City of Fruita
Municipal Code

Updated through SEPTEMBER 30, 2016

FRUITA MUNICIPAL CODE
SEPTEMBER 30, 2016

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TITLE 1

GENERAL PROVISIONS

Chapters:

1.01 Code Adoption
1.04 General Provisions
1.08 City Seal
1.12 Ordinances
1.16 Precincts
1.20 Criminal Proceedings
1.24 Right of Entry for Inspection
1.28 General Penalty

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Chapter 1.01

CODE ADOPTION

Sections:

1.01.010 Generally
1.01.040 Repeal of prior ordinances
1.01.050 Matters not affected by repeal of ordinances
1.01.060 Ordinances saved from repeal
1.01.070 Title, Chapter and Section headings Non-applicable
1.01.080 Reference to specific ordinances
1.01.090 Codes kept on file
1.01.100 Ordinances passed prior to adoption of the code
1.01.110 Sale of code copies

1.01.010 GENERALLY. The Fruita Municipal Code as promulgated by the City of Fruita, Colorado, is adopted and enacted by reference. The purpose of this code is to codify the ordinances of the City which are of a general and permanent nature. The subject matter of this code includes provisions concerning the application and interpretation of the code, the administration and organization of the city, animals, buildings, abandoned automobiles, peddlers, finances, streets, nuisances, traffic, offenses, civil defense, elections and zoning. (Ord. 339, S1 (a), 1976)

1.01.040 REPEAL OF PRIOR ORDINANCES. All ordinances of the city, of a general and permanent nature which were finally adopted on or before May 12, 1975, whether or not in legal effect at that date are repealed, except as hereinafter provided, and except as the Fruita Municipal Code expressly saves any ordinance or part thereof from repeal. If any section, subsection, sentence, clause or phrase of this code or ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions. The Council declares that it would have passed this code and ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional. If for any reason this code should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect. (Ord. 339, S5, 1976)

1.01.050 MATTERS NOT AFFECTED BY REPEAL OF ORDINANCES. The repeal of ordinances and parts of ordinances of a permanent or general nature by Section 1.01.040 of this chapter shall not affect any offense committed or act done, any penalty or forfeiture incurred or any contract, right or obligation established prior to the time when the ordinances and parts of ordinances are repealed. (Ord. 339, S6, 1976)

1.01.060 ORDINANCES SAVED FROM REPEAL. The repeal of ordinances of a general and permanent nature by Section 1.01.040 of this chapter shall not repeal any ordinance or part thereof saved from specific repeal by the Fruita municipal Code; nor shall such repeal affect any ordinance:

A. Promising, guaranteeing or authorizing the payment of money by or for the city;

B. Authorizing or relating to specific issuances of bonds or other evidences of indebtedness;

C. Granting a franchise;

D. Establishing the compensation of city officers or employees;

E. Levying taxes, making appropriations or adopting a budget;

F. Creating specific local improvement districts;

G. Making special assessments for local improvements;

H. Vacating, accepting, establishing, locating, relocating or opening any street or public way;

I. Affecting the corporate limits of the city;

J. Which is of a special or temporary nature;

K. Dedicating or accepting any plat or subdivision.

(Ord. 339, S7, 1976)

1.01.070 TITLE, CHAPTER AND SECTION HEADINGS, NON-APPLICABLE. Title, chapter and section headings contained in this code shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any title, chapter or section thereof. (Ord. 339, S8, 1976)

1.01.080 REFERENCE TO SPECIFIC ORDINANCES The provisions of this code shall not in any manner affect matters of record which refer to, or are otherwise connected with ordinances which are therein specifically designated by number or otherwise and which are included within the code, but such reference shall be construed to apply to the corresponding provisions contained within the code. (Ord. 339, S9, 1976)

1.01.090 CODES KEPT ON FILE.

A. At least three copies of the Fruita Municipal Code, and of each secondary code adopted therein, all certified by the mayor and the city clerk to be true copies of such codes as they were adopted by the ordinance codified in this chapter, shall be kept on file in the office of the city clerk available for public inspection. One copy of each such code may be kept in the office of the chief enforcement officer thereof.

B. The city clerk shall prepare and publish revised sheets of every loose leaf page in need of revision by reason of amendment, addition or repeal. The city clerk shall distribute the revised loose leaf sheets for such fee as the City Council may direct.

C. In addition to those copies of this code specified in subsection A of this section, a copy of this code shall be kept on file in the office of the city clerk in which it shall be the express duty of the city clerk to insert in their designated places all amendments or ordinances which are intended to become a part of the Fruita Municipal Code, when the same have been printed or reprinted in page form, and to extract from such code all provisions which may from time to time be repealed. This copy of the Fruita Municipal Code shall be available to all persons desiring to examine it and shall be considered the official Fruita Municipal Code.

(Ord. 339, S10, 1976)

1.01.100 ORDINANCES PASSED PRIOR TO ADOPTION OF THE CODE. The last ordinance included in the original code is Ordinance 328, passed May 12, 1975. The following ordinances, passed subsequent to Ordinance 328, but prior to adoption of this code, are adopted and made a part of this code: Ordinances 329 through 337 inclusive. (Ord. 339, S11, 1976)

1.01.110 SALE OF CODE COPIES. The city clerk shall maintain a reasonable supply of copies of this code and of all secondary codes incorporated in it by reference, to be available for purchase by the public at a moderate price. (Ord. 339, S12, 1976)

Chapter 1.04

GENERAL PROVISIONS

Sections:

1.04.010 Definitions
1.04.020 Grammatical interpretation
1.04.030 Prohibited acts include causing or permitting
1.04.040 Construction of provisions
1.04.050 Repeal not to revive any ordinances

1.04.010 DEFINITIONS. The following words and phrases whenever used in the ordinances of the city of Fruita, Colorado, shall be construed as defined in this section unless from the context a different meaning is intended or unless different meaning is specifically defined and more particularly directed to the use of such words or phrases.

A. "City" means the city of Fruita, Colorado, or the area within the territorial limits of the city of Fruita, Colorado, and such territory outside of the city over which the city has jurisdiction or control by virtue of any constitutional or statutory provision.

B. "Computation of time" means the time within which an act is to be done. It shall be computed by excluding the first day and including the last day; and if the last day be Sunday or a legal holiday, that day shall be excluded.

C. "Council" means the City Council of the City of Fruita. "All of its members" or "all councilmen" means the total number of councilmen provided by the general laws of the state of Colorado.

D. "County" means the county of Mesa, Colorado.

E. "Law" denotes applicable federal law, the Constitution and statutes of the state of Colorado, the ordinances of the county and city, and when appropriate, any and all rules and regulations which may be promulgated thereunder.

F. "May" is permissive.

G. "Month" means a calendar month.

H. "Must" and "shall": Are mandatory.

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

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

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

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

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

N. "Preceding" and "following" mean next before and next after, respectively.

O. "Property" includes real and personal property.

P. "Real property" includes lands, tenements and hereditaments.

Q. "Sidewalk" means that portion of a street between the curb line and the adjacent property line intended for the use of pedestrians.

R. "State" means the state of Colorado.

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

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

U. Title of office: Use of the title of any officer, employee, board or commission means that officer, employee, department, board or commission of the city.

V. "Written" includes printed, typewritten, mimeo-graphed or multi-graphed.

W. "Year" means a calendar year.

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

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

(Ord. 323, S1, 1975; Ord. 2010-05, S1)

1.04.020 GRAMMATICAL INTERPRETATION. The following grammatical rules shall apply in the ordinances of the city:

A. Gender: The masculine gender includes the feminine and neuter genders;

B. Singular and plural: The singular number includes the plural and the plural includes the singular;

C. Tenses: Words used in the present tense include the past and the future tenses and vice versa, unless manifestly inapplicable;

D. Use of words and phrases: Words and phrases not specifically defined shall be construed according to the context and approved usage of the language.

(Ord. 323, S2, 1975)

1.04.030 PROHIBITED ACTS INCLUDE CAUSING OR PERMITTING. Whenever in the ordinances of the city any act or omission is made unlawful, it shall include causing, allowing, permitting, aiding, abetting, suffering, or concealing the fact of such act or omission. (Ord. 323, S3, 1975)

1.04.040 CONSTRUCTION OF PROVISIONS. The provisions of the ordinances of the city, and all proceedings under them, are to be construed with a view to affect their objects and to promote justice. (Ord. 323, S4, 1975)

1.04.050 REPEAL NOT TO REVIVE ANY ORDINANCES. The repeal of an ordinance shall not repeal the repealing clause of such ordinance or revive any ordinance which has been repealed thereby. (Ord. 323, S5, 1975)

Chapter 1.08

CITY SEAL

Sections:

1.08.010 Described
1.08.020 Authority of attestations

1.08.010 DESCRIBED. A seal the impression of which is as follows: In the center the word "Seal" and around the outer edge the words "City of Fruita, Colorado," shall be and is established and declared to be the seal of the city. Said seal shall be of circular shape. (Ord. 13, S1, 1895)

1.08.020 AUTHORITY OF ATTESTATIONS. All attestations made to papers issued under the authority of and attested by the seal of the city prior to the date of the passage of this ordinance, the impression of which seal is as described in the foregoing section, are declared to have been and now to be the attestations of the seal of the city. (Ord. 13, S2, 1895)

Chapter 1.12

ORDINANCES

Sections:

1.12.010 Numbering requirements
1.12.020 Method for reenacting
1.12.030 Ordinances approved by mayor

1.12.010 NUMBERING REQUIREMENTS. All ordinances passed by the city council shall be numbered consecutively on a yearly basis, so that each ordinance will be designated first by the year in which it was enacted, and then the consecutive ordinance number for that year. Separate volumes shall be kept by year for the ordinances enacted within that year. (Ord. 1982-80, S5, 1982)

1.12.020 METHOD FOR REENACTING. No ordinance shall be revived or reenacted by mere reference to the title or number thereof, but the same shall be set forth at length as if it were an original ordinance. (Ord. 10, S6, 1895)

1.12.030 ORDINANCES APPROVED BY MAYOR. Any ordinance adopted, and all resolutions authorizing the expenditure of money or the entering into of a contract, require the approval and signature of the mayor before they become valid, except as otherwise provided in this section. Such ordinance or resolution shall be presented to the mayor within forty-eight hours after the action of the governing body for his signature approving the same. If he disapproves, he shall return such ordinance or resolution to the governing body at its next regular meeting with his objections in writing. The governing body shall cause such objections to be entered at large upon the record and shall proceed at the same or next subsequent meeting to consider the question: "Shall the ordinance or resolution, notwithstanding the mayor's objections, be passed?" If two-thirds of the members elected to the governing body vote in the affirmative, such resolution shall be valid, and such ordinance shall become law the same as if it had been approved by the mayor. If the mayor fails to return to the next subsequent meeting of the governing body any resolution or ordinance presented to him for his approval, the same shall become a valid ordinance or resolution, as the case may be, in like manner as if it had been approved by him. (Ord. 522, S4, 1981)

Chapter 1.16

PRECINCTS

Sections:

1.16.010 Precinct established, Elections conducted where
1.16.020 Elections, Voting machines to be used

1.16.010 PRECINCT ESTABLISHED-ELECTIONS CONDUCTED WHERE. The incorporated area of the city shall consist of one precinct, precinct no. 1, and all elections shall be conducted at the City Hall. (Ord. 258, S1, 1971)

1.16.020 ELECTIONS--VOTING MACHINES TO BE USED. In all municipal elections conducted after February 8, 1971, voting machines will be used. (Ord. 258, S2, 1971)

Chapter 1.20

CRIMINAL PROCEEDINGS

Sections:

1.20.010 Jury trial permitted when, Procedures, Payment of jurors

1.20.010 JURY TRIAL PERMITTED WHEN, PROCEDURES, PAYMENT OF JURORS. In any action before the municipal court in which the defendant is entitled to a jury trial by the Constitution or the general laws of the state, such party shall have a jury upon request. The jury shall consist of three jurors unless, a greater number, not to exceed six, is requested by the defendant. The jury shall be summoned pursuant to procedures established by Administrative Order issued by the Municipal Court Judge. Jurors shall be paid the sum of six dollars per day for actual jury service and three dollars for each day of service on the jury panel alone unless otherwise set by resolution of the City Council. (Ord. 313, S3 (c), 1974; Ord. 246, S12, 1969; Ord. 2010-05, S2)

Chapter 1.24

RIGHT OF ENTRY FOR INSPECTION

Sections:

1.24.010 Applicability - Procedure required

1.24.010 APPLICABILITY--PROCEDURE REQUIRED. Whenever necessary to make an inspection to enforce any ordinance or resolution, or whenever there is reasonable cause to believe there exists an ordinance or resolution violation in any building or upon any premises within the jurisdiction of the city, any authorized official of the city may, upon presentation of proper credentials, enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon him by ordinance; provided, that except in emergency situation or when consent of the owner and/or occupant to the inspection has been otherwise obtained, each shall give the owner and/or occupant, if they can be located after reasonable effort, twenty-four hours written notice of the authorized official's intention to inspect. The notice transmitted to the owner and/or occupant shall state that the property owner has the right to refuse entry, and that in the event such entry is refused, inspection may be made only upon issuance of a search warrant from the Fruita Municipal Court pursuant to rule 241(B) (2) of the Colorado Municipal Court rules of procedure in order to conduct the inspection. In the event the owner and/or occupant refuses entry after such request has been made, the official is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry. (Ord. 308, S1, 1974; Ord. 2002-16, S1)

Chapter 1.28

GENERAL PENALTY

Sections:

1.28.010 Municipal judge powers
1.28.020 Penalty designated
1.28.030 Injunctions

1.28.010 MUNICIPAL JUDGE POWERS. In sentencing or fining a violator, the municipal judge shall not exceed the sentence or fine limitations established by ordinance. The municipal judge may suspend the sentence or fine of any violator and place him on probation for a period not to exceed one year. The Municipal Judge shall be empowered in his discretion to assess costs against any defendant. Said costs shall be established by resolution of the Fruita City Council and may be amended from time to time. (Ord. 246, S11, 1969; Ord. 1986-13, S4; Ord. 1994-1, S1; Ord. 2010-05, S3)

1.28.020 PENALTIES FOR MUNICIPAL VIOLATIONS DESIGNATED.

A. Unless otherwise specifically provided, any person violating any of the provisions of this Code by performing an act prohibited or declared to be unlawful by this Code or failing to comply with or perform an act required by the mandatory requirements of this Code, or valid orders issued pursuant thereto, shall be deemed guilty of a municipal offense. All such offenses are divided into three (3) categories of municipal offenses. The three (3) classifications, and maximum penalties, for each classification are as follows:

CLASS	MAXIMUM FINE	MAXIMUM IMPRISONMENT
A	$1,000.00	1 Year
B	$1,000.00	6 Months
Non-criminal	$1,000.00	None

If any offense carries a specific penalty, then that penalty shall apply. Any offense not otherwise classified which does not carry a specific penalty is hereby denominated as a Class B municipal offense.

B. For the purposes of this Section, a “minor offender” shall be defined as any person accused of an offense contrary to this Code who, on the date of the alleged offense, was at least 10 years of age, but had not yet attained the age of 18 years. Except as to alleged violations of the Model Traffic Code, as adopted by reference by the City of Fruita, any minor offender convicted of a violation of this Code, or any rule or regulation promulgated thereunder, shall be punished by a fine only as set forth above. Notwithstanding any provision in this Code to the contrary, a minor offender shall not be subject to imprisonment, except as herein provided. As to minor offenders alleged to have violated any provision of the Model Traffic Code, as adopted by reference by the

City of Fruita, such persons shall, upon conviction, remain subject to the penalties set forth above as to any violation of the Model Traffic Code.

C. Nothing contained herein shall be construed to abrogate, abolish or otherwise limit the power of the Municipal Court to punish any person for contempt of court, whether by failure to obey a summons, subpoena, or other lawful order of the court, or by personal conduct before the court. Any person found guilty of such contempt, whether a minor offender or adult, shall be punished as provided in this Code, or as permitted by State law.

D. Each person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Code is committed, continued or permitted by any such person, and he shall be punished accordingly.

E. Any person who fails to appear in the Municipal Court of the City, pursuant to a summons and complaint issued in compliance with law shall be guilty of the separate municipal offense of "failure to appear," and upon conviction of such offense shall be punished accordingly for violation of a Class A municipal offense.

(Ord. 309; 398; 1989-15, S1; Ord. 1994-11, S1; Ord. 2000-09, S1; Ord. 2010-05, S4 (A); Ord. 2010-05, S5 (E))

1.28.030 INJUNCTIONS. The City may, at its discretion, proceed against any violation or violator of ordinances by abatement, injunction or other appropriate civil action, which remedies shall be cumulative to the penalties herein provided. (Ord. 309, S2, 1974)

TITLE 2

ADMINISTRATION AND PERSONNEL

Chapters:

2.10 City Council and Mayor
2.15 Officers and Employees
2.19 Elections
2.20 City Departments
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2.60 Rules Governing Administrative Proceedings
2.65 Disposition of Unclaimed Property
2.70 Code of Ethics for City Officials

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Chapter 2.10

CITY COUNCIL AND MAYOR

Sections:

2.10.010 Mayor and Council Members
2.10.020 Councilmembers - Terms
2.10.030 Council meetings
2.10.040 Compensation

2.10.010 MAYOR AND COUNCIL MEMBERS. The Mayor and members of the City Council are responsible for policy making for the City. The Mayor and City Council have the powers, duties and responsibilities as noted in Article II and Article III of the Fruita City Charter. They may perform such other duties as may be prescribed by law or ordinance. (Ord. 2015-05, S1-6)

2.10.020 COUNCIL MEMBERS - TERMS. When a vacancy exists in the office of a City Council member, said vacancy shall be filled as set forth in Section 2.04 of the Fruita City Charter. Any Council member appointed to fill a vacancy shall serve until the next regular municipal election. At the next regular election, the three candidates receiving the highest number of votes shall be elected to four year terms and the candidate receiving the next highest number of votes, in descending order, shall be elected to a two year term. (Ord. 2015-05, S1-6)

2.10.030 COUNCIL MEETINGS.

A. The two regular meetings of the City Council shall be held on the first and third Tuesday of each month, at seven p.m., at the Fruita Civic Center.

B. If there is a conflict of such meeting dates with a holiday or other event, the City Council may establish an alternate regular meeting date upon motion and public notice of the changed date. Further, if the City Council shall determine at a regularly scheduled meeting that the next following meeting(s) will not be required because of lack of council matters to be considered, the City Council may, by a majority vote, cancel the next following meeting(s).

(Ord. 2015-05, S1-6)

2.10.040 COMPENSATION. Each member of the City Council shall be compensated for expenses incurred in serving his/her office in the amount of three hundred dollars ($300) per month. The Mayor Pro Tem shall receive an additional fifty dollars ($50) per month. The Mayor shall be compensated in the amount of four hundred seventy five dollars ($475) per month. (Ord. 2015-05, S1-6)

Chapter 2.15

OFFICERS AND EMPLOYEES

Sections:

2.15.010 Appointed Officers
2.15.020 Power and duties of officers
2.15.030 Oath of Office; bond
2.15.040 Compensation
2.15.050 Employee Handbook

2.15.010 APPOINTED OFFICERS. Pursuant to the Fruita City Charter, Article IV, the following officers of the City shall be appointed by a majority vote of all the members of the City Council. Said officers shall hold their respective offices until their successors are duly appointed and qualified. Vacancies shall be filled by appointment of the City Council.

A. City Manager

B. City Attorney

C. Municipal Judge.

(Ord. 2015-05, S7-12)

2.15.020 POWERS AND DUTIES OF OFFICERS.

A. Appointed officers of the City shall have such powers and perform such duties as are now or hereafter may be prescribed by state law, the Fruita City Charter and the ordinances of the City, shall further perform any additional duties required by the City Council, and shall be subject to the control and orders of the City Council.

B. Upon adoption of a resolution by the City Council authorizing an individual City Manager to have the following powers, such City Manager shall have the power and authority to:

1. Execute any agreement on behalf of the City of Fruita that has formally been approved by the City Council;

2. Enter into contracts or agreements on behalf of the City of Fruita for the purchase or provision of services, equipment, or that provides for any expenditure of funds so long as adequate funds for such contracts or agreements have been appropriated by the City Council in its annual budget;

3. Enter into other contracts on behalf of the City of Fruita obligating the City for a period of less than one (1) year; and

4. Execute applications for grant funds and administer grants once received.

(Ord. 2015-05, S7-12)

2.15.030 OATH OF OFFICE, BOND.

A. When required by the City Council, each officer or employee, before entering upon entering upon the duties of his or her office, shall take an oath to support the Constitutions and laws of the United States, the State of Colorado and the odinances of the City.

B. In all cases where, by law, ordinance or resolution of the City Council, a bond is reuqired of any such officer, he or she shall make and execute to the City a bond in such sum as is required, by be approved by the City Council, conditioned upon the faithful performance of all duties pertaining to such office, the proper care of all money or property of the City coming into his or her hands and the proper accounting for or delivery of the same. The City shall pay the premiums for the bonds required of any such officer.

(Ord. 2015-05, S7-12)

2.15.040 COMPENSATION. Compensation for City employees and officers shall be set through a pay plan established as part of the annual budget for the City of Fruita or by terms of an employment contract. (Ord. 2015-05, S7-12)

2.15.050 EMPLOYEE HANDBOOK. Employment with the City is at-will. An employee handbook setting forth a summary of employment policies, guidelines and procedures shall be periodically reviewed, updated and approved by the City Manager. (Ord. 2015-05, S7-12)

Chapter 2.19

ELECTIONS

Sections:

2.19.010 Write-In Candidate Affidavit Required
2.19.020 Election May be Canceled - When

2.19.010 WRITE-IN CANDIDATE AFFIDAVIT REQUIRED. No write-in vote for any municipal office shall be counted unless an affidavit of intent has been filed with the City Clerk by the person whose name is written in prior to twenty days before the day of the day of the election indicating that such person desires the office and is qualified to assume the duties of that office if elected. (Ord. 1995-12, S1, 1995)

2.19.020. ELECTION MAY BE CANCELED - WHEN. If the only matter before the voters is the election of persons to office and if, at the close of business on the nineteenth day before the election, there are not more candidates than offices to be filled at such election, including candidates who have filed affidavits of intent as required by Section 2.19.010 of this code, the City Clerk shall certify such fact to the City Council, and it shall hold a meeting and may cancel the election and by resolution declare the candidates elected and, as permitted by C.R.S. 31-10-507, said candidates shall be deemed elected. The City Clerk shall publish notice of such cancellation if possible, in order to inform the electors of the City of Fruita, and notice of such cancellation shall be posted at each polling place and in not less than one other public place. (Ord. 1995-12, S2, 1995)

Chapter 2.20

CITY DEPARTMENTS

Sections:

2.20.010 General Provisions
2.20.020 Administration Department
2.20.030 Community Development Department
2.20.040 Human Resources Department
2.20.050 Parks and Recreation Department
2.20.060 Public Safety Department
2.20.070 Public Works Department

2.20.010 GENERAL PROVISIONS. Pursuant to the Fruita City Charter the Fruita City Council may establish or abolish city departments, offices or agencies and may prescribe the functions of all departments, offices and agencies. All Departments and Department Heads are under the management of the City Manager. (Ord. 2015-05, S13-15)

2.20.020 ADMINISTRATION DEPARTMENT. The Administration Department is responsible for the oversight of the financial and record keeping duties of the City. The Finance Director is responsible for oversight of the Department. The Administration Department includes accounting functions, budget development and monitoring, cash investments and cash management, record keeping and recording of official city actions, conduct of elections and other duties and responsibilities as may be prescribed. The Finance Director shall give a performance bond in the amount of $10,000 to the City for the faithful performance of his duties, and for the faithful accounting for and payment of all funds deposited with the City. (Ord. 2015-05, S13-15)

2.20.030 COMMUNITY DEVELOPMENT DEPARTMENT.

A. The Community Development Department is responsible for the oversight of current and long range planning and zoning including implementation and enforcement of Title 17, Land Use Code; Title 15, Building and Construction; and other duties and responsibilities as may be prescribed. The Community Development Director is responsible for oversight of the Department.

B. The position of Code Enforcement Officer shall be under the administration and operational control of the Community Development Director. Such Code Enforcement Officer shall have the power, together with the Community Development Director and the City Attorney, to enforce all terms and provisions contained in Title 17 of the Fruita Municipal Code concerning Land Use and Development, as well as the terms and conditions of any permits or other land use approvals granted pursuant to Title 17. Such Code Enforcement Officer shall also have the authority, together with the City Attorney and members of the Fruita Police Department, to enforce provisions contained in Title 6 concerning Animals, Title 8 concerning Health and Safety, Title 9 concerning Public Peace, Morals and Welfare, Title 10 concerning Vehicles and Traffic, Title 12 concerning Public Improvements and Title 15 concerning Building and Construction, as well as other provisions of the Fruita Municipal Code as may be determined from time to time by the City Council. The Code Enforcement Officer shall have the authority to issue notices of

violation, compliance orders, and may issue citations or summons and complaints in the Fruita Municipal Court. Provided, however, such Code Enforcement Officer need not be a "peace officer" as defined by Title 18, C.R.S., and if the Code Enforcement Officer is not a "peace officer," shall not be permitted to carry a firearm or conduct arrests.

C. The Building Inspector shall perform all required inspections within the City pursuant to Title 15, Building and Construction. The Building Inspector may be an employee of the City or may be a person or entity under contract with the City to perform building inspections within the City.

(Ord. 2015-05, S13-15)

2.20.040 HUMAN RESOURCES DEPARTMENT. The Human Resources Department is responsible for the administration and management of personnel including recruitment, retention, termination, record keeping, development of compensation and fringe benefit plans, and other duties and responsibilities as may be prescribed. The Human Resource Director is responsible for oversight of the Department. (Ord. 2015-05, S13-15)

2.20.050 PARKS AND RECREATION DEPARTMENT. The Parks and Recreation Department is responsible for administration, management, maintenance and operations of the City's parks, open space, trails, recreational programs, Community Center operations, and other duties and responsibilities as may be prescribed. The Parks and Recreation Director is responsible for oversight of the Department. (Ord. 2015-05, S13-15)

2.20.060 PUBLIC SAFETY DEPARTMENT. The Public Safety Department (also referred to as Police Department) is responsible for the enforcement of the rules and and regulations of the State of Colorado and City of Fruita, the protection of the peace, safety and welfare of the public, and other duties and responsibilities as may be prescribed. The Chief of Police is responsible for oversight of the Department. The Police Department shall be operated and managed in accordance with such departmental Policies and Procedures, and Standard Operating Directives as established by the Chief of Police. (Ord. 2015-05, S13-15)

2.20.070 PUBLIC WORKS DEPARTMENT.

A. The Public Works Department is responsible for the operations and maintenance of the public rights of way, buildings, sewer and irrigation utilities, mountain water system, fleet, engineering and design services and other duties and responsibilities as may be prescribed. The Public Works Director is responsible for oversight of the Department.

B. The City Engineer shall serve as Traffic Engineer for the City.

(Ord. 2015-05, S13-15)

2.28.200 ADDITIONAL FEES AND COSTS. The following fees and costs, if applicable, shall be paid to the City in all Municipal Court proceedings. The amounts of the fees and costs shall be established by annual resolution of the Fruita City Council. When judgment is entered against a defendant, all fees and costs shall be included as part of the judgment, unless otherwise provided in this Chapter. Costs shall be paid by the City when a defendant is acquitted, when

charges are dismissed against a defendant, or when a defendant is convicted and the Court determines he is unable to pay them, unless otherwise provided herein.

If any private person complainant, in any action before the Municipal Court, requests dismissal of the prosecution of said action, or willfully absences himself from trial or fails to appear at trial after being subpoenaed, and said action is dismissed, the Court shall give judgment against said private person complainant for all applicable fees and costs. In addition, if charges against an accused pursuant to a private person complaint are dismissed, and it appears to the Court there were no reasonable grounds for the complaint, or that it was maliciously made, the Court shall give judgment against said complainant for all applicable fees and costs.

A. Docket Fee. In all proceedings before the Municipal Court, a docket fee shall be charged, which shall be payable by the defendant upon his conviction. Said docket fee shall also be charged in the event a defendant is granted a deferred judgment and sentence or a deferred prosecution. A separate docket fee shall be charged upon the filing of a complaint alleging violation of probation or a deferred sentence and judgment.

B. Jury Fee. At the time he demands a jury trial, a defendant shall pay a jury fee to the Clerk of the Court, unless the fee is waived by the judge because of the indigence of the Defendant. If the action is dismissed or the defendant is acquitted of the charge, or if the defendant, having paid the jury fee, files with the Court at least ten (10) days before the scheduled trial date a written waiver of jury trial, the jury fee shall be refunded. A defendant who fails to file with the Municipal Court the written jury demand together with the jury fee as provided above waives the right to a jury trial.

C. Witness Fee. A witness fee in for each witness shall be assessed for each witness testifying in a trial. Said fee shall be paid by the defendant upon his conviction.

Witnesses shall receive the witness fee for testifying before the Municipal Court, provided, however, witnesses called to testify only to an opinion founded on a special study or experience in any branch of science or to make scientific or professional examinations and state the results thereof, shall receive additional compensation, to be fixed by the Court, with reference to the value of the time employed and the degree of learning or skill required. Said fees fixed by the Court shall be assessed against the defendant upon his conviction and paid to such witnesses.

Any witness fee collected by the Court Clerk shall be paid to the person entitled to the witness fee, if claimed by such person. Any witness fee collected, but not claimed by a witness within thirty (30) days, shall be paid by the Clerk of the Court to the City Treasurer. All unclaimed witness fees shall become the property of the City and shall not be refunded. If a fee claimed by a witness has not previously been collected by the Court Clerk, the City shall pay the witness claimant if said claim was submitted in a timely manner.

D. Juror Fees. For attending Municipal Court, jurors shall receive a daily fee while actually engaged on the jury and an attendance fee for attendance on the panel alone. Said fee shall be paid by the City.

E. Mileage Fees. All witnesses and jurors shall receive a mileage fee for each mile actually and necessarily traveled in going from his place of residence to the Municipal Court; provided, however, no witness shall receive mileage fees unless such witness claims the same before the adjournment of the Court. Mileage fees shall be paid by the City. This subsection shall not apply to an officer of the Court who attends in his official capacity, including clerks, sheriffs, bailiffs and police officers.

F. Deferred Judgment and Sentence, Deferred Prosecution, or Probation Fee. In all actions in which a defendant is granted a deferred judgment and sentence, or a deferred prosecution, or in all actions in which the Court orders that the defendant be placed on probation, the defendant shall be assessed a fee to defray the costs of preparing the applicable Court documents and to monitor compliance. Such fee shall be in addition the applicable docket fee. Nothing contained in this Chapter shall prevent the Court from assessing additional fees if a human services agency, mental health professional or similar professional is utilized by the Court to supervise the Defendant's compliance with the terms of the deferred judgment, deferred prosecution, or probation.

G. Bench Warrant Fee. In all actions in which a bench warrant is issued for the arrest of a defendant for failure to appear or failure to pay fines and costs as ordered by the Court, the Court shall assess against said defendant a fee in addition to all other fees and costs due and owing.

H. Incarceration Fee. In all actions in which a defendant is sentenced to incarceration in the county jail, the Court may assess against said defendant an incarceration fee in an amount equal to the sum charged to the City by Mesa County for such incarceration.

I. Misdemeanor Fee. In all proceedings before the Municipal Court for Class A or Class B criminal offenses, a misdemeanor fee shall be assessed to defendants which shall be payable by the defendant upon his conviction. Said misdemeanor fee shall also be charged in the event a defendant is granted a deferred judgment and sentence or a deferred prosecution.

The purpose of the Misdemeanor Fee is to accumulate funds to offset costs associated with a defendant's right to counsel in plea negotiations for misdemeanors and lesser offenses. Funds collected through the imposition of the misdemeanor fee shall be accounted for separately and used to offset the City's costs to provide counsel.

Chapter 2.28

MUNICIPAL COURT

Sections:

2.28.010 Municipal Court Established
2.28.020 Qualified Court of Record
2.28.030 Jurisdiction
2.28.040 Sessions
2.28.050 Practice and Procedure
2.28.060 Municipal Judges, Appointment; Qualifications
2.28.070 Municipal Judges - Removal from Office
2.28.080 Municipal Judges - Compensation
2.28.090 Municipal Judges - Oath
2.28.100 Municipal Judges - Powers
2.28.110 Court Clerk - Position Established
2.28.120 Court Clerk - Appointment
2.28.130 Court Clerk - Duties
2.28.140 Court Clerk - Compensation
2.28.150 Court Clerk - Bond
2.28.160 Court Facilities and Supplies; Appropriations
2.28.170 Penalty Assessments - Procedure
2.28.180 Penalty Assessment Schedule for Criminal Offenses
2.28.190 Noncriminal Municipal Offenses Procedure
2.28.200 Additional Fees and Costs
2.28.210 Witness Immunity

2.28.010 MUNICIPAL COURT ESTABLISHED. In order to provide a simple and expeditious method for the prosecution of alleged violations of City ordinances and the City Charter, but one which guarantees to the defendant a method of exercising his constitutional rights, the City Council hereby establishes a Municipal Court for the City of Fruita, Colorado. (Ord. 2000-08, S1)

2.28.020 QUALIFIED COURT OF RECORD. Whenever a judge of the Municipal Court of Fruita has been admitted to, and is currently licensed in the practice of law in Colorado, the Municipal Court shall keep a verbatim record of the proceedings and evidence at trial by either electronic devices or stenographic means, and the Court thus shall be a qualified municipal court of record pursuant to the provisions of State law. (Ord. 2000-08, S1)

2.28.030 JURISDICTION. The Municipal Court shall have original jurisdiction in all cases arising under the Charter and ordinances of the City, with full power to punish violators thereof by the imposition of such fines and penalties as are prescribed by ordinance or court rule, and permitted pursuant to State law. (Ord. 2000-08, S1)

2.28.040 SESSIONS. There shall be regular sessions of the Municipal Court for the trial of cases. The Municipal Judge may hold a special session of court at any time. All sessions of

court shall be open to the public, unless otherwise provided by law or court rule. (Ord. 2000-08, S1)

2.28.050 PRACTICE AND PROCEDURE. The practice and procedure in the Fruita Municipal Court shall be in accordance with the Colorado Municipal Court Rules of Procedure, as promulgated by the Colorado Supreme Court, and applicable statutes of the State of Colorado. The presiding Municipal Judge of the Court shall have authority to issue local rules of procedure consistent with the rules promulgated by the Supreme Court and State law. (Ord. 2000-08, S1)

2.28.060 MUNICIPAL JUDGES -- APPOINTMENT; QUALIFICATIONS. The City Council shall appoint the Municipal Judge, who shall be licensed to practice law in the State of Colorado. The person selected need not be a resident of this City of Fruita, Colorado, and, subject to State law, may hold other judicial offices and may practice law. The Municipal Judge shall serve at the pleasure of the City Council subject to annual review. Any vacancy in the office of the Municipal Judge shall be filled by appointment by the City Council. The City Council may appoint such additional associate municipal judges or assistant judges as may be necessary to act in case of temporary absence, sickness, disqualification, or other inability of the presiding Municipal Judge to act. (Ord. 2000-08, S1)

2.28.070 MUNICIPAL JUDGES-REMOVAL FROM OFFICE. The Municipal Judge or any assistant or associate municipal judge may be removed by a majority of the City Council at any time with or without cause. (Ord. 2000-08, S1)

2.28.080 MUNICIPAL JUDGES-COMPENSATION. The City Council shall provide for the salary of the Municipal Judge. Such salary shall be a fixed annual compensation and payable on a monthly or other periodic basis. Payment of any fees or other compensation based directly on the number of individual cases handled or heard by the Municipal Judge is prohibited. If an assistant or associate municipal judge acts in the absence of the Municipal Judge, the salary may be adjusted so as to compensate the assistant or associate municipal judge. (Ord. 2000-08, S1, Ord. 2016-08, S1)

2.28.090 MUNICIPAL JUDGES-OATH. Before entering upon the duties of his office, the Municipal Judge, or any assistant judge, shall take an oath or affirmation that he will support the Constitution of the United States and the Constitution of the State of Colorado and the Charter and ordinances of the City of Fruita, and that he will faithfully perform the duties of his office. (Ord. 2000-08, S1)

2.28.100 MUNICIPAL JUDGES-POWERS. The presiding Municipal Judge and any assistant or associate municipal judge shall have all judicial powers relating to the operation of the Municipal Court, subject to any rules of procedure governing the operation or conduct of municipal courts promulgated by the Colorado Supreme Court. In sentencing or fining a violator, a judge shall not exceed the sentence or fine limitations established by an applicable ordinance. Except as may otherwise be provided by law, a judge may defer the prosecution or a judgment and sentence of any violator, or suspend the sentence or fine of any violator, and place such violator on probation for a period not to exceed one (1) year. A judge may impose as conditions of such probation any of the conditions set forth in Section 16-11-204, C.R.S., except for subsection (2)(a)(V). In addition, a Municipal Judge shall require restitution as a condition of any probation, as set forth in Section 16-11-204.5, C.R.S.

A judge shall assess the fees and costs set forth in Section 2.28.200 of this Chapter. (Ord. 2000-08, S1)

2.28.110 COURT CLERK-POSITION ESTABLISHED. There is hereby established the position of Municipal Court Clerk. (Ord. 2000-08, S1, Ord. 2016-08, S2)

2.28.120 COURT CLERK-APPOINTMENT. The Municipal Court Clerk shall be appointed and supervised by the City Manager or his designee. Input from the Municipal Judge will be considered in the appointment, supervision and evaluation of the Municipal Court Clerk. (Ord. 2000-08, S1, Ord. 2016-08, S3)

2.28.130 COURT CLERK-DUTIES. The Municipal Court Clerk shall have such duties as are delegated to the Court Clerk by ordinance, court rule, the City Manager or his designee. The Municipal Court Clerk shall file monthly reports with the City Clerk of all fines and costs collected or received by the Municipal Court, and shall submit all such fines and costs to the Finance Director to be deposited in the general fund of the City. (Ord. 2000-08, S1, Ord. 2016-08, S4)

2.28.140 COURT CLERK-COMPENSATION. The City Council shall provide for the salary of the Municipal Court Clerk. (Ord. 2000-08, S1, Ord. 2016-08, S5)

2.28.150 COURT CLERK-BOND. The Municipal Court Clerk shall give a performance bond in the sum of not less than $2,000.00 to the City. The performance bond shall be conditioned upon the faithful performance of the duties of the Court Clerk, and for the faithful accounting for, and payment of, all funds deposited with or received by the Court. (Ord. 2000-08, S1, Ord. 2016-08, S6)

2.28.160 COURT FACILITIES AND SUPPLIES; APPROPRIATIONS. The City Council shall furnish the Municipal Court with suitable courtroom facilities and sufficient funds for the acquisition of all necessary books, supplies, and furniture for the proper conduct of the business of the Court. The City Council shall, on an annual basis, budget and appropriate funds to pay the annual salary of the Municipal Court Judge and any associate judges, the salary of the Municipal Court Clerk, together with the other expenses as may be necessary for the proper operation of the Municipal Court. (Ord. 2000-08, S1, Ord. 2016-08, S7)

2.28.170 PENALTY ASSESSMENTS – PROCEDURE. In order to provide for the expeditious handling of certain minor criminal offenses and noncriminal municipal offenses, the Fruita Municipal Court is authorized to accept penalty assessment fines and penalties in accordance with the provisions of this Section. This Section shall not be construed as limiting or otherwise modifying the Model Traffic Code, adopted by reference by the City of Fruita.

A. At the time that any person is arrested or charged for the commission of a Class A or B criminal offense set forth pursuant to Section 2.28.180 of this Chapter, or as set forth pursuant to Court Order, the arresting officer may offer to give a Penalty Assessment Notice to the defendant. If any person is charged with a noncriminal municipal offense,

the citing officer shall issue a Penalty Assessment Notice to the defendant, unless otherwise provided by law. This Notice shall be made by notation upon the summons and complaint issued in conformance with law.

B. If a person charged with a criminal offense does not possess a valid Colorado driver's license, such person, in order to secure release, as provided in this Section, must give his written acknowledgment of guilt or give his written promise to appear in court by signing the Penalty Assessment Notice prepared by the charging officer. Should the person to whom the Penalty Assessment Notice is tendered accept the notice by acknowledging his guilt in writing, said acceptance shall constitute a promise on such person's part to pay the fine or penalty specified in the schedule issued pursuant to Section 2.28.180 of this Chapter, or specified in a schedule issued by Court order, for the violation involved at the office of the Clerk of the Municipal Court, Fruita, Colorado, either in person or by mail within ten (10) days of the date of issuance. Any person who accepts a Penalty Assessment Notice for a criminal violation, by acknowledgment of guilt, but who does not furnish satisfactory evidence of identity, or who the officer has reasonable and probable grounds to believe will disregard a written promise to pay the specified fine, may be taken by the officer to the nearest post office facility, and required to remit the amount of the specified fine to the City of Fruita immediately by mail in United States currency or legal tender, or by money order, or personal check. Refusal or inability to remit the specified fine by mail when required shall constitute a refusal to accept a Penalty Assessment Notice, by acknowledgment of guilt.

Should a person cited for a criminal violation refuse to give his written acknowledgment of guilt or give his written promise to appear in Court by signing the Penalty Assessment Notice, the officer shall proceed to issue a Summons in accordance with Colorado law. Should such person accept the notice, by acknowledgment of guilt, but fail to pay the prescribed penalty within ten (10) days thereafter, the Notice shall be construed to be a Summons and Complaint, and the prosecution for said violation shall thereafter be heard in the Municipal Court, in which event such person shall be privileged to answer the charge made against him in the same manner as if he had not been tendered a Penalty Assessment Notice. In such event, the maximum penalty which may be imposed may exceed the penalty assessment amount.

C. If the person cited for a criminal violation does possess a valid Colorado driver's license, the person shall not be required to give his written acknowledgment of guilt or written promise to appear on the Penalty Assessment Notice. For the purposes of this Section, tender by an arresting officer of the Penalty Assessment Notice to such a person shall constitute notice to the violator to appear in Court at the time specified on such notice or to pay the required fine. Should such person fail to pay the prescribed penalty within ten (10) days thereafter, the notice shall be construed to be a Summons, and the prosecution for said violation shall thereafter be heard in the Municipal Court, in which event such person shall be privileged to answer the charge made against him in the same manner as if he had not been tendered a Penalty Assessment Notice. In such event, the maximum penalty which may be imposed may exceed the penalty assessment amount.

D. Payment of the prescribed penalty assessment within ten (10) days shall be deemed a complete satisfaction for the violation. Checks tendered by the violator to, and accepted

by the Municipal Court, and upon which payment is received by the Municipal Court, shall be deemed sufficient receipt.

E. Penalty Assessment Notices issued for noncriminal violations shall also be in accordance with Section 2.28.190 of this Chapter.

F. Nothing contained herein shall be construed as requiring a law enforcement officer to issue a Penalty Assessment Notice for a criminal violation. Penalty Assessment Notices for criminal violations shall not be issued in the event of an offense involving property damage, injury to any person, or in the event the complaint is made by a private party. Penalty Assessment Notices shall be issued in all cases involving noncriminal municipal offenses, unless otherwise provided by law.

(Ord. 2000-08, S1)

2.28.180 PENALTY ASSESSMENT SCHEDULE FOR CRIMINAL OFFENSES. A penalty assessment schedule for criminal offenses may be established by the Fruita City Council. In the event the City Council has not established such a schedule, the Court, by order of the Court may promulgate such a schedule. (Ord. 2000-08, S1)

2.28.190 NONCRIMINAL MUNICIPAL OFFENSES - PROCEDURE.

A. Pursuant to Section 16-10-101, C.R.S., and Section 16-10-109, C.R.S., the right of a trial by jury shall not be available at a hearing where the cited person is charged with a noncriminal municipal offense. In addition, no person charged with a noncriminal municipal offense shall be afforded the right of court appointed counsel.

B. The Colorado Municipal Court Rules of Procedure shall apply to any hearing where the cited person is charged with a noncriminal municipal offense, unless any of the rules are clearly inapplicable. The burden of proof shall be upon the People, and the Court shall dismiss charges against an alleged violator if the alleged violator is not proven to be liable or guilty beyond a reasonable doubt.

C. An appeal from final judgment on a noncriminal municipal offense shall be made in accordance with Rule 237 of the Colorado Municipal Court Rules of Procedure.

D. Except as otherwise provided in this Section, no person against whom a judgement has been entered for a noncriminal municipal offense shall collaterally attack the validity of that judgment unless such attack is commenced within three (3) months after the date of entry of the judgment. The only exceptions to such time limitations shall be:

1. A case in which the Court did not have jurisdiction over the subject matter of the alleged noncriminal municipal violation;

2. A case in which the Court did not have jurisdiction over the person of the violator;

3. Where the Court finds by the preponderance of the evidence that the failure to seek relief within the applicable time period was caused by an adjudication of

incompetence or by commitment of the violator to an institution for treatment as a mentally ill person; or

4. Where the Court finds that failure to seek relief within the applicable time period was the result of circumstances amounting to justifiable excuse or excusable neglect.

E. At any time that a person is cited for the commission of any noncriminal municipal offense, the citing officer shall give a notice to such person, which notice shall be in the form of a Penalty Assessment Notice as described in Section 2.28.170 of this Chapter.

F. The Penalty Assessment Notice tendered by the citing officer shall contain the name and address of the alleged violator, the license number of the vehicle involved, if any, the number of such person's driver's license if applicable, the nature of the offense, the amount of the penalty prescribed for such offense, the date of the Notice, the time and place and when and where such person shall appear in Court in the event such penalty is not paid, and a place for such person to execute and sign the acknowledgment of guilt or liability and an agreement to pay the penalty prescribed within ten (10) days, as well as such other information as may be required by law to constitute such Notice as a Summons and Complaint to appear in Court, if the prescribed penalty is not paid within the time period.

G. One (1) copy of the notice shall be given to the violator by the citing officer.

H. The time specified in the notice to appear shall be at least fourteen (14) days, but not more than 45 days after such citation, unless otherwise provided by law or the person cited requests an earlier hearing.

I. Whenever the alleged violator refuses to sign or accept the Penalty Assessment Notice, tender of such Notice by the citing officer to the alleged violator shall constitute service of a Summons and Complaint.

J. If an alleged violator is cited for a noncriminal municipal offense, he shall be privileged to answer the Complaint made against him in the manner provided in the Colorado Municipal Court Rules and Procedure. The maximum penalty which may be imposed shall not exceed the penalties set forth in the Penalty Assessment Notice.

K. In the event a person who has been cited for a noncriminal municipal offense fails to pay the Penalty Assessment Notice, he shall make an appearance and answer the Complaint against him. If the alleged violator answers that he is guilty or liable, judgment shall be entered against him and he shall be assessed the appropriate penalty and applicable court costs and fees. If the alleged violator denies the allegations in the Complaint, a final hearing on the Complaint shall be held within the time period prescribed in Rule 248 of the Colorado Municipal Court Rules of Procedure. If the alleged violator fails to appear for a final hearing, a default judgment shall be entered against him, and he shall be assessed the appropriate penalty and applicable court costs and fees.

L. In the event a person who has been cited for a noncriminal municipal offense fails to pay the penalty assessment within the time period specified in the Penalty Assessment

Notice and fails to appear at the time and place specified in the Notice, a default judgment shall be entered against him and he shall be assessed the appropriate penalty and Court costs.

M. Whenever the judge of the Municipal Court imposes a monetary penalty for a noncriminal municipal offense, if the person who committed the offense is unable to pay the amount at the time of the Court hearing or if he fails to pay any penalty imposed for the commission of such offense within the time permitted by the Court, in order to guarantee the payment of such penalty, the judge may compel collection of the penalty in the manner provided in Section 18-1-110, C.R.S.

N. An officer coming upon an unattended vehicle which is an apparent violation of any provision of the Model Traffic Code may place upon the vehicle a Penalty Assessment Notice indicating the noncriminal traffic offense and directing the owner/operator of the vehicle to remit the penalty assessment to the Municipal Court within ten (10) days. If the penalty assessment is not paid within ten (10) days of the issuance of such Notice, the Court shall mail a notice to the registered owner of the vehicle, setting forth the noncriminal traffic offense and the time and place where it occurred and directing the payment of the penalty assessment within twenty (20) days from the issuance of such notice. If the penalty assessment is not paid within such twenty (20) days, the Court shall request the officer who issued the original Penalty Assessment Notice to file a Complaint with the Court and serve upon the registered owner of the vehicle a Summons to appear in Court at a time and place specified therein.

O. The provisions of this Section shall not apply when it appears the alleged violator has, in the course of the same transaction or episode, committed one (1) or more noncriminal municipal offenses and has also committed one or more criminal municipal offenses and the charging officer charges such alleged violator with two (2) or more violations, any one of which is a noncriminal municipal offense.

(Ord. 2000-08, S1)

2.28.200 ADDITIONAL FEES AND COSTS. The following fees and costs, if applicable, shall be paid to the City in all Municipal Court proceedings. The amounts of the fees and costs shall be established by annual resolution of the Fruita City Council. When judgment is entered against a defendant, all fees and costs shall be included as part of the judgment, unless otherwise provided in this Chapter. Costs shall be paid by the City when a defendant is acquitted, when charges are dismissed against a defendant, or when a defendant is convicted and the Court determines he is unable to pay them, unless otherwise provided herein.

If any private person complainant, in any action before the Municipal Court, requests dismissal of the prosecution of said action, or willfully absences himself from trial or fails to appear at trial after being subpoenaed, and said action is dismissed, the Court shall give judgment against said private person complainant for all applicable fees and costs. In addition, if charges against an accused pursuant to a private person complaint are dismissed, and it appears to the Court there were no reasonable grounds for the complaint, or that it was maliciously made, the Court shall give judgment against said complainant for all applicable fees and costs.

A. Docket Fee. In all proceedings before the Municipal Court, a docket fee shall be charged, which shall be payable by the defendant upon his conviction. Said docket fee shall also be charged in the event a defendant is granted a deferred judgment and sentence or a deferred prosecution. A separate docket fee shall be charged upon the filing of a complaint alleging violation of probation or a deferred sentence and judgment.

B. Jury Fee. At the time he demands a jury trial, a defendant shall pay a jury fee to the Clerk of the Court, unless the fee is waived by the judge because of the indigence of the Defendant. If the action is dismissed or the defendant is acquitted of the charge, or if the defendant, having paid the jury fee, files with the Court at least ten (10) days before the scheduled trial date a written waiver of jury trial, the jury fee shall be refunded. A defendant who fails to file with the Municipal Court the written jury demand together with the jury fee as provided above waives the right to a jury trial.

C. Witness Fee. A witness fee in for each witness shall be assessed for each witness testifying in a trial. Said fee shall be paid by the defendant upon his conviction.

Witnesses shall receive the witness fee for testifying before the Municipal Court, provided, however, witnesses called to testify only to an opinion founded on a special study or experience in any branch of science or to make scientific or professional examinations and state the results thereof, shall receive additional compensation, to be fixed by the Court, with reference to the value of the time employed and the degree of learning or skill required. Said fees fixed by the Court shall be assessed against the defendant upon his conviction and paid to such witnesses.

Any witness fee collected by the Court Clerk shall be paid to the person entitled to the witness fee, if claimed by such person. Any witness fee collected, but not claimed by a witness within thirty (30) days, shall be paid by the Clerk of the Court to the City Treasurer. All unclaimed witness fees shall become the property of the City and shall not be refunded. If a fee claimed by a witness has not previously been collected by the Court Clerk, the City shall pay the witness claimant if said claim was submitted in a timely manner.

D. Juror Fees. For attending Municipal Court, jurors shall receive a daily fee while actually engaged on the jury and an attendance fee for attendance on the panel alone. Said fee shall be paid by the City.

E. Mileage Fees. All witnesses and jurors shall receive a mileage fee for each mile actually and necessarily traveled in going from his place of residence to the Municipal Court; provided, however, no witness shall receive mileage fees unless such witness claims the same before the adjournment of the Court. Mileage fees shall be paid by the City. This subsection shall not apply to an officer of the Court who attends in his official capacity, including clerks, sheriffs, bailiffs and police officers.

F. Deferred Judgment and Sentence, Deferred Prosecution, or Probation Fee. In all actions in which a defendant is granted a deferred judgment and sentence, or a deferred prosecution, or in all actions in which the Court orders that the defendant be placed on probation, the defendant shall be assessed a fee to defray the costs of preparing the

applicable Court documents and to monitor compliance. Such fee shall be in addition the applicable docket fee. Nothing contained in this Chapter shall prevent the Court from assessing additional fees if a human services agency, mental health professional or similar professional is utilized by the Court to supervise the Defendant's compliance with the terms of the deferred judgment, deferred prosecution, or probation.

G. Bench Warrant Fee. In all actions in which a bench warrant is issued for the arrest of a defendant for failure to appear or failure to pay fines and costs as ordered by the Court, the Court shall assess against said defendant a fee in addition to all other fees and costs due and owing.

H. Incarceration Fee. In all actions in which a defendant is sentenced to incarceration in the county jail, the Court may assess against said defendant an incarceration fee in an amount equal to the sum charged to the City by Mesa County for such incarceration.

I. Misdemeanor Fee. In all proceedings before the Municipal Court for Class A or Class B criminal offenses, a misdemeanor fee shall be assessed to defendants which shall be payable by the defendant upon his conviction. Said misdemeanor fee shall also be charged in the event a defendant is granted a deferred judgment and sentence or a deferred prosecution.

The purpose of the Misdemeanor Fee is to accumulate funds to offset costs associated with a defendant's right to counsel in plea negotiations for misdemeanors and lesser offenses. Funds collected through the imposition of the misdemeanor fee shall be accounted for separately and used to offset the City's costs to provide counsel.

(Ord. 2015-05, S16)

2.28.210 WITNESS IMMUNITY.

A. Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding before the Municipal Court, and the judge presiding over the preceding communicates to the witness an order as specified in subsection (B) of this Section, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; except that no testimony or other information compelled under the order, or any information directly or indirectly derived from such testimony or other information, may be used against the witness in any criminal case, except for prosecution for perjury, for false statement or otherwise failing to comply with the order.

B. In the case of any individual who has been or may be called to testify or provide other information in any proceeding before the Municipal Court, the Municipal Court may issue, upon request of the prosecuting attorney, an order requiring such individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in subsection (A) above.

C. The prosecuting attorney may request an order as specified in subsection (B) above when, in his judgment, the testimony or other information from any individual may be

necessary to the public interest and such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination.

(Ord. 2000-08, S1)

Chapter 2.29

TEEN COURT PROGRAM

Sections:

2.29.010 Definitions
2.29.020 Teen Court Established
2.29.030 Procedures

2.29.010 DEFINITIONS. As used in this Chapter, unless the context otherwise requires:

A. "Minor offense" means any offense denominated a misdemeanor under Title 18, C.R.S., or a violation of a municipal ordinance where the maximum penalty authorized does not exceed imprisonment for more than six (6) months.

B. "Teen" means any person over the age of ten years and under the age of nineteen years who is enrolled in school.

C. "Teen Court Judge" means a volunteer, who is approved by and is serving at the pleasure of the presiding Municipal Judge.

D. "Teen Defendant" means a Teen ordered to participate in the Teen Court program under this Chapter.

E. "Teen Defense Attorney" means a Teen who is chosen by a Teen Court Judge or the presiding Municipal Judge to speak on behalf of a Teen Defendant.

F. "Teen Jury" means not less than three (3) Teens who have been chosen by a Teen Court Judge to decide what sentence should be imposed against a Teen Defendant.

G. "Teen Prosecutor" means a teen who has been chosen by a Teen Court Judge or the presiding Municipal Judge to advocate on behalf of the community for any sentence to be imposed.

(Ord. 1998-24, S1; Ord. 2001-04, S1)

2.29.020 TEEN COURT ESTABLISHED.

A. There is hereby established in the City of Fruita a Teen Court program. Any Teen charged with a minor offense may receive a deferred judgment, a condition of which is successful participation in the Teen Court program, as determined by the Municipal Judge.

B. The procedure for determining the eligibility for the imposition of such a deferred judgment shall be as follows:

1. The Teen, in the presence of at least one of his or her parents or legal guardian, must enter a plea of guilty to the minor offense charged.

2. The Teen must request to participate in the Teen Court program, agree to the deferral of further proceedings in the Municipal Court for a period of up to six (6) months or until the Teen has successfully completed the Teen Court program, and provide the Court with addresses for mailing notices to both the Teen and his or her parents or legal guardian.

3. The Municipal Court must find that the Teen will benefit more from participation in the Teen Court program than from any other sentence that may be imposed.

4. The Municipal Court may accept the Teen's plea, order that the Teen participate in the Teen Court program, and defer further proceedings in the Municipal Court for up to six (6) months.

5. In addition to ordering the Teen to participate in the Teen Court program, the Municipal Court may enter an order that the Teen pay any restitution otherwise authorized by law.

C. If the Municipal Court receives a report from a Teen Court Judge that the Teen has not successfully completed the Teen Court program, or if within six (6) months after entry of the order for Deferred Judgment the Municipal Court has not received a report that the Teen has successfully completed the Teen Court program, the Municipal Court shall schedule a sentencing hearing, send notice to the Teen and his or her parents or legal guardian at the addresses given at the time of the order for Deferred Judgment, or any changed address, and at the sentencing hearing impose any other sentence authorized for the offense charged.

D. If the Municipal Court receives a report from the Teen Court Judge that the Teen has successfully completed the Teen Court program, the Municipal Court shall dismiss all charges against the Teen. The dismissal shall not constitute a conviction for any purpose.

(Ord. 1998-24, S1)

2.29.030 PROCEDURES.

A. Subject to any applicable rules of the Colorado Supreme Court, the presiding Municipal Judge shall be responsible for establishing procedures for the Teen Court program, including but not limited to:

1. The use of its courtroom and other facilities during times when it is not required for other business;

2. The approval of Teen Court Judges;

3. The collection of a fee from any Teen Defendant;

4. The range of sentencing options that may be imposed upon a Teen Defendant that shall not include a term of imprisonment but may include;

   (a) Community service supervised by the Municipal Court;
   (b) Payment of Restitution up to a maximum of three hundred dollars ($300.00)
   (c) Participation in law-related education classes, counseling, treatment or other programs; or
   (d) Participation as a juror or other Teen Court member in proceedings involving Teen Defendants.

B. Whenever a Teen, as a condition of a Deferred Judgment, has been ordered to participate in a Teen Court program, the Teen and his or her parent or legal guardian shall be ordered to appear at a Teen Court sentencing hearing. The Teen Court Judge shall preside over the sentencing. The Defendant may represent himself or herself or be represented by a Teen Defense Attorney. A Teen Prosecutor shall represent the interests of the City. Unless otherwise ordered by the Teen Court Judge, the Teen Jury shall deliberate in private and shall unanimously agree upon the sentence to be imposed against the Teen Defendant, pursuant to guidelines adopted by the Court. If the Jury is unable to unanimously agree on a sentence, then the Teen Court Judge shall impose the sentence pursuant to guidelines adopted by the Municipal Court.

C. The procedures to be followed at the Teen Court sentencing hearing shall be those contained in Section 19-2-1104, C.R.S., and the procedures established by the Municipal Court. In the event of a conflict, the procedures established by the Municipal Court shall govern.

(Ord. 1998-24, S1; Ord. 2001-04, S2)

Chapter 2.37

PRIVATE PATROL SYSTEMS

Sections:

2.37.010 Definitions
2.37.020 Permit required
2.37.030 Applications - Granting of permit
2.37.040 Terms and conditions of permits
2.37.050 Fees
2.37.060 Bond required
2.37.070 Compliance with the city code
2.37.080 Suspicious circumstances

2.37.010 DEFINITIONS. For the purpose of this chapter the words "patrol service" and "patrol system" shall be deemed to be any service or system which purports to furnish or does furnish to members or subscribers for a consideration, or otherwise, any watchman or guard, either uniformed or otherwise, to patrol any district in the city, or to guard or watch any property, or to perform any service usually and customarily performed by the regular patrolmen of the police department of the city. "Patrol service" and "patrol system" shall also include the performance by any person of guard duty at a public function while wearing a type of uniform which would indicate that such person is a peace officer. (Ord. 1982-100, S4 (part))

2.37.020 PERMIT REQUIRED. It is declared to be unlawful for any person, firm or corporation, either as principal or agent, to engage in the business of conducting or maintaining or soliciting business for any patrol service or system without first obtaining a permit from the council of the city therefor, and without paying the annual license fee hereinafter provided for. (Ord. 1982-100, S4 (part))

2.37.030 APPLICATIONS - GRANTING OF PERMIT. Before any person, firm or corporation shall engage in the business of conducting or maintaining any patrol service or system in the city, he or it shall make an application in writing to the city council for permission to engage in such business and describe therein the district in which he or it shall desire to operate. Said application shall be referred to the chief of police, who shall make an investigation concerning the character of the applicant and the condition of police protection prevailing within the district designated, and shall within seven days report thereon to the council. Upon receiving such report, the council shall grant or deny the applicant permission to engage in such business; and such permission shall be granted unless it shall appear from such report of the chief of police that the applicant is not a person of good moral character or has not a good character in respect to honesty and integrity, or that the district designated in any such application is already supplied with sufficient or ample police protection, by the city or by a patrol service, or system, or both. (Ord. 1982-100, S4 (part))

2.37.040 TERMS AND CONDITIONS OF PERMITS. Any permit granted by the council as provided in Section 2.37.030, shall be issued upon the following terms and conditions:

A. The patrol service or patrol system shall be operated and conducted under the general supervision of the chief of police.

B. The chief of police shall regulate the style of uniform, if any, to be used by said patrol system or patrol service, and he shall regulate firearm use by the system.

C. Any such permit and any license issued pursuant thereto may at any time be revoked by the city council for cause shown, after notice to the holder thereof and an opportunity to be heard shall have been given.

(Ord. 1982-100, S4 (part))

2.37.050 FEES. The annual permit fees for individuals, partnerships and corporations engaged in the business of merchant patrol as herein defined shall be as follows:

A. Individuals.....$ 25.00

B. Partnerships.....$ 30.00

C. Corporations.....$ 50.00

(Ord. 1982-100, S4 (part))

2.37.060 BOND REQUIRED. The individual, partnership or corporation applying for a permit under this chapter shall furnish a good and sufficient bond on a corporate bonding company approved by the city manager in the sum of seven thousand five hundred dollars conditioned on the faithful observance of this chapter and further conditioned on the faithful performance and honest conduct of all watching, guarding or protecting undertaken by the individual, partnership or corporation licensed hereunder. Such bond shall be payable to the city of Fruita, and to any person, firm or corporation who has been injured by any wilful, wanton or dishonest act of said licensee or any of its employees. (Ord. 1982-100, S4 (part))

2.37.070 COMPLIANCE WITH THE CITY CODE. Nothing herein shall be construed as permitting or allowing the applicant hereunder or any employee of the applicant to violate or to disobey any section of the code of the city of Fruita, or any duly enacted ordinance of the city of Fruita. (Ord. 1982-100, S4 (part))

2.37.080 SUSPICIOUS CIRCUMSTANCES. It shall be the duty of every person engaged in private patrol work to report break-ins and suspicious circumstances to the police department as soon as possible and to cooperate with the police department in the investigation of the same whenever requested to do so, but said person shall not attempt to investigate the suspicious circumstances himself. (Ord. 1982-100, S4 (part))

Chapter 2.39

PLANNING COMMISSION

Sections:

2.39.010 Creation; Membership
2.39.020 Meetings of the Planning Commission
2.39.030 Quorum and Voting
2.39.040 Planning Commission Officers
2.39.050 Powers and Duties of Planning Commission

2.39.010 CREATION; MEMBERSHIP.

A. In accordance with the City Charter, there shall be a Planning Commission consisting of seven (7) members. Members shall reside within the City and shall serve without compensation.

B. Planning Commission members shall be appointed by the Mayor, with approval of the City Council, for three (3) year overlapping terms. The members may continue to serve until their successors have been appointed. A vacancy may be filled by the City Council for the unexpired term only.

C. Members may be appointed to successive terms without any limitation. The Mayor or one (1) City Council member shall serve as a member of the Planning Commission. The City Council member or Mayor shall be appointed by the City Council immediately following the regular municipal election held every two (2) years.

D. Planning and Zoning Commission members may be removed by the City Council at any time for failure to attend two (2) unexcused consecutive meetings or for the failure to attend thirty percent (30%) or more of the meetings within any twelve (12) month period, or for any other good cause related to performance of duties. Upon request by the member proposed for removal, the City Council shall hold a hearing on the proposed removal before it becomes effective.

E. Chapter 2.70 of the Fruita Municipal Code concerning the Code of Ethics for City Officials and Sections 24-18-101, *et. seq.*, C.R.S. shall apply to all members of the Planning Commission.

(Ord. 2002-26, S1)

2.39.020 MEETINGS OF THE PLANNING COMMISSION.

A. The Planning Commission shall establish a regular meeting schedule and shall meet as frequently as necessary to perform its duties in conformance with Title 17 of the Fruita Municipal Code.

B. Minutes shall be kept of all Planning Commission proceedings.

C. All Planning Commission meetings shall be subject to the Colorado Open Meetings Law, Sections 24-6-401, *et. seq.*, C.R.S.

D. Whenever the Planning Commission is required to hold a public hearing pursuant to the City's Land Use Code, Title 17 of the Fruita Municipal Code, the Community Development Department shall notify the public of the date, time and place of such hearing in accordance with Section 17.01.130 of the Fruita Municipal Code. The quasi-judicial procedures set forth in Chapter 2.60 of the Fruita Municipal Code shall apply to all land use hearings.

(Ord. 2002-26, S1)

2.39.030 QUORUM AND VOTING.

A. Quorum for the Planning Commission shall consist of a majority of the Commission membership, excluding vacant positions. A quorum shall be necessary for the Planning Commission to take official action.

B. All actions of the Planning Commission shall be taken by a majority vote, a quorum being present.

C. A roll call vote shall be taken upon the request of any member.

(Ord. 2002-26, S1)

2.39.040 PLANNING COMMISSION OFFICERS.

A. In its first meeting in April of each year, the Planning Commission shall, by majority vote of its membership, excluding vacant positions, elect one (1) of its members to serve as chairman who shall preside over the Commission's meetings, and one (1) member to serve as vice chairman. The persons so designated shall serve in such capacities for a term of one (1) year. A vacancy in these offices may be filled for the unexpired term by a majority vote of the Commission membership, excluding vacant positions.

B. The chairman and vice-chairman may take part in all deliberations of the Planning Commission and vote on all matters.

(Ord. 2002-26, S1)

2.39.050 POWERS AND DUTIES OF PLANNING COMMISSION.

A. The Planning Commission may:

1. Make studies and recommend to the City Council plans, goals and objectives related to the growth, development and redevelopment of the City and the surrounding extraterritorial planning area.

2. Develop and recommend to the City Council policies, ordinances, administrative procedures, and other means for carrying out land use planning in a coordinated and effective manner.

3. Adopt bylaws, rules and procedures for the conduct of Planning Commission business.

B. The Planning Commission shall:

1. Conduct public hearings and make recommendations to the City Council concerning land use applications in accordance with the requirements of the City's Land Use Code, Title 17 of the Fruita Municipal Code.

2. Perform such additional duties as assigned by the City Council.

(Ord. 2002-26, S1)

Chapter 2.40

BOARD OF ADJUSTMENT

Sections:

2.40.010 Creation - Membership
2.40.020 Meetings of the Board of Adjustments
2.40.030 Quorum
2.40.040 Voting
2.40.050 Board of Adjustment Officers
2.40.060 Powers and Duties of Board of Adjustment

2.40.010 CREATION – MEMBERSHIP.

A. In accordance with the City Charter, there shall be a Board of Adjustment and appeals for the City consisting of five (5) regular members and two (2) alternates. Members shall reside within Fruita and shall serve without compensation.

B. Board of Adjustment regular members and alternates shall be appointed by the Mayor, with approval of the City Council, for three (3) year overlapping terms, but both regular members and alternates may continue to serve until their successors have been appointed.

C. Members may be reappointed by the City Council to successive terms without limitation.

D. Regular members of the Board of Adjustment may be removed by the City Council at any time for failure to attend two (2) unexcused consecutive meetings or for failure to attend thirty percent (30%) or more of the meetings within any twelve (12) month period, or for any other good cause related to performance of their duties. Alternate members may be removed for repeated failure to attend or participate in meetings when requested to do so in accordance with regularly established procedures. Upon request by the member proposed for removal, the City Council shall hold a hearing on such removal before it becomes effective.

E. Chapter 2.70 of the Fruita Municipal Code, concerning the Code of Ethics for City Officials, and Sections 24-18-101, *et. seq.*, C.R.S. shall apply to all members of the Board of Adjustment.

(Ord. 2002-26, S2)

2.40.020 MEETINGS OF THE BOARD OF ADJUSTMENT.

A. The Board of Adjustment shall establish a regular meeting schedule and shall meet frequently enough so that it can take action in conformity with the requirements of the City's Land Use Code, Title 17 of the Fruita Municipal Code.

B. The Board shall conduct its meetings in accordance with quasi-judicial procedures set forth in Chapter 2.60 of the Fruita Municipal Code.

C. Whenever the Board of Adjustment is required to hold a public hearing pursuant to the City's Land Use Code, Title 17 of the Fruita Municipal Code, the Community Development Department shall notify the public of the date, time and place of such hearing in accordance with Section 17.01.130 of the Fruita Municipal Code.

D. All meetings of the Board of Adjustment shall comply with the Colorado Open Meetings Law, Section 24-6-401, *et. seq.*, C.R.S. Whenever feasible, an agenda for each Board of Adjustment meeting shall be made available to the public in advance of such meeting.

(Ord. 2002-26, S2)

2.40.030 QUORUM.

A. A quorum for the Board of Adjustment shall consist of the number of members equal to four-fifths (4/5) of the regular Board membership, excluding vacant positions. A quorum shall be necessary for the Board to take any official action.

B. A member who has withdrawn from a meeting without being excused shall be counted as present for purposes of determining whether a quorum is present.

(Ord. 2002-26, S2)

2.40.040 VOTING.

A. The concurring vote of four-fifths (4/5) of the regular Board membership, excluding vacant positions, shall be necessary to reverse any order, requirement, decision, or determination of the administration; to decide in favor of an applicant on any matter upon which it is required to render a decision under the Fruita Municipal Code; or to grant any variance. All other actions of the Board shall be taken by majority vote, a quorum being present.

B. Once a member is physically present at a Board meeting, any subsequent failure to vote shall be recorded as an affirmative vote unless the member has been excused in accordance with subsection (C) or has been allowed to withdraw from the meeting in accordance with subsection (D).

C. A member shall be excused from voting on a particular issue by majority vote of the remaining members present under the following circumstances:

1. The member has direct financial interest in the outcome of the matter at issue, or

2. The matter at issue involves the members own official conduct, or

3. Participation in the matter might violate the letter or spirit of the City's Code of Ethics for City Officials, Chapter

4. Of the Fruita Municipal Code, or the Standards of Conduct for Local Government Officials, Sections 24-18-101, *et. seq.*, C.R.S., or

5. A member has such close personal ties to the applicant that the member cannot reasonably be expected to exercise sound objective judgment in the public interest.

D. A member may be allowed to withdraw from the entire remainder of a meeting by a majority vote of the remaining members present for any good and sufficient reason, other than the member's desire to avoid voting on matters to be considered at that meeting.

E. A motion to allow a member to be excused from voting or excused from the remainder of the meeting is in order only if made by or at the initiative of the member directly affected.

F. A roll call vote shall be taken upon the request of any member.

(Ord. 2002-26, S2)

2.40.050 BOARD OF ADJUSTMENT OFFICERS.

A. At its first regular meeting in April, the Board of Adjustment shall, by majority vote of its membership, excluding vacant positions, elect one (1) of its members to serve as chairman who shall preside over the Board's meetings, and one (1) member to serve as vice-chairman. The person so designated shall serve in such capacity for a term of one (1) year. A vacancy may be filled for an unexpired term only by majority vote of the Board's membership, excluding vacant positions.

B. The chairman or any member temporarily acting as chairman may administer oaths to witnesses coming before the Board.

C. The chairman and vice-chairman may take part in all deliberations and vote on all matters.

(Ord. 2002-26, S2)

2.40.060 POWER AND DUTIES OF BOARD OF ADJUSTMENT.

A. The Board of Adjustment shall hear and decide:

1. Appeals from any order, decision, requirement or interpretation made by the Community Development Director, building official, or any other zoning, building or code enforcement officer.

2. Applications for variances in accordance with the standards set forth in Title 17 of the Fruita Municipal Code.

3. Questions involving interpretations of the City's Official Zoning Map, including disputed district boundary lines and lot lines.

4. All other matters referred to it under the provisions of Titles 15 and 17 of the Fruita Municipal Code, or other ordinances of the City, or any Codes adopted by reference by the City.

B. The Board may adopt bylaws, rules and regulations governing its procedures and meetings not inconsistent with any provisions of the Fruita Municipal Code.

(Ord. 2002-26, S2)

Chapter 2.41

POLICE COMMISSION

Sections:

2.41.010 Membership requirements
2.41.020 Meetings of the Police Commission
2.41.030 Quorum and voting
2.41.040 Police Commission officers
2.41.050 Powers and duties of Police Commission

2.41.010 MEMBERSHIP REQUIREMENTS.

A. The Police Commission is established by Article VI of the Fruita City Charter. Members at large are appointed in accordance with the Fruita City Charter. The City Council representative or Mayor shall be appointed by the City Council immediately following the regular municipal election held every two (2) years. Members may continue to serve until their successors have been appointed.

B. Members of the Commission shall reside within the City.

C. Members may be appointed to successive terms without any limitation.

D. Chapter 2.70 of the Fruita Municipal Code, concerning the Code of Ethics for City Officials, and Sections 24-18-101, *et. seq.*, C.R.S. shall apply to all members of the Police Commission.

(Ord. 2005-17, S1)

2.41.020 MEETINGS OF THE POLICE COMMISSION. The Police Commission shall establish a regular meeting schedule and shall meet as frequently as necessary to perform its duties in conformance with Article 6 of the Fruita City Charter and this Chapter. (Ord. 2005-17, S1)

2.41.030 QUORUM AND VOTING.

A. A quorum for the Police Commission shall consist of a majority of the Commission membership, excluding vacant positions. A quorum shall be necessary for the Police Commission to take official action.

B. All actions of the Police Commission shall be taken by a majority vote, a quorum being present. A roll call vote shall be taken upon the request of any member.

(Ord. 2005-17, S1)

2.41.040 POLICE COMMISSION OFFICERS.

A. In its first meeting in April of each year, the Police Commission shall, by majority vote of its membership, excluding vacant positions, elect one (1) of its members to serve as chairman who shall preside over the Commission's meetings, and one (1) member to serve as vice chairman. The persons so designated shall serve in such capacities for a term of one (1) year. A vacancy in these offices may be filled for the unexpired term by a majority vote of the Commission membership, excluding vacant positions.

B The chairman and vice-chairman may take part in all deliberations of the Police Commission and vote on all matters.

(Ord. 2005-17, S1)

2.41.050 POWERS AND DUTIES OF POLICE COMMISSION.

A. The Police Commission shall have the powers and duties as noted in Section 6.03.04 of the Fruita City Charter.

B The Police Commission shall perform such additional duties as assigned by the City Council.

(Ord. 2005-17, S1)

Chapter 2.42

PARKS AND RECREATION COMMISSION

Sections:

2.42.010 Membership
2.42.020 Meetings of the Parks and Recreation Commission
2.42.030 Quorum and Voting
2.42.040 Parks and Recreation Commission officers
2.42.050 Powers and duties of Parks and Recreation Commission

2.42.010 MEMBERSHIP.

A. The Parks and Recreation Commission is established by Article VI of the Fruita City Charter. Members at large are appointed in accordance with the Fruita City Charter. The City Council representative or Mayor shall be appointed by the City Council immediately following the regular municipal election held every two (2) years. Members may continue to serve until their successors have been appointed.

B. Members of the Commission may reside inside or outside the city limits of Fruita and shall have an interest in parks and recreation activities in the city of Fruita.

C. Members may be reappointed by the City Council to successive terms without limitation.

D. Chapter 2.70 of the Fruita Municipal Code, concerning the Code of Ethics for City Officials, and Sections 24-18-101, *et. seq.*, C.R.S. shall apply to all members of the Parks and Recreation Commission.

(Ord. 2005-17, S2)

2.42.020 MEETINGS OF THE PARKS AND RECREATION COMMISSION. The Parks and Recreation Commission shall establish a regular meeting schedule and shall meet as frequently as necessary to perform its duties in conformance with the requirements of this Chapter and the Fruita City Charter. (Ord. 2005-17, S2)

2.42.030 QUORUM AND VOTING.

A. A quorum for the Parks and Recreation Commission shall consist of a majority of the Commission membership, excluding vacant positions. A quorum shall be necessary for the Parks and Recreation Commission to take official action.

B. All actions of the Parks and Recreation Commission shall be taken by a majority vote, a quorum being present. A roll call vote shall be taken upon the request of any member

(Ord. 2005-17, S2)

2.42.040 PARKS AND RECREATION COMMISSION OFFICERS.

A. At its first regular meeting in April, the Parks and Recreation Commission shall, by majority vote of its membership, excluding vacant positions, elect one (1) of its members to serve as chairman who shall preside over meetings, and one (1) member to serve as vice-chairman. The persons so designated shall serve in such capacities for a term of one (1) year. A vacancy in these offices may be filled for the unexpired term by a majority vote of the Commission membership, excluding vacant positions.

B. The chairman and vice-chairman may take part in all deliberations of the Parks and Recreation Commission and vote on all matters.

(Ord. 2005-17, S2)

2.42.050 POWERS AND DUTIES OF PARKS AND RECREATION COMMISSION.

A. The Parks and Recreation Commission shall have the powers and duties as noted in Section 6.03.05 of the Fruita City Charter.

B. The Parks and Recreation Commission shall perform such additional duties as assigned by the City Council.

(Ord. 2005-17, S2)

Chapter 2.52

RETIREMENT PLAN

Sections:

2.52.010 Retirement Plan Designated

2.52.010 RETIREMENT PLAN DESIGNATED. The City of Fruita shall provide a Retirement Plan to eligible city employees. The Plan Document and any subsequent amendments shall be approved by resolution of the Fruita City Council. Agreements for administration and record keeping services for the Retirement Plan shall also be approved by resolution of the Fruita City Council. Additional retirement plans may be established by resolution of the City Council. (Ord. 303, S1, 1974; Ord. 2004-22, S1)

Chapter 2.60

RULES GOVERNING ADMINISTRATIVE PROCEEDINGS

Sections:

2.60.010 Purpose and applicability
2.60.020 Quasi-judicial hearings - Applicability of rules - Designation
2.60.030 Quasi-judicial hearings - Rights of participant
2.60.040 Quasi-judicial hearings - Order of procedure
2.60.050 Quasi-judicial hearings - Hearing body - Rules of evidence
2.60.060 Quasi-judicial hearings - Hearing body- Deliberation and notice of decision
2.60.070 Quasi-judicial hearings - Judicial enforcement and review

2.60.010 PURPOSE AND APPLICABILITY. The purpose of the rules of procedure contained herein is to provide a uniform, consistent and expeditious method of procedure for the conduct of all hearings held before the city council, or any board, commission or official of the city, except in those instances where a hearing or proceeding is specifically governed by particular rules of procedure. The provisions of these rules shall be applied uniformly in all such hearings to which they are applicable; provided however, that any board, commission, or official may supplement the provisions of these rules by the adoption of further rules of procedure not inconsistent herewith. All supplementary rules by any board, commission or official shall be reduced to writing and copies thereof shall be made available to the public. (Ord. 326, S1, 1975)

2.60.020 QUASI-JUDICIAL HEARINGS - APPLICABILITY OF RULES - DESIGNATION. The provisions of these rules shall be applicable only to those hearings where the city council, board, commission or official is called upon to exercise a power of a judicial or quasi-judicial nature, which, for purposes of these rules, shall be deemed to consist of the following:

A. Hearings before the city council upon application for the issuance or hearings for the suspension or revocation of liquor or fermented malt beverage license; upon ordinances which zone or re-zone realty; and upon all appeals from the decisions of any city official, board or commission, where such an appeal is otherwise authorized, and which requires an evidentiary hearing to determine such appeal;

B. Hearing before the board of zoning adjustment upon appeals for many decision of the building inspector or upon request for a request for a variance or exception from the terms of any ordinance;

C. Hearing before any board, commission or official respecting the issuance, suspension or revocation of any license issued by the city. (Ord. 326, S2, 1975)

2.60.030 QUASI-JUDICIAL HEARINGS - RIGHTS OF PARTICIPANTS. All quasi-judicial hearings shall be conducted under procedures designed to ensure all interested parties due process of law and shall, in all cases, provide for the following:

A. The administration of oaths to all parties or witnesses who appear for the purpose of testifying upon factual matters;

B. The cross-examination, upon request, of all witnesses by the interested parties;

C. The stenographic, or other verbatim reproduction of all testimony presented in the hearing, or an adequate summary of such testimony;

D. A clear decision by the hearing body which shall set forth the factual basis and reasons for the decision rendered.

(Ord. 326, S3, 1975)

2.60.040 QUASI-JUDICIAL HEARINGS - ORDER OF PROCEDURE. In all quasi-judicial hearings, the following order of procedure shall be followed:

A. Presentation of those documents showing the regularity of the commencement of the proceedings and the form of the public notice given;

B. Presentation of evidence by the applicant, petitioner, appealing party or complainant;

C. Presentation of evidence in support of the applicant, petitioner, appealing party or complainant by any other person;

D. Presentation of evidence from any person opposing the application, petition, appeal or complaint;

E. Presentation of evidence in opposition or rebuttal to the matters presented by the opposition;

F. All documents or other items of physical evidence shall be marked as exhibits with such identifying symbols as may be necessary to determine the exhibit referred to by any witness or other person.

(Ord. 326, S4, 1975)

2.60.050 QUASI-JUDICIAL HEARINGS - HEARING BODY - RULES OF EVIDENCE. The hearing body shall not be required to observe any formal rules of evidence, but may consider any matter which a majority thereof concludes is reasonably reliable and calculated to aid the hearing body in reaching an accurate determination of the issues involved. (Ord. 326, S5, 1975)

2.60.060 QUASI-JUDICIAL HEARINGS - HEARING BODY - DELIBERATION AND NOTICE OF DECISION. Each hearing body is authorized to go into executive session for consideration of documents or testimony given in confidence if a majority of the members present consent; provided that no decision or formal action shall be effective, except upon a vote of the members of the hearing body, conducted in an open session thereof, which shall be duly recorded in the minutes of the public body. Written copies of all decisions shall be delivered to the applicant, petitioner, appellant, complainant and other interested party requesting same. (Ord. 326, S6, 1975)

2.60.070 QUASI-JUDICIAL HEARINGS - JUDICIAL ENFORCEMENT AND REVIEW. Any party aggrieved by any decision rendered by the hearing body in any quasi-judicial hearing, as well as department heads or authorized officials of the city; or the city itself, may apply to have the decision reviewed by a court of competent jurisdiction, in accordance with the provisions of the Colorado Rules of Civil Procedure. (Ord. 326, S7, 1975)

Chapter 2.65

DISPOSITION OF UNCLAIMED PROPERTY

Section:

2.65.010 Purpose
2.65.020 Definitions
2.65.030 Procedure for disposition of property held by the City Clerk
2.65.035 Public sale of unclaimed property held by the City Clerk
2.65.040 Procedure for disposition of property held by the Fruita Police Department

2.65.010 PURPOSE. The purpose of this ordinance is to provide for the administration and disposition of unclaimed property which is in the possession of, or under the control of the City Clerk or the Fruita Police Department. (Ord. 2003-14, S3)

2.65.020 DEFINITIONS. Words and terms shall be defined as follows:

A. "Unclaimed property" when held by the City Clerk, means any tangible or intangible property, including any income or increment derived therefore, less any lawful charges, that is held by or under the control of the City Clerk which has not been claimed by its owner for a period of more than two (2) years after it became payable or distributable.

B. "Unclaimed Property" when held by the Fruita Police Department means any tangible property, less any lawful charges or court proceedings, that is held by or under the control of the Fruita Police Department which has not been claimed by its owner after a period of more than sixty (60) days.

C. "Owner" means a person or entity, including a corporation, partnership, association, governmental representative or successor in interest of same, which owns unclaimed property.

D. "City Clerk" shall mean the City Clerk or designee thereof.

E. "Police Department" shall mean the Chief of Police or designee thereof.

(Ord. 2003-14, S3)

2.65.030-PROCEDURE FOR DISPOSITION OF PROPERTY HELD BY THE CITY CLERK.

A. Prior to disposition of any unclaimed property, the City Clerk shall send a written notice by certified mail, return receipt requested, to the last known address, if any, of any owner of unclaimed property. The last known address of the owner shall be the last address of the owner as shown by the records of the city department or agency holding the property. The notice shall include a description of the property, the amount or estimated value of the property, and when available, the purpose for which the property was deposited or otherwise held. The notice shall state where the owner may make inquiry of or claim the property. The notice shall also state that if the owner fails to

provide the City Clerk with a written claim for the return of the property within sixty (60) days of the date of the notice, the property shall become the sole property of the city and any claim of the owner to such property shall be deemed forfeited.

B. Prior to disposition of any unclaimed property, of which there is no last known address of the owner or after an unsuccessful attempt to notify the owner at the last known address, the City Clerk shall cause a notice to be published in a newspaper of general circulation in the city. The notice shall include a description of the property, the owner of the property, the amount or estimated value of the property, and when available, the purpose for which the property was deposited or otherwise held. The notice shall state where the owner may make inquiry of or claim the property. The notice shall also state that if the owner fails to provide the City Clerk with a written claim for the return of the property within sixty (60) days of the date of the publication of the notice, the property shall become the sole property of the city and any claim of the owner to such property shall be deemed forfeited.

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

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

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

F. In the event that all claims filed for the property are denied, the property shall become the sole property of the city and any other claim of such property shall be deemed forfeited.

G. Any legal action filed challenging a decision of the City Clerk shall be filed pursuant to Rule 106 of the Colorado Rules of Civil Procedure within thirty (30) days of such decision or shall be forever barred. If any legal action is timely filed, the property shall be disbursed by the City Clerk pursuant to the order of the court having jurisdiction over such claim.

H. The City Clerk is authorized to establish and administer procedures for the administration and disposition of unclaimed property consistent with the Chapter, including compliance requirements for other city officials and employees in the identification and disposition of such property.

(Ord. 2003-14, S3)

2.65.035 PUBLIC SALE OF UNCLAIMED PROPERTY HELD BY THE CITY CLERK. The City Clerk shall, with two (2) years of the receipt of unclaimed property, either determine to retain such property for the city's use or sell the property to the highest bidder at public sale. The City Clerk may decline the highest bid and re-offer the property for sale if in the judgment of the City Clerk the bid is insufficient. Any sale held under this section must be preceded by a single publication of notice, at least three (3) weeks in advance of the sale, in a newspaper of general circulation in the county in which the property is to be sold. The purchaser of property at any sale under this section takes the property free of all claims of the owner or previous holder thereof and all persons claiming through or under them. The City Clerk shall execute all documents necessary to complete the transfer of ownership.

(Ord. 2003-14, S3)

2.65.040-PROCEDURE FOR DISPOSITION OF UNCLAIMED PROPERTY HELD BY THE FRUITA POLICE DEPARTMENT.

A. Custodian. The Chief of Police or his designee is designated as the official custodian of each and every lost, stolen, confiscated or abandoned article or object of personal property not in the lawful custody of the court or any other person, which has been acquired or delivered to the police department or any of its members, for care, control and custody.

B. Records required. It shall be the duty of the Chief of Police or his designee to keep a record of all such property coming into the care, control and custody of the police department showing:

1. The date and description of the property received;

2. Which property has been reclaimed by its owner, including the date and to whom delivered;

3. The date and name of any person who has made a finder's claim and date of release to such person;

4. The date and description of how any remaining property was disposed of.

C. Rights of finder. Notwithstanding any other provision of this chapter, whenever any item of lost or abandoned property has been found and delivered to the Fruita Police Department for care, control and custody, such item shall be released to the original finder whenever a claim has been made by the finder and the following conditions have been met:

1. The claimant is the person who originally found the lost or abandoned property and he is not a police officer.

2. The claimant, after surrendering the property, has filed a written notice with the Fruita Police Department of his intentions to make a claim on the property within 60 days of the surrender of the item.

3. The lost or abandoned property has remained unclaimed by the owner or person having a right to such property for 60 days after the surrender of the property to the Fruita Police Department.

4. The lost or abandoned property is not stolen or confiscated property, nor is it property held under the exceptions outlined in subsection D, nor property held as evidence pursuant to subsection G.

5. The claimant must appear at the police department no less than 60 days after surrendering any lost or abandoned property and prior to the expiration of 90 days to request the release of such property. Failure to appear within the above time frame shall forever bar any finder's claim to such property.

6. The lost or abandoned property is not personal effects such as keys, checkbooks, wallets, credit cards or other such items as determined by the custodian.

7. The lost or abandoned property is not a firearm.

D. Disposition of certain property exclusive of section provisions. Notwithstanding any other provisions of this section, certain objects and articles of property as described in this section may be kept, held or disposed of as follows:

1. Nothing in this section shall be construed as amending any existing ordinances concerning the impoundment and disposition of livestock, dogs, poultry or other animals.

2. Unless ordered to the contrary by a court or otherwise required by state or national law, firearms or other weapons which may not lawfully be kept, possessed or retained by the owner or person otherwise entitled to the possession thereof, or which may not otherwise lawfully be released to the owner thereof, or which are unclaimed after notice to the owner, or the owner of which is not known, may be kept and used by the police department in its training program or otherwise, or may be donated to museums or historical societies as the Chief of Police may order for purposes of historical preservation. If the firearms or weapons are declared surplus by the Chief of Police, disposition of such firearms or weapons may be made as otherwise provided in this section.

3. If the property consists of burglary tools of any description; firearms, cartridges, explosives, armored or bullet proof clothing, or other dangerous weapons; gambling apparatus or instruments; articles or medicines for the purpose of inducing an abortion; beer, wine, spirituous liquor or fermented malt beverages; soiled bloody or unsanitary clothing; solids or liquids of unknown or uncertain composition; drugs, narcotics, hallucinogenic substance, hypodermic syringes and needles, or other drug paraphernalia; any poisonous, noxious or deleterious solids or liquids; or any other property which reasonably might result in injury to the health and safety of the public or be subject to unlawful use, the Chief of Police or his designee may destroy any such article.

E. Reclaiming property. Unless otherwise provided in this section, any lost, stolen, confiscated or abandoned property may be reclaimed by the lawful owner upon proof of ownership and identity satisfactory to the Chief of Police or his designee and he is hereby authorized to release the property to such owner when the owner gives a proper receipt therefore, if claimed before such property is disposed of as provided in subsection D or subsection G.

F. Failure to claim property. Failure to make a claim of ownership within the time limits prescribed in subsection C and before the sale or other disposition provided in subsection D or subsection G of any chapter shall forever bar the owner or any person claiming ownership by, through or under the owner from making any subsequent claims of ownership.

G. Disposition generally. All lost, stolen, confiscated or abandoned property, with exceptions as provided in subsection D, which has not been claimed by the rightful owner thereof within 60 days after such property is no longer required to be held as evidence or within 60 days after such property came into the custody of the Fruita Police Department, or within 30 days after the mailing of a letter of notice if an owner can be identified, shall be disposed of by releasing such property to the original finder if a claim has been filed; retaining and using such property in the city's training programs; destroying such property; or as ordered to the contrary by any court under the provision of a more appropriate ordinance or state statute; or at such time as the Chief of Police or his designee shall determine, donating such property to the Fruita Thrift Store, a community non-profit organization or selling such property at public auction, provided the following conditions are met:

1. The Chief of Police, or his designee, shall examine all property in his custody and if the identity of the owner appears from such examination or if the identity of the owner is readily available from public records available to him or otherwise known to him, the Chief of Police, or his designee, shall notify the apparent owner by mail, to the last known address of such apparent owner, describing the property and stating that such property is held by the Chief of Police and may be sold or otherwise disposed of unless claimed within 30 days of mailing such notice.

2. The Chief of Police or his designee shall keep in his control all articles of personal property seized or held as evidence, which has been delivered to the Fruita Police Department for use in any pending or prospective trial; unless otherwise ordered by the court having jurisdiction or upon proper authorization of the prosecuting attorney, until final disposition of any pending charges, including appeals or the lapse of time for filing an appeal.

3. Before any such property may be sold at public auction, the Chief of Police or his designee, shall cause to be published in a newspaper of general circulation in the city, not less than 14 days before such sale, a notice setting forth a description of each article to be sold, the time and date and place of sale, and a statement that any person who claims to be the owner of or claims any interest in any article so described may appear at the police department by a designated date so stated in

the newspaper, to reclaim such article upon presentation of satisfactory proof of identity and ownership of such article.

4. Whenever any property is retained by the city as provided for in this chapter, it shall be added to the city's capital assets inventory, which shall also indicate the location of the assigned property and designated use thereof.

H. Sale of unclaimed property. At the time and place mentioned in the notice for the sale of unclaimed property the Chief of Police or his designee shall sell all such property at public auction for the highest and best price such property will bring in cash. The proceeds of such sale, after deduction of the expenses of the sale, shall be paid to the City Manager, who shall deposit the proceeds into the general fund of the city.

(Ord. 2003-14, S3)

Chapter 2.70

A CODE OF ETHICS FOR CITY OFFICIALS

Sections:

2.70.010 Policy
2.70.011 Definitions
2.70.015 Fair and equal treatment
2.70.020 Conflict of interest
2.70.025 Board of ethics
2.70.030 Advisory opinion
2.70.040 Hearings and determinations
2.70.050 Sanctions

2.70.010 POLICY. Public confidence and respect can best be promoted if every public official, whether paid or unpaid, and whether elected or appointed, will uniformly treat all citizens with courtesy, impartiality, fairness and equality under the law; and avoid both actual and potential conflicts between their private self-interest and the public interest. (Ord. 1986-9, S4)

2.70.011 DEFINITIONS. The terms used in this ordinance are hereby defined as follows:

A. **Official** - Any person elected or appointed to any public office or public body of the city whether paid or unpaid and whether part time or full time.

B. **Public Body** - Any agency, board, body, commission or committee, of the city.

C. **Financial interest** - Any interest which shall yield directly or indirectly, a monetary or other material benefit (other than the duly authorized salary or compensation for his services to the city) to the official or to any person employing or retaining the services of the official.

D. **Personal interest** - Any interest arising from blood or marriage relationships or from close business or political association whether or not any financial interest is involved.

(Ord. 1986-9, S4)

2.70.015 FAIR AND EQUAL TREATMENT.

A. No official shall grant or make available to any person any consideration, treatment, advantage or favor beyond that which it is the general practice to grant or make available to the public at large.

B. No official shall request, use or permit the use of publicly-owned or publicly-supported property, vehicle, equipment, labor or service for the personal convenience or the private advantage of himself or any other person. This rule shall not be deemed to prohibit an official from requesting, using or permitting the use of such publicly-owned or publicly-supported property, vehicle, equipment, material, labor or service which it is the general

practice to make available to the public at large or which is provided as a matter of stated public policy for the use of officials in the conduct of official business.

(Ord. 1986-9, S4)

2.70.020 CONFLICT OF INTEREST. Financial or personal interest.

A. No official, either on his own behalf or on behalf of any other person shall have any financial or personal interest in any business or transaction with any public body unless he shall first make full public disclosures of the nature and extent of such interest.

B. Disclosure and disqualification. Whenever the performance of his official duties shall require any official to deliberate and vote on any matter involving his financial or personal interest, he shall publicly disclose the nature and extent of such interest and disqualify himself from participating in the deliberation as well as in the voting.

C. Incompatible employment. No official shall engage in private employment with, or render services for, any private person who has business transactions with any public body unless he shall first make full public disclosure of the nature and extent of such employment or services.

D. Representation of private persons. No official shall appear on behalf of any private person, other than himself, before any public body in the city.

E. Gifts and favors. No official shall accept any gift, whether in the form of money, thing, favor, loan or promise, that would not be offered or given to him if he were not an official.

F. Confidential information. No official shall, without prior formal authorization of the public body having jurisdiction, disclose any confidential information concerning any other official or employee, or any other person, or any property or governmental affairs of the city.

G. Whether or not it shall involve disclosure, no official shall use or permit the use of any such confidential information to advance the financial or personal interest of himself or any other person.

H. Nepotism. No elected official shall appoint or vote for appointment of any person related to him by blood or marriage who is a member of the officials household, under the same roof, and any parent, stepparent, grandparent, spouse, child, grandchild, brother, sister of the official or any child, parent, stepparent, or grandparent of the official's spouse, regardless of residence, to any clerkship, office, position, employment or duty, when the salary, wages, pay or compensation is to be paid out of public funds.

(Ord. 1986-9, S4)

2.70.025 BOARD OF ETHICS.

A. There is hereby created and established a board of ethics consisting of five persons who shall hold no other office or employment under the city. All members shall be residents of the city.

B. The members shall be appointed by the mayor subject to confirmation by a majority of the whole number of the council, whenever a sworn complaint or request for advisory opinion pursuant to Sections 2.70.040 and 2.70.30 herein is received by the council. The Board of Ethics shall serve until its final written opinion on the matter before it has been issued, thereafter it shall automatically dissolve. (Ord. 1986-9, S4)

2.70.030 ADVISORY OPINION. Upon the written request of the officer concerned, the board shall render written advisory opinions based upon the provisions of this ordinance. The board shall file its advisory opinions with the city clerk or mayor, but may delete the name of the officer involved. (Ord. 1986-9, S4)

2.70.040 HEARINGS AND DETERMINATIONS.

A. Upon the sworn complaint of any person alleging facts which if true would constitute improper conduct under the provisions of this ordinance, the Board of Ethics shall conduct a public hearing in accordance with the requirements of the due process of law, and, in written findings of facts and conclusions based thereon, make a determination concerning the propriety of the conduct of the subject official.

B. All such quasi-judicial hearings shall provide for the following:

1. A notice of hearing setting forth the allegations of the complaint and service of said notice on the alleged violator by personal service or by mailing said notice to his or her last known address by registered or certified mail, return receipt requested;

2. The representation of an accused official by a person or attorney of his or her choice at his or her own expense;

3. The administration of oaths to all parties or witnesses who appear for the purpose of testifying upon factual matters;

4. The cross-examination of all witnesses by the interested parties or their representatives;

5. The stenographic or other verbatim reproduction of all testimony presented in the hearing;

6. A written decision by the Board of Ethics setting forth the factual basis and reasons for the decision rendered.

C. All decisions by the Board of Ethics shall be final and not subject to further review by the city council. Appeal from the decision of the Board of Ethics shall be to the District Court of Mesa County, Colorado.

(Ord. 1986-9, S4)

2.70.050 SANCTIONS.

A. If the Board of Ethics finds that an official has willfully violated any of the provisions of this code of ethics said official shall be discharged from his or her position with the city.

B. If the Board of Ethics finds that an official has negligently violated any of the provisions of this code of ethics it shall issue a written warning to said official.

(Ord. 1986-9, S4)

TITLE 3

REVENUE AND FINANCE

Chapters:

3.04 Sewer Fund
3.05 Senior Citizen Property Tax Refunds
3.08 Special Revenue Sharing Trust Fund
3.12 Sales Tax
3.15 Use Tax-Building Materials-Vehicles
3.16 Community Center Fund
3.18 Fruita Lodger's Tax
3.19 Fruita Medical Marijuana Tax
3.20 Uniform Collection

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Chapter 3.04

SEWER FUND

Sections:

3.04.010 Established - Disposition and use

3.04.010 ESTABLISHED--DISPOSITION AND USE. The funds received from the collection of charges and rentals authorized by this section and Chapters 13.16 through 13.28 shall be deposited, paid out and applied only in the manner and form provided for the issuance of sanitary sewer refunding and improvement revenue bonds for the city, for the purpose of refunding and paying outstanding sanitary sewer revenue bonds of the city, and for extending and improving the city's sanitary sewer system and treatment plant such funds to be known and established as the "Sanitary Sewer Refunding and Improvement Bond Fund" but nothing contained in this chapter or the chapters cited above shall be construed in any way to prevent the city council from applying and crediting to such a fund, available money derived from any other sources. (Ord. 272 S20, 1972)

Chapter 3.05

SENIOR CITIZEN PROPERTY TAX REFUNDS

Sections:

3.05.010 Purpose
3.05.020 Definitions
3.05.030 Eligibility requirements for refund
3.05.040 Amount of Refund
3.05.050 Administration by City Treasurer
3.05.060 Payment of refund
3.05.070 Violations
3.05.080 Effective date

3.05.010 PURPOSE. The Fruita City Council has determined, after considering the right and power of the City to provide payments to its citizens, and considering the plight of elderly residents on fixed incomes caused by the effects of inflation and matters considered in relation thereto, that the refund of a portion of property tax payments provided for in this Chapter to relieve the plight of such elderly citizens is reasonable, proper and necessary. (Ord. 1997-17)

3.05.020 DEFINITIONS. When not clearly indicated otherwise by the context, the following words and phrases as used in this Chapter shall have the following meaning:

A. *Dwelling.* A structure, the primary purpose or use of which is residential. The term includes, but is not limited to, single family residences, condominiums or townhouses, used as the primary residence of the applicant and not used for business purposes, together with the real property upon which the dwelling is situated. The term does not include any structure, the primary purpose or use of which is business or other commercial activity.

B. *Owner.* The person of record in whom is vested fee simple ownership, dominion and title of said dwelling, or the person who has a taxable possessory interest in such dwelling such as a life estate.

C. *Refund.* The term refund refers to a portion of property taxes levied by the City of Fruita.

(Ord. 1997-17; Ord. 1998-17, S1)

3.05.030 ELIGIBILITY REQUIREMENTS FOR REFUND. In order to be eligible for refund of a portion of property taxes, the following requirements must be met:

A. Age. The applicant has become sixty-five (65) years of age or older during the calendar year preceding the year in which an application for a refund payment is made.

B. Income. The applicant's total gross annual income from all sources shall be fifteen thousand dollars ($15,000.00) or less for a single person, or eighteen thousand dollars ($18,000) or less for a married person.

C. Residency. The applicant must have resided in a dwelling located in the corporate limits of the City of Fruita which is subject to ad valorem property taxes levied and assessed by the City during the entire calendar year preceding the year in which the application for refund is made.

D. Ownership. The applicant must be the owner of such dwelling or have a taxable possessory interest in the dwelling, including but not limited to a life estate, and shall have paid in the manner and time provided for by statute all ad valorem taxes levied and assessed by Fruita against said dwelling which became due and owing in the year in which application for said refund is made. No more than one refund shall be paid per dwelling unit.

(Ord. 1998-17, S2; Ord. 1997-17)

3.05.040 AMOUNT OF REFUND. The Treasurer shall make payment to applicants meeting the eligibility requirements established in this Chapter in the amount of fifty dollars ($50.00) or fifty percent (50%) of the ad valorem taxes assessed by the City for the year in which the refund is claimed, whichever is greater. If the dwelling for which a refund is applied for is located in or is a part of a structure containing more than one dwelling unit, the assessed valuation and consequent refund will be determined by dividing the assessed valuation of the entire structure and land by the number of dwelling units contained therein. (Ord. 1997-17)

3.05.050 ADMINISTRATION BY CITY TREASURER. The administration of this Chapter is hereby vested in the Treasurer who shall prescribe application forms and make reasonable rules and regulations in conformity with this Chapter for its proper administration. The Treasurer may request documents such as Internal Revenue Service tax returns, birth certificates, and drivers' licenses to substantiate eligibility for a refund pursuant to this Chapter. (Ord. 1997-17)

3.05.060 PAYMENT OF REFUND. The Treasurer, after examination of applications filed for refunds under this Chapter, shall determine the eligibility of the applicant and the amount of refund, if any, to which the applicant is entitled and remit the same to applicant. Such refunds shall be paid from the General Fund and shall be appropriated as part of the annual City budget. (Ord. 1997-17)

3.050.070 VIOLATIONS. It shall be a violation of this ordinance for any applicant for payment hereunder to make any false statements in his or her application for payment; said violation shall be punishable pursuant to the General Penalty established in Section 1.28.020 of the Fruita Municipal Code. (Ord. 1997-17)

3.05.080 EFFECTIVE DATE. This Chapter shall be in effect for ad valorem taxes assessed against property in the City for the year 1997 and paid by the property owner in 1998. (Ord. 1997-17)

Chapter 3.08

SPECIAL REVENUE SHARING TRUST FUND

Sections:

3.08.010 Established - purpose

3.08.010 ESTABLISHED--PURPOSE. A special revenue sharing trust fund is established to account for all moneys received from distributions by the federal government under authority and by direction of the State and Local Fiscal Assistance Act of 1972, including any and all earnings, or prorated share of earnings, on said distributions.

(Ord. 288, S1, 1973)

Chapter 3.12

SALES TAX

Sections:

3.12.010	**Title and citation**
3.12.020	**Definitions**
3.12.030	**Furnishing heat considered a sale**
3.12.040	**Administration of provisions and disposition of moneys**
3.12 050	**Lease or contract considered sale when**
3.12.060	**License - Required when**
3.12.070	**Sales and services taxable, Statutory authority designated**
3.12.075	**Food and drug sales exempt**
3.12.076	**Occasional sales by a charitable organization exempt**
3.12.077	**Sale and purchase of farm equipment used for agricultural purposes exempt**
3.12.078	**Sale and purchase of pesticides used for agricultural purposes exempt**
3.12.080	**Vendor, Liable for tax, Payments due when, Extensions, Director determination authority**
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3.12.010 TITLE AND CITATION. This chapter shall be known and cited as the "City of Fruita Retail Sales Tax Ordinance." (Ord. 230, S1, 1969)

3.12.020 DEFINITIONS. When not clearly otherwise indicated by the context, the following words and phrases, as used in this chapter shall have the following meaning:

A. " Business" includes all activities engaged in or caused to be engaged in with the object of gain, benefit, or advantage, direct or indirect.

B. "CRS, 1963" means Colorado Revised Statutes, 1963, and any amendments thereto enacted before or after January 1, 1969.

C. "Director of Revenue" means the Director of Revenue of the state of Colorado.

D. "Farm auction closeout sale" means a regularly advertised and conducted sale at public auction or private treaty of all the tangible personal property of a farmer or rancher previously used by him in carrying on his farming or ranching operation. Unless said farmer or rancher is making or attempting to make full and final disposition at the auction sale of all property used in his farming or ranching operations and is abandoning said operations on the premises whereon they were previously conducted, such sale shall not be deemed a "farm auction closeout sale" within the meaning of this chapter.

E. "Gross taxable sales" means the total amount received in money, credit, property (excluding the fair market value of exchanged property which is to be sold thereafter in the usual course of the retailer's business), or other consideration valued in money for the sales and purchases at retail within the city, and embraced within the provisions of this chapter. In case of a sale on credit, a contract for sale wherein it is provided that the price shall be paid in installments and the title does not pass until a future date, chattel mortgage or a conditional sale, the total tax based on the total selling price shall become immediately due and payable. This tax shall be charged and collected by the seller;

1. Provided, that the taxpayer may take credit in his report of gross sales for an amount equal to the sale price of property returned by the purchaser when the full sale price thereof is refunded, either in cash or by credit,

2. And provided further, that the fair market value of any exchanged property which is to be sold thereafter in the usual course of the retailer's business, if included in the full price of a new article, shall be excluded from the gross sales,

3. And provided further, that taxes paid on the amount of gross sales which are represented by accounts not secured by conditional sale contract or chattel mortgage and which are found to be worthless and are actually and properly charged off as bad debts for the purpose of the income tax imposed by the laws of the state of Colorado, may be credited upon a subsequent payment of the tax herein provided; but if any such accounts are thereafter collected by the taxpayer, a tax shall be paid upon the amounts so collected. Such credit shall not be allowed with respect to any account or item therein arising from the sale of any article under a conditional sale contract whereby the seller retains title as security from all or part of the purchase price or from the sale of any article when the seller takes a chattel mortgage on the article to secure all or part of the purchase price.

F. "Person" includes any individual, firm, partnership, joint adventure, corporation, estate or trust, or any group or combination acting as a unit and the plural as well as the singular number.

G. "Purchase price" means the price to the consumer exclusive of any direct tax imposed by the federal government, or by the state of Colorado or by this chapter, and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the time and place of the exchange, provided such exchange property is to be sold thereafter in the usual course of the retailer's business.

H. "Retailer" or "vendor" means a person doing a retail business, known to the trade and public as such, and selling to the user or consumer and not for resale.

I. "Retail sale" includes all sales made within the city, except wholesale sales.

J. "Sale" or "sale and purchase" includes installment and credit sales, and the exchange of property, as well as, the sale thereof for money, every such transaction, conditional or otherwise, for a consideration, constituting a sale; the transaction of furnishing rooms or accommodations by any person, partnership, association, corporation, estate, receiver, trustee, assignee, lessee, or any person acting in a representative capacity or any other combination of individuals by whatever name known to a person, or persons who for a consideration, use, possess, or have the right to use or possess any room or rooms in a hotel, apartment hotel, lodging house, motor hotel, guest house, guest ranch, mobile home, auto camp, trailer court and park, under any concession, permit, right of access, license to use or other agreement, or otherwise; and also includes the sale or furnishing of electrical energy, gas or telephone services taxable under the terms of this chapter.

K. "Tangible personal property" means corporeal personal property. This shall not be construed to mean newspapers as legally defined by CRS 1963, Section 109-1-2.

L. "Tax" means either the tax payable by the purchaser of a commodity or service subject to tax or the aggregate amount of taxes due from the vendor of such commodity or services during the period of which he is required to report his collections, as the context may require.

M. "Taxpayer" means any person obligated to account to the Director of Revenue for taxes collected or to be collected under the terms of this chapter.

N. "City" means the city of Fruita.

O. "Wholesaler" means a person doing a regularly organized wholesale or jobbing business, and known to the trade as such and selling to retail merchants, jobbers or dealers, or other wholesalers, for the purpose of resale.

P. "Wholesale sale" means a sale by wholesalers to retail merchants, jobbers, dealers, or other wholesalers for resale and does not include a sale by wholesalers to consumers or users not for resale; the latter sales shall be deemed retail sales and subject to the

provisions of this chapter.

(Ord. 230, SS2--16 and 20; 1969)

3.12.030 FURNISHING HEAT CONSIDERED A SALE. The sale or furnishing of steam heat or other heat shall be included in the term "sale" or "sale and purchase" under this chapter. (Ord. 230, S19, 1969)

3.12.040 ADMINISTRATION OF PROVISIONS AND DISPOSITION OF MONEYS. The administration of this chapter is vested in and shall be exercised by the Director of Revenue who shall prescribe forms and reasonable rules and regulations for the making of returns, for the ascertainment, assessment, and collection of the taxes imposed hereunder, and for the proper administration and enforcement of this chapter. All moneys collected by the Director of Revenue shall be remitted monthly to the clerk of the city by the Director of Revenue. (Ord. 230, S37, 1969)

3.12.050 LEASE OR CONTRACT CONSIDERED SALE WHEN.

A. When right to continuous possession of any article of tangible personal property is granted under a lease or contract and such transfer of possession would be taxable under this ordinance if an outright sale were made, such lease or contract shall be considered the sale of such article and the tax shall be computed and paid by the vendor as in the case of an installment sale taxable hereunder.

B. When the right to possession of any article of tangible personal property is not continuous and is granted under a lease or contract for thirty days or less, such lease or contract shall be considered a sale of the use of said article and the tax shall be computed and paid upon the total charge for all such use, commodities or services rendered on each such lease or contract as collection therefor is made by the vendor; provided, however, that no such tax shall be computed and paid where the charge is primarily for the service or services rather than for use of the personal property.

C. Any person, firm or corporation engaged in the business of renting or leasing any item of personal property on a noncontinuous basis as hereinabove defined, when acquiring any article of personal property from any wholesaler, distributor or dealer for use in such business shall be the ultimate consumer and subject to the sales tax imposed herein.

(Ord. 230, S17, 1969)

3.12.060 LICENSE--REQUIRED WHEN. It is unlawful for any person to engage in the business of selling at retail, as the same is defined in this chapter, without having first obtained a license as granted and issued by the Director of Revenue as provided by Article 5 of Chapter 138, CRS 1963 as amended or may be hereafter amended. (Ord.230, S21, 1969)

3.12.070 SALES AND SERVICES TAXABLE STATUTORY AUTHORITY DESIGNATED.

A. There is imposed and levied and shall be collected and paid a tax for the privilege of

selling tangible personal property at retail upon every retailer or the furnishing of services in the city of Fruita in the amount stated in the schedule of sales tax. The tangible personal property and services taxable shall be the same as the tangible personal property and services taxable pursuant to Section 138-5-4, CRS 1963, and subject to the same exemptions as those specified in Section 138-5-14, CRS 1963.

B. Tax is imposed on the following:

1. On the purchase price paid or charged upon all sales and purchases of tangible personal property at retail;

2. In case of retail sales involving the exchange of property, on the purchase price paid or charged, including the fair market value of the property exchanged at the time and place of the exchange, excluding however, from the consideration or purchase price the fair market value of the exchanged property, provided such exchanged property is to be sold thereafter, in the usual course of the retailers business;

3. Upon telephone and telegraph services, whether furnished by public or private corporations or enterprises, for all intrastate telephone and telegraph service;

4. For gas and electric service, whether furnished by municipal, public or private corporations or enterprises, for gas and electricity furnished and sold for domestic and commercial consumption and not for resale, upon steam when consumed or used by the purchaser and not resold in original form whether furnished or sold by municipal, public or private corporations or enterprises;

5. Upon the amount paid for all meals and cover charges, if any, furnished in any restaurant, eating house, hotel, drugstore, club resort or other such place at which meals or food are regularly sold to the public;

6. On the entire amount charged to any person or persons for rooms or accommodations by any person, partnership, association, corporation, estate, receiver, trustee, assignee, lessee or any person acting in a representative capacity, or any other combination of individuals by whatever name known, to a person or persons who for a consideration use, possess or have the right to use and possess any room or rooms in a motel, apartment hotel, lodging house, motor hotel, guest house, guest ranch, mobile home, auto camp, trailer court and park under any concession, permit, right of access, license to use or other agreement, or otherwise;

7. On the full purchase price of articles sold after manufacture or after having been made to order and includes the full purchase price of material used and service performed in connection therewith, excluding however, such articles as are otherwise exempted in this chapter. The sale price is the gross value of all the materials, labor, service, and the profit thereon, included in the price charged to the consumer.

C. For these purposes:

1. All retail sales are deemed consummated at the place of business of the retailer, unless the tangible personal property sold is delivered by the retailer or his agent to a destination outside the incorporated limits of the city or to a common carrier for delivery to a destination outside the incorporated limits of the city.

2. Gross receipt from such sales shall include delivery charges, when such charges are subject to the state sales and use tax imposed by Article 5 of Chapter 138, CRS 1963, as amended, regardless of the place to which delivery is made.

D. The amount subject to this tax shall not include the amount of any sales or use tax imposed by Article 5 of Chapter 138, CRS 1963, as amended. For transactions consummated on or after January 1, 1986, the city's sales tax shall not apply to the sale of construction and building materials, as the term is used in C.R.S. 29-2-109, if such materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to the city evidencing that all local use tax has been paid or is required to be paid.

E. For transactions consummated on or after January 1, 1986, the City's sales tax shall not apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule municipality equal to or in excess of 3% a credit shall be granted against the City's sales tax with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or Home Rule Municipality. The amount of credit shall not exceed 3%.

(Ord. 316, S1, 1974; Ord. 244, S2 and 3, 1969; Ord. 230, S22, 1969; Ord. 1986-2, S4; Ord. 2008-15, S1)

3.12.075 FOOD AND DRUG SALES EXEMPT. The 3% sales tax shall not be imposed on the sale of food, as defined in Section 39-26-102 (4.5) CRS 1973, and on the sale of prescription drugs. (Ord. 1982-6, S11, 1982; Ord. 526, S11, 1981; Ord. 2008-15, S1)

3.12.076 OCCASIONAL SALES BY A CHARITABLE ORGANIZATION EXEMPT.

A. Effective September 1, 1995, all occasional sales by a charitable organization, shall be exempt from taxation imposed by this Chapter.

B. For the purposes of this Section, “charitable organization” means any entity organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no

substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

C. For the purposes of this Section, "occasional sales" means retail sales of tangible personal property, including concessions, for fund-raising purposes if:

1. The sale of tangible personal property or concessions by the charitable organization takes place no more than twelve (12) days, whether consecutive or not, during any one calendar year;

2. The funds raised by the charitable organization through the sales are retained by the organization to be used in the course of the organization's charitable service; and

3. The funds raised by the charitable organization through the sales do not exceed twenty-five thousand dollars ($25,000.00) during any one (1) calendar year.

(Ord. 1995-25, 1995)

3.12.077 SALE AND PURCHASE OF FARM EQUIPMENT USED FOR AGRICULTURAL PURPOSES EXEMPT.

A. All sales and purchases of farm equipment and any farm equipment under lease or contract shall be exempt from taxation under this Section if the fair market value of such equipment is at least one thousand dollars and the equipment is purchased, rented or leased for use primarily and directly in any farm operation. The lessor shall obtain a signed affidavit from the lessee or renter affirming that the farm equipment will be used primarily and directly in a farm operation.

B. For purposes of this section the following terms are defined:

1. "Attachments" means any equipment or machinery added to an exempt farm tractor or implement of husbandry that aids or enhances the performance of such tractor or implement.

2. "Farm Equipment" means farm tractors, as defined in section 42-1-102 (33) C.R.S., implements of husbandry as defined in section 42-1-102 (44), C.R.S., and irrigation equipment having a per unit purchase price of at least one thousand dollars. "Farm Equipment" also includes, regardless of purchase price, attachment and bailing wire, binders twine, and surface wrap used primarily and directly in any farm operation. "Farm Equipment" does not include:

a. Vehicles subject to the registration requirements of section 42-3-103 C.R.S., regardless of the purpose for which such vehicles are used;

b. Machinery, equipment, materials, and supplies used in a manner that is incidental to a farm operation;

c. Maintenance and janitorial equipment and supplies; and

d. Tangible personal property used in any activity other than farming, such as office equipment and supplies and equipment and supplies used in the sale or distribution of farm products, research, or transportation.

3. "Farm Operation" means the production of any of the following products for profit, including but not limited to a business that hires out to produce or harvest such products:

a. Agricultural, viticultural, fruit, and vegetable products;

b. Livestock, as defined in section 39-26-102 (5.5);

c. Milk;

d. Honey; and

e. Poultry and eggs.

C. This exemption on the sale and purchase of farm equipment used for agricultural purposes from the city sales tax is effective July 1, 2000 upon approval by the registered electors voting in the April 4, 2000 regular municipal election. (Ord. 2000-05, S1 - 2000)

3.12.078 SALE AND PURCHASE OF PESTICIDES USED FOR AGRICULTURAL PURPOSES EXEMPT.

A. All sales and purchases of pesticides that are registered by the commissioner of agriculture for use in the production of agricultural and livestock products pursuant to the provisions of the "Pesticide Act", Article 9 of Title 35, C.R.S., and offered for sales by dealers licensed to sell such pesticides pursuant to section 35-9-115 C.R.S., shall be exempt from taxation under this section.

B. This exemption on the sale and purchase of pesticides used for agricultural purposes from the city sales tax is effective July 1, 2000 upon approval by the registered electors voting in the April 4, 2000 regular municipal election. (Ord. 2000-05, S2)

3.12.080 VENDOR--LIABLE FOR TAX--PAYMENTS DUE WHEN—EXTENSIONS--DIRECTOR DETERMINATION AUTHORITY.

A. Every retailer, also herein called "vendor" shall, irrespective of the provisions as provided by this chapter, be liable and responsible for the payment of an amount equivalent to 3%

of all sales made by him of commodities or services as provided by this chapter, and shall before the fifteenth day of each calendar month make a return to the Director of Revenue for the preceding calendar month and remit an amount equivalent to said 3% on such sales to said director, less 3.3% of the sum so remitted to cover the vendor's expense in the collection and remittance of said tax.

B. Every retailer or vendor conducting a business in which the transaction between the vendor and the consumer consists of the supplying of tangible personal property and services in connection with the maintenance or servicing of same shall be required to pay the taxes levied under this chapter upon the full contract price unless application is made to the Director of Revenue for permission to use a percentage basis reporting the tangible personal property sold and the services supplied under such contract. The director is authorized to determine the percentage based upon the ratio of the tangible personal property included in the consideration as it bears to the total of the consideration paid under the combination contract or sale which shall be subject to the sales tax levied pursuant to the provisions of this chapter. This section shall not be construed to include items upon which the sales tax is imposed on the full purchase price as provided by this chapter.

(Ord. 1982-6, S7, 1982; Ord. 526, S7, 1981; Ord. 430b, S2, 1980; Ord. 343, S1, 1976; Ord. 333, S1, 1975; Ord. 230, S23, 1969; Ord. 2008-15, S1)

3.12.090 SCHEDULE AND METHODS OF IMPOSITION REQUIRED.

A. There is hereby imposed upon all of commodities and services specified in this chapter, a tax in accordance with the following:

Amount of Sale		Tax
$.01 including	$.16	No tax
.17 including	.49	.01
.50 including	.83	.02
.84 including	1.00	.03

On sales in excess of one dollar, the tax shall be three cents on each full dollar of the sales price, plus the tax shown in the above schedule for the applicable fractional part of a dollar of each such sales price.

B. Except as provided in subsection C of this section, retailers shall add the tax imposed hereby, or the average equivalent thereof, to the sale price or charge, showing such tax as a separate and distinct item, and when added such tax shall constitute a part of such price or charge and shall be a debt from the consumer to the retailer until paid and shall be recoverable at law in the same manner as other debts. The retailer shall be entitled, as collecting agent of this city, to apply and credit the percent rate to be paid by him under the provisions of this chapter, remitting any excess of collections over said 3% collection expense allowance, to the director of revenue in the retailer's next monthly sales tax return.

C. Any retailer selling malt, vinous or spirituous liquors by the drink may include in his sales price the tax levied under this chapter; provided, that no such retailer shall advertise or hold out to the public in any manner, directly or indirectly, that such tax is not included as a part of the sales price to the consumer. The schedule set forth in subsection A of this section shall be used by such retailer in determining amounts to be included in such sales price. No such retailer shall gain any benefit from the collection or payment of such tax, except as permitted by this chapter, nor shall the use of the schedule set forth in subsection A of this section relieve such retailer from liability for payment of the full amount of the tax levied by this chapter.

(Ord. 1982-6, S8, 1982; Ord. 526, S8, 1981; Ord. 430b, S3, 1980; Ord. 343, S2, 1976; Ord. 333, S2, 1975; Ord. 230, S24, 1969; Ord. 2008-15, S1, S2)

3.12.100 RULES AND REGULATIONS--DIRECTOR PROMULGATION AUTHORIZED. To provide uniform methods of adding the tax or the average equivalent thereof to the selling price, the Director of Revenue may formulate and promulgate after hearing appropriate rules and regulations to effectuate the purposes as provided by this chapter. (Ord. 230, S25, 1969)

3.12.110 ABSORPTION BY RETAILER PRO-HIBITED WHEN. It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof imposed by provisions of this chapter will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold, or if added that it or any part thereof will be refunded. Any person violating any of the provisions of this section shall be subject to the penalties herein provided. (Ord. 230, S26, 1969)

3.12.120 VENDOR--REPORTS REQUIRED WHEN. If the accounting methods regularly employed by the vendor in the transaction of his business, or other conditions, are such that reports of sales made on a calendar month basis will impose unnecessary hardship, the Director of Revenue, upon written request of the vendor, may accept reports at such intervals as will in his opinion better suit the convenience of the taxpayer and will not jeopardize the collection of the tax; provided, that the Director of Revenue may by rule permit taxpayers whose monthly tax collected is less than sixty dollars to make returns and pay taxes at intervals not greater than every three months. (Ord. 230, S27, 1969)

3.12.130 VENDOR--LOCATION OF BUSINESS WHERE SALES CONSUMMATED--DETERMINATION AUTHORITY. A retailer who has no permanent place of business in the city, or has more than one place of business, the place or places at which the retail sales are consummated for the purpose of the sales tax imposed by this chapter shall be determined by provisions of Article 5, Chapter 138, CRS 1963, as amended, and by rules and regulations promulgated by the Department of Revenue. (Ord. 230, S28, 1969)

3.12.140 SECURED CREDIT SALES PROVISIONS. Wherever an article is sold under a conditional sale contract whereby the seller retains title as security for all or part of the purchase price, or whenever the seller takes a chattel mortgage on the article to secure all or part of the purchase price, the total tax based on the total selling price shall become immediately due and payable. This tax shall be charged and collected by the seller. No refund or credit shall be

allowed to either party to the transaction in case of repossession. (Ord. 230, S29, 1969)

3.12.150 VENDOR--DUTY TO REMIT EXCESS COLLECTIONS--FAILURE TO REMIT DECLARED VIOLATION WHEN. If any vendor, during the reporting period, collects as a tax an amount in excess of 3% of his total taxable sales, he shall remit to the Director of Revenue the full net amount of the tax herein imposed, and also such excess. The retention by the retailer or vendor of any excess tax collections or the intentional failure to remit punctually to the Director of Revenue the full amount required to be remitted by the provisions of this chapter is declared to be a violation of this chapter. (Ord. 1982-6, S9, 1982; Ord. 526, S9, 1981; Ord. 430 b, S4, 1980; Ord. 2008-15, S1)

3.12.160 EXEMPTIONS--DESIGNATED.

A. The exemptions as specified in Section 138-5-14, CRS 1963, shall be available for purposes of the sales tax.

B. All sales of personal property on which a specific ownership tax has been paid or is payable shall be exempt from the sales tax when such sales meet both of the following conditions:

1. The purchaser is a nonresident of, or has its principal place of business outside of, the city; and

2. Such personal property is registered or required to be registered outside the city limits of the city under the laws of this state.

C. Every vendor vending individual items of personal property through coin-operated vending machines shall be exempt from the provisions of this chapter, but nevertheless such vendor shall pay sales tax of 3% on the personal property sold in excess of ten cents so vended in the coin-operated machines unless the sale is otherwise exempt under the provisions of this chapter.

(Ord. 1982-6, S10, 1982; Ord. 526, S10, 1981; Ord. 430 b, S5, 1980; Ord. 337, S1, 1975; Ord. 316 S2, 1974; Ord. 230, S31, 1969; Ord. 2008-15, S1)

3.12.170 EXEMPTIONS--DISPUTE SETTLEMENT PROCEDURES--REFUNDS AND CLAIMS.

A. Should a dispute arise between the purchaser and seller as to whether or not any sale, service or commodity is exempt from taxation under this chapter, nevertheless the seller shall collect and the purchaser shall pay the tax, and the seller shall thereupon issue to the

purchaser a receipt or certificate, on forms prescribed by the Director of Revenue, showing the names of the seller and the purchaser, the items purchased, the date, price, amount of tax paid, and a brief statement of the claim or exemption. The purchaser thereafter may apply to the Director of Revenue for a refund of such taxes, and it shall then be the duty of the Director of Revenue to determine the question of exemption. The

purchaser may request a hearing pursuant to Section 138-9-2, CRS 1963, and the final determination of the Director of Revenue may be appealed to the Colorado District Court pursuant to Section 138-9-4, CRS 1963.

B. A refund shall be made, or a credit allowed, for the tax so paid under dispute by any purchaser who has an exemption as in this chapter provided. Such refund shall be made by the Director of Revenue after compliance with the following conditions precedent: Applications for refund

1. Must be made within sixty days after the purchase of the goods whereon an exemption is claimed; and

2. Must be supported by the affidavit of the purchaser accompanied by the original paid invoice or sales receipt and certificate issued by the seller; and

3. Must be made upon such forms as shall be prescribed and furnished by the Director of Revenue, which forms shall contain such information as said Director shall prescribe.

C. Upon receipt of such application the Director shall examine same with all due speed and shall give notice to the applicant by order in writing of his decision thereon. Aggrieved applicants, within thirty days after such decision is mailed to them, may petition the Director for a hearing on the claim in the manner provided in Section 138-9-2, CRS 1963, and may appeal to the district courts in the manner provided in Section 138-9-4, CRS 1963. The right of any person to a refund under this article shall not be assignable and, except as provided in paragraph E of this section, such application for refund must be made by the same person who purchased the goods and paid the tax thereon as shown in the invoice of the sale thereof. Any applicant for refund under the provisions of this section, or any other person who shall make any false statement in connection with an application for a refund of any taxes shall be deemed guilty of a violation of this chapter and shall be punishable as hereinafter provided.

D. A refund shall be made or a credit allowed by the Director of Revenue to any person entitled to an exemption where such person establishes:

1. That a tax was paid by another on a purchase made on behalf of such person; and

2. That a refund has not been granted to the person making the purchase; and

3. That the person entitled to exemption paid or reimbursed the purchaser for such tax.

E. Such application for refund under paragraph C of this section shall be made within three years after the date of purchase and shall be made on forms prescribed and furnished by the Director of Revenue, which form shall contain in addition to the foregoing information such pertinent data as the Director shall prescribe. Upon receipt of such application and proof of the matters therein contained the Director shall give notice to the

applicant by order in writing of his decision thereon. Aggrieved applicants, within thirty days after such decision is mailed to them, may petition the Director for a hearing on the claim in the manner provided in Section 138-9-2, CRS 1963, and may appeal to the district courts in the manner provided in Section 138-9-4, CRS 1963. Any Applicant for refund under the provisions of this paragraph E, or any other persons who shall make any false statement in connection with an application for refund of any taxes, shall be deemed guilty of a violation of this chapter and shall be punishable as hereinafter provided.

F. Claims for tax moneys paid in error or by mistake may be processed for refund in accord with regulations promulgated and adopted by the Director of Revenue.

G. If any person be convicted under the provisions of this section, such convictions shall be prima facie evidence that all refunds received by such person during the current year were obtained unlawfully and the Director of Revenue is empowered and directed to bring appropriate action for recovery of such refunds. A brief summary statement of the above mentioned penalties shall be printed on each form application for refund.

H. The burden of proving that sales, services and commodities, on which tax refunds are claimed are exempt from taxation under provisions of this chapter, or were not at retail, shall be on the one making such claim under such reasonable requirements of proof as the Director of Revenue may prescribe. Should the applicant for refund be aggrieved at the final decision of the Director, he may proceed to have the same reviewed by the district courts in the manner provided for review of other decisions of the Director as provided in Section 138-9-4, CRS 1963.

(Ord. 230, S32, 1969)

3.12.180 DEFICIENT PAYMENTS. If any part of the deficiency is due to negligence or intentional disregard of authorized rules and regulations with knowledge thereof, but without intent to defraud, there shall be added 10% of the total amount of the deficiency, and interest in such case shall be collected at the rate on .5% per month, in addition to the interest provided by Section 138-9-8, CRS 1963, on the amount of such deficiency from the time the return was due, from the person required to file the return, which interest and addition shall become due and payable ten days after written notice and demand to him by the Director of Revenue. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added 50% of the total amount of the deficiency and in such case, the whole amount of the tax unpaid, including the additions, shall become due and payable ten days after written notice and demand by the Director of Revenue and an additional 1% per month on said amount shall be added from the date the return was due until paid. (Ord. 230, S33, 1969)

3.12.190 DEEMED PRIOR LIEN WHEN--PROCEDURE FOLLOWING SALE OF BUSINESS--TAXPAYER DEFINED.

A. The tax imposed by this chapter shall be a first and prior lien subject only to the lien of the state as imposed by Article 5, Chapter, 138, CRS 1963, upon the goods and business fixtures of or used by any retailer under lease, title restraining contract of other contract arrangement, excepting stock of goods sold or for sale in the ordinary course of business,

and shall take precedence on all such property over other liens or claims of whatsoever kind or nature. Any retailer who shall sell out his business or stock of goods, or shall quit business, shall be required to make out the return as provided by this chapter within ten days after the date he sold his business or stock of goods, or quit business, and his successor in business shall be required to withhold sufficient of the purchase money to cover the amount of said taxes due and unpaid until such time as the former owner shall produce a receipt from the Director of Revenue showing that the taxes have been paid, or a certificate that no taxes are due.

B. If the purchaser of a business or stock of goods shall fail to withhold the purchase money as above provided and the taxes shall be due and unpaid after the ten day period allowed, he, as well as the vendor, shall be personally liable for the payment of the taxes unpaid by the former owner. Likewise, anyone who takes any stock of goods or business fixtures of or used by any retailer under lease, title retaining contract or other contract arrangement, by purchase, foreclosure sale or otherwise, takes same subject to the lien for any delinquent sales taxes owed by such merchant, and shall be liable for the payment of all delinquent sales taxes of such prior owner, not, however, exceeding the value of property so taken or acquired.

C. Whenever the business or property of any taxpayer subject to this chapter shall be placed in receivership, bankruptcy or assignment for the benefit of creditors, or seized under distraint for property taxes, all taxes, penalties and interest imposed by this chapter and for which said retailer is in any way liable under the terms of this chapter, shall be a prior and preferred claim against all the property of said taxpayer, except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights shall have attached prior to the filing of the notice as provided by this chapter on the property of the taxpayer, other than the goods, stock in trade and business fixtures of such taxpayer, and no sheriff, receiver, assignee or other officer shall sell the property of any person subject to this chapter under process or order of any court without first ascertaining from the Director of Revenue the amount of any taxes due and payable under this chapter, and if there be any such taxes due, owing or unpaid, it shall be the duty of such officer to first pay the amount of said taxes out of the proceeds of said sale before making payment of any moneys to any judgment creditor or other claims of whatsoever kind or nature, except the costs of the proceedings and other preexisting claims or liens as above provided. For the purposes of this chapter, the term "taxpayer" shall include "retailer."

(Ord. 230, S34, 1969)

3.12.200 MONEY TO BE PUBLIC TRUST. All sums of money paid by the purchaser to the retailer as taxes imposed by this chapter shall be and remain public money, the property of the city, in the hands of such retailer and he shall hold the same in trust for the sole use and benefit of the city until paid to the Director of Revenue, and for failure to so pay to the Director of Revenue, such retailer shall be punished as provided by this chapter.

(Ord. 230, S35 (1), 1969)

3.12.210 ESTIMATE BY DIRECTOR AUTHORIZED WHEN--PENALTY--NOTICE REQUIRED.

A. If a person neglects or refuses to make a return in payment of the tax as required by this chapter, the Director of Revenue shall make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the taxpayer is delinquent; and shall add thereto a penalty equal to 10% thereof and interest on such delinquent taxes at the rate of 1% per month from the date when due. Promptly thereafter, the Director of Revenue shall give to the delinquent taxpayer written notice of such estimated taxes, penalty and interest, which notice shall be served personally or by certified mail.

B. Such estimate shall thereupon become a notice of deficiency as provided in Section 138-9-2, CRS 1963. A hearing may be held and the Director shall make a final determination in the manner provided in Section 138-9-4, CRS 1963.

(Ord. 230, S35 (2), 1969)

3.12.220 LATE PAYMENTS--NOTICE REQUIRED-- CONTENTS--EFFECT.

a. If any taxes, penalty or interest imposed by this chapter and shown due by returns filed by the taxpayer or as shown by assessments duly made as provided herein, are not paid within five days after the same are due, the Director of Revenue shall issue a notice setting forth the name of the taxpayer, the amount of the tax, penalties and interest, the date of the accrual thereof, and that the city claims a first and prior lien therefor on the real and tangible personal property of the taxpayer except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights shall have attached prior to the filing of the notice herein provide on property of the taxpayer, other than the goods, stock in trade and business fixtures of such taxpayer.

b. Said notice shall be on forms prepared by the Director of Revenue, and shall be verified by him or his duly qualified deputy, or any duly qualified agent of the Director of Revenue whose duties are the collection of such tax, and may be filed in the office of the clerk and recorder of any county in the state in which the taxpayer owns real or tangible personal property, and the filing of such notice shall create such lien on such property in that county and constitute notice thereof. After said notice has been filed, or concurrently therewith, or at any time when taxes due are unpaid, whether such notice be filed or not, the Director of Revenue may issue warrant directed to any duly authorized revenue collector, or to the sheriff of any county of the state, commanding him to levy upon, seize and sell sufficient of the real and personal property of the tax debtor found within his county for the payment of the amount due, together with interest, penalties and costs, as may be provided by law, subject to valid preexisting claims or liens.

(Ord. 230, S35(3), 1969)

3.12.230 LATE PAYMENTS—COLLECTION FROM SALE OF PROPERTY-- SHERIFF'S FEES. Such revenue collector or the sheriff shall forthwith levy upon sufficient of the property of the taxpayer, or any property used by such taxpayer in conducting his retail business, and said property so levied upon shall be sold in all respects with like effect and in the same manner as is prescribed by law in respect to executions against property upon judgment of a court of record, and the remedies of garnishments shall apply. The sheriff shall be entitled to such fees in executing such warrant as are now allowed by law for similar services. (Ord. 230, S35(4), 1969)

3.12.240 LIENS RELEASED WHEN. Any lien for taxes as shown on the records of the county clerk and recorder as herein provided, upon payment of all taxes, penalties and interest covered thereby, shall be released by the Director of Revenue in the same manner as mortgages and judgments are released. (Ord. 230, S35(5), 1969)

3.12.250 UNPAID TAXES DEEMED DEBT DUE CITY WHEN--RECOVERY PROCEDURE. The Director of Revenue may also treat any such taxes, penalties or interest due and unpaid as a debt due the city from the vendor. In case of failure to pay the tax or any portion thereof, or any penalty or interest thereon when due, the Director of Revenue may recover by law the amount of such taxes, penalties and interest in such county or district court of the county wherein the taxpayer resides or has his principal place of business having jurisdiction of the amounts sought to be collected. The return of the taxpayer of the assessment made by the Director of Revenue, as herein provided, shall be prima facie proof of the amount due. (Ord. 230, S35(6), 1969)

3.12.260 ACTIONS AFFECTING TITLE--CITY A PARTY DEFENDANT WHEN. In any action affecting the title to real estate or the ownership or rights to possession of personal property, the city may be made a party defendant for the purpose of obtaining an adjudication or determination of its lien upon the property involved therein and in any such action service of summons upon the Director of Revenue, or any person in charge of the office of the Director of Revenue, shall be sufficient service and binding upon the city. (Ord. 230, S35(7), 1969)

3.12.270 PENALTY--WAIVER AUTHORIZED WHEN. The Director of Revenue is authorized to waive, for good cause shown, any penalty assessed as in this chapter provided, and interest imposed in excess of 6% per year shall be deemed a penalty. (Ord. 230, S35(8), 1969)

3.12.280 DELINQUENT PAYMENTS--PENALTY IMPOSED WHEN--AMOUNT. If any person, firm or corporation liable for the payment of a tax imposed by this chapter has repeatedly failed, neglected or refused to pay the same within the time specified for such payment, and the Department of Revenue has been required to exercise its enforcement proceedings three or more times through the issuance of a distraint warrant to enforce collection of any such taxes due, the Director of Revenue is authorized to assess and collect the amount of such taxes due together with all the interest and penalties thereon provided by law and also an additional amount equal to 15% of the delinquent taxes, interest and penalties due, or the sum of twenty-five dollars, whichever amount is greater, said additional amount being imposed to compensate the department for administrative and collection costs incurred in collecting such delinquent taxes. (Ord. 230, S35(9), 1969)

3.12.290 VIOLATION—PENALTY.

A. It is unlawful for any retailer or vendor to refuse to make any return provided to be made by this chapter or to make any false or fraudulent return or false statement on any return or fail and refuse to make payment to the Director of Revenue of any taxes collected or due the city, or in any manner evade the collection and payment of the tax, or any part thereof, or for any person or purchaser to fail or refuse to pay such tax, or evade the payment thereof, or to aid or abet another in any attempt to evade the payment of the tax.

B. Any person violating any of the provisions of this chapter shall be subject to a fine not exceeding three hundred dollars, or by imprisonment not exceeding ninety days, or by both fine and imprisonment.

(Ord. 230, S36, 1969)

Chapter 3.15

USE TAX ON BUILDING MATERIALS AND ON VEHICLES

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3.15.010 PURPOSE. The purpose of this chapter is to raise revenue and provide a complementary tax to the city of Fruita ("City") sales tax. The taxes imposed in this chapter are on the privilege of using or consuming in the city any construction and building materials, or

storing, using and consuming in the city, motor vehicles, other vehicles on which registration is required, and mobile homes on which ad valorem taxes have not yet been paid. (Ord. 1986-3, S4)

3.15.020 DEFINITIONS. For the purpose of this chapter, the definitions of the words contained in this chapter shall be as defined in CRS 1973, Sections 39-26-201 and 42-1-102. (Ord. 1986-3, S4)

3.15.030 GENERAL FUND REVENUES. All funds received pursuant to the ordinances codified in this chapter shall be deposited into the city's general fund with the exception of the funds to be deposited into the Community Center Fund pursuant to Section 3.16.010 of the Fruita Municipal Code. (Ord. 1986-3, S4; Ord. 2008-15, S3)

3.15.040 EXEMPTIONS. In no event shall the use tax imposed by this chapter apply to the following:

A. Storage, use or consumption of any tangible personal property the sale of which is subject to a retail sales tax imposed by the city;

B. Storage, use or consumption of any tangible personal property purchased for resale in the city, either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of a business.

C. Storage, use or consumption of tangible personal property brought into the city by a nonresident thereof for his own storage, use or consumption while temporarily within the city;

D. The storage, use or consumption of tangible personal property by the United States government, or the state of Colorado, or its institutions, or its political subdivisions in their governmental capacities only, or by religious or charitable corporations in the conduct of their regular religious or charitable functions;

E. The storage, use or consumption of tangible personal property by a person engaged in the business of manufacturing or compounding for sale, profit or use, any article, substance or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded or furnished and the container, label or the furnished shipping case thereof;

F. The storage, use or consumption of any article of tangible personal property the sale or use of which has already been subjected to a sales or use tax of another statutory or home rule municipality. A credit shall be granted against the use tax imposed by this chapter with respect to a person's storage, use or consumption in the city of tangible personal property purchased by him in such municipality. The amount of the credit shall be equal to the tax paid by him by reason of the imposition of a sales or use tax of the previous statutory or home rule municipality on his purchase or use of the property. The amount of the credit shall not exceed the tax imposed by this chapter;

G. The storage, use or consumption of tangible personal property and household effects acquired outside of the city and brought into it by a nonresident acquiring residency;

H. The storage or use of a motor vehicle, other vehicle on which registration is required, or mobile home if the owner is or was, at the time of purchase, a nonresident of the city and he purchased the vehicle outside of the city for use outside the city and actually so used it for the primary purpose for which it was acquired and he registered, titled and licensed the motor vehicle, other vehicle on which registration is required, or mobile home outside the city;

I. The use or consumption of any construction and building materials, and the storage, use and consumption of motor and other vehicles on which registration is required, and mobile homes if a written contract for the purchase thereof was entered into prior to November 10, 1980.

J. The use or consumption of any construction and building materials required or made necessary in the performance of any construction contract bid, let or entered into at any time prior to November 10, 1980.

K. Purchases by tax-exempt entities which would be otherwise taxable under this chapter. The furnishing to the city clerk of a certificate of exemption shall be prima facie evidence of such tax-exempt status, and the use tax otherwise due shall not be collected at the time the building permit is secured or the vehicle is purchased.

L. For transactions consummated on or after January 1, 1986 the storage of construction and building material.

M. For transactions consummated on or after January 1, 1986, the City's use tax shall not be imposed with respect to the use or consumption of tangible personal property within the City which occurs more than three years after the most recent sale of the property if, within the three years following such sale, the property has been significantly used within the state for the principal purpose for which it was purchased.

(Ord. 1986-3, S4)

3.15.045 USE TAX – COLLECTION - LIMITATION OF ACTIONS. For transactions consummated on or after January 1, 1986:

A. No use tax, or interest thereon or penalties with respect thereto, shall be assessed, nor shall any notice of lien be filed, or distraint warrant issued, or suit for collection be instituted, nor any other action to collect the same be commenced, more than three years after the date on which the tax was or is payable; nor shall any lien continue after such period, except for taxes assessed before the expiration of such period, notice of lien with respect to which has been filed prior to the expiration of such period, in which cases such lien shall continue only for one year after the filing of notice thereof. In the case of a false or fraudulent return with intent to evade tax, the tax, together with interest and penalties thereon, may be assessed, or proceedings for the collection of such taxes may be begun at any time. Before the expiration of such period of limitation, the taxpayer and the City Manager may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing.

B. In the case of failure to file a return, the use tax may be assessed and collected at any time.

(Ord. 1986-3, S4)

3.15.046 USE TAX—REFUNDS--LIMITATION OF ACTIONS. For transactions consummated on or after January 1, 1986:

A. An application for refund of use tax paid under dispute by a purchaser or user who claims an exemption pursuant to 3.15.040 shall be made within sixty days after the storage, use, or consumption of the goods or services whereon an exemption is claimed.

B. An application for refund of tax moneys paid in error or by mistake shall be made within three years after the date of storage, use, or consumption of the goods for which the refund is claimed.

3.15.047 USE TAX--INTEREST ON UNDER-PAYMENT, NONPAYMENT, OR EXTENSIONS OF TIME FOR PAYMENT OF TAX.

A. If any amount of use tax is not paid on or before the last date prescribed for payment, interest on such amount at the rate imposed under section 3.15.051 of this ordinance shall be paid for the period from such last date to the date paid. The last date prescribed for payment shall be determined without regard to any extension of time for payment and shall be determined without regard to any notice and demand for payment issued, by reason of jeopardy, prior to the last date otherwise prescribed for such payment. In the case of a tax in which the last date for payment is not otherwise prescribed, the last date for payment shall be deemed to be the date the liability for the tax arises, and in no event shall it be later than the date notice and demand for the tax is made by the City Clerk.

B. Interest prescribed by this ordinance shall be paid upon notice and demand and shall be assessed, collected, and paid in the same manner as the tax to which it is applicable.

C. If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowed with respect to such overpayment.

D. Interest prescribed under this ordinance on any use tax may be assessed and collected at any time during the period within which the tax to which such interest relates may be assessed and collected.

(Ord. 1986-3, S4)

3.15.048 USE TAX--DEFICIENCY DUE TO NEGLIGENCE. If any part of the deficiency in payment of the use tax is due to negligence or intentional disregard of the ordinances or of authorized rules and regulations of the City with knowledge thereof, but without intent to defraud, there shall be added 10% of the total amount of the deficiency, and interest in such case shall be collected at the rate imposed under section 13.15.051, in addition to the interest provided

by section 3.15.047, on the amount of such deficiency from the time the return was due, from the person required to file the return, which interest and addition shall become due and payable ten days after written notice and demand to him by the City Clerk. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added 100% of the total amount of the deficiency and in such case, the whole amount of the tax unpaid, including the additions, shall become due and payable ten days after written notice and demand by the City Clerk and an additional 3% per month on said amount shall be added from the date the return was due until paid. (Ord. 1986-3, S4)

3.15.049 USE TAX--NEGLECT OR REFUSAL TO MAKE RETURN OR TO PAY. If a person neglects or refuses to make a return in payment of the use tax or to pay any use tax as required, the City Clerk shall make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the taxpayer is delinquent and shall add thereto a penalty equal to 10% thereof and interest on such delinquent taxes at the rate imposed under section 3.15.051, plus .5% per month from the date when due. (Ord. 1986-3, S4)

3.15.050 PENALTY INTEREST ON UNPAID USE TAX. Any use tax due and unpaid shall be a debt to the City, and shall draw interest at the rate imposed under section 3.15.051, in addition to the interest provided by section 3.15.047, from the time when due until paid. (Ord. 1986-3, S4)

3.15.051 RATE OF INTEREST. When interest is required or permitted to be charged under any provisions of sections 3.15.047 through 3.15.050 of this ordinance, the annual rate of interest shall be that established by the state commissioner of banking pursuant to 39-21-110.5, C.R.S. (Ord. 1986-3, S4)

3.15.052 VIOLATIONS--PENALTY. Any person who is convicted of failing to file a return or failing to pay use tax as required by this chapter, or of making false statements in connection with any filing of documents or statements required by this chapter, or of evading in any other way the requirements of this chapter, shall be punished as provided in Chapter 1.28.020 of this code. (Ord. 1986-3, S4)

3.15.053 DELINQUENT--LIEN ON PROPERTY. If any tax imposed by this chapter is not paid within ten days after it is due, the city clerk shall issue a notice setting forth the name of the taxpayer, the amount of the tax, the date of the accrual thereof, and that the city claims a first and prior lien therefor on the real and personal property of the taxpayer, except as to preexisting liens of a bona fide mortgagee, pledgee, judgment creditor, or purchaser whose right has attached prior to the filing of the notice as hereinafter provided. This notice shall be on forms prepared by the city clerk, and, when filed in the office of the clerk and recorder of any county in this state in which the taxpayer owns real or personal property, such notice shall create a lien as aforesaid on such property in that county and constitute a notice thereof. (Ord. 1986-3, S4)

3.15.054 USE TAX--ALTERNATIVE DISPUTE RESOLUTION PROCEDURE --DEFICIENCY NOTICE OR CLAIM FOR REFUND. For transactions consummated on or after January 1, 1986, the taxpayer may elect a state hearing on the City Manager's final decision on a deficiency notice or claim for refund pursuant to the procedure set forth in this section.

A. As used in this section 3.15.054, "state hearing" means a hearing before the executive director of the department of revenue or delegate thereof as provided in 29-2-106.1 (3), C.R.S.

B. When the City asserts that use taxes are due in an amount greater than the amount paid by a taxpayer, the City shall mail a deficiency notice to the taxpayer by certified mail. The deficiency notice shall state the additional use taxes due. The deficiency notice shall contain notification, in clear and conspicuous type, that the taxpayer has the right to elect a state hearing on the deficiency pursuant to 29-2-106.1 (3)., C.R.S. The taxpayer shall also have the right to elect a state hearing on the City's denial of such taxpayer's claim for a refund of use tax paid.

C. The taxpayer shall request the state hearing within thirty days after the taxpayer's exhaustion of local remedies. The taxpayer shall have no right to such hearing if he has not exhausted local remedies or if he fails to request such hearing within the time period provided for in this subsection (c). For purposes of this subsection (c), "exhaustion of local remedies" means:

1. The taxpayer has timely requested in writing a hearing before the City and such City has held such hearing and issued a final decision thereon. Such hearing shall be informal and no transcript, rules of evidence or filing of briefs shall be required; but the taxpayer may elect to submit a brief, in which case the City may submit a brief. The City shall hold such hearing and issue the final decision thereon within ninety days after the City's receipt of the taxpayer's written request therefor, except the City may extend such period if the delay in holding the hearing or issuing the decision thereon was occasioned by the taxpayer, but, in any such event, the City shall hold such hearing and issue the decision thereon within one hundred eighty days of the taxpayer's request in writing therefor; or

2. The taxpayer has timely requested in writing a hearing before the City and the City has failed to hold such hearing or has failed to issue a final decision thereon within the time periods prescribed in paragraph (1) above.

D. If a taxpayer has exhausted his local remedies as provided in subsection (c) above, the taxpayer may request a state hearing on such deficiency notice or claim for refund, and such request shall be made and such hearing shall be conducted in the same manner as set forth in 29-2-106.1 (3) through (7), C.R.S.

E. If the deficiency notice or claim for refund involves only the City, in lieu of requesting a state hearing, the taxpayer may appeal such deficiency notice or denial of a claim for refund to the district court of the county of Mesa as provided in 29-2-106.1 (8), C.R.S., provided the taxpayer complies with the procedures set forth in subsection (c) of this section.

F. If the City reasonably finds that the collection of use tax will be jeopardized by delay, the City may utilize the procedures set forth in 39-21-111, C.R.S.

(Ord. 1986-3, S4)

3.15.055 SEVERABILITY CLAUSE. It is hereby declared to the intention of the City Council that each and every part of this ordinance is severable, and if any term, phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional or invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional or invalid term, phrase, clause, sentence, paragraph or section. (Ord. 1986-3, S4)

3.15.056 EFFECTIVE DATE. This ordinance shall take effect January 1, 1986, and shall apply to transactions consummated on or after said date.

II. BUILDING AND CONSTRUCTION USE TAX

3.15.060 IMPOSITION - AMOUNT. There is imposed on the privilege of using or consuming any construction and building materials of every kind and form purchased outside the city at retail on or after January 1, 1982, for the purpose of use, or consumption within the city, a use tax of 3% of the retail purchase price of the construction and building materials. (Ord. 1986-3, S4; Ord. 2008-15, S4)

3.15.065 USE TAX- PRORATION AS APPLIED TO CERTAIN CONSTRUCTION EQUIPMENT.

A. Construction equipment which is located within the boundaries of the City for a period of more than thirty consecutive days shall be subjected to the full applicable use tax of the City.

B. With respect to transactions consummated on or after January 1, 1986, construction equipment which is located within the boundaries of the City for a period of thirty consecutive days or less shall be subjected to the City's use tax in an amount calculated as follows: the purchase price of the equipment shall be multiplied by a fraction, the numerator of which is one and the denominator of which is twelve, and the result shall be multiplied by 3%.

C. Where the provisions of subsection (b) of this section are utilized, the credit provisions of section 3.15.040 (f) of this ordinance shall apply at such time as the aggregate sales and use taxes legally imposed by and paid to other statutory and home rule municipalities or any such equipment equal 3%.

D. In order to avail himself of the provisions of subsection (b) of this section, the taxpayer shall comply with the following procedure:

1. Prior to or on the date the equipment is located within the boundaries of the City, the taxpayer shall file with the City Clerk an equipment declaration on a form provided by the City. Such declaration shall state the dates on which the taxpayer anticipates the equipment will be located within and removed from the boundaries of the City, shall include a description of each such anticipated piece of equipment, shall state the actual or anticipated purchase price of each such anticipated piece of equipment and shall include such other information as

reasonably deemed necessary by the City.

2. The taxpayer shall file with the City an amended equipment declaration reflecting any changes in the information contained in any previous equipment declaration no less than once every ninety days after the equipment is brought into the boundaries of the City or, for equipment which is brought into the boundaries of the City for a project of less than ninety days duration, no later than ten days after substantial completion of the project.

3. The taxpayer need not report on any equipment declaration any equipment for which the purchase price was under $2,500.

E. If the equipment declaration is given as provided in subsection (d) of this section, then as to any item of construction equipment for which the customary purchase price is under $2,500 which was brought into the boundaries of the City temporarily for use on a construction project, it shall be presumed that the item was purchased in a jurisdiction having a local sales or use tax as high as 3% and that such local sales or use tax was previously paid. In such case the burden of proof in any proceeding before the City, the executive director of the department of revenue, or the district court, shall be on the City to prove such local sales or use tax was not paid.

F. If the taxpayer fails to comply with the provisions of subsection (d) of this section, the taxpayer may not avail himself of the provisions of subsection (b) of this section and shall be subject to the provisions of subsection (a) of this section. However, substantial compliance with the provisions of subsection (d) of this section shall allow the taxpayer to avail himself of the provisions of subsection (b) of this section.

(Ord. 1986-3, S4; Ord. 2008-15, S4)

3.15.070 PAYMENT REQUIREMENTS- EXEMPTION CERTIFICATE ISSUED WHEN.

A. No building permit or planning clearance shall be issued by the planning department or city building official to any person requesting a permit for construction within the city until such person has paid to the city clerk estimated use tax in the amount of 3% of:

1. Fifty percent (50%) of the valuation of the project based on valuation data tables published by the *International Code Council of Building Officials* (Icbo) as applied to the type of construction involved. Said valuation to be total valuation including electrical, mechanical, and plumbing material, or

2. The total valuation of material costs as documented by signed and certified bids and/or estimates provided by the applicant. If this method is selected, said documentation shall be submitted to the city planning department for approval a minimum of three business days prior to being used for calculation of the estimated use tax. The city planning department or city building official must affirmatively approve the submitted material costs in order for these costs to be valid for estimated use tax calculation, or

3. For special, or non-standard construction, 50% of the valuation of the project, as estimated or determined solely by the city building official.

B. Estimated valuations shall be reviewed annually by the city building official and revised as needed.

C. Any person entitled to a whole or partial exemption shall execute an affidavit showing why he should be excused wholly or in part from paying an estimated use tax and shall also file such other forms as the city clerk may require to prove his exemption. After review of these documents, the city clerk may excuse such person from paying an estimated use tax if he finds that the person requesting an exemption qualifies for such exemption under Section 3.15.040.

D. Before a final building inspection is allowed and a certificate of occupancy is issued, a use tax return, in such form and with such supporting documentation as the city clerk may require, must be filed with the city clerk, and all use tax due to the city must be paid. If estimated use taxes were paid according to ICBO table valuations per section 3.15.070 (a) (1), and if no credit or refund is being claimed, the City shall consider estimated use taxes paid in to equal use taxes due, and no use tax return shall be required.

E. Notwithstanding the provisions of section 3.15.046 (b), if a taxpayer intends to claim a refund of paid in estimated use taxes, a letter of intent to claim the refund must be filed with the city clerk prior to or at the time of issuance of the certificate of occupancy by the city. In addition, applicants for any refund claim must file a use tax return with the city clerk, in such form and with such supporting documentation as the city clerk may require, no later than thirty calendar days from the date of issuance of the certificate of occupancy.

(Ord. 1986-3, S4; Ord. 2002-2, S1; Ord. 2008-15, S4)

3.15.080 COLLECTION AND ADMINISTRATION. The city administrator and the city clerk are authorized to promulgate such rules and regulations and all such forms as may be necessary for the proper administration and enforcement of Sections 3.15.060 through 3.15.070.

III. VEHICLE USE TAX

3.15.090 – IMPOSED - AMOUNT. There is imposed on the privilege of using or storing every motor vehicle, other vehicle on which registration is required, and mobile home purchased outside the city at retail on or after January 1, 1982, for the purpose of use, storage, or consumption within the City, a use tax in the amount of 3% of the retail purchase price of the motor vehicle, other vehicle on which registration is required, or mobile home. (Ord. 1986-3, S4; Ord. 2008-15, S4)

3.15.100 - APPLICABILITY. The use tax imposed by Section 3.15.090 shall be applicable to every motor vehicle or other vehicle on which registration is required by the laws of the state of Colorado and on mobile homes. (Ord. 1986-3, S4)

3.15.110 - PAYMENT PREREQUISITE TO REGISTRATION AND ISSUANCE OF TITLE. No registration shall be made of any motor or vehicle other vehicle on which registration is required and no certificate of title shall be issued for such vehicles or for mobile homes by the Department of Revenue or its authorized agents, until any tax due upon the use or storage thereof pursuant to the ordinance codified in this chapter has been paid. (Ord. 1986-3, S4)

3.15.120 - COLLECTION. The use tax imposed by Section 3.15.090 shall be collected by the authorized agent of the Department of Revenue on the county in which the purchaser resides. (Ord. 1986-3, S4)

3.15.130 – PROCEEDS--PAYMENT BY COUNTY TO CITY-AGREEMENT. The proceeds of the use tax imposed by Section 3.15.090 shall be paid to the city periodically in accordance with an agreement entered by and between the city and the authorized county agent of the Department of Revenue. (Ord. 1986-3, S4)

3.15.140 - ADMINISTRATION AND ENFORCEMENT AGREEMENTS AUTHORIZED. The city administrator is empowered to enter into and execute on behalf of the City any agreements necessary for the administration and enforcement of Sections 3.15.090 through 3.15.130. (Ord. 1986-3, S4)

Chapter 3.16

COMMUNITY CENTER FUND

Sections:

3.16.010 Establishment of Fund
3.16.020 Use of Fund
3.16.030 Tax Rate Reduction

3.16.010 ESTABLISHMENT OF FUND. There is hereby established the "Community Center Fund" in accordance with the ballot issue (the "Ballot Issue") approved by a majority of the electors of the City voting at the election held on November 4, 2008. All funds received, net of the costs of collection, from the sales tax and use tax increase imposed and levied at the rate of 1% pursuant to the Ballot Issue and under chapters 3.12 and 3.15 of the Fruita Municipal Code shall be deposited into the Community Center Fund. The Ballot Issue also authorizes revenue bonds payable from the Community Center Fund. (Ord. 2008-15, S5)

3.16.020 USE OF FUND. Tax revenues deposited into the Community Center Fund, together with all earnings on such deposits, shall be used solely for the purpose of constructing, improving, equipping, operating and maintaining a community center and providing for the payment of revenue bonds issued for such purposes. Further, following the tax rate reduction provided in Section 3.16.030 of this chapter, tax revenues deposited in to the Community Center Fund, together with all earnings on such deposits, shall continue to provide for the improvement, equipping, operation and maintenance of the community center. (Ord. 2008-15, S5)

3.16.030 TAX RATE REDUCTION. The tax rate increase authorized pursuant to the Ballot Issue and commencing January 1, 2009, shall be reduced from a rate of 1.0% to a rate of 0.4% on January 1st following the date on which the revenue bonds approved pursuant to the Ballot Issue, including any refundings or refinancings thereof, are paid in full; provided however, in no event shall such reduction occur later than January 1, 2039. (Ord. 2008-15, S5)

Chapter 3.18

FRUITA LODGER'S TAX

Sections:

3.18.010 Purpose
3.18.020 Definitions
3.18.030 Levy of Tax
3.18.040 Exclusions
3.18.050 Deductions
3.18.060 Collection of Tax
3.18.070 Vendor Responsible for Payment of Tax
3.18.080 Audit of Records
3.18.090 Tax Overpayments and Deficiencies
3.18.100 Collection and Refund of Disputed Tax
3.18.110 Tax Information Confidential
3.18.120 Forms and Regulations
3.18.130 Enforcement and Penalty
3.18.140 Status of Unpaid Tax in Bankruptcy and Receivership
3.18.150 Trust Status of Tax in Possession of Vendor
3.18.160 Hearings, Subpoenas and Witness Fees
3.18.170 Judge Compels Attendance
3.18.180 Depositions
3.18.190 Tax Lien/Enforcement
3.18.200 Recovery of Unpaid Tax
3.18.210 Statute of Limitation
3.18.220 Severability
3.18.230 Tourism Promotion Fund
3.18.240 Tourism Advisory Council
3.18.250 Exemption from Revenue Limitations
3.18.260 Effective Date

3.18.010 PURPOSE. For the purposes of this chapter, every person who purchases lodging in the City of Fruita is exercising a taxable privilege. The purpose of this chapter is to impose a tax which will be collected by every vendor from persons using lodging accommodations in the City of Fruita, which tax will provide revenues for marketing and promotion of the City of Fruita and its environs to tourists, the traveling public and others which will be beneficial to the community. (Ord. 1996-12)

3.18.020 DEFINITIONS. When not clearly otherwise indicated by the context, the following words and phrases as used in this chapter shall have the following meanings:

A. *Gross Taxable Sales* shall mean the total amount received in money, credits, property, or other consideration from sales and purchases of lodging that is subject to the tax imposed by this chapter.

B. *Lodging* shall mean the providing of the right to use or possess, for consideration, any room or rooms for temporary occupancy such as, but not limited to: a hotel room, motel room, lodging room, motor hotel room, guest house room, or a recreational vehicle park space or other similar accommodations located in the City, but shall not include rentals under a written agreement for occupancy for a period of twenty-eight (28) consecutive days or more.

C. *Person* means an individual, partnership, firm, joint enterprise, corporation, estate or trust, or any group or combination acting as a unit, including the United State of America, the State of Colorado and any political subdivision thereof.

D. *Purchase or Sale* means the acquisition or furnishing for consideration by any person of lodging within the City.

E. *Purchaser* means any person to whom the taxable service of lodging has been rendered.

F. *Tax* means either the tax payable by the purchaser or the aggregate amount of taxes due from a vendor during the period for which the vendor is required to report collections under this chapter.

G. *Taxpayer* shall mean any person obligated to account to the Finance Director for taxes collected or to be collected, or from whom a tax is due, under the terms of this chapter.

H. *Vendor* means a person making sales of or furnishing lodging to a purchaser in the City.

(Ord. 1996-12)

3.18.030 LEVY OF TAX.

A. There is hereby levied and shall be collected and paid a tax by every person exercising the taxable privilege of purchasing lodging as defined in this chapter.

B. The amount of the tax levied hereby is three percent (3%) of the gross taxable sale paid or charged for purchasing said lodging.

C. Any person providing lodging within the City of Fruita shall collect a tax from all those to whom lodging is provided amounting to three percent (3%) of the total rental revenue received by such vendor. Such tax shall be in addition to any other tax or levy for providing such service.

(Ord. 1996-12)

3.18.040 EXCLUSIONS. Purchases shall include all revenues earned and received for the purchase or sale of lodging excluding the following:

A. Charges for other services, such as food and/or telephone charges, furnished by a person providing lodging;

B. Deposits place by any purchaser with a request to hold a room for such purchaser for a future date until such time as said deposit has been credited against the purchase or sale;

C. All sales to the United States Government, the State of Colorado, its departments and institutions, the political subdivisions of the State in their governmental capacities only;

D. All sales to those charitable, religious and eleemosynary organizations have received from the Internal Revenue Service status under Section 501 (c) (3) of the Internal Revenue Code as a tax exempt organization, while in the conduct of their regular charitable, religious or eleemosynary functions and activities.

E. All sales to any purchaser by the United States Government, the State of Colorado, its departments, divisions and institutions, or the political subdivisions of the State in their governmental capacities only.

(Ord. 1996-12; Ord. 1998-25, S1)

3.18.050 DEDUCTIONS. The following deductions shall be allowed against sales received by the vendor providing lodging:

A. Refunds of sales actually returned to any purchaser;

B. Any adjustments in sales which amount to a refund to a purchaser, providing such adjustment pertains to the actual sale for lodging and does not include any adjustments for other services furnished by a vendor.

C. Taxes paid on the amount of gross sales which are represented by accounts which are found to be worthless and are actually and properly charged off as bad debts for the purpose of the income tax imposed by the laws of the state may be credited upon a subsequent payment of the tax herein provided; but if any such accounts are thereafter collected by the taxpayer, a tax shall be paid upon the amount so collected.

(Ord. 1996-12)

3.18.060 COLLECTION OF TAX.

A. Every vendor making sales to a purchaser in the City, which are taxable under the provisions of this chapter, at the time of making such sales, is required to collect the tax imposed by this chapter from the purchaser.

B. The tax to be collected shall be stated and charged separately from the sale price on any record thereof at the time when the sale is made or at the time when evidence of the sale is issued or employed by the vendor, provided that when added such tax shall constitute a part of such purchase price or charge and shall be a debt from the purchaser to the vendor until paid and shall be recoverable at law in the same manner as other debts. The tax shall be paid by the purchaser to the vendor, as trustee for and on account of the City, and the vendor shall be liable for collection therefor and on account of the City.

C. It shall be unlawful for the person providing lodging to assume or absorb the payment of the tax provided for in this chapter.

(Ord. 1996-12)

3.18.070 VENDOR RESPONSIBLE FOR PAYMENT OF TAX.

A. *Amount*. Every vendor shall add the tax imposed by this chapter to the purchase price or charge of all lodging within the City; provided that the vendor shall be liable and responsible to the City for the payment on a monthly basis of an amount equal to three percent (3%) of all his gross taxable sales, and any collection in excess of the percentage, less the vendors' collection fee. Vendors collecting and remitting the tax can, if such vendor is in compliance with the provisions of this chapter, deduct three and one-third percent (3 1/3%) of the amount remitted as a collection fee.

