

**FRUITA CITY COUNCIL  
JUNE 7, 2016  
7:00 P.M.**

**1. INVOCATION AND PLEDGE OF ALLEGIANCE**

**2. CALL TO ORDER AND ROLL CALL**

**3. AGENDA - ADOPT/AMEND**

**4. PROCLAMATIONS AND PRESENTATIONS**

- A. PROCLAMATION – Proclaiming the month of June 2016 as “Bike Month” and Wednesday, June 22, 2016 as “Bike to Work Day” in the City of Fruita to be accepted by Fruita Parks and Recreation Department staff

**5. PUBLIC PARTICIPATION**

This section is set aside for the City Council to LISTEN to comments by the public regarding items that do not otherwise appear on this agenda. Generally, the City Council will not discuss the issue and will not take an official action under this section of the agenda. **Please limit comments to a five-minute period.**

**6. CONSENT AGENDA**

These are items where all conditions or requirements have been agreed to or met prior to the time they come before the Council for final action. A Single **Public Hearing** will be opened for all items on the Consent Agenda. These items will be approved by a single motion of the Council. The Mayor will ask if there is anyone present who has objection to such procedure as to certain items. Members of the Council may also ask that an item be removed from the consent section and fully discussed. All items not removed from the consent section will then be approved. A member of the Council may vote no on specific items without asking that they be removed from the consent section for full discussion. Any item that is removed from the consent agenda will be placed at the end of the regular agenda.

- A. LIQUOR LICENSE RENEWAL – A request to approve the renewal of a Retail Liquor Store License – Malt, Vinous and Spirituous for Fruita Liquor Mart located at 423 E. Highway 6 & 50
- B. ORDINANCE 2016-05 – Second Reading – A request to approve an Ordinance amending Section 6.04.010 of the Fruita Municipal Code concerning Animal Control Definitions
- C. ORDINANCE 2016-06 – Second Reading – A request to approve an Ordinance amending Section 17.07.070(H) of the Fruita Land Use Code of the Fruita Municipal Code concerning Fences
- D. ORDINANCE 2016-07 – First Reading – An introduction of an Ordinance granting a franchise to Bresnan Communications, LLC to construct, operate and maintain a cable television system in the City of Fruita, Colorado for publication of public hearing on July 5, 2016

- E. **ORDINANCE 2016-08 – First Reading – An introduction of an Ordinance amending Chapter 2.28 of the Fruita Municipal Code concerning Municipal Court for publication of public hearing on July 5, 2016**
- F. **CONTRACT FOR SEWER SERVICE – A request to approve a contract for sewer services at 1024 18 Road (Percivals)**
- G. **FRUITA LIQUOR MART CONDITIONAL USE PERMIT AND SITE DESIGN REVIEW – A request to approve the Fruita Liquor Mart Conditional Use Permit and Site Design Review with the condition that all review comments and issues identified in the Staff Report must be adequately resolved before a Planning Clearance for a building permit is issued**

**7. PUBLIC HEARINGS**

Public Hearings are the formal opportunity for the city council to LISTEN to the public regarding the issue at hand. For land use hearings and liquor license hearings; the Council is required to act in a quasi-judicial capacity. When acting as a quasi-judicial body, the Council is acting in much the same capacity as a judge would act in a court of law. Under these circumstances, the judicial or quasi-judicial body must limit its consideration to matters which are placed into evidence and are part of the public record. The council must base their decision on the law and evidence presented at the hearing.

- 1) **Applicant Presentation (15 minutes max)** The petitioner is asked to present the proposal. Presentations should be brief and to the point and cover all of the main points of the project.
- 2) **Staff presentation (15 minutes max)** Staff will present the comments and reports received from review agencies, and offer a recommendation.
- 3) **Public Input (limit of 5 minutes per person. If two people in the audience are willing to cede their time to the speaker, that speaker may receive a total of 10 minutes, referred to as banking time).** People speaking should step up to the microphone and state their name and address. Speakers should be to the point and try not to repeat the points others have made.
- 4) **Applicant Rebuttal (limited to 5 minutes)** The Mayor will ask for the applicant's rebuttal. During this brief time, the applicant should answer the questions raised by the public.
- 5) **The hearing is then closed to public comments.**
- 6) **Questions from the Council.** After a Council member is recognized by the Mayor, they may ask questions of the staff, the applicant, or the public.
- 7) **Make a motion.** A member of the City Council will make a motion on the issue.
- 8) **Discussion on the motion.** The City Council may discuss the motion.
- 9) **Vote.** The City Council will then vote on the motion.

**A. Community Development Director Dahna Raugh**

- 1) **ORDINANCE 2016-01 – Second Reading – A request to approve an Ordinance amending Chapter 17.41 of the Fruita Land Use Code, Sign Code (continued from the February 2, March 1 and May 3, 2016 Council meetings)**

**8. ADMINISTRATIVE AGENDA**

**A. Public Works Director Ken Haley**

- 1) **RESOLUTION 2016-19 – A request to approve a Resolution to enter into an Intergovernmental Agreement (IGA) between the City of Fruita and the 5-2-1 Drainage Authority for Provision of Colorado Discharge Permit System (CDPS) Municipal Separate Storm Sewer (MS4) Stormwater Phase II Permit Services and authorize the Mayor to execute the IGA**
- 2) **Update on Public Works**

**9. COUNCIL REPORTS AND ACTIONS**

**10. CITY MANAGER'S REPORT**

**11. ADJOURN**

## PROCLAMATION

### ***Month of June and Wednesday, June 22, 2016 as "Bike Month" and "Bike to Work Day"***

**WHEREAS,** *Colorado is a premiere bicycling state and the City of Fruita offers some of the best bicycling opportunities in the country; and*

**WHEREAS,** *Colorado has designated each June as Bike Month to celebrate bicycling for transportation, fun and health; and*

**WHEREAS,** *Bicycling truly adds to Fruita's small town atmosphere by enjoying the experience of fun and freedom of safely riding a bike to work, school, on errands and for recreation; and*

**WHEREAS,** *the City of Fruita has gained a world-wide reputation as a mecca for mountain biking and outstanding road riding; and*

**WHEREAS,** *the City of Fruita proudly aspires to hold the title of "Trails Capital of the World" for its celebrated mountain biking trails on 18 Road, the Kokopelli Area, and the expansion of the Colorado Riverfront Trail; and*

**WHEREAS,** *bicycling activities and attractions have a positive impact on the City of Fruita's economy and tourism industry and stimulates economic development by making the area attractive to businesses and citizens who enjoy the outdoors and healthy lifestyles; and*

**WHEREAS,** *creating bicycle-friendly communities has been shown to improve citizens' health, well-being, and quality of life, to boost community spirit, to improve traffic safety, and to reduce pollution and congestion; and*

**WHEREAS,** *the City of Fruita, in conjunction with the Mesa County Health Department and the City of Grand Junction and other local organizations and businesses throughout Mesa County, will be promoting bicycling activities during Bike Month and on Bike to Work Day .*

**NOW, THEREFORE, I, Lori Buck, Mayor of Fruita, Colorado, do hereby proclaim the month of June and Wednesday, June 22, 2016 as "BIKE MONTH AND BIKE TO WORK DAY"**

*in the City of Fruita and call upon all citizens to participate in bicycling activities for improved health and community wellbeing.*

***IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the official Seal of the City of Fruita this 7<sup>th</sup> day of June 2016.***

\_\_\_\_\_  
Lori Buck, Mayor





---

## AGENDA ITEM COVER SHEET

---

**TO: FRUITA CITY COUNCIL AND MAYOR**

**FROM: DEBRA WOODS, DEPUTY CITY CLERK**

**DATE: JUNE 7, 2016**

**RE: LIQUOR LICENSE RENEWAL – A REQUEST TO RENEW A RETAIL LIQUOR STORE LICENSE – MALT, VINUOUS, AND SPIRITUOUS FOR FRUITA LIQUOR MART LOCATED AT 423 E. HIGHWAY 6 & 50**

### **BACKGROUND**

The Retail Liquor Store License - Malt, Vinous, and Spirituous for Fruita Liquor Mart located at 423 E. Highway 6 & 50 is up for renewal. Their current license expired on May 31, 2016, but the State of Colorado Liquor Enforcement Division has a 90-day grace period in which to renew.

Please note that this Council agenda also includes a Conditional Use Permit and Site Design Review for the Fruita Liquor Mart to move their location to an existing building located at the northwest corner of the intersection of Maple Street and Highway 6 & 50. After all conditions, review comments, Planning Clearance and building permit are issued, the Council will see a Change of Location for a Retail Liquor License to the new location on a future agenda. In the meantime, it is recommended that the license be renewed at the liquor store's current location.

The Police Department report indicates that there have not been any violations or incidents reported to them in the last year and there is nothing unusual or of concern that would hinder renewal of the license. The City Clerk's office has not been advised of any other issues or concerns related to the liquor license during the past year. There are no current TIPS certificates on file in the City Clerk's Office.

The following information is provided as background on the liquor license renewal process:

This item is placed on the agenda for the Council to determine if there is any cause for a hearing to be held on the renewal of the liquor license. If there is no cause for a hearing, the City Council should approve the renewal of the existing license. If there is cause for a hearing, the City Council should set a date to hold a quasi-judicial hearing to determine if there are sufficient grounds for suspension or revocation of the liquor license. The City Council may also temporarily suspend any license, without notice, pending any prosecution, investigation or public hearing. No such suspension shall be for a period of more than 15 days.

### **FISCAL IMPACT**

None.

### **APPLICABILITY TO CITY GOALS AND OBJECTIVES**

The City of Fruita is charged with protection of the public health, safety and welfare. The review and renewal of liquor licenses ensures that licensed establishments are operating by the rules and regulations adopted by the City and State concerning the sale or service of beer and alcoholic beverages.

### **OPTIONS AVAILABLE TO THE COUNCIL**

- 1) Renewal of the Retail Liquor Store License - Malt, Vinous, and Spirituous for Fruita Liquor Mart.
- 2) Schedule a hearing date to determine if there is good cause for the license to be suspended or revoked.

### **RECOMMENDATION**

It is the recommendation of staff that the Council move to:

**RENEW THE RETAIL LIQUOR STORE LICENSE - MALT, VINOUS, AND SPIRITUOUS FOR FRUITA LIQUOR MART LOCATED AT 423 E. HIGHWAY 6 & 50**



7. Is the applicant (including any of the partners, if a partnership; members or manager if a limited liability company; or officers, stockholders or directors if a corporation) or manager under the age of twenty-one years? Yes  No

8. Has the applicant (including any of the partners, if a partnership; members or manager if a limited liability company; or officers, stockholders or directors if a corporation) or manager ever (in Colorado or any other state):

(a) Been denied an alcohol beverage license?

(b) Had an alcohol beverage license suspended or revoked?

(c) Had interest in another entity that had an alcohol beverage license suspended or revoked?

If you answered yes to 8a, b or c, explain in detail on a separate sheet.

9. Has a liquor license application (same license class), that was located within 500 feet of the proposed premises, been denied within the preceding two years? If "yes", explain in detail.

10. Are the premises to be licensed within 500 feet of any public or private school that meets compulsory education requirements of Colorado law, or the principal campus of any college, university or seminary?

Waiver by local ordinance?  or  
Other:

11. Has a liquor or beer license ever been issued to the applicant (including any of the partners, if a partnership; members or manager if a Limited Liability Company; or officers, stockholders or directors if a corporation)? If yes, identify the name of the business and list any current financial interest in said business including any loans to or from a licensee. *Renewal Application*

12. Does the Applicant, as listed on line 2 of this application, have legal possession of the premises by virtue of ownership, lease or other arrangement?  
 Ownership  Lease  Other (Explain in Detail) *Town and Country Partners, Expire (11/15/16)*

a. If leased, list name of landlord and tenant, and date of expiration, exactly as they appear on the lease:

Landlord	Town and Country Partners	Tenant	Best Boys, LLC	Expires	11/15/16
----------	---------------------------	--------	----------------	---------	----------

b. Is a percentage of alcohol sales included as compensation to the landlord? If yes complete question 13.

c. Attach a diagram and outline or designate the area to be licensed (including dimensions) which shows the bars, brewery, walls, partitions, entrances, exits and what each room shall be utilized for in this business. This diagram should be no larger than 8 1/2" X 11".

13. Who, besides the owners listed in this application (including persons, firms, partnerships, corporations, limited liability companies), will loan or give money, inventory, furniture or equipment to or for use in this business; or who will receive money from this business. Attach a separate sheet if necessary.

Last Name	First Name	Date of Birth	FEIN or SSN	Interest/Percentage

Attach copies of all notes and security instruments, and any written agreement, or details of any oral agreement, by which any person (including partnerships, corporations, limited liability companies, etc.) will share in the profit or gross proceeds of this establishment, and any agreement relating to the business which is contingent or conditional in any way by volume, profit, sales, giving of advice or consultation.

14. Optional Premises or Hotel and Restaurant Licenses with Optional Premises:  
Has a local ordinance or resolution authorizing optional premises been adopted?

Number of additional Optional Premise areas requested. (See license fee chart)

15. Liquor Licensed Drug Store applicants, answer the following:  
(a) Does the applicant for a Liquor Licensed Drug Store have a license issued by the Colorado Board of Pharmacy?    
If "yes" a copy of license must be attached.

16. Club Liquor License applicants answer the following: Attach a copy of applicable documentation

(a) Is the applicant organization operated solely for a national, social, fraternal, patriotic, political or athletic purpose and not for pecuniary gain?

(b) Is the applicant organization a regularly chartered branch, lodge or chapter of a national organization which is operated solely for the object of a patriotic or fraternal organization or society, but not for pecuniary gain?

(c) How long has the club been incorporated?

(d) Has applicant occupied an establishment for three years (three years required) that was operated solely for the reasons stated above?

17. Brew-Pub License or Vintner Restaurant Applicants answer the following:  
(a) Has the applicant received or applied for a Federal Permit? (Copy of permit or application must be attached)

18a. For all on-premises applicants.  
(If this is an application for a Hotel, Restaurant or Tavern License, the manager must also submit an individual History Record - DR 8404-I)

Last Name of Manager	First Name of Manager	Date of Birth

18b. Does this manager act as the manager of, or have a financial interest in, any other liquor licensed establishment in the State of Colorado? If yes, provide name, type of license and account number.

Name	Type of License	Account Number

19. Tax Distraint Information. Does the applicant or any other person listed on this application and including its partners, officers, directors, stockholders, members (LLC) or managing members (LLC) and any other persons with a 10% or greater financial interest in the applicant currently have an outstanding tax distraint issued to them by the Colorado Department of Revenue?

If yes, provide an explanation and include copies of any payment agreements.

20. If applicant is a corporation, partnership, association or limited liability company, applicant must list all Officers, Directors, General Partners, and Managing Members. In addition, applicant must list any stockholders, partners, or members with ownership of 10% or more in the Applicant. All persons listed below must also attach form DR 8404-I (Individual History Record), and submit fingerprint cards to the local licensing authority.

