate, noise, odor, wildlife, and biological resources, caused by the incremental impacts that a proposed new or amended operation would have when added to the impacts from other past, present, and reasonably foreseeable future development of any type on the impact area..

Development Agreement has the same definition as found in Chapter 30 of the Berthoud Municipal Code.

Drilling or drilling phase: the period in which a drilling rig is utilized to penetrate the surface of the earth with a drill bit and the installation of well casing and cement at one or more wells.

Dwelling Unit has the same definition as found in Chapter 30 of the Berthoud Municipal Code.

ECMC: the Colorado Energy and Carbon Management Commission (formerly the Colorado Oil and Gas Conservation Commission).

EPA: the United States Environmental Protection Agency.

Flaring: the combustion of natural gas during upstream oil and gas operations, excluding gas that is intentionally used for onsite processes.

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Flowback: the process of allowing fluids and entrained solids to flow from a well following stimulation, either in preparation for a subsequent phase of treatment or in preparation for cleanup and placing the well into production. The term Flowback also means the fluids and entrained solids that emerge from a well during the Flowback process.

Flowline: a segment of pipe transferring oil, gas, or condensate between a wellhead and processing equipment to the load point or point of delivery to a U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration or Colorado Public Utilities Commission regulated gathering line or a segment of pipe transferring produced water between a wellhead and the point of disposal, discharge, or loading. This definition of flowline does not include a gathering line or crude oil transfer line but does include on-location flowlines such as wellhead lines, production piping, peripheral piping, produced water flowlines and off-location flowlines as defined by the Colorado Energy and Carbon Management Commission, 2 C.C.R. 404-1, 100 Series Definitions and successor regulations.

Gathering line: a gathering pipeline or system as defined by the Colorado Public Utilities Commission in the Colorado Code of Regulations or a pipeline regulated by the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration pursuant to 49 C.F.R. §§ 195.2 or 192.8 and successor regulations.

Groundwater: subsurface waters in a zone of saturation.

Historical or Cultural Resources has the same definition as found in Chapter 30 of the Berthoud Municipal Code.

Oil and gas location: a definable area where an Operator has disturbed or intends to disturb the land surface to locate an oil and gas facility.

Oil and gas facility: equipment, buildings, structures, or improvements associated with or required for the operation of oil and gas operations.

Oil and gas operations: exploration for oil and gas and the drilling of test bores; the siting, drilling, redrilling, deepening, completion, recompletion, reworking, fracturing, refracturing, temporary abandonment, shutting-in, or abandonment of a well; production operations related to any such well including the installation of pipelines; the generation, transportation, storage and treatment of oil and gas, and exploration and production wastes; any construction, site preparation, maintenance, repair, or reclamation activities associated with such operations; and any oil and gas facility, oil and gas well site or location, production site or other facility, site or location upon or within which any of the foregoing are conducted, operated, installed, constructed, generated, treated or located within Town limits.

Open Space has the same definition as found in Chapter 30 of the Berthoud Municipal Code.

Operator: Any individual, company, trust, foundation, or entity who exercises the right to control the conduct of oil and gas operations.

Park has the same definition as found in Chapter 30 of the Berthoud Municipal Code.

Permit: Town of Berthoud Oil and Gas Use by Special Review Permit issued pursuant to the provisions of this Section.

Pipeline: a flowline, crude oil transfer line, gathering line or any type of water or wastewater transfer line used for oil and gas operations.

Production or production phase means the operational phase of a well transporting hydrocarbons and other liquids or materials from the subsurface to the surface.

Root cause analysis means an analysis of the prime reasons, such as failures of management systems, faulty design, inadequate training, negligence, or improper changes, which led to an unsafe act or condition and resulted in an incident. If root causes were removed, the particular incident would not have occurred.

Plugging: oil and gas well plugging activities consistent with ECMC Rule 434 or any successor rules.

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Reclamation: the process of returning or restoring the surface of disturbed land to its condition prior to the commencement of oil and gas operations.

Safety Data Sheets: documentation required by the United States Occupational Safety and Health Administration that includes information such as the properties of each chemical; the physical, health, and environmental health hazards; protective measures; and safety precautions for handling, storing, and transporting the chemical.

School: any operating Public School as defined in § 22-7-703(4), C.R.S., including any Charter School as defined in § 22-30.5-103(2), C.R.S., or § 22-30.5-502(6), C.R.S., or Private School as defined in § 22-30.5-103(6.5), C.R.S.

School facility: any discrete facility or area, whether indoor or outdoor, associated with a school, that students commonly use as part of their curriculum or extracurricular activities. A school facility is either adjacent to or owned by the school or school governing body, and the school or school governing body has the legal right to use the school facility at its discretion.

Seismic operation: all activities associated with acquisition of seismic data including but not limited to surveying, shothole drilling, recording, vibroseis, shothole plugging and reclamation.

Surface owner: any person owning all or part of the surface of land upon which oil and gas operations are conducted, as shown by the tax records of the county in which the tract of land is situated, or any person with such rights under a recorded contract to purchase.

Town: the Town of Berthoud, Colorado.

Town Administrator: the Town Administrator or designee of the Town of Berthoud, Colorado.

Venting: allowing natural gas to escape into the atmosphere but does not include:

- a. The emission of gas from devices, such as pneumatic devices and pneumatic pumps, that are designed to emit as part of normal operations if such emissions are not prohibited by AQCC Regulation No. 7;
- b. Unintentional leaks that are not the result of inadequate equipment design; and
- c. Natural gas escaping from, or downstream of, a tank unless: (1) there is no separation occurring at equipment upstream of the tank; (2) the separation equipment is not sufficiently sized to capture the entrained gas; or (3) the natural gas is sent to the Tank during circumstances when the gas cannot be sent to the gathering line or the combustion equipment used to flare the gas is not operating.

Water source: water bodies that supply domestic, agricultural or municipal uses; water wells that are registered with Colorado Division of Water Resources, including household, domestic, livestock, irrigation, municipal/public and commercial wells, permitted or adjudicated springs, and monitoring wells other than monitoring wells that are drilled for the purpose of monitoring water quality changes that are not associated with oil and gas operations.

Well / Wellhead: an oil or gas well, a hole drilled for the purpose of producing oil or gas, a well into which fluids are injected, a stratigraphic well, a gas storage well, or a well used for the purpose of monitoring or observing a reservoir. Disposal wells are prohibited.

Wetlands has the same definition as found in Chapter 30 of the Berthoud Municipal Code.

Wildlife resources: fish, wildlife, and their aquatic and terrestrial habitats used for all life stages, including reproduction, rearing of young and foraging, and the migration corridors and seasonal ranges necessary to sustain robust wildlife populations.

30-15-103: Location restrictions for new facilities

- A. Oil and gas operations will be located to avoid or sufficiently minimize and mitigate adverse impacts, including cumulative impacts, to surrounding land uses and to protect public health, safety, and welfare, the environment, and wildlife resources. The Town may deny a Use by Special Review permit if it determines the proposed location is not consistent with the protection of public health, safety, welfare, the environment, and wildlife resources as referenced in the Criteria for Approval section even if the Applicant meets other requirements as set forth in the Sections titled, New oil and gas operation

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applications and Use by Special Review permit, Application Outcome and Development Standards, and Insurance and financial assurances

- B. Oil and gas operations are allowed only in the following zoning districts as set forth in Chapter 30 of the Berthoud Municipal Code regarding Zoning *et al.*: Agricultural District (AG), Light Industrial (M1), and Industrial (M2).
- C. Within zoning districts where oil and gas operations are allowed, oil and gas locations must be located 2,000 (two thousand) feet from the property line of a parcel containing any of the following uses: an existing or platted Dwelling Unit; a School, School Facility, or licensed Child Care Center; athletic fields, auditoriums, amphitheaters, hospitals, event centers, recreational facilities, nursing homes and life care institutions; parks, trails, and open spaces as defined in Chapter 30 of the Berthoud Municipal Code ; trails and trailheads open to the public; and workplaces located in the Agricultural, Light Industrial, and Industrial zoning districts.
  - 1. Owners of Dwelling Units and workplaces with property lines located less than 2,000 (two thousand) feet from a proposed oil and gas location may give written informed consent for oil and gas operations to occur no closer than 1,000 (one thousand) feet of the property line of the Dwelling Unit or workplace.
- D. Within zoning districts where oil and gas operations are allowed, oil and gas locations must be located 2,000 (two thousand) feet from public water supply wells and the center line of water sources including wetlands, rivers, streams, and reservoirs. A new oil and gas location may be within 1,000 (one thousand) feet of a public water supply well and the center line of water sources upon a showing by the Applicant that such a location would pose no likelihood of contamination to the public water supply well or water source.
- E. Within zoning districts where oil and gas operations are allowed, flowlines and crude oil transfer lines shall be sited to avoid areas containing existing or proposed residential, commercial, and industrial buildings; places of public assembly; water sources; and Town open space and parks.
  - 1. Flowlines and crude oil transfer lines shall be located a minimum of 150 (one hundred and fifty) feet from residential, commercial, and industrial buildings and the high-water mark of any water source. This distance shall be measured from the nearest edge of the flowline or crude oil transfer line.
- F. Locating oil and gas facilities within a Federal Emergency Management Agency (FEMA) designated flood zone shall not be allowed.
- G. For the purposes of this section, the setback measurement shall occur from the boundary of the oil and gas location.

30-15-104: Location restrictions for existing facilities

- A. For permitted or existing oil and gas operations where all permitted wells have not entered completions, no new residential, commercial, or mixed-use building units shall be constructed within 2,000 (two thousand) feet of such oil and gas location.
- B. No new residential, commercial, or mixed-use building units shall be allowed to be constructed within 2,000 (two thousand) feet of a permitted or existing oil and gas location for one year after the final well permitted for the location has been put into production.
- C. For permitted oil and gas operations where all permitted wells have been in production for more than one year, or the permit has otherwise lapsed, been revoked, or forfeited, and is not subject to renewal or reissuance, no new residential, commercial, or mixed-use building units may be constructed within 500 (five hundred) feet of the oil and gas location.
  - 1. The setbacks in subsection (C) shall not apply to the following occurring prior to the effective date of this section:

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- a. Constructed residential units;
- b. Platted residential lots;
- c. Residential lots / units planned within a site development plan such as a Neighborhood Master Plan; or
- d. Any development on or within land zoned a planned unit development (PUD) on the effective date of this section.

- 2. For oil and gas facilities that have been plugged, and locations that have been abandoned or reclaimed, no residential, commercial, or mixed-use building unit may be placed within 250 (two hundred and fifty) feet of the oil and gas facility.
- 3. The setback from any existing pipelines shall be a minimum of 150 (one hundred and fifty) feet from the edge of the pipeline easement closest to the flowline or gathering line. Pipelines removed prior to the construction of a residential, commercial, or mixed-use building unit as part of the oil and gas location's plugging, abandonment, and reclamation shall be excepted from this requirement.
- 4. For the purposes of this section, the setback measurement shall occur from the boundary of the oil and gas location.

30-15-105: New oil and gas operation applications and Use by Special Review permit

- A. An Application for a Use by Special Review permit shall be submitted pursuant to the processes and requirements of, and subject to the criteria for approval, outlined in the Use by Special Review section of this Chapter. In addition to the standard application materials required for a Use by Special Review application, the additional materials and procedures outlined in this section are required to be submitted or followed for any application for a new oil and gas operation.
- B. It shall be unlawful for any Operator to conduct oil and gas operations that has not been previously permitted under this Section unless a Use by Special Review permit has first been granted by the Town in accordance with the procedures defined in this Section.
- C. ECMC Oil and Gas Development Plan. Applicant shall submit a copy of any and all materials submitted to the ECMC in support of its Oil and Gas Development Plan (OGDP), if the OGDP has been or was concurrently submitted to the ECMC at the time of the Applicant's application to the Town. ECMC OGDP materials shall be labeled distinctly and separately from those materials submitted pursuant to the Town's Use by Special Review Permit application.
- D. The Applicant will follow the procedural steps for the Town's consideration of the application outlined in the Use by Special Review section of this Chapter. In addition to the procedural steps for the application outlined in Use by Special Review section of this Chapter, the Applicant shall request a pre-application meeting with the Town and conduct that meeting before submitting its application. The purpose of the pre-application meeting is for the Applicant to discuss how its application will meet the provisions of this Section and to assist the Town in comprehensive planning. Prior to the pre-application meeting, the Applicant shall submit to the Town a summary of its application, a map of the proposed oil and gas location and surrounding area, preferred transportation routes to and from the proposed oil and gas location, the surface owner's name, address, contact information, and date of the signed surface use agreement, if available.
- E. The following reports and documentation shall accompany any application for a Use by Special Review Permit for a new Oil and Gas Operation. The reports and plans shall indicate how the Applicant / Operator plans to comply with the Town's regulations and protect health, safety, welfare, the environment, and wildlife resources. The reports will include measures outlined in the Town's regulations. An approved application may require additional industry recognized Best Management Practices, or compliance with state or federal rules, whichever is most protective of public health, safety, welfare, the environment and wildlife resources.

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1. Alternative Location Analysis. Applicant shall submit with its application an analysis of no fewer than two (2) alternative locations from which relevant minerals can be accessed. The analysis shall include information related to the following:

- a. A single map listing the alternative sites and the preferred site;
- b. Zoning of the alternative sites and preferred site;
- c. The proposed area of mineral development;
- d. Natural and manmade features of each site;
- e. All proximate existing and permitted oil and gas operations within one mile (5,280 feet);
- f. Distance of the alternative sites and preferred site to the following within 1 mile (5,280 feet): residences, occupied buildings, parks, trails and open space areas; water bodies; irrigation infrastructure; flood overlay districts including floodways and floodplains; and roadways;
- g. Justification(s) for the preferred site; and
- h. Reason(s) why a site is not proposed as a viable alternative.