B. *Returns*. Every vendor shall, before the twentieth day of July, 1996, and before the twentieth day of each month thereafter, make a return to the Finance Director for the preceding calendar month commencing with the 12th day of June, 1996, and remit to the Finance Director, simultaneously therewith the total amount due the City as provided in this chapter. The monthly returns of the vendor as required hereunder shall be made in such manner and upon such forms as the Finance Director may prescribe.

C. *Accounting Practice*. If the accounting methods regularly employed by the vendor in the transaction of business, or other conditions, are such that the returns aforesaid made on a calendar month basis will impose unnecessary hardship, the Finance Director may, upon request of the vendor, accept returns at such intervals as will, in the director's opinion, better suit the convenience of the vendor and will not jeopardize the collection of the tax; provided, however, the director may by rule permit a vendor whose monthly tax collected is less than sixty dollars ($60.00) to make returns and pay taxes at intervals not greater than three (3) months.

D. *Duty to Keep Books and Records*. It shall be duty of every vendor to keep and preserve suitable records of all sales made by the vendor and such other books or accounts as may be required by the Finance Director in order to determine the amount of the tax for the collection or payment of which the vendor is liable under this chapter. It shall be the duty of every such vendor to keep and preserve for a period of three (3) years all such books, invoices and other records and the same shall be open for examination by the Finance Director.

(Ord. 1996-12)

3.18.080 AUDIT OF RECORDS.

A. For the purpose of ascertaining the correct amount of lodging tax due from any person engaged in business in the City, the Finance Director may authorize an agent to conduct an audit by examining any relevant books, accounts and records of such person.

B. All books, invoices, accounts and other records shall be made available within the City limits and be open at any time during regular business hours for examination by an

authorized agent of the Finance Director. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the Finance Director may issue a subpoena to require that the taxpayer or their representative attend a hearing or produce any such books, accounts and records for examination.

C. Any exempt organization claiming exemption under the provisions of this chapter is subject to audit in the same manner as any other person engaged in business in the City.

(Ord. 1996-12)

3.18.090 TAX OVERPAYMENTS AND DEFICIENCIES.

A. An application for refund of tax moneys paid in error or by mistake shall be made within three (3) years after the date of purchase of lodging for which the refund is claimed. If the Finance Director determines within three (3) years of the due date, that a vendor overpaid the lodger's tax, he shall process a refund or allow a credit against a future remittance from the same taxpayer. If the amount paid is less than the amount due, the difference together with interest shall be paid by the vendor within then (10) days after receiving written notice and demand from the Finance Director. The Finance Director may extend that time for good cause.

B. If any part of the deficiency is due to negligence or intentional disregard of regulations, but without intent to defraud, there shall be added ten percent (10%) of the total amount of the deficiency, and interest, from the person required to file the return. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added fifty percent (50%) of the total amount of the deficiency and in such case, the whole amount of the unpaid tax, including the additions, shall become due and payable ten (10) days after written notice and demand by the Finance Director.

(Ord. 1996-12)

3.18.100 COLLECTION AND REFUND OF DISPUTED TAX.

A. Should a dispute arise between the purchaser and vendor as to whether or not the sale of lodging is exempt from taxation under this chapter, the vendor shall collect and the purchaser shall pay such tax, and the vendor shall thereupon issue to the purchaser an invoice or sales receipt showing the date, price, and amount of tax paid, and a brief statement of the claim of exemption. The purchaser thereafter may apply to the Finance Director for a refund of such taxes, and it shall be the duty of the Finance Director to determine the question of exemption, subject to review by the courts.

B. Applications for a refund must be made within sixty (60) days after the purchase of the lodging on which the exemption is claimed and must be supported by the affidavit of the purchaser accompanied by the original paid invoice or sales receipt and the statement of the claim of exemption as set forth in subsection A of this section. The burden of proof that sales of lodging on which tax refunds are claimed, are exempt from taxation under this chapter, shall be upon the one making such claim by a preponderance of the evidence.

C. Upon receipt of such application, the Finance Director shall examine the same within fourteen (14) days and shall give notice to the applicant by an order in writing of the decision thereon.

D. A refund shall be made, or credit allowed, for the tax paid under dispute by any purchaser who has an exemption as set forth in the chapter. Such refund shall be made by the Finance Director after compliance with the conditions of this section.

E. An aggrieved applicant may, within ten (10) days after such decision is mailed to him, petition the Finance Director for a hearing on the claim in the manner provided in this chapter.

(Ord. 1996-12)

3.18.110 TAX INFORMATION CONFIDENTIAL. All specific information gained under the provisions of this chapter which is used to determine the tax due from a taxpayer, whether furnished by the taxpayer or obtained through audit, shall be treated by the City and its officers, employees or legal representatives as confidential. Except as directed by judicial order or as provided in this section, no City officer, employee, or legal representative shall divulge any confidential information. If directed by judicial order, the officials charged with the custody of such confidential information shall be required to provide only such information as is directly involved in the action or proceeding. Any City officer or employee or any member of the office of, or officer, or employee of the Finance Director who shall divulge any information classified herein as confidential, in any manner, except in accordance with proper judicial order, or as otherwise provided in the chapter or by law, shall be guilty of a violation hereof.

A. The Finance Director may furnish to officials of any other governmental entity who may be owed sales tax any confidential information, provided that said jurisdiction enters into an agreement with the City to grant reciprocal privileges to the City.

B. Nothing contained in this section shall be construed to prohibit the delivery to a taxpayer or their duly authorized representative a copy of such confidential information relating to such taxpayer, the publication of statistics so classified as to prevent the identification of particular taxpayers, or the inspection of such confidential information by an officer, employee, or legal representative of the City.

(Ord. 1996-12)

3.18.120 FORMS AND REGULATIONS.

A. The Finance Director is hereby authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment and collection of said lodger's tax and in particular and without limiting the general language of this chapter, to provide for:

1. A form of report on sales and purchases to be supplied to all vendors;

2. The records which vendors providing lodging are to keep concerning the

tax imposed by this chapter.

(Ord. 1996-12)

3.18.130 ENFORCEMENT AND PENALTY.

A. It shall be unlawful for any person to intentionally, knowingly, or recklessly fail to pay the tax imposed by this chapter, or for any vendor to fail to collect it and remit it to the City or to make any false or fraudulent return, or for any person to otherwise violate any provisions of this chapter. A violation of any provision of this chapter shall be punished by a fine or imprisonment, or both as set forth in the General Penalty Provisions of Chapter 1.28 of this Code. Each day, or portion thereof, any violation of this chapter shall continue shall constitute a separate offense.

B. A penalty in the amount of ten percent (10%) of the tax due or the sum of ten dollars ($10.00), whichever is greater, shall be imposed upon the vendor and become due in the event the tax is not remitted by the twentieth (20th) day of the month as required by this chapter, or such other date as prescribed by the Finance Director, and one percent (1%) interest shall accrue each month on the unpaid balance. The Finance Director is hereby authorized to waive, for good cause shown, any penalty assessed.

C. If any vendor fails to make a return and pay the tax imposed by the chapter, the City may make an estimate, based upon available information of the amount of tax due and add the penalty and interest provided above. The City shall mail notice of such estimate, by certified or registered mail, to the vendor at his address as indicated in the City records. Such estimate shall thereupon become an assessment, and such assessment shall be final and due and payable from the taxpayer to the Finance Director ten (10) days from the date of service of the notice or the date of mailing by certified or registered mail; provided. however, that within the ten (10) day period such delinquent taxpayer may petition the Finance Director for a revision or modification of such assessment and shall, within such ten day period, furnish the Finance Director the documents, facts and figures showing the correct amount of such taxes.

D. Such petition shall be in writing and the facts and figures submitted shall be submitted either in writing or orally, and shall be given by the taxpayer under penalty of perjury.

E. Thereupon, the Finance Director may modify such assessment in accordance with the facts submitted in order to effectuate the provisions of this chapter. Such assessment shall be considered the final order of the Finance Director, and may be reviewed under the rule 106(a)(4) of the Colorado Rules of Civil Procedure, provided that the taxpayer gives written notice to the Finance Director of such intention within ten (10) days after receipt of the final order of assessment.

F. The tax imposed by this chapter shall be a lien upon the goods and business fixtures of the vendor and upon the real property and appurtenant premises at which the taxable transactions occurred. The City may foreclose such lien in accordance with law and record notices of such lien in the records of the Mesa County Clerk and Recorder's Office.

G. The City may certify the amount of any delinquent taxes as a delinquent charge upon the property at which the taxable transaction occurred to the County Treasurer for collection in the same manner as delinquent general ad valorem taxes are collected.

(Ord. 1996-12)

3.18.140 STATUS OF UNPAID TAX IN BANKRUPTCY AND RECEIVERSHIP. Whenever the business or property of any taxpayer subject to this chapter shall be placed in receivership, bankruptcy or assignment for the benefit of creditors, or seized under distraint for taxes, all taxes, penalties and interest imposed by this chapter and for which the taxpayer is in any way liable under the terms of this chapter shall be a prior and preferred lien against all the property of the taxpayer, except as to other tax liens which have attached prior to the filing of the notice, other than the goods and stock in trade of such taxpayer, and no sheriff, receiver, assignee or other officer shall sell the property of any person subject to this chapter under process or order of any court, without first ascertaining from the Finance Director the amount of any taxes due and payable under this chapter, and if there be any such taxes due, owing and unpaid, it shall be the duty of such officer to first pay the amount of the taxes out of the proceeds of such sale before making payment of any moneys to any judgment creditor or other claimants of whatsoever kind or nature, except the costs of the proceedings and other preexisting tax liens as above provided. (Ord. 1996-12)

3.18.150 TRUST STATUS OF TAX IN POSSESSION OF VENDOR. All sums of money paid by the purchaser to the vendor as taxes imposed by this chapter shall be and remain public money, the property of the City, in the hands of such vendor, and the vendor shall hold the same in trust for the sole use and benefit of the City until paid to the Finance Director as herein provided, and for failure so to pay to the Finance Director, such vendor shall be punished for a violation hereof. (Ord. 1996-12)

3.18.160 HEARINGS, SUBPOENAS AND WITNESS FEES. Hearings before the Finance Director pursuant to provisions in this chapter shall be held pursuant to Chapter 2.60, Rules Governing Administrative Proceedings, of this Code. Any subpoena issued pursuant to this chapter may be enforced by the Fruita Municipal Judge pursuant to Section 13-10-112(2), C.R.S. Subpoenas issued under the terms of this chapter may be served by any person of full age. The fees of witnesses for attendance and trial shall be the same as the fees of witnesses before the district court, such fees to be paid when the witness is excused from further attendance. When the witness is subpoenaed at the instance of the Finance Director, such fees shall be paid in the same manner as other expenses under the terms of this chapter, and when a witness is subpoenaed at the instance of any party to any such proceeding, the Finance Director may require that the cost of service of the subpoena and the fee of the witness be borne by the party at whose instance the witness is summoned. In such case, the Finance Director, at his discretion, may require a deposit to cover the cost of such service and witness fees. A subpoena issued as aforesaid shall be served in the same manner as a subpoena issued out of a court of record. (Ord. 1996-12)

3.18.170 JUDGE COMPELS ATTENDANCE. The Fruita Municipal Judge, upon the application of the Finance Director, may compel the attendance of witnesses, the production of books, papers, records of memoranda, and the giving of testimony before the Finance Director or any duly authorized deputies, by an attachment for contempt, or otherwise, in the same manner as production of evidence may be compelled before the Court. (Ord. 1996-12)

3.18.180 DEPOSITIONS. The Finance Director or any party in an investigation or hearing before the Finance Director may cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in courts of this state and to that end compel the attendance of witnesses and the production of books, papers, records or memoranda. (Ord. 1996-12)

3.18.190 TAX LIEN/ENFORCEMENT.

A. The tax imposed by this chapter, together with the interest and penalties herein provided and the costs of collection which may be incurred, shall be and, until paid, remain a first and prior lien superior to all other liens on all the tangible personal property of a taxpayer within the City and may be foreclosed by seizing under distraint warrant and selling so much thereof as may be necessary to discharge the lien. Such distraint warrant may be issued by the Finance Director whenever the taxpayer is in default in the payment of the tax, interest, penalty or costs. Such warrant may be served and the goods subject to such lien seized by any police officer or any duly authorized employee of the City. The property so seized may be sold by the agency seizing the same or by the Finance Director at public auction after ten (10) days have passed after an advertisement in a newspaper published in the City.

B. The Finance Director or the sheriff of Mesa County shall forthwith levy upon sufficient amounts of the property of the taxpayer, and the property so levied upon shall be sold in all respects, with like effect and in the same manner as is prescribed by law in respect to executions against property upon judgment of a court of record, and the remedies of garnishment shall apply. The sheriff shall be entitled to such fees in executing such warrant as are allowed by law for similar services.

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

(Ord. 1996-12)

3.18.200 RECOVERY OF UNPAID TAX.

A. The Finance Director may also treat any such taxes, penalties, costs or interest due and unpaid as a debt due the City from the taxpayer.

B. In case of failure to pay the taxes, or any portion thereof, or any penalty, costs or interest thereon, when due, the Finance Director may recover at law the amount of such taxes, penalties, costs, the reasonable value of an attorney's time or the reasonable attorney's fees charged, plus interest, in any municipal, county or district court of the county wherein the taxpayer resides or had a principal place of business (at the time the tax became due) having jurisdiction of the amount sought to be collected.

C. The return of the taxpayer or the assessment made by the Finance Director shall be prima facie proof of the amount due.

D. Such actions may be actions in attachment, and writs of attachment may be issued to the police or sheriff, as the case may be, and in any such proceeding no bond shall be required of the Finance Director, nor shall any policeman or sheriff require of the Finance Director an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings. The Finance Director may prosecute appeals in such cases without the necessity of providing bond therefor.

E. It shall be the duty of the City Attorney, when requested by the Finance Director, to commence action for the recovery of taxes due under this chapter and this remedy shall be in addition to all other existing remedies, or remedies provided in this chapter.

F. The City may certify the amount of any delinquent tax, plus interest, penalties and the costs of collection, as a charge against the property at which the taxable transaction occurred to the county treasurer for collection in the same manner as delinquent ad valorem taxes.

(Ord. 1996-12)

3.18.210 STATUTE OF LIMITATION.

A. The taxes for any period, together with interest thereon and penalties with respect thereto, imposed by this chapter shall not be assessed, nor shall notice of lien be filed, or distraint warrant be issued, or suit for collection be instituted, or any other action to collect the same be commenced, more than three (3) years after the date on which the tax was or is payable. Nor shall any lien continue after such period, except for taxes assessed before the expiration of such three (3) year period, notice of lien with respect to which has been filed prior to the expiration of such period.

B. In case of a false or fraudulent return with intent to evade tax, the tax, together with interest and penalties thereon, may be assessed, or proceedings for the collection of such taxes may be begun at any time.

C. Before the expiration of such period of limitation, the taxpayer and the Finance Director may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing.

(Ord. 1996-12)

3.18.220 SEVERABILITY. The several sections, sentences, clauses and provisions of this chapter are intended to be severable; if any such section, sentence, clause or provision is declared unconstitutional, invalid or unenforceable by the valid judgment of a court of competent jurisdiction, such unconstitutionality, invalidity or unenforceability shall not affect the remaining portions of this chapter. (Ord. 1996-12)

3.18.230 TOURISM PROMOTIONAL FUND. There is hereby created a fund to be known as the "Marketing and Promotional Fund". All of the revenues derived from the lodger's tax imposed by this chapter shall be placed in such fund. All expenditures for such fund shall be for the purpose of marketing and promotion of the City and its environs to tourists, the traveling

public and others, in addition to costs incurred by the City in the collection and enforcement of this chapter. (Ord. 1996-12)

3.18.240 TOURISM ADVISORY COUNCIL. There is hereby created a Tourism Advisory Council which will consist of seven (7) members appointed by the City Council. Composition of the committee will include representatives of the lodging industry, area attractions, retail businesses, the City Council, and other interested parties. Members of the Commission may reside inside or outside the City limits Fruita and shall have an interest in marketing and promoting the City of Fruita. The Tourism Advisory Council shall advise the City Manager and City Council concerning the preparation of a budget for the expenditures of funds in the Tourism Promotional Fund. Members appointed to the Advisory Council shall serve terms as outlined in the Fruita City Charter. All members shall serve without compensation. (Ord. 1996-12, Ord. 2005-17)

3.18.250 EXEMPTION FROM REVENUE LIMITATIONS. The lodger's tax imposed by this ordinance and use of revenues derived from said tax for the marketing and promotion of the City was approved by the electorate of the City of Fruita on April 2, 1996. As part of said approval the revenues are to be collected and spent as a voter approved revenue change, notwithstanding any revenue or expenditure limitations contained in Article X, Section 20, of the Colorado Constitution. (Ord. 1996-12)

3.18.260 EFFECTIVE DATE. This chapter and Ordinance shall be effective on June 12, 1996. (Ord. 1996-12)

Chapter 3.19

FRUITA MEDICAL MARIJUANA TAX

Sections:

3.19.010 Purpose
3.19.020 Definitions
3.19.030 Levy of tax
3.19.040 Deductions
3.19.050 Collection of tax
3.19.060 Vendor responsible for payment of tax
3.19.070 Audit of records
3.19.080 Tax overpayments and deficiencies
3.19.090 Collection and refund of disputed tax
3.19.100 Tax information confidential
3.19.110 Forms and regulations
3.19.120 Enforcement and penalty
3.19.130 Status of unpaid tax in bankruptcy and receivership
3.19.140 Trust status of tax in possession of vendor
3.19.150 Hearings, subpoenas and witness fees
3.19.160 Judge compels attendance
3.19.170 Depositions
3.19.180 Tax lien/enforcement
3.19.190 Recover of unpaid tax
3.19.210 Limitation on actions
3.19.220 Severability
3.19.230 Exemption from revenue limitations

3.19.010 PURPOSE. For the purposes of this Chapter, every person who purchases medical marijuana or medical marijuana paraphernalia in the City of Fruita is exercising a taxable privilege. The purpose of this Chapter is to impose a tax which will be collected by every medical marijuana and medical marijuana paraphernalia vendor from persons purchasing medical marijuana and medical marijuana paraphernalia in the City of Fruita. (Ord. 2010-02, S1)

3.19.020 DEFINITIONS. When not clearly otherwise indicated by the context, the following words and phrases as used in this Chapter shall have the following meanings:

A. *Gross Taxable Sales* shall mean the total amount received in money, credits, property, or other consideration from sales and purchases of medical marijuana and medical marijuana paraphernalia that is subject to the tax imposed by this Chapter.

B. *Medical marijuana* shall mean the seeds, leaves, buds and flowers of the plant (genus) cannabis and any mixture, product or preparation thereof, which are appropriate for medical use as provided in Section 14 of Article XVIII of the Colorado Constitution, but excludes the plant's stalk, stems and roots.

C. *Paraphernalia* means all equipment, products and materials of any kind which are used, intended for use, or designed for the administration of medical marijuana to persons including the devices set forth in Section 9.08.060 of the Fruita Municipal Code.

D. *Person* means an individual, partnership, firm, joint enterprise, corporation, estate or trust, or any group or combination acting as a unit, including the United States of America, the State of Colorado and any political subdivision thereof.

E. *Purchase or Sale* means the acquisition or furnishing for consideration by any person of medical marijuana and paraphernalia within the City.

F. *Purchaser* means any person to whom the taxable service of providing medical marijuana and/or paraphernalia has been rendered.

G. *Tax* means either the tax payable by the purchaser or the aggregate amount of taxes due from a vendor during the period for which the vendor is required to report collections under this Chapter.

H. *Taxpayer* shall mean any person obligated to account to the Finance Director for taxes collected or to be collected, or from whom a tax is due, under the terms of this Chapter.

I. *Vendor* means a person making sales of or furnishing medical marijuana and/or paraphernalia to a purchaser in the City.

(Ord. 2010-02, S1)

3.19.030 LEVY OF TAX.

A. There is hereby levied and shall be collected and paid a tax by every person exercising the taxable privilege of purchasing medical marijuana and medical marijuana paraphernalia as defined in this Chapter.

B. The amount of tax levied hereby is five percent (5%) of the gross taxable sale amount paid or charged for purchasing said medical marijuana and medical marijuana paraphernalia.

C. Any person providing medical marijuana and/or medical marijuana paraphernalia within the City of Fruita shall collect a tax from all those to whom medical marijuana and paraphernalia is provided amounting to five percent (5%) of the total revenue received by such vendor from the sale or purchase of such items. Such tax shall be in addition to any other tax or levy for providing such items.

(Ord. 2010-02, S1)

3.19.040 DEDUCTIONS. The following deductions shall be allowed against sales received by the vendor providing medical marijuana and/or medical marijuana paraphernalia:

A. Refunds of sales actually returned to any purchaser;

B. Any adjustments in sales which amount to a refund to a purchaser, providing such adjustment pertains to the actual sale of medical marijuana and paraphernalia and does not include any adjustments for other services furnished by a vendor.

C. Taxes paid on the amount of gross sales which are represented by accounts which are found to be worthless and are actually and properly charged off as bad debts for the purpose of the income tax imposed by the laws of the State may be credited upon a subsequent payment of the tax herein provided; but if any such accounts are thereafter collected by the taxpayer, a tax shall be paid upon the amount so collected.

(Ord. 2010-02, S1)

3.19.050 COLLECTION OF TAX.

A. Every vendor making sales to a purchaser in the City, which are taxable under the provisions of this Chapter, at the time of making such sales, is required to collect the tax imposed by this Chapter from the purchaser.

B. The tax to be collected shall be stated and charged separately from the sale price on any record thereof at the time when the sale is made or at the time when evidence of the sale is issued or employed by the vendor, provided that when added such tax shall constitute a part of such purchase price or charge and shall be a debt from the purchaser to the vendor until paid and shall be recoverable at law in the same manner as other debts. The tax shall be paid by the purchaser to the vendor, as trustee for and on account of the City, and the vendor shall be liable for collection therefor and on account of the City.

C. It shall be unlawful for the person providing medical marijuana or medical marijuana paraphernalia to assume or absorb the payment of the tax provided for in this Chapter.

(Ord. 2010-02, S1)

3.19.060 VENDOR RESPONSIBLE FOR PAYMENT OF TAX.

A. *Amount*. Every vendor shall add the tax imposed by this Chapter to the purchase price or charge of all medical marijuana and medical marijuana paraphernalia sold within the City; provided that the vendor shall be liable and responsible to the City for the payment on a monthly basis of an amount equal to five percent (5%) of all its gross taxable sales, and any collection in excess of the percentage, less the vendors' collection fee. Vendors collecting and remitting the tax can, if such vendor is in compliance with the provisions of this Chapter, deduct three and one-third percent (3 1/3%) of the amount remitted as a collection fee.

B. *Returns*. Every vendor shall, before the twentieth day of June, 2010, and before the twentieth day of each month thereafter, make a return to the Finance Director for the preceding calendar month commencing with the first (1st) day of May, 2010 and remit to the Finance Director, simultaneously therewith the total amount due the City as provided in this Chapter. The monthly returns of the vendor as required hereunder shall be made

in such manner and upon such forms as the Finance Director may prescribe.

C. *Accounting Practice*. If the accounting methods regularly employed by the vendor in the transaction of business, or other conditions, are such that the returns aforesaid made on a calendar month basis will impose unnecessary hardship, the Finance Director may, upon request of the vendor, accept returns at such intervals as will, in the Director's opinion, better suit the convenience of the vendor and will not jeopardize the collection of the tax; provided, however, the Director may by rule permit a vendor whose monthly tax collected is less than sixty dollars ($60.00) to make returns and pay taxes at intervals not greater than three (3) months.

D. *Duty to Keep Books and Records*. It shall be duty of every vendor to keep and preserve suitable records of all sales made by the vendor and such other books or accounts as may be required by the Finance Director in order to determine the amount of the tax for the collection or payment of which the vendor is liable under this Chapter. It shall be the duty of every such vendor to keep and preserve for a period of three (3) years all such books, invoices and other records and the same shall be open for examination by the Finance Director.

(Ord. 2010-02, S1)

3.19.070 AUDIT OF RECORDS.

A. For the purpose of ascertaining the correct amount of medical marijuana tax due from any person engaged in business in the City, the Finance Director may authorize an agent to conduct an audit by examining any relevant books, accounts and records of such person.

B. All books, invoices, accounts and other records shall be made available within the City limits and be open at any time during regular business hours for examination by an authorized agent of the Finance Director. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the Finance Director may issue a subpoena to require that the taxpayer or their representative attend a hearing or produce any such books, accounts and records for examination. Such subpoena shall be enforced by the Fruita Municipal Court.

(Ord. 2010-02, S1)

3.19.080 TAX OVERPAYMENTS AND DEFICIENCIES.

A. An application for refund of tax moneys paid in error or by mistake shall be made within three (3) years after the date of purchase of medical marijuana or medical marijuana paraphernalia for which the refund is claimed. If the Finance Director determines within three (3) years of the due date, that a vendor overpaid the medical marijuana tax, he shall process a refund or allow a credit against a future remittance from the same taxpayer. If the amount paid is less than the amount due, the difference together with interest shall be paid by the vendor within then (10) days after receiving written notice and demand from the Finance Director. The Finance Director may extend that time for good cause.

B. If any part of the deficiency is due to negligence or intentional disregard of this Chapter,

or any regulations promulgated thereunder, but without intent to defraud, there shall be added ten percent (10%) of the total amount of the deficiency, and interest, from the person required to file the return. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added fifty percent (50%) of the total amount of the deficiency and in such case, the whole amount of the unpaid tax, including the additions, shall become due and payable ten (10) days after written notice and demand by the Finance Director.

(Ord. 2010-02, S1)

3.19.090 COLLECTION AND REFUND OF DISPUTED TAX.

A. Should a dispute arise between the purchaser and vendor as to whether or not the sale of medical marijuana or paraphernalia is exempt from taxation under this Chapter, the vendor shall collect and the purchaser shall pay such tax, and the vendor shall thereupon issue to the purchaser an invoice or sales receipt showing the date, price, and amount of tax paid, and a brief statement of the claim of exemption. The purchaser thereafter may apply to the Finance Director for a refund of such taxes, and it shall be the duty of the Finance Director to determine the question of exemption, subject to review by a court of competent jurisdiction.

B. Applications for a refund must be made within sixty (60) days after the purchase of the medical marijuana or paraphernalia on which the exemption is claimed and must be supported by the affidavit of the purchaser accompanied by the original paid invoice or sales receipt and the statement of the claim of exemption as set forth in subsection (A) of this Section. The burden of proof that sales of medical marijuana or medical marijuana paraphernalia on which tax refunds are claimed, are exempt from taxation under this Chapter, shall be upon the one making such claim by a preponderance of the evidence.

C. Upon receipt of such application, the Finance Director shall examine the same within fourteen (14) days and shall give notice to the applicant by an order in writing of the decision thereon.

D. A refund shall be made, or credit allowed, for the tax paid under dispute by any purchaser who has an exemption as set forth in the Chapter. Such refund shall be made by the Finance Director after compliance with the conditions of this Section.

E. An aggrieved applicant may, within ten (10) days after such decision is mailed to him, petition the Finance Director for a hearing on the claim in the manner provided in this Chapter.

(Ord. 2010-02, S1)

3.19.100 TAX INFORMATION CONFIDENTIAL. All specific information gained under the provisions of this Chapter which is used to determine the tax due from a taxpayer, whether furnished by the taxpayer or obtained through audit, shall be treated by the City and its officers, employees or legal representatives as confidential. Except as directed by judicial order or as provided in this Section, no City officer, employee, or legal representative shall divulge any confidential information. If directed by judicial order, the officials charged with the custody of

such confidential information shall be required to provide only such information as is directly involved in the action or proceeding. Any City officer or employee or any member of the office of, or officer, or employee of the Finance Director who shall divulge any information classified herein as confidential, in any manner, except in accordance with proper judicial order, or as otherwise provided in the Chapter or by law, shall be guilty of a violation hereof.

A. The Finance Director may furnish to officials of any other governmental entity who may be owed sales tax any confidential information, provided that said jurisdiction enters into an agreement with the City to grant reciprocal privileges to the City.

B. Nothing contained in this Section shall be construed to prohibit the delivery to a taxpayer or its duly authorized representative a copy of such confidential information relating to such taxpayer, the publication of statistics so classified as to prevent the identification of particular taxpayers, or the inspection of such confidential information by an officer, employee, or legal representative of the City.

(Ord. 2010-02, S1)

3.19.110 FORMS AND REGULATIONS.

A. The Finance Director is hereby authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment and collection of said medical marijuana tax and in particular and without limiting the general language of this Chapter, to provide for:

1. A form of report on sales and purchases to be supplied to all vendors;

2. The records which vendors providing medical marijuana and paraphernalia are to keep concerning the tax imposed by this Chapter.

(Ord. 2010-02, S1)

3.19.120 ENFORCEMENT AND PENALTY.

A. It shall be unlawful for any person to intentionally, knowingly, or recklessly fail to pay the tax imposed by this Chapter, or for any vendor to fail to collect such tax and remit it to the City or to make any false or fraudulent return, or for any person to otherwise violate any provisions of this Chapter. A violation of any provision of this Chapter shall constitute a Class A municipal offense as set forth in the General Penalty Provisions of Chapter 1.28 of this Code. Each day, or portion thereof, that any violation of this Chapter shall continue shall constitute a separate offense.

B. A penalty in the amount of ten percent (10%) of the tax due or the sum of ten dollars ($10.00), whichever is greater, shall be imposed upon the vendor and become due in the event the tax is not remitted by the twentieth (20th) day of the month as required by this Chapter, or such other date as prescribed by the Finance Director, and one percent (1%) interest shall accrue each month on the unpaid balance. The Finance Director is hereby authorized to waive, for good cause shown, any penalty assessed.

C. If any vendor fails to make a return and pay the tax imposed by the Chapter, the City may make an estimate, based upon available information of the amount of tax due and add the penalty and interest provided above. The City shall mail notice of such estimate, by certified or registered mail, to the vendor at his address as indicated in the City records. Such estimate shall thereupon become an assessment, and such assessment shall be final and due and payable from the taxpayer to the Finance Director ten (10) days from the date of service of the notice or the date of mailing by certified or registered mail; provided. however, that within the ten (10) day period such delinquent taxpayer may petition the Finance Director for a revision or modification of such assessment and shall, within such ten (10) day period, furnish the Finance Director the documents, facts and figures showing the correct amount of such taxes due.

D. Such petition shall be in writing and the facts and figures submitted shall be submitted either in writing or orally, and shall be given by the taxpayer under oath and under penalty of perjury.

E. Thereupon, the Finance Director may modify such assessment in accordance with the facts submitted in order to effectuate the provisions of this Chapter. Such assessment shall be considered the final order of the Finance Director, and may be reviewed under the Rule 106(a)(4) of the Colorado Rules of Civil Procedure, provided that the taxpayer gives written notice to the Finance Director of such intention within ten (10) days after receipt of the final order of assessment.

F. The tax imposed by this Chapter shall be a lien upon the goods and business fixtures of the vendor and upon the real property and appurtenant premises at which the taxable transactions occurred. The City may foreclose such lien in accordance with law and record notices of such lien in the records of the Mesa County Clerk and Recorder's Office.

G. The City may also certify the amount of any delinquent taxes as a delinquent charge upon the property at which the taxable transaction occurred to the County Treasurer for collection in the same manner as delinquent general ad valorem taxes are collected pursuant to Section 31-20-105, C.R.S.

(Ord. 2010-02, S1)

3.19.130 STATUS OF UNPAID TAX IN BANKRUPTCY AND RECEIVERSHIP. Whenever the business or property of any taxpayer subject to this Chapter shall be placed in receivership, bankruptcy or assignment for the benefit of creditors, or seized under distraint for taxes, all taxes, penalties and interest imposed by this Chapter and for which the taxpayer is in any way liable under the terms of this Chapter shall be a prior and preferred lien against all the property of the taxpayer, except as to other tax liens which have attached prior to the filing of the notice, other than the goods and stock in trade of such taxpayer, and no sheriff, receiver, assignee or other officer shall sell the property of any person subject to this Chapter under process or order of any court, without first ascertaining from the Finance Director the amount of any taxes due and payable under this Chapter, and if there shall be any such taxes due, owing and unpaid, it shall be the duty of such officer to first pay the amount of the taxes out of the proceeds of such sale before making payment of any moneys to any judgment creditor or other claimants of whatsoever kind or nature, except the costs of the proceedings and other preexisting tax liens as

above provided. (Ord. 2010-02, S1)

3.19.140 TRUST STATUS OF TAX IN POSSESSION OF VENDOR. All sums of money paid by the purchaser to the vendor as taxes imposed by this Chapter shall be and remain public money, the property of the City, in the hands of such vendor, and the vendor shall hold the same in trust for the sole use and benefit of the City until paid to the Finance Director as herein provided, and for failure so to pay to the Finance Director, such vendor shall be punished for a violation hereof. (Ord. 2010-02, S1)

3.19.150 HEARINGS, SUBPOENAS AND WITNESS FEES. Hearings before the Finance Director pursuant to provisions in this Chapter shall be held pursuant to Chapter 2.60, Rules Governing Administrative Proceedings, of this Code. Any subpoena issued pursuant to this Chapter may be enforced by the Fruita Municipal Court pursuant to Section 13-10-112(2), C.R.S. Subpoenas issued under the terms of this Chapter may be served by any person of full age. The fees of witnesses for attendance at a hearing shall be the same as the fees of witnesses before the District Court, such fees to be paid when the witness is excused from further attendance. When the witness is subpoenaed at the instance of the Finance Director, such fees shall be paid in the same manner as other expenses under the terms of this Chapter, and when a witness is subpoenaed at the instance of any party to any such proceeding, the Finance Director may require that the cost of service of the subpoena and the fee of the witness be borne by the party at whose instance the witness is summoned. In such case, the Finance Director, at his discretion, may require a deposit to cover the cost of such service and witness fees. A subpoena issued as aforesaid shall be served in the same manner as a subpoena issued out of a court of record. (Ord. 2010-02, S1)

3.19.160 JUDGE COMPELS ATTENDANCE. The Fruita Municipal Judge, upon the application of the Finance Director, may compel the attendance of witnesses, the production of books, papers, records of memoranda, and the giving of testimony before the Finance Director or any duly authorized deputies, by an attachment for contempt, or otherwise, in the same manner as production of evidence may be compelled before the Court. (Ord. 2010-02, S1)

3.19.170 DEPOSITIONS. The Finance Director or any party in an investigation or hearing before the Finance Director may cause the deposition of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions in civil actions in courts of this State and to that end compel the attendance of witnesses and the production of books, papers, records or memoranda. (Ord. 2010-02, S1)

3.19.180 TAX LIEN/ENFORCEMENT.

A. The tax imposed by this Chapter, together with the interest and penalties herein provided and the costs of collection which may be incurred, shall be and, until paid, remain a first and prior lien superior to all other liens on all the tangible personal property of a taxpayer within the City and may be foreclosed by seizing under distraint warrant and selling so much thereof as may be necessary to discharge the lien. Such distraint warrant may be issued by the Finance Director whenever the taxpayer is in default in the payment of the tax, interest, penalty or costs. Such warrant may be served and the goods subject to such lien seized by any police officer or any duly authorized employee of the City. The property so seized (except for medical marijuana) may be sold by the agency seizing the same or by the Finance Director at public auction after ten (10) days have passed after an

advertisement in a newspaper published in the City.

B. The Finance Director or the Sheriff of Mesa County shall forthwith levy upon sufficient amounts of the property of the taxpayer, and the property so levied upon shall be sold in all respects, with like effect and in the same manner as is prescribed by law in respect to executions against property upon judgment of a court of record, and the remedies of garnishment shall apply. The Sheriff shall be entitled to such fees in executing such warrant as are allowed by law for similar services.

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

(Ord. 2010-02, S1)

3.19.190 RECOVERY OF UNPAID TAX.

A. The Finance Director may also treat any such taxes, penalties, costs or interest due and unpaid as a debt due the City from the taxpayer.

B. In case of failure to pay the taxes, or any portion thereof, or any penalty, costs or interest thereon, when due, the Finance Director may recover at law the amount of such taxes, penalties, costs, the reasonable value of an attorney's time or the reasonable attorney's fees, including legal assistant's fees, charged, plus interest, in any municipal, county or district court of the county wherein the taxpayer resides or had a principal place of business (at the time the tax became due) having jurisdiction of the amount sought to be collected.

C. The return of the taxpayer or the assessment made by the Finance Director shall be prima facie proof of the amount due.

D. Such actions may be actions in attachment, and writs of attachment may be issued to the police or sheriff, as the case may be, and in any such proceeding no bond shall be required of the Finance Director, nor shall any police officer or sheriff require of the Finance Director an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings. The Finance Director may prosecute appeals in such cases without the necessity of providing bond therefor.

E. It shall be the duty of the City Attorney, when requested by the Finance Director, to commence action for the recovery of taxes due under this Chapter and this remedy shall be in addition to all other existing remedies, or remedies provided in this Chapter.

(Ord. 2010-02, S1)

3.19.210 LIMITATION ON ACTIONS.

A. The taxes for any period, together with interest thereon and penalties with respect thereto, imposed by this Chapter shall not be assessed, nor shall notice of lien be filed, or distraint warrant be issued, or suit for collection be instituted, or any other action to collect the

same be commenced, more than three (3) years after the date on which the tax was or is payable. Nor shall any lien continue after such period, except for taxes assessed before the expiration of such three (3) year period, notice of lien with respect to which has been filed prior to the expiration of such period.

B. In case of a false or fraudulent return with intent to evade the medical marijuana tax, the tax, together with interest and penalties thereon, may be assessed, or proceedings for the collection of such taxes may be begun at any time.

C. Before the expiration of such period of limitation, the taxpayer and the Finance Director may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing.

(Ord. 2010-02, S1)

3.19.220 SEVERABILITY. The several sections, sentences, clauses and provisions of this Chapter are intended to be severable; if any such section, sentence, clause or provision is declared unconstitutional, invalid or unenforceable by the valid judgment of a court of competent jurisdiction, such unconstitutionality, invalidity or unenforceability shall not affect the remaining portions of this Chapter. (Ord. 2010-02, S1)

3.19.230 EXEMPTION FROM REVENUE LIMITATIONS. Upon this Chapter becoming effective, the medical marijuana tax imposed by this Chapter and the revenues derived therefrom shall be collected and spent as a voter approved revenue change, notwithstanding any revenue or expenditure limitations contained in Article X, Section 20, of the Colorado Constitution. (Ord. 2010-02, S1)

Chapter 3.20

UNIFORM COLLECTION ORDINANCE

Sections:

3.20.010 Title and citation
3.20.015 Charges, Assessments, Taxes
3.20.020 Bill payments
3.20.025 Discontinuance
3.20.030 Property lien
3.20.045 Deposits
3.20.050 Remedies
3.20.055 Duty of property owner to notify city
3.20.065 Severability clause

3.20.010 - TITLE AND CITATION. Chapter 3.20 shall be known as the "Uniform Collection Ordinance." The Uniform Collection Ordinance shall be available as a method to collect any charges, assessments or taxes made or levied by the City. This ordinance may apply to collection for sewer, trash, water, weeds, and all other utilities and services provided by the City. (Ord. 1989-10, S3)

3.20.015 - CHARGES, ASSESSMENTS, TAXES. The City may charge, tax or assess the owner of record or occupant of any property which is serviced by any of the utilities or services provided by the City whether or not the property is occupied. The City may also tax or assess the property benefitted. (Ord. 1989-10, S3)

3.20.020 - BILL PAYMENTS. All bills for utilities shall be billed on a monthly basis and shall be due and payable at the office of the City Clerk within 30 days from the date of the bill.

Any bills, rates, fees or charges specified under any of provisions of the Fruita Municipal Code not paid when due shall bear interest at the rate of one and one half per cent (1 1/2%) per month until paid. The City's reasonable attorney fees incurred in collecting such delinquent amounts, together with any costs of collection, shall be paid by the owner or user and shall be included in the unpaid balances of such charges, assessments and taxes. The owner and the occupant of the property benefitted from the utility or service shall be jointly and severally liable for all amounts under the Fruita Municipal Code and this Chapter. The City shall not be required to look to any person whatsoever other than the owner for payment. The City may enforce payment by action at law. (Ord. 1989-10, S3)

3.20.025 - DISCONTINUANCE. If charges for irrigation water, sewer, garbage, trash and waste material pickup service or any other service, or any combination of these, remain unpaid for sixty (60) days after payment is due, the City may terminate service of the kind for which payment has not been made. In addition, the City may discontinue or require discontinuance of domestic water service should sewer charges remain unpaid for the time specified herein.

A. In order to terminate any or all of the foregoing types of service, the City shall send a notice of termination, by first class mail, or by certified mail, return receipt requested, at

the City's option, to the owner as listed on the City's records, and at the City's option, to the occupant of the premises served. The notice shall state:

1. The reason for termination, including as may be applicable, the unpaid charges for the services, and, if an ordinance or regulation of the City has been violated concerning the receipt or use of such services, the essential facts constituting the violation;

2. A statement that the recipient of the notice may within ten (10) days after the notice is sent contact the City Clerk, Fruita City Hall, Fruita, Colorado, to question, adjust, and settle the matters in dispute; that failure to respond within ten (10) days will give rise to the exercise of the City's rights as provided herein;

3. The right of the recipient to appeal the decision of the City Clerk to the Board of Utilities Service Appeals by filing a written notice of appeal to the City Clerk delivered not more than three (3) working days after the decision of the City Clerk concerning the matters in dispute, and upon such appeal the Board of Utilities Service Appeals shall review the matters in dispute and render a decision;

4. That the utility service in question will terminate unless the foregoing appeals process is utilized and if the matters in dispute are determined adversely to the appellant, such service will terminate three (3) days after the appeals process is complete;

5. The costs to be assessed for termination of utility service and for subsequent reinstatement of the service;

6. Any other matter not inconsistent with the foregoing.

B. Upon the request of a recipient of a notice of termination, the City Clerk shall meet and consult with the recipient of the notice within seven (7) days after the recipient's request to do so. If the City Clerk is unavailable, the City Manager shall appoint other City personnel to do so who shall have all powers granted herein to the City Clerk. The City Clerk shall be empowered to adjust and settle the dispute concerning charges for utilities service and violations of ordinances or regulations concerning the receipt or use of such services. At the conference, the City Clerk shall inform the recipient of the notice that the recipient has the right to appeal the decision of the City Clerk to the Board of Utilities Service Appeals.

C. There is hereby created the Board of Utilities Service Appeal, which shall consist of the three (3) persons appointed by the Mayor. If a recipient of a termination notice files a written notice with the City to appeal the decision of the City Clerk rendered pursuant to Section B above within three (3) working days of such decision, then the Board of Utilities Service Appeals (Board) shall give notice of not more than five (5) days to the members of the board and to the appellant of the time and place of a meeting of the Board to affirm, review, or modify the decision of the City Clerk. Two members shall constitute a quorum. The meeting shall be informal, and at the request of the appellant

will be recorded. The City and the appellant may present any facts or data relevant to the dispute, with or without the swearing of an oath.

The Board shall consider the data and evidence before it, and, except as set forth in Section E below, shall order termination of utility service if arrearages for such service remain unpaid or if the appellant or user of the service in question has violated any ordinance or regulation concerning the receipt or the use of such service.

D. The effective date of the termination of utility service shall be the earliest of:

1. Eleven (11) days after the mailing by the City of a notice of termination, if no appeal to the City Clerk is lodged;

2. Four (4) working days after the decision of the City Clerk if no appeal of his decision is lodged to the Board;

3. Three (3) days after the decision of the Board.

E. Notwithstanding the foregoing or any other part of the Fruita Municipal Code, utility service shall not be terminated if;

1. All arrearages for nonpayment of utility service have been paid in full;

2. Violations of ordinances or regulations concerning the receipt or use of utility service other than nonpayment of rates; have ceased;

3. Non payment of a bill has continued for more than thirty (30) days, but current bills {meaning that portion of the bill which is not more than thirty (30) days past due} are being paid when due and all past due installments are being amortized by reasonable installment payments approved by the City Clerk;

4. The utility services for which payment has been made were rendered to a previous occupant of the same premises to be served and were not ordered by the present or prospective customer, provided, however, the City may decline to furnish service at the same premises if subterfuge has occurred or if ownership of the premises has not changed. Subterfuge includes, but is not restricted to, an application for utility service at a given location in the name of another party by an applicant whose account is delinquent and who continues to reside at the premises.

F. Service may be terminated without prior notice and appeal procedures if the City determines that a bypass has been installed on a customer's service meter, a short circuit exists on a user's premises or service is being received or utilized in such a manner as to create a dangerous condition for occupants of the premises or others which requires immediate discontinuance of service in the opinion of the City.

G. The owner or occupant shall be liable for all costs incurred by the City in the

discontinuance or resumption of any service.

(Ord. 1989-10, S3)

3.20.030 PROPERTY LIEN.

A. If the charges for irrigation water, sewer, garbage, trash and waste material pick up service, or any combination of these, remain unpaid for sixty (60) days after payment is due, the City may send a notice of lien assessment, by first class mail, or by certified mail, return receipt requested, at the City's option, to the owner as listed on the City's records, and at the City's option, to the occupant of the premises served. The notice shall state:

1. That the City seeks a lien on the property served for the amount of the unpaid charges for the utility services;

2. That the recipient of the notice may within ten (10) days after notice is sent contact the City Clerk of the City of Fruita to question, adjust and settle the matters in dispute, that failure to respond in ten (10) days will give rise to the exercise of the City's lien rights as provided herein;

3. That the recipient may appeal the decision of the City Clerk to the Board of Utilities Service Appeals by filing a written notice of appeal to the City Clerk delivered not more than three (3) working days after the decision of the City Clerk concerning the matters in dispute, and upon such appeal, that the Board of Utilities Services Appeal shall review the matters in dispute and render a decision;

4. That a lien for unpaid charges for utilities services shall be assessed against the properties served if the arrearages remain unpaid and if the matters in dispute are determined adversely to the appellant, and that the amount of the lien shall be equal to arrearages for unpaid utilities services and other costs allowed by this ordinance. Should the owner or occupant not respond within ten (10) days, then the amount of the arrearages as determined by the City shall become a lien upon the property served which shall run in favor of the City.

B. Should the owner or occupant respond within ten (10) days, the City Clerk and subsequently, if applicable, the Board of Utilities Service Appeal shall meet with the person or persons to whom the notice was sent to determine whether a lien should be asserted for arrearages for utilities services on the property served. The procedures shall follow substantially those set forth in subsections B and C of section 3.20.025 of this chapter, except that the question to be resolved shall be whether a lien should be asserted on the property to which the utility services were furnished and the extent of arrearages for nonpayment. If the City Clerk or on appeal the Board of Utilities Service Appeal, if

an appeal is made, determines that such arrearage exists as of the date of decision of the City Clerk or the Board, if an appeal is made, then the amount of the arrearages shall become a lien on the property served and may be recorded forthwith and foreclosed

pursuant to Colorado law.

C. At the same time that the amount of arrearages may become a lien on the property served, it shall be the prerogative of the City Clerk to certify the property description in the amount of the charge, assessment or tax to the County Treasurer or other officer of the County having custody of the tax list, at the same time of such certification, to be by him placed on the tax list for the current year to be collected in the same manner as other taxes collected. All the laws of the State of Colorado for the assessment and collection of general taxes, including C.R.S. 31-20-105 and the laws for the sale of property for taxes and the redemption thereof, shall apply to and have full effect for the collection of charges, assessments or taxes.

When utility service is rendered to premises occupied by a lessee or licensee, the City may require the owner as well as the lessee or licensee to agree to pay and to pay for charges for all utility, irrigation, sewer, garbage, trash and waste material pick up service.

The City may require any such owner, lessee, or licensee to pay an advance deposit for an amount equal to but not more than the anticipated bill for two month's utility service, which may be used to satisfy unpaid arrearage for such service. The deposit shall be refunded when such person discontinues the use of the utility service for which the deposit was made, if all arrearages are fully paid.

(Ord. 1989-10, S3)

3.20.045 DEPOSITS. The City shall require a security deposit in the amount of twenty-five dollars ($25.00) for each and every new account concerning any services or utility provided to any parcel. (Ord. 1989-10, S3)

3.20.050 REMEDIES. Remedies provided hereunder shall be cumulative in nature and in addition to all other remedies codified in the Fruita Municipal Code or otherwise recognized under the laws of the State of Colorado. (Ord. 1989-10, S3)

3.20.055 DUTY OF PROPERTY OWNER TO NOTIFY CITY. It is the duty of the property owner to notify the City of the utilization of any of the City services at or about the parcel owned by him within 30 days after the commencement of the use. Failure to notify the City will subject owner of record to a penalty of fifty dollars ($50.00). Penalties shall bear interest at the rate of one and one half percent (1.5%) per month until paid. Collection of said penalties shall be as provided in this Chapter. (Ord. 1989-10, S3)

3.20.065 SEVERABILITY CLAUSE. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of this ordinance which can be given effect without the invalid provisions or applications, and to this end, the provisions of this ordinance are declared to be severable. (Ord. 1989-10, S3)

TITLE 4

RESERVED

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Title 5

BUSINESS LICENSES AND REGULATIONS

Chapters:

5.04 Business Licenses in General
5.05 Licensing Officer
5.08 Amusements
5.12 Dance Halls
5.15 Medical Marijuana Business Prohibited
5.16 Intoxicating Liquor
5.20 Alcoholic Beverage Licenses
5.21 Entertainment District
5.24 Junkyards and Automobile Wrecking and Salvage Yards
5.30 Pawnbrokers
5.40 Sexually Oriented Businesses
5.50 Issuance and Conditions of Licenses
5.60 Qualifications of Applicants
5.70 Suspension and Revocation Procedures

Chapter 5.04

BUSINESS LICENSES IN GENERAL

Sections:

5.04.010 Definitions
5.04.020 Fee - Declared uniform and non- discriminatory
5.04.030 Fee - Levied - Amount - Exemptions
5.04.040 Fee - Exemptions - Franchise, garage sale provisions
5.04.050 License application filing required when
5.04.060 Fee - Payable when
5.04.070 City clerk duties
5.04.080 Fee - Payment cumulative, not exclusive
5.04.090 Fee - Separate required for each place of business when
5.04.100 Fee - Required
5.04.110 Enforcement - City right to recover all sums due
5.04.120 Violations designated and license transferability provisions

5.04.010 DEFINITIONS. Whenever in this chapter 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:

A. "Business" means any business, trade, occupation, profession, avocation or calling of any kind, including the operation of recreation vehicle parks.

B. "Employees" means persons working for remuneration under the control and direction of an employer.

C. "Engaged in business" means to carry on or take a part in the operations of the business as owner, operator or agent.

D. "Person" includes any individuals, partnerships, associations, organizations or corporations.

(Ord. 253, S1, 1970; Ord. 1984-04, S5; Ord. 1990-01, S4)

5.04.020 FEE - DECLARED UNIFORM AND NON-DISCRIMINATORY. The City Council finds, determines and declares that considering the relationship of business and occupations to the municipal welfare, as well as the relation thereof to the expenditures required by the city and a proper distribution of the cost of services rendered by the city and all matters proper to be considered in relation thereto, that the fee imposed on each business herein defined is reasonable, proper, uniform and nondiscriminatory and necessary for a just and proper distribution of the cost of services rendered by the city. (Ord. 253, S2, 1970)

5.04.030 FEE – LEVIED – AMOUNT - EXEMPTIONS. There is levied and assessed, beginning January 1, 1979, and for each calendar year thereafter, a business license fee upon

every business except as otherwise provided herein, the sum of twenty-five dollars per year; provided, however, that if a business does not commence doing business with the City until August 1st or after of any calendar year, then in such event, the business license fee shall be the sum of twelve dollars and fifty cents for the remainder of the calendar year.

A. Every person engaged in business shall be liable for this business license fee.

B. The fee provided shall not apply to the operation of any business exempt by federal or state law.

C. The fee herein provided is upon occupations and businesses in the performance of local functions and is not a tax upon those functions relating to interstate commerce.

D. Any person engaged in business in the City for any period less than a six-month period must pay a twelve-dollar and fifty cents license fee.

(Ord. 1986-21, S4; Ord. 393, S1, 1978)

5.04.040 FEE - EXEMPTIONS - FRANCHISE, GARAGE SALE PROVISIONS. Every person engaged in business and paying a license fee under a licensing ordinance of the City, or operating under a franchise, shall be exempt from the payment of the tax levied by the ordinance; provided, however, the repeal of the license ordinance or expiration of any such franchise shall cause the person or business licensed or operating under a franchise to be subject to the business license fee as herein provided.

Charitable, religious and benevolent organizations are exempt from the business license fee. An individual may conduct one yard or garage sale in any one year period and not be obligated to obtain a business license. (Ord. 313, S6(b), 1974; Ord. 253, S4, 1970)

5.04.050 LICENSE APPLICATION FILING REQUIRED WHEN. Every person engaging in business, unless exempt from this license by law, shall make and file a business license application return with the City Clerk, on a form provided by the City. The return shall show the name and address of the place of business, the number of employees and persons engaged in the operation of the business, together with such other information as may be required. The return shall be filed and the fee paid, on or prior to January 1, 1971, and on or prior to January 2nd of each subsequent year; provided, however, as to a new business the first return shall be filed prior to the starting of the business and thereafter on or prior to January 2nd of each year. (Ord. 253, S5, 1970)

5.04.060 FEE - PAYABLE WHEN. Such fee shall be due and payable to the treasurer of the city. As to all persons engaged in business for a period of less than a year, the fee shall be due and payable prior to the time the person engages in business. (Ord. 253, S6, 1970)

5.04.070 CITY CLERK DUTIES. Upon the receipt of the license fee, it shall be the duty of the City Clerk to execute and deliver to the operator of the business paying the fee a revenue receipt, with the date of payment, business paying the fee, the period for which said fee is paid and the place at which the person conducts his business. (Ord. 253, S7, 1970)

5.04.080 FEE - PAYMENT CUMULATIVE, NOT EXCLUSIVE. The payment of the license fee imposed by this chapter shall not relieve the person paying the same from the payment of any other tax, now or hereafter imposed, by any ordinance for any business he may carry on, unless so provided by the ordinance imposing the tax, it being the intent of this chapter that the business license fee prescribed by the various sections or subsections of this chapter applicable to any business shall be cumulative except where otherwise specifically provided. (Ord. 253, S8, 1970)

5.04.090 FEE - SEPARATE REQUIRED FOR EACH PLACE OF BUSINESS WHEN. Every person doing business in more than one store, stand or other place of business, shall pay a separate fee for each place of business, unless such places of business are contiguous to each other, communicate directly with and open into each other, and are operated as a unit. The business may be transferred from one location to another without payment of additional business license fees. (Ord. 253, S9, 1970)

5.04.100 FEE - REQUIRED. It is unlawful for any person or his agent to engage in or carry on a business in the City for which an occupational business license is required, without first having paid the fee and obtained a revenue receipt, as herein provided. For the purpose of this section, the opening of a place of business, or offering to sell, followed by a single sale or the doing of any act or thing in the furtherance of the business, shall be construed to be engaging in carrying on such business. (Ord. 253, S10, 1970)

5.04.110 ENFORCEMENT - CITY RIGHT TO RECOVER ALL SUMS DUE. The City shall have the right to recover all sums due by the terms of this chapter by judgment and execution thereon in a civil action in any court of competent jurisdiction; such remedy shall be cumulative with all other remedies provided herein for the enforcement of this chapter. (Ord. 253, S11, 1970)

5.04.120 VIOLATIONS DESIGNATED AND LICENSE TRANSFERABILITY PROVISIONS. Failure to comply with the terms of this chapter by payment of fees, filing a return and to otherwise comply with the terms of this chapter constitutes an offense and a violation thereof. Each offense and delinquency for each calendar month constitutes a separate offense, but no conviction for such violation shall work a revocation of any license issued under the laws of the state of Colorado. A license shall not be transferred or assigned except when the business is relocated. (Ord. 313, S6(c), 1974; Ord. 253, S12, 1970)

Chapter 5.05

LICENSING OFFICER

Sections:

5.05.010 Office Created
5.05.020 Powers of Licensing Officer
5.05.030 Duties and Functions
5.05.040 Records Required

5.05.010 OFFICE CREATED. The office of Licensing Officer is hereby created. (Ord. 1997-12, S3)

5.05.020 POWERS OF LICENSING OFFICER. Except as otherwise provided, the Licensing Officer shall have full power to grant, renew, suspend during investigation, and revoke all licenses provided for in this Title, subject always to appeal to the City Council as hereinafter provided. (Ord. 1997-12, S3)

5.05.030 DUTIES AND FUNCTIONS. The Licensing Officer shall collect all license fees and shall issue licenses in the name of the City to all persons qualified under the provisions of this Title, and shall:

A. Make Rules. Promulgate and enforce all reasonable rules and regulations necessary to the operation and enforcement of this Title.

B. Adopt Forms. Adopt all forms and prescribe the information to be required therein.

C. Require Affidavits. Require applicants to submit all affidavits and oaths necessary to the administration of this Title.

D. Obtain Endorsement. Submit all applications to appropriate City officials and agencies for their endorsements thereon as to compliance by the applicant with all City regulations which such officials and agencies are charged to enforce.

E. Investigate. Investigate or cause to be investigated the eligibility of any applicant for a license.

F. Examine Records. Examine the books and records of any applicant or licensee when reasonably necessary to the administration and enforcement of this Title.

G. Administer Oaths; Issue Subpoenas. In conducting any investigation or hearing, the Licensing Officer or his designee is empowered to administer oaths and issue subpoenas. Compliance with any subpoena issued by the Licensing Officer may be enforced by application to the Municipal Court of the City, where enforcement may be in the same manner as a contempt of court is enforced.

(Ord. 1997-12, S3)

5.05.040 RECORDS REQUIRED. The Licensing Officer shall keep a record of all licenses issued, setting forth the name of every licensee, the place of business licensed, if any, the residence of the licensee, and the residence of each of the individual members of the licensee firm, or of each of the directing officers of the licensee corporation, the kind and grade of license issued, and any other information deemed pertinent by the Licensing Officer. (Ord. 1997-12, S3)

Chapter 5.08

AMUSEMENTS

Sections:

5.08.010 Definitions
5.08.020 License Required
5.08.030 License Fee - Period of validity
5.08.040 Illegal devices not approved or licensed

5.08.010 DEFINITIONS.

A. "Coin-operated mechanical skill device" means a device or machine which, upon the insertion of a coin or slug, operates or may be operated as a game, contest or an amusement of any description or which may be used for any such game, contest or amusement and which contains no automatic payoff device for the return of slugs, money, coins, checks, tokens or merchandise and which provides for no such payoff by any other means or manner.

B. "Coin-operated music machine" means a device or machine which, upon the insertion of a coin or slug, operates or may be operated to produce music or other similar form of entertainment.

(Ord. 180, S2, 1955)

5.08.020 LICENSE REQUIRED. It is unlawful for any person, firm, association of persons or corporation, other than a school, college or university, to operate a place of business wherein billiard or pool tables, and/or coin-operated skill devices, and/or coin-operated music machines, are used by the customers for a fee or charge, without first having obtained a license therefor in accordance with the provisions of this chapter, in addition to any other license required by ordinances of the City. (Ord. 39, S1, 1978)

5.08.030 LICENSE FEE - PERIOD OF VALIDITY. The annual license fee for that license required by Section 5.08.020 shall be twenty-five dollars for the first and five dollars for each additional billiard, or pool table, or coin-operated skill device, or coin-operated music machine, and shall be valid for one year from the date of issuance, unless sooner revoked, and shall not be assignable. Such application, therefor, shall be on forms obtained from the City Clerk. Failure by the licensee hereunder to comply with pertinent statutes of the state, ordinances of the City, Mesa County Health Department Rules and Regulations, City building and fire codes, or to operate licensed establishments hereunder, in a decent, orderly, and respectable manner, or failure to control profanity, rowdiness, undue noise, or other similar breaches of the peace, or disturbances, offensive to the senses of the average citizen or residents of the neighborhood in which the licensed establishment is located, or the failure to report such incidences to the city police department, shall be considered, after hearing thereon, as grounds for the suspension or revocation of the license issued pursuant to this section. (Ord. 391, S2, 1978)

5.08.040 ILLEGAL DEVICES NOT APPROVED OR LICENSED. Nothing herein contained shall be construed as sanctioning, licensing or approving any gambling device or machine prohibited by the ordinances of the City or the laws of the state. (Ord. 180, S4, 1955)

Chapter 5.12

DANCE HALLS

Sections:

I. PRIVATE DANCE HALL

5.12.010 Defined
5.12.020 License required - Application
5.12.030 License fee - Expiration date
5.12.040 License fee exemption - Private organization or membership club
5.12.050 License application required -- Issuance authority and conditions
5.12.060 License - Revocation authority

II. PUBLIC DANCE HALL

5.12.070 Defined
5.12.080 License - Required
5.12.090 License fee - Expiration date
5.12.100 License fee exemption - Fraternal, charitable, religious or benevolent organization
5.12.110 License application required - Issuance authority and conditions
5.12.120 License - Revocation authority

I. PRIVATE DANCE HALL

5.12.010 DEFINED. "Private dance hall" means and includes any room or place where dancing is offered to a membership club or members of a fraternal, charitable, religious, benevolent or private organization, their guests or friends. (Ord. 233, S1, 1968)

5.12.020 LICENSE REQUIRED - APPLICATION. Before any person, persons or corporation shall conduct, carry on or engage in conducting or keeping or maintaining any private dance hall, he, they or it shall first obtain a license by filing an application therefor with the City Clerk. (Ord. 233, S2, 1968)

5.12.030 LICENSE FEE - EXPIRATION DATE. The fee for a license required by Sections 5.12.010 through 5.12.060 is twenty-five dollars, and licenses issued hereunder shall expire one year from date of issuance. (Ord. 233, S3, 1968)

5.12.040 LICENSE FEE EXEMPTION - PRIVATE ORGANIZATION OR MEMBERSHIP CLUB. Provided, however, that licenses may in the discretion of the mayor be granted without fee for any dances infrequently held, i.e., not oftener than quarterly, by any fraternal, charitable, religious, benevolent or private organization, or a membership club. (Ord. 233, S4, 1968)

5.12.050 LICENSE APPLICATION REQUIRED - ISSUANCE AUTHORITY AND CONDITIONS. No license shall be issued by the City Clerk except upon order of the City

Council, and before any order authorizing the issuance of any license shall be made, the person, persons or corporation desiring such license shall make application in writing, stating the place where such private dance hall is to be carried on. The City Council may, upon investigation of such circumstances and conditions surrounding the place where such private dance hall is to be carried on, or of the persons or corporation applying for such license, upon its discretion refuse to issue any such license if, within the judgment of the City Council, it is to the best interests of the City and the morals thereof to refuse the same. (Ord. 233, S5, 1968)

5.12.060 LICENSE - REVOCATION AUTHORITY. The City Council reserves the right to and it may, at any time after the issuance of any license, upon investigation surrounding the operation of any private dance hall, revoke any license issued for conducting the same. (Ord. 233, S6, 1968)

II. PUBLIC DANCE HALL

5.12.070 DEFINED. "Public dance hall" means and includes any room or place where dancing is offered to members of the general public either on an admission basis or as an inducement for patronage. (Ord. 222, S1, 1966)

5.12.080 LICENSE REQUIRED. Before any person, persons or corporation shall conduct, carry on or engage in conducting or keeping or maintaining any public dance hall, he, they or it shall first obtain a license from the City Clerk. (Ord. 222, S2, 1966)

5.12.090 LICENSE FEE - EXPIRATION DATE. The fee for a license required by Sections 5.12.070 through 5.12.120 is twenty-five dollars, and licenses issued hereunder shall expire one year from date of issuance. (Ord. 222, S3, 1966)

5.12.100 LICENSE FEE EXEMPTION - FRATER NAL, CHARITABLE, RELIGIOUS OR BENEVOLENT ORGANIZATION. Provided, however, that licenses may, in the discretion of the Mayor, be granted without fee for any dances given by any fraternal, charitable, religious or benevolent organizations. (Ord. 222, S4, 1966)

5.12.110 LICENSE APPLICATION REQUIRED - ISSUANCE AUTHORITY AND CONDITIONS. No license shall be issued by the City Clerk except upon order of the City Council, and before any order authorizing the issuance of any license shall be made, the person, persons or corporation desiring such license shall make application in writing, stating the place where such public dance hall is to be carried on. The city council may, upon investigation of such circumstances and conditions surrounding the place where such public dance hall is carried on, or of the persons or corporation applying for such license, upon its discretion refuse to issue any such license if, within the judgment of the city council, it is to the best interest of the city and the morals thereof to refuse the same. (Ord. 222, S5, 1966)

5.12.120 LICENSE - REVOCATION AUTHORITY. The city council reserves the right to and it may, at any time after the issuance of any license, upon investigation surrounding the operation of any public dance hall, revoke any license issued for conducting the same. (Ord. 222, S7, 1966)

Chapter 5.15

MEDICAL MARIJUANA BUSINESSES PROHIBITED

Sections:

5.15.010 Legislative Intent and Purpose
5.15.020 Definitions
5.15.025 Cultivation, Manufacture and Sale of Medical Marijuana Prohibited
5.15.026 Licensing and Regulations of Medical Marijuana in Event Prohibition/Ban is Overturned

5.15.010 LEGISLATIVE INTENT AND PURPOSE

A. Legislative Intent: Pursuant to Article 43.3 of Title 12 of the Colorado Revised Statutes, the voters of the City of Fruita voted at the April 3, 2012 regular municipal election to approve a ban on the cultivation, manufacture and sale of medical marijuana, including the operations of medical marijuana centers, optional premises cultivation operations, and the manufacture of medical marijuana-infused products, unless such person does so as a patient or primary caregiver as authorized by Art. XVIII, Sec. 14 of the Colorado Constitution and pursuant to regulations enacted by the city; further authorizing the city to codify this ban in the municipal code.

B. Purpose: The purpose of this Chapter is to implement the voter approved ban on medical marijuana businesses and to provide for regulations in the event said ban is overturned in the future by voter approval, legislative act or applicable court rulings.

(Ord. 2011-09, S1; Ord. 2012-02, S1-S2)

5.15.020 DEFINITIONS:

The following words and phrases used in this Chapter 5.15 shall have the following meanings unless the context clearly indicates otherwise:

"Adjacent Grounds" means all areas that the Licensee has a right to possess by virtue of his/her ownership or lease, which are outside the enclosed Licensed Premises, but adjacent and contiguous to the Licensed Premises, including but not limited to porches, patios, decks, entryways, lawns, parking lots, and similar areas and all fixed and portable things in such areas, including but not limited lights, signs and security devices.

"Business Manager" means the individual designated by the owner of a Medical Marijuana Business and registered with the City as the person responsible for all operations of the business during the owner's absence from the business premises.

"Character and Record" includes all aspects of a person's character and record, including but not limited to, moral character; criminal record including Serious Traffic Offenses; record of previous sanctions against liquor licenses, gambling licenses, or Medical Marijuana licenses,

which the person owns, in whole or in part, in which the person serves as a Principal, manager, or employee; education, training, experience; civil judgments entered against the person; truthfulness and honesty; and financial responsibility. The conviction of any person for an offense, shall not, in itself, be grounds for a finding of a bad character and record if such person demonstrates that he/she has been rehabilitated in accordance with Section 24-5-101, C.R.S. In the event the Local Licensing Authority considers information concerning the criminal history of a person, the Local Licensing Authority shall also consider any information provided by an applicant regarding such criminal history records, including but not limited to, evidence of rehabilitation, character references and educational achievements especially those items pertaining to the period of time between the last criminal conviction and the time of consideration of a license application.

"Good Cause" shall have the same meaning as set forth in Section 12-43.3-104(1), C.R.S.

"Laws of the State of Colorado" shall mean and include Section 14 of Article XVIII of the Colorado Constitution; the Colorado Medical Marijuana Code, Article 43.3 of Title 12, C.R.S.; other Colorado statutes, including but not necessarily limited to Section 18-18-406(3), C.R.S. and Section 25-1.5-106, C.R.S.; applicable regulations promulgated by the Colorado Department of Public Health and Environment and the State Licensing Authority; and all applicable final decisions of Colorado's appellate courts.

"Licensed Premises" means the premises specified in an application for a license under this Chapter 5.15 which are owned or in possession of the Licensee, and within which the Licensee is authorized to cultivate, manufacture, distribute or sell Medical Marijuana in accordance with the provisions of this Chapter 5.15 and the Laws of the State of Colorado.

"Licensee" means a person licensed pursuant to this Chapter 5.15 and pursuant to the Colorado Medical Marijuana Code, Sections 12-43.3-101 *et. seq.*, C.R.S.

"Local Licensing Authority" shall mean the City Council of the City of Fruita.

"Medical Marijuana" means marijuana that is grown and sold pursuant to the provisions of this Chapter 5.15 and the Colorado Medical Marijuana Code for a purpose authorized by Section 14 of Article XVIII of the Colorado Constitution.

"Medical Marijuana Business" shall mean a person holding a Medical Marijuana Center license, as defined in Section 12-43.3-402, C.R.S.; a Medical Marijuana-Infused Products Manufacturer license, as defined in Section 12-43.3-404, C.R.S.; and/or an Optional Premises Cultivation Operation license, as defined in Section 12-43.3-403, C.R.S. For the purposes of this Chapter 5.15, a Patient that cultivates, produces, possesses or transports Medical Marijuana or a Primary Caregiver that cultivates, produces, sells, distributes, possesses, transports, or makes available marijuana in any form to one or more Patients shall not be deemed a "Medical Marijuana Business".

"Medical Marijuana Center" means a person licensed pursuant to this Chapter 5.15 and the Colorado Medical Marijuana Code to operate a business as described in Section 12-43.3-402, C.R.S., as contained in the Colorado Medical Marijuana Code, and sells medical marijuana to

registered Patients or Primary Caregivers as defined in Section 14 of Article XVIII of the Colorado Constitution, but is not a Primary Caregiver.

"Medical Marijuana-Infused Products Manufacturer" means a person licensed pursuant to this Chapter 5.15 and the Colorado Medical Marijuana Code to prepare products infused with medical marijuana that is intended for use or consumption other than by smoking or inhaling vapors, including but not limited to, edible products, ointments, and tinctures. These products, when manufactured or sold by a licensed Medical Marijuana Center or Medical Marijuana-Infused Products Manufacturer, shall not be considered a food or drug for the purposes of the Colorado Food and Drug Act, Part 4 of Article 5 of Title 25, C.R.S.

"Medical Use" shall have the same meaning as is set forth in Article XVIII, Section 14(1)(b) of the Colorado Constitution, or as may be fully defined in any applicable State law or regulation.

"Optional Premises Cultivation Operation" means a person licensed pursuant to this Chapter 5.15 and the Colorado Medical Marijuana Code to grow and cultivate Medical Marijuana at a Licensed Premises contiguous or not contiguous with the Licensed Premises of the person's Medical Marijuana Center license or the person's Medical Marijuana-Infused Products Manufacturing license. An Optional Premises Cultivation license may be issued only to a person licensed to operate a Medical Marijuana Center or licensed to operate as a Medical Marijuana-Infused Products Manufacturer.

"Patient" shall have the same meaning as is set forth in Article XVIII, Section 14(1)(d) of the Colorado Constitution, or as may be more fully defined in any applicable State law or regulation.

"Person" means a natural person, partnership, association, company, corporation, limited liability company or organization, or a manager, agent, owner, director, servant, officer, or employee thereof.

"Premises" means a distinct definite location which may include a building, a part of a building, a room, or any other definite contiguous area.

"Primary Caregiver" shall have the same meaning as is set forth in Article XVIII, Section 14(1)(d) of the Colorado Constitution, or as may be more fully defined in any applicable State law or regulation.

"Principal" means:

1. In the case of any business entity, including any general or limited partnership, corporation, limited liability company or other entity, any person who has any interest in the ownership of the entity and any person who has the day to day authority to or actually does manage the entity's financial affairs.

2. In the case of a corporation, the persons described for any entity described in subsection (1) above and the president, vice president, secretary, chief executive

officer, chief financial officer, and any person who holds any of the capital stock of the corporation.

3. In the case of a limited liability company, the persons described for any such entity in subsection (1) above and any member of the limited liability company.

4. In the case of a sole proprietorship, the individual owner.

"Serious Traffic Offense" means any driving offense carrying eight (8) points or greater under Section 42-2-127, C.R.S. or the substantial equivalent of such events in any other state.

"State Licensing Authority" means the authority created by Section 12-43.3-201, C.R.S. for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution and sale of Medical Marijuana in this State.

Unless defined in this Chapter or the context clearly indicates otherwise, any word or term used in this Chapter that is defined in Article XVIII, Section 14(1)(f) of the Colorado Constitution or in the Colorado Medical Marijuana Code shall have the same meaning that is ascribed to such word or term in the Colorado Constitution or in the Colorado Medical Marijuana Code.

(Ord. 2011-09, S1)

5.15.025 CULTIVATION, MANUFACTURE AND SALE OF MEDICAL MARIJUANA PROHIBITED. The cultivation, manufacture and sale of medical marijuana, including the operations of medical marijuana centers, optional premises cultivation operations, and the manufacture of medical marijuana-infused products is prohibited unless such person does so as a patient or primary caregiver as authorized by Art. XVIII, Sec. 14 of the Colorado Constitution and pursuant to regulations enacted by the city.

(Ord. 2012-02, S3)

5.15.026 LICENSING AND REGULATIONS OF MEDICAL MARIJUANA IN EVENT PROHIBITION/BAN IS OVERTURNED. In the event that the voter approved ban on medical marijuana businesses as set forth in Section 5.15.025 of this Code is overturned or declared unconstitutional by legislative action, future voter approval or by applicable court rulings, the City desires to keep in place legislation regarding the regulation and licensing of said medical marijuana businesses. To that end, the following provisions are applicable in the event said ban is overturned.

A. License required.

1. It shall be unlawful for any person to operate a Medical Marijuana Business without first having obtained a license to operate pursuant to the provisions of this Chapter, having paid the fees therefor, as well as having obtained a license to operate from the State Licensing Authority. The licensing requirements apply to

any Medical Marijuana Businesses that exist on the effective date of this Chapter and any Medical Marijuana Businesses established after such effective date.

2. Any person violating this Section commits a Class A municipal offense. A person committing a violation shall be guilty of a separate offense for each day or part thereof during which the offense is committed or continued to be permitted by such person and shall be punished accordingly.

3. Pursuant to the provisions of Article 43.3 of Title 12, C.R.S., Medical Marijuana Businesses shall be licensed by the City in one or more of the following categories:

   a. Medical Marijuana Center, as defined in Section 5.15.020 of the Fruita Municipal Code and Section 12-43.3-104(8), C.R.S. Such Center shall meet all criteria and requirements of Section 12-43.3-402, C.R.S. as well as all other regulatory requirements applicable to Medical Marijuana Centers set forth within this Chapter, and within the laws of the State of Colorado.

   b. Optional Premises Cultivation Operations license, as defined in Section 5.15.020 of the Fruita Municipal Code and Section 12-43.3-403, C.R.S. Such cultivation operation shall meet all criteria and requirements of Section 12-43.3-404, C.R.S., as well as all other regulatory requirements applicable to Optional Premises Cultivation Operations set forth in this Chapter and within the Laws of the State of Colorado. An Optional Premises Cultivation Operation may be located contiguous to the Licensed Premises of a Medical Marijuana Center or at a separate satellite location.

   c. No Medical Marijuana-Infused Products Manufacturers shall be licensed.

4. The licensing requirements set forth in this Chapter shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any federal law, the laws of the State of Colorado, or local laws, including, but not by way of limitation, a business license, retail sales tax license, retail food establishment license, or any applicable zoning permits or building permits.

5. No license for a Medical Marijuana Business shall actually be issued by the City until a license for such use, at the location designated in the application, has been issued by the State Licensing Authority.

6. The issuance of a license pursuant to this Chapter does not create a defense, exception or provide immunity to any person in regard to any potential federal criminal liability the person may have for the production, distribution or possession of marijuana.

7. Every license issued under this Chapter confers only a limited and conditional privilege subject to the requirements, conditions, and limitations of this Chapter

and State law. The license does not confer a property right of any kind. The license and the privilege created by the license may be further regulated, limited, or completely extinguished at the discretion of the City Council or the electors of the City, without any compensation to a Licensee. Every license approved or issued under this Chapter 5.15 shall be subject to the future exercise of the reserved rights of referendum and initiative, exercise of the local option described in Section 12-43.3-106, C.R.S., and any other future ordinances adopted by the electors of the City or the City Council. Nothing contained in this Chapter grants to any Licensee any vested right to continue operating under the provisions of this Chapter as they existed at the time the license was approved or issued and every license shall be subject to any ordinance or prohibition adopted after the license was approved or issued.

8. A separate license shall be required for each location from which a Medical Marijuana Business is operated.

9. All Medical Marijuana Business licenses issued by the City shall be valid for a period of one (1) year from the date such license is issued. Renewal applications shall be filed at least forty-five (45) days prior to the expiration date of the existing license.

10. Licensees shall report each transfer or change of ownership interest, change in Business Manager, or change in Principals or change in employees on forms provided by the City Clerk. An application or a change shall be submitted to the City Clerk at least thirty (30) days prior to any such change to provide necessary time for the background check and processing of the application pursuant to Section 5.15.160.

B. Local Licensing Authority.

1. For the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution and sale of Medical Marijuana within the City, there is hereby created the Medical Marijuana Local Licensing Authority of the City of Fruita. The City Council of the City shall serve as the Local Licensing Authority.

2. The Local Licensing Authority shall have such powers and duties as are provided for in this Chapter and the Colorado Medical Marijuana Code.

3. The Local Licensing Authority shall be assisted by the City Attorney, the City Manager and such other personnel as may be designated by the City Manager in the performance of the powers and duties of the Local Licensing Authority.

C. General Licensing Procedure and Regulations.

The City Clerk shall have authority to promulgate and employ reasonable regulations associated with the making and processing of applications for Medical Marijuana Business licenses. The City Clerk also may promulgate regulations concerning the processes and procedures associated

with the issuance, renewal, denial, suspension and/or revocation of such licenses that supplement and are not inconsistent with the provisions of this Chapter. Such regulations shall be written and shall become effective when copies of the same have been provided to the City Council and made available to the public, or upon a later effective date set forth in the regulations.

D. Application and License Fees.

1. Application and license fees for Medical Marijuana Businesses shall be as established in an annual fees and charges resolution adopted by the City Council.

2. The primary purpose of the fees established by the City Council is to defray the costs of the particular municipal services provided and not to defray the costs of general services provided by the City or to raise general revenues. The fees provided in this Section are reasonably related and proportional to the costs of the services provided and do not generate additional net revenue.

3. If any license or application is denied, approved but not issued, lapsed, abandoned, or withdrawn, only the license fee shall be refunded to the applicant.

E. License Applications.

1. Application for a Medical Marijuana Business license shall be made to the City Clerk upon forms provided by the City Clerk for that purpose. A complete application must contain all information that is required by the Laws of the State of Colorado with respect to any license that may be issued pursuant to the Colorado Medical Marijuana Code and such additional information as may be requested by the City Clerk in writing. At a minimum, the application shall require the following information:

a. The name, address, date of birth, and social security number of the following:

i. The owner or owners of the proposed Medical Marijuana Business in whose name the license is proposed to be issued. If the owner is a corporation, partnership, limited liability company or similar business entity, the application shall include the name and address of all Principals. If the owner is not a natural person, the organization documents for all business entities identified in the application and the contact information for the person that is authorized to represent the entity shall be provided.

ii. The Business Manager of the Medical Marijuana Business, if the manager is proposed to be someone other than the owner, or if the owner is an entity other than a natural person.

iii. All persons holding any financial interest in the Medical Marijuana Business, other than commercial lenders regulated by the federal government or the State of Colorado.

iv. All employees or prospective employees of the Medical Marijuana Business.

b. A statement of whether or not any of the named owners, Principals, managers, parties with a financial interest, employees or other persons named on the application have been:

i. Denied an application for a Medical Marijuana Business license by any other jurisdiction, including the State of Colorado, or has had such license suspended or revoked.

ii. Denied an application for a liquor license pursuant to Article 46 or 47, Title 12, C.R.S., or has had any such license suspended or revoked.

iii. Convicted, entered a plea of no contest, or entered a plea of guilty in conjunction with a deferred judgment and sentence pertaining to any charge related to the possession, use, or possession with intent to distribute narcotics, drugs or other controlled substances.

iv. Convicted, entered a plea of no contest or entered a plea of guilty in conjunction with a deferred judgment and sentence pertaining to any felony, misdemeanor, petty offense, municipal offense and Serious Traffic Offense.

c. Proof of ownership or legal possession of the proposed Licensed Premises for the term of the proposed license shall be presented to the City Clerk before any Medical Marijuana Business license permitted by this Chapter may be issued. If the Licensed Premises will be leased rather than owned by the applicant, a written consent by the owner of the property to licensing of the premises as a Medical Marijuana Business must be submitted by the applicant to the City Clerk as part of a complete application. A fully executed lease may satisfy this requirement if it clearly indicates that the owner knows the leased premises will be used as a licensed Medical Marijuana Business. If the building in which the Licensed Premises will be located is regulated by a declaration of covenants, an affidavit signed by an officer of the owners association shall be submitted by the applicant stating that a Medical Marijuana Business is not prohibited by such declaration, covenants or restrictions.

d. A conditional use permit issued by the Community Development Department for the location of the proposed Licensed Premises as required by subsection (X) of Section 17.07.070 of the Fruita Municipal Code. In

the event the conditional use permit is subject to an appeal, no further action shall be taken upon the license application until such appeal is finally adjudicated.

e. An operating plan for the proposed Medical Marijuana Business including the following information:

i. A description of the products and services to be provided by the Medical Marijuana Business, including an indication of whether or not the facility proposes to engage in the retail sale of Medical Marijuana-Infused Products for human consumption.

ii. A floor plan showing all interior dimensions of the Licensed Premises and the layout of the Medical Marijuana Business. Such floor plan shall also show the principal uses of the floor area depicted therein, including a depiction of where any services other than the dispensing of Medical Marijuana are proposed to occur on the Licensed Premises. If the building or proposed Licensed Premises is not yet in existence, the applicant shall file a plot plan and a detailed sketch for the interior and submit an architect's drawing of any building to be constructed.

iii. A security plan containing all information required by the State Licensing Authority's regulations and this Chapter.

iv. A lighting plan, including security lighting, for the Licensed Premises and Adjacent Grounds.

v. Any information and/or documentation not included in the foregoing subsections that is or will be required in an application to be filed with the State Licensing Authority for the State license that may be issued in accordance with the provisions of the Colorado Medical Marijuana Code.

vi. Any additional document(s) or information reasonably requested by the City.

2. Any application for a Medical Marijuana Business license shall be accompanied by the application fee, criminal background check fee, and an annual fee as required by Section 5.15.060 or in any resolution adopted pursuant thereto. No application shall be deemed complete or be processed in the absence of the payment of such fees.

3. Upon receipt of an application for a Medical Marijuana Business license, the City shall determine whether the proposed facility is or will be in full compliance with any and all applicable laws, rules and regulations.

4. Unless an application is under concurrent review by the State Licensing Authority and the Local Licensing Authority, the Police Department shall perform a criminal background investigation for the proposed Licensee, Business Manager, if any, the Principals of the entity, if applicable, persons holding a financial interest in the proposed business, prospective employees and any other persons subject to a criminal background check under the provisions of the Colorado Medical Marijuana Code in connection with any license application permitted thereunder. The applicant shall pay the fee established by resolution of the City Council adopted pursuant to Section 5.15.060 for the required background checks. The Police Chief or his designee shall provide the City Council with a written report concerning the Character and Record of the proposed Licensee, the Business Manager if any, the Principals of any business entity that would constitute the Licensee, persons holding a financial interest in the proposed business, and prospective employees.

5. The City shall perform a physical inspection of the proposed Licensed Premises to determine compliance with any applicable requirement of this Chapter.

6. The City Clerk shall not proceed to process any application for a license that is not complete or otherwise in full compliance with this Chapter, any other applicable City ordinance or regulation, or any applicable Laws of the State of Colorado. The City Clerk also shall refuse to further process any application that contains any false or incomplete information, but shall allow an applicant reasonable opportunity to correct deficiencies in applications that fail to include complete information before denying such application.

F. Procedures for Approval or Denial of License Application.

Within thirty (30) days following the date the City Clerk certifies that a license application is complete, the Local Licensing Authority shall either approve the license application, deny the license application, or approve the license application with conditions. No public hearing shall be required. However, the Local Licensing Authority shall notify the applicant of the date and time the application will be considered. The applicant shall appear at such meeting and the applicant shall be permitted to address the Local Licensing Authority in support of the application. No application for a license authorized under this Chapter shall be approved unless:

1. All applicable requirements of this Chapter 5.15 have been satisfied;

2. All applicable requirements of the Colorado Medical Marijuana Code have been satisfied;

3. All required Licensee fees and associated costs have been paid by the applicant;

4. Applicant has received a conditional use permit to operate the proposed Medical Marijuana Business in accordance with the City's Land Use Code, Title 17 of the Fruita Municipal Code;

5. All other applicable requirements of the Fruita Municipal Code have been met;

6. The applicant has obtained a State sales tax license, City sales tax license, if required, and has obtained a business license pursuant to Chapter 5.04 of the Fruita Municipal Code;

7. The applicant is not in arrears in regard to any administrative fines, court fines, assessments, sales tax reporting and/or payment obligations, medical marijuana excise tax reporting and/or payment obligation pursuant to Chapter 3.19 of the Fruita Municipal Code or fees owed to the City of Fruita; and

8. No fraudulent, misrepresented or false statement of material or relevant fact is contained within the application or was made to the Local Licensing Authority.

The City Clerk's office will issue a report of preliminary findings with respect to the requirements for issuance of a Medical Marijuana Business license and shall notify the applicant and the Local Licensing Authority, in writing, of its preliminary findings.
The Local Licensing Authority shall issue its decision within thirty (30) days following the meeting at which the application was considered. The Local Licensing Authority shall notify the applicant in writing of its decision, which shall state the reasons for the decision, by certified U.S. mail addressed to the applicant at the address shown on the application. No license shall actually be issued by the Local Licensing Authority until the applicant has obtained the requisite license from the State Licensing Authority.

G. Conditions on Licenses.

At the time that a new license is first approved, or when an existing license is renewed, or at any time that a sanction other than revocation is imposed, or at any time the Local Licensing Authority approves a major change to a license, the Local Licensing Authority may impose on the license any conditions related to the license, Licensed Premises, or Adjacent Grounds, that are reasonably necessary to protect the public health, safety or welfare, including but not limited to the following:

1. Additional security requirements;

2. Additional record keeping requirements;

3. Requirements for walls, doors, windows, locks and fences on the Licensed Premises and Adjacent Grounds;

4. Limits on the number of Patients who may patronize the establishment at one time;

5. Limits on Medical Marijuana-Infused Products that may be sold;

6. Requirements and limits on ventilation and lighting;

7. Limits on the products other than Medical Marijuana and Medical Marijuana-Infused Products that can be sold on the Licensed Premises;

8. Limits on hours of operation that are more restrictive than prescribed by Section 5.15.110(E);

9. A requirement that the Licensee temporarily close the Licensed Premises to the public until certain changes, inspections or approvals are made; and

10. Any other conditions reasonably necessary to protect the public health, safety and welfare and fulfill the intent and purposes of this Chapter.

H. Personal Requirements for the Licensee, Principals, Business Manager, Persons Holding a Financial Interest and Employees.

1. The Licensee, Principals, Business Manager, persons holding a financial interest in the business, and employees shall meet all requirements for the issuance of a license by the State Licensing Authority.

2. The Licensee, Principals, Business Manager and employees shall all be over the age of twenty-one (21) years.

3. The Licensee, Principals, Business Manager, persons holding a financial interest in the business, and employees have not been determined by any other Medical Marijuana licensing authority, any other licensing board within the State, or the State Licensing Authority to not be persons of good Character and Record within the preceding five (5) years.

4. The Licensee, Principals, Business Manager, persons holding a financial interest in the Medical Marijuana Business and employees are presently persons of good Character and Record.

5. The Licensee, Principals, Business Manager, persons holding a financial interest in the Medical Marijuana Business and employees have not discharged a sentence for any felony in the five (5) years immediately preceding the filing of a license application.

6. The Licensee, Principals, Business Manager, persons holding a financial interest in the Medical Marijuana Business and employees have never been convicted of a felony or received a deferred judgment and sentence pursuant to State or federal law regarding the possession, distribution, or use of a controlled substance, except that the Local Licensing Authority may grant a license if the Licensee, Principals, Business Manager, persons holding a financial interest in the Medical Marijuana Business or employees have a state felony conviction based on possession or use of a controlled substance that would not be a felony if such person were convicted of the offense on the date the license is applied for.

7. The Licensee, Principals, Business Manager, persons holding a financial interest in the Medical Marijuana Business have not held an interest in any liquor license, Medical Marijuana license or other license issued by any municipality, county, or the State of Colorado that has been revoked, suspended, or fined within the preceding five (5) years.

8. The Licensee, Principals, Business Manager, persons holding a financial interest in the Medical Marijuana Business, and employees have not had their authority, if any, to act as a Primary Caregiver revoked by the State of Colorado within the preceding five (5) years.

9. The Licensee and Principals are not in default on any municipal, county, State, or federal taxes, fees, fines or charges, do not have any outstanding warrants for their arrest, and do not have any outstanding liens or judgments payable to the City of Fruita.

10. The applicant and Principals are not in default on any student loan.

11. The applicant and Principals do not have any orders or judgments against them for child support in default or in arrears.

12. The applicant and Principals are not peace officers or prosecuting attorneys.

13. The applicant and Principals are not licensed physicians who recommend Medical Marijuana to Patients.

I. Special Restrictions and Requirements.

1. Limitation On The Number Of Licenses That May Be Issued Within The City. If the City of Fruita's population is less than twenty thousand (20,000) persons, only one Medical Marijuana Center license and one (1) Optional Premises Cultivation Operation license related to a Medical Marijuana Center license shall be issued. If the City's population is between twenty thousand (20,000) persons and thirty thousand (30,000) persons, the Local Licensing Authority may issue two (2) Medical Marijuana Center licenses and two (2) Optional Premises Cultivation Operation licenses related to Medical Marijuana Center licenses. Population shall be determined by the most recent data available from the U.S. Census Bureau and the State of Colorado Demography Office. In the event more than one (1) license application for a Medical Marijuana Business of the same classification are submitted to the Local Licensing Authority within a period of thirty (30) days, the applications comply with all of the requirements of this Chapter and the Colorado Medical Marijuana Code, but the Local Licensing Authority is not permitted to approve all of the applications because of the limitations set forth in this subsection, the Local Licensing Authority shall approve the application that the Local Licensing Authority finds and determines will best promote the intent and purposes of this Chapter 5.15 and the Colorado Medical Marijuana Code. An application for renewal of an existing Medical Marijuana Business license shall

receive a preference over an application for a new Medical Marijuana Business license if the existing business has substantially met all of the requirements of this Chapter 5.15 and the Colorado Medical Marijuana Code during the previous license term and is in good standing.

2. Permitted Locations. All Medical Marijuana Business licenses shall be issued for a specific location which shall be designated as the Licensed Premises. Except as permitted by law, all sales, deliveries and other transfers of Medical Marijuana products by a Licensee shall be made at the Licensed Premises. Medical Marijuana Businesses are not permitted in any residential zone district. Medical Marijuana Businesses shall only be located in the Tourist Commercial (TC), General Commercial (GC), and the Limited Industrial Research and Development (LIRD) zones pursuant to a conditional use permit issued in accordance with the requirements contained in the City's Land Use Code.

3. No Mobile Facilities. No Medical Marijuana Business shall be located in a movable or mobile vehicle or structure and no Medical Marijuana products shall be delivered in the City unless such delivery is by a Medical Marijuana Center licensed by the City and such delivery is specifically permitted by the Colorado Medical Marijuana Code.

4. No Beer or Alcohol on Premises. No fermented malt beverages and no alcohol beverages, as defined in the Colorado Beer Code and the Colorado Liquor Code, respectively, shall be kept, served or consumed on the Premises of a Medical Marijuana Business, except for marijuana tinctures.

5. Hours of Operation. Medical Marijuana Businesses shall limit their hours of operation to between 8:00 a.m. and 6:00 p.m.

6. Storage of Products. All products and accessories shall be stored completely indoors and on-site out of public view.

7. Restrictions on Location of Transactions. All transactions involving Medical Marijuana shall occur indoors and out of view of the public.

8. Consumption of Marijuana Prohibited. No consumption of any Medical Marijuana product shall be allowed or permitted on the Licensed Premises or Adjacent Grounds.

9. Underage Persons Prohibited. No person under the age of eighteen (18) years shall be permitted in the Licensed Premises unless accompanied by a parent or legal guardian.

10. Gun Sales and Pawn Shop Activities Prohibited. No gun sales or pawn shop activities shall be permitted on the Licensed Premises.

11. Storage of Currency. All currency over $1,000.00 shall be stored within a separate vault or safe (no marijuana in safe), securely fastened to a wall or floor, as approved by the Police Department.

12. Prevention of Emissions. Sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting the Licensed Premises shall be provided at all times. In the event that any debris, dust, fluids or other substances shall exit the Licensed Premises, the landowner and Licensee shall be jointly and severally responsible for the full cleanup immediately. The Medical Marijuana Business shall properly dispose of all materials and other substances in a safe and sanitary manner.

13. Compliance with City Codes. The Licensed Premises and Adjacent Grounds of a Medical Marijuana Business shall comply with all zoning, health, building, electrical, mechanical, fire, and other codes and ordinances of the City as shown by completed inspections and approvals by the Community Development Department, Building Department, Lower Valley Fire Department, and the Mesa County Health Department, if applicable.

J. Specific Requirements for a Medical Marijuana Center.

1. The Licensee shall also obtain an Optional Premises Cultivation Operation license, for a location which may or may not be contiguous to the Licensed Premises of the Medical Marijuana Center.
2. The Licensee shall cultivate at least seventy percent (70%) of the marijuana sold or exchanged on the Licensed Premises.

3. Small samples of Medical Marijuana products offered for sale may be displayed on shelves, counters and display cases in areas restricted to Patients and Primary Caregivers. All bulk marijuana products shall be locked within a separate vault or safe (no other items in this safe), securely fastened to a wall or floor, as approved by the Police Department.

4. A Medical Marijuana Center may sell “drug paraphernalia” as that term is defined in Section 9.08.060 of the Fruita Municipal Code to Patients only and shall be exempt from the prohibitions contained in said Section. Provided, however, a Medical Marijuana Center shall not display “drug paraphernalia” for sale on the Licensed Premises and such “drug paraphernalia” shall only be shown to Patients in an area restricted to access by Patients upon request.

5. A Medical Marijuana Center shall not sell merchandise other than Medical Marijuana, Medical Marijuana-Infused Products and items directly related to the consumption of Medical Marijuana.

K. Specific Requirements for Optional Premises Cultivation Operation License.

1. The applicant shall also hold a Medical Marijuana Center license or a Medical Marijuana-Infused Products Manufacturer's license.

2. The area of the proposed Licensed Premises utilized for cultivation shall be equipped with a ventilation system with carbon filters sufficient in type and capacity to eliminate marijuana odors emanating from the interior to the exterior discernable by reasonable persons. The ventilation system must be inspected and approved by the City.

3. The area of the proposed Licensed Premises utilized for cultivation shall be sufficiently separated from the area of the premises open to the public, to Patients, and Primary Caregivers, or a negative air pressure system shall be installed, to prevent pesticides, fertilizers, and other chemicals, artificial and natural, from moving into the ambient air in the area open to the public, Patients, and Primary Caregivers or any adjacent building, and such separation or negative air pressure system shall be approved by the City.

4. If carbon dioxide will be used in the cultivation area in the proposed Licensed Premises, sufficient physical barriers or a negative air pressure system shall be in place to prevent carbon dioxide from moving into the ambient air in any area open to the public or to Patients or in any adjacent building in a concentration that would be harmful to any person, including persons with respiratory disease, and shall be inspected and approved by the City.

5. Walls, barriers, locks, signage and other means shall be employed to prevent the public or Patients and Primary Caregivers from entering the area of the Licensed Premises utilized for cultivation of marijuana.

6. Disposal of unwanted marijuana by-products shall be done in accordance with procedures approved by the Police Department.

L. <u>Renewal of Medical Marijuana Business License.</u>

1. A Licensee may renew his or her Medical Marijuana Business license by submitting an application to the City Clerk at least forty-five (45) days before and not more than ninety (90) days before the expiration of the license. If a Licensee fails to file an application for renewal of its license at least forty-five (45) days before expiration of the license, the license shall expire.

2. A Licensee may renew a license that has expired if:

   a. The license has expired for less than ninety (90) days; and

   b. The Licensee pays the regular renewal fee and an additional five hundred dollars ($500.00) late renewal fee.

3. In the event an application for renewal has been filed at least forty-five (45) days before the expiration of the previous license, but the Local Licensing Authority does not rule on the application for renewal before the expiration of the previous license, the previous license shall be deemed extended until the Local Licensing Authority issues a decision on the application for renewal, but in no event may the license be extended for more than ninety (90) days.

4. The Local Licensing Authority may renew a license without a public hearing. However, if the Local Licensing Authority believes there may be Good Cause to deny the application for renewal, the Local Licensing Authority shall hold a public hearing on the application. The Licensee shall have an opportunity to be heard at the hearing and shall be given at least fifteen (15) days written notice of the date and time of the public hearing on the application for renewal.

M. Major Changes To Medical Marijuana Business License Or Licensed Premises Requiring Approval Of The Local Licensing Authority.

1. A Licensee shall notify the State Licensing Authority and Local Licensing Authority in writing of the name, address and date of birth of any proposed new owners, Principal, Business Manager, person holding a financial interest in the business or employee at least thirty (30) days before the new owner, Principal, Business Manager, or employee becomes associated with the business. The new owner, Principal, Business Manager or employee shall pass a fingerprint-based criminal history record check as required by the State Licensing Authority and obtain the required identification prior to being associated with, managing, owning or working at the Medical Marijuana Business.

2. A Licensee shall not make any of the following changes without first obtaining written approval of the Local Licensing Authority:

   a. Any transfer of the license or any ownership interest in the Licensee's business entity or license;

   b. Any change in the location of the Licensed Premises;

   c. Any change in the Licensee's Principals or employees;

   d. The hiring, substitution, resignation, replacement or termination of the Business Manager;

   e. Any change in the ownership of any of the stock of Licensee's corporation;

   f. Any change in the structure, ventilation system, plumbing system, electrical supply system, floor plan, safe or vault, locks, surveillance system, or security system at the License Premises;

g. Any material change to the Adjacent Grounds, including but not limited to, lighting, parking, or fences; and

h. Any material change in the operation from the operational plan submitted at the time the license was approved.

3. The Local Licensing Authority may summarily approve any of the above changes or hold a public hearing on the same, in the Local Licensing Authority's discretion. In the event the Local Licensing Authority elects to hold a public hearing, the Local Licensing Authority shall post notice of the hearing in the manner described in Section 12-43.3-302(2), C.R.S. on the Licensed Premises for a period of at least ten (10) days. Notice of the hearing shall also be provided to the applicant at least ten (10) days prior to the public hearing.

4. The transfer of a license to a new owner does not constitute a new license. The transferring of a license or ownership interest in a license takes the transfer of such license or interest subject to the conditions, history, record, and sanctions imposed on that license under the previous ownership of the license.

N. Reports Of Minor Changes.

Every Licensee shall report the following to the Local Licensing Authority in the writing within ten (10) days of such event:

1. Any change in a person's financial interest in the Licensed Premises, or Adjacent Grounds;

2. Any charges filed against or any conviction of any Principal, Business Manager, or employees for any felony, misdemeanor, or Serious Traffic Offense including but not limited to any deferred judgment and sentence ordered or supervised by a court of law; and
3. Any change to any permanent sign on the exterior of the Licensed Premises or Adjacent Grounds.

O. Books And Records.

1. Every Licensee shall maintain on the Licensed Premises at any time that any person is present on the Licensed Premises accurate and up to date books and records of the business operations of the Licensee or an authentic copy of the same, including but not limited to the following:

a. All books and records required to be maintained by the Colorado Medical Marijuana Code and the regulations promulgated thereunder;

b. Lists, manifests, orders, invoices, and receipts for all marijuana, marijuana plants, and Medical Marijuana-Infused Products cultivated, harvested, processed, delivered, purchased, stored, sold, and exchanged during the

preceding two (2) years by each transaction or event, including the date, source, strain, type, quantity, weight, and purchaser;

c. An inventory of all marijuana and Medical Marijuana-Infused Products presently on the Licensed Premises;

d. Sales taxes collected and paid;

e. Medical Marijuana excise taxes collected and paid to the City;

f. The name, address, and a copy of each purchaser's Medical Marijuana registry card, for every Patient who has registered the Medical Marijuana Center as his or her primary center or who has purchased Medical Marijuana, marijuana plants or Medical Marijuana-Infused Products at the Licensed Premises;

g. The written recommendation of any physician who has recommended that a Patient registered with the Medical Marijuana Center needs more than two (2) ounces of Medical Marijuana and six (6) marijuana plants to address the Patient's debilitating medical condition;

h. The name, address and a copy of the Medical Marijuana license of any other Medical Marijuana facility Licensee with whom the Licensee has transacted any business, including but not limited, to any purchase, sale, or exchange of marijuana plans, harvested marijuana or Medical Marijuana-Infused Products; and

i. Copies of the Medical Marijuana registry card of a homebound Patient and the waiver from the State of Colorado authorizing a Primary Caregiver to purchase Medical Marijuana for the homebound Medical Marijuana Patient and transport the same to the homebound Patient.

2. The Licensee shall separate or redact any information showing a Patient's debilitating medical condition from the above records.

P. <u>Inspection Of Books And Records; Audits.</u>

1. Any law enforcement officer, the City Manager, or his designee, may, without a warrant and without reasonable suspicion, inspect the books and records described in Section 5.15.180 at any time that anyone is present inside the Licensed Premises, but shall not inspect confidential Patient medical information describing a Patient's debilitating medical condition, unless a warrant specifically authorizing inspection of such records is issued or there are legal grounds that would excuse the requirement of a warrant.

2. Upon five (5) days written notice, a Licensee shall provide the books and records of the Licensee for inspection or auditing by the City, but shall not be required to

provide any confidential Patient medical information. In the event confidential Patient medical information is interspersed with other records or are contained on the same sheet of paper or electronic record, the Licensee shall copy the record and redact the confidential Patient medical information and provide a redacted copy to the City or law enforcement officers.

Q. Inspection Of Licensed Premises And Adjacent Grounds.

1. Every Licensed Premises and Adjacent Grounds shall be open to inspection by police officers, building officials, fire department officials, zoning officials, and health department officials at any time that anyone is present in the Licensed Premises, without obtaining a search warrant, and without reasonable suspicion to believe that any violation or criminal offense has occurred.

2. The Licensee, Principals, Business Manager, and employees shall have no reasonable expectation of privacy as to the buildings, rooms, areas, furniture, safes, lockers, or containers on the Licensed Premises and Adjacent Grounds, except as provided in this Section.

3. Licensees, Principals, Business Managers, employees, Patients, Primary Caregivers, and other persons on the Licensed Premises and Adjacent Grounds shall retain a reasonable expectation of privacy as to their medical condition, their persons, the personal effects in their immediate possession, and their motor vehicles on the Licensed Premises and Adjacent Grounds, to the extent provided by law.

R. Suspension And Revocation Of License.

1. In accordance with Section 12-43.3-601, C.R.S., as contained in the Colorado Medical Marijuana Code, and the rules and regulations promulgated thereunder, the Local Licensing Authority shall have the power, on its own motion or on complaint, after investigation and opportunity for a public hearing at which the Licensee shall be afforded an opportunity to be heard, to suspend or revoke a Medical Marijuana Business license issued by the Local Licensing Authority. The Local Licensing Authority shall have the power to administer oaths, and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary to the determination of the hearing. Subpoenas shall be enforced by the Fruita Municipal Court. The procedure for imposing such disciplinary actions shall be in accordance with Section 12-43.3-601, C.R.S.

2. The Local Licensing Authority may suspend or revoke a Medical Marijuana Business license for a violation by the Licensee or by any of the agents or employees of the Licensee of the following:

a. Any of the provisions of the Colorado Medical Marijuana Code or the rules and regulations promulgated thereunder;

b. Good Cause as defined in subsection (1) of Section 12-43.3-104, C.R.S., as contained in the Colorado Medical Marijuana Code;

c. Violation of any of the provisions set forth in Sections 5.15.100, 5.15.110, 5.15.120, 5.15.130, 5.15.140 and 5.15.160 of this Chapter 5.15;

d. The Licensee has failed to pay and remit the annual Medical Marijuana license and application fees, annual business license fee, medical marijuana excise taxes or sales taxes due and owing;

e. The Licensee has made any false statement in the application for a license or renewal thereof as to any of the facts required to be stated in such application;

f. The Licensee has failed either to file the required reports or to furnish such information, and records as required by this Chapter 5.15;

g. Violation of any condition imposed by the Local Licensing Authority on the issuance of the license or any condition imposed pursuant to approval of a conditional use permit;

h. Any facts or condition exist which, if it had existed or had been known to exist, at the time of the application for such license or renewal thereof, would have warranted the Local Licensing Authority in refusing originally to issue such license or renewal thereof;

i. The Licensee has failed to maintain the Licensed Premises in compliance with the requirements of the Fruita Land Use Code or any building, electrical or mechanical code provision applicable to the Licensed Premises; or

j. The Licensee, or any of the agents or employees of the Licensee, have violated any ordinance of the City or any State law on the Licensed Premises or have permitted such a violation on the Licensed Premises by any other person.

3. Except in the case of an emergency suspension, a suspension of a license shall not be for a period longer than six (6) months.

4. Any final decision of the Local Licensing Authority suspending or revoking a Medical Marijuana Business license, following a hearing as permitted in this Section, may be appealed to the Mesa County District Court within thirty (30) days following the date of such decision pursuant to the provisions of Rule 106(a)(4), Colorado Rules of Civil Procedure.

(Ord. 2009-23, S4; Ord. 2011-09, S1; Ord. 2011-09, S1; Ord. 2012-02, S4-S5

Chapter 5.16

INTOXICATING LIQUOR

Sections:

5.16.010 Sale prohibited when - Licensee deemed responsible for acts of employees

5.16.010 SALE PROHIBITED WHEN - LICENSEE DEEMED RESPONSIBLE FOR ACTS OF EMPLOYEES. It is unlawful for any person or persons, partnership, association, organization or corporation to permit the consumption of beer on any premises owned, occupied or used by a licensee of a license permitting the sale of beer of not more than 3.2 % alcohol by weight after eight p.m. on any Sunday. The licensee shall be deemed responsible for the acts of his agents or employees and shall be deemed to have authorized the sale of 3.2 % beer in the event of a violation of this chapter by his or her agent or employees. (Ord. 172, S2, 1954)

Chapter 5.20

ALCOHOLIC BEVERAGE LICENSES

Sections:

5.20.010 Definitions
5.20.020 Businesses classified
5.20.025 Declaration of policy and purpose
5.20.030 Tax levied
5.20.040 Tax payment
5.20.050 Violation - Penalties
5.20.060 License suspension and revocation - Applicability of provisions
5.20.070 License suspension and revocation - Authority - Procedure
5.20.080 Optional premises licenses
5.20.090 Alcoholic Beverage Tasting Permit

5.20.010 DEFINITIONS. For purposes of the special occupational tax upon liquors, the following shall mean:

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

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

C. "Vinous liquor" includes wine and fortified wines not exceeding 21 % of alcohol by volume and shall be construed to mean alcoholic beverages obtained by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar.

D. "3.2 % beer" means malt liquor as above defined containing not more than 3.2 % of alcohol by weight.

E. "Operator" means any person licensed by law to sell 3.2 % beer, malt, vinous, or spirituous liquors, other than medicinal liquors, for beverage purposes at retail, and who is engaged at any time during the calendar year in such operation in the city.

(Ord. 329, S1, 1975)

5.20.020 BUSINESSES CLASSIFIED. The business of selling at retail, any malt, vinous or spirituous liquor other than medicinal liquors, for beverage purposes is defined and separately

classified as such occupation for the purposes of the chapter as follows:

A. Class "A" Operators. All operators who are licensed to sell beer, wine and spirituous liquors for consumption on the premises either as hotels or restaurants shall be class "A" operators.

B. Class "B" Operators. All operators licensed to sell malt or vinous liquors only by the drink for consumption on the premises shall be Class "B" operators.

C. Class "C" Operators. All operators licensed as retail liquor stores to sell malt, vinous or spirituous liquors in original containers for consumption off the premises, shall be class "C" operators.

D. Class "D" Operators. All operators licensed as drugstores to sell malt, vinous or spirituous liquors in original containers for consumption off the premises, shall be class "D" operators.

E. Class "E" Operators. All operators licensed to sell malt, vinous or spirituous liquors as clubs are class "E" operators.

F. Class "F-1" Operators. All operators licensed to sell only 3.2 % beer and who sell the same for consumption on the premises are class "F-1" operators.

G. Class "F-2" Operators. All operators licensed to sell only 3.2 % beer and who sell the same solely in the original package or container for consumption off the premises shall be class "F-2" operators.

(Ord. 1983-13, S4; Ord. 1983-49, S4)

5.20.025 DECLARATION OF POLICY AND PURPOSE. The city council finds, determines and declares that considering the nature of the business of selling at retail 3.2 % beer, malt, vinous and spirituous liquors for beverage purposes, and the relation of such business to the municipal welfare, as well as the relation thereof to the expenditures required of the city; and a proper, just and equitable distribution of tax burdens within the city, and all other matters proper to be considered in relation thereto, the classification of said business as a separate occupation is reasonable, proper, uniform and nondiscriminatory and necessary for a just and proper distribution of tax burdens within the city. (Ord. 1983-13, S5)

5.20.030 TAX LEVIED. There is levied and assessed for the year 1990 and for each year thereafter, an annual occupation tax on the business of selling 3.2 % beer, malt, vinous or spirituous liquors in the city as said occupation has been defined in Section 5.20.020 in the amount of three hundred and fifty dollars ($350.00). (Ord. 1983-13, S6; Ord. 1989-11, S4)

5.20.040 TAX PAYMENT.

A. The occupational tax shall be due and payable to the City Clerk on January 1st of each year and shall be delinquent on February 1st of the same year. Prepayment of the tax

may be made in the month of December preceding the due date.

B. Upon receipt of the tax it shall be the duty of the City Clerk to execute and deliver to the person paying the tax a revenue receipt showing the name of the operator paying the tax, the date of payment, the annual period for which the tax is paid and the place at which the operator conducts the business.

C. The operator shall at all times during the year keep the revenue receipt posted in a conspicuous place in the place of business.

D. If any operator begins business subsequent to January 1st of any year, the tax required shall be prorated on a monthly basis for the remaining portion of the year, but no refund shall be made to any person who discontinues business during the year. All prorated taxes provided for in this section shall be due and payable upon the beginning of business and shall be delinquent ten days thereafter.

(Ord. 329, S4, 1975)

5.20.050 VIOLATION - PENALTIES. Failure to comply with the terms of Sections 5.20.010 through 5.20.040 in the payment of taxes, securing and posting receipt therefor, and to otherwise comply with the terms of the sections cited above, shall constitute an offense and violation thereof; delinquency for each calendar month shall constitute a separate and distinct offense; but no conviction for such violation shall work as a revocation of the licenses of the defendant issued under the laws of the state of Colorado. (Ord. 329, S5, 1975)

5.20.060 LICENSE SUSPENSION AND REVOCATION - APPLICABILITY OF PROVISIONS. The provisions of Section 5.20.070 shall apply to all licenses to sell at retail any malt, vinous or spirituous liquors, or fermented malt beverages in the city of Fruita. (Ord. 330, S1, 1975)

5.20.070 LICENSE SUSPENSION AND REVOCATION - AUTHORITY - PROCEDURE.

A. The council shall have the power, upon its own motion or upon complaint, to:

1. Summarily suspend any license for a period not to exceed fifteen days; or

2. Upon notice to the licensee and hearing, suspend any license for a period not to exceed six months or revoke such license.

B. Suspension and revocation proceedings shall be commenced by the council by issuing and causing to be served upon the licensee a notice of hearing, at least ten days prior to the hearing, and an order to show cause why his license should not be suspended or revoked whenever it shall appear to the council that there is a probable cause to believe that the licensee has violated any law, any rule or regulations of the state licensing authority, or any of the terms, conditions, or provisions of the license issued by the council.

C. In all such proceedings the City Attorney shall conduct an investigation and shall act as

the prosecuting agent during the hearing.

D. A hearing shall be held at a place and time designated by the council on the day stated in the notice, or upon such other day as may be set for good cause shown. Evidence in support of the charges shall be given first followed by cross-examination of those testifying thereto. The licensee, in person or by counsel, shall then be permitted to give evidence in defense, and in explanation and shall be allowed to give evidence and statements in mitigation of the charges, followed by cross-examination of those testifying thereto. In the event the licensee is found to have committed the violation charged, or any other violation, evidence and statements in aggravation of the offense shall also be permitted, followed by cross-examination of those testifying thereto.

E. If the evidence presented at the hearing does not support the charges stated in the notice and order served upon the licensee, but standing alone establishes the guilt of the licensee of a violation of some other law, rule or regulation the licensee shall be permitted to give evidence and statements in defense, explanation and mitigation if then prepared to do so. If such evidence is not then available, but can be obtained by the licensee, the licensee shall state the substance thereof and upon his request the hearing may be recessed for not more than ten days and shall then continue under the same procedure as though no recess had occurred.

F. In the event the licensee is found not to have violated any law, rule or regulation, the charges against him will be dismissed. If the licensee is found to have violated some law, rule or regulation, his license may be suspended or revoked.

G. Every licensee whose license has been suspended by the council shall, if ordered by the council, post two notices in conspicuous places, one on the exterior and one on the interior of his premises, for the duration of the suspension. The notices shall be twenty-four inches in length and fourteen inches in width, and shall be in the following form:

"NOTICE OF SUSPENSION
ALCOHOLIC BEVERAGE LICENSES ISSUED
For These Premises Have Been
Suspended by Order of the
LOCAL LICENSING AUTHORITY
For Violation of the Fermented
Malt Beverage Act-Liquor Code of 1935"

H. The temporary suspension of a license without notice pending any prosecution, investigation, or public hearing as provided for by the provisions of C. R. S., 1973, shall be for a period not to exceed fifteen days.

(Ord. 330, S2, 1975)

5.20.080 OPTIONAL PREMISES LICENSES.

A. An annually renewable optional premises license for the sale or service of alcoholic

beverages may be issued by the City Council for any outdoor sports and recreational facility which charges a fee for the use of such facility. Any optional premises license issued shall permit the licensee to sell or serve alcoholic beverages only on the optional premises specified in the license. No alcoholic beverages may be sold, served, or consumed outside the designated areas.

B. It shall be unlawful for any person to sell or dispense alcoholic beverages at an outdoor sports and recreational facility without having first obtained a valid optional premises license to do so as provided by this section, or in violation of any provision, restriction or limitation of the license if one has been issued.

C. Nothing contained in this section shall preclude the City Council, in its discretion, from denying an application for an optional premises license or imposing conditions, restrictions or limitations on any optional premises license in order to serve the public health, safety and welfare. Any such conditions may be imposed when the license is initially issued or should any specific event or use of the optional premises so warrant.

D. The following standards for the issuance of optional premises licenses are adopted pursuant to section 12-47-135.5 CRS, as amended. The standards adopted herein shall be considered in addition to all other standards applicable to the issuance of licenses under the Colorado Liquor Code for an optional premises license.

1. Eligible Facilities. An optional premises may only be approved when that premises is located on or adjacent to an outdoor sports and recreational facility which is defined as a facility which charges a fee for the use of such facility. There are no restrictions on the minimum size of an eligible facility. The type of outdoor sports and recreational facilities which may be considered for an outdoor premises license include the following:

a. Country Club

b. Golf Courses and driving ranges

2. Number of optional premises. There are no restrictions on the number of optional premises which any one licensee may have on his outdoor sports or recreational facility. However, any applicant requesting approval of more than one optional premises shall demonstrate the need for each optional premises in relationship to the outdoor sports or recreational facility and its guests.

E. Submittal Requirements. When submitting a request for the approval of an optional premises license, an applicant shall also submit the following information:

1. A detailed diagram of the outdoor sports or recreational facility indicating:

a. the location of the facility;

b. the location of all proposed optional premises;

c. the proposed locations of any permanent, temporary or moveable structure or vehicle located on an optional premises and used to dispense alcoholic beverages;

d. seating, if any;

e. restroom facilities, if any;

f. restrictions, if any, to access to the optional premises; and

g. location of secured area(s) for use in storing malt, vinous and spirituous liquors for future use on the optional premises.

2. A written statement setting forth what will be done to secure the optional premises and storage area(s) and the reason why the City Council should grant the license.

3. Such other information as may be reasonably required to satisfy the City Council that the control of the optional premises will be assured, and that the health, safety and welfare of the neighborhood and facility users will not be adversely affected should the license be issued.

F. Advance notification required. Pursuant to Section 12-47-135 (6) and Section 12-47-135 (7) CRS, as amended, no alcoholic beverages may be served on the optional premises until the licensee has provided written notice to the state liquor enforcement division and City Council forty-eight (48) hours prior to serving alcoholic beverages on the optional premises. Such notice must contain the specific days and hours on which the optional premises are to be used.

G. In addition to, or in lieu of, any enforcement actions which the City Council takes against the licensee for violations of this code or the Colorado Liquor Code and Regulations, the City Council may decline to renew the optional premises license for good cause shown. In addition, the City Council may suspend or revoke the optional premises license in accordance with the procedures specified in this code and the Colorado Liquor Code.

H. Severability. In any part, section, subsection, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance, and the City Council, hereby declares it would have passed this ordinance, and each part, section, subsection, sentence, clause or phrase thereof, regardless of the fact that any one or more parts, sections, subsections, sentences or clauses or phrases be declared invalid.

(Ord. 1993-06, S1)

5.20.090 ALCOHOLIC BEVERAGE TASTING PERMIT

A. The City hereby authorizes Tastings to be conducted by retail liquor store or liquor-licensed drugstore licensees in accordance with this section and pursuant to Section 12-47-301, C.R.S., as the term "Tastings" is defined the said Section 12-47-301. It is unlawful for any person or licensee to conduct Tastings within the City unless authorized in accordance with this section. Tastings shall not be authorized until the following prerequisites are fully satisfied, as determined by the City:

1. A retail liquor store or liquor licensed drugstore that wishes to conduct tastings shall submit an application for a Tastings Permit the City Clerk. The City Clerk may reject the application if the applicant fails to establish that the licensee is able to conduct tastings without violating any of the provisions of this Section. The application shall be accompanied by an application fee of $100.

2. The City Clerk shall establish the application procedure. Application forms will be prescribed by the local licensing authority and/or City Clerk and will include a schedule of the planned tastings, a list of the names of the persons conducting the tastings and documentation that the person conducting the tasting has completed the required training, a written control plan, and other such information as the local licensing authority and/or City Clerk may require. Any change to the information submitted must be submitted to the City Clerk one week prior to the change being made. Failure to do so constitutes a violation.

3. Renewal of the Tastings Permit shall be concurrent with renewal of the retail liquor store or liquor-licensed drugstore license. The initial Tastings Permit shall expire on the date of the retail liquor store or liquor-licensed drugstore license and the initial fee will not be prorated.

4. Tastings shall be subject to the limitations set forth in 12-47-301 (10)(c), C.R.S., as amended from time to time. Compliance with the limitations and requirements set forth in Section 12-47-301(10)(c), C.R.S. shall be a term and condition of any Tasting Permit, whether expressly set forth in the Tasting Permit or not.

5. Tastings, once approved, shall be subject to the following limitations:

   a) Tastings shall be conducted only by a person who has completed an alcohol server training program that meets the standards established by the Liquor Enforcement Division in the Department of Revenue and who is either a retail liquor store state licensee or a liquor-licensed drugstore licensee, or an employee of a licensee, and only on a licensee's licensed premises.

   b) The alcohol used in Tastings shall be purchased through a licensed wholesaler, licensed brew pub, or winery licensed pursuant to 12-47-403, C.R.S. at a cost that is not less than the lain-in cost of such alcohol.

c) Tastings shall be limited to beer and wine only and shall not include spirituous liquor.

d) The size of an individual alcohol sample shall not exceed one ounce of malt or vinous liquor.

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

f) Tastings shall be conducted only during the operating hours in which the licensee on whose premises the tastings occur is permitted to sell alcohol beverages, and in no case earlier than 11:00 a.m. or later than 7:00 p.m.

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

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

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

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

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

l) Tastings may occur on no more than four of the six days from a Monday to the following Saturday, not to exceed one hundred four days per year.

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

n) A violation of a limitation specified in this subsection (10) or of section 12-47-801 by a retail liquor store license or a liquor-licensed drugstore licensee, whether by his or her employees, agents, or otherwise, shall be the responsibility of the retail liquor store or liquor-licensed drugstore licensee who is conducting the Tasting.

o) A retail liquor store or liquor-licensed drugstore licensee conducting a Tasting shall be subject to the same revocation, suspension, and enforcement provisions as otherwise apply to the licensee.

p) Nothing in this subsection shall affect the ability of a Colorado winery licensed pursuant to section 12-47-402 or 12-47-403 to conduct a tasting pursuant to the authority of section 12-47-402 (2) or 12-47-403 (2) (e).

6. In addition to, or in lieu of, any enforcement actions which the City Council takes against the licensee for violations of this code or the Colorado Liquor Code and Regulations, the City Council may decline to renew the Tastings Permit for good cause shown. In addition, the City Council may suspend or revoke the Tastings Permit in accordance with the procedures specified in this code and the Colorado Liquor Code.

7. Severability. If any part, section, subsection, clause or phrase of this ordinance is for any reason to be held invalid, such decision shall not affect the validity of the remaining portions of this ordinance, and the City Council, hereby declares it would have passed this ordinance, and each part, section, subsection, sentence, clause or phrase thereof, regardless of the fact that any one or more parts, sections, subsections, sentences or clauses or phrases be declared invalid.

(Ord. 2011-17, S1)

Chapter 5.21

ENTERTAINMENT DISTRICT

Sections:

5.21.010	**Purpose and Authority**
5.21.020	**Definitions**
5.21.030	**Entertainment Districts – Creation and Amendment**
5.21.040	**Common Consumption Areas**
5.21.050	**Promotional Associations**
5.21.060	**Application for Attachment to a Common Consumption Area**
5.21.070	**Review of Applications for Certification, Recertification or Attachment**
5.21.080	**Decertification of a Promotional Association**

5.21.010 PURPOSE AND AUTHORITY

A. Purpose: It is the purpose of this Chapter to authorize the creation of Entertainment Districts within which, through its Local Licensing Authority, the City may allow the establishment of common consumption areas as provided for in C.R.S. 12-47-301(11) and establish application procedures and regulations concerning common consumption areas.

B. Authority: The Local Licensing Authority is hereby authorized to certify and decertify Promotional Associations; designate the location, size, security, and hours of operation of Common Consumption Areas; and, allow attachment of licensed premises to Common Consumption Areas consistent with this Chapter.

(Ord. 2016-02, S1)

5.21.020 DEFINITIONS. As used in this Chapter, the following words shall have the following meanings:

A. "Common Consumption Area" shall mean an area within a designated Entertainment District that uses physical barriers to close the area to motor vehicle traffic, limits pedestrian access, includes at least two licensed premises, and allows for the consumption of alcoholic beverages pursuant to the provisions of this Chapter and the Colorado Liquor Code.

B. "Entertainment District" shall mean an area within the City that is designated by Resolution of the City Council as an Entertainment District in accordance with Section 12-47-301 (11) (b) C.R.S., as amended consisting of no more than one hundred (100) acres and containing at least twenty thousand (20,000) square feet of premises licensed as a tavern, hotel and restaurant, brew pub, beer and wine, manufacturer that operates a sales room pursuant to section 12-47-402(2) or (6), beer wholesaler that operates a sales

room pursuant to section 12-47-406 (1) (b) (I), or vintner's restaurant at the time the district is created.

C. "Local Licensing Authority" shall mean the Fruita City Council or any authority designated by ordinance to serve as the Local Licensing Authority.

D. "Promotional Association" shall mean an association that is incorporated within Colorado that organizes and promotes entertainment activities within a Common Consumption Area, and is organized or authorized by two or more people who own or lease property within an Entertainment District.

(Ord. 2016-02, S1)

5.21.030 ENTERTAINMENT DISTRICTS – CREATION AND AMENDMENT. Entertainment Districts may be established or amended by Resolution of the Fruita City Council as determined to be in the best interest of the public and the specific geographic area to be served, subject to demonstration that the proposed district is consistent with the definition and purpose of an Entertainment District. Within fifteen (15) days of the creation or amendment of an Entertainment District, the Local Licensing Authority shall notify the State Licensing Authority of the creation or amendment of said Entertainment District and provide a map thereof. (Ord. 2016-02, S1)

5.21.040 COMMON CONSUMPTION AREAS.

A. Application. Within a designated Entertainment District, Common Consumption Areas may be licensed by the Local Licensing Authority upon application by a Promotional Association on forms provided by the City Clerk in conformance with the requirements of the Colorado Liquor Code and this Chapter. At a minimum, the following information shall be provided:

1) Name, address and list of all officers of the Promotional Association

2) Name and address of the existing establishments licensed under the Colorado Liquor Code that are attached to the Common Consumption Area (a minimum of two licensed establishments are required) which have opted to be included in the Promotional Association including the Liquor License number, a list of any past liquor violations and a copy of any operational agreements

3) Documentation of how the application addresses the reasonable requirements of the neighborhood or desires of the adult inhabitants as evidenced by petitions, written testimony, or otherwise

4) The size, in terms of acreage or square footage, of the Common Consumption Area. All areas must be contiguous within the Common Consumption Area. The size of the Common Consumption Area shall not exceed the area approved as the Entertainment District within which the Common Consumption Area is located, but may be a smaller area within the District

5) Proposed dates, days and hours of operation of the Common Consumption Area.
6) A site plan detailing the proposed Common Consumption Area including the following information:
   a. boundaries of the area,
   b. location and description of physical barriers,
   c. location of all entrances and exits,
   d. location of all attached licensed premises,
   e. location of signs to be posted notifying customers of the hours of operation and restrictions association with the Common Consumption Area,
   f. identification of licensed premises that are adjacent but not attached to the Common Consumption Area.
7) A security plan detailing security arrangements for the Common Consumption Area including, but not limited to the following information:
   a. evidence of completed liquor training of all serving personnel,
   b. number and location of security personnel during the days and hours of operation of the Common Consumption Area
8) Signed statement that the Common Consumption Area and all licensed establishments therein can be operated in compliance with this Chapter and the Colorado Liquor Code;
9) Documentation evidencing legal authorization for use of the Common Consumption Area; and
10) Proof of insurance of general liability and liquor liability naming the City of Fruita as an additional insured in a minimum amount of one million dollars ($1,000,000).
11) Application fee in the amount established by the Annual Fees and Charges Resolution adopted by the Fruita City Council

B. Hours of Operation. Common consumption areas and their attached licensed premises may serve alcohol and the customers may consume alcohol until 12:00 a.m. or as further restricted by the Local Licensing Authority in the certification of the Promotional Association. The hours of operation may differ between the licensed premises and the common consumption area. It is unlawful for any attached licensed premises to serve or the Promotional Association to allow consumption of alcohol beverages in the Common Consumption Area after 12:00 a.m. or as further restricted by the Local Licensing Authority in the certification of the Promotional Association.

(Ord. 2016-02, S1)

5.20.050 PROMOTIONAL ASSOCIATIONS.

If certified by the Local Licensing Authority as a Promotional Association, the Association may operate a Common Consumption Area within an Entertainment District and authorize the

attachment of a licensed premises to the Common Consumption Area, subject to approval of the Local Licensing Authority. To qualify for certification, a Promotional Association must:

A. Submit a copy of the Articles of Incorporation and Bylaws and a list of the names of all Directors and Officers of the Promotional Association.

B. Include at least two licensed premises attached to the Common Consumption Area

C. Have at least one director from each licensed premises attached to the Common Consumption Area on the board of directors; and

D. Submit a request for recertification of the Promotional Association and pay a recertification fee as established by the Annual Fees and Charges Resolution adopted by the Fruita City Council.

E. Recertification requests and annual reports shall be submitted by January 31 of each year to the Local Licensing Authority showing the items listed in Section 5.21.040 (A) along with any violation of the Liquor Code committed by an attached licensed premises and a copy of any changes to the articles of incorporation, bylaws and/or directors and officers of the Promotional Association

(Ord. 2016-02, S1)

5.21.060 APPLICATION FOR ATTACHMENT TO A COMMON CONSUMPTION AREA.

An application by a Liquor Licensee to attach to an existing Common Consumption Area of a certified Promotional Association shall be on forms prepared and furnished by the City Clerk. The information required shall include, but shall not be limited to:

A. Written authorization for attachment from a certified Promotional Association

B. The name of the representing Director to sit on the Board of the Certified Promotional Association

C. Detailed map of the Common Consumption Area including:

1. Location of physical barriers
2. Entrances and exits
3. Location of attached licensed premises
4. Identification of licensed premises that are adjacent but not to be attached to the Common Consumption Area
5. Approximate location of security personnel

6. Application fee as established by the Annual Fees and Charges Resolution adopted by the Fruita City Council

(Ord. 2016-02, S1)

5.21.070 REVIEW OF APPLICATIONS FOR CERTIFICATION, RECERTIFICATION OR ATTACHMENT.

Upon receipt of an application for certification or recertification of a Promotional Association, or attachment of a liquor licensee to an existing Common Consumption Area, the Local Licensing Authority shall consider such application within sixty (60) days of receipt. The Local Licensing Authority shall review the application for compliance with the requirements of this Chapter, the Colorado Liquor Laws and the desires and needs of the community and after consideration and a public hearing, the Local Licensing Authority may either approve the application with or without conditions or deny the application. (Ord. 2016-02, S1)

5.21.080 DECERTIFICATION OF A PROMOTIONAL ASSOCIATION.

The Local Licensing Authority has the authority to decertify a Promotional Association if the Association:

A. Fails to submit the annual report as required under Section 5.21.050 by January 31st of each year or fails to pay the required application fee

B. Fails to establish that the licensed premises and Common Consumption Area can be operated without violating this Section, any provision of the Colorado Liquor Code or Regulations or without creating a safety risk to the neighborhood

C. Fails to have at least two (2) licensed premises attached to the Common Consumption Area

D. Fails to obtain or maintain a properly endorsed general liability and liquor liability insurance policy that is acceptable to the local licensing authority and names the City of Fruita as an additional insured

E. The use is not compatible with the reasonable requirements of the neighborhood or the desires of the adult inhabitants

F. Violates any provision of C.R.S. 12-47-909, “Common Consumption Areas,” as amended

(Ord. 2016-02, S1)

Chapter 5.24

JUNKYARDS AND AUTOMOBILE WRECKING AND SALVAGE YARDS

Sections:

5.24.010 Definitions
5.24.020 License required
5.24.030 License fees
5.24.040 Premises to be enclosed
5.24.050 Operation of premises
5.24.060 Inspections
5.24.070 Violations

5.24.010 DEFINITIONS. For the purpose of regulating junk dealers, junkyards, automobile wrecking and salvage yards, and providing for the licensing thereof, the following definitions shall apply:

A. "Junk" means:

1. Old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, or;

2. Used household furniture, used wearing apparel, used lumber, used brick, used tile, used plumbing fixtures, used electrical fixtures, used articles made of precious metal or metals, used jewelry, used tools and other articles of personal property, which are bought and sold as second-hand property or;

3. Dismantled or wrecked automobiles, appliances, or parts thereof, or;

4. Waste or scrap iron, steel, and other old or scrap ferrous or nonferrous material, or;

5. Similar waste or scrap glass, rubber, machinery parts and debris.

B. "Junkyard" means any lot, building, structure, establishment, or place of business which is maintained, operated, or used for any of the following purposes:

1. The collection, storage, buying or selling of junk, or;

C. "Automobile wrecking and salvage yards" means any lot, land, or property which is maintained, used, or operated for the storing, keeping, stripping, dismantling, buying, selling or exchanging wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.

D. "Person" means an individual, agency, company, association, partnership, joint stock company, or corporation who operates a junkyard or automobile wrecking or salvage yard, or who allows a junkyard or automobile wrecking and salvage yard to be placed on

or remain on the premises owned or controlled by him.

(Ord. 418, S1 (part), 1979)

5.24.020 LICENSE REQUIRED. It is unlawful for any person, within the city, to maintain or operate, as a junkyard or automobile wrecking or salvage yard, or to allow the placement of a junkyard or automobile wrecking or salvage yard on premises owned or controlled by him, without first having obtained a license therefor. Application for such a license shall be made to the city clerk on forms provided by him. Upon making such application, the applicant shall state his name, the person, partnership, or corporation owning the place or places at which such junkyard or automobile wrecking or salvage yard shall be conducted or maintained, and such further other information as may be required by the city clerk. (Ord. 418, S1 (part), 1979)

5.24.030 LICENSE FEES. There is levied and assessed, beginning January 1, 1980, and for each calendar year thereafter, an annual license fee, as set forth in this section, for the operation of a junkyard or automobile wrecking or salvage yard within the city. The fee is in addition to such business license fees are as may be assessed elsewhere by the terms of the Fruita Municipal Code. The annual license fee for junkyards and automobile wrecking and salvage yards shall be based upon the area or space used thereof, and in an amount established by council resolution. (Ord. 418, S1 (part), 1979)

5.24.040 PREMISES TO BE ENCLOSED. It is unlawful for any person to operate or maintain a junkyard or automobile wrecking and salvage yard, or to allow a junkyard or automobile wrecking and salvage yard to be placed or remain on premises controlled by him, within the city, unless the premises on which such junkyard or automobile wrecking or salvage yard is entirely enclosed by solid fence at least seven feet in height. The fence shall be masonry or wood, or an ornamental hedge. However, the Fruita City Planning Commission, which discretion shall include the type and spacing of such trees, shrubs, or vines to be used. Further, such fence or ornamental hedge shall be kept in a neat, substantial and safe condition so as to accomplish this intended purpose. The outside of such fence or ornamental hedge shall not contain any advertising sign other than that needed to identify the enclosed junkyard or automobile wrecking and salvage yard. The purpose of such fence or ornamental hedge is to effectively screen such premises from public view. (Ord. 418, S1 (part), 1979)

5.24.050 OPERATION OF PREMISES. There shall be no stacking of junk, automobiles, or automobile parts, in any junkyard or automobile wrecking and salvage yard, from ground level, which shall be visible above the surrounding fence or ornamental hedge.

Further, all operations of such junkyard or automobile wrecking and salvage yard shall not encroach upon or use any area outside of the space enclosed. All junk, automobiles, or automobile parts, shall be piled or placed so as to allow adequate passageways or open space to permit the unobstructed passage of fire fighting vehicles and equipment, fire fighters, fire hoses, and similar firefighting equipment. It shall be the duty of the person operating a junkyard or automobile wrecking or salvage yard to maintain the premises so used in a clean, sanitary and neat condition. (Ord. 418, S1 (part), 1979)

5.24.060 INSPECTIONS. It shall be the duty of the building inspector to inspect or cause to be

inspected at least twice each year, all junkyards and automobile wrecking and salvage yards in the city for the purpose of enforcing Sections 5.24.030 through 5.24.050. (Ord. 418, S1 (part), 1979)

5.24.070 VIOLATIONS. Any person, owner, lessee, occupant or otherwise, who violates any of the provisions of this Chapter, or any amendment thereto, or who interferes in any manner with any person in the performance of a right or duty granted or imposed upon him by the provisions of this Chapter, commits a Class B municipal offense.

Chapter 5.30

PAWNBROKER

Sections:

5.30.010 Definitions
5.30.020 License required
5.30.030 Qualifications of licensee and business
5.30.040 License fee
5.30.050 Bond required.
5.30.060 Required acts of pawnbrokers
5.30.070 Prohibited acts - Penalties.
5.30.080 Copy of ordinance to be posted

5.30.010 DEFINITIONS. As used in this chapter, unless the context otherwise requires:

A. "Contract for purchase" means a contract entered into between a pawnbroker and a customer pursuant to which money is advanced to the customer by the pawnbroker on the delivery of tangible personal property by the customer on the condition that the customer, for a fixed price and for a fixed period of time, not to exceed ninety (90) days, has the option to cancel said contract.

B. "Fixed price" means the amount agreed upon to cancel a contract for purchase during the option period. Said fixed price shall not exceed:

1. One-tenth of the original purchase price for each month, plus the original purchase price, on amounts of fifty dollars or over, or

2. One-fifth of the original purchase price for each month, plus the original purchase price, on amounts under fifty dollars.

3. "Fixed time" means that period of time not to exceed ninety (90) days, as set forth in a contract for purchase, for an option to cancel said contract.

4. "Local law enforcement agency" means the Fruita Police Department.

5. "Option" means the fixed time and the fixed price agreed upon by the customer and the pawnbroker in which a contract for purchase may be but does not have to be rescinded by the customer.

6. "Pawnbroker" means a person regularly engaged in the business of making contracts for purchase or purchase transactions in the course of his business.

7. "Purchase transaction" means the purchase by a pawnbroker in the course of his business of tangible personal property for resale, other than newly manufactured

tangible personal property which has not been previously sold at retail, when such purchase does not constitute a contract for purchase.

8. "Tangible personal property" means all personal property other than chooses in action, securities or printed evidences of indebtedness, which property is deposited with or otherwise actually delivered into the possession of a pawnbroker in the course of his business in connection with a contract for purchase or purchase transaction.

(Ord. 1984-18, S5)

5.30.020 LICENSE REQUIRED. No person shall engage in the pawnbroker's business without first having obtained a license to do so from the clerk of the city. (Ord. 1982-111, S4 (part))

5.30.030 QUALIFICATIONS OF LICENSEE AND BUSINESS. No license required by this chapter shall be granted to any person who has been convicted of a felony. No license required by this chapter shall be granted in conjunction with any business where beer or other alcoholic beverages are sold or consumed or in conjunction with which there is operated any card room, billiard room or other place of amusement. (Ord. 1982-111, S4 (part))

5.30.040 LICENSE FEE. The fee for each license required by this chapter shall be one hundred dollars per year or fraction thereof and shall be payable in advance. (Ord. 1982-111, S4 (part))

5.30.050 BOND REQUIRED. Each applicant for a pawnbroker's license shall, prior to being issued a license, give a bond in the sum of two thousand dollars to insure the faithful observance of the provisions of this chapter and for the safekeeping and return of the articles held under a contract of purchase. The licensee shall keep a current copy of this bond on file with the city at all times. (Ord. 1982-111, S4 (part); Ord. 1984-18, S6)

5.30.060 REQUIRED ACTS OF PAWNBROKERS.

A. A pawnbroker shall keep a numerical register in which he shall record the following information: The name, address, and the date of birth of the customer, and his driver's license number or other identification number from any other form of identification which is allowed for the sale of valuable articles pursuant to Section 18-16-103, C.R.S., or for the sale of second hand property pursuant to Section 18-13-114, C.R.S.; the date, time, and place of the contract for purchase or purchase transaction; and an accurate and detailed account and description of each item of tangible personal property, including, but not limited to, any trademark, identification number, serial number, model number, brand name or other identifying marks on such property. The pawnbroker shall also obtain a written declaration of the customer's ownership which shall state that the tangible personal property is totally owned by the customer, or shall have attached to such declaration a power of sale from the partial owner to the customer, how long the customer has owned the property, whether the customer or someone else found the property, and, if the property was found, the details of the finding.

B. The customer shall sign his name in such register and on the declaration of ownership and receive a copy of the contract for purchase or receipt of the purchase transaction.

C. Such register shall be made available to the local law enforcement agency for inspection at any reasonable time.

D. The pawnbroker shall keep each register for at least three years after the last transaction entered in the register.

E. A pawnbroker shall hold all contracted goods within his jurisdiction for a period of ten (10) days following the maturity date of the contract for purchase, during which time such goods shall be held separate and apart from any other tangible personal property and shall not be changed in form or altered in any way.

F. A pawnbroker shall hold all property purchased by him through a purchase transaction for thirty (30) days following the date of purchase, during which time such property shall be held separate and apart from any other tangible personal property and shall not be changed in form or altered in any way.

G. Every pawnbroker shall provide the local law enforcement agency, on a daily basis, with two records on forms to be provided or approved by the local law enforcement agency, of all tangible personal property accepted during the preceding day and one copy of the customer's declaration of ownership. The form shall contain the same information required to be recorded in the pawnbroker's register pursuant to subsection (1) of this section.

(Ord. 1984-18, S7)

5.30.070 PROHIBITED ACTS – PENALTIES.

A. No pawnbroker shall enter into a contract for purchase or purchase transaction with any individual under the age of eighteen (18) years, or with any person who is visibly intoxicated, or with any known thief, or associate of thieves.

B. With respect to a contract for purchase, no pawnbroker may permit any customer to become obligated on the same day in any way under more than one contract for purchase agreement with the pawnbroker which would result in the pawnbroker obtaining a greater amount of money than would be permitted if pawnbroker and customer had engaged into only one contract for purchase covering the same tangible personal property.

C. No pawnbroker shall violate the terms of the contract for purchase.

D. Any pawnbroker who violates any of the provisions of this Chapter commits a Class B municipal offense.

E. Any customer who knowingly gives false information with respect to the information required by Section 5.30.060(A) commits a Class B municipal offense.

(Ord. 1984-18, S8; Ord. 2000-09, S3)

5.30.080 COPY OF ORDINANCE TO BE POSTED. Every operator of a pawnshop within the city shall keep posted in a prominent place in his or her establishment a copy of the ordinance codified in this chapter and any amendments to it. (Ord. 1982-111, S4 (part); Ord. 1984-18, S10)

Chapter 5.40

SEXUALLY ORIENTED BUSINESSES

Sections:

5.40.010 Purpose and description
5.40.020 Definitions
5.40.030 License required
5.40.040 Issuance of a sexually oriented business license
5.40.050 Manager's registration
5.40.060 Employee registration
5.40.070 Inspection
5.40.080 Expiration of license
5.40.090 License suspension or revocation
5.40.100 Mandatory license revocation
5.40.110 Hours of operation
5.40.120 Peep booth regulations
5.40.130 Lighting regulations
5.40.140 Additional regulations - Adult theaters, and adult cabarets
5.40.150 Conduct for sexually oriented businesses
5.40.160 Sexually oriented business - Employee tips
5.40.170 Adult motel regulations
5.40.180 Injunctions
5.40.185 Prohibited acts - Penalty
5.40.190 Fees

5.40.010 PURPOSE AND DESCRIPTION. The purpose of these regulations is to provide for the regulation and licensing of sexually oriented businesses within the City in a manner which will protect the property values, neighborhoods and residents from the potential adverse secondary effects of sexually oriented businesses while providing to those who desire to patronize sexually oriented businesses the opportunity to do so. It is not the intent of this Chapter to suppress any speech activities protected by the First and Fourteenth Amendments of the United States Constitution or Article II, Section 10 Colorado Constitution, but to impose content-neutral regulations which address the adverse secondary effects of sexually oriented businesses. Nothing in this Chapter is intended to authorize or license anything otherwise prohibited by law.

Sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution. The concern over sexually transmitted diseases is a legitimate health concern of the City which demands reasonable regulation of sexually oriented businesses to protect the health and well-being of the citizens, including the patrons of sexually oriented businesses. Licensing of sexually oriented businesses is a legitimate and reasonable means of ensuring that operators of sexually oriented businesses comply with reasonable regulations and that operators do not knowingly allow their businesses to be used as places of illegal sexual activity or solicitation.

There is convincing documented evidence that sexually oriented businesses, because of their nature, have a deleterious effect on both the existing businesses around them and surrounding residential areas causing increased crime and downgrading of property values. The purpose of this Chapter is to control adverse effects from sexually oriented businesses and thereby protect the health, safety and welfare of the citizens; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of the surrounding neighborhoods and deter the spread of urban blight. (Ord. 1997-12, S4)

5.40.020 DEFINITIONS.

A. Adult Arcade: 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 (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas.

B. Adult Bookstore or Adult Video Store: A business having as a substantial and significant portion of its stock and trade, revenues, space or advertising expenditures, resulting from the sale, renting or viewing of one or more of the following:

1. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, laser disks, slides or other visual representations which depict or describe specified sexual activities or specified anatomical areas; or

2. Instruments, devices, or paraphernalia which are designed for specified sexual activities.

C. Cabaret: A nightclub, bar, restaurant or similar business which regularly features:

1 Persons who appear in a state of nudity; or

2. Live performances which are characterized by the exposure to specified anatomical areas or by specified sexual activities; or

3. 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: A hotel, motel or similar business which offers private rooms to the public and provides patrons live performances or closed-circuit television transmissions, not including pay per view satellite transmissions, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

E. Adult Motion Picture Theater: A business where films, motion pictures, video cassettes, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

F. Adult Theater: A theater, concert hall, auditorium, or similar business which 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. Employee: Includes any person who is paid directly or indirectly by the licensee for services performed on the premises whether such person would otherwise as a matter of law be classified as an employee, agent, manager, entertainer or independent contractor.

H. Licensing Officer: The Licensing Officer referred to in this Title is the City Clerk unless another official has been designated by the City Manager or City Council as the Licensing Officer.

I. Manager: Any person other than a licensee who is employed by a sexually oriented business to act as a manager or supervisor of the employees, finances or patrons of the business or is otherwise responsible for operation of the business.

J. Peep booth: A viewing room, other than a private room, of less than one hundred fifty (150) square feet of floor space upon the premises of a sexually oriented business where there is 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.

K. Person: An individual, proprietorship, partnership, corporation, association or other legal entity.

L. Private Room: A room in an adult motel that is not a peep booth, has a bed in the room, has a bath in the room or adjacent to the room, and is used primarily for lodging.

M. Sexual Encounter Establishment: A business or commercial establishment, which as one of its primary business purposes, offers for any form of consideration, a place where two (2) 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. An adult arcade, adult bookstore, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, sexual encounter establishment or other similar business and includes:

1. The opening or commencement of any sexually oriented business as a new business.

2. The conversion of an existing business, whether or not a sexually oriented

business, to a sexually oriented business.

3. The addition of any sexually oriented business to any other existing sexually oriented business.

4. The relocation of any sexually oriented business; or

5. The continuation of a sexually oriented business in existence on the effective date of this Ordinance.

O. Specified Anatomical Areas: Are defined as:

1. Less than completely and opaquely covered: human genitals, pubic region, buttocks and female breast below a point above the top of the areola.

2. Human male genitals in a discernibly turgid state even if completely and opaquely covered.

P. Specified Sexual Activities: Acts, simulated acts, exhibitions, representations, depictions or descriptions of:

1. Human genitals in a state of sexual stimulation or arousal.

2. Fondling or other erotic touching of human genitals, pubic region, buttocks or female breast.

3. 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.

4. Cunnilingus, fellatio, anilingus, masturbation, bestiality, lewd exhibition of genitals or excretory function.

5. Flagellation, mutilation or torture for purposes of sexual arousal, gratification, or abuse.

Q. Stage: A raised floor or platform at least three feet (3') above the surrounding floor measured perpendicularly from the edge of the stage to the surrounding floor and at least thirty six (36) square feet in area.

(Ord. 1997-12, S4)

5.40.030 LICENSE REQUIRED.

A. It shall be unlawful for any person to operate a sexually oriented business without a license issued by the Licensing Officer under the provisions of this Chapter.

1. An application for a license must be made on a form provided by the City.

2. The application must be accompanied by a diagram showing the configuration of the premises, including a statement of total floor space occupied by the business, and designating the use of each room or other area of the premises.

3. The diagram shall designate those rooms or other areas of the premises where patrons are not permitted.

4. The diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches (+/- 6").

5. The diagram shall designate the place at which the license will be conspicuously posted.

6. No alteration in the configuration of the premises or any change in use of any room or area as shown on the diagram may be made without the prior written approval of the City.

7. The Licensing Officer may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared and that the use of any area or room in the premises has not changed.

B. The applicant must be qualified according to the provisions of this Title and the premises must be inspected by the Fire Department, Building Official of the Building Department and the Licensing Officer and found to be in compliance with the law.

C. Contemporaneously with the submission of an application for a license, the applicant shall submit the conditional use permit from the City Planning Department indicating that the requirements of Chapter 17.28 of the City Code are met unless the applicant's sexually oriented business is an existing nonconforming use under the provisions of Chapter 17.54 of the City Code. In the event that such permit is subject to appeal, no further action shall be taken upon such application until such appeal is finally adjudicated.

(Ord. 1997-12, S4)

5.40.040 ISSUANCE OF A SEXUALLY ORIENTED BUSINESS LICENSE.

A. The sexually oriented business shall be issued a license within thirty (30) days after receipt of an application if the requirements set forth in Section 5.50.010 (A) are met, unless the Licensing Officer finds one or more of the following:

1. An applicant is overdue in payment to the City of taxes, fees, fines or penalties assessed against the applicant or imposed upon the applicant in relation to a sexually oriented business.

2. An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.

3. The premises to be used for the sexually oriented business have not been approved by the Fire District, the Building Official and the Licensing Officer as being in compliance with applicable laws and ordinances.

4. The applicant has not been issued a permit by the City Planning Department indicating the requirements of Title 17 of the City Code are met and that such permit, if issued, is not subject to appeal or the applicant's sexually oriented business is an existing nonconforming use under Title 17 of the City Code.

B. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

C. The Fire District and Building Official shall complete their certification that the premises are in compliance or not in compliance within twenty (20) days of receipt of the application by the Licensing Officer. Their certifications shall be promptly presented to the Licensing Officer. The Licensing Officer’s inspection shall be completed within thirty (30) days after the receipt of the application.

D. A denial by the Licensing Officer of the application shall be in accordance with Section 5.50.010 (B) of this Title. The applicant may appeal the denial in accordance with the provisions of Section 5.50.010 (D) of this Title.

(Ord. 1997-12, S4)

5.40.050 MANAGER'S REGISTRATION.

A. It shall be unlawful for any person to work as a manager of a sexually oriented business without first registering with the Licensing Officer.

B. The registration of a manager with the Licensing Officer is in lieu of the issuance of a license to a manager.

C. The Licensing Officer shall register a manager if all of the requirements for a license as set forth under Chapter 5.60 of this Title and Section 5.40.040 of this Chapter are met.

D. The manager's registration shall be issued or denied in accordance with the criteria for issuance or denial of a license as set forth in Chapter 5.50.

E. The registration may be suspended or revoked for any grounds for the suspension or revocation of a license as set forth in Chapter 5.70 of this Title or Sections 5.40.090 or

5.40.100 of this Chapter.
(Ord. 1997-12, S4)

5.40.060 EMPLOYEE REGISTRATION. Each licensee will provide to the Licensing Officer the full name, aliases if any, address, telephone number and date of birth of any employee within five (5) days of employment. (Ord. 1997-12, S4)

5.40.070 INSPECTION.

A. The licensee or the licensee's employees shall permit representatives of the Police Department, Health Department, Building Official of the Building Department, the Fire District, Planning Department, Licensing Officer or other City departments or agencies to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law as provided for in this Section.

B. City departments and agencies shall conduct such inspections in a reasonable manner and only as frequently as may be reasonably necessary.

C. Inspections shall take place during the regular business hours of the sexually oriented business or when any person is on the premises.

D. It shall be unlawful for the licensee or any employee to refuse to permit such lawful inspection of the premises as provided in this Section.

(Ord. 1997-12, S4)

5.40.080 EXPIRATION OF LICENSE. Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 5.50.050 of this Chapter. (Ord. 1997-12, S4)

5.40.090 LICENSE SUSPENSION OR REVOCATION.

A. In addition to, the grounds set forth for suspension or revocation of a license in Chapter 5.70 of this Title, the Licensing Officer shall suspend a license for a period not to exceed six (6) months and may revoke a license if the Licensing Officer determines that a licensee or an employee of a licensee has:

1. Violated or is not in compliance with any Chapter of this Title.

2. Refused to allow an inspection of the sexually oriented business premises as authorized by this Chapter.

3. Knowingly permitted any unlawful act upon the premises.

B. In determining the action to be taken as provided in this Section, the Licensing Officer shall consider the following aggravating and mitigating circumstances:

1. Whether the licensee has been previously suspended or revoked.
2. Whether the licensee was warned that the conduct involved could lead to a suspension or revocation.
3. Whether the cause for suspension or revocation involves one or several violations.
4. Whether the violation(s) are technical or substantive in nature.
5. The extent to which the licensee, licensee's agents and employees, as opposed to patrons, were involved in the violation(s).
6. The extent to which the licensee or licensee's employees had knowledge of the violation(s).
7. Any corrective or remedial action the licensee has taken to prevent similar violation(s) in the future.
8. Whether the violation(s) involved the commission of a crime, and if so, the degree of felony or misdemeanor involved.
9. The extent to which the violation(s) caused personal injuries or property damages.
10. Whether the licensee has paid damages or made restitution to any person or entity damaged by the violation(s).
11. The extent to which the violations posed a significant risk to the health, safety and welfare of persons on or off of the licensed premises.
12. The length of time over which the violation(s) extended.
13. The extent to which the licensee or licensee's employees realized a financial gain from the violation(s).
14. The number of employees, patrons, or both involved in the violation(s).
15. The nature and extent of enforcement action taken by the City or any law enforcement to detect the violation(s).
16. The involvement of any persons under twenty one (21) years of age in the violation(s).
17. The extent to which the licensee or licensee's employees have attempted to cover up the violation(s), destroy evidence or otherwise hinder the investigation and detection of the violation(s).
18. The extent to which the licensee and licensee's employees have acted in good faith.

(Ord. 1997-12, S4)

5.40.100 MANDATORY LICENSE REVOCATION.

A. The Licensing Officer shall revoke a license if the Licensing Officer determines that:

1. A license has previously been suspended within the preceding twelve (12) months;

2. A licensee gave false information in the material submitted to the Licensing Officer;

3. A licensee or employee has knowingly allowed possession, use, or sale of controlled substance as defined in Part 3 of Article 22 of Title 12 C.R.S. on the premises;

4. A licensee or an employee has knowingly allowed prostitution on the premises;

5. A licensee or an employee knowingly operated the sexually oriented business during a period of time when the license was suspended.

6. Excluding conduct within a private room of an adult motel, a licensee or employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or other sexual conduct to occur on the premises.

B. When the Licensing Officer revokes a license, the revocation shall continue for one year, and the licensee shall not be issued a sexually oriented license for one year from the date revocation became effective.

(Ord. 1997-12, S4)

5.40.110 HOURS OF OPERATION.

A. It shall be unlawful for a sexually oriented business to be open for business or for the licensee or any employee of a licensee to allow patrons upon the licensed premises from:

1. On any Tuesday through Saturday from two o'clock (2:00) A.M. until seven o'clock (7:00) A.M.;

2. On any Monday other than a Monday which falls on January 1, from twelve o'clock midnight (12:00) until seven o'clock (7:00) A.M.;

3. On any Sunday from two o'clock (2:00) A.M. until eight o'clock (8:00) A.M.;

4. On any Monday which falls on January 1, from two o'clock (2:00) A.M. until seven o'clock (7:00) A.M.

B. This Section shall not apply to those areas of an adult motel which are private rooms.

(Ord. 1997-12, S4)

5.40.120 PEEP BOOTH REGULATIONS.

A. A licensee who has peep booths upon the premises shall comply with all of the following requirements:

1. The diagram accompanying an application for a license shall specify the location of one or more manager's stations.

2. It is the duty of the licensee to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

3. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain film or video reproduction equipment or equipment for showing slides or photographs. If the premises has two (2) or more manager's stations, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

4. It shall be the duty of the licensee and employees present on the premises to ensure that the view area specified in subsection A 3 above remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times and to ensure that no patron is permitted access to any area of the premises which has been designated in the application as an area to which patrons will not be permitted.

5. It shall be the duty of the licensee to ensure that all walls shall be maintained without holes or damage.

6. No peep booth may be occupied by more than one person at any time.

B. It shall be unlawful for any person having a duty under subsections A l through A 5 of this Section to knowingly fail to fulfill that duty.

(Ord. 1997-12, S4)

5.40.130 LIGHTING REGULATIONS.

A. Excluding a private room of an adult motel, the interior portion of the premises to which

patrons are permitted access shall be equipped with overhead fighting fixtures of sufficient intensity to illuminate every place at an illumination of not less than two (2.0) foot-candle as measured at the floor level.

B. It shall be the duty of the licensee and employees present on the premises to ensure that the illumination described above is maintained at all times that any patron is present on the premises.

(Ord. 1997-12, S4)

5.40.140 ADDITIONAL REGULATIONS - ADULT THEATERS, AND ADULT CABARETS.

A. Any adult cabaret or adult theater shall have one or more separate areas designated in the diagram submitted as part of the application as a stage for the licensee or employees to perform as entertainers. Entertainers shall perform only upon the stage. The stage shall be fixed and immovable. No seating for the audience shall be permitted within three feet (3') of the edge of the stage. No members of the audience shall be permitted upon the stage or within three feet (3') of the edge of the stage.

B. It shall be unlawful for the licensee or for any employee to violate any of the requirements of this Section or to knowingly permit any patron to violate the requirements of this Section.

C. In any adult theater or adult cabaret that 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, the licensee and all employees present on the premises and all patrons shall be at least twenty-one (21) years of age.

(Ord. 1997-12, S4)

5.40.150 CONDUCT FOR SEXUALLY ORIENTED BUSINESSES.

A. No licensee or employee mingling with the patrons, or serving food or drinks, shall be unclothed or in such attire, costume or clothing, so as to expose to view any specified anatomical area.

B. No licensee or employee shall encourage or knowingly permit any person upon the premises to touch, caress or fondle the breasts, anus or specified anatomical areas of any person.

C. No licensee or employee shall violate the requirements of subsections 5.40.100 A2 through A5 of this Article.

D. It shall be unlawful for any licensee or employee to knowingly permit a patron to violate any of the requirements of this Section.

(Ord. 1997-12, S4)

5.40.160 SEXUALLY ORIENTED BUSINESSES - EMPLOYEE TIPS.

A. It shall be unlawful for any employee of a sexually oriented business to receive tips from patrons except as set forth in subsection C of this Section.

B. A licensee that desires to provide for tips from its patrons shall establish one or more boxes or other containers to receive tips. All tips for such employees shall be placed by the patron of the sexually oriented business into the tip box.

C. A sexually oriented business that provides tip boxes for its patrons as provided in this Section shall post one or more signs to be conspicuously visible to the patrons on the premises in letters at least one inch (1') high to read as follows: "All tips are to be placed in tip box and not handed directly to the entertainer. Any physical contact between the patron and the entertainer is strictly prohibited."

(Ord. 1997-12, S4)

5.40.170 ADULT MOTEL REGULATIONS. An adult motel that, in addition to the renting of private rooms, operates a sexually oriented business as otherwise defined in this Chapter shall comply with all of the requirements set forth in this Chapter pertaining to that business. (Ord. 1997-12, S4)

5.40.180 INJUNCTION. Any person who operates or causes to be operated a sexually oriented business without a license is subject to suit for injunction as well as criminal prosecution. (Ord. 1997-12, S4)

5.40.185 PROHIBITED ACTS – PENALTY. Any person who violates any provision of this Chapter, or who fails to perform an act required by any provision of this Chapter, commits a Class A municipal offense. (Ord. 2000-09; S4)

5.40.190 FEES. A business license fee of three hundred fifty dollars ($350.00) and a manager's registration fee of seventy five dollars ($75.00) shall be paid upon submission of an application and annually thereafter upon renewal of the sexually oriented business license. (Ord. 1997-12, S4)

Chapter 5.50

ISSUANCE AND CONDITIONS OF LICENSES

Sections:

5.50.010 Issuance or denial
5.50.020 Posting, display of License
5.50.030 Licenses for branch establishments
5.50.040 Transfer of license
5.50.050 Renewal of license

5.50.010 ISSUANCE OR DENIAL.

A Except as otherwise provided in Title 5, the Licensing Officer shall issue a license to an applicant if he finds after investigation:

1. All conditions imposed upon the applicant as prerequisites to the issuance of the said license by the terms of the provisions pertaining to the particular license sought have been met including but not limited to meeting the qualifications of applicants standard set forth in Section 5.60.010.

2. The required application and license fees have been paid;

3. The use to which the premises are proposed to be put shall conform to the requirements of applicable building, fire, safety and zoning regulations; and

4. All other specific requirements of the terms and provisions relating to the application for the particular license requested for use at the premises specified in the application have been met.

B. If the Licensing Officer shall not so find he shall thereupon deny such application and notify the applicant of the denial by serving upon the applicant personally a copy of such denial and the reasons supporting such denial or by mailing the same to him by registered or certified mail at the business address shown on the application.

C. Any applicant aggrieved by any final order of the Licensing Officer after the denial of such application shall have the right to appeal to the City Council by filing a written appeal, stating the grounds thereof, with the Licensing Officer within ten (10) days following the date of denial of said application.

D. In the event an appeal is timely filed, it shall be heard at the next regular City Council meeting occurring at least ten (10) days after said filing with the Licensing Officer. Review by Council shall be a de novo hearing.

(Ord. 1997-12, S5)

5.50.020 POSTING, DISPLAY OF LICENSE.

A. Every license issued by the City for a business or activity to be conducted at a particular street address shall be posted during the period such license is valid. Such license shall be posted in a conspicuous place and shall be visible from the principal entrance of the business or activity. When such license expires, it shall be removed; no license not in full force and effect shall remain posted.

B. It shall be the duty of each and every person to whom a license has been issued to exhibit the same upon the request of any peace officer, the Licensing Officer, or other official of the City.

(Ord. 1997-12, S5)

5.50.030 LICENSES FOR BRANCH ESTABLISHMENTS. A license shall be obtained in the same manner prescribed herein for each branch establishment or location of the business as if each such branch establishment or location were a separate business; provided that warehouses and wholesale distributing plants used in connection with and incidental to a business licensed under the provisions of this Title shall not be deemed to be separate places of business or branch establishments. (Ord. 1997-12, S5).

5.50.040 TRANSFER OF LICENSE. No license shall be transferred from one person to another or from one location to another. Any change of ownership or change of location of a licensed business or activity shall require a new application and license with payment of fees therefor according to the provisions pertaining to the particular kind of license. (Ord. 1997-12, S5)

5.50.050 RENEWAL OF LICENSE.

A. At any time within thirty (30) days prior to the expiration of his current license, a licensee may make application for a license renewal for the succeeding year and pay the required fees therefor. Unless otherwise provided by this Title, if application is so made and no action or proceeding is pending against the licensee for suspension or revocation of his current license or licenses, he may continue in his business or activity for the succeeding period unless or until his application for license renewal is denied.

B. In the event a suspension or revocation proceeding is pending when a license renewal is applied for, the business or activity may continue in operation during the pendency of such suspension or revocation proceeding but the application for a license renewal shall not be acted upon until the suspension or revocation proceeding has been completed.

(Ord. 1997-12, S5)

Chapter 5.60

QUALIFICATIONS OF APPLICANTS

Sections:

5.60.010 Qualifications of Applicants

5.60.010 QUALIFICATIONS OF APPLICANTS. The general standards set out in this Section relative to the qualifications of every applicant for a City license shall be considered and applied by the Licensing Officer. The applicant shall:

A. Not have a history or prior misconduct which constitutes evidence that serious criminal conduct would likely result from the granting of a license issued pursuant to this Title.

B. No Obligations to the City. Not be in default under the provisions of this Title or indebted to or obligated in any manner to the City.

C. Compliance with all City Regulations. Present certificates furnished by the appropriate officers or agencies to the effect that the proposed use of any premises is in compliance with all applicable City regulations including, by way of description and not of limitation, zoning, building and fire codes and the like.

(Ord. 1997-12, S6)

Chapter 5.70

SUSPENSION AND REVOCATION PROCEDURES

Sections:

5.70.010 Grounds for Suspension or Revocation
5.70.020 Hearing Procedures
5.70.030 Hearings
5.70.040 Notice of Suspension or Revocation
5.70.050 Effect of Suspension or Revocation
5.70.060 Appeals
5.70.070 Summary Suspension
5.70.080 Council Decision - Effect Of
5.70.090 Fine in Lieu of Hearings

5.70.010 GROUNDS FOR SUSPENSION OR REVOCATION. The Licensing Officer shall suspend for a period not to exceed six (6) months or revoke any license issued by the City if he finds that:

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

B. The licensee has failed to file required reports or to furnish such other information as may be reasonably required by the Licensing Officer or other City official under the authority vested in him by the terms of the provisions relating to the specific license;

C. The licensee or any agent or employee of such licensee has violated any provisions of this Title pertaining to his license or any regulations or order lawfully made under and within the authority of this Title relating to the license;

D. The licensee or any agent or employee of such licensee has violated any law of the United States, of the State of Colorado or the City of Fruita when such violation occurred on the licensed premises, or relates to conduct or activity of any business required to be licensed by this Title.

(Ord. 1997-12, S7)

5.70.020 HEARING PROCEDURES.

A. Upon commencement of suspension or revocation proceedings, the Licensing Officer shall set a time and place for the hearing of the matter.

B. The Licensing Officer shall give the licensee timely notice of the time and place of the hearing and the violations asserted. Such notice shall be served personally or by mailing by first-class mail to the last address furnished to the Licensing Officer by the licensee, at least ten (10) days, including Saturdays, Sundays and legal holidays prior to the hearing, In lieu of such service, or in addition thereto, a copy of such notice may be affixed to the principal

entrance of the licensed premises which shall be deemed to be the principal place of business or main office or may be affixed to some prominent structure on such premises.

C. In any such action, a public hearing shall be granted at which the licensee shall be afforded an opportunity to be heard, present evidence, cross-examine witnesses, and offer evidence in mitigation of any violations.

D. All evidence shall be recorded stenographically or by electronic recording device.

E. In all such proceedings, the City Attorney shall act on behalf of the City during the hearing.

(Ord. 1997-12, S7)

5.70.030 HEARINGS. The Licensing Officer or his designee shall conduct hearings for suspension or revocation of licenses granted pursuant to this Chapter. The Licensing Officer shall make findings of fact and conclusions concerning the revocation or suspension of a license. The Licensing Officer shall transmit a copy of the final findings of fact and conclusion to the licensee as provided hereafter. (Ord. 1997-12, S7)

5.70.040 NOTICE OF SUSPENSION OR REVOCATION.

A. Upon suspension or revocation of any license required by this Title, notice of such suspension or revocation shall be given by personally serving the licensee with the order of suspension or revocation or by mailing such order to such person by certified or registered mail at the business address of the licensee as shown on the license or at the address of the designated agent. In lieu of such service, or in addition thereto, a copy of such order may be affixed to the principal entrance of the licensed premises which shall be deemed to be the principal place of business or main office, or may be affixed to some prominent structure on such premises.

B. The order shall be effective immediately upon service of notice thereof unless the order provides otherwise. Service of such order shall be complete upon mailing or posting.

(Ord. 1997-12, S7)

5.70.050 EFFECT OF SUSPENSION OR REVOCATION. Upon the effective date of suspension or revocation of any license required for a business or activity, the licensee of such licensed business or activity shall cease and desist from further operation or activity. (Ord. 1997-12, S7)

5.70.060 APPEALS. Any person aggrieved by any final order of the Licensing Officer after hearing shall have the right to appeal to the City Council by filing a written appeal with the City Clerk within ten (10) days following the effective date of the action or order complained of, and such appeal shall have the effect of staying execution of such final order pending appeal.