Name <i>Lam Vat</i>	Home Address, City & State <i>2219 Da Vinci Place</i>	DOB <i>[REDACTED]</i>	Position <i>OWNER</i>	% Owned <i>100%</i>
Name	Home Address, City & State	DOB	Position	% Owned
Name	Home Address, City & State	DOB	Position	% Owned
Name	Home Address, City & State	DOB	Position	% Owned
Name	Home Address, City & State	DOB	Position	% Owned

\*\* If Applicant is owned 100% by a parent company, please list the designated principal officer on question #20  
 \*\* Corporations - The President, Vice-President, Secretary and Treasurer must be accounted for on question #20 (Include ownership percentage if applicable)  
 \*\* If total ownership percentage disclosed here does not total 100%, applicant must check this box:

Applicant affirms that no individual other than these disclosed herein, owns 10% or more of the applicant, and does not have ownership in a prohibited liquor license pursuant to Title 47 or 48, C.R.S.

**Oath Of Applicant**

I declare under penalty of perjury in the second degree that this application and all attachments are true, correct, and complete to the best of my knowledge. I also acknowledge that it is my responsibility and the responsibility of my agents and employees to comply with the provisions of the Colorado Liquor or Beer Code which affect my license.

Authorized Signature <i>Lam Vat</i>	Printed Name and Title <i>Lam Vat, OWNER / MANAGING MEMBER</i>	Date <i>05/23/16</i>
--	---	-------------------------

**Report and Approval of Local Licensing Authority (City/County)**

Date application filed with local authority	Date of local authority hearing (for new license applicants; cannot be less than 30 days from date of application 12-47-311 (1) C.R.S.)
---	---

The Local Licensing Authority Hereby Affirms that each person required to file DR 8404-I (Individual History Record) has:

- Been fingerprinted
- Been subject to background investigation, including NCIC/CCIC check for outstanding warrants

That the local authority has conducted, or intends to conduct, an inspection of the proposed premises to ensure that the applicant is in compliance with, and aware of, liquor code provisions affecting their class of license

(Check One)

- Date of inspection or anticipated date \_\_\_\_\_
- Will conduct inspection upon approval of state licensing authority

The foregoing application has been examined; and the premises, business to be conducted, and character of the applicant are satisfactory. We do report that such license, if granted, will meet the reasonable requirements of the neighborhood and the desires of the adult inhabitants, and will comply with the provisions of Title 12, Article 46 or 47, C.R.S.

**Therefore, this application is approved.**

Local Licensing Authority for <i>The City of Fruita</i>		Telephone Number <i>(970) 858-3663</i>	<input checked="" type="checkbox"/> Town, City <input type="checkbox"/> County
Signature	Print <i>LORI BUCK MAYOR</i>	Title	Date
Signature (attest)	Print	Title	Date

**CITY OF FRUITA  
MEMORANDUM**

<b>TO:</b>	<b>FRUITA POLICE DEPARTMENT</b>
<b>FROM:</b>	<b>DEBRA WOODS, DEPUTY CITY CLERK</b>
<b>DATE:</b>	<b>JUNE 2, 2016</b>
<b>RE:</b>	<b>RETAIL LIQUOR STORE LICENSE RENEWAL</b>

**License Information**

<b>Licensee:</b>	Fruita Liquor Mart
<b>Location:</b>	423 E Hwy 6 & 50
<b>Type of License:</b>	Retail Liquor Store License
<b>Expiration Date of Current License:</b>	May 31, 2016
<b>City Council Hearing Date:</b>	June 7, 2016
<b>DUE DATE FOR POLICE REPORT:</b>	June 3, 2016

**Tips certificates on File**

<b>Employee:</b>	<b>Issued:</b>	<b>Exp</b>
(None current)		

**Report of Fruita Police Department**

A)	Have there been any reported violation(s) of the Liquor or Beer Code in the last year?	Yes	<input checked="" type="radio"/> No
B)	Have there been any incidents reported to the Police Dept in the last year that would pertain to the liquor license and the establishment's control of alcoholic beverages and their patrons?	Yes	<input checked="" type="radio"/> No
C)	Are there other concerns that need to be brought to the attention of the City Council?	Yes	<input checked="" type="radio"/> No

**Please attach documentation to support the above noted violation(s), incidents or comments.**

<b>Signature:</b> <i>Paula Rajewich</i>	<b>Date:</b> <i>6-2-16</i>
---	----------------------------



---

## AGENDA ITEM COVER SHEET

---

**TO: FRUITA CITY COUNCIL AND MAYOR**  
**FROM: JUDY MACY, CHIEF OF POLICE**  
**DATE: JUNE 7, 2016**  
**RE: ORDINANCE 2016-05 – SECOND READING – A REQUEST TO APPROVE AN ORDINANCE AMENDING SECTION 6.04.010 OF THE FRUITA MUNICIPAL CODE CONCERNING ANIMAL CONTROL DEFINITIONS**

### **BACKGROUND**

Presently, there are three different definitions of “Dog at Large” in the Fruita Municipal Code. The definition below will allow for one consistent definition and improved enforcement if necessary.

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. Dogs 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.

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.

### **FISCAL IMPACT**

None.

### **APPLICABILITY TO CITY GOALS AND OBJECTIVES**

Maintaining and performing the core functions of government with a high level of expertise.

### **OPTIONS AVAILABLE TO COUNCIL**

1. Approve Ordinance 2016-05 – Second Reading – An Ordinance amending Section 6.04.010 of the Fruita Municipal Code concerning Animal Control Definitions
2. Deny Ordinance 2016-05 – Second Reading - An Ordinance amending Section 6.04.010 of the Fruita Municipal Code concerning Animal Control Definitions

## **RECOMMENDATION**

It is the recommendation of City staff that the Council by motion:

- **APPROVE ORDINANCE 2016-05 – SECOND READING - AMENDING SECTION 6.04.010 OF THE FRUITA MUNICIPAL CODE, SECTION 1. SUBSECTION (D) CONCERNING THE DEFINITION OF “AT LARGE DOGS” AND SUBSECTION (S) CONCERNING THE DEFINITION OF “LEASH”**

**ORDINANCE NO. 2016-05**

**AN ORDINANCE OF THE CITY OF FRUITA, COLORADO AMENDING  
SECTION 6.04.010 OF THE FRUITA MUNICIPAL CODE CONCERNING  
ANIMAL CONTROL DEFINITIONS**

**WHEREAS**, the Fruita City Council desires to allow for one consistent definition of “Dogs at Large” to improve enforcement of the Fruita Municipal Code concerning Dogs at Large; and

**WHEREAS**, the Fruita City Council desires to clarify the definition of “leash” to improve enforcement of the Fruita Municipal Code concerning Dogs at Large;

**BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF  
FRUITA, COLORADO:**

**Section 1.** That subsection (D) of Section 6.04.010 of the Fruita Municipal Code, concerning the definition of “at large dogs” is hereby amended to read as follows:

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.

**Section 2.** That subsection (S) of Section 6.04.010 of the Fruita Municipal Code, concerning the definition of dog leashes, is hereby amended to read as follows:

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.

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL,  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016.**

**CITY OF FRUITA, COLORADO**

By: \_\_\_\_\_

Lori Buck, Mayor

ATTEST:

\_\_\_\_\_  
Margaret Sell, City Clerk



---

---

<b>AGENDA ITEM COVER SHEET</b>
--------------------------------

---

---

**TO:** Fruita City Council and Mayor

**FROM:** Community Development Department

**DATE:** June 7, 2016

**RE:** Ordinance 2016 – 06 – Second Reading - An Ordinance of the Fruita City Council Approving Amendments to Section 17.07.070.H, Fences, of the Fruita Land Use Code

**BACKGROUND**

At the April 5, 2016, City Council public hearing , the Council approved changes to Chapter 7 of the Land Use Code with the exception of Section 17.07.070.H, which identifies requirements for fences. Council had several concerns about fences that were necessary to explore in more detail and directed staff to further revise the language for fences to address their concerns. Based on the Council's discussion, the language for fences has been amended to address Council's concerns and is attached. The first reading of this Ordinance was held on May 5, 2016. No additional amendments were recommended at that time.

Paragraph 11 has been added to address Mr. Brouse's issue regarding fences in the front yards of property with frontage along major roadways (Frontage Road, Highway 6 & 50, and Highway 340). Paragraph 12 was added to make it clear that decisions regarding fence permits may be appealed to the City Council.

At the March 8, 2016, Planning Commission public hearing, the Commission recommended approval of changes to Chapter 7 of the Code with the condition that the Council consider all the issues discussed at the Planning Commission hearing. A draft of the minutes to the Planning Commission meeting during which this issue was discussed is attached.

One member of the public was at the Planning Commission public hearing to speak about amendments to the Land Use Code. Included with the Council's information packets is a letter and pictures from Mr. Brouse requesting an amendment to fence regulations to allow a 6-foot tall privacy fence in the front yards of certain properties. The Planning

Commission discussed Mr. Brouse's concerns, but did not provide a specific recommendation for the City Council on this particular issue.

### **FISCAL IMPACT**

Although the amendments to the Land Use Code regarding fence regulations are not expected to have an immediate fiscal impact, these amendments are intended to clarify the Code, resolve conflicts, and other potential problems which are expected to have an overall positive fiscal impact on the city in the long term.

### **APPLICABILITY TO CITY GOALS AND OBJECTIVES**

One of the current City Council's goals is a commitment to review the Land Use Code to help ensure that the regulations reflect the best promotion of the public health, safety, and welfare. The proposed amendments to resolve conflicts and other potential problems are intended to better promote the public health, safety and welfare.

### **OPTIONS AVAILABLE TO COUNCIL**

1. Approval of Ordinance 2016-16, An Ordinance of the Fruita City Council Approving Amendments to Section 17.07.070.H, Fences, of the Fruita Land Use Code
2. Denial of the proposed Ordinance.
3. Continue the proposed Ordinance to a later date.

### **RECOMMENDATION**

Staff recommends that the City Council move to approve Ordinance 2016- 16 – Second Reading - An Ordinance of the Fruita City Council Approving Amendments to Section 17.07.070.H, Fences, of the Fruita Land Use Code.

PROPOSED CHANGES TO FENCING REQUIREMENTS  
IN THE FRUITA LAND USE CODE

Additions are shown in **red letters**. Deletions are shown in ~~red strikeout~~.  
Comments/questions which are not intended to be part of the amendments  
are shown in **[red brackets]**.

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 ~~LIndustrial RD~~ zones provided that ~~there are not~~ more than three (3) strands ~~or one (1) coil of barbed wire atop a fence and the fence is located at least five (5) feet from the public right-of-way. is allowed and~~ The wires are not counted in the height calculation. ~~Similarly, where razor wire is permitted, only one coil of razor wire is allowed atop a fence.~~ 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 76 below).~~ ~~as measured from the natural grade, except w~~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. ~~The Community Development Director may approve an increase in fence or wall height where a unique feature of the property or a permitted use warrants such an increase and the increase is not detrimental to surrounding public or private properties.~~

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 ~~street-side front yard setback may be permitted only on the one street frontage that does not contain a driveway, and~~ 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 the Industrial (~~LRD~~) zones may exceed six (6) feet as provided for in subsection 32 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. [This was copied directly from the Fruita Engineering Design Criteria and Construction Specifications Manual.]
89. 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, ~~compatibility with adjacent properties (Section 17.07.080), and other applicable standards (e.g., City of Fruita Design Criteria and Construction Specifications, Building Codes, and Colorado Department of Transportation or Mesa County standards, as applicable in Fruita).~~
910. 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. [Major arterial roadways currently include the following: Frontage Road, Highway 6 & 50, and Highway 340.]
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.

**Ordinance 2016-06**

**AN ORDINANCE OF THE FRUITA CITY COUNCIL APPROVING AMENDMENTS TO SECTION 17.07.070.H, FENCES, OF THE FRUITA LAND USE CODE**

**WHEREAS**, there is a need to amend Fruita's regulations regarding fences to address several concerns and to clarify requirements, and

**WHEREAS**, the Fruita Planning Commission held a public hearing on March 8, 2016, regarding proposed amendments to Chapter 7 of the Fruita Land Use Code, including Section 17.07.070.H regarding fence requirements, and

**WHEREAS**, a public hearing was held before the Fruita City Council on March 1, 2016, April 7, 2016, May 3, 2016, and June 7, 2016, regarding proposed amendments to fencing requirements in the Fruita Land Use Code.

**NOW THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA COLORADO AS FOLLOWS:**

**THAT** Section 17.07.070.H of the Fruita Land Use Code is hereby amended to read as follows:

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

Louis Brackett- I second.

Mike Joseph- We have a motion and a second.

6 yes votes to deny; motion passes.

Application #: 2016-01  
 Applicant: City of Fruita  
 Application Name: Amendment to Chapter 7 of the Land Use Code  
 Application Type: Amendment  
 Description: This is a request to amend Chapter 7, Zoning Uses & General Requirements

Dahna Raugh- Staff is the applicant on this one. Would you like me to go over all the changes that I have addressed in the staff report or would you like to go ahead and start asking questions.

\*\*There was a discussion about the fence requirements. No big changes to the fence requirements but we did have a letter from Daryl Brouse (612 I-70 Frontage). He has some special circumstances with his property and would like to be heard about it. Mike Joseph feels that there is really no way to write the code to allow for Mr. Brouse to have a fence in his front yard. There was some discussion about the pictures that were provided to the Planning Commission that show Mr. Brouse's property and where his issue is with why he wants to have a fence in his front yard.

- Mr. Brouse's home has 3 lot lines and the front yard is adjacent to the new pedestrian trail along the I-70 Frontage, which takes away a lot of the homes privacy.

\*\*Planning Commission decided to review the Chapter 7 by pages. So for the purpose of minutes, there will be bullet points regarding the page numbers that were talked about.

Page 12 and 13

- Needs to be alphabetized.

Page 13 and 14

- There is no difference in the Industrial uses when it comes to Indoor and Outdoor Storage. It needs to be either all indoors or all outdoors.

Page 24

- Accessory dwelling units were discussed if someone were to buy 2 lots next to each other and you have a house on one and want to put an accessory dwelling unit on the other then we would have them fill out a Lot Combining Form, which is a recorded document, which states that the 2 lots act as one.

Page 27

- #5, Solid fences on corner lots. The fence needs to be 10 feet from any driveway, and has to be 10 feet or more away from any public sidewalk. You can put a privacy fence on your secondary front yard.

- Dahna gave some examples about how different lots are oriented and how the new language will apply.

**\*\*Some discussion about residential landscaping about the requirement to have 1 tree planted in the front yard within 6 months of the issuance of the Certificate of Occupancy.**

Page 29

- Storage in residential yards. 17.07.070 (K)
- Mike Joseph has some concerns about the regulations for storage in the front yards of residential zones. (see page 28 and 29 17.07.070 (K)). Mike is concerned about the keeping of almost anything in the front yard, especially building materials and parts of vehicles. Mike doesn't want the changes requested and would like it to be kept so that it can be enforced.
- After taking this language around to Staff and to a City Council Workshop, this is the language that we have come up with. If the Planning Commission would like to make recommendations, Staff are all for it.
- Janet Brazfield said that she doesn't have a problem with having storage in a residential zone but only if it is behind a fence of some kind so it cannot be seen from the right-of-way.
- Planning Commission made a suggestion to separate out vehicle storage from the storage of building materials and vehicle parts.
- Mike Joseph mentioned that adopting the new language under section 17.07.070 (K) would take away a tool that the City has to enforce storage issues.