2. Air Quality. Operator shall comply with the Air Quality Protection Plan and Well Liquids Unloading Plan as outlined in this Section and all applicable state and federal laws. In addition:

- a. A third-party consultant approved by the Town shall conduct baseline monitoring for thirty days at the Operator's cost. Baseline monitoring shall be conducted no closer than 500 feet of a proposed oil and gas facility at select location(s) up to a distance of 1 kilometer (3,280 feet) of the oil and gas operation as deemed appropriate by the Town. Baseline monitoring shall track levels and changes in monitored air pollutant concentrations during that time period.
- b. Reduced Emission (Green) Completions, as defined in EMC Rule 903.c.(1), or a successor rule, shall be used for all completions.
- c. *Venting and flaring.* Venting and flaring shall be eliminated other than during emergencies, upset conditions, leak repair, or maintenance activities. Operator shall report all venting and flaring to the Town and the reason(s) for its necessity within 24 hours. To the extent used, all flares, thermal oxidizers, or combustion devices shall be designed and operated as follows:
  - i. Any flaring or combustion shall utilize a flare that has a manufacturer specification of 98% destruction removal efficiency or better;
  - ii. The flare and/or combustor shall be designed and operated in a manner that will ensure no visible emissions during normal operation. Visible emissions means observations of smoke for any period or periods of duration greater than or equal to one minute in any fifteen-minute period during normal operation, pursuant to EPA Method 22. Visible emissions do not include radiant energy or water vapor;
  - iii. The flare and or combustor shall be operated with a flame present at all times when emissions are vented to it;
  - iv. All combustion devices shall be equipped with an operating auto-igniter;
  - v. If using a pilot flame ignition system, the presence of a pilot flame shall be monitored using a thermocouple or other equivalent device to detect the presence of a flame. A pilot flame shall be maintained in the flare's pilot light burner at all times when emissions are routed to the flare. A surveillance

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system shall be in place to monitor the pilot flame and shall activate a visible and audible alarm in the case that the pilot goes out;

vi. If using an electric arc ignition system, the arcing of the electric arc ignition system shall pulse continually and a device shall be installed and used to continuously monitor the electric arc ignition system; and

vii. Any flare, auto ignition system, recorder, vapor recovery device or other equipment used to meet the hydrocarbon destruction or control efficiency requirement shall be installed, calibrated, operated, and maintained in accordance with the manufacturer's recommendations, instructions, and operating manuals.

d. *Electrification.* All facilities shall be equipped with electric-powered engines for motors, compressors, drilling and production equipment, and pumping systems during pre-production and production activities unless no adequate electricity source is available during the necessary operation periods, or confirmation from the electrical utility cannot be obtained by the application hearing. Natural gas-powered drill rigs shall be used if an adequate electricity source cannot be secured for electric-powered drilling equipment.

e. *Air Quality Action Advisory Days.* Facilities may be subject to timing restrictions to reduce emissions on Air Quality Action Advisory Days as designated by the CDPHE in the Denver Metro / North Front Range Ozone Non-Attainment Area. Operators shall include provisions in Air Quality Plans to avoid operations during Air Quality Action Advisory Days, or, if technically infeasible or will create a safety concern, incorporate the following measures to minimize pollution on those days:

- i. Minimizing vehicle traffic and engine idling;
- ii. Reducing truck and worker traffic;
- iii. Delaying vehicle refueling;
- iv. Suspending or delaying use of fossil fuel powered equipment, if any is used on the oil and gas location;
- v. Postponing construction and maintenance activities unless repairing identified leaks or releases;
- vi. Postponing well maintenance and liquid unloading that would result in emission releases to the atmosphere; and
- vii. Postponing or reducing operations with high potential to emit Volatile Organic Compounds (VOCs) and/or Oxides of Nitrogen (NOx).

f. *Air Quality Protection Plan.* An Air Quality Protection Plan shall be submitted with all applications to demonstrate how the development and operation of the facility will avoid, or minimize and mitigate adverse impacts to air quality if those adverse effects cannot be avoided, and will demonstrate compliance with and implementation of standards this section. Unless more protective measures are required by the EPA and/or CDPHE, the Air Quality Protection Plan shall include, but not necessarily be limited to, the following:

- i. A section on air quality monitoring that describes how the Operator will conduct baseline monitoring prior to construction of the facility and continuous monitoring during all phases of the operation.

- A. The Plan shall describe how the Operator will conduct continuous monitoring and collect periodic canister samples (or equivalent

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method capable of collecting samples that can be speciated for individual air pollutants) during the drilling, completion, and production phases of development.

B. In the event a sample is triggered that is sent to the lab for speciation, the Plan shall describe the Town and CDPHE notification processes. Depending on the circumstances, expedited lab analyses may be required by the Town at the expense of the operator.

C. The Plan shall include provisions for continuous monitoring of the location with the ability to notify the operator of increases in air contaminant concentrations. The Plan shall include monitoring for all potential emissions, including but not necessarily limited to Volatile Organic Compounds (VOCs), Hazardous Air Pollutants (HAPs), Benzene, Toluene, Ethylbenzene, and Xylene (BTEX), Hydrogen Sulfide, Oxides of Nitrogen (NOx), Particulate Matter (PM), Fine Particulate Matter (PM 2.5), Carbon Monoxide (CO) and methane (CH<sub>4</sub>), carbon dioxide (CO<sub>2</sub>).

D. The Plan shall include provisions for continuous emissions monitoring at frequencies of no less than once per hour during drilling and completion activities. Each monitor shall include a sampling device to automatically collect a sample that can be speciated for individual air pollutants when the continuous emissions monitor reaches a threshold concentration level defined by the third-party consultant or in response to a request by the Town. Meteorological monitoring is also required during the time period that air quality monitoring is conducted. Continuous monitoring of production operations will continue until three years have passed from the date the last well at the location goes into production, unless the Town Administrator directs otherwise in response to the detection of repeated emissions at threshold concentrations or repeated odor violations.

E. The Plan shall meet the minimum requirements of AQCC Regulation 7, part B, section VI.C., and any successor sections, and receive approval from the Air Pollution Control Division (APCD) prior to beginning air quality monitoring at the permitted site of the location. When submitting the air quality monitoring plan to APCD, the Operator shall submit at least 90 days in advance of the pre-drilling monitoring to account for the Town's 30-days of pre-drilling air quality monitoring requirement.

F. In addition to all federal and state laws, rules and regulations, applications for new oil and gas operations shall demonstrate how exploration, construction, and standard operations of the facilities will comply with the rules and regulations of the AQCC. Information to be provided shall include all appropriate applications of notifications and permits for sources of emissions.

G. The Plan must evaluate the cumulative impacts to existing air quality including ambient air quality standards for ground-level ozone, meeting oil and gas sector greenhouse gas reduction targets, and the cumulative impacts of all approved and existing oil and gas operations and any other significant emissions sources within the Town.

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H. The following Best Management Practices shall be required and included in the Plan unless a more protective system exists and is required by the EPA and/or the AQCC:

I. Emission controls of 98% or better for glycol dehydrators;

II. Pressure-suitable separator and vapor recovery units;

III. Reduction or elimination of emissions from flowline maintenance activities such as pigging, including routing emissions to a vapor collection system, with at least 98% control of emissions from pigging operations.

I. The Town retains the discretion to require more protective Best Management Practices as a condition of the Town's Development Agreement if technologically feasible.

ii. A section describing the Applicant's proposed use of tanks during all phases of its operations and its planned practices to avoid, minimize, or mitigate emissions from those tanks. Operator shall conduct tankless operations unless technically infeasible and shall not store produced water or hydrocarbon liquids in tanks on-site unless for well unloading or maintenance activities.

g. *Well Liquids Unloading Plan.* The Applicant shall submit a plan for well liquids unloading, if applicable. The Plan shall include Best Management Practices, including artificial lift, automated plunger lifts and at least 98% emission reductions when utilizing combustion to control venting shall be employed unless technically infeasible. The Plan shall also include a provision to avoid well liquids unloading during CDPHE ozone alert days unless required for safety reasons.

3. Chemical and Hazardous Materials Use, Disclosure, and Handling.

a. Applicant shall submit a Chemical and Hazardous Materials Plan to demonstrate how the Applicant will comply with reporting and handling requirements outlined in this section and applicable state and federal laws. The plan shall disclose all the hazardous and non-hazardous materials and chemicals that will be used on the site of the proposed facility, including chemicals to be used in fracking fluid, and how of the chemicals used on the facility will be handled to prevent spills.

b. Operator shall disclose its expected use of all chemicals during all phases of the oil and gas operation.

c. The Town may limit or prohibit toxic chemicals in hydraulic fracturing fluids. To prevent harm to human health and prevent odors, Operators shall be prohibited from using any toxic chemical additives in hydraulic fracturing fluids including but not limited to, the following:

i. All chemicals listed in ECMC Table 437-1 or any successor regulation;

ii. Polysorbate 80; and

iii. Perfluoroalkyl and polyfluoroalkyl substances or "PFAS chemicals," defined as a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

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d. Drilling and completion chemicals shall be removed from the site within sixty (60) days of the drilling completion.

4. Emergency Response. Applicant shall submit and comply with an Emergency Response Plan. In its preparation of the Emergency Response Plan, the Applicant shall engage with emergency responders whose jurisdiction includes the Town and prepare a plan that includes, but not necessarily be limited to documentation of the communications and coordination with the Town and plans for the evacuation of buildings and any person within a 1 kilometer (3,280 feet) radius from the oil and gas operation. The Emergency Response Plan must detail all criteria for persons to be notified in the event of an emergency and training and necessary equipment for first responders. The Emergency Response Plan shall also include:

- a. The names, addresses and phone numbers, including 24-hour numbers for at least two persons responsible for field operations, at least one of which can be on the site of any emergency within 15 minutes, as well as the contact information for any subcontractor of the Applicant engaged for well-control emergencies, which shall be updated with the Town if the names of responsible personnel change;
- b. A process by which the Operator will notify neighboring residents and businesses within 1 kilometer (3,280 feet) to inform them about the on-site operations and emergencies and to provide sufficient contact information for surrounding neighbors to communicate with the Applicant;
- c. An emergency evacuation plan for the oil and gas facility and a plan to evacuate any person up to 1 kilometer (3,280 feet) of the oil and gas location;
- d. Emergency shutdown protocols and procedures to promptly notify the Town Administrator of any shutdowns that would have an impact to any area beyond the confines of the oil and gas location;
- e. A process by which the Applicant will notify the Town Administrator and the Berthoud Fire Protection District as soon as practicable but no later than 24 hours after the incident;
- f. Detailed information addressing each category of emergency that has a reasonable potential to occur at the operation and to be severe enough to present an immediate danger to public health, safety or welfare, including but not necessarily limited to: explosions; fires; gas; oil or water pipeline leaks or ruptures; well integrity issues, hydrogen sulfide or other toxic gas emissions; hazardous material vehicle accidents or spills; vandalism, and natural disasters. Examples of the most likely and worst-case scenarios should be provided, including information on the potential response scenarios;
- g. A provision that any spill outside of the containment area that has the potential to leave the facility or to threaten waters of the state, or as required by the Town-approved plan, shall be reported to the local dispatch and the ECMC Director in accordance with ECMC regulations;
- h. Detailed information identifying emergency access, transportation routes to and from oil and gas locations for emergency response, and health care facilities anticipated to be used if necessary;
- i. A project-specific plan for any project that involves drilling or penetrating through known zones of hydrogen sulfide gas;
- j. A provision obligating the Operator to reimburse the appropriate agencies for their expenses incurred in connection to any emergency response in connection to an oil and gas operation;

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- k. A statement and detailed information indicating that the Operator has adequate personnel, supplies, and training to implement the plan immediately at all times during construction and operations;
- l. A process by which the community can submit concerns and complaints and be assured of timely responses;
- m. Details regarding coordination methods and training between the Applicant and the first responders within or outside of the Town; and
- n. Provisions for cooperation with first-responder agencies in training, drills, exercises, and development of after-action reports.
- o. *Emergency Response Updates.* Applicant shall include provisions in its Emergency Response Plan for periodic review and updates. The provisions shall include, at a minimum:
  - i. An annual review of the plan and filing of any updates with the Town Administrator and the applicable fire district. If no updates to the plan are made then the Operator shall provide notice of "No Change" in the filing required under this subsection;
  - ii. Within 60 days of the start of production, Operator will provide an as-built facilities map in a format suitable for input into the Town's GIS system depicting the locations and type of above and below ground facilities, including sizes and depths below grade of all oil and gas flow lines and associated equipment, isolation valves, surface operations and their functions. The information concerning flowlines and isolation valves shall be marked and treated as confidential and shall only be disclosed in the event of an emergency or to emergency responders or for the training of emergency responders; and
  - iii. The Operator shall have current Safety Data Sheets (SDS) for all chemicals used or stored on an oil and gas location. The SDS sheets shall be provided immediately upon request to Town officials, a public safety officer, or a health professional as required by ECMC Rules.

5. Flood Mitigation. The site shall remain in compliance with the approved permit for disturbance in the flood hazard overlay zone in conformance with the Flood Damage Prevention section found in Chapter 30 of the Berthoud Municipal Code.

6. Pipelines. Operator must comply with the Pipeline Plan as outlined in this section and all applicable state and federal laws. All flowlines and crude oil transfer lines shall be sited to avoid areas containing existing or proposed residential, commercial, and industrial buildings; places of public assembly; water sources; and designated open spaces. All pipelines shall require crossing agreements, as needed. All pipelines shall be documented with the Use by Special Review Permit application. Any newly constructed or substantially modified flowlines or crude oil transfer lines shall meet the following requirements:

- a. The use of pipelines to transport liquid production wastes and product is required unless technically infeasible;
- b. All flowlines and crude oil transfer lines transporting process materials, production wastes, product, and any other items used or generated by an oil and gas facility shall be located to avoid existing or proposed residential, commercial, and industrial buildings, places of assembly, water source and designated open spaces. Buried flowlines and crude oil transfer lines shall be a minimum of four (4)-feet deep and shall be of detectable material which could include the addition of tracer wire to ensure detection during buried utility locating;

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- c. All flowlines and crude oil transfer lines shall be sited at a minimum of 150 (one hundred fifty) feet away from residential and other occupied buildings, as well as the highwater mark of any water source. This distance shall be measured from the nearest edge of the line. Increased flowline and crude oil transfer line setbacks may be required by the Town on a case-by-case basis taking into account the size, pressure, and type of line being proposed;
- d. Flowlines and crude oil transfer lines shall be aligned with established roads to minimize surface impacts and reduce habitat fragmentation and disturbance unless technically infeasible;
- e. Operators shall share existing pipeline rights-of-way and consolidate new corridors for pipeline rights-of-way to minimize surface impacts unless technically infeasible;
- f. Operators shall use boring technology when crossing streams, rivers, irrigation ditches or wetlands with a pipeline to minimize negative impacts to the channel, bank, and riparian areas, except that open cuts may be used across irrigation ditches if the affected ditch company approves the technique;
- g. As-built reporting, including the location (with GPS coordinates), materials and operating pressures of all pipelines and depicting the locations of other subsurface features or improvements crossed by such lines shall be provided to the Town in a format suitable to the Town and subject to the Town's public safety disclosure guidelines; and
- h. Temporary water lines, or other means rather than truck, will be used to transport water to the site for hydraulic fracturing and other purposes unless technically infeasible. Temporary water lines shall be buried at all existing driveway and road crossings, or utilize existing culverts, if available.
- j. *Pipeline plan.* Applicant shall submit a Pipeline Plan with its application detailing how it will comply with the pipeline safety provisions in this section. The Pipeline Plan must include:
  - i. A map that shows the location and route of each pipeline necessary for the oil and gas operations, through the lifetime of the oil and gas operations, and their approximate distances from: existing or proposed residential, commercial, or industrial buildings; places of public assembly; water sources; geologic hazards, agricultural lands; trails and open space; and public or private roads;
  - ii. A general description of the size of the pipelines and the materials the pipelines will carry;
  - iii. Whether pipelines will be co-located with proposed or existing lines;
  - iv. Identification of all pipeline segments that will be constructed by boring and the location of the boring operation;
  - v. Description of how the Applicant intends to adhere to the integrity management procedures for flowlines and crude oil transfer lines listed in ECMC Rule 1104.c-f, or any successor rules;
  - vi. A copy of the leak protection and monitoring plan for flowlines and crude oil transfer lines required by ECMC Rule 1104.g, or any successor rules; and
  - vii. Description of the measures planned to minimize land disturbance and impacts to vegetation.