A. Contents of Appeal. An appeal shall be in writing and shall set out a copy of the order appealed from and shall include a statement of the facts relied upon to contest such order.

B. Hearing.

1. The City Clerk shall fix a time and place for hearing the appeal which shall be at the next regular meeting of the City Council occurring not less than ten (10) days following receipt of the notice of appeal or the record on appeal, whichever is later, and shall cause written notice of the same to be served upon the applicant informing him thereof. The City Clerk shall also give such notice to the Licensing Officer and such Officer may appear and defend the order.

2. Upon appeal to the City Council of the suspension or revocation, the Council shall review the record, including the transcript of proceedings and evidence before the Licensing Officer, and shall determine whether there is substantial evidence in the record to support the recommendation of the Licensing Officer. If there is substantial evidence in the record to support the recommendation of the Licensing Officer, then the Council shall affirm the decision of the Licensing Officer. If there is not substantial evidence in the record to support the recommendation of the Licensing Officer, then the Council may reverse the recommendation of the Licensing Officer or remand the matter back to the Licensing Officer for further proceedings. No new evidence shall be submitted to the Council unless a majority of the Council determines that such evidence could not have been reasonably presented at the time the matter was heard before the Licensing Officer. If the Council decides to hear new evidence, it may hear the new evidence or remand the matter to the Licensing Officer.

3. The appellant seeking review of the action of the Licensing Officer, at the time of the filing of the notice of appeal, shall pay to the City the estimated cost for preparing a transcript of the proceedings before the licensing officer. The cost of preparing a transcript of testimony before the Licensing Officer shall be charged at rates ordinarily charged by certified court reporters. The cost of preparing the transcript shall be estimated by the City Clerk. In the event the cost of the transcript is greater than the cost estimated by the City Clerk, the appellant shall pay this additional cost within ten (10) days after billing by the City Clerk. In the event that the cost of the transcript is less than the estimated sum paid by the appellant, the City Clerk shall refund the excess paid within ten (10) days after actual cost of the transcript is determined.

(Ord. 1997-12, S7)

5.70.070 SUMMARY SUSPENSION. When the conduct of any licensee, agent or employee is so inimical to the public health, safety and general welfare as to constitute a nuisance or hazard and thus give rise to an emergency, the Licensing Officer shall have the authority to summarily order the cessation of business and the closure of the premises pending a hearing on the question of whether to suspend or revoke the license. Unless waived by the licensee in writing, the City Council within fifteen (15) days after the Licensing Officer has acted shall conduct a hearing upon the summary order and the activity giving rise to such order. The order shall state the grounds for its issuance and shall give notice of the hearing and shall be served upon the affected person in the manner prescribed in Section 5.70.020 (B). At such hearing the licensee shall show

cause why the summary suspension should not be made a final order of suspension or revocation.

(Ord. 1997-12, S7)

5.70.080 COUNCIL DECISION - EFFECT OF.

A. The decision of the City Council in all cases shall be final and conclusive and shall be served upon the. licensee by personal service, by registered or certified mail, or by posting as provided in Section 5.70.040 of this Chapter.

B. A decision of City Council is reviewable only by Court under C.R.C.P. 106(a)(4). There shall be no stay of execution pending a review by the Court except by Court order.

(Ord. 1997-12, S7)

5.70.090 FINE IN LIEU OF HEARING.

A. Upon application, stipulation or admission by the licensee, made ten (10) days prior to a scheduled suspension or revocation hearing unless waived by the Licensing Officer, the licensee may request permission to pay a fine in lieu of a hearing. Upon the receipt of the petition, the Licensing Officer or his designee may, in his sole discretion, stay a proposed hearing and cause any investigation to be made which he deems desirable and may, in his sole discretion, grant the petition if he is satisfied:

1. That the public welfare and morals would not be impaired by permitting the licensee to continue operation and that the payment of the fine will achieve the desired disciplinary purposes;

2. That the licensee has not had his license suspended or revoked, nor paid any fine in lieu of suspension during the two (2) years immediately preceding the date of the alleged violations; and

3. That the books and records of the licensee are kept in such a manner that economic loss can be determined with reasonable accuracy therefrom.

B. The fine accepted shall be the equivalent to twenty percent (20%) of the estimated gross revenues from the sale of such merchandise or services on the dates of the alleged violations; except that the fine shall be not less than five hundred dollars ($500.00) nor more than ten thousand dollars ($10,000.00).

C. Payment of any fine pursuant to the provisions of subsection A shall be payable in full in the form of cash, certified check or cashier's check made payable to the City of Fruita. The proceeds of the payment of the fine shall be paid into the General Fund of the City.

D. Upon payment of the fine pursuant to subsection A of this Section, the Licensing Officer or his designee shall enter his further order permanently staying the suspension or revocation hearing.

E. The authority of the Licensing Officer or his designee under this section is limited to:

1. The granting of such stays as are necessary for him to complete his investigation and make his findings; and

2. If he makes such findings, to the granting of an order permanently staying the imposition of the hearing; and

3. The determination of the fine to be imposed.

F. If the Licensing Officer does not make the findings required in subsection A of this Section and does not order the hearing permanently stayed, the hearing shall proceed as scheduled.

G. The determination of the Licensing Officer to deny a fine in lieu of a hearing, or to allow a fine in lieu of a hearing, and the determination of the amount of the fine, shall be final decisions committed to his discretion and not subject to appeal to the City Council.

(Ord. 1997-12, S7)

TITLE 6

ANIMALS

Chapters:

6.04 Definitions
6.08 Dogs At Large
6.09 Animal Nuisances
6.10 Quantity of Household Pets Restricted
6.11 Dangerous Animals Prohibited; Failure to Control Animals
6.12 Impoundment
6.13 Redemption and Disposition
6.16 Licensing and Vaccination/Dogs and Cats
6.17 Guard Dogs
6.18 Prohibition against Ownership or Sale of Certain Animals; Wild Animals At Large
6.24 Cruelty to Animals – Neglect of Animals
6.28 Kennels
6.29 Enforcement
6.30 Unlawful Violations and Penalties

Chapter 6.04

DEFINITIONS

Section:
6.04.010 Designated

6.04.010 DESIGNATED. As used in this title, the following words or phrases shall have the following meanings, respectively:

A. Abandon – The leaving of an animal without adequate provisions for the animal's proper care by its owner, the person(s) responsible for the animal's care or custody, or any other person having possession of such animal.

B. Animal – Any living vertebrate creature, domestic or wild, including dogs and cats but excluding estray animals as defined in C.R.S. 35-44-101, as amended.

C. Animal Services Center – The authorized facility or facilities designated by the City of Fruita, for the purposes of impounding, sheltering or disposing of animals held under the authority of this Ordinance or State law.

D. At Large – To be off the premises of the owner and not under direct physical control of the owner by means of a leash. This definition does not include any dog while actually working livestock, locating or retrieving wild game, assisting law enforcement, participating in an obedience show or class, or while being trained for any of these pursuits. Dog tethered to a stationary object within range of a public street, sidewalk or right-of-way shall be deemed to be at large if the dog's owner is not immediately present.

E. Attack – Aggressive behavior such as in biting, injuring or chasing a person or animal that may result in bodily injury, serious bodily injury, or the death of a person and/or animal.

F. Bodily Injury – Any physical pain, illness, impairment of physical or mental condition, or physical injury wherein the skin is broken, exterior bleeding occurs, bruising occurs, or bone, tissue or muscle damage is suffered, or emergency medical or veterinarian treatment becomes reasonably necessary for a person or animal.

G. Cat – Any member of the animal species felis domesticus.

H. City – The City of Fruita, Colorado.

I. County – The County of Mesa, Colorado.

J. Cruelty – A person who commits cruelty to animals if he/she knowingly or with criminal negligence overdrives, overloads, overworks, tortures, torments, deprives of necessary sustenance, unnecessarily or cruelly beats, needlessly mutilates, needlessly kills, carries or confines in or upon any vehicles in a cruel or reckless manner, or otherwise mistreats or neglects any animal, or causes or procures it to be done, or, having the charge or custody of any animal, fails to provide it with proper food, drink or protection from the weather, or abandons it.

K. Dangerous Animal – An animal which without provocation:

1. Causes serious bodily injury to a person; or which
2. Causes bodily injury to a person or animal on two or more occasions; or which
3. Is infected with rabies; or which
4. Is of wild extraction that on any occasion causes bodily injury by biting a person or animal, whether or not provoked, or is known to be infected with rabies; or which
5. Causes bodily injury to a person or animal off the animal owner's premises; or which
6. Is at large and exhibits repeated or continuous aggressive behavior; or which
7. Has engaged in an animal fighting contest with the owner's knowledge; or which
8. Has been specifically found to be dangerous by any court or jury.

L. Day – For purposes of Chapter 6.12, a “day” means a day during which the Mesa County Animal Services Shelter is open to the public, including days when the Mesa County Animal Services Shelter is available by telephone or dispatch.

M. Dog – Any member of the canine species, including dogs of wild extraction.

N. Dogs of Wild Extraction – A dog that is, or credibly alleged to be, any hereditary part related to wild canines such as but not limited to the wolf family (canis lupis) and/or the coyote family (canis latrans).

O. Harboring – The act of keeping and caring for an animal or of providing a premises in which the animal returns for food, shelter or care for a period of at least three (3) consecutive days.

P. Health Department – The Mesa County or Colorado State Health Department.

Q. Health Officer – The Health Officer of Mesa County, or any Health Department employee or other person authorized by the Health Officer.

R. Kennel – Any premises wherein any person engages in the business of boarding, breeding, buying, letting for hire, training for a fee, or selling dogs or cats.

S. Leash – A chain, cord or tether not more than six feet (6') in length which is securely attached to and capable of restraining an animal.

T. Mistreatment – Every act or omission which causes or unreasonably permits the continuation of unnecessary or unjustifiable pain or suffering.

U. Neglect – Failure to provide food, water, protection from the elements, or other care generally considered to be normal, usual and accepted for an animal's health and well-being consistent with the species, breed and type of animal.

V. Officer – Any sworn Member with the Fruita Police Department or acting under the authority of C.R.S. 30-15-105; and Mesa County Animal Services Center Officers contracted with the City of Fruita to enforce the provisions of this Ordinance.

W. Owner – Any person, or person acting as custodian, partnership, corporation, or an agent of the foregoing who owns, co-owns, possesses, keeps, harbors, or who has control or custody of an animal for a period of three (3) consecutive days or more; or the person named as owner in current County licensing records or on the dog identification license or rabies tag; or any parent, guardian, or legal custodian of any un-emancipated child under eighteen (18) years of age who owns, co-owns, possesses, keeps, harbors, or has control or custody of an animal.

X. Person - Any individual, firm, corporation, partnership, association, trust, estate, or other legal entity.

Y. Pet Animal – Any animal, a domestic living vertebrate creature, that is owned by an Owner.

Z. Potentially Dangerous Animal - Any pet animal or working dog that without provocation, threatens to attack, or bites causing physical injury to, a human being or domestic animal; or without provocation, chases or approaches a person upon the street, highways, sidewalks, or other areas open to the public in a menacing fashion; or has a known propensity, tendency, or disposition to attack without provocation, or cause physical injury or otherwise threatens the safety of human beings or domestic animals; or is owned or harbored primarily or in part for the purpose of fighting or is trained for fighting

Affirmative Defense. If the animal owner establishes such facts that the animal which attacks, terrorizes, or causes any bodily injury to a person or animal in immediate response to objectively unreasonable provocation, the animal shall not be found to be

dangerous, as an affirmative defense to a charge for violation of Section 6.11.010. However, any animal found to be dangerous may be destroyed in accordance with Chapter 6.12.

AA. Premises – Property owned, leased or expressly permitted to be used by an owner; or any confined area or locality like a residence, business, room, shop, building or motor vehicle in which the animal's presence is authorized by the owner of the premises. The term "premises" includes the open bed of a truck.

BB. Provocation - Harassment, teasing, threatening, striking, or attacking an animal or its owner in the animal's presence, by either a person or another animal. Provocation shall not include the lawful presence of an individual or animal in close proximity or upon property of another, where a dog is tied, kept, kenneled or harbored.

CC. Public Nuisance - Includes any animal, whose owner, keeper or custodian has been charged with three or more violations of this Ordinance concerning the same animal.

DD. Serious Bodily Injury - Bodily injury which, either at the time of the actual injury or at a later time, involves a substantial risk of death, a substantial risk of serious permanent disfigurement, a substantial risk of protracted loss or impairment of the function of any part or organ of the body, or breaks or fractures.

EE. Vaccination - The vaccination of an animal with an anti-rabies vaccine approved by the Colorado Department of Health and administered by a licensed veterinarian.

(Ord. 1984-16; Ord. 1993-07, S1; Ord. 2006-35, Ord. 2016-05, S1, S2)

Chapter 6.08

DOGS AT LARGE

Sections:

6.08.010 Dogs At Large
6.08.020 Penalties

6.08.010 DOGS AT LARGE.

A. Confinement Required. No dog owner, or any person who harbors, keeps or is a custodian of a dog, shall fail to physically, mechanically or electronically confine the dog. Such physical confinement shall ensure that the dog cannot leave the premises or be at large.

B. Dogs At Large. No dog owner, or any person who harbors, keeps or is custodian of a dog shall fail to prevent the dog from being or running at large, as defined in Chapter 6.04 of this Ordinance. Any dog off its owner's premises shall be under leash control by its owner.

C. Dogs in Common and Public Areas. No dog owner, or any person who harbors a dog, shall fail to prevent his or her dog from running at large in the yard of any multiple occupancy building which is occupied by other persons; or in the common areas of mobile home complexes, apartments, or condominium developments; or on public school property, or in open space areas of subdivisions; or in public or county parks or fairgrounds, unless permission is posted by county or public authorities allowing dogs at large.

D. Confinement During Estrus. Any unspayed female dog in the state of estrus (heat) shall be confined during estrus in a house, building or secured enclosure constructed so that no other dog may gain access to the confined animal. Owners who do not comply with this subsection may be ordered by an Officer to remove the dog to a boarding kennel, veterinary hospital or the Animal Services Center, or be served with a summons. All expenses incurred as a result of such confinement shall be paid by the owner. Failure to comply with the removal order of an Officer shall be a violation of this Ordinance, and any unspayed female dog in estrus may be summarily impounded in the event of noncompliance with such removal order.

E. Evidence of Running at Large. It shall be prima facie evidence that a dog is running at large if the dog is out of its owner's sight, or if the dog goes upon public or private property without the property owner's, manager's or tenant's consent.

(Ord. 1993-07, S3; Ord. 2000-09, S6; Ord. 2006-35)

6.08.020 PENALTIES. Any person who violates any provision of this Chapter upon a first complaint commits a non-criminal municipal offense. Any person who subsequently violates this Chapter commits a Class B municipal offense. (Ord. 2006-35)

Chapter 6.09

ANIMAL NUISANCES

Sections:

6.09.010 Disturbance of the Peace and Quiet Prohibited
6.09.020 Public Nuisance Prohibited
6.09.030 Penalties

6.09.010 DISTURBANCE OF THE PEACE AND QUIET PROHIBITED. It shall be unlawful for the owner or keeper of any animal in the city to permit such animal to disturb the peace and quiet of any person by barking, whining, howling or making any other noise in an excessive, continuous or untimely fashion.

A. Provocation Defense. Provocation of an animal whose noise is complained of, is an affirmative defense to any charge for violation of Chapter 6.09.

(Ord. 1993-07, S3; Ord. 2000-09, S6; Ord. 2006-35)

6.09.020 PUBLIC NUISANCE PROHIBITED.

A. It shall be unlawful for any owner or keeper of a pet animal to fail to exercise proper care and control of their pet animal so as to have it become a public nuisance with or without direct knowledge of that owner or keeper. For the purpose of this section, a public nuisance includes:

1. A Pet Animal which is a safety or health hazard, which damages or destroys the property of another (including but not limited to a garden, flower beds and trees), which creates offensive odors which materially interfere with or disrupt another person in conduct with lawful activities at such person's home or which urinates or defecates upon private property not owned or exclusively occupied by the owner or keeper or upon public property if the feces deposited by the pet animal are not immediately removed by the owner or keeper.

2. A Pet Animal at large that jumps on, or attempts to herd a person(s), or that runs after and vocalizes at horses, joggers, pedestrians, bicyclists, or any vehicle being ridden or driven upon the roads or any public grounds or place within the City of Fruita.

B. Custody of Pet Animal.

1. Any Pet Animal found trespassing or found causing a public nuisance as described in this section may be humanely restrained by the owner or occupant of such property, or by such owner's or occupant's agent, for a reasonable time, during which time such owner, occupant, or agent shall notify an Officer of their possession of the animal, notify the owner or custodian of their possession of the animal, release the animal to the owner or custodian, release the animal at the site of capture, or transport the animal to the Mesa County Animal Shelter.

2. Any animal, domestic or wild, found to be trespassing or creating a nuisance at any place within the city may be humanely restrained by any person. Nuisance wild animals may be released to an Officer, transported to the Mesa County Animal shelter or licensed wildlife rehabilitation facility, or relocated in accordance with all applicable state wildlife regulations.

C. Evidence required for Public Nuisance. The complainant must provide the Officer with the address of the owner or keeper if known, a date and time of violation and a description, photos, videos, etc., of the violation.

(Ord. 2006-35)

6.09.030 PENALTIES. Any owner or keeper who violates any provision of this Chapter commits a non-criminal offense. Any owner or keeper who subsequently violates this Chapter commits a Class B Municipal offense. (Ord. 2006-35)

Chapter 6.10

QUANTITY OF HOUSEHOLD PETS RESTRICTED

Sections:

6.10.010 Quantity of Household Pets Restricted
6.10.020 Penalties

6.10.010 QUANTITY OF HOUSEHOLD PETS RESTRICTED. Household pets, including but not limited to dogs and cats, which are generally kept within or about a dwelling are not permitted in quantities of more than four (4) animals over the age of three (3) months. (Ord. 1993-07, S4; Ord. 2000-09, S7; Ord. 2006-35)

6.10.020 PENALTIES. Any person who violates 6.10.010 above commits a non-criminal offense. Any person who subsequently violates Section 6.10.010 above commits a Class B municipal offense. (Ord. 2006-35)

CHAPTER 6.11

DANGEROUS ANIMALS PROHIBITED; FAILURE TO CONTROL ANIMALS

Sections:

6.11.010 Dangerous Animals Prohibited
6.11.020 Failure to Control Animals
6.11.030 Penalty

6.11.010 DANGEROUS ANIMALS PROHIBITED.

A. It is a defense to the charge of owning or keeping a dangerous animal that the person or animal that was bitten, clawed or approached by the dangerous animal was:

1. Other than in self defense or defense of its young, attacking the animal or engaging in conduct reasonably calculated to provoke the animal to attack or bite;

2. Unlawfully engaging in entry into or upon a fenced or enclosed portion of the premises upon which the animal was lawfully kept or upon a portion of the premises where the animal was lawfully restrained by leash or lead;

3. Unlawfully engaging in entry into or in or upon a vehicle in which the animal was confined;

4. Attempting to assault another person;

5. Attempting to stop a fight between the animal and any other animal;

6. Attempting to aid the animal when it was injured; or

7. Attempting to capture the animal in the absence of the owner or keeper.

B. For purposes of this section, a person is lawfully upon the premises of an owner or keeper when such person is on the premises in the performance of any duty imposed by law or by the express or implied invitation of the owner of such premises or the owner's agent.

C. No person shall own or harbor a dangerous animal within the City of Fruita except as provided in this ordinance. Such animal shall be impounded as a public nuisance pursuant to the procedures set forth in Chapter 6.12 and may be subject to disposition as provided by Chapter 6.13.

(Ord. 1993-07, S5; Ord. 2006-35)

6.11.020 FAILURE TO CONTROL ANIMALS.
No owner of an animal shall fail to prevent it from antagonizing, causing bodily injury to, or biting without provocation, any person or animal, including pets, domestic livestock, fowl, or wildlife. (Ord. 2006-35)

6.11.030 PENALTY.
Any person who violates any provisions of this Chapter commits a Class B Municipal offense. (Ord. 2006-35)

Chapter 6.12

IMPOUNDMENT

Sections:

6.12.010 Impoundment of Dogs Authorized
6.12.020 Impoundment of Dangerous Animals
6.12.030 Notice of Impoundment and Disposition Alternatives
6.12.040 Liability for Seizure and Impoundment Expenses
6.12.050 Removal of Impounded Animals
6.12.060 Impoundment alternatives

6.12.010 IMPOUNDMENT OF DOGS AUTHORIZED.

A. An Officer may seize and impound any dog which is:

1. At large; or

2. Off the owner's premises not wearing a current license tag; or

3. Is an unconfined, unspayed female dog in estrus.

B. An Officer may seize and impound any animal which:

1. Is required to be observed for rabies symptoms; or

2. Is, or appears to be abandoned, abused or neglected; or

3. Is a domestic animal, appears to be or is sick or injured, and whose owner cannot be identified or located; or

4. Is being kept or maintained contrary to the provisions of this Title.

(Ord. 1988-03, S5; Ord. 2006-35)

6.12.020 IMPOUNDMENT OF DANGEROUS ANIMALS. In the event that the Officer reasonably believes the animal is dangerous, it may be immediately seized and impounded. If impoundment of a vicious animal cannot be made safely by the Officer and/or other persons, the dangerous animal may be destroyed without notice to its owner. The Officer and/or the City of Fruita shall not be liable for such action. (Ord. 2006-35)

6.12.030 NOTICE OF IMPOUNDMENT AND DISPOSITION ALTERNATIVES. If the animal's owner cannot be established after a reasonable effort, the Officer may proceed with any disposition authorized by this Title. (Ord. 1982-97; Ord. 1988-03, S5; Ord. 2006-35)

6.12.040 LIABILITY FOR SEIZURE AND IMPOUNDMENT EXPENSES. An owner shall be obligated to reimburse the City of Fruita for all expenses incurred as a result of seizure or impoundment of an animal. Such fees shall be assessed against the owner of any impounded animal, and shall be payable upon redemption, release or abandonment of the animal. Owners of unwanted animals and persons in custody of abandoned animals may be required to pay the appropriate fees to the City of Fruita prior to transporting them to the Mesa County Animal Services Center. (Ord. 2006-35)

6.12.050 REMOVAL OF IMPOUNDED ANIMALS. No person shall remove any impounded animal from the Mesa County Animal Services Center or from the official custody of an Officer without the consent of the Fruita Police Department. (Ord. 2006-35)

6.12.060 IMPOUNDMENT ALTERNATIVES. Nothing in this Chapter 6.12 shall be construed to prevent an Officer from taking whatever action is reasonably necessary to protect them or members of the public from injury by any animal. (Ord. 2006-35)

Chapter 6.13

REDEMPTION & DISPOSITION

Sections:

6.13.010 Redemption Fees Authorized
6.13.020 Disposition of Impounded Animals
6.13.030 Disposition of Dangerous Dogs

6.13.010 REDEMPTION FEES AUTHORIZED. Any animal may be claimed and redeemed from impoundment by the owner and released from the Animal Services Center only upon timely demand at the Animal Services Center by a properly identified owner and upon payment of all seizure fees, impoundment fees, veterinary charges, charges for unusual care and feeding, redemption fees, and such other costs or fees as may be reasonably set by the City of Fruita or as set forth in the City of Fruita Charges and Fees Schedule. (Ord. 519, 1981; 1988-3, S5; Ord. 2006-35)

6.13.020 DISPOSITION OF IMPOUNDED ANIMALS. Any animal not properly redeemed by the end of any required impoundment or observation period shall become the property of the City of Fruita. The animal may then be disposed of by Mesa County Animal Services personnel and/or by the City of Fruita either by sale, donation, adoption to a suitable owner, return to finder or by humane euthanasia. (Ord. 2006-35)

6.13.030 DISPOSITION OF DANGEROUS ANIMALS.

A. An animal found to be dangerous by any Court, as defined in Chapter 6.04, Paragraph K, subsections 1, 2, 3 or 4 of this Title, may be disposed of by humane euthanasia. The owner of the dog shall be assessed and shall be liable for all applicable costs and fees pursuant to the City of Fruita fee schedule.

B. The owner of an animal found to be dangerous as defined in Chapter 6.04, Paragraph K, subsections 5, 6, 7, or 8 of this Title shall be subject to any reasonable sentencing orders set by the court prior to or after redemption of the animal. These orders and conditions may include, but are not limited to, delayed release of the animal, the posting of bond, construction of secure areas of confinement, restrictions on travel with the animal, neutering the animal, muzzling, compensation of victims, restrictions on sale or transfer of the animal, destruction, removal from the City of Fruita and any other terms or conditions deemed necessary to protect the public or the abatement of a public nuisance. These orders and conditions shall require payment of all fines and fees and expenses for seizure, impoundment, redemption, together with penalties and Court costs, if any.

C. In the event of non-compliance with these conditions, the animal may be impounded by the Officer and disposed of at their discretion, or according to court order. Such disposal shall be in addition to any other civil or criminal remedies, including contempt proceedings for non-compliance with any sentencing orders or with administrative conditions for release of a dangerous animal.

D. An animal found or declared not dangerous shall there upon be returned to its owner, subject to payment for redemption fees for licensing and veterinarian care, but excluding liability for boarding expenses.

(Ord. 1984-16; 1988-3, S4; 1993-07, S6; Ord. 2006-35)

Chapter 6.16

LICENSING AND VACCINATION/DOGS AND CATS

Sections:

6.16.010 Vaccination Required
6.16.020 Licensing
6.16.030 License Tags
6.16.040 Duplicate Tags
6.16.050 Proof of Licensing
6.16.060 Harboring Unvaccinated Dogs or Cats
6.16.070 False and Stolen License Requirements
6.16.080 Transferability
6.16.090 Penalties

6.16.010 VACCINATION REQUIRED. No person shall own, keep or harbor in the City any dog or cat over four months of age unless such dog or cat is vaccinated against rabies. All dogs and cats vaccinated at four months of age or older shall be re-vaccinated thereafter in accordance with the recommendation of the "Compendium of Animal Rabies Control" as promulgated by the National Association of State Public Health Veterinarians. After vaccinating a cat or dog for rabies, the veterinarian should give the owner written certification of such vaccination. Any dog or cat owner who moves into the City and acquires ownership of any dog or cat four months of age or older, shall comply with this Ordinance within thirty days afterwards. If any dog or cat has bitten any person or animal, within ten (10) days, the owner of said dog or cat shall report that fact to the vaccinating veterinarian and to the Fruita Police Department. No rabies vaccine shall be administered to that dog or cat until after a ten (10) day observation period unless otherwise directed by the Colorado State Department of Health. (Ord. 2006-35)

6.16.020 LICENSING. Dogs and Cats must be licensed annually. After vaccinating a dog/cat for rabies, the veterinarian may take the owner's payment for a county license and give the owner a county license certificate and tag. An owner may choose to buy a county license certificate and tag from the Mesa County Animal Services Center or their designee, rather than a veterinarian. If a county license certificate and tag is not purchased from a veterinarian, the owner shall show written certification from a veterinarian of the dog's/cat’s current rabies vaccination at the time of purchase. The county license certificate shall contain the following information:

A. The name, street address, and telephone number of the owner of the vaccinated dog/cat.

B. The veterinarian's name, address, telephone number, rabies tag number and expiration date.

C. The breed, age, color and sex of the dog/cat.

D. The county license number, license year, date of issue, license fee, and licensing agent. (Ord. 1985-2, S6, Ord. 2006-35)

6.16.030 LICENSE TAGS. Concurrent with the issuance and delivery of the license referred to in Section 6.16.020 of this Ordinance, the dog/cat owner shall cause to be attached to the collar or harness of the vaccinated dog/cat a metal tag serial numbered and bearing the year of issuance, the name of Mesa County, and the telephone number of the Mesa County Animal Services Center. No owner shall fail to place upon his dog/cat the collar or harness to which the tag is attached, and no owner shall fail to ensure that the dog/cat at all times wears the collar or harness displaying the license tag, unless the dog/cat is participating in a sanctioned show, is aiding law enforcement officers, or is actually training to hunt or retrieve game in circumstances where attachment of a license tag would constitute a clear danger to the dog/cat. (Ord. 1985-2, S7; Ord. 199, S3, 1960; Ord. 2006-35)

6.16.040 DUPLICATE TAGS. In the event of loss or destruction of the original license tag provided for in this Section, the owner shall obtain within 30 days, a duplicate license from the Mesa County Animal Services Center; paying the required fee and complying with the requirements set forth above. (Ord. 2006-35)

6.16.050 PROOF OF LICENSING. No person shall own or harbor any dog/cat and fail or refuse to exhibit a license certificate or license tag within a reasonable time upon demand by any Officer. (Ord. 2006-35)

6.16.060 HARBORING UNVACCINATED DOGS OR CATS. No person shall own or harbor any dog/cat which has not been vaccinated against rabies within the last year as provided in this Chapter. This Section shall also apply to dogs of wild extraction. (Ord. 2006-35)

6.16.070 FALSE AND STOLEN LICENSE DOCUMENTS. No person shall possess or make use of a stolen, counterfeit or forged license certificate or license tag. (Ord. 2006-35)

6.16.080 TRANSFERABILITY. Dog/Cat license certificates and license tags are not transferable. No person shall attach or cause to be attached any license tag to any dog/cat other than the dog/cat for which the tag was originally issued. Such records shall be deemed to be public records for purposes of admissibility in any proceeding for violation of this Title. Such records and the absence of entries in such record shall constitute prima facie evidence of dog/cat ownership and compliance or noncompliance with the licensing and vaccination provisions of this Title. (Ord. 2006-35)

6.16.090 PENALTIES. Any person who violates any provision of this Chapter, upon the first complaint commits a non-criminal offense. Any person who subsequently violates any provision of this Chapter, commits a Class B Municipal offense. (Ord. 2000-09, S10; Ord. 2006-35)

Chapter 6.17

GUARD DOGS

Sections:

6.17.010 Guard Dog Defined
6.17.020 Compliance with Chapter required to place or maintain
6.17.030 Public Protection Measures Mandated by Police; Compliance Required
6.17.040 Inspection authority of police
6.17.050 Penalties

6.17.010 GUARD DOG DEFINED. As used in this Chapter the words "guard dog" shall mean any dog trained or used to protect persons or property by attacking or threatening to attack any person found within the area patrolled by the dog. (Ord. 1984-17, S4; Ord. 2006-35)

6.17.020 COMPLIANCE WITH CHAPTER REQUIRED TO PLACE OR MAINTAIN. No person shall place or maintain guard dogs in any area for the protection of persons or property unless and until the provisions of this Chapter have been met. Further, noncompliance with this Chapter may cause the involved animal to be prosecuted as a vicious dog, covered in Chapter 6.11. (Ord. 1984-17, S4; Ord. 2006-35)

6.17.30 PUBLIC – PROTECTION MEASURES MANDATED BY POLICE; COMPLIANCE REQUIRED. Additional measures determined necessary by the Chief of Police or his designee to protect the public from accidental contact with the guard dog shall be taken by the applicant.

A. The owner of any dog which has been specifically trained to protect property shall at a minimum:

   1. Keep the dog confined to an area from which it cannot escape; and

   2. Post warning signs conspicuously about the area of confinement indicating the presence of a guard dog with letters not less than ten (10) inches high.

B. The owner of any dog which has been specifically trained to protect people shall at a minimum keep the dog under complete services of the handler at all times. (Ord. 2006-35)

6.17.040 INSPECTION AUTHORITY OF POLICE. The applicant agrees and consents to the entry of the premises in which guard dogs are used, by the Chief of Police or his designee, for the purpose of ascertaining whether the provisions of this Chapter have been and are being complied with. (Ord. 1984-17, S4; Ord. 2006-35)

6.17.050 PENALTIES. Any person who violates any provision of this Chapter upon the first complaint commits a non-criminal municipal offense. Any person who subsequently violates any provision of this Chapter commits a Class B municipal offense. (Ord. 2000-09; Ord. 2006-35)

Chapter 6.18

PROHIBITION AGAINST OWNERSHIP OR SALE OF CERTAIN ANIMALS; WILD ANIMALS AT LARGE

Sections:

6.18.010 Prohibition against Ownership or Sale Of Certain Animals; Wild Animals at Large
6.18.020 Penalties

6.18.010 PROHIBITION AGAINST OWNERSHIP OR SALE OF CERTAIN ANIMALS; WILD ANIMALS AT LARGE. It shall be unlawful for any person to own, possess, harbor, sell, or in any other manner traffic in the following species of animals:

A. All poisonous snakes and poisonous reptiles: and all nonpoisonous snakes with a length greater than six feet;

B. Gorillas, chimpanzees, orangutans and any other primates;

C. Any species of feline not falling within the categories of ordinary domesticated house cats;

D. Bears of any species;

E. Raccoons, porcupines, skunks, badgers, or other similar species, except ferrets (mustela putruis); or

F. Foxes, wolves, coyotes, or other species or canines other than dogs.

The provisions of this chapter shall not be applicable to any bona fide zoological garden or any circus or carnival licensed by the City of Fruita, or any bona fide research institute using wild, exotic or dangerous animals for scientific research. (Ord. 2006-35)

6.18.020 PENALTIES. Any person who violates any provision of this Chapter upon a first complaint commits a non-criminal offense. Any person who subsequently violates any provision of this Chapter commits a Class B Municipal offense. (Ord. 2006-35)

Chapter 6.24

CRUELTY TO ANIMALS – NEGLECT OF ANIMALS

Sections:

6.24.010 Cruelty to Animals
6.24.020 Poisoning Animals Prohibited
6.24.030 Beating or Injuring Animals Prohibited
6.24.040 Penalty

6.24.010 CRUELTY TO ANIMALS. A person commits cruelty to animals if he knowingly or with criminal negligence engages in conduct defined in subsection 6.04.010 (J) of this Title. (Ord. 2006-35)

6.24.020 POISONING ANIMALS PROHIBITED. It is unlawful for any person to poison any animal, or to distribute poison in any manner whatsoever with the intent or for the purpose of poisoning any animal. (Ord. 199, S10, 1960; Ord. 1988-3, S8; Ord. 2006-35)

6.24.030 BEATING OR INJURING ANIMALS PROHIBITED. No person shall inhumanely neglect, unnecessarily beat, injure or otherwise abuse any animal. (Ord. 35 Art. 1, S4, 1907; Ord. 1988-3, S8; Ord. 2006-35)

6.24.040 PENALTY. Any person who violates any provision of this Chapter commits a Class B municipal offense. (Ord. 2000-09, S12; Ord. 2006-35)

Chapter 6.28

KENNELS

Sections:

6.28.010 Licensing
6.28.020 Penalties, Suspension, Revocation or Refusal to Renew

6.28.010 LICENSING. It is unlawful for any person, partnership, corporation, or association of persons to maintain, operate or allow the maintenance and operation of a kennel on any property located within the City, without first having obtained a license therefore. Kennel licenses may be issued by the City Of Fruita annually, and should be renewed each succeeding year. There is levied and assessed an annual license fee in an amount established by council resolution, which is in addition to such business license fees as may be assessed elsewhere by the terms of this code. (Ord. 2000-09, S13; Ord. 2006-35)

6.28.020 PENALTIES, SUSPENSION, REVOCATION OR REFUSAL TO RENEW.

A. Any person, partnership, corporation, or association of persons who maintains, operates or allows the maintenance and operation of a kennel on any property located within the City, without first having obtained a license therefore, commits a non-criminal municipal offense.

B. The City may suspend, revoke, or refuse to allow renewal of any kennel license if it finds that:

1. The kennel is maintained contrary to any applicable statute, resolution, ordinance or regulation of the State of Colorado, the County of Mesa, or the City of Fruita;

2. The kennel is maintained so as to be detrimental to the health, peace or safety of the residents of the city;

3. The kennel is maintained so as to be a public nuisance;

4. The owner has failed to pay the yearly license fee.

(Ord. 1988-3, S9; Ord. 2006-35)

Chapter 6.29

ENFORCEMENT

Sections:

6.29.010 Enforcement Responsibility
6.29.020 Interference with Animal Regulation Officers
6.29.030 Compliance with Impoundment Requests
6.29.040 Search and Seizure of Dangerous Animals and/or Dogs

6.29.010 ENFORCEMENT RESPONSIBILITY. The provisions of this Title shall be enforced within the City of Fruita by an Officer and any other person as authorized by the City of Fruita. The Officer shall be deemed "peace officers" without regard to certification requirements, as authorized by C.R.S. 30-15-105. The City Attorney shall prosecute at his discretion any violation of this Title.

A. Enforcement Procedure. Whenever an Officer has personal knowledge or probable cause to believe that a violation of this Title has occurred, he/she may either issue a penalty assessment notice pursuant to C.R.S. 16-2-201, et seq., or issue a Summons and Complaint pursuant to C.R.S. 16-2-101, et seq. and C.R.S. 30-15-101, et seq.

B. Penalty Assessment Procedure.

1. Penalty Assessment. See Sections 2.28.170 and 2.28.190 of the Fruita Municipal Code.

2. Summons and Complaint. This procedure consists of personal service, or waiver by the recipient, of a summons and complaint. The summons requires the recipient to appear before the Municipal or County Court judge at a specified time and place to answer to charges of violating this Title as set forth in the complaint.

C. Mandatory Court. A summons and complaint shall be issued to anyone who is:

1. Charged under Chapter 6.11 involving a dangerous animal; or

2. Charged under Chapter 6.24 involving cruelty to an animal; or

3. Charged under Chapter 6.12 involving failure to comply with impoundment or quarantine requirements; or

4. Known to have been issued three or more penalty assessment notices for violation of this Title within the last two years; or
5. Charged with a violation of this Title involving serious bodily injury to or death of any person or animal.

D. Optional Court. Except for the mandatory requirement for court set forth above in subsection (C)(3), a Fruita Police Department Officer may, in his/her discretion, issue either a penalty assessment notice or a summons and complaint.

E. Content. A penalty assessment notice as well as a summons and complaint shall contain the following: document sworn to by the arresting officer; verification by the complaining party, if any; name of the alleged offender; specific offense; applicable fine; identity of any victim(s), and a brief summary of the circumstances of offense, if the alleged offense is a second or subsequent offense resulting in a penalty enhancement; information including the alleged offender's attitude.

(Ord. 2006-35)

6.29.020 INTERFERENCE WITH ANIMAL REGULATION OFFICERS. No person shall interfere with, molest, hinder, or prevent the Officer from discharging their duties as prescribed by this Title or other law. (Ord. 2006-35)

6.29.030 COMPLIANCE WITH IMPOUNDMENT REQUESTS. No person shall refuse to immediately deliver up or release any animal to an Officer upon lawful demand by the Officer to seize and impound the animal. (Ord. 2006-35)

6.29.040 SEARCH AND SEIZURE OF DANGEROUS ANIMALS AND/OR DOGS. An Officer shall have the right to enter upon private property when necessary to seize an animal that has been running at large, when in reasonable pursuit of such animal. Authorized entry upon such property shall not include entry into a domicile or any enclosure that confines the animal except upon invitation by the property owner. In the event of an owner's refusal or failure to deliver up or release the animal, and upon presentation of a motion and an affidavit establishing probable cause that the animal is a public nuisance as defined in Chapter 6.04.010 (CC), a Court may issue an ex parte order requiring the owner to immediately deliver up or release the animal to an Officer. Non-compliance with such order shall be grounds for proceedings to establish contempt of Court. The Court is also authorized to issue an ex parte warrant for search and seizure of a public nuisance animal, or an abandoned, abused, or neglected animal(s) in order to preserve evidence or to protect the public safety and welfare. An Officer seizing a public nuisance animal may impound the animal, release the animal in lieu of impoundment, and/or issue a penalty assessment notice or a Summons and Complaint to the animal owner or keeper, unless otherwise required by Court order or this Title. (Ord. 2006-35)

Chapter 6.30

UNLAWFUL VIOLATION & PENALTIES

Sections:

6.30.010 Unlawful Violations
6.30.020 Violations Without Bodily Injury
6.30.030 Violations With Bodily Injury
6.30.040 Probationary Conditions and Other Costs

6.30.010 UNLAWFUL VIOLATIONS. No person, partnership or entity shall violate any provision of this Title as amended. Any such violation is unlawful, and upon conviction of any violation, the offender shall be punished as hereinafter set forth. (Ord. 2006-35)

6.30.020 VIOLATIONS WITHOUT BODILY INJURY. A person who violates this Title upon a first complaint that does not involve bodily injury to any person or animal, shall be deemed to have committed a non-criminal municipal offense punishable as provided in Section 1.28.020. A person who violates this Title a second or subsequent time commits a Class B municipal offense punishable as provided in 1.28.020. If the animal owner has been convicted of three or more violations of any section of this Title not involving bodily injury, the court may impose a fine and sentence of imprisonment in the county jail in addition to any court costs and may order the destruction of the animal. (Ord. 2006-35)

6.30.030 VIOLATIONS WITH BODILY INJURY. Unless otherwise provided, any violation of this Title which involves bodily injury to any person or bodily injury or death to an animal shall be a Class A municipal offense punishable as provided in 1.28.020. Upon conviction, the court may order the destruction of the animal at the cost to the owner. (Ord. 2006-35)

6.30.040 PROBATIONS CONDITIONS AND OTHER COSTS. In addition to payment of any fine or other punishment, a violator shall be required as a condition of probation or sentencing to pay the City of Fruita all applicable fees and charges pursuant to Chapter 6.31, and cost of prosecution as may be required by the Court. Suspension of any penalty or punishment may be conditioned upon compliance with any reasonable order or condition designed to protect the public or abate a public nuisance caused by an owner's animal. Such conditions may include, but are not limited to, those set forth in Chapter 6.13. (Ord. 2006-35)

TITLE 7

RESERVED

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TITLE 8

HEALTH AND SAFETY

Chapters:

8.04 Weeds, brush and rubbish
8.06 Tree care and maintenance
8.08 Garbage and solid waste
8.12 Burning restrictions
8.14 Wood heating appliance regulations
8.15 Trailers
8.20 Smoking prohibited in Fruita City Hall except in those areas designated for smoking

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Chapter 8.04

WEEDS, BRUSH AND RUBBISH

Sections:

8.04.010 Definitions
8.04.020 Cutting Weeds - Duty of property owner
8.04.030 Cutting and removal required
8.04.040 Notice to cut and remove - Publication required - Contents
8.04.050 Collection of assessments
8.04.060 Penalties

8.04.010 DEFINITIONS. As used in this chapter:

A. "Brush" means a volunteer growth of bushes and such brush as is growing out of place in the location where growing, including all cuttings from trees and bushes, and also high and rank vegetable growth which may conceal filthy deposits.

B. "Rubbish" means places of discarded building material, waste, or rejected matter, trash or refuse.

C. "Weed" means any unsightly, useless, troublesome or injurious, herbaceous plant, and also rank vegetable growth which exudes unpleasant or noxious odors or that may conceal filthy deposits, and including those Noxious Plant species designated in Section 1.3 Mesa County Noxious Weed List within the Mesa County Noxious Weed Management Plan.

(Ord. 213, S3, 1965; Ord. 1993-08; Ord. 2007-13, S1)

8.04.020. CUTTING WEEDS - DUTY OF PROPERTY OWNER. It shall be the duty of each and every owner, agent or lessee of any lot or tract of ground in the city to cut to the ground all weeds twelve (12) inches in height or higher, including puncture vines regardless of height, or any designated noxious weed or brush; and to keep such growth down on each lot or tract of ground, on or along any street or avenue adjoining the same between the property line and the curb line thereof, and on or along any alley adjoining the same between the property line and the center of such alley. In the event a curbline does not exist, the City shall maintain a distance of ten feet (10') on both sides of the pavement. The property owner adjacent to said right of way shall be responsible for the maintenance of remaining right of way up to their property line along the length of said property line adjacent to the pavement. (Ord. 457, S2, 1981; Ord. 1983-47, S3; Ord. 2003-28; Ord. 2007-13, S2)

8.04.030. CUTTING AND REMOVAL REQUIRED. It shall be the duty of the owner, agent or lessee of any lots, tracts, or parcels of land to cut such weeds or brush and to remove the same together with any rubbish herein mentioned, and to keep such weeds down each year. All such weeds and brush shall immediately, upon cutting, be removed and properly disposed of. Noxious weeds shall be controlled pursuant to Section 5.0 Best Management Practices for Noxious Weeds in Mesa County within the Mesa County Noxious Weed Management Plan. (Ord. 457, S3, 1981; Ord.

1983-47, S4; Ord. 2007-13, S3)

8.04.040 NOTICE TO CUT AND REMOVE – PUBLICATION REQUIRED – CONTENTS. The Code Enforcement Officer shall publish annually after April 15th and before June 15th, once each week during two consecutive weeks, a notice in a newspaper published regularly in the County of Mesa, State of Colorado, and qualified to accept and publish legal notices, notifying all residents, lessees and owners of property, without naming them, that it is their duty to cut and to keep cut the weeds and brush and to remove the same, together with the rubbish from their property and from the streets and alleys as in this chapter provided, and that in default of such cutting and removal the work shall be done under the orders of the City Council and the costs thereof shall be assessed to the respective lots, tracts or parcels of land. A notice of the assessment shall be sent to the property owner by certified mail. (Ord. 457, S3, 1981; Ord. 1983-47, S5; Ord. 2007-13, S4)

8.04.050 COLLECTION OF ASSESSMENTS. It shall be the duty of the owner to pay such assessment within twenty days after the mailing of such notice, and in case of his failure to do so, he shall be liable personally for the amount of the assessment and the same shall be a lien upon the respective lots or parcels of land from the time of such assessment. In case the owner shall fail to pay such assessment within twenty days after notice has been mailed to him, as provided by this chapter, this then it shall be the duty of the city clerk to certify the amount of the assessment to the county treasurer or other officer of the county having the custody of the tax list, at the time of such certification, to be by him placed upon the tax list, for the current year and to be collected in the same manner as other taxes are collected, with 10% penalty thereon to defray the cost of collection; and all the laws of the State of Colorado for the assessment and collection of general taxes, including the laws for the sale of the property for taxes and the redemption thereof, shall apply to and have full effect for the collection of all such assessments. (Ord. 440, S2, 1980; Ord. 1983-47, S6)

8.04.060 PENALTIES. Any person who violates any of the provisions contained in this Chapter commits a noncriminal municipal offense. The fact that assessments have been made against property as provided in this Chapter for cutting and removing weeds, brush and rubbish shall not prevent the owner, agent or lessee from being convicted and sentenced for a noncriminal municipal offense. A penalty may be imposed on those violating any of the provisions of this Chapter, whether or not an assessment has been levied in accordance with the provisions of this Chapter. (Ord. 2000-09, S14)

Chapter 8.06

TREE CARE AND MAINTENANCE

Sections:

8.06.010 Definitions
8.06.020 Creation and establishment of a Tree Board
8.06.030 Duties and responsibilities of Tree Board
8.06.040 Elm trees
8.06.050 Street and public park tree types to be planted
8.06.060 Spacing newly planted street and public park trees
8.06.070 Distance from street corners and fire hydrants
8.06.080 Utilities
8.06.090 Public tree care
8.06.100 Pruning and clearance
8.06.110 Tree topping
8.06.120 City right and powers to enforce tree safety
8.06.130 Removal of stumps, dead, diseased and hazardous trees
8.06.140 Adoption of tree and shrubbery regulations

8.06.010 DEFINITIONS.

A. "Private Trees" are herein defined as trees, shrubs, bushes, and other wood-like vegetation located within a private property boundary line, but may project or exist over or outside the property line.

B. "Public Park Trees" are herein defined as trees, shrubs, bushes, and other wood-like vegetation located in established public parks, cemeteries, along designated trails, and other areas within the City's jurisdiction to which the public has free access to as a park.

C. "Street Trees" are herein defined as trees, shrubs, bushes, and all other wood-like vegetation which is found on land existing between property lines on either side of all streets, avenues, and ways within the City.

(Ord. 1993-19)

8.06.020 CREATION AND ESTABLISHMENT OF A TREE BOARD. There is hereby created and established a Tree Board for the City of Fruita which shall consist of five (5) to seven (7) members. Members of the Board may include both residents of the City of Fruita and nonresidents who are interested and enthusiastic about improving and protecting trees, who shall be recommended by the Mayor and approved by a majority vote of the City Council. This Tree Board shall be governed by by-laws recommended by the Tree Board and approved by the City Council. (Ord. 1993-19; Ord. 2005-17)

8.06.030 DUTIES AND RESPONSIBILITIES OF TREE BOARD. It shall be the responsibility of the Tree Board to study, investigate, counsel, monitor, and foster community forest care for the City of Fruita, by way of the following activities:

A. The Tree Board will develop, accordingly update, and administer an annual work plan for the care, preservation, pruning, planting, replanting, and removal or disposition of trees, shrubs, bushes, and other wood-like vegetation considered "Public Park Trees".

B. The Tree Board is responsible for any community education programs and or literature concerning community forestry, and is authorized to arrange, advertise, and conduct educational programs.

C. The Tree Board is responsible for conducting the annual Arbor Day Celebration.

D. The Tree Board will be responsible for cooperating with the Director of Public Works concerning reporting and treating areas where "Street Trees", "Public Park trees" and "Private Trees" pose a threat or danger to the public safety for any reason and need immediate attention. The board will not have the authority to contact any private citizen concerning these public safety hazards, and shall report only to the Director of Public Works. Any action taken concerning these trees will not involve the Tree Board.

(Ord. 1993-19)

8.06.040 ELM TREES. The City of Fruita shall be considered as an area or zone within which healthy elm trees are to be protected from infestation with Dutch Elm Disease and from harboring the European elm bark beetle, Hylurgopinus Rufipes. Any infected or infested trees, or parts thereof, shall be considered a public nuisance and shall be removed or destroyed in accordance with the public nuisance provisions of this Code. It shall likewise be considered a nuisance to maintain stumps or store wood which may harbor Dutch Elm Disease or furnish breeding places for the European elm bark beetle. (Ord. 1993-19)

8.06.050 STREET AND PUBLIC PARK TREE TYPES TO BE PLANTED. The types of trees to be planted as "Street Trees" or "Public Park Trees" will be determined by and at the discretion of the Tree Board. A list of allowable and undesirable trees will be produced and amended by the Tree Board as a part of the Tree Board Annual Work plan. (Ord. 1993-19)

8.06.060 SPACING NEWLY PLANTED STREET AND PUBLIC PARK TREES. The minimum spacing of newly planted "Street Trees" and "Public Park Trees" will be no less than the following:

Small trees - 18 to 20 feet
Medium trees - 25 to 30 feet
Large trees - 35 to 40 feet

The only exception to these distances is in a special planting approved by the Tree Board. (Ord. 1993-19)

8.06.070 DISTANCE FROM STREET CORNERS AND FIRE HYDRANTS. No "Street Trees" or "Public Park Trees" or "Private Trees" will be planted closer than twenty feet (20') to any street corner, measured from the point of the nearest intersecting curbs or curb-lines. No "Street Trees" or "Public Park Trees" or "Private Trees" shall be planted within ten feet (10') of any fire hydrant. (Ord. 1993-19)

8.06.080 UTILITIES. No trees other than what is considered a small tree may be planted under or within ten (10) lateral feet of any overhead utility wire, or over or within five (5) lateral feet of any underground water, sewer, transmission, or any other utility line. No trees may be planted in close proximity to any curb or sidewalk, which will detrimentally impact on the curb or sidewalk. It is recommended that the minimum between curb or sidewalk and newly planted trees be four feet (4'). (Ord. 1993-19)

8.06.090 PUBLIC TREE CARE. The City shall have the right to plant, prune, maintain, and remove any tree, shrub, bush, or other wood-like vegetation within the right-of-ways of all streets, alleys, easements, and public grounds as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public grounds. This section does not prohibit the planting of "Street Trees" by an adjacent property owner, provided the location and size of such trees are in accordance with this ordinance, as well as other guidelines that the Tree Board may develop. (Ord. 1993-19)

8.06.100 PRUNING AND CLEARANCE. Every owner of any tree on their property which overhangs any street, right-of-way, alley, corner, or any other public area or way within the City shall prune the branches so that such branches shall not obstruct the light of a street light, street signs or obstruct the view of any intersection, so that there shall be a clear space of nine feet (9') above the sidewalk or driveway and thirteen feet (13') above the street. Said owners shall remove all dead, diseased, or dangerous branches, or broken or decayed limbs on their trees which constitute a menace to the safety of the public, and shall bear the full financial burden of removal. (Ord. 1993-19)

8.06.110 TREE TOPPING. It shall be unlawful as a normal practice for any person, firm, or City department to top any "Street Trees" or "Public Parks Trees", or any other tree on public property. Topping is defined as the severe cutting back of limbs to stubs larger than three inches in diameter within the trees crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or trees located in areas where normal maintenance is impractical or dangerous may be exempted from this section only with approval by the Tree Board. (Ord. 1993-19)

8.06.120 CITY RIGHT AND POWERS TO ENFORCE TREE SAFETY. This ordinance outlines the City's ability to enforce tree safety and care concerning public/private overlap.

A. The Director of Public Works shall have the power to determine if a safety or obstruction concern exists with regard to "Street Trees" or "Public Park Trees" or "Private Trees", and can take the actions necessary to abate the problem.

B. The Director of Public Works and his authorized representative or agent shall have the right

to trim, remove, prune, and protect any tree, shrub, bush, or other wood-like vegetation which is on public right-of-way or any street, alley, sidewalk, or other public place, or to require the owner or occupant of the property, or their agent, abutting on the right- of-way of any street, alley, sidewalk, or other public place to trim, remove, prune, or protect any tree, shrub, bush, or other wood-like vegetation which may project or exist beyond the property line (including right-of-way trees adjacent to private property) of such owner, occupant, or agent, onto or over public property in a manner which interferes with the safe use of the right-of-way, at the expense of said owner.

C. If the property owner, occupant or agent, refuses or neglects to trim, remove, prune, or protect any such tree, shrub, bush, or other wood-like vegetation within fifteen (15) days after receipt of a written notice sent by certified mail with return receipt requested from the Director of Public Works to do so, the Director may do or cause to be done the necessary work incident thereto, and the expenses thereof shall be collected from the owner of such property, and if not collected with thirty (30) days the amount shall be made a lien against said property until paid. Upon demonstration of a financial hardship the City may consider development of a payment plan.

(Ord. 1993-19)

8.06.130 REMOVAL OF STUMPS, DEAD, DISEASED, AND HAZARDOUS TREES. The City shall have the right to cause the removal of any stumps which exist in any street, alley, right-of-way, or other public place and extends above the surface of the ground. Removal will be undertaken in the same manner as in Section 8.06.120, except the property owner will be given thirty (30) days to comply with a written notice.

The City shall have the right to cause the removal of any such trees on private property within the City, when such trees constitute a hazard to life and property, or harbor insects or diseases which are a potential threat to other trees within the City. The owner will be notified in writing by certified mail, return receipt requested as to why the request is being made by the Director of Public Works. Removal shall be done by the owner at their expense within sixty (60) days after the notice is served. In the event there is a failure of owners to comply with the notice, the City shall have the authority to remove such trees and charge the cost of removal to the owners. If payment is not received within thirty (30) days the amount shall be made a lien against said property until paid. Upon demonstration of a financial hardship the City may consider development of a payment plan.

(Ord. 1993-19)

8.06.140 ADOPTION OF TREE AND SHRUBBERY REGULATIONS. The City Council may, from time to time, adopt tree and shrubbery regulations, which may be promulgated by the Tree Board, by resolution. Any regulation so adopted shall be for the exclusive purpose of providing for the care of trees and shrubs in the City and shall be deemed as mandatory for any removal, destruction, trimming, or pruning of any tree, shrub, or hedge in the City. (Ord. 1993-19)

Chapter 8.08

GARBAGE AND SOLID WASTE

Sections:

8.08.010 Definitions
8.08.020 Containers - To be provided and maintained by owner or occupant where
8.08.025 Disturbing solid waste containers
8.08.030 Deposit of waste matter in public litter barrels prohibited
8.08.040 Accumulations unlawful
8.08.050 Hauling regulations - Vehicles to be kept clean and covered
8.08.060 Compliance with provisions required - Inspection and control authority
8.08.070 Offensive matter prohibited
8.08.080 Residential Solid Waste Collection
8.08.090 Commercial Solid Waste Collection
8.08.100 Hazardous and/or Infectious Waste Disposal
8.08.110 Penalties
8.08.120 Savings Clause

8.08.010 DEFINITIONS. As used in this chapter:

A. **Agricultural Solid Waste.** Solid waste that is generated by the rearing of animals, and the producing and harvesting of crops or trees.

B. **Commercial Solid Waste.** All types of solid wastes generated by stores, offices, restaurants, warehouses, and other non-manufacturing activities, excluding residential and industrial wastes.

C. **Construction/Demolition Waste.** Waste building materials, packaging, and rubble resulting from construction, remodeling, repair, and demolition operations on pavements, houses, commercial buildings, and other structures.

D. **Hazardous Waste.** A waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form that State or federal law designates as hazardous because it is ignitable, corrosive, reactive or toxic, including, but not limited to solvent, degreasers, paint thinners, cleaning fluids, pesticides, adhesives, strong acids and alkalis and waste paints and inks.

E. **Infectious Waste.** Equipment, instruments, utensils, and formites of a disposable nature from the rooms of patients who are suspected to have or have been diagnosed as having a communicable disease and must, therefore, be isolated as required by public health agencies; 2) laboratory wastes, such as pathological specimens (e.g., all tissues, specimens of blood elements, excreta, and secretions obtained from patients or laboratory animals) and disposable formites (any substance that may harbor or transmit pathogenic organisms) attendant thereto: 3) surgical operating room pathologic specimens and disposable formites attendant thereto, and similar disposable materials from outpatient areas and emergency

rooms.

F. **Institutional Solid Waste.** Solid wastes generated by educational, health care, correctional and other institutional facilities.

G. **Public Solid Waste Receptacles.** Containers provided by the City of Fruita and placed throughout the City, primarily in the downtown area and at various parks, for disposal of incidental solid wastes generated through use of the facility and for the purpose of providing a convenient method of disposal of incidental solid waste and prevent littering of streets and sidewalks.

H. **Residential Solid Waste.** Wastes generated by the normal activities of household including, but not limited to, food wastes, rubbish, ashes, and bulky wastes. Residential solid waste shall include agricultural waste, industrial waste, infectious waste, hazardous wastes, or construction and demolition wastes.

I. **Solid Waste.** Garbage, refuse, sludges, and other discarded solid materials, including solid waste materials resulting from industrial, commercial, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluents, dissolved materials in irrigation return flows or other common water pollutants. Unless specifically noted otherwise, the term "solid waste" as used in these guidelines shall not include mining, agricultural, and industrial solid wastes; hazardous wastes; sludges, construction and demolition wastes; and infectious wastes.

(Ord. 279, S2, 1973; Ord. 249, S1, 1970; Ord. 2011-01, S3)

8.08.020 CONTAINERS - TO BE PROVIDED AND MAINTAINED BY OWNER OR OCCUPANT. Owners and occupants of property generating solid waste shall at all times maintain in a clean condition and in good order, a container(s) for solid waste.

A. Residential solid waste shall be placed in disposable plastic bags with the top securely tied or in secured containers no larger than thirty two (32) gallons. The combined weight of the contents and bag or containers shall not exceed fifty (50) pounds. The container shall be a watertight receptacle of a solid and durable grade of metal or fire resistant plastic and shall be provided with a suitable handle or handles on the outside and with a tightly fitting metal or plastic cover equipped with a handle. The container must not have anything within the container to prevent the free discharge of the contents.

B. Business establishments which have solid waste in quantities sufficient to make impractical its storage in thirty-two (32) gallon containers, shall provide other suitable means of containment so as to prevent it from being scattered along the streets and alleys. Solid waste shall be deposited in such manner as to be readily accessible to the collection crews.

C. All containers that have deteriorated to the extent of having jagged or sharp edges capable of causing injury to the collector or others whose duty it is to handle the containers or to such an

extent that the lid shall not fit tightly or securely, will be condemned by the city acting through the code enforcement officer.

(Ord. 279, S2, 1973; Ord. 249, S1, 1970; Ord. 2011-01, S3)

8.08.025 DISTURBING SOLID WASTE CONTAINERS. Any person who disturbs or scavenges the contents of containers referred to in this Chapter commits a noncriminal municipal offense. (Ord. 279, S2, 1973; Ord. 249, S1, 1970; Ord. 2011-01, S3)

8.08.030 DEPOSIT OF WASTE MATTER IN PUBLIC SOLID WASTE RECEPTACLES PROHIBITED. No person, firm or corporation shall cause or permit any waste, as those terms are defined in Section 8.08.010, accumulated on the premises occupied by such person, firm or corporation to be deposited in public solid waste receptacles. (Ord. 279, S2, 1973; Ord. 249, S1, 1970; Ord. 2011-01, S3)

8.08.040 ACCUMULATIONS UNLAWFUL. The occupant and the owner of any premises wherein any waste, as those terms are defined in Section 8.08.010, is produced or accumulated shall be jointly and severally responsible to provide for removal of waste to the degree necessary to maintain the premises in a clean and orderly condition. Allowing the accumulation of waste within or upon any private alley, yard, or area, except when it is temporarily deposited for immediate removal, is declared a public nuisance and subject to the provisions of Chapter 9.11 of this Code. (Ord. 279, S2, 1973; Ord. 249, S1, 1970; Ord. 2011-01, S3)

8.08.050 HAULING REGULATIONS - VEHICLES TO BE KEPT CLEAN AND COVERED. It is unlawful for any person to remove or carry or cause to be removed or carried, on or along the streets and alleys of the City, any garbage, rubbish or waste unless the same are located in enclosed containers or if the bulk is so great that the material cannot be enclosed, then, adequate covering is provided to prevent the material scattering from the vehicle which is hauling it. Every vehicle that hauls garbage, rubbish or waste shall be loaded so that none of it shall fall, drip or spill on the ground, and every such truck shall be kept clean, well painted and maintained. (Ord. 279, S2, 1973; Ord. 249, S1, 1970; Ord. 2011-01, S3)

8.08.060 COMPLIANCE WITH PROVISIONS REQUIRED - INSPECTION AND CONTROL AUTHORITY. All persons, firms and corporations shall at all times comply strictly with the terms and provisions of this Chapter and waste containers shall at all times be under the inspection and control of the City's code enforcement officer and the police of the City of Fruita. (Ord. 279, S2, 1973; Ord. 249, S1, 1970; Ord. 2011-01, S3)

8.08.070 OFFENSIVE MATTER PROHIBITED. It is a noncriminal municipal offense for any person to throw or deposit or cause or permit to be thrown or deposited any animal or vegetable substance, any dead animal, human body waste, garbage or other offensive matter whatsoever upon any street, avenue, alley, sidewalk or public grounds. (Ord. 279, S2, 1973; Ord. 249, S1, 1970; Ord. 2011-01, S3)

8.08.080 RESIDENTIAL SOLID WASTE COLLECTION.

A. Authority to Contract. The City by and through its duly authorized employees, its contractors or City licensed operators shall be the sole agency for the collection of residential solid waste from single family dwelling units and multi-family residences of less than eight (8) units where each dwelling unit of a multi-family residence uses an individual disposal container, and no person except such duly authorized employees of the City, its contractors or City licensed operators shall collect the same. This Section shall not be construed so as to prevent an individual resident from hauling his own waste matter providing it is disposed of properly and in conformity with all City, County and State regulations. However, such individual hauling does not relieve a resident from the payment of the monthly charge imposed in Section 8.08.080 (G) of the Fruita Municipal Code. Nothing in this Chapter shall be constructed to relieve any contractor of the obligation of cleaning up premises after completion of a contract. The authority to contract went into effect on April 5, 1983 with approval of a majority of those voting in a special election on that date.

B. Scope of Contract. The City, its contractors, or City licensed operators shall furnish weekly residential solid waste collection and disposal service as herein provided to all persons resident within the City.

C. Charges for Service - Residential. The owner or tenant or occupant of a single family dwelling unit and multi-family residences of less than eight (8) units within the City limits shall pay a monthly fee to the City in an amount established annually by resolution of the Fruita City Council for the collection and removal of residential solid waste for each single family residence or for each dwelling unit of a multi-family residence that uses an individual disposal container for each dwelling unit. The amount of said charge and the manner of billing may be changed at any time by resolution of the City Council. Any resident may be billed an additional charge to be fixed by the City Manager for picking up solid waste which does not comply with the requirements of this Section.

D. Delinquent Accounts. Collection of amounts due for residential solid waste collection services are subject to the provisions of Chapter 3.20, Uniform Collection Ordinance. The City of Fruita shall not shut off or attempt to have shut off domestic water service to any resident or residence of the City for nonpayment of residential solid waste removal charges.

E. Placing of Waste Matter for collection:

1. Any person desiring to place residential solid waste for collection shall place the containers at the front of the premises of each residential property, or at the rear of the premises where there is an alley, not later than 7:00 a.m. on those days designated by the City Manager for collection of residential solid waste in the zone in which the resident is located.

2. Containers for solid waste and recyclable materials shall not, at any time, be placed on the sidewalk or in the street or alley, or in such a manner as to impair or obstruct pedestrian, bicycle or vehicular traffic.

F. Tree Trimmings and Hedge Cuttings. Any persons desiring to place tree trimmings or hedge

cuttings for collection shall cause the same to be securely tied in bundles not heavier than fifty (50) pounds, nor more than four (4) feet in length and twelve (12) inches in diameter. Heavy tree branches, tree trunks or stumps shall not be included. (Ord. 279, S2, 1973; Ord. 249, S1, 1970; Ord. 2011-01, S3)

8.08.090 COMMERCIAL SOLID WASTE COLLECTION. The owner, tenant or occupant of any restaurant, hotel, store, office, motor court, commercial enterprise or other building with businesses (except single family dwelling units and multi-family residences of less than eight (8) units where each dwelling unit of a multi-family residence uses an individual disposal container), shall contract on an individual basis with private refuse hauling contractors and will be billed by and pay directly to said contractor. Nothing in this Chapter shall be construed as preventing a commercial establishment from hauling its own waste matter providing it is properly disposed of in conformity with all City and County regulations, but such commercial establishment shall still be subject to all other provisions of this Chapter. (Ord. 279, S2, 1973; Ord. 249, S1, 1970; Ord. 2011-01, S3)

8.08.100 HAZARDOUS AND/OR INFECTIOUS WASTE DISPOSAL. No person shall place hazardous or infectious waste in containers for collection or bury or otherwise dispose of hazardous waste in or on private or public property within the City. All hazardous and/or infectious waste shall be disposed of in accordance with County, State and Federal regulations. Residents may contact the Mesa County Solid Waste Management division for information on proper disposal of hazardous wastes. Any person who violates any of the provisions of this Section commits a Class A municipal offense. (Ord. 279, S2, 1973; Ord. 249, S1, 1970; Ord. 2011-01, S3)

8.08.110 PENALTIES. Except as otherwise provided in the Sections of this Chapter, any corporation, firm, agent or person violating any provision of this Chapter shall be deemed guilty of a noncriminal offense. Each day said violation continues shall constitute a separate offense. The failure, neglect, or refusal to pay the collection charges by any person liable therefore is hereby specifically deemed to be a violation of this Chapter and shall subject such person to the penalties herein provided. (Ord. 279, S2, 1973; Ord. 249, S1, 1970; Ord. 2011-01, S3)

8.08.120 SAVINGS CLAUSE. If any Section, subsection, paragraph, sentence or clause, or phrase of this Chapter or the application of same to any particular set of persons or circumstances should for any reason be held invalid, such invalidity shall not affect the remaining portions of this ordinance, and to such end, the various provisions of this Chapter are declared to be severable. (Ord. 279, S2, 1973; Ord. 249, S1, 1970; Ord. 2011-01, S3)

Chapter 8.12

BURNING RESTRICTIONS

Sections:

8.12.010 Limitations on burning on public property - Authorization required
8.12.020 Limitations on burning on private property - Authorization required
8.12.030 Fires prohibited when
8.12.040 Authorized fires to be attended
8.12.050 Penalties

8.12.010 LIMITATIONS ON BURNING ON PUBLIC PROPERTY - AUTHORIZATION REQUIRED. It shall be unlawful for any person to kindle or maintain any bonfire, irrigation ditch fire, or rubbish fire, or authorize any such fire to be kindled or maintained, on or in any public street, alley, road, right-of-way or other public ground, without first obtaining written authorization from the Fruita Police Department and a burning permit from the Lower Valley Fire Protection District or their designated representative. (Ord. 463, S2, 1981; Ord. 1988-4, S1)

8.12.020 LIMITATIONS ON BURNING ON PRIVATE PROPERTY - AUTHORIZATION REQUIRED. It shall be unlawful for any person to kindle or maintain any bonfire, fire which is agricultural in nature, irrigation ditch fire, or rubbish fire, or authorize any such fire to be kindled or maintained on any private land without first obtaining a burning permit from the Lower Valley Fire Protection District or their designated representative. It shall be unlawful for any fire to be kindled or maintained in any outdoor container unless the container is inspected by and its use authorized by the Lower Valley Fire Protection District or their designated representative. The burning of garbage or refuse that smolders or gives off noxious odors is prohibited. (Ord. 463, S3, 1981; Ord. 1988-4, S2)

8.12.030 FIRES PROHIBITED WHEN. The chief of the Fruita Police Department or the Lower Valley Fire Protection District may prohibit or restrict any and all outdoor fires within the city limits when atmospheric conditions or local circumstances make such fires hazardous. (Ord. 463, S4, 1981; Ord. 1988-4, S3)

8.12.040 AUTHORIZED FIRES TO BE ATTENDED. Any person obtaining authorization pursuant to this chapter must notify the Lower Valley Fire Protection District prior to commencing activities and must attend the permitted fire at all times to insure that the fire does not pose a hazard to life or property and to insure the fire is safely extinguished. Said person must have a working water hose and shovel in their possession when attending the fire in case of emergency and shall comply with any special restrictions that may be imposed by the Lower Valley Fire Protection District or the Fruita Police Department. (Ord. 463, S5, 1981; Ord. 1988-4, S4)

8.12.050 PENALTIES. It is unlawful for any person to violate any of the provisions contained in this Chapter. Any person who knowingly violates any of the provisions of this Chapter commits a Class B municipal offense. (Ord. 2000-9, S18)

Chapter 8.14

WOOD HEATING APPLIANCE REGULATIONS

Sections:

8.14.010 Definitions
8.14.020 Endorsements
8.14.030 Applicability
8.14.040 Regulations of new construction or remodel
8.14.050 Operation of non EPA certified wood stove and/or fireplace during high air pollution days
8.14.060 Exemptions sole source of heat
8.14.070 Severability
8.14.080 City of Fruita wood stove incentive replacement
8.14.090 Annual review of regulation and incentive program

8.14.010 DEFINITIONS.

A. AQI – Air Quality Index – An index for reporting daily air quality. It tells citizens how clean or polluted the air is, and what associated health effects might be a concern. The AQI focuses on health effects citizens may experience within a few hours or days after breathing polluted air. The AQI is determined by the Colorado Department of Public Health and Environment.

B. "Good" AQI – 24-hour value for AQI ranges between 0 – 50. Air quality is considered satisfactory, and air pollution poses little or no risk.

C. "Moderate" AQI – 24-hour value for AQI ranges between 51 – 100. Air quality is acceptable; however, for some pollutants there may be moderate health concern for a very small number of people. For example, people who are usually sensitive to ozone may experience respiratory symptoms.

D. "Unhealthy-for-sensitive-groups" AQI – 24-hour value for AQI ranges between 101 - 150. Although the general public is not likely to be affected at this AQI range, exposure to ozone is a greater risk for people with lung disease, older adults and children, whereas exposure to the presence of particles in the air also affects those persons with heart disease as well as other groups.

E. "Unhealthy" AQI – 24-hour value for AQI ranges between 151 – 200. Everyone may begin to experience some adverse health effects, and members of the sensitive groups may experience more serious effects.

F. "No Burn" Day – Forecast issued by the Mesa County Health Department when "Moderate," "Unhealthy-for-sensitive-groups" or "Unhealthy" AQIs are forecast, in combination with monitored PM10 and PM2.5 values and visibility conditions warrant, during the Western

Slope Air Watch season. PM10 is a standard measurement of Particulate Matter that includes particles with a diameter of 10 micrometers or less (0.0004 inches or one-seventh the width of a human hair) and affects respiratory health and visibility. PM2.5 is the standard measurement of fine particles (smaller than 2.5 micrometers in diameter) that have effects on health.

G. "Burn" Day – Forecast issued by the Mesa County Health Department when "Good" AQIs are forecast, in combination with evaluation of monitored PM10 and PM2.5 values and as visibility conditions warrant, during Western Slope Air Watch season.

H. Western Slope Air Watch season (WSAW) – The annually recurring period during which Burn/No Burn forecasts shall be issued. The period shall run from November 1st through the last day of February.

I. EPA Certified – When a wood stove or fireplace insert has been tested, certified and labeled for emissions standards in accordance with criteria and procedures specified in Colorado and Federal Air Quality Regulations as specified in Colorado Air Quality Control Commission Regulation No. 4 Section II.

J. Non-qualified Wood stove or Fireplace. A wood stove or fireplace that does not meet the City of Fruita Land Use Code or EPA Standards.

K. National Ambient Air Quality Standards (NAAQS) – Clean Air Act Standards for wide-spread pollutants from numerous and diverse sources considered harmful to public health and the environment, specifically those for PM10 and PM2.5.

(Ord. 2013-05, S1)

8.14.020 ENDORSEMENTS. The continuation of Mesa County voluntary NO-BURN Program which was established in 1990 and implemented by the Mesa County Health Department. Documentation that Mesa County is impacted by high air pollution days, with monitored PM2.5 values close to the NAAQS.

Programs which provide incentives to reduce the use of non-EPA wood burning devices.

(Ord. 2013-05, S2)

8.14.030 APPLICABILITY. This Title and Chapter shall apply to the area within the city limits of Fruita. (Ord. 2013-05, S3)

8.14.040 REGULATION OF NEW CONSTRUCTION OR REMODEL. Wood heating appliances, such as wood stoves and fireplaces, shall be installed for operation in new or remodeled structures in accordance with the Fruita Land Use Code. This Section shall be enforced by the City of Fruita and the Mesa County Building Inspector during the normal course of inspection related to building permits on new construction and remodels. (Ord. 2013-05, S4)

8.14.050 OPERATION OF NON EPA CERTIFIED WOOD HEATING APPLIANCE, WOOD STOVE AND/OR FIREPLACE DURING "NO BURN" DAYS.

A. No person shall operate any wood heating appliances as declared by the Mesa County Health Department, unless an exemption has been granted pursuant to this Chapter 8.14 Section .060 or unless such wood heating appliance is EPA Certified. It shall be the duty of all persons owning or operating a non-qualifying wood heating appliance to be aware of any declaration by the Mesa County Health Department. Any such declaration shall constitute constructive notice of the existence of a "No Burn" day and of the applicability of the Chapter. Each time a "No Burn" day is declared, four hours shall be allowed for the burn down of existing fires in non-qualifying wood heating appliances prior to the initiation of enforcement.

B. It shall be unlawful to operate any wood heating appliance during a "No Burn" day. A three-step enforcement procedure shall be followed for violations pursuant to this Section.

1. If an owner, keeper, or a member of the household over the age of 18 years has received at least one warning from the City of a complaint within twelve (12) months of being notified of the first official complaint, a person shall be deemed guilty of a non-criminal offense. Any person who violates this Chapter (8.14) upon a second or subsequent complaint within twelve (12) months of the first official complaint commits a Class B municipal offense. (Ord. 2013-05, S5)

8.14.060 EXEMPTIONS OF HEAT. The City of Fruita shall issue an exemption from the no burn requirement contained in Section 8.14.050 to the owner of a non-qualifying wood heating appliance if that device is the sole functional source of heat for the building. (Ord. 2013-05, S6)

8.14.070 SEVERABILITY. The provisions of this Title are severable. If any provision of this Title and Chapter or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Title or Chapter which can be given effect, without the invalid provisions of application. (Ord. 2013-05, S7)

8.14.080 CITY OF FRUITA WOOD HEATING APPLIANCE INCENTIVE REPLACEMENT. The City of Fruita Wood Heating Appliance Replacement Program is hereby created, consisting of, but not limited to, the following components:

A. Waiver of Planning Clearance Fees. Planning Clearance fees for qualified replacement of wood heating appliance installations may be waived by the City of Fruita.

B. Other components may be added to the Incentive Program in the future.

(Ord. 2013-05, S8)

8.14.090 ANNUAL REVIEW OF REGULATION AND INCENTIVE PROGRAM. The wood stove regulation and incentive program will be reviewed annually by the Fruita City Council to allow for revisions which insure continued air quality protection in Mesa County. (Ord. 1998-03, S1)

Chapter 8.15

TRAILERS

Sections:

8.15.010 Compliance with location requirements
8.15.020 Emergency, temporary parking on streets
8.15.030 Recreational vehicle and trailer parking

8.15.010 COMPLIANCE WITH LOCATION REQUIREMENTS. It is unlawful within the city for any person to park any trailer on any street, alley or highway, or other public place, or on any tract of land owned by any person, occupied or unoccupied, within the city, except as provided in this chapter. (Ord. 503, S3, 1981)

8.15.020 EMERGENCY, TEMPORARY PARKING ON STREETS. Emergency or temporary stopping or parking of trailers is permitted on any street, alley or highway for not longer than twelve hours subject to any other and further prohibitions, regulations and limitations imposed by traffic and parking regulations or ordinances for the street, alley or highway. Any person who violates this Section commits a noncriminal municipal offense. (Ord. 503, S4, 1981; Ord. 2000-9, S21)

8.15.030 RECREATIONAL VEHICLE AND TRAILER PARKING. No person shall park or occupy any trailer or recreational vehicle, outside of an approved recreational vehicle park, trailer park or other specifically permitted location in accordance with the provisions of the Zoning Code, except that invited overnight guests may occupy a trailer or recreational vehicle located on any tract of land owned by the person extending the invitation for a period of time not to exceed seventy-two (72) hours, and provided such use and occupancy does not violate any other ordinance. Temporary parking or occupancy shall be permitted in designated rest areas only for a period of twelve (12) hours. The parking of one unoccupied trailer or recreational vehicle in a private garage building, or in a rear yard, or in a driveway at least twenty feet from the street curb is permitted providing no living quarters shall be maintained or any business practiced in such trailer or recreational vehicle while such trailer or recreational vehicle is so parked or stored. A permit must be obtained from the Planning Department for a trailer or recreational vehicle to be used as a temporary construction office on the site of and during construction, however, sleeping or cooking shall be prohibited. Any person who violates this Section commits a noncriminal municipal offense. (Ord. 503, S5, 1981; Ord. 1989-5, S4; Ord. 1993-09, S1; Ord. 2000-9, S22)

Chapter 8.20

SMOKING PROHIBITED IN FRUITA CITY HALL EXCEPT IN THOSE AREAS DESIGNATED FOR SMOKING

Sections:

8.20.010 Legislative Intent
8.20.020 Definitions
8.20.030 Smoking at Fruita City Hall Prohibited - Designated Areas - Posting
8.20.040 Violations - Penalties

8.20.010 LEGISLATIVE INTENT. Because the smoking of tobacco or any other plant, whether such smoking is active or passive, is a danger to health and is a cause of material annoyance and discomfort to those who are present in confined areas, the City Council hereby finds, determines and declares it is necessary and conducive to the protection of the public health, safety, welfare and economic well-being to provide for the maintenance of smoke free areas of reasonable sizes and locations within Fruita City Hall in order to prevent persons from being subjected, against their wills or desires, to the discomforts and hazards associated with smoking. (Ord. 1988-1 part)

8.20.020 DEFINITIONS. As used in this Chapter:

A. Designated Smoking Area shall mean an area or areas within Fruita City Hall which the Fruita City Manager has designated as a Smoking area.

B. Fruita City Hall shall mean all buildings, rooms, structures, bathrooms, etc., known as Fruita City Hall and located at 101 West McCune, Fruita, Colorado.

C. Smoke and Smoking shall mean the smoking or carrying of a lighted pipe, lighted cigar, or lighted cigarette of any kind and includes the lighting of a pipe, cigar or cigarette of any kind.

D. Smoking Prohibited shall mean no smoking shall be allowed except in a Designated Smoking Area, or as otherwise provided by this Article.

(Ord. 1988-1 part)

8.20.030 SMOKING AT FRUITA CITY HALL PROHIBITED - DESIGNATED AREAS - POSTING. Except in Designated Smoking Areas permitted by this Chapter, there shall be no Smoking permitted at Fruita City Hall.

A. Designated Smoking Areas: The Fruita City Manager may designate a portion or portions of Fruita City Hall for a Designated Smoking Area, provided that such designation shall be in accordance with all of the terms and provisions of this chapter. The City Manager shall designate such an area so that it is not necessary for non-smokers to pass through such area to reach other non-smoking areas.

B. Prohibited Smoking Area: Smoking shall not be permitted and Smoking areas shall not be designated in those areas where Smoking is prohibited by the Fire Chief, State Statute, Ordinances, Fire Code Regulations, or other regulations of the City of Fruita. Elevators, public restrooms, waiting rooms, public meeting rooms and hallways shall in no event be Designated Smoking Areas.

C. Signs: To advise persons of the prohibition against smoking in Public Places and the availability of Designated Smoking areas, if any, appropriate signs shall be posted.

(Ord. 1988-1 part)

8.20.040 VIOLATIONS - PENALTIES. It is unlawful for any person to violate any of the provisions of this Section. Any violation of this Section constitutes a noncriminal municipal offense. (Ord. 2000-9, S23)

TITLE 9

PUBLIC PEACE, MORALS AND WELFARE

Chapters:

9.01 Public Peace, Morals and Welfare
9.02 Noise
9.03 Parks and Public Grounds
9.05 Weapons
9.08 Offenses Relating to Intoxicating Liquors and Drugs
9.10 Sale and Possession of Tobacco Products
9.11 Public Nuisances
9.12 Injury to Property
9.14 Aiding and Abetting

Chapter 9.01

PUBLIC PEACE, MORALS AND WELFARE

Sections:

9.01.001	**Abandoned iceboxes and refrigerators**
9.01.002	**Assault**
9.01.004	**Curfew hours and places applicable - Unlawful acts**
9.01.005	**Curfew parent or guardian responsibility - Unlawful acts**
9.01.006	**Permission required to deal with minors**
9.01.007	**Criminal mischief**
9.01.008	**Keeping Disorderly house**
9.01.009	**Disturbing the peace**
9.01.010	**Disorderly conduct**
9.01.011	**Emergency equipment**
9.01.012	**Exploding, blasting; permission required**
9.01.013	**False report of crime**
9.01.015	**Sale, display of merchandise**
9.01.017	**Public Indecency**
9.01.018	**Obstructing a Peace Officer, Firefighter, Emergency Medical Services Provider, Rescue Specialist, or Volunteer**
9.01.019	**Escape**
9.01.021	**Refusing to aid a Police Officer**
9.01.023	**Resisting arrest**
9.01.024	**Theft**
9.01.025	**Criminal Tampering**
9.01.026	**Throwing stones - other missiles**
9.01.027	**Criminal trespass**
9.01.028	**Meeting - public**
9.01.029	**Duty to clean sidewalks**
9.01.030	**Interference with staff, faculty or students of educational institution**
9.01.033	**Police alarms, license required**
9.01.034	**Peddling and Solicitation**
9.01.036	**Selling of merchandise**
9.01.038	**Theft of rental property**
9.01.039	**Theft by receiving**
9.01.040	**Harassment**
9.01.042	**Obstructing highway or other passageway**

9.01.001 ABANDONED ICEBOXES AND REFRIGERATORS. Any person, firm or corporation who intentionally, knowingly, negligently, or recklessly stores, maintains, abandons, or places any unused and unattended icebox or refrigerator at any place or location whatsoever within the City which is accessible to children, without first removing the door or the locking device from said icebox or refrigerator commits a Non-criminal Municipal Offense. (Ord. 2010-09, S1)

9.01.002 ASSAULT. It is unlawful for any person to intentionally, knowingly, or recklessly assault another person, beat, strike, injure or inflict bodily injury to another person, or with

criminal negligence, the person causes bodily injury to another person by means of a deadly weapon; except in an amateur or professional contest of athletic skill. "Assault" as used in this Section means an attempt, coupled with a present ability, to commit a bodily injury upon the person of another. "Bodily injury" means physical pain, illness or any impairment of physical or mental condition. Any violation of this Section shall constitute a Class A municipal offense. (Ord. 2010-09, S1)

9.01.004 CURFEW HOURS AND PLACES APPLICABLE - UNLAWFUL ACTS. Any minor under the age of 16 years who knowingly frequents, loiters, loafs or plays upon any sidewalk, street, alley, vacant or unoccupied lot or in or upon any stairways or steps of a business or unoccupied building in the City between the hours of 9:30 p.m. and 5:00 a.m. commits a Non-criminal Municipal Offense, unless such minor is accompanied by his or her parent, guardian, or other person having control and custody of such minor. (Ord. 2010-09, S1)

9.01.005 CURFEW PARENT OR GUARDIAN RESPONSIBILITY - UNLAWFUL ACTS. Any parent, guardian or any other person having custody or care of any minor under the age of 16 years who knowingly allows or permits such minor to loiter, ramble, play upon or frequent any of the streets, alleys, sidewalks or any public places of the City, within the times prohibited by Section 9.01.004 of this Chapter, commits a Non-criminal Municipal Offense, unless such parent, guardian or other person having legal care or custody of such minor accompanies the minor. (Ord. 2010-09, S1)

9.01.006 PERMISSION REQUIRED TO DEAL WITH MINORS. Any person, firm or corporation licensed as a pawnshop, junk dealer or secondhand dealer who knowingly buys, purchases, exchanges, stores or handles any article of merchandise from a minor child without the written authorization for such sale or exchange of such merchandise from the parents or guardian of such minor commits a Class A municipal offense. (Ord. 2010-09, S1)

9.01.007 CRIMINAL MISCHIEF.

A. Any person who intentionally, knowingly, negligently, or recklessly damages, injures, defaces, destroys, removes; or causes, aids in, or permits the damaging, injuring, defacing, destruction or removal of real property or improvements thereto, or moveable or personal property of another in the course of a single criminal episode when the aggregate damage to the real or personal property is less than $1,000.00 commits a Class A Municipal Offense.

B. For the purposes of this Section, property shall be deemed to be injured or damaged when physical effort or the expenditure of monies is required to restore the property to its previous condition.

C. For the purposes of this Section, property shall be deemed to belong to "another" if anyone other than the Defendant has a possessory or proprietary interest therein.

(Ord. 2010-09, S1)

9.01.008 KEEPING DISORDERLY HOUSE. It shall be unlawful for any person to knowingly, intentionally, or recklessly keep any disorderly house, which term is defined as any structure and/or adjoining property or both which is used, owned, kept or controlled by such

person within this City or within which any drinking of alcohol by a person under the age of twenty-one (21), use of unlawful controlled substances, quarreling, fighting or riotous or disorderly conduct is permitted, allowed, occasioned, encouraged or suffered commits a Class A municipal offense. (Ord. 2010-09, S1)

9.01.009 DISTURBING THE PEACE.

A. A person commits disturbing the peace if he or she:

1. Causes to be produced or permits unreasonably loud or unusual noises which seriously inconvenience other persons in the area, including, but not limited to, the use of televisions, radios, phonographs and amplifiers.

2. Permits another to commit an act of disturbing the peace as described in this section in or upon any premises owned, possessed or under his management or control when it is in his power to prevent such an act.

B. Any person who knowingly violates any of the provisions of this Section, on the first offense, commits a non-criminal municipal offense. Any person, who knowingly violates any of the provisions of this Section a second time or any subsequent offenses, commits a Class B Municipal Offense.

(Ord. 2010-09, S1; Ord. 2015-06)

9.01.010 DISORDERLY CONDUCT. Any person who commits disorderly conduct as described in this Section commits a Class A Municipal Offense. A person commits disorderly conduct if he or she intentionally, knowingly or recklessly:

A. Makes a coarse and obviously offensive utterance, gesture or display in a public place, and the utterance, gesture or display by its very nature tends to incite an immediate breach of the peace.

B. Fights with another in a public place.

C. Without authorization, alters or befouls public property or the property of another so as to create a hazardous, unhealthy or physically offensive condition.

D. Causes the likelihood or harm or serious inconvenience by failing to obey any lawful order or command for dispersal by a police officer or firefighter where either three or more persons are committing disorderly conduct, or in the immediate vicinity of firefighter operations being conducted.

E. Urinates in public.

(Ord. 2010-09, S1)

9.01.011 EMERGENCY EQUIPMENT. It shall be unlawful for any person to carry or use upon any vehicle other than Fire Department, Police Department, Ambulance, or other duly authorized emergency or maintenance vehicles, any siren, whistle or red and/or blue lights

similar to that used on official Police Department or Fire Protection District vehicles of this city or any other law enforcement agency or fire department of the State. Any person who violates this Section commits a Class A Municipal Offense. (Ord. 2010-09, S1)

9.01.012 EXPLODING, BLASTING; PERMISSION REQUIRED. It shall be unlawful for any person within this city to explode or set off any explosive material without permission in writing from the City Manager, which permission shall limit the time and place of such firing and shall be subject to be revoked by the City Council at any time, provided the content of this section shall not be construed to apply to the firing of nail or staple guns used in the construction trade or law enforcement officers in the lawful discharge of their duties. Any person who violates this Section commits a Class A Municipal Offense. (Ord. 2010-09, S1)

9.01.013 FALSE REPORT OF A CRIME. A person commits the Class A Municipal Offense of False Reporting to Authorities, if:

A. He knowingly causes a false alarm of fire or other emergency to transmitted to or within an official or volunteer fire department, ambulance service, or any other governmental agency which deals with emergencies involving danger to life or property; or

B. He makes a report or knowingly causes the transmission of a report to law enforcement authorities of a crime or other incident within their official concern when he knows it did not occur; or

C. He or she makes a report or knowingly causes the transmission of a report to law enforcement authorities pretending to furnish information relating to an offense or other incident within their official concern when he or she knows that he or she has no such information or knows that the information is false.

D. He or she knowingly provides false identifying information to law enforcement authorities.

For the purpose of this section, "identifying information" means a person's name, address, birth date, social security number, or driver's license or Colorado identification number.

(Ord. 2010-09, S1)

9.01.015 SALE, DISPLAY OF MERCHANDISE. It shall be unlawful for any person, firm or corporation to place in or upon any public sidewalk, street, alley or public right-of-way any sign, advertisement or any article of merchandise offered, exhibited or advertised for sale or any other thing tending to interfere, obstruct, or encroach upon the use of such public sidewalk, street, alley, or public right-of-way or which renders same less commodious or convenient for public use, except when directed by the City Council that such display or sale of merchandise or any other thing may be permitted as a part of a coordinated promotional effort involving a majority of the retail business establishments in the immediate shopping area and display and/or sale of merchandise on a public right-of-way is prohibited except that, when directed by the City Council, such display or sale may be permitted for a maximum of seven days when proposed and conducted as a part of a coordinated promotional effort involving a majority of the retail business establishments within the city. Any person who violates this Section commits a Non-criminal Municipal Offense.

(Ord. 2010-09, S1)

9.01.017 PUBLIC INDECENCY. It shall be unlawful to commit a lewd or indecent act in the city. Any person who performs any of the following in a public place or where the conduct may reasonably be expected to be viewed by members of the public; in which such conduct is likely to cause affront or alarm to the other person violates this ordinance. Any person who violates any subsection below of this Section commits a Class A Municipal Offense.

A. An act of sexual intercourse; or

B. An act of deviate sexual intercourse; or

C. A lewd exposure of the body, done with the intent to arouse or to satisfy the sexual desire of any person; or

D. A lewd fondling or caress of one's own body or of the body of another person; or

E. Intentional exposure of the external genitalia or the perineum or the anus or the buttocks the pubes or the breast of any person to the view of any person; or

F. Aids, suffers or permits in the doing of any of the herein above described offenses.

G. "Public masturbation" defined as the real or simulated touching, rubbing, or otherwise stimulating of a person's own genitals or pubic area for the purpose of sexual gratification or arousal of the person, regardless of whether the genitals or pubic area is exposed or covered.

(Ord. 2010-09, S1)

9.01.018 OBSTRUCTING A PEACE OFFICER, FIREFIGHTER, EMERGENCY MEDICAL SERVICES PROVIDER, RESCUE SPECIALIST, OR VOLUNTEER.

A. A person commits obstructing a peace officer, firefighter, emergency medical services provider, rescue specialist, or volunteer when, by using or threatening to use violence, force, physical interference, or an obstacle, such person knowingly obstructs, impairs, or hinders the enforcement of the penal law or the preservation of the peace by a peace officer, acting under color of his or her official authority; knowingly obstructs, impairs, or hinders the prevention, control, or abatement of fire by a firefighter, acting under the color of his or her official authority; knowingly obstructs, impairs, or hinder the administration of medical treatment or emergency assistance by an emergency medical service provider or rescue specialist, acting under color of his or her official authority; or knowingly obstructs, impairs, or hinders the administration of emergency care or emergency assistance by a volunteer, acting in good faith to render such care or assistance without compensation at the place of an emergency or accident.

B. To assure that animals used in law enforcement or fire prevention activities are protected from harm, a person commits obstructing a peace officer or firefighter when, by using or threatening to use violence, force, physical interference, or an obstacle, he or she knowingly obstructs, impairs, or hinders any such animal.

C. It is no defense to a prosecution under this section that the peace officer was acting in an illegal manner, if he was acting under color of his official authority as defined in the in section 18-8-103 (2) of the Colorado Revised Statutes.

D. A violation of the sections above is a Class A Municipal Offense.

E. For the purposes of this section, unless the context otherwise requires:

1. "Emergency medical service provider" means a member of a public or private emergency medical service agency, whether that person is a volunteer or receives compensation for services rendered as such emergency medical service provider.

2. "Rescue Specialist" means a member of a public or private rescue agency, whether that person is a volunteer or receives compensation for services rendered as such rescue specialist.

3. "Peace officer" means any police officer in uniform, or if out of uniform, one who has identified himself by exhibiting his credentials as a member of the police department to the actor, or one whom the actor knew was a City peace officer at the time of the alleged offense.

(Ord. 2010-09, S1)

9.01.019 ESCAPE. Any person in the custody of a police officer or a person duly empowered with police authority who knowingly escapes or attempts to escape from such custody commits a Class A Municipal Offense. (Ord. 2010-09, S1)

9.01.021 REFUSING TO AID A PEACE OFFICER. A person, 18 years of age or older, commits a Class A Municipal Offense when, upon command by a person known to him to be a peace officer, he unreasonably refuses or fails to aid the peace officer in effecting or securing an arrest or preventing the commission by another of any offense. (Ord. 2010-09, S1)

9.01.023 RESISTING ARREST.

A. A person commits resisting arrest if he or she knowingly prevents or attempts to prevent a peace officer, acting under color of his or her official authority, from affecting an arrest of the actor or another, by:

1. Using or threatening to use physical force or violence against the peace officer or another; or

2. Using any other means which creates a substantial risk of causing bodily injury to the peace officer or another.

B. It is no defense to a prosecution under this section that the peace officer was attempting to make an arrest which, in fact was unlawful, if they were acting under color of their official authority, and in attempting to make the arrest they were not resorting to unreasonable or excessive force giving rise to the right of self-defense. A peace officer acts "under color of his official authority" when, in the regular course of assigned duties,

they are called upon to make, and does make, a judgment in good faith based upon surrounding facts and circumstances that an arrest should be made by them.

C. The term "peace officer" as used in this section means a peace officer in uniform or, if out of uniform, who has identified themselves by exhibiting their credentials as such peace officer to the person whose arrest is attempted.

D. Any person who violates this Section commits a Class A Municipal Offense.

(Ord. 2010-09, S1)

9.01.024 THEFT.

A. A person commits theft when he or she knowingly obtains or exercises control over anything of value of another without authorization or by threat or deception, and:

1. Intends to deprive the other person permanently of the use or benefit of the thing of value; or
2. Knowingly uses, conceals, or abandons a thing of value in such a manner as to deprive the other person permanently of its use or benefit; or
3. Uses, conceals, or abandons a thing of value and intending that such use, concealment, or abandonment will deprive the other person permanently of its use and benefit; or
4. Demands any consideration to which he is not legally entitled as a condition of restoring the thing of value to the other person; or

5. Any person who knowingly transfers a label or other designation of price from one item to another or who alters the same with intent to purchase such item at a lesser cost.

B. For the purposes of this subsection, a thing of value is that of "another" if anyone other than the Defendant has a possessory or proprietary interest therein.

C. Theft is a Class A Municipal Offense if the value of the thing involved is less than $1,000.00.

For the purposes of this subsection, evidence of the retail value of the thing involved shall be prima facie evidence of the value of the thing involved. Evidence offered to prove retail value may include, but shall not be limited to, affixed labels and tags, signs, shelf tags, and notices. In addition, if any person willfully conceals unpurchased goods, wares or merchandise owned or held by and offered or displayed for sale by any store or other mercantile establishment, whether the concealment be on his or her own person or otherwise and whether on or off the premises of said store or mercantile establishment, such concealment shall constitute prima facie evidence that the person intended to commit the crime of theft.

(Ord. 2010-09, S1)

9.01.025 CRIMINAL TAMPERING. A person commits the crime of criminal tampering if, with intent:

A. To cause interruption or impairment of a service rendered to the public by a utility or by an institution providing health or safety protection, he or she tampers with property of a utility or institution; or

B. If he or she tampers with property of another with intent to cause injury, inconvenience, or annoyance to that person or to another or if they knowingly make an unauthorized connection with property of a utility; or

C. Connects any pipe, tube, stopcock, wire, cord, socket, motor, or other instrument or contrivance with any main, service pipe, or other medium conducting or supplying gas, water, or electricity to any building without the knowledge and consent of the person supplying such gas, water, or electricity; or

D. In a manner alters, obstructs, or interferes with the action of any meter provided for measuring or registering the quantity of gas, water, or electricity passing through said meter without the knowledge and consent of the person owning said meter.

Nothing in this section shall be construed to apply to any licensed electrical or plumbing contractor while in performing usual and ordinary services in accordance with recognized customs and standards. Violations of this Section shall constitute a Class A Municipal Offense.

(Ord. 2010-09, S1)

9.01.026 THROWING STONES - OTHER MISSILES. It is unlawful for any person to knowingly throw, shoot or project any stone or other missile at:

A. Any person or animal, in such a manner as may cause injury or damage, or

B. A building or other public or private property of another without the consent of the owner whether occupied or unoccupied, or

C. At a vehicle, whether moving or not.

D. A person who commits a violation of this section commits a Class A Municipal Offense.

(Ord. 2010-09, S1)

9.01.027 CRIMINAL TRESPASS. A person commits a Class A Municipal Offense of criminal trespass if he or she intentionally, knowingly, or willfully:

A. Unlawfully enters or remains in or upon the commons area of a hotel, motel, condominium, business, school, or apartment building; or

B. Unlawfully enters or remains in a premise or motor vehicle of another; or

C. Unlawfully enters or remains in or upon the premises of another which are enclosed in a manner designed to exclude intruders or are fenced; or

D. As used in this Section, “premises” means real property, buildings, and other improvements thereon, and the steams banks and beds of any nonnavigable fresh water

streams flowing through such real property.

E. A person "Unlawfully enters or remains in" or upon "premises" when he or she is not licensed, invited, or otherwise privileged to do so. A person who, regardless of his or her intent, enters or remains in or upon premises which are at the time open to the public does so with license or privilege unless he or she defies a lawful order not to enter or remain, personally communicated to him or her by the owner of the premises or some other authorized person in charge or control thereof. License or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to remain in that part of the building which is not open to the public. A person who enters or remains upon unimproved and apparently unused land which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders does so with license and privilege unless notice against trespass is personally communicated to him or her by the owner of the land or some other authorized person, or notice forbidding entry is given by posting with signs at intervals not more than 440 yards or, if there is readily identifiable entrance to the land by posting with signs at such entrance to the private land or the forbidden part of the land.

(Ord. 2010-09, S1)

9.01.028 MEETING - PUBLIC. It shall be unlawful to hold any outdoor meeting on public property, to which more than ten persons are expected, invited or permitted to attend and addressed by one or more speakers, or conduct a processional parade unless a permit for such event has been issued by the city. Applications for said permit shall be made to the City Manager or his designated agent at least five (5) days prior to the event with a copy sent to the Lower Valley Fire Department, Police Department, Parks and Recreation Department, and Public Works Department and shall contain the following information:

A. A description of the event.

B. The day and hour of the event.

C. Location of the event. Should the event be a parade, the designated route for a parade in the city of Fruita shall be established by the Chief of Police.

D. A reasonable and good faith approximation of the number of persons expected to attend the event.

E. A reasonable and good faith approximation of the number and types of units expected to participate in the parade.

F. The name and addresses of the person(s) sponsoring the event.

Upon compliance with this section, a permit shall be issued by the City Manager or his agent. Any person who knowingly violates this Section commits a Class B Municipal Offense.
(Ord. 2010-09, S1)

9.01.029 DUTY TO CLEAN SIDEWALKS. The owner, or his agent, or the occupant of any premises or property in the city shall maintain those sidewalks adjoining such premises or property in a condition free from snow, ice, mud, dirt, rubbish and filth. Any accumulation of

snow and ice shall be removed from such sidewalk into the street within twenty-four (24) hours after every snowfall. Any person who violates this Section commits a Non-criminal Municipal Offense. (Ord. 2010-09, S1)

9.01.030 INTERFERENCE WITH STAFF, FACULTY OR STUDENTS OF EDUCATIONAL INSTITUTION.

A. No person shall, on or near the premises or facilities of any educational institution, willfully deny to students, school officials, employees, and invitees:

1. Lawful freedom of movement on the premises;

2. Lawful use of the property or facilities of the institution;

3. The right of lawful ingress and egress to the institution's physical facilities.

C. No person shall, on the premises of any educational institution or at or in any building or other facility being used by any educational institution, knowingly interfere or impede the staff or faculty of such institution in the lawful performance of their duties or knowingly interfere or impede a student of the institution in the lawful pursuit of his or her education or activities.

D. No person shall willfully refuse or fail to leave the property of or any building or other facility used by any educational institution upon being requested to do so by the chief administrative officer, his designee charged with maintaining order on the school premises and in its facilities, if such person is committing, threatens to commit, or incites others to commit any act which would disrupt, impair, interfere with or obstruct the lawful missions, processes, procedures, or functions of the institution.

E. A person shall not knowingly make or convey to another person a credible threat to cause death or to cause bodily injury with a deadly weapon against:

1. A person the actor knows or believes to be a student, school official, or employee of an educational institution; or

2. An invitee who is on the premises of an educational institution.

For the purposes of this subsection (D), "credible threat" means a threat or physical action that would cause a reasonable person to be in fear of bodily injury with a deadly weapon or death.

E. Any violation of this Section constitutes a Class A Municipal Offense.

F. It shall be an affirmative defense that the defendant was exercising his right to lawful assembly and peaceful and orderly petition for the redress of grievances, including any labor dispute between an educational institution and its employees, any contractor or subcontractor, or any employee thereof.

(Ord. 2010-09, S1)

9.01.033 POLICE ALARMS, LICENSE REQUIRED. It shall be unlawful for any person, firm or corporation to install or maintain police alarm systems in the city of Fruita without having obtained a license to do so. Nothing in this section shall be construed to apply to persons, firms or corporations that sell but neither install nor maintain alarm systems, or to individuals who either purchase and install their own systems or design and install their own systems. Any person who violates this Section commits a Non-criminal Municipal Offense. (Ord. 2010-09, S1)

9.01.034 PEDDLING AND SOLICITATION.

A . Definitions. Words used in this Section shall have the following meanings ascribed to them:

1. A "peddler" is any individual, whether a resident of the City or not, who engages in the itinerant or transient sale or bartering of any goods, merchandise or services directly to the consuming public, whether or not the goods, merchandise or services are actually delivered at the time of sales. A peddler engages in such activities as selling from place to place, from house to house, or from street to street, hawking of items at public events, and selling or canvassing by means of carrying goods or samples around from place to place in order to encounter consumers who will purchase or order the goods.

2. "Peddling" includes all activities ordinarily performed by a peddler but does not include the following:

    a. Any sales efforts by telephone, mail, or electronic media where there is no face to face encounter with the purchaser at the time of sale, delivery or provision of goods, merchandise or services;

    b. Any sales by sales persons selling goods or merchandise or providing services exclusively to commercial, industrial or business accounts;

    c. Newspaper and magazine sales;

    d. The sale of food by food peddlers or operators of mobile food units including push carts;

    e. Sales from push carts and similar vending devices located in public rights-of-way;

    f. Sales from a stationary but temporary source, such as a road side fruit stand, located totally upon private property, to the extent such activities are permitted and regulated under the City's Land Use Code contained in Title 17 of the Fruita Municipal Code; and

    g. Sales in City parks to the extent such activities are permitted.

3. A "solicitor" is any person, whether resident of the City or not, traveling either by foot or vehicle or any other type of conveyance, from place to place, or from house to house, or from street to street, taking or attempting to take orders for the sale of goods, wares, merchandise or personal property of any nature whatsoever for future delivery or for services to be performed or furnished in the future, whether or not such person has, carries or exposes for sale a sample of the subject of such sale or whether he is collecting

advance payments on such sale or not.

B. Business License and Sales Tax License-Required. A. Any peddler or solicitor working either individually or for a corporation, partnership or other legally recognized organization shall individually obtain a business license pursuant to Chapter 5.4 of the Fruita Municipal Code and sales tax license if required under Section 3.12 of the Fruita Municipal Code.

1. The following types of organizations and individuals selling goods, merchandise or services on their behalf are not required to obtain a license but shall otherwise comply with the applicable requirements of this Section:

    a. State and local governmental departments, agencies and subdivisions, including public schools;

    b. State accredited private schools and academies;

    c. Charitable, civic, patriotic, religious, educational, recreational, fraternal or cultural organizations which are tax exempt pursuant to Section 501(C) of the Internal Revenue Code as amended; and

    d. Person promoting a political candidate, political party, or ballot issue.

C. Prohibited Activities. It shall be unlawful for any peddler or a solicitor to:

1. Make any false statement of misrepresentation of fact, or otherwise engage in fraud, in the course of carrying out the activities permitted under this Section, or to fail to fulfill the obligations and representations which the peddler or solicitor makes to a consumer.

2. In peddling any goods, merchandise or services to be delivered or provided at a future date, refuse or fail to give to a purchaser at the time of sale a written and signed receipt which shall accurately set forth name, address and telephone number of the peddler or solicitor; a brief description of the goods, merchandise or services to be delivered or provided; the anticipated date and manner of delivery or provision of such goods, merchandise or services; the amount paid by the consumer; the balance due on purchases; and the terms or any payment;

3. Fail or refuse to leave peacefully private property immediately when told to do so by the land owner, the land owner's agent or representative, or the occupant of the premises, or to attempt to solicit business at any place which maintains a sign or other visible and legible indication that such solicitation of business is not desired or is prohibited, unless the permission of the owner, agent, representative or occupant of the premises has been previously obtained;

4. Engage in door-to-door sales at residences from a half hour after sunset until 8:00 a.m. the next day; or

5. Obstruct, impede or otherwise interfere with the public's use of public streets, sidewalks, ways or places, other than as authorized by other provisions of the Fruita Municipal Code.

D. Juvenile Peddlers and Solicitors.

1. No person under the age of eighteen (18) years of age shall be permitted to engage in peddling or soliciting except as provided in this subsection. Except as provided in subsection (B) above, pursuant to Section 5.04 of the Fruita Municipal Code a business license shall be obtained by a sponsoring person, company or organization for the conduct of any peddling or soliciting business involving, in whole or in part, a sales force of one (1) or more persons under eighteen (18) years of age. Any person eighteen (18) years of age or older peddling or soliciting for a sponsor shall obtain an individual business license as provided in subsection (B) above. The sponsor shall be responsible for supervising and controlling the conduct of all persons, including juveniles, peddling under the sponsor's license. This responsibility shall extend to the prohibited activities set forth in subsection (C) above. The sponsor shall maintain visual contact with all juveniles at all times sponsored juveniles are peddling or soliciting.

2. The sponsor shall be limited to peddling or soliciting, through its sales force, food products, such as candies and snacks, which are pre-packaged by the manufacturer and not requiring refrigeration; inexpensive household and novelty items; items hand crafted or prepared by members or beneficiaries of the sponsor.

3. Peddling or soliciting under this subsection shall be limited to between the hours of 3:00 p.m. and one half (1/2) hour after sunset on school days, as scheduled by the School District. During any other time of the year, peddling or soliciting under this Section shall be limited to the hours set forth subsection (C) above.

4. No juvenile under the age of twelve (12) shall be permitted to engage in peddling or soliciting unless accompanied by his or her parent or guardian.

E. Enforcement and Penalties. Any person, firm, association or corporation knowingly violating any of the provisions of this Section commits a Class A municipal offense. Such person, firm, association or corporation shall be guilty of a separate offense for each and every day during any portion of which a violation of this Section is committed or continued.

(Ord. 2015-16, S1)

9.01.036 SELLING OF MERCHANDISE.

A. It shall be unlawful for any person, firm or corporation to sell or offer for sale merchandise except from a permanent structure which complies with all building ordinances and codes applicable to such structure at a fixed location on premises appropriately zoned to retail sales to which the seller has the right of occupancy by ownership, lease or signed permit. Goods may be displayed or merchandised from other than the primary approved facility so long as the goods remain on the premises of the primary approved facility to which the seller has the right of occupancy and which is zoned for such sales.

B. Sales from a non-permanent structure may be authorized by the City Manager for a period not to exceed seven days. Such sales will still be subject to the sales licensing

requirements of the city.

C. Any person who violates any of the provisions of this Section commits a Non-criminal Municipal Offense.

(Ord. 2010-09, S1)

9.01.038 THEFT OF RENTAL PROPERTY. It shall be unlawful to commit theft of rental property in the City of Fruita. A person commits theft of rental property when he or she:

A. Obtains the temporary use of personal property of another, which is available only for hire, by means of threat or deception or knowing that such use is without the consent of the person providing the personal property; or

B. Having lawfully obtained possession for temporary use of the personal property of another which is available only for hire, knowingly fails to reveal the whereabouts of or to return the property to the owner thereof or his or her representative or to the person from whom he or she has received it within seventy-two (72) hours after the time at which he or she agreed to return it.

C. Theft of rental property is a Class A Municipal Offense where the value of the property is less than one thousand dollars ($1,000.00).

(Ord. 2010-09, S1)

9.01.039 THEFT BY RECEIVING. A person commits theft by receiving when he receives, retains, loans money by pawn or pledge on, or disposes of anything of value of another, knowing or believing that said thing of value has been stolen, and when he intends to deprive the lawful owner permanently of the use or benefit of the thing of value. Where the value of the thing involved is less than $1,000.00, theft by receiving is a Class A Municipal Offense. (Ord. 2010-09, S1)

9.01.040 HARASSMENT. It shall be unlawful to commit harassment in the City of Fruita.

A. A person commits harassment if, with intent to harass, annoy or alarm another person, he or she:

1. Strikes, shoves, kicks or otherwise touches a person or subjects him or her to physical contact; or

2. In a public place directs obscene language or makes an obscene gesture to or at another person; or

3. Follows a person in or about a public place or solicits them to take rides in automobiles; or

4. Initiates communication with a person, anonymously or otherwise by telephone, telephone network, data network, text message, instant message, computer, computer network or computer system in a manner intended to harass or threaten

bodily injury or property damage, or makes any comment, request, suggestion or proposal by telephone, computer, computer network, or computer system that is obscene; or

5. Makes a telephone call or causes a telephone to ring repeatedly, whether or not a conversation ensues, with no purpose of legitimate conversation; or

6. Makes repeated communications at inconvenient hours that invade the privacy of another and interfere in the use and enjoyment of another's home or private residence or other private property; or

7. Repeatedly insults, taunts, challenges, or makes communications in offensively coarse language to, another in a manner likely to provoke a violent or disorderly response.

B. As used in this section, unless the context otherwise requires, "obscene" means a patently offensive description of ultimate sexual acts or solicitation to commit ultimate sexual acts, whether or not said ultimate sexual acts are normal or perverted, actual or simulated, including masturbation, cunnilingus, fellatio, anilingus or excretory functions.

C. Any act prohibited by subparagraph A-4 above may be deemed to have occurred or to have been committed at the place at which the telephone call, electronic mail, or other electronic communication was either made or received.

D. Any person who violates this Section commits a Class A Municipal Offense.

(Ord. 2010-09, S1)

9.01.042 OBSTRUCTING HIGHWAY OR OTHER PASSAGEWAY. An individual, corporation or business commits an offense if without legal privilege such individual, corporation or business intentionally, knowingly, or recklessly:

A. Obstructs a highway, street, sidewalk, railway, waterway, building entrance, elevator, aisle, stairway, or hallway to which the public or a substantial group of the public has access or any other place used for the passage of persons, vehicles, or conveyances, whether the obstruction arises from his acts alone or from his acts and the acts of others; or

B. Disobeys a reasonable request or order to move issued by a person the individual, corporation or business knows to be a peace officer, a firefighter, or a person with authority to control the use of the premises, to prevent obstruction of a highway or passageway or to maintain public safety by dispersing those gathered in dangerous proximity to a fire, riot, or other hazard.

C. Obstructs the entrance into, or exit from, a funeral or funeral site, or knowingly obstructs a highway or other passageway where a funeral procession is taking place.

D. If a person requested or ordered by a police officer to move in accordance with the above subsections of this section does not leave the area and moves elsewhere thereafter either alone or with others so as to again cause an obstruction of a highway, street, sidewalk,

railway, waterway, building entrance, elevator, aisle, stairway, or hallway to which the public or a substantial group of the public has access or any other place used for the passage of persons, vehicles, or conveyances commits a violation of the applicable subsection(s) of this section without further request or order by the police officer to move.

E. For the purpose of this section:

1. "Obstruct" means to render impassable or to render passage unreasonably inconvenient or hazardous.

2. "Funeral" means the ceremonies, rituals, and memorial services held in connection with the burial, cremation, or memorial of a deceased person, including the assembly and dispersal of the mourners.

3. "Funeral site" means a church, synagogue, mosque, funeral home, mortuary, cemetery, gravesite, mausoleum, or other place where a funeral is conducted.

F. A violation of any subsection of this section is a Class A Municipal Offense.

(Ord. 2010-09, S1)

Chapter 9.02

NOISE

Sections:

9.02.001 Unnecessary and unusually loud noise
9.02.002 Use of sound amplification devices

9.02.001 UNNECESSARY AND UNUSUALLY LOUD NOISE.

A. Prohibition during certain hours. It shall be unlawful for any person to make, continue or cause to be made or continued any unnecessary, unusually loud or unusual noise between the hours of nine o'clock (9:00) p.m. and six o'clock (6:00) a.m., which either annoys, injures or endangers the comfort, repose, health or safety of other persons. For the purpose of this ordinance, a member of the Police Department of the City of Fruita is empowered to make a prima facie determination whether such noise constitutes a public nuisance.

B. Near schools and hospitals. It shall be unlawful for any person by himself or in the operation of any instrument, machine or vehicle to make any unnecessary noise within one hundred fifty feet (150') of any hospital or other institution reserved for the sick, or any school during school hours.

C. Exemptions. Persons actively engaged in lawful employment or other lawful pursuits in the area described in subsection (B) of this section, shall be exempt from the provisions of this section.

D. Excessive noise. No person operating or occupying a motor vehicle on any street, highway, alley, parking lot, or driveway, either public or private property, shall operate or permit the operation of any sound amplification system, including but not limited to, any radio, tape player, compact disc player, loud speaker, or any other electrical devise used for the amplification of sound from within the motor vehicle so that the sound is plainly audible.

1. For the purpose of this section, “plainly audible” means any sound which clearly can be heard, by unimpaired auditory senses based on a direct line of sight of fifty (50) or more feet, however, words or phrases need not be discernable and said sound shall include bass reverberation.

2. Prohibitions contained in this section shall not be applicable to emergency or public safety vehicles, vehicles owned and operated by the City or any utility company, for sound emitted unavoidably during job-related operation, or any motor vehicle used in an authorized public activity for which a permit has been granted by the appropriate agency of the City.

E. Any person who knowingly violates any of the provisions of this Section, on the first offense, commits a non-criminal municipal offense. Any person who knowingly violates

any of the provisions of this Section a second time, or any subsequent offenses, commits a Class B Municipal Offense.

(Ord. 2010-09, S2; Ord. 2015-07)

9.02.002 USE OF SOUND AMPLIFICATION DEVICES.

A. License required. It shall be unlawful to maintain or operate any loud speaker or amplifier connected with any radio, phonograph, microphone, or other device by which sounds are magnified and made heard over any public street or public place without having first secured a permit therefor.

B. Fee. The fee for licenses to be granted under this chapter shall be as established by a resolution of the City Council. The payment of the designated fees shall be for each day of usage of the equipment, as specified in the permit.

C. Application. Any person, firm or corporation desiring a license for the use or operation of such device, shall file an application therefor with the City Clerk, upon a form provided by him, setting forth the name and address of the applicant, the name of the owner of such device, the date upon which it is intended to be used, and such other information as may be prescribed.

D. Issuance of License. Such license shall be issued upon the payment of a license fee, as above provided, to the City Clerk, and shall permit the use of such device subject to reasonable terms and conditions only upon the date(s) specified on such license and no other.

F. EXCLUSIONS. This section shall not apply to radios in homes or in private vehicles, when the same are operated in such manner as not to be audible at a distance of fifty feet from such vehicle, nor to noise devices, bands, or other musical devices used in any public parade, procession or Special Event which is operated under a permit issued by the City.

Any person who violates any of the provisions of this Section commits a Non-criminal Municipal Offense.

(Ord. 2010-09, S2; Ord. 2015-09, S1)

Chapter 9.03

PARKS AND PUBLIC GROUNDS

Sections:

9.03.001 Parks and public grounds; Requirements concerning use of grounds and facilities
9.03.002 Parks and public grounds, prohibited acts
9.03.003 Hours of operation
9.03.004 Required permit – group activity
9.03.005 Other regulations
9.03.006 Swimming pool rates
9.03.007 Violation – Penalty

9.03.001 PARKS AND PUBLIC GROUNDS; REQUIREMENTS CONCERNING USE OF GROUNDS AND FACILITIES. Each person, firm or organization using city parks, public parks, or other public grounds shall confine all fires only to fireplaces provided, shall clean up all debris, extinguish all fires when such fires are permitted, and leave the premises in good order, and the facilities in a neat and sanitary condition. Any person who violates this Section commits a Class A Municipal Offense. (Ord. 2010-09, S3)

9.03.002 PARKS AND PUBLIC GROUNDS, PROHIBITED ACTS. It is unlawful for any person, firm or organization using city parks, trails, open spaces, greenways, right of ways, easement areas or any other property owned, maintained and/or controlled by the City to either perform or permit to be performed any of the following acts:

A. Willfully mark, deface, disfigure, injure, tamper with, or displace or remove any building, bridges, tables, benches, fireplaces, railing, paving or paving material, waterlines or other public utilities or parts or appurtenance thereof, signs, notices or placards whether temporary or permanent monuments, stakes, posts, or other boundary markers, or other structures or equipment, facilities or park property or appurtenance whatsoever, either real or personal;

B. Throw, discharge, or otherwise place or cause to be placed in the waters of any fountain, pond, lake, stream, tributary, storm sewer, or drain flowing into such waters, any substance, matter or thing, liquid or solid, which will or may result in the pollution of said waters;

C. Bring in or dump, deposit or leave any bottles, broken glass, ashes, paper, boxes, cans, dirt, rubbish, waste, garbage, refuse, or other trash. No such refuse or trash shall be placed in any waters in or contiguous to any parks, or left anywhere on the grounds thereof, but shall be placed in the proper receptacles where these are provided. Where receptacles are not so provided, all such rubbish or waste shall be carried away from the park by the person responsible for its presence, and properly disposed of elsewhere.

D. Violate any rule for the use of the park;

E. Prevent any person from using any park, or any of its facilities, or interfere with such use in compliance with this chapter and the rules applicable to such use;

F. Swim, bathe, or wade in any waters or waterway in or adjacent to any park, except in such waters and at such places as are provided therefor, and in compliance with such regulations as are set forth in this chapter or may be hereafter adopted.

G. Serve or consume beverages from glass containers.

H. Occupying a park or public grounds for other than their primary purposes. Pitching tents or parking trailers or other camping equipment except in places provided for such services

I. Any person who knowingly violates subsection (A) - (H) of this Section commits a Class B Municipal Offense.

(Ord. 2010-09, S3; Ord. 2014-05, S1)

9.03.003 HOURS OF OPERATION. City parks, exclusive of the swimming pool, shall be opened daily to the public during the hours of six a.m. to eleven p.m. of any one day; and it shall be unlawful for any person, or persons, other than city personal conducting city business therein, to occupy or be present in said park during any hours in which the park is not open to the public by the City Manager or Police Chief in the City Managers absence, at any time and for any interval of time, either temporarily or at regular or stated intervals. Hours for public swimming shall be as established by resolution of the City Council, except that the swimming pool manager may close the swimming pool during inclement weather, where unsanitary water conditions exist, or for any special event. Any person who violates any of the provisions of this Section commits a Class A Municipal Offense. (Ord. 2010-09, S3)

9.03.004 REQUIRED PERMIT - GROUP ACTIVITY. Whenever any group, association or organization desires to use said park facilities for a particular purpose, including, but not limited to parties or theatrical or entertainment performances, a representative of said group, association or organization shall first obtain a permit from the City Manager for such purposes. The City Council may adopt an application form to be used by the City Manager for such situations. The City Manager shall grant the application if it appears that the group association or organization meets all other conditions contained in the application. The application may contain a requirement for an indemnity bond to protect the city from any liability of any kind or character and to protect city property from damage, and shall contain such a provision if the swimming pool is to be utilized by said group. Any person who violates any of the provisions of this Section commits a Non-criminal Municipal Offense. (Ord. 2010-09, S3)

9.03.005 OTHER REGULATIONS.

A. Animals. It is unlawful to bring any dangerous animals into any park, and it is unlawful to permit any dog to be in any park unless such dog is on a leash not more than six feet long. Hoofed animals may be allowed pursuant to a parade/assembly/block party application.

B. Special Events. It shall be unlawful for any person to bring a dog or other domesticated

or exotic pet, excluding service dogs, into the venue of any festival or other special event located in any City park, public right-of-way, or other public grounds when prohibited by posted signs. When pets are prohibited, the City shall post signs at entrances to the event area and other designated locations based on the size of the perimeter of the event area clearly stating "No Pets Allowed". Signs shall be posted at all designated locations at a reasonable time prior to the official start time of such event and such signs shall remain posted until the official closure of the event.

C. Sales. It is unlawful for any person, other than employees and officials of the city acting on behalf of the city, to vend, sell, peddle or offer for sale any commodity or article within any park, without first having obtained a license for same.

D. Smoking. It is unlawful for any person to smoke within the swimming pool area.

E. Penalty. Any person who violates sections (A) and (B) commits a Class A Municipal Offense. Any person who violates any other provision(s) of this section commits a Non-criminal Municipal Offense.

(Ord. 2010-09, S3)

9.03.006 SWIMMING POOL RATES. Rates for swimming pool will be as established annually by resolution of the City Council. (Ord. 2010-09, S3)

9.03.007 VIOLATION - PENALTY. Any person convicted of violating any provision of this chapter shall be punished as provided in Chapter 1.28.020 of this code. (Ord. 2010-09, S3)

Chapter 9.05

WEAPONS

Sections:

9.05.001 Unlawfully carrying a concealed a weapon-unlawful possession or prohibited use of weapons
9.05.002 Sale of Weapons
9.05.003 Discharging firearms, BB guns

9.05.001 UNLAWFULLY CARRYING A CONCEALED WEAPON-UNLAWFUL POSSESSION OR PROHIBITED USE OF WEAPONS. A person commits a Class A Municipal Offense if such person knowingly and unlawfully:

A. Carries a knife concealed on or about his or her person; or

B. Carries a firearm concealed on or about his or her person; or

C. Without legal authority, carries, brings, or has in such person's possession a firearm or any explosive, incendiary, dangerous device, or any deadly weapon on the property of or within any building in which the chambers, galleries, or offices of any municipal offices of the City of Fruita are located, or in which a hearing or meeting is being or is to be conducted, or which the official office of any member, officer, or employee of the City of Fruita is located; or

D. Has in his or her possession a firearm while the person is under the influence of intoxicating liquor.

E. Aims, swings, or throws a throwing star or nunchaku as defined in this section at another person, or knowingly possesses a throwing star or nunchaku in a public place except for the purpose of presenting an authorized public demonstration or exhibition or pursuant to instruction in conjunction with an organized school or class. When transporting throwing stars or nunchaku for a public demonstration or exhibition or for a school or class, they shall be transported in a closed, non-accessible container.

F. It shall not be an offense if the defendant was:

1. A person in his or her own dwelling or place of business or on property owned or under his or her control at the time of the act of carrying; or

2. A person in a private automobile or other private means of conveyance who carries a weapon for lawful protection of such person's or another's person or property while traveling; or

3. A person who, at the time of carrying a concealed weapon, held a valid written permit to carry a concealed weapon issued pursuant to the Colorado Revised Statutes section 18-12-105.1, as it existed prior to its repeal, or, if the weapon involved was a handgun, a valid permit to carry a concealed handgun or a

temporary emergency permit issued pursuant to Part 2 of Article 12 of Title 18, C.R.S.; except that it shall be an offense under this Section if the person carrying a concealed handgun in violation of the provisions of Section 18-12-214, C,R,S,; or

4. A peace officer, as described in the Colorado Revised Statutes section 16-2.5-101, when carrying a weapon in conformance with the policy of the employing agency as provided in the Colorado Revised Statutes section 16-2.5-101 (2) ; or

5. A United States probation officer or a United States pretrial services officer while on duty and serving in the State of Colorado under the authority of rules and regulations promulgated by the judicial conference of the United States.

G. Definitions as used in this section:

1. "Knife" means any dagger, dirk, knife, or stiletto with a blade over three and one-half inches in length, or any other dangerous instrument capable of inflicting, cutting, stabbing, or tearing wounds, but does not include a hunting or fishing knife carried for sports use. The issue that a knife is a hunting or fishing knife must be raised as an affirmative defense.

2. "Firearm" means any handgun, automatic, revolver, pistol, rifle, shotgun, taser, or other instrument or device capable or intended to be capable of discharging bullets, cartridges, or other explosive charges.

3. "Deadly Weapon" means any of the following which in the manner it is used or intended to be used is capable of producing death or serious bodily injury:

   a. A firearm, whether loaded or unloaded;
   b. A knife;
   c. A bludgeon; or
   d. Any other weapon, device, instrument, material, or substance, whether animate or inanimate.

In addition to the penalties provided therefore, every person convicted of any violation of this Section shall forfeit to the City such weapon(s) described above.

(Ord. 2010-09, S5)

9.05.002 SALE OF WEAPONS. It is unlawful for any person to sell, loan, or furnish any "Firearm" as described in Section 9.05.001 to any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability or to any minor.

A. Such unlawful sale, loan, or furnishing shall be grounds for revocation of any license issued by the city to such person.

B. Any person who knowingly violates any of the provisions of this Section commits a Class A Municipal Offense.

(Ord. 2010-09, S5)

9.05.003 DISCHARGING FIREARMS, BB GUNS. It shall be unlawful for any person to fire, shoot or discharge any "Firearm" described in Section 9.5.001 or of any description, or BB gun or pellet gun whatsoever, whether powered with gun powder, compressed air, gas cartridges or spring, within the city limits, however:

A. The discharge of firearms or weapons by any member of any law enforcement organization, federal, state, county or city, in the course of his official duty shall not be deemed a violation of this section.

B. The discharge of firearms or weapons by authorized classes of a law enforcement agency, Parks and Recreation Department program, schools or universities at all times under proper instruction and supervision of shooting ranges as may be authorized or permitted by law, shall not be deemed a violation of this section.

C. Permission to discharge a firearm or weapon, subject to be revoked by the City Council at any time, may be granted in writing by the Chief of Police. Such permission shall limit the time and place of such firing and specifically set forth the purpose and limitations for which each permission to discharge a firearm or weapon has been granted. When the firing of a firearm or weapon is within the authorized limits, it shall not be deemed a violation of this section.

D. Any person who knowingly violates any of the provisions of this Section commits a Class A Municipal Offense, and in addition to the penalties prescribed therefor, any weapon, firearm, BB gun or pellet gun discharged in violation of this Section shall be confiscated and may be disposed of by order of the Municipal Court.

E. This Section does not apply to the discharge of a firearm expressly permitted under Colorado law, i.e., for the purpose of exercising the rights contained in section 18-1-704 or section 18-1-704.5.

(Ord. 2010-09, S5)

Chapter 9.08

ALCOHOL AND DRUGS

Sections:

9.08.001	**Definitions**
9.08.010	**Drinking of alcoholic beverages prohibited in certain places**
9.08.020	**Distribution to minors and others prohibited**
9.08.030	**Illegal possession or consumption of ethyl alcohol by an underage person**
9.08.050	**Illegal possession or consumption of marijuana by an underage person – Illegal possession of marijuana paraphernalia by an underage person**
9.08.060	**Possession of more than one (1) ounce of marijuana by a person twenty-one (21) years of age and over – prohibited**
9.08.070	**Open and public use of marijuana – prohibited**
9.08.075	**Cultivation of marijuana – restrictions**
9.08.080	**Transfer of marijuana prohibited**
9.08.085	**Extraction of marijuana concentrate or hash oil prohibited**
9.08.090	**Consumption of marijuana and open containers in motor vehicles prohibited**
9.08.100	**Possession of drug paraphernalia prohibited**
9.08.110	**Marijuana Clubs – prohibited**
9.08.120	**Marijuana Enterprises – prohibited**
9.08.130	**Marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores – prohibited**
9.08.140	**Abusing toxic vapors - prohibited**

DEFINITIONS. Definitions applicable to Chapter 9.08 as used in the sections below, unless the context otherwise requires:

A. "Alcoholic beverage" shall mean any fermented malt beverage or malt, vinous, or spirituous liquors, including 3.2 percent beer, of any kind and in any quantity.

B. "Enclosed" means a permanent or semi-permanent area covered and surrounded on all sides. Temporary opening of windows or doors or the temporary removal of wall or ceiling panels does not convert the area into an unenclosed space.

C. "Establishment" means a business, firm, enterprise, service or fraternal organization, club, institution, entity, group, or residence; any real property, including buildings and improvements, connected therewith; and any members, employees, and occupants associated therewith.

D. "Ethyl alcohol" means any substance which is or contains ethyl alcohol.

E. "Fermented malt beverage" shall mean any beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any similar product or any combination thereof in water containing not less than one-half of one percent alcohol by volume and not more than three and two-tenths percent alcohol by weight or four percent alcohol by volume; except that "fermented malt beverage" shall not include

confectionery containing alcohol within the limits prescribed by Section 25-5-410 (1)(i)(II), C.R.S.

F. "Locked Space" means secured at all points of ingress and egress with a locking mechanism designed to limit access such as with a key or combination lock as defined by Section 18-18-102(16.5), C.R.S.

G. "Malt liquors" includes beer and shall be construed to mean any beverage obtained by the alcoholic fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination thereof, in water containing more than three and two tenths percent of alcohol by weight or four percent alcohol by volume.

H. "Marijuana" or "Marihuana" means all parts of the plant of the genus cannabis whether growing or not, seeds thereof, the resin extracted from any part of the plant and every compound, manufacturer, salt, derivative, mixture or preparation of the plant, its seeds or its resin, including marijuana concentrate. "Marijuana" or "Marihuana" does not include industrial hemp, nor does it include fibers produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seeds of the plant which is incapable of germination or the weight or any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

I. "Marijuana accessories" means any equipment, products or material of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing or containing marijuana or ingesting, inhaling or otherwise introducing marijuana into the human body. Provided, however, compressed flammable gas used as a solvent in the extraction of THC or other cannabinoids shall not be considered a lawful marijuana accessory and is prohibited.

J. "Marijuana club" means any place of private assembly for the purpose of inviting members, their guests or members of the general public to use or consume marijuana/and or marijuana products on the premises of any commercial or industrial zoned property except for those spaces which are occupied for residential use in accordance with the City's Land Use Code governing residential use.

K. "Marijuana cultivation facility" shall the same meaning as defined in Section 16 (2)(h) of Article XVIII of the Colorado Constitution.

L. "Marijuana enterprise" means any commercial operation, facility, machine or business which sells or dispenses marijuana or marijuana products, including but not limited to, marijuana or marijuana products in vending machines.

M. "Marijuana paraphernalia" has the same meaning as marijuana accessories in Section 16 (2) (g) of Article XVIII of the Colorado Constitution.

N. "Marijuana product manufacturing facility" shall have the same meaning as defined in Section 16 (2)(j) of Article XVIII of the Colorado Constitution.

O. "Marijuana testing facility" shall have the same meaning as defined Section 16 (2)(l) of Article XVIII of the Colorado Constitution.

P. "Possession of ethyl alcohol" means that a person has or holds any amount of ethyl alcohol anywhere on his or her person or that a person owns or has custody of ethyl alcohol or has ethyl alcohol within his or her immediate presence and control.

Q. "Possession of marijuana" means that a person has or holds any amount of marijuana anywhere on his or her person or that a person owns or has custody of marijuana or has marijuana within his or her immediate presence and control.

R. "Private property" means any dwelling and its curtilage which is being used by a natural person or natural persons for habitation and which is not open to the public and privately owned real property which is not open to the public. "Private property" shall not include:

1. Any establishment which has or is required to have a license pursuant to Article 46, 47, or 48 of Title 12, C.R.S.;

2. Any establishment which sells ethyl alcohol or upon which ethyl alcohol is sold; or

3. Any establishment which leases, rents, or provides accommodations to members of the public generally.

S. "Retail marijuana store" shall have the same meaning as defined in Section 16 (2)(n) of Article XVIII of the Colorado Constitution.

T. "Spirituous liquor" means any alcohol beverage obtained by distillation, mixed with water and other substances in solution, and includes among other things brandy, rum, whiskey, gin, and every liquid or solid, patented or not, containing at least one-half of one percent alcohol by volume and which is fit for use for beverage purposes. Any liquid or solid containing beer or wine in combination with any other liquor, except as provided in subsections (E) and (U) of this Section, shall not be construed to be fermented malt or malt or vinous liquor but shall be construed to be spirituous liquor.

U. "Transfer" means to deliver or convey in a manner not permissible pursuant to Section 16 of Article XVIII of the Colorado Constitution.

V. "Vinous liquors" means wine and fortified wines that contain not less than one-half of one percent and not more than twenty-one percent alcohol by volume and shall be construed to mean an alcohol beverage obtained by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar.

(Ord. 2010-09, S6; Ord. 2013-11, S1; Ord. 2015-08, S2)

9.08.010 DRINKING OF ALCOHOLIC BEVERAGES PROHIBITED IN CERTAIN PLACES. It shall constitute Class B Municipal offense for any person to drink an alcoholic beverage in the City in any public place, including any public street, road, highway, alley or

public way which is either publicly or privately owned and used by the public with the following exceptions.

A. A person twenty one (21) years of age or older may drink fermented malt beverages in a public park unless otherwise prohibited by appropriate notice.

B. A person twenty one (21) years of age or older may consume malt, vinous, or spirituous liquors on the licensed premises of a special event permitted to sell alcoholic beverages pursuant to state statutes.

The fact that a person is in or upon a motor vehicle at the time of such drinking shall not be a defense in a prosecution under this Section.

(Ord. 2010-09, S6)

9.08.020 DISTRIBUTION TO MINORS AND OTHERS PROHIBITED. It is a Class A municipal offense for any person to sell, serve, give away, dispose of, exchange or deliver, or to permit the sale, serving, giving or procuring of any "alcoholic beverage" to or for any person under 21 years of age, to a visibly intoxicated person, or to a known habitual drunkard. Said offense shall be one of strict liability. (Ord. 2010-09, S6)

9.08.030 ILLEGAL POSSESSION OR CONSUMPTION OF ETHYL ALCOHOL BY AN UNDERAGE PERSON

A. Except as described by Section 18-1-711, C.R.S. and subsection (L) of this Section, a person under twenty-one (21) years of age who possesses or consumes ethyl alcohol anywhere in the City of Fruita commits illegal possession or consumption of ethyl alcohol by an underage person. Illegal possession or consumption of ethyl alcohol by an underage person is a strict liability offense.

B. A first offense of this Section 9.08.030 shall constitute a non-criminal municipal offense. Upon conviction of a first offense under this Section, the Court may sentence the underage person to a fine of not more than one hundred dollars ($100.00), or the Court may order that the underage person complete a substance abuse education program approved by the Court, or both.

C. A second or subsequent offense of this Section 9.08.030 shall constitute a Class B municipal offense and upon conviction, the Court may sentence the underage person to a fine of up to one thousand dollars ($1000.00), or the Court may order the underage person complete a substance abuse education program approved by the Court, or the Court may order the underage person to perform community service, or the Court may impose a jail sentence of up to 6 months, or any combination of the above.

D. Nothing in this section prohibits the City Prosecutor from entering into a deferred judgment agreement with any underage person for any offense under this Section, and the City Prosecutor is encouraged to enter into those agreements when they are consistent with this Section and in the interests of justice.

E. It is an affirmative defense to the offense described in subsection (A) of this Section that

the ethyl alcohol was possessed or consumed by a person under twenty-one (21) years of age under the following circumstances:

1. While such person was legally upon private property with the knowledge and consent of the owner or legal possessor of such private property and the ethyl alcohol was possessed or consumed with the consent of his or her parent or legal guardian who was present during such possession or consumption;

2. When the existence of ethyl alcohol in a person's body was due solely to the ingestion of a confectionery which contained ethyl alcohol within the limits prescribed by Section 25-5-410 (1) (i) (ii), C.R.S.; or the ingestion of any substance which was manufactured, designed, or intended primarily for a purpose other than oral human ingestion; or the ingestion of any substance which was manufactured, designed, or intended solely for medicinal or hygienic purposes; or solely from the ingestion of a beverage which contained less than one-half of one percent (.5%) of ethyl alcohol by weight; or

3. The person is a student who:

(a) Tastes but does not imbibe an alcohol beverage only while under the direct supervision of an instructor who is at least twenty-one (21) years of age and employed by a post-secondary school;

(b) Is enrolled in a university or a post-secondary school accredited or certified by an agency recognized by The United States Department Of Education, a nationally recognized accrediting agency or association, or the "Private Occupational Education Act of 1981", Article 59 of Title 12, C.R.S.;

(c) Is participating in a culinary arts, food service, or restaurant management degree program; and

(d) Tastes but does not imbibe the alcohol beverage for instructional purposes as a part of a required course in which the alcohol beverage, except the portion the student tastes, remains under the control of the instructor.

F. The possession or consumption of ethyl alcohol shall not constitute a violation of this Section if such possession or consumption takes place for religious purposes protected by the First Amendment to the United States Constitution.

G. An underage person shall be immune from criminal prosecution under this Section if he or she establishes the following:

(a) The underage person called 911 and reported in good faith that another underage person was in need of medical assistance due to alcohol consumption;

(b) The underage person who called 911 provided his or her name to the 911 operator;

(c) The underage person was the first person to make the 911 report; and

(d) The underage person who made the 911 call remained on the scene with the underage person in need of medical assistance until assistance arrived and cooperated with medical assistance or law enforcement personnel on the scene.

H. Prima facie evidence of a violation of Subsection (A) of this Section shall consist of:

1. Evidence that the defendant was under twenty-one (21) years of age and possessed or consumed ethyl alcohol anywhere in the City of Fruita ; or

2. Evidence that the defendant was under the age of twenty-one (21) years and manifested any of the characteristics commonly associated with ethyl alcohol intoxication while present anywhere in the City of Fruita.

I. During any trial for a violation of subsection (A) of this Section, any bottle, can, or any other container with labeling indicating the contents of such bottle, can, or container shall be admissible into evidence, and the information contained on any label on such bottle, can, or other container shall be admissible into evidence and shall not constitute hearsay. A jury or a judge, whichever is appropriate, may consider the information upon such label in determining whether the contents of the bottle, can, or other container were composed in whole or in part of ethyl alcohol, a label which identifies the contents of any bottle, can, or other container as "beer," "ale," "malt beverage," "fermented malt beverage," "malt liquor," "wine," "champagne," "whiskey" or "whisky," "gin," "vodka," "tequila," "schnapps," "brandy," "cognac," "liqueur," "cordial," "alcohol," or "liquor" shall constitute prima facie evidence that the contents of the bottle, can, or other container was composed in whole or in part of ethyl alcohol.

J. A parent or legal guardian of a person under twenty-one (21) years of age or any natural person who has the permission of such parent or legal guardian may give or permit the possession and consumption of ethyl alcohol to or by a person under twenty-one (21) years of age under the conditions described in subsection (G)(1) of this Section. This subsection (L) shall not be construed to permit any establishment which is licensed or is required to be licensed pursuant to article 46, 47, or 48 of Title 12, C.R.S., or any members, employees, or occupants of any such establishment to give, provide, make available, or sell ethyl alcohol to a person under twenty-one (21) years of age.

K. Nothing in this Section shall be construed to limit or preclude prosecution for any offense pursuant to Articles 46, 47, or 48 of Title 12, C.R.S., except as provided in such Articles.

L. Sealing of Record.

1. Upon dismissal of a case pursuant to this Section after completion of a deferred judgment or any other action resulting in dismissal of the case or upon completion of the court-ordered substance abuse education and payment of any fine for a first conviction of subsection (A) of this Section, the Court shall immediately order the case sealed and provide to the underage person and the City Prosecutor a copy of the order sealing the case for distribution by the appropriate party to all law enforcement agencies in the case.

2. Upon the expiration of one (1) year from the date of a second or subsequent conviction for a violation of subsection (A) of this Section, the underage person convicted of such violation may petition the Municipal Court for an order sealing the record of the conviction. The petitioner shall submit a verified copy of his or her criminal history, current through at least the twentieth (20th) day prior to the date of the filing of the petition, along with the petition at the time of filing, but in no event later than the tenth (10th) day after the petition is filed. The petitioner shall be responsible for obtaining and paying for his or her criminal history record. The Court shall grant the petition if the petitioner has not been arrested for, charged with, or convicted of any felony, misdemeanor, petty offense, or municipal offense during the period of one (1) year following the date of the petitioner's conviction for a violation of subsection (A) of this Section.

M. The qualitative result of an alcohol test or tests shall be admissible at the trial of any person charged with a violation of subsection (A) of this Section upon a showing that the device or devices used to conduct such test or tests have been approved as accurate in detecting alcohol by the Executive Director of the Department of Public Health and Environment.

N. Official records of the Colorado Department of Public Health And Environment relating to the certification of breath test instruments, certification of operators and operator instructors of breath test instruments, certification of standard solutions, and certification of laboratories shall be official records of the State. Copies of such records, attested by the Executive Director of the Department of Public Health and Environment or his or her designee and accompanied by a certificate bearing the official seal for said Department, which state that the Executive Director of the Department has custody of such records, shall be admissible in the Municipal Court and shall constitute prima facie evidence of the information contained in such records. The official seal of the Department described in this subsection (P) may consist of a watermark of the State seal within the document.

O. In any proceeding in the Municipal Court concerning a charge under subsection (A) of this Section, the Court shall take judicial notice of methods of testing a person's blood, breath, saliva, or urine for the presence of alcohol and of the design and operation of devices certified by the Department of Public Health and Environment for testing a person's blood, breath, saliva, or urine for the presence of alcohol. This subsection (Q) shall not prevent the necessity of establishing during a trial that the testing devices were working properly and that such testing devices were properly operated. Nothing in this subsection (Q) shall preclude a defendant from offering evidence concerning the accuracy of testing devices.

P. A law enforcement officer may not enter upon any private property to investigate any violation of this Section without probable cause.

(Ord. 2015-08, S3)

9.08.050 ILLEGAL POSSESSION OR CONSUMPTION OF MARIJUANA BY AN UNDERAGE PERSON – ILLEGAL POSSESSION OF MARIJUANA PARAPHERNALIA BY AN UNDERAGE PERSON.

A. Except as described by Section 14 of Article XVIII of the Colorado Constitution and Section 18-18-406.3, C.R.S., a person under twenty-one (21) years of age who possesses one (1) ounce or less of marijuana or consumes marijuana anywhere in the City of Fruita commits illegal possession or consumption of marijuana by an underage person. Illegal possession or consumption of marijuana by an underage person is a strict liability offense.

B. Except as described by Section 14 of Article XVIII of the Colorado Constitution and Section 18-18-406.3, C.R.S, a person under twenty-one (21) years of age who possesses marijuana paraphernalia anywhere in the City of Fruita and knows or reasonably should know that the drug paraphernalia could be used in circumstances in violation of the laws of this City of Fruita commits illegal possession of marijuana paraphernalia by an underage person. Illegal possession of marijuana paraphernalia by an underage person is a strict liability offense.

C. A first offense of this Section 9.08.050 shall constitute a non-criminal municipal offense. Upon conviction of a first offense under this Section, the Court may sentence the underage person to a fine of not more than one hundred dollars ($100.00), or the Court may order that the underage person complete a substance abuse education program approved by the Court, or both.

D. A second or subsequent offense of this Section 9.08.050 shall constitute a Class B municipal offense and upon conviction, the Court may sentence the underage person to a fine of up to one thousand dollars ($1000.00), or the Court may order the underage person complete a substance abuse education program approved by the Court, or the Court may order the underage person to perform community service, or the Court may impose a jail sentence of up to 6 months, or any combination of the above.

E. Nothing in this section prohibits the City Prosecutor from entering into a deferred judgment agreement with any underage person for any offense under this Section, and the City Prosecutor is encouraged to enter into those agreements when they are consistent with this Section and in the interests of justice.

F. An underage person shall be immune from criminal prosecution under this Section if he or she establishes the following:

1. The underage person called 911 and reported in good faith that another underage person was in need of medical assistance due to marijuana consumption;

2. The underage person who called 911 provided his or her name to the 911 operator;

3. The underage person was the first person to make the 911 report; and

4. The underage person who made the 911 call remained on the scene with the underage person in need of medical assistance until assistance arrived and cooperated with medical assistance or law enforcement personnel on the scene.

G. Prima facie evidence of a violation of subsections (A) or (B) of this Section shall consist

of:

1. Evidence that the defendant was under twenty-one (21) years of age and possessed or consumed marijuana or possessed marijuana paraphernalia anywhere in the City of Fruita ; or

2. Evidence that the defendant was under the age of twenty-one (21) years and manifested any of the characteristics commonly associated with marijuana impairment while present anywhere in the City of Fruita.

H. Sealing of Record.

1. Upon dismissal of a case pursuant to this Section after completion of a deferred judgment or any other action resulting in dismissal of the case or upon completion of the court-ordered substance abuse education and payment of any fine for a first conviction of subsections (A) or (B) of this Section, the Court shall immediately order the case sealed and provide to the underage person and the City Prosecutor a copy of the order sealing the case for distribution by the appropriate party to all law enforcement agencies in the case.

2. Upon the expiration of one (1) year from the date of a second or subsequent conviction for a violation of subsection (A) or (B) of this Section, the underage person convicted of such violation may petition the Municipal Court for an order sealing the record of the conviction. The petitioner shall submit a verified copy of his or her criminal history, current through at least the twentieth (20th) day prior to the date of the filing of the petition, along with the petition at the time of filing, but in no event later than the tenth (10th) day after the petition is filed. The petitioner shall be responsible for obtaining and paying for his or her criminal history record. The Court shall grant the petition if the petitioner has not been arrested for, charged with, or convicted of any felony, misdemeanor, petty offense, or municipal offense during the period of one (1) year following the date of the petitioner's conviction for a violation of subsection (A) or (B) of this Section.

I. The qualitative result of a marijuana test or tests shall be admissible at the trial of any person charged with a violation of subsection (A) of this Section upon a showing that the device or devices used to conduct such test or tests have been approved as accurate in detecting marijuana by the Executive Director of the Department of Public Health and Environment.

J. Official records of the Colorado Department of Public Health And Environment relating to the certification of standard solutions, and certification of laboratories shall be official records of the State. Copies of such records, attested by the Executive Director of the Department of Public Health and Environment or his or her designee and accompanied by a certificate bearing the official seal for said Department, which state that the Executive Director of the Department has custody of such records, shall be admissible in the Municipal Court and shall constitute prima facie evidence of the information contained in such records. The official seal of the Department described in this subsection (L) may consist of a watermark of the State seal within the document.

K. In any proceeding in the Municipal Court concerning a charge under subsection (A) of this Section, the Court shall take judicial notice of methods of testing a person's blood, saliva, or urine for the presence of marijuana and of the design and operation of devices certified by the Department of Public Health and Environment for testing a person's blood, saliva, or urine for the presence of marijuana. This subsection (M) shall not prevent the necessity of establishing during a trial that the testing devices were working properly and that such testing devices were properly operated. Nothing in this subsection (M) shall preclude a defendant from offering evidence concerning the accuracy of testing devices.

L. A law enforcement officer may not enter upon any private property to investigate any violation of this Section without probable cause.

(Ord. 2015-08, S4)

9.08.060 POSSESSION OF MORE THAN ONE (1) OUNCE OF MARIJUANA BY A PERSON TWENTY-ONE (21) YEARS OF AGE AND OVER – PROHIBITED.

A. It is unlawful for any person twenty-one (21) years of age and over to knowingly possess more than one (1) ounce of marijuana. A person who possesses not more than two (2) ounces of marijuana commits a non-criminal municipal offense and shall be punished by a fine of not more than $100.00. A person who possesses more than two (2) ounces of marijuana but not more than six (6) ounces of marijuana commits a Class B municipal offense.

B. During any trial for a violation of subsection (A) of this Section, any container with labeling indicating the contents of the container is admissible into evidence, and the information contained on the label on the container is admissible into evidence and is not hearsay. A jury or a judge, whichever is appropriate, may consider the information upon the label in determining whether the contents of the container were composed in whole or in part of marijuana.

C. Nothing in this Section shall be construed to limit or preclude prosecution for any offense pursuant to the Colorado Medical Marijuana Code, Article 43.3 of Title 12, C.R.S., or the Colorado Retail Marijuana Code, Article 43.4 of Title 12, C.R.S., except as provided in such Articles.

D. The qualitative result of a drug test or tests performed by or on behalf of a law enforcement agency with relevant jurisdiction shall be admissible at the trial of any person charged with a violation of subsection (A) of this Section upon a showing that the device or devices used to conduct such test or tests have been approved as accurate in detecting drugs by the Executive Director of the Colorado Department of Public Health and Environment.

(Ord. 2013-11, S3)

9.08.070 OPEN AND PUBLIC USE OF MARIJUANA – PROHIBITED.

A. Except as described in Section 18-1-711, C.R.S., a person twenty-one (21) years of age or

older who openly and publicly displays, consumes, or uses two (2) ounces or less of marijuana, commits a non-criminal municipal offense. The open and public display, consumption, or use of more than two (2) ounces of marijuana or any amount of marijuana concentrate shall be deemed possession thereof and a violation shall be punished as provided for in this Chapter or in the Colorado Revised Statutes.

B. As used in this Section, "open and public" means a place open to the general public which includes a place to which the public or a substantial number of the public has access without restriction including but not limited to streets, highways, public sidewalks, transportation facilities including rest areas, places of amusement, parks, playgrounds, City owned open space, bicycle and pedestrian trails, common open space owned by owners' associations, common areas of public buildings and facilities that are generally open or accessible to members of the public without restriction, parking lots and areas, and shopping centers or shopping areas. A person who displays, consumes, or uses marijuana in a residential dwelling unit or anywhere on the real property upon which such dwelling unit is located shall not be considered to be displaying, consuming or using marijuana in an "open and public" manner, unless such person disturbs or annoys or endangers another person outside of the perimeter of the subject property because of the second hand smoke generated from the smoking of marijuana.

C. As used in this Section, "openly" means the consumption or use of marijuana in such a manner that a person located outside the perimeter of the private property where the consumption or use is taking place is disturbed or annoyed or endangered because of the second hand smoke generated from the smoking of marijuana on said private property.

D. As used in this Section, "publicly" means an area that is open to general access by the public with or without some restrictions and includes marijuana social clubs.

(Ord. 2013-11, S3)

9.08.075 CULTIVATION OF MARIJUANA – RESTRICTIONS

A. In accordance with Section 16(3)(b) of Article XVIII of the Colorado Constitution, any person who is twenty-one (21) years of age or older may cultivate marijuana plants for his or her own use and may possess, grow, process or transport up to six (6) marijuana plants with three (3) or fewer being mature flowering plants subject to the following requirements:

1. Cultivation of marijuana plants may only occur in a fully enclosed structure.

2. Cultivation of marijuana plants may only occur in a person's primary residence or on the real property associated with the primary residence. Cultivation may occur in accessory buildings or structures located on such property.

3. Cultivation of marijuana plants shall not be observable from the exterior of the property on which the primary residence is located.

4. Cultivation of marijuana plants shall not cause light pollution, glare or brightness that disturbs others.

5. Cultivation of marijuana plants and the processing of marijuana plants shall not occur in the common areas of a planned community or of a multi-family or attached residential development.

6. Areas within structures used for the cultivation of marijuana plants shall comply with the requirements of all adopted City building and fire codes.

7. In accordance with Section 16(3)(b) of Article XVIII of the Colorado Constitution, cultivation may only occur in an enclosed, locked space. If a person under the age of twenty-one (21) years of age lives at the primary residence where marijuana plants are being cultivated, the cultivation area itself must be enclosed and locked. If no person under the age of twenty-one (21) years lives at the residence, the external locks of the residence constitute the enclosed and locked space. Provided, however, if a person under twenty-one (21) years of age enters the residence where marijuana plants are being cultivated, the person cultivating the marijuana must insure that access to the cultivation site is reasonably restricted for the duration of the presence in the residence of the person under twenty-one (21) years of age.

B. For the purposes of this Section, "primary residence" means the place that a person, by custom or practice, makes his or her principal domicile and address to which the person intends to return following any temporary absence, such as a vacation. Residence is evidenced by actual daily physical presence, use and occupancy of the primary residence and the use of the residential address for domestic purposes, such as, but not limited to, slumber, preparation of meals, regular mail delivery, vehicle and voter registration, or credit and utility billings. A person shall have only one (1) primary residence.

C. Any person under the age of twenty-one (21) years who knowingly cultivates, processes, or transports any marijuana plants commits a Class B municipal offense. Any person over the age of twenty-one (21) years who knowingly cultivates marijuana plants in a manner contrary to the requirements of this Section upon his or her first offense commits a non-criminal municipal offense. Any person over the age of twenty-one (21) years who knowingly cultivates marijuana plants in a manner contrary to the requirements of this Section upon his or her second of subsequent offense commits a Class B municipal offense.

(Ord. 2013-11, S3; Ord. 2015-08, S8)

9.08.080 TRANSFER OF MARIJUANA PROHIBITED. Any person over the age of 21 who knowingly transfers or dispenses more than one (1) ounce, but not more than two (2) ounces of marijuana, from one person to another for no consideration commits a non-criminal municipal offense and shall not be deemed dispensing or the sale thereof.

(Ord. 2013-11, S3; Ord. 2015-08, S9)

9.08.085 EXTRACTION OF MARIJUANA CONCENTRATE OR HASH OIL PROHIBITED

A. It shall be unlawful to any person to process or manufacture marijuana concentrate or

hash oil using butane, propane, or any other solvents containing compressed flammable gases anywhere in the City.

B. It shall be unlawful for any person who owns, manages, operates or controls the use of any premises anywhere within the City to allow marijuana concentrate or hash oil to be processed or manufactured on the premises using butane, propane, or any other solvents containing compressed flammable gases.

C. Any person who violates the provisions of this Section commits a Class A municipal offense.

(Ord. 2015-08, S10)

9.08.090 CONSUMPTION OF MARIJUANA AND OPEN MARIJUANA CONTAINERS IN MOTOR VEHICLES PROHIBITED.

A. As used in this Section, unless the context otherwise requires:

1. "Open marijuana container" means a receptacle or marijuana accessory that contains any amount of marijuana and:

   a. that is open or has a broken seal;

   b. the contents of which are partially removed; and

   c. there is evidence that marijuana has been consumed within the motor vehicle.

2. "Passenger area" means the area designed to seat the driver and passengers including seating behind the driver, while a motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in his or her seating position, including but not limited to the glove compartment.

B. 1. Except as otherwise permitted in subsection (2) of this subsection (B), a person while in the passenger area of a motor vehicle that is on a public street, highway or the right-of-way of a public street or highway within the City of Fruita shall not knowingly:

   a. Use or consume marijuana; or

   b. Have in his or her possession an open marijuana container.

2. The provisions of this subsection (B) shall not apply to:

   a. Passengers, other than the driver or a front seat passenger, located in the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation;

   b. The possession by a passenger, other than the driver or a front seat

passenger, of an open marijuana container in the living quarters of a house coach, house trailer, camper, motor home, as defined in Section 42-1-102(57), C.R.S., or trailer coach, as defined in Section 42-1-102(106)(a), C.R.S.;

c. Possession of an open marijuana container in the area behind the last upright seat of a motor vehicle that is not equipped with a trunk; or

d. The possession of an open marijuana container in an area not normally occupied by the driver or a passenger in a motor vehicle that is not equipped with a trunk.

3. Any person who violates the provisions of this subsection (B) commits a Class B municipal offense.

(Ord. 2013-11, S3; Ord. 2015-08, S11)

9.08.100 POSSESSION OF DRUG PARAPHERNALIA PROHIBITED

A. "Drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagation, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injection, ingestion, inhaling, or otherwise introducing into the human body a controlled substance in violation of the laws of this State. "Drug paraphernalia" includes, but is not limited to:

1. Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances under circumstances in violation of the laws of this State;

2. Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

3. Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from or in otherwise cleaning or refining marijuana;

4. Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;

5. Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;

6. Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances; or

7. Compressed flammable gas used as a solvent in the extraction of THC or other cannabinoids from marijuana.

8. Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise

introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:

a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screen, permanent screens, hashish heads, or punctured metal bowls;

b. Water pipes;

c. Carburetor tubes and devices;

d. Smoking and carburetor masks;

e. Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand;

f. Miniature cocaine spoons and cocaine vials;

g. Chamber pipes;

h. Carburetor pipes;

i. Electric pipes;

j. Air-driven pipes;

k. Chillums

l. Bongs; or

m. Ice pipes or chillers.

B. Drug paraphernalia does not include any marijuana accessories as defined in Section 16(2)(g) of Article XVIII of the Colorado Constitution, if possessed or used by a person age twenty-one (21) years or older, except that the production of hash oil or other marijuana concentrates by the use of butane, propane, or any other solvents containing compressed flammable gases is unlawful and prohibited by any person in the City of Fruita.

C. In determining whether an object is drug paraphernalia, the Municipal Court, in its discretion, may consider in addition to all other relevant factors, the following:

1. Statements by an owner or by anyone in control of the object concerning its use;

2. The proximity of the object to controlled substances;

3. The existence of any residue of controlled substances;

4. Direct or circumstantial evidence of the knowledge of an owner, or of anyone in control of the object, or evidence that such person reasonably should know, that it

will be delivered to persons who he knows or reasonably should know, could use the object to facilitate a violation of this Section or other applicable law;

5. Instructions, oral or written, provided with the object concerning its use;

6. Descriptive materials accompanying the object which explain or depict its use;

7. National or local advertising concerning its use;

8. The manner in which the object is displayed for sale;

9. Whether the owner, or anyone in control of the object, is a supplier of like or related items to the community for legal purposes, such as an authorized distributor or dealer of tobacco products;

10. The existence and scope of legal uses for the object in the community; and

11. Expert testimony concerning its use.

D. 1. Except as described in Section 18-1-711 C.R.S., concerning immunity for persons who suffer or report an emergency drug or alcohol overdose, a person commits the offense of possession of drug paraphernalia if he or she possesses drug paraphernalia and knows or reasonably should know that the drug paraphernalia could be used under circumstances in violation of the laws of this State or the City of Fruita.

2. Any person twenty-one (21) years of age or older who commits possession of drug paraphernalia commits a non-criminal municipal offense

(Ord. 2013-11, S3, Ord. 2015-08, S12-13)

9.08.110 MARIJUANA CLUBS – PROHIBITED. It shall be unlawful for any person to knowingly own, operate or maintain a marijuana club within the City of Fruita. Any person who violates this Section commits a Class A municipal offense. Each and every day a violation of the provisions of this Section is committed, exists or continues shall be deemed a separate and distinct offense.

(Ord. 2013-11, S3)

9.08.120 MARIJUANA ENTERPRISES – PROHIBITED. It shall be unlawful for any person to own, operate or maintain a marijuana enterprise within the City of Fruita. Any person who violates this Section commits a Class A municipal offense. Each and every day a violation of the provisions of this Section is committed, exists or continues shall be deemed a separate and distinct offense.

(Ord. 2013-11, S3)

9.08.130 MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, MARIJUANA TESTING FACILITIES, AND

RETAIL MARIJUANA STORES – PROHIBITED. It shall be unlawful for any person to knowingly operate, cause to be operated, or permit to be operated, any marijuana cultivation facility, marijuana product manufacturing facility, marijuana testing facility, and retail marijuana store within the City of Fruita, and all such uses are hereby prohibited in any location within the City, or within any area hereinafter annexed to the City. A violation of this Section shall constitute a Class A municipal offense. Each and every day a violation of the provisions of this Section is committed, exists or continues shall be deemed as a separate and distinct offense. The City Attorney is hereby authorized to seek an injunction, abatement, restitution, or any other remedy necessary to prevent, enjoin, abate or remove an establishment operated in violation of this Section.

(Ord. 2013-11, S3)

9.08.140 ABUSING TOXIC VAPORS -- PROHIBITED.

A. No person shall knowingly smell or inhale the fumes of toxic vapors for the purpose of causing a condition of euphoria, excitement, exhilaration, stupefaction, or dulled senses of the nervous system. No person shall knowingly possess, buy, or use any such substance for the purposes described in this subsection (A), nor shall any person knowingly aid any other person to use any such substance for the purposes described in this subsection (A). This subsection (A) shall not apply to the inhalation of anesthesia or other substances for medical or dental purposes.

B. Any person who knowingly violates the provisions of subsection (A) of this Section commits the Class A municipal offense of abusing toxic vapors.

C. For the purposes of this Section, the term “toxic vapors” means the following substances or products containing such substances:

1. Alcohols, including methyl, isopropyl, propyl, or butyl;

2. Aliphatic acetates, including ethyl, methyl, propyl, or methyl cellosolve acetate;

3. Acetone;

4. Benzene;

5. Carbon tetrachloride;

6. Cyclohexane;

7. Freons, including Freon 11 and Freon 12;

8. Hexane;

9. Methyl ethyl ketone;

10. Methyl isobutyl ketone;

11. Naphtha;

12. Perchlorethylene;

13. Toluene;

14. Trichloroethane; or

15. Xylene.

D. In a prosecution for a violation of this Section, evidence that a container lists one or more of the substances described in subsection (C) of this Section as one of its ingredients shall be prima facie evidence that the substance in such container contains toxic vapors and emits the fumes thereof.

Severability. If any part, section, subsection, clause, phrase or other portion of this Ordinance is invalidated for any reason, by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council specifically finds and declares that it would have passed this Ordinance, and each part thereof, regardless of the fact that one or more parts could be declared invalid.

Any Ordinance or part thereof expressly in conflict with this Ordinance is hereby repealed.

(Ord. 2015-08, S14-16)

Chapter 9.10

SALE AND POSSESSION OF TOBACCO PRODUCTS

Sections:

9.10.010 Definitions
9.10.020 Unlawful possession or use of tobacco products by minors
9.10.030 Unlawful furnishing of or sale of, tobacco products to minors
9.10.040 Retail sale of tobacco products

9.10.010 DEFINITIONS. As used in this chapter, the following words or phrases are defined as follows:

A. "Minor" means any person under the age of eighteen (18).

B. "Person" means any natural person, association, partnership, limited liability company, or corporation.

C. "Smoking" means the carrying or possession of a lighted pipe, cigar, or cigarette of any kind and includes the lighting of the same.

D. "Tobacco Products" means any substance as defined by section 39-28.5-101(5). C.R.S., including but not limited to any substance containing tobacco leaf, which may include but is not limited to: cigarettes, cigars, pipe tobacco snuff, and chewing or dipping tobacco. This definition does not include any nicotine containing product which is used for the purpose of helping a person stop smoking such as nicotine gum or patches.

(Ord. 2010-09, S7)

9.10.020 UNLAWFUL POSSESSION OR USE OF TOBACCO PRODUCTS BY MINORS.

A. It shall be unlawful for any minor to knowingly possess, consume, or use, either by smoking, ingesting, absorbing, or chewing, any tobacco product.

B. It shall be unlawful for any minor to knowingly obtain or attempt to obtain any tobacco product by misrepresentation of age, or use any false or altered identification for the purpose of purchasing any tobacco product.

C. It shall be rebuttably presumed that the substance within a package or container is a tobacco product if the package or container has affixed to it a label which identifies the package or container as containing a tobacco product.

D. Any minor who violates subsections A or B commits a Non-criminal Offense and upon conviction shall be subject to:

1. A minor shall not be subject to any jail time but may be required to pay a fine as provided and may be required to perform no more than 48 hours useful public

service (which may include education efforts or programs) or any combination of fine, public service and education.

(Ord. 2010-09, S7)

9.10.030 UNLAWFUL FURNISHING OF OR SALE OF, TOBACCO PRODUCTS TO MINORS.

A. It shall be unlawful for any person to knowingly furnish to any minor, by gift, sale, or by any other means, any tobacco product.

B. It shall be an affirmative defense to a prosecution under this section that the person furnishing the tobacco product was presented with and reasonably relied upon a document which identified the minor receiving the tobacco product as being eighteen (18) years of age or older.

C. Any person who violates subsection A of this Section, commits a Class A Municipal Offense.

(Ord. 2010-09, S7)

9.10.040 RETAIL SALE OF TOBACCO PRODUCTS

A. It shall be unlawful for any business proprietor, manager, or other person in charge or control of a retail business of any kind to engage, employ or permit any minor to sell tobacco products from such retail business.

B. It shall be unlawful for any business proprietor, manager, or other person in charge or control of a retail business of any kind to stock, sell or offer for sale tobacco products in any form or condition other than in the packaging provided by their manufacturer, or to permit or allow their agent, servant, or employee to sell tobacco products in any form or condition other than in the packaging provided by their manufacturer or, with respect to the sale of cigarettes, in packages containing less than twenty (20) cigarettes.

C. It shall be unlawful for any person to sell a tobacco product by use of a vending machine or other coin-operated machine; except that cigarettes may be sold at retail through vending machines only in:

1. Factories, businesses, offices, or other places not open to the public; or

2. Places to which minors are not permitted access.

D. Any person who sells or offers to sell any cigarettes or tobacco products at retail shall display a warning sign, a specified in this subsection.

E. Said warning sign shall be displayed in a prominent place in the building and on such machine at all times and shall have a minimum height of three inches (3”) and a width of six inches (6”) and shall read as follows:

WARNING:
IT IS ILLEGAL FOR ANY PERSON UNDER
EIGHTEEN YEARS OF AGE TO PURCHASE OR POSSESS
CIGARETTES AND TOBACCO PRODUCTS.
UPON CONVICTION A FINE OF UP TO $1,000.00 PLUS NOT MORE THAN
48 HOURS OF USEFUL PUBLIC SERVICE MAY BE IMPOSED.