Page 31

- Large vehicles or heavy equipment stored on smaller residential lots.
- Dahna talked about how the new rule with help home occupations with having some larger vehicles and some heavy equipment to be kept on their property when they need it.

Page 45

- 17.070.090 (I) allows a use that was legally established to continue to be used without any unnecessary burden if something were to happen to the use that limited or stopped the use entirely. For example, if an industrial use in the downtown mixed- use zone were to burn down, the property owners could rebuild and continue the use without a Conditional Use Permit. However, any expansion or significant changes were to occur. A Conditional Use Permit would then be required.

Dave Karisny- Mr. Chair, I move that we approve the review of Chapter 7 of the Land Use Code and direct the Planning Director to share what has been discussed and reconsider what has been discussed by the Planning Commission. Particularly section 17.07.070 (K).

Louis Brackett- I second.

6 yes votes; motion passes.

**TO: FRUITA CITY COUNCIL AND MAYOR**  
**FROM: MARGARET SELL, FINANCE DIRECTOR**  
**DATE: JUNE 7, 2016**  
**RE: ORDINANCE 2016-07 – FIRST READING – AN ORDINANCE ADOPTING A FRANCHISE AGREEMENT WITH BRESNAN COMMUNICATIONS LLC (AKA CHARTER COMMUNICATIONS)**

**BACKGROUND**

The City of Fruita has had a Franchise Agreement for cable television services since 1968. The last agreement was adopted in 2004 and was extended for an additional two year term in 2013. This ordinance adopts a new Franchise Agreement with Bresnan Communications. A franchise agreement allows Bresnan the use of the city right of way for the operation of the cable television system. In exchange for the use of right of way, a franchise fee is assessed on the gross revenue. The following is a summary of the major terms contained in the Franchise Agreement

1. Nonexclusive use of streets to construct and maintain any fixtures necessary for the maintenance and operation of the cable system.
2. Term. The term of the Franchise Agreement is 10 years with an automatic 5 year extension unless either party notifies the other of its desire not to extend the agreement at least 3 years before the expiration date.
3. Franchise Fee. Bresnan shall pay 3% of gross revenues to the City for the use of city streets. This is an increase from the 2.5% franchise fee currently in effect.
4. Community Programming. Option for future use of cable system for noncommercial video programming for education and government access programming and provisions for funding a portion of community programming services through a subscriber fee not to exceed \$0.04 per subscriber.

**FISCAL IMPACT**

This ordinance increases the franchise fees received by the City and will increase revenue from \$12,000 to \$15,000 on an annual basis (based on 2015 revenues).

**APPLICABILITY TO CITY GOALS AND OBJECTIVES**

Maintenance and repair of the City's infrastructure is one of the primary goals and objectives of the City. The Franchise Agreement allows for use of city streets by outside agencies with franchise fees received to offset the cost of the City's ongoing obligation to maintain streets.



City of Fruita  
325 E. Aspen,  
Fruita, CO 81521  
(970) 858-3663  
[www.fruita.org](http://www.fruita.org)

**OPTIONS TO THE COUNCIL:**

1. Publish the Ordinance for public hearing with or without amendments

**RECOMMENDATION:**

It is the recommendation of staff that the Council by motion:

**PUBLISH ORDINANCE 2016-07 GRANTING A FRANCHISE TO BRESNAN COMMUNICATIONS, LCC TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF FRUITA, COLORADO FOR PUBLIC HEARING ON JULY 5, 2016**

**ORDINANCE 2016-07**

**AN ORDINANCE GRANTING A FRANCHISE TO BRESNAN COMMUNICATIONS, LLC, TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF FRUITA, COLORADO:**

**WHEREAS**, the City of Fruita, Colorado granted a Franchise to construct, operate, and maintain a cable television system to Bresnan Communications, LLC, (hereinafter referred to as "Grantee" and also known locally as Charter Communications), the current operator of the cable system in the City of Fruita through the adoption of Ordinance 2004-27 dated December 7, 2004; and

**WHEREAS**, a two year extension was granted to the Franchise Agreement by the City of Fruita, Colorado through the adoption of Ordinance 2013-04 dated April 16, 2013, and

**WHEREAS**, the City Fruita finds that the Grantee has substantially complied with the material terms of the current Franchise under applicable laws, and that the financial, legal and technical ability of the Grantee is sufficient to provide services, facilities and equipment necessary to meet the future cable-related needs of the community; and

**WHEREAS**, having afforded the public adequate notice and opportunity for comment, Grantor desires to enter into this Franchise with the Grantee for the construction and operation of a cable system on the terms set forth herein; and

**WHEREAS**, the Grantor and Grantee have complied with all federal and State-mandated procedural and substantive requirements pertinent to this franchise renewal;

**NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO:**

**SECTION 1**  
**Definition of Terms**

**1.1 Terms.** For the purpose of this franchise the following terms, phrases, words and their derivations shall have the meaning ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time (the "Cable Act"), unless otherwise defined herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural

---

Franchise Ordinance  
City of Fruita, Colorado  
Bresnan Communications, LLC.

number. The word “shall” is mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

- A. “Cable System,” “Cable Service,” and “Basic Cable Service” shall be defined as set forth in the Cable Act.
- B. “Board/Council” shall mean the governing body of the Grantor.
- C. “Cable Act” shall mean the Cable Communication Policy Act of 1984, as amended, 47 U.S.C. §§ 521, et. seq.
- D. “FCC” shall mean the Federal Communications Commission and any successor governmental entity thereto.
- E. “Franchise” shall mean the non-exclusive rights granted pursuant to this Franchise to construct operate and maintain a Cable System along the public ways within all or a specified area in the Service Area.
- F. “Gross Revenue” means any revenue, as determined in accordance with generally accepted accounting principles, received by the Grantee from the operation of the Cable System to provide Cable Services in the Service Area, provided, however, that such phrase shall not include: (1) any taxes, fees or assessments collected by the Grantee from Subscribers for pass-through to a government agency, including, without limitation, the FCC user fee, the franchise fee, or any sales or utility taxes; (2) unrecovered bad debt; (3) credits, refunds and deposits paid to Subscribers; (4) any exclusions available under applicable State law and (5) any Educational and Governmental (“EG”) access fees (as described in Section 13 hereof) recovered from Subscribers.
- G. “Person” shall mean an individual, partnership, association, organization, corporation, trust or governmental entity.
- H. “Service Area” shall mean the geographic boundaries of the Franchise Authority, and shall include any additions thereto by annexation or other legal means, subject to the exception in subsection 6.1 hereto.
- I. “State” shall mean the State of Colorado.
- J. “Street” shall include each of the following located within the Service Area: public streets, roadways, highways, bridges, land paths, boulevards, avenues, lanes, alleys, sidewalks, circles, drives, easements, rights of way and similar public ways and extensions and additions thereto, including but not limited to public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the Grantor in the Service

Area, which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the Cable System.

K. "Subscriber" shall mean any Person lawfully receiving Cable Service from the Grantee.

## **SECTION 2** **Grant of Franchise**

**2.1 Grant.** The Grantor hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to erect, construct, operate and maintain in, upon, along, across, above, over and under the Streets, now in existence and as may be created or established during its terms; any poles, wires, cable, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation of a Cable System. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by federal, State or local law.

**2.2 Term.** The Franchise and the rights, privileges and authority hereby granted shall be for an initial term of ten (10) years, commencing on the Effective Date of this Franchise as set forth in Section 15.10. This Franchise will be automatically extended for an additional term of five (5) years from the expiration date as set forth in Section 15.10, unless either party notifies the other in writing of its desire to not exercise this automatic extension (and enter renewal negotiations under the Cable Act) at least three (3) years before the expiration of this Franchise. If such a notice is given, then the parties will proceed under the federal Cable Act renewal procedures.

**2.3 Police Powers and Conflicts with Franchise.** The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance necessary to the safety, health, and welfare of the public, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. This Franchise is a contract and except as to those changes which are the result of the Grantor's lawful exercise of its general police power, the Grantor may not take any unilateral action which materially changes the explicit mutual promises in this contract. Any changes to this Franchise must be made in writing signed by the Grantee and the Grantor. In the event of any conflict between this Franchise and any Grantor ordinance or regulation that is not generally applicable, this Franchise shall control.

**2.4 Cable System Franchise Required.** No Cable System shall be allowed to occupy or use the streets or public rights-of-way of the Service Area or be allowed to operate without a Cable System Franchise.

**SECTION 3**  
**Franchise Renewal**

**3.1 Procedures for Renewal.** The Grantor and the Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, or any such successor statute.

**SECTION 4**  
**Indemnification and Insurance**

**4.1 Indemnification.** The Grantee shall, by acceptance of the Franchise granted herein, defend the Grantor, its officers, boards, commissions, agents, and employees, for all claims for injury to any Person or property caused by the negligence of Grantee in the construction or operation of the Cable System and in the event of a determination of liability shall indemnify and hold Grantor, its officers, boards, commissions, agents, and employees harmless from any and all liabilities, claims, demands, or judgments growing out of any injury to any Person or property as a result of the negligence of Grantee arising out of the construction, repair, extension, maintenance, operation or removal of its wires, poles or other equipment of any kind or character used in connection with the operation of the Cable System, provided that the Grantor shall give the Grantee written notice of its obligation to indemnify the Grantor within ten (10) days of receipt of a claim or action pursuant to this section. In the event any such claim arises, the Grantor shall tender the defense thereof to the Grantee and the Grantee shall have the right to defend, settle or compromise any claims arising hereunder and the Grantor shall cooperate fully herein. If the Grantor determined in good faith that its interests cannot be represented by the Grantee, the Grantee shall be excused from any obligation to represent the Grantor. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify the Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of the Grantor or for the Grantor's use of the Cable System, including any EG channels.

**4.2 Insurance.**

A. The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	\$1,000,000 per occurrence, Combined Single Liability (C.S.L.) \$2,000,000 General Aggregate
Auto Liability including coverage on all owned, non-owned hired autos Umbrella Liability	\$1,000,000 per occurrence C.S.L.

Umbrella Liability

\$1,000,000 per occurrence C.S.L.

- B. The Grantor shall be added as an additional insured, arising out of work performed by Charter, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.
- C. The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage upon request.

**SECTION 5**  
**Service Obligations**

**5.1 No Discrimination.** Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, age or sex.

**5.2 Privacy.** The Grantee shall fully comply with the privacy rights of Subscribers as contained in Cable Act Section 631 (47 U.S.C. § 551).

**SECTION 6**  
**Service Availability**

**6.1 Service Area.** The Grantee shall make Cable Service distributed over the Cable System available to every residence within the Service Area where there is a minimum density of at least thirty (30) residences per linear strand mile of cable (excluding any home subscribing to any satellite service) as measured from Grantee's closest trunk line or distribution cable that is actively delivering Cable Service as of the date of such request for service. If such residence is located within one hundred twenty five (125) feet of Grantee's feeder cable, the Cable Service will be provided at Grantee's published rate for standard installations. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service, into any annexed area which is not contiguous to the present Service Area of the Grantee or to any area which is financially or technically infeasible. Grantee at its discretion may make Cable Service available to businesses within the Service Area. Cable Service offered to Subscribers pursuant to this Franchise shall be conditioned upon Grantee having legal access to any such Subscriber's dwelling unit or other units wherein such Cable Service is provided. Nothing herein shall be construed to limit the Grantee's ability to offer or provide bulk rate discounts or promotions.

**6.2 Subscriber Charges for Extensions of the Cable System.** No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of Section 6.1 above, the Grantee shall only be required to extend the Cable System to Subscribers in that area if the Subscribers are willing to share the capital costs of extending the Cable System. The Grantee may require that payment of the capital contribution in aid of construction borne by such

potential Subscribers be paid in advance. Subscribers shall also be responsible for any standard/non-standard installation charges to extend the Cable System from the tap to the residence.

**6.3 Underground New Development.** In cases of new construction or property development where utilities are to be placed underground, the Grantor agrees to require as a condition of issuing a permit for open trenching to any developer or property owner that such developer or property owner give Grantee at least thirty (30) days prior written notice of such construction or development, and of the particular dates on which open trenching will be available for Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at Grantee's expense. Grantee shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if Grantee fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the written notice given by the developer or property owner, then should the trenches be closed after the five day period, the cost of new trenching is to be borne by Grantee.

**6.4 Annexation.** The Grantor shall promptly provide written notice to the Grantee of its annexation of any territory which is being provided Cable Service by the Grantee or its affiliates. Such annexed area will be subject to the provisions of this Franchise upon sixty (60) days written notice from the Grantor, subject to the conditions set forth below and Section 6.1 above. The Grantor shall also notify Grantee in writing of all new street address assignments or changes within the Service Area. Grantee shall within ninety (90) days after receipt of the annexation notice, pay the Grantor franchise fees on revenue received from the operation of the Cable System to provide Cable Services in any area annexed by the Grantor if the Grantor has provided a written annexation notice that includes the addresses that will be moved into the Service Area in an Excel format or in a format that will allow Grantee to change its billing system. If the annexation notice does not include the addresses that will be moved into the Service Area, Grantee shall pay franchise fees within ninety (90) days after it receives the annexed addresses as set forth above. All notices due under this section shall be sent by certified mail, return receipt requested to the addresses set forth in Section 15.5 with a copy to the Director of Government Relations. In any audit of franchise fees due under this Franchise, Grantee shall not be liable for franchise fees on annexed areas unless and until Grantee has received notification and information that meets the standards set forth in this section.

## **SECTION 7**

### **Construction and Technical Standards**

**7.1 Compliance with Codes.** All construction practices and installation of equipment shall be done in accordance with all applicable sections of the National Electric Safety Code.

**7.2 Construction Standards and Requirements.** All of the Grantee's plant and equipment, including but not limited to the antenna site, head end and distribution system, towers, house

connections, structures, poles, wire, cable, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices and performed by experienced maintenance and construction personnel.

**7.3 Safety.** The Grantee shall at all times employ ordinary care and shall use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage.

**7.4 Network Technical Requirements.** The Cable System shall be designed, constructed and operated so as to meet those technical standards adopted by the FCC relating to Cable Systems contained in part 76 of the FCC's rules and regulations as may be amended from time to time, regardless of the transmission technology utilized.

**7.5 Performance Monitoring.** Grantee shall test the Cable System consistent with the FCC regulations.

## **SECTION 8** **Conditions on Street Occupancy**

**8.1 General Conditions.** Grantee shall have the right to utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property without obtaining all legally required permits of the Grantor.