7. Fugitive Dust. The Operator must comply with its Fugitive Dust Control Plan as outlined in this section and all applicable state and federal laws. All fugitive dust shall be contained to the

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maximum extent practicable and Operators must prevent dust from leaving their property. In addition:

- a. No produced water or other process fluids shall be used for dust suppression. Safety Data Sheets (SDS) for any chemical-based dust suppressant shall be submitted to the Town prior to use.
- b. The Operator will avoid creating dust or dust suppression activities within 300 feet of the ordinary high-water mark of any water body, unless the dust suppressant is water.
- c. Sand, silica and similar materials must be properly stored to prevent fugitive particulates. Measures shall be used to control particulates, including proof of compliance with State-required dust control measures and imposition of an opacity requirement as tested using EPA Method 9.
- d. Operations shall be conducted in such a manner that dust does not constitute a nuisance pursuant to Chapter 17 of the Berthoud Municipal Code or hazard to public health, safety, welfare the environment, or wildlife resources.
  - i. If there is a complaint of dust by a nearby resident, business, or agricultural operation that is made directly to the Operator, to the ECMC, or the Town, the Operator shall determine whether the dust was caused by Operator's operations. Operator will provide a complete description to the Town of all activities occurring at the oil and location at the time of the complaint. Operator shall report its conclusions, including the factual basis for the conclusions, to the Town and the complainant within 48 hours of the complaint. If the Operator or Town determines that the dust is caused by the Operator's actions, Operator shall resolve the dust concern to the maximum extent practicable within 24 hours.
- e. *Fugitive Dust Control Plan.* A Fugitive Dust Control Plan submitted with the application shall disclose techniques and methods to be utilized at the proposed location to prevent or mitigate fugitive dust generated by the construction and operations of the proposed facility and the traffic associated therewith. The plan shall demonstrate compliance with and implementation of standards in this section.

8. Historical and Cultural Resources. Operator shall assess historical and cultural resources in and around the proposed oil and gas location and share such information and proposed mitigation measures with the Town for advance approval prior to start of site construction. If a significant surface or sub-surface archeological site is discovered during construction, the operator shall be responsible for immediately contacting the Town to report the discovery. If any disturbance of a site deemed by the State Historic Preservation Office to be a historical or cultural resource occurs, the operator shall be responsible for mitigating the disturbance to the cultural or historical property through a data recovery plan in consultation with the Town's Historic Preservation Commission and the State Historic Preservation Office.

9. Incident and Accident Reporting. In addition to following the emergency response provisions outlined in the section of this Code regarding New oil and gas operation applications and use by Special Review permits, the Operator shall take all reasonable and necessary steps to avoid adverse incidents or accidents. In addition:

- a. *Emergency reporting.* If public health, safety, welfare, the environment, or wildlife resources are threatened, the Operator responsible for the operation causing such threat will immediately notify the appropriate emergency responders, the Town, the ECMC, and the surface owner orally.

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- b. *Safety Event reporting.* Within 24 hours of the cessation of any reportable safety event, as defined by the ECMC in Rule 602(g), or any successor rules, or any accident or natural event involving a fire, explosion or detonation requiring emergency services or completion of a ECMC Form 22, Operator shall submit a report to the Town Administrator that includes at least the following information, to the extent available: fuel source, location, proximity to residences and other occupied buildings, cause, duration, intensity, volume, specifics and degree of damage to properties, if any beyond the oil and gas location, injuries to persons, emergency response, and remedial and preventative measures to be taken within a specified amount of time.
- c. The Town may require the Operator to conduct a root cause analysis of any reportable safety events or Grade 1 gas leaks, each as defined by the ECMC. The root cause analysis shall be prepared and submitted to the Town no later than 30 days of the request.
- d. Any spill or release of unrefined and refined petroleum products, hazardous substances, fracking fluids, E&P waste, or produced fluids of greater than 25 gallons outside of secondary containment areas on a facility, including those thresholds reportable to the ECMC and CDPHE, shall upon discovery, be immediately reported to the National Response Center, ECMC, CDPHE, the Larimer County Sheriff, Larimer County Department of Health and Environment, and the Berthoud Fire Protection District.

10. **Leak Detection and Repair.** Operator shall conduct leak detection and repair inspections at every facility monthly or at greater frequencies if required by the APCD for any emission source using best available leak detection technologies and equipment, such as infrared cameras and hydrocarbon analyzers.

- a. If an infrared camera is used, Operator shall retain an infrared image or video of all leaking components before and after repair. Records and results of those inspections, including all corrective actions taken, shall be maintained for three years and shall be made available to the Town upon request. Operator shall also retain a copy of all reports submitted to the APCD, including monthly downtime reports and semi-annual control equipment status reports for production facilities, and make those reports available to the Town upon request.
- b. Operator shall report to the Town Administrator any leaks discovered by the Operator, including any leaks that are reported to the Operator by a member of the public, within 12 (twelve) hours of the discovery and / or report.
- c. Repair of leaks shall occur within 48 hours of detection if feasible. If it is anticipated that a repair will take longer than 48 hours, the Operator shall provide a written explanation to the Town as to why more time is required and how the leak will be contained.
- d. If the Town determines that the leak presents an imminent threat to public health, safety, welfare, the environment or wildlife resources, the Operator shall notify residents within 1 kilometer (3,280 feet) of the leak and may not operate the affected facility, component, equipment or flowline segment until the Operator has corrected the problem and the Town agrees that the affected component, equipment or flowline segment no longer poses a hazard to public health, safety, welfare, the environment or wildlife resources.
- e. *Leak Detection and Repair Plan.* A Leak Detection and Repair Plan shall disclose techniques, methods and protocols that will be utilized at the proposed oil and gas facility to identify, prevent, contain, document, repair, and report leaks, and shall demonstrate how it will comply with and implement the standards in this section.

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11. **Lighting and Visual Impacts.** The Operator's lighting and visual impacts mitigation measures must comply with the Town's Outdoor Lighting and Dark Sky Standards found in Chapter 30 of the Berthoud Municipal Code, the Visual Impacts Plan as outlined in this section, and all applicable state and federal laws. In addition:

- a. Oil and gas operations will avoid or sufficiently minimize and mitigate adverse impacts associated with lighting on public health, safety, and welfare, the environment and wildlife resources. Lighting associated with oil and gas operations will be designed to protect surrounding properties, roadways, livestock, and wildlife resources from light pollution and glare. All permanent lighting or lighting higher than a perimeter wall must be downward facing.
- b. Lighting at a facility must include:
  - i. the use of timers or motion sensing lighting;
  - ii. the use of full cut-off lighting; and
  - iii. the use of reduced light intensity colors and low-glare or no-glare lighting.
- c. The location of all outdoor lighting shall be designed to minimize off-site light spillage and glare using best practices recognized by the International Dark-Sky Association.
- d. For all phases of the development of the site, the application shall demonstrate compliance with the visual and aesthetic rules of ECMC and the Berthoud Municipal Code for landscaping, fencing, and lighting.
- e. All facilities shall be painted with colors that are matched to or slightly darker than the surrounding landscape, and shall utilize paint with uniform, non-contrasting, nonreflective color tones based upon the Munsell Soil Color Coding System.
- f. For all phases of site development, fencing shall be installed for security and visual aesthetics of the use.
- g. Oil and gas operations shall minimize removal of trees and vegetation on the site.
- h. Landscaping and/or fencing for screening and visual quality as viewed from public rights-of-way and neighboring residential areas shall be required within 6 months from the time of well completion and in accordance with requirements for the zoning district.
- i. Facility applications shall demonstrate compliance with weed control requirements of Chapter 16 of the Berthoud Municipal Code and Forestry Department, including for access roads serving the facility.
- j. *Lighting and Visual Impacts Plan.* The Applicant shall complete a plan in its application that includes the location of all outdoor lighting on the site and structures, including cut sheets (manufacturer's specifications with picture or diagram) of all proposed fixtures. The plan should also include the location and type of any emergency lighting and description of situations in which it will be used. A photometric study conducted by an independent consultant approved by the Town to measure the lumens emitted by the oil and gas facilities or operations and evaluate lighting impact on surrounding properties must also be included as part of the plan.

12. **Noise and Vibrations.**

- a. Operator shall comply with the Noise and Vibration Mitigation Plan as outlined in this section and all applicable state and federal laws. Noise and vibration mitigation measures shall include the following:

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- i. Oil and gas operations may not exceed the ambient noise level by more than five decibels during daytime hours (7:00 a.m. through 7:00 p.m.) and more than three decibels during nighttime hours (7:00 p.m. through 7:00 a.m.);
- ii. Oil and gas operations may not exceed the ambient noise level by more than ten decibels over the daytime average ambient noise level during fracturing operations during daytime hours. No fracturing shall be allowed during nighttime hours except for flowback operations related to fracturing as provided in subsection (iii).
- iii. Oil and gas operations may not exceed the ambient noise level by more than three decibels during flowback operations during nighttime hours;
- iv. Adjustments to the noise standards as set forth above in subsections (1), (2), and (3) of this section may be permitted intermittently in accordance with the following:

Table 1

Permitted Increase (dBA)	Duration of Increase (minutes)*
10	5
15	1
20	Less than 1

\* Cumulative minutes during any one hour

- v. The point of compliance for noise shall be the property line of the protected use or no less than 25 feet from the exterior wall of any protected use structure closest to the oil and gas facility.
- vi. In no instance may an oil and gas operation produce dBA or dBC noise exceeding limits set by the ECMC Rule 423 or any successor rule.
- vii. During construction, drilling, and completion activities, the Operator must conduct continuous noise monitoring by a third-party consultant approved by the Town for all oil and gas facilities located within 1 kilometer (3,280 feet) of any residential or occupied building.
- viii. To reasonably ensure the Operator controls noise to the allowable levels set forth above, one or more of the following may be required by the Town based on the location, nature, and size of the facility and technical feasibility:
  - A. Quiet design mufflers (i.e., hospital grade or dual dissipative) or equal to or better than noise mitigation technologies shall be utilized for non-electrically operated equipment;

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- B. Motors, generators, and engines shall be enclosed in acoustically insulated housings or covers;
- C. Obtain all power from utility line power or renewable sources;
- D. Utilize best management practices to minimize noise impact during drilling, completions, and all phases of operation including the use of "quiet fleet" noise mitigation measures for completions;
- E. Acoustical blankets, sound walls, mufflers, or other alternative methods around well drilling and completion activities to mitigate noise impact;
- F. Restrictions on workover operations and/or the unloading of pipe or other tubular goods between 7:00 p.m. and 7:00 a.m.;
- G. The use of electric drill rigs; and
- H. The use of Tier 4 or better diesel engines, diesel and natural gas co-fired Tier 2 or Tier 3 engines, natural gas fired spark ignition engines, or electric line power for hydraulic fracturing pumps.

- ix. If the Operator is in compliance with the approved noise mitigation and monitoring plan and a violation still occurs, the operator shall be notified of noncompliance and given 24 hours to correct the violation. Additional extensions of the 24-hour period may be granted in the event that the source of the violation cannot be identified after reasonable diligence by the Operator.
- x. In response to a noise complaint, the Town may at any time require additional continuous noise monitoring, conducted by an approved third-party consultant, until noise concerns are abated.

- xi. *Vibrations.*
  - A. No vibration shall be transmitted through the ground that is discernible without the aid of instruments measured at 500 feet from the abutting residential or commercial development.
  - B. No vibration shall exceed 0.002g peak at up to 50 cps frequency measured at 500 feet from the abutting residential or commercial development. Vibrations recurring at higher than 50 cps frequency or a periodic vibrator shall not induce accelerations exceeding 0.001g.
  - C. Single impulse period vibrations occurring at an average interval greater than five minutes shall not induce accelerations exceeding .01g.
  - D. Operator shall conduct continuous seismic monitoring during fracking operations.
  - E. Seismic events greater than 2.0 on Richter scale shall be reported to the Town Administrator and to ECMC.
  - F. If a seismic event occurs, the Town may order the cessation of operations immediately and operator can only resume work once the town is satisfied with the actions taken to reduce the likelihood of further seismicity.

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G. Operations shall be immediately suspended for any seismic event measuring 4.0 or above on the Richter scale. Operator may only resume work once the town is satisfied with the actions taken to reduce the likelihood of further seismicity.

b. *Noise and Vibration Mitigation Plan.* A Noise and Vibration Mitigation Plan shall be submitted with the application to demonstrate how the facility will mitigate noise and vibration impacts to comply with the noise standards contained in this section. The plan shall include the following:

- i. A minimum one-week (168 consecutive hours) baseline ambient noise analysis. The baseline analysis must include wind speed, direction, rainfall data, season conducted, and any other relevant conditions;
- ii. *Noise Modeling.* Using industry-recognized noise modeling software, modeling of expected dBA and dBC noise levels from the proposed oil and gas facilities and oil and gas operations during all phases of development and operation, assuming use of and identifying all noise-mitigating equipment and measures intended for use at the proposed oil and gas facilities or oil and gas operations. All noise modeling must include a list of all noise sources, reference noise data used in the model for each source, noise attenuation specifications for any proposed noise walls, and a scaled map showing predicted noise levels;
- iii. Modeled maximum A- and C-weighted decibel levels for all phases of development shall be presented using contour maps from the facility (combining noise sources) at 350 feet, 500 feet, 1,000 feet, 2,000 feet, and to the property line of the adjacent properties. Contour maps shall be provided that demonstrate both unmitigated and mitigated decibel levels; and
- iv. A plan of proposed mitigation measures to be implemented by the facility during each phase of development shall be provided to ensure compliance with the maximum permissible noise levels as listed in this section.

13. Odor. The Operator's odor mitigation measures must comply with the Odor Mitigation Plan as outlined in this section and all applicable state and federal laws. In addition, the Operator shall implement the following measures:

- a. Oil and gas facilities must not emit odor detectable after dilution with one or more volumes of odor free air to four volumes of clean air at any dwelling unit;
- b. If a resident within 1 kilometer (3,280 feet) of a facility complains of odor (either directly to the Operator, to the ECMC, or to the Town) the Operator shall determine whether the odor is caused by Operator's actions, by, at a minimum, conducting two odor measurements within a period of one hour – these measurements being separated by at least fifteen (15) minutes and taken 25 feet from the exterior wall of the residence. Operator will also provide a complete description of all activities occurring at the oil and gas location at the time of the complaint to the Town. Operator shall report its conclusions, including the factual basis for the conclusions, to the Town and the complainant within 48 hours of the complaint. If the Operator or Town determines that the odor is caused by Operator's operations, the Operator shall resolve the odor concern within 24 hours of receiving the complaint;
- c. If it is determined that the operator caused odors in violation of the odor requirements outlined in this Code, the operator may be required to cease or change operations, notify affected residents, and/or temporarily relocate residents until the facility is no longer causing a violation;

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- d. If odor persists after an Operator complies with this Code, and there are reasonable grounds to believe the location continues to cause the odor, the Town may require the Operator to conduct additional investigation, which may include audio, visual, and olfactory inspections or instrument-based leak inspections, and take appropriate corrective action based on the results of investigation and the severity of the odor; and
- e. In response to odor complaints the Town may require an Operator to collect and analyze a speciated air sample to measure for volatile organic compounds or hazardous air pollutants known to cause potential health risks and have acute health guideline values identified by the Agency for Toxic Substances and Disease Registry and/or CDPHE to further evaluate the risk of the odor. Speciated air sample collection shall be done utilizing a third-party vendor approved by the Town;
- f. *Odor Mitigation Plan.* The Applicant shall submit an Odor Mitigation Plan with its application indicating how its operations will prevent odors from adversely impacting the public and wildlife resources and further demonstrating compliance with the standards in this section. The Odor Mitigation Plan shall include investigation and control strategies which shall be implemented upon receipt of odor complaint(s), the determination that the facility is causing the odor, or as required by the Town. These odor control strategies shall include at least the following:
  - i. Odorants, that are not a masking agent, shall be added to chillers and/or mud systems;
  - ii. Additives to minimize odors from drilling and fracturing fluids except that Operators shall not mask odors by using masking fragrances;
  - iii. The utilization of filtration systems and/or additives to minimize, not mask, odors from drilling and fracturing fluids in the drilling and flowback processes;
  - iv. Increasing additive concentration during peak hours provided additive does not create a separate odor. Additives must be used per the manufacturer's recommended level;
  - v. The utilization of enclosed shale shakers to contain fumes from exposed mud where safe and feasible;
  - vi. Drilling activities shall utilize minimum low odor Category IV or better drilling fluid or non-diesel-based drilling muds that do not contain benzene, toluene, ethylbenzene, or xylene (BTEX). Operator will employ the use of drilling fluid with low to negligible aromatic content during drilling operations after surface casing is set;
  - vii. Removing drilling mud from drill pipe each time it is removed from the well and wiping down drill pipes as they exit the well bore each time;
  - viii. Drill cuttings shall be covered to prevent odor while being transported by truck; and
  - ix. A prohibition of the use of D-822 drilling mud unless its use is required by ECMC.