Any person who violates any subsection of this Section commits a Class A Municipal Offense.

(Ord. 2010-09, S7)

Chapter 9.11

PUBLIC NUISANCES

Sections:

9.11.010 Definitions - General
9.11.020 Public Nuisances - Policy
9.11.030 Public Nuisances - Defined
9.11.035 Allowable Storage Defined
9.11.040 Bringing nuisance into City
9.11.050 Author of nuisance - Defined
9.11.060 Jurisdiction - Parties - Process
9.11.070 Temporary restraining order - Preliminary injunction - When to issue.
9.11.080 Judgment - Relief
9.11.090 Redelivery of seized premises
9.11.100 Violation of injunction
9.11.110 Fees - Costs and fines - Liens and collection

9.11.010 DEFINITIONS - GENERAL. As used in this Chapter, unless the context otherwise requires:

A. An action to abate a public nuisance means any action authorized by this Chapter to restrain, remove, terminate, prevent, abate, or perpetually enjoin a public nuisance.

B. A Building means any dwelling, office building, commercial or industrial structure, or any other structure of any kind, whether or not such building is permanently affixed to the ground upon which it is situated, and includes any trailer, semi-trailer, trailer coach, mobile home, modular home, manufactured home or other vehicle designed or used for occupancy by persons for any purposes. (Ord. 2005-01)

9.11.020 PUBLIC NUISANCES - POLICY. It is the policy of the City pursuant to Section 31-15-401(c), C.R.S., that every public nuisance shall be restrained, prevented, abated, and perpetually enjoined. It is the duty of the City Attorney or his designee to bring and maintain an action, pursuant to the provisions of this Chapter, to restrain, prevent, abate, and perpetually enjoin any such public nuisance. Nothing contained in this Chapter shall be construed as an amendment or repeal of any of the criminal laws of this City or the State of Colorado, but the provisions of this Chapter, insofar as they relate to those laws, shall be considered a cumulative right of the people in the enforcement of such laws. (Ord. 2005-01)

9.11.030 PUBLIC NUISANCES - DEFINED. The following are deemed to be a public nuisance:

A. Any place where people congregate, which encourages the disturbance of the peace, or where the conduct of persons in or about that place is such as to annoy or disturb the peace of the occupants of or persons attending such place, or the residents in the vicinity,

or the passersby on the public streets or highways; or

B. Any public or private place or premises which encourages professional gambling, unlawful use of drugs, unlawful sale or distribution of drugs, furnishing or selling intoxicating liquor or fermented malt beverages to persons under the legal drinking age, solicitation for prostitution, or trafficking in stolen property; or

C. Any offensive or unwholesome business or establishment, or any business or establishment carried on in a manner dangerous to the public health, safety, or welfare, or to create such an offensive smell as may taint the air and render it unwholesome or disagreeable within the City or within one (1) mile beyond the outer limits of the City; or

D. Any building, fence, structure, tree or other vegetation, or land within the City, the condition of which presents a substantial danger or hazard to public health or safety, including any Adangerous building,@ as defined in the building codes, as adopted by reference by the City; or

E. Any dilapidated building of whatever kind which is unused by the owner, or uninhabited because of deterioration or decay, which condition constitutes a fire hazard or subjects adjoining property to danger of damage by storm, soil erosion, or rodent infestation, or which becomes a place frequented by trespassers and transients seeking a temporary hideout or shelter; or

F. Any unlawful pollution or contamination of any surface or subsurface waters in this City or of the air, or any water, substance or material intended for human consumption, but no action shall be brought under this subsection if the Colorado Department of Public Health and Environment or any other agency of the State of Colorado charged by and acting pursuant to statute or duly adopted regulation has assumed jurisdiction by the institution of proceedings concerning that pollution or contamination; or

G. Erection of a building or continued use of any building or other place for the exercise of any trade, employment or manufacture, which by causing noxious emissions, offensive smells, or otherwise, is offensive or dangerous to the health of individuals or of the public.

H. Any cellar, vault, sewer, drain, place, property, or premises within the City which is damp, unwholesome, nauseous, offensive, or filthy, or which is covered for any portion of the year with stagnant or impure water, or which is in such condition as to produce unwholesome or offensive odors, or which unreasonably creates fly or mosquito breeding conditions, or which is otherwise injurious to the public health; or

I. Permitting any garbage container to remain on a premises when it has become unclean, offensive, or which is injurious to the public health; or

J. Allowing vegetable or animal waste, garbage, litter, filth or refuse of any nature to accumulate within or upon any private alley, yard, or area except when it is temporarily deposited for immediate removal; or

K. Permitting the unreasonable accumulation of manure in any stable, stall, corral, feed yard,

yard, or in any other building or area in which any animals are kept; or

L. Discharging, placing, or tracking any offensive water, liquid waste, dirt, mud, construction debris, or refuse of any kind into any street, alley, sidewalk, gutter, stream, wash, natural watercourse, ditch, canal, or any vacant lot, or which as the result of continued discharge will render the place of discharge offensive or likely to become so; or

M. Keeping any drinking vessel for public use without providing a method of decontamination between uses; or

N. Corrupting or rendering unwholesome or impure any spring, stream, pond or lake; or

O. Any toilet or sanitary wastewater facilities not constructed and maintained in accordance with the ordinances of the City or the laws and regulations of the State of Colorado; or

P. Any animal or human fecal material, dead animal, or other filthy or offensive substance upon any lot, street, alley, highway, park or other place; or

Q. Neglecting or refusing to discontinue use of, clean out, disinfect, and fill up all privy vaults, septic tanks and cesspools or other individual wastewater disposal systems within twenty (20) days after notice from any enforcement officer or official of the City; or

R. Obstructing or tending to obstruct or interfere with or render dangerous for passage any street or sidewalk, lake, stream, drainage, canal or basin, or any public park without first obtaining the written permission of the City, specifically including the placement of portable toilets, construction dumpsters, construction materials, construction debris, topsoil, and/or landscaping material on City streets or sidewalks; or

S. The obstruction or maintenance of any drainage system, drainage easement, canal, ditch, conduit or other water course of any kind or nature, natural or artificial, in a manner which will become obstructed and/or cause the water to backup and overflow therefrom, or to become unsanitary; or

T. Cross-connecting with the Ute Water District=s water supply system by introducing into such system any foreign water not a part of the treated water supply system. It shall be permissible to introduce into the Ute Water District water supply system water of another approved water system upon approval by the Ute Water District; or

U. Any use of premises or of building exteriors which are deleterious or injurious, noxious or unsightly, which includes, but is not limited to, keeping or depositing on, or scattering over the premises, lumber, junk, trash, debris, or abandoned, discarded or unused objects or equipment such as motor vehicles, machine parts, furniture, stoves, refrigerators, freezers, cans or containers; or

V. Continuous or repeated conducting or maintaining of any business, occupation, operation, activity, building, land, or premises in violation of provisions of the Fruita Municipal Code, or a statute of this State; or

W. Unsheltered storage of old, unused, stripped and junked machinery, implements, or personal property of any kind which is no longer safely usable for the purposes for which it was manufactured, for a period of thirty (30) days or more (except in licensed junkyards) within the City; or

X. Outside storage or accumulation of:

1. Any new or marketable used tires that are not neatly stacked or displayed in a marketable manner and allowed in the applicable zone district; or

2. Non-marketable tire(s) in any manner for a period of greater than one month. ANon-marketable tires@ are defined as those tires which are incapable of holding air or which have less than 2/32 of tread, or both. Any person charged with a violation of this subparagraph (X)(2) may produce a receipt evidencing the removal and quartering of non-marketable tires during the thirty-one (31) days prior to the notice of violation, which receipt shall create a rebuttable presumption that no such violation has occurred; or

3. Any tires on property located in a residential district, except that up to two (2) tires per dwelling unit may be kept outside for up to one (1) week on any property within a residential zone district; or

Y. Any building, lot, land, premises, or business, occupation or activity, operation, or condition which, after being ordered abated, corrected, or discontinued by lawful order of the City or any officer thereof, continues to be conducted or continues to exist in violation of:

1. Any ordinance of this City; or

2. Any regulation enacted pursuant to the authority of an ordinance of this City; or

Z. Those offenses which are known to the common law of the land and the statutes of Colorado as nuisances when the same exist within the City limits or within any unincorporated areas of land entirely contained within the outer boundaries of the City of Fruita, such areas known as Aenclaves@.

AA. Any "graffiti" or "graffiti and/or related vandalism" which shall mean any unauthorized inscription, symbol, design or configuration of letters, numbers or symbols, or any combination thereof written, drawn, scribed, etched, marked, painted, stained, stuck on or adhered to any surface (public or private), including, but not limited to, trees, signs, poles, fixtures, utility boxes, walls, windows, roofs, paths, walks, streets, underpasses, overpasses, bridges, trestles, buildings, and any other surface or surfaces, regardless of the material of the component.

(Ord. 2005-01)

9.11.035 ALLOWABLE STORAGE DEFINED. The storage of usable implements,

equipment, merchandise, objects or personal property directly related to an on-going business located and permitted on the subject property which is neatly stacked or displayed shall be permitted so long as such storage does not violate other codes, ordinances, laws, regulations or restrictions which apply to said property**.**

9.11.040 BRINGING NUISANCE INTO CITY. No person shall bring into the City or keep therein for sale or otherwise, either for food or for any other purpose whatever, any animal, dead or alive, matter, substance or thing which shall be or which shall occasion a nuisance in the City or which shall be dangerous or detrimental to health. (Ord. 2005-01)

9.11.050 AUTHOR OF NUISANCE - DEFINED. Where a nuisance exists upon property and is the outgrowth of the usual, natural, or necessary use of the property, the owner or his agent, the tenant or his agent, and all other persons having control of the property on which such nuisance exists shall be deemed to be authors thereof and shall be jointly and equally liable and responsible. Where any such nuisance shall arise from the unusual or unnecessary use of such property or from the business thereon conducted, then the occupants and all other persons contributing to the continuance of such nuisance shall be deemed the authors. (Ord. 2005-01)

9.11.060 JURISDICTION - PARTIES - PROCESS.

A. An action to abate a public nuisance under this Chapter shall be brought in Fruita Municipal Court.

B. Except as otherwise may be provided in this Chapter, the practice and procedure in an action to abate a public nuisance shall be governed by the Colorado Rules of Civil Procedure.

C. An action to abate a public nuisance shall be brought by the City Attorney or his desgnee in the name of the State of Colorado and the City of Fruita.

D. An action to abate a public nuisance, and any action in which a temporary restraining order, temporary writ of injunction, or preliminary injunction is requested, shall be commenced by the filing of a complaint, which shall be verified or supported by affidavit. A summons shall be issued and served as in civil cases.

E. All complaints of nuisances made to the Mesa County Health Department, or the City Manager or his authorized agent shall state the nature of such nuisance; where it is, giving street name and number, the name of the owner, agent or occupant of the building or lot, if known, and the name and address of the complainant.

(Ord. 2005-01)

9.11.070 TEMPORARY RESTRAINING ORDER - PRELIMINARY INJUNCTION - WHEN TO ISSUE.

A. If the existence of a public nuisance is shown in such action to the satisfaction of the Municipal Court, either by verified complaint or affidavit, the Court may issue a temporary restraining order to abate and prevent the continuance or reoccurrence of the nuisance. Such temporary restraining order may direct the City Manager or his designee to seize and close the public nuisance and to keep the same effectually closed against its

use for any purpose, until further order of the Court. Within ten (10) days following the filing of a motion of any person adversely affected by a temporary restraining order, the Court shall conduct a hearing and determine whether the temporary restraining order shall be continued pending final determination of the action.

B. The Court may, as part of a preliminary injunction, direct the Chief of Police or Community Development Department Director to seize and close such public nuisance and to keep the same closed against its use for any purpose, until further order of the Court. While the preliminary injunction remains in effect, the building or place seized and closed shall be subject to the orders of the Municipal Court. Preliminary injunctions may issue as provided by the Colorado Rules of Civil Procedure. No bond or security shall be required of the City Attorney or the People of the State or in the City in any action to abate a public nuisance.

(Ord. 2005-01)

9.11.080 JUDGMENT - RELIEF.

A. The judgment in an action to abate a public nuisance may include a permanent injunction to restrain, abate, and prevent the continuance or reoccurrence of the nuisance. The Court may grant declaratory relief, mandatory orders, or any other relief deemed necessary to accomplish the purposes of the injunction and enforce the same, and the Court may retain jurisdiction of the case for the purpose of enforcing its orders.

B. The judgment in an action to abate a public nuisance may include an order directing the City Manager or his designee to seize and close the public nuisance, and to keep the same effectually closed until further order of the Court, not to exceed one (1) year.

C. The judgment in an action to abate a public nuisance may include, in addition to or in the alternative to other injunctive relief, an order requiring the removal, correction, or other abatement of a public nuisance, in whole or in part by the owner or operator of the public nuisance. The judgment may include an order directing the Chief of Police or the Community Development Department Director to remove, correct or abate the public nuisance if the author of the nuisance fails or refuses to do so within a reasonable time as determined by the Court, at the cost of the owner or operator of the public nuisance.

D. The judgment in an action to abate a public nuisance may include, in addition to or in the alternative to any other relief authorized by the provisions of this Chapter, the imposition of a fine of not more than one thousand dollars ($1,000.00), conditioned upon failure or refusal of compliance with the orders of the Court within any time limits therein fixed.

(Ord. 2005-01)

9.11.090 REDELIVERY OF SEIZED PREMISES. If the owner or operator of a building or place seized and closed as a public nuisance has not been guilty of any contempt of court in the proceedings, and demonstrates by evidence satisfactory to the Court that the public nuisance has been abated and will not recur, the Court may require the posting of bond, in an amount fixed by the order by the Court, for the faithful performance of the obligation of the owner or operator thereunder to prevent recurrence of or continuance of the public nuisance. (Ord. 2005-01)

9.11.100 VIOLATION OF INJUNCTION. Any violation or disobedience of any injunction or order issued by the Court in an action to abate a public nuisance shall constitute a Class A municipal offense, and each day on which the violation or disobedience of an injunction or order continues or recurs may be considered as a separate action of contempt of Court. (Ord. 2005-01)

9.11.110 FEES - COSTS AND FINES - LIENS AND COLLECTION.

A. For seizing and closing any building or premises as provided in this Chapter, or for performing other duties pursuant to the direction of the Court in accordance with the provisions of this Chapter, the City shall be entitled to a reasonable sum fixed by the Court, in addition to the actual costs incurred or expended.

B. All fees and costs allowed by the provisions of this Section, the costs of a Court action to abate any public nuisance, and all fines levied by the Court in contempt proceedings incident to any action to abate a public nuisance shall be a first and prior lien upon any real property where the nuisance was located, and the same shall be enforceable and collectible by execution issued by order of the Court, from the property of any person liable therefor.

C. Nothing contained in this Chapter shall be construed in such a manner as to destroy the validity of a bona fide lien upon real or personal property appearing of record prior to the recording of Court orders involving real estate as authorized under this Chapter.

E. In addition to the remedies set forth in paragraphs (A) through (C) above, the assessment, together with up to fifteen percent (15%) for inspection and other incidental costs in connection therewith, shall be a lien against each lot or tract of land until paid and shall have priority over all other liens except general taxes and prior special assessments. In accordance with Section 31-20-105, C.R.S., such assessment may be certified by the City Manager=s designee to the Mesa County Treasurer, to be placed on the tax list for the current year, and collected and paid over in the same manner as provided by law for the collection of taxes. Any amount charged on the tax roll of the succeeding year, and any unpaid balance so carried over shall bear interest at the rate of eighteen percent (18%) per annum, until paid.

(Ord. 2005-01)

Chapter 9.12

INJURY TO PROPERTY

Sections:

9.12.001 Control of dust producing areas
9.12.002 Control of open bodied trucks transporting dust or litter producing materials
9.12.003 Unlawfully using water, tampering with facilities
9.12.004 Unlawful advertising
9.12.005 Littering
9.12.006 Discharging water, other liquids

9.12.001 CONTROL OF DUST PRODUCING AREAS. It shall constitute a noncriminal municipal offense for any person to own, possess, or control any cleared area, parking lot, vacant lot or other site used by vehicular traffic without implementing an effective fugitive dust abatement or control measure, as may be required, which may include, but not be limited to, the following:

A. Wetting down of the dust-producing area;

B. Landscaping;

C. Covering, shielding or enclosing;

D. Paving on temporary or permanent basis;

E. Treating through the use of pallitives and chemical stabilization;

F. Graveling the dust areas.

(Ord. 1983-30 (part); Ord. 2000-9, S75)

9.12.002 CONTROL OF OPEN BODIED TRUCKS TRANSPORTING DUST OR LITTER-PRODUCING MATERIALS. No vehicle shall be driven or moved on any highway unless such vehicle is constructed or loaded or the load thereof securely covered to prevent any of its load from dropping, sifting, leaking, blowing or otherwise escaping therefrom; except that sand may be dropped for the purpose of securing traction or water or other substance may be sprinkled on a roadway in cleaning or maintaining such roadway. Any person who violates this Section commits a noncriminal municipal offense. (Ord. 2000-9, S76)

9.12.003 UNLAWFULLY USING WATER, TAMPERING WITH FACILITIES. It shall be unlawful for any person to use the water from any part of the water works system; to open any fireplug, stopcock or valve or other fixture appertaining to said works, or to shut off or turn on water for any service pipe without lawful authority or permission having been issued therefore. Any person who violates any provision of this Section commits a Class B municipal offense. (Ord. 2000-9, S77)

9.12.004 UNLAWFUL ADVERTISING. It shall be unlawful to post, affix, distribute or display advertising in certain ways and places in the City of Fruita. Any person, firm or corporation who performs any of the following commits a noncriminal municipal offense:

A. It shall be unlawful to tack, paste or tie any paper, cardboard, or fabric bills, posters, printed matter, advertisements or announcements on any poles, posts, trees, the outside walls of buildings or fences within the city. Nothing herein contained shall apply to notices required by law to be posted within the city nor to signs or any printed matter or printed advertisements which may be attached to or posted on or in buildings advertising goods for sale therein, or relating to any business therein conducted, nor to signs, bills or posters of any description within a building or tacked or posted to a signboard, billboard, or bulletin board as provided in Chapter 3.

B. It shall be unlawful to affix any handbill, poster, placard, circular, writing paper or other similar device on any public or private property without permission from the owner, tenant or occupant of the same.

C. It shall be unlawful to post, affix or distribute any handbill, poster, placard, circular, writing paper or similar device in any vehicle or in such a manner that it is liable to be blown or scattered about the city.

D. It shall be unlawful to post or display upon any such billboard, signboard, bulletin board, advertising sign or structure, any indecent, immoral or lascivious picture or design.

(Ord. 1983-30 (part); Ord. 2000-9, S79)

9.12.005 LITTERING. It shall be unlawful for any person to cast, throw, place, sweep, or deposit anywhere within the city any refuse in such a manner that it may be carried or deposited by the elements upon any street, sidewalk, alley, sewer, parkway, or other public or private place; nor shall any person place or deposit his refuse in the container of another in a manner so that it will be collected as though it had been generated by that other. Any person who knowingly violates this Section commits a Class B municipal offense. (Ord. 1983-30 (part); Ord. 2000-9, S79)

9.12.006 DISCHARGING WATER, OTHER LIQUIDS. Any person who knowingly discharges or causes to be discharged certain liquids, solids or gases onto the streets, alleys and sidewalks or into any public sewer within the City commits a Class B municipal offense. A person violates this Section if he or she unlawfully:

A. Discharges or causes to be discharged steam water or other liquids from any building directly onto or in such a manner that it will flow onto or seep under the streets, alleys and sidewalks; provided that the provisions of this section shall not apply to run-off water resulting from natural precipitation, sprinkling or irrigation.

B. Discharges or causes to be discharged any gasoline, benzene, naphtha, fuel oil, or other flammable, toxic, explosive or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes capable of causing damage or hazard to structures, equipment or people into the public sewer system.

(Ord. 1983-30, part; Ord. 2000-9, S81)

Chapter 9.14

AIDING AND ABETTING

Sections:

9.14.001 Aiding and Abetting

9.14.001 AIDING AND ABETTING. Any person, firm or corporation who knowingly aids or abets another person, firm or corporation in violating or failing to comply with any of the provisions of the Fruita Municipal Code and the Charter of the City of Fruita commits a Class B municipal offense. (Ord. 2000-9, S82)

TITLE 10

VEHICLES AND TRAFFIC

Chapters:

10.04 Municipal Traffic Code
10.06 Golf Carts/Golf Course Maintenance Vehicles on Public Rights of Way
10.08 Parades
10.12 Abandoned Vehicles
10.14 Restricted Truck Routes

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Chapter 10.04

MUNICIPAL TRAFFIC CODE

Sections:

10.04.010 Model Traffic Code Adopted
10.04.020 Deletions
10.04.030 Additions or Modifications
10.04.035 Skate Devices Prohibited When
10.04.040 Penalties
10.04.050 Application
10.04.060 Validity
10.04.070 Repeal
10.04.080 Interpretation
10.04.090 Certification

10.04.010 MODEL TRAFFIC CODE ADOPTED. Pursuant to Parts 1 and 2 of Article 16 of Title 31, C.R.S., as amended, there is hereby adopted by reference the 2010 edition of the "Model Traffic Code for Colorado Municipalities," promulgated and published as such by the Colorado Department of Transportation ("CDOT"), Safety and Traffic Engineering Branch, 4201 E. Arkansas Avenue, EP 700., Denver, Colorado 80222. The subject matter of the Model Traffic Code relates primarily to comprehensive traffic control regulations for the City. The purposes of this Ordinance and the Code adopted herein is to provide a system of uniform traffic regulations consistent with State law and generally conforming to similar regulations throughout the State and the nation. Not less than one (1) copy of the Model Traffic Code adopted herein is now filed in the office of the Clerk of the City of Fruita, Colorado, and may be inspected during regular business hours. After adoption of the Model Traffic Code, a copy of the Code may be kept in the office of the Chief of Police instead of the City Clerk. The copy of the Model Traffic Code shall be certified by the Mayor and the City Clerk to be a true and correct copy. (Ord. 1986-10; Ord. 1991-09; Ord. 1996-05, S1; Ord. 2003-18; Ord. 2011-02, S1)

10.04.020 DELETIONS. The 2010 edition of the Model Traffic Code is adopted as if set out at length save and except the following articles and/or sections which are declared to be inapplicable to this municipality and are therefore expressly deleted:

Part 17, Penalties and Procedure – deleted

(Ord. 1996-5, S1; Ord. 2003-18; Ord. 2011-02, S2)

10.04.030 ADDITIONS OR MODIFICATIONS.

A. Part 17, Penalties and Procedures, is hereby added to the 2010 Model Traffic Code as adopted by the City of Fruita to read as follows:

1701. Municipalities - traffic offenses classified - schedule of fines.

1. It is a traffic offense for any person to violate any provision of the Code.

2. Pursuant to C.M.C.R. 210 (b)(4), the court may by order, which may from time to time be amended, supplemented, or repealed, designate the traffic offenses, the penalties for which may be paid at the office of the court clerk or violations bureau.

3. The court in addition to any other notice, by published order to be prominently posted in a place where fines are to be paid, shall specify by suitable schedules the amount of fines to be imposed for violations, designating each violation specifically in the schedules. Such fines will be within the limits set by ordinance.

4. Fines and costs shall be paid to, receipted by, and accounted for by the court clerk.

5. If a person receives a penalty assessment notice for a violation under this section 1701 and such person pays the fine for the violation on or before the date the payment is due, the points assessed for violation are reduced as follows:

   a. For a violation having an assessment of three (3) or more points under Section 42-2-127(5), C.R.S., as amended, the points are reduced by two (2) points;

      For a violation having an assessment of two (2) points under Section 42-2-127(5), C.R.S., as amended, the points are reduced by one (1) point.

1703. Parties to a crime. Every person who commits, conspires to commit, or aids or abets in the commission of any act declared in this Code to be a traffic offense, whether individually or in connection with one or more other persons or as principal, agent, or accessory, is guilty of such offense or liable for such offense, and every person who falsely, fraudulently, forcibly, or willfully induces, causes, coerces, requires, permits, or directs another to violate any provision of this Code is likewise guilty of such offense or liable for such offense.

1704. Offenses by persons controlling vehicles. It is unlawful for the owner or any other person employing or otherwise directing the driver of any vehicle to require or knowingly to permit the operation of such vehicle upon a highway in any manner contrary to law or this Code.

1706. Juveniles - convicted - arrested and incarcerated - provisions for confinement.

1. Notwithstanding any other provision of law, a child, as defined in section 19-1-103 (18), C.R.S., convicted of a misdemeanor traffic offense under this Code, violating the conditions of probation imposed under this Code, or found in contempt of court in connection with a violation or alleged violation under this article shall not be confined in a jail, lockup, or other place used for the confinement of adult offenders if the court with jurisdiction is located in a county in which there is a juvenile detention facility operated by or under contract with the department of human services that

shall receive and provide care for such child or if the jail is located within forty miles of such facility. The court imposing penalties under this section may confine a child for a determinate period of time in a juvenile detention facility operated by or under contract with the department of human services. If a juvenile detention facility operated by or under contract with the department of human services is not located within the county or within forty miles of the jail, a child may be confined for up to forty-eight hours in a jail pursuant to section 19-2-508 (4), C.R.S.

2. a. Notwithstanding any other provision of law, a child, as defined in section 19-1-103 (18), C.R.S., arrested and incarcerated for an alleged misdemeanor traffic offense under this article, and not released on bond, shall be taken before a county judge who has jurisdiction of such offense within forty-eight hours for fixing of bail and conditions of bond pursuant to section 19-2-508 (4)(d), C.R.S. Such child shall not be confined in a jail, lockup, or other place used for the confinement of adult offenders for longer than seventy-two hours, after which the child may be further detained only in a juvenile detention facility operated by or under contract with the department of human services. In calculating time under this subsection 2, Saturdays, Sundays, and court holidays shall be included.

   b. In any case in which a child is taken before a county judge pursuant to paragraph a of this subsection 2, the child's parent or legal guardian shall immediately be notified by the court in which the county judge sits. Any person so notified by the court under this paragraph b shall comply with the provisions of section 42-4-1716 (4), C.R.S.

1708. Burden of proof - appeals.

1. The burden of proof shall be upon the people, and the court shall enter judgment in favor of the defendant unless the people prove the liability of the defendant beyond a reasonable doubt.

2. Appeals from courts of record shall be in accordance with Rule 37 of the Colorado Rules of Criminal Procedure.

1709. Penalty assessment notice for traffic offenses - violations of provisions by officer - driver's license. Whenever a penalty assessment notice for a traffic infraction is issued the penalty assessment notice which shall be served upon the defendant by the peace officer shall contain the name and address of the defendant, the license number of the vehicle involved, if any, the number of the defendant's driver's license, if any, a citation of the statute alleged to have been violated, a brief description of the traffic infraction, the date and approximate location thereof, the amount of the penalty prescribed for such traffic infraction, the amount of the surcharge thereon pursuant to section 24-4.2-104 (1), C.R.S., the number of points, if any, prescribed for such traffic infraction pursuant to section 42-2-127, and the date the penalty assessment notice is served on the defendant; shall direct the defendant to appear in a specified county court at a specified time and place in the event such penalty and surcharge

thereon is not paid; shall be signed by the peace officer; and shall contain a place for the defendant to elect to execute a signed acknowledgment of liability and an agreement to pay the penalty prescribed and surcharge thereon within twenty days, as well as such other information as may be required by law to constitute such penalty assessment notice to be a summons and complaint, should the prescribed penalty and surcharge thereon not be paid within the time allowed in section 42-4-1701.

1711. Compliance with promise to appear. A written promise to appear in court may be complied with by an appearance by counsel.

1712. Procedure prescribed not exclusive. The foregoing provisions of this Code shall govern all police officers in making arrests without a warrant or issuing citations for violations of this Code, for offenses or infractions committed in their presence, but the procedure prescribed in this Code shall not otherwise be exclusive of any other method prescribed by law or ordinance for the arrest and prosecution of a person for an offense or infraction of like grade.

1713. Conviction record inadmissible in civil action. Except as provided in sections 42-2-201 to 42-2-208, C.R.S., no record of the conviction of any person for any violation of this Code shall be admissible as evidence in any court in any civil action.

1714. Traffic violation not to affect credibility of witness. The conviction of a person upon a charge of violating any provision of this Code or other traffic regulation less than a felony shall not affect or impair the credibility of such person as a witness in any civil or criminal proceeding.

1715. Convictions, judgments, and charges recorded - public inspection.

1. Every judge of a court not of record and every clerk of a court of record shall keep a full record of every case in which a person is charged with any violation of this Code or any other law regulating the operation of vehicles on highways.

2. Within ten days after the entry of a judgment, conviction, or forfeiture of bail of a person upon a charge of violating any provision of this Code or other law regulating the operation of vehicles on highways, the judge or clerk of the court in which the entry of a judgment was made or the conviction was had or bail was forfeited shall prepare and immediately forward to the motor vehicle division of the department of revenue an abstract of the record of said court covering every case in which said person had a judgment entered against him or her, was so convicted, or forfeited bail, which abstract must be certified by the person so required to prepare the same to be true and correct.

3. Said abstract must be made upon a form furnished by the department of revenue and shall include the name, address, and driver's license number of the party charged, the registration number of the vehicle involved, the nature of the offense, the date of

hearing, the plea, the judgment or whether bail forfeited, and the amount of the fine or forfeiture as the case may be.

1716. Notice to appear or pay fine - failure to appear - penalty.

1. For the purposes of this part 17, tender by an arresting officer of the summons or penalty assessment notice shall constitute notice to the violator to appear in court at the time specified on such summons or to pay the required fine and surcharge thereon.

2. Except as otherwise provided in subsection 3 of this section, a person commits a traffic offense if the person fails to appear to answer any offense other than a traffic infraction charged under this part 17.

3. a. (i) Except as otherwise provided in subparagraph (ii) of this paragraph a, a person who is a parent or legal guardian of a minor under the age of eighteen years and who is required to appear in court with the minor pursuant to the provisions of this part 17 including but not limited to section 1706 (2)(b), shall appear in court at the location and on the date stated in the penalty assessment notice or in the summons and complaint or as instructed by the court.

(ii) The provisions of subparagraph (i) of this paragraph a concerning the appearance of a parent or legal guardian shall not apply in a case where the minor under the age of eighteen years or the parent of the minor demonstrates to the court by clear and convincing evidence that the minor is an emancipated minor.

(iii) For purposes of this subsection 3, "emancipated minor" means a minor under the age of eighteen years who has no legal guardian and whose parents have entirely surrendered the right to the care, custody, and earnings of the minor, no longer are under any duty to support or maintain the minor, and have made no provision for the support of the minor.

b. A person who violates any provision of paragraph a of subparagraph (i) of this subsection 3 commits a class 1 petty offense and shall be punished pursuant to section 18-1.3-503, C.R.S.

1717. Conviction - attendance at driver improvement school.

1. Except as otherwise provided in subsection 2 of this section, whenever a person has been convicted of violating any provision of this Code or other law regulating the operation of vehicles on streets or highways, the court, in addition to the penalty provided for the violation or as a condition of either the probation or the suspension of all or any portion of any fine or sentence of imprisonment for a violation other than a traffic infraction, may require the defendant, at the defendant's own expense, if any, to attend and satisfactorily complete a course of instruction at any designated driver

improvement school located and operating in the county of the defendant's residence and providing instruction in the traffic laws of this state, instruction in recognition of hazardous traffic situations, and instruction in traffic accident prevention. Such school shall be approved by the court.

2. Whenever a minor under eighteen years of age has been convicted of violating any provision of this Code or other law regulating the operation of vehicles on streets or highways, the court may require the minor to attend and satisfactorily complete a course of instruction at any designated driver improvement school providing instruction in the traffic laws of this state, instruction in recognition of hazardous traffic situations, and instruction in traffic accident prevention. The court may impose the driver improvement school requirement in addition to the penalty provided for the violation or as a condition of either the probation or the suspension of all or any portion of any fine or sentence of imprisonment for the violation. The minor, or the minor's parent or parents who appear in court with the minor in accordance with section 1716 3, of this Code, shall pay the cost of attending the designated driver improvement school. The court shall make available information on scholarships and other financial assistance available to help minors or their parents offset the costs of driver improvement school. Such school shall be approved by the court.

B. Section 1212, Parking-Weight Restrictions, is hereby added to the Model Traffic Code as adopted by the City of Fruita.

1212 Parking - Weight Restrictions - No trucks, truck tractors, semi-trailers, commercial vehicles or motor vehicles exceeding 10,000 pounds gross vehicle weight shall be parked on any street in the City of Fruita; <u>except</u> such parking is permitted only for the purpose of loading and unloading passengers or freight without delay, and only when such loading does not obstruct, impede or endanger any traffic.

C. Section 1213 Parking - Size Restrictions, is hereby added to the Model Traffic Code as adopted by the City of Fruita.

1213 Parking-Size Restrictions - No truck type trailer, whatever its empty weight, that is greater than eight feet (8') in width or greater than eighteen feet (18') in length shall be parked on any street in the City of Fruita; <u>except</u> that such parking is permitted only for the purpose of loading or unloading freight and only when such loading or unloading does not obstruct, impeded or endanger any traffic.

D. Section 1214, Parking - Restrictions on Hazardous Wastes, is hereby added to the Model Traffic Code as adopted by the City of Fruita.

1214 Parking - Restrictions on Hazardous Wastes - No trucks, truck trailers, semi-trailers, commercial vehicles or motor vehicles carrying, containing or transporting any hazardous substance (as defined in Section 42-20-103, C.R.S.) shall park in any residential district of the City of Fruita; <u>except</u> that such parking is permitted in any business district only for the

purpose of loading or unloading hazardous substances without delay, and only when such loading and unloading does not obstruct, impede or endanger any traffic.

(Ord. 1999-7, S1; Ord. 2003-18, Ord. 2011-02, S3)

10.04.035 SKATE DEVICES PROHIBITED WHEN.

A. Skate device(s) shall include and mean any skateboard(s), conventional or in line roller skates or other similar device or apparatus all which may be collectively referred to as a skate device or skate devices.

B. No person shall operate a skate device in any place where there are one or more signs posted prohibiting such activity. No person shall operate a skate device in any place in a manner which causes injury to any person or damage to public or private property.

C A person using a skate device upon any sidewalk, public path, trail or right-of-way within the City shall use the same in a careful and prudent manner and at rate of speed no greater than is reasonable and proper under the conditions existing at the point of operation, taking into account the amount and character of pedestrian traffic, grade and width of sidewalk, path, trail or right of way and condition of the surface thereof, and shall obey all traffic control devices. Every person using a skate device upon a sidewalk, public path, trail or other right of way shall yield the right of way to any pedestrian thereon.

(Ord. 1996-18; Ord. 2003-18)

10.04.040 PENALTIES.

A. The following penalties, herewith set forth in full, shall apply to this Chapter. Any person who violates any of the provisions stated or adopted in this Chapter commits a noncriminal municipal offense except any of the following violations which shall constitute a Class B municipal offense:

1. MTC 1101 (1) Speeding and (2) If the alleged violator is accused of exceeding the prima facia speed limit by more than 19 mph;

2. MTC 1101 (3) Special Hazards (if the alleged violation has caused, or contributed to the cause of, an accident resulting in appreciable damage to property of another or an injury or the death to any person);

3. MTC 1105 Speed Contest;

4. MTC 1401 Reckless Driving;

5. MTC 1402 Careless Driving (if the violation has caused, or contributed to the cause of, an accident resulting in appreciable damage to property of another or an injury or death to any person);

6. MTC 1413 Eluding or Attempting to Elude a Police Officer;

7. MTC 1903 Stopping For School Buses; and

8. Any other offense contained in the Model Traffic Code resulting in an accident causing personal injury or substantial property damage.

B. If a person receives a penalty assessment notice for a violation and such person pays the fine for the violation on or before the date the payment is due, the points assessed for violation are reduced as follows:

1. For a violation having an assessment of three (3) or more points under Section 42-2-127(5), C.R.S., as amended, the points are reduced by two (2) points;

2. For a violation having an assessment of two (2) points under Section 42-2-127(5), C.R.S., as amended, the points are reduced by one (1) point.

(Ord. 2000-9, S84; Ord. 2003-18; Ord. 2011-02, S4)

10.04.050 APPLICATION. This chapter shall apply to every street, alley, sidewalk area, driveway, park, and to every other public way or public place or public parking area, either within or outside the corporate limits of this municipality, the use of which this municipality has jurisdiction and authority to regulate. The provisions of sections 1401, 1402, 1413, and 1211 of the adopted Model Traffic Code, respectively concerning reckless driving, careless driving, eluding a police officer, and limitations on backing shall apply not only to public places and ways but also throughout this municipality. (Ord. 1996, S1; Ord. 2003-18; Ord. 2011-02, S5)

10.040.060 VALIDITY. If any part or parts of this Ordinance are for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each part or parts thereof, irrespective of the fact that any one part or parts might be declared invalid. The enactment of this Ordinance shall not affect the prosecution of any pending case in the Fruita Municipal Court and any repealed provisions shall remain in effect as to such pending cases. (Ord. 1996-5, S1; Ord. 2003-18; Ord. 2011-02, S6)

10.040.070 REPEAL. Any existing or parts of ordinances covering the same matters as embraced in this Ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effective date of this Ordinance. (Ord. 1996-5, S1; Ord. 2003-18, Ord. 2011-02, S7)

10.04.080 INTERPRETATION. This ordinance shall be so interpreted and construed as to effectuate its general purpose to conform with the State's uniform system for the regulation of vehicles and traffic. Article and section headings of the ordinance and adopted Model Traffic Code shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or extent of

the provisions of any article or section thereof. (Ord. 1996-5, S1; Ord. 2003-18)

10.040.090 CERTIFICATION. The City Clerk shall certify to the passage of this ordinance make not less than three copies of the adopted Code available for inspection by the public during regular business hours. (Ord. 1996-5, S1; Ord. 2003-18, Ord. 2011-02, S8)

Chapter 10.06

GOLF CARTS/GOLF COURSE MAINTENANCE VEHICLES ON PUBLIC RIGHTS OF WAY

Sections:

10.06.010 Definitions
10.06.020 Boundary
10.06.030 Rules and Restrictions
10.06.040 Permit Required
10.06.050 Insurance
10.06.060 Penalties

10.06.010 DEFINITIONS. For the purpose of this section:

A. "Golf cart" means: a four wheel, pneumatic tired vehicle powered by a gasoline or battery driven motor that is designed for use as a transport device on a golf course.

B. "Golf course maintenance vehicle" means: any vehicle commonly used for the purpose of maintaining a golf course, including but not limited to, mowers, or towed implements.

(Ord. 1992-11)

10.06.020 BOUNDARY. A golf cart or golf course maintenance vehicle may be driven upon the City of Fruita streets, excluding county roads, state or federal highways, in the area bounded on the west by the west side of 18 Road, on the east by the east side of 19 Road, on the north by the south side of Interstate 70 frontage road, and on the south by the Colorado River. (Ord. 1992-11)

10.06.030 RULES AND RESTRICTIONS.

A. No person shall operate a golf cart or golf course maintenance vehicle on any public street in the City of Fruita:

1. Unless said operation of golf course maintenance vehicle is within the boundaries set forth in Section 10.06.020 above;

2. Except that a golf cart may cross public right of way in designated areas. Designated areas shall be approved by the Chief of Police;

3. Unless the golf cart or a self propelled golf course maintenance vehicle is equipped at a minimum with the following:

   a. A rear view mirror;

   b. An audible warning device;

c. A steering wheel;

d. A foot controlled accelerator; and

e. A foot brake.

4. unless any towed implement is equipped at a minimum with a state approved slow moving triangle mounted on the rear of the implement; and the vehicle towing the towed implement meets all the requirements of Section 10.06.030 A 3 above;

5. Except during the time from 1/2 hour before sunrise to 1/2 hour after sunset (unless such vehicle is properly equipped for night time operation);

6. Unless such person possesses, on the person of the operator, a valid driver's license;

7. In a way or at a speed which impedes the normal flow of traffic; the operator has the affirmative duty to observe traffic behind and around him. If the vehicle is traveling at a speed which is more than 5 miles per hour below the applicable speed limit, the operator shall pull over to the right side of the road at the first safe opportunity and allow vehicle to pass his vehicle;

8. While under the influence of, or impaired by, alcohol nor shall any person operate a golf cart or golf course maintenance vehicle while under the influence of any drug. The definition of, and proof of, intoxication or impairment shall be as set forth in C.R.S. 42-4-1202. The operator of a golf cart or golf course maintenance vehicle who is arrested for operating a golf cart or golf course maintenance vehicle while under the influence or impaired by alcohol or drugs shall submit to chemical testing as set forth in Title 42 of the Colorado Revised Statutes. Failure to submit to a test as required shall result in the immediate revocation of the permit issued to an operator.

9. Unless such person has, on their person, proof of recreational vehicle, or similar insurance, that is current and provides coverage for injury to persons and property.

B. Golf course maintenance vehicles, in addition to the requirements of Section 10.06.030 A above, shall also obtain a permit from the Fruita Police Department as outlined in Section 10.06.040, which permit shall be attached to the golf course maintenance vehicle at all times that such vehicle is being operated upon a city street.

C. The operator of a golf cart or golf course maintenance vehicle on city streets shall comply with the provisions of the Model Traffic Code as adopted by the City.

(Ord. 1992-11)

10.06.040 PERMIT REQUIRED. The Police Chief, or his designee, after having determined that the golf course maintenance vehicle and the operator are in compliance with the requirements of this ordinance, shall issue a permit. Such permits shall be valid for as long as the operator owns the

vehicle, unless revoked for just cause. Fees for the permit will be $10.00. The City Council may alter such fee by resolution. (Ord. 1992-11)

10.06.050 INSURANCE. The City Council shall, by resolution, establish the minimum requirements of required insurance. (Ord. 1992-11)

10.06.060 PENALTIES. Any person who violates, or allows another to violate, any of the provisions of this Chapter commits a noncriminal municipal offense. (Ord. 2000-9, S85)

Chapter 10.08

PARADES

Sections:

10.08.010 Permit required when-Route restriction authority

10.08.010 PERMIT REQUIRED WHEN -- ROUTE RESTRICTION AUTHORITY. No procession, parade of animals, or parade containing one hundred or more persons or twenty-five or more vehicles, excepting the military forces of the United States and the state of Colorado, shall march or proceed along any street except in accordance with a permit issued by the city clerk. The city clerk shall have the authority to designate and limit the route to be followed by any such parade or procession, and it is unlawful for those comprising the parade or procession to follow any other route than the one authorized. Any person who violates any of the provisions of this Section commits a noncriminal municipal offense. (Ord. 162, S2, 1950; Ord. 2000-9, S86)

Chapter 10.12

ABANDONED VEHICLES

Sections:

10.12.010 Purpose
10.12.020 Vehicle - Defined
10.12.030 Abandoning vehicles prohibited
10.12.040 Leaving wrecked or dismantled vehicles on streets prohibited
10.12.050 Junked vehicles on private property prohibited - Exceptions
10.12.060 Investigation authority - Notice of violation
10.12.070 Civil remedy - Removal and impoundment authorized when

10.12.010 PURPOSE. The purpose of this chapter is to safeguard life, limb and property by regulating abandoned, wrecked, discarded, dismantled, worn out and nonoperating vehicles within the city. (Ord. 269, S1, 1972)

10.12.020 VEHICLE--DEFINED. "Vehicle" means any automobile, truck, tractors, or other machinery of any kind, including every device in, on or by which any person or property is or may be transported or drawn upon a public highway, road or street, excepting devices moved by human power or used exclusively upon stationary rails or tracks. (Ord. 269, S2, 1972)

10.12.030 ABANDONING VEHICLES PROHIBITED. No person shall abandon any vehicle on any street or highway within the city, and no person shall leave any vehicle at any place within the city for such time and under such circumstances as to cause such vehicle reasonably to appear to have been abandoned. Any person who knowingly violates any of the provisions of this Section commits a Class B municipal offense. (Ord. 269, S3, 1972; Ord. 2000-9, S87)

10.12.040 LEAVING WRECKED OR DISMANTLED VEHICLES ON STREETS PROHIBITED. Any person who knowingly leaves any partially dismantled, wrecked, discarded, disassembled, worn out or junked vehicle on any street or highway within the City commits a Class B municipal offense. (Ord. 2000-9, S88)

10.12.050 JUNKED VEHICLES ON PRIVATE PROPERTY PROHIBITED -- EXCEPTIONS. Any person who is the owner of any vehicle or any person who is in charge or control of any property within the City, whether he is an owner, tenant, occupant, lessee or otherwise, who knowingly permits or allows any partially disassembled, dismantled, wrecked, junked, abandoned or discarded vehicle to remain on such property longer than fifteen (15) days commits a Class B municipal offense. This Section shall not apply to:

A. A vehicle in an enclosed building;

B. A vehicle on the premises of a business enterprise operated in a lawful place and manner, where necessary to the operation of such business or enterprise; or

C. A vehicle in an appropriate storage place or depository maintained for impounded vehicles by the city.

(Ord. 1982-22, S4; Ord. 269, S5, 1972; Ord. 2000-9, S89)

10.12.060 INVESTIGATION AUTHORITY--NOTICE OF VIOLATION. The chief of police or any member of the police department is authorized to investigate any vehicle left at any place within the city which reasonably appears to be in violation of this chapter. If after an investigation there is probable cause for believing a violation of this chapter exists, the person making the investigation shall hand deliver a notice of said violation to the owner of the vehicle, if known, the person asserting control over the vehicle, if any, and the occupant of the premises on which such vehicle is located, advising such person or persons of the violation and ordering the removal of the vehicle within ten days from the date of the notice; provided, that if such violation occurs on a street or highway within the city, no notice need be given. No summons or complaint shall be issued for any violation of this chapter which occurs on private property until the expiration of ten days from the date of the notice. (Ord. 1982-22, S5; Ord. 269, S6, 1972)

10.12.070 CIVIL REMEDY--REMOVAL AND IMPOUNDMENT AUTHORIZED WHEN. Separate and apart from criminal penalties applicable to violations of this chapter, any such vehicle found on any property within the city to be partially dismantled, wrecked, junked, worn out, discarded or abandoned in violation of the provisions of this chapter shall be ordered by the court to be removed and impounded by the police department until lawfully claimed or disposed of in accordance with law. (Ord. 313, S8, 1974; Ord. 269, S7, 1972)

Chapter 10.14

RESTRICTED TRUCK ROUTES

10.14.010 Definitions
10.14.020 Restricted routes - designated
10.14.030 Truck and other commercial vehicles prohibited on restricted routes
10.14.040 Signs required
10.14.050 Effective date

10.14.010 DEFINITIONS. The following terms, as used in this Chapter, shall have the same meanings as defined in the Model Traffic Code except as hereinafter designated unless the context specifically indicates otherwise or unless such meaning is excluded by express provisions:

A. "Immediate area of operation" means a segment of a restricted route between successive intersecting streets, including any restricted route, which provides the only practical access to that segment of the restricted route.

B. "Official traffic control devices" means all signs, signals markings, and devices, not inconsistent with State law, placed or displayed by authority of the City, for the purpose of regulating, warning or guiding traffic.

C. "Restricted route" means any street, highway, public way or portion thereof prohibited to the operation of certain through truck and other commercial vehicle traffic, as designated by the City's Traffic Engineer.

D. Through truck traffic" means operation of a truck or mobile machinery without origin or destination in the immediate area of operation

E. "Truck" means any motor vehicle equipped with a body designed to carry property which is generally and commonly used to carry and transport property over the public street, except privately owned recreation motor vehicles, in excess of ten thousand pounds gross vehicle weight rating (10,000 G.V.W.R.).

(Ord. 2003-19)

10.14.020 RESTRICTED ROUTES- DESIGNATED. The City's Traffic Engineer shall set forth the restricted routes and length of time of said restriction. (Ord. 2003-19)

10.14.030 TRUCKS AND OTHER COMMERCIAL VEHICLES PROHIBITED ON RESTRICTED ROUTES.

A. Through truck traffic, including road tractors and semi-trailers, as well as mobile machinery shall be prohibited upon the designated restricted routes established pursuant to Section 10./14.020 of the Fruita Municipal Code, except as otherwise provided in this Section. It shall constitute a non-criminal municipal offense for any person to operate or cause to be

operated a truck, including a road tractor and semi-trailer, or mobile machinery upon a restricted route without an origin or destination in the immediate area of operation. Nothing contained herein shall prevent a truck or mobile machinery to use a restricted route while traveling to or from a truck terminal, garage, place or performing a service, or place of loading or unloading, if such truck or mobile machinery proceeds from the restricted route to an unrestricted route without an unreasonable increase of the distance to be traveled on a restricted route.

B. Any person operating a truck, including a road tractor or semi-trailer, upon a restricted route, shall have in his possession a log book, delivery slip or other evidence of his point of origin and destination to justify the presence of the vehicle upon such route. Failure to produce such evidence upon the request of a police officer shall constitute a none-criminal municipal offense.

(Ord. 2003-19)

10.14.040 SIGNS REQUIRED. In accordance with Section 106(3) of the Model Traffic Code for Colorado Municipalities, as adopted in Chapter 10/04 of the Fruita Municipal Code, the City shall erect appropriate official traffic control devices, as determined by the City's Traffic Engineer, designating the restriction set forth in this Chapter. (Ord. 2003-19)

10.14.050 EFFECTIVE DATE. The restriction placed on street so designated shall become effective upon the erection of official traffic control devices as required by this Ordinance. (Ord. 2003-19)

TITLE 11

RESERVED

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TITLE 12

PUBLIC IMPROVEMENTS

Chapters:

12.04 Construction and Repair of Sidewalks
12.08 Excavations
12.12 Obstruction of Streets and Sidewalks
12.14 Sidewalk Restaurants
12.16 Removal of Snow
12.20 Street Naming and Numbering

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Chapter 12.04

CONSTRUCTION AND REPAIR OF PUBLIC IMPROVEMENTS

Sections:

12.04.010 Construction of sidewalks and sewers - When city petitioned
12.04.020 Construction of streets and sewers - When city deems necessary
12.04.030 Construction and repair of sidewalks, curbs, and gutters
12.04.040 Construction - permit required
12.04.050 Specifications
12.04.060 Notice of order
12.04.070 Failure to comply with notice
12.04.080 Assessment of costs

12.04.010 CONSTRUCTION OF SIDEWALKS AND SEWERS -WHEN CITY PETITIONED. When the owners of 60% of the frontage of the lots or lands adjacent to or abutting upon any street or alley or designated portion thereof, petition the city council, in writing to construct a storm or sewerage sewer in the street or alley or require sidewalks, and/or curbs and gutters to be constructed along the street or alley or designated portion thereof, it is the duty of the city council to order such construction be accomplished by contract and shall assess the costs of such improvements against the lots or lands adjacent to or abutting upon such sidewalk, street, or alley so improved, and collect the assessment as provided in Section 12.04.080. (Ord. 432, S2 (part), 1980)

12.04.020 CONSTRUCTION OF STREETS AND SEWERS - WHEN CITY DEEMS NECESSARY. When the city council deems it necessary that any storm or sewerage sewer be constructed or that any street be surfaced or improved, the City Council shall order such construction or improvement to be accomplished by contract, assess the costs of such construction or improvement against the adjacent property, and collect the assessment as provided in Section 12.04.080. (Ord. 432, S2 (part), 1980)

12.04.030 CONSTRUCTION AND REPAIR OF SIDEWALKS, CURBS AND GUTTERS. When the city council deems it necessary that any portion of a sidewalk, curb or gutter be constructed or repaired, it may on its own motion order the construction or repair to be done by the owner of the lots or land adjacent to or abutting the improvement or repair. (Ord. 432, S2(part), 1980)

12.04.040 CONSTRUCTION - PERMIT REQUIRED. It is unlawful for anyone to construct any sidewalk, curb or gutter in the city without first obtaining from the city clerk a permit for such construction. Any person who fails to obtain a permit for the construction of improvements commits a Class B municipal offense. (Ord. 432, S2 (part), 1980; Ord. 2000-9, S90)

12.04.050 SPECIFICATIONS. All sidewalks, curbs, and gutters shall be constructed or repaired in accordance with specifications required by the city, including specifications as to curb cuts. (Ord. 432, S2 (part), 1980)

12.04.060 NOTICE OF ORDER. The city administrator, on behalf of the city council, shall serve notice by registered mail upon the owner or owners of the property adjacent to or abutting the sidewalk, curb or gutter ordered constructed or repaired to make such construction or repair within thirty days from the date of registering the notice for mailing. The notice shall read as follows:

NOTICE
Fruita, Colorado

_____
(Date)

You are hereby notified that the city council of the City of Fruita, Colorado, by resolution duly adopted at its regular meeting, directed the under signed to inform you that construction or repair of sidewalk, curb, or gutter has been ordered at the following location:

_____

In the event the construction or repair ordered by the City Council is not completed within thirty days from this date, the city council may order it completed under contract and will order the costs of that construction or repair assessed against the owners of the adjacent or abutting property, including that property owned by you. The construction of sidewalk, curb, or gutter in the City of Fruita must be made in accordance with specifications adopted by the City.

By order of the City Council of the City of Fruita.

_____
City Administrator

(Ord. 432, S2 (part), 1980)

12.04.070 FAILURE TO COMPLY WITH NOTICE. The city administrator shall report to the city council any owner or owners of property adjacent to or abutting the sidewalk, curb, or gutter ordered improved who has failed, refused or neglected to comply with the notice to construct or repair. The city council may thereupon, by resolution duly adopted, order the construction or repair to be done by contract. (Ord. 432, S2 (part), 1980)

12.04.080 ASSESSMENT OF COSTS. The costs of any improvements ordered by the city council, pursuant to this chapter, shall be assessed against the owner or owners of adjacent or abutting property. Notice of the assessment shall be given by registered mail to the owners by the city clerk within ten days of the completion of the improvement. Where such costs have not been paid within thirty days after completion of the improvement, the city clerk shall certify the assessment, plus a 10% penalty for cost of collection, to the treasurer of Mesa County, who shall extend the assessment upon his tax roll and collect it in the same manner as other taxes assessed upon the property. (Ord. 432, S2 (part), 1980)

Chapter 12.08

EXCAVATIONS

Sections:

12.08.010 Permit required - Authority - Supervision of work
12.08.020 Permit - Scope - Work specifications authority
12.08.030 Permit application - Contents required
12.08.040 Permit fee
12.08.050 Permit bond and insurance requirements
12.08.060 Commencement and completion requirements
12.08.070 Width and inconvenience limitations

12.08.010 PERMIT REQUIRED - AUTHORITY - SUPERVISION OF WORK. All work on any excavation, cut, trench or opening in or under any street, sidewalk, curb, gutter, curb walk, alley or other public place shall be done only on authority of a permit issued by the Public Works Director or his designated representative, and such work shall be supervised by the Public Works Department. (Ord. 2001-03, S1; Ord. 2015-02, S1)

12.08.020 PERMIT - SCOPE - WORK SPECIFICATIONS AUTHORITY. It is unlawful or any person, other than the city itself, to excavate, cut, core, open or trench in or under any street, sidewalk, curb, gutter, curb walk, alley or other public place without having first obtained a permit from the city. The Public Works Director shall supervise and prescribe the procedures as outlined in the permit, precautions and specifications under which the excavation work, utility placement, backfilling and resurfacing shall be done, insofar as necessary to protect city interests and property. Any person who knowingly violates any of the provisions of the Section commits a Class B municipal offense. (Ord. 2001-03, S1)

12.08.030 PERMIT APPLICATION - CONTENTS REQUIRED. Every person desiring to do any of said excavation work shall apply to the Public Works Director for a permit on a form provided by the city, stating the applicant's name, the location, length, width and purpose of the proposed excavation, the amount of the permit fee, the dates of commencement and projected completion of the work, that the work will be performed in strict compliance with the specifications and procedures established by the Public Works Director, and that the city will be indemnified and held harmless from any and all damages by reason of the work of the permittee. (Ord. 2001-03, S1; Ord. 2015-02, S1)

12.08.040 PERMIT FEE. A permit fee shall be paid to the city prior to the issuance of excavation permits. The permit fee shall be established by Resolution of the Fruita City Council. (Ord. 2001-03, S1; Ord. 2015-02, S1)

12.08.050 PERMIT - BOND AND INSURANCE REQUIREMENTS. Every person applying for an excavation permit and prior to the issuance thereof shall file a surety bond or have other equivalent bond in effect, good for one year, in favor of the city in the penal sum of five thousand dollars ($5,000), and conditioned upon the faithful performance of such work in strict compliance with the specifications, rules, regulations and ordinances of the city and within

the specified time limits, and that such person will indemnify and save harmless the city against and from any and all damages or claims for damages, loss, costs, charges or expenses that may be brought against it by any person by reason of such work. The applicant shall also produce evidence of general liability insurance coverage for the work with limits of not less than twenty-five thousand dollars. (Ord. 2001-03, S1)

12.08.060 COMMENCEMENT AND COMPLETION REQUIREMENTS. All work authorized by a permit issued for excavation work shall be commenced within a reasonable time as stated in Section 12.08.070, and shall be diligently and continuously performed until completion. In the event that weather, process of law, or any other unexpected obstacles shall cause work to be stopped for so long a time that public travel shall be unreasonably obstructed, the Public Works Director may order the excavation refilled and repaved as if the work contemplated in the permit were actually completed. Any person who knowingly violates any of the provisions of this Section commits a Class B Municipal Offense. (Ord. 2001-03, S1)

12.08.070 WIDTH AND INCONVENIENCE LIMITATIONS. No opening or excavation shall be undercut or have a greater width at the bottom than at the top. In no case shall more than one-half of the width of any street, alley or other public place be opened or excavated at any one time, and, in all cases, one-half of such street, alley or other public place shall remain untouched for the accommodation of traffic until the other one-half is restored for safe use. All such work shall be performed in such way as to cause minimum inconvenience and restriction to the public and to both pedestrian and vehicular traffic. After the completion of the work necessitating an excavation, the excavated area shall be refilled and returned as near as possible to its condition prior to the excavation, including the replacement of all pavement, cement or other surface material, within fifteen (15) days. Any filling and replacement done pursuant to this section shall be subject to the inspection and approval of the Public Works Director or his designated representative. The permit granted for an excavation, subject to Section 12.08.050, shall note on its face that the applicant shall have fifteen days in which to meet the terms of this section. (Ord. 2001-03, S1)

Chapter 12.12

OBSTRUCTION OF STREETS AND SIDEWALKS

Sections:

12.12.010 Permitted when - Items to be removed at night
12.12.020 Clear passageway on sidewalk required when
12.12.030 Permanent improvements prohibited on public right of way
12.12.040 Trees and plants - trimming requirements

12.12.010 PERMITTED WHEN - ITEMS TO BE REMOVED AT NIGHT. No person shall place upon nor suffer to be placed upon any sidewalk, street or alley in this city any goods, boxes, barrels, sacks, wood, wares or merchandise of any description whatever for sale, show or use except in front of the building occupied by him and not beyond three feet from the front line of the lot where such goods may be exposed, and all such goods shall be taken in and removed from the sidewalk, street or alley at night. Any person who violates any of the provisions of this Section commits a noncriminal municipal offense. (Ord. 44 Art. 2, S7, 1907; Ord. 2000-9, S93)

12.12.020 CLEAR PASSAGEWAY ON SIDEWALK REQUIRED WHEN. No person or persons, except when necessarily engaged in loading or unloading goods, wares, and merchandise, shall be allowed to pile up, deposit or keep upon any sidewalk any boxes, bales, barrels, goods, wares or other articles, and when so engaged such person shall at all times leave a passageway of at least two feet wide clear upon such sidewalk for the use of foot passengers. Any person who violates any of the provisions of this Section commits a noncriminal municipal offense. (Ord. 44 Art. 2, S8, 1907; Ord. 2000-9, S94)

12.12.030 PERMANENT IMPROVEMENTS PROHIBITED ON PUBLIC RIGHT-OF-WAY. It shall be unlawful for any resident of the City, without permission of the City Council, to construct upon any public right-of-way property owned by the City any improvement which is of a permanent nature. Such improvements will include, but not necessarily be limited to, structures and permanent surface coverings such as cement, asphalt or tar. The property so involved includes, but is not necessarily limited to, the area between a curb and sidewalk and/or the areas between the property line and the sidewalk where the sidewalk is constructed adjacent to the curb. Any person who violates any of the provisions of this Section commits a noncriminal municipal offense. (Ord. 1983-48; Ord. 2000-9, S95)

12.12.040 TREES AND PLANTS - TRIMMING REQUIREMENTS. All trees and plants standing on any private property in the city shall be kept by the owner or occupant of the property so that the branches of such trees and plants projecting over any public sidewalk or private driveway shall be not less than nine (9) feet above the sidewalk or driveway. In estimating said height, police department personnel shall take into consideration the variation of height due to normal rain, snow, sleet, and foliage conditions. Any person who violates any of the provisions of this Section commits a noncriminal municipal offense. (Ord. 1984-29; Ord. 2000-9, S96)

Chapter 12.14

SIDEWALK RESTAURANTS

Sections:

12.14.010 Purpose
12.14.020 Definitions
12.14.030 Permit required - Issuance authority - Term
12.14.040 Application for permit
12.14.050 Restrictions

12.14.010 PURPOSE. The purpose of this Chapter is to enhance the environment in the downtown area and to provide the maximum possible usage subject to appropriate restrictions. (Ord. 1991-12, S4)

12.14.020 DEFINITIONS.

A. Downtown Area: The downtown area shall be those properties abutting Aspen Avenue and Park Square between Plum Street and Peach Street and those properties abutting Mesa Street between Park Square and Highway 6 & 50.

B. Location: Location means that particular area for which a permit has been issued and which is stated on the permit.

C. Sidewalk Restaurant: A sidewalk restaurant means the extension of an existing food facility extending out onto the public right-of-way.

(Ord. 1991-12, S4; Ord. 1991-17, S4)

12.14.030 PERMIT REQUIRED - ISSUANCE AUTHORITY - TERM.

A. Before any person shall engage in conducting a sidewalk restaurant they shall first obtain a permit from the City Council. In order to obtain a permit, an application shall be filed with the City Clerk with an application fee of $150.00. The City Clerk shall schedule a hearing before the City Council within thirty (30) days of the date of filing of the application.

B. The City Council may, upon investigation of such circumstances and/or conditions of the location or the applicant, at its discretion refuse to issue any such permit, if, within the judgment of the Council, it is to the best interest of the city to refuse the same. The City Council reserves the right to revoke a permit if it finds that any provision of this Chapter, or special conditions placed upon the permit pursuant to this Chapter, has been violated or any other necessary permits or licenses have been suspended, revoked or canceled.

C. Permits may be issued within ninety (90) days of the beginning date of said use and shall expire one year from the date of issuance.

(Ord. 1991-12, S4)

12.14.040 APPLICATION FOR PERMIT. Applications for a permit to establish and operate a sidewalk restaurant shall be submitted on a form provided by the City Clerk and shall include, but not be limited to, the following:

A. Name and address of applicant.

B. Names of all beneficial owners of the applicant if the applicant is other than a sole proprietorship.

C. A signed statement that the permittee shall hold harmless and indemnify the City of Fruita, its officers and employees for any claims for damage to property or injury to persons which may be occasioned by any activity carried on under the terms of the permit. Permittee shall furnish and maintain such public liabilities, food products' liability and other insurance as will protect the permittee and the City of Fruita from all claims for damage to the property or bodily injury, including death, which may arise from operations under the permit or in connection therewith. Such insurance shall provide insurance equal to the limits of insurance currently required of the City. Such insurance shall be without prejudice to coverage otherwise existing therein, and shall name the City of Fruita and its officers and employees as additional insureds and shall further provide that the policy shall not terminate or be canceled prior to the completion of the contract without thirty (30) days' written notice to the City Clerk.

D. Description of the building, structure and/or other implements to be used in connection with conducting of business if the permit is granted.

E. The location for which the permit is requested within the downtown area.

F. A listing of all applicable permits obtained and those expected to be obtained prior to the commencement of the business.

G. Proof of consent of two thirds (2/3) of all the businesses located within seventy five (75) feet of the location.

(Ord. 1991-12, S4)

12.14.050 RESTRICTIONS. The person to whom a permit has been issued may conduct business on the public right of way subject to the following restrictions:

A. The permittee shall not leave his equipment or merchandise at the location unattended unless it is secured when not attended.

B. The permittee shall not conduct business at the location between the hours of 2:00 a.m. and 6:00 a.m.

C. No permit shall be issued unless and until consent is obtained from two thirds of the

businesses within seventy five (75) feet of the proposed location.

D. The sidewalk restaurant cannot extend for more than ten (10) feet onto the sidewalk, but in no event shall the remaining width of the sidewalk for pedestrian flow be less than five (5) feet.

E. The sidewalk restaurant shall be set off from the public right-of-way by some manner of partition at least three (3) feet in height which may be moveable or installed on a semipermanent basis.

F. The permittee is required to pick up any litter within twenty five (25) feet of the location.

G. Any other conditions or restrictions that may be imposed as a condition of permit approval by the City Council.

(Ord. 1991-12, S4; Ord. 1991-17, S5)

Chapter 12.16

REMOVAL OF SNOW

Sections:

12.16.010 Required where - Time limits
12.16.020 Snow Emergency

12.16.010 REQUIRED WHERE - TIME LIMITS. Any and all persons owning or occupying any store or other business property in the city contiguous to any sidewalk, shall within two hours after the cessation of any snow or sleet storm, cause the snow, ice or sleet to be removed from the sidewalk lying contiguous to the premises so owned or occupied; provided, that when said snow or sleet shall fall in the nighttime the same shall be removed by ten a.m. of the succeeding day. Any person who violates this Section commits a noncriminal municipal offense. (Ord. 44 Art. 2 S10, 1907; Ord. 2000-9, S97)

12.16.020 SNOW EMERGENCY.

A. During times of heavy snow fall the City Manager, upon his own authority and after consultation with the director of public works, may declare a snow emergency. The declaration of such an emergency will be made by and through all available media. Within two hours of such declaration, it shall be the duty of each and every resident of the City of Fruita to remove their parked vehicles from those city streets designated in the declaration. The declaration of the City Manager may provide that all streets within the City be cleared of parked vehicles. The purpose of such declaration is to allow for a more thorough plowing of the city streets during a heavy snowfall and thereby to allow safer transit upon the streets of the city.

B. After consultation with the director of public works, the City Manager will, as soon as possible after the declaration, declare an end to the snow emergency. The declaration of termination of the snow removal shall be made in the same way as is noted in paragraph A above. The City Manager shall make every effort to limit the hours of snow emergency to the shortest possible time consistent with public safety. After the declaration of termination, city residents may park their vehicles on city streets in accordance with the motor vehicle ordinances of the city.

C. Any person who parks his vehicle upon a City street during the time of a declared snow emergency commits a noncriminal municipal offense. (Ord. 2000-9, S98; Ord. 1984-5)

Chapter 12.20

STREET NAMING AND NUMBERING

Sections:

12.20.010 Grid system - Established - Description
12.20.020 Thoroughfares designated as streets or avenues when
12.20.030 Grid system-Center and numbering procedure
12.20.040 Numbering-Park Square
12.20.050 Numbering-Cleveland Addition
12.20.060 Numbering-Roberson Drive
12.20.070 Name changes designated
12.20.080 Assignment of street addresses and marking of addresses on buildings

12.20.010 GRID SYSTEM - ESTABLISHED - DESCRIPTION. An overlying grid system is established following the present developed areas of Fruita and extending into the undeveloped areas and overlapping the existing irregular sized blocks. With Park Square (Circle Park) as the center, this grid will be maintained so that a uniform system exists for present and future numbering of addresses. The streets shall radiate in four directions from Park Square, with east, west, north or south prefixes assigned. The national pattern will be followed which means that all north and west thoroughfares will be odd numbered and all east and south thoroughfares will be even numbered. (Ord. 299, S1, 1974)

12.20.020 THOROUGHFARES DESIGNATED AS STREETS OR AVENUES WHEN. All east-west thoroughfares will be designated avenues, and all north-south thoroughfares will be designated streets. (Ord. 299, S2, 1974)

12.20.030 GRID SYSTEM--CENTER AND NUMBERING PROCEDURE. Beginning at Park Square and proceeding in each of the four directions, the first block (or grid) will be numbered from 100 through 199, thence 200 through 299, etc., with a number assigned for every fifteen feet beginning at the corner of the block or grid pattern

In areas where there are no established blocks, the numbering on a footage basis will commence with the corner of the block and continue to the beginning of the next block, making utilization, if necessary, of the street footage within the grid pattern. (Ord. 299, S3, 1974)

12.20.040 NUMBERING--PARK SQUARE. Park Square (Circle Park) addresses will be named and numbered as follows:

A. The street shall be known as Park Square, and the addresses shall be either North Park Square or South Park Square, determined as follows in this Section 12.20.040.

B. Starting on North Park Square at the corner of West Aspen Avenue, numbering from south to north, then east, then south to East Aspen Avenue, all numbers being odd-numbered North Park Square, deleting the street footage for Mesa Street.

C. Then starting on Park Square at West Aspen Avenue, numbering from north to south, then east, then north to East Aspen Avenue, all addresses being even-numbered South Park Square, again deleting Mesa Street footage. (Ord. 299, S4, 1974)

12.20.050 NUMBERING--CLEVELAND ADDITION. As a result of the offsetting streets in the Cleveland Addition and the necessity of condensing the grid pattern to conform, blocks in the Cleveland Addition from Maple Street to Apple Street (now Second Street in the Cleveland Addition) will be considered 500 blocks. The west half of the blocks in the Cleveland Addition between Apple and Ash (all blocks south of what is presently McCune Avenue) will be numbered in the 600 series and the east half of the same blocks will be numbered in the 700 series. The established grid will then be maintained on all streets from Ash on east to Pine, commencing with 800 series numbers for the block between Ash Street and Sycamore. (Ord. 299, S5, 1974)

12.20.060 NUMBERING--ROBERSON DRIVE. On Roberson Drive, the extended grid pattern will be utilized in assigning new house numbers for these residences. (Ord. 299, S6, 1974)

12.20.070 NAME CHANGES DESIGNATED. The following streets, or portions thereof, are given new designations:

A. Main Street as it now appears in the Cleveland Addition is re-designated as Cleveland Avenue.

B. Second Street as it now appears in the Cleveland Addition becomes a part of South Apple Street.

C. Third Street as it now appears in the Cleveland Addition will become a part of South Ash Street.

D. Fourth Street as it now appears in the Cleveland Addition will become a part of South Sycamore Street.

E. Fifth Street as it now appears in the Cleveland Addition and Florita Street shall be combined and renamed as Cedar Street, with North or South Cedar Street addresses as the case may be.

F. The portion of Sixth Street lying within the city limits is renamed as Pine Street.

G. Drucilla is renamed Cedar Way.

H. The Old Fruita Highway, sometimes referred to as the "Old Diagonal Highway," is renamed Pine Way.

I. Washington Place is renamed Pabor Place.

J. Spruce Street is renamed and becomes a part of North Orchard Street.

K. Columbine Street is re-designated Columbine Avenue.

L. Mesa Avenue is now designated Mesa Street in conformance with Section 12.20.020 of this chapter.

M. Crossroads Avenue is now designated Jurassic Avenue.

N. Crossroads Court is now designated Jurassic Court.

O. Cotton Court is now designated Redbud Court.

P. South Peach Street on Bonnie Vista subdivision plat is now designated as Bonnie Vista Drive.

Q. Peter Drive portioned west of South Mulberry Street is now designated as Bonnie Vista Drive.

R. West Grand Avenue is now designated as Raptor Road.

S. Crossbow Court is now re-designated as Cretaceous Court.

T. S Peach St is designated on the final plat for Bonnie Vista Sub as Bonnie Vista Drive.

U. Peter Drive portion west of S Mulberry St is designated on final plat for Bonnie Vista sub as Bonnie Vista Drive.

V. West Grand Ave west of State Hwy 340 is re-designated as Raptor Road.

W. Crossbow Ct east of State Hwy 340 is re-designated as Cretaceous Court.

X. Gold Rush Drive as designated on the final plat for Comstock Estates Subdivision, Filing #4 is re-designated as Nugget Drive.

Y. I.3 Road as designated on the Community Plan Map and various other city maps is re-designated as Horsethief Canyon Road.

Z. J Road, located between 18 road and the Independent Ranchmen's ditch is re-designated as Wildcat Avenue

AA. The East to West leg of Anthracite Drive as designated on the final plat for Comstock Estates Subdivision, Filing #6 is re-designated as Mica Drive.

BB. The North to South leg of Garnet Drive as designated on the final plat for Comstock Estates Subdivision, Filing #6 is re-designated as Jasper Drive.

CC. The east to west leg of Joe Newman Drive as designated on the final plat for Comstock Estates Subdivision, Filing #4 is re-designated as Galena Drive.

DD. The north to south leg of Galena Drive as designated on the final plat for Comstock Estate Subdivision, filing #5 beginning with 601Galena through 612 Galena Drive is re-designated as Silver Plume Drive.

EE. West McCune Ave as designated on the Town Plat of Fruita West of the Union Pacific Railroad and US Highway 6 is re-designated as Greenway Drive

FF. Monument Drive as designated on the Subdivision Plat for Vista Valley Planned Unit Development in Fruita is re-designated as Black Ridge Drive.

GG. Vista Valley Court as designated on the Subdivision Plat for Vista Valley Planned Unit Development in Fruita is re-designated as Wolf Creek Court

HH. The subject right-of-way north of the River road between 15 ½ Road and 16 Road as shown in Exhibit A is named Rail Spur.

II. Heritage Street as designated on the Subdivision Plat for Legacy Planned Unit Development in Fruita is re-designated as Blair Street.

JJ. Purple Plum Street as designated on the Manley Subdivision plat is re-designated as Purple Plum Court.

(Ord. 1997-24, S3, S4; Ord. 299, S7, 1974; Ord. 1996-10, S1; Ord. 21, S3; Ord. 24, S3, S4; Ord. 25, S3; Ord. 26, S3, 1997; Ord. 2000–3, S3: Ord. 2000-07, S3; Ord. 2000-15, S3; Ord. 2002-28, S3; Ord. 2002-14, S3; Ord. 2003-12, S4; Ord. 2003-13, S3; 2003-16, S3; Ord. 2007-03, S5; Ord. 2008-11, S3, Ord. 2010-12)

12.20.080 ASSIGNMENT OF STREET ADDRESSES AND MARKING OF ADDRESSES ON BUILDINGS. All buildings within the city will be numbered by the system set forth in this Chapter. All buildings shall have in a clearly visible place located on the wall of the structure facing the nearest roadway, a number denoting the address of that structure. The number will be of contrasting colors to the structure and of a size at least three inches (3") in height or larger if necessary to make it legible from the roadway. In cases where a structure is built far enough from the roadway that it is not possible to place numbers that are legible from the roadway, a signpost placed at the intersection of the roadway and driveway denoting the address of the structure may be required. (Ord. 2002-25, S12)

TITLE 13

WATER AND SEWERS

Chapters:

13.04 Water Regulations
13.08 Water Rates and Charges
13.12 Municipal Irrigation System
13.16 Sewer Definitions
13.20 Sewer Connections--Permits
13.24 Sewer Service Regulations
13.28 Sewer Rates and Charges

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Chapter 13.04

WATER REGULATIONS

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13.04.020 Provisions as contracted between city and user - Scope
13.04.025 Non-tributary groundwater, Consent to conservation
13.04.030 Service - Advance payment and meter required
13.04.040 Rules, regulations and rates part of contract - Penalty for violation
13.04.050 Hindering or fouling water supply deemed nuisance
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13.04.070 Entering reservoir enclosures prohibited - Exceptions
13.04.080 Injuring or defacing waterworks appurtenances prohibited
13.05.081 Obstructing or tampering with water meters prohibited
13.05.082 Wasting water prohibited
13.04.090 Right to shut off supply authorized when
13.04.100 Inspection - Required - Scope
13.04.110 Inspection - Times specified
13.04.120 Inspection - Report filing required - Deadline
13.04.130 Inspection - Expenses allowed
13.04.140 Unauthorized uses designated - Prohibited

13.04.010 SERVICE - APPLICATION REQUIRED. All persons who desire to use water from the city water system shall, before doing so, make application to the City Clerk and sign a contract. (Ord. 1986-14)

13.04.020 PROVISIONS OF CONTRACT BETWEEN CITY AND USER - SCOPE. The provisions of this chapter, so far as is applicable, shall be considered as part of the contract between the city and each consumer of water who is furnished with city water, and each consumer of water, by using city water, or allowing city water to be used, shall be presumed to express his consent to be bound by all the provisions hereof or such others as the city may hereafter adopt. (Ord. 366, S1, 1977; Ord. 306, S1(b), 1975)

13.04.025 NON-TRIBUTARY GROUNDWATER, CONSENT TO CONSERVATION. All property owners who are being provided with water service by the City, are deemed and presumed to have consented to the conservation, protection, withdrawal and use by the City of any non-tributary groundwater under their lands. (Ord. 1985-16, S5)

13.04.030 SERVICE - ADVANCE PAYMENT AND METER REQUIRED. All consumers of water receiving service shall pay to the city clerk an amount equal to one minimum quarterly charge for residential use or one minimum monthly charge for commercial use as an advance payment on his account, which shall be held and considered as his advance payment on succeeding months. All consumers of water shall be required to have a meter unless excused by Section 13.08.070 of this title.

(Ord. 306, S1(c), 1975)

13.04.040 RULES, REGULATIONS AND RATES PART OF CONTRACT - PENALTY FOR VIOLATION. The rules, regulations and water rates contained herein shall be considered a part of the contract with every person, company or corporation which is supplied with water through the water system of the city, and every such person, company or corporation, by taking water, shall be considered to express his or their assent to be bound hereby; and whenever any of them or such other as the city council may hereafter adopt is violated, the water shall be cut off from the building or place for such violation, although two or more parties may water through the same pipe and shall not be let on again except by order of the city, and on payment of the expenses of shutting it off and turning it on again, and such other terms as the city council shall determine, and a satisfactory understanding with the party or parties that no further cause of complaint shall arise; and in case of such violation after such understanding, the city shall have the right to declare any payment made for the water by the person committing such violation to be forfeited. (Ord. 306, S1(d), 1975)

13.04.050 HINDERING OR FOULING WATER SUPPLY DEEMED NUISANCE. Any person who shall do any act diverting, damaging, draining or otherwise tending to impede or hinder the waters or streams tributary or contributing to the water supply of the waterworks system of the city, or shall throw eject or cast into or allow to flow into or fall into any water supply of said city or into any reservoir, lake water belonging to said city any sewerage, filth, carrion, garbage, minerals, clay, rocks, dirt or earths of any kind, or any excretions, clothing, paper, rags or other extraneous substance of any kind, shall be deemed guilty of a nuisance and offense against the city. (Ord. 306, S1(e), 1975)

13.04.060 DIGGING UP, OBSTRUCTING OR POLLUTING PIPELINES DEEMED NUISANCE. Any person who shall dig up, obstruct or in any manner pollute any ditch or pipeline running water therein or flowing therein, shall be deemed guilty of a nuisance and offense against the city. (Ord. 306, S1(f), 1975)

13.04.070 ENTERING RESERVOIR ENCLOSURES PROHIBITED--EXCEPTIONS. Except for the purpose of fishing, all persons are forbidden to enter within the fence enclosures enclosing the reservoirs belonging to the city without the permission of the city. (Ord. 306, S1(g), 1975)

13.04.080 INJURING OR DEFACING WATERWORKS APPURTENANCES PROHIBITED. Whoever shall injure or deface or impair any part of appurtenances of the waterworks, as indicated in the preceding sections, shall be deemed guilty of an offense. (Ord. 306, S1(h), 1975)

13.04.081 OBSTRUCTING OR TAMPERING WITH WATER METERS PROHIBITED. Whoever shall obstruct access to, tamper with, injure, deface, or otherwise injure any water meter, or any part thereof including any seal or seals thereto, of the city, that measure domestic, commercial, agricultural, or business consumption of water provided by the city to its customers, shall be deemed guilty of an offense against the city. (Ord. 1986-14, S5; Ord. 459, 1981)

13.04.082 WASTING WATER PROHIBITED. The owner or lessee of any premises to which any water is conducted from city water lines shall keep all pipe and fixtures from the water tap serving his property to his premises, and on said premises, in good repair and protected from frost,

and shall keep all pipe and fixtures, from the water tap serving his property to his premises, and on said premises, in good repair and protected from frost, and shall keep all pipe or fixtures, and their connections, tight, so as to prevent waste of water. Upon any waste resulting from a breakage of such pipe or fixtures, or any imperfection of such pipes or fixtures, the owner or lessee shall forthwith stop the same by repairing the old pipes, or fixtures, or by the laying of new pipes or fixtures. It is unlawful to use water so that it is wasted by flowing into the street, gutters, or fields. As used herein, waste shall mean negligent misuses, not to be considered as tailings water. Any person violating the provisions hereof shall be guilty of an offense against the city. (Ord. 1986-14, S6)

13.04.090 RIGHT TO SHUT OFF SUPPLY AUTHORIZED WHEN. The city council reserves the right to cause the water to be shut off from the street if and when they deem it necessary for repairing the mains or waterworks, making connection or extensions to the same or for the purpose of cleaning the same; and the city shall not be responsible to any consumer of water or any beneficiary of water by the reason of the failure of the supply of water by the city; and no claims for damage shall be made against the city by reason of any accident to the waterworks system or any damages by reason of service pipes or connection with the water mains. (Ord. 306, S1(i), 1975)

13.04.100 INSPECTION - REQUIRED - SCOPE. It shall be the duty of the mayor of the city and the water committee of said city to make a personal inspection of the water systems of the city, said inspection to include the pipeline of said city beginning at its upper intake on the Fruita Reservoir and down to the city. (Ord. 306, S1(j), 1975)

13.04.110 INSPECTION - TIMES SPECIFIED. The mayor and water committee shall make the inspection as provided in Section 13.04.100 hereof as early in the spring as the weather condition will permit. (Ord. 1986-14, S7)

13.04.120 INSPECTION - REPORT FILING REQUIRED - DEADLINE. It shall be the duty of the mayor and water committee after making the inspection above provided for, within three days from the date hereof, to file a written report or survey of the conditions of the pipeline and water system as disclosed by their inspection, with the city clerk. (Ord. 306, S1(1), 1975)

13.04.130 INSPECTION - EXPENSES ALLOWED. The mayor and water committee making said inspection shall be entitled to receive their necessary expenses. (Ord. 1986-14, S8)

13.04.140 UNAUTHORIZED USES DESIGNATED - PROHIBITED. No person shall by himself or by his family or agents or servants use the water from any part of the waterworks without permission duly issued therefor, nor shall without lawful authority open any fire plug, stopcock or valve or other fixture appertaining to said works, nor shall any person shut off or turn on water for any service pipe without lawful authority therefor. (Ord. 306, S9, 1975)

Chapter 13.08

WATER RATES AND CHARGES

Sections:

13.08.010 Bill payment regulations - Service shutoff authorized when - Costs
13.08.020 Discontinued service - Notice required - Credit given when
13.08.030 Tap fees
13.08.050 Tap fees - Payment time and method
13.08.060 Monthly charges
13.08.080 Interrupted supply - Claims not allowed

13.08.010 BILL PAYMENT REGULATIONS--SERVICE SHUTOFF AUTHORIZED WHEN--COSTS.

A. All water accounts shall be billed monthly and in advance.

B. All water bills shall be payable to the office of the city clerk on or before the due date which shall be ten days following the date of the next billing. Bills paid any time following the due date, up to the next billing period will be assessed a five percent late charge. If water bills are unpaid at the time of the following month's billing, water will be shut off on seven days' written notice.

C. There shall be a two dollar and fifty cent charge for any water shut off and a two dollar and fifty cent charge for any water turned on for any reason, except for any water shut off or water turned on performed as part of the city's installation of a tap or replacement of a meter.

D. Any rates, fees, or charges specified under any of the provisions of this chapter not paid when due shall bear interest at the rate of one percent per month until paid. The city's reasonable attorneys' fees incurred in collecting such delinquent accounts, together with any cost of collection, shall be paid by the delinquent user and shall be included in the unpaid balance of such rates, fees and charges. Any unpaid or overdue rates or charges shall become a lien upon the property served and shall be collected in the manner provided by law, or if imposed upon property not subject to lien shall be collected by appropriate legal action as provided by law. (Ord. 421, S1, 1980)

13.08.020 DISCONTINUED SERVICE - NOTICE REQUIRED - CREDIT GIVEN WHEN. Any person desirous of discontinuing the use of water must give notice to the city clerk and the city shall turn off the water. No credit will be given for non-usage of water unless the water has been shut off by the city as set forth herein, and in any event, no credit shall be given unless the period of non-usage is for a period of at least one-half calendar month. (Ord. 306, S3, 1975)

13.08.030 TAP FEES.

A. At the time of making application to the City for water service from the city's water system,

the applicant shall pay a tap fee based on the size line required according to the schedule adopted by the City Council by resolution.

B. No water shall be furnished to a consumer until a contract is signed and all tapping charges, labor, materials or other expenses have been paid to the city.

C. The City Council may impose special tapping charges and special restrictions or requirements for taps if it determines that the number, location or special circumstances of the proposed taps justify such special charges, restrictions or requirements.

D. An existing tap may not be subject to additional service, change of fixtures, or change in use without prior permission from the city and modification of the contract. The City Manager shall grant or deny permission for a change in service, fixtures or use and, as a condition thereof, impose restrictions or requirements necessary for the health and welfare of the water users or for the integrity, maintenance, development and financing of the city's water system. A water user may appeal the decision of the City Manager to the City Council which shall make the final decision.

E. A supplemented tapping charge shall be paid for any additional service, change of fixtures, or change of use. The fees for such charges shall be set by the City Council by resolution.

(Ord. 1985-18, S3; Ord. 1983-31; Ord. 461, 1981)

13.08.050 TAP FEES - PAYMENT TIME AND METHOD. Where more than one residential unit or use is served through a single meter, or where a group of individual residential units are served by a party line through a master meter, a minimum charge shall be made for each residential unit or use thus served. Any water used in excess of three thousand gallons multiplied by the total number of individual residential units or uses shall be billed as excess for one unit or use. It shall be the duty of all owners and/or operators of water service lines with more than one user to certify to the city the location thereof and the number of units or users thereon. No additional connections shall be made without application to and permission of the city. Residential rates and billing shall apply to all residential uses, including apartments of ten units or less, mobile home parks of ten units or less, and residences with home occupations. All other uses including hotels, motels, and offices, shall be considered commercial uses. (Ord. 369, S5, 1978)

13.08.060 MONTHLY CHARGES. Rates for monthly water service shall be set by the City Council by resolution. The rates set by such resolution may be changed periodically. Where more than one residential unit or use is served through a single tap a charge shall be made for each residential unit or use thus served. It shall be the duty of all owners and operators of water service lines with more than one user to certify to the city the location and number of units or users thereon. No additional connections shall be made without the permission of the city. (Ord. 1985-18, S4)

13.08.080 INTERRUPTED SUPPLY--CLAIMS NOT ALLOWED. No claims shall be made against the city by reason of the breaking of any pipe or service cock, or for any other interruption of the supply, or by reason of the breaking of any machinery, reservoir, ditch, flume, dam or any other appliances of and to said works or stoppage for necessary repairs. (Ord. 306, S10, 1975)

Chapter 13.12

MUNICIPAL IRRIGATION SYSTEM

Sections:

13.12.010 Unlawful acts designated
13.12.020 Free from obstruction
13.12.030 Rules and regulations
13.12.040 Prohibited uses
13.12.050 Penalties
13.12.060 Purpose of provisions
13.12.070 Unlawful acts designated
13.12.080 Unlawful acts - Abatement - Authorized
13.12.090 Unlawful acts - Abatement - Recovery of expenses

13.12.010 UNLAWFUL ACTS DESIGNATED. It shall be unlawful for any person, firm, corporation, or association, or any employee thereof, to engage in any of the following acts with reference to the municipal irrigation water system which is piped within the limits of the city:

A. To take irrigation water out of turn; that is, to take water from the municipal irrigation water system out of the normal sequence of use as that sequence is established by the city council or its employees;

B. To use irrigation water for more than the maximum time allotted for each user according to the rules and regulations adopted by the city council;

C. To refuse to cooperate with other users of the water by making it impossible for the water to flow through the system to the next user;

D. To waste water by allowing the same to overflow onto streets, sidewalks or to engage in or permit or allow any other non-consumptive use of irrigation water;

E. To throw, dump, place, or block any irrigation conveyance with any item which obstructs the flow of water in the system.

(Ord. 1983-16, S4)

13.12.020 FREE FROM OBSTRUCTION. It shall be the duty of every resident in front of whose dwelling or residence a portion of the irrigation system flows to keep the same free from debris, dirt, trash, bottles, or any other obstacle or matter which may tend to obstruct the system or to inhibit the flow of water in it. (Ord. 1983-16, S4)

13.12.030 RULES AND REGULATIONS. The city council is authorized to adopt such reasonable rules and regulations as may be necessary for the effective and efficient administration and operation of the irrigation system. These regulations may be adopted by the city council at any

regular or special meeting after giving notice of the adoption of the proposed regulations by advertising the notice in a newspaper within the city at least ten days prior to the meeting at which the rules and regulations may be adopted. (Ord. 1983-16, S4; Ord. 1984-12)

13.12.040 PROHIBITED USES. The water provided by the municipal irrigation system shall be used only for the purpose of watering lawns and gardens of city residents. It shall not be used for any of the following uses:

A. For use in evaporative water coolers;

B. For use in any refrigerated air conditioning system;

C. For any industrial, commercial or business use.

(Ord. 1983-16, S4, part)

13.12.050 PENALTIES. Any person, firm, individual, corporation or association who violates any Section of this Chapter, or any rule or regulation promulgated thereunder commits a Class B municipal offense. (Ord. 2000-9, S99)

13.12.060 PURPOSE OF PROVISIONS. The purpose of Sections 13.12.060 through 13.12.090 is to protect the public health and welfare by regulating the use of water, ditches and other facilities which are privately owned, used to convey water, and to establish a means whereby violations of these sections may be resolved. (Ord. 1983-15, S5)

13.12.070 UNLAWFUL ACTS DESIGNATED. It is unlawful for any person, firm or corporation:

A. To fail or neglect at any time to clean and maintain any ditch or other facility for conveying water across or upon any property occupied by such person, firm or corporation within the city so as to cause, directly or indirectly, water to flow onto any street, alley, sidewalk or other public place in the city;

B. To take or conduct any water from any ditch or facility used to convey water in such a manner as to cause, directly or indirectly, water to flow onto any street, alley, sidewalk or other public place in the city;

C. To alter, obstruct or construct any ditch or other facility used to convey water, any headgate, measuring device or other device so as to cause, directly or indirectly, water to flow onto any street, alley, sidewalk or other public place in the city;

D. To deposit, discharge or to permit any deposit or discharge into any ditch or other facility used to convey water, any garbage, rubbish or waste material (as those terms are defined in Section 8.08.010 of this code) or other substance that would tend to have a polluting effect.

(Ord. 1983-15, S6)

13.12.080 UNLAWFUL ACTS - ABATEMENT - AUTHORIZED. The city may terminate and abate any violation of Section 13.12.070 forthwith. (Ord. 1983-15, S7)

13.12.090 UNLAWFUL ACTS - ABATEMENT - RECOVERY OF EXPENSES. The expense incurred by the city in abating and terminating any violation of Section 13.12.070 may be recovered by proper action from the person, firm or corporation causing, directly or indirectly, any violation of Section 13.12.070. (Ord. 1983-15, S8)

Chapter 13.16

SEWER DEFINITIONS

Sections:

13.16.010 Purpose
13.16.020 Building drain
13.16.025 Building sewer
13.16.030 Runoff water
13.16.040 Sanitary sewage
13.16.050 Sanitary sewer
13.16.060 Slug
13.16.070 Superintendent

13.16.010 PURPOSE. For the purposes of Section 3.04.010 and Chapters 13.16 through 13.28, the following words and phrases shall have the meanings respectively ascribed them by this chapter. (Ord. 272, S2 (part), 1972)

13.16.020 BUILDING DRAIN. "Building drain" means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet (1.5 meters) outside the inner face of the building wall. (Ord. 404, S1, 1979)

13.16.025 BUILDING SEWER. "Building sewer" means the extension from the building drain to the public sewer or other place of disposal, also called house connection. (Ord. 404, S2, 1979)

13.16.030 RUNOFF WATERS. "Runoff waters" means any water from storm or surface runoff, including by way of example but not by limitation, ground waters, or storm and surface runoff from building foundations or roof drains, or any other collected or uncollected water from natural sources. (Ord. 272, S2 (c), 1972)

13.16.040 SANITARY SEWAGE. "Sanitary sewage" means the waste from water closets, urinals, lavatories, sinks, bath tubs, showers, household laundries, cellar floor drains, bars, soda fountains, cuspidors, refrigerator drips, drinking fountains and any other waterborne waste not constituting an industrial waste. (Ord. 272, S2 (b), 1972)

13.16.050 SANITARY SEWER. "Sanitary sewer" means a sewer that carries liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions together with minor quantities of ground, storm, and surface waters that are not admitted intentionally. (Ord. 404, S3, 1979)

13.16.060 SLUG. "Slug" means any discharge of water or wastewater which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen minutes more than five times the average twenty-four-hour concentration of flows during normal operation and shall adversely affect the city's sewer system or performance of its wastewater

treatment works. (Ord. 404, S4, 1979)

13.16.070 SUPERINTENDENT. "Superintendent" means the superintendent of wastewater facilities of the city, or his authorized deputy, agent, or representative. (Ord. 404, S5, 1979)

Chapter 13.20

SEWER CONNECTIONS - PERMITS

Sections:

13.20.010 Private facilities - Prohibited when
13.20.020 Private facilities - Connection required when - Specifications
13.20.030 Use of public sewers required - Private facilities dismantled when
13.20.040 Permit - Required when
13.20.050 Permit - Application - Contents required
13.20.060 Permit - Issuance conditions - Specifications included
13.20.070 Construction, standards, supervision and inspection
13.20.080 Connections of sanitary sewers and building sewers
13.20.090 Construction standards - Building and sanitary sewers

13.20.010 PRIVATE FACILITIES - PROHIBITED WHEN. Except where otherwise provided, no person shall maintain within the city any privy, privy vault, septic tank, cesspool or other facility intended for use for the disposal of sewage. (Ord. 272, S3 (part), 1972)

13.20.020 PRIVATE FACILITIES - CONNECTION REQUIRED WHEN - SPECIFICATIONS. Where a public sanitary sewer is not available within the city or in any area under the jurisdiction of the city, the building sewer shall be connected to a private sewage disposal system complying with the provisions and recommendations of the Department of Public Health of the state. Such private sewage disposal system shall be constructed, maintained and operated at all times in a sanitary manner. (Ord. 272, S3 (part), 1972)

13.20.030 USE OF PUBLIC SEWERS REQUIRED - PRIVATE FACILITIES DISMANTLED WHEN. The City council deems it necessary for the protection of the public health that the owners of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes, situated within the city, install at the owner's expense suitable toilet facilities therein, and connect such facilities directly with the proper public sewer in accordance with the provisions of this chapter; provided, that the public sewer runs within four hundred feet of the boundary line of such property. Such connection with the public sewer systems shall be made within thirty days after date of written notice given by registered mail, to such owners notifying them to connect their premises with the sewer.

At such time as a public sanitary sewer runs within four hundred feet of the property line of any property served by a private sewage disposal system, a direct connection shall be made to the public sanitary sewer in accordance with the provisions of Chapters 13.16 through 13.28, and any septic tank, cesspool or similar sewage disposal facilities shall be abandoned and filled with suitable material.

(Ord. 404, S6, 1979)

13.20.040 PERMIT - REQUIRED WHEN. It is unlawful for any person to open, uncover or in

any manner make connection with any sewer main or line of the city, or to lay drain or sewer pipes on any premises or in any street or alley in the city without first obtaining a written permit therefor from the city. (Ord. 272, S4, 1972)

13.20.050 PERMIT - APPLICATION - CONTENTS REQUIRED. The application for the permit shall be in writing on a form provided by the city which shall require at least the following information, together with any plans, specifications, or other information considered pertinent in the judgment of the official of the city having authority over such matters:

A. Name and address of applicant;

B. Name and address of owner of the premises where the connection is to be made, or where the drain or line is to be laid;

C. Location of the proposed connection, drain or sewer pipes;

D. Statement as to the type, materials and method of connection and the type of materials to be discharged into the sewer;

E. Statement as to whether the connection is to be made to the storm sewer or the sanitary sewer.

(Ord. 404, S7, 1979)

13.20.060 PERMIT - ISSUANCE, SPECIFICATIONS INCLUDED. The city clerk shall issue a permit for such connection if the application contains all the required information and the superintendent finds that the proposed connection complies with all the provisions of the applicable ordinances of the city and the sewer installation regulations of the city. Such permits shall contain all information contained in said application and shall specify the type and kind of connections and grease and sand traps to be used, together with the specifications of construction. (Ord. 404, S8, 1979)

13.20.070 CONSTRUCTION, STANDARDS, SUPERVISION AND INSPECTION. Any user of the sewer system, either inside or outside of the boundaries of the city, must build his own sewer line if there is no line available for him to connect with. All connections to the city's sewer system must be made subject to the supervision and inspection of the superintendent, and in compliance with the Fruita plumbing code. (Ord. 404, S9, 1979)

13.20.080 CONNECTIONS OF SANITARY SEWERS AND BUILDING SEWERS.

A. A separate and independent building sewer shall be provided for every building; except, where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard, or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer. The city does not and will not assume any obligation or responsibility for damage caused by or resulting from any such single

connection. Each such application shall be reviewed and appropriate action taken on a case-by-case basis. No such connection shall be approved without written approval and an agreement to hold the city harmless from any damage resulting from such connection from the owner of the front building.

B. Building sewers for existing buildings may be used in connection with new buildings only when they are found, on examination and test by the superintendent, to meet all requirements of Chapters 13.16. through 13.28 of this title.

C. Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, the means of lifting and discharging into the building sewer of the sanitary sewage carried by such building drain shall be approved by the superintendent.

D. No person shall make connection of roof down spouts, foundation or floor drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer.

E. All connections of the building sewer into the public sewer shall be made gas tight and watertight and verified by proper testing. Any deviation from the procedures and materials prescribed in this chapter and the sewer installation regulations of the city must be approved by the superintendent before installation. The applicant for the building sewer permit shall notify the appropriate city official when the building sewer is ready for inspection and connection to the public sewer. The connection and testing shall be made under the supervision of that official or his representative.

F. All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored by the owner in a manner satisfactory to the city.

G. All costs and expenses incidental to the installation and connection of the building sewer shall be borne by the owner of the property on which it is installed. The owner shall indemnify the city from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer in writing prior to connection of the building sewer to the city sewer system.

(Ord. 404, S10, 1979)

13.20.090 CONSTRUCTION STANDARDS - BUILDING AND SANITARY SEWERS. The size, slope, alignment, materials of construction of all sanitary sewers including building sewers, the methods to be used in excavating, placing of the pipe, jointing, testing, backfilling the trench, and connection of the building sewer into the public sewer, shall all conform to the requirements of the Fruita building and plumbing codes and the provisions of this title. (Ord. 404, S11, 1979)

Chapter 13.24

SEWER SERVICE REGULATIONS

Section:

13.24.010 Purpose of provisions
13.24.020 Rules and regulations - Adoption and enforcement authority
13.24.030 Use of the public sewers - Prohibited acts - Remedies
13.24.040 Runoff waters - Discharge prohibited - Disconnection required
13.24.050 Powers and authority of inspectors
13.24.060 Control manhole required when - Specifications
13.24.070 Abandonment of connection - Permit required - Procedure
13.24.080 Interfering with city employees or digging prohibited when
13.24.090 Repair and maintenance responsibility
13.24.100 Prohibited deposits - Human or animal wastes
13.24.110 Prohibited deposits - Industrial or other polluted wastes - Exception
13.24.120 Damaging or tampering with equipment prohibited when
13.24.130 Penalties

13.24.010 PURPOSE OF PROVISIONS. The purpose of Section 3.04.010 and Chapters 13.16 through 13.28 is to safeguard life, limb and property, and to protect the public health by regulating the public sewer system within the city. (Ord. 272, S1, 1972)

13.24.020 RULES AND REGULATIONS - ADOPTION AND ENFORCEMENT AUTHORITY. The city council shall make and enforce such rules and regulations as it may deem necessary for the safe, efficient and economical management of the city sewer system. Such rules and regulations, when not repugnant to this code or any other ordinances of the city and the laws of the state, shall have the same force and effect as ordinances of the city. (Ord. 272, S22, 1972)

13.24.030 USE OF THE PUBLIC SEWERS - PROHIBITED ACTS - REMEDIES.

A. No person shall discharge or causes to be discharged any of the following described water or wastes into any public sewer:

1. Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid, or gas;

2. Any water containing toxic or poisonous solids, liquids or gases in sufficient quanity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the wastewater treatment plant;

3. Any waters or wastes having a PH lower than 5.5, or having any other corrosive property capable of causing damage or hazard to structures, equipment or personnel

of the wastewater works;

4. Solid or viscous substances in quantities or of size capable of causing obstruction to the flow in sewers, or other interferences with the proper operation of the wastewater facilities such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, un-ground garbage, whole blood, paunch manure, hair and fleshings, entrails or - either whole or ground by garbage grinders - paper dishes, cups or milk containers.

B. The following described substances, materials, waters, or waste shall not be discharged into the city sewer system in concentrations or quantities which will

1. Harm the sewers or wastewater treatment facilities, process or equipment,

2. Have an adverse effect on the receiving stream or

3. Otherwise endanger lives, limb, public property, or constitute a nuisance.

The superintendent of wastewater facilities of the city or his representative may set limitations more stringent than the limitations established by this subsection if in his opinion such more severe limitations are necessary to meet the above objectives. In so doing, he shall give consideration to such factors as the quantity of the subject waste in relation to flows and velocities in the sewers, construction materials of the sewers, the wastewater treatment process employed, capacity of the wastewater treatment plant, degree of treat-ability of the waste in the wastewater treatment plants, and other pertinent factors.

The limitations or restrictions on materials or characteristics of waste or waste waters which shall not be discharged into the sanitary sewer without approval of the city are as follows:

a. Wastewater having a temperature higher than one hundred fifty degrees Fahrenheit (sixty-five degrees Celsius);

b. Wastewater containing more than twenty-five milligrams per liter of petroleum oil, non-biodegradable cutting oils, or product of mineral oil origin;

c. Wastewater from industrial plants containing floatable oils, fat or grease;

d. Any garbage that has not been properly shredded. Garbage grinders may be connected to sanitary sewers from homes, hotels, institutions, restaurants, hospitals, catering establishments, or similar places where garbage originates from the preparation of food in kitchens for the purpose of consumption on the premises or when served by caterers;

e. Any waters or wastes containing iron, chromium, copper, zinc and similar objectionable or toxic substances to such degree that any such material received in the composite wastewater at the wastewater treatment works

exceeds the limits established by the appropriate official of the city for such materials;

f. Any waters or wastes containing odor-producing substances exceeding limits which may be established by the city;

g. Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the city in compliance with applicable state or federal regulations;

h. Quantities of flow, concentrations, or both which constitute a "slug" as defined in Section 13.16.060;

i. Waters or wastes containing substances which are not amenable to treatment or reduction by the wastewater treatment processes employed by the city, or amenable to treatment only to such degree that the wastewater treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge of the receiving waters for the city's treatment facilities;

j. Any water or wastes which, by interaction with other water or wastes in the public sewer system, release obnoxious gases, form suspended solids which interfere with the collection system, or create any condition deleterious to structures and processes.

C. If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in subsection D of this section, the superintendent may take one or more of the following actions:

1. Reject the wastes;

2. Require pretreatment to an acceptable condition for discharge into the public sewers;

3. Require control over the quantities and rates of discharge or;

4. Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provisions of Chapter 13.28 of this title. When considering the above alternatives, the superintendent shall give consideration to the economic impact of each alternative on the discharger. If the superintendent permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the superintendent.

D. Grease, oil, and sand interceptors shall be provided by the owner of the property at his expense when, in the opinion of the superintendent, they are necessary for the proper handling of liquid wastes containing floatable grease in excessive amounts as specified in subsection B (3) of this section, or any flammable wastes, sand, or other harmful ingredients;

except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the superintendent and shall be located as to be readily and easily accessible for cleaning and inspection. In maintaining these interceptors the owner shall be responsible for the proper removal and disposal by appropriate means of the captured material, and shall maintain records of the dates and means of disposal, which records are subject to review by the superintendent. Any removal and hauling of the collected materials not performed by the owner must be performed by currently licensed waste disposal firms.

E. Where pretreatment or flow-equalizing facilities are provided or required for any water or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.

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

G. The superintendent may require a user of sewer services to provide information needed to determine compliance with this chapter. They may include:

1. Wastewater discharge peak rate and volume over a specified time period;

2. Chemical analyses of waste waters;

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

4. Quantity and disposition of specific liquid, sludge, oil, solvent, or other materials important to sewer use control;

5. A plot plan of sewers on the user's property showing sewer and pretreatment facility location;

6. Details of wastewater pretreatment facilities; and

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

H. Sampling methods, location, times, durations, and frequencies are to be determined on an individual basis subject to approval by the superintendent.

I. No statement contained in this section shall be construed as preventing any special agreement

or arrangement between the city and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the city for treatment.

(Ord. 404, S12, 1979)

13.24.040 RUNOFF WATERS - DISCHARGE PROHIBITED - DISCONNECTION REQUIRED.

A. No person shall discharge or cause to be discharged any unpolluted waters such as storm water, surface water, groundwater, roof runoff and subsurface drainage, or cooling water into any building or sanitary sewer.

B. Storm water, runoff water and all other unpolluted drainage shall be discharged into such sewers as are specifically designated as storm sewers, or to a natural outlet approved by the city and other regulatory agencies. Unpolluted industrial cooling water or process waters may be discharged, on prior approval of the city, into a storm sewer, or natural outlet.

C. Where investigation reveals the presence in the system of runoff waters emanating from any source of new construction, as defined in this section and Section 13.16.030, the owner, lessor, renter or occupant of such lot, land, building or premises shall be at his own expense required to disconnect or remove from the sanitary sewer system the discharge of such runoff water.

(Ord. 404, S13, 1979)

13.24.050 POWERS AND AUTHORITY OF INSPECTORS.

A. The superintendent and other duly authorized employees of the city, bearing proper credentials and identification, shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling, and testing pertinent to sanitary sewage discharge to the city's sewer system in accordance with the provisions of Chapter 13.16 through 13.28 of this title. While performing work pursuant to this subsection, all employees of the city shall observe all safety rules applicable to the premises established by the owner or contractor for its own employees.

B. The superintendent or other duly authorized employees of the city are authorized to obtain information concerning industrial waste processes which have a direct bearing on the nature and source of discharge into the city wastewater collection system. No user of the city's sewer system shall withhold such information from those city officials unless the user establishes that such information represents a trade secret, the disclosure of which would significantly damage the business of the user.

C. The city official and other duly authorized employees of the city, bearing proper credentials and identification, shall be permitted to enter all private properties through which the city holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, maintenance or replacement of any portion of

the city's sewer system lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the easement pertaining to the private property involved.

(Ord. 404, S14, 1979)

13.24.060 CONTROL MANHOLE REQUIRED WHEN - SPECIFICATIONS. When required by the city, the owner of any property served by a building sewer carrying industrial waste shall install a suitable control manhole in the building sewer to facilitate observation and sampling of the waste. Such manholes, when required, shall be accessible and safely located and shall be constructed in accordance with the plans approved by the city. The manholes shall be installed by the owner at his expense and shall be maintained by him so as to be safe and accessible at all times. (Ord. 272, S13, 1972)

13.24.070 ABANDONMENT OF CONNECTION - PERMIT REQUIRED - PROCEDURE. No person shall abandon any building connection without first obtaining a written permit therefor. Such building connection shall be effectively sealed with a vitrified clay stopper inserted in the bell of the sewer extending to the property line which stopper shall be jointed as directed by the city. (Ord. 272, S13, 1972)

13.24.080 INTERFERING WITH CITY EMPLOYEES OR DIGGING PROHIBITED WHEN. No person shall in any way interfere with the employees of the city in the discharge of their duties in the tapping of any sewer pipe, main or lateral. No person shall dig up or cause to be dug up any street or alley in the sewer system of the city, without first obtaining a permit from the city, and no person having a permit shall dig up any portion of any street or alley of the city for the purpose of:

A. Connecting with the sewer system of the city; or

B. Repairing, maintaining, or replacing any lateral sewer line and fail or neglect to place the street or alley in its original condition.

(Ord. 297, S2 (part), 1974; Ord. 272, S14 (part), 1972)

13.24.090 REPAIR AND MAINTENANCE RESPONSIBILITY. The city shall be responsible for the repair and maintenance of all main trunk sewer lines. The responsibility for the expense and cost of maintaining, repairing and replacing any lateral sewer line from the point where such lateral taps the main trunk line to the boundary of the user's property shall be borne and paid by the property owner served by any such lateral. (Ord. 297, S2 (b), 1974; Ord. 272, S14 (part), 1972)

13.24.100 PROHIBITED DEPOSITS - HUMAN OR ANIMAL WASTES. No person shall deposit or permit to be deposited in any unsanitary manner upon public or private property within the city or within any area within the jurisdiction of the city any human or animal excrement wastes. (Ord. 272, S15, 1972)

13.24.110 PROHIBITED DEPOSITS - INDUSTRIAL OR OTHER POLLUTED WASTES -

EXCEPTION. No person shall discharge into any natural outlet within the city, or any area within the jurisdiction of the city, any sanitary sewer industrial waste or other polluted waste, except where suitable treatment has been provided. (Ord. 272, S16, 1972)

13.24.120 DAMAGING OR TAMPERING WITH EQUIPMENT PROHIBITED WHEN. No person shall maliciously, willfully or negligently break, damage or destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the city sanitary sewer system. (Ord. 272, S17, 1972)

13.24.130 PENALTIES.

A. If such violation knowingly continues beyond the time limit set for correction, the user and owner shall be deemed to have committed a Class B municipal offense.

B. Any person violating any of the provisions of the portions of the municipal code of the city specified in subsection A shall be liable to the city for any expense, loss, or damage caused by reason of such violation. (Ord. 404 S15, 1979; Ord. 2000-9, S100)

Chapter 13.28

SEWER RATES AND CHARGES

Sections:

13.28.010 Plant Investment Fees
13.28.020 Sewer charges
13.28.030 Nonpayment of charges - Penalties - Liens
13.28.040 Violation - Penalty

13.28.010 PLANT INVESTMENT FEES.

A. At the time of making application to the city for sewer service from the City's sewer system, the applicant shall pay a plant investment fee. The plant investment fee shall be set by resolution of the City Council based on water tap size. For water taps larger than two inches (2”) the City will calculate the specific plant investment fee.

B. Additional Service - Fixtures.

1. An existing sewer tap shall not be subject to additional service, or a change in use, without obtaining approval from the City. Approval may be subject to conditions necessary to the interest of the City sewer system, including requirements for an additional sewer tap, an increase in tap size or pretreatment requirements.

2. If an additional tap is required, all installation costs shall be the responsibility of the applicant and the appropriate plant investment fee paid. If a larger tap is required, all installation costs shall be the responsibility of the applicant and a plant investment fee equal to the difference between the existing tap size and the new tap size shall be assessed. Any costs for installation, equipment and appurtenances necessary to comply with pretreatment requirements are the responsibility of the applicant.

(Ord. 462, S1, 1981; Ord. 1983-32; Ord. 2011-04, S1)

13.28.020 SEWER CHARGES.

A. There shall be levied and assessed upon each lot, parcel of land, building or premises in the city having any connection with the sewer system of the city, a monthly sewer service charge based on the information set out below.

B. Definitions.

1. Equivalent Residential Unit (EQR). As used in this Ordinance, means a number related to the volume and treatment requirements of sewage discharged by a single-family residential unit. The volume and treatment requirements associated with an EQR are 4,000 gallons per month with BOD loading of 200 mg/L. EQR's assigned to

residential customers as set forth in the Table in paragraph (D) below are directly proportional to the volume of sewage discharged by a single-family residential unit.

2. Biochemical Oxygen Demand (BOD). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty (20) degrees centigrade, expressed in milligrams per liter (mg/L). A BOD multiplier will adjust the EQR flow values assigned to residential customers to account for extra costs for treatment of excess BOD.

3. Residential Customer. A customer/user shall be classified as residential in nature if they receive sewer service at a condominium, townhome, detached single family residence, mobile home, multi-family residential apartment building, or senior citizens apartment building.

4. Non-Residential Customer. A customer/user shall be classified as commercial in nature if they receive sewer service at any property not included in the definition of Residential Customer in subparagraph B(3) above. Sewer service provided to hotels, motels, schools, hospitals, travel trailer or overnight mobile home parks, nursing homes, governmental agencies and commercial businesses shall be defined as non-residential in nature.

5. Total Suspended Solids (TSS). The total suspended matter, expressed in milligrams per liter (mg/L), that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and that is removable by laboratory filtering.

C. Charges for sewer service shall be set by resolution of the City Council.

D. Residential sewer service charges will be a monthly rate per calculated EQR, assessed on a flat rate basis, as set forth in the table below. The minimum EQR for any service shall be 1.00.

TYPE OF ESTABLISHMENT	EQRV (BASED ON VOLUME)	BOD (MG/L)	BOD MULTIPLIER	TOTAL EQR (EQRV X BOD Multiplier)
Single family dwelling	1.00/unit	200	1.00	1.00/unit
Multiple family dwelling	1.00/unit	200	1.00	1.00/unit
Apartment buildings	1.00/apartment	200	1.00	1.00/apartment
Permanent trailer or mobile home parks	1.00/space	200	1.00	1.00/space

E. Non-residential sewer service charges shall be billed on a monthly basis and will consist of a minimum charge and a volume charge. The minimum charge and the volume charge shall be based on the actual monthly volume of metered potable water consumption, expressed in gallons, as recorded by the Ute Water Conservancy District.

1. The minimum charge is a fixed monthly charge that includes a monthly allotment of metered potable water consumption. Customers who consume less than the full monthly allotment included in the minimum charge shall pay the full minimum charge. Customers who consume more than the full monthly allotment included in the minimum charge shall pay the full minimum charge plus a volume charge as described on subparagraph E(2) below. The minimum charge, the monthly allotment of metered potable water consumption and the volume charge shall be set by resolution of the City Council.

2. The monthly volume charge shall be based on the customer's actual monthly volume of metered potable water consumption and assessed on a set dollar amount ($) per 1,000 gallons basis. The monthly volume charge shall be calculated according to the following formula:

   Start: Actual Monthly Metered Potable Water Consumption (Gallons)
   Less: Monthly Volume Allotment included in the Minimum Charge (Gallons)
   Equals: Net Monthly Metered Potable Water Consumption (Gallons)

   $$\frac{\text{Net Monthly Metered Potable Water Consumption (Gallons)}}{1{,}000} * \$ \text{ per 1,000 Gallon}$$

3. A sewer rate stabilization fund has been established to allow for a phased implementation schedule for the change in monthly non-residential sewer service charges from a flat rate to a volume based charge. Policies for use of the sewer rate stabilization fund will be established by resolution of the City Council with the purpose of providing for an equitable recovery of the cost of service from each utility customer while taking into consideration the fiscal impacts on individual customers, equity among customer classes, and correlation between metered water consumption and actual discharges of sewage into the sewer system and rate covenant requirements.

F. Determining the Total Annual Sewer System Costs: The City shall determine the total annual cost necessary to operate, maintain and insure the financial integrity of the sewer system. These costs shall include, but not be limited to: operations, maintenance and administration, infrastructure repair, replacement, rehabilitation and expansion, debt service, the maintenance of adequate cash and contingency reserves, and compliance with debt financing covenants.

G. Review of Sewer Service Charges: The City of Fruita shall review the total annual sewer system costs and the revenues earned from the provision of sewer service not less often than every two years and will revise the system established herein to assure that sufficient funds are obtained to adequately operate, maintain and insure the financial integrity of the sewer system.

H. Extra Strength Discharges: Non-residential customers discharging wastewater into the City sewer system with strength levels in excess of those described below may, at the discretion of

the City, be required pay a monthly extra strength surcharge in addition to the standard sewer charges described in paragraph (E).

1. Customers with BOD discharge strength in excess of 300 mg/L shall be required to pay an extra strength surcharge. The assumed normal BOD discharge strength is 200 mg/L.

2. Customers with TSS discharge strength in excess of 300 mg/L shall be required to pay an extra strength surcharge. The assumed normal TSS discharge strength is 200 mg/L.

I. The BOD extra strength surcharge shall be assessed on a $ per pound basis and shall be calculated pursuant to the formula show below.

Step 1: [Customer BOD strength (mg/L)] - [200 mg/L assumed normal BOD discharge strength] = <u>Customer excess BOD strength (mg/L)</u>

Step 2: [453,592 milligrams per pound] / [Customer excess BOD strength (mg/L)] = <u>Customer excess BOD strength (pounds/L)</u>

Step 3: [Customer wastewater volume (gallons)] / [3.785 liters per gallon] = <u>Customer wastewater volume (L)</u>

Step 4: [Customer wastewater volume (L)] / [Customer excess BOD strength (pounds/L)] = <u>Customer excess BOD (pounds)</u>

Step 5: [Customer excess BOD (pounds)] * [$ per pound BOD extra strength surcharge] = <u>BOD extra strength surcharge that must be paid by the customer</u>

J. The TSS extra strength surcharge shall be assessed on a $ per pound basis and shall be calculated using the same methodology illustrated in paragraph (I) above for the BOD extra strength surcharge.

K. In addition to the extra strength surcharge provided herein, customers discharging extra strength wastewater shall also be required to pay the actual costs incurred by the City to test such discharges.

L. The BOD and TSS extra strength surcharge rates shall be set by resolution of the City Council.

(Ord. 421, S2, 1980; Ord. 1984-1, S4; Ord. 1986-22, S4; Ord. 1987-4, S4; Ord. 2011-04, S1)

<u>13.28.030 NONPAYMENT OF CHARGES - PENALTIES - LIENS.</u> Nonpayment of fees or charges under the provisions of this chapter not paid when due shall be subject to the provisions of Chapter 3.20, Uniform Collection Ordinance.

(Ord. 405, S2, 1979; Ord. 272, S19, 1972; Ord. 1986-20, S5; Ord. 2011-04, S1)

13.28.040 VIOLATION - PENALTY.

A. Any person, owner, lessee, occupant, or otherwise, who knowingly violates any of the provisions of this Chapter commits a Class B municipal offense.

B. Any person, owner, lessee, occupant, or otherwise, violating any of the provisions of this chapter shall be liable to the city for any expense, loss of revenue or damage caused by reason of such violation as well as penalties designated in Section 1.28.020 of the Fruita Municipal Code. Any required fees not paid shall incur interest at the legal rate from the date determined to be the date of violation.

(Ord. 462, S3, 1981; Ord. 2011-04, S1)

TITLE 14

STORMWATER MANAGEMENT

Chapters:

14.01 Definitions
14.10 Illicit Discharges Prohibited into Storm Drainage System
14.20 Control of Storm Water Discharges from Construction and Post-Construction Activities
14.25 Enforcement
14.30 Appeals
14.35 Abatement and Penalties

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Chapter 14.01

DEFINITIONS

Sections:

14.01.005 Definitions
14.01.010 Best Management Practices (BMPS)
14.01.015 CDPS
14.01.017 City
14.01.018 City Manager
14.01.020 Clean Water Act (CWA)
14.01.025 Colorado Water Quality Control Act
14.01.030 Commercial
14.01.035 Construction Site
14.01.045 Construction Stormwater Management Plan (SWMP)
14.01.050 Contaminated
14.01.055 Contractor
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14.01.065 Development
14.01.070 Discharge
14.01.075 Domestic Animal Waste
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14.01.090 Drainageway
14.01.095 Environmental Protection Agency or EPA
14.01.100 Fertilizer
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14.01.350 Wastewater
14.01.355 Waters of the State
14.01.360 Waters of the United States
14.01.365 Water Quality Standard
14.01.370 Wetland
14.01.375 Yard Waste

14.01.005 DEFINITIONS. The following words, terms and phrases, when used in this Title, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning: (Ord. 2015-03, S1)

14.01.010 BEST MANAGEMENT PRACTICES (BMPS) means the specific management practices used to control pollutants in stormwater. BMPs are of two types: "source controls" (nonstructural) and "treatment controls" (structural). Source or nonstructural controls are practices that prevent pollution by reducing potential pollutants at their source, such as proper chemical containment at municipal shops or construction sites, before they come into contact with stormwater. Treatment or structural controls, such as constructed water quality detention facilities, remove pollutants already present in stormwater. Best management practices can either be temporary, such

as a silt fence used during construction activity, or permanent detention facilities, to control pollutants in stormwater. (Ord. 2015-03, S1)

14.01.015 CDPS means the Colorado Discharge Permit System. (Ord. 2015-03, S1)

14.01.017 CITY means the City of Fruita, Colorado. (Ord. 2015-03, S1)

14.01.018 CITY MANAGER means the Fruita City Manager or his duly appointed representative. (Ord. 2015-03, S1)

14.01.020 CLEAN WATER ACT (CWA) means the Clean Water Act, also known as the Federal Water Pollution Control Act, and including amendments thereto by the Clean Water Act of 1977, 33 U.S.C. Section 466 et seq. as amended. (Ord. 2015-03, S1)

14.01.025 COLORADO WATER QUALITY CONTROL ACT means Title 25, Article 8, C.R.S. (Ord. 2015-03, S1)

14.01.030 COMMERCIAL means any business, trade, industry or other activity engaged in for profit. (Ord. 2015-03, S1)

14.01.035 CONSTRUCTION means to make or form by combining or arranging building parts or building elements, to include but not limited to examples such as road construction, commercial shopping center, residential development or parks development, and including the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction-related activities (e.g., stockpiling of fill material). (Ord. 2015-03, S1)

14.01.040 CONSTRUCTION SITE means any location where construction or construction-related activity occurs. (Ord. 2015-03, S1)

14.01.045 CONSTRUCTION STORMWATER MANAGEMENT PLAN (SWMP) means a specific individual construction plan that describes the best management practices (BMPs), as found in the current SWMM, to be implemented at a site to prevent or reduce the discharge of pollutants. The purpose of a SWMP is to identify possible pollutant sources to stormwater and to set out BMPs that, when implemented, will reduce or eliminate any possible water quality impacts. (Ord. 2015-03, S1)

14.01.050 CONTAMINATED means containing harmful quantities of pollutants that exceed State or federal guidelines. (Ord. 2015-03, S1)

14.01.055 CONTRACTOR means any person or firm performing or managing construction work at a construction site, including any construction manager, general contractor or subcontractor. Also includes, but is not limited to, earthwork, paving, building, plumbing, mechanical, electrical or landscaping contractors and material suppliers delivering materials to the site. (Ord. 2015-03, S1)

14.01.060 CDPS PERMIT means a permit issued by the State of Colorado under Part 5 of the Colorado Water Quality Control Act (Title 25, Article 8 C.R.S.) that authorizes the discharge of

pollutants to waters of the State, whether the permit is applicable to a person, group or area. (Ord. 2015-03, S1)

14.01.065 DEVELOPMENT means any public or private construction, reconstruction, conversion, structural alteration, relocation or enlargement of any structure within the jurisdiction of the City, as well as any manmade change or alteration to the landscape, including but not limited to mining, drilling, dredging, grading, paving, excavating and/or filling. (Ord. 2015-03, S1)

14.01.070 DISCHARGE means any addition or release of any pollutant, stormwater, subsurface, groundwater or any other substance whatsoever to the storm drainage system. (Ord. 2015-03, S1)

14.01.075 DOMESTIC ANIMAL WASTE means excrement and other waste from domestic animals, including household pets. (Ord. 2015-03, S1)

14.01.080 DOMESTIC SEWAGE means sewage originating primarily from kitchen, bathroom and laundry sources, including waste from food preparation, dishwashing, garbage grinding, toilets, baths, showers and sinks. (Ord. 2015-03, S1)

14.01.090 DRAINAGEWAY means any natural or artificial (manmade) channel which provides a course for water flowing either continuously or intermittently to downstream areas. (Ord. 2015-03, S1)

14.01.095 ENVIRONMENTAL PROTECTION AGENCY OR EPA means the United States Environmental Protection Agency (USEPA), the regional office thereof, any federal department, agency or commission that may succeed to the authority of the USEPA and any duly authorized official of the USEPA or such successor agency. (Ord. 2015-03, S1)

14.01.100 FERTILIZER means a substance or compound that contains an essential plant nutrient element in a form available to plants and used primarily for its essential plant nutrient element content in promoting or stimulating growth of a plant or improving the quality of a crop or a mixture of two or more fertilizers. (Ord. 2015-03, S1)

14.01.105 FIRE PROTECTION means any water and any substance(s) or material(s) contained therein, used by any person to control or extinguish a fire or to inspect or test fire equipment. (Ord. 2015-03, S1)

14.01.110 FUNGICIDE means a substance that destroys or inhibits the growth of fungi. (Ord. 2015-03, S1)

14.01.115 GARBAGE means putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking and consumption of food, including waste materials from markets, storage facilities and the handling and sale of produce and other food products. (Ord. 2015-03, S1)

14.01.120 GROUNDWATER means any water residing below the surface of the ground or percolating into or out of the ground. (Ord. 2015-03, S1)

14.01.125 HARMFUL QUANTITY means the amount of any substance that may cause an adverse impact to the storm drainage system and/or will contribute to the failure of the City to meet the water quality based requirements of the CDPS/NPDES permit for discharges from the municipal separate storm sewer system. (Ord. 2015-03, S1)

14.01.130 HAZARDOUS SUBSTANCE means any substance listed in Table 302.4 of 40 CFR Part 302 as amended. (Ord. 2015-03, S1)

14.01.135 HAZARDOUS WASTE means any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR, Part 261 as amended. (Ord. 2015-03, S1)

14.01.140 HERBICIDES means a chemical substance used to destroy plants, especially weeds. (Ord. 2015-03, S1)

14.01.145 ILLEGAL DISCHARGE means illicit discharge. (Ord. 2015-03, S1)

14.01.150 ILLICIT CONNECTION means any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the storm drainage system. Such connection includes any physical connection to a publicly maintained storm drain system composed of non-stormwater that has not been permitted by the public entity responsible for the operation and maintenance of the system. (Ord. 2015-03, S1)

14.01.155 ILLICIT DISCHARGE means any discharge to a storm drain system that is not composed entirely of stormwater, except discharges pursuant to a CDPS/NPDES permit, discharges resulting from fire fighting activities, and discharges further exempted by this Title. (Ord. 2015-03, S1)

14.01.160 INDUSTRIAL WASTE means any wastes produced as a byproduct of any industrial, manufacturing, agriculture, commerce, trade or business, as distinguished from domestic or residential waste. (Ord. 2015-03, S1)

14.01.165 MECHANICAL FLUID means any fluid used in the operation and maintenance of machinery, vehicle(s) and any other equipment. Includes, but is not limited to, mechanical fluid, lubricants, antifreeze, petroleum products, oil and fuel. (Ord. 2015-03, S1)

14.01.170 MINIMUM MEASURE means a mandated part of a stormwater management program that reduces the amount of pollutants entering streams, lakes and rivers as a result of runoff from residential, commercial and industrial areas during a storm event. (Ord. 2015-03, S1)

14.01.175 MOBILE COMMERCIAL CLEANING means washing, steam cleaning and any other method of mobile cleaning of vehicles and/or exterior surfaces, engaged in for commercial purposes or related to a commercial activity. (Ord. 2015-03, S1)

14.01.180 MSDS means the Material Safety Data Sheet for hazardous chemicals. (Ord. 2015-03, S1)

14.01.185 MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) means a conveyance or the system of conveyances, including roads with drainage systems, municipal streets, curbs, gutters, ditches, inlets, drains, catch basins, pipes, tunnels, culverts, channels, detention basins and ponds owned and operated by the City and designed or used for collecting or conveying stormwater and is not a combined sewer or used for collecting or conveying sanitary sewage. (Ord. 2015-03, S1)

14.01.190 NOTICE OF VIOLATION (NOV) means a formal written notice delivered, either by hand delivery, certified mail or posted on the subject property, to a person or entity who has violated any provision of the Fruita Municipal Code. The notice shall contain the parcel number or address, name or entity to whom the notice is being delivered, section(s) of the code being violated, time frame in which to correct the violation and information regarding remedies the City may take to achieve compliance. An NOV may also be referred to as a "compliance advisory." (Ord. 2015-03, S1)

14.01.195 NPDES means the National Pollutant Discharge Elimination System under Section 402 of the Clean Water Act. (Ord. 2015-03, S1)

14.01.200 NPDES PERMIT means a permit issued pursuant to EPA authority. An NPDES permit allows the discharge of pollutants to navigable waters of the United States or waters of the State, whether the permit is applicable on an individual, group, or area basis. (Ord. 2015-03, S1)

14.01.205 OIL means any kind of oil in any form, including, but not limited to, petroleum, fuel oil, crude oil, synthetic oil, motor oil, cooking oil, vegetable or animal fat, grease, sludge, oil refuse and oil mixed with waste. (Ord. 2015-03, S1)

14.01.210 OWNER means a person having dominant and/or servient interest in property, having sufficient interest to convey property, and/or having possessory interest in property. The term "owner" also includes the owner's agent. (Ord. 2015-03, S1)

14.01.215 PART OF A LARGER COMMON PLAN OF DEVELOPMENT OR SALE means a contiguous area where multiple separate and distinct construction activities will be taking place at different times on different schedules under one plan. An example would be a commercial development with multiple separate buildings constructed over the course of multiple construction schedules. (Ord. 2015-03, S1)

14.01.220 PERSON means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or its legal representative(s), agent(s), or assign(s), including all federal, State and local governmental entities. (Ord. 2015-03, S1)

14.01.225 PESTICIDE means a substance or mixture of substances intended to prevent, destroy, repel or mitigate any pest. (Ord. 2015-03, S1)

14.01.230 PETROLEUM PRODUCT means a product that is obtained from distilling and processing crude oil that is capable of being used as a fuel or lubricant in a motor vehicle or aircraft,

including motor oil, gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil and No. 1 and No. 2 diesel. (Ord. 2015-03, S1)

14.01.235 POLLUTANT means any substance attributable to water pollution, including but not limited to dredged spoil, solid waste, incinerator residue, filter backwash, sewage, septic waste, sewage sludge, rubbish, garbage, solid waste, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, sediment, rock, dirt, sand, mud, soil, sediment, industrial, municipal and agricultural waste, litter, debris, yard waste, pesticides, herbicides, fertilizers, domestic animal waste, mechanical fluid, oil, motor oil, used oil, grease, petroleum products, antifreeze, surfactants, solvents, detergents, cleaning agents, paint, heavy metals, toxins, household hazardous waste, small quantity generator waste, hazardous substances and hazardous waste. (Ord. 2015-03, S1)

14.01.240 POLLUTION means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water that renders the water harmful, detrimental, or injurious to humans, animal life, plant life, property or public health, safety or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose. (Ord. 2015-03, S1)

14.01.245 POTABLE WATER means water that has been treated to federal Safe Drinking Water Act standards and/or is safe for human consumption. (Ord. 2015-03, S1)

14.01.250 PRIVATE DRAINAGE SYSTEM means all privately owned ground, surfaces, structures or systems, excluding the municipal separate storm sewer system, that contribute to or convey stormwater, including but not limited to roofs, gutters, downspouts, lawns, driveways, pavement, roads, streets, curbs, gutters, ditches, inlets, drains, catch basins, pipes, tunnels, culverts, channels, detention basins, ponds, draws, swales, streams and any ground surface. (Ord. 2015-03, S1)

14.01.255 PROPERTY OWNERS' ASSOCIATION is an association formed by a land owner or owners to manage and maintain property in which they own an undivided common interest. The association may be referred to as a homeowners' association (HOA) for residential developments or as a business owners' association (BOA) for commercial developments. (Ord. 2015-03, S1)

14.01.260 QUALIFIED PERSON means a person who possesses the required certification, license and appropriate competence, skills, and ability as demonstrated by sufficient education, training and/or experience to perform a specific activity in a timely and complete manner consistent with the regulatory requirements and generally accepted industry standards for such activity and may, for certain duties, be required to be a professional engineer licensed in the State of Colorado or as required under Section 12-25-101, C.R.S. (Ord. 2015-03, S1)

14.01.265 RECEIVING WATERS means creeks, streams, rivers, lakes, estuaries or other bodies of water into which surface water and/or treated or untreated waste are discharged, either naturally or in manmade systems. (Ord. 2015-03, S1)

14.01.270 RELEASE means to dump, spill, leak, pump, pour, emit, empty, inject, leach, dispose or otherwise introduce into the storm drainage system. (Ord. 2015-03, S1)

14.01.275 RUBBISH means non-putrescible solid waste, excluding ashes that consist of: (a) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves and similar materials; and (b) noncombustible waste materials, including glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures (1,600 to 1,800 degrees Fahrenheit). (Ord. 2015-03, S1)

14.01.280 SANITARY SEWAGE means the domestic sewage and/or industrial waste that is discharged into the City's sanitary sewer system and passes through the sanitary sewer system to the City's wastewater treatment plant for treatment. (Ord. 2015-03, S1)

14.01.285 SANITARY SEWER means the system of pipes, conduits and other conveyances which carry industrial waste and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, to the City's wastewater treatment plant (and to which stormwater, surface water and groundwater are not intentionally admitted). (Ord. 2015-03, S1)

14.01.290 SEDIMENT means soil, mud, dirt, gravel and rocks that have been disturbed, eroded and/or transported naturally by water, wind or gravity, and/or mechanically by any person, vehicle or equipment. (Ord. 2015-03, S1)

14.01.295 SEPTIC TANK WASTE means any domestic sewage from holding tanks such as vessels, grease interceptors, chemical toilets, campers, trailers, septic tanks and aerated tanks. (Ord. 2015-03, S1)

14.01.300 SITE means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity. (Ord. 2015-03, S1)

14.01.305 SOLID WASTE means any garbage, rubbish, refuse, yard waste and other discarded material, including solid, liquid, semisolid, or contained gaseous material, resulting from industrial, municipal, commercial, construction, mining or agricultural operations and residential, community and institutional activities. (Ord. 2015-03, S1)

14.01.310 STORM DRAINAGE SYSTEM means all surfaces, structures and systems that contribute to or convey stormwater, including private drainage systems, to the municipal separate storm sewer system, and any non-municipal drain or pipe, channel or other conveyance, including natural and manmade washes and ditches for conveying water, groundwater, drainage water or unpolluted water from any source, excluding sewage and industrial wastes, to waters of the State and United States. (Ord. 2015-03, S1)

14.01.315 STORMWATER means surface runoff resulting from precipitation and other storm events. (Ord. 2015-03, S1)

14.01.320 STORMWATER HEARING BOARD means a review board appointed by the City Manager to hear an appeal to an administrative action in response to a violation. The Fruita City Council may serve as the Stormwater Hearing Board. (Ord. 2015-03, S1)

14.01.325 STORMWATER MANAGEMENT MANUAL means the Mesa County Stormwater Management Manual (SWMM) that contains the policies and criteria pertaining to stormwater runoff; federal, State and local regulations pertaining to stormwater law and water quality; and grading and drainage criteria under Section 5.2.7(B)(2)(d) of the City's Land Development Code, dated 2008, and as amended or replaced. (Ord. 2015-03, S1)

14.01.330 SURFACE WATER means water bodies and any water temporarily residing on the surface of the ground, including oceans, lakes, reservoirs, rivers, ponds, streams, puddles, channeled flow and runoff. (Ord. 2015-03, S1)

14.01.335 TOXIC means a substance that is harmful or poisonous according to the MSDS standards. (Ord. 2015-03, S1)

14.01.340 UNCONTAMINATED means not containing harmful quantities of pollutants that exceed State or federal guidelines. (Ord. 2015-03, S1)

14.01.345 UPSET means an exceptional incident in which there is an unintentional and temporary noncompliance because of factors beyond reasonable control. An upset does not include noncompliance to the extent caused by operational error, improperly designed or inadequate treatment, lack of preventive maintenance, or careless or improper operation. (Ord. 2015-03, S1)

14.01.350 WASTEWATER means any water or other liquid, other than uncontaminated stormwater, discharged from a facility or the community. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, institutions and industrial establishments, together with any incidental groundwater, surface water and stormwater that may be present. (Ord. 2015-03, S1)

14.01.355 WATERS OF THE STATE means any groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, inside the territorial limits of the State and all other bodies of surface water, natural or artificial, navigable or non-navigable, and including the beds and banks of all water courses and bodies of surface water, that are wholly or partially inside or bordering the State or inside the jurisdiction of the State. (Ord. 2015-03, S1)

14.01.360 WATERS OF THE UNITED STATES means all waters which are currently used, used in the past or susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and the flow of the tide; all interstate waters, including interstate wetlands; all other waters the use, degradation or destruction of which would affect or could affect interstate or foreign commerce; all impoundments of waters otherwise defined as waters of the United States under this definition; all tributaries of waters identified in this definition; all wetlands adjacent to waters identified in this definition; and any waters within the federal definition of "Waters of the United States" at 40 CFR Section 122.2; but not including any waste treatment systems, treatment

ponds or lagoons designed to meet the requirements of the federal Clean Water Act. (Ord. 2015-03, S1)

14.01.365 WATER QUALITY STANDARD means the designation of a body or segment of surface water in the State for desirable uses and the narrative and numerical criteria deemed by State or federal regulatory standards to be necessary to protect those uses. (Ord. 2015-03, S1)

14.01.370 WETLAND means any area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. (Ord. 2015-03, S1)

14.01.375 YARD WASTE means leaves, grass clippings, tree limbs, brush, soil, rocks or debris that result from landscaping, gardening, yard maintenance or land clearing operations. (Ord. 2015-03, S1)

CHAPTER 14.10

ILLICIT DISCHARGES PROHIBITED INTO STORM DRAINAGE SYSTEM

Sections:

14.10.005 Prohibitions
14.10.010 Exemptions
14.10.015 Requirements Applicable to Certain Dischargers
14.10.020 Release Reporting and Cleanup
14.10.025 Authorization to Inspect, Adopt and Impose Best Management Practice

14.10.005 PROHIBITIONS.

A. No person shall release or cause to be released into the storm drainage system any discharge that is not composed entirely of uncontaminated stormwater, except as allowed in Section 14.10.010 of this Chapter. Common stormwater contaminants which cannot be released into the storm drainage system include herbicides and lawn chemicals, construction debris and wastes, wastewater, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment, dirt and other toxic substances, including substances defined as "pollutants."

B. Notwithstanding the provisions of Section 14.10.010 of this Chapter, any discharge shall be prohibited by this Section if the discharge in question has been determined by the City Manager to be a source of pollutants to the storm drainage system.

C. The construction, use, maintenance or continued existence of illicit connections to the storm drainage system are prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

D. No person shall connect a line conveying sanitary sewage or wastewater, domestic sewage or wastewater, or industrial waste to the storm drainage system or allow such a connection to continue. Any existing connection must be removed.

E. No person shall maliciously damage, destroy or interfere with best management practices (BMPs) implemented pursuant to this Title.

(Ord. 2015-03, S1)

14.10.010 EXEMPTIONS. The following non-storm water discharges are not a violation of this Title. Note that even if one of the following discharges is not covered under this Title it may still require a federal and/or State-issued permit.

A. Intermittent uncontaminated discharge from landscape irrigation, lawn watering, or irrigation return flows.

B. Uncontaminated discharge from foundation, footing or crawl space drains and sump pumps. (Commercial air conditioning condensation and water from commercial cooler drains shall be discharged to the sanitary sewer system only.)

C. Uncontaminated groundwater, including rising groundwater, groundwater infiltration into storm drains, pumped groundwater and springs.

D. Diverted stream flows and natural riparian habitat or wetland flows.

E. Uncontaminated discharges from the occasional noncommercial or charity washing of vehicles or occasional not-for-profit car washing events.

F. Dechlorinated and uncontaminated swimming pools and hot tubs may be drained to the storm drain system. Swimming pool and hot tub drainages may be drained to the sanitary sewer system without de-chlorination.

G. Discharges approved by the City Manager as being necessary to protect property and/or public health and safety, such as flows from emergency fire fighting.

H. Waterline flushing and other infrequent discharges from potable water sources and waterline repair work as necessary to protect public health and safety.

I. Water incidental to street sweeping (including associated sidewalks and medians) that is not associated with construction.

J. City activities as determined necessary by the City Manager, such as spring cleanup and fall leaf pickup programs. The intent of these activities is to reduce pollution in the storm drainage system. For this exemption to apply, the participant(s) must comply with the directions and specified time frame determined by the City Manager.

K. A discharge authorized by and in compliance with a CDPS or NPDES permit, other than the CDPS permit for discharges from the municipal separate storm sewer system. This type of discharge must receive advance approval by the City before the CDPS permit can be issued.

(Ord. 2015-03, S1)

14.10.015 REQUIREMENTS APPLICABLE TO CERTAIN DISCHARGERS. Process waters generated from any industrial or commercial source, including carpet and rug cleaners and mobile commercial power cleaning operations, shall not discharge to the storm drainage system without a valid CDPS discharge permit. In the absence of a CDPS discharge permit, discharges from power cleaning operations shall be either discharged to land following the conditions of the CDPHE Low Risk Discharge Guidance: Discharges From Surface Cosmetic Power Washing Operations To Land

or Discharge of Potable Water, or be reclaimed via wet vacuum sweeping or other type of containment, then discharged to the sanitary sewer, before entering the storm drainage system. (Discharge to the sanitary sewer is allowed only with prior City authorization at the City's wastewater treatment plant.) (Ord. 2015-03, S1)

14.10.020 RELEASE REPORTING AND CLEANUP. Any person responsible for a known or suspected release of materials which results in, or may result in, illegal discharges to the storm drainage system shall take all necessary steps to ensure the discovery, containment, abatement and cleanup of such release. In the event of such a release of a material, said person shall comply with all State, federal and local laws requiring reporting, cleanup, containment and any other appropriate remedial action in response to the release. Notice shall be given to the City Manager and followed by a written report of the remedial action(s) taken. (Ord. 2015-03, S1)

14.10.025 AUTHORIZATION TO INSPECT, ADOPT AND IMPOSE BEST MANAGEMENT PRACTICES. The City has the authority to conduct stormwater inspections at commercial and industrial facilities and residential facilities under common ownership (for detention ponds owned by POAs) and to require implementation of best management practices (BMPs) where appropriate. The selection, application and maintenance of BMPs must be sufficient to prevent or reduce the likelihood of pollutants entering the storm drainage system. The City may adopt and impose requirements identifying specific BMPs in the stormwater management manual for any activity, operation or facility, which may cause a discharge of pollutants to the storm drainage system. Where specific BMPs are required, every person undertaking such activity or operation or owning or operating such facility shall implement and maintain BMPs at the person's own expense. (Ord. 2015-03, S1)

CHAPTER 14.20

CONTROL OF STORM WATER DISCHARGES FROM CONSTRUCTION AND POST-CONSTRUCTION ACTIVITIES

Sections:

14.20.005 General Requirements for Construction Sites
14.20.010 Construction Sites Requiring an Approved Construction Stormwater Management Plan
14.20.015 Construction Stormwater Management Plans
14.20.020 Implementation of Approved Construction Stormwater Management Plans
14.20.025 Post-Construction Requirement of Permanent BMPS
14.20.030 Certification of Permanent BMPS
14.20.035 Ongoing Inspection and Maintenance of Permanent BMPS

14.20.005 GENERAL REQUIREMENTS FOR CONSTRUCTION SITES.

A. All proposed development as described in Paragraph B of this Section must provide for on-site erosion and sediment control, control of illegal discharges, and runoff collection and conveyance in accordance with the Stormwater Management Manual and applicable federal and State laws.

B. The owner of a construction site and/or conducting construction activity, including but not limited to subdivision development, subsequent lot development, individual home and building construction, and developments as defined, that disrupt or expose soil or remove vegetation on one (1) or more acres of land during the life of the construction project, shall be responsible for obtaining a State discharge permit and compliance with the requirements of this Title, and to utilize specific BMPs adopted by the City and within the Stormwater Management Manual. All BMPs designed to meet the requirements of this Title shall comply with the Stormwater Management Manual and the construction stormwater management plan.

C. Waste Disposal. Solid waste, industrial waste, yard waste, rubbish, discarded building materials, chemicals, sanitary wastes and any other pollutants or waste on any construction site shall be controlled through the use of BMPs. Waste containers shall be provided and maintained by the owner or contractor on construction sites where there is the potential for release of waste. Uncontained waste, rubbish and other pollutants or toxins that may blow, wash or otherwise be released from the site are prohibited.

D. Ready-mixed concrete or any materials resulting from the washing or cleaning of vehicles or equipment containing or used in transporting or applying ready-mixed concrete shall be contained in a designated area on construction sites for proper disposal. All washing-out of concrete mixer truck bowls and chutes and release of these materials into storm drains is prohibited.

E. Erosion and Sediment Control. BMPs shall be implemented to prevent the release of sediment from construction sites and development. Disturbed area(s) shall be minimized and disturbed soil, including but not limited to construction sites and entrances and exits therefrom, shall be managed to prevent tracking, blowing and fugitive emissions release. Any water used in cleaning operations shall not be disposed into the storm sewer system. Sediment, dirt and mud tracked onto public streets shall be removed immediately by sweeping, scooping and shoveling at the owner's expense. Sediment not removed within the specified time limits as stated in a notification will be removed by the City or its designated contractor. Such removal costs will be billed to the property owner and, if not paid, become a lien on the property.

F. Materials Storage. Construction materials stored on public streets or required as part of a public construction project occurring in the right-of-way will require BMPs if determined appropriate by the City Manager.

(Ord. 2015-03, S1)

14.20.010 CONSTRUCTION SITES REQUIRING AN APPROVED CONSTRUCTION STORMWATER MANAGEMENT PLAN. Where any public or private construction, including subdivision development, will disturb or expose soil or remove vegetation on one (1) or more acres of land during the life of the construction project, including the disturbance of less than one (1) acre of total land that is part of a larger common plan of development or sale, if the larger common plan will ultimately disturb one (1) or more acres, or on smaller projects as designated by the City, a construction stormwater management plan for the project must be provided to the City and implemented by the construction site owner as follows:

A. The preparation, content and implementation of the construction stormwater management plan shall comply with this Title, the Stormwater Management Manual and all applicable laws.

B. The area included in the construction stormwater management plan shall be assumed to include the entire property area, unless the applicable construction stormwater management plan specifically excludes certain areas from disturbance.

C. Construction stormwater management plans must be provided for all phases of development, including sanitary sewer and storm drainage system construction, waterline, street and sidewalk construction, grading, installation of other utilities, the construction of all buildings and/or individual site development and landscaping for common areas owned and maintained by the POA.

D. The construction stormwater management plan must be provided by the owner and submitted to the City Planner and the 5-2-1 Drainage Authority for approval during the development review process.

E. The City and the 5-2-1 Drainage Authority will review the construction stormwater management plans as part of the development review process and approval must be provided before commencement of construction.

F. Construction activity, including any soil disturbance, stockpiling or transport, or removal of vegetation, shall not commence on the site until the City Planner and the 5-2-1 Drainage Authority has issued written approval of the construction stormwater management plan acceptance.

G. The property owner bears all legal and financial responsibility for implementation, monitoring of and for the approved construction stormwater management plan, for all construction activity within the development and for notification of all contractors and utility agencies on the site regarding compliance with the same. The requirement to follow the terms of the construction stormwater management plan shall be recorded as a note on the property plat. The owner shall provide a copy of the approved construction stormwater management plan to all utility agencies, subcontractors and other agencies or person(s) prior to working on or within the construction site or subdivision development. If a property is sold the owner is responsible for ensuring the plan is part of the property sale and is included when a planning clearance is obtained for a building permit. The construction stormwater management plan must be attached to the planning clearance to obtain a building permit.

(Ord. 2015-03, S1)

14.20.015 CONSTRUCTION STORMWATER MANAGEMENT PLANS. Preparation, content and implementation of construction stormwater management plans for all public and private construction activity shall, in addition to requirements in the Stormwater Management Manual (SWMM) and all applicable laws:

A. Be prepared under the direction of a qualified person as defined in Section 14.01.260 of this Title.

B. Provide the name, address and phone number of the project owner for purposes of correspondence and enforcement.

C. Specify and provide detail for all BMPs necessary to meet the requirements of this Title, including any applicable BMPs that have been adopted and imposed by the City.

(Ord. 2015-03, S1)

14.20.020 IMPLEMENTATION OF APPROVED CONSTRUCTION STORMWATER MANAGEMENT PLANS.

A. BMPs shall be installed and maintained by a qualified person(s).

B. The owner shall be able to provide upon request a copy of the construction stormwater management plan on site during construction.

C. The owner shall inspect all BMPs at least once every fourteen (14) days, and after any precipitation or snowmelt event that causes surface erosion. The owner must provide consent to the City for the City to inspect any BMP without advance notice or permission from the owner.

D. Based upon inspections performed by the owner or by authorized City personnel, modifications to the construction stormwater management plan shall be necessary if at any time the specified BMPs do not meet the objectives of this Title.

E. If major modification is required, such as addition or deletion of a sediment basin, the owner shall meet and confer with authorized City personnel to determine the nature and extent of modification(s). Minor modifications necessary to meet the objectives of this Title may be performed without City authorization. All approved modification(s) shall be completed in a timely manner, but in no case more than seven (7) calendar days after the inspection showing that modification is needed. All modification(s) shall be recorded on the owner's copy of the construction stormwater management plan. In the case of an emergency, the contractor shall implement conservative BMPs and follow up with City personnel the next working day.

(Ord. 2015-03, S1)

14.20.025 POST-CONSTRUCTION REQUIREMENT OF PERMANENT BMPS.

A. Land development that meets the requirements of Section 14.20.010 of this Chapter shall implement stormwater runoff controls through the use of permanent BMPs. All permanent BMPs shall be maintained in good working condition for the life of the development.

B. Developments that have permanent BMPs installed shall maintain those BMPs in good working condition for the life of the development.

C. Structural BMPs located on property shall be owned, operated, inspected and maintained by the owner(s) of the property and those persons responsible for the property on which the BMP is located. The legal responsibility to maintain the BMPs shall be included in POA incorporation articles and covenant restrictions, and development agreements for commercial sites. As a condition of approval of the BMP(s), the owner and those persons responsible for the property shall also agree to maintain the BMP to its design capacity unless or until the City shall relieve the property owner of that responsibility in writing. The obligation to maintain the BMP(s) shall be recorded on the property plat. The development agreement and/or final plat shall include any and all maintenance easements required to access and inspect the BMP(s) and to perform routine maintenance as necessary to ensure proper functioning of the stormwater BMP. The building of any structures on such

maintenance easements is prohibited. Any agreement arising out of or under this Title shall be recorded in the office of the Fruita City Clerk and/or the Mesa County land records.

D. The City and/or the 5-2-1 Drainage Authority will issue annual notices to POAs to ensure inspections and maintenance of permanent BMPs are performed properly.

(Ord. 2015-03, S1)

14.20.030 CERTIFICATION OF PERMANENT BMPS. Upon completion of a construction project and before a certificate of occupancy or clearance by the City Planner shall be granted, the City shall be provided a written certification signed by a qualified person stating that the completed project is in compliance with the approved construction stormwater management plan. All applicants are required to submit "as-built" plans for any permanent BMP(s) after final construction is completed. A digital copy of the as-built plans is required in current AutoCAD format. A final inspection by the City is required before the release of any performance securities may occur. (Ord. 2015-03, S1)

14.20.035 ONGOING INSPECTION AND MAINTENANCE OF PERMANENT BMPS. Permanent BMPs included in a construction stormwater management plan which is subject to an inspection and maintenance agreement must undergo ongoing annual inspections by a qualified person or professional engineer to document maintenance and repair needs and to ensure compliance with the requirements of the agreement, the construction stormwater management plan and this Title. (Ord. 2015-03, S1)

CHAPTER 14.25

ENFORCEMENT

Sections:

14.25.005 Right of Entry
14.25.010 Violations
14.25.015 Upset Condition

14.25.005 RIGHT OF ENTRY. The City Manager shall have the right to enter the premises at any time to investigate if the discharger is complying with all requirements of this Title when there is reason to believe that there exists, or potentially exists, in or upon any premises, any condition which constitutes a violation of this Title. Investigation may include, but is not limited to, the following: the sampling of any suspected discharge, the taking of photographs, interviewing of any person having any knowledge related to the suspected discharge or violation and access to any and all facilities or areas within the premises that may have any effect on the discharge or alleged violation. In the event that the owner or occupant refuses entry after a request to enter has been made, the City Manager is hereby empowered to seek assistance from the City Attorney and the Municipal Court in obtaining such entry. (Ord. 2015-03, S1)

14.25.010 VIOLATIONS. Whenever the City finds that any person has violated any portion of this Title, the City Manager shall serve a compliance advisory or a notice of violation (NOV). Within the time specified after the date of such notice, the person shall submit to the City Manager evidence of the satisfactory correction of the violation.

Whenever the City Manager finds that any person has violated or is violating this Title or a permit or administrative order issued hereunder, the City Manager may give a verbal warning or have served upon said person an administrative order. Such order may be a compliance order, a show cause order, a cease and desist order or an order assessing an administrative fine. Compliance with an administrative order shall not relieve the user of liability for any violations occurring before or after the issuance of the administrative order or prevent the City Attorney from taking any other enforcement action. (Ord. 2015-03, S1)

14.25.015 UPSET CONDITION.

A. An upset condition determination constitutes an affirmative defense to an action brought for noncompliance when the terms of this Title are met. An owner who wishes to establish the affirmative defense of upset must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and that the cause(s) of the upset can be identified; and

2. The facility or operation was at the time being properly operated; and

3. Notice of the upset was submitted as required in Section 14.10.020 of this Title; and

4. Remedial measures were complied with as required.

B. Burden of Proof. In any enforcement proceeding, the one seeking to establish the occurrence of an upset has the burden of proof.

(Ord. 2015-03, S1)

CHAPTER 14.30

APPEALS

Sections:

14.30.010 Appeals to City Manager
14.30.015 Appeals to Stormwater Hearing Board or Officer

14.30.010 APPEALS TO CITY MANAGER. Any person wishing to appeal any decision, action, administrative order, assessment of administrative fine, or determination made and issued by the City Manager in interpreting, enforcing or implementing the provisions of this Title, or the provision of any administrative order issued under this Title, shall file with the City Manager a written request for reconsideration within ten (10) working days of such decision, action, administrative order or determination. That written request shall set forth in detail the facts supporting the request. The City Manager, or his designated Hearing Officer, shall hold a hearing within ten (10) working days of such request. All requests for reconsideration shall be heard by the City Manager within ten (10) working days from the date of the hearing. The decision, action, administrative order or determination shall remain in effect during the reconsideration period. (Ord. 2015-03, S1)

14.30.015 APPEALS TO STORMWATER HEARING BOARD OR OFFICER.

A. Any person entitled to appeal an order of the City Manager pertaining to a violation of this Title may do so by filing an appeal with the City Manager within ten (10) working days from the date of the City Manager's determination or order. The appeal shall contain the following items:

1. A heading in the words "Before the Stormwater Hearing Board of the City of Fruita, Colorado" or "Before the Stormwater Hearing Officer of the City of Fruita, Colorado";

2. A caption reading "Appeal of _____," giving the names of all participating appellants;

3. A statement of the legal interest of the appellants in the affected facility, together with the name of the authorized representative thereof;

4. A concise statement of the action protested, together with any material facts;

5. Verified signatures of all appellants, together with official mailing addresses and telephone numbers; and

6. Verification by declaration under perjury of at least one appellant as to the truth of the matters stated in the appeal.

Upon receipt of a properly filed appeal, the City Manager shall notify the City Council, and the City Manager shall convene a Stormwater Hearing Board or appoint

a Hearing Officer. The hearing shall commence no sooner than ten (10) days, but no later than sixty (60) days, after the appeal is filed.

B. The City Manager is authorized to order any user who causes, makes, or allows an unauthorized direct or indirect discharge or a harmful contribution to the storm drainage system to show cause why appropriate enforcement action should not be taken. In such case, a notice shall be served on the respondent user specifying the time and place of a hearing regarding the violation, the reasons why the action is to be taken, the proposed enforcement action, and directing the user to show cause why the proposed enforcement action should not be taken. The notice of the hearing shall be served upon the user personally or by certified mail, return receipt requested, at least ten (10) days before the hearing. Service may be made on any agent or authorized representative of a corporation or partnership.

C. The City Manager may appoint a Hearing Officer or may instead convene a Stormwater Hearing Board to conduct the hearing or appeal. The Board may consist of a City Council member or designee, the City Manager, a 5-2-1 Drainage Authority Board member or designee and an employee of the Public Works Department. The Hearing Officer or Stormwater Hearing Board shall have the power to:

1. Issue in the name of the City Council notices of hearings or subpoenas requiring the attendance and testimony of witnesses and the production of evidence.

2. Hold a quasi-judicial hearing, and receive relevant evidence relating to compliance with the requirements set forth in this Title. Hearings shall be conducted informally. Rules of civil procedure and evidence shall not solely determine the conduct of the hearing or the admissibility of evidence. All testimony shall be given under oath, and a tape or digital recording or other evidence of the verbatim content of the hearing shall be made. The burden of persuasion in either an appeal or show cause hearing shall be upon the appellant or respondent. The standard of proof to be utilized by the Hearing Officer or Board in making its findings or recommendations shall be a preponderance of the evidence.

3. Determine and find whether just cause exists for not taking the proposed enforcement actions, or whether the order or action appealed is unwarranted.

4. Transmit a report of the evidence and hearing, including transcripts, tapes, and copies of other evidence requested by any party, together with findings and recommendations to all parties to the hearing and to the City Council.

D. Findings and recommendations of the Hearing Board or Officer shall be final and binding upon the City Manager and parties to the hearing; provided, however, that if the City Council disapproves the recommendations of the Hearing Board or Officer within thirty (30) days thereof, the City Council may conduct its own hearing, make

its own findings, and issue its own orders. An order consistent with findings and recommendations of the Hearing Board or Officer, or the City Council, as the case may be, shall be issued by the City Manager. The order may provide for imposition of appropriate penalty charges, and for administrative fines designed to reimburse the City for the costs of the permit enforcement action. Further orders and directives, as are necessary and appropriate to enforce the provisions of this Title may be issued by the City Manager.

(Ord. 2015-03, S1)

CHAPTER 14.35

ABATEMENT AND PENALTIES

Sections:

14.35.010 Abatement
14.35.020 Penalties

14.35.010 ABATEMENT. Any person who violates a prohibition or fails to meet a requirement of this Title will be subject, without prior notice, to one or more of the enforcement actions identified herein, when attempts to contact the person have failed, or voluntary compliance has not occurred, and the enforcement actions are necessary to stop an actual or threatened discharge, which presents or may present imminent danger to the environment, or to the health, safety or welfare of persons or to the well being of the storm drainage system. Any person who fails to comply with a notice of violation shall be subject to any of the following:

A. The City Manager may issue a stop work order to the owner and contractors on a construction site, by posting the order at the construction site. Unless express written exception is made, the stop work order shall prohibit all further construction activity at the site and shall bar any further inspection or approval(s) necessary to commence or continue construction or to assume occupancy of the site. A notice of violation shall accompany the stop work order, and shall define the compliance requirements.

B. The City Manager may order City representatives to terminate an illicit connection to the municipal separate storm sewer system. Any expense related to abatement by City or its contractor(s) or agent(s) shall be fully reimbursed by the property owner. Failure to pay may result in the property being liened as provided herein.

C. When a property owner is not available, not able or not willing to correct a violation, the City Manager may order City personnel, contractor(s) or agent(s) to enter private property to take any and all measures necessary to abate the violation. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow City representatives to enter upon the premises for these purposes. Any expense related to such abatement by City representatives shall be fully reimbursed by the property owner. Failure to pay may result in the property being liened as provided herein.

D. Within Thirty (30) days after abatement by City representatives, the City Manager shall notify the property owner of the costs of abatement, including administrative costs, and the deadline for payment. If the amount due is not paid, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment plus an administrative charge of twenty-five percent (25%). The unpaid liens and charges shall be certified to the County Treasurer pursuant to Section 31-20-105, C.R.S. so that the County Treasurer may enter the amounts of the assessment against the parcel as it appears on the current assessment roll, and the amount of the assessment on the bill for taxes levied against

the parcel of land. All laws of this State for the assessment and collection of general taxes, including the laws for the sale of property for taxes and redemption of the same apply.

E. Where necessary for the reasonable implementation of this Title, the City Manager may, by written notice, order any owner of a construction site or subdivision development to post surety, in a form approved by the City Attorney, not to exceed a value determined by the City Manager to be necessary to achieve consistent compliance with this Title. The City may deny approval of any building permit, subdivision plat, site development plan, or any other City permit or approval necessary to commence or continue construction or to assume occupancy, until such surety has been filed with the City.

(Ord. 2015-03, S1)

14.35.020 PENALTIES. Any person who knowingly violates or continues to violate a prohibition or requirement of this Title commits a Class B municipal offense and shall be subject to criminal prosecution to the fullest extent of the law.

The violation of any provision of this Title or with any orders, rules, regulations, permits and permit conditions shall also be deemed a Class B municipal offense. Any person violating this Title shall, upon an adjudication of guilt or a plea of guilty or no contest, be punished pursuant to a Class B municipal offense. Each day or portion thereof that any violation of any provision of this Title exists shall constitute a separate offense.

A. If any person violates any order of the City Manager, a Hearing Board or Officer or the City Council, or otherwise fails to comply with any provisions of this Title or the orders, rules, regulations and permits issued hereunder, or discharges into the storm drain system or into State waters contrary to the provisions of this Title, federal or State requirements, or contrary to any order of the City, the City may commence an action in a court of record for appropriate legal and equitable relief. In such action, the City may recover from the defendant reasonable attorney fees, legal assistant fees, court costs, deposition and discovery costs, expert witness fees, and other expenses of investigation, enforcement action, administrative hearings, and litigation, if the City prevails in the action or settles at the request of the defendant. Any person who violates any of the provisions of this Title shall become liable to the City for any expense, loss, or damage to the City or to the storm drain system occasioned by such violation. The City Attorney may seek a preliminary or permanent injunction or both which restrains or compels the activities on the part of the discharger.

B. Any person who knowingly makes, authorizes, solicits, aids, or attempts to make any false statement, representation or certification in any hearing, or in any permit application, record, report, plan, or other document filed or required to be maintained pursuant to this Title, or who falsifies, tampers with, bypasses, or knowingly renders inaccurate any monitoring device, testing method, or testing samples required under

this Title, shall be guilty of a Class B municipal offense and upon conviction thereof shall be punished by pursuant to a Class B municipal offense.

C. The remedies provided for in this Title, including recovery of costs, administrative fines and treble damages, shall be cumulative and in addition to any other penalties, sanctions, fines and remedies that may be imposed. Each day in which any such violation occurs, whether civil and/or criminal, shall be deemed a separate and distinct offense.

(Ord. 2015-03, S1)

TITLE 15

BUILDING AND CONSTRUCTION

Chapters:

15.04 International Building Code
15.08 International Plumbing Code
15.12 International Mechanical Code
15.16 International Fuel Gas Code
15.20 International Property Maintenance Code
15.22 International Residential Code
15.24 International Fire Code
15.28 International Energy Conservation Code
15.32 National Electric Code
15.40 Administration and Enforcement
15.42 Building Board of Appeals
15.44 Structure Moving Regulations
15.50 Violations and Penalties

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Chapter 15.04

INTERNATIONAL BUILDING CODE

Sections:

15.04.010 Adopted by reference
15.04.020 Amendments

15.04.010 ADOPTED BY REFERENCE.

A. The International Building Code, 2012 Edition, promulgated by the International Code Council, Inc. together with amendments set forth below (hereafter "IBC" or "International Building Code") is hereby adopted to provide minimum standards to safeguard life and limb, health, property, and the public welfare by regulating and controlling various matters including, but not limited to the design, construction, quality of materials, use and occupancy, location and maintenance of all buildings and structures within the City of Fruita.

B. The following chapters of the Appendix of the International Building Code, 2012 Edition, are adopted: Chapter C, Group U - Agriculture Building; Chapter I, Patio Covers. No other chapters of the Appendix are adopted.

(Ord. 1983-33, S6; Ord. 2001-01, S1; Ord. 2007-01, S1; Ord. 2012-04, S1)

15.04.020 AMENDMENTS. The International Building Code adopted in Section 15.04.010 is hereby amended as follows:

A. Section 105.2: Section 105.2 is amended by the addition of the word Platforms to Section 105.2 Item 6.

B. Section 109: Section 109 is amended by the addition of Subsection 109.7. No fees shall be required for a building permit obtained for Agricultural Buildings, as defined at Section 202. This agricultural building fee exemption does not include fees for electrical, mechanical and plumbing permits for said structures.

C. Section 109.2: Section 109.2 is amended by the addition of Table 108-A, Fee Schedule, for building permits and/or combinations of building, mechanical, plumbing, electrical, fuel gas piping and pool, hot tub and spa permits. Copy the Table 108-A, Fee Schedule, is on file in the Fruita City Clerk's office and the Mesa County Building Inspection office.

D. Section 109.6: Section 109.6 is amended to establish a fee refund policy, by the addition of the following: Building permit fees may be refunded at the rate of 85% of the building permit fee provided the project for which the permit was issued has not commenced and/or inspections have not been conducted. No refunds will be made after work has commenced.

E. Section 110: Section 110 is amended by addition of Subsection 110.7 to read as follows: No inspections shall be required for a building permit obtained for Agricultural Buildings as defined at Section 202. However, this exemption is not an exception of the minimum building standards set forth in the International Building Code, nor to the other requirements for inspections for electrical, mechanical and plumbing.

F. Section 113: Section 113 is amended by deletion thereof. The Board of Appeals established in Section 15.42 of the Fruita Municipal Code shall serve as the Board of Appeals.

G. Section 114.4. Violation Penalties. Section 114.4 is amended by deletion of the section and replacing with the following: Section 114.4. Violation Penalties. Any person who violates a provision of the code or fails to comply with any of the requirements thereto shall be subject to the penalties prescribed in Chapter 15.50 of the Fruita Municipal Code.

H. Section 310: Section 310.5.1 amended by deleting "provided an automatic sprinkler system is installed in accordance with section 903.3.1.3 or with section 2904 of the International Residential Code."

I. Section 310: Section 310.6 amended by adding at last paragraph "or shall comply with the International Residential Code."_

J. Table 602: Table 602 is amended by the addition of footnote i. to E occupancies. "Footnote i. Group E Day Care occupancies that accommodate 12 or fewer persons shall have fire resistive ratings as required for IRC occupancies."

K. Section 1004: Section 1004, Table 1004.1.2 is amended to change the maximum floor area allowance per occupant of Agricultural Building from 300 Gross to 500 Gross.

L. Section 3001.1 is amended to read as follows:
3001.1 Scope. This chapter governs the design, construction, installations, alterations, maintenance and repair of new and existing installations of elevators, dumbwaiters, escalators and moving walks, requiring permits therefore and providing procedures for the inspection and maintenance of such conveyances.