**8.2 Underground Construction.** The facilities of the Grantee shall be installed underground in those Service Areas where existing telephone and electric services are both underground at the time of system construction. In areas where either telephone or electric utility facilities are installed aerially at the time of system construction, the Grantee may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the Grantor, the Grantee shall likewise place its facilities underground. In the event that any telephone or electric utilities are reimbursed by the Grantor or any agency thereof for the placement of cable underground or the movement of cable, Grantee shall be reimbursed upon the same terms and conditions as any telephone, electric or other utilities.

**8.3 Construction Codes and Permits.** Grantee shall obtain all legally required permits before commencing any work requiring a permit, including the opening or disturbance of any Street within the Service Area. The Grantor shall cooperate with the Grantee in granting any permits required, providing such grant and subsequent construction by the Grantee shall not unduly interfere with the use of such Streets. The Grantee shall adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the Cable System in the Service Area, provided that such codes are of general applicability and such codes are uniformly and consistently applied by the Grantor as to other public utility companies and

other entities operating in the Service Area. Notwithstanding the above, the Grantee may set off any administrative permit fees or other fees required by the Grantor related to the Grantee's use of Grantor rights-of-way against the franchise fee payments required under Section 10.1 of this Franchise.

**8.4 System Construction.** All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. The Grantee shall, at all times, employ ordinary care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way by the Grantee shall be placed in such a manner as not to interfere with the usual travel on such public way.

**8.5 Restoration of Public Ways.** Grantee shall, at its own expense, restore any damage or disturbance caused to the public way as a result of its operation, construction, or maintenance of the Cable System to a condition reasonably comparable to the condition of the Streets immediately prior to such damage or disturbance.

**8.6 Removal in Emergency.** Whenever, in case of fire or other disaster, it becomes necessary in the judgment of the Grantor to remove any of the Grantee's facilities, no charge shall be made by the Grantee against the Grantor for restoration and repair, unless such acts amount to gross negligence by the Grantor.

**8.7 Tree Trimming.** Grantee or its designee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities.

**8.8 Relocation for the Grantor.** The Grantee shall, upon receipt of reasonable advance written notice, to be not less than ten (10) business days, protect, support, temporarily disconnect, relocate, or remove any property of Grantee when lawfully required by the Grantor pursuant to its police powers. Grantee shall be responsible for any costs associated with these obligations to the same extent all other users of the Grantor rights-of-way are responsible for the costs related to the relocation of their facilities.

**8.9 Relocation for a Third Party.** The Grantee shall, on the request of any Person holding a lawful permit issued by the Grantor, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Street as necessary any property of the Grantee, provided that the expense of such is paid by any such Person benefiting from the relocation and the Grantee is give reasonable advance written notice to prepare for such changes. The Grantee may require such payment in advance. For purposes of this subsection, "reasonable advance written notice" shall

be no less than ten (10) business days in the event of a temporary relocation and no less than one hundred twenty (120) days for a permanent relocation.

**8.10 Reimbursement of Costs.** If funds are available to any Person using the Streets for the purpose of defraying the cost of any of the foregoing, the Grantor shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the Grantor shall make application for such funds on behalf of the Grantee.

**8.11 Emergency Use.** If the Grantee provides an Emergency Alert System (“EAS”), then the Grantor shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee’s Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. The Grantor shall hold the Grantee, its employees, officers and assigns harmless from any claims or costs arising out of use of the EAS, including, but not limited to, reasonable attorneys’ fees and costs.

## **SECTION 9** **Service and Rates**

**9.1 Phone Service.** The Grantee shall maintain a toll-free telephone number and a phone service operated such that complaints and requests for repairs or adjustments may be received at any time.

**9.2 Notification of Service Procedures.** The Grantee shall furnish each Subscriber at the time service is installed, written instructions that clearly set forth information concerning the procedures for making inquiries or complaints, including the Grantee’s name, address and local telephone number. Grantee shall give the Grantor thirty (30) days prior notice of any rate increases, channel lineup or other substantive service changes.

**9.3 Rate Regulation.** Grantor shall have the right to exercise rate regulation to the extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the Grantor. If and when exercising rate regulation, the Grantor shall abide by the terms and conditions set forth by the FCC.

**9.4 Continuity of Service.** It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to the Grantee are honored, and subject to Grantee’s rights under Section 15.1 of this Franchise.

**SECTION 10**  
**Franchise Fee**

**10.1 Amount of Fee.** Grantee shall pay to the Grantor an annual franchise fee in an amount equal to three percent (3%) of the annual Gross Revenue. Such payment shall be in addition to taxes of general applicability owed to the Grantor by the Grantee that are not included as franchise fees under federal law. Franchise fees may be passed through to Subscribers as a line item on Subscriber bills or otherwise as Grantee chooses, consistent with federal law.

**10.2 Increase in Franchise Fees.**In the Event the City decides during the term of this Agreement to assess a franchise fee of a greater amount than the franchise fee specified in Section 10.1 of this Agreement, Grantee agrees to pay to the City the new amount after a public hearing in which the public and Grantee are given an opportunity to comment on the impact of the higher fee and the City Council has adopted an ordinance approving a negotiated franchise amendment imposing such increased fee. In no event shall Grantee pay a franchise fee greater than the maximum provided by applicable law. Such increased fee shall take effect on the next available billing cycle in which the higher fee may be placed on Subscribers' bills.

**10.3 Payment of Fee.** Payment of the fee due the Grantor shall be made on a quarterly basis, within forty-five (45) days of the close of each calendar quarter and transmitted by electronic funds transfer to a bank account designated by Grantor. The payment period and the collection of the franchise fees that are to be paid to the Grantor pursuant to the Franchise shall commence sixty (60) days after the Effective Date of the Franchise as set forth in Section 15.10. In the event of a dispute, the Grantor, if it so requests, shall be furnished a statement of said payment, reflecting the Gross Revenues and the applicable charges.

**10.4 Accord and Satisfaction.** No acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for additional sums payable as a franchise fee under this Franchise.

**10.5 Limitation on Recovery.** The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee was due. If any Franchise payment or recomputed payment is not made on or before the dates specified herein, Grantee shall pay an interest charge, computed from the last day of the fiscal year in which payment was due, at the annual rate of one (1%) percent over the prime interest rate.

**SECTION 11**  
**Transfer of Franchise**

**11.1 Franchise Transfer.** The Franchise granted hereunder shall not be assigned, other than by operation of law or to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Grantor, such consent not to be unreasonably withheld or delayed. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the Grantor shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Grantor has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Grantor shall be deemed given.

**SECTION 12**  
**Records, Reports and Maps**

**12.1 Reports Required.** The Grantee's schedule of charges for regular Subscriber service, its policy regarding the processing of Subscriber complaints, delinquent Subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the Grantee's policy in connection with its Subscribers shall be filed with the Grantor upon request.

**12.2 Records Required.**

The Grantee shall at all times maintain:

- A. A record of all written complaints received regarding interruptions or degradation of Cable Service, which record shall be maintained for one (1) year.
- B. A full and complete set of plans, records and strand maps showing the location of the Cable System.

**12.3 Inspection of Records.** Grantee shall permit any duly authorized representative of the Grantor, upon receipt of advance written notice, to examine during normal business hours and on a non-disruptive basis any and all of Grantee's records maintained by Grantee as is reasonably necessary to ensure Grantee's compliance with the Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the Grantor. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years, except for service complaints, which shall be kept for one (1) year as specified above. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act. The Grantor agrees to treat as confidential books, records or maps that constitute proprietary or confidential information to the extent Grantee make the Grantor aware

of such confidentiality. If the Grantor believes it must release any such confidential books or records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by State and federal law, it shall deny access to any of Grantee's books and records marked confidential, as set forth above, to any Person.

**SECTION 13**  
**Education and Government (EG) Access**

**13.1 Community Programming.**

- A. Upon the second and fifth anniversary of this Franchise, upon written request of the Grantor, the Grantor and Grantee will meet to discuss the possibility of providing one (1) channel on the Cable System for use by the Grantor for non-commercial, video programming for education and government ("EG") access programming. The EG channel may be placed on any tier of service available to subscribers. If all of the following conditions are satisfied, Grantee will provide one (1) downstream access Channel upon no less than 120 days' written notice from the Grantor following such meeting and receipt of the following:
- (1) Grantor has passed a resolution stating that there is demonstrated community need for EG access programming;
  - (2) Grantor has passed a resolution in which it agrees to fund all the operational expenses for such programming;
  - (3) Grantor provides a letter to Grantee identifying those entities or persons who will be responsible for providing access programming and agreeing to indemnify Grantee for any negligence or willful misconduct of such entities or persons for such access programming; and
  - (4) A statistically-significant representative sample survey of Subscribers in the Service Area indicates that more than twenty-five percent (25%) of Subscribers are somewhat interested or very interested in viewing EG access programming; provided, however, that any such survey shall be at Grantee's option and cost, and shall be conducted and concluded within ninety (90) days of the meeting with the Grantor described above. If Grantee opts not to conduct such a survey, then this subsection (4) shall not be a condition to providing EG Funding.
- B. If the EG channel provided pursuant to this section is occupied by non- local or character-generated programming fifty (50%) percent of the time during "regular viewing hours" for any ten (10) consecutive week period, the Grantee shall have a right to a return of the EG channel upon one hundred twenty (120) days' notice to

Grantor of its intent to reclaim the EG channel. For purposes of this subsection, "regular viewing hours" shall be the hours between 1 p.m. and 11 p.m., Monday through Friday, and between noon and midnight on weekends.

### **13.2 Community Access Funding.**

- A. Upon the second and fifth anniversary of this Franchise, upon written request of the Grantor, the Grantor and Grantee will meet to discuss the possibility of providing capital funding for Grantor's non-commercial, video programming for education and government ("EG") access programming ("EG Funds"). The Grantor shall prepare an EG Funding plan that will identify the capital support needed to fund the EG access. The Grantor and Grantee shall agree upon the amount of such capital support and the amount to be recovered from Subscribers. If all of the following conditions are satisfied, Grantee will provide EG Funds upon no less than 120 days' written notice from the Grantor following such meeting and receipt of the following:
- a. Grantor has passed a resolution requesting that the Grantee begin collecting EG Funds from Subscribers, not to exceed \$.04 per subscriber per month for payment to the Grantor;
  - b. Grantor has passed a resolution in which it agrees:
    - i. to fund all the operational expenses for such programming; and
    - ii. to only use such EG Funds for capital expenses in accordance with federal law.
    - iii. A statistically-significant representative sample survey of Subscribers in the Service Area indicates that more than twenty-five percent (25%) of Subscribers are somewhat interested or very interested in viewing EG access programming; provided, however, that any such survey shall be at Grantee's option and cost, and shall be conducted and concluded within ninety (90) days of the meeting with the Grantor described above. If Grantee opts not to conduct such a survey, then this subsection (iii) shall not be a condition to providing EG Funding.
- B. All EG Funds must be spent for EG capital in compliance with federal law. Grantee shall have the right to request information from the Grantor about use of the EG Funds to confirm such compliance.
- C. Grantee shall have the right to stop its collection from Subscribers and payment to the Grantor of the EG Funds if Grantee no longer carries any EG channels on its Cable System.

**SECTION 14**  
**Enforcement or Revocation**

**14.1 Notice of Violation.** If the Grantor believes that the Grantee has not complied with the terms of the Franchise, the Grantor shall first informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Grantor shall notify the Grantee in writing of the exact nature of the alleged noncompliance (the "Violation Notice").

**14.2 Grantee's Right to Cure or Respond.** The Grantee shall have thirty (30) days from receipt of the Violation Notice to (i) respond to the Grantor, contesting the assertion of noncompliance, or (ii) to cure such default, or (iii) if, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Grantor of the steps being taken and the projected date that they will be completed.

**14.3 Public Hearing.** If the Grantee fails to respond to the Violation Notice received from the Grantor, or if the default is not remedied within the cure period set forth above, the Board shall schedule a public hearing if it intends to continue its investigation into the default. The Grantor shall provide the Grantee at least twenty (20) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, notice of which shall be published by the Clerk of the Grantor in a newspaper of general circulation within the Grantor in accordance with subsection 15.5 hereof. The Grantee shall have the right to present evidence and to question witnesses. The Grantor shall determine if the Grantee has committed a violation and shall make written findings of fact relative to its determination. If a violation is found, the Grantee may petition for reconsideration before any competent tribunal having jurisdiction over such matters.

**14.4 Enforcement.** Subject to applicable federal and State law, in the event the Grantor, after the hearing set forth in subsection 14.3 above, determines that the Grantee is in default of any provision of the Franchise, the Grantor may:

- A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or seek other equitable relief; or
- C. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise itself in accordance with subsection 14.5 below.

**14.5 Revocation.**

- A. Prior to revocation or termination of the Franchise, the Grantor shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of

substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have sixty (60) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If the Grantor has not received a satisfactory response from Grantee, it may then seek to revoke the Franchise at a public hearing. The Grantee shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise.

- B. At the hearing, the Board shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript shall be made available to the Grantee within ten (10) business days. The decision of the Board shall be made in writing and shall be delivered to the Grantee. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Board *de novo*. The Grantee may continue to operate the Cable System until all legal appeals procedures have been exhausted.
- C. Notwithstanding the above provisions, the Grantee does not waive any of its rights under federal law or regulation.
- D. Upon revocation of the Franchise, Grantee may remove the Cable System from the Streets of the Grantor, or abandon the Cable System in place.

#### **14.6 Conditions of Sale.**

- A. If a renewal of the Grantee's Franchise is denied or the Franchise is lawfully terminated, and the Franchising Authority either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act.
- B. The Grantee and the Franchising Authority agree that in the case of a final determination of a lawful revocation of the Franchise, the Grantee shall be given no more than twelve (12) months to effectuate a transfer of its Cable System to a qualified third party. During said time period, Grantee shall exercise all due diligence to effectuate a transfer. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior Franchise during this period. If at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the

Franchising Authority, the Grantee and the Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that the Grantee's continued operation of the Cable System during the twelve (12) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Franchising Authority or the Grantee.

**SECTION 15**  
**Miscellaneous Provisions**

**15.1 Force Majeure.** The Grantee shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes, but is not limited to, severe or unusual weather conditions, fire, flood, or other acts of God, strikes, work delays caused by failure of utility providers to service, maintain or monitor their utility poles to which Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

**15.2 Minor Violations.** Furthermore, the parties hereby agree that it is not the Grantor's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweighs the benefit to be derived by the Grantor and/or Subscribers.

**15.3 Action of Parties.** In any action by the Grantor or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

**15.4 Equal Protection.** If any other provider of cable services or video services (without regard to the technology used to deliver such services) is lawfully authorized by the Grantor or by any other State or federal governmental entity to provide such services using facilities located wholly or partly in the public rights-of-way of the Grantor, the Grantor shall within thirty (30) days of a written request from Grantee, modify this Franchise to insure that the obligations applicable to Grantee are no more burdensome than those imposed on the new competing provider. If the Grantor fails to make modifications consistent with this requirement, Grantee's Franchise shall be deemed so modified thirty (30) days after the Grantee's initial written notice. As an alternative to the Franchise modification request, the Grantee shall have the right and may choose to have this Franchise with the Grantor be deemed expired thirty (30) days after written notice to the Grantor. Nothing in this Franchise shall impair the right of the Grantee to terminate this Franchise and, at Grantee's option, negotiate a renewal or replacement franchise, license, consent, certificate or other authorization with any appropriate government entity.