14. Reclamation. Reclamation of the oil and gas operation must comply with the Reclamation Plans as outlined in this section and all applicable state and federal laws.

- a. *Interim Reclamation.* In addition to following the ECMC rules related to interim reclamation, the Operator shall comply with the following provisions:
  - i. There shall be no permanent storage of equipment (i.e., vehicles, trailers, commercial products, chemicals, drums, totes, containers, materials, and all

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supplies not necessary for uses on an oil and gas location) on the site of an oil and gas location.

i. When not in use, or if no longer needed for on-site operations, all equipment not being used on the site shall be removed from the site within thirty (30) days of completion of the work, weather conditions permitting.

b. *Final Reclamation.* In addition to following the ECMC rules related to final reclamation, the Operator shall:

i. Give notice to the Town Administrator of the commencement and completion of final reclamation activity;

ii. Provide coordinates for the location of the decommissioned well(s), and any associated pipelines in a format suitable for input into the Town's GIS system; and

iii. Permanently mark the plugged and abandoned well with a brass plaque set in concrete similar to a permanent bench-mark to monument its existence and location. Such plaque shall contain all information required on a dry hole marker by the ECMC. The exact location will be recorded with the Larimer County clerk and recorder.

c. Plugging and Abandonment notice is required to ensure adequate public notice and traffic management, and review of final reclamation plans. At least 72 hours prior to commencing plugging and abandonment operations, Operator will provide to the Town:

i. A timeline for work to be accomplished;

ii. Notice that has been submitted to the surface owner and all residents within 1 kilometer (3,280 feet);

iii. The Form 4 Sundry Notice supplied to the ECMC to notify state of the plugging and abandonment; and

iv. A Final Reclamation Plan in accordance this section and approved by the surface owner.

d. *Reclamation Plans.* The Applicant shall submit an Interim Reclamation Plan and a Final Reclamation Plan with its application. Both plans shall outline how the Applicant will comply with Berthoud Municipal Code and ECMC rules related to site reclamation.

i. The Interim Reclamation Plan shall also, at a minimum, include:

A. A site plan that defines the "working pad surface" limited to those areas necessary for production;

B. A written description of existing vegetation in the area; and

C. A plan for revegetation and any landscaping outside of working pad surface, or for reclaiming to the final land use as designated by the surface owner, and how it will be watered and maintained.

ii. The Final Reclamation Plan shall also, at a minimum, include:

A. A timeline for the removal of all equipment from the location; and

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B. A detailed demonstration of how the Operator will restore the site surface area to the condition it was prior to the oil and gas operation.

15. Spill Prevention, Containment, and Reporting. The Operator must comply with the provisions in its Spill Prevention and Containment Plan as outlined in this section and all applicable state and federal laws. In addition:

- a. Unloading areas shall be designed to contain potential spills or direct spills into other secondary containment areas;
- b. Containment systems constructed of steel rimmed berms, or similar impervious surfaces that are equal to or better, shall be used for all secondary containment areas. Berms or other secondary containment devices around crude oil, condensate, and produced water storage tanks enclosing an area sufficient to contain and provide secondary containment for 150% of the largest single tank. Berms or other secondary containment devices shall be sufficiently impervious to contain any spilled or released material. Inspection of all berms and containment devices shall occur at regular intervals, but not less than monthly. Maintenance of all berms and containment devices must remain in good condition;
- c. All spills or releases, whether reportable or not, shall be cleaned up immediately and to the satisfaction of the local emergency response authorities, in accordance with the Operator's Spill Prevention and Containment Plan. Any leak, release, or spill will be cleaned up according to applicable Town, county, state and federal laws. Operators will notify the Town immediately upon completion of clean-up activities.
- d. A root cause analysis of any spill, leak, or release of any substance other than fresh water that resulted in serious bodily injury or fatality, serious environmental harm, was a Grade 1 gas leak as defined by the ECMC, or is otherwise requested by the Town must be submitted to the Town within 30 days of the leak, spill, or release.
- e. *Spill Prevention and Containment Plan.* The Applicant shall submit a Spill Prevention and Containment Plan with all facility applications. The plan shall outline techniques, methods, and protocols to be utilized at the proposed facility to prevent, contain, clean up, document, and report any spills or releases, and shall demonstrate compliance with and implementation of the standards in this section.

16. Transportation Impacts. The Applicant will be required to enter into a long-term road maintenance and improvements agreement, and a Development Agreement with the Town. These Agreements shall be presented with the Use by Special Review application at the public hearing. Additionally, Operator shall adhere to the provisions in the Traffic Impact Analysis and Routing Plan as detailed in this section and the following the provisions:

- a. 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:
  - i. The first 50 feet of access drive from the edge of pavement of the adjacent road will be paved, or made of an approved all weather surface, and the remaining portions of the access drive shall be composed of a minimum of six inches of compacted Class 5 road base.
  - ii. The access drive entrance shall include returns with a 30 foot radius.
  - iii. A mud and debris tracking pad shall be located at the end of the paved portion of the access drive.
  - iv. Access road shall be an all-weather roadway

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having a prepared subgrade and an aggregate base course surface a minimum of six inches thick compacted to a minimum density of 95 percent 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 5 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; and 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; and

Maintained so as to provide a passable roadway free of ruts at all times.

b. *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 Engineer prior to such use. The Operator shall comply with all Town and state regulations regarding weight limitations on streets within the Town, and the Operator shall minimize extralegal truck traffic on streets within the Town.

c. Every permit issued by the Town shall require the Applicant 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:

- i. Repair and maintenance of roads;
- ii. Bridges and other transportation infrastructure;
- iii. Improvements made or to be made by the Town to accommodate the operations and to protect public health, safety and welfare; and
- iv. Costs incurred to process and analyze the application, including the reasonable expenses paid to independent experts or consultants.

d. 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.

e. The Town may further require that the Applicant post a bond in an amount to be set during the Use by Special Review, as security in the event additional damages occur to facilities owned or operated by the Town or used by the general public.

f. 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 Operator in order to protect and preserve facilities owned or operated by the Town or used by the general public.

g. *Traffic Impact Analysis and Routing Plan.* A Traffic Impact Analysis and Routing Plan shall be submitted with all applications. The plan shall disclose routing alternatives

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and transportation infrastructure improvements for the proposed operation to mitigate projected transportation impacts and demonstrate compliance with and implementation of the standards in this section. The Traffic Impact Analysis and Routing Plan shall be prepared by a third-party vendor approved by the Town. The Traffic Impact Analysis and Routing Plan shall include:

- i. The proposed haul routes to and from the site, and public and private roads that traverse or provide access to the proposed operation;
- ii. The estimated number of vehicle trips per day for each type of vehicle, estimated weights of vehicles when loaded, a description of the vehicles, including the number of wheels and axles of such vehicles and trips per day;
- iii. The identification of impacts to Town roads and bridges related to facility construction, operations, and ongoing new traffic generation;
- iv. A plan to mitigate transportation impacts that will typically include, but not be limited to, a plan for traffic control, ongoing roadway maintenance, and improving or reconstructing Town roads;
- v. Detail of access locations for each well site including sight distance, turning radius of vehicles and a template indicating this is feasible, sight distance, turning volumes in and out of each site for an average day and what to expect during the peak hours;
- vi. A truck routing map and truck turning radius templates with a listing of required improvements are necessary at intersections along the route;
- vii. Restriction of non-essential traffic and prohibition of any class 7 vehicles and above to and from any oil and gas location to periods outside of peak morning and afternoon traffic periods during weekdays (7:00-8:00 a.m. and 3:00-6:00 p.m.); and
- viii. Identification of need for any additional traffic lanes, which would be subject to the final approval of the Town.

17. Water quality protection. Water quality protection and sampling shall comply with the Water Quality Control Plan as outlined in this section and all applicable state and federal laws. To avoid or minimize adverse impacts to surface and sub-surface water bodies from oil and gas facilities, the following measures will be required:

a. *Water source sampling and testing.* Using records of the Colorado Division of Water Resources, the Applicant shall identify and offer to sample all available water sources located within one-half mile of the projected track of the borehole of a proposed well and within one-half mile of the radius of the proposed location. All sampling must be conducted by a third-party consultant approved by the Town. The Applicant / Operator shall provide all water source test results to the Town and maintain records of such results. Sampling requirements include:

- i. Initial baseline samples and subsequent monitoring samples shall be collected from all available water sources within one-half mile of the projected track of the borehole of a proposed well and one-half mile radius of the oil and gas location;
- ii. Initial collection and testing of baseline samples from available water sources shall occur within twelve months prior to the commencement of drilling a well, or within twelve months prior to the re-stimulation of an

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existing well for which no samples were collected and tested during the previous twelve months;

iii. Post-stimulation samples of available water sources shall be collected and tested pursuant to the following time frame:

- A. One sample within six months after completion;
- B. One sample between twelve and eighteen months after completion; and
- C. One sample between sixty and seventy-two months after completion.

b. For multi-well pads, collection shall occur annually during active drilling and completions.

c. Operator shall collect a sample from at least one up-gradient and two down-gradient water sources within a one-half mile radius of the oil and gas location. If no such water sources are available, operator shall collect samples from additional water sources within a radius of up to one mile from the location until samples from a total of at least one up-gradient and two down-gradient water sources are collected. Operators should give priority to the selection of water sources closest to the location.

d. An Operator may rely on existing groundwater sampling data collected from any water source within the radii described above, provided the data was collected within the twelve months preceding the commencement of drilling the well, the data includes measurement of all the constituents measured in Table 2, and there has been no significant oil and gas activity within a one-mile radius in the time period between the original sampling and the commencement of drilling the well.

e. Operator shall make reasonable efforts to obtain the consent of the owner of the water source to be sampled. If the Operator is unable to locate and obtain permission from the surface owner of the water source, the Operator shall advise the Town Administrator that the Operator could not obtain access to the water source from the surface owner.

f. Operator shall test for the analytes listed in Table 2, and subsequent testing as necessary or appropriate as determined by the Town.

g. Operator shall follow standard industry procedures in collecting samples, consistent with the ECMC model Sampling and Analysis Plan.

h. Operator shall report the location of the water source using a GPS with sub-meter resolution.

i. Operator shall report on damaged or unsanitary well conditions, adjacent potential pollution sources, odor, water color, sediment, bubbles, and effervescence.

j. Operator shall provide copies of all test results described above to the Town Administrator, the ECMC, and the water source owners within three months after collecting the samples.

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k. *Subsequent sampling.* If sampling shows water contamination, the Town may require additional measures, including but not limited to the following:

- i. If free gas or a dissolved methane concentration level greater than one milligram per liter (mg/l) is detected in a water source, determination of the gas type using gas compositional analysis and stable isotope analysis of the methane (carbon and hydrogen);
- ii. If the test results indicate thermogenic or a mixture of thermogenic and biogenic gas, an action plan to determine the source of the gas;
- iii. Immediate notification to the Town Administrator, the ECMC, and the owner of the water source if the methane concentration increases by more than five mg/l between sampling periods, or increases to more than ten mg/l;
- iv. Immediate notification to the Town Administrator, the ECMC and the owner of the water source if BTEX and/or TPH are detected as a result of testing. Such detections may result in required subsequent sampling for additional analytes;
- v. Further water source sampling in response to complaints from water source owners; and
- vi. Timely production and distribution of test results, well location, and analytical data in electronic deliverable format to the Town Administrator, the ECMC and the water source owners.

I. All water source testing shall be conducted by a qualified independent professional consultant approved by the Town at the Operator's expense.

Table 2. Water Quality Analytes

GENERAL WATER QUALITY	Alkalinity Conductivity & TDS Ph Dissolved Organic Carbon (or Total Organic Carbon) Bacteria Hydrogen Sulfide
MAJOR IONS	Bromide Chloride Fluoride Magnesium Potassium Sodium Sulfate Nitrate + Nitrite as N (total)
METALS	Arsenic Barium Boron Chromium Copper Iron Lead

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	Manganese Selenium Strontium
DISSOLVED GASES AND VOLATILE ORGANIC COMPOUNDS	Methane Ethane Propane BTEX as Benzene, Toluene, Ethylbenzene, Xylenes Total Petroleum Hydrocarbons (TPH)
OTHER	Water Level Stable isotopes of water (Oxygen, Hydrogen, Carbon) Phosphorus

m. *Water Quality Control Plan.* Applicant shall submit a Water Quality Control Plan that details practices that will avoid impacts to water quality, comply with this section, and comply with all applicable state and federal water quality rules. The Plan shall include, but not necessarily be limited to plans for water quality testing, the prevention of illicit or inadvertent discharges and containment of pollutants in case of a discharge, and stormwater discharge management.

18. Water supply. The Applicant / Operator's acquisition and use of water must comply with Berthoud Municipal Code Section 30-2-120, the Water Supply Plan as outlined in this section, and all applicable state and federal laws. In addition:

- a. The water supply used must be the least detrimental to the environment among the available sources and adequate to meet the needs of the oil and gas operation;
- b. The water supply shall be legally and physically available, dependable, and sustainable. Operator will implement reuse and recycling to the greatest extent practicable;
- c. The operation shall not use water from the Town's municipal water supply unless approved by the Board of Trustees; and
- d. Any necessary water agreements must be secured prior to any oil and gas operations commencing.
- e. *Water Supply Plan.* Applicant shall submit a Water Supply Plan prepared by a certified professional engineer approved by the Town that demonstrates compliance with the applicable standards in this section and includes:
  - i. A description of the physical source of the water that the Operator proposes to use to serve each phase of the operation;
  - ii. A list of all available physical sources of water other than the Town's municipal water for the operation, and if multiple sources are available, an analysis to determine which source is least detrimental to the environment;
  - iii. The amount of water needed for each phase of the operation;

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- iv. Proof that the source of *water supply* is physically and legally available and dependable for each phase of the operation;
- v. A description of how *water* will be delivered to the site for each phase of the operation;
- vi. A description of *water* efficiency methods;
- vii. The amount of produced water expected to be recycled or reused; and
- viii. The amount of wastewater produced, and disposal *plans* for wastewater.