M. Chapter 30: Chapter 30 concerning elevators, moving walks, escalators or dumbwaiters, is amended by adding new sections and subsections to read as follows:

1. Section 3009 - Permits and Certificates of Inspection.

   Permits Required. It shall be unlawful to install any new elevator, moving walk, escalator or dumbwaiter or to make alterations to any existing elevator, dumbwaiter, escalator or moving walk, as defined in Part XII of ASME A17.1, without first having obtained a permit for such installations from the building official. Permits shall not be required for maintenance or minor alterations.

3009.2 Certificates of Inspection Required. It shall be unlawful to operate any elevator, dumbwaiter, escalator or moving walk without a current certificate of inspection issued by an approved inspection agency. Such certificates shall be issued upon payment of prescribed fees and a valid inspection report indicating that the conveyance is safe and that the inspection and tests have been performed in accordance with Part X of ASME A17.1. Certificates shall not be issued when the conveyance is posted as unsafe pursuant to Section 3012. Exception**:** Certificates of Inspection shall not be required for conveyances within a dwelling unit.

3009.3 Applications for Permits. Applications for a permit to install shall be made on forms provided by the building official, and the permit shall be issued to an owner or the owner's representative, upon payment of the permit fees specified in this section.

3009.4 Applications for Certificates of Inspection. Applications for an inspection and certificates of inspection shall be made to an approved inspection agency by the owner of an elevator, dumbwaiter, escalator or moving walk. Fees for inspections and certificates of inspection shall be determined by the approved inspection agency.

3009.5 Fees. A fee for each permit shall be paid to the building official as prescribed in Table 108-A, Fee Schedule. A copy the Table 108-A, Fee Schedule, is on file in the Fruita City Clerk's office and the Mesa County Building Inspection office.

2. Section 3010 - Design

3010.1 Detailed requirements. For detailed design, construction and installation requirements see Chapter 16 and the appropriate requirements for ASME A17.1.

3. Section 3011 - Requirements for Operation and Maintenance

3011.1 General. The owner shall be responsible for the safe operation and maintenance of each elevator, dumbwaiter, escalator and moving walk installations and shall cause periodic inspections to be made on such conveyances as required by this section.

3011.2 Periodic Inspection and Tests. Routine and periodic inspections and tests shall be made as required by ASME A17.1.

3011.3 Alterations, Repairs and Maintenance. Alterations, repairs and maintenance shall be made as required by Part XII of ASME A17.1.

3011.4 Inspection Costs. All costs of such inspections shall be paid by the owner.

4. Section 3012 - Unsafe Conditions

3012.1 Unsafe Conditions. When an inspection reveals an unsafe condition of an elevator, escalator, moving walk or dumbwaiter, the inspector shall immediately file with the owner and the building official a full and true report of inspection and unsafe condition. If the building official finds that the unsafe condition endangers human life, the building official shall cause to be placed on such conveyance, in a conspicuous place, a notice stating that such conveyance is unsafe. The owner shall see to it that such notice of unsafe condition is legibly maintained where placed by the building official. The building official shall also issue an order in writing to the owner requiring the repairs or alterations to be made to such conveyance that are necessary to render it safe and may order the operation thereof discontinued until the repairs or alterations are made or the unsafe conditions are removed. A posted notice of unsafe conditions shall be removed by the building official when satisfied that the unsafe conditions have been corrected.

5. Section 3109.4: Section is amended by deletion thereof.

(Ord. 2001-01, S1; Ord. 2007-01, S1; Ord. 2012-04, S1)

Chapter 15.08

INTERNATIONAL PLUMBING CODE

Sections:

15.08.010 Adopted by reference
15.08.020 Amendments

15.08.010 ADOPTED BY REFERENCE.

A. The International Plumbing Code, 2012 Edition, as published by the International Code Council, together with amendments set forth below (hereafter “IPC” or "International Plumbing Code") is hereby adopted for regulating the design, construction, quality of materials, erection, installation, alteration, repair, location, relocation, addition to, use and maintenance of plumbing systems within the City of Fruita.

B. The following chapters of the Appendix of the International Plumbing Code are adopted: Appendix B – Rates of Rain Fall for Various Cities; Appendix E – Sizing of Water Piping Systems. No other chapters of the Appendix are adopted.

(Ord. 2001-01, S2; Ord. 2007-01, S2; Ord. 2012-04, S2)

15.08.020 AMENDMENTS. The International Plumbing Code adopted in Section 15.08.010 is hereby amended as follows:

A. Section 106.6. Section 106.6 is amended by deletion of the section and replaced with the following. Section 106.6 Permit Fees. A fee for each permit shall be as set forth in Table 108-A, Fee Schedule. A copy of Table 108-A, Fee Schedule, is on file in the Fruita City Clerk's office and the Mesa County Building Inspection office.

B. Section 106: section 106.5.6 is amended by deletion of the first paragraph.

C. Section 108.4, Violation Penalties. Section 108.4 is amended by deletion of the section and replaced with the following: Section 108.4 Violation Penalties. Any person who violates a provision of this code or fails to comply with any of the requirements thereto shall be subject to the penalties as prescribed in Chapter 15.50 of the Fruita Municipal Code.

D. Section 109: Section 109 is amended by deletion and replaced with the following: Section 109, Subsection 109.1. The Board of Adjustment established in Chapter 15.42 of the Fruita Municipal Code shall serve as the Board of Appeals for the International Plumbing Code.

(Ord. 2001-01, S2; Ord. 2007-01, S2; Ord. 2012-04, S2)

Chapter 15.12

INTERNATIONAL MECHANICAL CODE

Sections:

15.12.010 Adopted by reference
15.12.020 Amendments

15.12.010 ADOPTED BY REFERENCE.

A. The International Mechanical Code, 2012 Edition, published by the International Code Council, together with amendments set forth below (hereafter “IMC" or "International Mechanical Code”) is hereby adopted to regulate the design, construction, quality of materials, erection, installation, alteration, location, relocation, replacement, addition to, use and maintenance of mechanical systems within the City of Fruita.

(Ord. 2001-01; Ord. 2007-01, S3, Ord. 2012-04, S3)

15.12.020 AMENDMENTS. The International Mechanical Code adopted in Section 15.12.010 is hereby amended as follows:

A. Section 106.5.2. Fee Schedule. Section 106.5.2 is amended by the addition of Table 108-A Fee Schedule. A copy of Table 108-A, Fee Schedule, is on file in the Fruita City Clerk's office and the Mesa County Building Inspection office.

B. Section 108.4. Violation Penalties. Section 108.4 is amended by deletion of the section and replaced with the following: Section 108.4 Violation Penalties. Any person who violates a provision of this code or fails to comply with any of the requirements thereof shall be subject to penalties as prescribed in Chapter 15.50 of the Fruita Municipal Code.

C. Section 109. Means of Appeal. Section 109 is amended by deletion thereof. The Board of Appeals established in Chapter 15.42 of the Fruita Municipal Code shall serve as the Board of Appeals.

(Ord. 2001-01, S3; Ord. 2007-01, S3; Ord. 2012-04, S3)

Chapter 15.16

INTERNATIONAL FUEL GAS CODE

Sections:

15.16.010 Adopted by reference
15.16.020 Amendments

15.16.010 ADOPTED BY REFERENCE.

A. The International Fuel Gas Code, 2012 Edition, published by the International Code Council, together with amendments set forth below (hereafter “IFGC" or "International Fuel Gas Code") is hereby adopted for the control of buildings and structures related to gas and fuel burning appliances and related piping within the City of Fruita.

B. The following chapters of the Appendix of the International Fuel Gas Code, 2012 Edition, are adopted: Appendix A, Sizing and Capacities of the Gas Piping; Appendix B, Sizing of Vent Systems; Appendix C Exit Terminals of Mechanical Draft and Direct-Venting Systems. No other Appendix chapters are adopted.

(Ord. 2001-01, S4; Ord. 2007-01, S4; Ord. 2012-04, S4)

15.16.020 AMENDMENTS. The International Fuel Gas Code adopted in Section 15.20.010 is hereby amended as follows:

A. Section 106.6.2. Schedule. Section 106.6.2 is amended by the addition of Table 108-A Fee Schedule. A copy the Table 108-A, Fee Schedule, is on file in the Fruita City Clerk's office and the Mesa County Building Inspection office.

B. Section 108.4. Violation Penalties. Section 108.4 is amended by deletion of the section and replacing with the following: Section 108.4 Violation Penalties. Any person who violates a provision of this code or fails to comply with any of the requirements thereof shall be subject to penalties as prescribed in Chapter 15.50 of the Fruita Municipal Code.

C. Section 109. Means of Appeal. Section 109 is amended by deletion thereof. The Board of Appeals established in Chapter 15.42 of the Fruita Municipal Code shall serve as the Board of Appeals.

(Ord. 2001-01, S4; Ord. 2007-01, S4; Ord. 2012-04, S4)

Chapter 15.20

INTERNATIONAL PROPERTY MAINTENANCE CODE

Sections:

15.20.010 Adopted by reference
15.20.020 Amendments

15.20.010 ADOPTED BY REFERENCE.

A. The International Property Maintenance Code, 2012 Edition, published by the International Code Council, together with amendments set forth below (hereafter "IPMC" or "International Property Maintenance Code") is hereby adopted for the practical safeguarding of persons and property in regard to buildings and structures within the City of Fruita.

(Ord. 2001-01, S5; Ord. 2007-01, S5; Ord. 2012-04, S5)

15.20.020 AMENDMENTS. The International Property Maintenance Code adopted in Section 15.20.010 is hereby amended as follows:

A. Section 111. Means of Appeal. Section 111 is amended by deletion thereof. The Board of Appeals established in Chapter 15.42 of the Fruita Municipal Code shall serve as the Board of Appeals.

B. Section 108.1.3. Section 108.1.3 is amended by the deletion of the words "vermin or rat infested".

C. Section 302. Section 302 is amended by deletion thereof.

D. Section 303. Section 303 is amended by deletion thereof.

E. Section 308. Section 308 is amended by deletion thereof.

F. Section 309: Section 309 is amended by deletion thereof.

(Ord. 2001-01, S5; Ord. 2007-01, S5; Ord. 2012-04, S5)

Chapter 15.22

INTERNATIONAL RESIDENTIAL CODE

Sections:

15.22.010 Adopted by reference
15.22.020 Amendments

15.22.010 ADOPTED BY REFERENCE.

A. The International Residential Code, 2012 Edition, published by the International Code Council, together with amendments set forth below (hereafter “IRC" or "International Residential Code”) is hereby adopted for regulating the design, construction, quality of materials, erection, installation, alteration, repair, location, relocation, replacement, addition to, use or maintenance of one-and-two family dwellings and townhouses not more than three stories in height within the City of Fruita.

B. The following chapters of the Appendix of the International Residential Code, 2012 Edition, are adopted: Appendix A, Sizing and Capacities of Gas Piping; Appendix B, Sizing of Vent Systems Serving Appliances Equipped With Draft Hoods, Category 1 Appliances; Appliances Listed For Use with Type B Vents; Appendix C, Exit Terminals of Mechanical Draft and Direct-Vent Venting Systems; Appendix D, Recommended Procedures for Safety Inspections of Existing Appliance Installations; Appendix H, Patio Covers; Appendix Q, ICC International Residential Code Electrical Provisions/National Electrical Code Cross-Reference. No other Appendix chapters of the Appendix are adopted.

(Ord. 2007-01, S6; Ord. 2012-04, S6)

15.22.020 AMENDMENTS. The International Residential Code adopted in Section 15.22.010 is hereby amended as follows:

A. Section R105.2: Section R105.2, Item 5, is amended to read: Sidewalks, Driveways and Platforms not more than 30 inches above adjacent grade and not over any basement or story below.

B. Section R105.2: Section R105.2 is amended by the addition of the following new sub-sections: Building Item 11. Re-siding of buildings regulated by this code; Building Item 12. Re-roofing of buildings regulated by this code that do not exceed Limits of Section R907.3.

C. Section R105.3.1.1: Section R105.3.1.1 is amended by deletion thereof.

D. Section R106.3.1: Section R106.3.1 is amended by deletion of the first sentence of the first paragraph. One set of construction documents so reviewed shall be retained by the Building Official.

E. Section R106.5: Section R106.5 is amended by deletion thereof.

F. Section R108.2: Section R108.2 is amended to add Table 108-A Fee Schedule. A copy the Table 108-A, Fee Schedule, is on file in the Fruita City Clerk's office and the Mesa County Building Inspection office.

G. Section R112: Section R 112 is amended by deletion thereof. The Board of Appeals established in Chapter 15.42 of the Fruita Municipal Code shall serve as the Board of Appeals.

H. Section R113.4. Violation Penalties. Section R113.4 is amended by deletion of the Section and replaced with the following: Section R113.4 Violation Penalties. Any person who violates a provision of this code or fails to comply with any of the requirements thereto shall be subject to the penalties as prescribed in Chapter 15.50 of the Fruita Municipal Code.

I. Table R302.1, Exterior Walls: Table R302.1(1) is amended by changing the following: Walls (not fire resistance rated) Minimum Fire Separation Distance = 3 feet; Projections (fire resistance rated) Minimum Fire Separation Distance = 2 feet; Projections (not fire resistance rated) Minimum Fire Separation Distance = 3 feet; Openings (unlimited) Minimum Fire Separation Distance = 3 feet; Openings, deleted 25% Maximum of Wall Area/0 Hours/3 feet; Penetrations (all) Minimum Fire Separation Distance <3 feet, compliance with Section R302.4 and at 3 feet or greater, no requirements.

J. Section R303.1: Section R303.1, Exception 3 is amended by deletion and replacing with the following: Use of sunroom additions and patio covers, as defined in Section R202, shall be permitted for natural ventilation provided the space has adequate openings to the outside.

K. Section R309.1: Section R309.1 is amended by the deletion of the second paragraph.

L. Section R309.5: Section R309.5 is amended by deletion thereof.

M. Section R302.2: For the purpose of this section, townhouse shall include two (2) or more attached units as defined in Section R202. R302.2 exception replace 1-hour with 2-hour

N. Section R313: Section R313 is amended by the deletion thereof.

O. Section R908: The IRC is amended to add Section R908. Roof Covering Requirements in Wildfire Hazard Areas.

1. Section R908.1 Wildfire Hazards defined. Areas that have wildfire hazard rating of medium or above (as shown on the Mesa County Wildfire Hazard Map).

2. Section R908.2 Roof Covering. Roof coverings for new buildings or structures or additions thereto or roof coverings utilized for re-roofing, shall be Class A or B, tested in accordance with ASME E108 or UL 790 or Fire-retardant-treated shingles or shakes treated in accordance with AWPA C1.

3. Section R908.3 Moved Buildings. Any building or structure moved within or into any Wildfire Hazard Area shall be made to comply with all the requirements for new buildings in the Wildfire Area.

P. Part IV-Energy Conservation, Chapter 11(eleven): Chapter 11 (eleven) is amended by the deletion thereof in its entirety. And adding "see 2009 International Energy Conservation Code as adopted for energy code requirements."

(Ord. 2007-01, S6; Ord. 2012-04, S6)

Chapter 15.24

INTERNATIONAL FIRE CODE

Sections:

15.24.010 Adopted by reference
15.24.020 Amendments

15.24.010 ADOPTED BY REFERENCE.

A. The International Fire Code, 2012 Edition, published by the International Code Council, (hereafter "IFC" or "International Fire Code") is hereby adopted for regulating and safeguarding of life and property from fire and explosion hazards arising from the storage, handling and use of hazardous substances, materials and providing for the issuance of permits for hazardous uses or operations for buildings, structures and land uses within the City of Fruita.

B. The following chapters of the Appendix of the International Fire Code, 2012 Edition, are adopted: Appendix B, C, D, F, H, and I. No other chapters of the Appendix are adopted.

(Ord. 2002-24, S1; Ord. 2007-01, S7; Ord. 2012-05, S1)

15.24.020 AMENDMENTS. The International Fire Code adopted in Section 15.24.010 is hereby amended as follows:

A. Section 101 Scope and General Requirements. Section 101 is amended as follows: Section 101.1. Whenever the word “jurisdiction” is used in the International Fire Code, it shall be held to mean the City of Fruita.

B. Section 105.6. Required operational permits. Section 105.6 is amended as follows: Operational permits are valid for three years from date of issue for Explosives, Hazardous Materials, HPM Facilities and Storage of scrap tires and tire products. All other permits are valid only for each event or season.

Operational permits are required for the following:

Operational Permits:	Code Section
Amusement buildings**	105.6.2
Carnivals and fairs **	105.6.4
Exhibit and trade shows**	105.6.13
Fireworks retail sales **	105.6.14
Explosives **	105.6.14
Open Burning * (combined) **	105.6.30
Pyrotechnic special effects material**	105.6.14 & 105.6.36
Hazardous Materials**	105.6.20
HPM Facilities**	105.6.21
Storage of scrap tires and tire byproducts **	105.6.42

* A permit shall be required for each "burn season" as outlined in the Mesa County Open Burning Control Regulations.

**Permit fees and rates shall be as established by separate resolutions by the Board of Directors of the Lower Valley Fire Protection District

C. Section 105.6 .30 is amended by deletion of the Section and replaced with the following: Section 105.6.30 Open Burning. Permit for bonfires, and open burning shall be secured at the Lower Valley Fire Protection District offices. Such permits shall adhere to all applicable fire codes and ordinances and the Colorado Air Quality Control Act, C.R.S. 1973, section 25-7-128 and the Mesa County Open Burning Control Regulation.

D. Section 105.7 Required construction permits. Section 105.7 is amended as follows:

Construction Permits:	Code Section
Plan Review Fees**	
Automatic fire-extinguishing systems**	105.7.1
Fire Sprinkler Systems	
Hood extinguishing System	
Fire pumps and related equipment **	105.7.7
Fire alarm and detection systems and related equipment**	105.7.6
Installation/above ground storage tanks**	105.7.8
Installation/underground tanks**	105.7.8
Removal of underground tanks**	105.7.8
Flammable and combustible liquids **	105.7.8
LP gas **	105.7.11

**Permit fees and rates shall be as established by separate resolutions by the Board of Directors of the Lower Valley Fire Protection District.

E. Section 108. Appeals The language is deleted and shall be replaced as follows: The Board of Adjustment established in Chapter 15.42 of the Fruita Municipal Code shall serve as the Board of Appeals.

F. Section 109.4 Violation penalties. The language of section 109.4 is deleted and shall be replaced as follows: Section 109.4 Violation penalties. Any person who violates a provision of the code or fails to comply with any of the requirements thereto shall be subject to the penalties prescribed in Chapter 15.50 of the Fruita Municipal Code.

G. Section 903.2 Where Required. This section is amended by adding the following sentence: Buildings located in the Fruita Greenway Business Park Plan area (as defined in the City's Master Plan) which exceed 2,000 square feet shall be provided throughout with an automatic fire sprinkler system unless otherwise approved by the City Manager and/or the Fire Code Official.

H. Section 903.3.1.3 NFPA 13D sprinkler systems. This section is amended to read as follows:

Where domestic water is provide by a public water system, any required 13D system must be supplied by the public water system. The water tap must be adequate to supply the hydraulic demand of the fire sprinkler system.

Automatic sprinkler systems installed in one- and two-family dwellings shall be installed throughout in accordance with NFPA 13D. Where NFPA 13D systems are installed, they shall be designed and operate in the following manner:

(A) All water flow activations shall be capable of sounding an interior audible alarm notifying all occupants simultaneously.

(B) All water flow activations shall be capable of activating an exterior audible/visual alarm. This alarm shall be located so as to be visible from the nearest fire department access road.

(C) The light used shall be a strobe light producing at least 110-185 candela.

(D) A tamper switch shall be installed on the fire sprinkler control valve, which shall be capable of activating the light portion only of the exterior audible/visual strobe signal.

(E) Where public water service cannot provide required flows for NFPA 13D systems the following design criteria shall be used:

(1) Water supply storage capacity shall be the minimum required by NFPA 13D plus an additional amount based upon the expected response time of the fire department, not to exceed a 20-minute response time.

I. Section 903.3.7 Fire department connections. Section 903.3.7 is amended by the addition of the following: Fire department connections must be located within 150 feet of the nearest fire hydrant unless waived by the Fire Chief.

J. Section 907.1.2 Fire alarm shop drawings. The following shall be added:

1. 907.1.2.14. System designers shall have a NICET Level III certification or equivalent.

2. 907.1.2.15. New systems shall be designed with addressable devices. Exception: systems which monitor and transmit alarms from automatic fire sprinkler systems only.

K. Section 907.8.6 False Alarms: Alarm system malfunctions or malicious false alarms. New sections to be added as follows:

1. Section 907.8.6. Whenever the activation of any fire alarm is due to a malfunction of the system and that system has had another malfunction within the

same quarter of a calendar year, or more than six during any calendar year, the owner and/or operator of the system shall pay a false alarm fee to offset some of the costs involved in the dispatching and responding of fire equipment to the location of the alarm.

2. Section 907.8.6.1. It is the responsibility of the owner or operator of an alarm system to police the improper use of the system, such as the intentional activating of a false alarm or the intentional activation of a smoke or heat detector to produce a false alarm. After three such activations within the same quarter of a calendar year from the same fire alarm system, or more than six during any calendar year, the fee schedule for the false alarms shall become effective.

3. Section 907.8.6.2. Whenever the Fire Chief cannot determine how a false alarm was activated and three such unexplained alarms occur within the same calendar year quarter, the fee schedule for false alarms shall become effective with the fourth and subsequent alarms, or alarms exceeding six during any calendar year, the fee schedule for false alarms shall become effective with the seventh and subsequent alarms.

4. Section 907.8.6.3 A fee, in accordance with the fee schedule established by resolution of the Fire District Board of Directors and on file with the Office Manager shall be charged for false alarms.

5. A new fire alarm system shall be allowed 30 days to become stabilized before this false alarm section will be applied.

L. Section 1015 Exit and Exit Access doorways: Section 1015 is amended by adding the following: Section 1015.7 Outdoor Patios. All Group A-2 Assembly occupancies that have a fenced or enclosed outdoor patio shall have a second exit equipped with panic hardware direct to the exterior.

M. Appendix C Fire Hydrant Locations and Distribution. Section C105. The following shall be added to existing wording of this section: In all subdivisions, commercial areas, industrial parks and where required by the Fire Chief fire hydrants shall be located on the corner of a street intersection, either between the curb and sidewalk or behind the sidewalk where it is adjacent to the street curbs.

N. The following new section is added to Appendix C: Section C 106.1 Fire Hydrants. Fire hydrant pumper connections shall be equipped with a five inch non threaded sexless connection (commonly referred to as Storz) and metal cap which can be removed by a standard pentagon nut hydrant wrench. The distance from the center of the fire hydrant pumper connection nut to the finished grade shall not be less than 22 inches. Pumper connections shall face the street or as directed by the Fire Chief.

(Ord. 2001-24, S1; Ord. 2007-01, S7; Ord. 2012-05, S1)

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Chapter 15.28

INTERNATIONAL ENERGY CONSERVATION CODE

Sections:

15.28.010 Adopted by reference
15.28.020 Amendments

15.28.010 ADOPTED BY REFERENCE.

A. The International Energy Conservation Code, 2009 Edition, published by the International Code Council, (hereafter “IECC" or "International Energy Conservation Code”) is hereby adopted regulating the design, construction, quality of materials, erection, installations, alteration, repair, location, relocation, replacement, additions to, use and maintenance of the building envelope, mechanical, lifting and power systems in the City of Fruita.

(Ord. 2001-01, S7; Ord. 2007-01, S8; Ord. 2012-04, S7)

15.28.020 AMENDMENTS. The International Energy Conservation Code adopted in Section 15.24.010 is hereby amended as follows:

A. Section 107: section 107 is amended by deletion thereof

B. Section 108: section 108 is amended by deletion thereof.

C. Section 109: section 109 is amended by deletion thereof

D. Section 402.5: section 402.5 is amended by the deletion thereof.

E. Section 403.2.2: section 403.2.2 is amended by deletion thereof.

F. Section 404: section 404 is amended by deletion thereof in its entirety.

(Ord. 2012-04, S7)

Chapter 15.32

NATIONAL ELECTRIC CODE

Sections:

15.32.010 Adopted by reference

15.32.010 ADOPTED BY REFERENCE.

A. The National Electrical Code, 2011 Edition, as promulgated by the National Fire Protection Association and as adopted by the State of Colorado and pursuant to Title 12, Article 23 C.R.S. (hereinafter "NEC" or "National Electrical Code") is hereby adopted. The purpose of the NEC is the practical safeguarding of person and property from hazards arising from the use of electricity.

B. Applicants shall pay for each electrical permit at the time of issuance, a fee for electrical permits and inspections as determined by Table 108-A Fee Schedule. A copy of Table 108-A, Fee Schedule, is on file in the Fruita City Clerk's office and the Mesa County Building Inspection office.

(Ord. 2001-01, S8; Ord. 2007-01, S9; Ord. 2012-04, S8)

Chapter 15.40

ADMINISTRATION AND ENFORCEMENT

Sections:

15.40.010 Building official designated
15.40.020 Interpretation
15.40.030 Promulgation of regulations
15.40.040 Building official, Powers and duties
15.40.050 Responsibility of owner
15.40.060 Prohibitions
15.40.070 Non-assumption, Non-waiver of liability
15.40.080 Copies on File and Available for Sale

15.40.010 BUILDING OFFICIAL DESIGNATED. The City Council shall designate a person to serve as the City of Fruita Building Official. The Building Official is authorized and directed to enforce all provisions of this Title and the codes adopted by reference thereunder. The City may contract with other persons or other governmental entities to perform inspections and other duties of the Building Official provided for in this Title and the codes adopted by reference thereunder. (Ord. 2001-01, S10)

15.40.020 INTERPRETATION. The Building Official shall have the power to determine the proper interpretation of the rules and requirements of this Title and the codes adopted by reference thereunder pertaining to the construction, alteration, enlargement or improvement of buildings and structures regulated by this Title or the codes adopted by reference thereunder. Provided, however, the Building Official shall not be permitted to modify any substantive rules and regulations contained in this Title and the codes adopted by reference thereunder. (Ord. 2001-01, S10)

15.40.030 PROMULGATION OF REGULATIONS. The Building Official shall be authorized to promulgate from time to time additional regulations, design standards, tables, drawings, and guidelines not in conflict with the provisions of this Title and the codes adopted by reference thereunder. (Ord. 2001-01, S10)

15.40.040 BUILDING OFFICIAL, POWERS AND DUTIES.

A. The Building Official is charged with the administration and enforcement of this Title and all codes adopted by reference thereunder, under the authority of the City Manager.

B. The Building Official or his designee shall have the power to:

1. Enter any premises at any reasonable time for the purpose of administering this Title.

1. Direct that tests of materials, devices, construction methods, structural assemblies

or foundation conditions be made, or sufficient evidence of proof be submitted at the expense of the owner, where such evidence or proof is necessary to determine whether the material, devices, construction or foundation meets the requirements of this Title. The records of such tests shall be kept available for inspection during the construction of the building or structure and for such a period thereafter as required by the Building Official.

4. Direct by written notice, or by attaching a placard to the premises, the correction of any condition where, in the opinion of the Building Official, such a condition violates the provisions of this Title.

5. Revoke a permit where there is a violation of the provisions of any code adopted by reference in this Title or when there is a violation of the provisions of Section 15.40.060.

6. Authorize the filing of a criminal complaint in the Fruita Municipal Court if he has probable cause to believe a violation of this Title or any code adopted by reference thereunder has been committed.

(Ord. 2001-01, S10)

15.40.050 RESPONSIBILITIES OF OWNER. Neither the granting of a permit, nor the approval of the drawings and specifications, nor inspections made by the Building Official shall in any way relieve the Owner of such building or structure from full responsibility for carrying out all work in accordance with the requirements of this Title and the codes adopted by referenced thereunder. (Ord. 2001-01, S10)

15.40.060 PROHIBITIONS.

A. No person shall commence or continue any work in respect to any building, structure, factory-built housing unit, manufactured home, mobile home or equipment without first obtaining required permits from the City of Fruita, as required by this Title and the codes adopted by reference thereunder.

B. No person shall occupy any new building, factory-built housing unit, manufactured home, or mobile home until sewage disposal facilities meeting the minimum standards of the Colorado Department of Public Health and Environment and the City of Fruita have been installed and have been approved, in writing, by the City. No person shall occupy any building, factory-built housing unit, manufactured home, or mobile home unless domestic water facilities have been installed and have been approved in writing by the City of Fruita. (Ord. 2001-01)

15.40.070 NON-ASSUMPTION, NON-WAIVER OF LIABILITY. The City of Fruita, its officials, employees, agents and contractors thereof, shall not be deemed to have assumed a duty of care where none otherwise existed by the performance of a service or an act of assistance for the benefit of any person under this Title. The adoption of the codes under this Title shall not give rise to a duty of care. The enforcement or failure to enforce this Title or the mere fact that

an inspection was conducted in the course of enforcing this Title shall not give rise to a duty of care were none otherwise existed. Enactment of this Title shall not constitute a waiver of the official immunity, sovereign immunity, or governmental immunity by the City of Fruita, its officers, employees, agents and contractors. (Ord. 2001-01, S10)

15.40.080 COPIES ON FILE AND AVAILABLE FOR SALE. At least one copy of each of the Codes hereby adopted, together with one copy of the Ordinance codified in this Chapter, shall be kept on file in the office of the City Clerk. Copies of said Codes are adopted Appendix shall be available for sale to the public at a moderate price. The codes promulgated by the International Code Council, Inc (ICC) may be obtained from the ICC, 5203 Leesburg Pike, Suite 708 Falls Church, VA 22041-3401. The Codes promulgated by the National Fire Protection Association (NFPA) may be obtained from the (NFPA) Batterymarch Park, Quincy, MS 02169.

(Ord. 2007-01, S10; Ord. 2007-01, S10)

Chapter 15.42

BUILDING BOARD OF APPEALS

Sections

15.42.010 Establishment of building board of appeals
15.42.020 Notice of appeal
15.42.030 Scheduling of hearing
15.42.040 Hearing
15.42.041 Decisions
15.42.050 Appeals from the board

15.42.010 ESTABLISHMENT OF BUILDING BOARD OF APPEALS. The City of Fruita's Board of Adjustments established pursuant to Chapter 2.40 of the Fruita Municipal Code shall serve as the City's Building Board of Appeals to hear all appeals arising under the codes adopted by referenced under this Title, except with respect to the National Electric Code. Such Building Board of Appeals shall have jurisdiction to decide any appeals from a decision of the Building Official, or his designee, if the decision of the Building Official or his designee concerns suitability of alternate materials, method of construction or reasonable interpretations of the codes adopted pursuant to this Title. Provided, however, the Building Board of Appeals shall not be entitled to hear appeals of life safety matters or the administrative provisions of the codes adopted pursuant to this Title, nor shall the Building Board of Appeals be empowered to waive requirements under said codes. (Ord. 2001-01, S11; Ord. 2007-01, S11)

15.42.020 NOTICE OF APPEAL. Any person aggrieved by a decision of the Building Official, or his designee, denying, issuing, or revoking a permit or in applying the provisions of this Title or any code adopted by reference thereunder, to the construction, alteration, or repair of a structure may appeal such decision to the Board of Adjustments, acting as the Building Board of Appeals, except as otherwise limited in this Chapter. Any appeal to the Board of Appeals shall be preceded by a written appeal to the Chief Building Official, who shall reply in writing.

The decision of the Chief Building Official may be appealed to the Board of Appeals within ten days from the date of the decision of the Chief Building Official. A Notice of Appeal together with a copy of the original written appeal to the Chief Building Official and a copy of the Chief Building Officials decision shall be filed with the City Clerk setting forth the decision appealed from and the grounds for said appeal. Upon receipt, the City Clerk shall transmit the notice of appeal to the Building Official and the Board of Adjustments. (Ord. 2001-01, S11; Ord. 2007-01, S11)

15.42.030 SCHEDULING OF HEARING. Upon receipt of a notice of appeal, the City Clerk shall schedule said appeal for hearing within thirty (30) days from the date of receipt of the notice of appeal. The City Clerk shall thereupon mail written notice of the date, time, and place of the hearing to the Building Official and to the appellant. (Ord. 2001-01, S11; Ord. 2007-01, S11)

15.42.040 HEARING. The hearing on the appeal from a decision of the Building Official shall be public and shall permit the appellant and the Building Official to call witnesses, introduce evidence, examine and cross-examine witnesses, and otherwise provide each of the parties with due process of law. The Board of Adjustments may adopt reasonable rules and regulations for the conduct of such hearings and thereafter such rules and regulations shall govern the conduct of such hearings. (Ord. 2001-01, S11; Ord. 2007-01, S11)

15.42.041 DECISIONS. The Board of Adjustments, serving as the Building Board of Appeals, shall issue its findings and decision on an appeal in writing no later than thirty (30) days after the conclusion of the hearing. The City Clerk shall mail copies of the findings and decision to the Building Official and the appellant. (Ord. 2001-01, S11; Ord. 2007-01, S11)

15.42.050 APPEALS FROM THE BOARD. Any decision issued by the Board of Adjustments serving as the Building Board of Appeals on an appeal filed under this Chapter shall be final. Any further appeal from the decision of the Board shall be made to the District Court as provided by law. (Ord. 2001-01, S11; Ord. 2007-01, S11)

Chapter 15.44

STRUCTURE MOVING REGULATIONS

Sections:

15.44.010 Definitions
15.44.020 Percentage of Code
15.44.030 Time requirements
15.44.040 Bond requirements
15.44.050 Moving permit and fees
15.44.060 Inspections
15.44.070 Violations and penalties
15.44.080 Use tax

15.44.010 DEFINITIONS. A "structure" is defined as follows: Anything to be placed, constructed or erected upon the ground, except utility poles, flagpoles, or walls and fences less than four feet high. (Ord. 501, S1 (part), 1981; Ord. 446, 1980)

15.44.020 PERCENTAGE OF CODE. For the purpose of enforcing the Uniform Building Code and to ensure that the structure or structures being moved into Fruita will, within a one-hundred-eighty-day period, meet or exceed the Uniform Building Code, all structures, before being moved into Fruita, must be at least seventy-five percent up to code. This determination will be made by the city building inspector before the structures can be moved. (Ord. 501, S1 (part), 1981; Ord. 446, 1980).

15.44.030 TIME REQUIREMENT. For the purpose of being assured that the structure or structures will be completed and brought up to code, a time limit of one hundred eighty days will be required from start to finish, or from the time a building permit is taken out from the building department. (Ord. 501, S1 (part), 1981; Ord. 446, 1980)

15.44.040 BOND REQUIREMENTS. To insure that all work will be completed in the time as required, there will be required a bond in the amount of work required to complete the percentage of work to be brought up to code, or security of equal amount. (Ord. 501, S1(part), 1981; Ord. 446, 1980)

15.44.050 MOVING PERMIT AND FEES. There will be required a moving permit fee charge of twenty-five dollars per structure moved into the city limits. When it is required for the building inspector to make an inspection on a structure or structures to be moved into Fruita, there will be a charge of twenty dollars per structure plus twenty cents a mile traveled outside of the city limits. (Ord. 501, S1 (part), 1981, Ord. 446, 1980)

15.44.060 INSPECTIONS. All inspections will be in conformance with the Uniform Building Code, as required. (Ord. 501, S1(part), 1981; Ord. 446, 1980)

15.44.070 VIOLATIONS AND PENALTIES. Any person, owner, contractor, lessee, occupant or otherwise who knowingly violates any of the provisions of this Chapter or any

amendment thereto, or who knowingly interferes in any manner with any person in the performance of a right or duty granted or imposed upon him by the provisions of this Chapter commits a Class B municipal offense. (Ord. 2000-9, S111)

15.44.080 USE TAX. Structures, including new modular and other newly manufactured homes being moved into the city, shall be subject to the city use tax for the materials used in construction, as reflected in Section 3.15.070 of the Fruita Municipal Code. (Ord. 501, S1(part), 1981; Ord. 446, 1980)

Chapter 15.50

VIOLATIONS AND PENALTIES

Sections:

15.50.010 Applicability
15.50.020 Violations
15.50.030 Penalties

15.50.010 APPLICABILITY. This Chapter of the Fruita Municipal Code sets forth violations and penalties of Building and Construction Code (hereinafter referred to as "Codes") adopted in Title 15 including, but not limited to, the International Building Code, the International Plumbing Code, the International Mechanical Code, the International Fuel Gas Code, the International Property Maintenance Code, the International Fire Code, the International Residential Code, the International Energy Conservation Code, and the National Electrical Code. (Ord. 2007-01, S12)

15.50.020 VIOLATIONS. In case any building or structure is, or is proposed to be erected, constructed, remodeled, used or maintained in violation of this Title or any provision of the Codes adopted by this Title, the City Attorney of the City, the Fruita City Council or any owner of real estate within the area, in addition to other remedies provided by law, may institute an appropriate action injunction, mandamus or abatement to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alternation, remodeling, maintenance or use. (Ord. 2007-01, S12)

15.50.030 PENALTIES. It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish equip, use, install, occupy or maintain any building or structure in the City or cause or permit the same to be done, contrary to or in violation of any of the provisions of Codes adopted in Title 15.

Any person, firm or corporation violating any of the provisions of the Codes shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of the codes is committed, continued or permitted. Any offense under this Title shall be deemed on of "strict liability". Violation of the codes Adopted in Title 15 shall constitute a Class B municipal offense.

The issuance or granting of a permit or approval of plans and specifications shall not be deemed or construed to be a permit for, or any approval of any violation of the provisions of the Codes. No permit presuming to give authority to violate or cancel the provisions of the codes shall be valid, except insofar as the work or use, which it authorized, is lawful.

The issuance or granting of a permit or approval of a plan shall not prevent the administrative authority from thereafter requiring the correction of errors in said plans and specifications or from preventing construction operations from being carried on there under when in violation of the Codes or any other ordinance or from revoking any certificate of approval when issued in error. (Ord. 2007-01, S12)

TITLE 16

RESERVED

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TITLE 17

LAND USE CODE

Chapters:

17.01 General Provisions
17.03 Basic Definitions
17.04 Land Use Categories
17.05 Land Development Applications- General Provisions
17.06 Annexations
17.07 Zoning - Uses and General Requirements
17.08 Density Bonuses
17.09 Transfer of Development Rights/Credits
17.11 Design Standards
17.13 Zoning Review and Amendment Procedures
17.15 Subdivisions
17.17 Planned Unit Developments
17.19 Public Dedications and Impact Fees
17.21 Subdivision and Development Improvements Agreements
17.23 Manufactured and Mobile Home Standards
17.25 Manufactured and Mobile Home Parks and Subdivisions
17.27 Recreational, Vehicle Parks and Campgrounds
17.29 Parks, Open Spaces and Trails
17.31 Mineral Extraction and Mining Operations
17.33 Animal Regulations
17.35 Sexually Oriented Businesses
17.37 Historic Preservation
17.39 Parking Standards
17.41 Sign Code
17.43 Transportation System Planning and Development
17.45 Flood ways, Floodplains, and Flood Hazard Prevention
17.47 Vested Property Rights

Chapter 17.01

GENERAL PROVISIONS

Sections:

17.01.010 Short Title
17.01.020 Authority
17.01.030 Purposes
17.01.040 Jurisdiction
17.01.050 Effective Date
17.01.060 Relationship to Other Laws
17.01.070 Relationship to City Master Plan
17.01.080 Applicability
17.01.090 Administration of Land Use Code
17.01.100 Enforcement and Penalty; Deadlines
17.01.110 Review and Inspection Fees
17.01.120 Computation of Time
17.01.130 Public Notices
17.01.140 Severability

17.01.010 SHORT TITLE. This Title 17 of the Fruita Municipal Code shall be known and may be cited as the Fruita Land Use Code, as amended. (Ord. 2009-02)

17.01.020 AUTHORITY.

A. This Title is adopted pursuant to the authority contained in Sections 31-23-101 et. seq., C.R.S. (Planning and Zoning), Sections 29-20-101 et. seq., C.R.S. (Land Use Control and Conservation), Sections 24-65-101 et. seq., C.R.S. (Colorado Land Use Act), Sections 24-67-101 et. seq., C.R.S. (Planned Unit Development Act), Title 29, Article 20, C.R.S. (Local Government Control Act of 1974), Section 31-2-107, C.R.S., (Adoption of Home Rule Charter) and the Fruita City Charter.

B. Whenever any provision of this Title refers to or cites a section of the Colorado Statutes and that section is later amended or superseded, this Title shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section.

(Ord. 2009-02)

17.01.030 PURPOSES.

This Title is adopted in accordance with the City of Fruita Master Plan and is designed for the purpose of promoting the health, safety and welfare of the present and future inhabitants of the community, including:

A. Lessening congestion in streets, avoiding an excessive amount of streets, facilitating traffic circulation, and minimizing conflicts between vehicular, bicycle and pedestrian traffic;

B. Securing safety from fire, flood and other dangers;

C. Providing adequate light and air;

D. Protection and enhancement of the city's tax base;

E. Securing economy in governmental expenditures;

F. Fostering business and economic development;

G. Protecting both urban and non-urban development and conserving the value of property;

H. Preventing the overcrowding of land and avoiding undue concentration of population;

I. Separating incompatible uses and densities so as to avoid negative impacts of uses on each other;

J. Providing for a variety of housing and neighborhood types and densities and a range of housing costs;

K. Facilitating adequate provision of transportation, water, wastewater, schools, parks, recreation and other public services and utilities;

L. Avoiding the effects of public nuisances; such as, noxious odors, fumes, air pollution, visibility impairment, noise and potential hazards such as fire, explosion, irradiation, chemical and nuclear pollution;

M. Insuring that new growth and development does not result in an economic burden to existing residents and taxpayers;

N. Insuring that the negative impacts resulting from new development, both onsite and offsite, are appropriately mitigated; and

O. Insuring that adequate provisions are made for infrastructure and services to new development including, but not limited to the following:

1. Water service

2. Wastewater service

3. Natural gas service

4. Electric service

5. Communications service

6. Cable service

7. Parks and recreation

8. Open space

9. Irrigation

(Ord. 2009-02)

17.01.040 JURISDICTION.

A. This Title shall be applicable within the corporate boundaries of the city.

B. In addition to other locations required by law, a copy of a map showing the boundaries of the city shall be available for public inspection in the Community Development Department.

(Ord. 2009-02)

17.01.050 EFFECTIVE DATE. The provisions of this Title were originally adopted and became effective on March 27, 1995. This amended Title was adopted on March 3, 2009, and became effective on April 3, 2009. (Ord. 2009-02)

17.01.060 RELATIONSHIP TO OTHER LAWS.

A. To the extent that the provisions of this Title are the same in substance as previously adopted provisions in the city's zoning, subdivision, or flood control ordinances replaced by this Title, the provisions of this Title shall be considered as continuations thereof and as new enactments unless otherwise specifically provided. In particular, if a land use did not constitute a lawful nonconforming use under a previously adopted zoning ordinance, such use does not achieve lawful nonconforming status under this Title merely by the repeal of the previous zoning ordinance.

B. This Title is not intended to repeal, abrogate, annul or in any way impair or interfere with existing laws or ordinances when there is no conflict between this ordinance and existing laws and ordinances. This Title is not intended to repeal, abrogate, annul or in any way impair or interfere with restrictive covenants running with any land to which the city is a party. In those situations where this Title imposes a greater restriction upon land, building or structure than is imposed or required by existing provisions of law, ordinance, contract or deed, the provisions of this Title shall control.

(Ord. 2009-02)

17.01.070 RELATIONSHIP TO CITY MASTER PLAN. It is the intention of the city that this Title implement the planning policies adopted by the City Council in the components of the Fruita Master Plan, and other planning documents. While the City Council reaffirms its commitment that this Title and any amendments there to be in general conformity with adopted plans and other planning studies, the City Council hereby expresses its intent that neither this Title nor any amendment thereto may be challenged on the basis of any alleged nonconformity with any planning document, unless otherwise provided by law. (Ord. 2009-02)

17.01.080 APPLICABILITY.

A. Except as otherwise specifically provided, the provisions and requirements of this Land Use Code shall become effective on the effective date hereof, and shall be applicable to all developments, subdivisions or uses of land commenced within the city after said date. Any ordinance amending this Title shall become effective thirty (30) days following publication, unless otherwise specified in said ordinance, and shall be applicable to all developments, subdivisions or other uses of land commenced within the city after said date.

B. Any development, subdivision or use of land for which an application has been filed and application fees have been paid prior to the effective date of this Land Use Code may follow this Title as of the date of filing such application or, at the option of the applicant, may follow this Title, in whole, as amended.

C. Any land which has been subdivided prior to the effective date of this Land Use Code and for which there has been no Planning Clearance, Site Design Review, Conditional Use Permit, or other lot specific land use review or other review substantially similar to the development review required by this Title shall be subject to those provisions of this Title applicable to such development review.

D. Except as otherwise provided herein, the provisions and requirements of this Land Use Code shall be deemed minimum requirements and stricter provisions may be imposed when the Planning Commission or City Council find such provisions to be necessary to promote the purposes and provisions of this Title.

E. Upon submittal of a land development application as provided in this Land Use Code, the applicant expressly accepts the time schedules for review as set forth herein and waives any right to any other time schedule for review.

F. If any provision of this Land Use Code conflicts with other provisions of the Fruita Municipal Code, the provisions of this Title shall control and take precedence.

(Ord. 2009-02)

17.01.090 ADMINISTRATION OF LAND USE CODE.

A. Except as otherwise specifically provided, primary responsibility for administering and enforcing this Title may be assigned by the City Manager to one or more individuals. Final authority is maintained by the City Manager.

B. The Community Development Director shall serve as the administrative head of the Community Development Department. The City Manager and Mayor are authorized to sign plats indicating approval of Major and Minor Subdivision final plats.

(Ord. 2009-02)

17.01.100 ENFORCEMENT AND PENALTY; DEADLINES.

A. After the effective date of this Title, any person who knowingly erects, constructs, reconstructs, uses or alters any building, structure or land or who knowingly subdivides or uses any land in violation of this Title commits a Class B municipal offense. Any person who violates any provision of this Title shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this Title are committed, continued or permitted. Nothing in this Section shall be construed to prevent the city from pursuing any other remedies it may have for violations of this Title.

B. In case any building or structure is proposed to be erected, constructed, reconstructed, altered, moved, or used or any land is proposed to be subdivided or used in violation of this Title, the city, in addition to other remedies provided by law, may institute an appropriate action to prevent, enjoin, abate, or remove the violation; to prevent the occupancy of the building, structure, or land; or to prevent any illegal act or use.

C. In addition to the other enforcement provisions in this Title, the city may exercise any and all enforcement powers granted to it by State Law, including without limitation to Section 31-23-308 C.R.S., (Enforcement of Zoning Ordinance), Section 24-67-106 C.R.S., (Enforcement of Planned Unit Development Plan), and Section 31-23-215 C.R.S. (Subdivision Enforcement).

D. Any land development permit granted under this Title may be revoked, following public hearing, upon the determination that one (1) or more of any conditions or requirements contained in the land development permit, including any conditions set forth pursuant to subsection 17.01.080(D) has been violated. In the event the Community Development Director has reasonable cause to believe that one (1) or more conditions or requirements of the land development permit has been violated, the Community Development Director shall serve the record owner of the property subject to the land development permit and the holder of such permit if other than the owner, in person or by certified mail, return receipt requested, a notice to show cause why the land development permit should not be revoked and any vested property rights related thereto forfeited. Such notice shall state the date, time and place for a public hearing at which the City Council will consider whether the land development permit should be revoked. The notice shall also set forth a concise statement of the grounds for revocation. The notice shall be served at least fifteen (15) days prior to the date of the hearing. The public hearing shall be conducted by the City Council, pursuant to Chapter 2.60 of the Fruita Municipal Code. Following such hearing, the City Council shall issue a written decision either revoking the subject land development permit or finding insufficient evidence exists to revoke the permit.

E. Suspensions.

1. If, in the process of inspecting improvements being constructed pursuant to this Title and for which a valid land development permit has been issued, a defect, design flaw or an unforeseen condition is discovered or work is being performed which has not been approved by the city which, if uncorrected, would create a non-conforming use or structure, or would violate other provisions of this Chapter, or state law or applicable design and construction standards, the City Engineer or Community Development Director may administratively suspend existing approved land development permits, and suspend the issuance of new land development application approvals, pending correction of the flaw, defect or unforeseen condition. Suspensions may include partial suspension of specific tasks, or complete stop work orders.

2. The applicant is responsible for correcting said flaw, defect or unforeseen condition, including any necessary design or engineering work, information submitted for city approval, and the cost of construction.

3. Any suspensions so issued by the city, and any subsequent releases of a suspension, shall be done in writing and be transmitted to the project representative.

4. Any permit or approval that remains suspended for sixty (60) days automatically can be considered to be revoked, requiring re-submittal of a permit application or request for approval and payment of applicable fees.

5. Specific to subdivisions, if an applicant elects not to correct said flaw, defect or unforeseen condition to the satisfaction of the city, the Community Development Director may also initiate actions to terminate the subdivision improvements agreement following the procedure described in Section 17.21.120.

6. Specific to the issuance of a permit or approval under this Title, the city imposes a specific requirement on the applicant for the permit or approval to remedy any impacts to city infrastructure caused by the construction. This includes but is not limited to repair or replacement of damaged sidewalk and streets, cleaning and sweeping of streets to remove dirt and debris, removal of construction debris, and cleaning and jetting of storm drains. The city retains the right to suspend the issuance of a Certificate of Occupancy or other land development applications until remedial actions are performed to the satisfaction of the city.

F. The following deadlines for submittal processing and review of a multi-step development approval shall apply. The procedure set forth in subsection (D) hereof may be followed for revocation of any development approval, which has expired prior to the following applicable deadlines:

1. For land development applications deemed to be complete which require a public hearing before both the Planning Commission and City Council, with the exception of annexations, the following decision deadlines apply:

   a. Planning Commission - 75 days

b. City Council - 110 days

2. For annexation applications deemed to be complete, the following decision deadlines apply:

   a. Setting the City Council hearing date to find the property eligible for annexation – 75 days
   b. City Council hearing to find the property eligible – 120 days
   c. Setting the hearing date to annex the property shall coincide with the accompanying land use final approval (Subdivision, Site Design Review, Conditional Use Permit, etc.). If an annexation agreement is to be used instead, the decision deadlines to annex property shall be 75 days for the Planning Commission and 110 days for the City Council.

3. For Variance applications deemed to be complete, the Board of Adjustment shall render a decision within 75 days.

4. For applications deemed to be complete which require no public hearings and can be administratively approved by staff, the following decision deadlines apply:

   a. Planning Clearances – 5 days
   b. Site Design Review – 70 days
   c. Final Plats – 70 days
   d. Sign Permits – 5 days
   e. Temporary Use Permits – 5 days
   f. Home Occupation Permits – 5 days
   g. Minor Subdivisions – 70 days

G. Nothing in this Title shall prohibit the continuation of previous enforcement practices undertaken by the Community Development Department pursuant to City Council action or applicable law.

(Ord. 2009-02)

17.01.110 REVIEW AND INSPECTION FEES.

A. An applicant for a land development application approval, including planning clearances, sign permits, conditional use permits, annexation petitions, subdivisions, planned unit developments, zoning amendments, variances, and other land development applications, shall pay the required fees as established by the City Council.

B. Application fees shall be paid at the time of project submittal. The city will bill the developer additionally for processing fees that exceed the initial fee. These fees shall be paid within thirty (30) days of billing by the city. The city reserves the right to not process land development applications for which the applicable fees have not been paid, and reserves the right to not schedule public hearings on such applications until the required fees have been paid. No final approval of a land development application shall be granted and no recording of applicable development plans, plats

and supporting documents shall occur until all required fees have been paid by the applicant. If an application, plan, plats or other documents submitted by the applicant under the provisions of this Title are incomplete or are modified so as to require additional checking and review, or if the applicant requests a continuance of a project for which public notice has already been provided, the city reserves the right to require the payment of additional fees.

C. Prior to approval and acceptance of the construction and installation of public and private development or subdivision improvements, the subdivider or developer shall pay to the city the actual cost, including the reasonable value of city employees' time, of all inspections of such improvements, including but not limited to, streets, curbs, gutters, street signs, street lighting facilities, water distribution system, wastewater collection system, storm management system, irrigation system, park, and landscaping improvements, made or conducted at the direction of the Community Development Department Director or the City Engineer. The amount of the fees charged for such inspections shall be established by resolution of the City Council. In the event extraordinary inspections are necessary, the city reserves the right to assess, in addition to established fees, extraordinary inspection costs.

D. In addition to the fee schedule established by resolution of the City Council, a developer is also responsible for payment to the city for all extraordinary review and inspection costs performed by or contracted for by the city, including but not limited to drainage studies, traffic studies, geotechnical investigations, reviews and inspections requiring specialized equipment and/or the services of consultants. These additional fees shall be paid to the city before the final inspection is performed by the city and the first partial release of the performance guarantee is authorized by the city.

(Ord. 2009-02)

17.01.120 COMPUTATION OF TIME.

A. Unless otherwise specifically provided, the time within which an act is to be done shall be based on calendar days and shall be computed by excluding the first and including the last day.

B. Unless otherwise specifically provided, whenever a person has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him and the notice or paper is delivered by mail, three (3) days shall be added to the prescribed period.

(Ord. 2009-02)

17.01.130 PUBLIC NOTICES.

A. Decisions Requiring a Public Hearing. For every public hearing required by this Title, with the exception of time extensions and subdivision and development improvement agreements, and unless otherwise required by law, the city shall notify the public of the date, time and place of such hearing by:

1. Publication once in a newspaper of general circulation within the city, at least 15 days prior to the public hearing; and

2. Posting notice at the Fruita City Hall, 325 East Aspen, Fruita, CO 81521, at least five (5) days prior to the hearing; and

3. Sign(s) posted on or near the subject property. One or more notices that are sufficiently conspicuous in terms of size, location and content to provide reasonably adequate notice to potentially interested persons of the land use action at a specified date and time. Such notice(s) shall be posted at least fifteen (15) days prior to the public hearing; and

4. Written notice mailed to property owners within three hundred and fifty (350) feet of the subject property or more until a minimum of twenty (20) unique property owners are provided notice at least fifteen (15) days prior to the public hearing. This requirement does not apply to applications that are not property specific such as Land Use Code or Master Plan amendments.

B. Administrative Decisions.

1. Minor Subdivisions and Site Design Review shall require public notice prior to the administrative decision the same as the public hearing decision requirements stated in subsection A of this section.

2. Planning Clearances, Sign Permits, Temporary Use Permits, Home Occupation Permits and Final Plats require no public notice.

C. When a proposed amendment to the zone district regulations pertains to an entire zone district or all zone districts, notice shall be given only by publication in a newspaper of general circulation within the city, at least 15 days prior to the public hearing and posting of the notice at least five (5) days prior to the hearing at the Fruita City Hall, 325 East Aspen, Fruita, CO 81521, with no posting on any specific property or mailing required.

D. Major Activity Notice. When a subdivision or commercial or industrial activity is proposed which will cover five (5) or more acres of land, the City of Fruita shall send notice to the Colorado Land Use Commission, the State Geologist, and the Board of County Commissioners of the proposal prior to approval of any zoning change, subdivision or planning clearance for a building permit application associated with such a proposed activity.

E. Notice to Mineral Estate Owners. In addition to the notices described above, and in accordance with Section 24-65.5-103, C.R.S., not less than thirty (30) days before the date scheduled for the first (1st) public hearing on an application for a subdivision creating more than one additional buildable lot, the applicant shall provide notice to mineral estate owners, as defined in Section 24-65.5-102(5), C.R.S. The notice shall be sent and shall contain all of the information required by Section 24-65.5-103, C.R.S. Proof of the giving of such notice shall be submitted by the applicant to the Community Development Department, on forms provided by the Community Development Department, prior to commencement of the hearing.

(Ord. 2009-02)

17.01.140 SEVERABILITY. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, or phrases of this Title are severable, and if any such section, paragraph, sentence, clause, or phrase is declared unconstitutional or otherwise invalid by any court of competent jurisdiction in a valid judgment or decree, such unconstitutionality or invalidity shall not affect any of the remaining sections, paragraphs, sentences, clauses, or phrases of this Title since the same would have been enacted without the incorporation into this Title of such unconstitutional or invalid section, paragraph, sentence, clause or phrase. (Ord. 2009-02)

Chapter 17.03

BASIC DEFINITIONS

Words contained in this Chapter are those having a special meaning relative to the purposes of this Title. Words not listed in this Chapter shall be defined by reference to a published standardized dictionary. Words used in the singular include the plural and words used in the plural include the singular.

201 PLAN. A regional plan for wastewater collection and treatment to prevent pollution of the State's water.

ABUTTING PARCELS. Parcels which are directly touching and have common parcel boundaries. Parcels separated by a public right-of-way are not considered abutting, but would be adjacent.

ACCESS PERMIT. A permit obtained from the City of Fruita, Mesa County, or the State of Colorado allowing access to a public street, road or highway.

ACCESSORY DWELLING UNIT. Also known as granny flat, elder cottage or accessory apartment. A separate self-contained dwelling unit including a separate kitchen and bathroom, which is located on the same parcel or lot but is secondary to a principal dwelling unit . An accessory dwelling unit may be attached to the principal dwelling unit or detached in an accessory structure.

ACCESSORY STRUCTURE. A detached subordinate structure, the use of which is customarily incidental to, and supportive of, the principal structure or the principal use of land, and which is located on the same parcel of ground with the principal structure or use.

ACCESSORY USE. A use conducted in conjunction with a principal use of a property and constitutes an incidental or insubstantial part of the total activity that takes place on the lot or is commonly associated with the principal use and integrally related to it.

ADJACENT. For purpose of this Land Use Code, shall mean surrounding property or use, any portion of which is within a three hundred and fifty (350) foot radius.

ADMINISTRATIVE DECISION. Any decisions regarding a land development application or development issue made by the Community Development Director, City Engineer or City Manager pursuant to this Title. The City Manager retains the final authority in administrative decisions.

ADMINISTRATOR. The Community Development Director as selected by the City Manager to serve within the Fruita Community Development Department.

AFFORDABLE HOUSING UNIT. Affordable housing unit is a low/moderate income housing unit which is financially sponsored by a government finance agency and/or which is developed or sponsored by a private non-profit affordable housing agency such as Housing Resources of Western Colorado, Habitat for Humanity, Family Health West, the Grand Junction Housing Authority, or any other entity or agency, as determined by the Fruita City Council.

AGRI-BUSINESS. A business and/or commercial use operated primarily for the support of agricultural needs. It may consist of products, materials, and equipment servicing and sales; storage and/or processing of agricultural products and/or animals; medical and/or technical support services.

AGRICULTURAL PRODUCE. Fruit, vegetables, eggs and honey prior to processing of any kind other than washing. Canned fruits or vegetables, preserves, wine, meat and dairy products shall not be considered agricultural produce for the purposes of this Title.

ALLEY. A service road providing a secondary means of public access to abutting property and not intended for general traffic circulation.

ALTERATIONS TO HISTORIC SITE. Any proposed modification to a designated historic site, structure or district which could have an affect on the character of the historic resource relative to the criteria by which it was designated. Examples of alterations to structures may include additions, any exterior modifications, including signage to be affixed to the facade, and any interior modifications that may affect the characteristics for which the structure was designated.

ANIMAL CLINIC. Facility used for the medical care and treatment of animals under the supervision of a licensed veterinarian with no outdoor accommodations for animals.

ANIMAL HOSPITAL. Facility used for the medical care and treatment of animals under the supervision of a licensed veterinarian with outdoor accommodations for animals.

ANIMALS, AGRICULTURAL. Those animals commonly associated with agricultural use; such as, cattle, horses, mules, burros, pigs, sheep, goats, rabbits, chickens, ducks and geese, whose primary value is commercial rather than personal enjoyment.

ANIMALS, HOUSEHOLD. Those animals which are commonly kept as pets, whose primary value is personal enjoyment. These animals shall not be raised for commercial purposes and shall be limited to common species whose presence in the neighborhood does not arouse unusual community odor, noise, health, interest or curiosity sufficient to attract the community residents to a specific neighborhood.

ANIMALS, OTHER. Those animals not defined as household animals or agricultural animals or exotic animals.

ANNEXATION. The process of incorporating an unincorporated portion of Mesa County into the boundaries of the city pursuant to the Municipal Annexation Act of 1965, Sections 31-12-101, et. seq., C.R.S.

ANTENNA. Any device designed and intended for transmitting or receiving television, radio, microwave signals, or other electromagnetic waves. An antenna includes all mounting and stabilizing items such as a tower, a pole, a bracket, guy wires, hardware, connection equipment and related items.

APPEAL. A request for a review of the City of Fruita staff's interpretation of any provisions of this Title.

APPLICANT. Any person, developer, subdivider, petitioner, property owner, firm, partnership, joint venture, association, corporation, group or organization who may apply for any land development permit, approval or decision governed or required by this Title.

APPLICATION. A written request for any land development permit, approval or decision governed or required by this Title. An application is not complete until each requirement of this Title is met and all fees are paid.

AS BUILT DRAWING. An engineering drawing indicating the final, as constructed location, grades, elevations, and construction details of streets, utilities, and other public facilities.

ATTACHED. Buildings joined and architecturally integrated by means such as common walls or a common roof.

AUTO REPAIR SHOP. A shop or place of business used for repair and maintenance of automobiles, trucks and other motor vehicle equipment. All motor vehicle equipment on the property shall carry a valid registration, have a registration or title applied for, or show a work order. Motor vehicle equipment, for which the shop operator holds no valid registration or work order shall be classified as salvage and junk and may not be kept, stored or worked on, in or on the property of an auto repair shop.

AUTOMOBILE SALES ESTABLISHMENT AND LOTS. An open area under private ownership used for the display, sale or rental of new and/or used motor vehicles where no repair work is done, except minor incidental repair of motor vehicles, to be displayed, sold or rented. An office/shelter structure as an accessory use is permitted.

AWNING. A projection from a building which shelters an area next to the building, supported entirely by the exterior wall of the building, composed of a covering of rigid or non-rigid material and/or fabric on a supporting framework that may be either permanent or retractable. Also known as a canopy.

BASE DENSITY. The maximum number of dwelling units/lots permitted by right, per gross acre, on a parcel of land within a zone district.

BED AND BREAKFAST FACILITY. A facility of residential character that provides sleeping accommodations with or without meals for hire on a day-to-day basis.

BIKE LANE. An area defined on a public roadway for exclusive use by bicyclists.

BIKE PATH. An off-street trail available for use by bicyclists. Also known as a trail.

BLOCK. A land area consisting of contiguous lots established by recorded plats; usually bordered by public ways or spaces.

BLOCK FRONTAGE. All property fronting on one side of a street between intersecting or intercepting streets, or between a street and a street right-of-way, waterway (wider than thirty (30) feet), or end of a dead-end street. An intercepting street shall determine only the boundary of the frontage of the side of the street that it intercepts.

BONUS DENSITY. The additional number of dwelling units permitted on a parcel of land above the base density permitted in a zone.

BUFFER. A distance separation between land uses or buildings. Buffers typically contain landscaping. Accessory uses or structures, dumpsters, parking areas, etc. are not permitted in designated buffer areas.

BUILDING. Any permanent roofed structure built for the shelter and enclosure of persons, animals, materials or property of any kind. Does not include mobile or manufactured homes, but does include covered decks, porches, gazebos and sheds.

BUILDING CODES. The codes regulating building and construction adopted by the City of Fruita as identified in Title 15 of the Municipal Code.

BUILDING DESIGN CAPACITY. The maximum occupancy load of a building as provided by the most recent version of the International Building Code, adopted by the city.

BUILDING ENVELOPE. Lines enclosing a horizontal and vertical space in which a building is to be constructed, which lines indicate the maximum exterior dimensions of the proposed building, covered porches, breezeways and other portions of the building.

BUILDING FACADE. The exterior face of a building.

BUILDING HEIGHT. The maximum vertical distance measured from finished grade near foundation to the highest part of the structure, including roof equipment or attachments, but excluding antennas.

BUILDING LOT. A lot which meets the applicable requirements for construction of a building.

BUILDING PERMIT. A permit issued by the Mesa County Building Department, acting on behalf of the City of Fruita after receipt of a Planning Clearance for a building permit issued by the City Community Development Department, which allows the construction of a structure within the city.

BUSINESS RESIDENCE. A single residential dwelling unit, accessory to, and located on the same lot, as a structure primarily devoted to business or commercial uses.

CAMPGROUND. Any lot or parcel of land developed to provide spaces and facilities for the temporary residential use of two (2) or more tents, recreational vehicles, and other similar temporary shelters. (See Chapter 17.27)

CANOPY. See Awning.

CARPORT. A structure with roof providing space for the storage of one or more automobiles and enclosed on not more than two (2) sides by walls.

C.C.I.O.A. The Colorado Common Interest Ownership Act, Sections 38-33.3-101, et. seq., C.R.S., governing the formation and operation of common ownership communities and condominiums.

CERTIFICATE OF OCCUPANCY. Refers to the Certificate of Occupancy defined in the currently adopted International Building Code or the permission to occupy a development for the approved use, granted by the City of Fruita.

CHANGE IN USE. A change from one principal use of a building or land to another principal use of the building or land. There may or may not be an increase in the size of the existing building or extent of the use of the land, but one or more of the following factors are present and confirmed for the new use:

1. The new use has an off-street parking requirement under this Title which is greater than parking available and necessary for the previous use; or

2. The number of vehicle trips generated by the new use is or will be greater than the number of vehicle trips generated by the previous use as determined by the Institute of Transportation Engineers Trip Generation, latest edition; or

3. The amount of stormwater runoff or impervious (to drainage) surface area will be increased with the new use.

4. The amount of wastewater generated by the use will be greater than the previous use.

[**Note:** If there is a change from one principal use of a building or land to another principal use of a building or land, but there is no increase in the size of the existing building or extent of the use of the land and none of the above previous factors apply, a change of use shall not have occurred.]

CHANNEL. A natural or artificial low-lying area with definite bed and banks, which confines and conducts continuous or periodic flows of water.

CHIEF BUILDING OFFICIAL. The person appointed by the Fruita City Manager to administer the Building Codes, as adopted by the City of Fruita, for the city.

CHILD CARE CENTER. A facility for child care for less than 24 hours a day in a location which is maintained for the whole or part of a day for the care of two (2) or more children under the age of sixteen (16) years and not related to the owner of the center, whether such facility is operated with or without compensation for such care and with or without stated education purposes. The term includes facilities commonly known as " child daycare centers," "nursery schools," "kindergartens," "preschools," "play groups," "day camps," and "summer camps."

CHILD CARE HOME. A type of child care center that provides less than 24-hour care for two (2) to eight (8) children on a regular basis in a place of residence. Children in care are from different family households and are not related to the head of the household.

CHURCH. Any structure or building for organized public worship.

CITY. The City of Fruita.

CITY ENGINEER. The individual selected by the City Manager to serve as the appointed Chief Engineer for the City of Fruita.

CIVIC CLUB. A group of people organized for a common purpose to pursue common goals, interests, or activities, are not commercial in nature and usually characterized by certain membership qualifications, payment of fees and dues, regular meetings and a constitution and bylaws.

CIVIC SPACES. Public areas, such as plazas, landscaped courtyards, alcoves or pocket parks that provide pedestrian rest areas and/or aesthetic relief.

CLUSTER/CLUSTERED. A group of dwelling units that are placed close together in order to preserve open space.

CODE ENFORCEMENT OFFICER. The individual hired by the Community Development Director to perform duties within the community that enforce adherence to the Land Use Code by all individuals for the health, safety and welfare of the community and the residents therein.

COMMUNITY CORRECTIONS FACILITY.

1. A facility providing residential or non-residential services operated under the direction of a Community Corrections Program, as defined by Sections 17-27-101, et. seq., C.R.S.; or

2. A facility providing residential or non-residential services substantially similar to that described in Section 17-27-102(3), C.R.S., although not being administered pursuant to Sections 17-27-101 et. seq., C.R.S., which is operated by a private individual, partnership, corporation or association.

A community corrections facility shall manage and supervise "offenders" in accordance with adopted standards and pursuant to a contract supervised and administered by an agency of the State of Colorado; such a facility is not required to be in direct privity of contract with the State so long as it is subject to the same, or equivalent, standards and rules applicable to a facility which is subject to Sections 17-27-101, et. seq., C.R.S. The applicant for a community corrections facility which is not administered pursuant to Sections 17-27-101 et. seq., C.R.S. shall identify, and provide as required by the Director, the rules and contract under which such facility is regulated and administered. A community corrections facility shall provide to the Director, upon request, evidence that the facility/program is subject to 'program audits' by the State, or an agent of the State, and is operating and has been operated in compliance with all applicable standards. "Offenders" means, for the purposes of this definition, a person accused or convicted of a felony, misdemeanor or other criminal offense.

COMPOSITE SITE PLAN. A site plan submitted and recorded with the platting of subdivisions. The composite site plan should show information not typically included on the plat, such as; specific driveway restrictions, non-typical building setback lines, developer/HOA maintained fencing, etc.

CONCEALED OR STEALTH TELECOMMUNICATIONS TOWER. Any tower or telecommunications facility which is designed to enhance compatibility with adjacent land, buildings, structures and uses, including, but not limited to, architecturally screened roof-mounted antennas, antennas integrated into architectural elements and towers designed

to not look like a tower; such as, light poles, power poles and trees. The term stealth does not necessarily exclude the use of un-camouflaged lattice, guyed or monopole tower designs.

CONCEPT PLAN. The optional first step of a Planned Unit Development proposal, pursuant to Chapter 17.17.

CONDITIONAL USE. A use which, because of its unique or varying characteristics, cannot be properly classified as an allowed use in a particular zone district. After due consideration, as provided for in Section 17.13.040 of this Title, of the impact upon neighboring land and of the public need for the particular use at a particular location, such conditional use may or may not be approved.

CONDOMINIUM. A common interest community in which portions of the real estate are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of the separate portions. A common interest community is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

CONDOMINIUM UNIT. A unit in a condominium consisting of any enclosed room(s) occupying all or part of a floor(s) in a building of one or more floors used for residential, professional, commercial, or industrial purposes together with the interest in the common elements appurtenant to that unit.

CONSERVATION EASEMENT. A deed restriction placed on property that restricts its owner to specific limited uses of the property, typically agriculture or as passive, public or private open space.

CONSTRUCTION. For the purposes of this Title, any improvements made to land, existing buildings, or other above or below ground facilities, and any erection or installation of new structures or above or below ground facilities for which a Planning Clearance or other land development application approval is required by the Fruita Municipal Code.

CONSTRUCTION PLAN. Complete construction drawings of a facility or improvement, including but not limited to road plans and profiles, drainage plans and utility plans.

CONVEYANCE OF THE LAND. Transfer of all or a part of a title or equitable interest in land; the lease or assignment of an interest in land; the transfer of any other land interest.

COOPERATIVE PLANNING AREA. An area defined in an intergovernmental agreement between Mesa County, the City of Fruita, and the City of Grand Junction and generally located between 20 Road and 21 Road from the Bureau of Land Management Lands on the north to State Highway 6 & 50 on the south and extending south to the Colorado National Monument in areas between 18 ½ Road and 21 Road. The Cooperative Planning Area is also shown on the TDR/C Sending Area Map contained within the Transferable Development Rights/Credits Program Manual; also known as the Community Separator and Buffer Zone.

COTTAGE OR COTTAGE CLUSTER. A single lot or parcel of land developed with two or more detached single family dwellings.

COUNCIL. The Fruita City Council.

COUNSELING CENTER. A facility where individuals or small groups are provided professional counseling assistance with personal, emotional, marital, medical, or similar problems on an out-patient basis.

COUNTY. Mesa County.

CUL-DE-SAC. A local dead-end street terminating in a vehicular turnaround area.

CURB FACE. The vertical or shaped portion of a curb, facing the roadway, and designed to direct stormwaters.

DAYCARE CENTER. A facility for the care, protection and supervision of two (2) or more adults, on a regular basis, away from their primary residence, for less than twenty-four (24) hours per day.

DAYCARE HOME. A type of daycare center that provides less than 24- hour care for two (2) to eight (8) adults on a regular basis in a place of residence. Adults in care are from different family households and are not related to the head of the household.

DECK. Open floor space above ground level, without a roof. A deck over thirty (30) inches above finished grade (ground surface) requires a building permit.

DECORATIVE WALL. Masonry or masonry with wood, with surface variations so that it is dissimilar from a plain cinder block wall.

DEDICATION. Land, easements, or rights-of-way which are permanently conveyed to a public entity or utility and accepted by that public entity or utility.

DEED. A document conveying and evidencing a conveyance of land or a conveyance of an interest in land.

DEED RESTRICTION. A legal document recorded with the County Clerk and Recorder describing restricted activities on a lot or parcel of land.

DEPARTMENT. The Fruita Community Development Department.

DESERT LANDSCAPING. The use of landscaping materials, both vegetative and non-vegetative, which are native to an arid or semiarid climate. (See xeriscape.)

DESIGN CAPACITY. The practical capacity of a facility, whether a road, building, ditch, pond, or other structure determined by engineering analysis to be capable of accommodating the design volume or load.

DESIGN CRITERIA AND CONSTRUCTION SPECIFCATIONS MANUAL. City of Fruita regulations and standards concerning the construction of wastewater systems, sanitary sewer systems, street system and other transportation systems, storm drainage and erosion control systems, irrigation systems and others.

DESIGN STANDARDS. Local, State, or national criteria, specifications or requirements referenced within this Title and used for the design of public or private infrastructure such as, streets, sewers, and sidewalks.

DEVELOPER. A person, firm, partnership, joint venture, association, corporation, group or organization who shall participate as owner, promoter, developer or sales agent in the planning, platting, development, promotion, sale or lease of a development.

DEVELOPMENT. Construction, improvement, or remodeling of a building or placement of a use on a parcel of land. Development may be deemed to include all property adjacent or abutting, whether or not to be immediately planned or developed, under the same or substantially the same ownership. Development includes, but is not limited to any of the following: the division of a parcel of land into two (2) or more lots; the construction, reconstruction, conversion, excavation, clearing of roadways or building sites; the extension of utilities; landfill or land disturbance; any use or extension of the use of land; the placement of a use on any property; or any planned unit development. Development does not include movement of earth associated with crops and/or farming or landscaping.

DEVELOPMENT APPLICATION. See Application.

DEVELOPMENT IMPROVEMENTS AGREEMENT (DIA). An agreement between the city and a property owner and developer which provides for the construction, installation and development of public or shared improvements associated with a development and includes a performance guarantee and various exactions required by the city as further described in Chapter 17.21 of this Title.

DEVELOPMENT RIGHT/CREDIT. The ability to build one (1) dwelling unit in a Sending Area, as such ability is created and administered pursuant to an intergovernmental agreement and/or the regulations of the appropriate jurisdiction and Chapter 17.09 of this Title, concerning Transferable Development Rights/Credits. For purposes of its use in this Code, the term Development Right is also knows as a Development Credit.

DEVELOPMENT SCHEDULE/PHASING SCHEDULE/FILING SCHEDULE. A schedule approved by the City Council showing the order and timing for the start and completion of various parts of a development. Such a schedule is mandatory and considered a condition of approval of a subdivision to be completed in phases or filings.

DIRECTOR. The Director of the City of Fruita Community Development Department.

DISBURSEMENTS AGREEMENT. An agreement recorded in the records of the County Clerk and Recorder which binds a developer and/or landowner to expend funds required for the construction of development improvements, and which provides for the escrow of funds controlled by a financial institution and the city to secure the completion of improvements.

DOWNTOWN AREA. The area within the city designated in the Fruita Community Plan as Downtown Mixed Use.

DOWNTOWN CORE. The area designated on the Fruita Community Plan as Downtown Mixed Use south of Pabor Avenue. This area extends from Pabor Avenue south to the railroad tracks and from Little Salt Wash to Elm Street.

DRIVEWAY. A paved or unpaved area used for the ingress and/or egress of vehicles and allowing access from a street to a building or other structure or facility. Also known as a driving aisle when used in reference to a parking lot.

DUPLEX. A building containing two (2) dwelling units totally separated from each other by an unpierced wall extending from ground to roof located on a single lot and all under the same ownership.

DWELLING, CARETAKER. A dwelling designed for a resident to oversee a commercial or industrial establishment.

DWELLING, MULTI-FAMILY. A building containing three or more dwelling units arranged, designed for, and intended for occupancy of three (3) or more family units independent of each other, having independent cooking and bathing facilities located on a single lot and all under the same ownership.

DWELLING, SINGLE-FAMILY, ATTACHED. One of two (2) or more single family dwelling units having a common or party wall separating dwelling units with each dwelling unit located on a separate lot.

DWELLING, SINGLE-FAMILY, DETACHED. A residential building containing not more than one (1) dwelling unit entirely surrounded by open space on a single lot. This includes modular houses.

DWELLING UNIT. One (1) or more rooms designed, occupied, or intended for occupancy as a separate living quarter, with cooking, sleeping and sanitary facilities provided within the dwelling unit for the exclusive use of a single family maintaining a household.

DWELLING, ZERO LOT LINE. A single-family dwelling unit located on a lot in such a manner that one (1) or more of the building's sides rest directly on a lot line.

EASEMENT. An ownership interest in real property entitling the holder thereof to use, but not full possession, of that real property.

ELECTRONIC MESSAGE BOARDS. A sign with electronically changeable copy.

ENGINEER. An engineer licensed or registered by the State of Colorado.

EQUIPMENT. Rolling stock or movable personal property except that, for the purpose of this Title, it shall not include those items defined as heavy equipment.

ESCROW AGREEMENT. A legal instrument binding a developer and/or landowner to apply funds held in trust by a financial institution for the construction of required improvements of a development or other specified purpose.

EVIDENCE. Any map, documentary or testimonial material offered by a person in support of a specific claim, condition, or assertion.

EXOTIC ANIMALS. Those animals not defined as household pets or agricultural animals.

EXTRACTIVE USES. Surface and/or subsurface natural resources which may be extracted from the land. This includes exploratory drilling or mining, but excludes individual water well drilling.

FAÇADE. The exterior walls of a building exposed to public view or that wall viewed by persons not in the building.

FAMILY. Any number of persons living together on the premises as a single unit, but shall not include a group of more than four (4) individuals not related by blood, marriage or adoption. Notwithstanding the foregoing, a family shall be deemed to include four (4) or more persons not related by blood, marriage, adoption, or legal custody occupying a residential dwelling unit and living as a single household, if the occupants are handicapped persons as defined in Title VIII, Part 3 of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, or disabled persons as defined by '24-34-301, C.R.S. A household that includes persons identified above shall not be excluded from the necessary persons employed in the care and supervision of such handicapped or disabled persons.

FARM AND RANCH STRUCTURES AND USES. Those structures and uses devoted to the shelter and/or raising of livestock, poultry, feed, flowers, crops, field equipment or other agricultural items, with or without a dwelling unit. Also known as Agricultural structures and uses.

FARMERS MARKET. A structure or place where agricultural produce is brought for the purposes of retail sales. (Note: A farmers market differs from a produce stand in that there may be more than one (1) seller allowed per parcel of land and the structure from which produce is sold at a farmers market need not be portable or capable of being dismantled or removed from the site.)

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA). The federal agency responsible for the National Flood Insurance Program which includes the Flood Insurance Rate Maps (FIRM) and Federal Flood Insurance Zones.

FEED LOT. An area which is used for custom feeding of livestock where charges are made to owners of livestock for yardage, feed and feed processing.

FENCE. A barrier constructed to mark a boundary or to prevent exit from or entry onto or into premises or property and/or to screen premises or property from view regardless of the material used, except vegetative materials, including walls but not retaining walls. A fence is considered a structure.

FILING. A portion of a development where a plat is created showing only the lots to be developed at the time of recording of such plat, plus a large remainder lot (as a single parcel) reserved for future filings.

FINAL PLAN. The last most detailed plan submitted to the city for approval as part of the subdivision or development review process.

FINAL PLAT. A survey map establishing real estate interests for recording with the County Clerk and Recorder prepared by a registered surveyor. This survey shall be marked

on the ground so that streets, blocks, lots and other divisions thereof can be identified and drawn in accordance with the requirements of this Title.

FIRE FLOW SURVEY. A testing of fire hydrants to determine capacity by volume and pressure for fire fighting purposes in accordance with the requirements of the local Fire Marshal.

FLEA MARKETS. A flea market, swap shop, or similar activity by whatever name, where the use involves the setting up of two (2) or more booths, tables, platforms, racks, or similar display areas for the purpose of selling, buying, or trading merchandise, goods, materials, products or other items offered for sale outside an enclosed building. Flea markets do not include any of the following activities: garage sales, produce stands, or fund raising activities done by a non-profit organization.

FLOODPLAIN. An area adjacent to a watercourse which may be subject to flooding as a result of an increase in water flow beyond a normal high water mark.

FLOOR AREA. The total horizontal area of all floors in a building.

FLOOR AREA, GROSS. The total square footage of a building measured within the exterior face of exterior walls or the centerline of walls separating two (2) abutting buildings, including all floors of a multistory building whether finished or unfinished.

FLOOR AREA, NET. The square footage of the primary use area of a building including restrooms, hallways and stairwells, but not including normally unoccupied areas such as garages, storage rooms, furnace areas, or any space where floor-to-ceiling height is less than six (6) feet and six (6) inches.

FRONTAGE. The frontage of a parcel of land is considered that distance where a property line is common with a road right-of-way line. This does not include property lines common with an alley right-of-way.

GARAGE, PUBLIC. A structure, or portion thereof, attached or detached, and accessory to the principal building on a parcel of land for the storage of motor vehicles. A structure other than a private garage used for the housing of motor vehicles or where vehicles are stored or kept for remuneration, hire or sale. This garage shall not be considered an "Auto Repair Shop."

GARAGE (YARD) SALE. A sale of used clothing or household goods held at the seller's home.

GASOLINE SERVICE STATION. Buildings and/or surfaced area where automotive vehicles may be refueled and/or serviced. This service shall not include tire recapping, body painting and repair, or engine repair, which requires removal of the head or pan of the engine.

GEOLOGIC HAZARD AREA. An area identified by a qualified State or federal government agency as containing or being directly affected by a geologic hazard.

GEOTECHNICAL REPORTS. A report describing the engineering and construction properties of soils at a site based on drilling and sampling information and which provides recommendations for foundations, utility lines, and pavement design within the development.

GOVERNING BODY. The Fruita City Council.

GRADE. The lowest point of elevation of the finished surface of the ground, paving or sidewalk within the area between the building and the property line or, when the property line is more than five (5) feet from the building, the point between the building and a line five (5) feet from the building.

GRADE, FINISHED. The level of the soil after completion of site development.

GRADE, HIGHEST ADJACENT. The highest natural elevation of the ground surface prior to construction next to the proposed wall of a structure.

GRADE, NATURAL. The undisturbed ground level which may be determined by on-site evidence (vegetation, ground level on adjacent land, elevation of adjacent streets and roads, soil types and locations, etc.).

GREENHOUSE. See Nursery-Greenhouse.

GROSS ACREAGE. The area of a proposed development, including proposed dedications of easements, rights-of-way or other property rights, but excluding existing dedicated rights-of-way.

GROSS LEASABLE AREA. The total building area, expressed in square feet and designed for tenant occupancy and exclusive use, including any basements, mezzanines, or upper floors, as measured from exterior walls or the centerline of walls separating two (2) abutting buildings, but excluding any space where floor-to-ceiling height is less than six (6) feet and six (6) inches.

GROUND COVER. Rocks, mulch, grass or other plants and similar materials used to keep soil from being blown or washed away.

GROUND SUBSIDENCE. A process characterized by the downward displacement of surface material caused by natural phenomena; such as, removal of underground fluids, natural consolidation, or dissolution of underground minerals or by manmade phenomena such as underground mining.

GROUND WATER. Subsurface water found within and below the zone of continuous saturation.

GROUP HOMES. The residential occupancy of a structure by a group of people who do not meet the definition of Household Living. Tenancy is arranged on a monthly or longer basis, and the size of the group may be larger than a family. The residents may receive care, training or treatment, as long as the care givers also reside at the site. Group home does not include a home for adults who have been charged or convicted and are under court supervision for any violent crime, but shall include homes for adjudicated delinquent children.

GROUP HOMES, LARGE. A group home for more than eight (8) persons or for less than eight (8) persons when on-site medical or psychological treatment, therapy, or counseling is provided for all or some of the residents of the group home.

GROUP HOMES, SMALL. An owner occupied group home for the exclusive use of not more than eight (8) persons who do not receive or require on-site medical or psychological treatment, therapy, or counseling, but some or all of whom are receiving on-site physical assistance with day-to-day living activities. The limit of eight individuals includes both those receiving and those providing assistance.

HABITABLE FLOOR. Any floor usable for living purposes, which includes: working, sleeping, eating, cooking, recreation, or a combination thereof.

HARDSCAPE. Stone, brick, rock, sand, textured or shaped concrete, decorative walls and/or pedestrian facilities (i.e. benches, tables, play equipment, walking or bike paths).

HAZARD PRONE AREA. An area which has not yet been officially designated by the State or federal government as a geological hazard area but where historical evidence, climatological data, surface or subsurface geological, topographical, vegetative, or on other onsite naturally occurring factors indicate a relatively greater risk of property damage than exists on other parcels in the city.

HAZARDOUS SUBSTANCE. Any material that, by reason of its toxic, corrosive, caustic, abrasive or otherwise injurious properties, may be detrimental or deleterious to the health of any person handling or otherwise coming into contact with such material or substance.

HEALTH CLUB. An establishment that provides facilities for exercise activities; such as, running, jogging, aerobics, weight lifting, court sports and swimming, as well as, locker rooms, showers, massage rooms, saunas and related accessory uses.

HEALTH DEPARTMENT. The Mesa County Health Department.

HEARING. See Public Hearing.

HEAVY EQUIPMENT. Any vehicle with a gross weight greater than fifteen thousand (15,000) pounds which is used primarily for commercial purposes, including but not limited to, trucks, earthmovers, backhoes and loaders, but not including recreational vehicles or farm equipment.

HEDGE VEGETATION. A plant which will grow, with regular trimming, to a height of four (4) to six (6) feet maximum.

HELIPAD. A facility without the logistical support provided by a Heliport (See Heliport) where helicopters take off and land. Helipads do not include facilities for maintenance, repair, fueling or storage of helicopters.

HELIPORT. An area used for the take-off and landing of helicopters and fuel facilities (whether fixed or mobile) or appurtenant areas for parking, maintenance, and repair of helicopters.

HIGH WATER MARK. The ordinary high water level or bank of a stream, river, lake or impoundment which, in the absence of evidence to the contrary, shall be presumed to be the edge of the vegetation growing along the shore.

HILLSIDE DISTURBANCE. Includes any and all areas of the building site disturbed during construction by grading or excavation and temporary or permanent construction for all buildings, parking areas, driveways, roads, sidewalks, and other areas of concrete, asphalt, or other construction materials.

HOME OCCUPATION. A commercial or business use within a dwelling unit by the residents thereof, which is incidental or secondary to the principle use of the dwelling for residential purposes.

HOMEOWNERS ASSOCIATION (HOA). A formally constituted non-profit association made up of the property owners and/or residents of a fixed area, which association is formed for the purpose of assuming permanent responsibility for costs and upkeep of common areas, common elements, open space, irrigation system, and similar shared facilities or to enforce the covenants for a development whether or not there are shared facilities.

HOSPITAL. Any building used for overnight accommodation and medical care of human patients including sanitariums, but excluding clinics, rest homes and convalescent homes.

HOTEL. A structure providing short term lodging or boarding for guests for not more than thirty (30) consecutive days, including lodges and motels.

HUMAN SCALE. Buildings and spaces built in scale with each other and in scale with the human use of these buildings and spaces. Buildings scaled to human physical capabilities have steps, doorways, railings, work surfaces, seating, shelves, fixtures, walking distances, and other features that fit well to the average person.

ILLUMINATION, DIRECT. When applied to the lighting of signs, 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, INDIRECT. When applied to the lighting of signs, lighting by means of a light source directed at a reflecting surface in a way that illuminates the sign from the front, or a light source that is primarily designed to illuminate the entire building facade upon which a sign is displayed. Indirect illumination does not include lighting which is primarily used for purposes other than sign illumination; e.g., parking lot lights, or lights inside a building that may silhouette a window sign, but are primarily installed to serve as inside illumination.

ILLUMINATION, INTERNAL. When applied to the lighting of signs, 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 themselves made of a translucent material.

IMPOUND LOT. A lot for the storage of vehicles which have been towed or otherwise moved to the lot by a towing carrier permitted to operate pursuant to Sections 40-13-101 et. seq. C.R.S., in which lot no vehicle dismantling or repair work occurs.

IMPROVEMENTS. Street pavements, curbs, gutters, sidewalks, paths, bikeways, sedimentation control facilities, revegetation, water lines and mains, irrigation systems, storm sewers, wastewater collection lines and wastewater mains, irrigation systems, lateral wastewater lines, drain ways, gas lines, electric and telephone lines and appurtenances, street signs, street lights, lot pin monuments, range point boxes, cable television lines, fiber optic cables, recreational facilities, landscaping, fire hydrants, and traffic control devices and any other item required for compliance with the regulations of this Title or the conditions of approval in a development.

Public Improvements shall be deemed to include water lines, water mains, fire hydrants, wastewater collection lines and mains, public recreational facilities, traffic control devices, public roads, curb, gutter, sidewalk, bike paths and other facilities conveyed to the city.

Private Improvements include all development improvements not conveyed to the city or other governmental entity; such as, natural gas facilities, telephone lines, electric lines, cable television system facilities, irrigation systems, drainage facilities and homeowner association common area facilities.

INTENSITY. The number of dwelling units per acre for residential development and gross floor area/level of activity and impacts of activity for non-residential development.

IRRIGATION OR IRRIGATED. Water used, whether or not potable, to sustain or grow landscapes or flora.

JUNK. Any waste, scrap, surplus, or discarded material, including but not limited to, metal, glass, paper, appliances not used for their intended purposes, junk vehicles, dismantled machinery, discarded construction materials, cardboard or fabric which is worn, deteriorated, and may or may not be used again in some form, but excluding animal wastes and human sewage.

JUNK VEHICLE. Any motor vehicle, trailer, or semi-trailer that is not operable in its existing condition because of damage or because parts necessary for operation are removed, damaged or deteriorated; or, is not capable of being lawfully driven on a public highway or street pursuant to the minimum standards set forth in Title 42 of the Colorado Revised Statues. Any such motor vehicle, trailer, or semi-trailer shall be presumed to be a junk vehicle if no current Colorado license plates are displayed thereon, or if Colorado license plates have been invalid for more that sixty (60) days.

JUNK YARD. Any yard, lot, land, parcel, building or structure, or part thereof, used for storage, collection, processing, purchase, sale, salvage or disposal of used or scrap materials, equipment, vehicles or appliances. The term "Junk Yard" shall include "Wrecking Yard" and "Salvage Yard." Junk Yard does not include storage of vehicles used for agricultural purposes on a property used for agricultural purposes, or facilities qualifying as motor vehicle repair shops.

JURISDICTION. The sphere of responsibility of the Fruita City Council or a tax-assessing district.

KENNEL. A facility in which five (5) or more animals of the same species are housed, groomed, bred, boarded, and/or trained in return for compensation, and/or sold, and which may offer incidental medical treatment.

LAND DEVELOPMENT APPLICATION. A written request submitted for any approval, permit, or action required by this Land Use Code.

LANDLOCKED PARCEL. A parcel of land without access of record with the County Clerk and Recorder to a public right-of-way.

LANDSCAPE AREA. An area set aside from structures and parking which is developed with plantings, woods, stone, brick, rock, sand, textured or shaped concrete and/or pedestrian facilities (i.e. benches, tables, play facilities, paths, etc.).

LANDSLIDE. A mass movement where there is a distinct surface of rupture or zone of weakness, which separates the slide material from more stable underlying material.

LAND SURVEY PLAT. A plat which shows the information developed by a monumented land survey and includes all the information required by C.R.S. Section 38-51-106.

LAND USE. List of uses within categories enumerated in Section 17.07.060 of this Title for various uses of land in the city.

LAND USE CODE OR CODE. Unless otherwise specified, refers to this Title 17 of the Fruita Municipal Code.

LETTER OF CREDIT. A letter from a bank or other financial institution which guarantees that sufficient funds may be drawn on the financial institution to cover the cost of constructing the required improvements in a development.

LOADING SPACE. An off-street portion of a parcel for the temporary parking of commercial vehicles while loading or unloading materials for use or sale on the parcel.

LODGE. A structure providing short term lodging or boarding for guests for not more than thirty (30) consecutive days, including hotels and motels.

LOT. A parcel of land as established by recorded plat.

LOT AREA, NET. The area of land enclosed within the property lines of the lot excluding adjacent streets and alleys.

LOT AREA, GROSS. The horizontal area within the exterior boundaries for the subject property, including: any streets and required improvements, easements, reservations or dedications.

LOT, CORNER. A lot abutting upon two (2) or more intersecting streets.

LOT COVERAGE. Lot coverage is measured as a percentage of the total lot area covered by buildings. It is calculated by dividing the square footage of a building cover by the square

footage of the lot. All covered patios, decks, porches and accessory buildings are included in the calculation. Roof eaves are not included.

LOT DEPTH. The horizontal distance measured from the front property line to the rear property line. If front and rear property lines are not parallel, the lot depth is the shortest distance between the front and rear property lines.

LOT, DOUBLE FRONTAGE (THROUGH LOT). A lot having frontage on two (2) non-intersecting streets. A double frontage lot shall be required to have one (1) front yard setback and one (1) rear yard setback.

LOT, FLAG. A lot having no frontage or access to a street or place except by a narrow strip of land.

LOT FRONTAGE. The distance for which a lot abuts on a street.

LOT, INTERIOR. A lot whose side property lines do not abut on any street.

LOT LINE. A line of record bounding a lot which divides one lot from another lot or from a public or private street or any other public or private space.

LOT LINE, FRONT. The property line dividing a lot frontage from a road right-of-way.

LOT, PENINSULA. A lot which is bordered on three (3) sides by a street. Peninsula lots are required to have two (2) front yard setbacks. The third street frontage shall be treated as a rear yard for setback purposes.

LOT WIDTH. The horizontal distance between side property lines measured parallel to the street, or to the tangent of a curved street property line. If side property lines are not parallel, the lot width is the shortest distance between the side property lines.

MACHINE SHOP. A structure used for containing machinery for the manufacture, modification or repair of metal goods and automotive equipment. This use shall be conducted entirely inside the building and does not include the dismantling of automotive equipment.

MAINTAIN. To use, to keep in existence.

MAJOR STREET PLAN. A plan or plans showing the location of rights-of-way, which will be developed in the future, which must be adhered to when planning new development or land uses. Plans for areas smaller than the entire city are still considered "major street plans." The city relies on the authority in Title 31, C.R.S., in addition to its other powers and authority relating to major street plans. Also known as the Fruita Area Street Classifications and Traffic Control Plan.

MANUFACTURED HOME. A factory-built single-family dwelling manufactured under the Federal Manufactured Home Construction and Safety Standards Act. The Act, commonly called the HUD Code, went into effect June 15, 1976.

MANUFACTURED OR MOBILE HOME PARK. A parcel of land used for the continuous accommodation of five (5) or more occupied manufactured homes or mobile homes and operated for the pecuniary benefit of the owner of the parcel of land, his agents, lessees, or assignees. A manufactured or mobile home park does not include manufactured or mobile home subdivisions. (See Chapter 17.25)

MANUFACTURED OR MOBILE HOME SUBDIVISION. A parcel or contiguous parcels of land subdivided into two (2) or more lots configured specifically for development of manufactured or mobile home housing. (See Chapter 17.25)

MASTER PLAN. Collectively, the City of Fruita Community Plan (2008); the Parks, Open Space, and Trails Plan (2009); Fruita Greenway Business Park Plan (2001); City of Fruita Traffic Calming, Bicycle, Pedestrian Plan (1999); City of Fruita Stormwater Management Master Plan (1998); Mesa County Stormwater Management Plan; Fruita Kokopelli Greenway Plan (1996); The SH 340 Corridor Conceptual Development Plan (1994); and City of Fruita 201 Regional Wastewater Plan.

MEMBERSHIP CLUB. An association of persons, incorporated or unincorporated for a common purpose, but not including groups organized primarily to render a service carried on as a business.

MESA COUNTY ROAD AND BRIDGE STANDARDS. Mesa County Standard Specifications for Road and Bridge Construction (Adopted March 28, 1995), as amended, should be used in accordance with the Fruita Land Use Code.

MINI STORAGE WAREHOUSE. A structure containing separate, individual, and private storage spaces of varying sizes, leased or rented on individual leases for varying periods of time.

MOBILE HOME. A factory-built single-family dwelling constructed prior to the enactment of the HUD Code on June 15, 1976. The term "mobile home" shall only include those units designed and intended for use as a permanent residence and shall not include office trailers, manufactured homes, travel trailers, camp trailers, or other recreational type vehicles designed for temporary occupancy.

MODULAR HOME. A factory-built single-family dwelling constructed in compliance local building code standards. Such dwellings are divided into multiple modules or sections which are manufactured in a remote facility and then delivered to the site. The modules are assembled into a single residential building using either a crane or trucks. Also known as factory-built homes.

MONUMENTED LAND SURVEY. Land survey in which monuments are either found or set pursuant to Sections 38-51-103, 38-51-104, and 38-51-105, C.R.S., to mark the boundaries of a specified parcel of land.

MOTEL. A structure providing short term lodging or boarding for guests for not more than thirty (30) consecutive days, including hotels and lodges.

MUDFLOW. Describes a flowing mass of predominantly fine-grained earth material possessing a high degree of fluidity during movement.

MULCH. Wood chips, bark, rock or other accepted material placed around plants to assist in moisture retention, weed prevention and erosion control.

NATURAL HAZARD. Describes a geologic, floodplain, or wildfire hazard, as identified by a State or federal agency.

NATURAL RESOURCE. A resource established through the ordinary course of nature.

NEIGHBORHOOD. An area of a community with characteristics that distinguishes it from other areas and that may include distinct ethnic or economic characteristics, housing types, schools, or boundaries defined by physical barriers; such as, major highways and railroads or natural features such as rivers.

NEIGHBORHOOD ASSOCIATION. Any group that has been recognized by the Community Development Department or has registered with the Community Development Department the boundaries of a particular area with which it is related and which the association represents.

NIGHT CLUB. A commercial establishment dispensing alcoholic beverages for consumption on the premises and in which music, dancing or live entertainment is conducted.

NO BUILD AREA. An area identified on a plat or other document indicating the areas where no permanent buildings or structures are permitted including slabs and raised landscaping. Fencing may be permitted in some no build areas.

NODES. An identifiable grouping of uses subsidiary and dependent to a larger urban grouping of similar or related uses.

NONCONFORMING, LEGAL. A use, lot, structure, and/or development which was legally established prior to the adoption of this Code or any amendment thereto, which does not presently conform to the Code or its amendments.

NOTICE. The method used of informing persons of requests, hearings, actions taken and similar actions. The form and specifics of notice will vary depending on the application process and other factors.

NOTICE OF INCOMPLETENESS. A notice issued by the City Community Development Department to an applicant indicating that a land development application does not meet the minimum requirements for processing.

NURSERY-GREENHOUSE. A place where plants are grown, acquired and maintained for transplanting or sale. Sale or rental of small landscaping tools and supplies may be an accessory use.

NURSERY SCHOOL/PRESCHOOL/ DAY NURSERY. See Child Care Center.

OFF-STREET PARKING SPACE. The space required to park one (1) motor vehicle, exclusive of access drives, and not on a public right-of-way.

OPEN MINING. The mining of natural mineral deposits by removing the overburden lying above such deposits and mining directly from the deposits exposed. The term includes, but is not limited to, such practices as open cut mining, open pit mining, strip mining, quarrying and dredging.

OPEN SPACE. Any property or portion thereof without habitable structures or significant impervious surface and not designated and used for a specific purpose. Open space must also have all three (3) of the following characteristics: 1) land in a natural, near natural, agricultural, or other desirable condition or reserved for outdoor recreational activities; 2) permanent protection, and; 3) has attributes or features worthy of protection.

OPEN SPACE, PRIVATE. An open space which is privately owned and designed for private use.

OPEN SPACE, PUBLIC. An open space that is designated for public access and may be posted with hours of operation and use. Public open space can be publicly owned or owned by a private entity such as a homeowners' association but contains a public access easement.

OUTDOOR EVENTS. Entertainment, educational and cultural events generally involving large numbers of people as spectators or participants in an outdoor setting.

OUTLOT. An area of land on a plat which will be used for a purpose other than a building site.

OUTSIDE STORAGE. Storage of materials, supplies, and merchandise that is not within an enclosed structure and in the same place for more than forty-eight (48) hours.

OVERBURDEN. All the earth and other materials which lie above natural mineral deposits or materials disturbed from their natural state in the process of mining and/or other development.

OVERFLOW PARKING. Any off street, ground level open area, used for the temporary storage of excess motor vehicles.

OVERLAY DISTRICT. A zoning district which has been superimposed over basic districts to address development constraints which require special attention and treatment and to alert developers to issues they need to address in preparing an application to develop.

OWNER OF RECORD. The fee simple owner of a parcel or parcels of land as indicated by the records of the Mesa County Clerk and Recorder.

PARCEL. An area of land defined by a legal description recorded with the Mesa County Clerk and Recorder.

PARK. A type of open space that is used for recreational activities and typically contain recreational amenities such as picnic tables and/or ball fields depending on the size of the park.

PARK, COMMUNITY. Community parks are large, multi-purpose parks that serve the entire community. These parks are generally designed to provide active play opportunities

for all ages. Community parks can also provide indoor facilities to meet a wider range of recreation and interests. These parks should be designed to meet the active community while providing a sanctuary for those individuals who also enjoy more leisure-oriented activities.

PARK, NEIGHBORHOOD. Neighborhood scale parks are intended to serve residents in the neighborhoods surrounding the park. These parks are typically designed primarily for informal and unorganized activities, such as pickup ball games. They are generally small in size at 2-8 acres of usable area. While it is not the rule, neighborhood parks sometimes provide space for programmed activities, such as organized athletics.

PARK, PRIVATE. A park that is privately owned and not generally open for public use.

PARK, POCKET. Pocket parks are smaller versions of neighborhood parks with fewer amenities, and serve a smaller radius of homes. In Fruita, these parks are found in most subdivision with more than 25 units and have historically been privately developed and maintained, but have public access agreements allowing for public use. However, there are a few pocket parks that are owned and maintained by the City.

PARK, PUBLIC. A park that is open for public use and can be owned by a private entity such as a homeowners' association or publicly owned.

PARKS, OPEN SPACE, AND TRAILS IMPACT FEE/DEDICATION. Land dedicated for public use or a fee paid by the developer of a new development to the city for the purpose of acquisition and development of public parks, open space, trails, or other similar municipal facilities. (See Chapters 17.19 and 17.29)

PARKWAY STRIP. The undeveloped portion of right-of-way between the back of curb and the detached sidewalk. Also known as a Tree Lawn.

PATIO. An uncovered outdoor area which is flush with the ground and is usually paved and partially enclosed by the existing dwelling unit, walls, fencing or garage.

PEDESTRIAN PATH. A right-of-way or easement dedicated for public pedestrian access or a private path intended for pedestrian use. Also known as a trail.

PERFORMANCE GUARANTEE. Cash, letter of credit, escrow and disbursement agreement or bond used for securing the performance of certain obligations, such as, the completion of development improvements.

PERSON. The word "person" shall also include association, firm, partnership, or corporation.

PETITIONER. See Applicant.

PHASE. A portion of an approved development plan for which an approved plat or approved site plan often exists.

PLANNED UNIT DEVELOPMENT (PUD). A zone which allows for modification of the normal use, density, size or other zoning restrictions for the development of residential,

business, commercial, industrial or other areas as part of a unified planned development for the entire property for purposes identified in Section 17.17.010 of this Title.

PLANNED UNIT DEVELOPMENT (PUD) GUIDE. Documents submitted that describe, with written and graphic materials, the provisions for a Planned Unit Development zone. The PUD Guide serves as the primary reference for the zoning standards of a PUD and describes the purposes of the PUD, its land uses, development standards, and construction phasing and other pertinent information.

PLANNING CLEARANCE. A permit issued by the City of Fruita that allows development to proceed, a use to be made or maintained or improvements, including structures, to be built or placed in accordance with this Title and with the requirements of the Mesa County Building Department.

PLANNING COMMISSION. The City of Fruita Planning Commission.

PLANT INVESTMENT FEE (TAP FEE). A charge applied for connecting to the city wastewater collection and treatment system. The fee is dedicated for the improvement and expansion of the city's wastewater treatment plant and lines.

PLAT. A map of surveyed and legally described land, which may have appropriate dedications and/or restrictions, which is an instrument for recording of real estate interests with the Mesa County Clerk and Recorder's office.

PLAYGROUND. Any property, public or private, used for and equipped with facilities for recreation especially by children. A playground may be incidental to school use but is not limited to school use or school facilities as defined herein.

PORCH. A roofed, enclosed or partially enclosed extension of a dwelling unit unheated and usually without windows.

PRE-CONSTRUCTION MEETING. A meeting held between the city staff and the developer/contractor prior to the commencement of construction of a building or development.

PRELIMINARY PLAN. The map or maps of a proposed development and supporting materials which permit the evaluation of the proposal prior to final detailed engineering and design.

PRINCIPAL STRUCTURE OR USE. The main or primary purpose for a structure or use on a parcel of land.

PRIVATE. Anything not owned or operated by a governmental entity, political subdivision, or tax-assessing district.

PRODUCE STAND. An open air stand for the selling of agricultural products. This stand may be portable for dismantling for moving in an off-season.

PROFESSIONAL OFFICE. 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 is permitted, except as a clearly accessory use.

PROPERTY. A lot, parcel, tract or other real estate.

PUBLIC. Any thing owned or operated by a governmental entity, political subdivision, or tax-assessing district.

PUBLIC BUILDING. Any building owned, leased or held by the United States of America, the State of Colorado, Mesa County, the City of Fruita, any school district or other agency or political subdivision, whose building is used for governmental purposes.

PUBLIC HEARING. A public meeting for which public notice has been given and an opportunity for public testimony is provided. Usually, a public hearing will be conducted in accordance with Chapter 2.60 of the Fruita Municipal Code.

PUBLIC MEETING. A meeting of the Board of Adjustment, Planning Commission, or City Council, which the public may attend, as further defined by State law.

PUBLIC NOTICE. Notice to the public of an official public hearing. This notice shall be published as set forth in Section 17.01.130 of this Title.

PUBLIC SITE. Property which is owned by a public entity or is open to the public.

RADIOACTIVITY. A condition related to various types of radiation emitted by radioactive minerals that occur in deposits of rocks, soils or water.

RECAPTURE AGREEMENT. An agreement between a developer and the city or other property owners which sets forth the terms and conditions under which part of the costs of an improvement are recoverable from a subsequent development using the improvement.

RECEIVING AREA. City zones that allow a density bonus through the Transfer Development Right/Credit Program: Rural Estate (RE); Rural Residential (RR); South Fruita Residential (SFR), and; Community Mixed Use (CMU).

RECEIVING SITE. A property located within the receiving area and participating in the Transferrable Development Rights/Credits (TCR/C) program.

RECLAMATION. Rehabilitation of plant cover, soil stability, water resources, and other measures appropriate to the subsequent beneficial use of land.

RECORDED. Document(s) of record being placed in the coded files and books of the Mesa County Clerk and Recorder's office.

RECREATIONAL VEHICLE. A vehicle that is: 1) built on a single chassis; 2) four hundred (400) square feet or less when measured at the largest horizontal projection; 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 a temporary living quarters for recreational, camping travel or seasonal use.

Recreational vehicles also shall also include the following: truck campers, travel trailers, motorized homes, motor homes, recreational buses, recreation vans, all watercraft subject to registration by the State of Colorado, all off-road motorcycles, mini-bikes, all-terrain vehicles (ATVs), go-carts and similar vehicles with motor power.

RECREATIONAL VEHICLE PARK. Any lot or parcel developed to provide spaces and facilities for the temporary residential use of two (2) or more recreational vehicles. (See Chapter 17.27)

RECREATIONAL VEHICLE SPACE. A parcel of land within an approved recreational vehicle park, shown in the records of the City of Fruita Community Development Department, and which was designed and intended for the accommodation of one (1) recreational vehicle. A recreational vehicle space also may accommodate a tent or other individual camping unit on a temporary basis.

RECYCLING CENTER/FACILITY. A structure or facility in which used material is separated and processed prior to shipment to others who will use those materials to manufacture new products.

RECYCLING COLLECTION POINT. An incidental use that serves as a neighborhood drop-off point for temporary storage of recoverable resources with no processing of such items being allowed. This facility would generally be located on a shopping center parking lot or in other public/quasi-public areas, such as churches and schools.

REGULATION. A specific regulatory section of the Fruita Municipal Code or other law, or promulgated pursuant thereto.

REHABILITATIONS. Restoration or remodeling of an existing structure.

RELEASE. A document signifying the satisfactory completion of a subdivision or development improvement. Releases are typically approved by the City Council at a public hearing.

RENTAL, HEAVY EQUIPMENT. The use of any building, land area or other premises for the rental of heavy equipment, large trucks, trailers, or other similar items.

RENTAL, HOME ORIENTED. A business providing items for rent generally found or used in and around the home.

REQUEST. A writing seeking an approval required under this Title; this is the same as an application.

RESIDENTIAL. A land use which is primarily designed as a living and dwelling unit.

RESIDENTIAL DENSITY-MAXIMUM. Maximum residential density means the number calculated by dividing the total number of dwelling units or residential lots, by the gross acreage expressed in square feet or acres of the development property. Gross land area includes all of the parcel or property at the time a development application is filed. The "gross residential density" is calculated the same as maximum residential density.

RESIDENTIAL DENSITY-MINIMUM. This calculation shall apply to the term "net minimum residential density" as used in this Title. Minimum residential density means the number calculated by dividing the total number of dwelling units or residential lots by the new developable land area of the development parcel.

RESORT CABIN. A building accommodating individuals on a term occupancy basis located in areas providing recreational environmental opportunities in rural areas.

RESTAURANT. An establishment serving food and beverage.

RETAINING WALL. A manmade barrier constructed for the purpose of stabilizing soil, retarding erosion, or terracing a parcel or site. If a retaining wall exceeds four (4) feet on any part of the property, it requires a Planning Clearance.

REVOCABLE LICENSE OR PERMIT. A permit issued by the City Council, allowing private development within a public right-of-way or property, which may be revoked, with or without cause, at the discretion of the City Council.

RIGHT-OF-WAY, PUBLIC. A strip of land acquired by reservation, dedication, forced dedication, prescription, or condemnation in fee simple and intended to be occupied by a road, crosswalk, railroad, electric transmission lines, oil or gas pipeline, waterline, wastewater line, storm sewer, and other similar uses; generally, the right of one to pass over the property of another.

ROADWAY. That portion of the street within a right-of-way and/or easement.

ROCK FALL. The rapid freefalling, bounding, sliding, or rolling of large mass of rock(s).

ROOF LINE. The highest edge of the roof or the top of parapet, whichever establishes the top line of the structure when viewed in a horizontal plane.

ROOF PLANE. See Roof Line.

SANITARY FACILITIES. Sanitary facilities mean toilets, urinals, lavatories, showers, utility sinks and drinking fountains, and the service buildings containing these facilities.

SATELLITE DISH. An antenna, consisting of radiation element(s) that transmit or receive radiation signals, that is supported by a structure, with or without a reflective component, to the radiating dish, usually circular in shape with parabolic curve design constructed of solid or open mesh surface and intended for transmitting or receiving television, radio, microwave signals or other electromagnetic waves to or from earth satellites.

SCHOOL DISTRICT. The Mesa County Valley School District No. 51, a school district duly organized under the laws of the State of Colorado, which includes within its boundaries the City of Fruita.

SCREENING. Shielding, concealing and effectively hiding from view of a person standing at ground level on an abutting site, or outside the area of the feature so screened by a wall, fence, hedge, berm or any combination of these methods, or any similar architectural or landscaped feature, such as a landscape perimeter strip.

SECURED/SECURITY. Cash, escrow fund, letter of credit, bond or other readily available source of money securing the performance of certain obligations.

SEISMIC EFFECTS. Direct and indirect effects caused by a natural earthquake or a manmade phenomenon.

SELF SERVICE STORAGE FACILITY. A building consisting of individual, small, self-contained units that are leased or owned for the storage of business and household goods or contractor's supplies. Also known as a mini warehouse.

SELF SERVICE STORAGE YARD. A secured area for the storage of recreational vehicles, trailers, campers, etc. Not for storage of uncovered business materials, household goods, contractor's supplies or other loose unsecured items.

SENDING AREA. An area designated for limited development or to remain undeveloped, such as prime agricultural land, the Cooperative Planning Area (Buffer Zone) and/or an area with significant natural features as shown on the map in the Sending Areas section of the Transfer Development Rights/Credits Manual.

SENDING SITE. An eligible property located within a sending area and participating in the Transferrable Development Rights/Credits (TDR/C) program.

SERVICE LINES. Electric, gas, communication, cable television, water, wastewater, irrigation and drainage lines providing local distribution, transmission or collection service.

SERVICE YARD AND ENTRANCE. An area and entrance to a structure which is used for pickup and delivery of goods and services especially in conjunction with retail and wholesale outlets. These areas are usually provided to accommodate commercial trucks and not for general customer use.

SETBACK. The distance that structures are required to be placed from the property lines of a parcel of land or from other established reference points.

SHRUB. A woody plant, smaller than a tree, consisting of several small stems from the ground or small branches near the ground; may be deciduous or evergreen.

SIDEWALK. A paved walkway along the side of a street.

SIGN. Any device, fixture, placard, structure, or part thereof, that uses any color, form, graphic, illumination, symbol, or writing to advertise, announce or identify the purpose of, a person or entity, or to communicate information of any kind to the public.

SIGN, ADDRESS. A sign which identifies the address and/or occupants of a dwelling or establishment.

SIGN, ATTACHED. A sign attached to a building such as a wall sign, projecting sign, awning or canopy sign or window sign. The opposite of a freestanding sign.

SIGN, AWNING OR CANOPY. An attached sign that is permanently affixed to a roofed shelter attached to and supported by a building.

SIGN, CREATIVE. Unique signs that exhibit a high degree of thoughtfulness and imagination that make a positive visual contribution to the overall image of the city while mitigating the impacts of large signs or sign of unusual design.

SIGN, CONSTRUCTION. Temporary signs identifying the development of the property on which the sign is located and may include the builder, contractor or other person furnishing service, materials or labor to the premise during the period of construction, development or lot sales.

SIGN, COURTESY. Signs which identify as a courtesy to customers, items such as credit cards accepted, redemption stamps offered, menus or hours of operation.

SIGN, DIRECTIONAL. An on-premise sign providing direction to features of a site such as the entrance or exit, bathroom location, additional parking areas, etc.

SIGN, DOOR. A sign affixed to a door which identifies the name and address of the establishment.

SIGN, EXEMPT. Signs that are exempt from the requirement to obtain a sign permit but are still required to meet the minimum requirements of this Title.

SIGN, FLASHING. A sign, which contains an intermittent or flashing light source or a sign which includes the illusion of intermittent or flashing light by means of animation or an externally mounted light source.

SIGN, FREE STANDING. A sign structure which is supported by one or more columns, uprights, poles or braces extended from the ground or which is erected on the ground; provided that no part of the structure is attached to any building. The opposite of an attached sign.

SIGN, IDENTIFICATION. A sign which displays the address, name and/or use of the parcel upon which the sign is located.

SIGN, INSTITUTIONAL. A sign setting forth the name of a public, charitable, educational, or religious institution.

SIGN, INTEGRAL. Names of building, dates of erection, monumental citation, commemorative tablets and the like which are carved into stone, concrete or similar material or made of bronze, aluminum, or other permanent type construction and made an integral part of the structure.

SIGN, MEMORIAL. Non-commercial signs intending to celebrate or honor the memory of a person or an event.

SIGNS, MENU. Signs at restaurants which are not designed to be read from the public right-of-way and are not visible beyond the boundaries of the lot or parcel upon which they are located or from any public thoroughfare or right-of-way.

SIGN, MONUMENT. A freestanding sign continuously attached to the ground; the opposite of a pole sign.

SIGN, OFF-PREMISE. A sign that directs attention to a commercial business, commodity, service or entertainment conducted, sold or offered at a location other than the premises on which the sign is located, including billboards. The opposite of an on-premise sign.

SIGN, ON PREMISE. A sign that advertises a commercial business, commodity, service, or entertainment conducted, sold or offered on the same property on which the sign is located; the opposite of an off-premise sign.

SIGN, PERMANENT. A sign which is securely attached to the ground or a structure so that it cannot readily be moved. The opposite of a temporary sign.

SIGN, POLE. A freestanding sign erected above the ground on a pole.

SIGN, POLITICAL. A sign relating to a candidate, issue, proposition, ordinance or other matter to be voted upon by the electors of the city.

SIGN, PORTABLE. A sign that is not permanent, affixed to a building, structure, or the ground. A sign that is mounted or painted or erected upon a vehicle, van, truck, automobile, bus, railroad car or other vehicle shall be considered a portable sign.

SIGN, PROJECTING. A sign attached to a structure wall and extending outward from the wall more than twelve (12) inches.

SIGN, PUBLIC INFORMATION. Signs which identify restrooms, public telephones, self-service or provide instructions as required by law or necessity and similar informational signs.

SIGN, REAL ESTATE. A temporary sign indicating the availability for sale, rent or lease land or buildings and can either be on-premise or off-premise.

SIGN, REGULATORY. Signs which provide information regarding specific regulations on a property such as "no trespassing," "no solicitors," "no smoking,"etc.

SIGN, ROOF TOP. A sign that is mounted on the roof of a building or that is wholly dependent upon a building for support and which projects above the top walk or edge of a building with a flat roof, the eave line of a building with gambrel, gable or hip roof, or the deck line of a building with a mansard roof.

SIGN, SUBDIVISION. A sign which identifies only the name of the subdivision located at the entrance to that subdivision.

SIGN, TEMPORARY. A sign which is not permanently affixed to the ground or a structure and can be readily removed from its location. The opposite of permanent sign.

SIGN, TIME AND TEMPERATURE. Signs displaying the time and temperature only.

SIGN VARIANCE. An exception to the numerical requirements of Chapter #41, Signs, which may be approved by the City Council after a public hearing. See also Variance.

SIGN, VEHICLE. A sign painted affixed to or otherwise mounted on any vehicle or on any object which is placed on, in or attached to a vehicle. For the purpose of this definition, the term vehicle shall include trucks, buses, vans, railroad cars, automobiles, tractors, trailers, motor homes, semi-tractors or any other motorized or non-motorized transportation device whether such vehicle is in operating condition.

SIGN, WALL. A sign attached to, or erected against, the wall of a structure which has the sign face in a plane parallel to the plane of the wall and which does not extend more than twelve (12) inches from the building face.

SIGN, WIND. A sign consisting of a series of banners, flags, pennants, ribbons, spinners, streamers, captive balloons, or other objects or material fastened in a manner, which will move when subjected to pressure by wind or breeze.

SIGN, WINDOW. A sign that is painted on, applied to or attached to a window or that can be read through the window from the public right-of-way.

SKETCH PLAN. Map(s) of a proposed subdivision and supporting documents submitted to evaluate concept, feasibility and design characteristics at an early stage in the planning of a subdivision.

SMALL HOUSING TYPES. Dwelling units (including multi-family dwellings) that individually contain less than 1,750 square feet in floor area including garages or covered parking areas.

STICK BUILT CONSTRUCTION. A type of construction wherein a complete structure is assembled on a building site from individual pieces of common building materials such as lumber, sheathing, piping, etc. The use of prefabricated sub assemblies such as structural floor, wall, or roof panels, trusses, precast concrete foundation assemblies, and/or insulated concrete form (ICF) construction meet the definition of stick built for the purposes of this Title.

STORY. A horizontal division of a building constituting the area between two adjacent levels designed and intended to be a habitable floor.

STREET, ARTERIAL. Streets carrying general traffic within the city and providing communication with surrounding territory and which may be part of the federal-aid and state highway connecting links within the city.

STREET, COLLECTOR. Streets penetrating neighborhoods and routes serving intra-city rather than statewide travel. A minor amount of through traffic may be carried on a collector street, but the system primarily carries local traffic. Average trip lengths and travel speeds are less than on arterial streets.

STREET FURNITURE. Furniture designed for and permitted in the public right-of-way; e.g. benches, bus shelters.

STREET, LOCAL. Streets within the city open to public travel and which is not a part of a federal-aid connecting link, state highway, or a street designated as a collector or arterial street.

STREET, PRIVATE. Streets not accepted into the City of Fruita street system for maintenance, but maintained by a private homeowners association or private landowners.

STREET, PUBLIC. Streets built to the City of Fruita standards and accepted into the City of Fruita street system for maintenance.

STREETSCAPE. The landscaping and other man-made objects located within the public right-of-way which add variety and are placed for aesthetic purposes as well as functional, pedestrian guidance and traffic control.

STRUCTURE. Anything constructed or erected which requires location on or in the ground or is attached to something having a location on the ground. Structures do not include ditches and their appurtenances, poles, lines, cables, or transmission or distribution facilities of public utilities, freestanding mailboxes, on-grade slabs, walks, driveways, or landscaping materials. A fence is a structure.

SUBDIVISION. The division of a lot, tract or parcel of land into two or more lots, tracts parcels or other divisions of land for sale or development.

SUBDIVISION, PLATTED. A group of lots, tracts, or parcels of land created by recording a map which meets the requirements of Section 38-51-106, C.R.S., and which shows the boundaries of such lots, tracts, or parcels and the original parcel from which they are created.

SUBDIVISION IMPROVEMENTS AGREEMENT (SIA). An agreement between the city and a property owner and developer which provides for the construction, installation and development of improvements associated with a subdivision and includes a performance guarantee and various exactions required by the city, as further described in Chapter 17.21 of this Title.

SUITABLE SCHOOL LANDS. Tracts of vacant land lying within areas designated by the School District for school sites or other school facilities and having characteristics rendering such tracts suitable or desirable for development as school sites or facilities, including but not limited to, appropriate size and dimensions, lack of geologic, environmental or topographic barriers to development, reasonable access to utilities, roads and other necessary facilities, including irrigation water, compatible zoning, and proximity to other schools, school facilities and residential areas.

SURVEYOR. A land surveyor registered by the State of Colorado.

SWMM. Stormwater Management Master Plan as adopted by the city.

TELECOMMUNICATION FACILITIES. Cables, wires, lines, wave guides, antennas, other equipment and facilities and any other equipment or facilities associated with the transmission or reception of electromagnetic waves and/or communications which are located or as a part of a tower or antenna support structure.

TELECOMMUNICATIONS, TOWER. A self-supporting latticed, guyed or monopole structure constructed from grade which supports a telecommunications facility. The term tower shall not include amateur radio operators' equipment, as licensed by the FCC.

TEMPORARY USE OR STRUCTURE. Any use or structure placed on a parcel of land for a non-permanent use of limited duration.

TOWNHOUSE. Refers to a single-family dwelling unit that is connected to a similar single-family dwelling unit by one (1) or two (2) common sidewalls. An owner of a townhouse also owns the land area on which the foundation of the townhouse is constructed and may also own portions of the abutting land not occupied by other dwelling units.

TRACT. A lot, piece or parcel of land, of greater or less size, the term not importing, in itself, any precise dimension, though term generally refers to a large piece of land.

TRAFFIC VOLUME. As calculated, according to national or other city approved objective standards, such as the Institute of Traffic Engineers publication. If an applicant provides proof that actual traffic volume will be different, the city may vary from the approved standards.

TRAFFIC IMPACT STUDY. A study prepared by a professional traffic engineer which calculates the relative effect of a proposed development on the local, collector and/or arterial road system.

TRAIL. Any off-street pathway designed mainly for non-motorized travel. Also known as a pedestrian path or a bicycle path.

TRAILHEAD. The trailhead is the point at which a trail starts. Trailheads often contain rest rooms, maps, sign posts, and distribution centers for informational brochures about the trail and its features, and parking areas for vehicle and trailers.

TRAIL, LOCAL. A low volume trail that provides connectivity within and between developments and serves as a connector to primary or other trails.

TRAIL, PRIMARY. A continuous trail that provides a major conduit for travel on trail systems and forms the major trail spines throughout the community with connection to a larger regional trail system.

TRAIL, PRIVATE. A trail which is privately owned and is not generally open for public use.

TRAIL, PUBLIC. A trail that is designed for public use. Public trails can be publicly owned or owned by a private entity such as a homeowners' association but contains a public access easement.

TRANSFERABLE DEVELOPMENT RIGHTS/CREDITS (TDR/C). A development rights/credits which has been severed or extinguished from a sending site by deed restriction, conservation easement, or other legal instrument authorized by law and the recording of that instrument, and which is transferable to a receiving site within a specified receiving area, as further described in Chapter 17.09.

TRANSFER DEVELOPMENT RIGHTS/CREDITS CERTIFICATE. A negotiable certificate issued by Mesa County evidencing the legal right of the holder thereof to use such

certificate to obtain bonus density on a receiving site subject to, and in accordance, with this Land Use Code.

TRANSFER RATIO. The value of one (1) TDR/C relative to its use on a receiving site.

TRANSIENT HOUSING. Housing or accommodations which are typically occupied by residents for periods of thirty (30) days or less, including, but not limited to hotels, motels, and lodges.

TRANSMISSION LINES. Electric lines (115 KW and over) and appurtenant facilities which emanate from a power plant or a substation and terminate at a substation; or pipelines/conveyors (ten (10) inches diameter or larger) and appurtenant facilities for transporting natural resources, chemicals, petroleum derivatives, or waste substances.

TRAVEL TRAILER. A vehicle or portable unit mounted on its own chassis and wheels which does not exceed eight (8) feet in width and/or forty (40) feet in length, is drawn by a motor vehicle, and provides temporary living quarters for recreational, camping or travel use.

TRUCK CAMPER. A portable unit consisting of a roof, floor and sides designed to be loaded onto, and unloaded from, the bed of a pickup truck, and provides temporary living quarters for recreational, camping or travel use.

TRUCK PARKING AREA. An area for the temporary parking of trucks which are often left with motors running and/or refrigerator unit motors operating.

UNDERGROUND PRESSURIZED IRRIGATION SYSTEM. A watering system for landscaped areas, consisting of underground, pressurized pipes connected to sprinkler heads, bubbler heads, or drip systems.

UNSUITABLE OR POTENTIALLY UNSTABLE SLOPE. An area susceptible to or impeded by rapid erosion, a landslide, a mudflow, a rockfall or accelerated creep of slope forming materials.

USE. The purpose for which land or a structure is designed, arranged, intended, or occupied.

USE, PUBLIC. A use which is owned by a public entity or is open to the public

UTILITIES. Services and facilities provided by public agencies and private companies; such as, electrical and natural gas service, telephone service, water (domestic and irrigation), wastewater disposal, drainage systems, solid waste disposal, etc.

VACATION OF EASEMENT. A formal abandonment of an easement by the City Council, or other owner.

VACATION OF RIGHT-OF-WAY. A formal abandonment of a public right-of-way by the City Council or Board of County Commissioners in accordance with State law.

VARIANCE. An exception from the numerical requirements of this Title excluding the numerical standards contained in Chapter 11. Use variances are not permitted.

VERTICAL CONTROL. All drawings with grades shall have at least one benchmark described. If public facilities besides curb, gutter, and sidewalk, or driveways are proposed, then a permanent benchmark must be referenced, with the elevation based upon U.S.G.S. datum. If the existing benchmark is far enough removed from the site that it reasonably cannot be shown on the plan, then the description of the benchmark location shall not only include aliquot corner description, but street reference. Also, all proposed benchmarks must be shown.

WALL. Refers to the vertical exterior surface of a building; the vertical interior surfaces that divide a building's space into rooms.

WASTEWATER COLLECTOR (OR MAIN). A wastewater line located within public right-of-way or easement generally eight (8) inches in diameter or larger which receives wastewater flows from wastewater laterals and transports these flows to the treatment facility.

WASTEWATER LATERAL. A wastewater line which discharges into a wastewater collection line or main.

WASTEWATER SYSTEM. A unified collection and treatment system operated by the city for the disposal of sanitary wastewater.

WATERCOURSE. An area in which water flows regularly or periodically.

WILDFIRE HAZARD. An area containing or directly affected by a hazard from uncontrolled fire in a natural area.

WILDLIFE HABITAT RESOURCE AREA. A geographical area containing those elements of food, water, cover, space and general welfare in combination and quantities adequate to support a species for at least a portion of a year. An area need not be occupied by a species in order to be considered a habitat for that species; habitat may include those areas, which were historically occupied and are still suitable for occupancy, are presently occupied, or are potentially suitable though not historically occupied. Significant wildlife habitats are those areas containing, or having significant impact upon, those wildlife habitats in which the wildlife species could be endangered by development, and includes those essential elements of habitat, which, if altered or eliminated, would impair or destroy the area's capability to sustain a wildlife species.

WOONERF. A street or group of streets designed primarily to meet the interests of pedestrians and cyclists rather than motorists, opening up the street for social use.

WORKING DAY. A business day; those days the Community Development Department is open to the public for business; holidays, Saturdays, and Sundays are not working days.

XERISCAPE. Landscape methods, which conserve water through the use of drought-tolerant plants and specialized planting and irrigation techniques.

YARD. An existing or required open space on a parcel. A yard is open, unoccupied and unobstructed from the ground to the sky, except as otherwise provided in this Title.

YARD, FRONT. A yard extending across the full width and depth of the lot between a front road right-of-way, front lot line or access easement line, and the nearest line or point of the building.

YARD, FRONT SETBACK. The minimum horizontal distance required between any building and the front property line.

YARD, REAR. A yard extending across the full width and depth of the lot between the rear lot line and the nearest line or point of the building.

YARD, REAR SETBACK. The minimum horizontal distance required between any building and the rear property line.

YARD, SIDE. 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.

YARD, SIDE SETBACK. The minimum horizontal distance required between any building and the side property line.

ZERO LOT LINE. The location of a building on a lot in such a manner that one (1) or more of the buildings sides rests directly on a lot line.

ZONE. A particular set of rules and regulations, applied to specific areas identified on the Official Zoning Map, which limits the types and intensity of uses.

(Ord. 2009-02, Ord. 2009-10, Ord. 2009-23, S1; Ord. 2010-10; Ord. 2011-08, S1; Ord. 2011-14, S1; Ord. 2012-07, S1; Ord. 2015-04; S1)

Chapter 17.04

LAND USE CATEGORIES

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I. INTRODUCTION TO LAND USE CATEGORIES

17.04.010 PURPOSE.

This Chapter classifies land uses and activities into use categories on the basis of common functional, product, or physical characteristics, as follows:

A. Categorization. Uses are assigned to the category whose description most closely describes the nature of the primary use. The "Characteristics" subsection of each use category describes the characteristics of each use category. Developments may have more than one primary use. Developments may also have one or more accessory uses. It is the intent of this Chapter to group similar or compatible land uses into specific land use categories.

B. Interpretation. When a use's category is not clearly identifiable, the Community Development Director may determine the applicable use category or refer the question to the Planning Commission for a public hearing and determination following the procedure under Section 17.07.060. The following is considered to determine what use category the use is in, and whether the activities constitute primary uses or accessory uses:

1. The description of the activity(ies) in relationship to the function and characteristics of each use category;
2. The building or structure type associated with each use category, and the relative amount of site or floor space and equipment devoted to the activity;
3. Relative amounts of sales from each activity;
4. The customer type for each activity;
5. The relative number of employees in each activity;
6. Hours of operation;
7. Building and site arrangement;
8. Vehicles used with the activity;
9. The relative number of vehicle trips generated by the activity;
10. Signs;
11. How the use advertises itself; and
12. Whether the activity would function independently of the other activities on the site.

C. Developments with multiple primary uses. When all of the primary uses of a development fall within one use category, then the development is assigned to that use category. For example, a development that contains a retail bakery and a cafe

would be classified in the Retail Sales and Service category because all the primary uses are in that category. When the primary uses of a development fall within different use categories, each primary use is classified in the applicable category and is subject to the regulations for that category.

D. **Accessory Uses.** Accessory uses are allowed by right, in conjunction with, the use unless stated otherwise in the regulations. Also, unless otherwise stated, they are subject to the same regulations as the primary use. Typical accessory uses are listed as examples with the categories.

E. **Use of examples.** The "Examples" subsection of each use category provides a list of examples of uses that are included in the use category. The names of uses on the lists are generic. They are based on the common meaning of the terms and not on what a specific use may call itself. For example, a use whose business name is "Wholesale Liquidation" but that sells mostly to consumers, would be included in the Retail Sales and Service category rather than the Wholesale Sales category. This is because the actual activity on the site matches the description of the Retail Sales and Service category. If the use cannot be located within one of the categories provided by this Section, the city may at its discretion refer to appropriate outside sources, such as the Land-Based Classification Standards (LBCS) of the American Planning Association or the North American Industry Classification System (NAICS); however, the City of Fruita is not obligated to consider these sources and is not liable for any damages resulting from such use, or resulting from future amendments to the LBCS or NAICS.

(Ord. 2009-02)

II. RESIDENTIAL USE CATEGORIES

17.04.100 GROUP LIVING.

A. **Characteristics**. Group Living is characterized by the residential occupancy of a structure by a group of people who do not meet the definition of Household Living. The size or composition of the group is different than that of a Household. Tenancy is arranged on a month-to-month basis, or for a longer period. Uses where tenancy may be arranged for a shorter period are not considered residential. They are considered to be a form of transient lodging (see the Retail Sales and Service and Community Service categories). Generally, Group Living structures typically have a common eating area for residents, though individual units may have a kitchen. The residents may or may not receive any combination of care, training, or treatment, as long as they also reside at the site.

B. **Accessory Uses**. Accessory uses commonly found are recreational facilities, parking of autos for the occupants and staff, and parking of vehicles for the facility.

C. **Examples.** Examples include dormitories; fraternities and sororities; monasteries and convents; nursing and convalescent homes; assisted living and similar retirement facilities where some level of daily care is provided by on-site staff; some group homes for the physically disabled, mentally retarded, or emotionally disturbed; some residential programs for drug and alcohol treatment; and alternative or post incarceration facilities. Group Living includes Large and Small Group Homes.

D. Exceptions.

1. Lodging where tenancy may be arranged for periods less than one (1) month is considered a hotel or motel use (or hospital) and is classified in the Retail Sales and Service or other category. However, in certain situations, lodging where tenancy may be arranged for periods less than one (1) month may be classified as a Community Service use such as publicly assisted, short term housing.

2. Lodging where the residents meet the definition of Household, and where tenancy is arranged on a month-to-month basis, or for a longer period is classified as Household Living.

3. Facilities for people who are under judicial detainment and are under the supervision of sworn officers are included in the Detention Facilities category.

4. Bed and Breakfast.

(Ord. 2009-02; Ord. 2011-14, S2)

17.04.110 HOUSEHOLD LIVING.

A. Characteristics. Household Living is characterized by the residential occupancy of a dwelling unit by a household. Where units are rented, tenancy is arranged on a month-to-month basis, or for a longer period. Uses where tenancy may be arranged for a shorter period are not considered residential. They are considered to be a form of transient lodging (see the Retail Sales and Service and Community Service categories). Apartment complexes that have accessory services such as food service, dining rooms, and housekeeping are included as Household Living. Single Room Occupancy (SRO) housing, that do not have totally self- contained dwelling units (i.e., with kitchen and wash room facilities) are also included if at least two thirds of the units are rented on a monthly basis. SROs may have a common food preparation area, but meals are prepared individually by the residents. In addition, temporary medical hardship dwellings, and residential homes as defined by the State of Colorado, are included in the Household Living category.

B. Accessory Uses. Accessory uses commonly found are private yards and gardens, private recreational activities, raising of pets, hobbies, home occupations (subject to Code requirements), and parking of the occupants' vehicles, but not including residential occupancy of any vehicle. Home occupations, accessory dwelling units, and bed and breakfast facilities are accessory uses that are subject to additional regulations.

C. Examples. Uses include living in houses, duplexes, apartments, condominiums, retirement center apartments (not otherwise categorized as Group Living), manufactured housing, and other structures with self-contained and permitted dwelling units. Examples also include living in Single Room Occupancy housing, if the provisions are met regarding length of stay and separate meal preparation.

D. Exceptions.

1. For purposes of this code, a recreational vehicle is not considered a dwelling.

2. Lodging in a dwelling unit or Single Room Occupancy Hotel (SRO) where less than two thirds of the units are rented on a monthly basis or longer is considered a hotel or motel use and is classified in the Retail Sales and Service category. SROs which include common dining are classified as Group Living.

3 Guest houses that contain kitchen facilities are not accessory to Household Living uses; such houses may be allowed as Accessory Dwellings or as part of a multifamily development, subject to applicable code requirements.

4 In certain situations, lodging where tenancy may be arranged for periods less than one (1) month may be classified as a Community Service use, such as publicly assisted, short term housing or mass shelter in the event of an emergency declared by a government agency.

(Ord. 2009-02)

III. COMMERCIAL USE CATEGORIES

17.04.200 COMMERCIAL OUTDOOR RECREATION.

A. Characteristics. Commercial Outdoor Recreation uses are large, generally commercial uses that provide continuous or temporary recreation or entertainment oriented activities. They generally take place outdoors. They may take place in a number of structures, which are arranged together in an outdoor setting. (Temporary uses are subject to Section 17.07. 070L.)

B. Accessory Uses. Accessory uses may include concessions, restaurants, parking, caretaker's quarters, and maintenance facilities.

C. Examples. Examples include amusement parks, theme parks, golf driving ranges, farmer’s market, flea market, arts and crafts fair, miniature golf facilities, and similar commercial venues.

D. Exceptions.

1. Golf courses, including up to two thousand (2,000) square feet of accessory commercial floor area (e.g., clubhouse, restaurant, equipment sales and rental) are classified as Parks and Open Space. Golf courses with a commercial component exceeding two thousand (2,000) square feet commercial floor area are considered Retail Sales and Service.

2. Uses that draw large numbers of people to periodic events, rather than on a continuous basis, are classified as Major Entertainment Event.

(Ord. 2009-02)

17.04.210 COMMERCIAL PARKING.

A. Characteristics. Commercial Parking facilities provide parking that is not accessory to a specific use. A fee may or may not be charged. A facility that provides both accessory parking for a specific use and regular fee parking for people not connected to the use is also classified as a Commercial Parking facility.

B. Accessory Uses. In a parking structure only, accessory uses may include car washing, and vehicle repair activities.

C. Examples. Examples include short- and long-term fee parking facilities, commercial district shared parking lots, commercial shuttle parking, and mixed parking lots (partially for a specific use, partly for rent to others).

D. Exceptions.

1. Parking facilities that are accessory to a use, but which charge the public to park for occasional events nearby, are not considered Commercial Parking facilities.

2. Parking facilities that are accessory to a primary use are not considered Commercial Parking uses, even if the operator leases the facility to the primary use or charges a fee to the individuals who park in the facility.

(Ord. 2009-02)

17.04.220 QUICK VEHICLE SERVICING.

A. Characteristics. Quick Vehicle Servicing uses provide direct services for motor vehicles where the driver generally waits in the car before and while the service is performed. The development will include a drive-through facility, the area where the service is performed Vehicle fueling stations are always classified as a primary use (Quick Vehicle Servicing), rather than an accessory use, even when the fueling component comprises less land than other uses of the site.

B. Accessory Uses. Accessory uses may include auto repair and tire sales, mini mart or similar convenience retail uses.

C. Examples. Examples include full-serve and mini-serve gas stations, unattended card key stations, car washes, and quick lubrication services where service is typically provided in less than one hour.

D. Exceptions.

1. Refueling facilities for the vehicles that belong to a specific use (fleet vehicles) which are on the site where the vehicles are kept, are accessory to the use.

(Ord. 2009-02)

17.04.230 MAJOR ENTERTAINMENT EVENT.

A. **Characteristics.** Major Entertainment Event uses are characterized by activities and structures that draw large numbers of people to specific events or shows. Activities are generally of a spectator nature.

B. **Accessory Uses.** Accessory uses may include restaurants, bars, concessions, parking, and maintenance facilities.

C. **Examples.** Examples include sports arenas, race tracks (auto, horse, dog, etc.), auditoriums, exhibition and meeting areas, concert halls, outdoor amphitheaters, and fairgrounds.

D. **Exceptions.**

1. Exhibition and meeting areas with less than ten thousand (10,000) square feet of total event area are classified as Retail Sales and Service.

2. Banquet halls that are part of hotels or restaurants are accessory to those uses, which are included in the Retail Sales and Service category.

3. Theaters, including drive-in theaters, are classified as Recreation and Entertainment.

(Ord. 2009-02)

VOCATIONAL AND TRADE SCHOOLS.

A. **Characteristics.** Vocational and Trade Schools uses are characterized by activities conducted in an office setting and generally focusing on serving students with vocational education, or supplemental academic education, enrichment, and/or tutoring.

B. **Accessory Uses.** Accessory uses may include incidental retail (e.g., sale of instructional materials), parking, or other amenities primarily for the use of customers and employees.

C. **Examples.** Examples include vocational schools, tutoring centers, computer classes, after school learning centers for grades K-12, and arts and crafts classes.

(Ord. 2009-02)

17.04.250 OFFICE.

A. **Characteristics.** Office uses are characterized by activities conducted in an office setting and generally focusing on business, government, professional, medical, or financial services.

B. **Accessory Uses.** Accessory uses may include cafeterias, health facilities, parking, or other amenities primarily for the use of employees in the firm or building.

C. **Examples.** Examples include professional services such as lawyers, accountants, engineers, or architects; financial businesses such as lenders, brokerage houses, bank

headquarters, or real estate agents; data processing; sales offices; government offices and public utility offices; TV and radio studios; medical and dental clinics, and medical and dental labs.

D. Exceptions.

1. Offices that are part of and are located with a firm in another category may be considered accessory to the firm's primary activity. Headquarters offices, when in conjunction with or adjacent to a primary use in another category, are considered part of the other category.

2. Contractors and others who perform construction or similar services off-site are included in the Office category if equipment and materials are not stored on the site and fabrication, services, or similar work is not carried on at the site.

3. Governmental offices may be classified as Office, Community Service, or other use based on the use's predominate function.

(Ord. 2009-02)

17.04.260 RETAIL SALES AND SERVICE.

A. Characteristics. Retail Sales and Service firms are involved in the sale, lease or rent of new or used products to the general public. They may also provide personal services or entertainment, or provide product repair or services for consumer and business goods.

B. Accessory Uses. Accessory uses may include offices, storage of goods, manufacture or repackaging of goods for on-site sale, and parking, subject to applicable Code requirements.

C. Examples. Examples include uses from the four subgroups listed below:

1. Sales-oriented: Stores selling, leasing, or renting consumer, home, and business goods including art, art supplies, bicycles, clothing, dry goods, electronic equipment, fabric, furniture, garden supplies, gifts, groceries, hardware, home improvements, household products, jewelry, pets, pet food, pharmaceuticals, plants, printed material, stationery, and videos; food sales, and sales or leasing of consumer vehicles including passenger vehicles, motorcycles, light and medium trucks, and other recreational vehicles.

2. Personal service-oriented: Branch banks; urgency medical care; laundromats; photographic studios; photocopy and blueprint services; hair, tanning, and personal care services; tax preparers, accountants, real estate, legal, financial services; business, martial arts, and other trade schools; dance or music classes; taxidermists; mortuaries; veterinarians; kennels limited to boarding, with no breeding; and animal grooming.

3. Entertainment-oriented: Restaurants, cafes, delicatessens, taverns, and bars

4. Repair-oriented: Repair of TVs, bicycles, clocks, watches, shoes, guns, appliances and office equipment; photo or laundry drop off; quick printing; recycling drop-off; tailor; locksmith; and upholsterer.

D. Exceptions.

1. Lumber yards and other building material sales that sell to contractors and not retail customers are classified as Wholesale Sales.

2. Indoor or outdoor continuous entertainment activities such as bowling alleys, ice rinks, and game arcades; pool halls; indoor firing ranges; theaters, health clubs, gyms, membership clubs, and lodges; hotels, motels, recreational vehicle parks, and other temporary lodging with an average length of stay of less than 30 days are classified as Recreation and Entertainment.

3. Repair and service of consumer motor vehicles, motorcycles, light and medium trucks and small personal transportation devices (e.g., electric carts) and garden tractors, is classified as Vehicle Repair. Repair and service of industrial vehicles and equipment, including farm, construction and other heavy equipment, and heavy trucks is classified as Vehicle Repair.

4. Hotels, restaurants, and other services that are part of a truck stop are considered accessory to the truck stop which is classified as Commercial Vehicle Servicing.

5. In certain situations, hotels and motels may be classified as a Community Service use, such as publicly assisted, short term housing or mass shelter in the event of an emergency declared by a government agency. See Community Services.

(Ord. 2009-02)

17.04.270 SELF-SERVICE STORAGE.

A. Characteristics. Self-Service Storage uses provide separate storage areas for individual or business uses. The storage areas are designed to allow private access by the tenant for storing personal property.

B. Accessory Uses. Accessory uses may include security and leasing offices. Living quarters for one (1) resident manager per site are allowed. Other living quarters are subject to the regulations for Residential Uses. Use of the storage areas for sales, service and repair operations, or manufacturing is not considered accessory to the Self-Service Storage use. The rental of trucks or equipment is also not considered accessory to a Self-Service Storage use.

C. Examples. Examples include single story and multistory facilities that provide individual storage areas for rent; these uses are also called mini warehouses. Secured yards providing storage areas for recreational vehicles.

D. **Exceptions.** A transfer and storage business where any individual storage areas are incidental to transfer and storage operations, or where employees are the primary movers of the goods to be stored or transferred, is in the Warehouse and Freight Movement category.

17.04.280 VEHICLE REPAIR.

A. **Characteristics.** Firms servicing passenger vehicles, light and medium trucks and other consumer motor vehicles such as motorcycles, boats and recreational vehicles. Generally, the customer does not wait at the site while the service or repair is being performed. (Different than Quick Vehicle Services category.)

B. **Accessory Uses.** Accessory uses may include offices, sales of parts, and vehicle storage.

C. **Examples.** Examples include vehicle repair, transmission or muffler shop, auto body shop, alignment shop, auto upholstery shop, auto detailing, and tire sales and mounting.

D. **Exceptions.** Repair and service of industrial vehicles and equipment, and of heavy trucks; and towing and vehicle storage including heavy vehicle storage are classified as Industrial Service.

(Ord. 2009-02; Ord. 2011-14, S2)

IV. INDUSTRIAL USE CATEGORIES

17.04.300 INDUSTRIAL SERVICE.

A. **Characteristics.** Industrial Service firms are engaged in the repair or servicing of industrial, business or consumer machinery, equipment, products or by-products. Firms that service consumer goods do so by mainly providing centralized services for separate retail outlets. Contractors and building maintenance services and similar uses perform services off-site. Few customers, especially the general public, come to the site.

B. **Accessory Uses.** Accessory uses may include offices, parking, storage, rail spur or lead lines, and docks.

C. **Examples.** Examples include welding shops; machine shops; tool repair; electric motor repair; repair of scientific or professional instruments; sales, repair, or storage of heavy machinery, metal, and building materials; towing and vehicle storage; heavy truck servicing and repair; building, heating, plumbing or electrical contractors; printing, publishing and lithography; exterminators; recycling operations; janitorial and building maintenance services; fuel oil distributors; solid fuel yards; research and development laboratories; dry-docks and the repair or dismantling of ships and barges; laundry, dry-cleaning, and carpet cleaning plants; and photofinishing laboratories.

D. Exceptions.

1. Contractors and others who perform Industrial Services off-site are included in the Office category, if equipment and materials are not stored at the site, and fabrication, or similar work is not carried on at the site.

2. Hotels, restaurants, and other services that are part of a truck stop are considered accessory to the truck stop.

(Ord. 2009-02; Ord. 2011-14, S2)

17.04.310 MANUFACTURING AND PRODUCTION.

A. Characteristics. Manufacturing and Production firms are involved in the manufacturing, processing, fabrication, packaging, or assembly of goods. Natural, man-made, raw, secondary, or partially completed materials may be used. Products may be finished or semi-finished and are generally made for the wholesale market, for transfer to other plants, or to order for firms or consumers. Goods are generally not displayed or sold on site, but if so, they are a subordinate part of sales. Relatively few customers come to the manufacturing site, as distinguished from Retail Sales and Services where customers routinely come to the business.

B. Accessory Uses. Accessory uses may include offices, cafeterias, parking, employee recreational facilities, warehouses, storage yards, rail spur or lead lines, docks, repair facilities, or truck fleets. Living quarters for one (1) caretaker per site are allowed. Other living quarters are subject to the regulations for Residential Uses.

C. Examples. Examples include processing of food and related products; catering establishments; breweries, distilleries, and wineries; slaughter houses, and meat packing; feed lots and animal dipping; weaving or production of textiles or apparel; lumber mills, pulp and paper mills, and other wood products manufacturing; woodworking, including cabinet makers; production of chemical, rubber, leather, clay, bone, plastic, stone, or glass materials or products; movie production facilities; ship and barge building; concrete batching and asphalt mixing; production or fabrication of metals or metal products including enameling and galvanizing; manufacture or assembly of machinery, equipment, instruments, including musical instruments, vehicles, appliances, precision items, and other electrical items; production of artwork and toys; sign making; production of prefabricated structures, including mobile homes; and the production of energy.

D. Exceptions.

1. Manufacturing of goods to be sold primarily on-site and to the general public is classified as Retail Sales and Service; where the majority of traffic to the business is for retail sales and the manufacturing use is entirely indoors, the use will be categorized as Retail Sales and Service.

2. Manufacture and production of goods from composting organic material is classified as Waste-Related uses.

(Ord. 2009-02)

17.04.320 WAREHOUSE, FREIGHT MOVEMENT AND DISTRIBUTION.

A. **Characteristics.** Warehouse, Freight Movement, and Distribution involves the storage, or movement of goods for the subject firm or other firms, including goods that are generally delivered to the final consumer. There is little on-site sales activity with the customer present, except for some will-call pickups.

B. **Accessory Uses.** Accessory uses may include offices, truck fleet parking and maintenance areas, rail spur or lead lines, docks, repackaging of goods, and will-call pickups.

C. **Examples.** Examples include separate or off-site warehouses used by retail stores such as furniture and appliance stores; household moving and general freight storage; cold storage plants, including frozen food lockers; storage of weapons and ammunition; major wholesale distribution centers; truck, marine, or air freight terminals; bus barns; parcel services; major post offices; grain terminals; and the stockpiling of sand, gravel, or other aggregate materials.

D. **Exceptions.**

1. Uses that involve the transfer or storage of solid or liquid wastes are classified as Waste-Related uses.

2. Mini-warehouses are classified as Self-Service Storage uses.

(Ord. 2009-02)

17.04.330 WASTE-RELATED AND RECYCLING FACILITIES.

A. **Characteristics.** Waste-Related uses are characterized by uses that receive solid or liquid wastes from others for disposal on the site or for transfer to another location, uses that collect sanitary wastes, or uses that manufacture or produce goods or energy from the biological decomposition of organic material. Waste-Related uses also include commercial or industrial uses that receive, store, sort, and distribute post-consumer recyclable materials; and those that receive hazardous wastes from others and are subject to the regulations of OAR 340. 100-110, Hazardous Waste Management.

B. **Accessory Uses.** Accessory uses may include offices, repackaging and transshipment of by-products, and recycling of materials.

C. **Examples.** Examples include sanitary landfills, limited use landfills, waste composting, energy recovery plants, sewer treatment plants, portable sanitary collection equipment storage and pumping, recycling centers, and hazardous-waste-collection sites.

D. **Exceptions.**

1. Disposal of clean fill, as defined in OAR 340-093-0030, is considered a fill, not a Waste-Related use.

2. Sewer pipes that serve a development are considered a Basic Utility.

3. Excavation is considered Development or Mining, as applicable.

(Ord. 2009-02)

17.04.340 WHOLESALE SALES.

A. Characteristics. Wholesale Sales firms are involved in the sale, lease, or rent of products primarily intended for industrial, institutional, or commercial businesses. The uses emphasize on-site sales or order taking and often include display areas. Businesses may or may not be open to the general public, but sales to the general public are limited as a result of the way in which the firm operates. Products may be picked up on site or delivered to the customer.

B. Accessory Uses. Accessory uses may include offices, product repair, warehouses, parking, minor fabrication services, and repackaging of goods.

C. Examples. Examples include sale or rental of machinery, equipment, heavy trucks, building materials, special trade tools, welding supplies, machine parts, electrical supplies, janitorial supplies, restaurant equipment, and store fixtures; mail order houses; and wholesalers of food, clothing, auto parts, building hardware, and office supplies.

D. Exceptions.

1. Firms that engage primarily in sales to the general public are classified as Retail Sales and Service.

2. Firms that engage in sales on a membership basis are classified as either Retail Sales and Service or Wholesale Sales, based on a consideration of characteristics of the use and the customer traffic generated.

3. Firms that are primarily storing goods with little on-site business activity are classified as Warehouse, Freight Movement, and Distribution.

(Ord. 2009-02)

V. INSTITUTIONAL AND CIVIC USE CATEGORIES

17.04.400 BASIC UTILITIES, PRIVATE OR PUBLIC.

A. Characteristics. Basic Utilities are infrastructure services which need to be located in or near the area where the service is provided. Basic Utility uses generally do not have regular employees at the site. Services may be public or privately provided. All public safety facilities are Basic Utilities.

B. **Accessory Uses.** Accessory uses may include parking; control, monitoring, data or transmission equipment.

C. **Examples.** Examples include water and sewer pump stations; sewage disposal and conveyance systems; electrical substations; water towers and reservoirs; water quality and flow control facilities; water conveyance systems; stormwater facilities and conveyance systems; telephone exchanges; bus stops or turnarounds, suspended cable transportation systems, and public safety facilities, and emergency communication broadcast facilities when not accessory to a different primary use; except fire and police stations and holding cells within a police standard are Community Services or Offices.

D. **Exceptions.**

1. Services where people are generally present, other than bus stops or turnarounds, and public safety facilities, are classified as Community Services or Offices.

2. Utility offices where employees or customers are generally present are classified as Offices.

3. Bus barns and similar facilities are classified as Warehouse and Freight Movement.

4. Public or private passageways, including easements, for the express purpose of transmitting or transporting electricity, gas, oil, water, sewage, communication signals, or other similar services on a regional level are classified as Rail Lines and Utility Corridors.

(Ord. 2009-02)

17.04.410 COMMUNITY SERVICES; GOVERNMENT OFFICES.

A. **Characteristics.** Community Services are uses of a public, nonprofit, or charitable nature generally providing a local service to people of the community, except for Schools which are categorized separately. Generally, they provide the service on the site or have employees at the site on a regular basis. The service is ongoing, not just for special events. Private lodges, clubs, and non-profit athletic or health clubs that have membership provisions are open to the general public to join at any time may be considered a Community Service. Uses providing mass shelter or short term housing where tenancy may be arranged for periods of less than one (1) month when operated by a public or non-profit agency may also be considered a Community Service. The use may also provide special counseling, education, or training of a public, nonprofit or charitable nature.

B. **Accessory Uses.** Accessory uses may include offices; meeting areas; food preparation areas; parking, health and therapy areas; daycare uses; and athletic facilities.

C. **Examples.** Examples include city hall, county government and administrative offices, fire and police stations, libraries, museums, senior centers, community

centers, publicly owned swimming pools, youth club facilities, hospices, ambulance stations, drug and alcohol centers, social service facilities, mass shelters or short term housing when operated by a public or non-profit agency, vocational training for the physically or mentally disabled, soup kitchens, and surplus food distribution centers.

D. Exceptions.

1. Private commercial athletic clubs, golf clubs (e.g., clubhouse or restaurant exceeding 2,000 square feet of floor area), and private museums and similar commercial uses are classified as Retail Sales and Services.

2. Parks are in Parks and Open Areas.

3. Uses where tenancy is arranged on a month-to-month basis, or for a longer period are residential, and are classified as Household or Group Living.

4. Public safety facilities are classified as Basic Utilities.

(Ord. 2009-02)

17.04.420 DAYCARE/CHILD CARE CENTER.

A. Characteristics. Daycare and Child Care Center uses include day or evening care of two (2) or more children or adults outside of their primary place of residence. See also, Daycare Home which is a different use category.

B. Accessory Uses. Accessory uses include: offices, play areas, and parking.

C. Examples. Examples include preschools, nursery schools, latch key programs, and adult daycare programs.

D. Exceptions. Daycare and Child Care Center uses do not include care given by the parents, guardians, or relatives of the children or adults, or by babysitters. Daycare use also does not include care given by a "family daycare" provider as defined by State law if the care is given to eight (8) or fewer children or adults at any one time not including the children of the provider. Daycare does not include public or private schools or facilities operated in connection with an employment use, shopping center or other principal use, where children are cared for while parents or guardians are occupied on the premises or in the immediate vicinity.

(Ord. 2009-02, Ord. 2011-14, S2)

17.04.430 MEDICAL CENTERS.

A. Characteristics. Medical Centers includes uses providing medical or surgical care to patients and may offer overnight care.

B. Accessory Uses. Accessory uses include out-patient clinics, offices, laboratories, teaching facilities, meeting areas, cafeterias, parking, maintenance facilities, and housing facilities for staff or trainees.

C. Examples. Examples include hospitals and medical complexes that include hospitals. Medical clinics (medical, dental, vision, and similar clinics) that provide care where patients are generally not kept overnight and urgency medical care clinics not otherwise part of a Medical Center also are included as examples.

D. Exceptions. Uses that provide exclusive care and planned treatment or training for psychiatric, alcohol, or drug problems, where patients are residents of the program, are classified in the Group Living category.

(Ord. 2009-02)

17.04.440 PARKS AND OPEN SPACE AREAS.

A. Characteristics. Parks and Open Space Areas are uses of land focusing on natural areas, public or private parks consisting mostly of playfields, playgrounds, turf or similar facilities for outdoor recreation, community gardens, trails, or public squares. Parks and open space areas tend to have few structures and structures are accessory to the primary park, trail, or outdoor recreation use.

B. Accessory Uses. Accessory uses may include club houses, maintenance facilities, concessions (as with athletic fields), caretaker's quarters, and parking.

C. Examples. Examples include parks, golf courses, cemeteries, public squares, plazas, recreational trails, community garden plots, botanical gardens, boat launching areas, nature preserves, and open space that is approved through design review and is not part of an Agricultural use.

(Ord. 2009-02)

17.04.450 RELIGIOUS INSTITUTIONS AND PLACES OF WORSHIP.

A. Characteristics. Religious Institutions are intended to primarily provide meeting areas for religious activities.

B. Accessory Uses. Accessory uses include Sunday school facilities, parking, caretaker's housing, one transitional housing unit, and group living facilities such as convents. A transitional housing unit is a housing unit for one (1) household where the average length of stay is less than sixty (60) days. Religious schools, when accessory to a religious institution, are different than a school as a primary use. Additional housing may be permitted as a primary use on the same site as a Religious Institution or Place of Worship subject to applicable Code requirements.

C. Examples. Examples include churches, temples, synagogues, and mosques.

(Ord. 2009-02)

17.04.460 SCHOOLS.

A. Characteristics. This category includes public and private schools, secular or parochial, at the primary, elementary, middle, junior high, or high school level that provide state mandated basic education.

B. Accessory Uses. Accessory uses include play areas, cafeterias, recreational and sport facilities, auditoriums, and before- or after-school daycare.

C. Examples. Examples include public and private daytime schools, boarding schools and military and similar academies.

D. Exceptions.

1. Preschools are classified as Child Care uses.

2. Business and trade schools are classified as Vocational Schools.

(Ord. 2009-02; Ord. 2011-14, S2)

17.04.470 DETENTION FACILITIES.

A. Characteristics. This category includes law enforcement incarceration facilities that are not accessory to a police station or law enforcement office.

B. Accessory Uses. Accessory uses include visitor areas, cafeterias, recreational and sport facilities, and educational facilities.

C. Examples. Examples include short- and long-term city, county, state, or federal law enforcement facilities, at any designated level of security.

D. Exceptions. Does not include police station holding cells and similar temporary incarceration facilities.

(Ord. 2009-02)

VI. OTHER USE CATEGORIES

17.04.500 AGRICULTURE.

A. Characteristics. Agriculture includes activities that raise, produce or keep plants or animals.

B. Accessory Uses. Accessory uses include dwellings for proprietors and employees of the use, and animal training and veterinary services.

C. Examples. Examples include breeding or raising of fowl or other animals; dairy farms; stables; riding academies; kennels or other animal boarding places; veterinary services; farming, truck gardening, horticulture and wholesale plant nurseries.

D. Exceptions.

1. Processing of animal or plant products, including milk, and feed lots, are classified as Manufacturing and Production.

2. Livestock auctions are classified as Wholesale Sales.

3. Plant nurseries that are oriented to retail sales are classified as Retail Sales and Service.

4. When kennels are limited to boarding, with no breeding, or small animal veterinary services are provided without exterior holding pens, the city may determine the use category is Agriculture or Retail Sales and Service.

(Ord. 2009-02)

17.04.510 MINING AND SIMILAR EXTRACTIVE INDUSTRIES.

A. Characteristics. Mining includes mining or extraction of mineral or aggregate resources from the ground for off-site use.

B. Accessory Uses. Accessory uses include storage, sorting, stockpiling, or transfer off-site of the mined material.

C. Examples. Examples include quarrying or dredging for sand, gravel or other aggregate materials; mining; and oil, gas, or geothermal drilling. Note: Planning clearance is required prior to any grading or clearing of vegetation from a site, even if the intended use is not Mining. In such case, the land use designation is the same as that for which the clearing or grading is proposed. Other permit requirements may also apply.

(Ord. 2009-02)

17.04.520 RADIO FREQUENCY TRANSMITTING FACILITIES.

A. Characteristics. Radio Frequency Transmission Facilities includes all devices, equipment, machinery, structures or supporting elements necessary to produce non-ionizing electromagnetic radiation within the range of frequencies from 100 KHz to 300 GHz and operating as a discrete unit to produce a signal or message. Towers may be self supporting, guyed, or mounted on poles or buildings.

B. Accessory Uses. Accessory use may include transmitter facility buildings.

C. Examples. Examples include broadcast towers, communication/cell towers, and point-to- point microwave towers.

D. Exceptions.

1. Receive-only antennae are not included in this category.

2. Radio and television studios are classified in the Office category.

3. Radio Frequency Transmission Facilities that are public safety facilities are classified as Basic Utilities.

(Ord. 2009-02)

17.04.530 UTILITY CORRIDORS.

A. Characteristics. The category includes public or private passageways, including easements, for the express purpose of transmitting or transporting electricity, gas, oil, water, sewage, communication signals, natural gas, or other similar services on a regional level.

B. Examples. Examples include regional electrical transmission lines; and regional gas and oil pipelines.

C. Exceptions. Utilities exclusively serving the City of Fruita (e.g., utilities placed within a street or trail right-of-way or easement in conjunction with an approved subdivision) are not classified as utility corridors.

(Ord. 2009-02)

Chapter 17.05

LAND DEVELOPMENT APPLICATIONS - GENERAL PROVISIONS

Sections:

17.05.010 Designation of Required Land Development Applications
17.05.020 No Use or Occupancy Until Requirements Fulfilled
17.05.030 Certificate of Occupancy Required
17.05.040 Temporary Postponement of Improvements
17.05.050 Application Requirements and Limitations
17.05.060 Appeals of Administrative Decisions
17.05.070 Procedures for Applications Requiring a Public Hearing
17.05.080 Reconsideration by City Council
17.05.090 Amendments to Approved Land Development Applications

17.05.010 DESIGNATION OF REQUIRED LAND DEVELOPMENT APPLICATIONS.

A. The use made of property may not be substantially changed; substantial clearing, grading, or excavating may not be commenced; and buildings, fences, or other substantial structures may not be constructed, erected, moved, or substantially altered except in accordance with the requirements of this Title.

B. Land development applications are approved under this Title only when a review of the application submitted, including the plans contained therein, indicates that the development will comply with the provisions of this Title, if completed as proposed, including any conditions of approval. Such plans and applications as are finally approved are incorporated into any permit issued, and except as otherwise provided in this Title, all developments shall occur strictly in accordance with such approved plans, applications, and conditions of approval, as applicable.

C. Physical improvements to land to be subdivided may not be commenced except in accordance with approval by the City Council or after the completion of all requirements as certified by the Community Development Director and City Engineer.

D. Physical improvements to land subject to land development application requirements may be approved by the city staff to allow expedited construction of certain specific improvements prior to permit and approval issuance in unique and special circumstances where delays would cause unacceptable impacts to city projects or activities. Such approval requires an administrative order or letter signed by the Public Works Director, City Engineer, or Community Development Director stating the reason for the approval.

E. Land development application approvals issued under this Title shall be issued in the name of the applicant or the applicant's agent (authorized representative), as applicable. Land development application approvals made under this Title shall

identify the property involved and the proposed use, shall incorporate by reference, the plans submitted and shall contain any special conditions or requirements lawfully imposed by the permit issuing authority.

(Ord. 2009-02)

17.05.020 NO USE OR OCCUPANCY UNTIL REQUIREMENTS FULFILLED. Approval of a land development application authorizes the recipient to commence; the activity resulting in a change of use of the land or; to obtain a building permit, if required pursuant to the Fruita Municipal Code, to commence work to construct, erect, move, place, or substantially alter buildings or other structures or; to make necessary improvements to a subdivision. However, except as otherwise permitted in this Title, the intended use may not be commenced, and no building may be occupied, until all of the requirements of this Title and all additional requirements imposed pursuant to the issuance of a permit or approval have been complied with. (Ord. 2009-02)

17.05.030 CERTIFICATE OF OCCUPANCY REQUIRED. No building or structure shall be occupied, and no change in existing occupancy classification of a building or structure or portion thereof shall be made until the city has authorized the issuance of a Certificate of Occupancy. Issuance of a Certificate of Occupancy shall not be construed as an approval of a violation of provisions of this Title or other titles of the Municipal Code.

The city may suspend or revoke a Certificate of Occupancy or completion issued under the provision of this Title where ever the Certificate was issued in error, or on the basis or incorrect information supplied, or where it is determined that the building or structure or portion thereof is in violation of any ordinance or regulation or any of the provisions of this Title. (Ord. 2009-02)

17.05.040 TEMPORARY POSTPONEMENT OF IMPROVEMENTS. It shall be within the administrative discretion of the City Manager to approve a temporary postponement of certain required improvements so long as the pubic health, safety, and welfare are preserved and the recipient provides a performance bond or other security satisfactory to the city to ensure that all to of the requirements of this Title will be fulfilled within a reasonable period. At a minimum, a request for postponing improvements must be submitted in writing explaining what improvements are requested to be postponed, why the postponement is necessary and when the improvements will be completed. At the City Manager's discretion, a request to postpone improvements may be sent to the City Council for a decision. (Ord. 2009-02)

17.05.050 APPLICATION REQUIREMENTS AND LIMITATIONS.

A. Applications for land development approvals shall be submitted in the form and numbers as determined by the Community Development Director and accompanied by the requisite application fee(s) adopted by the City Council. An application shall not be processed or scheduled for public hearing until the Community Development Director deems it complete.

B. Applications for land development application approvals required under this Title will be accepted only from parties in interest who are owners of record or their authorized representative.