**15.5 Notices.** Unless otherwise provided by federal, State or local law, all notices, reports or demands pursuant to this Franchise shall be in writing and shall be deemed to be sufficiently given upon delivery to a Person at the address set forth below, or by U.S. certified mail, return receipt requested, nationally or internationally recognized courier service such as Federal Express or electronic mail communication to the designated electronic mail address provided below. Grantee shall provide thirty (30) days' written notice of any changes in rates, programming services or channel positions using any reasonable written means. As set forth above, notice served upon the Grantor shall be delivered or sent to:

Grantor: City of Fruita  
c/o City Manager  
325 E. Aspen Ave., Ste 155  
Fruita, CO 81521

Grantee: Bresnan Communications, LLC. by  
Charter Communications, Inc., its Manager  
VP/GM, KMA  
1860 Monad Road  
Billings, MT 59102

Copy to: Charter Communications  
Attn: Vice President of  
Government Affairs  
12405 Powerscourt Drive  
St. Louis, MO 63131

**15.6 Public Notice.** Minimum public notice of any public meeting relating to this Franchise or any such grant of additional franchises, licenses, consents, certificates, authorizations, or exemptions by the Grantor to any other Person(s) to provide Cable Services, video services, or other television services utilizing any system or technology requiring use of the public rights of way shall be by publication at least once in a newspaper of general circulation in the area at least ten (10) days prior to the meeting and a posting at the administrative buildings of the Grantor.

**15.6.1** Grantor shall provide written notice to Grantee within ten (10) days of Grantor's receipt from any other Person(s) of an application or request for a franchise(s), license(s), consent(s), certificate(s), authorization(s), or exemption(s) to provide Cable Services, video services, or other television services utilizing any system or technology requiring use of the public rights of way. Any public hearings to consider such application or request shall have the same notice requirement as outlined in Paragraph 15.6 above.

**15.7 Severability.** If any section, subsection, sentence, clause, phrase, or portion of this Franchise is, for any reason, held invalid or unconstitutional by any court of competent

jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Franchise.

**15.8 Entire Agreement.** This Franchise and any Exhibits hereto constitute the entire agreement between Grantee and the Grantor and they supersede all prior or contemporaneous agreements, representations or understandings (whether written or oral) of the parties regarding the subject matter hereof.

**15.9 Administration of Franchise.** This Franchise is a contract and neither party may take any unilateral action that materially changes the explicit mutual promises and covenants contained herein. Any changes, modifications or amendments to this Franchise must be made in writing, signed by the Grantor and the Grantee. Any determination by the Grantor regarding the interpretation or enforcement of this Franchise shall be subject to de novo judicial review.

**15.10 Effective Date.** The Franchise granted herein will take effect and be in full force from such date of acceptance by Grantee recorded on the signature page of this Franchise. This Franchise shall expire on \_\_\_\_\_, 2026, unless extended in accordance with Section 2.2 of the Franchise or by the mutual agreement of the parties. If any fee or grant that is passed through to Subscribers is required by this Franchise, other than the franchise fee, such fee or grant shall go into effect sixty (60) days after the Effective Date of this Franchise.

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL  
THIS 5TH DAY OF JULY, 2016**

ATTEST:

City of Fruita

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Lori Buck Mayor

**ACCEPTANCE**

Accepted this \_\_\_ day of \_\_\_\_\_, 2016, subject to applicable federal, State and local law.

Bresnan Communications, LLC  
By Charter Communications, Inc., its Manager

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Franchise Ordinance  
City of Fruita, Colorado  
Bresnan Communications, LLC.



City of Fruita  
325 E. Aspen,  
Fruita, CO 81521  
(970) 858-3663  
www.fruita.ora

## AGENDA ITEM COVER SHEET

**TO:** FRUITA CITY COUNCIL AND MAYOR  
**FROM:** MARGARET SELL, FINANCE DIRECTOR  
**DATE:** JUNE 7, 2016  
**RE:** ORDINANCE 2016-08 – FIRST READING – AN ORDINANCE AMENDING CHAPTER 2.28 OF THE FRUITA MUNICIPAL CODE CONCERNING MUNICIPAL COURT

### **BACKGROUND**

The Fruita City Council directed staff to prepare an ordinance amending the Municipal Code concerning the organization and structure of the Municipal Court as it relates the Court Clerk position to reflect changes in the supervision of the Court Clerk and other housekeeping changes.

- The attached ordinance makes changes to the process for establishing compensation for the Judge and Court Clerk with these amounts established through the adoption of the budget.
- The language “Clerk of the Court” has been changed to read “Municipal Court Clerk”.
- The responsibility for appointment and supervision of the Municipal Court Clerk is changed from the Judge, an independent contractor, to the City Manager of his designee as an employee of the City required to follow established personnel policies and procedures.

### **FISCAL IMPACT**

There is no fiscal impact from the adoption of this ordinance.

### **APPLICABILITY TO CITY GOALS AND OBJECTIVES**

This ordinance aligns the City’s laws as they relate to city employees and independent contractors with regulatory guidelines published by the IRS concerning determination of independent contractor status vs employee status.

### **OPTIONS TO THE COUNCIL:**

1. Publish a notice of public hearing for the ordinance (as presented or with amendments) for further consideration by the Council.
2. Take no action and leave the existing ordinances in effect.

### **RECOMMENDATION:**

It is the recommendation of staff that the Council by motion:

**MOVED TO PUBLISH A SYNOPSIS OF ORDINANCE 2016-08 AMENDING CHAPTER 2.28 OF THE FRUITA MUNICIPAL CODE CONCERNING MUNICIPAL COURT FOR PUBLIC HEARING ON JULY 5, 2016.**

**ORDINANCE 2016-08**

**AN ORDINANCE AMENDING CHAPTER 2.28 OF THE FRUITA MUNICIPAL CODE  
CONCERNING MUNICIPAL COURT**

**WHEREAS**, there are outdated provisions in the Fruita Municipal Code relating to the administration of personnel of the Fruita Municipal Court which need to be updated to reflect current employment practices of the City of Fruita, and

**WHEREAS**, it is the intent of this ordinance to update personnel provisions related to Municipal Court.

**BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA,  
COLORADO:**

**Section 1:** Section 2.28.080 of the Fruita Municipal Code and Ordinance 2000-08, S1 (part) is hereby amended as follows:

**2.28.080 MUNICIPAL JUDGES-COMPENSATION.** The City Council shall provide ~~by ordinance~~ 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, ~~his~~ **THE** salary may be adjusted so as to compensate the assistant or associate municipal judge.

**Section 2:** Section 2.28.110 of the Fruita Municipal Code and Ordinance 2000-08, S1 (part) is hereby amended as follows:

**2.28.110 COURT CLERK-POSITION ESTABLISHED.** There is hereby established the position of ~~Clerk of the~~ Municipal Court **CLERK**. ~~Provided however, The presiding Municipal Judge may serve as ex-officio clerk if the business of the Court is insufficient to warrant a separate full-time or part-time clerk.~~

**Section 3:** Section 2.28.120 of the Fruita Municipal Code and Ordinance 2000-08, S1 (part) is hereby amended as follows:

**2.28.120 COURT CLERK-APPOINTMENT.** The MUNICIPAL COURT Clerk of ~~the Municipal Court~~ shall be appointed AND SUPERVISED by the ~~Municipal Judge~~ CITY MANAGER OR HIS DESIGNEE. ~~In addition, the Municipal Judge shall exercise supervisory powers concerning the job performance of the Clerk, and shall have the power to discipline or terminate the Clerk in accordance with the City of Fruita's personnel policies and procedures.~~ INPUT FROM THE MUNICIPAL JUDGE WILL BE CONSIDERED IN THE APPOINTMENT, SUPERVISION AND EVALUATION OF THE MUNICIPAL COURT CLERK.

**Section 4:** Section 2.28.130 of the Fruita Municipal Code and Ordinance 2000-08, S1 (part) is hereby amended as follows:

**2.28.130 COURT CLERK-DUTIES.** The ~~Clerk of the~~ Municipal Court CLERK shall have such duties as are delegated to ~~him~~ THE COURT CLERK by ordinance, court rule, THE CITY MANAGER OR HIS DESIGNEE. ~~or by the Municipal Judge.~~ 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 ~~pay~~ to the ~~City Treasurer~~ FINANCE DIRECTOR ~~said fines and costs which shall~~ TO be deposited in the general fund of the City.

**Section 5:** Section 2.28.140 of the Fruita Municipal Code and Ordinance 2000-08, S1 (part) is hereby amended as follows:

**2.28.140 COURT CLERK-COMPENSATION.** The City Council shall provide ~~by ordinance~~ for the salary of the ~~Clerk of~~ Municipal Court CLERK, ~~except that if the Municipal Judge serves as ex officio clerk, he shall not receive any additional compensation.~~

**Section 6:** Section 2.28.150 of the Fruita Municipal Code and Ordinance 2000-08, S1 (part) is hereby amended as follows:

**2.28.150 COURT CLERK-BOND.** The ~~Clerk of 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 approved by the City Council and~~ be conditioned upon the faithful performance of ~~his~~ THE duties OF THE COURT CLERK, and for the faithful accounting for, and payment of, all funds deposited with or received by the Court. ~~When the Municipal Judge serves as ex officio Clerk of the Municipal Court, he shall execute the performance bond required by this Section.~~

**Section 7:** Section 2.28.160 of the Fruita Municipal Code and Ordinance 2000-08, S1 (part) is hereby amended as follows:

**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 ~~assistant~~ **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.

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL  
THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2016**

ATTEST:

City of Fruita

\_\_\_\_\_  
Margaret Sell, City Clerk

\_\_\_\_\_  
Lori Buck, Mayor



---

---

**AGENDA ITEM COVER SHEET**

---

---

**TO:** Fruita City Council and Mayor

**FROM:** Community Development Department

**DATE:** June 7, 2016

**RE:** Sewer service contract for 1024 18 Road (Percivals)

**BACKGROUND**

The property located at 1024 18 Road contains a house with a failing septic system. Because the property is within 400 feet of Fruita's sewer lines, the property must connect to the public sewer service instead of installing a new septic system. Fruita's regulations require that a property be annexed, if at all possible, in order to receive sewer service.

Staff understands that the property owners are working on the annexation application, but needs the sewer service right now so that the house can continue to be occupied. Attached is a contract to provide the sewer service before the annexation is completed.

**FISCAL IMPACT**

This proposed sewer service is expected to create a negligible fiscal impact to the city.

**APPLICABILITY TO CITY GOALS AND OBJECTIVES**

With the contract that requires annexation of the property to the city, this sewer service connection will meet the city's goals and objectives. Annexation is required for property receiving Fruita's public sewer service so that any future development of the property will be in compliance with Fruita's regulations instead of County regulations which may or may not meet Fruita's goals and objectives.

**OPTIONS AVAILABLE TO COUNCIL**

1. Approve the contract as presented.
2. Approve the contract with amendments.
3. Deny the contract.

## **RECOMMENDATION**

Staff recommends that the contract for sewer service to the property located at 1024 18 Road be approved.

**CITY OF FRUITA, COLORADO  
AGREEMENT CONCERNING EXTRATERRITORIAL WASTEWATER  
COLLECTION SERVICE AND ANNEXATION**

**Percival Property**

THIS AGREEMENT is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2016, by the **City of Fruita, Colorado**, a municipal corporation, whose address is 325 East Aspen, Fruita, Colorado 81521 (“City”), and **Gregory A. Percival**, whose address is 1024 18 Road, Fruita, Colorado, (“the Percivals”).

**RECITALS**

WHEREAS, the City owns and operates the City of Fruita wastewater collection and treatment system in accordance with the laws of the State of Colorado and the municipal ordinances, rules, regulations, policies and resolutions of the City; and

WHEREAS, the Percivals are the owners of the property described in Exhibit A, attached hereto and incorporated herein by this reference (“Property”), which is located outside the corporate limits of the City; and

WHEREAS, the Percivals desire to obtain wastewater collection service for a single family dwelling unit located on the Property and desire to annex the Property to the City when eligible for annexation; and

WHEREAS, the Property is situated in a manner so that the Percivals will be able to connect to the City’s wastewater collection system; and

WHEREAS, the City has determined that this Agreement and all covenants contained herein are necessary to comply with the Fruita Municipal Code and the goals, policies and plans of the City, and the City is not hereby representing that it is a regulated public utility; and

WHEREAS, the City is authorized by Sections 31-35-402 and 31-12-121, C.R.S., to provide wastewater service to properties located outside of its boundaries by means of contract; and

WHEREAS, pursuant to Section 31-12-121, C.R.S., as a condition precedent to the supplying of municipal services pursuant to contract, the City will require a consent to the annexation of the area to be supplied with wastewater service; and

WHEREAS, the City desires to provide municipal wastewater collection and treatment service to the Property on the terms and conditions contained in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

SECTION 1  
WASTEWATER COLLECTION AND TREATMENT SERVICE

1.1 Provision of Wastewater Collection Treatment Service. The City agrees to provide municipal wastewater collection and treatment service to the Property under the terms and conditions specified in this Agreement and pursuant to all requirements as set forth in the Fruita Municipal Code and the City's rules, regulations and policies. This agreement to provide service is subject to the condition that the property is annexed into the City. The City shall be the sole municipal wastewater collection and treatment service provider to the Property. Wastewater collection and treatment service for the Property pursuant to this Agreement shall not exceed service to one (1) single family residential unit. Provision of wastewater service within the Property shall be made on a first come/first served basis with the City's other wastewater service customers, subject to system capacity and any prior commitments, and payment of all fees as set forth in this Agreement.

1.2 Payment of Required Fees. The Percivals shall purchase and the City agrees to sell, subject to the terms and conditions of this Agreement, one (1) single family residential sewer tap to be used for the Property at the rate in effect at the time of connection for property located inside the city limits (currently \$6,600.00). Said amount shall be paid prior to the issuance of a building permit for connection of the sewer to the Property. The Percivals shall be responsible for arranging for connection of the dwelling unit to the City's sewer main with a private contractor and payment of all costs incurred for installation of said sewer lateral from the City's main sewer line to the dwelling unit.

1.3 User Fees. Upon connection of the dwelling unit to the City's wastewater collection and treatment system, the Percivals shall pay applicable monthly user charges for use of the City's wastewater system. Until such time as the Property is annexed to the City, the City shall charge user fees at the prevailing out-of-city rates as established pursuant to the Fruita Municipal Code. Upon annexation of the Property, the City shall charge such fees at the prevailing in-city rates established under the Fruita Municipal Code. Any nonpayment of monthly user charges, shall, at the option of the City, give rise to immediate discontinuance of all water service to the Property in accordance with the terms of an Agreement dated December 27, 1983, between the City of Fruita and the Ute Water Conservancy District. In addition, at the option of the City, all wastewater services may be disconnected under the provisions of Section 3.20.025 of the Fruita Municipal Code, a copy of which is attached as Exhibit B and incorporated herein by this reference. The Percivals expressly agree to be bound by all provisions thereof. All wastewater service fees, charges and delinquent charges assessed thereon from the time the same shall become due and payable, shall become and remain a lien against the Property until said fees and charges have been paid to the City. Said lien may be foreclosed by an action at law or in equity in the name of the City in any court having jurisdiction thereof. If the City is required to resort to legal action for collection of any fees, charges or assessments due, the City shall be entitled to its reasonable attorney's fees and other expenses incurred in such action if the City prevails.