19. **Waste Management.** Applicant must submit a Waste Management Plan for the disposal of all waste generated by the oil and gas facilities or oil and gas operations, including use of truck or pipeline transport with details of anticipated truck trips. The Plan shall include provisions for the recycling of drilling, completion, and flowback fluids unless technically infeasible. The Plan will identify whether waste materials will be stored on site and, if so, how such storage will avoid adverse impacts to the oil and gas facility parcel(s), surrounding lands, water, natural resources, wildlife resources, air quality, and public health, safety, and welfare. The Plan must specify whether on-site storage of drilling mud is contemplated and, if so, how the Applicant will eliminate odors leaving the site. The Plan must also include a description of any sources of technically enhanced naturally occurring radioactive material used in or generated by the oil and gas operations and how those materials will be disposed. The Operator shall adhere to its Plan and all applicable state and federal laws related to waste management during its operations.

20. **Wildlife.** Operators must comply with the Environmental Considerations section of the Design Standards section found in Chapter 30 of the Berthoud Municipal Code, all applicable state and federal laws related to wildlife resources and the Applicant's Wildlife Conservation Plan as outlined in this section.

a. *Wildlife Conservation Plan.* The Applicant shall submit a Wildlife Conservation Plan that contains a map of ecologically important areas including critical wildlife habitat areas, riparian areas, rivers, water bodies, wetlands, potential conservation areas as identified by the Colorado Natural Heritage Program Species of Concern listing, Tier 1 and Tier 2 species as identified by the Colorado Parks and Wildlife, and of federally-designated threatened or endangered species, as mapped by other applicable federal and state governmental agencies or discovered upon inspection, on and within one mile of the parcel(s) on which the oil and gas facilities are proposed to be located. It shall also include, at a minimum, the following information:

- i. A description of the ownership, location, type, size, and other attributes of the wildlife habitat on the site;
- ii. A description of the populations of wildlife species that inhabit or use the site including a qualitative description of their spatial distribution and abundance;
- iii. An analysis of the potential adverse impacts of the proposed development on wildlife and wildlife habitat on or off-site;
- iv. A list of proposed mitigation measures and an analysis of the probability of success of such measures;
- v. A plan for implementation, maintenance, and monitoring of mitigation measures;
- vi. A plan for any relevant enhancement or restoration measures; and

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vii. A demonstration of fiscal, administrative, and technical competence of the applicant or other relevant entity to successfully execute the plan.

30-15-106: Application Outcome and Development Standards

- A. Application Outcome. An application for a Use by Special Review will either be approved, approved with conditions, or denied. Denial shall occur if the proposed oil and gas facilities or operations cannot be conducted in a manner that protects public health, safety, and welfare, the environment and wildlife resources. Applications approved will be subject to any conditions placed on approval to ensure compliance with the standards listed in the Application Outcome and Development Standards found in this Section and the Use by Special Review standards found in Chapter 30 of the Berthoud Municipal Code. An approved application will incorporate the plans submitted by the Applicant pursuant to the New oil and gas operation applications and Use by Special Review permit section, unless the Town requires additional industry recognized Best Management Practices or compliance with ECMC, CDPHE, and / or EPA rules, whichever is most protective of public health, safety, welfare, the environment and wildlife resources.
- B. Development Standards. The following Development Standards can be found in the the New oil and gas operation applications and Use by Special Review permit section and establish minimum standards of operation at sites in the Town:
  - 1. Air quality standards, the Air Quality Protection Plan, and the Well Liquids Unloading Plan;
  - 2. Chemical and Hazardous Materials Use, Disclosure, and Handling provisions and the Chemical and Hazardous Materials Plan;
  - 3. Emergency Response standards and the Emergency Response Plan;
  - 4. Flood mitigation measures;
  - 5. Flowlines and crude oil transfer lines provisions and the Pipelines Plan;
  - 6. Fugitive Dust standards and the Fugitive Dust Control Plan;
  - 7. Historic and Cultural Resources protections;
  - 8. Incident and Accident Reporting provisions;
  - 9. Leak Detection and Repair provisions and the Leak Detection and Repair Plan;
  - 10. Lighting and visual impacts provisions and the Lighting and Visual Impacts Plan;
  - 11. Noise and vibration provisions and the Noise and Vibration Mitigation Plan;
  - 12. Odor mitigation provisions and the Odor Mitigation Plan;
  - 13. Reclamation provisions and the Reclamation Plans;
  - 14. Spill prevention, containment, and reporting and the Spill Prevention and Containment Plan;
  - 15. Transportation impacts and the Traffic Impact Analysis and Routing Plan;
  - 16. Water quality protection and the Water Quality Control Plan;
  - 17. Water supply provisions and the Water Supply Plan;
  - 18. Waste Management provisions; and
  - 19. Wildlife protection and the Wildlife Conservation Plan.
- C. Variances. Any request for a variance from the Development Standards outlined in this section shall indicate how the proposed variance would be similarly protective of public health, safety, welfare, the environment, and wildlife resources and follow the variance procedures outlined in Chapter 30 of the Berthoud Municipal Code.
- D. Annual Operator Registration. Operators of any new oil and gas facilities approved after the effective date of this section shall submit an Annual Operator Registration to the Town within 60 days of approval of any new facility. Operator registration must be updated and renewed annually by January 15. Annual Operator Registration submittal requirements shall include:
  - 1. A list of all wells and production within the Town during the previous three years;
  - 2. List of any reportable safety events from its facilities within the Town during the previous three years as defined by ECMC Rule 602(g) or successor rules. Operator shall also list any root cause analyses conducted and corrective actions taken in response to the incidents, including internal changes to corporate practices or procedures;
  - 3. List of any spills or releases from its facilities within the Town during the previous three years; and

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- 4. List of any notices of alleged violations issued by the ECMC or CDPHE related to its facilities during the previous three years.
- E. Memorandum of Understanding. A condition of approval for any new oil and gas operation application is a signed Memorandum of Understanding (MOU) between the Applicant / Operator and the Town. The MOU shall include, but not necessarily be limited to, the following conditions:
  - 1. The Operator agrees to abide by all Town, state, and federal regulations applicable to the oil and gas operation, and the imposition of penalties for noncompliance pursuant to the section titled Inspections, enforcement and fines found in Chapter 30 of Berthoud Municipal Code regarding oil and gas drilling and production;
  - 2. The Operator agrees to cover any costs to repair the Town's transportation infrastructure necessitated by a proposed new oil and gas operation; and
  - 3. The Operator shall reimburse the Town for all inspection costs necessary to inspect facilities approved under this section to determine compliance with this section and any permits issued by the Town. Such fees shall include actual costs incurred by the Town, including but not limited to employee or contractor time, employee or contractor supervision, legal and consulting fees, necessary equipment rental, mileage, and overhead. Costs may also include necessary personnel and time to analyze operator-submitted inspection and spill reports.
- F. Application fee. An application for approval of a new oil and gas facility shall be accompanied by an application fee set by the Town. The Applicant is also responsible for all costs of reviewing and processing the permit application, including but not limited to the costs of legal, consultant, and referral agency review of the permit application, the pre-application conference, completeness determination, and all hearings and meetings on the permit application. All additional costs must be paid in full prior to final action by the Town on the permit application. A Memorandum of Understanding regarding payment of fees is an application requirement.

#### 30-15-107: Insurance and financial assurances

A. Risk Management Plan. The Applicant shall submit a Risk Management Plan with its application. The plan shall include risk identification, frequency, responsibilities, assessment, response, planning mitigation, and methods of risk avoidance and control that implement techniques to prevent the accident/loss and reduce the impact after an accident/loss occurs. It shall also include a summary of how the Applicant will comply with the insurance and financial assurance requirements in this section. Operators shall periodically update and revise the plan, but at least every three years and after any incident listed in the New oil and gas operation applications and Use by Special Review permit section).

B. Insurance. Operator shall maintain or cause to be maintained, with insurers authorized by the state of Colorado and carrying a financial strength rating from A.M. Best of no less than A-VII (or a similar rating from an equivalent recognized ratings agency), at a minimum, the following types of insurance with limits no less than the amounts indicated:

- 1. Commercial general liability insurance on an occurrence form including coverage for bodily injury and property damage for operations and products and completed operations with limits of not less than \$1,000,000 for each occurrence, \$2,000,000 General Aggregate and \$2,000,000 Products/Completed Operations Aggregate. The Town requires the Products/Completed Operations coverage to be provided three years after completion of construction. An endorsement must be included with the certificate;
- 2. Automobile liability insurance with limits of not less than \$1,000,000 each accident covering owned, hired and non-owned vehicles;
- 3. Workers' compensation and Employer's Liability insurance must be maintained for all employees, providing statutory coverage and Employer's Liability insurance with minimum

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limits of \$100,000 each accident, \$100,000.00 disease-each employee and \$500,000 disease policy limit;

4. Control of well/operators extra expense insurance with limits of not less than \$25,000,000 covering the cost of controlling a well that is out of control or experiences a blowout. Coverage shall include re-drilling or restoration expenses, legal liability for pollution-related bodily injury or property damage resulting from an out of control well event, loss of equipment and evacuation expense;

5. Umbrella/excess liability insurance in excess of general liability, employer's liability, and automobile liability with limits no less than \$25,000,000 per occurrence; provided, however, that for so long as all pre-production phases are ongoing at the oil and gas location, Operator will maintain such insurance with limits no less than \$100,000,000 per occurrence; and

6. Environmental liability/pollution legal liability insurance for gradual pollution events, providing coverage for bodily injury, property damage or environmental damage with limits no less than with limits of not less than \$25,000,000 per pollution incident. Coverage shall include claims arising during transportation and at non-owned waste disposal sites. Should this insurance be on a claims-made basis the retroactive date must precede the date field activities were initiated.

7. *Contractors.* Operator shall require adequate insurance of its contractors and subcontractors. Operator agrees that it shall be responsible for any damage or loss suffered as a result of negligence by Operator or any subcontractor with these requirements.

8. Operator shall waive and cause its insurers to waive for the benefit of the Town any right of recovery or subrogation which the insurer may have or acquire against the Town or any of its affiliates, or its or their employees, officers or directors for payments made or to be made under such policies.

9. Operator is required to add the Town and its elected and appointed officials and employees as additional insureds under general liability (including operations and completed operations), auto liability, Environmental/Pollution Liability and umbrella liability policies.

10. Operator shall ensure that each of the policies are endorsed to provide that they are primary without right of contribution from the Town or any insurance or self-insurance otherwise maintained by the Town, and not in excess of any insurance issued to the Town.

11. Operator shall ensure that each of the policies above (excluding workers' compensation and control of well/operator's extra expense) are endorsed to state that the inclusion of more than one insured under such insurance policy shall not operate to impair the rights of one insured against another insured and that the coverage afforded by each insurance policy shall apply as though a separate policy had been issued to each insured.

12. All policies shall be endorsed such that they cannot be canceled or non-renewed without at least thirty days' advanced written notice to the Operator and the Town, evidenced by return receipt via United States mail, except when such policy is being canceled for nonpayment of premium, in which case ten days advance written notice is required. Language relating to cancellation requirements stating that the insurer's notice obligations are limited to "endeavor to" are not acceptable.

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13. Operator shall, prior to permit issuance, and at least annually, deliver certificates of insurance reasonably acceptable to the Town confirming all required minimum insurance is in full force and effect.
14. Deductibles or retentions shall be the responsibility of Operator. Deductibles or retentions must be listed on the certificate of insurance required herein and are subject to the reasonable approval of the Town.
15. Operator shall require any of its subcontractors to carry the types of coverage and in the minimum amounts in accordance with the requirements this section. Operator agrees that it shall be responsible for any damage or loss suffered by the Town as a result of non-compliance by Operator or any subcontractor with these requirements.
16. If Operator's coverage lapses, is cancelled or otherwise not in force, the Town reserves the right to obtain insurance required herein and charge all costs and associated expenses to Operator, which shall become due and payable immediately.

C. Financial Assurance. A surety bond or other financial assurance deemed acceptable by the Town is required from the Operator to ensure performance of all obligations of the Operator in compliance with all rules, regulations, and laws imposed by the Town, including the obligation to properly plug, abandon and reclaim all wells, well sites and pipelines. Upon the commencement of any work on the oil and gas operation, the Operator shall procure and deposit with the Town a surety bond issued by an insurer authorized by the state of Colorado and carrying a financial strength rating from A. M. Best of no less than A- VII. The amount of financial assurance required is \$100,000 for an oil and gas location, but if the location includes more than one well, the assurance must include \$100,000 for each additional well. The applicable bond amount shall be released when all oil and gas wells subject to the Application approval have been plugged and abandoned, and the site reclaimed, as determined by the Town.

30-15-108: Inspections, enforcement, and fines

- A. Operator Inspections. Operators are required to inspect their oil and gas facilities to ensure compliance with all federal, state, county, and Town rules.
  1. *Applicability.* This section applies to Operators of pre-existing oil and gas operations on property previously annexed by the Town or annexed subsequent to the effective date of this section, and to Operators who have obtained a Use by Special Review permit after the effective date of this section.
  2. *Operator Inspections.* All Operators must inspect all oil and gas facilities, including shut-in and temporarily abandoned facilities, and all oil and gas operations as follows:
    - a. Conduct soil sampling for contamination within the boundaries of an oil and gas location and along pipeline routes annually;
    - b. Use equipment-assisted inspection for emissions or releases, including use of best available technology (such as infrared cameras), at least every 90 days; and
    - c. Conduct visual inspections for liquid leaks within the boundaries of an oil and gas location and along pipeline routes at least every 90 days.
  3. *Inspection Reporting.* Operators will report the date, methodology, subject, and results of all inspections to the Town no later than the last day of each month.

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4. *Spills, Leaks and Releases.* Spills, leaks, and releases of any substance other than fresh water, including spills of produced water, oil, condensate, natural gas liquids, all spills outside of secondary containment, gas leaks, other fugitive emissions, and exploration and production waste, shall be reported to the Town immediately upon discovery and no later than 8 hours thereafter. When leaks, spills, or releases are discovered by Town, Operator, or any other type of inspection, the enforcement mechanisms and penalty provisions in this section apply.
5. *Reporting.* For spills or other releases meeting the Colorado reporting requirements pursuant to Section 25-8-601(2), C.R.S. or ECMC Rule 912, or any successor statute or rule, Operators will adhere to all state reporting requirements.
6. *Clean-up.* Any leak, release, or spill shall be stopped and cleaned up according to applicable Town, county, state and federal laws, including Colorado Water Quality Control Commission regulations, the Colorado Oil and Gas Act, the federal Clean Air Act, and the federal Clean Water Act. Operators will notify the Town immediately upon completion of clean-up activities.
7. *Root Cause Analysis.* A root cause analysis of any spill, leak, or release of any substance other than fresh water that resulted in bodily injury or fatality, serious environmental harm, was a Grade 1 gas leak as defined by the ECMC, or is otherwise requested by the Town shall be submitted to the Town within 30 days of the leak, spill, or release.

**B. Town Inspections.** To monitor compliance with permit conditions or if the Town has reasonable cause to believe that a violation of the provisions of this section has occurred, the Town may inspect oil and gas facilities and commence enforcement if necessary to ensure compliance with the provisions of this section.