C. To help minimize development-planning costs, avoid misunderstandings or misinterpretation of city requirements, and ensure compliance with the requirements of this Title, a pre-application meeting between the applicant and the Community Development Department and other staff is encouraged or required as provided in this Title. For applications in which a pre-application meeting is required, a pre-submittal meeting will not be held unless a pre-application meeting has been held. Pre-application meetings are valid for a period of six (6) months from the date of the meeting, after which a new pre-application meeting may be required. Pre-application meetings may not adequately address all city requirements or requirements of outside agencies (e.g., CDOT, Health Department, Mesa County). Applicants are encouraged to seek information on permit requirements from other agencies, as applicable.

D. After the applicant has fully prepared its application for a permit or approval, the applicant is encouraged to schedule and hold a pre-submittal meeting with Community Development Department staff prior to submittal of the application to help ensure the application will be correct and complete when submitted.

E. All applications for land development approvals required under this Title must be complete before the permit issuing authority is required to consider the application. A notice of completeness or incompleteness shall be issued by the Community Development Department within fifteen (15) days of the receipt of an application. Upon a determination that an application for a permit or approval is complete, the Community Development Department shall issue a notice of completeness to the applicant and place the application on the agenda of the Planning Commission, City Council, or Board of Adjustment if review by such body is required under this Title. If such review is not required, the Community Development Director shall act on the application pursuant to this Land Use Code.

F. The burden of persuasion on the issue of whether the development or use applied for, if completed as proposed, will comply with the requirements of this Title and should be approved remains, at all times, on the applicant. The Community Development Director may request additional information from the applicant during the course of reviewing the application if, based on professional expertise or relevant input provided by the Planning Commission or City Council, the Director believes that such information would be helpful in evaluating the application for compliance with the requirements of this Land Use Code.

G. The city shall make every reasonable effort to process review applications as expeditiously as possible, consistent with the need to ensure that the application conforms to the requirements of this Title.

(Ord. 2009-02)

17.05.060 APPEALS OF ADMINISTRATIVE DECISIONS.

A. Any person aggrieved by a decision of the City Manager under the provisions of this Title may appeal such decision to the City Council within thirty (30) days of the decision from which the appeal is taken. The letter of appeal shall state the specific grounds upon which the appeal is based and shall have attached to it any documentary evidence. The City Council shall then hold a public hearing on such appeal at a regular meeting within forty-five (45) days of the date of the filing of the

appeal. Public notice shall be given as required as per Section 17.01.130 of this Title. Following such hearing the City Council shall affirm the decision of the City Manager, or reverse, or modify such decision.

B. Any person who has provided a written comment to the Community Development Department regarding a land development application that is permitted to be approved administratively will be provided with a copy of the decision by the Community Development Department including information on how to appeal that decision.

(Ord. 2009-02)

17.05.070 PROCEDURES FOR LAND DEVELOPMENT APPLICATIONS REQUIRING A PUBLIC HEARING.

A. Pre-Application Meeting. A pre-application meeting with the Community Development Department is required prior to submitting an application for any proposal that requires a public hearing under this Title. The purpose of the pre-application meeting is informational; staff will review the applicant's preliminary proposal and provide informal feedback on applicable city codes and requirements. The intent is to promote efficiency and two-way communication early in the development review process between applicants and the city. Prospective applicants are strongly encouraged to contact adjacent property owners for the purpose of soliciting neighborhood input prior to formally submitting an application.

B. Staff Review. The Community Development Director shall review the application with appropriate staff and other agencies and shall prepare a Staff Report setting forth the staff's findings concerning the application's compliance with the requirements of this Title and a staff recommendation including any conditions of approval, if applicable. The Community Development Director is responsible for reviewing comments and recommendations of other city departments and review agencies and shall incorporate their comments into one consolidated and reconciled Staff Report. If the Staff Report finds that the application fails to comply with applicable requirements of this Title, it shall identify the requirements in question and specifically state supporting reasons for the proposed findings. The Staff Report shall be available for public review at least seven (7) days prior to the scheduled hearing. The Community Development Department shall provide copies of the application, review comments, public comments and other applicable information to the Planning Commission or the Board of Adjustment, as applicable.

C. Planning Commission Review. Before being presented to the City Council, the Planning Commission shall hold a public hearing on the application for a recommendation to the City Council. The applicant, or the applicant's representative, shall be present at the Planning Commission public hearing to represent the application. The Community Development Department shall provide to the Planning Commission application information, a Staff Report, review comments, written public comments and other related documents. At the Planning Commission public hearing, the Planning Commission shall accept oral and written testimony from staff, the applicant and members of the public. For the record, Community Development Department staff shall be provided a copy of all

new written or graphic information provided by the applicant or the public at the public hearing. The Planning Commission shall consider whether the application complies with all of the applicable requirements of this Title. At the close of the public hearing, the Planning Commission shall take one of the following actions:

1. Recommend to the City Council that the application be approved, subject to any conditions it finds necessary to protect the public health, safety and welfare or to ensure compliance with the city's regulations and stating the reasons for the approval including conditions of approval; or

2. Recommend denial of the application, stating the specific reasons for recommending denial.

D. City Council Review. After the Planning Commission has made a recommendation, the Community Development Department shall provide to the City Council all information presented to the Planning Commission and include a report containing the Planning Commission's recommendation and whether staff concurs in whole or in part with the Planning Commission's findings and recommendation. The City Council shall hold a public hearing to consider whether the application complies with all of the applicable requirements of this Title. The applicant or the applicant's representative shall be present at the City Council public hearing to represent the application.

At the City Council public hearing, the City Council shall accept oral and written testimony from staff, the applicant and members of the public. For the record, Community Development Department staff shall be provided a copy of all new written or graphic information provided by the applicant or the public at the public hearing.

If the City Council finds that an application does comply with the requirements of this Title, it shall approve the application.

If the City Council finds that the application does not meet all of the applicable requirements of this Title, it shall specify the reasons why the application fails to comply with applicable requirements and include them in its motion to deny the application.
If the City Council concludes that the application fails to comply with one or more requirements of this Title, but the application can be made to comply with all requirements of this Title through the imposition of conditions of approval, the City Council may approve the application subject to conditions of approval.

The City Council's decision approving, approving with conditions or denying, the application shall include specific findings, based upon the evidence submitted, justifying such a conclusion.

E. Board of Adjustment Review. The Board of Adjustment shall hold a public hearing on land development applications requiring a decision by the Board of Adjustment. The applicant, or the applicant's representative, shall be present at the Board of Adjustment public hearing to represent the application. The Community Development Department shall provide to the Board of Adjustment application

information, a Staff Report, review comments, written public comments and other related documents. At the Board of Adjustment public hearing, the Board of Adjustment shall accept oral and written testimony from staff, the applicant and members of the public. For the record, Community Development Department staff shall be provided a copy of all new written or graphic information provided by the applicant or the public at the public hearing. The Board of Adjustment shall consider whether the application complies with all of the applicable requirements of this Title including variance approval criteria of Section 17.13.050. At the close of the public hearing, the Board of Adjustment shall take one of the following actions:

1. Approve the application subject to any conditions it finds necessary to protect the public health, safety and welfare or to ensure compliance with the city's regulations and stating the reasons for the approval including conditions of approval; or

2. Recommend denial of the application, stating the specific reasons for denial.

(Ord. 2009-02)

17.05.080 RECONSIDERATION BY CITY COUNCIL OR BOARD OF ADJUSTMENT. City Council or Board of Adjustment decisions on land use applications, whether approval or denial, may not be reconsidered by the City Council or Board of Adjustment for one (1) year unless it is clearly demonstrated that:

A. Circumstances affecting the property that is the subject of the application have substantially changed, or;

B. New information is available that could not, with reasonable diligence, have been presented at a previous hearing. A request to be heard on this basis must be filed with the Community Development Director within thirty (30) days of the original decision, or;

C. Nothing contained in this Section shall preclude the submission of a substantially new application as determined by the Community Development Director and the City Engineer.

(Ord. 2009-02)

17.05.090 AMENDMENT TO APPROVED LAND DEVELOPMENT APPLICATIONS. The Community Development Director may authorize minor deviations from the original approved application, including approvals by the City Council. The Community Development Director shall determine whether amendments to and modifications of approved land development applications are minor or major. Major deviation shall be subject to review and approval by the city decision making body that approved the original application, provided an application that was approved by City Council may be referred to the Planning Commission first for a recommendation pursuant to Section 17.05.070. A major deviation is one that exceeds one or more of the following thresholds:

A. Increase in the number of residential lots or dwelling units;

B. Reduction in the area of open space by more than ten (10) percent, or a reduction in the quality of open space, as determined by the Community Development Director;

C. Increase in permitted floor area by more than ten (10) percent for any single non-residential building;

D. Modification to any site design or lot development standard in this Title;

E. Any change to a requirement imposed through conditions of approval;

F. Modifications to street standards or other public improvement requirements shall be subject to approval by the City Engineer, pursuant to the City of Fruita Engineering Design Criteria and Construction Specifications. Where a modification potentially affects a project's compliance with this Title, or any condition of approval related to this Title imposed through the original approval, the request shall be subject to review and approval by the Community Development Director. The Community Development Director may refer the request to the Planning Commission and City Council.

(Ord. 2009-02)

Chapter 17.06

ANNEXATIONS

Sections:

17.06.010 Purpose and Applicability
17.06.020 Application
17.06.030 Annexation Impact Report
17.06.040 Criteria and Decision for Annexations not requiring an Election
17.06.045 Disconnection of Territory
17.06.050 Zoning of Annexed Properties

17.06.010 PURPOSE AND APPLICABILITY. Land may be annexed to the City as deemed appropriate by the City Council in accordance with this Chapter and the Municipal Annexation Act of 1965, as amended, Sections 31.12-101 *et. seq.* C.R.S. Land may be disconnected from the City if the City Council is of the opinion that the best interests of the City of Fruita will not be prejudiced by the disconnection of such land in accordance with Part 5 of Article 12 of Title 31, C.R.S. Because Fruita is a home rule municipality, Part 6 of Article 12 of Title 31, C.R.S., permitting disconnection by court decree, shall not be applicable to the City of Fruita.

(Ord. 2009-02; Ord. 2012-16, S1)

17.06.020 APPLICATION. Application requirements and processing procedures for annexations or disconnection shall comply with those described in the Municipal Annexation Act of 1965, as amended, Sections 31-12-101 et. seq., C.R.S. Applications shall be made in such form and in such numbers as required by the Community Development Director. If, in the opinion of the Community Development Director, existing right-of-way adjacent to the land requested to be annexed should be annexed at the same time, the applicant shall submit a legal description, prepared by a registered land surveyor, of the subject right-of-way with the application for annexation. Additionally, annexation application shall be accompanied by a land use application for the subject property such as a Subdivision, Site Design Review or Conditional Use Permit or an annexation agreement. (Ord. 2009-02)

17.06.030 ANNEXATION IMPACT REPORT.

Any petition for annexation not requiring an election shall be accompanied by an annexation impact report, which contains the following elements:

C. Plans of the municipality for extending to or otherwise providing for municipal services;

B. The City of Fruita's anticipated financing of the extension of services;

C. The special districts included in the territory to be annexed;

D. The effect of annexation on the public school district system including the estimated number of students generated and capital construction required to educate each student;

E. Traffic/pedestrian/bicycle impacts;

F. Wastewater, water, drainage, and irrigation impacts, and;

G. Other relevant information as required by the Community Development Department.

(Ord. 2009-02)

17.06.040 CRITERIA AND DECISION FOR ANNEXATIONS NOT REQUIRING AN ELECTION.

A. Criteria.

1. If the subject property is located within the city's Urban Growth Area (UGA) as defined by the Fruita Community Plan, annexation may be approved only after considering the following criteria:

   a. The annexation meets the requirements of the State Statutes;

   b. The area is or can be efficiently served by city utilities and capital investments, including water, sewer, parks, drainage systems and streets;

   c. The area is contiguous with existing urban development;

   d. The area is or can be efficiently served by police and other municipal services;

   e. The development is consistent with community goals, principles, and policies as expressed in the Fruita Community Plan;

   f. The annexation is supported by local residents and landowners;

   g. Water and ditch rights can be provided, as applicable, in accordance with city policies;

   h. The area will have a logical social and economic association with the city, and;

   i. The area meets or can meet the existing infrastructure standards set forth by the city.

2. If the subject property is located in the Growth Management Area (GMA) as defined by the Fruita Community Plan, annexation may be approved only after considering the following criteria in addition to the criteria required to be considered for property in the Urban Growth Area:

   a. The area would have a positive net fiscal benefit to the community;

b. The area is necessary to accommodate an activity that cannot be reasonably accommodated on lands within the existing UGA boundary;

c. The area would allow for the logical and concurrent extension of urban services (water, streets, sewer, etc.);

d. The area would offer a desirable new "edge" to the community, and;

e. The area discourages a sprawling development pattern and contributes to the Community Vision as described in the Fruita Community Plan.

3. Annexation of property outside both the UGA and GMA should only be considered for extraordinary circumstances.

B. Decision. The Community Development Director shall make recommendations to the Planning Commission and the City Council on any petition for annexation not requiring an election. Following public hearings as required by law, the City Council shall approve, conditionally approve or disapprove all petitions for annexation not requiring an election. The city retains complete discretion and authority to approve or deny an annexation petition for any reason or to require an annexation agreement as a condition of approval of any annexation.

(Ord. 2009-02; Ord. 2012-16, S2)

17.06.045 DISCONNECTION OF TERRITORY. In accordance with Section 31-12-501, C.R.S., when the owner of a tract of land within and adjacent to the boundary of the City of Fruita desires to have such land disconnected from the City of Fruita, such owner may file an application for disconnection with the Community Development Director requesting disconnection. The Community Development Director shall make recommendations to the Planning Commission and the City Council on any application for the disconnection of territory. The Planning Commission shall then make a recommendation concerning the requested disconnection to the City Council. If the City Council, in its sole discretion, is of the opinion that the best interests of the City of Fruita will not be prejudiced by the disconnection of such land, the City Council may enact an ordinance effecting such disconnection. If the ordinance is enacted, it shall be immediately effective upon the required publication and the required filing with the Mesa County Clerk and Recorder. Two (2) certified copies thereof shall be filed by the City Clerk with the office the Mesa County Clerk and Recorder. The County Clerk and Recorder shall retain one copy and shall file the second certified copy with the division of local government in the Colorado Department of Local Affairs, as provided by Section 24-32-109, C.R.S.

Disconnection of land annexed to the City of Fruita by court decree shall not be permitted.

(Ord. 2012-16, S3)

17.06.050 ZONING OF ANNEXED PROPERTIES. Land annexed to the city shall be zoned in accordance with the City of Fruita's zoning regulations within ninety (90) days following annexation of the land. The city's acceptance of a land use application or issuance of building permit may be contingent upon approval of city zoning. (Ord. 2009-02)

Chapter 17.07

ZONING - USES AND GENERAL REQUIREMENTS

Sections:

17.07.010 Establishment of Zones
17.07.020 Incorporation of Official Zoning Map
17.07.030 Zoning Names
17.07.040 Zoning Boundaries
17.07.050 Application of Zoning Regulations
17.07.060 Zoning Uses and Requirements
17.07.070 Supplemental Zoning Regulations and Standards
17.07.080 Land Use Compatibility Criteria
17.07.090 Legal Non-Conforming Uses, Structures, and Lots

17.07.010 ESTABLISHMENT OF ZONES. To carry out the purposes of the Master Plan and the purposes and provisions of this Title, the incorporated area of the City of Fruita is hereby divided into the following zones for the purposes set forth below:

A. Agricultural Residential (AR). The purpose of the AR zone is to allow low density rural residential and agricultural uses, to preserve and enhance the rural character of the outlying areas of Fruita, and discourage inappropriate or premature urban development.

B. Rural Estate (RE). The purpose of the RE zone is to preserve the natural and agricultural landscape as a transition between the Rural Residential (RR) zone, AR zone, and the community separator through minimum requirements and incentives for rural land preservation and clustered residential lots.

C. Rural Residential (RR). The purpose of the RR zone is to allow low density residential uses compatible with rural areas.

D. Community Residential (CR). The purpose of the CR zone is to allow for moderate density detached single-family residential neighborhoods with the inclusion of other housing types such as attached dwelling units (e.g. apartments and townhouses).

E. Large Lot Residential (LLR). The purpose of the LLR zone is to allow larger lot developments in the same areas as the CR zone and other areas as appropriate.

F. South Fruita Residential (SFR). The purpose of the SFR zone is to allow a variety of low to moderate density residential areas compatible with existing low density development, the Colorado National Monument and the Colorado River.

G. Downtown Mixed Use (DMU). The purpose of the DMU zone is to maintain and enhance downtown as a vibrant, pedestrian-oriented commercial and residential area and as the civic heart of the community. Mixed use development, such as commercial on the ground floor and residential above the ground floor is encouraged within this zone. The intent of this zone with regard to housing is to allow existing

residential uses and provide housing options within walking distance of commercial and civic uses without compromising the integrity of the downtown commercial core.

H. Community Mixed Use (CMU). The purpose of the CMU zone is to establish walkable neighborhoods that are residential in scale and character, integrating a variety of housing, open spaces, and community services.

I. Monument Preservation (MP). The MP zone is intended to provide a recreational and environmental buffer between the Colorado National Monument and Bureau of Land Management lands, and urban development with low intensity uses that preserve open space quality.

J. General Commercial (GC). The GC zone is intended to accommodate commercial development in appropriate areas with appropriate access, landscaping, frontage improvements, setbacks, screening and multi-modal access and connectivity.

K. Industrial (I). The purpose of the I zone is to encourage non-polluting industrial and research and development activities designed to meet acceptable state and locally established standards for noise, dust, effluent (e.g., sewage pre-treatment), odor, and other impacts typically associated with industrial uses.

L. Planned Unit Development (PUD). A PUD zone provides a flexible, performance-based alternative to standard development requirements where adjustments to some of the standard requirements of this Title may be permitted in order to produce a development that is superior in its design and functionality to that which would result from the strict application of the standards under a non-PUD proposal. Applications for PUD approval must demonstrate that the proposal is consistent with the intent of the city's Master Plan and equally or better meets the intent of the design standards for which adjustment is sought.

M. Community Services and Recreation (CSR). The purpose of the CSR zone is to provide public and private recreational land, facilities, schools, fire stations, libraries, fairgrounds and other public and quasi-public lands and buildings. The zone includes open space areas, which are set aside to prevent environmental damage to sensitive areas and to limit development in areas that are unsuitable for development due to flooding or geologic hazards. The CSR zone may be applied to parks, outdoor recreation facilities, open space corridors, environmental areas, trails, recreational facilities, and similar areas. The CSR zone helps implement the open space, trails and parks policies of the city's Master Plan.

(Ord. 2016-04, S1)

17.07.020 INCORPORATION OF OFFICIAL ZONING MAP. The location and boundaries of the zones established by this Chapter are shown on the "Official Zoning Map" of the City of Fruita. Said Official Zoning Map, together with all data shown thereon and all amendments thereto, is, by reference, hereby incorporated into this Chapter. Changes in zones shall be made according to the requirements of this Title. (Ord. 2016-04, S1)

17.07.030 ZONING NAMES. The zoning names in effect before May 5, 2016, are converted as follows:

OLD ZONE	NEW ZONE
TC (Tourist Commercial)	GC (General Commercial)
RC (River Corridor)	CSR (Community Services & Recreational

17.07.040 ZONING BOUNDARIES. Except where otherwise indicated, zoning boundaries shall follow municipal corporation limits, section lines, lot lines, centerlines of watercourses, and right-of-way centerlines or extensions thereof. In unsubdivided land or where a zoning boundary divides a lot or parcel, the location of such boundary, unless indicated by dimensions, shall be determined by scale of the Official Zoning Map. Where a zoning boundary coincides with a right-of-way line and said right-of-way is subsequently abandoned, the zoning boundary shall then follow the zoning of the property to which the vacated right-of-way is connected. Land not part of public rights-of-way and which is not indicated as being in any zoning boundary shall be considered to be included in the most restrictive abutting zone, even when such zone is separated from the land in question by a public right-of-way. (Ord. 2016-04, S1)

17.07.050 APPLICATION OF ZONING REGULATIONS. Except as hereinafter provided, within the municipal boundaries of the City of Fruita:

A. No building or structure shall be erected or placed and no existing building or structure shall be moved, removed, altered or extended, nor shall any land, building or structure be used for any purpose or in any manner other than as provided among the uses listed in Section 17.07.060(F) (Land Use/Zoning Table) and the zoning requirements and regulations for the zone in which such land, building or structure is located.

B. No building or structure shall be erected or placed nor shall any existing building or structure be moved, removed, altered, replaced or extended, nor shall any open space surrounding any building or structure be encroached upon or reduced in any manner except in conformity with the lot area, lot coverage, setback and height provisions set forth in subsection 17.07.060(I) (Density and Dimensional Standards Table) for the zone in which such land, building or structure is located.

C. No lot area, frontage, yard or other open space or parking space provided around any building or structure for purposes of compliance with provisions of this Title shall be considered as providing lot area, frontage, yard or other open space for any other building or structure on the same lot or on any other lot.

D. Uses permitted by this Title also may be subject to provisions of other applicable city, county, or state laws and regulations, and where the provisions of this Title impose a greater restriction than required by other land use regulations, the provisions of this Title shall govern.

E. In their application and interpretation, the provisions of this Title shall be considered minimum requirements. Nothing herein shall impair the obligations of or interfere with private agreements or covenants in excess of the minimum requirements. Where this Title imposes a greater restriction than that imposed by existing contract,

covenant or deed, the provisions of this Title shall control.

F. For developments without access to the city's sanitary sewer system (farther than four hundred [400] feet away), the minimum lot size is required to be no less than three (3) acres. Larger lots may be required for certain non-residential land uses.

(Ord. 2016-04, S1)

17.07.060 ZONING USES AND REQUIREMENTS. All combinations of allowed uses and development standards may not be appropriate at a particular location within a zone, even if a use is designated as an allowed use in this Section. Any proposed land use must be compatible with the uses and site design of surrounding properties and meet the design standards set forth in this Title.

A. Administrative Approvals. Administrative approvals include: Planning Clearances including Planning Clearances for a change in use to a use that is designated as allowed outright under Section 17.07.060; home occupations; Minor Subdivisions; Site Design Review (with no Adjustment) ; Temporary Use Permits; Sign Permits, and; final plats (not including subdivision improvements agreements).

B. Public Hearing required for some Planning Clearances. Where the proposed use is designated a Conditional Use, or a use requiring Site Design Review with Adjustment, or is not itemized in the Use/Zone Matrix under Section 17.07.060 and is not deemed by the Community Development Director to be similar to an allowed use, the Director shall refer the land use request to public hearings, pursuant to Section 17.05.070.

C. Schedule of Allowed Uses. The Land Use/Zone Table in subsection F below indicates Allowed Uses and Conditional Uses. Definitions and examples of those uses are contained in Chapters 17.03 and 17.04. Tables specifying allowable development densities and the requirements for minimum lot area, minimum setbacks, maximum building height and maximum lot coverage in each of the zones is subsection I below.

D. Key to Allowed Uses. Uses may be allowed outright, allowed conditionally, or allowed subject to special use standards, as follows:

* - Means not allowed

A - Means allowed outright in the indicated zone, subject to compatibility with surrounding properties, per Section 17.07.080, and special and supplementary zoning regulations and standards.

C - Allowed by Conditional Use Permit only. (See Conditional Use Permit Section 17.13.040).

E. Key to Zones:

AR	Agricultural Residential	DMU	Downtown Mixed Use
MP	Monument Preservation	RR	Rural Residential
CR	Community Residential	GC	General Commercial
LLR	Large Lot Residential	I	Industrial
RE	Rural Estate	CSR	Community Services and Recreation
SFR	South Fruita Residential	CMU	Community Mixed Use

Planned Unit Development (PUD) zone uses are specified in each PUD Guide.

Section 17.07.060 (F)

LAND USE/ZONING TABLE

	AR	RE	RR& LLR	CR	CMU[1]	SFR	DMU	MP	GC	I	CSR
RESIDENTIAL											
Household Living											
Business Residence	*	*	*	*	A	*	A	*	A	A	*
Dwelling, Single-Family Attached	C	C	A	A[2]	A	A	A	*	*	*	*
Dwelling, Single-Family Detached	A	A	A	A	A	A	A	A	*	*	*
Duplex	*	*	*	A[2]	A	*	A	*	*	*	*
Dwelling, Multi-Family	*	*	*	A[2]	A	*	A	*	A	*	*
Manufactured Housing Park (See Chapters 23 & 25)	*	*	*	C	C	*	*	*	*	*	*
Mobile Home Park (See Chapters 23 & 25)	*	*	*	C	C	*	*	*	*	*	*
Manufactured Home (See Chapter 23)	C	C	C	C	C	C	C	C	*	*	*
Mobile Home (See Chapter 23)	*	C	C	C	C	C	C	C	*	*	*
Accessory Dwelling Unit (See Section 17.07.070.C)	A	A	A	A	A	A	A	A	*	*	*
Dwelling, Caretaker	A	*	*	*	*	*	*	*	A	A	*
Home Occupation	Home Occupations are permitted as accessory to any permitted residential use, subject to the Home Occupation standards in Section 17.07.070 (B)										
Cultivation of Medical Marijuana by Patients and Caregivers in Residential Dwelling Units.	Medical Marijuana cultivation is permitted as accessory to any permitted residential use, subject to the supplemental standards of Section 17.07.070 (X)(1)										
Child Care Home, Daycare Home	A	A	A	A	A	A	A	A	A	A	*
Group Living											
Small Group Homes	C	C	C	A	A	A	A	C	A	*	*
Large Group Homes	*	*	*	C	C	*	C	*	C	*	*
INSTITUTIONAL & CIVIC											
Community Service & Government Offices											
Public Building Uses	C	C	C	C	C	C	A	C	A	A	A
Museum, Art Galleries, Opera Houses	C	C	C	C	C	C	A	C	A	C	A
Public Safety and Emergency Response Services	C	C	C	C	C	C	C	C	C	C	A
Other Community Services	C	C	C	C	C	C	A	C	A	C	C
Daycare/Child Care											
Daycare Center	C	C	C	C	C	C	A	C	A	*	*
Child Care Center	C	C	C	C	C	C	A	C	A	*	*
Detention Facilities											
Jails, Honor Camps, Reformatories, Detention Center	*	*	*	*	*	*	*	*	C	C	C
Community Corrections Facility	*	*	*	*	*	*	*	*	C	C	C

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LAND USE/ZONING TABLE

	AR	RE	RR& LLR	CR	CMU[1]	SFR	DMU	MP	GC	I	CSR
INSTITUTIONAL & CIVIC											
Medical Centers											
Medical and Dental Clinics	*	*	*	*	C	*	A	*	A	A	C
Counseling Centers (nonresidential)	*	*	*	*	*	*	A	*	A	A	C
Hospital/Mental Hospital	*	*	*	*	*	*	C	*	C	C	C
Physical and Mental Rehabilitation (resident)	*	*	*	*	*	*	C	*	C	C	C
All Other	*	*	*	*	*	*	C	*	C	C	*
Parks & Open Space Areas											
Cemetery	A	A	A	A	C	A	A	A	A	A	A
Golf Course or Golf Driving Range	C	C	C	C	C	C	*	C	A	A	A
Campground, Primitive (See Chapter 27)	C	*	*	*	*	*	*	C	C	*	C
Parks, Lakes, Reservoirs, Greenways, Trails	A	A	A	A	A	A	A	A	A	A	A
Other	C	C	C	C	C	C	C	C	C	C	A
Religious Institutions/Places of Worship											
All	A	A	A	A	A	A	A	A	A	A	A
Schools											
Boarding Schools	C	C	C	C	C	C	C	C	C	*	C
Elementary Schools	A	A	A	A	A	A	A	A	A	*	A
Secondary Schools	A	A	A	A	A	A	A	A	A	*	A
Utility, Basic											
Utility Service Facilities, (Underground)	A	A	A	A	A	A	A	A	A	A	A
Utility Treatment, Production or Service Facility	*	*	*	*	*	*	C	*	C	C	C
All Other Utility, Basic	C	C	C	C	C	C	C	C	C	C	A
Utility Corridors											
Transmission Lines (above ground)	C	C	C	C	C	C	C	C	C	C	A
Transmission Lines (underground)	C	C	C	C	C	C	C	C	C	C	A
All Other	C	C	C	C	C	C	C	C	C	C	C
COMMERCIAL											
College, Trade & Vocational Schools											
Colleges and Universities	*	*	*	C	C	C	C	*	C	C	C
Vocational, Technical & Trade	*	*	*	C	C	C	A	*	A	A	C
All Other Education Institutions	*	*	*	C	C	C	A	*	A	A	C
Entertainment Event, Major											
Indoor Facilities	*	*	*	*	C	*	A	C	A	C	C
Outdoor Facilities	*	*	*	*	C	*	A	C	A	C	C

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LAND USE/ZONING TABLE

	AR	RE	RR& LLR	CR	CMU[1]	SFR	DMU	MP	GC	I	CSR
COMMERCIAL											
Office											
General Offices	*	*	*	*	A	*	A	*	A	A	*
Office with Drive-in Facilities	*	*	*	*	C	*	C	*	A	A	*
Parking, Commercial											
All, when not accessory to a permitted use	*	*	*	*	C	*	C	*	A	A	A
Recreation & Entertainment, Outdoor											
Campgrounds & Recreational Vehicle Parks (See Chapter 27)	C	*	*	*	*	*	*	C	C	C	C
Swimming Pools, Community	C	C	C	C	C	C	C	C	C	C	A
Shooting Ranges, Outdoor	*	*	*	*	*	*	*	*	*	C	C
Amusement Park	*	*	*	*	*	*	*	*	C	*	C
Drive-in Theater	*	*	*	*	*	*	*	*	C	*	C
Miniature Golf	*	*	*	*	C	*	A	C	A	*	A
Riding Academy, Roping or Equestrian Area	C	C	C	C	C	C	*	C	C	*	C
Zoo	*	*	*	*	*	*	*	C	C	*	C
All other Outdoor Commercial Recreation	C	C	C	*	C	C	C	C	A	A	A
Recreation & Entertainment, Indoor											
Health Club	*	*	*	C	C	*	A	*	A	A	A
Movie Theater	*	*	*	*	*	*	A	*	A	A	*
Skating Rink	*	*	*	*	C	*	A	*	A	A	A
Arcade	*	*	*	*	C	*	A	*	A	A	*
Shooting Ranges, Indoor	*	*	*	*	*	*	*	*	C	A	C
All Other Indoor Recreation	*	*	*	*	C	*	A	*	A	A	A
Retail Sales & Service											
Alcohol Sales, Retail	*	*	*	*	C	*	A	*	A	A	*
Animal Clinic/Hospital/Boarding/Sales, Indoor (See Chapter 6.28 of the Municipal Code)	C	*	*	*	C	*	A	C	A	A	*
Animal Clinic/Hospital/Boarding/Sales, Outdoor (See Chapter 6.28 of the Municipal Code)	C	*	*	*	*	*	C	C	C	C	*
Bar/Nightclub	*	*	*	*	C	*	A	*	A	A	*
Bed and Breakfast (1-4 guest rooms) See Section 17.07.070 (A)	C	C	C	C	C	C	A	C	A	*	*
Bed and Breakfast (4+ Guest rooms)	*	*	*	*	*	*	A	C	A	A	*

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LAND USE/ZONING TABLE

	AR	RE	RR& LLR	CR	CMU[1]	SFR	DMU	MP	GC	I	CSR
COMMERCIAL											
Retail Sales & Service (Continued)											
Delivery and Dispatch Services (Vehicles on-site)	*	*	*	*	*	*	C	*	A	A	*
Drive-Up/Drive-Through Facilities (with permitted use)	*	*	*	*	*	*	C	*	A	A	*
Drive-Up/Drive-Through Facilities (not in conjunction with a permitted use; freestanding)	*	*	*	*	*	*	C	*	A	A	*
Food Service, Catering	*	*	*	*	A	*	A	*	A	A	*
Food Service, Restaurant (including alcohol sales)	*	*	*	*	C	*	A	*	A	A	*
Food Service, Restaurant (Not including alcohol sales)	*	*	*	*	A	*	A	*	A	A	*
Farm Implement/Equipment Sales/Service	*	*	*	*	*	*	A	*	A	A	*
Flea Market/Farmer's Market	*	*	*	*	*	*	C	*	C	C	A
Feed Store	*	*	*	*	*	*	C	*	A	A	*
Fuel Sales, Automotive/Appliance (not including Drive-Up/Drive-Through uses)	*	*	*	*	*	*	A	*	A	A	*
Fuel Sales, Heavy Vehicle (not including Drive-Up/Drive-Through uses)	*	*	*	*	*	*	A	*	A	A	*
Funeral Homes/Mortuaries/Crematories	*	*	*	*	*	*	C	*	C	C	*
General Retail Sales, Indoor Operations, Display and Storage	*	*	*	*	A	*	A	*	A	A	*
General Retail Sales, Outdoor Operations, Display or Storage	*	*	*	*	C	*	A	*	A	A	*
Hotels and Motels	*	*	*	*	*	*	A	*	A	A	*
Nursery/Greenhouse, Retail (not Agriculture)	*	*	*	*	C	*	A	*	A	A	*
Manufactured Building Sales and Service	*	*	*	*	*	*	C	*	A	A	*
Pawn Shops (See Chapter 5.30 of the Municipal Code)	*	*	*	*	C	*	A	*	A	A	*
Rental, Home Oriented, Indoor Display/Storage	*	*	*	*	C	*	A	*	A	A	*
Rental, Heavy Equipment, Outdoor Display/Storage	*	*	*	*	*	*	A	*	A	A	*
Repair, Small Appliance/Small Engine	*	*	*	*	C	*	A	*	A	A	*
Repair, Large Appliance	*	*	*	*	*	*	A	*	A	A	*
Sexually Oriented Businesses (See Chapter 35 of the Land Use Code and 5.40 of the Municipal Code)	*	*	*	*	*	*	*	*	C	C	*
Personal Services	*	*	*	*	A	*	A	*	A	A	*
Medical Marijuana Centers See Section 17.07.070(U)(3)	*	*	*	*	*	*	*	*	*	*	*

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LAND USE/ZONING TABLE

	AR	RE	RR& LLR	CR	CMU[1]	SFR	DMU	MP	GC	I	CSR
COMMERCIAL											
Retail Sales & Service (Continued)											
Medical Marijuana Cultivation by Patients and Primary Caregivers in Non-Residential Units See Section 17.07.070(U)(2)	*	*	*	*	*	*	*	*	C	C	*
Medical Marijuana Optional Premises Cultivation Operations See Section 17.07.070(U)(3)	*	*	*	*	*	*	*	*	*	*	*
All Other Retail Sales and Service	*	*	*	*	C	*	A	*	A	A	*
Storage/Self Service Storage											
Mini Warehouse/Self Service Storage Facility	*	*	*	*	*	*	*	*	A	A	*
Outdoor Storage (Vehicles, Equip. Etc.)	*	*	*	*	*	*	*	*	A	A	*
Vehicle Repair, Except Quick Vehicle Servicing											
Auto and Light Truck Mechanical Repair Shop	*	*	*	*	*	*	C	*	A	A	*
Body Shop	*	*	*	*	*	*	*	*	A	A	*
Truck Stop/Travel Plaza/Truck Parking Area	*	*	*	*	*	*	*	*	C	C	*
Tire Recapping and Storage	*	*	*	*	*	*	*	*	C	C	*
All Other Vehicle Repair, Limited	*	*	*	*	*	*	C	*	A	A	*
Vehicle Service, Limited: Quick Vehicle Servicing											
Car Wash	*	*	*	*	*	*	C	*	A	A	*
Gasoline Service Station	*	*	*	*	*	*	C	*	A	A	*
Quick Lube	*	*	*	*	*	*	C	*	A	A	*
All Other Vehicle Service, Limited	*	*	*	*	*	*	C	*	A	A	*
INDUSTRIAL											
Indoor Operations or Storage											
Industrial Service	*	*	*	*	*	*	*	*	A	A	*
Assembly	*	*	*	*	*	*	*	*	A	A	*
Food Products	*	*	*	*	*	*	*	*	A	A	*
Manufacturing/Processing	*	*	*	*	*	*	*	*	A	A	*
All Other	*	*	*	*	*	*	*	*	C	A	*
Outdoor Operations or Storage											
Industrial Service	*	*	*	*	*	*	*	*	C	A	*
Assembly	*	*	*	*	*	*	*	*	C	A	*
Food Products	*	*	*	*	*	*	*	*	C	A	*
Manufacturing/Processing	*	*	*	*	*	*	*	*	C	A	*

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LAND USE/ZONING TABLE

	AR	RE	RR& LLR	CR	CMU[1]	SFR	DMU	MP	GC	I	CSR
INDUSTRIAL											
Junk Yard											
Junk Yard (See Municipal Code Chapter 5.24)	*	*	*	*	*	*	*	*	*	C	*
Impound Lot											
Impound Lot	*	*	*	*	*	*	*	*	C	A	*
Warehouse, Freight Movement & Distribution											
Indoor Operations, Storage and Loading	*	*	*	*	*	*	C	*	A	A	*
Indoor Storage with Outdoor Loading Docks	*	*	*	*	*	*	C	*	A	A	*
Outside Storage or Loading	*	*	*	*	*	*	*	*	C	A	*
Gas or Petroleum Storage	*	*	*	*	*	*	*	*	C	C	*
Sand or Gravel Storage	*	*	*	*	*	*	*	*	C	A	*
All Others	*	*	*	*	*	*	*	*	C	C	*
Waste Related Uses											
Non-Hazardous Waste Transfer	*	*	*	*	*	*	*	*	C	C	*
Medical/Hazardous Waste Transfer Station	*	*	*	*	*	*	*	*	C	C	*
Solid Waste Disposal Sites	*	*	*	*	*	*	*	*	*	C	*
Recycling Collection Points	*	*	*	*	*	*	*	*	C	C	C
All Other Waste Related/Recycling Center	*	*	*	*	*	*	*	*	*	C	C
Wholesale Sales											
Wholesale Business (No highly flammable materials/liquids)	*	*	*	*	*	*	C	*	A	A	*
Agri Business Wholesaling	C	C	C	*	*	*	C	*	C	C	*
All Other Wholesale Uses	*	*	*	*	*	*	C	*	C	C	*
Agricultural											
Animals Agricultural; Confinement	C	*	*	*	*	*	*	*	*	C	C
Dairy	C	*	*	*	*	*	*	*	*	C	C
Winery	C	C	*	*	*	*	C	C	C	A	C
Confined Animal Feeding Operation, Feedlot	C	*	*	*	*	*	*	*	*	C	*
Forestry/Silviculture, Commercial	C	*	*	*	*	*	*	*	C	A	*
Pasture, Commercial	A	*	*	*	*	*	*	C	A	A	A
All Other Agriculture	A	A	*	*	*	*	*	A	*	A	A

Section 17.07.060 (F) LAND USE/ZONING TABLE											
	AR	**RE**	**RR& LLR**	**CR**	**CMU[1]**	**SFR**	**DMU**	**MP**	**GC**	**I**	**CSR**
INDUSTRIAL											
Aviation or Surface Passenger											
Airports/Heliports	*	*	*	*	*	*	*	*	C	C	C
Bus/Commuter Stops	A	A	A	A	A	A	A	A	A	A	A
Bus/Railroad Depot	*	*	*	*	C	*	C	*	A	A	A
Helipads	*	*	*	*	*	*	*	*	C	C	C
All Other Aviation or Surface Passenger Terminal	*	*	*	*	C	*	C	*	C	C	C
Mining (See Chapter 31)											
Oil or Gas Drilling	C	*	*	*	*	*	*	C	*	C	*
Sand or Gravel Extraction or Processing	C	*	*	*	*	*	*	C	C	C	*
All Other Mining, Extraction	*	*	*	*	*	*	*	C	C	C	*
Telecommunications Facilities											
Telecommunications Facilities, Towers and Support Structures	C	C	C	C	C	C	C	C	C	C	C

[1] Non-residential uses in the CMU zone are subject to the supplemental zoning district standards in Section 17.07.070 (J).

[2]Duplex, multi-family and attached single family developments in the CR zone are permitted only as a percentage of a detached single-family residential development. See the Density and Dimensional Standards Table in Section 17.07.060(I).

G. Uses Not Itemized in Land Use/Zoning Table. When a use is proposed and no zone allows for such use under the Land Use/Zoning Table above, the applicant may request from the Community Development Department a determination of a zone in which the use may be allowed. The applicant shall submit a written request, which describes the particular use proposed. The use may be deemed an Allowed Use or a Conditional Use upon the finding of the following:

1. Such use is appropriate to the physiographic and general environmental character of the zone to which it is added;

2. Such use does not create any more hazards to, or alteration of, the natural environment than the minimum amount normally resulting from the other permitted uses, or uses conditionally allowed, in the zone to which it is added, as applicable;

3. Such use does not create any more offensive noise, vibration, dust, heat, smoke, odor, glare, or other objectionable influences or more traffic hazards than the minimum amount normally resulting from the other uses permitted in the zone to which it is added;

4. Such use is generally consistent with the uses existing and permitted in the zone to which it is added; and

5. Such use is in conformance with the goals, policies and Master Plan of the city and the purposes of this Title.

H. Schedule of Density/Height/Bulk/Location Requirements in Zones.

1. The following standards apply to all uses and development, except as modified pursuant to Chapter 17.11 Design Standards or Chapter 17.17 Planned Unit Developments.

2. Maximum density may not be achievable on every lot or parcel, as the development must conform to applicable setbacks, coverage, parking, drainage, public improvements, landscaping and other code requirements including density bonus requirements.

3. Connection to the city's wastewater collection and treatment system is required for all single-family residential lots smaller than three (3) acres in size. Larger lots may be required for multi-family and non-residential developments that do not connect to the city's wastewater collection and treatment system. All uses with existing individual sewage disposal systems that require repair or replacement, or are part of a larger development plan and are within four hundred (400) feet of the existing city wastewater collection system, as measured to the closest property line, shall connect to the city system. All property to be annexed with existing land uses using individual sewage disposal systems must connect to the city wastewater collection system if they are within four hundred (400) feet or will be within four hundred (400) feet of a city wastewater collection system once the development to be annexed is completed.

4. Standards containing a slash (x/y) indicate standards for primary buildings (x) and accessory buildings (y).

5. Structures, lots, and land uses lawfully established prior to the effective date of this Code may continue pursuant to Section 17.07.090.

Section 17.07.060 (I)

DENSITY AND DIMENSIONAL STANDARDS TABLE

ZONE DISTRICT	MAX RES. DENSITY (GROSS)	MIN LOT AREA	MIN FRONT/ STREET YARD	MIN SIDE YARD	MIN REAR YARD	MAX STRUCTURE HEIGHT*	MAX LOT COVERAGE ***
Agriculture Residential (AR)	10 acres/DU	3 acres	50’	50’	50’	35’	20%
Rural Estate (RE)	3 acres/DU, or 2 acres/DU	2 acres	25’	10’	20’	35’	20%
Rural Residential (RR)	1 DU/acre or 2 DU/acre	20,000 sf	25’	10’	20’	35’	20%
Community Residential (CR)**	No Specific Standards**	7,000 sf	25’ for garage openings; 20’ for elevations other than garage opening; except 15’ for buildings with alley access only or 15’ for unenclosed front porches covering at least 30% of front elevation with a 6’ minimum depth with the garage or parking area on the rear half of the lot	16’ total; 5’/3’ min. except 0’ where common wall or zero-lot line dev. allowed	15’/3’	35’/16'	50%
Large Lot Residential (LLR)	3 DU/acre	10,000 sf	25’	10’/5’	15’/3’	35’/16’	40%
South Fruita Residential (SFR)	2 DU/acre, or 3 DU/acre	7,000 sf	25’	10’/5’	15’/5’	35’/16’	40%
Downtown Mixed Use (DMU) – Core (as designated in the Fruita Community Plan - south of Pabor Avenue and west of Elm Street)	12 DU/acre	5,000 sf; 6,000 sf for corner lots	0’, or as required per building code	0’, or as required per building code	0’, or as required per building code	35’/25’; or 5 stories for DU’s above Commercia l	90%

Section 17.07.060 (I)

DENSITY AND DIMENSIONAL STANDARDS TABLE

ZONE DISTRICT	MAX RES. DENSITY (GROSS)	MIN LOT AREA	MIN FRONT/ STREET YARD	MIN SIDE YARD	MIN REAR YARD	MAX STRUCTURE HEIGHT*	MAX LOT COVERAGE ***
Downtown Mixed Use (DMU) – Outside Core	12 DU/acre	5,000 sf, except 6,000 sf corner lot; 7,500 sf duplex; 10,000 sf multi-family; 2,500 sf per each townhouse unit	25’ for garage openings; 20’ for elevations other than garage openings; except 0' for non-residential or mixed-use buildings, 15’ for buildings with alley access only, and 15’ for buildings with unenclosed front porches covering at least 30% of front elevation with a 6’ minimum depth with the garage or parking area on the rear half of the lot	15’ total; 5’/3’ min.; except 0’ where common wall or zero-lot line dev. allowed	15’/3’; except 0’ where common wall or zero-lot line dev. allowed	35’/16’	35%; or 60% for mixed use buildings and lots with parking on rear ½ of lot and front porches on at least 30% of front elevation with a 6’ minimum depth
Community Mixed Use – Commercial Development, including Mixed Use Buildings	2 DU/acre; or up to 5 DU/acre	5,000 sf; 6,000 sf corner lots				35’/25’; or 4 stories for DU’s above Commercial	60%
Community Mixed Use – Residential Development, not including Mixed Use Buildings	2 DU/acre; or up to 5 DU/acre	5,000 sf, except 6,000 sf corner lot; 7,500 sf duplex; 10,000 sf multi-family; 2,500 sf per each attached townhouse unit	25’ for garage openings; 20’ for elevations other than garage opening; 15’ for buildings with alley access, and 15’ for buildings with un-enclosed front porches covering at least 30% of front elevation with a 6’ minimum depth with the garage or parking area on the rear half of the lot	16’ total; 5’/3’ min.; except 0’ where common wall or zero-lot line dev. allowed	15’/3’; except 0’ where common wall or zero-lot line dev. allowed	35’/25’	35%; or 60% for lots with parking on rear ½ of lot and front porches on at least 30% of front elevation with a 6’ minimum depth
General Commercial (GC) Non-residential development	Not Applicable	5,000 sf	0’	10’/5’; except 0’ where common wall or zero-lot line dev. allowed	20’/5’; except 0’ where common wall or zero-lot line dev. allowed	35’/25’	80%

Section 17.07.060 (I)

DENSITY AND DIMENSIONAL STANDARDS TABLE

ZONE DISTRICT	MAX RES. DENSITY (GROSS)	MIN LOT AREA	MIN FRONT/ STREET YARD	MIN SIDE YARD	MIN REAR YARD	MAX STRUCTURE HEIGHT*	MAX LOT COVERAGE ***
General Commercial (GC) Multi-family residential development	Max density dictated by land area size per dwelling unit	7,000 sf per dwelling unit	0’	10’/5’ except 0’ where common wall or zero-lot line dev. allowed	20’/20’ except 0’ where common wall or zero-lot line dev. allowed	35’/25’	80%
Industrial (I)	Not Applicable	10,000 sf	20’	20’/10’; except 0’ where common wall or zero-lot line dev. allowed	20’/10’ except 0’ where common wall or zero-lot line dev. allowed	50’/70’	80%
Monument Preservation (MP)	1 DU/2 acres	2 acres	25’	50’	20’/10’	35’/25’	20%
Community Services Recreational (CSR)	No Specific Standards						

* Accessory buildings can be up to the maximum height limit for the zone when located within the primary building setbacks.

** One duplex unit or two-unit attached single family on a lot or land area of at least ten thousand (10,000) square feet in size is permitted for each ten (10) single-family detached units in the same subdivision

One triplex or three-unit attached single family on a lot at least fifteen thousand (15,000) square feet in size for each fifteen (15) single-family detached units in the same subdivision

One four-plex or four-unit attached single family on a lot of at least twenty thousand (20,000) square feet in size for each twenty (20) single-family detached units in the same subdivision

For the purposes of these attached housing calculations, single-family detached units cannot be counted more than once for determining permitted attached housing units.

*** Lot coverage requirements do not apply to townhouses or condominiums, which instead are determined through the subdivision process.

(Ord. 2016-04, S1)

17.07.070 SUPPLEMENTAL ZONING REGULATIONS AND STANDARDS. In addition to regulations contained elsewhere in this Title, the use of land and buildings in all zones shall be governed by the following:

A. Bed and Breakfast. Where bed and breakfast uses are allowed, they must meet the following conditions and standards:

1. Where the applicable zoning district allows bed and breakfast uses as a conditional use, the use must be a residential dwelling that contains no more than four (4) guest bedrooms where overnight lodging, with or without meals, is provided for compensation. Bed and Breakfast uses with more than four (4) guest bedrooms are considered hotels or motels;

2. Kitchen and dining facilities in bed and breakfast dwellings may serve only residents and guests and shall not be operated or used for any commercial activity other than that necessary for bed and breakfast purposes;

3. The bed and breakfast use shall not change the residential character of the dwelling if located in a residential zone or area;

4. In residential zones (including residential developments in the CMU zone), there shall be no advertising display or other indication of the bed and breakfast use on the premises other than a sign that is in compliance with the provisions of Chapter 17.41;

5. A minimum of one parking space per guest bedroom and resident bedroom shall be required. Screening may also be required;

6. The bed and breakfast facility shall comply with all Building Codes adopted by the city;

7. It shall be the responsibility of the applicant to demonstrate that any declarations, covenants, conditions or restrictions on the property allow for a bed and breakfast use; and

8. Where a bed and breakfast use is subject to Conditional Use Permit approval, any existing or proposed uses in addition to that of a dwelling unit (e.g. home occupation, accessory dwelling unit, etc.) are considered as part of the conditional use review.

B. Home Occupations. A Home Occupation is a commercial or business use within a dwelling unit by the residents thereof, which is incidental or secondary to the principle use of the dwelling for residential purposes. The purpose of this Section is to allow commercial ventures, which by the nature of the venture are appropriate in scale and intensity of use to be operated within a dwelling. Home occupations require a City of Fruita Business License and any other local, state or federal permits that may be required. Two types of home occupations are authorized by this Code: 1) Home Occupations meeting the standards of this Section, as provided below, are permitted outright; and 2) Home Occupations exceeding the criteria or standards of this Section may be permitted subject to approval of a Conditional Use Permit.

1. Outdoor Storage and Display:

   a. All materials, vehicles, inventory, products, equipment, fixtures, and activities associated with the home occupation (i.e., that exceed what is customary for a single-family residence) shall be fully enclosed in a structure that complies with applicable building and land use codes. The owner is responsible for verifying building code compliance when no Planning Clearance is required. Oversized vehicles or equipment on properties over two acres in size are exempt from this requirement but must meet the requirements of Section 17.07.060.K.4.

   b. On-site storage of hazardous materials (including toxic, explosive, noxious, combustible or flammable materials) beyond those normally incidental to residential use is prohibited.

2. Vehicles, Parking and Traffic:

   a. The home occupation site shall not be used as a dispatch for employees or vehicles to other locations beyond that which is customary for a residential use.

   b. There shall be no commercial vehicle deliveries to the home occupation during the hours of 9:00 p.m. to 7:00 a.m.

   c. There shall be no more than one (1) client or customer vehicle at any one time and no more than eight (8) per day at the home occupation site.

   d. The home occupation shall not adversely affect traffic flow and parking in the neighborhood.

3. Business Hours. There shall be no restriction on business hours, except that clients or customers are permitted at the home occupation from 7:00 a.m. to 9:00 p.m. only, Monday through Friday.

4. Prohibited Home Occupation Uses:

   a. There shall be no advertising display, signage, or other indication of the home occupation on the premises other than that which is allowed by the applicable zone for residential uses as provided for in the Sign Code in Chapter 17.41.

   b. Any activity that produces radio, TV, or other electronic interference, noise, glare, vibration, smoke, or odor beyond allowable levels as determined by local, state or federal standards, or that can be detected beyond the property line is prohibited.

   c. Any activity involving on-site retail sales, including garage sales exceeding the thresholds of a temporary use, is prohibited; except that the sale of items that are incidental to a permitted home occupation is allowed. For example, the sale of lesson books or sheet music from music teachers, art or craft supplies from arts or crafts instructors, computer software from computer consultants, produce or crafts produced on-site, and similar incidental items for sale by home business is allowed pursuant to this Section.

d. Any activity that may produce wastes not typically associated with residential use of the property.

e. The following uses are specifically excluded as permitted home occupations: sexually oriented businesses; car, truck or heavy equipment repair; medical, dental, tattoo, body piercing, or other similar personal service that creates biohazard wastes as a typical part of the service provided.

5. Enforcement. The Community Development Director or designee may visit and inspect the site of a home occupation in accordance with this chapter periodically to ensure compliance with all applicable regulations, during normal business hours, and with reasonable notice.

C. Accessory Dwelling Units. Accessory dwelling units are permitted on all lots containing a single family detached dwelling unit in: the Agricultural Residential (AR), Rural Estate (RE), Monument Preservation (MP), Large Lot Residential (LLR), and Rural Residential (RR) zones; on lots at least 7,000 square feet in size in the Downtown Mixed Use (DMU) and Community Mixed Use (CMU) zones; and in all other zones that allow single family residential detached dwelling units provided the lot area is at least twenty (20) percent larger than the required minimum for the zone.

Accessory dwelling units must be located on a lot that contains a principle single family dwelling unit and cannot exceed eight hundred and fifty (850) square feet of heated floor area, or fifty (50) percent of the size of the principle single family dwelling; whichever is larger. Accessory dwelling units can be attached or detached from the principal dwelling. Only one accessory dwelling unit is permitted per lot or parcel.

D. Accessory Buildings (Except Accessory Dwelling Units). An accessory building shall not protrude beyond the front plane of the principal building.

E. Design Standards And Specifications. The following standards and regulations are applicable to all projects requiring approval under the provisions of this Title:

1. Street, Road and Bridge Standards. The publication entitled "City of Fruita Design Criteria and Construction Specifications" (latest edition) shall apply to developments in all zones, except that standards and specifications published by the Colorado Department of Transportation shall apply to all State highways in all zones.

2. Drainage and Storm Water Management. The publications entitled, "Mesa County Storm Water Management Manual" (latest edition), "City of Fruita Design Criteria and Construction Specifications" (latest edition), and all building codes adopted pursuant to Title 15 of the Fruita Municipal Code shall apply to developments in all zones.

Each business, commercial, or industrial development is required to meet or exceed the standards of the City of Fruita, Colorado Department of Public Health and Environment and the U.S. Department of Environmental Protection Agency with regard to water pollution control, stormwater control, and storm water management. It

is the property owner's or applicant's responsibility, as applicable, to ensure compliance with state and federal regulations.

3. Wastewater. Industrial pretreatment may be required for industries with certain liquid wastes as defined by the City of Fruita, Colorado Department of Public Health and Environment, and the US Environmental Protection Agency. All businesses and industries shall meet or exceed the requirements of the Fruita Municipal Code.

4. Buildings and Structures. All buildings and structures in all zones shall comply with all building codes adopted pursuant to Title 15 of the Fruita Municipal Code.

5. Other Design Standards and Construction Specifications. All other development in all zones shall comply with the publication entitled "City of Fruita Design Criteria and Construction Specifications" (latest edition), and all building codes adopted by the city.

6. Conflicting Provisions. When conflicts exist between adopted codes and standards, or between adopted codes and standards and project-specific "approved for construction" drawings and specifications, the most restrictive provision shall apply. Where the City of Fruita has approved construction drawings for a project, unless superseded by state or federal law, the project-specific "approved for construction" drawings and specifications shall control, followed by written criteria, or specifications published by other entities. Where local City of Fruita documents are silent, the most stringent external standard or specification shall apply.

F. Exceptions to Lot Area and Dimensional Standards. Lot area and dimensions shall conform to the Schedule of Density and Dimensional Standards Table in Section 17.07.060 (I), except as amended by the design standards of Chapter 11 of this Title, PUD zoning as per Chapter 17 of this Title, and as follows:

1. Minimum frontage. All residential lots, including cul-de-sac lots where vehicle access is provided from the abutting street, shall have a minimum street frontage width of twenty-eight (28) feet excluding areas set aside for utility pedestal installations. Flag lots and or lots with shared driveways are permitted to have less than twenty-eight (28) feet of street frontage as determined through the subdivision review process and as per Section 43.050 of this Title.

2. Utility Facilities. Electric substations, telephone switching facilities, irrigation structures, and similar limited impact facilities shall be permitted to occupy a lot area smaller than that provided for in these regulations provided such facilities are properly screened and buffered from surrounding properties and the street.

G. Height Exceptions and Permitted Setback Encroachments.

1. Height limits do not apply to any: chimney; spire; bulkhead~~,~~; elevator; water collection, recirculation, or storage system; geothermal heating system; solar photovoltaic equipment; wind turbine; belfry; cupola; windmill; antenna; or any similar structure or necessary mechanical appurtenance not designed for occupancy extending above the roof line, provided such structure does not extend more than ten

(10) feet above the highest roof line and does not exceed more than ten (10) percent of the area of the roof where it projects more than four (4) feet above the highest roof plane. Light poles, flag poles, and similar structures not attached to a building are permitted to be no taller than the maximum height in the zone in which it is located.

2. Building setback encroachment of up to three (3) feet is permitted for chimneys, roof eaves, bay windows and similar features that do not contain inhabitable floor space, stairways not to exceed six (6) feet in height or raised decks not to exceed three (3) feet in height, provided that minimum clearance of three (3) feet is maintained between the structure encroachment and all property lines and provided adequate space is reserved to comply with storm water drainage requirements.

3. On properties that are used mainly for agricultural uses in the Agricultural Residential (AR) and Rural Estate (RE) zones any structures used mainly for agricultural purposes (e.g., silos and barns) are exempt from the height limits for structures.

H. Fences. The purpose of this Section is to ensure fences erected within the city do not impede traffic safety, do not conflict with applicable codes, and impose no deleterious effect on any neighborhood. A Planning Clearance shall be required before erecting, moving or altering a fence in the city. Fences shall conform to the following requirements:

1. No fence shall be erected in such location upon any lot or property in a manner constituting a traffic hazard because of obstruction of view. The City of Fruita Design Criteria and Construction Specifications Manual and the City of Fruita Land Use Code shall be used as the criteria for determining compliance. No fence shall be constructed to within four (4) feet of or prevent access to any fire hydrant, utility pedestal, vault, cabinet, or similar feature.

2. Fences shall be constructed of durable materials, which may include but are not limited to, wire (e.g., chain link), vinyl-coated wire, wrought iron, wood, extruded plastic (e.g., from fence manufacturer), and other materials similar in appearance and durability. Unacceptable materials that are visible to the public include: glass, tires, razor wire, barbed wire and/or concertina wire, junk, and any material that presents a public health or safety hazard.

   The prohibition on razor wire, barbed wire, concertina wire and similar wire fences does not apply to the Industrial (I) zone provided that there are no more than three (3) strands or one (1) coil of wire and the fence is located at least five (5) feet from the public right-of-way. The wires are not counted in the height calculation. Electric and barbed wire fencing is allowed in zones which allow large animals (such as horses, cows and sheep) only when properly installed and necessary to contain large animals, and the fence must be located no closer than ten (10) feet to the public right-of-way.

3. There shall be no fence or wall erected which exceeds six (6) feet in height as measured from the natural grade except as permitted in subsection 6 below. Where the city has approved construction of a retaining wall, the height of the retaining wall shall not be included in the height of the fence. An increase of up to two (2) inches is allowed when spacing for drainage under a fence is needed.

4. Except as allowed for corner lots (subsection 5 below), fences in the required front yard setback shall not exceed thirty-six (36) inches in height; however, such fences may be increased to forty-eight (48) inches maximum height if the fence material is at a ratio of not less than half open space to half closed space for every square foot for that part of the fence extending above thirty-six (36) inches in height. Examples of fence types that would typically comply include: chain link, picket, split rail, and similar fences.

5. On corner lots, solid fences up to six (6) feet in height within a front yard setback may be permitted on one street frontage provided the fence conforms to the required clear sight triangle.

6. Fences in excess of six (6) feet shall comply with applicable building codes and all required setbacks for primary buildings, as applicable. Fences in Industrial (I) zones may exceed six (6) feet as provided for in subsection 2 above.

7. Fences in zones which permit a zero building setback must meet design standard requirements of Chapter 11 of this Title.

8. A gated fence across a driveway must be designed so that the longest vehicle using the driveway can completely clear the traveled way of the public street when the gate is closed.

9. Where a fence is proposed in conjunction with a development or change in use, the location, height, materials, and detailing of the fence may be subject to other requirements or limitations to ensure consistency with the purposes of this Title.

10. All fences shall be properly maintained by the owner so as to not become a public nuisance or hazard.

11. For properties fronting on major arterial roadways as identified in the Fruita Master Plan, the front property line along the roadway is permitted to be fenced as long as the fencing does not encroach into the clear sight triangle.

12. Any appeal of the City Manager's decision on a fence permit shall be made to the City Council as provided in Section 17.05.060 of this Title.

I. <u>Landscaping Requirements.</u>

1. For single-family and duplex dwelling units with a front yard, at least one (1) tree in the front yard is required to be planted and maintained within six (6) months of issuance of a Certificate of Occupancy.

2. Except for development subject to Level One Design Standards of Chapter 11 of this Title, no less than ten (10) percent of a lot or parcel developed for multi-family or non-residential land uses must be landscaped. At least half of this landscape must be provided on the front half (street sides) of the development unless the front setback is permitted to be, and will be, fifteen (15) feet or less, in which case the required

landscaping may be located anywhere on the property provided all other requirements are met. Landscaping must include at least one (1) small tree for every five hundred (500) square feet, one (1) medium tree for every one thousand (1,000) square feet, or one (1) large tree for every 1,500 square feet of landscaped area along with two (2) shrubs for every tree and appropriate groundcover. Landscaping~~,~~ in addition to the minimum ten (10) percent may be required for parking lots containing more than fifteen (15) car parking spaces and/or for buffering and screening purposes as deemed necessary to comply with compatibility requirements of Section 17.07.080 and/or parking lot landscape requirements of Section 17.39.070.G of this Title.

3. For large industrial land uses with significant amounts of outdoor storage and/or operations, the outdoor storage/operation area(s) are not required to be used in the calculation of the minimum 10% landscaping required.

4. Landscape improvements must follow the landscaping requirements of the Appendix of the Fruita Land Use Code including quality, size, type, planting, and location considerations. Landscaping required to be installed to meet the minimum requirements of this Title (including conditions of approval on a land development application) must be maintained to continue to meet the minimum requirements of this Title.

5. The types of trees and other vegetation to be planted within public right-of-ways will be determined by the decision making body (Community Development Director or City Council) based on the requirements of the Appendix of the Land Use Code.

J. Non-Residential Uses in Community Mixed Use Zones. In addition to the requirements of Chapter 17.11, Design Standards, Non-Residential Uses in the CMU zone are regulated as follows:

1. Commercial uses that individually do not exceed a gross floor area of two thousand five hundred (2,500) square feet per commercial center are permitted;

1. Commercial uses that individually exceed a gross floor area of two thousand five hundred (2,500) square feet per use, and commercial centers that exceed a total of twenty-five thousand (25,000) square feet for all uses in the center, may be allowed subject to Conditional Use Permit approval. For the purpose of this Section, a "commercial center" is defined as the aggregate of all commercial uses located within six hundred (600) feet of one another, regardless of property ownership. Uses not under the same ownership, or separated from one another by a street, driveway, right-of-way, easement, open space or other feature, are still considered to be in the same center if located within six hundred (600) feet of one another;

3. A new commercial use shall not be permitted where it would be located within one-half (1/2) mile of an existing or city-approved commercial use that is also zoned CMU. This provision does not apply to commercial uses existing or proposed in the GC, DMU, or I zones.

4. Compliance with the Supplemental Zoning Regulations under Section 17.07.070 and Design Standards under Chapter 17.11 is required.

K. Storage of Vehicles and Similar Equipment on Residential or Agricultural Property.

1. For the purposes of this section, "vehicle" is defined as any automobile, truck, tractor, or other machinery of any kind, including every device in, on, or by which any person or property is or may be transported or drawn upon a public highway, road or street, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

2. Trailers, airplanes, boats, recreational vehicles, travel trailers, campers and similar items may be stored on property used mainly for residential purposes as long as the storage is at least ten (10) feet from public right-of-way, excluding alleys. Storage, as used in this subsection, means the location of the above-mentioned items for more than forty-eight (48) hours during any seven (7) day period.

3. It shall be unlawful to store or otherwise have, maintain or allow on a single parcel of land in the City of Fruita more than one (1) non-farm vehicle not having current Colorado license plates or registration unless the vehicle is in an approved junkyard or other similar use where such vehicle storage is permitted. Such vehicle must be stored within an enclosed building or stored behind the front plane of the house or other primary building on the property.

4. There shall be no limit on the number of active or serviceable agricultural vehicles on a parcel of land, regardless of whether such vehicles have current registration or license plates; however, the restrictions of one (1) vehicle per parcel of land shall apply to agricultural vehicles which are clearly abandoned or which are not in their present condition suitable for active agricultural use.

5. Work vehicles exceeding one-ton capacity, other heavy duty vehicles or heavy equipment not typically associated with a residential use shall not be stored on property under two acres in size and used or zoned primarily for residential purposes except for deliveries or for construction or maintenance work to be done at the site. The number of such oversized vehicles stored on the property is limited to two per lot and must be stored behind the front plane of the house and meet primary building setbacks. Storage, as used in this subsection, means the location of the above-mentioned items for more than forty-eight (48) hours during any seven (7) day period.

L. Temporary Uses. Temporary uses are characterized by their short term or seasonal nature and by the fact that permanent improvements are not made to the site. A land use that occurs on a specific property for more than 6 months in a calendar year is not permitted as a temporary use. Temporary uses include, but are not limited to: construction trailers, leasing offices, garage sales, temporary carnivals and fairs, parking lot or sidewalk sales, mobile food vendors, seasonal sales such as Christmas tree sales, produce stands, and similar uses. Special Events such as city-wide festivals or carnivals conducted on school sites are exempt from these provisions (but a Special Event Permit may be required). Temporary uses must comply with the criteria listed below. The city may require a temporary use to cease at any time~~,~~ if it is found to be in violation of any of these criteria.

1. The following criteria and standards apply to all temporary uses:

a. The applicant has the property owner's permission to place the use on the specified property.

b. Permanent changes to the site are prohibited.

c. The temporary use regulations do not exempt an applicant or operator from any other required permits; such as, health department permits.

d. The use does not interfere with travel on public ways (including pedestrian and vehicle travel), and does not interfere with access to another property.

e. Ingress and egress are safe and adequate when combined with the other uses of the property.

f. Temporary use sign(s) shall be permitted in compliance with the requirements of Chapter 41.

g. All businesses are required to have a current city business license.

h. A Temporary Use Permit is required for any use that exceeds three (3) consecutive days, occurs more than four times in a calendar year, or occupies more than 10,000 square feet of land. The Temporary Use Permit application will be required to address the following additional requirements at a minimum:

1) The proposed site is adequate in size, shape and location to accommodate the temporary use;

2) Adequate parking is available to accommodate the traffic expected to be generated by the temporary use;

3) The temporary use will not jeopardize, endanger or otherwise constitute a menace to the public health, safety, or general welfare;

4) Adequate sanitation facilities and solid waste collection facilities are provided as necessary; and

5) Adequate on-site security measures are provided as necessary.

2. Temporary Uses for a Period Greater Than Ninety (90) Days. For uses that occur for a period longer than ninety (90) days in a calendar year, all of the following criteria must be met. Uses occurring for longer periods of time are considered permanent uses and must follow all requirements regarding permanent uses.

a. The criteria for all temporary uses identified in subsection 1 above are met.

b. The proposed temporary use is permitted as an allowed use in the zone designated for the subject property according to the Land Use Table in Section 17.07.060 and does not violate any conditions of approval for the existing use of the subject

property. If the principal use of a property is classified as a Conditional Use by the zone, and a proposed temporary use is not designated as allowed outright in the zone or is not specified as a permitted use by the existing Conditional Use Permit, an amended Conditional Use Permit is required.

c. The use does not require use of more than ten (10) percent of the off-street parking needed to comply with the minimum parking requirement under Chapter 17.39 for an existing, permanent use of the property.

d. The use complies with the applicable setback requirements and other standards of the zone in which it is located.

e. The use does not create adverse off-site impacts, including vehicle traffic, noise, odors, vibrations, glare or lights, over and above the impacts that might be created by other uses permitted outright in the applicable zone.

f. The use is adequately served by public facilities or provides acceptable temporary/portable facilities, as approved by the city.

g. Conditions may be imposed regarding temporary utility connections, sanitary facilities, security and other requirements as necessary to protect public health, safety, or welfare.

3. Temporary Sales Office, Construction Office or Model House. A temporary sales office, temporary construction office or model house may be allowed in any zone based on compliance with the following criteria:

a. The temporary sales office, construction office, or model house shall be located within the boundaries of the subdivision or parcel of land in which the real property is to be sold and comply with applicable regulations;

b. The property to be used for a temporary sales office or construction office shall not be permanently improved for that purpose;

c. Conditions may be imposed regarding temporary utility connections, as necessary to protect public health, safety, or welfare; and

d. A temporary sales office, construction office, or model house may not be used as a dwelling unit. A model house may be used as a dwelling unit when the development in which it is located is permitted to obtain Planning Clearances for dwelling unit construction.

e. A temporary sales office, construction office or model house cannot be established before approval to begin site work has been obtained. A temporary sales office or a model house use must be removed within one week after the sale of the last unit in the development. A temporary construction office must be removed within one week of issuance of a Certificate of Occupancy or Certificate of Completion for the construction, or acceptance of the public improvements in a subdivision.

M. Wood Burning Stoves, Fireplaces, Gas Log Fireplaces and Pellet Stoves.

1. Purpose: Air pollution in the Fruita area has become an issue of concern and has been documented by the Mesa County Health Department and the Mesa County Air Quality Planning Committee. It has been found that a major contributor to the air pollution problem in the Grand Valley is the widespread use of wood stoves and fireplaces that do not have air pollution control devices.

2. Devices Prohibited: New dwellings and remodeled portions of existing structures shall not contain wood burning stoves, fireplaces, coal burning or similar heating devices not approved by the U.S. Environmental Protection Agency (EPA).

3. Devices Allowed: Only EPA approved natural gas fireplaces, EPA approved pellet stoves, and EPA approved wood burning stoves and fireplaces shall be allowed in new or remodeled structures.

N. Outdoor Storage, HVAC Equipment and Other Service Functions. Outdoor storage, HVAC equipment and other service functions must be incorporated into the overall design of the building and landscaping plan. Views of these areas shall be screened from visibility from abutting public rights-of-way and the ground floor of abutting residential land uses. These requirements do not apply to single family or duplex dwelling developments.

O. Waste Storage. Every use shall provide for enclosed solid waste storage, sorting, and recycling facilities, as applicable. Such facilities shall be oriented away from building entrances, setback at least ten (10) feet from any public right-of-way and screened from view of all public rights-of-way (with the exception of alleys) and abutting land uses by locating them inside buildings (as practical), or by placing them behind a sight obscuring fence, wall, landscaping, or combination thereof. The storage of oils, chemicals, wastewater and other liquid contaminants must be stored and contained in structures approved by the U.S. Environmental Protection Agency (EPA) and the Colorado Department of Public Health and Environment to prevent them from leaking.

P. Repair, Painting and Similar Uses. For non-residential land uses, all repair, painting, bodywork, and similar activities, including the storage of refuse and vehicle parts, must take place within an enclosed structure (surrounded by walls and a roof). Residential land uses must meet all other city requirements regarding such uses.

Q. Dust, Noise, Odor. Each business, commercial, or industrial development is required to meet or exceed the standards for dust, noise and odor, as adopted by the City of Fruita, Mesa County Health Department, state law, the Colorado Department of Public Health and Environment and the U.S. Environmental Protection Agency.

R. New Outdoor Lighting.

1. Street lighting shall be required for all new developments. All intersections shall be illuminated. If there is more than six hundred (600) feet between intersections, additional lighting shall be installed between intersections. Where a new street

intersects with an existing street that is not illuminated, the developer will be responsible for the cost of illuminating such intersection. The local electric service provider and the City of Fruita must approve street lighting plans.

2. The following regulations shall apply to all new outdoor lighting on private land:

   a. All fixtures shall be fully shielded. For purposes of this subsection, fully shielded shall mean fixtures constructed so that light rays emitted are projected below, and not above, the horizontal plane of the fixture.

   b. Lighting shall be downcast and so placed as to prevent the light rays or illumination from being cast beyond property lines.

   c. The maximum height of pole lights shall not exceed thirty-five (35) feet in height. The maximum height of lights attached to a building shall not exceed twenty (20) feet in height. Lights required by other government agencies for safety purposes, such as Federal Aviation Administration requirements for lights on certain tall structures, are exempt from these standards.

   d. Total outdoor light output shall not exceed the limits set in the table below. Lighting District 1 refers to urban and downtown areas, and commercial and industrial activity centers. Lighting District 2 refers to residential areas, and commercial and industrial activity primarily surrounded by residential land uses. Lighting District 3 refers to rural and agricultural areas, and small commercial or industrial activities primarily surrounded by rural or agricultural areas.

Maximum Total Lumen Output Standards			
	LD1	LD2	LD3
Commercial and Industrial Zoning (per acre)	300,000	200,000	100,000
Residential Zoning (per lot)	30,000	20,000	10,000

   e. Gas fired fixtures and lights used for holiday decorations are exempt from the requirements of this subsection.

S. Irrigation water. Irrigation water must be provided to new developments when landscaping is required and must be used for required landscape areas where irrigation water is legally and physically available. A minimum of one and one half (1 ½) to two (2) shares of irrigation water per irrigated acre is required to be provided. See the City of Fruita Design Criteria and Construction Specifications Manual for more information.

T. Medical Marijuana. Definitions of terms specifically related to Medical Marijuana are contained in Chapter 5.15 of the Fruita Municipal Code.

1. Cultivation of Medical Marijuana by Patients and Primary Caregivers in Residential Dwelling Units. The cultivation, production, or possession of marijuana plants for medical use by a patient or primary caregiver, as such terms are defined by Article XVIII, Section 14 of the Colorado Constitution, shall be allowed in residential dwelling units subject to the following conditions:

a. The cultivation, production or possession of marijuana plants shall be in full compliance with all applicable provisions of Article XVIII, Section 14 of the Colorado Constitution, the Colorado Medical Marijuana Code, Sections 12-43.3-101, *et. seq.*, C.R.S., and the Medical Marijuana Program, Section 25-1.5-106, C.R.S.

b. Marijuana plants that are cultivated, produced or possessed shall not exceed the presumptive limits of no more than four (4) ounces of a useable form of marijuana unless otherwise permitted under Article XVIII, Section 14 of the Colorado Constitution and no more than twelve (12) marijuana plants, with six (6) or fewer being mature, flowering plants that are producing a useable form of marijuana shall be cultivated or permitted within a primary residence by a patient or a primary caregiver.

c. Cultivation of medical marijuana in a residential unit that is not a primary residence is not permitted.

d. For the purposes of this subsection, the term "primary residence" means the place that a person, by custom and practice, makes his or her principal domicile and address to which the person intends to return, following any temporary absence, such as a vacation. Residence is evidenced by actual daily physical presence, use and occupancy of the primary residence and the use of the residential address for domestic purposes, such as, but not limited to, slumber, preparation of and partaking in meals, vehicle and voter registration, or credit, water and utility billing. A person may only have one (1) primary residence. A primary residence shall not include accessory buildings.

e. Such cultivation, production or possession of marijuana plants shall be limited to the following space limitations within a residential unit:

i. Within a single family dwelling unit (Group R-3 as defined by the International Building Code, as adopted in Chapter 15.04 of the Fruita Municipal Code) a secure defined, contiguous area not exceeding 150 square feet within the residence of the patient or primary caregiver.

ii. Within a multi-family dwelling unit (Group R-2 as defined by the International Building Code, as adopted in Chapter 15.04 of the Fruita Municipal Code) a secure, defined, contiguous area not exceeding 100 square feet within the residence of the patient or primary caregiver.

f. For the purpose of this subsection, a "secure" area means an area within the primary residence accessible only to the patient or primary caregiver. Secure premises shall be locked or partitioned off to prevent access by children, visitors, or anyone not licensed and authorized to possess medical marijuana.

g. Marijuana plants shall not be grown in the common area of a multi-family residential structure.

h. If a patient or primary caregiver elects to cultivate quantities of marijuana in excess of the amounts permitted under subsection (b.) above, as permitted in Article XVIII, Section 14(4)(b) of the Colorado Constitution, such patient must be in full compliance with the Colorado Medical Marijuana Program as provided in Section 25-1.5-106(10), C.R.S. and may grow medical marijuana for personal use as a patient or as a primary caregiver for patients as a conditional use within non-residential units or structures in the General Commercial (GC), and the Industrial (I) zones only. See subsection (2) below.

i. The cultivation of medical marijuana plants in a primary residence shall meet the requirements of all adopted city building, electrical, mechanical and safety codes. Any patient or primary caregiver cultivating medical marijuana in a primary residence shall have an initial building and safety inspection conducted by the city, shall comply with any conditions of said inspection, and shall submit to an annual building and safety code inspection thereafter.

j. The cultivation of medical marijuana plants shall not be permitted on the exterior portions of a residential dwelling unit. The cultivation, production or possession of marijuana plants in a residential unit must not be perceptible from the exterior of the residential dwelling unit and shall comply with the following:

i. Any form of signage shall be prohibited; unusual odors, smells, fragrances or other olfactory stimulants shall be prohibited; light pollution, glare, or brightness resulting from grow lamps that disturbs adjacent residents shall be prohibited; and excessive noise from ventilation fans shall be prohibited.

ii. Marijuana plants shall be used or consumed exclusively by a patient for the patient's personal use and solely to address a debilitating medical condition.

k. Any primary caregiver cultivating medical marijuana for patients and providing said marijuana to patients for consideration such as a monetary sum shall obtain a business license from the city pursuant to Chapter 5.04 of the Fruita Municipal Code. Any primary caregiver transferring medical marijuana to a patient for consideration shall also obtain a sales tax license and shall comply with the requirements of Chapter 3.12 of the Fruita Municipal Code concerning collection and payment of municipal sales tax. Any patient obtaining medical marijuana from a primary caregiver for consideration shall pay a medical marijuana excise tax in accordance with Chapter 3.19 of the Fruita Municipal Code which shall be collected by the primary caregiver and remitted to the city.

2. Cultivation of Medical Marijuana by Patients and Primary Caregivers in Non-Residential Zones. The cultivation, production, or possession of marijuana plants for medical use by a patient or primary caregiver, as such terms are defined by Article XVIII, Section 14 of the Colorado Constitution, may be allowed as a conditional use in non-residential buildings in the General Commercial (GC), and the Industrial (I) zones only subject to the following conditions:

   a. The cultivation, production or possession of marijuana plants shall be in full compliance with all applicable provisions of Article XVIII, Section 14 of the Colorado Constitution, the Colorado Medical Marijuana Code, Sections 12-43.3-101, *et. seq.*, C.R.S., and the Medical Marijuana Program, Section 25-1.5-106, C.R.S.

   b. Marijuana plants that are cultivated, produced or possessed shall not exceed the presumptive limits of no more than two (2) ounces of a useable form of marijuana per patient and no more than six (6) marijuana plants, with three (3) or fewer being mature, flowering plants that are producing a useable form of marijuana per patient, unless otherwise permitted under Article XVIII, Section 14 of the Colorado Constitution, shall be cultivated. A caregiver may cultivate medical marijuana for no more than five (5) licensed patients. Two (2) or more primary caregivers shall not join together for the purpose of cultivating medical marijuana within any non-residential unit located in the General Commercial (GC) and the Industrial (I) zones.

   c. Marijuana plants shall not be grown in the common area of any commercial or industrial building.

   d. The cultivation of medical marijuana plants in any building shall meet the requirements of all adopted city building, electrical, mechanical and safety codes. Any patient or primary caregiver cultivating medical marijuana shall have an initial building and safety inspection conducted by the city, shall comply with any conditions of said inspection, and shall submit to an annual building and safety code inspection thereafter.

   e. The cultivation of medical marijuana plants shall not be permitted on exterior portions of a building. The cultivation, production or possession of marijuana plants within a building or unit must not be perceptible from the exterior of the building or unit.

   f. Any form of signage, except for identification signs and courtesy signs, shall be prohibited; unusual odors, smells, fragrances or other olfactory stimulants shall be prohibited; light pollution, glare or brightness resulting from grow lamps that disturbs adjacent property shall be prohibited; and excessive noise from ventilation fans shall be prohibited.

   g. Any primary caregiver cultivating medical marijuana for patients and providing said marijuana to patients for consideration such as a monetary sum shall obtain a business license from the city pursuant to Chapter 5.04

of the Fruita Municipal Code. Any primary caregiver transferring medical marijuana to a patient for consideration shall also obtain a sales tax license and shall comply with the requirements of Chapter 3.12 of the Fruita Municipal Code concerning the collection and payment of municipal sales taxes. Any patient obtaining medical marijuana from a primary caregiver for consideration shall pay a medical marijuana excise tax in accordance with Chapter 3.19 of the Fruita Municipal Code which shall be collected by the primary caregiver and remitted to the city.

2. Medical Marijuana Businesses. The cultivation, production or possession of marijuana plants by a medical marijuana center and a medical marijuana optional premises cultivation operation is prohibited. In the event that the voter approved ban on medical marijuana businesses as set forth in Section 5.15.025 of this Code is overturned or declared unconstitutional by legislative action, future voter approval or by applicable court rulings, the city desires to keep in place legislation regarding the regulation and licensing of said medical marijuana businesses. To that end, the following provisions are applicable in the event said ban is overturned.

The cultivation, production or possession of marijuana plants by a medical marijuana center and a medical marijuana optional premises cultivation operation may be allowed as a conditional use in non-residential buildings in the General Commercial (GC), and the Industrial (I) zones only subject to the requirements contained in Chapter 5.15 of the Fruita Municipal Code and the following provisions;

a. If the City of Fruita's population is less than 20,000 persons, only one (1) medical marijuana center and one (1) optional premises cultivation operation related to a medical marijuana center shall be approved as a conditional use. If the city's population is between 20,000 persons and 30,000 persons, the City of Fruita may grant two (2) conditional use permits for medical marijuana centers and two (2) conditional use permits for optional premises cultivation operations related to medical marijuana centers. Populations shall be determined by the most recent data available from the U.S. Census Bureau and the State of Colorado Demography office. In the event more than one (1) application for a conditional use permit for a medical marijuana business of the same classification are submitted to the city within a period of thirty (30) days, the applications comply with all the requirements of the Fruita Land Use Code, Chapter 5.15 of the Fruita Municipal Code and the Colorado Medical Marijuana Code, but the city is not permitted to approve all of the applications because of the limitations set forth in this subsection, the city shall approve the application that the City Council finds and determines will best promote the intent and purposes of the Fruita Land Use Code, Chapter 5.15 of the Fruita Municipal Code and the Colorado Medical Marijuana Code.

b. The city shall not receive or act upon an application for a conditional use permit if the building in which the medical marijuana business is to be located is within one thousand feet (1,000') of the following:

i. A State licensed public or primary preschool or a State licensed public or private elementary school, middle, junior high or high school;

ii. A State licensed residential child care facility;

iii. An alcohol or drug treatment facility; or

iv. A principal campus of a college, university, or seminary.

The distance shall be computed by direct measurement from the nearest property line of the land used for the above uses to the nearest portion of the building in which the medical marijuana business is to be located.

c. The city shall not receive or act upon an application for the issuance of a conditional use permit if the building in which the medical marijuana business is to be located is within five hundred feet (500') of the following:

i. Any residential land use;

ii. Any public park or other publicly owned or maintained building open for use by the general public; or

iii. Any religious institution or place of worship.

The distance shall be computed by direct measurement from the nearest property line of the land used for the above uses to the nearest portion of the building in which the medical marijuana business is to be located.

d. The city shall not receive or act upon an application for the issuance of a conditional use permit if the application concerns a particular location that is the same as or within one thousand feet (1,000') of a location for which, within the two (2) years immediately preceding the date of the application, the city denied an application for a special use permit for a medical marijuana business due the nature of the use or other concerns related to the specific location.

e. Marijuana plants, products, accessories, and associated paraphernalia contained in a medical marijuana business shall not be visible to members of the public from a public sidewalk, public street or right-of-way, any other public place, or any portions of the building in which the medical marijuana business is located not restricted to access by patients and employees only.

f. All signage related to a medical marijuana Business shall meet the standards established in the Fruita Land Use Code. In addition, signs shall be restricted to a total of sixteen square feet, including all temporary signs. No signs associated with a medical marijuana business shall use the words "marijuana", "cannabis", or other any word or phrase commonly understood to refer to marijuana unless such word or phrase is immediately preceded by the word "medical" or the message of such sign includes the words "for medical use" or "for medicinal purposes" in letters that are no smaller than the largest letter on the sign. No depiction of marijuana plants or leaves shall appear on any exterior sign of a medical marijuana business.

g. Parking requirements for a medical marijuana center shall be based on parking requirements for high volume retail sales.

h. The medical marijuana business shall be operated in a manner that does not cause any substantial harm to the public health, safety and welfare.

i. Any conditional use permit granted for a medical marijuana business confers only a limited and conditional privilege subject to the requirements, conditions and limitations of Chapter 5.15 of the Fruita Municipal Code and State law. Any license granted for a medical marijuana business pursuant to Chapter 5.15 may be further regulated, limited or completely extinguished at the discretion of the City Council or the electors of the city, without any compensation to the licensee.

j. A conditional use permit for a medical marijuana business may be subject to conditions that are reasonably necessary to protect the public health, safety or welfare, including but not limited to the following:

i. Limits and requirements on parking and traffic flows;

ii. Limits on noise inside the medical marijuana business or on adjacent grounds;

iii. Prohibitions on certain conduct in the medical marijuana business;

iv. A limitation on the square footage that can be utilized by the medical marijuana business; and

v. Any other conditions reasonably necessary to protect the public health, safety and welfare and fulfill the intent and purposes of the Fruita Land Use Code and Chapter 5.15 of the Fruita Municipal Code."

(Ord. 2016-04, S1, Ord. 2016-06)

17.07.080 LAND USE COMPATIBILITY CRITERIA.

The purpose of this Section is to provide a fair and consistent manner in which to consider compatibility within the overall context of the Fruita Master Plan, existing adjacent land uses, applicable zoning district requirements, and other city codes and regulations. Nothing in this Section shall prevent the City of Fruita from denying a land use application based on relevant Code requirements or taking enforcement action against a property owner where a nuisance or other Code violation occurs.

For all land uses, "compatibility" is provided when a proposed land use can coexist with other existing uses in the vicinity without one use having a disproportionate or severe impact on the other use(s). The city decision-making body may consider other uses existing and approved, and may consider all potential impacts relative to what customarily occurs in the applicable zone and those which are foreseeable, given the range of land uses allowed in the zone. The review authority may require conditions of approval to promote compatibility between uses.

(Ord. 2016-04, S1)

17.07. 090 LEGAL NON-CONFORMING USES, STRUCTURES, AND LOTS. Any use, structure, or lot in existence and lawful at the time of adoption of this Title or any subsequent amendment hereto, which is not in conformance with the provisions of this Title or amendment, shall be considered a legal non-conforming use, structure, or lot and may continue in existence pursuant to the following:

A. A legal non-conforming use may be extended throughout the same building, provided no structural alteration of such building is made for the purpose of such extension. A legal non-conforming use of property not contained within a building shall not be expanded.

B. A legal non-conforming use shall not be changed to any other use except a conforming use.

C. Whenever a legal non-conforming use of land, structure, sign, or a building has been discontinued for a continuous period of one (1) year, future use of the land, structure, sign, or building shall be in conformance with all applicable city regulations.

D. A structure, building or sign which does not meet the setback, height, size, or other site requirements of this Chapter may be repaired, maintained, or extended, provided any such repair, maintenance, or extension is in full compliance with all applicable city regulations.

E. A non-conforming structure, building or sign which has been damaged to an extent not exceeding fifty (50) percent of its assumed market value on the day before the damage occurred may be restored in conformance with the city's building codes, provided such work is commenced within one (1) year of the date of damage. If the structure, sign, or building is damaged to the extent of more than fifty (50) percent of assumed market value, the non-conforming structure, building, or sign must be discontinued. Assumed market value for a building shall be determined by multiplying the most recent assessed value of the damaged building by four (4). This section shall not apply to single-family dwellings. Legal non-conforming single-family dwellings may be rebuilt in compliance with the current building codes.

F. An individual lot which was legally created but does not meet the minimum lot area or other dimensional requirement for the zone in which it is located shall be considered a legal non-conforming lot. Such legal non-conforming lot may be used provided all zoning and other applicable city regulations, including but not limited to setbacks, are met.

G. Mobile and manufactured homes shall be subject to the provisions of this Code on the date they are removed from their pad or foundation; however, if a mobile or manufactured home was legally established as a single-family residential dwelling unit, the mobile or manufactured home can be replaced on the same site even if single-family residential land uses are not permitted, nor does the replacement require a Conditional Use Permit, but all other standards apply.

H. Non-conformities should be brought into compliance with all city regulations before annexation and those non-conformities that are to be permitted to continue as legal non-conformities must be identified in the Ordinance annexing the property.

I. A use that was legally established without a Conditional Use Permit shall not be deemed non-conforming solely because a Conditional Use Permit is now required for the use. Any expansion or other significant changes to the land use which requires the Conditional Use Permit will require approval of a new Conditional Use Permit before the expansion or other significant change.

Chapter 17.08

DENSITY BONUSES

Sections:

17.08.010 Purpose
17.08.020 Applicability
17.08.030 General Provisions
17.08.040 Density Bonus Matrix
17.08.050 Density Bonus Criteria

17.08.010 PURPOSE. The purpose of Chapter 17.08 is to help implement portions of the Fruita Community Plan by providing for residential density bonuses in designated zones tied to the provision of community amenities. This Chapter is intended to promote compatibility between land uses, as well as predictability and fairness in the approvals process, consistent with the Fruita Community Plan. (Ord. 2009-02)

17.08.020 APPLICABILITY. The provisions of Chapter 17.08 apply only when an applicant has requested a density bonus and only where the zone in which a project is located specifically authorizes residential densities exceeding the base density of the zone. Density bonuses granted under Chapter 17.08 may be combined with density transfers granted under Chapter 17.09, subject to the limitations of Chapter 17.09 (maximum transfer of one (1) dwelling unit per gross acre). (Ord. 2009-02)

17.08.030 GENERAL PROVISIONS.

A. Density bonus requests shall be submitted on forms provided by the Community Development Director and shall be accompanied by plans, exhibits, narrative, and other information as required by the Community Development Director, to sufficiently demonstrate compliance with the provisions of this Chapter.

B. Density bonus applications shall be processed at the same time and using the same procedure as required for a Major Subdivision, Planned Unit Development, or Site Design Review, as applicable.

C. Projects utilizing the provisions of this Chapter are not necessarily required to be processed as a Planned Unit Development; nor are they required to obtain development rights under Chapter 17.09 Transfer of Development Rights/Credits, except as provided in Section 17.08.040.

D. The city decision-making body may preliminarily approve a density bonus, with final approval contingent upon the owner and city executing an Annexation Agreement, Subdivision or Development Improvement Agreement, PUD Guide, and/or other binding agreement as necessary to ensure compliance with this Title and other city requirements.

E. Except as provided under Subsection D (preliminary approval) above, a density bonus approval shall be binding on the subject property and shall run with the land.

F. The city's decision-making body may approve, deny, or approve with conditions, density bonus applications filed in accordance with Chapter 17.08.

(Ord. 2009-02)

17.08.040 DENSITY BONUS MATRIX. The city's decision-making body is authorized to grant density bonuses in accordance with the following point system. All densities are dwelling units per gross area, as defined in Chapter 17.03. The criteria for awarding density bonus points are provided in Section 17.08.050. No fractions of points are awarded.

Density Bonus Points Achieved*				
	RE	**RR**	**SFR**	**CMU**
None	1.0 DU/3.0 acres	1.0 DU/acre	2.0 DU/acre	2.0 DU/acre
6-12	1.0 DU/2.0 acres	2.0 DU/acre	3.0 DU/acre	3.0 DU/acre
13-25	Not applicable	Not applicable	Not applicable	4.0 DU/acre
26-38	Not applicable	Not applicable	Not applicable	5.0 DU/acre

*The first six (6) density bonus points for projects in the SFR and CMU zones must be achieved for Housing Variety, pursuant to Section 17.08.050A. (Ord. 2009-02)

17.08.050 DENSITY BONUS CRITERIA. Density bonus points are awarded based on an application's compliance with the approval criteria contained in the following table and text. The City Council may grant density bonuses in accordance with the following point system. A provision by an applicant for a density bonus point in one category cannot be used again for additional points in another category.

Table 17.08.050 **Distribution of and Criteria for Density Bonus Points**	
Categories **(58 Points Possible)**	**Criteria** Summary only. See text following table for code criteria.
A. Housing Variety (18 points possible)	Housing variety required with flexibility for small projects. Lot size – points for projects with range of lot sizes, including large lots. Housing choices – points for projects with "small housing types" that contribute to housing choice; points based on percentage (%) of "small" housing units (may be attached or detached units). Affordable housing – points for projects with deed-restricted affordable housing units.
B. Context Sensitivity (8 points possible)	Compliance with District Design standards required – no points (Chapter 17.11) Transition lot sizes to blend with abutting residential lots "feathering" – points for projects address lot-to-lot relationship. Transition building heights to blend with abutting residential structures – points for projects that address building-to-building relationship. Orient multifamily, attached single family and detached single family dwelling units to open space – points for multifamily attached single family and/or detached single family dwelling units with open space frontage Integrate shade features into design of buildings, parks, trails and open space areas – points based on quality of shade amenities. Incorporate mature trees and/or large rock outcroppings, as applicable, into site design – points based on quality of design. Incorporate historic or cultural resources into project – e.g., points for preserving historic farm structures and providing interpretative site. Utilize xeriscaping to conserve water and improve habitat. Fencing that avoids the 'fence canyon' affect along major roadways Recreational Vehicle Parking providing for multifamily, attached single family and/or small lot (<6,000 square feet) detached dwelling units to help avoid parking problems in higher density areas.

Table 17.08.050 **Distribution of and Criteria for Density Bonus Points**	
Categories **(58 Points Possible)**	**Criteria** Summary only. See text following table for code criteria.
C. Open Space (9 points possible)	Compliance with minimum open space requirements – no points Provide more than the minimum open space requirement – points based on percentage (%) of open space.* Proximity of dwellings to open space – points based on percentage (%) of dwelling units in close proximity to open space. Provide recreation amenities appropriate to the site – points based on quality of recreation amenity and potential for public enjoyment of it. ***Note:** Density bonus is not in addition to impact fee credit. Public improvements and dedications that exceed impact fee requirements may receive a combination of density bonus points and impact fee credit, to be determined by the city decision-making body.
D. Multi-Modal Transportation (11 points possible)	Compliance with Subdivision standards and Design standards required – street connectivity and pedestrian ways required (no points) Complete streets required – sidewalks, park strips with street trees, bicycle lanes required on all major collector and arterial streets (no points). Points awarded for park strips with street trees on local and minor collector residential streets. Extending sidewalks "off-site" where gaps exist – points based on "extra" improvement beyond that which would be provided under standard code requirements. Traffic-calming features – to include intersection curb extensions, roundabouts, or other traffic control devices; points based on "extra" improvement beyond that which would be provided under standard code requirements. Pedestrian shelters with benches (rest area) on trails or at bus stop – points based on number and quality of rest areas.

Table 17.08.050 **Distribution of and Criteria for Density Bonus Points**	
Categories **(58 Points Possible)**	**Criteria** Summary only. See text following table for code criteria.
E. Location and Linkages (2 points possible)	Flood fringe avoidance – a point for development that does not develop the flood fringe. Agricultural land conservation – a point for the purchase of development rights/credits School proximity – a point for projects that place dwellings in close proximity to an existing or planned public school. Habitat or wetlands conservations/restoration – a point for projects that conserve and/or restore wetlands or other habitat for native plant or animal species.
F. Schools (2 points possible)	School land dedication or school facility improvements that directly benefit the school attendance area in which the project is located. Density bonus is not in addition to impact fee credit. Public improvements or dedications that exceed impact fee requirement may receive a combination of density bonus points and impact fee credit, to be determined by the city decision-making body.
G. Neighborhood Commercial Center (2 points possible)	Neighborhood commercial centers – must be part of an "integrated" mixed-use community, subject to the applicable Special use standards under Section 17.07.070 and the Design Standards under Chapter 17.11. Development agreement required where the applicant requests a density bonus based on future provision of neighborhood commercial uses (i.e., reservation of land for future development). Contingency – If the proposed neighborhood commercial center site does not develop with commercial uses, future site development may be limited to two (2) units per gross acre.

Table 17.08.050 **Distribution of and Criteria for Density Bonus Points**	
Categories **(58 Points Possible)**	**Criteria** Summary only. See text following table for code criteria.
H. Green Construction & Technology (4 points possible)	Construction activity pollution prevention – erosion and sediment control plan required. Green Technology*: • Certified Green Building • Energy efficiency in buildings • Reduced water use • Reuse of Historic Buildings. See "Context Sensitivity" category • Minimize site disturbance through site design • Minimize site disturbance during construction • Storm water management • Heat island reduction • Solar orientation – See "Context Sensitivity" category • On-site energy generation or use of renewable energy • District heating and cooling • Infrastructure energy efficiency • Wastewater management • Recycled content in infrastructure • Construction waste management • Light pollution reduction *The above options are based on the Green Construction & Technology component of the Leadership Through Energy and Environmental Design Neighborhood Development (LEED-ND) rating system. See code criteria that follow for details and options.

Table 17.08.050 **Distribution of and Criteria for Density Bonus Points**	
Categories **(58 Points Possible)**	**Criteria** Summary only. See text following table for code criteria.
I. Innovation in Design (2 points possible)	At the City Council's discretion, point(s) for other innovative design solutions that are not included in items A-H, above, may be awarded, consistent with the Fruita Community Plan.

A. Housing Variety (18 points possible)

1. Lot size/land area variety – Choose one of the following options:

Criteria	Bonus Points
a) At least ten (10) percent of lots or land area per unit in the project are at least twenty (20) percent larger than the project's median lot or land area per unit size.	3
b) At least twenty (20) percent of lots or land area per unit in the project are at least twenty (20) percent larger than the project's median lot or land area per unit size.	6
c) At least thirty (30) percent of lots or land area per unit in the project are at least twenty (20) percent larger than the project's median lot or land area per unit size.	9

Percentages are rounded down to closest whole ten (10) percent; no partial points.

2. Housing choices – Choose one of the following options:

Criteria	Bonus Points
a) At least ten (10) percent of the dwelling units in the project consist of "small housing types".	3
b) At least twenty (20) percent of the dwelling units in the project consist of "small housing types".	6
c) At least thirty (30) percent of the dwelling units in the project consist of "small housing types".	9

Small housing types are dwelling units (including apartment units) that individually contain less than 1,750 square feet of floor area, including garages or covered parking areas. Percentages are rounded down to closest whole ten (10) percent; no partial points.

3. Affordable housing – Choose one of the following options:

Criteria	Bonus Points
a) At least fifteen (15) percent of the dwelling units in the project reserved for qualifying buyers or renters with incomes at or below the Mesa County area median income.	6
b) At least ten (10) percent of the dwelling units in the project reserved for qualifying buyers or renters with incomes at or below eighty (80) percent of Mesa County area median income.	6
c) At least five (5) percent of the dwelling units in the project reserved for qualifying buyers or renters with incomes at or below sixty (60) percent of Mesa County area median income.	6

Income levels determined based on household size and other factors, in accordance with the most current Mesa County Housing Authority or U.S. Department of Housing and Urban Development criteria. Housing must be deed-restricted to provide for the requisite affordability. Percentages are rounded down to closest whole ten (10) percent; no partial points. Development Agreement required.

B. Context-Sensitivity (8 points possible)

1. Compliance with Design Standards required – no points for compliance with Chapter 17.11.

2. Transition lot sizes to blend with abutting residential lots ("feathering"). Two (2) points may be awarded for maintaining lot sizes for all lots on the perimeter of the project that are not less than eighty (80) percent of the size of abutting lots in an existing platted subdivision. The feathering provision does not apply where the abutting lots or parcels that can reasonably be subdivided in the future; nor does it apply where the lands are separated by more than one hundred (100) feet by a street right-of-way, open space, or similar feature.

3. Transition building heights to blend with abutting residential structures. Two (2) points may be awarded for stepping-down building heights on the perimeter of the project. This criterion applies to new dwellings placed within forty (40) feet of existing single-family dwellings, and is met when no portion of the new dwelling(s) exceeds the height of the existing dwelling(s) by more than eight (8) feet.

4. Orient multifamily, attached single family and/or small lot (<6,000 square feet) detached dwelling units to open space. One (1) point may be awarded if no less than fifty (50) percent of the perimeter of the required open space area(s) within a subdivision has multifamily, attached single family or small lot detached single-family dwelling

Example of townhomes oriented to open space

units placed adjacent to it. Two points may be awarded if no less than seventy-five (75) percent of the open space meets this requirement. For purposes of this subsection, "adjacent" means fronting onto or directly across a street or alley from the subject open space area. Where dwellings front onto an open space, each dwelling unit must have an individual entrance or an unenclosed porch that overlooks the open space.

5. Integrate shade features into design. One or two (1-2) points may be awarded for incorporating shade features. For example, outdoor seating areas for incorporating shade features. For example, outdoor seating areas adjacent to civic buildings and trails, and within parks and other open space areas should contain canopies, pergolas, or other features as appropriate. Shade features must provide shade on not less than ten (10) percent of the development's total open space area excluding public street right-of-ways and parking areas; shade trees may be counted toward up to seventy-five (75) percent of the required shade coverage area. For purposes of this section, 12:00 noon on the summer solstice date shall be used for determining shade coverage. For newly planted trees, shade canopies shall be based on typical growth habit within five (5) years of planting. The number of points awarded is based on the quality of the shade feature(s) and the context in which it is provided: one (1) point possible for shade features on private open space and two (2) points possible for public open space shade features.

6. Incorporate mature trees and/or large rock outcroppings. One or two (1-2) points may be awarded for incorporating mature trees or unique rock outcroppings into the site design. The number of points awarded is based on the quality of the natural feature(s) and the context in which it is provided: one (1) point possible for preserving trees/rock outcroppings on private open space and two (2) points possible for public open space.

7. Historic or cultural resources. One or two (1-2) points may be awarded for incorporating historically or culturally significant resources into the site design. The number of points awarded is based on the quality of the resource and the context in which it is provided: two (2) points possible for preserving resources that are listed or are eligible to be listed on a local, state, or national register of historic landmarks; one (1) point possible for other resources, as deemed appropriate by the city decision-making body.

8. Xeriscaping. One (1) point may be awarded for landscape plans that utilize drought-tolerant (xeriscape) plant and ground cover materials to conserve water and improve native habitat. One (1) point possible where the landscape plans rely exclusively on plants that are indigenous to the high desert area of Western Colorado. (See also, Water Efficiency and Storm Water Management under subsection H.)

9. Fencing. One (1) point may be awarded for prohibiting fencing over four (4) feet tall adjacent to collector and arterial roadways, including properties separated from the collector and arterial streets by a landscaped out lot not less than ten (10) feet in width.

10. Recreational Vehicle Parking. One (1) point may be awarded for providing a separate space for recreational vehicle parking in subdivisions incorporating multifamily, attached single family and/or small lot (<6,000 square feet) detached dwelling units. A separate parking area at least ten (10) feet wide by thirty (30) feet long must be provided for every two (2) dwelling units of this type in the subdivision.

C. Open Space (9 points possible)

1. Compliance with minimum requirements. All projects must comply with the minimum requirements of Chapter 17.19 Public Dedications and Impact Fees, and Chapter 17.29 Parks, Open Space and Trails. No points.

2. Exceed minimum requirements. Up to nine (9) points may be awarded to projects that reserve and improve open space/parkland. Points may be awarded cumulatively under one or more of the following options:

OPEN SPACE	
Criteria	**Bonus Points**
a) Project exceeds minimum park/open space dedication and improvement requirements of Chapter 17.19 and Chapter 17.29. One (1) point for every ten (10) percent above minimum requirement, up to thirty (30) percent or three (3) points.*	1-3
b) At least one park at least two (2) acres in size is located within one-quarter (1/4) mile of all residents of a proposed subdivision; measured as shortest distance following existing and planned public streets and trails.	1
c) Project contains trail improvements, as required, under Chapter 17.29. No points for providing trail.	
d) One (1) point possible when trail is provided to connect to an existing or city planned trail or park and project exceeds minimum park/open space requirements under Chapter 17.29. Up to two (2) additional points possible for extending trail off-site and connecting it to an adjacent public street, trail, or park: one (1) point for each one hundred fifty (150) feet the trail is extended. Distances are rounded down to closest 100-foot increment; no partial points.*	1-3
e) Buffering between proposed development and any environmental resource (e.g., washes, wetlands, or similar resources) exceeds by at least thirty-five (35) feet the minimum buffers identified by the Fruita Community Plan and in Chapter 29 of this Title.	1

OPEN SPACE	
Criteria	**Bonus Points**
f) Project contains private recreation amenity in addition to required public open space/park areas. One (1) point for improving at least two (2) percent of the total site with private recreation amenities. May be unenclosed, as in a plaza, shared courtyard, community garden, or rooftop garden; or enclosed, as in a swimming pool, clubhouse, or community greenhouse.	1

*Percentages and distances are rounded down to closest ten (10) percent (a) or two (2) percent (f) increment, as applicable, and to closest 100-foot increment (e); no partial points. Density bonus is not in addition to impact fee credit. Public improvements or dedications that exceed impact fee requirement may receive a combination of density bonus points and impact fee credit, to be determined by the city decision-making body.

D. Multi-Modal Transportation (11 points possible)

1. Compliance with Subdivision standards and District Design standards required. Street connectivity and pedestrian ways necessitated by the proposed development are required (no points).

2. Complete streets required. Bicycle lanes, and park strips with street trees are required on all major collector and arterial streets (no points).

3. Multi-modal amenities. Points may be awarded cumulatively as follows:

MULTI-MODAL TRANSPORTATION	
Criteria	**Bonus Points**
a) Park strips and street trees on local residential streets. One (1) point possible where twenty (20) percent of a project's total street frontage (counting both sides of all streets) contains street trees in park strips; two (2) points possible for thirty (30) percent of frontage with amenities; three (3) points for forty (40) percent; four (4) points for fifty (50) percent; five (5) points for sixty (60) percent; and six (6) points for sixty-five (65) percent or more. Park strips must be no less than five (5) feet in width and contain, in aggregate, at least one (1) tree for every forty (40) feet of street frontage. Trees may be grouped or clustered for compatibility with the overall site design, and need not be spaced at regular intervals of forty (40) feet.*	1-6
b) Off-site sidewalk extension. Up to three (3) points possible for extending a street sidewalk off-site and connecting it to an adjacent sidewalk, public street, trail, or park: one (1) point for each one hundred fifty (150) feet the sidewalk is extended. Distances are rounded down to closest 100-foot increment; no partial points.*	1-3

MULTI-MODAL TRANSPORTATION	
Criteria	**Bonus Points**
c) Traffic-calming features. Up to six (6) points possible for providing traffic-calming features. Features may include but are not limited to intersection curb extensions, roundabouts, traffic circles, T-intersection, curvilinear street, skinny street (<30' curb-to-curb with parking on both sides), woonerfs (pedestrian streets), enhanced pedestrian crossings (e.g., pavers or stamped concrete inlay), and other traffic control devices as approved by the city. One (1) point possible for first street where traffic calming feature(s) employed for the full length of street; additional point possible for each additional street, provided the street must be at least four hundred (400) feet in length to be eligible for points.*	1-6
d) Pedestrian shelters with benches (rest area). One (1) point is possible for providing a covered bus waiting area at identified bus stops or at least two (2) trailside rest areas for pedestrians.	1

***Note:** Density bonus is not in addition to impact fee credit. Public improvements or dedications that exceed impact fee requirement may receive a combination of density bonus points and impact fee credit, to be determined by the city decision-making body.

E. Location and Linkages (2 points possible)

A total of two (2) points are possible selecting from the following options:

1. Floodplain avoidance. One (1) point possible for not developing in the one hundred (100) year floodplain.

2. Agricultural land conservation. One (1) point possible where project involves purchase of development rights/credits under Chapter 17.09; the density bonus point is in addition to any development credit/right transferred to the subject site under Chapter 17.09.

3. School proximity. One (1) point possible for project that places at least fifty (50) percent of its dwellings within one-quarter (¼) mile of an existing or planned public school; measured as shortest distance following existing and planned public streets and trails.

4. Habitat or wetlands conservation/restoration. One (1) point is possible for a project that conserves and/or restores a wetland or other habitat for native plant or animal species, as recommended by the Colorado Division of Wildlife.

F. Schools (2 points possible)

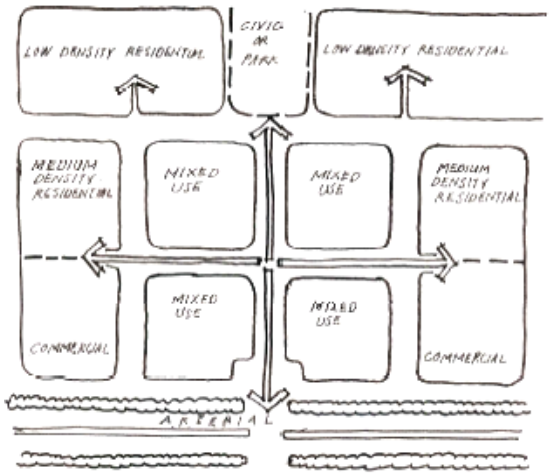
Two (2) points possible for dedicating land for a school or contributing to school facility

Proximity to schools

improvements that directly benefit the school attendance area in which the project is located. Density bonus is not in addition to School Land Dedication fee credit. Public improvements that exceed School Land Dedication fee requirement may receive a combination of density bonus points and impact fee credit, to be determined by the city decision-making body.

G. Neighborhood Commercial Center (2 points possible)

Two (2) points are possible for developing a neighborhood commercial center as part of an integrated mixed-use community. For the purpose of this subsection, "integrated" means the commercial center is located within six hundred (600) feet of a residential use developed (or approved for development) at a density of not less than five (5) units per gross acre. Additionally, the commercial center must be located within one-quarter (¼) mile of an existing or city planned park at least four (4) acres in size; measured as the shortest distance following existing and planned public streets and trails. (See also, Special Use standards in Section 17.07.070 and District Design Standards in Chapter 17.11.) A development agreement is required when the applicant requests a density bonus based on future provision of neighborhood commercial uses (i.e., reservation of land for future development). If the proposed neighborhood commercial center site does not develop with commercial uses, future residential development of the site may be limited to two (2) units per gross acre.



Commercial center concept, where "mixed-use" indicates live-work uses <u>or</u> attached/small lot (<6,000 square foot lot) housing in proximity to commercial

H. Green Construction & Technology (4 points possible)

1. <u>Construction activity pollution prevention.</u> An Erosion and Sediment Control (ESC) Plan is required (no points). The ESC Plan shall conform to the erosion and sedimentation requirements of the EPA Construction General Permit (current edition) or local erosion and sedimentation control standards and codes, whichever is more stringent. Additionally, Post Construction Storm Water Management is required. Post Construction Storm Water Management Best Practices must be implemented in accordance with local and state storm water requirements (no points).
2. <u>Green technology</u>. Up to four (4) points possible for demonstrating consistency with selected provisions of the Green Construction & Technology (GCT) component of the Leadership Through Energy and Environmental Design Neighborhood Development (LEED-ND) rating system. Density bonus points may be awarded for projects that demonstrate certification potential under LEED-ND; however, certification is not required. No points awarded for meeting

LEED-ND standards if those standards are already standard local, state or federal requirements. The city decision-making body may allow alternate rating systems it deems equivalent to LEED-ND. The city may also require the applicant to enter into a Development Agreement where density bonus points are awarded under this Section.

Green Construction & Technology Criteria. One (1) density point possible for meeting the minimum criteria (one LEED-ND point) on four (4) of the following LEED-ND credits; two (2) density bonus points possible for meeting the minimum criteria (one LEED-ND point) on eight (8) or more of the LEED-ND credits; three (3) density bonus points possible for meeting the minimum criteria (one LEED-ND point) on twelve (12) or more of the LEED-ND credits; four (4) density bonus points possible for meeting the minimum criteria (one LEED-ND point) on 16:

a. Certified Green Buildings (GCT Credit 1)
b. Energy efficiency in buildings (GCT Credit 2)
c. Reduced water use (GCT Credit 3)
d. Reuse of Historic Buildings. (GCT Credit 5) – See also, "Context Sensitive" category above.
e. Minimize site disturbance through site design (GCT Credit 6)
f. Minimize site disturbance during construction (GCT Credit 7)
g. Storm water management (GCT Credit 9)
h. Heat island reduction (GCT Credit 10)
i. Solar orientation (GCT Credit 11)
j. On-site energy generation or use of renewable energy (GCT Credit 12)
k. District heating and cooling (GCT Credit 14)
l. Infrastructure energy efficiency (GCT Credit 15)
m. Wastewater management (GCT Credit 16)
n. Recycled content in infrastructure (GCT Credit 17)
o. Construction waste management (GCT Credit 19)
p. Light pollution prevention (i.e., lighting consistent with dark sky best practices) required (GCT Credit 20)

I. Innovation in Design (2 points possible)

At the City Council's discretion, one or two (1-2) points may be awarded for other innovative design solutions that are not included in items A-H, above, consistent with the policies and objectives of the Fruita Community Plan.

(Ord. 2009-02)

Chapter 17.09

TRANSFER OF DEVELOPMENT RIGHTS/CREDITS

Sections:

17.09.010 Purpose
17.09.020 General Provisions
17.09.030 Sending Areas
17.09.040 Receiving Areas
17.09.050 Standards and Criteria

17.09.010 PURPOSE. The Transfer of Development Rights/Credits Program is a planning tool for cooperatively managing growth between the City of Fruita, Mesa County, and willing property owners for the following purposes:

A. To encourage the preservation of large land parcels in agricultural use, buffers between growing communities, or areas with significant natural features;

B. To support the Cooperative Planning Area that maintains a distinct separation between the City of Fruita and the City of Grand Junction through the perpetuation of rural land uses;

C. To assist in the orderly development and preservation of rural lands;

D. To ensure orderly transitions of density between urban and rural areas;

E. To encourage urban residential development and downtown redevelopment at appropriate densities and locations;

F. To encourage landowners in designated Sending Areas to forego or limit development of their property by transferring their property's development rights to a designated Receiving Area;

G. To provide an institutional mechanism for landowners in Sending Areas to receive compensation for either not developing or limiting the development of their property;

H. To provide an opportunity for landowners in Receiving Areas to obtain a higher return on investment through developing at an increased density; and

I. To encourage intergovernmental coordination in order to achieve the above purposes.

(Ord. 2009-02)

17.09.020 GENERAL PROVISIONS. The city's Transferable Development Rights/Credits (TDR/C) Program establishes a framework to match landowners that are eligible to transfer (sell) development rights/credits with land developers that desire to acquire (purchase) development rights/credits. The TDR/C transaction is consummated by the issuance of TDR/C certificates. The city bears no responsibility for any misrepresentation of the terms or expectations of a TDR/C transaction.

A. The total density increase above the base density provided through TDR/Cs shall not exceed one (1) dwelling unit per gross acre over the entire area of the receiving site. Additional density bonuses are available under Chapter 17.08.

B. Bearers of TDR/C certificates are eligible for achieving bonus density in all zones that allow density bonuses.

(Ord. 2009-02)

17.09.030 SENDING AREAS. The following provisions are established in the Mesa County Land Development Code for Sending Areas and are summarized here. In the event of conflict between this Section and the Mesa County Land Development Code, the Mesa County Land Development Code shall control:

A. A landowner of a Sending Site in a Sending Area may voluntarily sell their development rights/credits to a buyer, at a value established by the seller and the buyer.

B. The issuance of TDR/Cs from the Sending Site must be evidenced by a Transferable Development Right/Credit Certificate issued by Mesa County. In order to issue the TDR/C Certificate, a Declaration of Restriction of Development and Easement on a form made available by the Mesa County Planning and Economic Development Department signed by the owner of record from which Transferable Development Rights/Credits are being transferred must be presented to the Mesa County Planning and Economic Development Department, and shall clearly identify:

1. The grantor;

2. The legal description of the Sending Site from which the Transferable Development Rights/Credits are being transferred and the specific portion of the Sending Site being restricted from future development through the transfer; and

3. The number of TDR/Cs being transferred from the Sending Site.

C. The Declaration of Restriction of Development and Easement shall be recorded in the property records of Mesa County clearly stating the number of Development Rights/Credits that have been transferred. The Declaration of Restriction of Development and Easement shall be perpetual.

D. Upon recordation of the deed restriction, a TDR/C Certificate shall be issued by Mesa County identifying the number of Development Rights/Credits transferred, and the book and page number of the recorded Declaration of Restriction of Development and Easement.

E. Once a TDR/C Certificate is issued:

1. Future development of the Sending Site is limited to the remaining density not severed or extinguished by the Transfer of Development Rights/Credits;

2. The Sending Site may only be developed as a cluster development under Section 6.4.4 of the Mesa County Land Development Code; and

3. No rezoning of the Sending Site to a higher density or other use shall be permitted by Mesa County.

(Ord. 2009-02)

17.09.040 RECEIVING AREAS. Receiving areas are defined as the city zones that allow a density bonus: Rural Estate (RE); Rural Residential (RR); South Fruita Residential (SFR), and; Community Mixed Use (CMU). The following provisions are established for Receiving Areas:

A. Existing city zoning limits the development potential of properties within Receiving Areas to a base density. For property pursuing annexation into the City of Fruita, the base density and underlying zone shall be the density and zoning recommended by the Fruita Community Plan.

B. For a parcel to be developed at a density greater than the base density allowed in any zone that allows a density bonus, the owner of record or applicant shall use one (1) or more TDR/C Certificates, a Density Bonus under Chapter 17.08, or a combination of TDR/C Certificates and Chapter 17.08 Density Bonuses, or may apply for a PUD zone.

C. TDR/C Certificates proposed for use on a Receiving Site must originate only from a Sending Area identified for the City of Fruita/Mesa County TDR/C Program.

D. An owner of record of a Receiving Site or an applicant interested in participating in the TDR/C Program should contact the City of Fruita Community Development Department to obtain an estimate of the bonus density that may be achieved, and the associated site development requirements that may apply on the subject property.

E. An owner of record in a Receiving Area or an applicant choosing not to participate in the TDR/C Program shall retain the option to develop its property at the density as provided for in this Title.

(Ord. 2009-02)

17.09.050 STANDARDS AND CRITERIA. Recommendations of the Planning Commission to the City Council and decisions by the City Council concerning the Transfer of Development Rights/Credits shall be based upon the base density for each zone and potential density bonuses allowed, pursuant to this section and Chapter 17.08. The total density increase above the base density provided through TDR/Cs shall not exceed one (1) dwelling unit per gross acre over the entire area of the Receiving Site. (Ord. 2009-02)

Chapter 17.11

DESIGN STANDARDS

Sections:

17.11.010 Purpose
17.11.020 Applicability, Adjustments, Guidelines Versus Standards
17.11.030 Downtown Mixed Use and Community Mixed Use Zones – Commercial Development
17.11.040 Development in Tourist Commercial and General Commercial Zones
17.11.050 Attached Single Family Residential, Multi-Family Residential and Single Family Residential Lots Measuring Less Than 7,000 Square Feet in Size and Lot Widths Measuring Less Than 60 Feet
17.11.060 Mixed Use Developments in the Community Mixed Use Zone

17.11.010 PURPOSE. It is the purpose of this Chapter to set forth the design standards under which the architecture and site design of certain developments are reviewed in order to meet the goals, objectives and design criteria set forth in the City of Fruita Master Plan.

The 2008 Community Plan strives to promote high quality growth that preserves Fruita's character and increases economic sustainability. The Plan goes on to call for the creation of vibrant neighborhoods with a diversity of housing options that allow Fruita residents to live, work, and play in their community. As such, the design standards in this chapter are proposed to meet these goal statements combining the needs for strong livable neighborhoods and long-term economic development. These standards are intended to set the course to meet the desired character of the community. Because not all development opportunities can be predicted or accommodated in even the best written code, Section 17.11.020(B) is included with this chapter in order to provide developers a tremendous level of flexibility when applying the regulations and requirements in this chapter. The purpose of this chapter is to quantify and qualify requirements to meet the community's character and goals. For any project, should an applicant believe their project is meeting the broad goals of the Community Plan, but not necessarily specific requirements of this chapter; the applicant is encouraged to utilize 17.11.020 (B). This chapter is intended to help guide and provide direction for an applicant, and will encourage any high quality project that meets community goals and objectives. All interpretations of the requirements of this chapter shall meet this purpose.

(Ord. 2009-02)

17.11.020 APPLICABILITY, ADJUSTMENTS, GUIDELINES VERSUS STANDARDS.

A. Applicability.

In addition to other applicable regulations, the design standards of this Chapter apply to non-residential developments that are located in the following zones: Downtown Mixed

Use (DMU); Community Mixed Use (CMU); Tourist Commercial (TC); General Commercial (GC). These design standards also are applicable to all multi-family residential units and new lots in new subdivisions (subdivisions approved 4/3/2009) that include attached single family residential units; single family detached residential lots measuring less than 7,000 square feet in size, residential lots measuring less than sixty (60) feet in width and only those parts of new subdivisions containing these types of residential units regardless of the zone in which it is located.

The architectural and site design standards of this Chapter are applicable to new buildings and also building additions and exterior remodels which building costs exceed 50% of the Mesa County Assessor's current actual value of the current improvements in the subject property.

B. Adjustments.

The provisions of this Chapter may be adjusted at the discretion of the city decision-making body, as applicable, without the need for a variance, where the city decision-making body finds that an applicant's proposed alternative design meets the intent of the regulations which are to be adjusted, and the proposed design provides compatibility between the proposed development and uses adjacent to the subject site. Where this Chapter provides "Guiding Principles," those principles are to be used in evaluating adjustment requests.

C. Guidelines Versus Standards.

The terms "shall" and "must" indicate a code standard. The standard is mandatory but may be adjusted, as described in subsection B, above. Statements of "intent" and code provisions using the word "should" or "encourage" are guidelines. "Guiding Principles" are guidelines. The graphics contained in this Chapter also serve as guidelines; however, some graphics also reference a quantitative standard (e.g., percentage or dimensions). While guidelines are discretionary in nature, they must be addressed by the applicant, and the city decision-making body may apply them as mandatory requirements in situations where the applicant has requested code adjustments.

(Ord. 2009-02, Ord. 2013-06)

17.11.030 LEVEL ONE DESIGN STANDARDS. In addition to other applicable regulations, the following architectural and site design standards are applicable to all development other than single family detached and duplex residential developments, in the Downtown Mixed Use (DMU) and Community Mixed Use (CMU) zones with the following exceptions:

-All properties touching Grand Avenue between Highway 6 & 50 and Sycamore Street
-All properties touching Highway 6 & 50 between Pine Street and Plum Street
-All properties west of Apple Street, south of Cleveland Street and north of Highway 6 & 50

-All property between the west end of Pabor Way and Little Salt Wash

A. Guiding Principles

New buildings and exterior remodels are expected to honor the historical development pattern and character of downtown Fruita. While many communities attempt to "create" or "re-create" an urban downtown of their own, Fruita already has a downtown containing a mixture of historic buildings and contemporary buildings, a large central plaza, and attractive residential neighborhoods in and around the downtown area. Fruita's Mixed Use zones are intended to support traditional downtown and village commercial development. New development and redevelopment should support a walkable and attractive area with shopping, restaurants, residences, parks, and civic, office and other employment centers. The building design standards draw on historic elements of the downtown while allowing for a contemporary interpretation of Fruita's history. It is not the intent of the City of Fruita to create an architectural theme or to freeze time, but rather to ensure that new buildings, remodels and redevelopment fit within the context of their historic surroundings, as applicable, and support compact, walkable districts. The key elements of mixed use development are summarized as follows:

1. Architecture based on local vocabulary of building styles and elements, including compatibility with historic structures, where applicable.
2. Building height and articulated facades that create a sense of street enclosure at a human scale.
3. Provide appropriate design standards for the Downtown Core (South of Pabor) and the adjacent Downtown Mixed Use neighborhood (between Pabor and Ottley).
4. Provide appropriate design standards for commercial and mixed use developments in the Community Mixed Use zone.
5. Transition building height between the Mixed Use zones and the adjacent residential neighborhoods.
6. Require the use of contextually appropriate materials, textures and colors.
7. Promote a storefront character (windows, pedestrian shelter, furnishings, etc.) within planned commercial centers.
8. Encourage a diversity of building facades and rooflines that fall into a consistent rhythm.
9. Promote corner lots as focal points with furnishings and public art.

B. Building Design Standards:

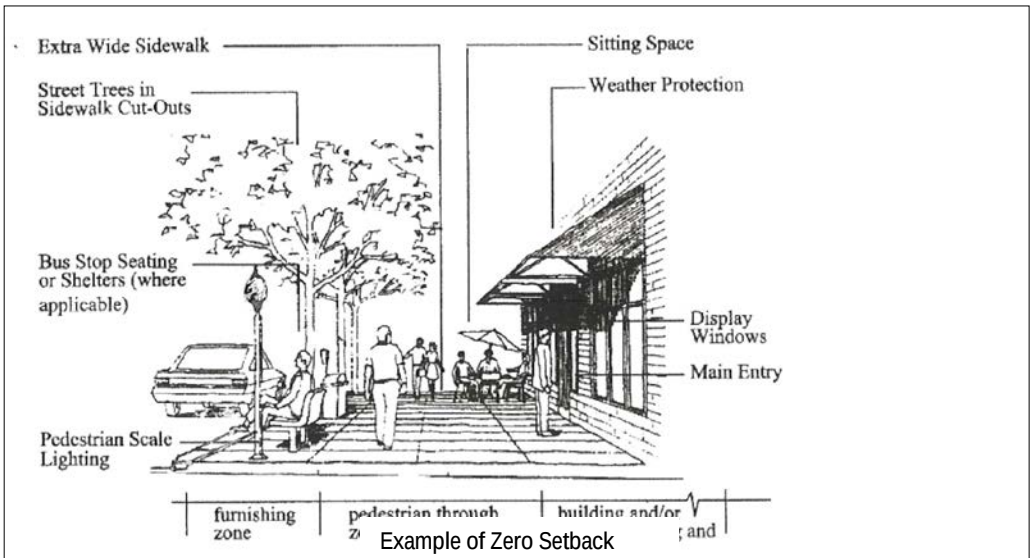
1. Height.

a. Maximum Height. The maximum allowable height is five (5)stories in the DMU zone Downtown Core and four (4) stories for buildings in the CMU zone that mix residential and commercial land uses, except that buildings, or portions of buildings, located less than one hundred (100) feet from Elm Street south of Pabor Ave. and north of Highway 6 & 50 shall not exceed thirty-five (35) feet in height. The maximum height of all portions of a building that are within one hundred (100) feet of a single family dwelling shall step-down in roof elevation, i.e., from fifty (50) feet to thirty-five (35) feet to provide a more sympathetic scale with adjacent single family dwellings.

b. Minimum Height. New buildings constructed within the Downtown Core and abutting Aspen Avenue shall be built to a height of not less than twenty-two (22) feet to maintain an intimate, pedestrian scale relative to the street, and a sense of street enclosure. Single story buildings in the Downtown and Community Mixed Use zones shall incorporate parapets that reach the minimum required height.

2. Setback.

a. Zero Front Setback Required. All non-residential buildings, including mixed use buildings containing residential and non-residential uses, shall maintain a zero setback from a street property line. This standard is met when at least fifty (50) percent of the abutting street frontage has a building placed at the street property line, as generally depicted below.



Example of Zero Setback

Exceptions:

An exception to the zero setback regulation may be approved or required in the following situations:

1. Where a proposed building is adjacent to a single family dwelling.

2. Where the sidewalk width is extended for public use, or a public plaza is proposed to be placed between the building and public right-of-way. Exceptions may also be made for planter boxes incorporated into the building wall, provided the planter box does not exceed a height of thirty (30) inches above sidewalk grade.

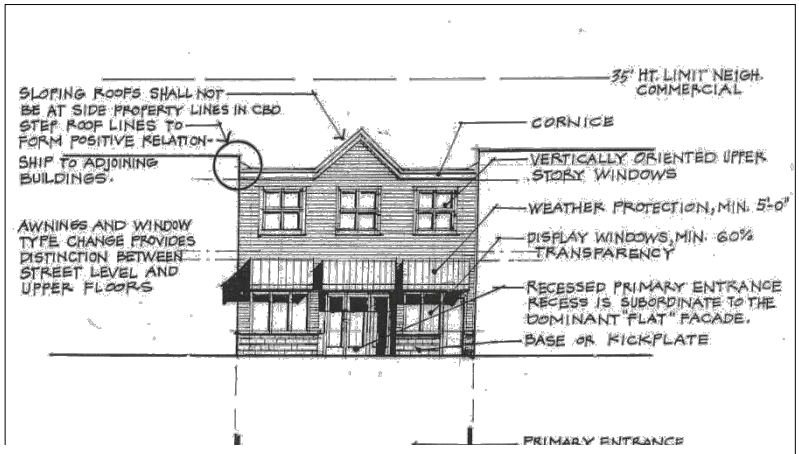
3. Where a public utility easement or similar restricting legal condition makes conformance with the zero setback impracticable, the building shall instead be placed as close to the street as possible given the legal constraint, and pedestrian amenities (e.g., plaza, courtyard, landscaping, outdoor seating area, etc.) shall be provided within the street setback in said location.

b. Side and Rear Yards. Side or rear yard setbacks shall conform to applicable building codes. The city decision-making body may require additional setbacks where necessary for storm water drainage, vision clearance at intersections, access to utilities, or similar purposes.

c. Right-of-Way. The city may allow the placement of pedestrian amenities; such as, street furnishings, canopies, awnings, signs and similar features in the sidewalk right-of-way, subject to Site Design Review or a Temporary Encroachment Agreement.

3. Building Form

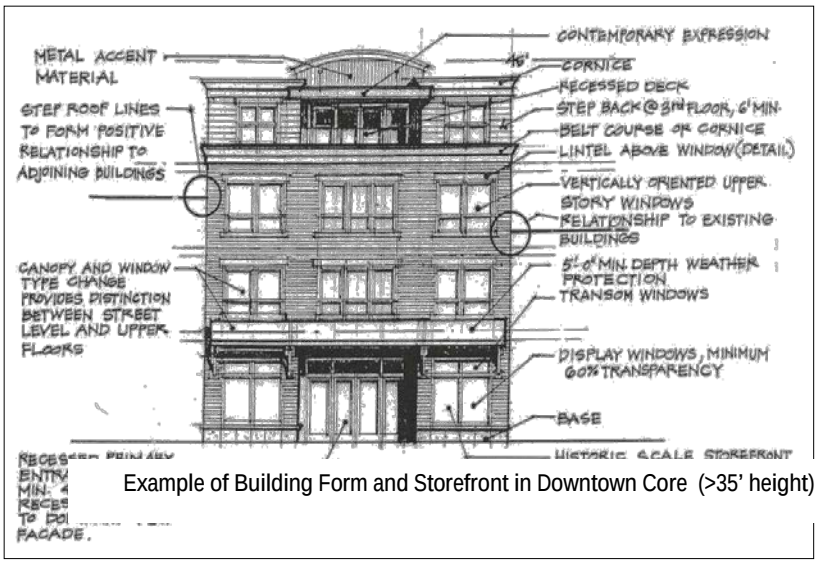
a. Overall Form. Architectural designs shall address all four (4) sides of a building in the DMU and CMU zones. The predominant form in the Downtown Core is a generally "flat" elevation with any recesses, projections, or rounded corners ("articulations") appearing subordinate to the dominant rectangular form. The predominant form in the Downtown Mixed Use zone may be similar to the Core, or it may be more residential in character and contain pitched roofs, porches, bay windows and similar features. New buildings should reflect the predominant form, while expressing individuality.



Example of Building Form (<35' height)

4. Storefront Character

   a. <u>Fenestration (Windows and Doors).</u> Except as approved for parking structures or accessory structures, buildings shall provide display windows and windowed doors to express a store front character. The ground floor, street-facing elevation(s) of all buildings shall comprise least sixty (60) percent transparent windows, measured as a section extending the width of the street-facing elevation between the building base (or thirty (30) inches above the sidewalk grade, whichever is less) and a plane seventy-two (72) inches above the sidewalk grade. Upper floors may have less window area, but should follow the vertical lines of the lower level piers and the horizontal definition of spandrels and any cornices. Buildings without a street-facing elevation, such as those that are setback behind another building and those that are oriented to a civic space (e.g., internal plaza or court), shall meet the sixty (60) percent transparency standard on all elevations abutting civic spaces(s) and elevations containing a primary entrance. All side and rear elevations, except for zero lot line/common wall elevations (where windows are not required), shall provide no less than thirty (30) percent transparency. Where an exception to the window transparency requirement is made for parking garages or similar structures, the building design must incorporate openings or other detailing that resembles the window patterns (rhythm and scale) found on adjacent buildings. Storefronts that resemble suburban strip malls (e.g., picture windows extending to near grade level) and those that use reflective glass, clerestory windows and/or similar non-traditional features are not permitted.



Example of Building Form and Storefront in Downtown Core (>35' height)

   b. <u>Street Level Entrance.</u> All primary building entrances shall open to the sidewalk and be ADA accessible. Primary entrances above or below grade may be allowed where ADA accessibility is provided.

   c. <u>Street Level/Upper Floor.</u> Building elevations shall contain detailing that visually defines street level building spaces (storefronts). The distinction between street level and upper floors shall be established, for example, through the use of awnings, canopies, belt course, or similar detailing, materials and/or fenestration.

5. Building Mass

The third story, and/or any portion of a building exceeding twenty-eight (28) feet in height, shall step-back at least six (6) feet from the outer plane of the building. The purpose of the height step back is to maintain a small town appearance and scale as viewed from the street and to provide for solar gain and light filtering down to the street. (See also, subsection B.1 Height, above.)

6. Openings

   a. Ground Floor Windows. Ground floor elevations shall conform to subsection B.4.a, above, and must contain windows that are framed, for example, by piers or pilasters (sides); awnings, canopies or trim/hoods (tops); and kick plates or bulkheads (base). Decorative detailing and ornamentation around windows (e.g., corbels, medallions, pediments, or similar features) is encouraged.

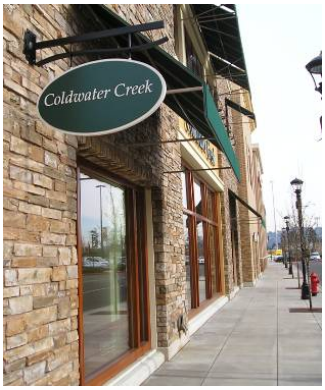
   b. Upper Floor Windows. Upper floor window orientation shall primarily be vertical, or have a width that is no greater than height, consistent with the Western vernacular. Paired or grouped windows that, together, are wider than they are tall, shall be visually divided to express the vertical orientation of individual windows.

   c. Pedestrian Entrances. Ground level entrances shall be at least partly transparent to encourage an inviting and successful business environment. This standard may be met by providing a door with a window(s), a transom window above the door, or sidelights beside the door. Where ATMs or other kiosks are proposed on any street-facing elevation, they shall be visible from the street for security and have a canopy, awning, or other weather protection shelter.

   d. Corner Entrances. Buildings on corner lots shall have corner entrances or the building plan shall provide for a corner plaza consistent with Section 17.11.030(C), below, or the building shall provide architectural features (e.g., alcove with seating or artwork) at the corner that emphasizes the corner as a civic space.

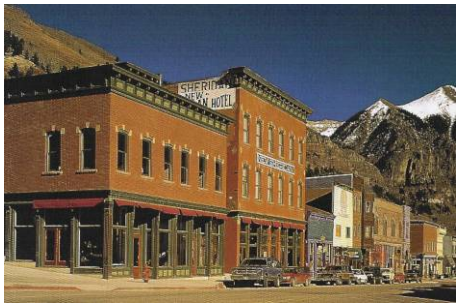
7. Horizontal Rhythms

   a. Traditional Lot and Building Pattern. Buildings must respect the traditional lot pattern and building rhythm of the downtown and/or adjacent residential neighborhood, as applicable, by incorporating rhythmic divisions in all elevations. As a general guideline, front elevations should be articulated not less than once every twenty-five (25) feet. Articulation should be subtle. For example, slight offsets in a building elevation, roofline and/or the rhythmic placement of windows, pilasters, awnings, trim, art/medallions, or other detailing and ornamentation are preferred. Abrupt divisions, such as clashing paint colors, should be avoided. Side and rear elevations may be articulated less frequently but should complement the overall building design. The city may require detailing on a zero-lot line elevation to reduce



the apparent scale and avoid blank walls (i.e., until an abutting property develops).

b. Horizontal Lines. New buildings and exterior remodels shall follow prominent horizontal lines existing on adjacent buildings at similar levels along the street frontage. Examples of such horizontal lines include: the base below a series of storefront windows; an existing awning or canopy line, or belt course between building stories; and/or an existing cornice or parapet line.



Example of appropriate articulation and rhythm using architectural bays, windows, off-sets, detailing, and weather protection (above).

Exceptions: Where existing buildings do not meet the city's current architectural standards, a new building may establish new horizontal lines.

c. Ground Floor/Upper Floor Division. A clear visual division shall be maintained between the ground level floor and upper floors, for example, through the use of a belt course, transom, awnings or canopies.

8. Vertical Rhythms

New construction or front elevation remodels shall reflect a vertical orientation, either through breaks in volume or the use of surface details, to divide large walls, so as to reflect the underlying historic property lines, as applicable.

9. Materials and Color

a. Primary Materials. Exterior building materials shall predominately consist of those materials traditionally found in Fruita's downtown or others indigenous to the intermountain West, including brick, stone (e.g., limestone, rhyolite, granite, etc.), adobe, adobe brick, slump block, stucco, split block, and painted or natural wood. (See examples in sidebar.) Pitched roof materials shall be wood or asphalt singles, or standing rib seam sheet metal-matte finish. Roof colors must be warm earth-tones such as ash, light charcoal, light red (sandstone) or olive green, except flat roofs may be any non-reflective color and finish. All windows and doors must have trim that is at least four (4) inches deep. Rough-hewn wood, timbers and metals may be used as accents but not as the primary exterior

cladding. Substitute materials that are equal in appearance and durability may be approved.

b. Change in Materials. Elevations shall incorporate changes in material that define a building's base, middle and top and create visual interest and relief. Side and rear elevations that do not face a street, pedestrian access way or plaza may utilize changes in texture and/or color of materials in the interest of affordability, provided that the design is consistent with the overall composition of the building.

c. Secondary Materials. Any of the materials listed above may also be used as secondary materials or accents. Metals; such as, copper, steel, iron, bronze and similar appearance metals may be used as trims or accents (e.g., flashing, weather protection features, ornamentation, etc.) when non-reflective and compatible with the overall building design.

Examples of appropriate materials.

d. Color. Color schemes should be simple and coordinated over the entire building to establish a sense of overall composition. Color schemes should tie together signs, ornamentation, awnings, canopies and entrances. There shall be no more than one base color for each twenty-five (25) feet of the front elevation; one base color for the entire front elevation is preferred. Using only one or two accent colors is also preferred, except where precedent exists for using more than two colors with some architectural styles. Natural wood finishes are appropriate for doors, window sashes and trim, signs, canopies and other architectural accents. Reflective, luminescent, sparkling, and "day-glow" colors and finishes are not permitted. Metals shall be finished in mute, earth-tones or otherwise burnished to minimize glare.

e. Restoration and Rehabilitation. Restoration and rehabilitation of historically significant structures should incorporate original materials and design elements (e.g., previously covered over), to the extent practicable, and in compliance with Chapter 17.37.

10. Pedestrian Shelters

Awnings, canopies, recesses or similar pedestrian shelters shall be provided along at least thirty (30) percent of a building's ground floor elevation(s) where the building abuts a sidewalk, civic space (e.g., plaza), pedestrian access way, or outdoor seating area. Pedestrian shelters used to meet the above standard shall extend at least five (5) feet over the pedestrian area, be proportionate to the building in its dimensions, and not obscure the building's architectural details. Pedestrian shelters shall align with one another to the extent practicable. Use of colored canvas (not plastic) awnings and wood canopies, consistent with historical styles, is encouraged, though metal and plexi-glass canopies may be considered.

Exception: The city may reduce the minimum shelter depth upon finding that existing right-of-way dimensions or building code requirements preclude a larger shelter.

11. Mechanical Equipment

a. Building Walls. When mechanical equipment, such as utility vaults, air compressors, generators, antennae, satellite dishes, or similar equipment, must be installed on a building wall, it shall be oriented away from all streets. Where such equipment is installed on a side or rear building elevation and is adjacent to an alley, access way, or civic space, its appearance shall be minimized using materials and/or colors that are similar to those used on the subject building. Standpipes, meters, vaults and similar equipment shall not be placed on a front elevation when other practical alternatives exist; such equipment shall be placed low on a side or rear elevation to the extent practical.

b. Rooftops. Rooftop mechanical units shall not be visible from the street, pedestrian access way or civic space. Such units should be screened behind a parapet wall.

c. Ground-Mounted Mechanical Equipment. Ground-mounted equipment (e.g., generators and air compressors) shall be limited to side or rear yards and screened with fences or walls constructed of materials similar to those on adjacent buildings. Hedges may also be used as screens where there is adequate sunlight and irrigation to ensure their successful growth. The city may require additional setbacks and/or noise attenuating equipment to promote compatibility with adjacent residential uses.

d. Civic Spaces. Mechanical equipment and garbage storage areas are not permitted within the civic space(s) required under subsection C.1. The city may require that such facilities be screened completely from view and set back from a civic space for aesthetic reasons and to minimize odors or noise.

12. Historic Preservation.

For additions or rehabilitations to existing structures that are listed on the National, State or Local historic register, the following standards shall apply in addition to requirements of Chapter 17.37:

a. Additions and Rehabilitation. Additions and rehabilitations should match the original materials, windows, doors, trim, and colors. If the addition is a wing, it should be subordinated to the original building in design, i.e. the roof should be lower and the mass and bulk of the new addition should be less. If the addition is an extension or lengthening of the original building, introduce a setback to preserve the corner of the original and hence the design arrangement and balance of the original facade should be provided.

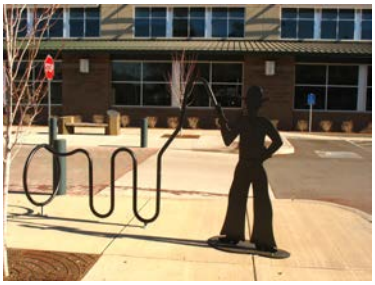
b. Cornices and Decorative Elements. Original members, brackets, molding, etc. should be preserved if at all possible. Replacement of missing parts should be exact copies of the original. Avoid mixing new and old original members on one facade unless the match is perfect. Aluminum and plastic awnings and door hoods are not allowed. Canvas awnings in appropriate colors are allowed.

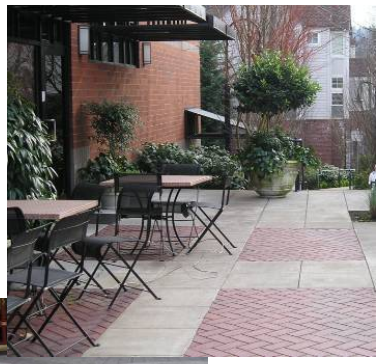
c. False Fronts and Applied Facades. Avoid fake modernization or concealment of the original façade. When an existing building has a well developed facade and is

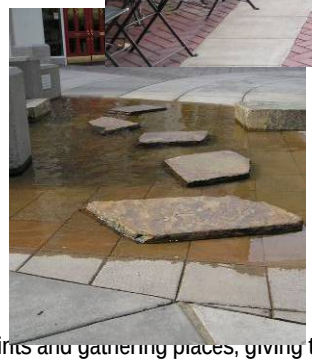
the product of good workmanship, efforts should be made to retain as much of the original materials and detailing as possible or restore them to maintain the building's integrity.

C. Open Space and Civic Space:

The provision of attractive and functional civic spaces is as important as building design and centralized parking areas to the success of the downtown and Fruita's mixed use commercial centers. Therefore, the city requires that all new commercial developments and redevelopment projects in these districts contribute their proportionate share of civic space.





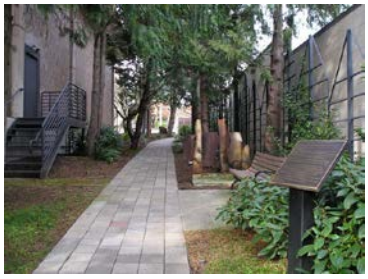


Civic spaces should serve as focal points and gathering places, giving the downtown a unique identity and sense of place. Pedestrian amenities may include, but are not limited to outdoor seating areas or cafes, pedestrian access ways, weather protection, plazas, benches, public art, and street furnishings such as bicycle racks and pedestrian lighting (e.g., bollards) at crossings.

Standards:

1. Civic Space Standard**.** At least three (3) percent of every development site shall be designated and improved as civic space (plaza, landscaped courtyard, or similar space), with the highest priority locations being those areas with the highest pedestrian activity (e.g., street corners and pedestrian access ways), as generally designated in the examples accompanying this subsection. Improvements shall conform to subsection C.4, below.

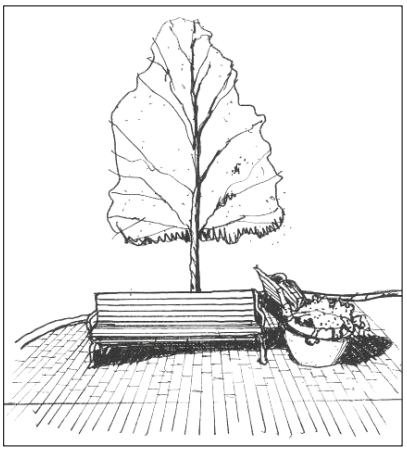
   Exception for Minor Projects: Building additions and remodels are not required to provide civic space when proposed building material costs are estimated to be less than fifty (50) percent of the existing Assessor's actual value of improvements on the subject site. Assessor's actual value shall be the value of record at the Mesa County Assessor's Office.



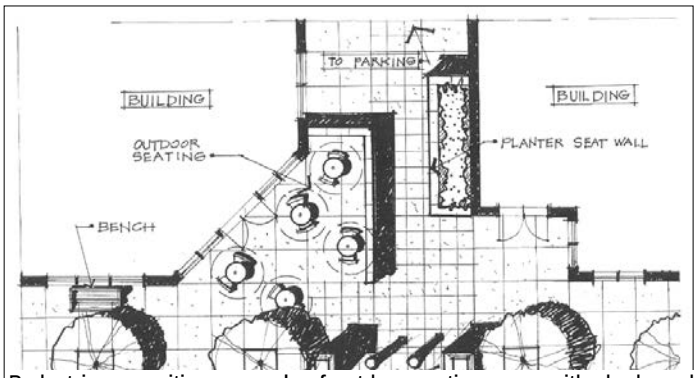
Exception for In Lieu Fee: The city may find that the creation of civic space is not practicable based on the project location or other relevant factors. In such cases, the city may accept an in lieu fee which shall be calculated in accordance with Chapter 17.19.

2. Dimensions. All civic spaces shall have dimensions of not less than eight (8) feet wide and deep, and have a surface area of not less than forty-eight (48) square feet.

3. Public Access. Such areas shall abut a public right-of-way or otherwise be connected to and visible from a public right-of-way by a sidewalk or pedestrian access way; access ways shall be identifiable with a change in paving materials (e.g., pavers inlaid in concrete or a change in pavement scoring patterns and/or texture). Where a right-of-way connection is not possible, the owner shall be required to provide a public access way easement to the civic space.



4. Pedestrian Amenities Required. Where civic space is required, it shall contain pedestrian amenities such as plaza space, extra-wide sidewalks (i.e., outdoor café space), benches, public art, pedestrian-scale lighting, shade structures, way finding signs, as approved by the city decision-making body, or similar pedestrian areas. Where a civic space adjoins a building entrance it should incorporate a weather protection canopy, awning, pergola, or similar feature.



Pedestrian amenities; example of outdoor seating areas with shade and pedestrian access way leading to internal parking area.

Exception: Building additions and remodels that are exempt under subsection C.1 above, are not required to provide pedestrian amenities, though they are encouraged to do so. In such cases, the city may consider the voluntary provision of pedestrian amenities in approving adjustments to other applicable standards required under this Chapter.

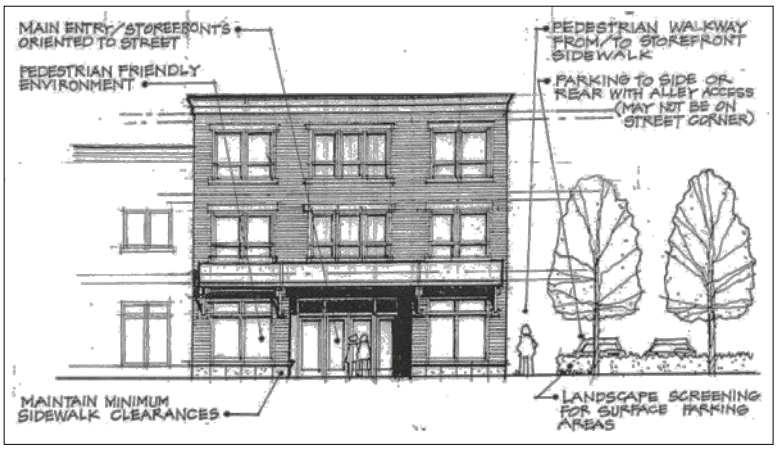
D. Access and Circulation:

Access in the Downtown and Community Mixed Use zones is to be provided as follows:

Standards:

1. Pedestrian Access. Walkways linking the pedestrian system of the block to every building entrance and civic space on a proposed development site are required. Walkways shall be constructed of scored concrete or pavers and have a width of not less than four (4) feet; additional width may be required where necessary due to projected use of the walkway.

2. Vehicle Access and Driveways. New vehicle access onto Aspen Avenue is not allowed; when new vehicle access is required, it shall be taken from streets other than Aspen Avenue. Where an existing driveway or alley provides adequate access to a site, such access must be utilized before any new street access is created.



3. Drive-up and Drive-Through Uses. New drive-up/drive-through facilities (e.g., windows, ATMs, etc.) are not permitted in the Downtown Core within forty (40) feet of Aspen Avenue.

4. Off-Street Parking and Loading. Except as approved for parking structures (e.g., garages or under-ground parking), parking is to be provided primarily in on-street parking spaces and in shared parking areas internal to each block, either beside or behind buildings. Parking shall conform to the minimum parking standards of Chapter 17.39. (Note reduced parking standards within the Downtown Core.) Parking and vehicle circulation areas abutting a sidewalk, public right-of-way, or pedestrian access way shall provide a landscape screen of not less than four (4) feet in width and three (3) feet in height, or a decorative wall, landscape wall, or other buffer. Loading docks and trash storage areas in parking lots shall be located to the side or rear of buildings and screened from public view.

Parking is to be placed beside or behind (not in front) of building. Parking must be buffered from adjacent streets and pedestrian ways.

E. Landscaping.

1. Plant Material. Landscaping must consist of plant material covering not less than fifty (50) percent of the non-developed areas within three (3) years of planting. Use of desert landscaping or low water usage plant species as identified by the Colorado State University Tri-River Extension Service is required.

Exception: The required plant material coverage may be reduced to twenty (20) percent of all non-developed surfaces where a proposed building incorporates a green (landscaped) roof.

2. Parking Areas. Parking area(s) shall be landscaped, as required by Section 17.39.070.G. Landscaping must consist of desert landscaping or drought tolerant plant species as identified by the Colorado State University Tri-River Extension Service.

(Ord. 2009-02, Ord. 2013-06)

17.11.040 LEVEL TWO DESIGN STANDARDS. In addition to other applicable regulations, the following architectural and design standards apply to all development in the Tourist Commercial and General Commercial zones and all properties zoned DMU which are not subject to Level One Design Standards (Section 17.11.030).

A. Guiding Principles

1. Create distinct commercial centers.
2. Define the edges of commercial areas with attractive landscape buffers and transitions between commercial uses and the roadway and/or non-commercial areas.
3. Orient buildings to streets or, where buildings are to be setback from Highway 6 & 50 or Highway 340, require entrances to be oriented to pedestrian ways and require appropriate landscaping between parking lots and the highway.
4. Improve on-street parking opportunities where practical.
5. Use materials and colors that blend with the desert landscape.
6. Use desert landscaping or drought tolerant landscaping for context-appropriate design and to conserve water
7. Maintain views of Colorado National Monument, Book Cliffs, Big Salt Wash, and other natural features, where practicable.
8. Facilitate the development of a continuous pedestrian network and bicycle ways connecting with adjacent neighborhoods.
9. Reduce reliance on the highway for local vehicle trips (e.g., from one store to another store in the same vicinity).
10. Develop an interconnected system of driveways or alleys with shared access to minimize traffic conflicts.

B. Site Design

1. Primary building entrances shall be oriented to the public street right-of-way and/or public sidewalk and shall be connected to the public street right-of-way and/or public sidewalk by a concrete walkway not less than six (6) feet in width. Primary building entrances shall be within twenty (20) feet of the public street right-of-way and/or public sidewalk.

Where it is not practical to locate primary building entrances within twenty (20) feet of the public street right-of-way or public sidewalk, the concrete walkway connecting a primary building entrance to the public sidewalk or public street right-of-way shall be no less than ten (10) feet in width. This concrete walkway must have three-foot wide planter strips on each side and raised or textured paving at all driveway crossings.

Primary building entrances located more than forty (40) feet from the public street right-of-way or public sidewalk will require a pedestrian plaza outdoor seating area, courtyard, or other civic amenity provided between the building and the street.

2. Where a primary building entrance is located more than twenty (20) feet from a public street right-of-way and/or public sidewalk, or where parking and/or driving aisles are provided between the primary building entrance and public street right-of-way and/or public sidewalk, a fifteen (15) foot wide minimum landscape screen shall separate all off-street parking areas from adjacent public street right-of-ways or public sidewalks.

3. Buildings shall meet transparency and weather protection standards (Subsection C, Building Design below) along all street-facing elevations and any elevations containing a primary building entrance. A landscape screen at least five (5) feet wide shall cover any blank building walls (i.e., lacking windows and weather protection) and contain materials of sufficient size/species to screen the blank wall.

C. Building Design

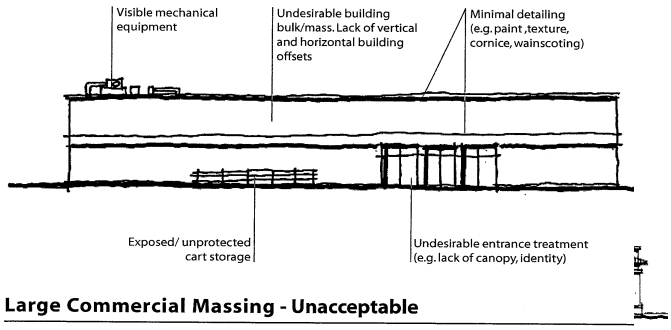
1. Intent:

The building design standards are intended to implement following contextual values:

a. Building orientation to streets to create a sense of enclosure and human scale
b. Articulated building facades to break up large volumes and promote human scale
c. Materials, textures and colors appropriate to the desert landscape
d. Storefront character (windows, pedestrian shelter, furnishings, etc.) where applicable

2. Standards:

a. Overall Design. Architectural designs shall address all four sides of a building with materials, detailing, and color. Architectural elements should wrap around building corners. Where a proposed design is based on the applicant's corporate style guide, as in formula retail stores,



Large Commercial Massing - Unacceptable

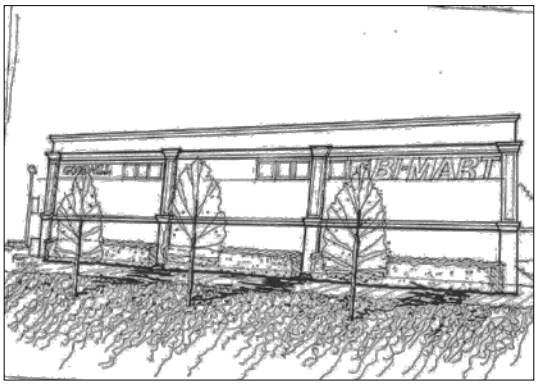
Examples of acceptable and unacceptable design (roofline, mass, entrances, windows, articulation, landscaping, etc.)

restaurants, discount outlets, or similar proposals where a similar building design has been used previously, the applicant must demonstrate that the design has been adapted to fit Fruita's unique location/historical context (Colorado National Monument/Grand Valley) and desert environment.

b. Stepped Rooflines. Height should vary from building to building to avoid a homogenous appearance. This standard is met by using stepped parapets, gables, or slightly dissimilar height from building-to-building.

c. Window Transparency. Building elevations that face a street, parking area, civic space, or open space shall comprise at least forty (40) percent transparent windows, measured as a section extending the width of the street-facing elevation between the building base (or thirty (30) inches above the sidewalk grade, whichever is less) and a plane eighty (80) inches above the sidewalk grade. Upper floors may have less window area, but should follow the vertical lines of the lower level piers and the horizontal definition of spandrels and any cornices.

Where the Community Development Director determines, based on physical site constraints or the functional requirements of a non-residential building, that providing window transparency is not practical or does not further meet the intent of these standards as stated in Section 17.11.040 (C) above, other alternative means of breaking up large elevations (e.g., columns, belt course, and upper story panels/transom, with landscaping) shall be employed. See example below.



Example of exception to window and entrance standards due to site constraints (e.g., grade change)

d. Primary Entrances. Buildings shall have clearly defined primary entrances that provide a weather-protection shelter for a depth of not less than five (5) feet (e.g., either by recess, overhang, canopy, portico and/or awning) extending from the building entry.

e. Building Mass. Building elevations shall incorporate offsets or divisions to reduce the apparent building scale and to improve aesthetics. Elevations of a structure shall be divided into smaller areas or planes to minimize the appearance of bulk as viewed from any street, civic space or adjacent property. When an elevation of a primary structure is more than eight hundred (800) square feet in area, the elevation must be divided into distinct planes of not more than eight hundred

(800) square feet. For the purpose of this standard, areas of wall planes that are entirely separated from other wall planes are those that result in a change in plane such as a recessed or projecting section of the structure that projects or recedes at least one (1) foot from the adjacent plane, for a length of at least six (6) feet. Changes in plane may include but are not limited to recessed entries, bays, stepped parapets, secondary roof forms (e.g., gables, lower roof sheds, dormers and towers), building bases, canopies, awnings, projections, recesses, alcoves, pergolas, porticos, roof overhangs, columns, or other features that are consistent with the overall composition of the building. The distinction between street level and upper floors shall be established, for example, through the use of awnings, canopies, belt course, or similar detailing, materials and/or fenestration.

f. Materials and Colors. Exterior materials shall consist of brick, stone, adobe, wood shingle or imitation wood shingle walls, slump block, adobe brick or suitable split block or brick. Wood timbers and metal (brushed steel, iron, copper, or similar architectural-grade metals) may be used on canopies, arbors, trellises, pergolas, porticos, brackets, fasteners, lighting, signage, and other detailing, as appropriate, to provide visual interest and contrast. In general, color selection should complement, not compete with, the surrounding desert landscape. Warm earth tone colors (e.g., sandstone reds, desert greens and browns) are generally preferred over cool colors, such as blue and white/off-white. Substitute materials that are equal in appearance and durability may be approved.

g. ATMs and Service Windows. Where walkup ATMs or service windows are proposed on any street-facing elevation, they shall be visible from the street for security and have a canopy, awning, or other weather protection shelter. Where drive-up windows or similar facilities are provided the drive-up window and associated vehicle queuing area shall be setback at least twenty (20) feet from all adjacent rights-of-way. The applicant may be required to install textured pavement (e.g., pavers or stamped concrete) for pedestrian crossings of any drive aisle.

(Ord. 2009-02, Ord. 2013-06)

17.11.050 ATTACHED SINGLE FAMILY RESIDENTIAL, MULTI-FAMILY RESIDENTIAL AND SINGLE FAMILY RESIDENTIAL LOTS MEASURING LESS THAN 7,000 SQUARE FEET IN SIZE AND LOTS LESS THAN 60 FEET IN WIDTH. In addition to other applicable regulations, the following architectural and site design standards are applicable to new lots with attached single family residential dwelling units, multi-family residential dwelling units, detached single family residential lots measuring less than seven thousand (7,000) square feet in size, and single family residential lots measuring less than sixty (60) feet in width and only those parts of new subdivisions containing these types of residential units/lots.

A. Guiding Principles

New buildings and exterior remodels should honor traditional neighborhood development principles, consistent with the desired character and form of Fruita, as expressed by the

Community Plan. While many communities attempt to "create" traditional neighborhoods, Fruita already has traditional neighborhoods. The original town plat contains a variety of housing types in both historic and contemporary structures, many with front porches. Fruita's historic neighborhoods contain both small and large lots, some with alley access and street tree planter strips, and most within walking distance of centrally located open spaces, schools, churches and other community services. However, some areas outside the historic town plat have developed in a manner that is inconsistent with the above traditional neighborhood design principles. The design standards in this section are intended to guide compatible infill development and promote the creation of new, traditional neighborhoods where new subdivisions are proposed. It is not the intent of the City of Fruita Code to create an architectural theme or to freeze time, but rather to ensure that new buildings and remodels fit within the context of their historic surroundings, as applicable, and support the development of new compact, walkable neighborhoods with a variety of housing. The key elements of this Section are summarized as follows:

1. New development and redevelopment should support walkable and attractive neighborhoods with a variety of housing types that are designed to be compatible with adjacent uses.
2. Architecture should provide for compatibility with historic structures where applicable.
3. Provide for street connectivity and pedestrian access and safety both within new developments and between new and existing subdivisions.
4. Integrate open space and parks into the design of new neighborhoods and subdivisions.

B. Applicability

In addition to other applicable regulations, the following site design standards are applicable only to multi-family residential dwelling units and new lots in new subdivisions that include attached single-family residential dwelling units, single-family detached residential lots measuring less than 7,000 square feet in size, residential lots measuring less than sixty (60) feet in width, and only those parts of new subdivisions containing these types of residential dwelling units.

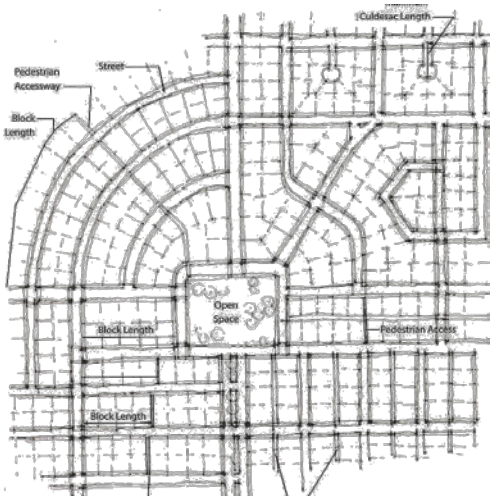
C. Neighborhood Structure and Street Network

1. Purpose

Promote neighborhood circulation with convenient connections via streets and pedestrian and bicycle ways to parks, schools, churches, neighborhood commercial uses (where applicable) and other neighborhood-oriented services and amenities.

2. Guidelines and Standards

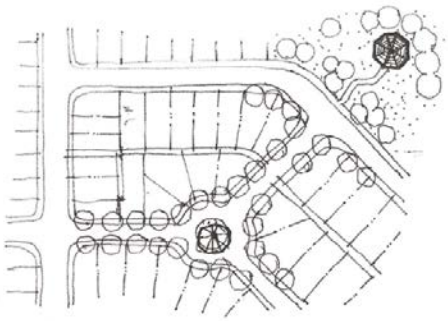
a. Streets, bicycle ways and walkways or trails, as applicable, shall, to the maximum extent practical,



Neighborhood Structure and Street Network

create a unifying circulation network that provides convenient routes to destinations without needlessly forcing trips onto the surrounding collector or arterial streets.

b. Street and alley networks, as applicable, shall, to the maximum extent practical, be configured to minimize cut-through traffic on local residential streets without relying upon the use of cul-de-sacs; where cut-through traffic is unavoidable, street design shall incorporate neighborhood traffic calming features, such as curb extensions (reduced width at intersections), roundabouts at major intersections, traffic circles, or other features, consistent with the City of Fruita Street System Design Criteria and the City of Fruita Traffic Calming, Pedestrian and Bicycle Plan.



Traffic calming and connectivity

Cul-de-sacs, where allowed, are limited to a maximum length of four hundred (400) feet. A pedestrian access way or trail will be required to connect the end of any cul-de-sac to an adjacent street or trail right-of-way to minimize out-of-direction travel by pedestrians and bicyclists. The city decision-making body may also require the use of pervious paving (e.g., pavers) or stamped concrete on cul-de-sacs to minimize stormwater runoff (impervious surfaces) or to identify cul-de-sacs as community spaces where children play (e.g., basketball hoops, street hockey, etc.).

Pedestrian ways with vehicle loading off alleys for small lots, traffic calming, street alignment to take advantage of vistas.

c. Streets, pedestrian ways and trails should focus on important vistas; for example, by aligning street axis to provide for views of community buildings, mountains, trees or open spaces.

d. Block lengths shall provide for at least one street connection for every three to six hundred (300 to 600) feet maximum in block length, except where topographic or access restrictions (e.g., arterial intersection spacing) preclude such connections. Where street connections are not feasible, pedestrian and bicycle pathway/trail connections shall be used to make walking and bicycling within and between developments convenient.

D. Parks and Open Space

1. Purpose

Promote the creative design and use of a wide variety of parks and open spaces.

2. Guidelines and Standards

a. Parks and open spaces should be used to form neighborhood edges and transitions where higher density development is proposed adjacent to lower density development, and where development abuts watercourses, washes, and other natural features.

b. Parks and open spaces should be collocated with existing or planned school sites, as applicable.

c. Where a new park of two (2) acres or more in size is proposed, it should be located, configured and designed to maximize pedestrian access from the greatest number of residents in the adjacent neighborhood(s).

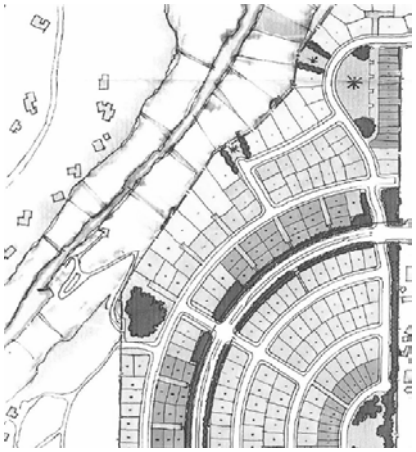
d. Where mixed-use projects are planned with residential and commercial uses proposed, the city decision-making body may require open space areas or parks that serve as central gathering places for residents and employees.

e. Where a proposed subdivision is adjacent to an existing park, open space or natural area (e.g., wash), the city decision-making body may require the applicant to connect to and/or augment the existing park, open space or natural area with required land dedication, trails, and/or other related improvements, consistent with the provisions of Chapter 17.19 and Chapter 17.29.