In the event said fees, charges and assessments are not paid when due, the City's Finance

Director may certify the amount of the same to the Mesa County Treasurer, to be placed upon the tax rolls for the current year, and to be collected in the same manner as other taxes are collected, with ten percent (10%) per annum added thereto to defray the costs of collection, pursuant to Section 31-20-105, C.R.S. All laws of the State of Colorado for the assessment and collection of general taxes, including laws for the sale of property for taxes and redemption of the same, shall apply.

1.4 Limited Service. The Percivals acknowledge and agree that the sewer tap obtained pursuant to this Agreement shall be used to collect and treat wastewater from one (1) single family residential dwelling unit only, through one (1) four inch (4") diameter lateral only. The Percivals further understand and agree that the City, in providing said sewer tap, is under no further obligation to provide sewer taps for wastewater collection and treatment service to new developments such as parcels created by subdivision of the existing Property, and that once annexed, any future subdivision or development of the Property shall be subject to the provisions of the Fruita Municipal Code as it exists at the time of any subdivision or development application.

## SECTION 2 COMPLIANCE WITH RULES AND REGULATIONS

Provision of wastewater collection and treatment service to the Property shall be subject to the laws of the State of Colorado and all applicable ordinances, rules and regulations of the City concerning the provision of wastewater treatment and collection service as they may be amended from time to time as if the Property was located within the corporate limits of the City. The City reserves the right to require the Percivals to provide information needed to determine compliance with said rules, regulations and ordinances, and if the discharge of wastewater from the Property is in violation of any such rules, regulations, and ordinances, require pretreatment, control over rates and quantities of discharge, or additional payments to cover the costs of treatment. A copy of the City's regulations in effect at the time of this Agreement, Chapter 13.24, Sewer Service Regulations, of the Fruita Municipal Code is attached hereto as Exhibit C and incorporated herein by this reference.

## SECTION 3 ANNEXATION; POWER OF ATTORNEY

3.1 Annexation Required. The Percivals or their successors in interest, shall petition the City for annexation of the Property to the City at such time as the Property becomes eligible for annexation and upon request by the Fruita City Council. Failure of the Percivals and/or their successors in interest to commence annexation proceedings, as herein required, shall authorize the City to commence such annexation on the Property owner's behalf in accordance with Section 31-12-121, C.R.S., in which event the City shall charge the Percivals, or their successors in interest, all costs and fees associated with such annexation. In accordance with Section 31-12-121, C.R.S., this requirement to annex the Property shall be enforceable by an action for specific performance filed in the Mesa County District Court.

3.2 Power of Attorney Granted. The Percivals hereby designate and irrevocably appoints the City Clerk of the City of Fruita, Colorado, as their attorney-in-fact and agent to sign any petition for annexation of the Property. As a further covenant to run with the land, the Percivals, and for their successors in interest, hereby agree that in the event a counter-petition or objection to the proposed annexation is filed, any signature on such petition or objection purporting to be the Percivals or their successors in interest of the Property may be disregarded and shall be given no force and effect by the City or any court of competent jurisdiction. The provisions contained in this subsection concerning the Power of Attorney herein granted shall be valid for the maximum period set forth under Colorado law.

3.3 Additional Remedies. The Percivals state and agree that the primary consideration for granting their request for municipal wastewater treatment and collection service is the Percivals covenant and promise that they will consent to the annexation of the Property to the City. The Percivals, and their successors and assigns, further understand and agree that should they fail to abide by each and every covenant contained in this Section 4, then, in that event, the right to municipal wastewater treatment and collection service as provided under this Agreement may be terminated by the City upon the giving of sixty (60) days written notice of its intention to do so.

#### SECTION 4 ENFORCEMENT

4.1 Default; Notice; Termination. In the event of any default or breach by the Percivals, or their successors and assigns, of a covenant, term, condition or obligation under this Agreement, and if such default or breach continues after notice thereof for sixty (60) days, this Agreement may be forthwith terminated with respect to such party at the option of the City. Any declaration of termination of the Agreement shall be effective only after and upon a resolution to that effect duly authorized by the Fruita City Council. All rights concerning remedies or attorney's fees shall survive any termination of this Agreement.

4.2 Legal Action. The parties to this Agreement shall have all rights available at law or in equity to enforce the terms of this Agreement, including the right of specific performance. In the event that any action is filed or maintained by either party in relation to this Agreement, the substantially prevailing party shall be entitled to its costs and reasonable attorney's fees or the reasonable value of a salaried attorney's time.

#### SECTION 5 MISCELLANEOUS PROVISIONS

5.1 Waiver of Defects. In executing this Agreement, the Percivals and the City waive all rights they may have concerning defects, if any, of the form of this Agreement, the formalities whereby it is executed; and concerning the procedure, substance and form of the ordinances or resolutions adopting this Agreement. The Percivals further waive all rights they may have concerning the power of the City to impose conditions on the Percivals as set forth herein.

5.2 Failure to Exercise Rights. No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by written amendment to this Agreement signed by the City and the Percivals. The waiver of any default under this Agreement shall not be deemed a waiver of any subsequent default or defaults of the same type. The City's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the Percivals. The Percivals failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the City.

5.3 Complete Agreement. This Agreement contains all of the understandings, conditions and agreements between the City and the Percivals relating to the provision of wastewater treatment collection service at this time, and no other prior or current representation, oral or written, shall be effective or binding upon the City and the Percivals.

5.4 Authorization. The signatories to this Agreement affirm and warrant that they are fully authorized to enter into and execute this Agreement, and all necessary actions, notices, meetings and/or hearings pursuant to any law required to authorize their execution of this Agreement have been made.

5.5 Amendments. This Agreement may be amended from time to time by written agreement duly authorized by the parties, provided however, the subsequent owners of any portion of the Property shall be subject to this Agreement and shall be entitled to receive wastewater treatment and collection service pursuant to the terms of this Agreement without amendment to this Agreement and shall be considered beneficiaries hereof.

5.6 Covenants; Binding Effect. This Agreement shall extend to, be binding upon, and inure to the benefit of the parties hereto and the successors and assigns of the respective parties hereto. Specifically, by accepting a deed to any or all of the Property any grantee of the Percivals expressly agrees to be bound by the terms of this Agreement, including, but not limited to, the appointment of the City Clerk as attorney-in-fact for the purposes of annexation as set forth in Section 3 above, and this Agreement shall be deemed to be a restrictive covenant running with the Property for the benefit of the City of Fruita wastewater treatment and collection system and the real property owned by the City for such system.

5.7 Time of the Essence. Time is of the essence of this Agreement.

5.8 Colorado Law Applicable. This Agreement is made and delivered within the State of Colorado, and the laws of the State of Colorado shall govern its interpretation, validity and enforceability.

5.9 Provision deemed Severable. If any part, term or provision of this Agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term or provision and the rights of the parties will be construed as if the part, term, or provision was never part of the Agreement.

5.10 Recordation of Agreement. The City shall record a copy of this Agreement in the

office of the Clerk and Recorder of Mesa County, Colorado.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

CITY OF FRUITA, COLORADO, a  
municipal corporation, acting by and through  
its City Council,

By: \_\_\_\_\_  
Lori Buck, Mayor

ATTEST:

\_\_\_\_\_  
Margaret Sell, City Clerk

STATE OF COLORADO    )  
                                  )ss.  
COUNTY OF MESA        )

Subscribed and sworn to before me by \_\_\_\_\_, and  
\_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, 2016.

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires: \_\_\_\_\_

[SEAL]

\_\_\_\_\_  
Notary Public

Gregory A. Percival, Property Owner

Gregory A Percival 5-20-16

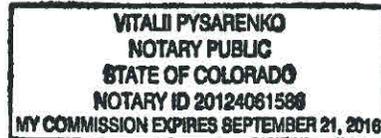
STATE OF COLORADO )  
 )ss.  
COUNTY OF MESA )

Subscribed and sworn to before me by Gregory Allan Percival this  
20 day of May, 2016.

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires: Sept 21 2016

Vitalii Pysarenko  
Notary Public



**EXHIBIT A**  
**LEGAL DESCRIPTION**

BEG SW COR S2NW4SW4 SEC 16 1N 2W N 440FT SELY 535FT ALG HWY W 316FT TO  
BEG  
EXC HWY & EXC RD ROW AS DESC IN B-5175 P-424 MESA CO RECDS - 1.60AC  
known as No. 1024 18 Road, Fruita, CO 81521,

**EXHIBIT B**  
Percival Sewer Service Contract

Revised 09/01/2010

3-56

Revenue and Finance

**Chapter 3.20**

**UNIFORM COLLECTION ORDINANCE**

**Sections:**

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

**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)

**EXHIBIT C**  
Percival Sewer Service Contract

Revised 09/01/2010

13-16

Water and Sewer

**Chapter 13.24**

**SEWER SERVICE REGULATIONS**

**Section:**

<b>13.24.010</b>	<b>Purpose of provisions</b>
<b>13.24.020</b>	<b>Rules and regulations - Adoption and enforcement authority</b>
<b>13.24.030</b>	<b>Use of the public sewers - Prohibited acts - Remedies</b>
<b>13.24.040</b>	<b>Runoff waters - Discharge prohibited - Disconnection required</b>
<b>13.24.050</b>	<b>Powers and authority of inspectors</b>
<b>13.24.060</b>	<b>Control manhole required when - Specifications</b>
<b>13.24.070</b>	<b>Abandonment of connection - Permit required - Procedure</b>
<b>13.24.080</b>	<b>Interfering with city employees or digging prohibited when</b>
<b>13.24.090</b>	<b>Repair and maintenance responsibility</b>
<b>13.24.100</b>	<b>Prohibited deposits - Human or animal wastes</b>
<b>13.24.110</b>	<b>Prohibited deposits - Industrial or other polluted wastes - Exception</b>
<b>13.24.120</b>	<b>Damaging or tampering with equipment prohibited when</b>
<b>13.24.130</b>	<b>Penalties</b>

**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 quantity, 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)



---

---

<b>AGENDA ITEM COVER SHEET</b>
--------------------------------

---

---

**TO:** Fruita City Council and Mayor

**FROM:** Community Development Department

**DATE:** June 7, 2016

**RE:** Fruita Liquor Mart Conditional Use Permit & Site Design Review

**BACKGROUND**

This is a request for approval of a Conditional Use Permit (CUP) and Site Design Review for a retail liquor store to be located in an existing building located at the northwest corner of the intersection of Maple Street and Highway 6 & 50. The existing building (formerly a restaurant) will be internally remodeled to support a retail liquor store with a drive-through service window. The planned exterior remodeling will be minimal. The access and layout of traffic circulation on the property will be changed to accommodate the drive-through service window. A retail liquor store is a permitted use in the DMU zone but the proposed drive-through service requires a CUP in this zone.

This application was originally scheduled for the November Planning Commission public hearing but was continued several times due to concerns with vehicular access and other unexpected issues. A major issue that needed to be resolved was that the existing access directly to Highway 6 & 50 on the south side of the property is required to be closed as per the Highway 6 Access Control Plan which was jointly adopted by Fruita and the Colorado Department of Transportation (CDOT). Because this is the only existing *legal* access to the property, two new access points to Maple Street are proposed to accommodate the proposed development. Although not ideal, staff has determined that these new access points to Maple Street are safer overall in the long term than the current direct access to the Highway. Staff recommends that an access easement on the north side of the property be provided so that there is an opportunity in the future to combine the access to the subject property and access to the adjacent strip mall.

With the resolution to the access issues, there are no other significant concerns expressed by reviewers. All approval criteria that must be considered for CUPs either has been met or can be met with the condition that all review comments and issues identified in the Staff Report are adequately resolved before Planning Clearance for a building permit is issued. The Site Design Review also meets or can meet all city requirements if the all issues are resolved.

At the May 10, 2016, Planning Commission public hearing, the Commission voted 5-0 to approve both the CUP and the Site Design Review with the condition that all review comments and issues identified in the Staff Report are adequately resolved before Planning Clearance for a building permit is issued. No written public comments have been received, but one member of the public spoke out at the public hearing about a concern for public safety with the access points as proposed.

### **FISCAL IMPACT**

Commercial development generally has a positive fiscal impact on the city. The use of this vacant building to grow an existing Fruita business in a larger building with a drive-through service should have a positive fiscal impact to the city. A Transportation Impact Fee and a Drainage Impact Fee will be required to be paid due to the increase in anticipated traffic to the site, and increase in stormwater drainage from the site which helps off-set the cost of development. There are no concerns with compatibility which could negatively affect the value of adjacent development.

### **APPLICABILITY TO CITY GOALS AND OBJECTIVES**

The proposed CUP and Site Design Review meets or can meet all approval criteria and standards of Fruita's Land Use Code with the recommended conditions of approval. The Land Use Code, along with other regulatory documents such as the Highway 6 Access Control Plan, implement the City's goals and policies as outlined in the City's Master Plan including the Fruita Community Plan.

### **OPTIONS AVAILABLE TO COUNCIL**

#### **Site Design Review**

1. Deny the proposed Site Design Review.
2. Approve the proposed Site Design Review with or without conditions.

#### **Conditional Use Permit**

1. Deny the proposed Conditional Use Permit.
2. Approve the proposed Conditional Use Permit with or without conditions.

### **RECOMMENDATION**

#### **Site Design Review**

Staff recommends that the City Council move to approve the Fruita Liquor Mart Site Design Review with the condition that all review comments and issues identified in the

Staff Report must be adequately resolved before a Planning Clearance for a building permit is issued.

Conditional Use Permit

Staff recommends that the City Council move to approve the Fruita Liquor Mart Conditional Use Permit with the condition that all review comments and issues identified in the Staff Report must be adequately resolved before a Planning Clearance for a building permit is issued.



**Community Development Department  
Staff Report  
May 5, 2016**

**Application #:** 2015-10  
**Project Name:** Fruita Liquor Mart  
**Application:** Conditional Use Permit and Site Design Review  
**Property Owner:** VAT Brothers, LLC  
**Representative:** Burke Martin, Blythe Group & Co.  
**Location:** 439 East Highway 6 & 50  
**Zone:** Downtown Mixed Use (DMU)  
**Request:** This is a request for Site Design Review approval for a proposed new retail liquor store and a Conditional Use Permit for the proposed drive-through service window.