1. *Right to Enter.* Any oil and gas facility may be inspected by the Town, or the Town's designee, at any time to ensure compliance with the requirements of Town permits or the provisions of this section. Unless urgent circumstances exist, the Town will use best efforts to ensure that 1 hour of prior notice is given to the Operator's contact person at the telephone number on file. Town inspections will be coordinated with the Operator to ensure Operator presence onsite to the extent possible and to ensure the site visit is conducted in accordance with all applicable operator safety requirements. Inspections in response to odor complaints will occur as soon as feasible upon receipt of the complaint.
2. *Records.* Operators will disclose any and all information regarding operations or activities of the oil and gas operation to the Town. This includes, but is not necessarily limited to, daily drilling logs, air quality monitoring data, noise monitoring data or logs, water analysis reports, environmental assessments, daily activity logs or reports, and records or reports required by the CDPHE, the ECMC, the Colorado Public Utilities Commission, the Occupational Safety and Health Administration, and the Pipeline and Hazardous Materials Safety Administration. Operators shall submit all reports required by this rule to the Town electronically.
3. *Inspection fees.* The Town may require the Operator to pay reasonable inspection fees for inspections conducted by the Town or a third party approved by the Town as detailed in a Development Agreement.

**C. Violations.** Violations of any condition of approval or any provisions of this section may be subject to fines, penalties, and other corrective actions.

1. *Process initiation.* If the Town Administrator has reasonable cause to believe that a violation has occurred, the Town Administrator will issue a notice of violation to the Operator. Each violation of an individual condition or Code provision will be considered a separate infraction. Each day a violation occurred will be considered a separate infraction. The Notice of Violation shall include:

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- a. Provisions of this Code or conditions imposed on a permit that were violated;
- b. A short and plain statement of the facts alleged to constitute each violation;
- c. A statement of the fines the Operator will be subject to as specified in this section; and
- d. A demand that the violation that the violation be remedied and fines paid.

2. *Operator Response.* The Operator will have the time specified by the Town Administrator in the notice to respond to the notice of violation, unless an extension is requested in writing and granted by the Town Administrator. The response must address each violation, including the cause of the violation and any corrective actions taken, and identify any other relevant facts.

3. *Assessment of Penalty.* Based on the Operator's response, if any is provided, and any other competent evidence, the Town Administrator will determine if a violation has occurred and, if so, the appropriate penalty to assess. Any fine imposed after consideration of the response will be measured with respect to the first date of discovery of the violation or the date the violation first occurred and continues until the violation has been remedied to the satisfaction of the Town Administrator.

4. *Penalty Calculation.* The Town Administrator may assess a civil penalty up to \$15,000 per violation per day, depending on the nature and severity of the violation, statutory authority, and application of the additional factors listed below.

a. To evaluate the severity of the violation, the Town Administrator will consider the following:

- i. The degree of threatened or actual impact to public health, safety, welfare, the environment or wildlife;
- ii. The existence, size, and proximity of potentially impacted livestock, wildlife, fish, soil, crops, water, and all other environmental resources;
- iii. The degree of threatened or actual damage to agricultural lands, public lands, private property, freshwater sources, public drinking water, natural resources, environmental features, or wildlife;
- iv. The size of any leak, release, or spill;
- v. Whether the violation resulted in a significant waste of oil and gas resources;
- vi. The toxicity of a leak, release, or spill;
- vii. Whether the violation led to death or injury of persons or wildlife; and
- viii. The duration of the violation.

b. In addition to considering the severity of the violation, the Town Administrator will consider the following:

- i. Whether the same or similar violations have occurred at the location;
- ii. Whether other violations have occurred at the location in the previous 24 months;
- iii. The Operator's history of violations of any applicable rules, of similar or different types, at the location or others;

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- iv. The timeliness and adequacy of the Operator's corrective actions;
- v. The degree the violation was outside of the Operator's reasonable control and responsibility;
- vi. Whether the Operator acted with gross negligence, or knowing and willful misconduct;
- vii. Whether the Operator self-reported; and
- viii. Whether the Operator was cooperative with all agencies and jurisdictions involved in working to mitigate the impacts of the violation.

c. The Town may impose a penalty for violations of its Code and / or Conditions of Approval. The Town may impose its own penalty if the ECMC finds a violation of a similar requirement in its rules and imposes its own penalty; however, the Town Administrator shall consider the amount of the penalty imposed by the ECMC for its similar violation when calculating the Town's penalty.

- 5. *Suit to Enjoin ECMC Rule Violation.* If the Town discovers a violation or threatened violation of Title 34, Article 60 of the Colorado Revised Statutes or any rule, regulation, or order made under that Article, the Town will notify the ECMC in writing. If the ECMC fails to file a Notice of Alleged Violation against the Operator in a timely manner, the Town Attorney may file an action on behalf of the Town seeking injunctive relief.
- 6. *Other Penalties.* In addition to or in lieu of civil fines, the Town may exercise remedies for Operator violations including the following:
  - a. Increased Operator or Town inspection frequency at the Operator's expense;
  - b. Mandatory equipment upgrades;
  - c. A requirement to conduct an audit of the systems or equipment involved in the violation(s); and / or
  - d. A requirement for increased reporting to the Town.
- 7. *Written Order Suspending the Approval.* As a result of either (i) emergency conditions, or (ii) 3 or more fines imposed for violations within 12 months, the Town may issue a written order to the Operator. Upon receipt, the Operator shall cease all activities and operations immediately until the violation is remedied or appeal the order suspending approval to the Board of Trustees within 14 days.
- 8. *Other Enforcement Remedies.* In addition to the foregoing enforcement measures, the Town has the right to any and all other enforcement measures and remedies provided by law, including but not limited to injunctive or other relief through the courts to enforce any conditions of the Development Agreement or to stop or abate any oil and gas operations occurring or about to occur without the requisite special use, required permits, or other Town approvals. Nothing in this section shall limit the remedies available to the Town for a violation of this section.

#### 30-15-109: Seismic Operations

- A. An Operator seeking to conduct any seismic operations within the Town must obtain a Seismic Operations Permit. As part of the Town's Seismic Operations Permit, the Operator shall submit an application fee and

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development review deposit as specified in the Town's Fee Schedule. Additionally, the Operator shall submit the following information to the Town as part of the Seismic Operations Permit:

1. A timeline for the seismic operation;
2. A map of any existing mines underlying the project area, and within 1-kilometer (3,280 feet) of the seismic operation boundary;
3. A map of any water sources within 1-kilometer (3,280 feet) of the seismic operation boundary;
4. A map of any occupied buildings and / or dwelling units within 1-kilometer (3,280 feet) feet of the seismic operation;
5. A list of equipment to be used during the seismic operation;
6. Plans to monitor and control the seismic operation to prevent any damage to any infrastructure;
7. A public notification plan for buildings along any vibroisis truck routes;
8. An assessment by a certified engineer demonstrating the roads to be used in the project are able to endure the vibrations generated by the seismic operation;
9. Proof of adequate insurance for any potential damage caused by the seismic operation;
10. Copies of written permission from any landowner whose land will be utilized for the seismic operation;
11. The company or companies responsible for performing the seismic operation and contact information of those companies;
12. A traffic control plan; and
13. Any other information the Town deems reasonable and necessary to protect public health, safety, welfare, the environment and wildlife.

- B. The Town will approve, deny, or place conditions of approval on Seismic Operations Permit in accordance with the criteria outlined in the purpose, authorities and application to existing facilities section .
- C. The Operator shall notify building occupants and property owners as outlined in its Seismic Operations Permit within thirty (30) days after approval of the Permit or within fourteen (14) days of conducting the operation, whichever is closer to the Seismic Operation.

30-15-110: Judicial Review

- A. Decisions by the Board of Trustees shall be subject to judicial review as applicable pursuant to C.R.C.P. 106(a)(4).

## SECTION 16 – WIRELESS COMMUNICATION FACILITIES (WCF)

**30-16-101 Purpose and Goals.** The purpose of these provisions is to establish requirements for the siting of Wireless Communications Facilities. The goals of these provisions are to:

- A. Provide for the managed development and installation, maintenance, modification, and removal of wireless communications infrastructure in the Town with the fewest number of WCFs to complete a network without unreasonably discriminating against wireless communications providers of functionally equivalent services including all of those who install, maintain, operate, and remove WCFs.
- B. Promote and protect the public health, safety, and welfare by reducing the visibility of WCFs to the fullest extent possible through techniques including but not limited to concealment design techniques and undergrounding of the equipment associated with WCFs.
- C. Encourage the deployment of smaller, less intrusive WCFs where appropriate to supplement existing larger WCFs.
- D. Encourage the use of wall mounted panel antennas.
- E. Encourage roof mounted antennas when wall mounted antennas will not provide adequate service or are not otherwise feasible.
- F. Encourage the location of Towers in non-residential areas, in a manner that minimizes the total number of Towers needed throughout the community.
- G. Encourage strongly the collocation of WCFs on new and existing Sites.
- H. Encourage owners and users of antennas and Towers to locate them, to the extent possible, in areas where the adverse impact on the community is minimized.
- I. Enhance the ability of WCF providers to provide such services to the community quickly, effectively, and efficiently.
- J. Effectively manage WCFs in the Right-of-Way.

**30-16-102 Definitions.** The following definitions apply to this Section.

**Alternative Tower Structure:** Any man-made clock towers, bell steeples, light poles, water towers, farm silos, or similar alternative design mounting structures approved by the Town, that conceal where technically feasible the presence of WCFs to make them architecturally compatible with the surrounding area pursuant to this Section. A stand-alone pole in the Right-of-Way that accommodates Small Cell Facilities is considered an Alternative Tower Structure provided it meets the concealment standards of this Section. Alternative Tower Structures are not considered Towers, for the purposes of this Section.

**Antenna:** Any device used to transmit and/or receive radio or electromagnetic waves such as, but not limited to panel antennas, reflecting discs, microwave dishes, whip antennas, directional and non-directional antennas consisting of one or more elements, multiple antenna configurations, or other similar devised and configurations.

**Antennas, panel:** An array of antennas, rectangular in shape, used to transmit and receive telecommunication signals.

**Antenna, whip:** A single antenna that is cylindrical in shape and omni-directional.

**Base Station:** A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The definition of Base Station does not include or encompass a Tower as defined herein or any equipment associated with a Tower. Base Station does include, without limitation:

- A. Equipment associated with wireless communications services such as private broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul that, at the time the relevant application is filed with the Town under this Section, has been reviewed and approved under the applicable zoning or siting process, or

under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

- B. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplied, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems ("DAS") and small cell networks) that, at the time the relevant application is filed with the Town under this Section, has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

The definition of Base Station does not include any structure that, at the time the relevant application is filed with the Town under this Section, does not support or house equipment described in paragraphs A and B above.

**Camouflage or Camouflage Design Techniques:** Measures used in the design and siting of Wireless Communication Facilities with the intent to minimize or eliminate the visual impact of such facilities to surrounding uses. A WCF Site utilizes Camouflage Design Techniques when it (i) is integrated as an architectural feature of an existing structure, or (ii) is integrated in an outdoor fixture such as a flagpole, while still appearing to some extent as a WCF. This definition does not include the use of Concealment design elements so that a facility looks like something other than a wireless Tower or Base Station.

**Collocation:**

- A. For the purposes of Eligible Facilities Requests, means the mounting or installation of transmission equipment on an Eligible Support Structure for the purpose of transmitting and /or receiving radio frequency signals for communications purposes.
- B. For the purposes of facilities subject to shot clocks governed by 47 U.S.C. Sec. 332, means attachment of facilities to existing structures, regardless of whether the structure or location has previously been zoned for wireless facilities.

**Concealment:** Utilization of elements of stealth design in a facility so that the facility looks like something other than a wireless Tower or Base Station. Language such as "stealth," "camouflage," or similar in any permit or other document required by the Town Code is included in this definition to the extent such permit or other document reflects an intent at the time of approval to condition the site's approval on a design that looks like something else. Concealment can further include a design which mimics and is consistent with the nearby natural, or architectural features (such as an artificial tree), or is incorporated into (including without limitation, being attached to the exterior of such facility and painted to match it) or replaces existing permitted facilities (including without limitation, stop signs or other traffic signs or freestanding light standards) so that the presence of the WCF is not apparent. This definition does not include conditions that merely minimize visual impact but do not incorporate Concealment design elements so that the facility looks like something other than a wireless Tower or Base Station.

**Eligible Facilities Request:** Any request for modification of an Existing Tower or Base Station that does not Substantially Change the physical dimensions of such Tower or Base Station involving:

- A. Collocation of new Transmission Equipment.
- B. Removal of Transmission Equipment.
- C. Replacement of Transmission Equipment.

A request for modification of an Existing Tower or Base Station that does not comply with the generally applicable building, structural, electrical, and safety codes or with other laws codifying objective standards reasonably related to health and safety, or does not comply with any relevant federal requirements, is not an Eligible Facilities Request.

**Eligible Support Structure:** Any Tower or Base Station as defined in this Section, provided that it is Existing at the time the relevant application is filed with the Town under this Section.

Equipment Cabinets: A cabinet or building used to house equipment used by wireless communications providers at a Wireless Communications Facility. This definition does not include relatively small electronic components, such as remote radio units, radio transceivers, amplifiers, or other devices mounted behind antennas, if they are not used as physical containers for smaller, distinct devices.

Existing: For purposes of this Section, a constructed Tower or Base Station that was reviewed, approved, and lawfully constructed in accordance with all requirements of applicable law as of the time of an Eligible Facilities Request, provided that a Tower that exists as a legal, non-conforming use and was lawfully constructed is existing for purposes of this definition.

OTARD Antenna:

- A. An antenna that is designed to receive direct broadcast satellite service, including direct-to-home satellite services, that is one meter or less in diameter; or
- B. An antenna that is designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instruction television fixed services, and local multipoint distribution services, and that is one meter or less in diameter or diagonal measurement; or
- C. An antenna that is designed to receive television broadcast signals.

OTARD antenna structure: Any pole, Tower, or other structure designed and intended to support an OTARD Antenna.

Related Accessory Equipment: The Transmission Equipment customarily used with, and incidental to Wireless Communication Facilities antennas, including by way of example, coaxial or fiber-optic cable, regular and backup power supply and remote radio units.

Right-of-Way: In the context of this Section, any public street or road that is dedicated to public use for vehicular traffic except for those rights-of-way owned by the Colorado Department of Transportation within the Town limits.

Site: In the context of this Section, for Towers and Eligible Support Structures, a Site means the current boundaries of the leased or owned property surrounding the Tower or Eligible Support Structure and any access or utility easements currently related to the Site. For Alternative Tower Structures, Base Stations and Small Cell Facilities in the Right-of-Way, a Site is further restricted to that area comprising the base of the structure and to other Related Accessory Equipment already installed on the ground.

Small Cell Facility: A WCF where each antenna is located inside an enclosure of no more than three (3) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three (3) cubic feet; and primary equipment enclosures are no larger than seventeen (17) cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosure, back-up power systems, grounding equipment, power transfer switch and cut-off switch.

Substantial Change: A modification substantially changes the physical dimensions of an Eligible Support Structure if after the modification, the structure meets any of the following criteria:

- A. For Towers, it increases the height of the Tower by more than ten percent or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater, as measured from the top of an existing antenna to the

bottom of a proposed new antenna; for other Eligible Support Structures, it increases the height of the structure by more than ten percent or more than ten (10) feet, whichever is greater, as measured from the top of an existing antenna to the bottom of a proposed new antenna;

- B. For Towers, it involves adding an appurtenance to the body of the Tower that would protrude from the edge of the Tower more than twenty (20) feet, or more than the width of the Tower structure at the level of the appurtenance, whichever is greater; for Eligible Support Structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six (6) feet;
- C. For any Eligible Support Structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, as determined on a case-by-case basis based on the location of the Eligible Support Structure but not to exceed four cabinets per application; or for Base Stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten percent larger in height or overall volume than any other ground cabinets associated with the structure;
- D. It entails any excavation or deployment outside of the current site, except that, for Towers other than Towers in the Public Rights-of-Way, it entails any excavation or deployment of Transmission Equipment outside of the current site by more than 30 feet in any direction. The site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site.
- E. For any Eligible Support Structure, it would defeat the Concealment elements of the Eligible Support Structure by causing a reasonable person to view the structure's intended stealth design as no longer effective for any Eligible Support Structure, it does not comply with record evidence of conditions associated with the siting approval of the construction or modification of the Eligible Support Structure or Base Station equipment, unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that would not exceed the thresholds identified in paragraphs a, b, and c of this definition.