E. Unique Fruita Characteristics

1. Purpose

Promote development that is compatible with the natural features of Fruita landscape and promotes Fruita's traditional neighborhood development patterns, consistent with the Guiding Principles in subsection 17.11.050A.



Development concept addressing topography, views, solar access, wash setbacks, neighborhood buffering, and trail connections.

2. Guidelines and Standards

a. Streets, blocks, open space areas and trails should be oriented and designed in response to Fruita's location in the Grand Valley. View corridors to the mountains, washes, open space areas, and canals shall be incorporated into

project designs, and lot orientation should allow solar access to individual home sites, to the greatest extent practical.

b. Developments adjacent to the Little Salt Wash or Big Salt Wash, and those in the foothills of the Colorado National Monument, McInnis Canyon National Conservation Area or near the Colorado River, shall be designed to respond to the topographic and natural resource values of those areas by limiting grading, incorporating required setbacks and buffering, providing trail connections, and clustering development densities in less environmentally sensitive areas. Development in areas prone to flooding is subject applicable building codes and may be prohibited where an applicant has requested a density bonus under Chapter 17.08 or planned unit development approval under Chapter 17.17 (i.e., development density shall be transferred from the floodplain to more suitable upland areas).

Historic Fruita

c. Development shall conform to the natural topography of the site by minimizing cuts and fills. Except as necessary for underground utilities, individual cuts and fills (i.e., for streets and foundations) are limited to no more than eight (8) feet each and no retaining wall shall exceed a height of eight (8) feet without a variance. Terracing may be allowed by the city decision-making body, as necessary, due to existing topography.

d. Developments subject to the requirements of this Section and proposed within one hundred (100) feet of a designated historic landmark are required to demonstrate compatibility with the adjacent landmark in terms of building height, setbacks, building form, architectural detailing, materials, and site design (parking, circulation and landscaping). The city decision-making body shall approve, approve with conditions, or deny a proposed development under this subsection based on its finding of compatibility as described above and also as described in Section 17.07.080, Land Use Compatibility Criteria.

F. Alleys and Shared Driveways

1. Purpose

Enhance the safety, appearance, and overall quality of Fruita's neighborhood streets by providing options and incentives for alleys and/or shared driveways serving small lot developments and multifamily projects where garages and other parking areas are setback and oriented away from neighborhood streets. Alleys or shared driveways are encouraged in new subdivisions and in redevelopment projects where the subject block has, or historically had, an alley. The following provisions are intended to reduce or eliminate traffic conflicts and aesthetic problems associated with frequent garage openings and driveway approaches abutting neighborhood streets. Alleys and shared driveways also allow homes to front onto parks and open space areas without a road

Alley with rear backing distance, center "V" drainage and landscaping.

separating the homes from such features. Alleys can also provide additional off-street parking where needed. Finally, alleys can provide effective land use and density transitions in the middle of a block instead of along street frontages, where it is more desirable to have similar building types face one another.

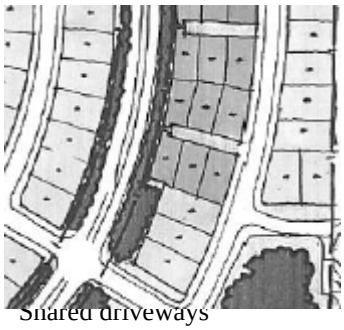
2. Guidelines and Standards

   a. Alleys or shared driveways may be allowed where developments face major streets to which individual driveway access is not allowed but houses are oriented to the street (e.g., with deep front yard setbacks) is desired.

   b. /The city decision-making body may require alleys or shared driveways to be incorporated into a subdivision design where lot sizes are less than seven thousand (7,000) square feet.

   c. Alleys and shared driveways should align so that drivers entering an alley or shared driveway can see any on-coming vehicles.

   d. Dead-end alleys and shared driveways shall be less than one hundred fifty (150) feet long, except as allowed with an approved emergency vehicle turnaround.



Shared driveways (upper right) abutting arterial

   e. Where an alley or shared driveway also serves as a required emergency apparatus (fire) lane, it shall conform to the applicable design criteria and standards for such lanes.

(Ord. 2009-02)

17.11.060 MIXED USE DEVELOPMENTS IN THE COMMUNITY MIXED USE ZONE

1. Purpose

   The following provisions are intended to supplement the commercial design standards in Chapter 17.11.030 and encourage the development of successful mixed use centers integrating a variety of housing and neighborhood-oriented commercial uses and services that are compatible with surrounding residential uses and are supported by a well-planned network of streets, blocks, pedestrian and bicycle ways, and parks and open spaces. For the purpose of Section 17.11.050, “commercial use,” “commercial development,” and “commercial center” refer to the commercial portions or phases of developments in the Community Mixed Use (CMU) zone.

2. Guidelines and Standards

   a. Commercial mixed use developments may be permitted in the Community Mixed Use (CMU) zone, subject to the applicable provisions of Sections 17.07.050 and 17.07.060 (Land Use), and the commercial designs standards in Section 17.11.030.

b. Commercial uses shall be located to maximize pedestrian access by the greatest number of surrounding residents.

c. Commercial centers shall be located adjacent to arterial or major collector streets. Secondary access should be provided to adjacent neighborhoods with traffic calming measures used to discourage neighborhood cut-through traffic.

d. Commercial uses shall be located adjacent to existing or planned residential areas containing a variety of housing types at densities of five (5) or more units per gross acre, and not adjacent to low density residential subdivisions. This guideline is intended to promote land use compatibility and transportation efficiency.

e. Commercial mixed use developments shall conform to the overall size restrictions and spacing criteria one-half (½) mile from another commercial center, in a CMU zone. For the purposes of this subsection, one-half (½) mile is measured as the distance from the geographic center of the parcel(s) on which commercial uses exist or are proposed, as applicable.

Commercial mixed use framework

f. Street and block patterns, and pedestrian and bicycle connections, shall extend through neighborhood "commercial centers," as defined under Section 17.07.070.J, so that the center maintains a coherent, continuous, visually related and functionally linked pattern for commercial centers contained in Section 17.07.070.

(Ord. 2009-02)

Chapter 17.13

ZONING REVIEW AND AMENDMENT PROCEDURES

Sections:

17.13.010 General Requirements
17.13.020 Planning Clearances
17.13.030 Site Design Review
17.13.040 Conditional Uses
17.13.050 Variances
17.13.060 Amendment to Official Zoning Map (Rezone)
17.13.070 Amendment to the Land Use Code
17.13.080 Vacation of Public Right-of-Way
17.13.090 Vacation of Public Easement

17.13.010 GENERAL REQUIREMENTS.

A. Concurrent Review of Applications. Where a project involves more than one application under this Title, the Community Development Director may require that all relevant applications for the project to be submitted together for concurrent processing and review; except that variance applications shall be reviewed separately by the Board of Adjustment.

B. Review of Multiple Applications when Subject to Different Review Procedures. Where a project involves multiple applications with different review procedures (e.g., public hearing review of a "major" application or administrative review of a "minor" application as specified herein), the Community Development Director may process the subject applications individually under the respective review procedures, or where the Community Development Director deems it in the public interest, he or she may refer all applications for the project to the applicable hearing body for concurrent review.

C. Criteria for Approval. Reviews of all applications under the Land Use Code shall be based on the applicable provisions of the Code and other applicable regulations. The burden shall be on the applicant to demonstrate conformity with the applicable regulations. Upon city approval, the applicant shall address all of the conditions imposed by the city decision-making body. Planning Clearances and the issuance of Certificates of Occupancy shall be contingent upon completing the project in accordance with the city's approval and conditions thereof.

D. Appeals. Any person aggrieved by a decision of the Community Development Department Director, under the provisions of this Title may appeal such decision as per Section 17.05.060 of this Title.

(Ord. 2009-02)

17.13.020 PLANNING CLEARANCES.

A. Applicability. A Planning Clearance is required for any development requiring a building permit and any of the following, whether a building permit is required or not: changes in land use or development, including but not limited to new or replacement structures; significant exterior remodels of existing structures; changes to vehicle access or circulation; landscaping (except single-family residential land uses); parking, or lighting of the same; changes in building use; changes in occupancy type, as defined in applicable building codes; temporary uses; fences; sheds and any other accessory building or structure covering more than eighty (80) square feet of land area; canopies exceeding eight (8) feet in height and other accessory structures covering over eighty (80) square feet of land area, whether permanent or temporary; fireplaces and wood burning stoves (including replacement of the same); grading, excavation, or fill of more than fifty (50) cubic yards of material; and similar changes as determined by the Community Development Director.

B. Procedure. The Community Development Director can administratively approve Planning Clearances.

C. Approval Criteria. Planning Clearances shall be approved only if the application meets or can meet all applicable requirements of this Title and other Titles of the Municipal Code.

D. Expiration. Planning Clearances expire automatically if:

1. Within one (1) year after the issuance of such permit, the use or development authorized by such permit has not commenced, or

2. Within one (1) year after the issuance of such permit, less than ten (10) percent of the total cost of all construction, alteration, excavation, demolition or similar work on any development authorized by such permit has been completed on the site. With respect to phased development this provision shall apply only to the phase under construction, or

3. After some physical alteration to land or structures begins to take place, such work is discontinued for a period of three (3) years.

(Ord. 2009-02)

17.13.030 SITE DESIGN REVIEW.

A. Applicability. Site Design Review is required for all developments and exterior remodels that result in an increase in floor area, height, lot coverage, or parking. However, Site Design Review is not required for subdivisions, single family or duplex residential dwellings.

B. Procedure. Two types of Site Design Review are authorized, Minor Review and Major Review, as follows:

1. Administrative Site Design Review. Developments subject to Site Design Review that do not require an Adjustment to any regulation under this Title by more than ten (10) percent (dimensional standards only) are reviewed and acted upon by the Community Development Director.

2. Site Design Review With Adjustment. Developments subject to Site Design Review that require an adjustment to one or more regulations under this Title by more than ten (10) percent are reviewed through the public hearing process in accordance with Section 17.05.070.

C. Approval Criteria. The city decision-making body may approve a Site Design Review application only upon finding that it meets the applicable requirements of this Title and other applicable regulations.

(Ord. 2009-02)

17.13.040 CONDITIONAL USES.

A. Applicability. A Conditional Use Permit is required for any use identified as a conditional use on the Land Use/Zoning Table in Section 17.07.060.F of this Title.

B. Procedure. Conditional Use Permit applications shall be processed and reviewed through the public hearing process in accordance with Section 17.05.070.

C. Approval Criteria for Conditional Use Permits. A Conditional Use Permit may be granted for a conditional use in a particular zone provided the City Council finds as follows:

1. The proposed use is consistent with the provisions and purposes of this Title, with the purposes of the zone in which it is located, and with the city's Master Plan;

2. The proposed use is compatible with existing and allowed uses surrounding or affected by the proposed use, pursuant to the criteria in Section 17.07.080;

3. The proposed use will not materially endanger the public health or safety; and

4. Public services and facilities including, but not limited to, transportation systems, wastewater disposal and treatment, domestic water, fire protection, police protection, and storm drainage facilities are adequate to serve the proposed use.

D. Expiration. A use requiring a Conditional Use Permit must commence within three years of approval or the Conditional Use Permit approval will expire. Conditional uses that

have ceased for more than one year cannot be re-established without re-approval of the Conditional Use Permit.

(Ord. 2009-02)

17.13.050 VARIANCES.

A. Applicability. A variance is an exception from the numerical requirements of this Title excluding the numerical standards contained in Chapter 11 and Chapter 41. Use variances are not permitted.

B. Procedure. Variances are reviewed and acted upon at a public hearing before the Board of Adjustment.

C. Approval Criteria. The Board of Adjustment may approve a variance request upon finding that the variance application meets or can meet the following approval criteria:

1. That the variance granted is without substantial detriment to the public good and does not impair the intent and purposes of this Title and the Master Plan, including the specific regulation in question;

2. By reason of exceptional narrowness, shallowness, depth, or shape of a legal lot of record at the time of enactment of this Title, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such property, the strict application of the subject regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the owner of such property;

3. A variance from such strict application is reasonable and necessary so as to relieve such difficulties or hardships, and the variance will not injure the land value or use of, or prevent the access of light and air to, the adjacent properties or to the area in general or will not be detrimental to the health, safety and welfare of the public;

4. That the circumstances found to constitute a hardship are not due to the result or general conditions throughout the zone, was not induced by any action of the applicant, and cannot be practically corrected, and;

5. That the variance granted is the minimum necessary to alleviate the exceptional difficulty or hardship.

D. Final Decision. Any decision of the Board of Adjustment shall be final, from which an appeal may be taken to a court of competent jurisdiction, as provided in accordance with Section 31-23-307, C.R.S.

E. Reconsideration of Denial of Variance. Whenever the Board of Adjustment denies an

application for a variance, such action may not be reconsidered by the Board for one (1) year unless the applicant clearly demonstrates that circumstances affecting the subject property have substantially changed, or new information is available that could not with reasonable diligence have been presented at the previous hearing.

(Ord. 2009-02, Ord. 2009-10)

17.13.060 AMENDMENT TO OFFICIAL ZONING MAP (REZONE).

A. Applicability and Procedures. The City Council may amend the number, shape, or boundaries of any zone, removing any property from one zone and adding it to another zone, only after recommendation of the Planning Commission. An amendment to the Official Zoning Map may be initiated by the owner of any property for which a rezone is sought or upon application of City Council.

B. Approval Criteria. The Official Zoning Map may be amended when the following findings are made:

1. That the proposed amendment is compatible with surrounding land uses, pursuant to Section 17.07.080, and is consistent with the city's goals, policies and Master Plan; and

2. That the land to be rezoned was previously zoned in error or the existing zoning is inconsistent with the city's goals, policies and Master Plan; or

3. That the area for which the amendment is requested has changed substantially such that the proposed zoning better meets the needs of the community; or

4. That the amendment is incidental to a comprehensive revision of the city's Official Zoning Map which recognizes a change in conditions and is consistent with the city's goals, policies and Master Plan; or

5. That the zoning amendment is incidental to the annexation of the subject property and the proposed zoning is consistent with the city's goals, policies, and Master Plan.

C. Protests. In case of a protest against an amendment to the Official Zoning Map which is submitted to the City Clerk at least twenty-four (24) hours prior to the City Council's vote on a proposed amendment to the Official Zoning Map, and which is signed by the owners of fifty (50) percent or more of either the area included in the proposed rezoning or of the land extending a radius of two hundred and fifty (250) feet from the land included in the proposed rezoning, then such rezoning shall not become effective except upon a favorable vote of three fourths (3/4) of the entire membership of the City Council, whether present or not.

D. Additional Requirements. In addition to the procedures for public hearings under Section

17.05.070, if the zoning amendment is approved by the City Council, it shall enact an ordinance to such effect and the amendment to the Official Zoning Map shall become effective thirty (30) days after publication of said ordinance.

(Ord. 2009-02)

17.13.070 AMENDMENT TO THE LAND USE CODE.

A. Applicability and Procedures. City Council may, after the recommendation of the Planning Commission, amend language in this Title, which amendment may be initiated by any citizen or group of citizens, firm or corporation residing or owning property within the city, or by the Planning Commission, or by the City Council.

B. Approval Criteria. Amendment to the language in this Title may be made upon a finding that the amendment is consistent with the city's goals, policies and Master Plan.

(Ord. 2009-02)

17.13.080 VACATION OF PUBLIC RIGHT-OF-WAY.

A. The City Council may approve the vacation of a public right-of-way, after recommendation by the Planning Commission, upon finding that the vacation will not:

1. Create any landlocked parcels;

2. Negatively impact adjacent properties;

3. Reduce the quality of public services to any parcel of land; and

4. Be inconsistent with any transportation plan adopted by the city.

B. A right-of-way vacation may be approved through the Major Subdivision platting process as long as the above criteria are met in addition to the following:

1. The right-of-way to be vacated was previously dedicated to the public;

2. The right-of-way to be vacated is entirely within the plat being created; and

3. Existing and proposed utilities are accommodated with sufficient easements.

(Ord. 2009-02)

17.13.090 VACATION OF PUBLIC EASEMENT. The City Council may approve the vacation of a public easement, after recommendation from the Planning Commission, upon

finding that there is no longer a public interest in retaining said easement and no utility provider objects to the easement vacation. (Ord. 2009-02)

Chapter 17.15

SUBDIVISIONS

Sections:

17.15.010 Authority; Jurisdiction; Enforcement
17.15.020 Scope
17.15.030 Purposes
17.15.040 Classification of Subdivisions and General Procedures
17.15.050 Pre-Application and Pre-Submittal Conferences
17.15.060 Sketch Plan Submittal, Processing and Review
17.15.070 Preliminary Plan Submittal, Processing and Review
17.15.080 Final Plat Submittal, Processing and Review
17.15.090 Phased Subdivisions and Subdivision Filings
17.15.100 Approval to Begin Site Development
17.15.110 Withdrawal of Approval
17.15.120 Corrections to Recorded Plats
17.15.130 Time Extensions for Minor Subdivisions, Preliminary Plans or Final Plats
17.15.140 Public and Other Subdivision Improvements- General Requirements
17.15.150 Related Costs – Public and Other Required Subdivision Improvements
17.15.160 Public Improvements to be the Property of the City
17.15.170 Guarantee of Improvements
17.15.180 Subdivision Improvements Required prior to Issuance of Planning Clearances
17.15.190 Recapture Agreements

17.15.010 AUTHORITY; JURISDICTION; ENFORCEMENT.

A. These regulations have been adopted in accordance with Title 31 of the Colorado Revised Statutes, as amended, which enables the city to control the subdivision of all property within all zones within the boundaries of the municipality. It shall be unlawful for any person, partnership or corporation to subdivide land within the legal boundaries of the City of Fruita without having first complied with the provisions of these regulations.

B. Any subdivider or agent of a subdivider who transfers or sells subdivided land before a final plat for such land has been approved by the City Council and recorded in the office of the Mesa County Clerk and Recorder shall be subject to penalties and remedies as provided by 31-23-216, C.R.S., as amended and by Section 17.01.100.

(Ord. 2009-02)

17.15.020 SCOPE. No plat of a subdivision creating a new parcel shall be approved unless it conforms to the provisions of this Title. (Ord. 2009-02)

17.15.030 PURPOSES. The purposes of this Chapter are to:

A. Assist orderly, efficient and integrated development of the city, consistent with the Fruita Community Plan;

B. Promote the health, safety, and general welfare of the residents of the city;

C. Ensure conformance of land subdivision plans with the public improvement plans of the city;

D. Ensure coordination of intergovernmental public improvement plans and programs;

E. Encourage well planned subdivisions by establishing adequate standards for design and improvement;

F. Improve land survey monuments and records by establishing standards for surveys and plats;

G. Safeguard the interests of the public, homeowners and subdividers from fire, flood and other dangers;

H. Facilitate adequate provision of transportation, water, irrigation, wastewater collection, schools, parks and recreation, and other public services and utilities;

I. Secure equitable handling of all subdivision plans by providing uniform procedures and standards;

J. Preserve natural vegetation and cover and promote the natural beauty of the city;

K. Prevent and control erosion, sedimentation and other pollution of surface and subsurface water;

L. Prevent flood damage to persons and properties and minimize expenditure for flood relief and flood control projects;

M. Restrict building on flood lands, shore lands, areas covered by poor soils, such as bentonite, or in areas poorly suited for building or construction;

N. Provide adequate space for future development of schools and parks to serve the population;

O. Lessen the congestion in streets while reducing the waste of excessive amounts of streets;

P. Protection of the city's tax base;

Q. Provide adequate light and air;

R. Protect both existing urban and non-urban development and preserve the value of property;

S. Secure economy in governmental expenditures; and

T. Prevent the overcrowding of land and avoid the undue concentration of population.

(Ord. 2009-02)

17.15.040 CLASSIFICATION OF SUBDIVISIONS AND GENERAL PROCEDURES.

A. Minor Subdivisions.

1. The following subdivisions are classified as Minor subdivisions:

   a. Subdivisions creating five (5) or fewer additional building lots all of which are adjacent to a dedicated and accepted public street for which all public improvements are already in existence and available to serve each lot and the subdivision will be completed in one phase and no density bonus is requested.

   b. Conveyances of real property to the city for public dedication purposes, unless submitted as a part of another subdivision.

   c. Consolidation plats combining no more than three (3) lots.

   d. Correction plats. (Section 17.15.120)

   e. Lot Line or Boundary Line Adjustments provided that the following conditions are met:

      1) No lot or parcel shall be created, nor shall any line be adjusted, resulting in less than the minimum land area required by this Title or other applicable regulations;

      2) Easements affecting more than the subject properties are not changed;

      3) Street and right-of-way locations are not changed; and

      4) The previously recorded plat shall not be altered in any way, which will adversely affect the previously recorded plat or compatibility with adjacent properties, pursuant to Section 17.07.080.

   f. Subdivisions dividing existing multi-family buildings into no more than six (6) townhouse or condominium lots.

2. Minor Subdivisions shall be processed as follows:
   a. A pre-application meeting with the Community Development Department is required pursuant to Section 17.15.050, below;

   b. The application must be submitted in the form and quantities required by the Community Development Director. The application shall be reviewed for compliance with the requirements of this Title including, but not limited to, the standards of the applicable zone and the compatibility criteria of Section 17.07.080;

   c. The Community Development Department shall review the application with appropriate staff and other agencies, as applicable; and

   d. After comments from city and other reviewers are considered, the Community Development Director shall make a decision to approve, deny, or approve the application with conditions based on the applicable requirements of this Title.

   e. Any person aggrieved by a decision of the Community Development Director, or his or her designee, under the procedures set forth above, may appeal such decision to the City Council pursuant to Section 17.05.060;

   f. Upon expiration of the appeal period in Section 17.05.060 the Minor Subdivision approval shall become final and the owner shall have one hundred eighty (180) days from the date of the approval to comply with any required conditions of approval and record the Final Plat. Time extensions may be granted pursuant to section 17.15.130.

B. Major Subdivisions.

1. The following subdivisions are classified as Major subdivisions:

   a. Subdivisions creating six (6) or more additional building lots, and

   b. Subdivisions not otherwise conforming to the criteria for Minor Subdivisions under subsection 17.15.040(A), above.

2. Major Subdivisions shall be processed as follows:

   a. Pre-application conferences are required pursuant to Section 17.15.050, below.

   b. Sketch Plan. An application for Sketch Plan is optional and approval shall be reviewed for compliance with this Title, other requirements of the city, and requirements of other agencies, as applicable. Applications for Sketch Plan approval shall be reviewed through the public hearing process in accordance with Section 17.05.070.

c. Preliminary Plan. An application for Preliminary Plan approval shall be reviewed for conformity to the requirements of this Title, and other applicable regulations. Applications for Preliminary Plan approval shall be reviewed through the public hearing process in accordance with Section 17.05.070.

d. Final Plat. An application for Final Plat approval shall be reviewed for conformity to the approved Preliminary Plan, including any conditions of approval, the requirements of this Title, and any other applicable regulations. Final Plat applications can be approved administratively with the related subdivision improvements agreement requiring approval by the City Council at a public hearing.

e. Sketch Plan, Preliminary Plan and Final Plat applications must be submitted in the form and quantities required by the Community Development Director.

(Ord. 2009-02)

17.15.050 PRE-APPLICATION AND PRE-SUBMITTAL CONFERENCES.

Prior to any submittal of an application under Chapter 17.15, a pre-application conference shall be held with the Community Development Department staff. The purpose of the pre-application meeting is informational; staff will review the applicant's preliminary proposal and provide informal feedback on applicable city codes and requirements. The intent is to promote efficiency and two-way communication between applicants and the city early in the land development review process. Prospective applicants are encouraged to contact adjacent property owners for the purpose of soliciting their input prior to formally submitting an application. (Ord. 2009-02)

17.15.060 SKETCH PLAN SUBMITTAL, PROCESSING AND REVIEW. If an applicant chooses to submit a Sketch Plan application for approval, the following submittal, processing and review procedures apply:

A. Applications for Sketch Plan approval shall be submitted in the form and number as required by the Community Development Director. The application shall be distributed to appropriate staff and others for review and comment.

B. The Community Development Department shall provide all review comments to the Planning Commission along with written recommendations regarding the Sketch Plan application.

C. At a public hearing in accordance with Section 17.05.070, the Planning Commission shall evaluate the Sketch Plan application according to the following criteria:

1. Conformance to the City of Fruita's Master Plan, Land Use Code, Design Criteria and Construction Specifications Manual and other city policies and regulations;

2. Compatibility with the area around the subject property in accordance with Section 17.07.080;

3. Adequate provision of all required services and facilities (roads, bicycle and pedestrian facilities, parks, police protection, fire protection, domestic water, wastewater services, irrigation water, storm drainage facilities, etc);

4. Preservation of natural features and adequate environmental protection; and

5. Ability to resolve all comments and recommendations from reviewers without a significant redesign of the proposed development.

D. The Planning Commission shall provide a recommendation to the City Council regarding the Sketch Plan application.

E. Following the Planning Commission public hearing, the City Council shall evaluate the Sketch Plan application according to the same criteria and make a final decision for approval, approval with conditions or denial of the Sketch Plan application.

F. The Sketch Plan application may be continued or withdrawn by the applicant at any time in writing to the Community Development Department. The applicant may be responsible for paying for the cost of an additional public notice if public notice for the public hearing has already been sent out.

G. Preliminary Plan applications must be submitted within 180 days of City Council approval of the Sketch Plan unless a time extension has been granted pursuant to Section 17.15.130. If more than 180 days have elapsed from the date of the City Council's approval of the Sketch Plan application, and if no extension is granted, the Sketch Plan approval shall expire.

(Ord. 2009-02)

17.15.070 PRELIMINARY PLAN SUBMITTAL, PROCESSING AND REVIEW.

A. Applications for Preliminary Plan approval shall be submitted in the form and number as required by the Community Development Director. The application shall be distributed to appropriate staff and others for review and comment.

B. The Community Development Department shall provide review comments to the Planning Commission along with written recommendations regarding the Preliminary Plan application.

C. At a public hearing in accordance with Section 17.05.070, the Planning Commission shall evaluate the Preliminary Plan application according to the Sketch Plan criteria in Section 17.15.060(C) and also the following criteria:

1. Adequate resolution of all review comments; and

2. Compliance with conditions of approval on the Sketch Plan, if any.

D. The Planning Commission shall provide a recommendation to the City Council regarding the Preliminary Plan application.

E. Following the Planning Commission public hearing, the City Council shall evaluate the Preliminary Plan application according to the same criteria and make a final decision for approval, approval with conditions or denial of the Preliminary Plan application.

F. The Preliminary Plan application may be continued or withdrawn by the applicant at any time in writing to the Community Development Department. The applicant may be responsible for paying for the cost of an additional public notice if public notice for the public hearing has already been sent out.

G. Final Plat applications must be submitted within 180 days of City Council approval of the Preliminary Plan unless a time extension has been granted pursuant to Section 17.15.130. If more than 180 days have elapsed from the date of the City Council's approval of the Preliminary Plan application, and if no extension is granted, the Preliminary Plan approval shall expire. The Community Development Director shall determine if the project must be resubmitted at the Sketch Plan stage or the Preliminary Plan stage of the land development review process.

(Ord. 2009-02)

17.15.080 FINAL PLAT SUBMITTAL, PROCESSING AND REVIEW.

A. Applications for Final Plat approval shall be submitted in the form and number as required by the Community Development Director. The application shall be distributed to appropriate staff and others for review and comment.

B. The Community Development Department shall evaluate the Final Plat application for compliance with the approval of the Preliminary Plan including any conditions of approval and all requirements of this Title.

C. The Final Plat application may be withdrawn by the applicant at any time in writing to the Community Development Department.

D. Final Plats may be administratively approved by staff, however, if a subdivision improvements agreement (SIA) is required for the subdivision, the SIA must be approved by the City Council at a public hearing.

E. Final Plats for Major Subdivisions must be recorded within two years of Preliminary Plan approval by the City Council unless a time extension has been granted pursuant to

Section 17.15.130. For Final Plats not yet recorded on the effective date of this Title, the applicants have two years from the effective date of this Title to finalize requirements and record the Final Plat.

F. The Final Plat and related documents must be recorded within ninety (90) days of the City Council's approval of the SIA unless a time extension has been granted pursuant to Section 17.15.130. If more than ninety (90) days have elapsed from the date of the City Council's approval of the SIA, and if no extension is granted, the approval of the Final Plat, SIA and related documents shall expire. The Community Development Director shall determine if the project must be resubmitted at the Sketch Plan stage or the Preliminary Plan stage of the development review process.

G. In accordance with Chapter 17.47 of this Title, in the event development within the subdivision has not commenced within three (3) years of the recording date of the Final Plat, unless such period is otherwise extended by the City Council, the City Council may, following a public hearing, vacate its approval of the subdivision which shall then be deemed null and void. For purposes of this subsection, start of development shall mean either the commencement of construction of the public and other required improvements within the subdivision, or the sale of an individual lot or unit within the development, or issuance of the first building permit for construction within the subdivision, whichever event first occurs.

H. Additional requirements for Final Plat approval.

1. As part of the Final Plat submittal requirements, once staff has approved the Final Plat application, a peer reviewer shall prepare a letter to the Fruita Community Development Director and the subdivider documenting any deficiencies in the Final Plat to be corrected. After all corrections to the Final Plat are made to the satisfaction of the peer reviewer, the subdivider shall obtain from the reviewer a signed and sealed certification to the Community Development Department that the Final Plat has been reviewed, and to the best of his or her knowledge, the plat satisfies the requirements pursuant to Section 38-51-106, C.R.S., as amended, for the recording of subdivision plats in the office of the Mesa County Clerk and Recorder. The subdivider shall pay all review fees charged by the peer reviewer, which shall be billed directly to the subdivider by the peer reviewer.

   This certification makes no warranties to any person for any purpose. It is prepared to establish for the City of Fruita Community Development Director and the County Clerk and Recorder that a professional peer review has been obtained. The certification does not warrant:

   a. Title or legal ownership of the land platted nor the title of legal ownership of adjoiners;

b. Errors and/or omissions, including but not limited to, the omission(s) of rights-of-way and/or easements, whether or not of record;

c. Liens and encumbrances, whether or not of record; and

d. The qualifications, licensing status and/or any statement(s) or representation(s) made by the surveyor who prepared the above named subdivision plat.

2. The Final Plat shall be approved by certain reviewers as determined by the city with signatures indicating all requirements or changes have been fulfilled.

3. The Community Development Department staff shall ensure the Final Plat and related documents are recorded with the Mesa County Clerk and Recorder's office including, but not limited to, the following: the executed subdivision improvements agreement; delivery of the performance guarantee required by Section 17.15.160; powers of attorney; deeds conveying easements; land or rights-of-way not dedicated on the Final Plat; the declaration of covenants; evidence of incorporation of the homeowners association, if applicable; and, homeowner's association bylaws, if applicable.

(Ord. 2009-02)

17.15.090 PHASED SUBDIVISIONS AND SUBDIVISION FILINGS. Phased subdivisions are differentiated from subdivisions constructed in filings primarily by the scope and timing of Final Plat submittals and the scope and timing of approvals for construction. In a phased subdivision, the entire subdivision is platted after approval of the Final Plat. For a subdivision done in filings, only a portion of the subdivision is recorded after approval of that portion of the Final Plat. Subsequent Final Plat submittals are required to be approved for subsequent filings. Individual construction phases or filings and associated construction drawings and submittals are reviewed and approved administratively, with the subdivision improvements agreement specific to a phase or filing of the development approved by the City Council at a public hearing. A schedule of phasings or filings is required to be submitted with the Preliminary Plan and Final Plat applications. No such schedule may exceed five years without re-approval by the City Council after the five-year period. (Ord. 2009-02)

17.15.100 APPROVAL TO BEGIN SITE DEVELOPMENT.

A. No excavation, trenching, or other site development work shall begin until the following minimum requirements have been met:

1. The subdivision improvements agreement has been recorded along with the required performance guarantee;

2. Approved for construction drawings have been signed by the City Engineer;

3. All fees, including review fees, permit fees and impact fees have been paid;

4. A pre-construction meeting has been held with the City Engineer and/or Public Works Director, and a signed copy of the inspection/approval form for the development has been received by the subdivider;

5. Copies of permits issued by other governmental entities. Specifically, but not by way of limitation, a Construction Site Storm Water Discharge Permit issued by the Colorado Department of Public Health and Environment. Also a complete and accurate copy of the final Construction Storm Water Management Plan; and

6. All other documents required by this Chapter.

B. Exceptions - specific work tasks may be undertaken prior to compliance with subsection A above, only with the written approval of the city. Such work tasks shall be limited to the following:

1. Surveying;

2. Installation of erosion control measures;

3. Placement of equipment or construction trailers, including utility hook-ups with a valid Planning Clearance and Building Permit if required;

4. Demolition, under a valid demolition permit;

5. Tree removal, clearing and grubbing;

6. Removal/relocation of irrigation facilities necessary to maintain irrigation service to adjoining properties;

7. Undergrounding of overhead electric or telecommunication lines;

8. Work within a Grand Valley Drainage District easement, with its written permission, and;

9. Other required infrastructure, which in the opinion of the city, is desirable to expedite due to weather or environmental conditions or which require close coordination with critical city-managed infrastructure or utility projects.

(Ord. 2009-02)

17.15.110 WITHDRAWAL OF APPROVAL. The city decision-making body may withdraw its approval of a plan or plat if and when it is determined that information provided by the subdivider, upon which such decision was based, was false or inaccurate. (Ord. 2009-02)

17.15.120 CORRECTIONS TO RECORDED PLATS. If it is discovered that there is a minor survey or drafting error in a recorded Final Plat, the applicant shall be required to file the Final Plat with an affidavit executed by a registered land surveyor and approved by the County Surveyor. If however, the correction of the error results in major alterations, as determined by the Community Development Director, then the corrected plat shall be subject to the full approval procedures for Final Plats contained in this Chapter and the recording of the corrected plat. (Ord. 2009-02)

17.15.130 TIME EXTENSIONS FOR MINOR SUBDIVISIONS, PRELIMINARY PLANS OR FINAL PLATS.

A. The City Council may grant an extension of the deadline to submit Preliminary Plan or Final Plat applications, record the final plat or commence development of the subdivision. Time extensions may be granted by the Community Development Director for Minor Subdivisions. A public hearing before the City Council is required on any request for a time extension for a Major Subdivision. Time extension requests are evaluated on the following criteria:

1. There have been no changes to the area in which the subdivision is located that would effect the proposed subdivision,

2. There have been no changes to the city's rules, regulations and policies including changes to the city's Master Plan and this Land Use Code, and

3. There has been no significant increase in impact fees required to be paid for the proposed subdivision.

B. In the event an approved Final Plat is not recorded by the deadline set out herein, and no extension has been granted, the approval shall be revoked pursuant to Section 17.01.100 of this Title. In accordance with Chapter 47 of this Title, in the event development within the subdivision has not commenced within three (3) years of the recording date of the final plat, the City Council may, following a public hearing, vacate its approval of the subdivision within shall then be deemed null and void. For purposed of this section, "commence development" shall mean either the commencement of construction of the public and other required improvements within the subdivision, or the sale of an individual lot or unit within the development, or issuance of the first building permit for construction with the subdivision, whichever first occurs.

(Ord. 2009-02)

17.15.140 PUBLIC AND OTHER SUBDIVISION IMPROVEMENTS - GENERAL REQUIREMENTS. The following public and other necessary subdivision improvements shall be constructed at the sole expense of the subdivider as set forth in the subdivision or development approval which are in accordance with the City of Fruita Design Criteria and

Construction Specifications Manual, this Title, and sound construction and local practices. Standards and specifications published by the Colorado Department of Transportation shall apply to all State Highways. Where specific requirements are set out in other sections of this Title, the most restrictive shall apply:

A. Street grading and surfacing and all related improvements of all internal streets within the subdivision.

B. Adjacent streets and related improvements. All adjacent streets and related improvements providing primary or secondary access to the proposed subdivision shall be capable of adequately handling the vehicular traffic generated by the subdivision, at full occupancy, as determined by the city based on generally accepted traffic engineering standards and any applicable city standards. In applying this standard, the minimum acceptable level of service for all streets within the City of Fruita is Level of Service "C", as defined by the Institute of Transportation Engineers (ITE) Trip Generation Manual, latest edition. (See also the Transportation Impact Fee Study prepared by Mesa County, Colorado by Duncan Associates, September, 2002.) Consistent with Chapter 17.19, the city may require a site specific traffic impact study performed by a registered professional engineer, at the sole cost of the subdivider, when the proposed subdivision is expected to generate at least five hundred (500) daily trip ends or fifty (50) peak hour trip ends in order to determine the traffic impacts generated by the proposed subdivision and the related street improvements needed to accommodate such additional traffic.

In the event the City Council determines that improvements to adjacent streets are necessary as a result of the traffic impacts generated by the proposed subdivision, construction of such off-site improvements shall be the responsibility of the developer. The City Council may, as a condition of approval of the subdivision: (1) require the subdivider to construct all such improvements including the full width of any expanded roadway surface; (2) require the subdivider to pay to the city the cost of constructing such improvements in which case the city shall be responsible for constructing the applicable improvements; (3) may require the subdivider to participate in a street improvement district which shall be responsible for constructing such improvements; (4) require payment of a transportation impact fee consistent with Section 17.19.130 of this Title; or (5) any combination of the above.

Provided, however, in the event the City Council determines that adjacent streets providing access to the proposed subdivision are presently inadequate to handle existing levels of traffic without the proposed subdivision, the city, or a street improvement district created by the city, shall be responsible for the costs of the improvements necessary to adequately service the subject property without the proposed subdivision. The subdivider shall be responsible for all remaining costs necessitated by development of the subdivision. In the event the City Council determines that the improvements to be constructed and/or paid for by the subdivider will also benefit other properties in the area if further developed or subdivided, and if requested by the subdivider and approved by City Council, the city shall enter into recapture agreements pursuant to Section 17.15.180

with the subdivider requiring the owner or developer of such other properties, as a condition of subdivision or development, to reimburse the subdivider for a portion of the costs incurred by the subdivider for the street improvements constructed pursuant to this subsection. Such contribution or recapture amount shall be calculated by the city and shall be roughly proportional to the traffic impacts generated by such other developments or subdivisions.

C. Curbs, gutters and sidewalks, bicycle and pedestrian paths and trails.

D. Wastewater laterals, and mains.

E. Storm drainage system, as required.

F. Water distribution system.

G. Fire hydrants.

H. Required street signs and other traffic control devices.

I. Permanent reference monuments and monument boxes.

J. Street lights.

K. Irrigation System. If the proposed subdivision is located in an area that can be reasonably serviced by an existing irrigation ditch or canal system, the subdivider shall install a fully functional, non-potable irrigation system capable of servicing the subdivision and shall convey adequate irrigation water rights to the homeowners association.

L. Natural gas lines and related facilities necessary to service the subdivision.

M. Cable television lines and related facilities necessary to service the subdivision.

N. Telephone and other telecommunication lines and related facilities necessary to service the subdivision.

O. Electrical distribution lines and related facilities. All newly constructed electrical distribution lines shall be placed underground to serve new residential subdivision areas. Exceptions to the undergrounding requirements for Minor Subdivisions may be allowed pursuant to the following conditions:

1. Upon the request of the developer of a Minor Subdivision, the Community Development Director may permit said lines be constructed overhead provided that the Minor Subdivision is in compliance with all other provisions of this Title and the following conditions are met:

a. The electrical distribution lines proposed to be placed overhead shall not exceed a maximum distance of one (1) block or seven hundred fifty (750) feet, whichever is less;

b. It will not result in any endangerment of the public health or safety;

c. It will not substantially injure the value of adjoining or abutting property;

d. It will be in harmony with the area in which it is located; and

e. It will be in general conformity with applicable city policies and regulations.

P. Erosion control and storm water management facilities, both temporary and permanent, including obtaining state required permits.

Q. Relocation and/or replacement of existing facilities of the types listed above, as required for the installation of other specified improvements.

R. Public or private park, trail, public site, open space and recreation facilities.

S. Other facilities as may be specified in this Title or required by the City Council.

(Ord. 2009-02)

17.15.150 RELATED COSTS - PUBLIC AND OTHER REQUIRED SUBDIVISION IMPROVEMENTS. A subdivider shall provide, at its sole cost, all necessary engineering designs, surveys, field surveys, as-built drawings and incidental services, including the cost of updating city mapping related to the construction of the public and other required subdivision improvements. (Ord. 2009-02)

17.15.160 PUBLIC IMPROVEMENTS TO BE THE PROPERTY OF THE CITY. Upon completion of construction of the public improvements in conformity with city standards and the plans, and any properly approved changes, a subdivider shall convey to the city, by bill of sale, all physical facilities necessary for the extension, maintenance and repair of municipal services. Acceptance of said conveyance shall be made by the city only by a majority vote of the City Council. Approval of a subdivision shall not constitute acceptance by the city for maintenance of wastewater system facilities, parks, streets, alleyways or other public improvements required under a subdivision improvements agreement. The acceptance of such facilities for maintenance shall be by specific action of the City Council upon completion in accordance with the subdivision improvements agreement and/or adopted standards. (Ord. 2009-02)

17.15.170 GUARANTEE OF IMPROVEMENTS. In order to secure the construction and installation of the public and other required subdivision improvements, the subdivider shall choose one of the following options prior to the recording of the subdivision Final Plat:

A. Subdivision Improvements Agreement. Furnish the city with a performance guarantee satisfactory to the city, as set forth in a subdivision improvements agreement along with other required documents before recording the final plat. (See also, Chapter 17.21.)

B. Final Plat Hold. Complete all required improvements according to the subdivision approval and approved for construction drawings the same as would be required for a recorded Final Plat with a subdivision improvements agreement, pursuant to Chapter 21 of this Title. A subdivision improvements agreement is required for any improvement involving existing public right-of-way or other existing public property. Before the Final Plat is recorded, an up-to-date title search is required to ensure that there are no additional liens on the property. Failure to provide clear title to land/improvements may result in vacation of the approved Final Plat. All required improvements must be inspected by staff, and accepted by the City Council before the Final Plat is recorded. Additionally, a warranty is required for the improvements before the Final Plat is recorded. The warranty shall be the same as that required in subdivision improvements agreements in Chapter 21 of this Title.

(Ord. 2009-02)

17.15.180 SUBDIVISION IMPROVEMENTS REQUIRED PRIOR TO ISSUANCE OF PLANNING CLEARANCES. All required improvements shall be installed, inspected and approved by city staff prior to issuance of a planning clearance for a building permit for the construction of any buildings within a subdivision with the exception of trails, bikeways and landscaping of common open spaces, parks and recreation areas whether dedicated to the city or to a homeowners association. Up to twenty percent (20%) of the Planning Clearances in a subdivision may be released when all improvements are completed excluding trails, bikeways, fencing and landscaping of common open spaces, parks and recreation areas. Once all improvements are completed, approved and accepted by the city, all other Planning Clearances can be released. Once a Planning Clearance is released, a Certificates of Occupancy for the building can be issued if all other requirements have been met.

The city may approve an exception to this provision for a model house to be constructed, provided that the house shall not be occupied as a residence until Planning Clearances have been released for the subdivision and a Certificate of Occupancy has been issued.

Improvements required to be completed before release of a Planning Clearance may include but are not limited to the following:

1. Permanent survey monuments referenced to the North American Vertical Datum of 1988 (NAVD) 88 per the Mesa County Survey Monument (MCSM) standards;

2. Wastewater lines and laterals to each lot;

3. Water mains and laterals to each lot;

4. Fire hydrants;

5. Storm drainage structures and conveyances, including associated erosion control measures as needed to prevent siltation of new or existing storm drainage facilities;

6. Grading and base construction of streets and alleys;

7. Soil stabilizing structures;

8. Dry utilities, including telecommunications, cable television, electrical service, and natural gas service shall be installed and operational;

9. Concrete curb, gutter, sidewalks, cross pans and handicap ramps;

10. Asphalt and/or concrete street paving as required;

11. Street signage, pavement markings and required traffic control devices;

12. Overlot grading of all areas to facilitate proper drainage, including grading completed on all lots to match finished grade elevations at all property corners;

13. Street lighting;

14. Trails and bikeways;

15. Permanent soil stabilization and revegetation measures;

16. Landscaping of common open spaces, parks and recreation areas whether dedicated to the City or to a homeowners association;

17. Developer installed fencing as shown on the construction drawings pursuant to the applicable subdivision improvements agreement;

18. Non-potable irrigation system;

19. All other required public or private improvements pursuant to the applicable subdivision improvements agreement and this Title;

20. As built drawings accepted by the City Engineer; and

21. Any other documentation required by the City.

(Ord. 2009-02)

17.15.190 RECAPTURE AGREEMENTS. As one of the conditions of approval of a subdivision, the city may determine that certain off-site improvements that are of general benefit to the city are required. In this event, the city, by affirmative action of the City Council, may enter into a recapture agreement with a subdivider under which proportionate engineering, surveying and construction costs of off-site water, wastewater, storm drainage and/or street improvements are repaid to the subdivider by other owners or developers who benefit from such improvements over an established period of time. The proportionate share of the cost of the improvements to be repaid by others shall be calculated in accordance with formulas approved by the city. It is the subdivider's sole responsibility to request a recapture agreement, and said request shall be made prior to final City Council action on the development application. The City Council retains sole authority to approve or deny all recapture agreements, at its discretion. Recapture agreements shall not exceed a period of ten (10) years. (Ord. 2009-02)

Chapter 17.17

PLANNED UNIT DEVELOPMENTS

Sections:

17.17.010 General Purposes
17.17.020 Planned Unit Developments – General Procedures
17.17.030 Criteria For Review and Decisions
17.17.040 Planned Unit Development Applications; Submittal, Processing and Review
17.17.050 Planned Unit Development Improvements
17.17.060 Amendments to Final Planned Unit Development Plan or Planned Unit Development Guide

17.17.010 GENERAL PURPOSES. Planned Unit Developments allow for modification of the normal use, density, size or other zoning restrictions for the development to accomplish the following purposes:

A. More convenient location of residences, places of employment, and services in order to minimize the strain on transportation systems, to ease burdens of traffic on streets and highways, and to promote more efficient placement and utilization of utilities and public services;

B. To promote greater variety and innovation in residential design, resulting in adequate housing opportunities for individuals of varying income levels and greater variety and innovation in commercial and industrial design;

C. To relate development of particular sites to the physiographic features of that site in order to encourage the preservation of its natural wildlife, vegetation, drainage, and scenic characteristics;

D. To conserve and make available open space;

E. To provide greater flexibility for the achievement of these purposes than would otherwise be available under conventional zoning restrictions;

F. To encourage a more efficient use of land and of public services, or private services in lieu thereof, and to reflect changes in the technology of land development so that resulting economies may inure to the benefit of those who need homes;

G. To conserve the value of land and to provide a procedure which relates the type, design, and layout of residential, commercial and industrial development to the particular site proposed to be developed, thereby encouraging the preservation of the site's natural characteristics, and;

H. To encourage integrated planning in order to achieve the above purposes.

(Ord. 2009-02)

17.17.020 PLANNED UNIT DEVELOPMENTS – GENERAL PROCEDURES.

A. Subdivisions. In the event a proposed Planned Unit Development involves a subdivision, the Sketch Plan application for the subdivision shall be reviewed as the Concept Plan for the Planned Unit Development application. Concept Plans like Sketch Plans are optional. The Preliminary Plan application shall be reviewed as the Preliminary Planned Unit Development Plan. Approval criteria for Planned Unit Developments must be considered in addition to the approval criteria required to be considered for subdivisions, pursuant to Chapter 17.15.

B. Site Design Review. In the event a proposed Planned Unit Development does not require a subdivision, Planned Unit Development will follow the Site Design Review application procedures of Chapter 17.13, except the Site Design Review for the Planned Unit Development shall be reviewed through the public hearing process in accordance with Section 17.05.070. Approval criteria for Planned Unit Developments must be considered in addition to the approval criteria required to be considered for Site Design Review, pursuant to Chapter 17.13.

(Ord. 2009-02)

17.17.030 CRITERIA FOR REVIEW AND DECISIONS. Recommendations of the Planning Commission to the City Council and decisions by the City Council concerning a proposed Planned Unit Development shall be based upon the following criteria. In no case shall the approval of a Planned Unit Development vary the health and safety requirements contained in Title 8, requirements concerning public peace, morals and welfare contained in Title 9, requirements concerning public improvements contained in Title 12, requirements concerning water and wastewater service contained in Title 13, or the requirements of the city's building codes as set forth in Title 15 of the Municipal Code.

The following approval criteria shall be considered by the Planning Commission and City Council in its review of a proposed Planned Unit Development and no Planned Unit Development shall be approved unless the Council is satisfied that each of these approval criteria has been met, can be met or does not apply to the proposed Planned Unit Development:

1. Conformance to the Fruita Master Plan;

2. Consistency with the purposes as set out in Section 17.17.010, above;

3. Conformance to the approval criteria for Subdivisions (Chapter 17.15) and/or Site Design Review (Chapter 17.13), as applicable; except where Adjustments to the standards of this Title are allowed, and;

4. Where the applicant proposes one or more Adjustments to the standards of this Title, consistency with the Adjustment criteria set forth in Section 17.11.020(B), is required.

(Ord. 2009-02)

17.17.040 PLANNED UNIT DEVELOPMENT APPLICATIONS - SUBMITTAL, PROCESSING AND REVIEW.

A. Planned Unit Development Concept Plan. Upon completing a pre-application conference, a Concept Plan application may be submitted to the Community Development Department.

B. Preliminary Planned Unit Development Plan. An application for a Preliminary Planned Unit Development Plan shall be submitted within one hundred eighty (180) days of the approval of the Planned Unit Development Concept Plan by the City Council. Failure to file a complete Preliminary Planned Unit Development Plan application in a timely manner will result in reconsideration of the Planned Unit Development Concept Plan approval by the Council.

C. Final Planned Unit Development Plan. An application for Final Planned Unit Development Plan/Plat application shall conform to the previously approved Preliminary Planned Unit Development Plan, all conditions of approval, and the requirements of Section 17.17.030, and shall be submitted to the Community Development Department within one hundred eighty (180) days following approval or conditional approval of the Preliminary Planned Unit Development Plan by the City Council, unless such time is extended by the City Council.

D. Final Approval and Recording of Planned Unit Development. Upon approval of the Final Planned Unit Development Plan/Plat the City Council shall enact an ordinance zoning the subject property as a Planned Unit Development. The Final Planned Unit Development Plan/Plat shall then be recorded by the Community Development Department in the manner and by the deadline provided for approved subdivision Final Plats and related documents in Section 17.15.080. No Final Planned Unit Development Plan, development or subdivision improvements agreement shall be recorded until the developer has paid to the city all review, filing and recording fees, as well as any applicable impact fees. The applicant shall sign the Planned Unit Development Guide before it is recorded.

(Ord. 2009-02)

17.17.050 PLANNED UNIT DEVELOPMENT IMPROVEMENTS.

All required improvements for an approved Planned Unit Development shall be designed, constructed and installed in accordance with the requirements for subdivision improvements set

forth in Chapter 17.15 and in accordance with a development or subdivision improvements agreement entered into by the City Council and the developer pursuant to Chapter 17.21 for Planned Unit Development involving a subdivision or in accordance with requirements for Site Design Review approval if no subdivision is required. Improvements shall be constructed pursuant to the city approved Planned Unit Development construction plans and Planned Unit Development Guide. (Ord. 2009-02)

17.17.060 AMENDMENTS TO PLANNED UNIT DEVELOPMENT FINAL DEVELOPMENT PLAN OR PLANNED UNIT DEVELOPMENT GUIDE.

A. Conditions for Amendment. An approved Final Planned Unit Development Plan or Planned Unit Development Guide may be amended, if the applicant demonstrates that the proposed modification:

1. Is consistent with the efficient development and preservation of the entire Planned Unit Development;

2. Does not affect, in a substantially adverse manner, either the enjoyment of the land abutting within or adjoining the Planned Unit Development, or the public interest;

3. Is not granted solely to confer a special benefit upon any person;

4. Does not contain proposed uses that adversely affect other uses approved for the Planned Unit Development;

5. Does not contain a public site, park or open space plan that differs substantially in quantity or quality from that originally approved;

6. Contains street and utility plans that are coordinated with planned and/or existing streets and utilities for the remainder of the Planned Unit Development; and

7. Is consistent with all applicable regulations of this Title, except as specifically allowed through the subject Planned Unit Development approval or where an amendment is allowed pursuant to this Section.

B. Classification of Amendments. For the purposes of considering a proposed amendment to a Final Planned Unit Development Plan or Planned Unit Development Guide, amendments shall be classified as minor amendments or major amendments. A minor amendment shall include minor changes in location, siting, and bulk of structures, or height or character of structures required by engineering or other circumstances not foreseen at the time the Planned Unit Development or Planned Unit Development Guide was approved. A minor amendment shall not alter the dimensions of any building or structure by more than ten (10) percent. A major amendment shall include all other modifications; such as; changes in use, arrangement of lots or structures, and all changes in the provisions concerning public sites, parks, open space or density.

C. Pre-application Conference. When proposing any amendment to a Final Planned Unit Development Plan and/or Plat, the applicant shall first request a pre-application conference with the Community Development Department to discuss city procedures, and requirements. The applicant shall provide information that is sufficient for the Community Development Director to determine whether the request meets the criteria for a minor or major amendment.

D. Review of Planned Unit Development Amendments. Minor Planned Unit Development amendments shall be reviewed and may be approved by the Community Development Director. Major Planned Unit Development amendments shall be reviewed and may be approved in the manner set forth for original Planned Unit Development applications as contained in this Chapter.

(Ord. 2009-02)

Chapter 17.19

PUBLIC DEDICATIONS AND IMPACT FEES

Sections:

17.19.010 Purpose
17.19.020 Authority to Impose Dedication or Impact Fee Requirements
17.19.025 Payment of Impact Fees
17.19.030 Criteria for Requiring Dedications or Payment of Impact Fees
17.19.040 Alternative Methods for Determining the Extent of Dedication or Impact Fee Requirements
17.19.050 Basis of Determination
17.19.060 Fee Funds Established; Use of Impact Fees
17.19.070 Credits; Offsets; and Reimbursements
17.19.080 Refund of Impact Fees Paid
17.19.090 Public Parks, Open Space and Trails Dedication/Fee
17.19.100 School Land Dedication
17.19.110 Fee in Lieu of School Land Dedication
17.19.120 School Land Dedication Fee Trust Fund
17.19.130 Transportation Impact Fee
17.19.140 Chip and Seal Impact Fee
17.19.150 Drainage Impact Fee

17.19.010 PURPOSE. The City Council declares it is the policy of the city that dedications of real property and/or exactions in the form of monetary payments shall be required in those instances where the City Council determines that a proposed project, development or improvement: (1) will create the need for new facilities or services, or (2) will result in increased use of existing services or facilities in such a manner as to require the expansion or eventual replacement thereof. In those instances, this Chapter shall be applied to provide a method whereby such dedication or impact fee shall be quantified to assure that a fair and equitable proportionality is established between the cost of the improvements or facilities which are attributable to the proposed development or improvement (and which are therefore the responsibility of the owner/developer), and the overall public cost of the provision of such improvements or facilities. In interpreting and implementing the provisions of this Chapter, the City Council shall give due weight to the needs of the general public, and especially the development or improvement proposed, so as not to burden disproportionately the general public and existing residents with costs or expenses to provide services or facilities, the need for which are generated by the proposed development or improvement. (Ord. 2009-02)

17.19.020 AUTHORITY TO IMPOSE DEDICATION OR IMPACT FEE REQUIREMENTS.

A. Pursuant to the provisions of applicable law, authority is specifically given to the City Council, as a part of its legislative function, to establish general schedules or formulas for

monetary impact fees for those classes of development that are subject to real property dedications, public improvement requirements, and/or impact fees.

B. Strictly by means of illustration, and not by means of limitation, dedications or impact fees are expressly authorized under the following circumstances:

1. Streets, Sidewalks, and Trails. Land may be required to be dedicated to the city for the construction, reconstruction, reconfiguration, widening or extension of on-site and off-site streets or for acceleration/deceleration lanes. Land also may be required to be dedicated to the city for the construction, reconstruction or reconfiguration of on-site and off-site sidewalks or trails for use by the general public. Payment for the construction of such sidewalks or trails also may be required. Dedication to the City of Fruita for all internal public rights-of-way shall be required and actual construction by the owner/developer shall be required for all internal streets, necessary off-site streets, sidewalks, and trails. A combination of both construction and payment of impact fees as provided in this Chapter also may be required. Fees for initial life extending surfaces for all streets internal to a subdivision also shall be required as provided in this Chapter.

2. Public Parks, Open Space, and other Public Sites. Land sufficient to enable the development of a public park, trail or other public site within a development and actual construction of such public park, trail or other public site may be required based upon compliance with the city's park and open space standards, or payment of a fee in lieu of such dedication and improvements shall be required provided that adequate standards exist for insuring that the monetary impact fee paid by the owner/developer is utilized on a project which will directly or indirectly benefit the owner/developer's property.

3. Utilities. Land or easements to the city for use by the general public, or by utility companies shall be required for utility pipelines, conduits, wires and other facilities or appurtenances. For the purposes of this Chapter, utilities include, but are not limited to: domestic water, irrigation, wastewater, storm sewer, electric, natural gas, cable television, and telecommunications services.

4. School Lands. Based upon standards adopted by the City of Fruita in conjunction with the local school district, fee title to school lands may be required to be dedicated by the owner/developer, or a fee in lieu thereof shall be required.

5. Storm Water and Drainage Management. Land sufficient to enable the development of regional storm water and drainage improvements, and actual construction thereof, may be required based upon an assessment of the development's impact on the city’s storm water quality compliance programs, and/or the need for upstream or downstream flood control measures. A fee in lieu of dedication and/or construction may be required when payment of a fee will not create or exacerbate a flooding or water quality compliance problem, and such fee in lieu of dedication and/or

construction is based on a rational determination of the impacts generated by a development.

6. Downtown Parking District In Lieu Fee. [Reserved]

C. The City Council, in its discretion, shall accept or reject any proposed dedication of land to the city prior to final approval of a proposed development. Dedication of land to the city is required to be in fee title.

D. Notwithstanding any provision contained in this Chapter to the contrary, any vacant platted building lot within the city created by subdivision prior to January 1, 1980, shall be subject to the impact fees/land dedications set forth in this Chapter. Fees for such lots shall be due and payable at the time of issuance of Planning Clearances for building permits for the construction of habitable structures on such lots. Impact fees assessed for developments approved after the effective date of this Chapter shall be due and payable at the time of approval of the subdivision Final Plat, Final Planned Unit Development Plan, or issuance of a Planning Clearance for a building permit, whichever shall first occur, however; Minor Subdivisions for only residential land uses can defer payment of impact fees (but not required land dedications) to the time of Planning Clearance approval for construction on individual lots. Minor subdivisions that defer the impact fees to the time of Planning Clearance are required to pay the fee in effect at the time of Planning Clearance approval.

(Ord. 2009-02, Ord. 2010-10, S3, Ord. 2015-12)

17.19.025 PAYMENT OF IMPACT FEES

A. Notwithstanding any provision contained in this Chapter to the contrary, any vacant building lot within the city created prior to January 1, 1980, shall be subject to the impact fees/land dedications set forth in this Chapter. Fees for such lots shall be calculated based on the impact fees in effect and payable at the time of Planning Clearance approval.

B. Impact fees assessed for developments approved after the effective date of this Chapter shall be calculated based on the impact fees in effect and payable at the time of Planning Clearance approval.

C. For new subdivision development, impact fees may be paid prior to recording a plat based on the impact fees in effect at the time of plat approval. If impact fees are not paid before the plat is recorded, impact fees must be paid at the time of Planning Clearance approval for each lot based on the fees in effect at the time of Planning Clearance approval.

D. Required land dedications cannot be deferred until the time of Planning Clearance approval and must be provided with the plat.

17.19.030 CRITERIA FOR REQUIRING DEDICATIONS OR PAYMENT OF IMPACT FEES. Dedications or payment of an impact fee is required of an owner/developer based on the following:

A. That a legitimate, identifiable public purpose is served by the required dedication or payment of a fee;

B. That the City of Fruita is acting within its power to provide the facilities or services for which the fee or dedication is required, either directly or through such dedication/impact fee process, for the benefit of the residents of the community;

C. That, but for the proposed development or improvement or the proposed development or improvement in conjunction with other developments, actual or proposed, the city would not currently be considering providing or expanding either the services or facilities in question (i.e. existing facilities and services are adequate to service the existing population);

D. That the proposed development or improvement, and the projected use of facilities and services generated by such development or improvement, is a contributing cause to the need for new or expended facilities or services;

E. That the City of Fruita would be legally justified in declining to approve the proposed development or improvement unless the dedication or impact fee was imposed because of the negative effect of the proposed development or improvement, on either existing private property or the city's or another local government's facilities or services;

F. That the City of Fruita, acting within its lawful authority, requires all owners or developers similarly situated to provide similar, in both quantity and quality, or roughly similar dedications, or to pay the same or roughly the same fees;

G. That the dedication or impact fee will serve the proposed development or improvement directly, provided, however, the fact that certain services or facilities of a general nature which provide a general benefit to all residents of the community including residents of the proposed development shall not constitute a valid ground for failing to impose a dedication or fee requirement; and

H. That the dedication or impact fee is required to and does address needs for capital facilities brought about by the proposed development or improvement which needs are not addressed by any other requirement of this Title.

(Ord. 2009-02)

17.19.040 ALTERNATIVE METHODS FOR DETERMINING THE EXTENT OF DEDICATION OR IMPACT FEE REQUIREMENTS. Upon a determination by the City Council pursuant to the provisions of this Chapter that payment of an impact fee or a dedication

of land may lawfully be required, the extent of such fee or dedication shall be determined using whichever of the following methods is selected by the owner/developer.

A. The city has adopted local or nationally recognized general standards or formulas relating to dedications and impact fees, as contained in this Chapter, and is authorized to adjust or modify these general standards and formulas from time to time by action of the City Council. Such standards or formulas shall be applicable to all owners/developers unless the owner/developer requests the city to implement the provisions of subsection C of this Section. If an owner/developer voluntarily accepts the general standards or formulas of the city by proceeding to a hearing before the Planning Commission and/or City Council, the owner/developer shall be deemed to have waived any rights under subsection C and shall be conclusively presumed to have accepted the general standards or formulas contained in this Chapter.

B. In the event no general standard or formula has been adopted relating to a certain type of dedication or impact fee, the owner/developer may voluntarily agree to comply with the dedication or fee recommended by the city staff, or request a review and determination by City Council in a public hearing. Unless the owner/developer affirmatively requests the city to implement the provisions of subsection C of this Section, at the pre-application conference prior to submittal of a subdivision Sketch Plan application, PUD Concept Plan application, or similar application, he shall be deemed to have waived any rights under subsection C and shall be conclusively presumed to have accepted the dedication or fee requirement recommended by city staff.

C. Individualized Study.

1. An owner/developer may request that an individualized study or report be made by the city relating solely to its proposed development or improvement in order to determine whether or not dedications or improvements shall be required, and, if so, to determine the extent thereof. Such study or report shall be individualized to the owner/developer's property or proposed development or improvements, shall fairly and accurately delineate the need for additional public services or facilities which will be generated by the owner/developer's proposed development or improvement, and shall include consideration of the following criteria:

    a. Whether the proposed public improvements or facilities would be required but for the owner/developer's proposed development or improvement;

    b. Whether, and to what extent, it is reasonably likely that other developments or residents thereof will utilize the public facility or improvement in question;

    c. Whether existing public facilities or services can adequately serve the proposed development or improvement without the additional expense to construct, expand, or improve the public facility or service in question; and

d. The conclusions of such study or report shall contain a recommendation as to the nature of the dedications(s) or impact fee(s) to be required, and the extent or amount thereof. In determining any such extent or amount of a dedication or impact fee to be required of an owner/developer, a proportion shall be established between the total cost of providing or expanding such necessary public facilities or services on the one hand, and the amount or extent of such total cost which is attributable to, or is caused or generated by, the proposed development or improvement, on the other hand. The extent of the dedication or amount of the fee due from the owner/developer must bear roughly the same proportion to the total cost of providing the public services or facilities in question as the need for such facilities or services generated by the owner/developer's development or improvement bears to the general population's need for or use of the facilities or services.

2. The owner/developer shall request such an individualized study or report at the pre-application conference prior to the submittal of a subdivision Sketch Plan application, Planned Unit Development Concept Plan application, or similar application and shall pay to the city a fee established by the City Council to secure a portion of the city's review and supervision expenses. In addition, at such time the owner/developer shall submit to the city a deposit in an amount established by the city equal to the estimated costs the city will incur for any necessary engineering, consultant and planning services to be performed by persons not employed on a full time basis by the city or by city staff. The required fee and deposit shall be tendered to the City Clerk and no public hearing on the owner/developer's application shall be held unless the fee and deposit is paid in full. Unless a request for an individualized study or report is made at the time provided herein, such right shall be deemed to be waived by the owner/developer.

3. Prior to the approval of any requested rezoning, conditional use approval, subdivision approval, Planned Unit Development approval, other development approval or Planning Clearance for a building permit, if applicable, the owner/developer shall pay to the city the actual cost to the city for any engineering, consultant, or planning services provided under the direction of the city necessary to conduct the individualized study or report.

4. The owner/developer may agree with the provisions of such study or report, in which case the same shall be submitted to the Planning Commission and the City Council as a joint finding and recommendation. However, if the owner/developer disagrees with all or any part of the city's report, the owner/developer may, at his sole expense, submit a written report detailing the owner/developer's findings with regard to the criteria set forth in this Chapter, and shall submit the same to the Planning Commission and the City Council. The Planning Commission and the City Council shall consider such reports at all required public hearings, and the City Council shall ultimately determine what dedications or impact fees, if

any, are required, and if so, the extent or amount of such dedications or fees. The decision of the City Council shall be final, subject to the owner/developer's right to appeal to the Mesa County District Court.

D. Any owner/developer may prepare or cause to be prepared, at his sole cost and expense, a study or report described in subsection (C) above. Said report shall be in writing and, upon the submission of such study or report, the owner/developer shall pay a fee established by the City Council to compensate the city for the review time and costs of the city's staff in reviewing said study or report. In the event the city needs to obtain engineering, consultant or planning services by a person who is not a regular full time employee of the city to conduct such review, the owner/developer shall pay the costs for such services in the manner set forth in subsection (C). The city's staff shall review such study or report, and shall comment thereon in writing to the Planning Commission and the City Council. Any disagreement by the city's staff with any of the findings or conclusions of such study or report shall be delivered to the owner/developer of the development or improvement in question. In the event of disagreement between the city's staff and the owner/developer as to what dedications or impact fees should be required, the City Council shall determine what dedications or impact fees, if any, are required, and if so, the extent or amount of such dedications or fees. The decision of the City Council shall be final, subject only to the right of the owner/developer to appeal the same to the Mesa County Court.

E. The city staff retains the right to require preparation and submittal of an individualized report or study as a condition of review of the proposed development, with said report(s) paid for solely by the owner/developer.

(Ord. 2009-02, Ord. 2015-12)

17.19.050 BASIS OF DETERMINATION. In deciding whether to impose a dedication or impact fee requirement, and the extent of such dedication or impact fee, the Planning Commission and the City Council shall consider the criteria set forth in Section 17.19.030, and shall be guided by the overriding principle that an impact fee or public dedication requirement is unfair, disproportionate and unconstitutional if it imposes a burden on an owner/developer which in equity and fairness should be borne by the public in general. However, an impact fee or dedication will be required in compliance with all existing constitutional requirements when the failure of the owner/developer to provide the dedication or impact fee would fail to remedy impacts to the city, other local governments or to the general public created or exacerbated by the owner/developer's proposed project or improvement to such an extent that the City Council would be justified in denying approval of the proposed project or improvement. (Ord. 2009-02)

17.19.060 FEE FUNDS ESTABLISHED; USE OF IMPACT FEES.

A. All impact fees collected pursuant to this Chapter shall be deposited in funds created by the city and shall be used for the purposes for which they were collected. All impact fees collected pursuant to this Chapter shall be accounted for in the manner required by

Sections 29-1-801, et. seq., C.R.S. and other applicable law.

B. Funds collected from impact fees shall be used to acquire additional real property necessary for the purposes for which they were collected, or for purposes of acquiring or improving capital facilities, as defined in Section 29-20-104.5, C.R.S., related to the purposes for which such funds were collected. A "capital facility" includes planning, preliminary engineering, engineering design studies, land surveys, final engineering, permitting, and the construction and installation of all the necessary features for the facilities. Funds collected from impact fees shall not be used for periodic or routine maintenance of city or other government facilities.

C. If an impact fee is assessed in lieu of a dedication to address large scale impacts that are borne by the city and by the public in general, as in the case of school land dedication fees, public park, open space, and trail fees, transportation impact fees and storm water and drainage management fees, such impact fees shall be considered as directly benefiting the proposed development even if such fees are used to partially fund the mitigation of impacts that are of general benefit to the community as a whole.

D. In the event that bonds or similar debt instruments are issued for the advanced provision of capital facilities for which impact fees may be expended, such fees may be used to pay debt service on such bonds or similar debt instruments.

E. Monies in the impact fee account shall be considered to be spent in the order collected, on a first-in/first-out basis.

(Ord. 2009-02, Ord. 2010-10, S3)

17.19.070 CREDITS, OFFSETS, AND REIMBURSEMENTS.

A. As a general policy, owners/developers that propose, or are required to physically construct improvements of a type and nature for which an impact fee would normally be assessed shall be eligible for offsets of up to one hundred (100) percent of the impact fees assessed to a particular phase or filing of a development, provided that the constructed improvements are of general benefit to the City of Fruita and general public, as determined by the city, and are not required solely because of the development.

B. For constructed improvements meeting the provisions of subsection (A) above, where the construction cost exceeds the assessed impact fee, developers are eligible for additional credit against impact fees assessable at a future phase or filing, or for reimbursement by the city from previously collected impact fees. Credits for the cost of constructed improvements may be carried over or transferred to successive filings or phases within the same development, but in no case shall credits be carried over or transferred to a different development or project.

C. In all cases, offsets or credits against one (1) fee, such as a transportation impact fee, cannot be used to offset or credit another type of fee, such as a Public Parks, Open Spaces and trail impact fee/Dedication.

D. Constructed improvements to designated State Highways are eligible for the same offsets and credits provided for improvements to other streets and roads, provided the improvements are of benefit to the general public and not just the property being developed. By way of example, street widening and the installation of a sidewalk along a State Highway would be eligible for offsets and credits, but acceleration/deceleration lanes strictly servicing the development would not be eligible for offsets or credits.

E. Specific to transportation impact fees, offsets or credits for the value of right-of-way abutting the development are specifically not allowed.

F. The purpose and monetary value of any offset, credit, or reimbursement against assessed impact fees shall be specifically delineated in the appropriate section of the subdivision or development improvements agreement for the development, and the basis (e.g. cost of constructed improvements) of the offset, credit, or reimbursement shall be detailed in the improvements agreement.

G. The City Council may, by an affirmative vote of at least three fourths (3/4) of all members of the Council, waive, suspend or alter all or some of the impact fees imposed by this Chapter, or agree to pay some or all of the impact fees imposed on a proposed development or redevelopment from other funds of the city that are not restricted to other uses upon finding such waiver, suspension, alteration or payment is necessary to promote the economic development of the city or public health, safety and general welfare of its residents. Any resolution adopted by the City Council providing for the waiver, suspension or altering of impact fees shall contain specific findings of fact supporting the waiver, suspension, alteration or payment.

(Ord. 2009-02, Ord. 2010-10, S3, Ord. 2015-12)

17.19.080 REFUND OF IMPACT FEES PAID.

A. If a development approval expires without commencement of construction or development, the owner/developer shall be entitled to a refund without interest, of impact fees paid, unless otherwise agreed by the city and the owner/developer, except that the city shall retain one (1) percent of the fee to offset a portion of the cost of collection and refund. The owner/developer must submit a letter requesting a refund to the Community Development Department within thirty (30) days following expiration of the development approval granted.

B. Unless otherwise provided in this Title, any funds not expended or encumbered by the end of the calendar quarter immediately following ten (10) years from the date the impact fees were paid shall, upon application of the then current land owner, be returned to such land owner with interest at the legal rate, provided that the land owner submits an

application for a refund to the Community Development Department within one hundred eighty (180) days following expiration of such ten (10) year period.

(Ord. 2009-02; Ord. 2015-12)

17.19.090 PUBLIC PARKS, OPEN SPACES, AND TRAILS IMPACT FEE/DEDICATION.

A. The City of Fruita has determined that new residential developments cause financial impacts to the city's public park, open space, and trail systems necessitating capital improvements that would not be required without such development. The city has adopted a parks, open space, and trails master plan which provides general policy guidelines and planning recommendations for provision of public parks, open space, and trails. The purpose of this section is to implement and be consistent with the city's master plan, specifically, the parks, open space, and trails section of the master plan, by requiring all new residential development to contribute a proportionate share of the public parks, open space, and trails necessary to accommodate any impacts or need for such facilities through the dedication of land and/or fees in lieu of land dedications.

The dedication of land and/or the payment of the cash equivalent will enable the city to provide parks in the proper location and of the proper size to serve the citizens of the city. This regulation also is adopted to help discourage the proliferation of small parcels, tracts, and outlots that are ostensibly created as open space and/or parks but are not sized, located or maintained as functional sites for these uses**.**

Consistent with this Section and with Chapter 17.29 of this Title, every residential development which increases the number of dwelling units above that which was approved as of the effective date of this title shall include a dedication of land to the city or other entity, as determined by the City Council, to be used for public parks, open space, and/or trails and/or payment of a public parks, open space, and/or trails fee in lieu of such dedication, as provided herein. Accessory dwelling units are not subject to this fee.

B. Amount of Land Dedication Required. Land for public parks, open space, and trails shall be based on the adopted level of service standard as identified in the Parks, Open Space, and Trails Master Plan (POST Plan) as follows:

For every 1,000 residents, the following parks and trail areas are needed to meet the level of service standard identified in the POST Plan:

2.0 acres of neighborhood parks
4.0 acres of community parks, and
1.0 mile of trails

Parkland per household is the product of the average household size multiplied by the level of service standard. Average household size is 2.52 people per dwelling unit (which is the US Census Bureau's 2006 Colorado statewide average):

2.52 * (2.0/1,000 = .005 acres per household for neighborhood parks
2.52 * (4.0/1,000 = .010 acres per household for community parks
2.52 (1/0/1,000 = .0025 miles per household for primary trails

C. Dedication and Improvement of Public Parks, Open Space, and Trails. Standards for when a fee in lieu of land dedication is required or when land is required to be dedicated, including improvements to the dedicated land, is identified in Chapter 29 of this Title.

If credit is to be given for land and improvements dedicated for public use, the credit shall be based on the estimated cost of the improvements including installation costs and the average cost of land in the area. The average cost of land shall be set annually by the City Council by resolution.

D. Payment in Lieu of Dedication and Improvements. The amount of payment to be provided in lieu of land dedication shall be based on the number of acres of land dedication which otherwise would be required. The following formula, combined with consideration of affordability issues, the goals of the city's Master Plan, and other community issues, will be used to determine the fee required and such fee shall be set annually the City Council by resolution.

Acquisition costs of un-subdivided development-ready land: $57,000 per acre

Neighborhood park development costs: $140,000 per acre
Community park development costs: $180,000 per acre
Primary trails development costs: $420,000 per mile

Neighborhood park fee calculation: .005 acres X ($57,000 + $140,000) = $985 per household

Community park fee calculation: .010 acres X ($57,000 + $180,000) = $2,370 per household

Primary trails fee calculation: .0025 miles X $420,000 = $1,050 per household

Maximum combined parkland and trail impact fee = $4,405

The above land values and development costs are based on average land values in Fruita and data on recent park and trail construction costs in the region for 2009.

E. The city may require the applicant to dedicate other land owned by the applicant for use as a public park, open space, or trail. If the city determines to accept other land not

within the development instead of or as partial payment toward, the land dedication/fee payment required hereunder, the amount of land dedication shall be the same amount of land that would otherwise be dedicated within the proposed development.

F. The proceeds from a fee in lieu of land dedication, shall be placed in a public parks, open space, and trails fund established by the city and maintained for the acquisition and improvement of land for public parks, open space, and trails, which may benefit the residents of the city in general, as well as those of the proposed development.

(Ord. 2009-02, Ord. 2010-10, S3)

17.19.100 SCHOOL LAND DEDICATION.

A. When Required. Every subdivision or other development, which is proposed to contain residential units and which increases the number of permitted residential dwelling units over and above that approved as of the effective date of this Section shall be required to dedicate land for school purposes, based on the increased number of approved dwelling units, if the Mesa County School District No. 51 ("School District") determines that such development includes within it "suitable school lands" which are necessary for implementing a school plan. If such subdivision does not contain "suitable school lands," the fee required under Section 17.19.110 shall be paid in lieu of a school land dedication, based upon the increased number of approved residential dwelling units. The provisions of this Section and Section 17.19.110 shall be the exclusive standards for the dedication of "suitable school lands" and imposition of fees in lieu thereof as prescribed by Section 17.19.110, and in the event of any conflict between such provisions and any other provision contained in this Chapter, the requirements of this Section and Section 17.19.110 shall control.

In the event a dedication of land for school purposes is required under this Section, such dedication shall be made by the owner at or before the time of approval of the subdivision Final Plat Final Planned Unit Development Plan, or Planning Clearance. No such approval shall be granted until good and sufficient title to the "suitable school lands" to be dedicated under this Section, free and clear of all liens and encumbrances whatsoever, except for current general property taxes and patent reservations, is conveyed or dedicated to, and accepted by, the School District.

B. Amount. The amount of "suitable school lands" which may be required to be dedicated under this Section shall be roughly proportional to the additional real property required by the School District for expansion of existing school facilities and construction of new school facilities to accommodate enrollment growth from the proposed residential subdivision and the future inhabitants thereof. Such rough proportionality shall be deemed to be met by the following formula:

Number of dwelling units in the proposed residential development x
Student generation fee factor of .023 =

Number of acres of suitable school lands required

The student generation fee factor is based upon a study conducted by Mesa County School District No. 51 and referenced in the Intergovernmental Agreement between Mesa County School District No. 51 and the City of Fruita, and may be modified from time to time in the manner provided in subsection 17.19.110(F) below.

(Ord. 2009-02, Ord. 2015-12)

17.19.110 FEE IN LIEU OF SCHOOL LAND DEDICATION.

A. When Required. Except for developments where a school land dedication is required in accordance with Section 17.19.100 above, or is permitted under subsection (D) below, or an exemption under subsection (C) applies, all proposed development which increases the number of approved dwelling units over and above the number approved as of the effective date of this Section , shall pay fees in lieu of school land dedication (SLD fee) in an amount per unit, based upon the increased number of dwelling units, set forth in subsection (F) hereof. In no case shall the requirement of SLD fees or the amount thereof be subject to individualized determination as provided in subsection 17.19.040(C) or (D). SLD fees shall be collected by the city for the exclusive use and benefit of the School District, and shall be expended by such School District solely to acquire real property or an interest in real property reasonably needed for development or expansion of school sites and facilities, or to reimburse the School District for sums expended to acquire such property or interests. Revenues derived from such fees shall be used only for such purposes.

B. Payment of SLD Fee.

1. No Planning Clearance for a building containing residential units shall be approved until and unless the applicable SLD fee has been paid as required by this Section based on the increased number of approved dwelling units. No SLD fee shall be required or collected under this Section with respect to any subdivision for which final approval has been granted as of the effective date of this Section.

2. In the sole discretion of the City Council, the city may elect to approve a Planning Clearance subject to payment of required SLD fees due under this Section pursuant to a deferred payment plan. Provided, however, any deferred payment plan shall provide for a performance guarantee such as a performance bond, irrevocable letter of credit, or escrow fund approved by the City Council, to assure payment of such fees.

3. Any plan for payment of SLD fees on a deferred basis in accordance with subsection (B)(2) above shall be documented in a written deferred payment plan. Such deferred payment plan shall contain, at a minimum, the following:

   a. The legal description of the real property subject to the deferred payment plan.

b. A detailed statement of the SLD fees owed pursuant to the condition of approval of the Planning Clearance, which remain unpaid.

c. The agreement of the owner/developer to pay all SLD fees owed with respect to such real property upon the sale of such property or upon application for a Planning Clearance for one (1) or more dwelling units to be constructed on such property, which ever first occurs.

d. A description of the performance guarantee assuring that such fees shall be paid when due and owing.

e. The notarized signature of the record owners of the property or their duly authorized agents.

f. The notarized signature of the Community Development Department Director or his or her designee, indicating approval of the deferred payment plan.

C. Exemptions. The following shall be exempted from dedication of school lands or payment of the SLD fee:

1. Subdivisions or other developments containing only non-residential buildings; and

2. Subdivisions or other developments containing only nursing homes, adult foster care facilities, or specialized group care facilities; and

3. Approved residential developments that are subject to recorded covenants restricting the age of the residents of dwelling units contained within such developments in such a manner that the dwelling units may be classified as "housing for older persons" pursuant to the Federal Fair Housing Amendments Act of 1988.

D. Credits.

1. An applicant for subdivision or other development approval who owns other "suitable school lands" within the same School District may offer to convey such lands to the District in exchange for credit against all or a portion of the SLD fees otherwise due or to become due. The offer must be in writing, specifically request credit against fees in lieu of school land dedication, and set forth the amount of credit requested. If the city and the School District accept such offer, the credit shall be in the amount of the value of the "suitable school lands" conveyed, as determined by written agreement between the city, the School District and the owner/developer.

2. Credit against SLD fees otherwise due or to become due will not be provided until good and sufficient title to the property offered under this subsection is conveyed to and accepted by the School District in which the development is located. Upon such conveyance, the School District and the city shall provide the owner/developer with a

letter or certificate setting forth the dollar amount of the credit, the reason for the credit, and a description of the project or development to which the credit shall be applied.

3. Credits shall not be transferable from one project or development to another.

E. Refund of Fees Paid.

1. Any SLD fee, which has not been expended by a School District within five (5) years of the date of collection shall be refunded, with all accumulated interest, if any, to the person or entity which paid the fee. Prior to such refund, such amount shall be reduced by an amount equal to three (3) percent of the principal amount to be refunded, for the costs incurred by the city in the refund of such fee. The city shall give written notice by first class mail to the person or entity, which paid the fee at the last known address as contained in the records of the city or Mesa County Clerk and Recorder. If such person or entity does not file a written claim for such refund with the city within ninety (90) days of the mailing of such notice, such refund shall be forfeited and shall be retained and used for the purposes set forth in subsection 17.19.110(A).

2. The City Council may, upon the School District's request, extend the five (5) year period of time specified in Paragraph (1) of this subsection above upon a showing that such extension is reasonable necessary in order for the School District to complete or close a purchase transaction entered into in writing by the District prior to expiration of such period, or to give the District an opportunity to exercise a purchase option it acquired prior to expiration of such period. Such request shall be made at a public hearing of the City Council. In no event shall any extension of time exceed one (1) additional five (5) year period.

F. SLD Fees-Establishment and Application.

1. SLD fees shall be collected and held in trust for the use and benefit of the School District pursuant to Section 17.19.120. Such fees shall be expended by the School District to acquire additional real property for expansion of existing school facilities and construction of new school facilities necessitated by new residential development in the School District, or to reimburse the School District for sums expended to acquire such property. The amount of the SLD fee shall be based on a methodology which takes into account the student generation rates of new residential development, the quantity of land required to build new school facilities on a per pupil basis, and the anticipated cost of acquiring suitable school lands in the School District to expand existing school facilities and construct new school facilities to accommodate new residential development without decreasing current levels of educational services.

2. At the time SLD fees are initially adopted and annually thereafter, the City Council shall determine the average cost per acre of "suitable school lands," after a public

hearing. The city shall give the School District sixty (60) days prior written notice of the hearing. Such hearing shall consider the School District's long range capital improvement plans and any other evidence, comments or recommendations submitted by the School District and the public in making such determination.

3. The SLD fee shall then be set, by resolution of the City Council, in accordance with the following formula:

   Cost per acre of suitable school lands within the School District x
   Student generation fee factor of .023=
   SLD fee per dwelling unit

   [For example, if the average cost of "suitable school lands" is fifteen thousand dollars ($15,000.00) per acre, the SLD fee per dwelling unit would be fifteen thousand dollars ($15,000.00) times (X) .023, or three hundred forty-five dollars ($345.00).]

4. The student generation fee factor may also be modified at the hearing, provided that either the School District gives notice to the City Council that it requests such a modification at least thirty (30) days prior to the hearing, or the City Council adopts a motion providing for consideration of a modification of said fee factor and its hearing notice to the School District pursuant to this subsection so states. Said hearing shall consider the School District's school facilities plan currently in place, the methodology and data supporting the proposed modification, and any evidence, comments or recommendations submitted by the County Community Development Department, the City's Community Development Department, the School District and interested members of the public.

(Ord. 2009-02, Ord. 2015-12)

17.19.120 SCHOOL LAND DEDICATION FEE TRUST FUND.

A. Creation. A School Land Dedication Trust Fund ("SLD Trust Fund") shall be established for the benefit of School District. All SLD fees collected by the city, pursuant to this Chapter, for approved residential dwelling units in the city and within the boundaries of the School District shall be deposited in the SLD Trust Fund. Such SLD Trust Fund shall be governed by the provisions of this Chapter, as supplemented by the terms of the intergovernmental agreement entered into between the city and the School District. Such agreement shall substantially comply with the requirements of this Section, and shall include, but need not be limited to, provisions regarding the following:

1. Maintenance and management of the SLD Trust Fund as a separate interest bearing account in accordance with Sections 24-75-601 to 605 C.R.S., apart from all other funds of the city, the funds in which are held in trust for the use and benefit of the School District;

2. The powers and fiduciary obligations of one (1) or more trustees named in the agreement with respect to the management of the SLD Trust Fund;

3. The retention of a specified portion of the SLD fees collected by the city for the reasonable costs incurred by the city in the collection of said fees;

4. An accounting system to ensure that SLD fees are expended for the provision of new or expanded school sites benefiting the School District for which such fees are paid;
5. An annual audit of the SLD fees collected and disbursed, with said audit to be in accordance with generally accepted accounting standards for governmental entities;

6. A periodic update of the School District's school facilities plan;

7. An agreement by the School District to submit an annual report to the city describing the School District's expenditure of SLD fees during the preceding fiscal year;

8. An agreement by the School District to furnish, when requested by the city, an accounting from the chief financial officer of the District concerning the expenditure of the SLD fees paid to the School District; and

9. An annual review by the city of the matters set forth in the report described in subsection 17.19.110(F) above.

Any intergovernmental agreement entered into pursuant to this subsection may contain terms permitting an SLD Trust Fund to be managed by one (1) or more trustees in combination with other SLD Trust Funds established under provisions of comparable school site fee resolutions or ordinances adopted by the county or other municipalities within the county.

B. Ownership. The School District shall be beneficial owner of the funds in its SLD Trust Fund, but the signature of the chief financial officer of the School District, or his or her designee, and the signature of the City Manager or his or her designee, shall be required for the withdrawal of monies from such fund.

C. Earmarking And Expenditure Of SLD Fees.

1. All SLD fees collected by the city shall be properly identified and promptly deposited in the SLD Fee Trust Fund, and shall not be withdrawn for any purpose except as authorized in accordance with this Chapter, and any applicable intergovernmental agreement;

2. Each SLD fee collected by the city pursuant to this Chapter, shall be earmarked for the School District, and shall be expended only for the purposes set forth in this Chapter. Any changes to School District boundaries that would affect the expenditure of fees in lieu of land dedication must be reviewed by the City Council

prior to the implementation of such changes. Such fees shall not be used to pay general obligation bonds, or to compensate for costs incurred by the School District for costs incurred to upgrade existing educational facilities, unless such fees are expended for the purpose of increasing the site or land area for such existing facilities for the benefit of the School District.

3. Upon the written request of the School District or its authorized representative, the City Council or its authorized designee shall promptly notify the Board of Education of the amount of fees in lieu of dedication received and deposited in the SLD Trust Fund for its benefit and the amount of interest earned thereon, as of the end of the month immediately preceding the month in which the request was made. Upon receipt of such notice, the School District may file with the Board a request for disbursement to such District of all or part of the fees and interest accumulated in its SLD Trust Fund for purposes authorized by this Chapter.

4. Such request for disbursement shall be in writing, set forth the amount of funds needed, and contain a brief description of the purposes for which the funds will be used.

5. Such request shall be heard at a regular meeting of the City Council held within thirty (30) days after it is filed, at which time the School District, through its authorized representative, shall demonstrate to the City Council a need for the moneys requested to expend for purposes authorized by this Chapter. Such demonstration shall be deemed sufficient if it is shown that the request is in furtherance of an existing capital improvement or site acquisition plan duly adopted by the Board of Education and has been included and relied upon in its budget for the fiscal year in which the moneys are to be expended. Upon the City Council's approval, which shall not be unreasonably withheld, the requested funds shall be transferred to the School District's Capital Projects Fund.

(Ord. 2009-02)

17.19.130 TRANSPORTATION IMPACT FEE.

A. The City of Fruita has determined that new developments and expansion, modification or redevelopment of existing developments cause financial impacts to the city's transportation system necessitating capital improvements that would not be required without such development. These impacts include wear and tear on existing pavements requiring rehabilitation or reconstruction of existing streets, increased traffic volumes requiring widening to improve traffic flow and provide better turning movements, additional traffic control devices and safety concerns associated with the interaction of vehicular traffic with pedestrian and bicycle traffic.

B. The city has further determined that typically, no single development creates enough traffic to warrant construction of off-site improvements based strictly on a traffic capacity

analysis or a required level of service analysis. However, each development incrementally depletes existing capacity and incrementally decreases the level of service. The cumulative impacts from new developments results in unacceptable depletions in capacity and level of service, thereby requiring the expenditure of capital funds for improvements.

C. The city has also determined that irrespective of a capacity or level of service analysis for traffic flow, construction of facilities to facilitate safe turning movements for vehicles, and for the safe movement of bicycles and pedestrians are reasonable requirements for urban streets, and shall be accounted for in any impact fee calculation.

D. Consistent with the city's need to plan for, engineer and construct transportation improvements resulting from the cumulative impacts of new development, including bikeways and sidewalks, the city's general policy is that the proportional impact resulting from a new development be paid by the owner/developer, and consistent with the provisions of this Chapter, a transportation impact fee shall be assessed for new development.

1. For developments for which a site specific traffic impact analysis is conducted pursuant to Sections 17.19.040 and 17.15.140 of this Title, the transportation impact fee shall be calculated by the city based upon the following criteria:

   a. An evaluation of the site-specific traffic impact analysis, which shall describe the percentage impact of the development on the local street network in the vicinity of the development. The traffic impact analysis shall include an estimate of twenty (20) year future traffic volumes, and use a pass-by traffic growth rate of two (2) percent or less, unless otherwise approved by the city.

   b. Estimated costs of future improvements on local streets and intersections, plus a calculated pro rata cost for improvements to regional roads. The scope of future local improvements shall be based on the long term needs of the city, as determined by the city, consistent with long range planning documents, and irrespective of a strict level of service analysis. Improvements may include, but are not limited to, curb, gutter, and sidewalk; bikeways; traffic signals; pavement widening, replacement, or rehabilitation; traffic calming devices; and traffic control devices. The scope of future regional road improvements, and estimated costs thereof, shall be determined from current and future regional planning studies, including the Transportation Impact Fee Study prepared for Mesa County by Duncan & Associates, and dated September, 2002. (The "Duncan Study")

   c. The roughly proportional impacts from the development on individual local streets and/or intersections multiplied by the total estimated costs for these improvements, plus a calculated pro rata amount for regional roads, shall equal the total transportation impact fee.

2. The base rate for residential subdivisions with single family and duplex dwelling units for which no traffic impact analysis is performed, shall be three thousand two hundred dollars ($3,200.00) per dwelling unit. The base rate may be adjusted by resolution of the City Council annually for inflation based on the change in the Colorado Department of Transportation's Construction Cost Index. For multi-family dwelling units in excess of two units, the base rate of three thousand two hundred dollars ($3,200.00) shall be multiplied by a factor of 0.69 per unit for the fee per dwelling unit. Said fees are based upon traffic impact analysis performed according to subsection (D)(1) of this Section and adjusted to reflect recent actual costs incurred on local road projects. The base rate may be adjusted by resolution of the City Council annually for inflation based on the change in the Colorado Department of Transportation's Construction Cost Index.

3. The transportation impact fee for commercial, industrial and other uses specified in the following table shall be a base rate of one thousand five hundred and eighty-nine dollars ($1,589) multiplied by the factor listed for that use. The base rate may be adjusted by resolution of the City Council annually for inflation based on the change in the Colorado Department of Transportation's Construction Cost Index.

LAND USE TYPE	ITE CODE	UNIT	FACTOR
Other			
Mobile Home/Manufactured Home/RV Park	240	per unit or space	0.50
Hotel/Motel	310/320	per room	0.94
Retail/Commercial			
Shopping 0 - 99.9 KSF	820	Per 1000 sf floor	1.64
Shopping 100 - 249.9 KSF	820	Per 1000 sf floor	1.54
Shopping 250 - 499.9 KSF	820	Per 1000 sf floor	1.49
Shopping >500KSF	820	Per 1000 sf floor	1.38
Auto Sales / Service	841	Per 1000 sf floor	1.48
Bank	911	Per 1000 sf floor	2.49
Convenience Store w/ Gas Sales	851	Per 1000 sf floor	3.58
Golf Course	430	Hole	2.33
Health Club	493	Per 1000 sf floor	1.34
Movie Theater	443	Per 1000 sf floor	4.14
Restaurant, Sit Down	831	Per 1000 sf floor	2.02
Restaurant, Fast Food	834	Per 1000 sf floor	4.52
Office/Institutional			
Office, General 0 - 99.9 KSF	710	Per 1000 sf floor	1.23
Office, General > 100 KSF	710	Per 1000 sf floor	1.05
Office, Medical	720	Per 1000 sf floor	3.47
Hospital	610	Per 1000 sf floor	1.61
Nursing Home	620	Per 1000 sf floor	0.45
Church	560	Per 1000 sf floor	0.77
Day Care Center	565	Per 1000 sf floor	1.60
Elementary/Secondary School	520/522/530	Per 1000 sf floor	0.25
Industrial			
Industrial Park	130	Per 1000 sf floor	0.73
Warehouse	150	Per 1000 sf floor	0.52
Mini-Warehouse	151	Per 1000 sf floor	0.18

Note: All factors for all uses are based on the sum total of non-regional and regional costs/unit from Table 16 and Table 17 of the Duncan Study published in September, 2002, with the value of the ratio for a single family unit assumed to be 1.0.

4. For specific uses not identified in the table above, the transportation impact fee factor shall be determined by the city based on an evaluation of the traffic generating characteristics of the proposed development compared to specific uses listed in the table.

    a. For non single family residential developments for which no traffic impact analysis is performed, the transportation impact fee shall be calculated based on the schedule set forth in subsection (3) above.

b. A change of use in an existing commercial, industrial, or institutional structure that does not involve a change in the square footage of the structure shall not require a new transportation impact fee unless the use requires a site plan review, conditional use permit or rezone in which case a traffic study may be required and a transportation impact fee may be imposed based on the net increase in traffic. Alternatively, the transportation impact fee assessed shall be calculated based on the difference in Table Values for the new verses the previous use.

c. In many instances, a particular structure may include auxiliary uses associated with the primary land use. For example; in addition to the actual production of goods, manufacturing facilities usually also have office, warehouse, research, and other associated functions. The impact fees generally are assessed based on the primary land use. If the applicant can document that a secondary land use accounts for over twenty-five (25) percent of the gross floor area of the structure, and that the secondary use is not assumed in the trip generation or other impact data for the primary use, then the impact fees may be assessed based on the disaggregated square footage of the primary and secondary land use.

d. For an expansion, redevelopment, or modification of an existing development, the fee shall be based on the net increase in the impact of the new use and/or square footage as compared to the previous use and/or square footage.

e. In the event that the proposed change of land use type, redevelopment, or modification results in a net decrease in the fee for the new use or development as compared to the previous use or development, there shall be no refund of impact fees previously paid.

f. For fees expressed per one thousand (1,000) square feet, the square footage shall be determined according to gross floor area, measured from the outside surface of exterior walls and excluding unfinished basements and enclosed parking areas. The fees shall be prorated and assessed based on actual floor area, not on the floor area rounded to the nearest one thousand (1,000) square feet.

5. All transportation impact fees shall be deposited in a fund created by the city for transportation improvements until used to construct actual capital facilities and improvements on impacted local streets and intersections, or allocated to regional road improvements. Consistent with Section 17.19.060, the total amount of deposited impact fees may be used at the discretion of the city to construct improvements to the local street network, or to regional street projects, so long as the fees are used to perform improvements to streets and/or intersections impacted by the development.

(Ord. 2009-02, Ord. 2015-12)

17.19.140 CHIP AND SEAL IMPACT FEE. The city has determined that the life of a new asphalt street can be extended through the use of a "chip and seal" coat within the first two (2) to five (5) years after the construction of the new street. In order to extend the life of asphalt streets in new developments and reduce initial maintenance costs to the City of Fruita, a chip and seal impact fee will be assessed for each new development that provides additional constructed public streets. The chip and seal impact fee changes annually, and is calculated based on the current square yard bid cost of chip and seal work, as contracted by the city, multiplied by the total number of square yards of new asphalt for dedicated, city maintained streets interior to a development as shown in the approved schedule of improvements contained in the applicable subdivision improvements agreement or development improvements agreement. (Ord. 2009-02, Ord. 2015-12)

17.19.150 DRAINAGE IMPACT FEE.

A. The City of Fruita had prepared a Storm Water Management Master Plan (SWMMP) (June 1998) which provides general policy guidelines and planning recommendations for storm water management, and provides specific criteria for calculating drainage impacts and associated impact fees for new developments. The City of Fruita has determined that storm water management is a desirable and necessary part of new developments, and has adopted the Storm Water Management Master Plan (SWMMP) (June 1998) as a component of its Master Plan. Technical criteria for drainage calculations are also found in the Mesa County Storm Water Management Manual (SWMM), which has also been adopted as a component of the city's Master Plan.

B. Consistent with the justifications and formula found in the SWMMP, a drainage impact fee shall be assessed for all new developments when the calculated runoff volume and/or flow rate from developed conditions exceeds the runoff volume and/or flow rate from historic (pre-development) conditions. A drainage impact fee which the City Council has determined is roughly proportional to the infrastructure impacts caused by the development, shall be calculated according to the following formula:

Drainage impact fee ($) = $B \times (C100_d - C100_h) \times A^{0.7}$ where:

B = Base Value = $15,793, as of January 1, 2009, to be adjusted annually for inflation based on the Consumer Price Index, All Items, All Urban Consumers, Western Region, size B/C, published on a monthly basis by the United States Department of Labor (Bureau of Labor Statistics) (ACPI-U).

C100 = 100 year Rational Method composite runoff coefficient, with subscripts "d" and "h" representing developed and historic conditions respectively.

A = Area to be developed, in acres

C. Consistent with Section 17.19.060 of this Chapter, drainage impact fees shall be

deposited in a fund established by the city for such purposes and shall be used to resolve drainage and flooding issues anywhere within the basin affected by the development being charged the impact fee, and may also be used for city-wide or regional studies and plans, so long as the percentage of impact fees used on city-wide or regional studies and plans is roughly proportional to the percentage of the study or plan devoted to the basin from which the fees were generated.

(Ord. 2009-02, Ord. 2015-12)

Chapter 17.21

SUBDIVISION AND DEVELOPMENT IMPROVEMENTS AGREEMENTS

Sections:

17.21.010 General Requirements
17.21.020 Construction of Improvements
17.21.030 Schedule of Improvements to Be Constructed
17.21.040 Timetable for Construction of Required Improvements
17.21.050 City Inspections of Improvements
17.21.060 Final Approval of Improvements by City Staff
17.21.070 Conveyance of Public Improvements
17.21.080 Warranty for Public and Other Required Improvements
17.21.090 Revegetation of Disturbed Areas Required
17.21.100 Performance Guarantee Required
17.21.110 Indemnification and Insurance
17.21.120 Default; Notice and Termination of Subdivision or Development Improvements Agreements
17.21.130 Issuance of Certificate of Compliance

17.21.010 GENERAL REQUIREMENTS. An approval of a land development application which requires a subdivision improvements agreement or development improvements agreement does not become effective until a subdivision or development improvements agreement and related documents, setting forth financial arrangements to secure the actual construction of required public or semi-public (shared) improvements required by the city, has been executed between the property owner and the City Council. The subdivision improvements agreement or development improvements agreement shall include a guarantee to construct all required improvements together with collateral which shall be sufficient to ensure the completion of the required improvements. With the property owner's written consent, the City Council may enter into a subdivision improvements agreement or development improvements agreement with a developer or applicant who is not the property owner, provided that the agreement(s) shall be binding on the subject property and shall run with the land. (Ord. 2009-02)

17.21.020 CONSTRUCTION OF IMPROVEMENTS. Every subdivision improvements agreement or development improvements agreement shall provide that the applicant, at its sole cost and expense, shall design, purchase, construct and install all elements of all improvements, whether such improvements are located within the subdivision or development property (on-site) or outside of the subdivision or development (off-site). The improvements shall be designed and built in conformance with this Title and other applicable city ordinances, building codes and regulations in effect as of the effective date of the subdivision improvements agreement or development improvements agreement, and the approved for construction drawings. Prior to the commencement of construction of the subdivision or development improvements, the city shall review and approve all drawings and plans. (Ord. 2009-02)

17.15.270 RELATED COSTS - PUBLIC AND OTHER REQUIRED SUBDIVISION IMPROVEMENTS. A subdivider shall provide, at its sole cost, all necessary engineering designs, surveys, field surveys, as-built drawings and incidental services, including the cost of updating city mapping related to the construction of the public and other required subdivision improvements. (Ord. 2009-02)

17.21.030 SCHEDULE OF IMPROVEMENTS TO BE CONSTRUCTED. Every subdivision improvements agreement or development improvements agreement shall include a schedule of the required improvements showing in detail the required improvements, the costs thereof, and make reasonable provision for the completion of said improvements in accordance with design and time specifications. No work shall be commenced on such improvements until such time as the schedule of improvements has been approved by the city and the required performance guarantee has been delivered to the city. (Ord. 2009-02)

17.21.040 TIMETABLE FOR CONSTRUCTION OF REQUIRED IMPROVEMENTS. Every improvement identified in the subdivision improvements agreement or development improvements agreement shall include a time schedule for the construction and completion of the required improvements. Said schedule shall provide for a commencement date as well as a date when such improvements will be substantially completed. Under such schedule, all required subdivision or development improvements shall be completed no later than one (1) year following the start of development, unless otherwise agreed by the City Council.

Where a developer or property owner is prevented from commencing or completing any of the required improvements within the time periods set forth in the subdivision improvements agreement or development improvements agreement, the times for commencement and/or completion of such improvements may be extended by the City Manager in accordance with Section 17.05.040.

(Ord. 2009-02)

17.21.050 CITY INSPECTIONS OF IMPROVEMENTS. Every subdivision improvements agreement or development improvements agreement shall provide that the city shall have the right to make inspections and require testing during construction of the required improvements in such reasonable intervals as the responsible city officials may request. Inspection, acquiescence and approval of any inspector of the construction of physical facilities, at any particular time, shall not constitute an approval by the city of any phase of the construction of such improvements. Such approval shall be made by the city only after completion of construction of all improvements in the manner set forth in Section 17.21.060. The city also reserves the right to perform or contract for independent quality assurance tests to confirm compliance with city requirements. (Ord. 2009-02)

17.21.060 FINAL APPROVAL OF IMPROVEMENTS BY CITY STAFF. Every subdivision improvements agreement or development improvements agreement shall provide that upon completion of construction of all required improvements, the responsible city officials shall perform final inspections of the improvements and certify with specificity their conformity or lack thereof to the approved plans, specifications and design standards. The subdivision

improvements agreement or development improvements agreement shall further provide that the property owner or developer shall make all corrections necessary to bring the improvements into conformity with applicable city standards, approved for construction drawings, and the utility, drainage and street improvements plans and requirements of other agencies, as approved. The city shall be under no obligation to provide any wastewater collection service, street maintenance or issue any further planning clearances for building permits or certificates of occupancy, until all such facilities are brought into conformance with the applicable standards, plans and specifications and approved by the responsible city officials. (Ord. 2009-02)

17.21.070 CONVEYANCE OF PUBLIC IMPROVEMENTS. A subdivision improvements agreement or development improvements agreement shall provide that all public improvements shall be conveyed to the city or other public entity, as applicable. Upon completion of construction in conformity with the applicable plans, standards, specifications and any properly approved changes, and final approval by the responsible city official, all public improvements shall be conveyed to the city or Colorado Department of Transportation or other public entity, as applicable. Acceptance of said conveyance to the city shall be made by majority vote of the City Council. Following such conveyance, the city shall be solely responsible for the maintenance of such public improvements, unless otherwise provided for by the agreement, except for any correction work required during the warranty period. (Ord. 2009-02)

17.21.080 WARRANTY FOR PUBLIC AND OTHER REQUIRED IMPROVEMENTS.

The property owner or developer shall warrant in the subdivision improvements agreement or development improvements agreement all required improvements for a period of twenty-four (24) months from the date the City Council accepts such improvements. Specifically, but not by way of limitation, the property owner or developer shall warrant the following:

A. That the title conveyed shall be good and its transfer rightful;

B. Any and all facilities conveyed shall be free from any security interest or other lien or encumbrance; and

C. Any and all facilities so conveyed shall be free of any and all defects in materials or workmanship.

(Ord. 2009-02)

17.21.090 REVEGETATION OF DISTURBED AREAS REQUIRED. Every subdivision improvements agreement or development improvements agreement shall provide that all areas disturbed by construction shall be promptly revegetated with native vegetation following completion of such work unless a building permit application has been requested for a particular lot, in which case revegetation shall be provided prior to legal occupancy of such lot. The property owner or developer shall comply with all city regulations concerning dust suppression, drainage and the control of other nuisances. In addition, the applicant or developer shall control all noxious weeds and rodents within such areas to the reasonable satisfaction of the city until conveyed to individual lot owners. (Ord. 2009-02)

17.21.100 PERFORMANCE GUARANTEE REQUIRED.

A. Every subdivision improvements agreement or development improvements agreement shall provide that in order to secure the construction and installation of the required improvements listed in the schedule of improvements, whether on-site or off-site, including tasks not specifically itemized within the schedule of improvements but which can be reasonably considered necessary for the development and for which the property owner or developer is responsible, the property owner or developer shall furnish the city with: (1) cash to be deposited in an escrow account that is acceptable to the city pursuant to an escrow and disbursement agreement approved by the city; or (2) an irrevocable letter of credit that is acceptable to the city, or (3) a performance bond issued by a surety approved by the city, in an amount equal to one hundred ten (110) percent of the estimated cost of all required improvements.

B. The developer or property owner shall deliver to the city the performance guarantee required by subsection (A) above prior to the recording of a subdivision final plat, or prior to recording of a PUD final development plan, or prior to the issuance of a conditional use permit or planning clearance, as applicable. Unless expressly authorized by the city, work shall not be commenced within the development until the approved security is furnished to the city. No lot within a subdivision shall be conveyed to any third party until the approved security is delivered to the city and the final plat has been recorded in the records of the Mesa County Clerk and Recorder.

C. Upon completion of a certain class of improvements, such as wastewater facilities by way of example, evidenced by a detailed cost breakdown of the completed improvements, the amount of any security tendered may be reduced by up to one hundred (100) percent of the approved cost for the installation of such class of improvements, upon approval by the city. Upon completion of all of the improvements required by the subdivision improvements agreement or development improvements agreement, and upon final inspection and approval by the city of all such improvements, the City Council shall further authorize a reduction of the amount of the security guaranteeing the required subdivision or development improvements to ten (10) percent of the total actual cost of the improvements.

D. Any performance guarantee tendered to the city shall be fully released and discharged only by express action of the City Council upon expiration of the twenty-four (24) month warranty period described in Section 17.21.080 and the correction of any defects discovered during such warranty period. In the event that the correction of defects are not satisfactorily completed upon the expiration of the twenty-four (24) month warranty period, the city will retain the existing performance guarantee and may require a new performance guarantee and withhold further planning clearances for building permits and certificates of occupancy within the subdivision or development until the new performance guarantee is tendered to the city.

E. Every subdivision improvements agreement or a development improvements agreement shall provide that upon the developer's or property owner's failure to perform its

obligations under such agreement and all other applicable plans, drawings, specifications and documents, as approved, within the time periods set forth in the agreement, the city may give written notice to the developer or property owner of the nature of the default and an opportunity to be heard before the City Council concerning such default. If the default has not been remedied within thirty (30) days of receipt of the notice or of the date of any hearing before the City Council, whichever is later (or such reasonable time period as is necessary to cure the default provided that the developer or the property owner has commenced in good faith to cure the default), the city may then give written notice to the developer or property owner and any surety on a performance bond, issuer of a letter of credit, or escrow agent that the city, as agent for the developer or property owner, is proceeding with the task of installing and completing the remaining required improvements in whole or in part.

F. Every subdivision improvements agreement or development improvements agreement must contain a power of attorney whereby the developer or property owner designates and irrevocably appoints the City Manager of the City of Fruita, Colorado as its attorney in fact and agent for the purpose of completing all necessary improvements required by the subdivision improvements agreement or development improvements agreement in the event of a default by the developer or property owner. The agreement shall be recorded in the office of the Clerk and Recorder of Mesa County, Colorado, and shall constitute constructive notice of the agreement and the power of attorney contained therein. The agreement and power of attorney contained therein may be enforced by the city pursuant to all legal and equitable remedies available, including an action for specific performance in a court of competent jurisdiction.

G. If a substantial amount of time elapses between the time of delivery of the security and actual construction of the improvements, the city may require a reasonable increase in the amount of the applicable security, if necessary because of estimated increased costs of construction.

(Ord. 2009-02)

17.21.110 INDEMNIFICATION AND INSURANCE. Every subdivision improvements agreement or development improvements agreement shall require the developer, property owner and any contractor or subcontractor employed by the developer or property owner who performs work within public rights-of-way, easements dedicated to the city, or within other property owned by the city to indemnify and hold harmless the City of Fruita, its officers, employees, insurers, and self insurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with work performed by the developer or property owner, its contractors and subcontractors, within city rights-of-way, easements or other property, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, an act, omission, error, professional error, mistake, negligence, or other fault of the developer, property owner, or contractor, and any subcontractor. The city may also require in a subdivision improvements agreement or development

improvements agreement that any contractor employed by the developer or property owner to perform work within public rights-of-way, easements dedicated to the city, or within any other property owned by the city to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands and other obligations assumed by contractors and subcontractors pursuant to this section. (Ord. 2009-02)

17.21.120 DEFAULT; NOTICE; AND TERMINATION OF SUBDIVISION AND DEVELOPMENT IMPROVEMENTS AGREEMENTS. In the event of any default or breach by a property owner or developer of a covenant, term, condition or obligation contained in a subdivision improvements agreement or development improvements agreement, and if such default or breach continues after notice thereof and an opportunity of a hearing as set forth in this Chapter, the agreement may be forthwith terminated, at the option of the city. Any declaration of termination of an agreement shall be effective only after and upon a resolution to that effect adopted by the City Council. In the event a property owner or developer fails to construct any required improvements in accordance with the terms of a subdivision improvements agreement or development improvements agreement, the city may suspend approval of the development during which time the property owner or developer shall have no right to sell, transfer or otherwise convey tracts or lots within the development or property without the express written approval of the city. (Ord. 2009-02)

17.21.130 ISSUANCE OF CERTIFICATE OF COMPLIANCE. Upon satisfactory completion of all required improvements, expiration of the applicable warranty period, and compliance with all of the terms of the subdivision improvements agreement or development improvements agreement, the city shall, upon request, execute a resolution or certificate stating that all improvements have been constructed in compliance with the subdivision or development improvements agreement. (Ord. 2009-02)

Chapter 17.23

MANUFACTURED AND MOBILE HOME STANDARDS

Sections:

17.23.010 Purpose
17.23.020 Placement of Manufactured Housing and Mobile Homes
17.23.030 Recreational Vehicles Restricted
17.23.040 Uncertified Mobile Homes
17.23.050 Placement of Manufactured and Mobile Homes; Permits Required
17.23.060 Manufactured Home Site Requirements
17.23.070 Manufactured Home Design Standards and Building Requirements

17.23.010 PURPOSE. The purpose of this Chapter is to set forth the conditions under which manufactured housing and mobile homes will be allowed within the City of Fruita. (Ord. 2009-02)

17.23.020 PLACEMENT OF MANUFACTURED HOUSING AND MOBILE HOMES. It is unlawful within the City of Fruita for any person to place or park any manufactured home or mobile home as defined in Chapter 17.03, on any street, alley, highway or other public place, or on any tract of land owned by any person, firm, or corporation, occupied or unoccupied, within the city, except as provided in this Chapter and in other Chapters of this Title. (Ord. 2009-02)

17.23.030 RECREATIONAL VEHICLES RESTRICTED. Recreational vehicles, travel trailers, and truck campers as defined in Chapter 17.03; and other camping vehicles are not considered manufactured homes or mobile homes and are not allowed in mobile home parks, manufactured home parks, or as permanent year round dwelling units. Recreational vehicles, travel trailers, truck campers and other camping vehicles are allowed in approved recreational vehicle parks and campgrounds for a limited time period. Recreational vehicles may be stored on residential, commercial or industrially zoned parcels of land in approved parking or recreational vehicle storage areas in conformance with the provisions of this Title. (Ord. 2009-02)

17.23.040 UNCERTIFIED MOBILE HOMES. Mobile homes located within the City on the effective date of this Chapter, which have not been certified as conforming to the U.S. Department of Housing and Urban Development's (H.U.D.) 1984 Mobile Home Standards, as amended, are hereby declared legal nonconforming uses, but may not be replaced by another mobile home that is not H.U.D. certified. (Ord. 2009-02)

17.23.050 PLACEMENT OF MANUFACTURED AND MOBILE HOMES; PERMITS REQUIRED. No person shall locate a manufactured or mobile home in the City of Fruita without first obtaining a planning clearance for a building permit from the Community Development Department. (Ord. 2009-02)

17.23.060 MANUFACTURED HOME SITE REQUIREMENTS. Manufactured single family homes, as defined in Chapter17.03, are allowed as a conditional use in all zones that allow residential land uses. Manufactured homes are also permitted in manufactured home parks and manufactured home subdivisions. All manufactured homes shall comply with the design standards set forth below. An owner shall provide proof of all required certifications to the Community Development Department prior to the placement of any manufactured home on any parcel of land. (Ord. 2009-02)

17.23.070 MANUFACTURED HOME DESIGN STANDARDS AND BUILDING REQUIREMENTS. Every manufactured home installed or located within the City of Fruita after the effective date of this Chapter shall comply with the following standards and requirements:

A. The manufactured home sections must be partially or entirely manufactured in a factory;

B. The finished home dimensions must be not less than twenty-four (24) feet in width and thirty-six (36) feet in length, excluding porches;

C. The manufactured home must be set on an excavated, backfilled, engineered foundation enclosed at the perimeter so that the top of the perimeter wall sits no more than twelve (12) inches above finish grade. The foundation shall be similar in appearance and durability to a masonry foundation of a site-built dwelling. The foundation shall provide an anchoring system for the manufactured home that is totally concealed under the structure;

D. The finished home must have brick, wood or cosmetically equivalent exterior siding on all exterior walls which provides a consistent, continuous facade from the bottom of the soffit (top of the wall section) downward to the top of the exposed perimeter foundation. The exterior siding of the finished home must have the same appearance as materials commonly used on residential dwellings. Metal siding must be painted or anodized;

E. The finished home must have a pitched roof with a pitch of at least a nominal three in twelve (3:12). The roof must be covered with shingles, shakes, or tile. Eaves of the roof must extend at least one (1) foot from the intersection of the roof and the exterior walls;

F. The finished home must have windows that are wood, vinyl coated or anodized aluminum;

G. The finished home must have color-coordinated body and trim. Colors of both the factory components and the site-built components shall be the same;

H. The main entrance to the finished home must face or be oriented toward an adjacent street;

I. The transportation mechanisms including the wheels, axles and hitch must be removed;

J. No finished home shall be occupied for dwelling purposes unless it is properly placed and connected to water, wastewater, electric and natural gas utilities, as appropriate, in conformance with the city's building codes set forth in Title 15;

K. All manufactured homes shall be certified pursuant to the "National Manufactured Housing Construction and Safety Standards Act of 1974," 42 U.S.C. §5401, *et seq*., as amended, or shall be certified by the Colorado Division of Housing pursuant to Sections 24-32-701, *et seq.*, C.R.S.; and

L. All finished homes shall have an enclosed crawl space underneath the finished home and shall not provide a harborage for rodents or create a fire hazard. No enclosed crawl space shall be used for storage unless the storage area is surfaced with concrete. Basements may be used to satisfy this requirement. Adequate access and ventilation shall be provided in accordance with the city's building codes set forth in Title 15 of the Fruita Municipal Code.

(Ord. 2009-02)

Chapter 17.25

MANUFACTURED AND MOBILE HOME PARKS AND SUBDIVISIONS

Sections:

17.25.010 Manufactured and Mobile Home Parks; General Provisions
17.25.020 Density, Dimensional and Spacing Standards for Manufactured or Mobile Home Parks
17.25.030 Manufactured and Mobile Home Park Design Standards
17.25.040 Miscellaneous Requirements for Manufactured or Mobile Home Parks
17.25.050 Manufactured or Mobile Home Park Application Submittal Requirements
17.25.060 Manufactured Housing Subdivisions

17.25.010 MANUFACTURED AND MOBILE HOME PARKS; GENERAL PROVISIONS

A. Description. Manufactured and mobile home parks are a high density residential use on a parcel of land under single ownership or control on which two (2) or more manufactured homes or mobile homes may be permitted as a conditional use within the Community Residential (CR) zone and the Community Mixed Use (CMU) zone. They may also be permitted in a Planned Unit Development (PUD).

B. Manufactured and Mobile Home Parks - Approval Procedure.

1. An applicant seeking to develop a manufactured or mobile home park as a conditional use in the CR and CMU zone shall apply for a conditional use permit in accordance with the requirements set forth in Section 17.13.040 of this Title. Prior to, or simultaneously with the submittal of an application for a conditional use permit, the applicant shall submit a manufactured or mobile home park development plan for the subject property for review and approval.

2. An applicant seeking to develop a manufactured or mobile home park as part of a Planned Unit Development shall comply with the procedures and standards set forth in Chapter 17.17 of this Title.

3. Prior to, or simultaneously with an application for a conditional use permit, or Planned Unit Development approval, the applicant shall submit an application for subdivision in accordance with the requirements of Chapter 17.15 of this Title. A manufactured or mobile home park shall be subdivided for the purpose of dedication of adjacent public streets, internal public streets and ways, parks, open space or recreation areas, easements and other public facilities.

4. Development of a manufactured or mobile home park is permitted only in accordance with a manufactured or mobile home park development plan and subdivision final plat prepared and approved in accordance with the requirements

of this Title. The owners and their successors, heirs, or assigns shall be bound by the approved manufactured or mobile home park development plan and the subdivision final plat, including any amendments thereto approved by the City Council as provided in this Title.

C. General Requirements Applicable to Manufactured and Mobile Home Parks.

1. In order to provide uniform administrative procedures and quality development standards, manufactured and mobile home parks shall conform to all provisions of this Title except as such provisions are specifically altered in the approved manufactured or mobile home park development plan.

2. No development within a manufactured or mobile home park shall occur until a subdivision final plat for the portion to be developed is approved and recorded as provided in Chapter 17.15.

3. Vesting of property rights for a manufactured or mobile home park development accrue only for that portion of the property granted subdivision final plat approval.

4. All public utility distribution lines shall be placed underground.

5. The minimum number of acres which may constitute a manufactured or mobile home park development shall be five (5) acres.

6. Planning clearances, building and occupancy permits for manufactured or mobile homes in a manufactured or mobile home park development shall comply with the following requirements:

a. It shall be unlawful to erect, move or place any manufactured or mobile home, or other structure on or onto any site space, lot or tract in a manufactured or mobile home park without first obtaining a planning clearance and a building permit.

b. No planning clearance for building permit for the installation of a manufactured or mobile home shall be issued unless the manufactured home meets the requirements set forth in Chapter 17.23.

(Ord. 2009-02)

17.25.020 DENSITY, DIMENSIONAL AND SPACING STANDARDS FOR MANUFACTURED OR MOBILE HOME PARKS.

A. The minimum area for a manufactured or mobile home space shall be four thousand (4,000) square feet.

B. The minimum lot length shall be eighty (80) feet.

C. The minimum lot width shall be fifty (50) feet.

D. The maximum building height shall be thirty-five (35) feet.

E. The distance between any building or manufactured or mobile home from a property line of the manufactured or mobile home park shall be twenty (20) feet.

F. The front setback of a manufactured or mobile home shall be fifteen (15) feet from the back of the curb, provided however, that in order to encourage the enclosed storage of parked vehicles, the setback from the back of curb to a garage shall be either five (5) feet or fifteen (15) feet or greater.

G. Side spacing shall provide for a distance of twenty (20) feet between manufactured or mobile homes.

H. Rear spacing shall provide for a distance of twenty (20) feet between units when units are side to end, and a distance of ten (10) feet between units when units are end to end.

I. There shall be a minimum setback of twenty (20) feet between any service facility or park permanent building and a manufactured or mobile home.

J. Accessory buildings and structures shall be constructed in accordance with the city's building codes adopted in Title 15 of the Fruita Municipal Code. Accessory buildings and structures shall include steps, attached or detached patios that are open on three (3) sides, attached or detached decks that are open on three (3) sides, attached or detached storage units, attached or detached garages, and attached or detached carports. Accessory buildings or structures may be located adjacent to a manufactured or mobile home space line provided, however, that a minimum of six (6) feet of separation is provided between a garage and any other structure on an adjoining space. Any other building or structure shall provide a minimum of ten (10) feet between it and any structure on an adjoining space.

K. The limits of each manufactured or mobile home space shall be clearly marked on the ground by permanent monuments set pursuant to Section 38-51-101, C.R.S.

(Ord. 2009-02)

17.25.030 MANUFACTURED AND MOBILE HOME PARK DESIGN STANDARDS.

A. Street Design Standards.

1. All interior streets in a manufactured or mobile home park shall be privately owned and maintained by the park owner, unless otherwise permitted by the City Council, and shall be a minimum width of twenty-two (22) feet from back of curb to back of curb, including the width of gutter pans.

2. Primary through streets shall be thirty-four (34) feet from back of curb to back of curb with a four (4) foot wide detached sidewalk on one side being located six (6) feet from the back of curb.

B. Parking.

1. Every manufactured or mobile home space shall have two (2) off-street parking spaces adjacent to the manufactured or mobile home. There shall be one (1) additional parking space for each manufactured or mobile home space within one hundred (100) feet for the use of occupants and guests.

2. Off-Street Vehicle Parking for Recreation Facilities. Off-street vehicle parking shall be provided for recreation facilities located within a manufactured or mobile home park. One (1) space per two hundred fifty (250) square feet of gross floor area, plus one (1) space per employee at the maximum shift shall be provided for enclosed recreations facilities, or twenty (20) spaces are to be provided for every diamond or athletic field, or one (1) space for every four (4) spectator seats, whichever is greater. (One seat is equal to two (2) feet of bench seating length.) Handicapped parking spaces shall be provided in conformance with the Americans with Disabilities Act, as may be amended from time to time.

C. Pedestrian Circulation. The developer shall provide for a system of pedestrian circulation within the development. The system shall connect with existing sidewalks, if any are adjacent to the property. The system shall be designed to link residential units with recreation facilities, school bus stops and existing sidewalks in the neighborhoods. Detached sidewalks within the manufactured or mobile home park shall be a minimum of four (4) feet in width.

D. Street and Sidewalk Lighting. All streets and sidewalks shall be lighted in accordance with the city's lighting standards.

E. Access and Circulation. A manufactured or mobile home park development shall have two (2) means of access to public streets at the perimeter of the site. Internal circulation may be provided by public or private streets, driveways and alleys. Each manufactured or mobile home space shall be provided access to the internal circulation system. No manufactured or mobile home space shall have direct access to a public street on the perimeter of the site.

F. Sidewalk Between Street and Manufactured or Mobile Home. Concrete sidewalks shall be provided between the manufactured or mobile home and the adjacent street sidewalk; except, the paved parking area may satisfy this requirement provided a sidewalk is provided from the parking area to the manufactured or mobile home.

G. Traffic Control.

1. Pursuant to Section 42-4-1102, C.R.S., the city elects to impose and enforce stop sign regulations, speed limits and parking restrictions posted in accordance with the Manual of Uniform Traffic Control Devices upon all streets which are privately maintained in manufactured or mobile home parks. The owner of the manufactured or mobile home park shall provide such signs as may be required by the City Engineer, and agrees to erect and maintain such signs in conformity with the Model Traffic Code and other applicable regulations.

2. The stop sign placement, speed limits and parking restrictions shall be determined by the City Engineer, but shall be consistent with the provisions of Sections 42-4-1101 to 42-4-1104 *et. al.*, C.R.S., Section 42-4-1204, C.R.S. and Section 42-4-1208, C.R.S.

3. There shall be posted at each entrance to any manufactured or mobile home park a sign giving notice of such enforcement in the following text: "NOTICE: Stop sign, speed limits and parking restrictions enforced by the city."
4. When all signs are in place, stop sign, speed limits and parking regulations shall be enforced and violations thereof punished in accordance with the provisions of the Model Traffic Code, as adopted by the City of Fruita.

H. Utility Design Requirements.

1. All public utilities shall be installed in accordance with the applicable city standards.

2. A manufactured or mobile home park may have multiple master meters for water service.

3. Each manufactured or mobile home space shall have its own meter for water, electrical, and natural gas service.

I. Manufactured or Mobile Home Space Landscaping. The developer shall provide front and rear manufactured or mobile home space landscaping for each space, including but not limited to, grass, a non-potable irrigation system, and trees and shrubs. The developer shall provide a graphical representation of "typical" manufactured or mobile home space landscaping for each of the manufactured or mobile home designs to be located in the manufactured or mobile home park, for review and approval by the Planning Commission and City Council.

J. Manufactured or Mobile Home Park Perimeter and Common Space Landscaping. The developer shall landscape the perimeter and common areas of the manufactured or mobile home park in accordance with landscaping plans submitted to the Planning Commission and City Council for review and approval.

K. Outdoor Living Area.

1. No less than eight (8) percent of the gross site area shall be reserved for and devoted to improved recreation areas and facilities provided in a location or locations convenient to all manufactured or mobile home spaces.

2. An outdoor living area shall be provided on each space equal to at least ten (10) percent of its area, provided that in no case shall such area be less than three hundred (300) square feet or required to be more than five hundred (500) square feet. The minimum horizontal dimension of such area shall be not less than fifteen (15) feet.

3. Such outdoor living area shall be properly drained, located for convenience and optimum use and walled, fenced or landscaped to provide reasonable privacy.

L. Tenant Storage.

1. A separate uniform tenant storage structure may be provided for each space, located on each space.

2. There shall be a minimum of two hundred twenty-four (224) cubic feet of storage area provided for each manufactured or mobile home space.

3. Design and location of tenant storage shall enhance the appearance of the park and the exterior siding of the structure shall have the same appearance as materials commonly used on residential dwellings.

M. Street Names, Addressing, Mail Delivery. All proposed street names shall be indicated on the development plan and submitted by the owner for approval. Each space shall be numerically designated for address and mail purposes and signs furnished and installed by the manufactured or mobile home park owner. Cluster postal boxes will be provided at a central location(s) convenient to the residents. No individual street-side mailboxes are permitted unless otherwise approved by the city.

N. Solid Waste Disposal.

1. The owner of the manufactured or mobile home park shall be responsible for the promulgation and enforcement of rules and regulations governing solid waste storage and handling that meet or exceed state or federal regulations.

2. The owner shall provide containers for the storage of solid wastes awaiting collection for each manufactured or mobile home space. Containers are to be sized to completely contain all solid wastes that are generated on the premises. Containers are to be flytight, watertight, and rodent proof and are to be kept off the street, curb, sidewalk and all other public ways, and concealed from public view, except on collection day.

(Ord. 2009-02)

17.25.040 MISCELLANEOUS REQUIREMENTS FOR MANUFACTURED OR MOBILE HOME PARKS.

A. Residents Council. A manufactured or mobile home park development shall establish a residents council. This residents council shall be established from residents living within the community and from different sections of the community. The purpose of the residents council shall be to foster communication between residents and park management. The council shall serve as a method for residents of a manufactured or mobile home park development to direct questions and concerns to management and to assist in the social programs of the community. The residents council shall meet with management on a regular basis as established by the council, but no less than quarterly. The meeting shall be noticed and be open to all residents of the park. Members of the residents council shall be subject to popular election by residents of the park.

B. Single Ownership of a Manufactured or Mobile Home Park Required. A manufactured or mobile home park development may not be converted to another use other than such uses provided for in the approved development plan without the approval of the city and meeting the appropriate lot size, lot width, setback and other requirements for the new use.

1. The land within a manufactured or mobile home park development shall remain in a unified ownership and the individual ownership of lots or spaces or portions of lots or spaces shall not be transferred.

2. No dwelling unit other than a manufactured or mobile home shall be located within a manufactured or mobile home park development.

C. Conformance of Manufactured or Mobile Home Park to State Law. A manufactured or mobile home park and its operation shall conform to the provisions of the Mobile Home Park Act, Sections 38-12-201, *et. seq.*, C.R.S., as amended from time to time.

D. Business License. The owner or operator of a manufactured or mobile home park shall obtain and maintain a business license as provided in Title 5 of the Fruita Municipal Code.

(Ord. 2009-02)

17.25.050 MANUFACTURED OR MOBILE HOME PARK APPLICATION SUBMITTAL REQUIREMENTS.

The applicant shall submit the required information on forms and in numbers as determined by the Community Development Department. The application shall be distributed to appropriate staff and others for review and comment. .

A. Manufactured and Mobile Home Park Review and Approval Criteria. In addition to the criteria set forth for conditional use permits (Section 17.13.040) or Planned Unit

Developments (Chapter 17.17), the following criteria shall be considered by the Planning Commission and City Council in the review of manufactured and mobile home park development plan applications:

1. Whether the application is in compliance with the requirements of this Chapter 17.25;

2. Whether the proposed park is compatible with the surrounding land uses;

3. Whether the subject land is suitable for the intended use and is compatible with the natural environment; and

4. Whether the manufactured or mobile home park is compatible with the City of Fruita's Master Plan and related plans and documents and complies with all provisions of this Title 17.

(Ord. 2009-02)

17.25.060 MANUFACTURED HOUSING SUBDIVISIONS; GENERAL PROVISIONS.

A. Description. This is a low density residential use intended primarily for single family uses on individual lots within a subdivision, consisting of manufactured homes. Manufactured housing subdivisions may be allowed as a conditional use within the CR and CMU zones. They may also be permitted in a Planned Unit Development (PUD) Zone District.

B. Manufactured Housing Subdivision Approval Procedure.

1. Prior to, or simultaneously with the application for a conditional use permit pursuant to Section 17.13.040 or Planned Unit Development approval pursuant to Chapter 17.17, the applicant shall submit a manufactured housing subdivision development plan for the property for review and approval.

2. Prior to, or simultaneously with the application for development plan approval, the applicant shall submit a subdivision application for the property for review and approval as provided in Chapter 17.15 of this Title. Development of a manufactured housing subdivision shall be subject to review and approval through the sketch plan, preliminary plan, and final plat process in compliance with all of the standards contained in this Title 17. Public hearings on these matters may be combined or occur separately.

3. A manufactured housing development shall be subdivided for the purpose of creation of the residential lots, dedication of adjacent public streets, internal public streets and ways, utility and other easements, parks, trails, open space, and other public facilities, and a subdivision final plat shall be recorded as provided in Chapter 17.15 of this Title.

3. Development of a manufactured housing subdivision is permitted only in accordance with a development plan and final plat(s) prepared and approved in accordance with the provisions herein. The owners and their successors, heirs, or assigns shall be bound by the approved development plan and final plat(s), including any amendments thereto, approved by the City Council, as provided herein.

C. General Requirements Applicable to Manufactured Housing Subdivisions.

1. In order to provide uniform administrative procedures and quality development standards, manufactured housing subdivisions shall conform to all provisions of this Title 17.

2. No development within a manufactured housing subdivision shall occur until a subdivision final plat for the portion to be developed is approved and recorded as provided in the city's subdivision regulations (Chapter 17.15 of this Title.)

3. A portion of the gross site area shall be dedicated to the city for public use as required by Chapter 17.19 or a fee in lieu of land shall be paid. Impact fees as required by Chapter 17.19 shall also be paid.

4. Vesting of property rights accrue only for that portion of the property granted final subdivision final plat approval.

5. All public utility distribution lines shall be placed underground.

6. The minimum number of acres, which may constitute a manufactured housing subdivision, shall be five (5) acres.

7. Planning clearances, building and occupancy permits for manufactured homes in a manufactured housing subdivision shall comply with the following requirements:

   a. It shall be unlawful to erect, move or place any manufactured home, or other structure on or onto any site, lot or tract in a manufactured housing subdivision without first obtaining a planning clearance and a building permit.

   b. No planning clearance for a building permit for the installation of a manufactured shall be issued unless the manufactured home meets the requirements set forth in Chapter 17.23.

8. All manufactured housing subdivision developers shall establish an association of homeowners for their development. The homeowners association shall establish bylaws governing the association which shall satisfy certain standards including, but not limited to, the following:

a. Mandatory participation in the homeowners association for the purpose of maintenance of all common areas, buffer areas and vacant lots within the subdivision and to enforce the declaration of restrictive covenants;

b. Binding effect on all future property owners;

c. Perpetual existence;

d. Unaffected by any change in zoning or land use;

e. Assurance of adequate maintenance;

f. Enforceable by the city by appropriate legal action; and

g. If maintenance or preservation of common areas or lots no longer comply with the provisions of the association's declaration, the city may take all necessary action to assure compliance and assess the association all costs incurred by the city for such purpose, including reasonable attorney fees. (See Section 17.29.050.)

(Ord. 2009-02)

Chapter 17.27

CAMPGROUNDS AND RECREATIONAL VEHICLE PARKS

Sections:

17.27.010 Development Standards
17.27.020 Size and Density of Camping Spaces and Recreational Vehicle Spaces
17.27.030 Streets and Parking
17.27.040 Accessory Uses
17.27.050 Open Space and Recreational Areas
17.27.060 Setbacks, Landscaping and Fencing
17.27.070 Utilities
17.27.080 Fire Prevention and Protection
17.27.090 Sanitary Facilities
17.27.100 Miscellaneous Requirements
17.27.110 Permanent Occupancy Prohibited
17.27.120 Responsibilities of Management

17.27.010 DEVELOPMENT STANDARDS.

A. Site Conditions. Conditions of soil, groundwater level, drainage and topography shall not create hazards to the property or the health or safety of the occupants. The site shall not be exposed to objectionable smoke, noise, odors or other adverse influences, and no portion subject to unpredictable flooding, subsidence or erosion shall be used for any purpose which would expose persons or property to hazards.

B. Soil and Groundcover. Exposed ground surfaces in all parts of the campground or recreational vehicle park shall be paved, or covered with stone screening or other solid materials, or protected with a vegetative growth that is capable of preventing soil erosion and of eliminating objectionable dust.

17.27.020 SIZE AND DENSITY OF CAMPING SPACES AND RECREATIONAL VEHICLE SPACES.

A. Minimum Camping Space Size. Each tent or recreational vehicle camping space shall contain a minimum of one thousand five hundred (1,500) square feet and shall have a minimum width of twenty-five (25) feet.

B. Parking. Each camping or recreational vehicle space shall contain one (1) paved vehicle parking space with a minimum length of twenty (20) feet and a minimum width of nine (9) feet. For recreational vehicle camping spaces, an additional paved area with a minimum length of thirty-five (35) feet and a minimum width of 12 (twelve) feet shall be

provided. No part of a recreational vehicle or other camping unit placed on the camping space shall be closer than five (5) feet to the edge of the camping space.

C. Required Separation Between Recreational Vehicles. Recreational vehicles shall be separated from each other and from buildings by at least ten (10) feet. Any projections, such as attached awnings for purposes of this separation requirement shall be considered to be part of the recreational vehicle.

D. Space Identification. Each space for the parking of a recreational vehicle or tent camping space shall be identified by numbers, a minimum of three (3) inches in height, posted in a conspicuous place at the front of the space.

17.27.030 STREETS AND PARKING.

A. Interior Streets. All interior two-way streets shall be twenty-eight (28) feet minimum width and all interior one-way roads shall be twenty (20) feet minimum width. All streets shall be paved and shall be designed for the safe and convenient movement of vehicles, bicyclists and pedestrians.

B. Parking Requirements. At least one and one-fifth (1~~½~~ 1/5) off-street parking spaces shall be provided in the campground or recreational vehicle park per each camping or recreational vehicle space. No on-street parking will be permitted.

17.27.040 ACCESSORY USES.

A. Management headquarters, recreational facilities, toilets, dumping stations, showers, coin-operated laundry facilities and other uses and structures customarily incidental to operation of a campground or recreational vehicle park are permitted as accessory uses to the campground or recreational vehicle park.

B. In addition, stores, restaurants and other convenience establishments shall be permitted as accessory uses in campgrounds and recreational vehicle parks in zone districts where such uses are not allowed as principal uses, subject to the following restrictions:

1. Such establishments and the parking areas primarily related to their operations shall not occupy more than five (5) percent of the gross area of the campground or recreational vehicle park.

2. Such establishments shall be restricted in their uses to occupants of the campground or recreational vehicle park.

3. Such establishments shall present no visible evidence from any street outside the campground or recreational vehicle of their commercial character which would

attract customers other than occupants of the campground or recreational vehicle park.

17.27.050 OPEN SPACE AND RECREATIONAL AREAS.

A. A general area or areas amounting to not less than ten (10) percent of the gross area of any campground and recreational vehicle park, excluding any area dedicated as public right-of-way, shall be developed for passive park and/or active recreation uses. The minimum size required shall be no less than five thousand (5,000) square feet, regardless of campground or recreational vehicle park size, measuring no less than fifty (50) feet on any side.

B. Such areas shall not include any area designated as a camping space or recreational vehicle space, storage area, required buffer, screen or setback, service building, sanitary facility, or waste station area.

17.27.060 SETBACKS, LANDSCAPING AND FENCING.

A. Setbacks. Each campground and recreational vehicle park shall set aside along the perimeter of the facility the following areas which shall be landscaped and used for no other purpose:

1. Minimum front setback. Twenty-five (25).

2. Minimum side and rear setback. When abutting residential zones or land uses, the side setback shall be fifty (50) feet; when abutting a dedicated public right-of-way, the side setback shall be twenty-five (25) feet on the side street; when abutting any other zone or land use, the side setback shall be fifteen (15) feet along the interior lot line.

B. Landscaping. A landscaping plan prepared by a licensed landscape architect must be submitted as part of the campground or recreational vehicle park development plan. The design of the landscaping must mitigate the visual impact of the campground or recreational vehicle park on the surrounding area.

C. Boundary Fencing. Except for the front boundary, each campground or recreational vehicle park shall be enclosed by a solid fence or wall not less than six (6) feet in height.

17.27.070 UTILITIES.

A. All Utilities Underground. All public utilities within a campground or recreational vehicle park shall be underground.

B. Potable Water Supply. The potable water supply for a campground or recreational vehicle park shall be provided by a delivery system that is owned and operated by the Ute Water Conservancy District. The water system shall be connected to all service buildings and all recreational vehicle spaces in compliance with the standards set by the Ute Water Conservancy District. In addition to other provisions of this Title 17, the water distribution system within a campground or recreational vehicle park shall meet the following minimum standards:

1. The water distribution system shall be designed, constructed and maintained in compliance with State Department of Public Health and Environment regulations and Ute Water Conservancy District regulations to provide a safe, potable and adequate supply of water.

2. Tent camping spaces shall be provided with common use water faucets located no more than one hundred fifty (150) feet from any tent camping space.

3. A water station for filling water storage containers shall be provided at a rate of one (1) water station for every one hundred (100) spaces (both camping and recreational vehicle spaces), with a minimum of one water station per campground or recreational vehicle park.

C. Wastewater Disposal and Collection. Facilities shall be provided and properly maintained for the collection and disposal or treatment of wastewater.

1. When the city's wastewater collection system is available, all plumbing fixtures, building sewers and camping and recreational vehicle space sewers shall be connected thereto in compliance with all city regulations and policies. If the city's wastewater system is not available, a private sewage collection and disposal facility meeting requirements of the State Water Quality Control Commission, the State Department of Public Health and Environment and Mesa County Health Department shall be installed and all plumbing fixtures, building sewers, and camping and recreational vehicle space sewers shall be connected thereto in compliance with all city regulations and policies.

2. Solid and liquid wastes shall not be discharged or otherwise disposed of on the surface of the ground or into any well, cave, open ditch, stream, lake or reservoir.

D. Wastewater Collection.

1. Individual wastewater connections shall be provided at each recreational vehicle space and shall meet the following requirements: A four (4) inch inside diameter wastewater lateral and riser pipe with the surrounding ground graded to drain from the rim of the riser pipe. The wastewater lateral shall be properly trapped

and vented if recreation vehicles without individually trapped and vented plumbing fixtures are accommodated.

2. Recreational vehicles with a drain hose less than three (3) inches in diameter shall be connected with reducers and a screw or clamp-type fittings.

3. A sanitary waste station meeting all city regulations for removing and disposing of waste from self-contained recreational vehicle sewage holding tanks shall be provided for each one hundred (100) recreational vehicle spaces.

E. Electricity and Natural Gas.

1. An electric outlet shall be provided for each recreational vehicle space. The installation shall comply with all adopted building codes. Such electrical outlets shall be weatherproof.

2. Street and yard lights shall be provided in such number and intensity as to ensure safe movement of vehicles and pedestrians at night. A light shall be located at each outside entrance of the service buildings, which shall be kept lighted during hours of darkness.

3. Where natural gas is provided, the installation shall comply with all adopted building codes.

17.27.080 FIRE PREVENTION AND PROTECTION.

A. All campgrounds and recreational vehicle parks shall comply with the adopted building codes and the NFPA (National Fire Protection Association) 1194 Standard for Recreational Vehicle Parks and Campgrounds.

B. No outdoor fires will be allowed except in grills, ovens, stoves or provided fire boxes.

17.27.090 SANITARY FACILITIES.

A. Sanitary facilities shall be provided and installed in accordance with the city's adopted building codes (Title 15 of the Fruita Municipal Code).

B. Required toilet, lavatory and bathing facilities shall be provided in the following minimum numbers:

Recreational vehicle spaces or campsites	**Toilets**		**Urinals**	**Lavatories**		**Showers**	
	M	**F**	**M**	**M**	**F**	**M**	**F**
15	1	1	1	1	1	1	1
16 - 30	1	2	1	2	2	1	1
31 - 45	2	2	1	3	3	1	1
46 - 60	2	3	2	3	3	2	2
61 - 80	3	4	2	4	4	2	2
81 - 100	3	4	2	4	4	3	3
101 - 120	4	5	3	5	5	4	4

M = Male
F = Female

C. No portable toilets will be allowed in campgrounds or recreational vehicle parks.

17.27.100 MISCELLANEOUS REQUIREMENTS.

A. Liquid petroleum storage containers for use with individual recreational vehicle sites shall be limited to one hundred (100) pound size.

B. Storage buildings, lean-tos, bins or other outside storage facilities (other than waste storage facilities, e.g. trash cans) shall not be allowed at camping or recreational vehicle spaces.

17.27.110 PERMANENT OCCUPANCY PROHIBITED.

A. No recreational vehicle or tent shall be used as a permanent place of abode, dwelling or business or for indefinite periods of time. Continuous occupancy extending beyond one hundred and eighty (180) days in a calendar year shall be presumed to be permanent occupancy; however, twenty-five percent (25%) of the recreational vehicle spaces in a recreational vehicle park may be occupied as a recreational vehicle residence for more than six (6) months in a calendar year.

B. Any action toward removal of wheels of a recreational vehicle except for temporary purposes of repair or to attach the trailer to the grounds for stabilizing purposes is hereby prohibited.

17.27.120 RESPONSIBILITIES OF MANAGEMENT.

A. Enforcement of Regulations. The owner or operator of any campground or recreational vehicle park shall arrange for the management and supervision of such facility so as to enforce or cause compliance with the provisions of this Chapter.

B. Maintenance. The owner, operator or attendant of every campground or recreational vehicle park shall assume full responsibility for maintaining in good repair and clean condition all facilities of the campground or recreational vehicle park.

C. Business License. Every owner or operator of a campground or recreational vehicle park shall obtain and continuously maintain in effect a business license pursuant to Title 5 of the Fruita Municipal Code.

D. Office. In every campground or recreational vehicle park there shall be a designated office building in which shall be located the office of the person in charge of said facility. A copy of all required city and State licenses and permits shall at all times be kept in said office.

E. Management Duties. It shall be the duty of the attendant or person in charge, together with the owner or operator, to:

1. Keep at all times a register of all tenants (which shall be open at all times to inspections by state, county and federal officials and City of Fruita officials) showing for all tenants:

   a. Name of party;

   b. Dates of entrance and departure;

   c. License numbers of all recreational vehicles, towing vehicles ~~or~~ and automobiles; and

   d. States issuing such license.

2. Maintain the campground or recreational vehicle park in a clean, orderly and sanitary condition at all times;

3. See that provisions of this Chapter are complied with and enforced and report promptly to the proper authorities any violations of law, which may come to his or her attention;

4. Report to local health authorities all persons known to the owner or manager to be infected with any communicable diseases.

5. Prohibit the use of any tent or recreational vehicle by a greater number of occupants than that which it is designed to accommodate, and prohibit stays beyond the time limits identified in this Chapter of the Land Use Code; and

6. Promptly report all violations of State, federal or municipal law that occur within the boundaries of the facility.

(Ord. 2015-04, S3)

Chapter 17.29

PARKS, OPEN SPACE, AND TRAILS

Sections:

17.29.010 Purpose
17.29.020 General Provisions
17.29.030 Public Parks, Open Spaces and Trails Criteria
17.29.050 Maintenance of Public Parks, Open Spaces, and Trails

17.29.010 PURPOSE. The purpose of this Chapter is to guide the planning and design of public parks, trails, open spaces, and other public sites, where such facilities are required to be provided pursuant to this Title. Where a provision of this Chapter is preceded by the word "shall" or "must," the provision is mandatory; absent the word "shall" or "must," the provision is a guideline. However, the city decision-making body may invoke guidelines as requirements where the applicant has requested approval of a Density Bonus under Chapter 17.08, Planned Unit Development approval under Chapter 17.17, or where the applicant has requested one or more adjustments pursuant to Chapter 17.11 and/or other provisions of this Title. The intent of this Chapter is to implement the city's Master Plan by providing-for a comprehensive, integrated network of public parks, trails, recreation facilities and open spaces to be developed and preserved as the community grows. (Ord. 2009-02, Ord. 2010-10, S4)

17.29.020 GENERAL PROVISIONS.

A. The city will typically require the payment of a fee in lieu of land dedication for the parks, open space, and trail impact fee/dedication requirement as outlined in Section 17.19.090 of this Title. As part of the dedication requirement set forth in Section 17.19.090, residential developments with 1,000 residents or more (based on the schedule in Section 17.19.090) shall provide at least six acres of land for a public neighborhood park and/or community park and at least one (1) mile of trail land. For residential developments with less than 1,000 residents, public parks, open space, and/or trails may be provided or a fee in lieu of this dedication requirement may be paid as determined by the city decision making body through the land development review process and based on the approval criteria of Section 17.29.030.

B. Land to be dedicated for parks, open space, and/or trails must be contained in an outlot dedicated to either the City of Fruita or a Property Owners' Association and the outlot must include an easement for public access/use on the same basis as the land in question is available to the residents of the development in which it is located. Private open space, parks, trails, or other private recreation areas in any development shall not be a substitute for the required public parks, open space, and trails impact fee/dedication.

C. In all cases, land and improvements and/or a fee in lieu of land and improvements will be required to meet the requirements set forth in Section 17.19.090.

D. Ownership and maintenance of public parks, open space, and trails shall be determined by the City Council on a case-by-case basis through the development review process. The city reserves the right to reject any land which it deems unsuitable for park, open space, and/or trail purposes.

E. Landscape improvements to public parks, open space and trails must follow landscaping requirements of Appendix A of the Fruita Land Use Code.

(Ord. 2009-02, Ord. 2010-10, S4)

17.29.030 PUBLIC PARKS, OPEN SPACE, AND TRAILS CRITERIA.

A. In determining which land areas are appropriate and/or necessary for public parks and eligible for credit against the otherwise required park, open space, and trails impact fee/dedication, the following criteria must be considered:

1. Land area to be dedicated should be at least two acres in size.
2. The land area to be dedicated should be in an area underserved by existing public parks as identified by the Fruita Parks, Open Space, and Trails Master Plan.
3. The land should be located adjacent to other open space or schools.
4. The land area's proposed improvements must be designed, signed and stamped by a licensed landscape architect and must include at a minimum the following: water rights, irrigation system, appropriate groundcover, at least one large tree per every 5,000 square feet of landscaped area, and at least one of the following:
   -Paved, multi-purpose area for court games (e.g. basketball, tennis);
   -A multi-purpose play field with backstop;
   -Playground equipment and a bench;
   -Shade structure for picnics and sitting within a landscaped setting.
5. The land area to be dedicated should have at least twenty percent (20%) of the perimeter of the parkland area adjacent to a public right-of-way so that the park is visible to the public and to increase safety by allowing activities in the park to be easily seen from other public areas.
6. The land to be dedicated should be relatively flat and lend itself to organized recreational activities without the need for substantial improvements to accommodate facilities for recreational activities.
7. The size and shape of the land to be dedicated must lend itself to recreational activities.
8. The soil conditions and drainage must allow for development of park facilities.
9. The parkland should be used to organize and focus lot, block, and circulation patterns in a development and enhance surrounding development. Street, block,

lot and building patterns shall respond to the views, landscape and recreational opportunities provided by such parks, open space, and trail areas.

10. Surrounding the site with the rear property lines of residential lots is strongly discouraged.
11. Parks to be used for on-going organized recreational activities should include adequate access and parking areas (both motorized vehicles and bicycles) for the type and intensity of uses intended for the park.
12. Uses designated within public parks shall be appropriate to the context and character of the site and the intensity of the proposed development.
13. Notwithstanding the preceding criteria, a five-foot wide landscaped outlot abutting and parallel to public right-of-way for collector and arterial roads will be eligible for credit against the otherwise required parks, open space and trails impact fee/dedication. Both the land area and the improvement to the land are eligible for credit. The minimum required width is five feet and the minimum required landscaping must consist of one large tree for every forty linear feet along the public right-of-way and appropriate groundcover and irrigation. This outlot must be owned and maintained by a Homeowners Association and contain a public access easement in order to receive credit.

B. The following public trails will be required to be provided in all developments to provide an adequate bicycle and pedestrian transportation system. The land area required for the public trail is not eligible for credit against the otherwise required public parks, open space, and trails impact fee/dedication. Construction of the public trail(s) may be required and the cost of trail construction of a primary trail or an off-site trail is eligible for credits against the public parks, open space, and trails impact fee/dedication. Internal links necessary to provide an adequate bicycle and transportation network internal to the development are not eligible for credits.

1. Land for primary trails as identified in the Parks, Open Space, and Trails Master Plan must be provided. Trail heads should be required for primary trails at all major access points and should include parking areas, restrooms, shaded seating and picnic areas, regulatory, informational and entry signs, and drinking fountains where feasible.
2. Local trails must be provided to link to existing or planned future trails.
3. Trails that provide a valuable link to a destination such as schools, parks, open space, other neighborhoods, and commercial areas must be provided.
4. Trails are required to provide a connection to avoid out-of-direction t5ravel by pedestrians and bicyclists. As an example, a trail is required at the end of all cul-de-sacs to connect to an existing road, other trail or future development connection if the property has development potential (regardless of future land use).
5. Trails proposed adjacent to a roadway should be a last resort when no other options exist. Attached sidewalks are not considered trails. If a trail is proposed

adjacent to a roadway, the trail must be detached from the roadway and trail user safety shall be a primary consideration.

6. The width of land required for primary trails shall be at least 30 feet, but 50 feet or more is preferred. The width of the trail surface for a primary trail should be at least 10 feet and may be required to be wider in certain circumstances such as in areas of limited sit distance. The width of land required for local trails must be at least 16 feet for short connections (such as between cul-de-sacs) and wider for longer connections (such as a trial behind rear property lines along a block). The width of the trail surface for local trails should be at least 8 feet and may be required to be wider in certain circumstances.
7. Trails will be required to be paved in most circumstances and trails must be paved in order to receive credit.
8. Vertical clearance on all trails must be at least eight (8) feet. Horizontal clearance must be at least 3 feet on both sides.
9. Adequate lighting should be required at all trailheads, primary trail access points, underpasses and at intersections with other trails. Adjacent roadway lighting may be used where possible.
10. Maximum grade should be no more than 5%.

B. Open space that is not a park as defined in this Title is not eligible for credits against the otherwise required park, open space, and trails impact fee/dedication (with the exception of five foot wide landscape strips as described in Section 17.29.030.A.13). In open space areas, the emphasis is on resource protection or preservation and public use should be balanced with the need for resource protection. Types of public use should be limited to trails, benches, picnic sites, environmental interpretation and educational areas. Easements for a public trail, protection of natural or historical features, watersheds, wildlife, and similar resources may be required and improvements to open space areas may be eligible for credits against the otherwise required public parks, open space, and trails impact fee/dedication and will be determined on a case-by-case basis by the city decision making body through the land development review process.

C. Appropriate buffering and setbacks shall be used between environmental resources and proposed development to ensure that the proposed development does not degrade the existing habitat or interfere with other uses. At a minimum, the following buffer standards apply to the following environmental resources:

Canals and drains – fifty (50) feet on both sides of the canal or drain as measured from the centerline of the canal or drain.

Washes and creeks and wetlands – one hundred (100) feet on both sides of the wash, or creek as measured from the centerline of the wash or 100 fett from the edge of the wetland area.

Colorado River – three hundred (300) feet on both sides of the river as measured from the centerline of the river.

17.29.040 MAINTENANCE OF PUBLIC PARKS, OPEN SPACE, AND TRAILS.

A. Any homeowners' association of other organization established to own and maintain public parks, open space, or trails shall maintain such lands and improvements in a reasonable order and condition in accordance with the approved land development.

A. In the event a homeowners' association or other organization established to own and maintain public parks, open space, or trails fails at any time after approval of the development by the city to maintain the public parks, open space, or trails in a reasonable order and condition, the Community Development Department may serve written notice upon such organization or upon the residents of the development setting forth the manner in which the organization has failed to maintain the public parks, open space, or trails, as applicable, in a reasonable order and condition, and said notice shall include a demand that such deficiencies of maintenance be cured within thirty (30) days thereof and shall state the date and place of a hearing thereon before the City Council which shall be held within twenty-one (21) days of the notice. At such hearing, the City Council may modify the terms of the original notice as t deficiencies and may give an extension of time within which they shall be cured.

If the deficiencies set forth in the original notice or in the modification thereof are not cured within said thirty (30) days, or any extension thereof, the City Council, in order to preserve the taxable values of the properties within the development, and to prevent the public park, open space, or trails from becoming a public nuisance, may enter upon said public park, open space, or trails and maintain the same for a period of one (1) year. Said entry and maintenance shall not vest in the public any right to use the park, open space, or trails, except when the same is voluntarily dedicated to the public by the developer. Before the expiration of said year, the City Council, upon its own initiative or upon the written request of the organization previously responsible for the maintenance of the public park, open space, or trails, shall call a public hearing upon notice to such organization or to the residents of the development, at which hearing such organization or the residents of the development shall show cause why such maintenance by the city should not, at the election of the city, continue for a succeeding year.

If the City Council determines that such organization is ready and able to maintain the public park, open space, or trails in a reasonable condition, the city shall cease to maintain such area at the end of the one (1) year period. If the City Council determines that such organization is not ready and able to maintain said public park, open space, or trails in a reasonable condition, the city may, at its discretion, continue to maintain the public park, open space, or trails during the next succeeding year and, subject to a similar hearing and determination, in each year thereafter.

B. The cost of maintenance of a public park, open space, or trails by the City of Fruita, including and administration fee equal to ten (10) percent of such cost, shall be paid by the organization established to own and maintain the park, open space, or trail, and any unpaid assessments shall become a tax lien on the properties within the development. The city shall file a notice of such lien in the office of the Mesa County Clerk and Recorder upon the properties affected by such lien within the development and shall certify such unpaid assessments to the Mesa County Board of County Commissioners and the Mesa County Treasurer for collection, enforcement and remittance in the manner provided by law for the collection, enforcement, and remittance of general property taxes.

(Ord. 2010-10, S4)

17.29.040 GENERAL PROVISIONS.

A. Public Sites, Parks and Open Spaces to Serve as Neighborhood Focus. Open spaces, such as the city's drainage ways and parks, shall be used to organize and focus lot, block and circulation patterns and to enhance surrounding development. Street, block, lot and building patterns shall respond to the views, landscape and recreational opportunities provided by such parks, public sites and open spaces areas.

B. Public Access. Areas designated as public sites, parks and open spaces shall be both visibly and physically accessible to the community. Public access shall be provided to all public parks, open spaces, natural and developed, and trails directly from the public street and trail system. Public site, park and open spaces areas shall be bounded along at least ten (10) percent of the perimeter by a street, except for natural open spaces areas if authorized by the City Council.

C. Buffering. Appropriate buffering and setbacks shall be used between environmental resources and proposed development to ensure that the proposed development does not degrade the existing habitat or interfere with other uses. At a minimum, the following buffer standards apply:

Canals – fifty (50) feet on both sides of the canal as measured from the centerline of the canal.
Washes and creeks and wetlands – one hundred (100) feet

Colorado River – three hundred (300) feet

D. Park and Open Spaces Uses. Uses designated within public and private parks and open spaces shall be appropriate to the context and character of the site and the intensity of the proposed development.

E. Ownership and Maintenance of Public Sites, Parks, Open Spaces and Trails. Ownership

and maintenance of public sites, parks, open spaces and trails shall be determined by the City Council on a case-by-case basis through the development review process.

(Ord. 2009-02)

17.29.050 MAINTENANCE OF PRIVATE PARKS, RECREATION AREAS AND OPEN SPACES.

A. Any homeowners' association or other organization established to own and maintain private parks, recreation areas or common open spaces shall maintain such lands and improvements in a reasonable order and condition in accordance with the developer's application, the development plan, as approved, and any conditions of approval, the applicable declaration of covenants.

B. In the event a homeowners' association or other organization established to own and maintain private parks, recreation areas and common open spaces, or any successor organization, fails at any time after approval of the development by the city to maintain the private parks, recreation areas or common open spaces in a reasonable order and condition, the Community Development Department may serve written notice upon such organization or upon the residents of the development setting forth the manner in which the organization has failed to maintain the private parks, recreation areas and common open spaces, as applicable, in a reasonable order and condition, and said notice shall include a demand that such deficiencies of maintenance be cured within thirty (30) days thereof and shall state the date and place of a hearing thereon before the City Council which shall be held within twenty-one (21) days of the notice. At such hearing, the City Council may modify the terms of the original notice as to deficiencies and may give an extension of time within which they shall be cured.

If the deficiencies set forth in the original notice or in the modification thereof are not cured within said thirty (30) days, or any extension thereof, the City Council, in order to preserve the taxable values of the properties within the development, and to prevent the private park, recreation area or common open spaces from becoming a public nuisance, may enter upon said private park, recreation area or common open spaces and maintain the same for a period of one (1) year. Said entry and maintenance shall not vest in the public any right to use the private park, recreation area or common open spaces, except when the same is voluntarily dedicated to the public by the developer. Before the expiration of said year, the City Council, upon its own initiative or upon the written request of the organization previously responsible for the maintenance of the private park, recreation area or common open spaces, shall call a public hearing upon notice to such organization or to the residents of the development, at which hearing such organization or the residents of the development shall show cause why such maintenance by the city should not, at the election of the city, continue for a succeeding year.

If the City Council determines that such organization is ready and able to maintain the private park, recreation area or common open spaces in a reasonable condition, the city shall cease to maintain such area at the end of the one (1) year period. If the City Council determines that such organization is not ready and able to maintain said private park, recreation area or common open spaces in a reasonable condition, the city may, at its discretion, continue to maintain the private park, recreation area or common open spaces during the next succeeding year and, subject to a similar hearing and determination, in each year thereafter.

C. The cost of the maintenance of a private park, recreation area, trail or common open spaces by the City of Fruita, including an administration fee equal to ten (10) percent of such cost, shall be paid by the owners of properties within the development that have a right of enjoyment of the private park, recreation area or common open spaces, and any unpaid assessments shall become a tax lien on said properties. The city shall file a notice of such lien in the office of the Mesa County Clerk and Recorder upon the properties affected by such lien within the development and shall certify such unpaid assessments to the Mesa County Board of County Commissioners and the Mesa County Treasurer for collection, enforcement and remittance in the manner provided by law for the collection, enforcement, and remittance of general property taxes.

(Ord. 2009-02)

APPENDIX

LANDSCAPING STANDARDS

UPDATED MARCH 16, 2010

CITY OF FRUITA LANDSCAPING SPECIFICATIONS

DEVELOPED AND COMPILED BY THE CITY OF FRUITA COMMUNITY DEVELOPMENT DEPARTMENT USING THE TRI RIVER AREA COLORADO STATE UNIVERSITY EXTENSION OFFICE PUBLICATIONS ON RECOMMENDED PLANT SPECIES.

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THE CITY OF FRUITA IS LOCATED IN USDA HARDINESS ZONE: 6-7

LANDSCAPE PLANTS SUITABLE FOR THE CITY OF FRUITA

Compiled using the CSU Extension Office recommended landscape and planting publications

PLANT TYPE:
GC=Ground Cover; ET= Evergreen Tree; OG= Ornmental Grass; P=Perennial; S=Shrub; T= Tree; V=Vine
PLANT SIZE:
S=Small; M=Medium; L=Large
If the Xeriscape cell is selected, plant/tree/shrub is considered suitable for a Xeriscaping landscape.
Tree size at time of planting not to exceed 3" caliper. (Trunk measured at 6" above finished grade)
Staking and Guying of trees shall be completed immediately upon planting and stay for 1-2 years.

TREES					
BOTANICAL NAME	**COMMON NAME**	**MIN. SIZE REQUIRED**	**PLANT TYPE**	**PLANT SIZE**	**XERISCAPE**
Acer campestre	Maple, Hedge	1" Caliper	T	S	
Acer freemanii 'Jeffersred'	Maple, Autumn Blaze	1" Caliper	T	L	
Acer ginnala	Maple, Amur	1" Caliper	T	S	
Acer platanoides	Maple, Norway	1" Caliper	T	L	
Acer platanoides 'Emerald Queen'	Maple, Emerald Queen	1" Caliper	T	L	
Acer tataricum	Maple, Tatarian	1" Caliper	T	S	
Betula nigra	Birch, River	1" Caliper	T	L	
Catalpa speciosa	Catalpa, Western	1" Caliper	T	L	☐
Celtis occidentalis	Hackberry, Western	1" Caliper	T	L	☐
Cercis canadensis	Redbud, Eastern	1" Caliper	T	S	
Crataegus crus-galli inermis	Hawthorn, Thornless Cockspur	1" Caliper	T	S	
Crataegus laevigata 'Paul's Scarlet'	Hawthorn, Paul's Scarlet	1" Caliper	T	S	
Crataegus phaenopyrum	Hawthorn, Washington	1" Caliper	T	S	
Crataegus viridis	Hawthorn, Winter King	1" Caliper	T	M	
Corylus colurna	Filbert, Turkish	1" Caliper	T	L	
Fraxinus americana 'Autumn Purple'	Ash, Autumn Purple	1" Caliper	T	L	
Fraxinus pennsylvanica	Ash, Green	1" Caliper	T	L	☐
Fraxinus pennsylvanica 'Marshall'	Ash, Marshall's seedless	1" Caliper	T	L	☐
Ginkgo biloba	Maidenhair Tree	1" Caliper	T	L	
Gleditsia triancanthos inermis	Honeylocust, Thornless	1" Caliper	T	L	☐
Gymnocladus dioica	Kentucky Coffeetree	1" Caliper	T	L	☐
Juniperus scopulorum	Juniper, Rocky Mountain	1" Caliper	ET	M	☐
Koelreuteria paniculata	Golden Rain Tree	1" Caliper	T	S	☐
Liriodendron tulipifera	Tulip Tree	1" Caliper	T	L	
Malus spp.	Crabapple (Spring Snow, Adams, Radiant)	1" Caliper	T	S	
Morus alba 'Pendula'	Mulberry, Weeping	1" Caliper	T	S	

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PLANT SIZE:
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If the Xeriscape cell is selected, plant/tree/shrub is considered suitable for a Xeriscaping landscape.
Tree size at time of planting not to exceed 3" caliper. (Trunk measured at 6" above finished grade)
Staking and Guying of trees shall be completed immediately upon planting and stay for 1-2 years.

TREES					
BOTANICAL NAME	**COMMON NAME**	**MIN. SIZE REQUIRED**	**PLANT TYPE**	**PLANT SIZE**	**XERISCAPE**
Morus alba 'Stribling'	Mulberry, Fruitless	1" Caliper	T	L	
Picea glauca 'Conica'	Spruce, Dwarf Alberta	1" Caliper	ET	M	
Picea pungens	Spruce, Colorado	1" Caliper	ET	L	
Pinus aristata	Pine, Bristlecone	1" Caliper	ET	S	☐
Pinus cembroides edulis	Pine, Pinyon	1" Caliper	ET	M	☐
Pinus nigra	Pine, Austrian	1" Caliper	ET	L	
Pinus strobiformis	Pine, Southwestern White	1" Caliper	ET	L	
Pinus sylvestris	Pine, Scotch	1" Caliper	ET	L	
Platanus acerifolia	Planetree, London	1" Caliper	T	L	
Populus angustifolia	Cottonwood, Narrowleaf	1" Caliper	T	L	
Populus fremontii	Cottonwood, Fremont	1" Caliper	T	L	
Prunus cerasifera	Plum, Cherry	1" Caliper	T	S	
Prunus cerasifera 'Newport'	Plum, Newport Purple-Leaf	1" Caliper	T	S	
Prunus cerasifera 'Thundercloud'	Plum, Thundercloud Purple-Leaf	1" Caliper	T	S	
Prunus cerasifera 'Mt. St. Helens'	Plum, Mt. St. Helens Cherry	1" Caliper	T	S	
Prunus maackii	Chokecherry, Amur	1" Caliper	T	S	
Prunus virginiana	Chokecherry	1" Caliper	T	M	
Pseudotsuga menziesii	Fir, Douglas	1" Caliper	ET	L	
Pyrus calleryana	Pear, Ornamental (Aristocrat, Autumn Blaze, Redspire, Bradford)	1" Caliper	T	S	
Quercus bicolor	Oak, Swamp White	1" Caliper	T	L	
Quercus macrocarpa	Oak, Bur	1" Caliper	T	L	☐
Quercus shumardii	Oak, Shumard	1" Caliper	T	L	
Robinia ambigua 'Idahoensis'	Locust, Idaho	1" Caliper	T	M	
Sophora japonica	Japanese Pagoda Tree	1" Caliper	T	L	
Thuja occidentalis	Arborvitae, American	1" Caliper	ET	M	
Tilia americana	Linden, American	1" Caliper	T	L	

LANDSCAPE PLANTS SUITABLE FOR THE CITY OF FRUITA

Compiled using the CSU Extension Office recommended landscape and planting publications

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PLANT SIZE:
S=Small; M=Medium; L=Large
If the Xeriscape cell is selected, plant/tree/shrub is considered suitable for a Xeriscaping landscape.
Tree size at time of planting not to exceed 3" caliper. (Trunk measured at 6" above finished grade)
Staking and Guying of trees shall be completed immediately upon planting and stay for 1-2 years.