**Project Description:**

This is a request for approval of a Site Design Review and a Conditional Use Permit (CUP) for a new retail liquor store to be located in an existing building located at the northwest corner of the intersection of Maple Street and Highway 6 & 50. The existing building (formerly a restaurant) will be internally remodeled to support a retail liquor store with a drive-through service window. The planned exterior remodeling will be minimal. The access and layout of traffic circulation on the property will be changed to accommodate the drive-through service window. A retail liquor store is a permitted use in the DMU zone but the proposed drive-through service requires a CUP in this zone.

This application was originally scheduled for the November Planning Commission public hearing but was continued due to concerns with vehicular access and other unexpected issues. The application was revised and was rescheduled for the December Planning Commission public hearing but was again continued to address various concerns.

The drive-through configuration has changed to address the requirement that the access directly to Highway 6 & 50 be closed. The current site plan shows the proposed development with the main vehicular access to the property to be one-way from Maple Street just south of the strip mall access, with a one-way exit farther south on the south side of the existing building.

**Surrounding Land Uses and Zoning:**

Properties to the north, east and west also are zoned DMU and all properties are used mainly for commercial purposes. A drive-through bank is located to the east. There is a house to the northeast which is attached to commercial business on that property. Industrial zoning with industrial and commercial land uses are to the south across the highway.



**LOCATION AND ZONING MAP**



**2012 AERIAL PHOTOGRAPH**

## **Review of Applicable Land Use Code Requirements:**

### **CONDITIONAL USE PERMITS**

A conditional use is defined as 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 the Land Use Code, 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.

As per Section 17.07.010.G of the Code, 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.

**Section 17.13.040, Conditional Uses, of the Land Development Code requires that a conditional use be approved after considering the following:**

- 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;**

The proposed drive-through liquor sales service window is consistent with the DMU zone in this location. This area of DMU zoning is adjacent to the state highway and not near the center of downtown. Pedestrian character, while very important to a well functioning downtown, is not the dominant characteristic in this area adjacent to the highway with many businesses oriented toward highway traffic and not foot traffic. The development meets or can meet the design standard requirements of the Code and this is discussed in more detail below.

If all review comments and issues identified in this Staff Report are adequately resolved, the proposed drive-through will be consistent with the provisions and purposes of the Land Use Code. The Land Use Code is one of the primary documents to implement the City's Master Plan.

This criterion can be met.

- 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;**

It appears that this drive-through liquor store operation can coexist with other existing and allowed uses in this area without one use having a disproportionate or severe impact of the other uses. Similar zoning and land uses surround the subject property. This criterion has been met.

**3. The proposed use will not materially endanger the public health or safety; and**

If all review comments and issues identified in this staff report are adequately resolved, the proposed use is not expected to materially endanger the public health or safety. The main concern is traffic safety regarding the vehicular access.

CDOT and Fruita staff agree that closing the access from the highway and establishing new access points for the subject property from Maple Street would enhance traffic safety. The 2010 US 6 Access Control Plan (adopted by the City of Fruita in 2010 with an intergovernmental agreement between Fruita, CDOT, and Mesa County) identifies this access as one that should be closed to improve traffic safety and roadway function.

Combining the access to the subject property with the adjacent strip mall property along Maple Street would be the best solution to avoid too many access points and conflicting turning movements on Maple Street; however, there is no *legal* access from the strip mall parking area to the subject property. Staff understands that the owner of the adjacent strip mall is not interested in establishing a shared access at this time.

To resolve this problem in the long term, staff recommends that an access easement be provided along the north line of the subject property to provide an opportunity in the future to combine the access points to these properties. There are some concerns with internal traffic movements and potential conflicts with the adjacent strip mall that can be resolved with additional curbing and landscaping. Review comments from the City Engineer and Code Enforcement Officer provide some guidance regarding these concerns.

Because the access to the subject property is required to be from Maple Street instead of Highway 6 & 50, the physical access to the highway property must be eliminated. This includes both a curb, replaced sidewalk, and some landscaping adjacent to the highway so it can't be used and cannot be mistaken for an exit. Also, a curb and some landscaping between the drive-through lane and the unpaved area that is part of the CDOT right-of-way will be required to channel traffic on the site and to meet minimum landscape requirements of the Code. This issue also is addressed by review comments from CDOT.

It should be noted that although review comments from CDOT require a traffic study to review impacts and the possible need for improvements to the intersection of Maple Street with Highway 6 & 50, this access point is the responsibility of the City of Fruita because it is a public street intersection used by all citizens. Fruita will not require the applicants to provide this traffic study or improvements to this intersection.

This criterion can be met.

- 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.**

All required public services and facilities are adequate to serve the proposed use. The subject property has been used for a restaurant business since the 1980s. There are no special or unusual utility demands associated with this property. No reviewer expressed a significant concern regarding public services and facilities for the proposed use. The Lower Valley Fire Protection District requires that a fire hydrant be relocated to provide for improved fire protection in the area. This criterion can be met.

Based on this information, all approval criteria that must be considered for CUPs either have been met or can be met if all review comments and issues identified in this Staff Report are adequately resolved.

## SITE DESIGN REVIEW

Chapter 13 of the Land Use Code, Zoning Review and Amendment Procedures, sets out the requirements for processing land development applications. Site Design Review applications can be reviewed and approved administratively unless an Adjustment is requested. An Adjustment is defined as one or more exceptions to the design standards of Chapter 11, where the decision making body finds that the applicant's proposed alternative design meets the intent of the regulations which are to be adjusted. An Adjustment exceeding 10% of a dimensional standard in Chapter 11 is required to be reviewed and approved by the City Council at a public hearing. It does not appear that an Adjustment is necessary for the proposed development.

There are no specific approval criteria for Site Design Review applications, but to be approved, the City's decision making body must find that the development application meets the requirements of the Code and other applicable regulations. The following is a summary of some issues regarding the proposed development's compliance with the City's regulations.

Because the proposed building will be remodeled and not moved, the issue of building setbacks, building height, and lot coverage is not applicable.

Regarding exterior remodeling and architectural details of the existing building, the applicants intend to remove the top portion of the roof (the red-colored mansard style fascia which hides the gabled roof and HVAC equipment), paint the existing metal panel walls (and potentially add stucco), change the south door to a window with an awning for the drive-through service, and replace some windows and doors with new windows

and doors. Some of the windows will be spandrel glass which looks like a window, but is opaque due to the interior location of bathrooms and mechanical equipment. As long as windows and doors and other architectural details on the building's walls are not completely removed, and another method to screen the HVAC equipment on the roof is identified on the elevation drawings, these exterior alterations comply with the architectural design standards of Chapter 11 of the Land Use Code.

Chapter 11 of the Code requires a sidewalk to connect the public street right-of-way to the primary building entrance. Chapter 19 (Public Dedications and Impact Fees) requires that the missing public sidewalk along Maple Street be constructed with the current redevelopment of this property. The site plan shows a new sidewalk on the north side of the building connecting Maple Street to the parking lot. The site plan shows a *future* public sidewalk along Maple Street where there is no sidewalk now, and a *future* sidewalk connecting Maple Street to the front door of the business on the south side of the property. These sidewalks must be installed as part of the current redevelopment to meet the minimum requirements of the Land Use Code.

Chapter 41, Parking Standards, of the Code requires motorized vehicle parking spaces to be provided at a rate of one space per 500 square feet of floor area for this type of business. The 3,750 square foot building will require 8 parking spaces and revised site plan shows 20 parking spaces. The parking spaces also meet the minimum requirements regarding length, width, and driving aisle width, but the handicap accessible space may need to be wider to be van accessible. Staff understands that there will be new asphalt in the parking lot to remove the large potholes and other problems with this parking area and allow the parking lot to be restriped. Bicycle parking spaces also are required and a bicycle parking area is shown on the Schematic Design drawing of the revised plan and is located near the primary building entrance.

For the drive-through service window, stacking spaces measuring at least 10 feet wide and 22 feet long must be provided at a rate of four spaces per window with one space on the exit side. The revised site plan shows adequate stacking spaces for this proposed development. Some curbing and landscaping will be required to channel traffic and avoid conflicts as pointed out in the review comments from the City Engineer and the Code Enforcement Officer.

Revised landscape drawings also have been provided. At least 10% of the subject property is required to be landscaped, with at least half of the landscaping provided on the front half (street sides) of a development. Additional landscaping is required for parking lots with more than 15 car parking spaces. Also, within these landscape area, a certain amount of trees and shrubs are required to be provided. It appears that this requirement is met, however, the future landscaping shown adjacent to the CDOT right-of-way and the new drive-through lane should be provided to help channel traffic and meet requirements for landscaping in the front half of properties. Some sort of groundcover will be needed on the north side of the building where a future addition to the building is identified.

Outside storage appears to be limited to a trash dumpster which will be located away from the public sidewalk and will be screened as required. The original building elevations show the HVAC equipment located on the roof of the buildings and identify that the equipment is to be screened as required by the Code. Revised elevation drawings will be required showing the screening of the HVAC equipment.

New outdoor lighting must meet the intent of the Code which is to improve safety and reduce light pollution. The lighting plan provided shows no significant off-site light trespass and does not appear to exceed the overall maximum lumen count required by the Code. All outdoor lights are required to be full cut-off and not all the lights proposed meet this requirement. This must be resolved.

The Code requires that irrigation water be used where it is physically and legally available. It appears that the proposed development will connect to the existing irrigation system.

The revised site plan has been reviewed by the staff including the Public Works Department, City Engineer, Police, and Code Enforcement. Two additional comments have been provided. The Lower Valley Fire Protection District also has reviewed the revised plan and has no concerns. These revised comments are included with this Staff Report. Other than the access issue, no reviewer expressed a concern regarding the proposed development.

The only public improvements required are a public sidewalk along Maple Street where there is no sidewalk at this time, the relocation of a fire hydrant, and curb/sidewalk along Highway 6 & 50 to remove the existing curb cut. These public improvements will not require a development improvements agreement, but will require an Excavation and Right-of-Way Permit through the city's Public Works Department.

Signs are shown on the building elevations and on the site plan. Signs are reviewed and approved under a separate permit. It appears that some of the signs shown on the drawings are large than what is permitted.

Regarding impact fees, a Transportation Impact Fee and potentially a Drainage Impact Fee will be required. These fees will be calculated once all the required revisions to the development plan have been made.

It appears that the Site Design Review application meets or can meet the minimum requirements of the Code without a significant redesign.

### **Review Comments:**

All review comments received are included with this Staff Report.

This proposed development was significantly revised three times. All review comments received are included with this staff report. All review comments must be adequately resolved before a Planning Clearance for a Building Permit is issued.

It should be noted that this staff report amends and clarifies some of the review comments.

**Public Comments:**

No written public comments have been received regarding this application.

**Staff Recommendation:**

**Conditional Use Permit:**

Staff recommends approval of the Conditional Use Permit for a retail liquor store drive-through service window with the condition that all review comments and issues identified in the Staff Report must be adequately resolved before a Planning Clearance for a Building Permit is issued.

**Site Design Review:**

Staff recommends approval of the Site Design Review for a new retail liquor store with the condition that all review comments and issues identified in the Staff Report must be adequately resolved before a Planning Clearance for a Building Permit is issued.

**Fruita Planning Commission:** (May 10, 2016)

**Fruita City Council:** (June 7, 2016)



# LAND DEVELOPMENT APPLICATION

Project Name: FRUITA LIQUOR MART  
 Project Location: 439 HIGHWAY 6450  
 Current Zoning District: DMU Requested Zone: DMU - NO CHANGE  
 Tax Parcel Number(s): 2697-173-00-081 Number of Acres: 0.535  
 Project Type: RETAIL STORE ADDITION & RENOVATION

Property Owner: VAT BROTHERS LLL Developer: \_\_\_\_\_  
 Property Owner: \_\_\_\_\_ Contact: \_\_\_\_\_  
 Address: 2219 DA VINCI PL Address: \_\_\_\_\_  
 City/State/Zip: GRAND JUNCTION, CO 81507 City/State/Zip: \_\_\_\_\_  
 Phone: 559-355-2351 Fax: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
 E-mail: KOMPHEAKVAT@YAHOO.COM E-mail: \_\_\_\_\_

**Please designate a representative as the coordinator for this application. The representative should attend all conferences/hearings, will receive all correspondence, and communicate all information to the property owners.**

Owner Rep: BLYTHE GROUP + CO Engineer: \_\_\_\_\_  
 Contact: BURKE MARTIN Contact: \_\_\_\_\_  
 Address: 622 ROOD AVE Address: \_\_\_\_\_  
 City/State/Zip: GRAND JUNCTION, CO 81501 City/State/Zip: \_\_\_\_\_  
 Phone: 970-242-1058 Fax: 970-242-2268 Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
 E-mail: BMARTIN@THEBLYTHEGROUP.COM E-mail: \_\_\_\_\_

**This Notarized application authorizes the owner's representative, if designated, to act on behalf of the property owners regarding this application.**

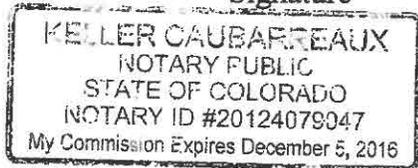
The above information is correct and accurate to the best of my knowledge.

Lam Vat \_\_\_\_\_  
 Name of Legal Owner Signature Date

\_\_\_\_\_  
 Name of Legal Owner Signature Date

\_\_\_\_\_  
 Name of Legal Owner Signature Date

STATE OF COLORADO )  
 ) ss.  
 COUNTY OF MESA )



The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of October, 2015

My Commission expires: December 5, 2016

[Signature]  
 Notary Public

## PROJECT NARRATIVE

### **Project History:**

The Project is located at the North West corner of the intersection of S. Maple Street and Highway 6&50 (439 Highway 6 & 50). The original project was to renovate and add on to the existing building. However, during the planning review process CDOT commented that the proposed site plan would not work with their access management plan which requires the driveway from Highway 6 & 50 to be closed. The site plan, and the scope of the project, have been re-designed based on that comment.

### **Project Description:**

The project is on a 0.5-acre site and consist of renovating the interior of the existing 3,700 SF single story pre-engineered metal building. The renovations are to convert the building from a restaurant to a retail liquor store with a drive up window. The mansard style fascia will be removed from the existing building. The current make-up air unit and 2 exhaust fans that were required for the restaurant kitchen will be removed from the roof. The 2 remaining roof top mechanical units will be screened with a screening system designed for attaching to existing roof top units. Currently the site is all hardscape or building. This project will entail installation of landscaping to meet the current City of Fruita land use code.

### **Project Compliance:**

The proposed use is compliant with the current zoning (DMU) of the site. Surrounding land use is primarily commercial in nature with a bank to the SE, the COOP building, laundromat, chiropractor, tattoo shop and copy center to the SW. A motel is located to the West and a strip mall to the North. To the North East is a residential neighborhood located across the street behind the bank.

Based on CDOT's access management plan to close the existing driveway from highway 6&50. Although the driveway serving the strip mall has historically been used for access to this property the adjacent land owner has refused to allow shared access. Therefore we will be utilizing a one-way traffic circulation through the site. This will require the entrance from S. Maple Street to be at the North East corner of our lot. The one-way exit back on to S. Maple Street is located as far north as possible based on the location of the existing building.

The existing utilities serving this site will be adequate for this project. There are no special or unusual utility demands associated with this project.