For purposes of determining whether a Substantial Change exists, changes in height are measured from the original support structure in cases where deployments are or will be separated horizontally, such as on building rooftops; in other circumstances, changes in height are measured from the dimensions of the Tower or Base Station, inclusive of approved appurtenances and any modifications that were approved prior to February 22, 2012.

Tower: Any structure that is designed and built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated Site. The term includes radio and television transmission towers, self- supporting lattice towers, guy towers, monopoles, microwave towers, common carrier towers, cellular telephone towers and the like. Alternative Tower Structures and Small Cell Facilities in the Rights-of-Way are not Towers.

Transmission Equipment: Equipment that facilitates transmission for any FCC licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

Wireless Communications Facility or WCF: A facility used to provide personal wireless services as defined at 47 U.S.C. Section 332 (c)(7)(C); or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services. A WCF does not include a facility entirely

enclosed within a permitted building where the installation does not require a modification of the exterior of the building; nor does it include a device attached to a building, used for serving that building only and that is otherwise permitted under other provisions of the Code. A WCF includes an antenna or antennas, including without limitation, directions, omni-directions and parabolic antennas, Base Stations, support equipment, Small Cell Facilities, Alternative Tower Structures, and Towers. It does not include the support structure to which the WCF or its components are attached if the use of such structures for WCFs is not the primary use. The term does not include mobile transmitting devices used by wireless service subscribers, such as vehicle or handheld radios/telephones and their associated transmitting antennas, nor does it include other facilities specifically excluded from the coverage of this Section.

**30-16-103 Applicability; Waiver; Exemptions.** The requirements set forth in this Section shall apply to all WCF applications for Base Stations, Alternative Tower Structures, Alternative Tower Structures located within Right-of-Way, and Towers as defined elsewhere herein. The Town, through an appropriately designated and authorized person, shall have the authority to waive any requirement or standard set forth in this Section as it may be proposed to be applied to a specific WCF, if the Town makes a determination that the specific requirement or standard as proposed to be applied is preempted by federal or state law. Prior to applying the waiver to any pending application, the Town shall, in consultation with the Town Administrator and Town Attorney, make a written preemption determination which written determination shall identify the specific requirement or standard that is being waived and cite to the specific federal or state law provision that preempts the specific Town requirement or standard set forth in this Section. The requirements set forth in this Section shall not apply to:

- A. *Amateur Radio Antennas.* Amateur radio antennas that are owned and operated by a federally licensed amateur radio station operator or are used exclusively for receive-only antennas, provided that the requirement that the height be no more than the distance from the base of the antenna to the nearest property line is met. The Town or their designee has the authority to approve modifications to the height restriction, if in the reasonable discretion of the Town, modifications are necessary to comply with federal law.
- B. *Pre-existing WCFs.* Any WCF for which a permit has been properly issued prior to the effective date of this Section, shall not be required to meet the requirements of this Section, other than the requirements of subparagraphs Section D.1, Section D.5 and Section D.6 below. Changes and additions to pre-existing WCFs (including trading out of antennas for an equal number of antennas) shall meet applicable requirements of this Section.
- C. *Miscellaneous Antennas.* Antennas used for reception of television, multi-channel video programming and radio such as OTARD antennas, television broadcast band antennas, and broadcast radio antennas, provided that the requirement that the height be no more than the distance from the base to the nearest property line are met. The Town Administrator or their designee has the authority to approve modifications to the height restriction related to OTARD antennas and OTARD antenna structures, if in the reasonable discretion of the Town, modifications are necessary to comply with federal law.

**30-16-104 Operational Standards.** The following operational standards shall apply.

- A. *Federal Requirements.* All WCFs shall meet the current standards and regulations of the FAA, the FCC and any other agency of the federal government with the authority to regulate WCFs. If such standards and regulations are changed, then the owners of the WCF governed by this Section shall bring such facility into compliance with such revised standards and regulations within the time period mandated by the controlling federal agency. Failure to meet such revised standards and regulations shall constitute grounds for the removal of the WCF at the owner's expense.
- B. *Radio Frequency Standards.* All WCFs shall comply with federal standards for radio frequency emissions. The Town may require that the owner or operator of the WCF provide information demonstrating compliance. If such information is not sufficient, in the reasonable discretion of the Town, to demonstrate compliance, the Town may require the owner or operator of the WCF to submit a project implementation report which

provides cumulative field measurements of radio frequency emissions of all Antennas installed at the subject Site, and which compares the results with established federal standards. If, upon review, the Town finds that the facility does not meet federal standards, the Town may require corrective action within a reasonable period of time, and if not corrected, may require removal of the WCF. Any reasonable costs incurred by the Town, including reasonable consulting costs to verify compliance with these requirements, shall be paid by the applicant.

- C. *Signal Interference.* All WCFs shall be designed and sited so as not to cause interference with the normal operation of radio, television, telephone and other communication services utilized by adjacent residential and non-residential properties; nor shall any such facilities interfere with any public safety communications. The Applicant shall provide a written statement ("Signal Interference Letter") from a qualified radio frequency engineer, certifying that a technical evaluation of existing and proposed facilities indicates no potential interference problems.
- D. *Legal Access.* In all applications for WCFs outside of the Right-of-Way, an Applicant shall demonstrate that it owns or has lease rights to the Site.
- E. *Operation and Maintenance.* To ensure the structural integrity of WCFs, the owner of a WCF shall ensure that it is maintained in compliance with standards contained in applicable local building and safety codes. If upon inspection, the Town determines that a WCF fails to comply with such codes and constitutes a danger to persons or property, then, upon written notice being provided to the owner of the WCF, the owner shall have thirty (30) days from the date of notice to bring such WCF into compliance. Upon good cause shown by the owner, the Town may extend such compliance period not to exceed ninety (90) days from the date of said notice. If the owner fails to bring such WCF into compliance within said time period, the Town may remove such WCF at the owner's expense. No hazardous materials shall be permitted in association with WCFs, except those necessary for the operations of the WCF and only in accordance with all applicable laws governing such materials.
- F. *Abandonment and Removal.* If a WCF has not been in use for a period of three months, the owner of the WCF shall notify the Town of the non-use and shall indicate whether re-use is expected within the ensuing three months. Any WCF that is not operated for a continuous period of six months shall be considered abandoned. The Town, in its sole discretion, may require an abandoned WCF to be removed. The owner of such WCF shall remove the same within thirty (30) days of receipt of written notice from the Town. If such WCF is not removed within said thirty (30) days, the Town may remove it at the owner's expense and any approved permits for the WCF shall be deemed to have expired.

**30-16-105 Design and Siting Standards.** The requirements set forth in this Section shall apply to the location and design of all WCFs governed by this Section as specified below; provided, however, that the Town may waive any one or more of these requirements if determines that the goals of this Section are better served thereby. WCFs shall be designed and located to minimize the impact on surrounding properties and residential neighborhoods and to maintain the character and appearance of the Town, consistent with other provisions of this Code. In addition to the provisions of this Code, applicants shall comply with the Town's Wireless Communications Design Standards, which may be adopted and amended from time to time by the Town Administrator.

- A. *Camouflage/Concealment.* All WCFs and any Related Accessory Equipment shall, to the maximum extent possible, use Concealment Design Techniques, and where not possible utilize Camouflage Design Techniques. Camouflage Design Techniques include, but are not limited to using materials, colors, textures, screening, undergrounding, landscaping, or other design options that will blend the WCF to the surrounding natural setting and built environment.
- B. Where WCFs are located in areas of high public visibility, they shall, where physically possible, be designed to be concealed, and where not possible to be concealed, to minimize the WCF profile through placement of equipment fully or partially

underground, or by way of example and not limitation, behind landscape berms.

C. Concealment design may include the use of Alternative Tower Structures should the Town determine that such design meets the intent of this Code and the community is better served thereby.

D. All WCFs, such as antennas, vaults, equipment rooms, equipment enclosures, and Towers shall be constructed of non-reflective materials (visible exterior surfaces only).

*E. Siting.*

1. No portion of any WCF may extend beyond the property line.
2. WCFs shall be required to be designed and constructed to permit the facility to accommodate WCFs from at least two wireless communications providers on the same WCF. No WCF owner or operator shall unfairly exclude a competitor from using the same facility or Site.
3. WCFs shall be sited in a location that does not reduce the parking for the other principal uses on the parcel below Code standards.
4. WCFs shall not encroach into any sight triangles.
5. WCFs shall not encroach into recorded/documentated easements without permission from the underlying property owner and the easement holder.

*F. Lighting.* WCFs shall not be artificially lighted, unless required by the FAA or other applicable governmental authority, or the WCF is mounted on a light pole or other similar structure primarily used for lighting purposes. If lighting is required, the Town may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views. Lighting shall comply with the Town's Dark Sky Standards, and be shielded or directed to the greatest extent possible so as to minimize the amount of glare and light falling onto nearby properties, particularly residences.

*G. Landscape and Fencing Requirements.*

1. WCFs shall be sited in a manner that does not reduce the landscaped areas for the other principal uses on the lot or parcel, below any applicable Code standards including without limitation, Planned Unit Development standards.
2. Except for WCFs in the Right-of-Way, the Site of the WCF shall be landscaped with a buffer of plant materials that effectively screen the view of the WCF from adjacent residential property. The standard buffer shall consist of the front, side, and rear landscaped setback on the perimeter of the Site.
3. In locations where the visual impact of the WCF would be minimal, the landscaping requirement may be reduced or waived in whole or in part by the Town.
4. Existing mature tree growth and natural landforms on the Site shall be preserved to the maximum extent possible. In some cases, such as WCFs sited on large, wooded lots, natural growth around the Site perimeter may be sufficient to buffer.
5. No trees larger than four (4) inches in diameter measured at 4½ feet high on the tree from grade may be removed, unless authorized by the Town. To obtain such authorization the Applicant shall show that tree removal is necessary, the Applicant's plan minimizes the number of trees to be removed and that any trees removed are replaced at a ratio of 2 to 1 with tree species to be approved by the Town.
  - i. The applicant shall provide a maintenance plan to ensure the replacement trees shall be irrigated and maintained to the Town for approval prior to the removal of any tree.

**H. Specific Design Requirements.** Additional design requirements shall be applicable to the types of WCFs as specified below:

*1. Base Stations –*

- a. Base Stations shall be architecturally compatible with respect to attachments, and colored to match the building or structure to which they are attached;
- b. The maximum protrusion of such facilities from the building or structure face to which they are attached shall be two (2) feet;
- c. Wall mounted WCFs shall not extend above the roofline unless mounted to a penthouse; and
- d. Roof mounted WCFs shall be approved only where an Applicant demonstrates a wall mounted WCF is inadequate to provide service and shall be evaluated for approval based upon the following criteria:
  - i. Roof mounted whip antennas shall extend no more than twelve (12) feet above the parapet of any flat roof or ridge of a sloped roof or penthouse to which they are attached;
  - ii. Roof mounted panel antennas shall extend no more than seven (7) feet above the parapet of a flat roof or ridge of a sloped roof to which they are mounted; and
  - iii. Other roof mounted Related Accessory Equipment shall extend no more than seven (7) feet above any parapet of a flat roof upon which they may be placed, and shall not be permitted on a sloped roof.

*2. B. Alternative Tower Structures (ATS) and Small Cell Facilities not located in the Right-of-Way –*

- a. ATS shall be designed and constructed to look like a building, facility, or structure typically found in the area, in order that the WCF is Concealed.
- b. Height or size of the proposed ATS or Small Cell Facility should be minimized as much as possible and shall be subject to the maximum height restrictions of the zoning district in which they are located, as set forth in The Zoning Section, Chapter 30 of the Town's Municipal Code, as amended.
- c. ATS shall be sited in a manner that is least obtrusive to residential structures and residential district boundaries;
- d. ATS should take into consideration the uses on adjacent and nearby properties and the compatibility of the facility to these uses;
- e. ATS and Small Cell Facilities shall be compatible with the surrounding topography, tree coverage, and foliage;
- f. ATS and Small Cell Facilities shall be designed utilizing design characteristics that have the effect of concealing where technically feasible and generally reducing or eliminating visual obtrusiveness; and
- g. Visual impacts of the proposed ingress and egress shall be minimized.

*3. Alternative Tower Structures and Small Cell Facilities located in the Right-of-Way –*

- a. No ATS pole shall be higher than thirty-five (35) feet including any cannister or antennas located on top of a pole;
- b. No pole or structure shall be more than ten (10) feet higher (as

measured from the ground to the top of the pole or structure) than any existing utility or traffic signal within five hundred (500) feet of the pole or structure;

- c. Any new pole for ATS or Small Cell Facilities shall be separated from any other existing WCF facility by a distance of at least six hundred (600) feet, unless the new pole replaces an existing traffic signal, street light or utility pole;
- d. With respect to pole-mounted components, Small Cell Facilities shall be located on an existing utility pole serving another utility; or be located on a new utility pole where other utility distribution lines are aerial, if there are no reasonable alternatives;
- e. ATS must be concealed consistent with other existing natural or manmade features in the Right-of-Way near the location where the ATS will be located;
- f. To the extent reasonably feasible, be consistent with the size and shape of the pole-mounted equipment installed by communications companies on utility poles near the ATS;
- g. When placed near a residential property, any ATS or Small Cell Facilities must be placed in front of the common side yard property line between adjoining residential properties. In the case of a corner lot, the facility must be placed in front of the common side yard property line adjoining residential properties, or on the corner formed by two intersecting streets;
- h. Small Cell Facilities shall:
  - i. be designed such that antenna installations on traffic signals are placed in a manner so that the size, appearance, and function of the signal will not be considerably altered; and
  - ii. be designed such that all antennas, mast arms, equipment, and other facilities are sized to minimize visual clutter, and where possible, concealed within the structure; and
  - iii. be consistent with the size and shape of the pole-mounted equipment installed by communications companies on utility poles near the ATS; and
  - iv. require that any ground mounted equipment be installed in an underground or partially underground equipment vault (projecting not more than thirty-six (36) inches above grade) or the maximum height permissible through the Town's Engineering specifications and standards for ground mounted utility equipment, or co-located within a traffic cabinet of a design approved by the Town, unless a use by special review is obtained subject to the requirements of the Town Code; and
  - v. not alter vehicular circulation or parking within the Right-of-Way or impede vehicular, bicycle, or pedestrian access or visibility along the Right-of-Way; and
  - vi. comply with the federal Americans With Disabilities Act and all applicable local, state, and federal law and regulations; and
  - vii. not be located or maintained in a manner that causes unreasonable interference. Unreasonable interference means any use of the Right-of-Way that disrupts or interferes with its use by the Town, the general public, or other person authorized to use or be present upon the Right-of-Way, when there exists

an alternative that would result in less disruption or interference. Unreasonable interference includes any use of the Right-of-Way that disrupts vehicular or pedestrian traffic, any interference with public utilities, and any other activity that will present a hazard to public health, safety, or welfare.