TREES					
BOTANICAL NAME	**COMMON NAME**	**MIN. SIZE REQUIRED**	**PLANT TYPE**	**PLANT SIZE**	**XERISCAPE**
Ulmus parvifolia	Elm, Lacebark	1" Caliper	T	L	

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PLANT SIZE:
S=Small; M=Medium; L=Large
#5=5 Gallon, #1=1 Gallon
In some instances, perennials and ornamental grasses may be substituted in place of a shrub. Perennials listed below are recommendations.
If the Xeriscape cell is selected, plant/tree/shrub is considered suitable for a Xeriscaping landscape.

SHRUBS, GROUNDCOVER, GRASSES, PERENNIALS & VINES					
BOTANICAL NAME	**COMMON NAME**	**MIN. SIZE REQUIRED**	**PLANT TYPE**	**PLANT SIZE**	**XERISCAPE**
Achillea hybrids	Yarrow	#1	P	S	☐
Agastache cana	Hyssop, Wild	#1	P	S	☐
Agastache rupestris	Hyssop, Sunset	#1	P	S	☐
Alcea rosea	Hollyhock	#1	P	M	☐
Alyssum saxatile 'Compactum'	Basket of Gold	#1	P	S	
Andropogon gerardii	Big bluestem	#1	OG	L	☐
Aegopodium podagraria 'variegatum'	Variegated Bishop's weed	#1	GC	M	☐
Amelanchier alnifolia	Serviceberry	#5	S	L	
Aquilegia hybrids	Columbine	#1	P	S	☐
Arctostophylos x coloradensis	Manzanita, Colorado	#5	S/GC	S	

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If the Xeriscape cell is selected, plant/tree/shrub is considered suitable for a Xeriscaping landscape.

SHRUBS, GROUNDCOVER, GRASSES, PERENNIALS & VINES

BOTANICAL NAME	COMMON NAME	MIN. SIZE REQUIRED	PLANT TYPE	PLANT SIZE	XERISCAPE
Artemisia filifolia	Sage, Sand	#5	S	S	☐
Artemisia 'Powis Castle'	Sage, Silver	#1	P	S	
Artemisia schmidtiana	Sage, Silver Mound	#1	GC	S	☐
Artemisia tridentata	Sage, Basin	#5	S	M	☐
Aster spp.	Aster	#1	P	S-M	
Berberis thunbergii 'Crimson Pygmy'	Barberry, Crimson Pygmy	#5	S	S	☐
Berberis thunbergii 'Rosy Glow'	Barbery, Rosy Glow	#5	S	M	☐
Buddleia davidii	Butterfly bush	#5	S	M	
Buxus microphylla 'Wintergreen'	Boxwood, Wintergreen	#5	S	S	
Calamagrostis x acutiflora 'Karl Foerster'	Reed Grass, Karl Foerster	#5	OG	M	
Calamagrostis x acutiflora 'Overdam'	Reed Grass, Overdam Feather	#5	OG	M	
Callirhoe involucrata	Poppy Mallow	#1	P	S	
Campanula persicifolia	Bellflower, Peachleaf	#1	P	S	
Campsis radicans	Trumpet Vine	#5	V	L	
Caragana arborescens	Siberian Peashrub	#5	S	L	
Carex buchananii	Japanese Red Sedge	#1	OG	S	
Caryopteris incana	Spirea, Bluemist	#5	S	S	
Centaurea montana	Bachelor Button	#1	GC	S	☐
Cerastium tomentosum	Snow-in-Summer	#1	GC	S	☐
Chaenomeles speciosa	Flowering quince	#5	S	M	
Chrysothamnus nauseosus	Rabbitbrush	#5	S	M	☐
Coreopsis grandiflora 'Sunray'	Coreopsis, Sunray	#1	P	S	☐
Coreopsis verticillata 'Moonbeam'	Coreopsis, Moonbeam	#1	P	S	☐
Cornus sericea	Dogwood, Redtwig	#5	S	L	

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In some instances, perennials and ornamental grasses may be substituted in place of a shrub. Perennials listed below are recommendations.
If the Xeriscape cell is selected, plant/tree/shrub is considered suitable for a Xeriscaping landscape.

SHRUBS, GROUNDCOVER, GRASSES, PERENNIALS & VINES					
BOTANICAL NAME	**COMMON NAME**	**MIN. SIZE REQUIRED**	**PLANT TYPE**	**PLANT SIZE**	**XERISCAPE**
Cornus sericea 'Kelseyi'	Dogwood, Kelsey Redtwig	#5	S	S	
Cortaderia selloana 'Pumila'	Dwarf Pampas grass	#1	OG	M	
Cotinus coggygria 'Purple Robe'	Smoketree, Purple	#5	S	L	
Cotoneaster apiculatus	Cotoneaster, Cranberry	#5	S	S	
Cotoneaster horizontalis	Cotoneaster, Rock	#5	S	M	☐
Cotoneaster acutifolia	Cotoneaster, Peking	#5	S	L	☐
Dalea purpurea	Purple Prairie Clover	#1	P	S	
Delphinium elatum 'Magic Mountain Mix'	Delphinium, Dwarf	#1	P	S	
Delosperma nubigenum	Iceplant, Hardy Yellow	#1	GC	S	☐
Dianthus 'Brilliancy'	Dianthus, Pinks	#1	P	S	
Dianthus barbatus	Sweet William, mixed	#1	P	S	
Echinacea purpurea	Coneflower, Purple	#1	P	S	☐
Erianthus ravennae	Pampas Grass	#5	OG	L	
Erigeron hybrids	Daisy, Fleabane	#1	P	S	☐
Euonymus alatus	Burning bush	#5	S	L	
Euonymus alatus 'Compacta'	Dwarf Burning bush	#5	S	M	
Euonymus fortunei 'Emerald Gaiety'	Euonymus, Emerald Gaiety	#5	S	M	
Euonymus fortunei 'Emerald'n Gold'	Euonymus, Emerald'n Gold	#5	S	M	
Euonymus fortunei 'Moonshadow'	Euonymus, Moonshadow	#5	S/GC	S	
Euonymus kiautschovicus 'Manhattan'	Euonymus, Manhattan	#5	S	M-L	
Euphorbia marginata	Snow-on-the-mountain	#1	GC	M	☐
Fallugia paradoxa	Apache Plume	#5	S	M	☐
Festuca ovina glauca	Fescue, Blue	#1	OG/GC	S	☐
Festuca idahoensis	Fescue, Idaho		OG	S	☐

LANDSCAPE PLANTS SUITABLE FOR THE CITY OF FRUITA

Compiled using the CSU Extension Office recommended landscape and planting publications

PLANT TYPE:
GC=Ground Cover; ET= Evergreen Tree; OG= Ornmental Grass; P=Perennial; S=Shrub; T= Tree; V=Vine
PLANT SIZE:
S=Small; M=Medium; L=Large
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SHRUBS, GROUNDCOVER, GRASSES, PERENNIALS & VINES					
BOTANICAL NAME	**COMMON NAME**	**MIN. SIZE REQUIRED**	**PLANT TYPE**	**PLANT SIZE**	**XERISCAPE**
Forestiera neomexicana	Privet, New Mexican	#5	S	L	☐
Forsythia spp.	Forsythia	#5	S	L	
Gaillardia x grandiflora 'Dazzler'	Dazzler Blanketflower	#1	P	S	☐
Gaillardia x grandiflora 'Goblin'	Goblin flower	#1	P	S	☐
Gaura lindheimeri	Whirling butterflies	#1	P	S	☐
Geranium sanguineum	Bloody Cranesbill	#1	P	S	
Geum hybrids	Geum	#1	P	S	
Helianthemum nummularium	Yellow sunrose	#1	P	S	☐
Helictotrichon sempervirens	Blue oat grass	#1	OG	S	☐
Heliopsis helianthoides 'Summer Sun'	False sunflower	#1	P	M	
Hemerocallis spp.	Daylily	#1	P	S	☐
Heuchera sanguinea	Coral bells	#1	P	S	
Hibiscus syriacus	Rose-of-Sharon	#5	S	L	
Holodiscus dumosus	Rock Spirea	#5	S	M	☐
Hydrangea arborescens 'Annabelle'	Hydrangea, Annabelle	#5	S	S	
Iberis sempervirens	Candytuft	#1	P	S	☐
Imperata cylindrica 'Rubra'	Japanese Blood Grass	#1	OG	S	
Iris hybrids	Bearded Iris	#1	P	S	☐
Juniperus 'Blue Star'	Juniper, Blue Star	#5	S	S	
Juniperus 'Calgary Carpet'	Juniper, Calgary Carpet	#1	GC	M	☐
Juniperus chinensis 'Armstrong'	Juniper, Armstrong	#5	S	M	☐
Juniperus chinensis 'Blue Point'	Juniper, Upright	#5	S	M	
Juniperus chinensis 'Old Gold'	Juniper, Old Gold	#5	S	M	☐
Juniperus 'Hetzii'	Juniper, Hetzi	#5	S	L	☐

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BOTANICAL NAME	**COMMON NAME**	**MIN. SIZE REQUIRED**	**PLANT TYPE**	**PLANT SIZE**	**XERISCAPE**
Juniperus horizontalis 'Blue Chip'	Juniper, Blue Chip	#1	GC	M	☐
Juniperus horizontalis 'Hughes'	Juniper, Hughes	#1	GC	M	☐
Juniperus horizontalis 'Prince of Wales'	Juniper, Prince of Wales	#1	GC	M	☐
Juniperus scopularum 'Gray Gleam'	Juniper, Gray Gleam	#5	S	L	☐
Kniphofia uvaria	Red Hot Poker	#1	P	S	☐
Lavandula angustifolia	Lavender	#1	P	S	☐
Leucanthemum x superbum	Daisy, Shasta	#1	P	S	
Liatrus spicata 'Kobold'	Blazing star	#1	P	S	☐
Ligustrum x vicaryi	Privet, Golden Vicary	#5	S	M	
Lilium asiatica	Lily, Asiatic	#1	P	S	
Lilium orientalis	Lily, Oriental	#1	P	S	
Lonicera japonica 'Halliana'	Hall's Japanese Honeysuckle	#1	V/GC	L	☐
Mahonia aquifolium	Oregon Grapeholly	#5	S	M	
Mirabilis multiflora	Desert Four O'Clock	#1	P	S	☐
Miscanthus sinensis 'Gracillimus'	Maiden Grass	#5	OG	L	
Miscanthus sinensis 'Silberfeder'	Variegated silver Maiden Grass	#5	OG	L	
Miscanthus sinensis 'Zebrinus'	Zebra grass	#5	OG	L	
Oenothera speciosa	Primrose, Mexican Evening	#1	P	S	☐
Paeonia hybrids	Peonies	#1	P	S	
Panicum virgatum	Switch grass	#1	OG	L	
Papaver orientale	Poppy, Oriental	#1	P	S	
Parthenocissus quinquefolia	Virginia Creeper	#1	V	L	
Parthenocissus tricuspidata	Boston Ivy	#1	V	L	
Pennisetum alopecuroides	Fountain grass	#5	OG	M	

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SHRUBS, GROUNDCOVER, GRASSES, PERENNIALS & VINES

BOTANICAL NAME	COMMON NAME	MIN. SIZE REQUIRED	PLANT TYPE	PLANT SIZE	XERISCAPE
Pennisetum alopecuroides 'Hamelin'	Dwarf Fountain grass	#5	OG	S	
Penstemon caespitosus	Penstemon, Mat	#1	GC	S	☐
Penstemon strictus	Penstemon, Rocky Mountain	#1	P	S	
Perovskia atriplicifolia	Russian Sage	#5	S	M	
Phalaris arundinacea 'Picta'	Ribbon grass	#1	OG	M	
Philadelphus x virginalis	Mockorange	#5	S	L	
Phlox subulata	Phlox, Creeping	#1	GC	S	☐
Physocarpus opulifolius	Common ninebark	#5	S	L	
Picea glauca 'Conica'	Spruce, Dwarf Alberta	#5	S	M	
Pinus mugo	Pine, Mugo	#5	S	S-L	
Pinus mugo 'Slowmound'	Pine, Dwarf Mugo	#5	S	S	
Platycodon grandiflora	Balloonflower	#1	P	S	
Polygonum aubertii	Silver Lace Vine	#1	V	M	
Potentilla fruticosa	Cinquefoil	#5	S	S	☐
Potentilla verna	Creeping potentilla	#1	GC	S	☐
Prunus x cistena	Plum, Cistena	#5	S	M	
Prunus tomentosa	Cherry, Nanking (Manchu)	#5	S	L	
Prunus virginiana	Chokecherry	#5	S	L	
Prunus virginiana 'Shubert'	Chokecherry, Shubert	#5	S	L	
Rhamnus frangula 'Columnaris'	Columnar buckthorn	#5	S	L	
Rhus trilobata	Sumac, Three-leaf	#5	S	M	☐
Rhus aromatica 'Grow-low'	Sumac, Grow Low	#5	S	S	
Ribes alpinum	Currant, Alpine	#5	S	S	
Ribes aureum	Currant, Golden	#5	S	M	
Rosa spp. (Climbing)	Climbing roses	#5	S	M-L	
Rosa spp. 'Meidiland or other'	Shrub roses	#5	S	S-L	
Rosa hybrid (Florabunda)	Florabunda roses	#5	S	M	

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SHRUBS, GROUNDCOVER, GRASSES, PERENNIALS & VINES

BOTANICAL NAME	COMMON NAME	MIN. SIZE REQUIRED	PLANT TYPE	PLANT SIZE	XERISCAPE
Rosa hybrid (Hybrid-Tea)	Hybrid-Tea roses	#5	S	M	
Rudbeckia fulgida	Black-eyed Susan	#1	P	S	☐
Salix purpurea nana	Willow, Dwarf arctic	#5	S	M	
Salvia nemorosa 'May Night'	Salvia, May Night	#1	P	S	
Sambucus canadensis 'Aurea'	Elderberry, Golden	#5	S	L	
Santolina chamaecyparissus	Gray Santolina	#1	GC	S	☐
Scabiosa caucasica	Pincushion flower	#1	P	S	
Schizachyrium scoparium	Little bluestem	#1	OG	M	☐
Sedum 'Autumn Joy'	Steoncrop	#1	P	S	☐
Sedum 'Dragon's Blood'	Stonecrop, Dragon's Blood	#1	GC	S	☐
Sedum pinifolium	Blue Spruce Sedum	#1	GC	S	☐
Sorbaria sorbifolia	Spirea, Ash-leaf	#5	S	L	
Spiraea x bumalda 'Anthony Waterer'	Spirea, Anthony Waterer	#5	S	S	
Spiraea x bumalda 'Froebelii'	Spirea, Froebel	#5	S	S	
Spiraea x bumalda 'Goldflame'	Spirea, Goldflame	#5	S	S	
Spiraea x vanhouttei	Spirea, Vanhoutte	#5	S	M	
Symphoricarpos albus	Snowberry	#5	S	M	
Symphoricarpos x chenaultii 'Hancock'	Hancock Coralberry	#5	S	S	
Syringa patula 'Miss Kim'	Lilac, Miss Kim	#5	S	M	
Syringa vulgaris	Lilac	#5	S	L	
Tanacetum niveum	Daisy, Snow	#1	P	S	
Tanacetum x coccineum	Daisy, Painted	#1	P	S	
Thuja occidentalis	Arborvitae, American	#5	S	L	
Thymus pseudolangunosa	Thyme, Wooly	#1	GC	S	☐
Thymus Serpyllum	Thyme, Wild	#1	GC	S	☐
Veronica pectinata	Speedwell, Blue Woolly	#1	GC	S	☐
Veronica prostrata	Speedwell, Prostrate	#1	GC	S	☐

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SHRUBS, GROUNDCOVER, GRASSES, PERENNIALS & VINES					
BOTANICAL NAME	**COMMON NAME**	**MIN. SIZE REQUIRED**	**PLANT TYPE**	**PLANT SIZE**	**XERISCAPE**
Veronica spicata	Blue Spike Speedwell	#1	P	S	
Viburnum opulus	Cranberry bush, European (Snowball bush)	#5	S	L	
Viburnum opulus 'Compactum'	Cranberry bush, Compact European (Snowball bush)	#5	S	M	
Viburnum trilobum 'Compactum'	Cranberry bush, Compact American	#5	S	M	
Vinca minor	Periwinkle		GC	S	☐
Weigela florida 'Java Red'	Weigela, Java Red	#5	S	M	
Weigela florida 'Variegata'	Weigela, Variegated	#5	S	M	
Yucca baccata	Yucca, Banana	#5	S	M	☐
Yucca filamentosa 'Golden Sword'	Yucca, Golden Sword	#5	S	S	☐
Yucca harrimaniae	Yucca, Harriman's	#5	S	S	☐
Zinnia grandiflora	Zinnia, Rocky Mountain	#1	P	S	☐

Choosing a Soil Amendment no. 7.235

by J.G. Davis and C.R. Wilson[1](5/05)

Quick Facts...

- Soil amendments improve the physical properties of soils.
- Amendments are mixed into the soil. Mulches are placed on the soil surface.
- The best soil amendments increase water- and nutrient-holding capacity and improve aeration and water infiltration.
- Wood products can tie up nitrogen in the soil.

- Sphagnum peat is superior to Colorado mountain peat.
- When using biosolids, choose Grade 1 biosolids.

A soil amendment is any material added to a soil to improve its physical properties, such as water retention, permeability, water infiltration, drainage, aeration and structure. The goal is to provide a better environment for roots.

To do its work, an amendment must be thoroughly mixed into the soil. If it is merely buried, its effectiveness is reduced, and it will interfere with water and air movement and root growth.

Amending a soil is not the same thing as mulching, although many mulches also are used as amendments. A mulch is left on the soil surface. Its purpose is to reduce evaporation and runoff, inhibit weed growth, and create an attractive appearance. Mulches also moderate soil temperature, helping to warm soils in the spring and cool them in the summer. Mulches may be incorporated into the soil as amendments after they have decomposed to the point that they no longer serve their purpose.

Organic vs. Inorganic Amendments

There are two broad categories of soil amendments: organic and inorganic. Organic amendments come from something that is or was alive. Inorganic amendments, on the other hand, are either mined or man-made. Organic amendments include sphagnum peat, wood chips, grass clippings, straw, compost, manure, biosolids, sawdust and wood ash. Inorganic amendments include vermiculite, perlite, tire chunks, pea gravel and sand.

Not all of the above are recommended by Colorado State University. These are merely examples. Wood ash, an organic amendment, is high in both pH and salt. It can magnify common Colorado soil problems and should not be used as a soil amendment. Don't add sand to clay soil -- this creates a soil structure similar to concrete.

Organic amendments increase soil organic matter content and offer many benefits. Organic matter improves soil aeration, water infiltration, and both water- and nutrient-holding capacity. Many organic amendments contain plant nutrients and act as organic fertilizers. Organic matter also is an important energy source for bacteria, fungi and earthworms that live in the soil.

Application Rates

If your soil has less than 3 percent organic matter, then apply 3 cubic yards of your chosen organic amendment per 1,000 square feet. To avoid salt buildup, do not apply more than this. Retest your soil before deciding whether to add more soil amendment.

Wood Products

Wood products can tie up nitrogen in the soil and cause nitrogen deficiency in plants. Microorganisms in the soil use nitrogen to break down the wood. Within a few months, the nitrogen is released and again becomes available to plants. This hazard is greatest with sawdust, because it has a greater surface area than wood chips. If you plan to apply wood chips or sawdust, you may need to apply nitrogen fe

If you plan to apply wood chips or sawdust, you may need to apply nitrogen fertilizer at the same time to avoid nitrogen deficiency.

Sphagnum Peat vs. Mountain Peat

Sphagnum peat is an excellent soil amendment, especially for sandy soils, which will retain more water after sphagnum peat application. Sphagnum peat is generally acid (i.e., low pH) and can help Gardeners grow plants that require a more acidic soil. Colorado mountain peat is not as good a soil amendment. It often is too fine in texture and generally has a higher pH.

Mountain peat is mined from high-altitude wetlands that will take hundreds of years to rejuvenate, if ever. This mining is extremely disruptive to hydrologic cycles and mountain ecosystems. Sphagnum peat is harvested from bogs in Canada and the northern United States. The bogs can be revegetated after harvest and grow back relatively quickly in this moist environment.

Are Biosolids Safe?

Biosolids are byproducts of sewage treatment. They may be found alone or composted with leaves or other organic materials. The primary concerns about biosolids are heavy metal content, pathogen levels and salts. To avoid excessive levels of heavy metals and to ensure that pathogens have been killed, always choose a Grade 1 biosolid. While Grade 1 biosolids are acceptable for food Gardens, do not use them on root Crops because they will come in direct contact with the edible portion of the plant. Do not use biosolids below Grade 1

Manure vs. Compost

Fresh manure can harm plants due to elevated ammonia levels. To avoid this problem, use only aged manure (at least six months old). Pathogens are another potential problem with fresh manure, especially on vegetable Gardens. Compost manure for at least two heating cycles at 130 to 140 degrees F to kill any pathogens before applying the manure to vegetable Gardens. **Most home composting systems do not sustain temperatures at this level.** Home-composted products containing manure are best used in flower Gardens, shrub borders and other nonfood Gardens. See fact sheets 9.369, *Preventing E. coli From Garden to Plate*, and 7.212, *Composting Yard Waste*.

During composting, ammonia gas is lost from the manure. Therefore, nitrogen levels may be lower in composted manure than in raw manure. On the other hand, the

phosphorus and potassium concentrations will be higher in composted manure. Modify fertilizer practices accordingly. Salt levels also will be higher in composted manure than in raw manure. If salt levels are already high in your Garden soil, do not apply manures.

Other composts are available that are made primarily from leaf or wood products alone or in combination with manures or biosolids.

Factors to Consider When Choosing an Amendment

There are at least four factors to consider in selecting a soil amendment:

- how long the amendment will last in the soil,
- soil texture,
- soil salinity and plant sensitivities to salts, and
- salt content and pH of the amendment.

Laboratory tests can determine the salt content, pH and organic matter of organic amendments. The quality of bulk organic amendments for large-scale landscape uses can then be determined.

Longevity of the Amendment

The amendment you choose depends on your goals.

- Are you trying to improve soil physical properties quickly? Choose an amendment that decomposes rapidly.
- Do you want a long-lasting improvement to your soil? Choose an amendment that decomposes slowly.
- Do you want a quick improvement that lasts a long time? Choose a combination of amendments.

Table 1: Decomposition rate of various amendments.

Amendment	Decomposition rate
Grass clippings, manures	Rapid decomposition (days to weeks)
Composts	Moderate decomposition (about six months)
Wood chips (redwood, cedar), hardwood bark, peat	Slow decomposition (possibly years)

Soil Texture

Soil texture, or the way a soil feels, reflects the size of the soil particles. Sandy soils have large soil particles and feel gritty. Clay soils have small soil particles and feel

sticky. Both sandy soils and clay soils are a challenge for Gardeners. Loam soils have the ideal mixture of different size soil particles.

When amending sandy soils, the goal is to increase the soil's ability to hold moisture and store nutrients. To achieve this, use organic amendments that are well decomposed, like composts or aged manures.

With clay soils, the goal is to improve soil aggregation, increase porosity and permeability, and improve aeration and drainage. Fibrous amendments like peat, wood chips, tree bark or straw are most effective in this situation.

Use Tables 2 and 3 for more specific recommendations. Because sandy soils have low water retention, choose an amendment with high water retention, like peat, compost or vermiculite. Clay soils have low permeability, so choose an amendment with high permeability, like wood chips, hardwood bark or perlite. Vermiculite is not a good choice for clay soils because of its high water retention.

Table 2: Permeability and water retention of various soil types.

Soil Texture	Permeability	Water Retention
Sand	high	low
Loam	medium	medium
Silt	low	high
Clay	low	high

Table 3: Permeability and water retention of various soil amendments.

Amendment	Permeability	Water Retention
Fibrous		
Peat	low-medium	very high
Wood chips	high	low-medium
Hardwood bark	high	low-medium
Humus		
Compost	low-medium	medium-high
Aged manure	low-medium	medium
Inorganic		
Vermiculite	high	high
Perlite	high	low

Soil Salinity and Plant Sensitivity to Salts

Some forms of compost and manures can be high in salts. Avoid these amendments in soils that are already high in salts (above 3 mmhos/cm) or when growing plants that are

sensitive to salts. Raspberry, strawberry, bean, carrot, onion, Kentucky bluegrass, maple, pine, viburnum and many other landscape plants are salt sensitive. In such cases, choose sphagnum peat or ground leaves instead of compost or manures.

Salt Content and pH of the Amendment

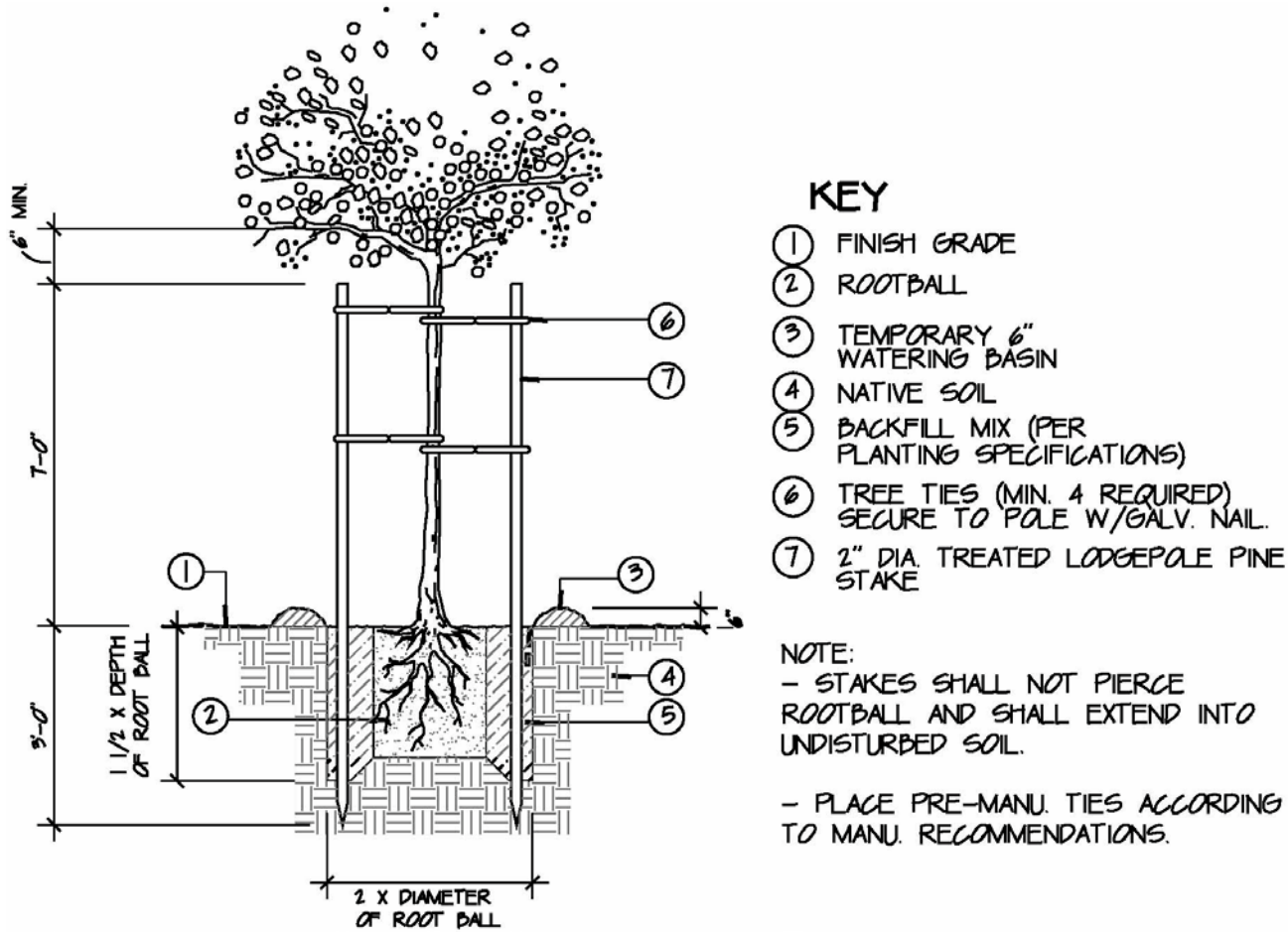
Always beware of salts in soil amendments. High salt content and high pH are common problems in Colorado soils. Therefore, avoid amendments that are high in salts or that have a high pH. Amendments high in salts and/or pH include wood ash, Colorado mountain peat and composted manures. An amendment with up to 10 mmhos/cm total salts is acceptable if well mixed into low-salt soils (less than 1 mmhos/cm). Amendments with a salt content greater than 10 mmhos/cm are questionable. Choose a low-salt amendment for soils testing high in salts.

Sphagnum peat and compost made from purely plant sources are low in salts and are good choices for amending Colorado soils. Ask for an analysis of the organic amendments that you are considering, and choose your amendments wisely. If no analysis is available, test a small amount of the amendment before purchasing a large quantity.

[1]J.G. Davis, Colorado State University Extension soil specialist and associate professor, soil and crop sciences; and C.R. Wilson, Extension horticulture agent, Denver County. 6/00. Reviewed 5/05.

EXAMPLE OF TYPICAL STAKING/GUYING OF TREE

DETAIL



(Ord. 2010-10, S5)

Chapter 17.31

MINERAL EXTRACTION AND MINING OPERATIONS

Sections:

17.31.010 Purpose
17.31.020 Procedure for Extraction and Rehabilitation Requests
17.31.030 Operation and Rehabilitation Standards for all Mining Operations
17.31.040 Revocation of Conditional Use Permit

17.31.010 PURPOSE. The purpose of this Chapter is to establish reasonable and uniform limitations, safeguards, and controls for conservation of natural resources and for rehabilitation of mineral extraction lands. Gravel and other mineral extraction, washing, crushing, cement batch plants, asphalt plants, and processing activities should be located and conducted in sufficiently sized parcels where extraction and rehabilitation can be undertaken while still protecting the health, safety, and welfare of the area and the city. In cases where the location of the proposed mining use abuts other zoning or land uses, or structures, mineral excavation, extraction, processing and rehabilitation may be restricted in order to be compatible with and protect the adjoining uses. (Ord. 2009-02)

17.31.020 PROCEDURE FOR EXTRACTION AND REHABILITATION REQUESTS. The extraction of commercial mineral deposits with necessary accessory uses shall be allowed in the River Corridor (RC) zone, Monument Preservation (MP) zone, General Commercial (GC) zone, and the Limited Industrial Research and Development (LIRD) zone as a conditional use and in conformance with an approved excavation and rehabilitation plan. Any excavation plan being followed under previous regulations shall fulfill this requirement. A plan shall contain, in addition to those relevant requirements outlined for a conditional use application, the following requirements:

A. A detailed description of the method of operation of extraction, processing and rehabilitation to be employed, including any necessary accessory uses; such as, but not limited to, crushers, washers, batch plants and asphalt plants;

B. An extraction plan showing the areas to be mined, location of stockpile areas, location of structures, and general location of processing equipment, with accompanying time schedules, fencing if applicable, depth of deposit, estimated quantity of the deposit, and other pertinent factors;

C. A detailed rehabilitation plan showing proposed rehabilitation with time schedule including, but not limited to, finish contours, grading, sloping, types, placement and amount of vegetation, reuse plans and any other proposed factors;

D. Topography of the area with contour lines of sufficient detail to portray the direction and rate of slope of the land covered in the application;

E. Type, character, and amount of proposed vegetation;

F. The operator's estimated cost at each of the following segments of the rehabilitation process, including, where applicable, backfilling, grading, reestablishing top soil, planting, re-vegetation management, and protection prior to vegetation establishment and administrative costs;

G. A drainage report and drainage basin plan prepared by a registered engineer in the State of Colorado with consideration of natural drainage, drainage during excavation including erosion and sedimentation controls, drainage after rehabilitation, such that proposed excavation will have no adverse effects in excess of natural conditions. Where applicable, the report shall include a flood plain permit;

H. A traffic impact analysis, which reviews road and safety conditions in the pit area and in the vicinity of the pit area. This shall include ingress/egress, parking and loading areas, on-site circulation, estimate of the number of trucks per day and the average and maximum number of trucks per day (ranges are acceptable). The analysis shall include the times and location of school bus stops in the vicinity of the haul route and mitigation measures, such as staggering hours of operation, to avoid conflicts between hauling and school children on the haul route; and

I. Additional information as may be required by the Community Development Department.

J. Upon approval, the excavation and rehabilitation plans shall be recorded with the County Clerk and Recorder. Any change in the approved excavation and rehabilitation plan shall be prohibited unless amended by approval of the City Council.

(Ord. 2009-02)

17.31.030 OPERATION AND REHABILITATION STANDARDS FOR ALL MINING OPERATIONS. Mining and necessary accessory uses shall be subject to the following conditions and to the approved excavation and rehabilitation plan:

A. A permit to extract minerals issued by the Colorado Division of Minerals and Geology (DMG) in conformance with the Open Mining Land Recovery Act and other applicable state laws;

B. Excavation within one hundred twenty-five (125) feet of an existing residence is not permitted unless by written agreement of the owners and occupants of the residence, and no excavation involving the use of rock crushers, washers, asphalt plant, cement batch

plant and other similar equipment shall take place within two hundred fifty (250) feet of a residence;

C. At a minimum, a one hundred (100) foot greenbelt setback will be provided from watercourses for the protection of valuable plant life, riparian areas and wildlife areas. Erosion and sedimentation controls will be practiced throughout the life of the pit including the maintenance of vegetative buffers, use of straw bales in drainage ways and mulching and reseeding exposed areas adjacent to the active mining area. Existing trees and ground cover along public street frontage and drainage ways shall be preserved, maintained and supplemented, if necessary, for the depth of the setback to protect against and reduce noise, dust and erosion;

D. The operator shall submit a haul route plan to the Community Development Department and Department of Public Works Director and receive permission to use for haulage in public rights-of-way not designated for such haulage by reason of load limit, dust, right-of-way or pavement width or other relevant factors. The City Public Works Director may place reasonable restrictions on such right-of-way use. Alternative haul routes shall be developed where hauling impacts the health, safety, and welfare of the local area;

E. Haulage roads within the premises shall be maintained in a reasonably dust free condition. Dust retardant measures may include the use of watering, application of magnesium chloride, oiling, or paving;

F. Unless otherwise approved, the hours of operation shall be 6:00 a.m. to 7:00 p.m. normally; shorter hours of operation may be imposed in urbanized areas as part of the conditional use permit;

G. In no event shall a slope of less than 2:1 be left for dry pits, or the slope of 3:1 for pits deeper than ten (10) feet. In a wet pit, in no event shall a slope be less than 2:1 except as provided herein;

H. The floor of excavation pits, whether wet or dry, shall be left in a suitable condition;

I. The operator shall not store, overburden, or excavate materials or construct dikes or levies in such a manner as to increase any drainage or flooding on property not owned by the operator or damage public facilities;

J. Prior to starting excavation, where the operation is adjacent to subdivided and/or developed commercial, residential, or industrial property, fencing may be required to prevent the visibility of the mining operation, and buffering and screening may be required if deemed necessary by the City Council as part of the conditional use permit. The operator may be required to fence and/or buffer and screen the entire parcel or fence only areas of excavation as it proceeds. None of these fences shall be removed until

rehabilitation has been completed;

K. Where the operation is adjacent to subdivided property, and/or developed commercial or residential property, once mining has been completed, the site shall not be used as an area to stockpile mineral and/or gravel resources, unless otherwise permitted by the conditional use permit. The mining operator shall reclaim mined areas as rapidly as possible;

L. Operations shall comply with noise, vibration, and other standards of Mesa County and the noise standards contained in Sections 25-12-101, *et. seq*., C.R.S., as amended;

M. All air emissions shall comply with standards established by the Colorado Department of Public Health and Environment and the Mesa County Health Department. An air emissions permit shall be obtained from these agencies prior to commencing the mining operation;

N. All water uses and discharges shall conform to standards established by the State Water Quality Control Commission and the water laws of the State of Colorado;

O. All slopes shall be stabilized and re-vegetated. Land shall be reformed to most closely resemble the natural contours of the land before mining commenced. Lakes created, as the result of mining in the river bottom, shall have undulating surfaces, shallow and deep areas, established wetlands, and natural riparian vegetation. Other areas shall be re-vegetated with plant material indigenous to the area;

P. The re-vegetation plan must meet the standards of the Colorado State University Tri-River Extension Service;

Q. After re-vegetation of the area, the area must be maintained for a period of three (3) years, or until all vegetation is firmly established in the reclamation area;

R. A time limit for reclamation will be included in each conditional use permit. This time limit will be dependent upon the type of reclamation effort; and

S. A development schedule shall be submitted describing the life span of the plan in months and years (ranges are acceptable) and, if applicable, the months and years per phase. Diligence in meeting this schedule is required. Extensions of time may be granted by the City Council with proper justification.

T. Extensions of time in the development schedule may be granted by the City Council if a written request is submitted outlining the factors and reasons for the extension. New or changed conditions, if any, will be considered.

U. If no material has been extracted within three (3) years of obtaining the conditional use permit for mineral extraction and a request for extension has not been received and

approved by the City Council, the conditional use permit will expire. A new application and extraction plan shall then be submitted and reviewed in the manner described in this Chapter.

V. An extension request shall provide information concerning the factors and reasons for the request. The City Council will consider these factors and reasons as well as the extent conditions have changed in the area, if any, in granting extensions of the conditional use permit.

(Ord. 2009-02)

17.31.040 REVOCATION OF CONDITIONAL USE PERMIT. The City Council shall have the power after a public hearing to revoke the conditional use permit for violation of this Chapter or conditions imposed by the City Council pursuant to subsection 17.13.040. Upon at least ten (10) days notice to the owner and the operator, the City Council may hold a hearing to determine the nature and extent of an alleged violation, and shall have the power, upon a showing of good cause, to revoke the conditional use permit and to require that immediate reclamation measures be commenced. (Ord. 2009-02)

Chapter 17.33

ANIMAL REGULATIONS

Sections:

17.33.010 Animals
17.33.020 Number of Dogs and Cats Permitted
17.33.030 Fruita Animal Restrictions by Zone District

17.33.010 ANIMALS. Notwithstanding any other provision of the Fruita Municipal Code to the contrary, and with the exception of duly permitted zoos or circuses, no person shall own, possess, harbor, maintain or keep household animals, agricultural animals, exotic animals, or other animals that become a neighborhood nuisance because of noise, odor, or a threat to the health and safety of surrounding residences, and commercial and industrial establishments. A nuisance, for the purpose of this Section, shall be defined as a property for which the City receives three (3) or more animal complaints supported by competent evidence in a one (1) month period of time and which establishes a continuous neighborhood problem of noise, odor or a threat to safety. (Ord. 2009-02; Ord. 2011-11)

17.33.020 NUMBER OF DOGS AND CATS PERMITTED. The total number of dogs and cats on a single parcel shall not exceed four (4). Puppies and kittens of up to three (3) months in age shall be allowed to exceed this number. (Ord. 2009-02)

17.33.030 FRUITA ANIMAL RESTRICTIONS BY ZONE DISTRICT. The following restrictions by zone apply to all animals which are kept as an accessory use to the main use of the property. See Section 17.07.060(F) for allowed uses, such as kennels, veterinary clinics, agricultural land uses, and other where the keeping of animals is part of the primary use of the property.

Animal densities refer to any combination of a particular category which add up to the total number allowed in each zone; e.g., two (2) dogs and two (2) cats, or one (1) dog and three (3) cats, or four (4) dogs, etc. are allowed for a dwelling unit in the Community Residential Zone (See also Fruita Municipal Code Section 6.04.010, *et seq*.)

Animal densities calculated by animals per dwelling unit permitted cumulatively; e.g. four (4) dogs, two (2) rabbits, and one (1) snake are allowed per dwelling unit in the community residential zone.

Animal densities calculated by animals per acre are not permitted cumulatively; e.g. two (2) horses and sixteen (16) goats would not be permitted on a two (2) acre lot in a rural estate zone but one (1) horse and eight (8) goats or two (2) horses and no goats would be permitted.

ZONE ⇨ ANIMAL **CATEGORY** ⇩	**Agricultural Residential, Rural Residential and Rural Estate MONUMENT PRESERVATION, COMMUNITY SERVICES AND RECREATIONAL & RIVER CORRIDOR (MP, CSR, RC, AR, RR & RE)**	**Community Residential, Large Lot Residential, Community Residential, Downtown Mixed Use & South Fruita Residential (CR, LLR, CMU, DMU & SFR)**	**Tourist Commercial General Commercial & Limited Industrial and Research and Development (TC, GC & LIRD)**
Cats/dogs	4 per dwelling unit no limit on kittens & puppies up to 3 months old	4 per dwelling unit .no limit on kittens & puppies up to 3 months old	4 per dwelling unit no limit on kittens & puppies up to 3 months old
Horses, cows, llamas, mules, buffalo, ostrich, emus	No limit except on parcels of land less than 10 acres, then 1/acre	Conditional Use Permit required then 1per acre	Conditional Use Permit required except on parcels of 35 acres or more in which case no limit
Goats, sheep, pigs, potbellied (miniature) pigs, miniature horses	No limit except on parcels of land less than 10 acres, then 8/acre	Conditional Use Permit required except on parcels of 35 acres or more in which case no limit	Cond. Use permit required except on parcels of 35 acres or more in which case no limit
Chickens (excluding roosters)	No limit	6 chickens per dwelling unit with a maximum of 12 chickens per lot. More than these numbers require a Conditional Use Permit for parcels of land less than 35 acres in size.	6 chickens per dwelling unit with a maximum of 12 chickens per lot. More than these numbers require a Conditional Use Permit for parcels of land less than 35 acres in size.
Ducks, turkeys, pigeons, small birds (except chickens and roosters)	No limit	Cond. Use Permit required except on parcels of 35 acres or more in which case no limit	Conditional Use Permit required except on parcels of 35 acres or more in which case no limit
Rabbits, chinchillas, small animals	No limit	4 per dwelling unit except on parcels of 35 acres or more in which case no limit	4 per dwelling unit except on parcels of 35 acres or more in which case no limit
Non-domestic exotic animals, birds, reptiles[i]	4 per dwelling unit: must be kept indoors	4 per dwelling unit: must be kept indoors	4 per dwelling unit: must be kept indoors

[i]Notwithstanding this section, it shall be unlawful for any person to own, possess, or harbor any of the animals described in Section 6.18.010 of the Municipal Code.

(Ord. 2009-02; Ord. 2011-11; Ord. 2014-04, S1)

Chapter 17.35

SEXUALLY ORIENTED BUSINESSES

Sections:

17.35.010 Purpose and Description
17.35.020 Definitions
17.35.030 Conditional Use Permit Required
17.35.040 Separation Requirements
17.35.050 Criteria for Permit Approval
17.35.060 Review Process

17.35.010 PURPOSE AND DESCRIPTION. The purpose of this Chapter is to allow the reasonable location of sexually oriented businesses within the city in a manner which will protect property values, neighborhoods and residents from the potential adverse secondary effects of sexually oriented businesses, while providing to those who desire to patronize sexually oriented businesses such opportunity in appropriate areas within the city. It is not the intent of this Chapter to suppress any speech activities protected by the First Amendment to the United States Constitution but to impose content neutral regulations which address the adverse secondary effects that sexually oriented businesses may have on adjoining properties.

It has been determined, and reflected in the land use studies of various U.S. cities, that businesses which have as their primary purpose the selling, renting or showing of sexually explicit materials have negative secondary impacts upon surrounding businesses and residences. The experience in other U.S. cities is that the location of sexually oriented businesses significantly increases the incidence of crimes, especially sex offenses, including sexual assault, indecent exposure, lewd and lascivious behavior, and child molestation.

It has been determined, and reflected in the land use studies of various U.S. cities, that sexually oriented businesses in business districts which are immediately adjacent to and which serve residential neighborhoods have a deleterious effect on both the business and the residential segments of the neighborhood, causing blight and down-grading of property values.

It is the intent of these regulations to allow sexually oriented businesses to exist within the city in various dispersed locations rather than to allow them to concentrate in any one business area. It is further the purpose of these regulations to require separation requirements between sexually oriented businesses and residential uses, churches, parks, and educational institutions in an effort to buffer these uses from the secondary impacts created by sexually oriented business activity.

(Ord. 2009-02)

17.35.020 DEFINITIONS.

A. Unless otherwise defined below, terms used in this Chapter pertaining to sexually oriented businesses shall be as defined in Section 5.40.020 of the Fruita Municipal Code.

B. Business: Means and includes a sexually oriented business as defined in subsection 5.40.020 (N) of Title 5 of the Fruita Municipal Code.

(Ord. 2009-02)

17.35.030 CONDITIONAL USE PERMIT REQUIRED. A conditional use permit is required for the operation of a sexually oriented business in the General Commercial (GC) zone and the Limited Industrial Research and Development (LIRD) zone. Additional requirements for the granting of a conditional use permit are found in Section 17.13.040, conditional use permits. (Ord. 2009-02)

17.35.040 SEPARATION REQUIREMENTS. No sexually oriented business shall be located within one thousand (1,000) feet of another sexually oriented business, residentially zoned or used property, church, day care center, park or educational institution (whether within or without the city). A waiver of the foregoing restrictions may be applied for in accordance with subsection (B) of this Section.

A. Method of Measurement. The one thousand (1,000) feet separation measurement shall be made in a straight line without regard to intervening structures or objects from the nearest property line of the proposed sexually oriented business to the nearest property line of another sexually oriented business, residentially zoned or used property, church, park, day care center or educational institution.

B. Waiver Criteria. In establishing the provisions of this Section, the City Council hereby finds and determines that there may be exceptional or extraordinary circumstances or conditions which are applicable to properties within the city or to the intended uses of properties within the city that do not generally apply to the property or class of uses in the same zone, and such that denial of an application for relief would result in an inability to reasonably utilize property. Therefore, it is necessary to provide for such extraordinary relief in the form of a waiver. In reviewing such applications for waivers, the burden shall be upon the applicant to meet the criteria set forth in this Section.

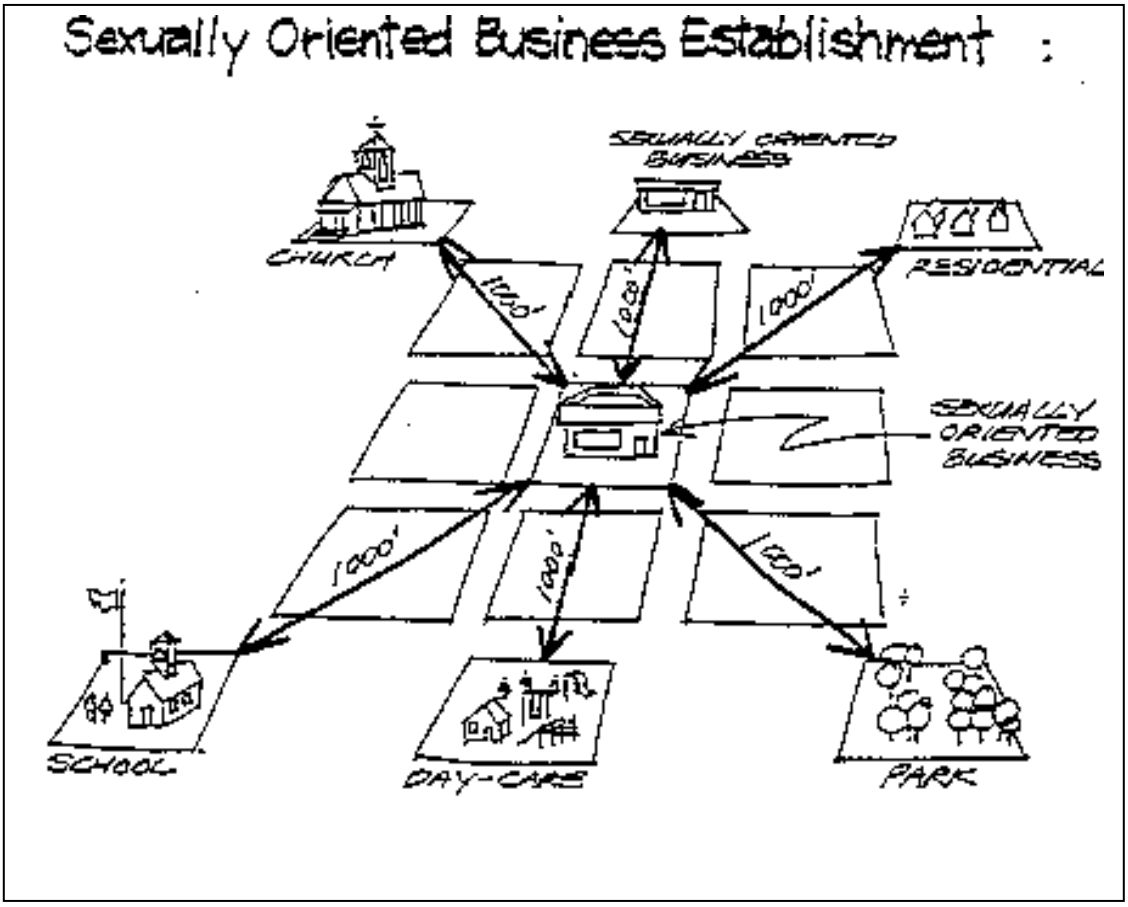


Figure 35-1

1. A waiver to the separation requirements set forth in this Section may be granted as a part of the conditional use review process if the presumptions in Section 17.35.010 of this Chapter are overcome by proof that the establishment of a sexually oriented business within one thousand (1,000) feet of another sexually oriented business establishment or establishment of a sexually oriented business within one thousand (1,000) feet of any residential zone, residential use, park, church or educational institution as applicable, will not have a deleterious effect on surrounding residential and business areas by creating blight, downgrading of property values or tending to cause an increase in crime.

2. In granting a waiver to the separation requirements the Planning Commission or City Council may impose reasonable conditions relating to hours of operation, screening, buffering and signage as long as the conditions imposed are not

designed to prohibit the dissemination of protected materials under the First Amendment to the United States Constitution.

(Ord. 2009-02)

17.35.050 CRITERIA FOR PERMIT APPROVAL. It shall be unlawful for any person to conduct or establish any sexually oriented business activity or enterprise until a conditional use permit for a sexually oriented business has been approved by the City Council. Such permits shall be approved if the criteria set forth in Section 17.13.040 and the following criteria are met:

A. The subject property is zoned General Commercial (GC) and Limited Industrial and Research Development (LIRD);

B. The subject property meets the one thousand (1,000) foot separation requirements as set forth subsection (A) of Section 17.35.040 or a waiver has been granted pursuant to subsection (B) of the same Section;

C. The subject property contains off-street parking in accordance with the requirements of Chapter 17.39; and

D. The proposed sexually oriented business building has a certificate of occupancy.

(Ord. 2009-02)

17.35.060 REVIEW PROCESS. Applicants for a conditional use permit for a sexually oriented business shall submit a completed conditional use application form which contains the information required by 17.13.040, and, in addition, distances to other sexually oriented businesses, residentially zoned or used property, churches, day care centers, and park or educational institutions. The application shall be reviewed pursuant to the conditional use permit process as outlined in Section 17.13.040. (Ord. 2009-02)

Chapter 17.37

HISTORIC PRESERVATION

Sections:

17.37.010 Purpose
17.37.020 Board Established
17.37.030 City Registry Established
17.37.040 Designation of Historic Structures, Sites and Districts
17.37.050 Procedures For Designating Historic Structures, Sites and Districts For Preservation
17.37.060 Criteria For Designation
17.37.070 Review of Alterations and Demolition
17.37.080 Revocation of Designation

17.37.010 PURPOSE. The purpose of this Chapter is to enhance the community's local resources and to promote the public health, safety, prosperity, and welfare through:

A. The protection and preservation of the city's architectural, historic and cultural heritage, as embodied in designated historic structures, sites, and districts, by appropriate regulations and incentives;

B. The establishment of a City Register listing designated structures, sites and districts; and

C. The provision of educational opportunities to increase public appreciation of Fruita's unique heritage.

(Ord. 2009-02)

17.37.020 BOARD ESTABLISHED. An Historic Preservation Board, hereinafter in this Chapter referred to as the "Board," which shall have principal responsibility for matters of historic preservation, is hereby established.

A. Membership. The Board shall consist of a minimum of five (5) members and not more than seven (7) members providing a balanced, community-wide representation. The Director of the Community Development Department and/or appointed department representatives shall serve as staff to the Board. There shall be one (1) member representative of the downtown merchants.

B. Appointments and Terms of Office. Members of the Board shall be appointed by the City Council and shall serve three (3) year staggered terms from the date of appointment.

Members may continue to serve until their successors have been appointed. Appointments to fill vacancies on the Board shall be made by the City Council. All members of the Board shall serve without compensation except for such amounts determined appropriate, in advance, by the City Council to offset expenses incurred in the performance of their duties. Members of the Board may be removed by the City Council without cause being stated.

C. Powers and Duties - The Board shall after solicitation of public comment and at a properly noticed public meeting:

1. Recommend eligibility criteria for the designation of historic resources and for review of proposals to alter designated resources;

2. Review and determine qualifications of properties nominated for designation as either an historic structure, site or district and recommend to City Council approval or denial of a designation;

3. Review and make recommendations to the owner(s) on proposed alterations or demolitions to a designated historic structure, site or district;

4. Advise and assist owners of historic properties on physical and financial aspects of preservation, renovation, rehabilitation and reuse, including nomination to the City Register, the State Register and the National Register of Historic Places;

5. Develop and assist in public education programs including, but not limited to, walking tours, brochures, a marker program for historic properties, lectures, exhibits and conferences;

6. Conduct surveys of historic sites, properties, and areas for the purpose of defining those of historic significance, and prioritizing the importance of identified historic areas. The Board may create a list of structures of historical or archeological merit, which have not been designated;

7. Advise the City Council on matters related to preserving the historic character and substance of the City and recommend easements, covenants, licenses and other methods which would implement the completion of purposes of this Chapter; and

8. Actively pursue financial assistance for preservation-related programs.

D. Compliance with Laws. The Board shall conduct its business in accordance with the State's Public Meetings Act, Open Records Act and other laws applicable to local public bodies.

E. Bylaws. The Board shall propose to the City Council for approval bylaws as the Board deems necessary.

(Ord. 2009-02)

17.37.030 CITY REGISTRY ESTABLISHED. The Fruita City Council hereby establishes the City of Fruita Register of Historic Sites, Structures and Districts. Historic sites, structures or districts may be listed on said register only if said site, structure or district has been designated by the City Council following recommendation by the Planning Commission and Board.

All properties listed on the National or State Register are eligible for the City Register but are not designated until approval, pursuant to this Chapter, is obtained.

(Ord. 2009-02)

17.37.040 DESIGNATION OF HISTORIC STRUCTURES, SITES AND DISTRICTS.

A. Pursuant to the procedures set forth in this Chapter, the City Council may, by resolution:

1. Designate as historic an individual structure, site or other feature or an integrated group of structures and features on a single lot or site having a special historical or architectural value; and/or

2. Designate as an historic district an area containing a number of structures or sites having special historical or architectural value.

B. Each such designation shall include a description of the characteristics of the structure, site or historic district which justify its designation and a description of the particular features that should be preserved, and shall include a legal description of the location and boundaries of the historic structure, site or district.

C. No individual structure or site will be designated without the consent of all owners and/or lien holder(s) of record. Historic districts may be designated in accordance with Colorado Revised Statutes and the provisions in this Chapter.

D. The purpose and effect of designation is:

1. To assist local groups interested in preservation of physical structures, sites or districts, and to recognize locally significant structures, sites or districts;

2. To provide a mechanism to educate the public on local history, development of the community, architectural styles, and housing and business development;

3. To enable the owners of the property in the city to take advantage of historic preservation programs and opportunities; and

4. To make all properties listed on the City Registry eligible for such incentive programs as may be developed.

(Ord. 2009-02)

17.37.050 PROCEDURES FOR DESIGNATING HISTORIC STRUCTURES, SITES AND DISTRICTS FOR PRESERVATION.

A. A nomination for designation listing in the City Register may be made by the Board or by any citizen by filing an application with the Community Development Department. The applicant shall pay all public notice expenses, recording fees and any other fees established by resolution of the City Council.

B. Board Review.

1. The Board shall hold a public meeting on the designation application no more than thirty (30) days after the filing of the application.

2. The Board shall review the application for conformance with the established criteria for designation and with the purposes of this Chapter.

3. Within thirty (30) days after the conclusion of the public meeting, but in no event more than thirty (30) days after the meeting, unless otherwise mutually agreed by the Board, the applicant, and the owner or owners other than the applicant, the Board shall recommend either approval, modification and approval or disapproval of the application. The Board may recommend approval conditional upon the execution of certain easements, covenants, or licenses.

4. The Board shall forward to the Planning Commission in writing any recommendation concerning a designation and further state any recommendations as to easements, covenants, or licenses that must be met by the property owner to receive and/or maintain the designation.

C. Planning Commission Review.

1. The Planning Commission shall hold a public hearing on the designation application no more than thirty (30) days after receipt of the Board's recommendation.

2. The Planning Commission shall review the application for conformance with the established criteria for designation and, with the purposes of this Chapter.

D. City Council Review.

1. The City Council shall hold a public hearing on the designation application no more than thirty (30) days after the receipt of the Planning Commission recommendation.

2. The City Council shall review the application for conformance with the established criteria for designation and, with the purposes of this Chapter.

3. After considering the evidence presented to it, the City Council shall choose to designate or not designate a structure, site, or historic district by ordinance.

E. When a structure, site or historic district has been designated as provided herein, the Director of the Community Development Department shall promptly notify the record owners of the property, according to the County Assessor's records or other available information, and record the designation with the County Clerk and Recorder.

(Ord. 2009-02)

17.37.060 CRITERIA FOR DESIGNATION. The Board and Planning Commission will consider the following criteria in reviewing nominations of properties for designation.

A. Structures - Structures must be at least fifty (50) years old and meet one (1) or more of the criteria for architectural, cultural or geographic/environmental significance. A structure can be exempted from the age standard if the City Council finds it to be exceptionally important in other criteria.

1. Historic structures or sites shall meet one (1) or more of the following in order to be considered for designation.

   a. Architectural:

      i. Exemplifies specific elements of an architectural style or period;

      ii. Is an example of the work of an architect or builder who is recognized for expertise nationally, state-wide, regionally, or locally;

      iii. Demonstrates superior craftsmanship or high artistic value;

      iv. Represents an innovation in construction, materials or design;

      v. Represents a built environment of a group of people in an era of history;

      vi. Exhibits a pattern or grouping of elements representing at least one (1) of the above criteria; or

      vii. Is a significant historic remodel.

   b. Cultural:

      i. Is a site of historic event that had an effect upon society;

      ii. Exemplifies cultural, political, economic or ethnic heritage of the city; or is associated with a notable person or the work of a notable person.

   c. Geographic/Environmental:

      i. Enhances the sense of identity of the city; or

      ii. Is an established and familiar natural setting or visual feature of the city.

2. Prehistoric, paleontological and historic archaeological structures or sites shall meet one (1) or more of the following:

   a. Architectural:

      i. Exhibits distinctive characteristics of a type, period or manner of construction; is a unique example of structure.

   b. Cultural:

      i. Has the potential to make an important contribution to the knowledge of the area's history or prehistory;

      ii. Is associated with an important event in the area's development;

      iii. Is associated with a notable person(s) or the work of a notable person(s);

      iv. Is a typical example or is associated with a particular ethnic or other community group; or

      v. Is a unique example of an event in local history.

   c. Geographic/Environmental:

      i. Is geographically or regionally important.

3. Each property will also be evaluated based on physical integrity using the following criteria (a property need not meet all the following criteria):

   a. Shows character, interest or value as part of the development, heritage or cultural characteristics of the community, region, state, or nation;

   b. Retains original design features, materials and/or character;

   c. Is in the original location or same historic context if it has been moved; or

   d. Has been accurately reconstructed or restored.

B. Historic Districts.

1. For the purposes of this Chapter a district is a geographically definable area including a concentration, linkage or continuity of sites, buildings, structures and/or objects. A district is related by a pattern of either physical elements or social activities.

2. Significance is determined by applying criteria to the pattern(s) and unifying element(s).

3. Nominations will not be approved unless the application contains written approval from owners of at least sixty (60) percent of the properties within the district boundaries.

4. Properties that do not contribute to the significance of the historic district may be included within the boundaries as long as the non-contributing elements do not noticeably detract from the district's sense of time, place and historical development. Non-contributing elements will be evaluated for their magnitude of impact by considering their size, scale, design, location, and/or Information potential.

5. District boundaries will be defined by visual changes, historical documentation of different associations or patterns of development, or evidence of changes in site type or intensity as established through testing or survey.

6. Once districts are designated, applicable design guidelines and other appropriate restrictions may be included as part of the designation.

7. In addition to meeting at least one (1) of the criteria as outlined in subsection (8) of this subsection (B), the designated contributing sites and structures within the district must be at least fifty (50) years old. The district could be exempt from the age standard if the resources are found to be exceptionally important in other significant criteria.

8. Historic districts shall meet one (I) or more of the following:

    a. Architectural:

        i. Exemplifies specific elements of an architectural period or style;

ii. Is an example of the work of an architect or builder who is recognized for expertise nationally, State-wide, regionally or locally;

iii. Demonstrates superior craftsmanship or high artistic value;

iv. Represents an innovation in construction, materials, or design;

v. Represents a built environment of a group of people in an era of history;

vi. Is a pattern or a group of elements representing at least one of the above criteria; or

vii. Is a significant historic remodel.

b. Cultural:

i. Is the site of an historic event that had an effect upon society;

ii. Exemplifies cultural, political, economic or social heritage of the community; or

iii. Is associated with a notable person(s) or the work of a notable person(s);

c. Geographic/Environmental:

i. Enhances sense of identity of the community; or

ii. Is an established and familiar natural setting or visual feature of the community.

d. Archaeology/Subsurface:

i. Has the potential to make an important contribution to the area's history or prehistory;

ii. Is associated with an important event in the areas development;

iii. Is associated with a notable person(s) or the work of a notable person(s);

iv. Has distinctive characteristics of a type, period or manner of construction;

v. Is of geographical importance;

vi. Is a typical example/association with a particular ethnic group;

vii. Is a typical example/association with a local cultural or economic activity; or

viii. Is a unique example of an event or structure.

(Ord. 2009-02)

17.37.070 REVIEW OF ALTERATIONS AND DEMOLITION. The owner is required to consult with the Board before making any alteration or any demolition of a structure listed on the City Register. The Board shall determine if the alteration is compatible with the designation. The Board shall review any proposed demolition and have up to one hundred eighty (180) days to review alternatives to demolition such as historic grants and loans for rehabilitation, adaptive reuse alternatives, advertisement for alternatives to demolition, public/private partnerships, etc.

A. For the purposes of this Section, the term "alteration" shall mean any proposed modification to a designated historic site, structure or district, which could have an affect on the character of the historic resource relative to the criteria by which it was designated. Examples of alterations for structures may include additions, any exterior modifications, including signage to be affixed to the facade, and any interior modifications that may affect the characteristics for, which the structure was designated.

B. Criteria to Review Alterations - In reviewing a proposed alteration, the Board shall consider the project in terms such as design, finish, material, scale, mass and height. When the subject site is in an historic district, the Board must also find that the proposed development is visually compatible with the development on adjacent properties, as well as any guidelines adopted as part of the given historic district designation. For the purposes of this Section, the term "compatible" shall mean consistent with, harmonious with and/or enhances the mixture of complementary architectural styles either of the architecture of an individual structure or the character of the surrounding structures.

The Board will review all alterations in terms of the Secretary of the U.S. Department of Interior's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings."

C. The Board will use the following criteria to determine compatibility of a proposed alteration:

1. The effect upon the general historical and architectural character of the structure and property;

2. The architectural style, arrangement, texture and material used on the existing and proposed structures and their relation and compatibility with other structures;

3. The size of the structure. its setbacks, its site, location, and the appropriateness thereof, when compared to existing structure and the site;

4. The compatibility of accessory structures and fences with the main structure on the site, and with other structures;

5. The effects of the proposed work in creating, changing, destroying, or otherwise impacting the exterior architectural features of the structure upon which such work is done;

6. The condition of existing improvements and whether they are a hazard to public health and safety; and

7. The effects of the proposed work upon the protection, enhancement, perpetuation and use of the property.

(Ord. 2009-02)

17.37.080 REVOCATION OF DESIGNATION.

A. If a building or special feature on a designated site has been altered in such a way so as to negate the features necessary to retain designation, the owner may apply to the Board for a revocation of the designation, or the Board shall recommend revocation of the designation to the City Council in the absence of the owner's application to do so.

B. If a designated structure is moved or demolished, the designation shall, without notice and without Board recommendation, automatically terminate. If moved, a new

application for designation at the new location must be made in order for designation to be considered.

C. Upon the City Council's decision to revoke a designation, the Department of Community Development shall cause to be prepared a notice to the property owner (s) of the revocation.

(Ord. 2009-02)

Chapter 17.39

PARKING STANDARDS

Sections:

17.39.010 Off-Street Parking Standards; General Provisions
17.39.020 Off-Street Parking Standards; Applicability
17.39.030 Number of Off-Street Parking Spaces Required
17.39.040 Location of Parking Areas
17.39.050 Loading Areas
17.39.060 Parking Area Surfacing
17.39.070 Design of Parking Areas
17.39.080 On-Street Parking Standards for Residential Cul-de-Sacs

17.39.010 OFF-STREET PARKING STANDARDS; GENERAL PROVISIONS. In order to ensure that sufficient parking is provided to serve the requirements of all land uses in the City of Fruita, and to avoid congestion in the streets, the requirements of this Chapter shall constitute minimum requirements for all land uses. Additional spaces above the minimum number required may be provided, but the maximum number of access ways to and from parking areas shall not be exceeded. (Ord. 2009-02)

17.39.020 OFF-STREET PARKING STANDARDS; APPLICABILITY.

A. Except as provided herein, the provisions of this Chapter shall apply to all uses established or commenced on or after the effective date of this Title.

B. For uses existing on the effective date of this Title, parking spaces or areas existing on such date shall not be diminished in number or size to less than that required for such use under this Chapter.

C. When an existing use or building is expanded, off-street parking, loading areas and landscaping shall be provided as required for the added floor area, whether or not they were provided for the existing use or building.

D. When the use of an existing building or land is changed and requires more off-street parking than the existing use, off-street parking, loading areas and landscaping shall be provided as required for the new use, whether or not they were provided for the existing use.

E. Parking Regulations in Downtown Mixed Use zone:

1. The Downtown Mixed Use (DMU) zone is subject to different parking standards than the rest of the City of Fruita. The DMU zone contains a unique historic area of Fruita that was established before the invention of the automobile. It provides a unique pedestrian oriented environment with each building built side by side with the next building and typically small narrow lots, relatively short blocks and alley access. Parking takes place on the streets and in back of the buildings off of the alleys. To require off-street parking facilities for each use at levels required for other commercial areas would destroy the character of the area and encourage the demolition of historic structures in favor of parking lots.

2. No off-street parking will be required for uses in existing buildings and reconstruction of existing buildings in the DMU zone south of Pabor Avenue ("Downtown Core").

3. New buildings in the Downtown Core are subject to the requirements of this Chapter, except that the minimum parking standards in Section 17.39.030 shall be reduced by fifty (50) percent. Alternatively, upon City Council adoption of a Parking District In Lieu Fee, proponents of new buildings may pay an in lieu fee which shall be dedicated to developing public parking facilities in the Downtown Core.

4. Where new development abuts Aspen Avenue in the Downtown Core, all off-street parking shall be provided on the rear one-half (½) of the lot and not within forty (40) feet of Aspen Avenue. Alternatively, off-street parking may be placed closer than forty (40) feet to Aspen Avenue where it is provided underground, or in a multistory parking garage.

(Ord. 2009-02)

17.39.030 NUMBER OF OFF-STREET PARKING SPACES REQUIRED.

A. Off-street parking spaces shall be provided according to the following schedule, and when computations result in a fraction, the nearest whole number shall apply. When parking is required for more than one use, the sum of the requirements for all uses shall apply.

Use Categories (Examples of Uses are in Chapter 17.04)	**Minimum Motorized Vehicle Parking Per Land Use** (fractions rounded down to the closest whole number)	**Minimum Bicycle Parking Per Land Use** (fractions rounded down to the closest whole number)
Residential Categories		
Accessory Dwelling	None when the primary single family dwelling Provides 3 spaces	none
Single Family Dwelling, including attached and detached dwellings	3 spaces per dwelling unit	none
Duplex	4 spaces per duplex	none
Multifamily	1 space per studio or 1-bedroom unit 1.5 spaces/unit per 2-bedroom unit 2 spaces/unit per 3-bedroom or larger unit Plus one (1) additional space for every six dwelling units	1 space per unit
Group Living, such as nursing or convalescent homes, rest homes, assisted living, congregate care, and similar special needs housing	1 space per 4 beds	1 space per 20 beds
Commercial Categories		
Drive-up/Drive-In/Drive-Through (drive-up windows, kiosks, ATM's, similar uses/facilities)	See Section 17.39.070.B	none

Use Categories (Examples of Uses are in Chapter 17.04)	**Minimum Motorized Vehicle Parking Per Land Use** (fractions rounded down to the closest whole number)	**Minimum Bicycle Parking Per Land Use** (fractions rounded down to the closest whole number)
Commercial Categories *(continued)*		
Bed and Breakfast Inn	1 space per bedroom	none
Educational Services, not a school (e.g., tutoring or similar services)	1 space per 500 sq. ft. floor area	1 space per 1,000 sq. ft.
Entertainment, Major Event	1 space per 500 sq. ft. or 1 per 6 seats or per CU review	1 space per 1,000 sq. ft.
Offices including medical, dental and veterinary offices	1 space per 500 sq. ft. floor area	1 space per 1,000 sq. ft.
Outdoor Recreation, Commercial	1 space per 500 sq. ft.	1 space per 1,000 sq. ft
Retail Sales and Service (see also Drive-up Uses)	Retail: Low Volume (such as clothing, auto parts): 1 space per 500 sq. ft, except bulk retail (e.g., auto, boat, trailers, nurseries, lumber and construction materials, furniture, appliances, and similar sales) 1 per 1,000 sq. ft. High Volume (such as convenience store, grocery store): 1 space per 250 sq. ft.	1 space per 1,000 sq. ft. 1 space per 500 sq. ft.
	Restaurants and Bars: 1 space per 250 sq. ft. floor area including outdoor seating areas	1 space per 500 sq. ft.

Use Categories (Examples of Uses are in Chapter 17.04)	**Minimum Motorized Vehicle Parking Per Land Use** (fractions rounded down to the closest whole number)	**Minimum Bicycle Parking Per Land Use** (fractions rounded down to the closest whole number)
	Health Clubs, Gyms, Continuous Entertainment (e.g., bowling alleys): 3 spaces per 1,000 sq. ft.	1 space per 1,000 sq. ft.
Retail Sales and Service (see also Drive-up Uses) *(continued)*	Lodging (hotels, motels, inns) (see also Bed and Breakfast Inns): 0.75 per rentable room; for associated uses, such as restaurants, entertainment uses, and bars, see above	1 space per 4 rooms
	Theaters and Cinemas: 1 per 6 seats	1 space per 15 seats
Self-Service Storage	No standard	none
Industrial Categories		
Industrial Service (See also Drive-up Uses)	1 space per 1,000 sq. ft. of floor area	1 space per 3,000 sq. ft.
Manufacturing and Production	1 space per 1,000 sq. ft. of floor area	1 space per 3,000 sq. ft.
Warehouse and Freight Movement	1 space per 500 sq. ft. of floor area Bulky materials such as vehicles and construction material is measured at 1 space per 1,000 square feet of area.	1 space per 2,000 sq. ft.
Wholesale Sales	1 space per 1,000 sq. ft. of area used for storage of wholesale materials. Bulky materials such as vehicles and construction material is measured at 1 space per 2,000 square feet of area.	1 space per 3,000 sq. ft.
Institutional Categories		
Basic Utilities	None	none
Community Service	1 space per 200 sq. ft. of floor area	1 space per 500 sq. ft.

Use Categories (Examples of Uses are in Chapter 17.04)	**Minimum Motorized Vehicle Parking Per Land Use** (fractions rounded down to the closest whole number)	**Minimum Bicycle Parking Per Land Use** (fractions rounded down to the closest whole number)
Institutional Categories *(continued)*		
Daycare, adult or child daycare; does not include Family Daycare	1 space per 500 sq. ft. of floor area	1 space per 1,000 sq. ft.
Parks and Open Space	Determined per CU or subdivision review, or no standard	Determined per CU or subdivision review, or no standard
Religious Institutions and Houses of Worship	1 space per 75 sq. ft. of main assembly area	1 space per 500 sq. ft. of main assembly area
Schools	Grade, elementary, middle, junior high schools: 2 spaces per classroom	5 spaces per classroom
	High Schools: 7 per classroom	5 spaces per classroom
Other Categories		
Accessory Uses (with a permitted use)	No standard, except some uses may be required to provide parking under the minimum standards for primary uses, as determined by the decision body through Conditional Use Permit review, or Site Design Review	No standard, except some uses may be required to provide parking under the minimum standards for primary uses, as determined by the decision body through Conditional Use Permit review, or Site Design Review
Agriculture - Nurseries and similar horticulture	See Retail Sales and Wholesale, as applicable	

Use Categories (Examples of Uses are in Chapter 17.04)	**Minimum Motorized Vehicle Parking Per Land Use** (fractions rounded down to the closest whole number)	**Minimum Bicycle Parking Per Land Use** (fractions rounded down to the closest whole number)
Temporary Uses	As required by Section 17.13.040 or per CU review	

B. For all uses requiring a Conditional Use Permit, parking requirements will be determined through the Conditional Use Permit review. More or less parking as identified in the table may be required as part of the Conditional Use Permit review.

C. Other Uses. For uses not specifically listed above, the use classification for purposes of parking requirements shall be determined by the Community Development Department Director, based on the following criteria: (1) the similarity of the use to those uses listed in this Chapter; (2) the zone of the property; (3) the need for off-street parking in the area where the property is located; (4) the nature and extent of use of the property by the public; (5) the number of employees who will work on the subject property; and (6) the use capacity.

D. Uses Not Known. For unknown commercial space for which all or part of the space has no designated use (such as strip malls or single buildings divided for more than two separate uses), the parking requirement shall be as follows: parking spaces shall be provided at the rate of one (1) space per three hundred (300) square feet for the first floor and one (1) space per six hundred (600) square feet for all other floor area.

E. Alternative Parking Standards

1. Demand Analysis

An applicant may propose parking in amounts less than listed in Table 17.39.030 by submitting a parking demand analysis to the Community Development Director for review and approval. The parking demand analyses must be based on the proposed use and provide an estimate of parking demand based on the number of employees, residents (if applicable), and customer/visitors who are likely to travel to the subject site by transportation mode: automobile, transit, and

bicyclists and pedestrians. The Community Development Director may, at his or her discretion, request the applicant submits supplemental information prepared by a qualified professional, which may include but is not limited to examples from similar uses in other comparable communities. The analysis shall be reviewed concurrently with other pending proposed land use application(s), if any.

2. Joint Use of Parking Spaces.

a. When an owner or developer can demonstrate that two (2) separate uses do not require parking during the same hours and that adequate provisions have been made to ensure that the uses will not require parking during the same hours, such owner or developer may request the Community Development Department Director for permission to allow parking spaces which otherwise comply with the provisions of this Chapter to fulfill the requirements for both uses. Permission for such joint use of parking spaces may be granted subject to such conditions as the Community Development Department Director finds necessary to carry out the purposes and intent of this Chapter.

b. Off-street parking designated for joint use shall generally not be more than two hundred (200) feet from the property or use it is intended to serve, except that employee parking may be at a further distance if it can be reasonably used.

c. An applicant requesting the joint use of parking spaces shall submit a proposed written agreement between the owners or other parties in interest of the structures or uses for which the joint parking arrangements are proposed, and a copy of such agreement, once executed, shall be recorded with the Mesa County Clerk and Recorder's Office.

(Ord. 2009-02)

17.39.040 LOCATION OF PARKING SPACES.

A. Off-street parking shall be located only on portions of a lot improved for parking purposes, consistent with city standards and as approved by the city decision-making body. Enclosed underground parking spaces may be located anywhere on the lot.

B. Parking areas shall not be located closer than five (5) feet to any public sidewalk (see also Section 17.39.070.G.2.a).

Minimum Number of Accessible Parking Spaces Source: ADA Standards for Accessible Design 4.1.2(5)

C. Non- residential parking areas containing more than five parking spaces shall not be located closer than ten (10) feet to any residential zone or residential land use. This requirement does not apply in the DMU zone or commercial portions of a CMU zone.

D. Bicycle parking spaces shall be located as close as possible to the entrance to the building or land use and shall not interfere with motorized or pedestrian traffic.

(Ord. 2009-02)

17.39.050 LOADING AREAS. For those uses requiring deliveries or service by truck and which are not contiguous to an alley, an off-street delivery truck berth at least fourteen (14) feet wide and thirty (30) feet long shall be provided in addition to the required parking area. Where the property or use is served or designed to be served by tractor-trailer delivery vehicles, the off-street loading berth shall be designed so that delivery vehicles using the loading area do not obstruct traffic movements in the parking area or in the public right-of-ways. (Ord. 2009-02)

17.39.060 PARKING AREA SURFACING. All parking areas including bicycle parking areas shall be surfaced with asphalt, concrete or brick, except the Agricultural Residential and Rural Estate zones. All parking areas and driving aisles which are not paved shall provide a dust-free surface whether the parking area and driving aisles are required by this Title or not. This includes parking for heavy equipment and overflow parking areas. (Ord. 2009-02)

17.39.070 DESIGN OF PARKING AREAS. The following design standards shall be met for all parking areas, whether or not the parking area is required.

A. Access.

Except single and two (2) family residential dwellings, each access way between a public street and the parking area shall be not less than fifteen (15) feet or more than thirty-two (32) feet wide at the intersection of the access way with the public street, and a divider stop at least six (6) feet long shall be installed if the access way exceeds twenty-five (25) feet in width. Each access way shall be clearly and permanently marked and defined through the use of landscaping, rails, fences, walls or other barriers or markers. Said marking and defining may be augmented by painting or striping.

B. Stacking Spaces.

Total Number of Parking Spaces Provided (per lot)	Total Minimum Number of Accessible Parking Spaces (with 60" access aisle, or 96" aisle for vans*)	Van Accessible Parking Spaces with min. 96" wide access aisle	Accessible Parking Spaces with min. 60" wide access aisle
	Column A		
1 to 25	1	1	0
26 to 50	2	1	1
51 to 75	3	1	2
76 to 100	4	1	3
101 to 150	5	1	4
151 to 200	6	1	5
201 to 300	7	1	6
301 to 400	8	1	7
401 to 500	9	2	7
501 to 1000	2% of total parking provided in each lot	1/8 of Column A**	7/8 of Column A***
1001	20 plus 1 for each 100 over 1000	1/8 of Column A**	7/8 of Column A***
*vans and cars may share access aisles **one out of every 8 accessible spaces		***7 out of every 8 accessible parking spaces	

For any drive-in or drive-through retail use (such as fast food or pharmacy), four (4) stacking spaces shall be provided for each window, or counter on the entrance side, and one (1) such space on the exit side. For service uses (such as gas stations, quick lube and car washes), two stacking spaces shall be provided for each bay on the entrance side and one such space on the exit side. Stacking spaces shall not interfere with other required parking areas. Stacking spaces must measure at least twenty-two (22) feet long by ten (10) feet wide.

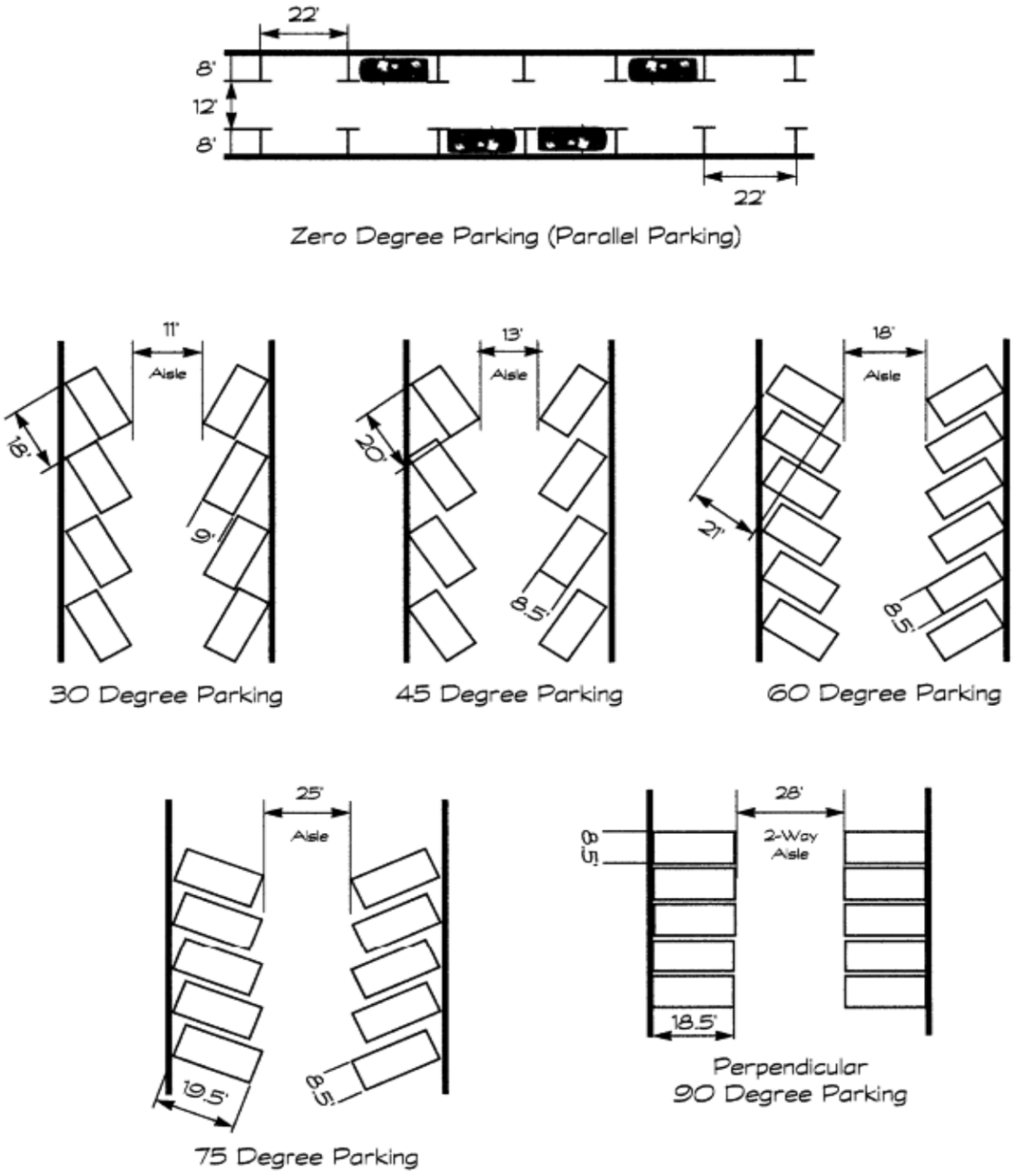
C. Parking for the Disabled.

Parking shall be provided pursuant to the Americans With Disabilities Act guidelines and standards. In the event the Americans with Disabilities Act, as amended, or the city's building codes adopted pursuant to Title 15 of the Fruita Municipal Code contain additional requirements, the strictest standard shall apply.

D. Parking Area Layout.

The dimensions of required off-street parking areas shall comply with the standards shown in the following Parking Dimensions Table.

Parking Dimension Table			
Parking Angle	**Stall Width (feet)**	**Stall Depth (feet)**	**Aisle Width (feet)**
0°	8.0	22.0	12
30°	9.0	18.0	11
	9.5	18.0	11
	10.0	20.0	11
45°	8.5	20.0	13
	9.0		12
	9.5		15
60°	8.5	21.0	18
	9.0		16
	9.5		15
75°	8.5	19.5	25
	9.0		23
	9.5		22
90°	8.5	18.5	28
	9.0		25
	9.5		24



Parking Area Layout/Design

E. Grade of Parking.

Outdoor parking areas shall not exceed a four (4) percent grade and shall be not less than one (1) percent grade. The grade of access-ways shall not exceed four (4) percent within one hundred (100) feet of the intersection with a public street.

F. Bicycle Parking Design

Bicycle parking devices shall be designed to allow one tire and the frame of the bicycle to be locked to the parking device with a standard U-lock and shall support the bicycle by the frame and not the tire.

G. Landscaping of Parking Areas.

1. Parking areas. For parking lots containing more than fifteen (15) parking spaces, a minimum ten (10) percent of the total surface area of all parking areas, as measured around the perimeter of all parking spaces and maneuvering areas, shall be landscaped in addition to landscape requirements contained in other areas of this Code. Such landscaping shall consist of evenly distributed shade trees with shrubs and/or ground cover. "Evenly distributed" means that the trees and other plants are distributed around the parking lot perimeter and between parking bays to provide a partial shade canopy during summer months. At a minimum, one tree per seven (7) parking spaces shall be planted to create a partial tree canopy over and around the parking area. All parking areas with more than twenty (20) spaces shall include landscape islands with trees to break up the parking area into rows of not more than twelve (12) contiguous (side-by-side) parking spaces. All parking area landscapes shall have dimensions of not less than twenty-four (24) square feet of area, or not less than four (4) feet in width by six (6) feet in length, to ensure adequate soil, water, and space for healthy plant growth. Such areas shall have irrigation.

2. Buffering and Screening Required. Buffering and screening are required under the following circumstances:

   a. Parking/Maneuvering Area Adjacent to Streets and Walkways. Where a parking or vehicle maneuvering area is within twenty (20) feet of a public street, sidewalk or walkway, an evergreen plant screen (e.g., ground covers and hedge) or decorative masonry wall, arcade, trellis, or similar partially opaque structure at least three (3) feet in width and three (3) feet in height shall be established between the parking/vehicle maneuvering area and public street, sidewalk or

walkway as applicable. The required screening shall have breaks or portals to allow visibility (natural surveillance) into the site and to allow pedestrian access to any adjoining walkways. Hedges used to comply with this standard shall be a minimum of thirty-six (36) inches, and not more than forty-eight (48) inches, in height at maturity, and shall be of such species, number, and spacing to provide year-round screening within one (1) year after planting. Landscaping must consist of desert landscaping or drought tolerant plant species as identified by the Colorado State University Tri-River Extension Service.

b. Parking/Maneuvering Area Adjacent to Building or private street, sidewalk or walkway. Where a parking or maneuvering area or driveway is adjacent to a building or private street, sidewalk or walkway, the area shall be separated from the building private street, sidewalk or walkway by a curb or wheel stops and a raised walkway, plaza, or landscaped buffer. Raised curbs, bollards, wheel stops, or other design features shall be used to protect pedestrians, landscaping, and buildings from being damaged by vehicles. Where parking areas are located adjacent to residential ground-floor living space, a five (5) foot wide landscape buffer with a curbed edge may fulfill this requirement.

(Ord. 2009-02)

17.39.080 ON-STREET PARKING STANDARDS FOR RESIDENTIAL CUL-DE-SACS.
For cul-de-sacs in single family residential subdivisions, at least one (1) on-street parking space shall be provided for every unit with access along the cul-de-sac bulb. If one additional off-street space is provided for each dwelling unit with access from the cul-de-sac bulb, this on-street parking space requirement can be reduced up to fifty (50) percent. (Ord. 2009-02)

Chapter 17.41

SIGN CODE

Sections:

17.41.010 Purposes
17.41.020 Sign Permits and Administration
17.41.030 Enforcement and Penalties
17.41.040 Exempt Signs
17.41.050 Prohibited Signs
17.41.060 Measurement of Sign Area, Height and Construction
17.41.070 Sign Illumination
17.41.080 Sign Installation and Maintenance
17.41.090 Standards for Specific Types of Signs
17.41.100 Sign Standards by Zone
17.41.110 Creative Signs
17.41.120 Bus Shelter and Bench Advertising

17.41.010 PURPOSES. The standards and requirements contained in this Chapter are intended to coordinate the use, placement, physical dimensions, and design of all signs within the City of Fruita. The purposes of these standards are to:

A. Recognize that signs are a necessary means of visual communication for the convenience of the public and for the benefit of businesses, and

B. Provide a reasonable balance between the right of an individual to identify his or her business and the right of the public to be protected against the visual discord resulting from the unrestricted proliferation of signs and similar devices, and

C. Protect the public from damage or injury caused by signs that are structurally unsafe or obscure vision of motorists, bicyclists or pedestrians or conflict with traffic signals or signs, and

D. Provide flexibility within the sign review/approval process to allow for unique circumstances and creativity.

(Ord. 2009-10)

17.41.020 SIGN PERMITS AND ADMINISTRATION. Any sign authorized by this Chapter may contain non-commercial copy in lieu of any other copy.

A. Sign Permit Required. To ensure compliance with the regulations of this Chapter, a sign permit shall be required in order to erect, move, alter, reconstruct or repair any permanent or temporary sign, except signs that are exempt from permits in compliance with Section 17.41.040 (Exempt Signs). Changing or replacing the copy on an existing lawful sign shall not require a permit, provided the copy change does not change the nature of the sign or render the sign in violation of this Chapter.

B. Application for a Sign Permit.

1. Sign Permit Application Requirements. Applications for sign permits shall be made in writing on forms furnished by the Community Development Department

2. Staff Review and Approval. When the Community Development Department staff has determined the application to be complete, the Community Development Department shall review the sign permit in accordance with requirements of this Code and approve, approve with conditions or deny the sign permit.

C. Appeal of Sign Permit Decision. Any appeal of the Community Development Department's decision on a sign permit shall be made to the City Council as provided in Section 17.05.060 of this Title.

D. Sign Variances.

1. Applicability. A sign variance is an exception from the numerical requirements of this Chapter.

2. Procedure. Sign variances are reviewed and acted upon at a public hearing before the City Council.

3. Approval Criteria. The City Council may approve a sign variance request upon finding that the sign variance application meets or can meet the following approval criteria:

a. That the sign variance granted is without substantial detriment to the public good and does not impair the intent and purposes of this Title and the Master Plan, including the specific regulation in question;

b. By reason of exceptional narrowness, shallowness, depth, or shape of a legal lot of record at the time of enactment of this Title, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such property, the strict application of the subject regulation would result in peculiar and exceptional practical difficulties to, or

exceptional and undue hardship upon the owner of such property;

c. A sign variance from such strict application is reasonable and necessary so as to relieve such difficulties or hardships, and the sign variance will not injure the land value or use of, or prevent the access of light and air to, the adjacent properties or to the area in general or will not be detrimental to the health, safety and welfare of the public;

d. That the circumstances found to constitute a hardship are not due to the result or general conditions throughout the zone, was not induced by any action of the applicant, and cannot be practically corrected, and;

e. That the sign variance granted is the minimum necessary to alleviate the exceptional difficulty or hardship.

4. Final Decision. Any decision of the City Council shall be final, from which an appeal may be taken to a court of competent jurisdiction, as provided in accordance with Section 31-23-307, C.R.S.

(Ord. 2009-10, Ord. 2016-01)

17.41.030 ENFORCEMENT AND PENALTIES.

A. Penalties. Violations of this Chapter shall be subject to the administrative and civil remedies and criminal penalties set forth in the Fruita Municipal Code, including Section 17.01.100.

B. Removal of illegal signs in the public right-of-way. The City of Fruita 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 Chapter.

C. Storage of removed signs. Signs removed in compliance with this Section shall be stored by the City of Fruita for thirty (30) days, during which they may be recovered by the owner only upon payment to the City of Fruita for costs of removal and storage. If not recovered within the thirty (30) day period, the sign and supporting structure shall be declared abandoned and title shall vest with the City of Fruita. The costs of removal and storage, up to thirty (30) days, may be billed to the owner. If not paid, the applicable costs shall constitute a lien against the property, and may be certified to the County Treasurer for collection in the same manner as delinquent ad valorem taxes, as authorized by law.

(Ord. 2009-10)

17.41.040 EXEMPT SIGNS. The following types of signs are exempt from the **permit**

requirements of this Chapter and may be placed in any zone subject to the provisions of this Chapter. Such signs shall otherwise be in conformance with all applicable requirements contained in this Title. Signs shall not interfere with traffic signs or the sight distance triangle at intersections. Evidence of the property owner's permission to install a sign may be required. All other signs shall be allowed only with a permit and upon proof of compliance with this Chapter. These exempt signs are permitted in addition to other signs permitted by this Chapter.

A. Signs in the public right-of-way unless permitted by this Title and specifically permitted by the governmental entity controlling the right-of-way (City of Fruita, Colorado Department of Transportation, etc.)

B. Signs that are not visible beyond the boundaries of the lot or parcel upon which they are located and/or from any public thoroughfare or right-of-way shall be exempt from the provisions of this Chapter, except that such signs shall be subject to the safety regulations of the City's building codes adopted pursuant to Title 15 of the Fruita Municipal Code.

C. Architectural features. Integral decorative or architectural features of buildings so long as such features do not contain letters, trademarks, moving parts or lights.

D. Art. Integral decorative or architectural features of buildings and works of art so long as such features or works do not contain letters, trademarks, moving parts or lights.

E. Building Identification, Historical Markers. Non-illuminated signs which are permanently affixed to buildings or structures for the purpose of identifying the name of a building, date of erection or other historical information.

F. Construction. Temporary construction signs advertising the development or improvement of a property by a builder, contractor or other person furnishing service, materials, or labor to the premise during the period of construction, development or lot sales shall be allowed provided that:

1. Signs in conjunction with any single family residential use shall not exceed eight (8) square feet each;

2. Signs in conjunction with all other uses shall have a maximum area of thirty-two (32) square feet each;

3. Only one (1) such sign oriented per street front per premises shall be erected. Any two (2) such signs located on the same premises shall be located at least one hundred (100) feet apart as measured by using a straight line;

4. Such signs shall not be illuminated;

5. Such signs shall only appear at the construction site; and

6. Such signs shall be removed within seven (7) days after completion of the project;

7. Such signs shall be erected only after submittal of a land development application for the subject property.

G. Courtesy. Signs which identify, as a courtesy to customers, items such as credit cards accepted, redemption stamps offered, menus or hours of operation; limited to one (1) such sign for each business or use, not to exceed four (4) square feet per face or eight (8) square feet in total area. One flashing or blinking sign of this type may be permitted to be displayed in a window on the ground floor provided the sign is no larger than four square feet in area.

H. Decorations (Holiday). Temporary decorations or displays, when such are clearly incidental to and are customarily and commonly associated with any national, State, local or religious holiday or celebration; provided that such signs shall be displayed for not more than sixty (60) days in any one (1) year.

I. Directional. On-premises directional and instructional signs not exceeding six (6) square feet in area each.

J. Doors. Signs affixed to door which identify the name and/or address of an establishment limited to four (4) square feet.

K. Flags. Flags, crests or banners of nations, or organizations of nations, or states and cities, or professional fraternal, religious, civic organizations, or generally accepted military service related flags (i.e. POWs) except when displayed in connection with commercial promotion.

L. Hazards Signs. Temporary or permanent signs erected by the City of Fruita, public utility companies, oil and gas companies, or construction companies to warn of danger or hazardous conditions, including signs indicating the presence of underground cables, gas lines and similar devices.

M. Identification/Address. Non-illuminated signs not to exceed two (2) square feet in area which identify the address and/or occupants of a dwelling unit or of an establishment. An Identification/Address sign that contains only the address number(s) of the property may be larger than two square feet only if necessary for the numbers to be visible from the public right-of-way.

N. Memorial. Memorial signs, plaques or grave markers which are non-commercial in nature.

O. Merchandise. Merchandise, pictures or models of products or services which are incorporated as an integral part of a window display. This is different from a Window Sign

which requires a sign permit.

P. Political Signs. Political signs displayed on private property in accordance with an official election or signs erected on behalf of candidates for public office and ballot issues provided:

1. The total area of all such signs on a lot does not exceed thirty-two (32) square feet;

2. All such signs may be erected no sooner than sixty (60) days in advance of the election for which they were made;

3. The signs are removed within seven (7) days after the election for which they were made; and

4. The property owner upon whose land the sign is placed shall give written permission for the placement of said signs and will be responsible for violations.

Q. Public Information Signs. Signs which identify restrooms, public telephones, or provide instructions as required by law or necessity, provided the sign does not exceed two (2) square feet in area and is non-illuminated. (This category shall be interpreted to include such signs as "restrooms," "self-service," and similar informational signs.)

R. Religious Symbols. Religious symbols located on a building or lot used for organized religious purposes.

S. Regulatory Signs. Regulatory signs erected on private property identifying regulations specific to that property, such as "no trespassing" or "no smoking" signs, which do not exceed two (2) square feet per face or four (4) square feet in total surface area, limited to four (4) such signs per use or per building, whichever is the greater number.

T. Real Estate Sale, Lease, Rent Signs. Temporary signs used to offer for sale, lease or rent land or buildings provided that such signs shall be no taller than six (6) feet, shall not be illuminated and shall be removed within seven (7) days after the real estate closing or lease transaction and:

1. One (1) on-premise sign per street frontage advertising real estate ("For Sale," "For Rent," "For Lease" or "For Development") not greater than eight (8) square feet in area in a residential zone and thirty-two (32) square feet in area in non-residential zones may be located on the property being advertised. If the property so advertised lies on a corner lot or double frontage lot, then a second sign may be oriented along the second street so long as the two signs are at least one hundred (100) feet apart as measured by the shortest straight line;

2. In addition to the on-premise real estate sign(s), a maximum of three (3) directional

signs, each not exceeding four (4) square feet in area, shall be permitted off the subject premises. The message of said signs shall be limited to the name of the property or development being advertised, an address, a telephone number, a directional arrow, mileage to the subject property, and the terms "Lot/Home For Sale," "For Rent," "For Lease," "For Development," etc;

3. In addition to the signs identified in subsections a & b above, land containing not less than five (5) lots or one acre shall be allowed one sign per street entrance advertising the subdivision. Such signs may have a maximum sign area of thirty-two (32) square feet.

U. Scoreboards. Scoreboards for athletic fields.

V. Strings of Light Bulbs. Displays of string lights, provided:

1. They are decorative displays which only outline or highlight landscaping or architectural features of a building;

2. They are steady burning lights. No blinking, flashing, intermittent changes in intensity or rotating shall be permitted;

3. They are no greater in intensity than five (5) watts;

4. They shall not be placed on or used to outline signs, sign supports;

5. They shall not be assembled or arranged to convey messages, words, commercial advertisements, slogans and/or logos;

6. They shall not create a safety hazard with respect to placement, location of electrical cords or connection to power supply;

W. Temporary, On-Premise. Two temporary signs (either attached or freestanding) are permitted per business (including institutional businesses and temporary uses such as garage sales and fruit stands) as long as the signs are brought indoors at the end of each business day. There are no size or height limits associated with these types of temporary signs.

X. Temporary, Off-Premise. In lieu of one on-premise temporary signs, one temporary off-premise portable freestanding sign is permitted in the public right-of-way directly abutting the subject property per each businesses or institutional use as long as the signs meet the following requirements:

1. The sign can be located only on the public right-of-way directly in front of the subject property.

2. The sign height shall not exceed four (4) feet as measured from the ground;

3. The sign size shall not exceed six (6) square feet;

4. The sign cannot be placed on public art including pedestals, benches, seating walls, trash cans, landscaping (other than grass or gravel ground cover), utility structures, and similar items;

5. Signs affixed to a fence or other structure, or are within the area used as part of a permitted sidewalk restaurant (as per Chapter 12.14 of the Municipal Code) are considered on-premise signs;

6. The sign shall be brought indoors at the end of each business day;

7. The sign shall not obstruct the clear sight for traffic at intersections and driveways;

8. No sign shall be placed in a traffic lane for vehicles, including bicycle lanes;

9. No sign shall be placed in a public parking space including bicycle parking spaces;

10. A sign placed on public sidewalks must leave five (5) feet of minimum width clear for traffic circulation and if the sidewalk is less than five (5) feet in width, a sign cannot be placed on the sidewalk.

Y. Time and Temperature. Signs displaying time and temperature devices provided they are not related to a product and do not exceed sixteen (16) square feet in sign area and do not exceed eight (8) feet in height when freestanding.

Z. Traffic Control. Signs for the control of traffic or other regulatory purposes including signs for the control of parking on private property, and official messages erected by, or on the authority of, a public officer in the performance of his/her duty.

AA. Vacancy and No Vacancy. The sign area of "vacancy" and "no vacancy" signs, cannot exceed three (3) square feet per face. Also, signs designed to indicate vacancy such as "yes," "no" or "sorry" shall also be exempt under the provisions of this subsection if they meet the area requirement.

BB. Vehicular For Sale Signs. Motor vehicle for sale signs provided there is only one (1) sign per vehicle, the sign does not exceed two (2) square feet.

CC. Vehicular Signs. Signs displayed on trucks, buses, trailers or other vehicles which are being operated or stored in the normal course of a business, such as signs indicating the name of

the owner or business which are located on moving vans, delivery trucks, rental trucks and trailers and the like, shall be exempt from the provisions of this Chapter, 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.

DD. Vending Machine Signs. Vending machine signs provided that the advertisement upon the vending machine sign is limited to the product vended.

(Ord. 2009-10, Ord. 2016-01, Ord. 2016-10)

17.41.050 PROHIBITED SIGNS. The following signs are inconsistent with the purposes and standards in this Chapter and are prohibited in all zones:

A. Flashing, rotating, blinking or moving signs, animated signs, signs with moving, rotating or flashing lights or signs that create the illusion of movement;

B. Any sign that is erected in such a location as to cause visual obstruction or interference with motor vehicle traffic, or traffic-control devices including any sign that obstructs clear vision in any direction from any street intersection or driveway;

C. Mechanical or electrical appurtenances, such as "revolving beacons", that are designed to compel attention;

D. Off-premises advertising signs except as specifically permitted by this Chapter;

E. 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;

F. Any sign located in such a way as to intentionally deny an adjoining property owner visual access to an existing sign;

G. Vehicle-mounted signs, including but not limited to, signs painted on or attached to semi-trailers or cargo containers when exhibited on private property adjacent to public right-of-way for the purpose of advertising the business or services offered on the property.

H. No single sign may measure more than three hundred (300) square feet regardless of size calculations otherwise contained in this Chapter.

I. Searchlights;

J. 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;

K. Wind signs;

L. Any sign (together with its supporting structure) now or hereafter existing which, ninety (90) days or more after the premises have been vacated, advertises an activity, business, product or service no longer produced or conducted upon the premises upon which such sign is located. If the sign or sign structure is covered or the identifying symbols or letters removed, an extension of time may be granted by the Community Development Department 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);

M. Any sign or sign structure which:

1. Is structurally unsafe;

2. Constitutes a hazard to safety or health by reason of inadequate maintenance or dilapidation;

3. Is not kept in good repair; or

4. Is capable of causing electrical shocks to persons likely to come in contact with it; and

N. Any sign or sign structure which:

1. In any other way obstructs the view of, may be confused with or purports to be an official traffic sign, signal or device or any other official sign;

2. Uses any words, phrases, symbols or characters implying the existence of danger or the need for stopping or maneuvering a motor vehicle;

3. Creates in any other way an unsafe distraction for motor vehicle operators; or

4. Obstructs the view of motor vehicle operators entering a public street from any parking area, service drive, private driveway, alley or other thoroughfare.

(Ord. 2009-10, Ord. 2016-01)

17.41.060 MEASUREMENT OF SIGN AREA, HEIGHT AND CONSTRUCTION.

A. Sign Surface Area. The area of a geometric shape enclosing any message, logo, symbol, name, photograph or display face shall be measured using standard mathematical formulas.

B. Sign Support. Supporting framework or bracing that is clearly incidental to the display itself shall not be computed as sign area.

C. Back-to-Back (Double-Faced) Signs. Back-to-back signs shall be regarded as a single sign only if mounted on a single structure, and the distance between each sign face does not exceed two (2) feet at any point.

D. Three-Dimensional Signs. Where a sign consists of one or more three-dimensional objects (i.e. balls, cubes, clusters of objects, sculpture), the sign area shall be measured as their maximum projection upon a vertical plane. Signs with three-dimensional objects that exceed a projection of six (6) inches from the sign face may be approved in compliance with Section 17.41.110, Creative Signs.

E. Sign Height. The height of a sign shall be measured from the highest point of a sign to the natural ground surface beneath it.

F. Wind Load. All exterior signs shall be engineered to withstand a minimum wind load of thirty (30) pounds per square foot.

(Ord. 2009-10)

17.41.070 SIGN ILLUMINATION.

A. Signs within five hundred (500) feet and in the direct line of sight of an existing residential structure or signs over ten (10) feet tall which are within five hundred (500) feet of and in the direct line of sight of the Fruita State Park are required to minimize light pollution impacts to the Fruita State Park and/or existing residential structures. A residence shall be deemed "existing" for purposes of this subsection if it has a valid building permit in effect for construction of said structure or if construction of said structure was complete on or prior to the effective date of this Chapter.

B. All lighted signs shall have their lighting directed in such a manner as to illuminate only the face of the sign. When external light sources are directed at the sign surface, the light source must be concealed from pedestrians' and motorists' "lines of sight."

C. Signs must be illuminated in a way that does not cause glare onto the street and adjacent properties. Signs shall be lighted only to the minimum level for nighttime readability.

D. All lighted signs shall meet all applicable electrical codes and the electrical components used shall bear the label of an approval agency. Additionally, electrical permits shall be obtained for electric signs. When electrical service is provided to freestanding signs, all such electrical service shall be underground.

E. Flashing, moving, blinking, chasing or other animation effects are prohibited on all signs except time and temperature signs and courtesy signs four (4) square feet or less in area when displayed in a window.

F. Neon tubing is an acceptable method of sign illumination.

G. Electronic message boards are permitted but the message can change only once every five (5) minutes and only one color light may be used at a time. Time and temperature signs and courtesy signs four (4) square feet or less in area when displayed in a window are exempt from this regulation. Electronic message boards using plasma technology are prohibited.

(Ord. 2009-10)

17.41.080 SIGN INSTALLATION AND MAINTENANCE.

A. Owners of projecting signs extending over public right-of-way shall be required to maintain public liability insurance in an amount to be determined appropriate by the City of Fruita, in which the City of Fruita is named as an "additional insured."

B. The owner of a sign and the owner of the premises on which a sign is located shall be jointly and severally liable to maintain such sign, including any illumination sources in a neat and orderly condition, and in good working order at all times, and to prevent the development of any rust, corrosion, rotting or other deterioration in the physical appearance or safety of such sign. The sign must also be in compliance with all building and electrical codes adopted by the city and the State.

C. The City of Fruita may inspect any sign governed by this Chapter and shall have the authority to order the repair, or removal of a sign which constitutes a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation or obsolescence.

(Ord. 2009-10)

17.41.090 STANDARDS FOR SPECIFIC TYPES OF SIGNS. Any sign authorized by this Chapter may contain non-commercial copy in lieu of any other copy.

A. Attached sign types. The sum of all attached signs cannot exceed ten (10) percent of wall area to which the sign(s) is attached. Each building facade shall have its own separate and distinct sign allowance. The sign allowance per facade can only be used on that facade and shall not be transferred to any other facade.

1. Wall Signs. The sign shall not be placed to obstruct any portion of a window, doorway or other architectural detail. Wall signs shall not extend more than four (4)

feet above the roof line of the portion of the building to which it is attached but in no case is the wall sign permitted to be above thirty-five (35) feet in height regardless of building height.

2. Awning or Canopy Signs.

   a. Location. Signs may be placed only on awnings or canopies that are located on first or second story of a building. No awning or canopy sign shall project beyond, above or below the face of an awning or canopy.

   b. Maximum area and height. Sign area shall comply with the requirements established by Section 17.41.100, Sign Standards by Zone District. No structural element of an awning or canopy shall be located less than eight (8) feet above finished grade.

3. Window Signs. When a sign is painted on, applied or attached to or displayed in a window and is visible beyond the boundaries of the lot upon which the sign is displayed, the total area of such sign shall not exceed:

   a. Fifty (50) percent of the window or door area at the ground floor level; and

   b. Fifty (50) percent of the total allowable sign area for the premises.

4. Projecting Signs.

   a. Maximum area and height. Projecting signs shall not be higher than the wall from which the sign projects. Projecting signs must have eight (8) feet clearance from the ground below and may not extend more than six (6) feet from the building wall. The size of projecting signs is limited to sixteen (16) square feet.

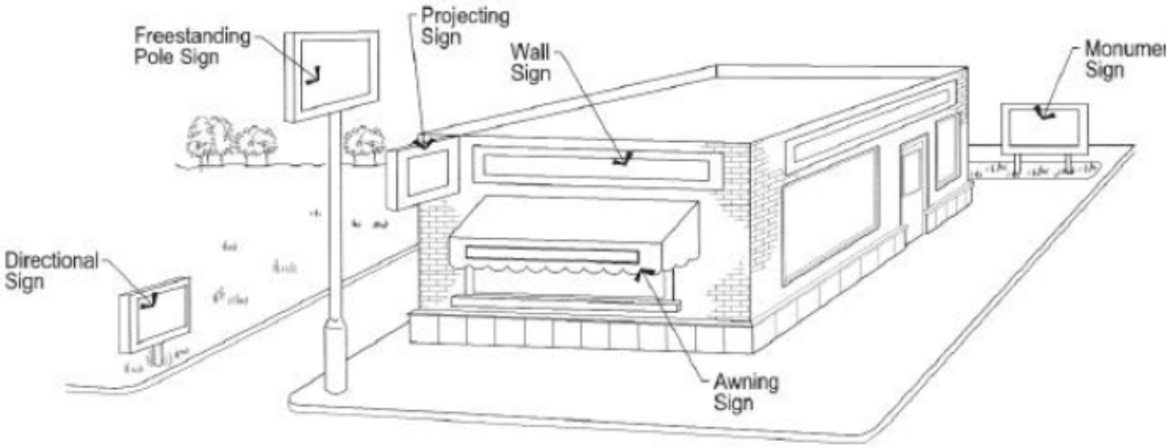
   b. Sign structure. Sign supports and brackets shall be compatible with the design and scale of the sign.

   c. Quantity. The number of projecting signs is limited to one per business.

B. Freestanding Signs.

1. Location. No freestanding sign in any zone can be erected closer than eight (8) feet to any curbline in the public right-of-way, nor closer than four (4) feet to any building. With the exception of the DMU zone, no freestanding signs for non-residential land uses must not be located less than twenty-five (25) feet from any property line abutting a residential land use.

2. Maximum area and height. The sign shall comply with the height and area requirements established in Section 17.41.100, Sign Standards by Zone.



Different Types of Signs

C. Off-Premises Signs. Other than the off-premise signs permitted as identified in Section 17.41.040 regarding Exempt Signs, the only other off-premise signs permitted are Business District Identification signs. One Business District Identification sign (whether freestanding or attached) is permitted at each major entry point to a Business District for those businesses that do not have frontage on a State Highway. For the purposes of Business District Identification Signs, Business Districts and major entrance points to Business Districts are identified by Resolution of the City Council. This type of sign is permitted in addition to all other signs permitted on the property on which the sign is located.

1. Freestanding: Limited to thirty-five (35) feet in height and three hundred (300) square feet in size.

2. Attached: Limited to three hundred (300) square feet in size.

(Ord. 2009-10, Ord. 2016-01)

17.41.100 SIGN STANDARDS BY ZONE

A. Signs in the Monument Preservation (MP), Rural Residential (RR), Community Residential (CR), Large Lot Residential (LLR), South Fruita Residential (SFR), Community Services and Recreation (CSR) zones and residential land use portions of the Community Mixed Use (CMU), and Downtown Mixed Use (DMU) zones shall be limited to:

Type of Sign	Number of Signs	Maximum Area (sq. ft.)	Maximum Height of Freestanding Signs
Identification Sign (Freestanding or Attached Sign)	1 per single family or duplex unit	2 sq. ft.	4'
	1 per multi-family building	16 sq. ft.	6'
	1 per public or quasi-public use	32 sq. ft.	8'
	1 per subdivision entrance	32 sq. ft.	6'
Commercial Uses (legal nonconforming only)	1 per tenant space for attached signs 1 per lot or parcel for freestanding signs	1 sq. ft. for each lineal foot of building wall or frontage; 25 sq. ft. maximum	6'

B. Signs in the General Commercial (GC), Industrial and non-residential land use portions of the Downtown Mixed Use (DMU) and Community Mixed Use (CMU) shall be limited to all signs permitted in subsection A above and also the following:

Type of Sign	Number of Signs	Maximum Area (sq. ft.)	Maximum Height of Freestanding Signs
Freestanding *	1 per parcel per street frontage	0.75 sq. ft. per linear foot of street frontage per 2 traffic lanes; 1.5 sq. ft. per linear foot of street frontage when more than 2 traffic lanes	8' or up to 35'**
Attached (Wall, Window, Awning or Canopy, Projecting)	unlimited but total area of all attached signs cannot exceed the maximum square footage allowed	1.5 sq. ft. per linear foot of building façade	n/a

* For parcels or lots with buildings that abut the entire street side property line, freestanding signs shall not be permitted along that street side. This currently includes most of the lots fronting Circle Park and Aspen Avenue from Circle Park to Peach Street.

** One Freestanding sign per lot or parcel up to thirty-five (35) feet in height is permitted for properties touching the right-of-way for Highway 6 & 50 or Highway 340 which are zoned GC, DMU or CMU, or; properties zoned DMU and touching the right-of-way for Plum Street between Highway 6 & 50 and Aspen Avenue. Maximum size for freestanding signs taller than ten (10) feet is limited to two hundred (200) square feet.

*** For small buildings and/or lots, a minimum of fifty (50) square feet is permitted for an attached sign and fifty (5) square feet is permitted for a freestanding sign regardless of the width of the street frontage and/or building façade; however, all other requirements must be met.

C. Signs in the Agricultural Residential (AR) and Rural Estate (RE) Zone Districts shall be limited to:

1. All signs permitted in subsection A above, and;

3. One Identification Sign for agricultural land uses limited to:

   a. Forty-eight (48) square feet in size whether attached or freestanding;

   b. Freestanding sign limited to eight (8) feet in height with the setback from property lines equal to the height of the sign.

D. Planned Unit Development and Conditional Use Signs. Planned Unit Developments and Conditional Use Permits shall have proposed signs reviewed and approved as part of the Planned Unit Development or Conditional Use Permit review process.

(Ord. 2009-10, Ord. 2016-01)

17.41.110 CREATIVE SIGNS.

A. Purpose. This Section establishes standards and procedures for the design, review and approval of creative signs. The purposes of this creative sign program are to:

   1. Encourage signs of unique design, and that exhibit a high degree of thoughtfulness, imagination, inventiveness, and spirit; and

   2. Provide a process for the application of sign regulations in ways that will allow creatively designed signs that make a positive visual contribution to the overall image of the City of Fruita, while mitigating the impacts of large or unusually designed signs.

B. Applicability. An applicant may request approval of a sign permit under the creative sign program to authorize on-site signs that employ standards that differ from the other provisions of this Chapter, but comply with the provisions of this Section.

C. Approval Authority. A sign permit application for a creative sign shall be subject to approval by the City Council after a recommendation from the Planning Commission.

D. Application Requirements. A sign permit application for a creative sign shall include all information and materials required by the City of Fruita, and the permit fee as determined by resolution of the City Council.

E. Design Criteria. In approving an application for a creative sign, the Planning Commission shall ensure that a proposed sign meets the following design criteria:

   1. Design quality. The sign shall:

      a. Constitute a substantial aesthetic improvement to the site and shall have a

positive visual impact on the surrounding area;

b. Be of unique design, and exhibit a high degree of thoughtfulness, imagination, inventiveness, and spirit; and

c. Provide strong graphic character through the imaginative use of graphics, color, texture, quality materials, scale, and proportion.

2. Contextual criteria. The sign shall contain at least one (1) of the following elements:

a. Classic historic design style;

b. Creative image reflecting current or historic character of the City of Fruita;

c. Symbols or imagery relating to the entertainment or design industry; or

d. Inventive representation of the use, name or logo of the structure or business.

3. Architectural criteria. The sign shall:

a. Utilize and/or enhance the architectural elements of the building; and

b. Be placed in a logical location in relation to the overall composition of the building's facade and not cover any key architectural features/details of the facade.

(Ord. 2009-10, Ord. 2016-01)

17.41.120 BUS SHELTER AND BENCH ADVERTISING.

A. Advertising - Bus Shelters. Advertising on or incorporated within County or City approved transit shelters is permitted as long as the following requirements are met:

1. There is a written agreement between the bus shelter provider and all of the required permits have been obtained from the City of Fruita and Mesa County.

2. The bus shelters are located only at designated bus stops on designated bus routes. As routes or stops change, bus shelters that are no longer on a designated route or bus stop must be removed within thirty (30) days following notice by the County and/or the City of Fruita requesting removal.

3. Bus shelters are also subject to the following requirements:

a. Advertising shall be limited to two side panels on the bus shelter, each not

more than forty-eight (48) inches wide and seventy-two (72) inches high; the advertising panels may be illuminated by "back lighting";

b. A third advertising panel may be provided along the rear of the bus shelter for public service messages or other public purposes, as specified in the written agreement with the County and the City;

c. A proposed maintenance schedule shall be included in the written agreement between the bus shelter provider and the County and the City. The permittee shall be responsible for all maintenance of the shelter including general repair, painting, removal of graffiti, and maintenance of lawn or landscaping around the shelter area. Failure to properly maintain the shelter or shelter area is cause for removal;

d. All bus shelters shall be located on and anchored to a concrete pad or equivalent;

e. Shelters should be located in the public right-of-way; in situations where the shelter is required to be located outside the public right-of-way, the Community Development Department may allow such location, provided written authorization of the owner of the private land has been obtained and any costs associated with obtaining the authorization has been paid;

f. A planning clearance for a building permit shall be obtained for each bus shelter; all requirements of the Americans with Disabilities Act must be met;

g. Where curb and gutter are present and the posted speed limit is thirty-five (35) miles per hour or less, the front of the shelter shall be set back a minimum of five (5) feet from the curb, unless otherwise authorized by the County and City's Community Development Department; in no case shall the setback be less than three and one-half (3 ½) feet from the curb;

h. Where there is no curb and gutter or the posted speed limit is greater than thirty-five (35) miles per hour the front of the shelter shall be set back a minimum of ten (10) feet from the edge of pavement, unless otherwise authorized by the City's Community Development Department; in no case shall the setback be less than five (5) feet from the edge of pavement;

i. The shelter shall not be located in a way which impedes pedestrian, bicycle, wheelchair, or motor vehicle travel, including the limitation of vehicular sight distance; vertical supports for the shelter shall be located no closer than one (1) foot from any sidewalk;

j. Bus shelters with advertising are limited to the General Commercial (GC), Downtown Mixed Use (DMU) and Industrial zones and are allowed only on major collector, minor arterial, and major arterial streets and roads, as designated in City of Fruita Street Classification and Traffic Control Plan, with the exception that such advertising bus shelters and benches shall not be allowed on the lots fronting on Circle Park and East Aspen Ave. from Circle Park on the west to Elm Street on the east, Mesa County School District No. 51 property, and on property operated by the Museum of Western Colorado; and

k. Shelters located in the Downtown Mixed Use (DMU) and General Commercial (GC) zones are subject to the design standards of such zone. (See Chapter 17.11.)

B. Advertising - Bus Benches. Advertising on bus benches is permitted as long as the following requirements are met:

1. There is a written agreement between the bus bench provider and the County and the City and all of the required permits have been obtained from the County and City.

2. A single bench may be located only at designated bus stops along a designated bus route, subsequent to issuance of a permit by the County and the City's Community Development Department. A second bench may be allowed based on ridership data which demonstrates such a need. As routes or stops change, bus benches that are no longer along a designated route or bus stop must be removed within thirty (30) days following notice by the County and City.

3. Benches are also subject to the following conditions:

a. A site plan of the bench location, meeting the requirements of this Section, shall be submitted to the County and the City's Community Development Department for review and approval of planning clearance prior to placement of any bench. Additionally, all requests to locate a bench on State highways shall also be submitted to the Colorado Department of Transportation (C.D.O.T.) for review and approval;

b. Benches should be located within the public right-of-way; in situations where the bench is required to be located outside the public right-of-way the County and City's Community Development Department may allow such encroachment if it is the minimum amount necessary to site the bench, written authorization from the owner of the private land has been provided, and any costs associated with obtaining the authorization has been paid;

c. The bench may be oriented towards approaching traffic at an angle not to exceed thirty (30) degrees from parallel to the street frontage;

d. Where curb and gutter are present and the posted speed limit is thirty-five (35) miles per hour or less, the front of the bench shall be set back a minimum distance of five (5) feet from the curb. The five (5) feet minimum distance may not be reduced;

e. Where no curb and gutter is present or the posted speed limit exceeds thirty-five (35) miles per hour, the bench may be located at a distance no closer than ten (10) feet from the edge of pavement, unless otherwise authorized by the County and the City's Community Development Department; in no case shall the distance be reduced to less than five (5) feet from the street pavement. Bus benches must be located within twenty (20) feet of a bus stop. To the greatest extent possible, benches should not be located within the parkway between the road pavement/curb and sidewalk;

f. The advertising panel shall be limited to a single face that must be oriented to the street. The sign face shall not exceed twelve (12) square feet in size with a maximum sign height of two (2) feet; the sign shall be non-illuminated and non-reflective;

g. The bench may not be located in a manner which impedes pedestrian, bicycle, wheelchair, or vehicle travel including the limitation of vehicular sight distance. The bench shall be set back a minimum distance of one (1) foot from an adjacent sidewalk at it's nearest point;

h. The permittee shall be responsible for all maintenance of the bench including general repair, painting, removal of graffiti, and maintenance of lawn or landscaping around the bench area. Failure to properly maintain the bench or bench area is cause for removal;

i. Benches containing advertising are limited to major collector, minor arterials, and major arterials, as designated in the City's Street Classification and Traffic Control Plan;

j. The design of benches obtained by the provider subsequent to the adoption of this Chapter shall be approved by the City;

k. Bus benches with advertising are limited to General Commercial (GC), Downtown Mixed Use (DMU) and Industrial zones and are allowed only on major collector, minor arterial, and major arterial streets and roads, as designated on the City's Street Classification and Traffic Control Plan, with

the exception that such advertising benches shall not be allowed in the lots fronting on Circle Park and East Aspen Ave. from Circle Park on the west to Elm Street on the east, Mesa County School District No. 51 property, and on property operated by the Museum of Western Colorado; and

l. The City's Community Development Department may add additional requirements for design and placement of benches as necessary based on the site location including, but not limited to the following:

i. Construction of a concrete pad sufficient in size to accommodate the bench supports and two (2) feet of foot space along the front of the bench; and

ii. Securing the bench to concrete pads utilizing a "break-away" anchor design.

(Ord. 2009-10, Ord. 2016-01)

Chapter 17.43

TRANSPORATION SYSTEM PLANNING AND DEVELOPMENT

Sections:

17.43.010 Street System Standards; General Provisions
17.43.020 Private Street Construction and Inspection
17.43.030 Planning Principles for Local Circulation Systems
17.43.040 Minimum Requirements for Local Circulation Systems
17.43.050 Access to Private Property
17.43.060 General Access Standards
17.43.070 Access Control Standards for Arterial Streets
17.43.080 Access Control Standards for Major Collector and Minor Collector Streets
17.43.090 Access Control Standards for Local Streets
17.43.100 Intersection Requirements

17.43.010 TRANSPORTATION SYSTEM STANDARDS; GENERAL PROVISIONS.

A. Legislative Authority. The City Council is authorized to regulate vehicular access to or from any public street within the city in order to protect the public health, safety and welfare, to maintain efficient traffic flow, to maintain proper street right-of-way drainage and to protect the functional levels of public streets. The City Council is also authorized to prohibit anyone from causing or permitting a street to become obstructed or damaged in any way, or permitting water, wastewater or other substance from any ditch, lateral, canal, reservoir, rain or flume or other artificial course to flow across such a street.

B. Design Specifications. All streets within the City of Fruita shall be constructed in accordance with the latest version of the City of Fruita Design Criteria and Construction Specifications Manual.

C. Roadway Classifications. The public street systems within the City of Fruita consist of four roadway classifications as defined in the Fruita Area Street Classifications & Traffic Control Plan document. These four roadway classifications include arterial, major collector, minor collector, and local street designations. Alternate street sections for minor collector and local streets internal to a subdivision will be considered, but should meet the minimum lane widths identified in the City of Fruita Design Criteria and Construction Specifications Manual.

D. Permits Required.

1. An excavation and right-of-way permit, issued by the City of Fruita, is required for all work within a city right-of-way, including alleys, and for all work adjacent to a city right-of-way where use of the right-of-way is needed for construction vehicles, staging of materials, or safety barricades. For the purposes of this

Section, work is defined as the installation, modification, or repair to any utilities, pavement, curb, gutter, sidewalk, or any alteration of the ground surface within or adjacent to the public right-of-way for the purpose of installing any improvement which will affect drainage patterns or sight distances. The requirements of this Section apply to all projects or construction, and to all individuals and entities, including utility companies which may hold a franchise from the city. A performance bond or other security approved by the city may be required to ensure conformance with permit provisions. Engineered plans prepared by a Colorado registered professional engineer may also be required. All construction shall be in accordance with plans, specifications and details approved by the city. Approved permits shall not be changed without the written consent of the city.

2. Exceptions. The following work and/or projects are exempt from the permit requirements of this Chapter:

   a. City capital improvement projects for which construction drawings have been issued and approved by the city and for which a project specific traffic control plan has been approved by the city.

   b. Work performed in or adjacent to a County, State, or federal, right-of-way shall obtain applicable permits from the appropriate governing agency.

E. Street Maintenance - Notice. The city shall not be responsible for the maintenance of public streets in new subdivisions and developments until the street improvements are approved and accepted by the city. In the event such street improvements have not been accepted, the city may post at all entrances to the subdivision or other development a sign which states: "Notice: Streets within this subdivision have not been accepted by the city for maintenance".

(Ord. 2009-02)

17.43.020 PRIVATE STREET CONSTRUCTION AND INSPECTION. Construction of private streets within the city is not preferred and shall be considered on an individual basis. Private streets shall be subject to the same process and design standards for a public street. Private streets will not be maintained by the city. (Ord. 2009-02)

17.43.030 PLANNING PRINCIPLES FOR LOCAL CIRCULATION SYSTEMS. Basic considerations in the design of local circulation systems shall recognize the following factors: (1) safety for both vehicular and pedestrian traffic; (2) efficiency of service for all users; (3) liability especially as affected by traffic elements in the circulation system; and (4) economy of both construction and the use of land. Design of streets should minimize maintenance costs.

Each of the following principles is an elaboration on one or more of these four (4) factors. The principles are not intended as absolute criteria, since instances may appear where certain principles conflict. The principles should, therefore, be used as guides to proper systems layout.

A. Ensure Vehicular and Pedestrian Access and Provide Utility Access. The primary function of local streets is to serve abutting properties. Street widths, placement of sidewalks, patterns of streets and the number of intersections are related to safe and efficient access to abutting lands.

B. Control Access to Collectors and Arterials. Local circulation systems and land development patterns should not detract from the efficiency of peripheral collector and arterial streets. Ideally, land development should occur so that no lots require direct access to collector or arterial routes. The number of access points between the local circulation system and the arterial system should be minimized. Intersections along collector and arterial routes should be properly spaced for efficient signalization and traffic flow.

C. Discourage Speeding. Residential streets should be designed to discourage fast movement of vehicular traffic and incorporate traffic calming measures where appropriate.

D. Interconnectivity. All developments should be planned to provide both vehicle and pedestrian/bicycle connectivity to adjacent undeveloped properties and to the existing circulation system. Wherever possible, street stubs to adjacent parcels, and connections for pedestrian/bicycle paths shall be incorporated into the design of the development.

(Ord. 2009-02)

17.43.040 MINIMUM REQUIREMENTS FOR LOCAL CIRCULATION SYSTEMS. In addition to the planning principles outlined in Section 17.43.030, the minimum requirements of this Section shall apply to the design of new streets. Additional specific requirements can also be found in the Mesa County Standard Specification for Road and Bridge Construction. Where conflicts exist between this Section and provisions of the Mesa County Standard Specification for Road and Bridge Construction, the provisions of this Section shall apply.

A. Development Access. Any development exceeding two hundred fifty (250) average daily trips (ADT) or twenty-five (25) units shall have a minimum of two (2) fully platted ingress/egress points (dedicated rights-of-way), or one (1) fully platted ingress/egress point plus a secondary access point for emergency vehicles. Any development exceeding three hundred fifty (350) ADT or thirty-five (35) units shall have a minimum of two (2) fully platted ingress/egress points. Any development exceeding seven hundred fifty (750) ADT or seventy-five (75) units shall have a minimum of three (3) fully platted ingress/egress points.

B. Phased Developments. For phased developments, secondary access shall be installed at

or prior to the time at which the total number of units served by a single access exceeds twenty-five (25) units.

C. Courts and Cul-de-sacs. A cul-de-sac shall not exceed two hundred fifty (250) ADT and in no case should its length exceed six hundred (600) feet, unless a secondary emergency access is provided, in which case the cul-de-sac length may be increased to one thousand (1000) feet. Dead end streets or cul-de-sacs without bulbs shall not be permitted. Streets provided or designed for future connection to adjacent areas shall be improved. Such connections which provide access to structures shall have dedicated cul-de-sacs. A cul-de-sac bulb which may be vacated in the future shall be improved to paved standards if access is provided to dwellings or other structures. Cul-de-sac bulbs not providing access to dwellings or other structures shall be improved with a gravel surface and barricades may be required.

D. Street Stubs. Proposed street stubs to adjacent undeveloped property may be considered in meeting the requirements of subsections (B) and (C) of this Section. The City Council shall have sole discretion to make this determination based on a consideration of current information pertaining to the potential and timing of the development of adjacent parcels.

E. Urban and Rural Street Sections Based on Lot Size. Urban street sections, which include concrete curb and gutter, and either detached or attached sidewalks on both sides, are required in all residential and commercial developments serviced by public streets, wherein the minimum lot size in the development is less than two (2) acres. For residential developments wherein the minimum lot size in the development is equal to or greater than one-half (½) acre, the sidewalk on one (1) side of the street may be deleted at the discretion of the City Council. Rural street sections without curb and gutter, or sidewalks, are allowed only in developments having a minimum lot size of two (2) acres or greater.

(Ord. 2009-02)

17.43.050 ACCESS TO PRIVATE PROPERTY. In order to qualify as access to property within the city, a street shall be one (1) of the following:

A. Public Maintained Street. A public street maintained by the city, the Colorado Department of Transportation (C.D.O.T.) or other public agencies. All new driveways or other access points to a public street shall be designed in accordance with the Fruita Design Criteria and Construction Specifications.

B. Private Street Not Maintained by a Public Agency. Such a street shall be constructed according to the provisions of this Chapter and shall be owned by a homeowners association or other private entity that will take responsibility for maintenance. A maintenance waiver shall be signed by all lot owners accessing the street acknowledging that the city does not maintain the street, and will be recorded by the city in the records of

the Mesa County Clerk and Recorder. The right-of-way widths and level of improvement of such street shall be the same as that of a public street.

C. Shared Drives. The level of improvements required for shared driveways shall be designed according to the following guidelines.

1. Widths of Shared Drives:

a. Less than twenty (20) feet: A maximum density of two (2) units will be allowed on the shared driveway. Minimum improved travel surface roadway width shall be considered on an individual basis.

b. Twenty (20) feet to twenty-six (26) feet: A maximum density of four (4) units will be allowed on the shared driveway. Minimum improved travel surface roadway width of eighteen (18) feet.

2. Access Requirements. The access requirements for shared driveways are:

a. Garages and other parking facilities accessing shared driveways shall be located on the lot in such a manner that movement into or out of the garage or parking area will not encroach on adjacent private property or parking areas.

b. No parking is allowed on shared driveways. For all lots accessing from a shared driveway, one additional off-street car parking space must be provided.

(Ord. 2009-02)

17.43.060 GENERAL ACCESS STANDARDS.

A. Purpose. The lack of adequate access management to the city's street system and the proliferation of driveways and other access approaches can become a major contributor to traffic accidents and a major factor contributing to the functional deterioration of city streets. As new access approaches are constructed, the traffic speed and capacity of streets decrease, while congestion and hazards to the traveling public increase. As a result, significant amounts of tax dollars can be spent to improve city streets and provide additional operational capacity and safety.

The objective of these standards is to both maintain safety and preserve street capacity while at the same time allowing accessibility to adjacent land uses, in a manner consistent with the functional classifications of roads.

B. Standards.

1. In all areas where curb and gutter are provided, all driveways accessing single family building lots shall conform to the standard construction details published by the city. In areas where curb and gutter are not provided, all driveways shall have a minimum surface width of eighteen (18) feet at the edge of pavement, or drive surface, and taper to a minimum surface width of twelve (12) feet at a distance of six (6) feet from the edge of the drive, and maintain this surface width to the edge of the city street or right-of-way.

2. A paved surface with a minimum of twelve (12) feet in width shall be available to fire, ambulance and police vehicles to within one hundred (100) feet of the principal entrances to all principal buildings.

3. In the Rural Estate (RE) and Agricultural Residential (AR) zones for lots three (3) acres in size or larger, access surfacing material outside of the public right-of-way may be six (6) inches Class 6 aggregate base course, or other material such as recycled asphalt, so long as the surfacing material is treated to maintain a dust free condition.

4. The maximum total width of access(s) serving any one (1) parcel shall be limited to thirty-two (32) feet.

5. Access grades may not exceed ten (10) percent. The grade of the entrance and exit shall slope downward and away from the street surface at the same rate as the normal cross slope and for a distance equal to the width of the shoulder, but in no case less than ten (10) feet from the pavement edge.

6. All driveways and approaches shall be constructed so that they do not interfere with the drainage system of the public street or highway. The applicant will be required to provide, at its own expense, drainage structures at entrances and exits which will become an integral part of the existing drainage system. The dimensions of all drainage structures shall be approved by the city prior to installation.

7. No more than one (1) access shall be allowed to any parcel or lot having an area of one (1) acre or less. Additional accesses to parcels or lots having an area of greater than one (1) acre shall be subject to all of the provisions of Chapter 17.07 and this Chapter 17.43.

8. An access approach that has a gate across it shall be designed so that the longest vehicle using it can completely clear the traveled way of the public street when the gate is closed.

9. A parcel or lot fronting on two (2) public streets with identical functional classifications shall take access from the street with the lowest twenty (20) year projected traffic volume. Residential lots fronting on two local roads do not

necessarily have to take access from the street with the lowest twenty (20) year projected traffic volume.

(Ord. 2009-02)

17.43.070 ACCESS CONTROL STANDARDS FOR ARTERIAL STREETS.

A. Private Direct Access. Private direct access to arterials is discouraged. Private direct access to such arterial streets shall be permitted only when the property in question has no other reasonable access to the city's street system. When direct access is necessary, the following shall be required:

1. Access shall continue until such time that some other reasonable access to a lower functional category street is available and permitted. Access permits issued by the city or by the Colorado Department of Transportation shall specify the future reasonable access location and, if known, the date the change will be made. This provision shall not be construed as guaranteeing a public street access. Subdivisions of land shall make provisions for all parcels or lots in the area to have access to a lower functional classification street in the future. Back-out driveways shall not be allowed.

2. No more than one (1) access approach shall be provided to an individual parcel or to contiguous parcels or lots under the same ownership unless it can be shown that additional accesses would be significantly beneficial to the safety and operation of the street or the local circulation system. Subdivision of a parcel or lot shall not result in additional access unless shown as necessary for safety or operational reasons.

3. On two-lane arterials, access approaches may be limited to right turns only if the approach is within five hundred (500) feet, measured near curb line to near curb line, from the nearest signalized intersection. Under no circumstances may a driveway be closer than one hundred (100) feet to the curb line of the intersecting street when measured from the driveway edge nearest the intersecting street.

4. Access approaches on multi-lane divided roads shall be limited to right turns only unless either: (1) the approach does not have the potential for signalization; or (2) it can be shown that allowing left turns would significantly reduce congestion and safety problems at a nearby intersection; or (3) there are no intersections, existing or planned, which allow a U-turn, and left turns can be safely designed without signalization; or (4) a painted median is present which allows continuous turning storage.

B. Spacing and Signalization Shall be Considered. In areas where higher traffic volumes are present or growth is expected in the foreseeable future that will require signalization, it is imperative that the location of all public approaches be planned carefully to ensure good

signal progression. An approved traffic engineering analysis shall be made to properly locate all proposed connecting access approaches that may require signalization.

(Ord. 2009-02)

17.43.080 ACCESS CONTROL STANDARDS FOR MAJOR COLLECTOR AND MINOR COLLECTOR STREETS.

A. Private Direct Access. No more than one (1) access approach shall be provided to an individual parcel/lot or to contiguous parcels/lots under the same ownership unless it can be shown that additional access approaches would not be detrimental to the safety and operation of the public street, and are necessary for the safety and efficient use of the property. Back-out driveways shall not be allowed on Major Collector streets. Under no circumstances may a driveway be closer than one hundred (100) feet to the flow line or edge of the traveled way of the intersecting street when measured from the driveway edge nearest the intersecting street. Subdivision of a parcel shall not result in additional access unless shown as necessary for safety or operational reasons. Shared driveways are encouraged on all collector or larger roads to minimize access points.

B. Spacing of Intersecting Streets. Spacing of major intersecting streets should be at one-quarter (1/4) mile intervals plus or minus two hundred (200) feet. Spacing of other streets where intersection channelization improvements are not required in accordance with the Fruita Design Criteria and Construction Standards shall be at intervals no less than three hundred (300) feet, providing that reasonable access cannot be obtained from lower classification streets.

C. Separation of Driveways. Individual driveways shall have a minimum edge to edge separation distance of one hundred (100) feet. Where the lot dimensions or the location of existing driveways prevent one hundred (100) feet separation, the minimum separation distance shall be the maximum achievable, as determined by the City Engineer on a case-by-case basis.

(Ord. 2009-02)

17.43.090 ACCESS CONTROL STANDARDS FOR LOCAL STREETS.

A. Private Direct Access. Accesses located near an intersection of two (2) local streets shall be constructed so that the edge of the access nearest the intersection is no less than fifty (50) feet from the flowline of the intersecting street. Where the intersecting street is classified as a collector or arterial, setbacks for accesses shall be no less than eighty (80) feet from the flowline of the intersecting street. All accesses are subject to the sight distance requirements of subsection 17.43.090.

B. Spacing of Intersecting Streets. Intersecting public and private streets shall be located opposing where possible or be offset by a minimum of one hundred fifty (150) feet when

measured from near curb line to near curb line

C. Separation of Driveways. Individual driveways shall have a minimum edge to edge separation distance of ten (10) feet. Driveways cannot be located closer than five (5) feet to any side property line.

(Ord. 2009-02)

17.43.100 INTERSECTION REQUIREMENTS.

A. General. Most streets intersect at grade. To minimize potential conflicts and to provide adequately for the anticipated crossing and turning vehicle movements, geometric design of the intersection at grade shall be given careful consideration. The geometric design components of all intersections, including but not limited to the location, approach radii, and sight distance, shall be designed in accordance with the Design Criteria and Construction Standards. (Ord. 2009-02)

Chapter 17.45

FLOOD WAYS, FLOODPLAINS, AND FLOOD HAZARD PREVENTION

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PART V. DEFINITIONS

PART I. DESCRIPTION AND PURPOSES

17.45.010 STATUTORY AUTHORIZATION. The Legislature of the State of Colorado has, in Section 31-23-301 C.R.S., authorized municipalities to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry by regulating, restricting and limiting land uses in order to lessen or avoid the hazards to persons and damage to property resulting from the accumulation of storm or flood waters. (Ord. 2009-02)

17.45.020 FINDINGS OF FACT.

A. The flood hazard areas of Fruita are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

B. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately flood proofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

(Ord. 2009-02)

17.45.030 PURPOSES. The purposes of this Chapter are to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

A. To protect human life and health;

B. To minimize expenditure of public money for costly flood control projects;

C. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

D. To minimize prolonged business interruptions;

E. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and wastewater lines, streets and bridges located in areas of special flood hazard;

F. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;

G. To ensure that potential buyers are notified that property is in an area of special flood

hazard; and

H. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

(Ord. 2009-02)

17.45.040 METHODS OF REDUCING FLOOD LOSSES. In order to accomplish its purposes, this Chapter includes methods and provisions for:

A. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

B. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

C. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;

D. Controlling filling, grading, dredging, and other development which may increase flood damage;

E. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas; and

F. Preventing or restricting development or construction where ingress and egress to a parcel of land is potentially affected by flood waters, or are within areas of special flood hazard as defined in this Chapter.

(Ord. 2009-02)

PART II. GENERAL PROVISIONS

17.45.050 LANDS TO WHICH CHAPTER PROVISIONS APPLY. This Chapter shall apply to all areas of special flood hazards within the jurisdiction of the City of Fruita. (Ord. 2009-02)

17.45.060 BASIS FOR ESTABLISHING AREAS OF SPECIAL FLOOD HAZARD. The areas of special flood hazard are identified by the Federal Emergency Management Agency in a scientific and engineering report entitled "The Flood Insurance Study of Mesa County, Colorado and Incorporated Areas," dated July 6, 2010, with an accompanying Flood Insurance Rate Map (FIRM) which is adopted by reference and declared to be part of this Chapter. The Flood

Insurance Study and FIRM are on file at City of Fruita, 325 East Aspen, #155, Fruita, Colorado. (Ord. 2009-02; Ord. 2010-11, S1)

17.45.070 COMPLIANCE REQUIRED. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this Chapter and the other applicable regulations. Violation of the provisions of this Chapter by failure to comply with any of its regulations (including violations of conditions and safeguards established in connection with conditions) shall commit a Class B municipal offense in accordance with Section 17.01.100. (Ord. 2009-02; Ord. 2010-11, S2)

17.45.080 ABROGATION AND GREATER RESTRICTIONS. This Chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Chapter and another ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail. (Ord. 2009-02)

17.45.090 INTERPRETATION. In the interpretation and application of this Chapter, all provisions shall be:

A. Considered as minimum requirements;

B. Liberally construed in favor of the governing body; and

C. Deemed neither to limit nor repeal any other powers granted under State statutes.

(Ord. 2009-02)

17.45.100 LIMITATIONS OF LIABILITY. The degree of flood protection required by this Chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This Chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This Chapter shall not create liability on the part of the City of Fruita, any officer or employee thereof, or the Federal Emergency Management Agency for any flood damages that result from reliance on this Chapter or any administrative decision lawfully made thereunder. (Ord. 2009-02)

PART III. ADMINISTRATION

17.45.110 ESTABLISHMENT OF A FLOODPLAIN DEVELOPMENT PERMIT. A floodplain development permit shall be obtained before construction or development begins, including any grading or other earthwork, within any area of special flood hazard established in Section 17.45.060. Application for a development permit shall be made on forms furnished by the floodplain administrator, and may include, but not be limited to:

A. Plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. All elevations shall be given in 1988 North American Vertical Datum (NAVD) consistent with Mesa County Survey Monument (MCSM) standards, and a correction factor shall be provided/calculated to equate reference elevations listed on the FIRM maps to current NAVD88 elevations. Specifically, the following information is required:

1. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;

2. Elevation in relation to mean sea level to which any structure has been flood proofed;

3. Certification by a registered professional engineer or architect that the flood proofing methods for any nonresidential structure meet the flood proofing criteria in Section 17.45.230; and

4. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

(Ord. 2009-02)

17.45.120 DESIGNATION OF CITY ENGINEER AS FLOODPLAIN ADMINISTRATOR. The City Engineer is hereby appointed floodplain administrator to administer and implement this Chapter by granting or denying floodplain development permit applications in accordance with its provisions. (Ord. 2009-02)

17.45.130 FLOODPLAIN ADMINISTRATOR; DUTIES AND RESPONSIBILITIES DESIGNATED. Duties of the floodplain administrator shall include, but not be limited to:

A. Permit Review.

1. Review all development permits to determine that the permit requirements of this Chapter have been satisfied;

2. Review all development permits to determine that all necessary permits have been obtained from those federal, State, or local governmental agencies from which prior approval is required; and

3. Review all development permits to determine if the proposed development is located in the flood way; if located in the flood way, assure that the encroachment provisions of Section 17.45.260 (A) are met.

B. Use of Other Base Flood Data. When base flood elevation data has not been provided in accordance with Section 17.45.060, basis for establishing the areas of special flood hazard, the floodplain administrator shall obtain, review, and reasonably utilize any base flood elevation and flood way data available from any federal, State, or other source as criteria for requiring that new construction, substantial improvements, or other development in Zone A are administered in accordance with Sections 17.45.210 through 17.45.250.

C. Information to be Obtained and Maintained.

1. Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement;

2. For all new or substantially improved flood proofed structures:

a. Verify and record the actual elevation (in relation to mean sea level) to which the structure has been flood proofed; and

b. Maintain the flood proofing certifications required in subsection 17.45.110 (A)(3); and

3. Maintain for public inspection all records pertaining to the provisions of this Chapter.

D. Alteration of Watercourses.

1. Notify adjacent communities and the Colorado Water Conservation Board prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency; and

2. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

E. Interpretation of FIRM Boundaries. Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Sections 17.45.140 and 17.45.150.

(Ord. 2009-02)

17.45.140 VARIANCE PROCEDURES.

A. The Board of Adjustment, as established by Chapter 2.40 of the Fruita Municipal Code, shall hear and decide appeals and requests for variances from the requirements of this Chapter.

B. The Board of Adjustment shall hear and decide appeals 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 Chapter.

C. Those aggrieved by the decision of the Board of Adjustment may appeal such decision to the Mesa County District Court, as provided by law.

D. In passing upon such applications, the Board of Adjustment shall consider all technical evaluations, all relevant factors, and standards specified in other sections of this Chapter, and

1. The danger that materials may be swept onto other lands to the injury of others;

2. The danger to life and property due to flooding or erosion damage;

3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners;

4. The importance of the services provided by the proposed facility to the community;

5. The necessity to the facility of a waterfront location, where applicable;

6. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;

7. The compatibility of the proposed use with the existing and anticipated development;

8. The relationship of the proposed use to the Master Plan and flood plain management program for that area;

9. The safety of access to the property in times of flood for ordinary and emergency vehicles;

10. 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; and,

11. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as wastewater, gas, electrical, and water systems, streets, and bridges.

E. Upon consideration of the factors in this Section 17.45.140, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Chapter.

F. The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency.

(Ord. 2009-02)

17.45.150 CONDITIONS FOR VARIANCES.

A. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one half (1/2) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base level, providing items one (1) thru eleven (11) in Section 17.45.140 (D) have been fully considered. As the lot size increases beyond the one half (1/2) acre, the technical justifications required for issuing the variance increases.

B. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this Section.

C. Variances shall not be issued within any designated flood way if any increase in flood levels during the base flood discharge would result.

D. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

E. Variances shall only be issued upon:

1. A showing of good and sufficient cause;

2. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and,
3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create

nuisances, cause fraud on or victimization of the public as identified in Section 17.45.140 (D), or conflict with existing local laws or ordinances.

F. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk from the reduced lowest floor elevation.

(Ord. 2009-02)

PART IV. PROVISIONS FOR FLOOD HAZARD REDUCTIONS.

17.45.160 GENERAL STANDARDS. In all areas of special flood hazards, the standards set out in Sections 17.45.170 through 17.45.210 are required. (Ord. 2009-02)

17.45.170 ANCHORING.

A. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure and capable of resisting the hydrostatic and hydrodynamic loads.

B. All manufactured homes and mobile homes must be elevated and anchored to resist flotation, collapse, or lateral movement and capable of resisting the hydrostatic and hydrodynamic loads. Methods of anchoring may include, but are not limited to, use of over the top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces. Specific requirements may be:

1. Over the top ties be provided at each of the four corners of the manufactured home or mobile home, with two (2) additional ties per side at intermediate locations, with mobile homes less than fifty (50) feet long requiring one additional tie per side;

2. Frame ties be provided at each corner of the home, with five (5) additional ties per side at intermediate points, with manufactured homes or mobile homes less than fifty (50) feet long requiring four (4) additional ties per side;

3. All components of the anchoring system be capable of carrying a force of four thousand eight hundred (4,800) pounds; and,

4. Any additions to the manufactured or mobile home be similarly anchored.

(Ord. 2009-02)

17.45.180 CONSTRUCTION MATERIALS AND METHODS.

A. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

B. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

C. All new construction and 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.

(Ord. 2009-02)

17.45.190 UTILITIES.

A. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

B. New and replacement wastewater systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.

C. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(Ord. 2009-02)

17.45.200 SUBDIVISION AND OTHER DEVELOPMENT PROPOSALS.

A. All subdivision and other development proposals shall be consistent with the need to minimize flood damage.

B. All subdivision and other development proposals shall have public utilities and facilities, such as wastewater, gas, electrical and water systems, located and constructed to minimize flood damage.

C. The centerline of all streets providing ingress and egress to proposed subdivisions shall be a minimum of one foot above the one hundred (100) year floodplain elevation.

D. All subdivision and other development proposals shall have adequate drainage provided to reduce exposure to flood damage.

E. Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least fifty (50) lots or five (5) acres (whichever is less).

(Ord. 2009-02)

17.45.210 SPECIFIC STANDARDS APPLICABLE. In all areas of special flood hazards where base flood elevation data has been provided as set forth in Section 17.45.060, or subsection (B) of Section 17.45.130, the following provisions set out in Sections 17.45.220 through17.45.250 are required. (Ord. 2009-02)

17.45.220 RESIDENTIAL CONSTRUCTION STANDARDS. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above base flood elevation. (Ord. 2009-02)

17.45.230 NONRESIDENTIAL CONSTRUCTION STANDARDS. New construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall either have the lowest floor (including basement) elevated to the level of the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

A. Be flood proofed so that below the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water;

B. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

C. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards practice for meeting the provisions of this Section. Such certifications shall be provided to the floodplain administrator as set forth in subsection 17.45.130(C)(2).

(Ord. 2009-02)

17.45.240 OPENINGS IN ENCLOSURES BELOW THE LOWEST FLOOR. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

A. A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided;

B. The bottom of all openings shall be no higher than one (1) foot above grade; and

C. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of flood waters.

(Ord. 2009-02)

17.45.250 RECREATIONAL VEHICLES. Recreational vehicles shall either:

A. Be on the site for fewer than thirty-one (31) consecutive days;

B. Be fully licensed and ready for highway use; or

C. Meet the permit requirements and elevation and anchoring requirements for resisting wind forces.

(Ord. 2009-02)

17.45.260 FLOOD WAYS. Located within areas of special flood hazards established in Section 17.45.060 are areas designated as flood ways. Since the flood way is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions shall apply:

A. Encroachments, including fill, new construction, substantial improvements, and other development are prohibited unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in the base flood level more than one (1) foot.

B. If subsection (A) of this Section is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Part IV of this Chapter (Sections 17.45.160 through 17.45.260).

C. Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Regulations, the City of Fruita my permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the city first applies for a Conditional FIRM and Floodway Revisions through FEMA.

D. When 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 are 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 foot at any point within the community.

(Ord. 2009-02; Ord. 2010-11, S3 (part))

17.45.270 MANUFACTURED AND MOBILE HOME STANDARDS.

A. Manufactured and mobile homes shall be anchored in accordance with the specifications of the Mesa County Building Department and with the requirements set forth in Chapter 17.23.

B. All manufactured and mobile homes or those to be substantially improved shall conform to the following requirements:

1. Manufactured or mobile homes that are placed or substantially improved in Zone A on a site:

a. Outside of a manufactured or mobile home park or subdivision;

b. In a new manufactured or mobile home park or subdivision;

c. In an expansion to an existing manufactured or mobile home park or subdivision; or

d. In an existing manufactured or mobile home park or subdivision, on which a manufactured or mobile home has incurred "substantial damage" as the result of a flood; or shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

2. Manufactured or mobile homes be placed or substantially improved on sites in existing manufactured or mobile home parks or subdivisions that are not subject to the provisions in subsection (B)(1) above shall be elevated so that either:

a. The lowest floor of the manufactured or mobile home is at or above the base flood elevation; or

b. The manufactured or mobile home chassis is supported by reinforced piers or other foundation elements that are no less than thirty-six (36) inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(Ord. 2009-02)

PART V. DEFINITIONS

FLOOD CONTROL DEFINITIONS. The following definitions are applicable to the flood control regulations:

A. APPEAL - A request for a review of the Floodplain Administrator's interpretation of any provision of this Title or a request for a variance.

B. SPECIAL FLOOD HAZARD AREA (SFHA)- The land in the floodplain within a community subject to a one (1) percent or greater chance of flooding in any given year.

C. BASE FLOOD - The flood having a one (1) percent chance of being equaled or exceeded in any given year. Also referred to as the 100-year flood.

D. DEVELOPMENT - Any man made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of special flood hazard.

E. 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, installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) are completed before the effective date of this Title.

F. EXPANSION TO EXISTING MANUFACTURED HOME PARK OR SUBDIVISION - The preparation of additional sites by the construction of facilities for servicing the lots or sites 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).

G. FLOOD OR FLOODING - A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters, and/or;

2. The unusual and rapid accumulation or runoff of surface waters from any source.

H. FLOOD INSURANCE RATE MAP (FIRM) - 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.

I. FLOOD INSURANCE STUDY (FIS) - The official report provided by the Federal Emergency Management Agency that includes flood profiles, used to administer the National Flood Insurance Program.

J. FLOOD PROOFING – Any combination of structural and 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.

K. FLOODWAY - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

L. HIGHEST ADJACENT GRADE – The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure

M. LOWEST FLOOR - 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 Title.

N. MANUFACTURED HOME - A structure that is 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 attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

O. NEW CONSTRUCTION - Structures for which the "start of construction" commenced on or after the effective date of the original ordinance codified in this Title, and includes any subsequent improvements to such structures.

P. 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 the city's flood control regulations.

Q. OBSTRUCTION - (Relating to floodplains) A dam, wall, embankment, levee, dike, pile, abutment, projection, excavation, channel rectification, culvert, building, fence, stockpile, refuse, fill, structure or matter, in, along, across, or projecting into any drainway, channel, or watercourse, which might impede, retard or change the direction of the flow of water, either by itself or by catching and collecting debris carried by the water, or which is placed where the one hundred-year flood may carry the debris downstream.

R. ONE HUNDRED YEAR FLOODPLAIN – See Special Flood Hazard Area.

S. RECREATIONAL VEHICLE - A vehicle which is:

1. Built on a single chassis;

2. Four hundred (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.

T. START OF CONSTRUCTION - Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means the first placement of permanent construction of a structure on a site; such as, the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation; such as, clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings; such as, garages or sheds not occupied as dwelling units or not part of the main structure. 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.

U. STRUCTURE - A walled and roofed building or manufactured home that is principally above ground.

V. 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 fifty percent (50%) of the market value of the structure before the damage occurred.

W. SUBSTANTIAL IMPROVEMENT - Any reconstruction or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the "start of construction" of the improvement. This term 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 to assure safe living conditions, or

2. Any alteration of a "historic structure" provided that the alteration will not preclude the structure's continued designation as an "historic structure".

X. VARIANCE - A grant of relief from the requirements of the flood control regulation contained in Chapter 17.45 of this Title which permits construction in a manner that would otherwise be prohibited by this Title.

Y. 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 as required by this Chapter is presumed to be in violation until such time that documentation is provided.

Z. WATER SURFACE ELEVATION – The height, in relation to the National American Vertical Datum of 1988 (NAVD 88) of floods of various magnitudes and frequencies in the floodplains of riverine areas.

(Ord. 2009-02; Ord. 2010-11, S4 (part))

Chapter 17.47

VESTED PROPERTY RIGHTS

Sections:

17.47.010 Purpose
17.47.020 Definitions
17.47.030 Applications; Approval by the City
17.47.040 Alternative Creation of Vested Property Rights
17.47.050 Establishment of Vested Property Rights; Public Notice and Hearing Required
17.47.060 Approval of Site Specific Development Plan; Conditions
17.47.070 Duration and Termination of Vested Property Rights
17.47.080 Waiver of Vested Property Rights
17.47.090 Subsequent Regulation Prohibited; Exceptions
17.47.100 Payment of Costs
17.47.110 Other Provisions Unaffected
17.47.120 Limitations

17.47.010 PURPOSE. The purpose of this Chapter is to provide the procedures necessary to implement the provisions of Article 68 of Title 24, Colorado Revised Statutes, which Article establishes a vested property right to undertake and complete development and use of real property under the terms and conditions of a site specific development plan. (Ord. 2009-02)

17.47.020 DEFINITIONS. The following definitions are for the purposes of administration of this Chapter only and do not apply to other sections of this Code. Unless modified in this Section, the terms used in this Chapter shall have the same meaning as set forth in Section 24-68-102, C.R.S.

A. A "site specific development plan" means a plan that has been submitted to the city by a landowner or such landowner's representative describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property, which plan shall create a vested property right if the landowner wishes said approval to have the effect of creating vested rights pursuant to Sections 24-68-101, *et. seq.*, C.R.S. The landowner must request vested rights approval in writing at the time a land development application is submitted. Failure to request vested rights renders the approval not a “site specific development plan” and no vested rights shall be deemed to have been created. The following shall be considered "site specific development plans" if a landowner wishes to have a “site specific development plan” approved:

DEVELOPMENT REVIEW PROCEDURE	SITE SPECIFIC DEVELOPMENT PLAN
1. Site Design Review pursuant to Section 17.13.020	Site Design Review as approved by City Council
2. Conditional Use Permit pursuant to Section 17.13.040	Conditional Use Permit as approved by City Council
3. Minor Subdivisions pursuant to Chapter 17.15.	Subdivision final plat as approved by the City Council
4. Major Subdivisions pursuant to Chapter 17.15	Subdivision final plat as approved by the City Council AND the applicable subdivision improvements agreement as approved by the City Council
5. Planned Unit Development (PUD), not accompanied by subdivision of land pursuant to Chapter 17.17	Final PUD Plan, any applicable PUD Guide AND the applicable development improvements agreement as approved by City Council
6. Planned Unit Development (PUD) pursuant to Chapter 17.17, accompanied by subdivision of land pursuant to Chapter 17.15	Subdivision final plat together with Final PUD Plan, PUD Guide AND any applicable subdivision improvements agreement as approved by City Council

If not indicated above, a "site specific development plan" shall mean the final approval step, irrespective of the name or designation of such approval, which occurs prior to a Planning Clearance application.

Provided however, the City Council may, by agreement with the applicant, designate an approval step other than those indicated above, or the final approval step, to serve as the "site specific development plan" approval for a specific project.

The following are specifically excluded from, and shall not constitute, a "site specific development plan": variances, subdivision Sketch Plans, subdivision Preliminary Plans, PUD Concept Plans, PUD Preliminary Plans, business licenses, floodway or floodplain permits, franchises, temporary use permits, any Master Plan element, creation of improvement districts, zoning, rezoning other than Planned Unit Developments, final

architectural plans, or final construction drawings and related documents specifying materials and methods for construction of improvements.

B. "Vested property right" means the right to undertake and complete development and use of property under the terms and conditions of a "site specific development plan."

(Ord. 2009-02; Ord. 2012-07, S4)

17.47.030 APPLICATIONS; APPROVAL BY THE CITY.

A. Except as otherwise provided in this Section, an application for approval of a "site specific development plan" as well as the approval, conditional approval, or denial of approval of a plan shall be governed only by the duly adopted laws and regulations in effect at the time the application is submitted to the city. For purposes of this Section, "laws and regulations" includes any zoning, development, or land use law of general applicability adopted by the city as well as any zoning, development or land use regulations that have previously been adopted for the particular parcel described in the plan and that remain in effect at the time of application for approval of the plan. In the event the application for a "site specific development plan" requires review and approval in multiple stages, "application" means the original application submitted at the first stage in any multi-stage process that may culminate in the ultimate approval of a "site specific development plan."

B. Notwithstanding the limitations contained in subsection (A) above, the city may adopt a new or amended law or regulation when necessary for the immediate preservation of public health and safety and may enforce such law or regulation in relation to applications for "site specific development plans" pending at the time such law or regulation is adopted.

(Ord. 2009-02)

17.47.040 ALTERNATIVE CREATION OF VESTED PROPERTY RIGHTS. If any applicant desires an approval step, other than as defined in subsection 17.47.020(A) above, to constitute an approval of a "site specific development plan" with the effect of creating vested property rights pursuant to this Chapter and Article 68 of Title 24, C.R.S., the applicant must so request at least thirty (30) days prior to the date of the public hearing on said approval step by the City Council or Community Development Director, as applicable, is to be considered. Failure to do so renders the approval by the City Council or Community Development Director, as the case may be, to not constitute an approval of a "site specific development plan" and no vested property right shall be deemed to have been created by such approval, except in the case of an approval as set forth in subsection 17.47.020(A) above. (Ord. 2009-02; Ord. 2012-07, S4)

17.47.050 ESTABLISHMENT OF VESTED PROPERTY RIGHTS; PUBLIC NOTICE AND HEARING REQUIRED. A vested property right shall be deemed established with

respect to any property upon the approval, or conditional approval, of a "site specific development plan," following notice and public hearing, by the City Council. A vested property right shall attach to and run with the applicable property and shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the "site specific development plan", as approved, including any amendments thereto. A "site specific development plan" shall be deemed approved upon the effective date of the city's legal action, resolution or ordinance relating thereto. Such approval shall be subject to all rights of referendum and judicial review; except that the period of time permitted by law for the exercise of such rights shall not begin to run until the date of publication, in a newspaper of general circulation within the city, of a notice advising the general public of the "site specific development plan" approval and creation of a vested property right pursuant to this Chapter and Article 68 of Title 24, C.R.S. Such publication shall occur no later than fourteen (14) days following approval. (Ord. 2009-02; Ord. 2012-07, S4)

17.47.60 APPROVAL OF SITE SPECIFIC DEVELOPMENT PLAN; CONDITIONS.

A. The city may approve a "site specific development plan" upon such terms and conditions as may reasonably be necessary to protect the public health, safety and welfare, and failure to abide by such terms and conditions, at the option of the City Council following a public hearing, shall result in the forfeiture of vested property rights. This subsection shall be strictly construed.

B. Terms and conditions imposed or agreed upon may include, without limitation:

1. Future approvals by the city not inconsistent with the original approval;

2. Approvals by other agencies or other governments;

3. Satisfactory inspections;

4. Completion of all or certain phases or filings of a project by certain dates;

5. Waivers of certain rights;

6. Completion and satisfactory review of studies and reports;

7. Payment of fees to the city or other governmental or quasi- governmental agencies as they become due and payable;

8. Payment of costs and expenses incurred by the city relating to the review and approval;

9. Continuing review and supervision of the plan and its implementation and development;

10. Obtaining and paying for planning clearances, building permits, water plant investment fees (taps) and wastewater plant investment fees (taps);

11. Compliance with other codes and laws, including building codes, of general applicability;

12. Construction of on-site or off-site improvements or facilities for the use of future inhabitants or the public at large;

13. Payment of any applicable impact fees; and

14. Dedication or conveyance of public site or parkland, trails, school land, common area or open spaces, with provision for its maintenance; or payment of a fee in lieu thereof, and dedication of necessary easements and rights-of-way.

(Ord. 2009-02)

17.47.070 DURATION AND TERMINATION OF VESTED PROPERTY RIGHTS.

A. A property right, which has been vested pursuant to this Chapter and Article 68 of Title 24, C.R.S., shall remain vested for a period of three (3) years. This vesting period shall not be extended by any amendments to a "site specific development plan" unless expressly authorized by the City Council.

B. Notwithstanding the provisions of subsection (A) above, the City Council is authorized to enter into development agreements with landowners providing that property rights shall be vested for a period exceeding three (3) years where warranted in the light of all relevant circumstances including, but not limited to, the size and phasing of the development, economic cycles, and market conditions. Such development agreements shall be adopted as legislative acts subject to referendum.

C. Following approval or conditional approval of a "site specific development plan", nothing contained in this Chapter or Article 68 of Title 24, C.R.S. shall exempt such a plan from subsequent reviews and approvals by the city to insure compliance with the terms and conditions of the original approval, if such further reviews and approvals are not inconsistent with said original approval.

(Ord. 2009-02)

17.47.080 WAIVER OF VESTED PROPERTY RIGHTS. An applicant may waive a vested property right by separate written agreement, which shall be recorded in the office of the Mesa County Clerk and Recorder. Unless otherwise agreed to by the City Council, any landowner requesting annexation to the City of Fruita shall waive in writing any pre-existing vested property rights as a condition of such annexation. (Ord. 2009-02)

17.47.090 SUBSEQUENT REGULATION PROHIBITED; EXCEPTIONS.

A. A vested property right, once established as provided in this Chapter and Article 68 of Title 24, C.R.S., precludes any zoning or other land use action by the city or pursuant to an initiated measure which would alter, impair, prevent, diminish, impose a moratorium on development, or otherwise delay the development or use of the property as set forth in an approved "site specific development plan," except:

1. With the consent of the affected landowner;

2. Upon the discovery of natural or manmade hazards on or in the immediate vicinity of the subject property, which hazards could not reasonably have been discovered at the time of "site specific development plan" approval, and which hazards, if uncorrected, would pose a serious threat to the public health, safety, and welfare; or

3. To the extent that the affected landowner receives just compensation for all costs, expenses and liabilities incurred by the landowner after approval by the city, including, but 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 thereon at the legal rate until paid. Just compensation shall not include any diminution in the value of the property, which is caused by such action.

B. Establishment of a vested property right pursuant to law shall not preclude the application of ordinances or regulations which are general in nature and are applicable to all property subject to land use regulation by the City of Fruita, including, but not limited to, building, fire, plumbing, electrical, housing, mechanical, and dangerous building codes.

(Ord. 2009-02)

17.47.100 PAYMENT OF COSTS. In addition to any and all other fees and charges imposed by this Title, the applicant for approval of a "site specific development plan" shall pay all costs incurred by the city as a result of the "site specific development plan" review and approval, including publication of notices, public hearing and review costs, when such costs are incurred apart and in addition to costs otherwise incurred by the city or applicant for a public hearing relative to the subject property. (Ord. 2009-02)

17.47.110 OTHER PROVISIONS UNAFFECTED. Approval of a "site specific development plan" shall not constitute an exemption from or waiver of any other provisions of this Title pertaining to the development and use of property. (Ord. 2009-02)

17.47.120 LIMITATIONS. Nothing in this Chapter is intended to create any vested property right, but only to implement Article 68 of Title 24, C.R.S., as amended. In the event of the repeal of said Article or judicial determination that said Article is invalid or unconstitutional, this Chapter shall be deemed to be repealed and the provisions hereof no longer effective. (Ord. 2009-02)