*4. Towers -*

- a. Towers shall either maintain a galvanized steel finish, or, subject to any applicable FAA standards, be painted a neutral color so as to reduce visual obtrusiveness as determined by the Town;
- b. Tower structures should use existing landforms, vegetation, and structures to aid in concealing the facility from view or blending in with the surrounding built and natural environment;
- c. Monopole support structures shall taper from the base to the tip;
- d. All Towers shall be enclosed by security fencing or wall at least six (6) feet in height and shall also be equipped with an appropriate anti-climbing device. No security fencing or any portion thereof shall consist of barbed wire or chain link material; and
- e. Towers shall be subject to the maximum height restrictions of the zoning district in which they are located, subject to a maximum height limit of sixty (60) feet.
- f. Towers should be sited in a manner that is least obtrusive to residential structures and residential district boundaries where feasible;
- g. Towers should take into consideration the uses on adjacent and nearby properties and the compatibility of the Tower to these uses;
- h. Towers should be designed utilizing design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
- i. Visual impacts of the proposed ingress and egress shall be minimized;
- j. No new Towers shall be permitted unless the Applicant demonstrates to the reasonable satisfaction of the Town that no existing WCFs can accommodate the needs that the Applicant proposes to address with its Tower application. Evidence submitted to demonstrate that no existing WCFs can accommodate these needs may consist of the following:
  - i. No existing WCFs are of sufficient height and are located within the geographic area required to meet the Applicant's engineering requirements;
  - ii. Existing WCFs do not have sufficient structural strength to support Applicant's proposed WCF;
  - iii. The Applicant's proposed WCF would cause electromagnetic interference with the WCFs on the existing WCFs or the existing WCFs would cause interference with the Applicant's proposed WCF; or
  - iv. The Applicant demonstrates that there are other limiting factors that render existing WCFs unsuitable for collocation.
- k. A Tower shall meet the greater of the following minimum setbacks from all property lines:
  - i. The setback for a principal building within the applicable zoning;
  - ii. Twenty-five (25) percent of the facility height, including WCFs

and Transmission Equipment; or if the Tower height, including antennas, if the Tower is in or adjacent to a residential district or residential zoned property.

- iii. For Sites within or adjacent to residential zones, Towers over forty (40) feet in height shall not be located within one-quarter mile from any existing Tower that is over forty (40) feet in height, unless the Applicant has shown to the satisfaction of the Town that there are no reasonably suitable alternative sites in the required geographic area which can meet the Applicant's needs.

- 1. No Towers shall be permitted in the Right-of-Way.

5. *Related Accessory Equipment* - Related Accessory Equipment for all WCFs shall meet the following requirements:

- a. All buildings, shelters, cabinets, and other accessory components shall be grouped as closely as technically possible;
- b. For WCFs outside of the Right-of-Way, the total footprint coverage area of the WCF's Related Accessory Equipment shall not exceed three hundred fifty (350) square feet;
- c. No Related Accessory Equipment or accessory structure shall exceed twelve (12) feet in height; and
- d. Related Accessory Equipment shall be located out of sight whenever possible by locating behind parapet walls or within equipment enclosures. Where such alternate locations are not available, the Related Accessory Equipment shall be concealed where technically feasible or otherwise camouflaged in a manner appropriate for the specific site.

6. *Additional Design Standards.* The Town may adopt administrative regulations addressing additional design standards for WCFs.

**30-16-106 Review Procedures and Requirements.** No new WCF shall be constructed and no collocation or modification to any existing WCF may occur except after a written request from an Applicant, reviewed and approved by the Town in accordance with this Section. In addition to following the procedures and regulations regarding land use approval, the applicant is responsible for coordinating any building permit activities with the Town. All WCFs, except Eligible Facilities Requests, shall be reviewed pursuant to the following procedures:

A. *Submittal Requirements.* Each Applicant for a WCF shall be required to submit:

- 1. A Signal Interference Letter
- 2. For new Towers and attachments to buildings, an inventory of Existing Sites
- 3. A stamped report by a state of Colorado registered professional engineer, or a verified statement from a qualified radio frequency engineer, demonstrating or assuring that the site will be in full compliance with federal radio-frequency emissions standards for wireless facilities; and
- 4. A stamped plan or report by a state of Colorado registered professional engineer indicating the structure is structurally sound to support the WCF.
- 5. For all sites except Small Cell Facilities located in the Rights-of-Way, a site plan map prepared in accordance with the Site Plan Map standards as detailed in Chapter 30 of the Berthoud Municipal Code. Applications for Small Cell Facilities located in the Rights-of-Way shall provide a map illustrating the location of the facility.
- 6. A project narrative detailing the criteria found in either the Site Plan or the Special Use Permit standards as detailed in Chapter 30 of the Berthoud Municipal Code, as applicable. The following additional information shall be described/provided:

- a. How the application meets the Design Standards found in this Chapter.
- b. Concealment and Camouflage provisions.
- c. If a freestanding facility is proposed, an analysis of alternatives to a freestanding facility within a one-mile radius of the facility.
- d. 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).
- e. A statement as to whether the facility can be made available for collocation with other wireless users and if so, under what conditions.
- f. Any other information deemed necessary by the Town to determine compliance with this Section.

B. *Additional Submittal Requirements.* In addition to the information required in Subsection 1 above, find the following requirements below:

1. In all zoning districts in which Towers are a use by right, applications shall be reviewed and considered for approval by the Town for conformance to this Section, any specific requirements of the zone district in which the proposed Tower is located and the Town's Wireless Communications Design Standards. In zoning districts where applications are permitted by use by special review, the application process shall follow the use by special review process and approved by the Town Board of Trustees. Such Towers shall be reviewed for conformance to this Section using the use by special review procedures set forth in Chapter 30 of the Municipal Code in conjunction with the applicable sections of this Section. Except in zone districts where Towers are a use by right, all applications for Towers shall demonstrate that other alternative design options such as Base Stations or Alternative Tower Structures are not viable options.
2. In all zoning districts and Planned Unit Developments, each application for a Base Station, Alternative Tower Structure, or Alternative Tower Structure proposed for location within Right-of-Way shall be reviewed and considered for approval by the Town for conformance to this Section and any specific requirements of the zone district in which the proposed Site is located. Except for WCFs in the Right-of-Way that meet all requirements of this Section or Eligible Facilities Requests, the Town may refer the application to Planning Commission for approval if the Town finds the proposed WCF to have a significant visual impact (e.g., proximity to historic or designated view corridors, or on significant community features) or otherwise is substantially incompatible with the structure on which the WCF will be installed, or it does not meet the clear intent of this Section.

C. *Criteria for approval.* The Community Development Director, or their designee, shall determine if the applicant has demonstrated that the proposed WCF meets the following standards, as applicable:

1. Application materials are complete.
2. The proposed land use will satisfy all applicable provisions of the zoning code, overlay districts, and subdivision regulations unless a variance is being concurrently requested.
3. The proposed land use will conform with or further the goals, policies and strategies set forth in the Town of Berthoud Comprehensive Plan.
4. The proposed land 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.
5. The proposed land 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.
6. The proposed land 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.

7. Potential negative impacts of the proposed land use on the rest of the neighborhood or of the neighborhood on the proposed land use have been mitigated through setbacks, architecture, screening, 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.
8. The applicant has submitted evidence that all applicable local, state and federal permits have been or will be obtained.
9. The application addresses camouflage of the facilities from public view as appropriate.
  10. The Signal Interference Letter is found to be satisfactory to the Town.
  11. The radio frequency report is found to be satisfactory to the Town.
  12. The structures proposed are found to be satisfactory to the Town.
13. If accessory structures are proposed, the application provides information regarding accessory structures that meet the intent of the Accessory Structures standards of this Section and Chapter 30 of the Municipal Code.
14. Compliance with mitigation co-location standards and requirements established by this Section and Chapter 30 of the Municipal Code.

D. *Timeframes for Review.* All WCFs, other than those specified below shall be reviewed according to the following timeframes:

1. Review of an application to collocate a facility on an Existing Tower or Base Station: 90 days.
2. Review of an application to deploy a Small Cell Facility on a new structure: 90 days.
3. Review of an application to deploy a WCF other than a Small Cell Facility on a new structure: 150 days.
4. Review of an application for a new Tower, Base Station, or Alternative Tower Structure: 150 days.
5. Tolling the Timeframe for Review. Except for WCFs specified below in subsections ~~(F) (G) (i), (ii), and (iii)~~, the relevant review timeframe begins to run when the application is filed with the Town, and may be tolled only by mutual agreement or where the Town determines that an application is incomplete.
6. To toll the timeframe for incompleteness, the Town shall provide written notice to the applicant within thirty (30) calendar days of receipt of the application, specifically delineating all missing documents or information required in the application;
7. Upon providing the notice of incompleteness to the applicant, the timeframe for review pauses. The timeframe for review begins running again when the applicant makes a supplemental written submission in response to the Town's notice of incompleteness; and
  - ii. Following a supplemental submission, the Town will notify the applicant within ten (10) business days whether the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in subparagraph b of this subsection. In the case of a second or subsequent notice of incompleteness, the Town may not specify missing documents or information that were not delineated in the original notice of incompleteness.
8. The Town may also toll the timeframe for review if Town staff determines, based on its available resources, that it cannot reasonably and adequately review the collocation application or siting application as well as a previously submitted land use application related to housing intended to provide affordable or attainable housing, renewable energy, projects of governmental entities, or any other project. This period of tolling will only occur once and will

not be longer than forty-five (45) days. The Town will notify the applicant in writing within thirty (30) days after submission of the collocation application or siting application of the duration of the period of tolling and the reason for its determination.

**E. *Specific Review Procedures for Collocating Small Cell Facilities on Existing Towers or Base Stations.*** Within ten (10) business days of receipt of an application for a Small Cell Facility, the Town shall provide written comments to the applicant determining completeness of the application and setting forth any modifications required to complete the application to bring the proposal into full compliance with the requirements of this subsection.

1. To toll the timeframe for incompleteness, the Town must provide written notice to the applicant within ten (10) business days of receipt of the application, specifically delineating all missing documents or information required in the application.
2. The timeframe for review resets to zero (0) when the applicant makes a supplemental written submission in response to the Town's notice of incompleteness.
3. Following a supplemental submission, the Town will notify the applicant within ten (10) business days whether the supplemental submission provided the information identified in the original notice delineating missing information. If the application remains incomplete, the timeframe is tolled pursuant to the procedures identified in subparagraphs (1) and (2) of this paragraph. In the case of a second or subsequent notice of incompleteness, the Town may not specify missing information or documents that were not delineated in the original notice of incompleteness.

**F. *Specific Review Procedures for Eligible Facilities Requests.***

1. Application. Eligible Facilities Requests for Collocation on or modification of an Existing Tower or Base Station shall be considered a use by right subject to administrative review and determination by the Town. The Town shall prepare, and from time to time revise and make publicly available, an application form which shall be limited to the information necessary for the Town to consider whether an application for Collocation or modification is an Eligible Facilities Request. Such information may include, without limitation, whether the project:
  - a. results in a Substantial Change to the physical dimensions of the Site; or
  - b. violates a generally applicable law, regulation, or other rule reasonably related to public health and safety.

The application may not require an applicant to demonstrate a need or business case for the proposed modification or Collocation.

2. Time frame for EFR review. Subject to the tolling provisions below, an application for an Eligible Facility Request shall be approved within sixty (60) days of the date of the request unless the Town determines that it does not qualify as an Eligible Facilities Request. Upon receipt of an application for an Eligible Facility Request pursuant to this subsection, the Town shall review such application to determine whether the application so qualifies.

a. Tolling the Timeframe for EFR Review.

- i. The sixty (60) calendar day review period begins to run when the application is filed with the Town, and may be tolled only by mutual agreement or where the Town determines that an application is incomplete:

- ii To toll the timeframe for incompleteness, the Town must provide written notice to the applicant within thirty (30) calendar days of receipt of the application, specifically delineating all missing documents or information required in the application;
    - iii. Upon notice of incompleteness to the applicant, the timeframe for review pauses. The timeframe for review begins running again when the applicant makes a supplemental written submission in response to the Town's notice of incompleteness; and
- 3. Following a supplemental submission, the Town will notify the applicant within ten (10) business days whether the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in subparagraphs (i) and (ii) of this subsection. In the case of a second or subsequent notice of incompleteness, the Town may not specify missing documents or information that were not delineated in the original notice of incompleteness.
  - a. If the Town fails to approve or deny an Eligible Facility Request within the time frame for review (accounting for any tolling), the request shall be deemed granted; provided that this approval shall become effective only upon the Town's receipt of written notification from the applicant after the review period has expired (accounting for any tolling) indicating that the application has been deemed granted.
  - b. Interaction with Telecommunications Act 47 U.S.C. Section 332(c)(7). If the Town determines that the applicant's request is not an Eligible Facilities Request, the applicant shall be advised as to the relevant provisions of the Town Code that govern the process to consider the request, and whether the Town Code requires any additional information to be submitted in order for the request to be considered complete. If the applicant subsequently indicates an intent for the proposal to be considered under the relevant section of the Town Code and submits all required information, the presumptively reasonable timeframe under 47 U.S.C. Section 332(c)(7), as set forth in applicable federal and state law will begin to run from submittal of the required information under the applicable provision of the Town Code.
- 4. **Decision.** Any decision to approve, approve with conditions, or deny an application for a WCF shall be in writing, supported by substantial evidence in a written record, and shall be provided to the Applicant within ten (10) days of the decision. If the approval is for a concealed WCF, the written decision shall specifically identify that the WCF is a concealed facility.
- 5. **Compliance with Applicable Law.** Notwithstanding the approval of an application for collocation as described herein, all work done pursuant to WCF applications must be completed in accordance with all applicable building and safety requirements as set forth in the Town Code, and any other applicable regulations. In addition, all WCF applications shall comply with the following:
  - a. Comply with any permit or license issued by a local, state, or federal agency with jurisdiction of the WCF;
  - b. Comply with easements, covenants, conditions and/or restrictions on or applicable to the underlying real property;
  - c. Be maintained in good working condition and to the standards established at the time of application approval or as otherwise required by applicable law; and
  - d. Remain free from trash, debris, litter, graffiti, and other forms of vandalism. Any damage shall be repaired as soon as practicable, and in no instance more than ten (10) days from

the time of notification by the Town or after discovery by the owner or operator of the Site.

6. ***Compliance Report.*** Upon request by the Town, the Applicant shall provide a compliance report within forty-five (45) days after installation of a WCF, demonstrating that as installed and in operation, the WCF complies with all conditions of approval, applicable Town requirements and standard regulations.

30-16-107     **Standards for Approval.** No WCF, including Related Accessory Equipment, shall be approved unless it meets the following approval criteria:

- A. Visual impacts are minimized and view corridors are protected to the greatest extent feasible.
- B. Unless a Tower site, or otherwise waived pursuant to this Section, the WCF utilizes Concealment Design Techniques to avoid adverse impacts on the surrounding area, by ensuring that the facility looks like something other than a Tower or Base Station;
  - a. The WCF meets the applicable design standards for the type of WCF in accordance with Section V, Design Standards; and
  - b. The WCF is and will be operated at all times in accordance with Section IV.