This project will be relocating an existing retail store from the strip mall to the north into this new location. Since this is a relocation of an existing business in the same general location we do not anticipate there to be any effect on the current public facilities.

Based on the historic use of this site there are no anticipated concerns with the soils or geology of the site.

### **Land Use Code Compliance:**

This project is zoned DMU and is located on Highway 6 & 50 between Pine and Plum Street so Level Two design standards apply.

#### **Site Design:**

The primary entrance is facing Highway 6 & 50. Due to the orientation of the existing building on the site the entrance will be greater than 25' from the CDOT right-of-way or S Maple Street. The entrance will be connected S Maple Street a 5' wide concrete walk. Where the walk crosses the exit drive way patterned concrete will be utilized to identify the cross walk. The existing sidewalk on Maple Street will be extended to connect to the sidewalk on Highway 6 & 50. A landscape area will be between the entry sidewalk and the CDOT Right-of-way. A 19'-0 wide landscape area will be between the existing building and the sidewalk on S Maple St.

#### **Building Design:**

The existing building is a single story gabled roof building with an eave height of 13'-0" and exterior finishes of brick and metal panels. Both of which will be remaining. The metal panels will be painted and no change is anticipated to the brick. The owner is considering covering the metal panels with stucco.

The existing windows will remain in place with some glazing being replaced with spandrel (opaque) glass where the interior use is not suitable for windows. On the north and east faces of the building we are providing landscaping between the building and public ways to break up these building faces. Due to the functional requirements of the facility and the restrictions created by the existing building and its location on the site the transparency requirements were not able to be met.

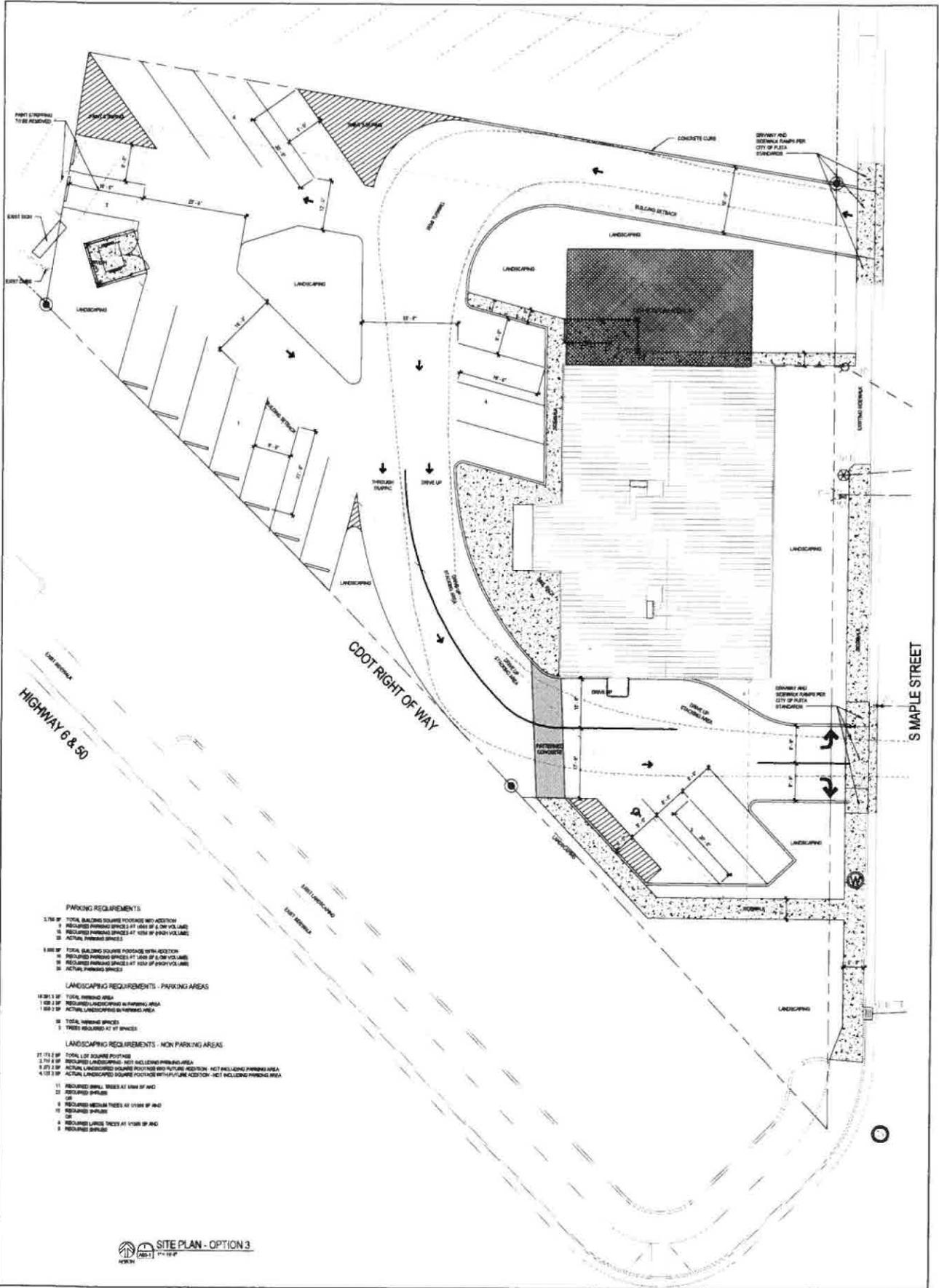
The primary entrance is defined by a separate mass with glass entry doors and a 5'-0" deep awning above it.

#### **Development Schedule:**

This project is anticipated to start construction in June of 2016 and complete in August of 2016

#### **Conditional Use Permit:**

1. Although this project is located outside the area of the current Downtown master plan it is located on one of the main entrances to the City of Fruita. As such this renovation will improve the appearance of this site by providing landscaping on a site that currently has no landscaping.
2. This project is relocating an existing complying business from the property immediately north to this site with the same zoning (DMU). The drive up window for this project will be for a permitted use. The drive-up is configured so that the required vehicle stacking will occur on site and will not affect the surrounding properties. Additionally the bank to the South East currently has a drive-up, and at least 2 other retail stores in close proximity have drive-up windows.
3. The drive-up window has no threat to the public health or safety.
4. The drive-up window will have no impact on the public services and facilities needed for this project.



- PARKING REQUIREMENTS**
- 3,750 SF TOTAL BUILDING SQUARE FOOTAGE WITH ADJUNCTION
  - 1 REQUIRED PARKING SPACES AT 1000 SF OF GROSS VOLUME
  - 1 REQUIRED PARKING SPACES AT 1000 SF OF GROSS VOLUME
  - 1 ACTUAL PARKING SPACES
- LANDSCAPING REQUIREMENTS - PARKING AREAS**
- 1830.1 SF TOTAL PARKING AREA
  - 1.00 2 SF REQUIRED LANDSCAPING WITHIN PARKING AREA
  - 1830.1 SF ACTUAL LANDSCAPING WITHIN PARKING AREA
  - 16 TOTAL TREES AT SPACES
  - 1 TREES REQUIRED AT SPACES
- LANDSCAPING REQUIREMENTS - NON PARKING AREAS**
- 27,712 SF TOTAL LOT SQUARE FOOTAGE
  - 2.00 2 SF REQUIRED LANDSCAPING WITHIN INCLUDING PARKING AREA
  - 9,072 SF ACTUAL LANDSCAPING SQUARE FOOTAGE WITHIN INCLUDING PARKING AREA
  - 4,023 SF ACTUAL LANDSCAPING SQUARE FOOTAGE WITHIN INCLUDING PARKING AREA
  - 15 REQUIRED SMALL TREES AT 1000 SF AND
  - 15 REQUIRED SMALL TREES
  - 15 REQUIRED MEDIUM TREES AT 1000 SF AND
  - 15 REQUIRED MEDIUM TREES
  - 15 REQUIRED LARGE TREES AT 1000 SF AND
  - 15 REQUIRED LARGE TREES

**SITE PLAN - OPTION 3**

<p>DATE: 08/11/15</p> <p>PROJECT: AS1-1</p>											
---	---	---	---	---	---	---	---	---	---	---	---

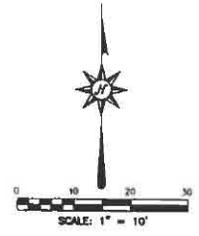
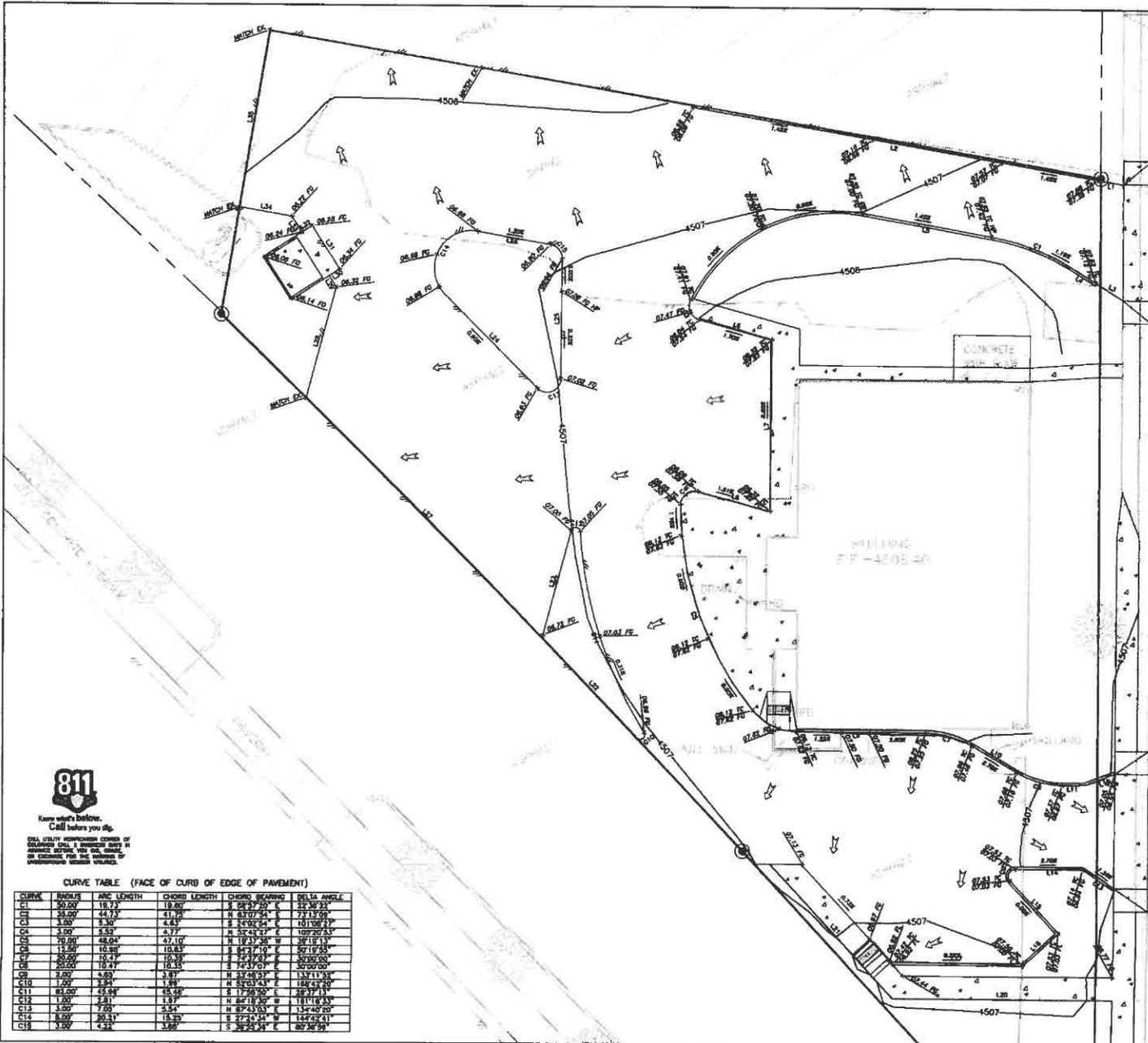
**BLYTHE GROUP** co.

Architecture  
Interior Design  
Project Management

418 East Avenue  
Grand Junction, CO 81501  
Phone: 970.243.1008  
www.blythegroup.com







- LEGEND**
- TC= TOP OF CURB ELEVATION
  - EC= EDGE CONCRETE ELEVATION
  - ED= EXISTING GRADE ELEVATION
  - EP= EDGE PAVEMENT ELEVATION
  - FL= FLOWLINE ELEVATION
  - FD= FINISH GRADE ELEVATION
  - FF= FRESH FLOOR ELEVATION
  - H.P.= HIGH POINT ELEVATION
  - L.P.= LOW POINT ELEVATION
  - TW = TOP OF WALL ELEVATION

**LINE TABLE**  
(FACE OF CURB OF EDGE OF PAVEMENT)

LINE	BEARING	DISTANCE
L1	S 89°18'31" E	3.81
L2	S 89°18'51" E	88.29
L3	S 87°30'10" E	6.89
L4	S 87°30'10" E	30.88
L5	S 87°15'51" E	28.88
L6	N 74°37'07" E	16.43
L7	N 89°24'53" E	37.27
L8	S 22°17'07" E	13.38
L9	N 89°27'07" E	26.11
L10	S 89°37'07" E	11.48
L11	N 89°37'07" E	4.58
L12	N 89°28'52" E	7.28
L13	S 89°19'31" E	60.08
L14	S 89°27'07" E	12.68
L15	N 74°37'07" E	15.08
L16	N 89°11'07" E	6.78
L17	S 89°27'07" E	28.88
L18	N 89°27'07" E	7.28
L19	S 89°18'30" E	26.68
L20	N 89°18'30" E	47.68
L21	S 87°28'07" E	39.88
L22	S 87°30'07" E	26.38
L23	N 89°27'07" E	23.07
L24	N 89°27'07" E	39.88
L25	S 89°27'07" E	26.87
L26	N 89°24'07" E	18.17
L27	S 89°27'07" E	18.87
L28	S 89°27'07" E	18.87
L29	S 89°27'07" E	18.87
L30	S 89°27'07" E	18.87
L31	S 89°27'07" E	18.87
L32	S 89°27'07" E	18.87
L33	S 89°27'07" E	18.87
L34	S 89°27'07" E	18.87
L35	S 89°27'07" E	18.87
L36	S 89°27'07" E	18.87
L37	S 89°27'07" E	18.87
L38	S 89°27'07" E	18.87
L39	S 89°27'07" E	18.87
L40	S 89°27'07" E	18.87
L41	S 89°27'07" E	18.87
L42	S 89°27'07" E	18.87
L43	S 89°27'07" E	18.87
L44	S 89°27'07" E	18.87
L45	S 89°27'07" E	18.87
L46	S 89°27'07" E	18.87
L47	S 89°27'07" E	18.87
L48	S 89°27'07" E	18.87
L49	S 89°27'07" E	18.87
L50	S 89°27'07" E	18.87



Know what's below.  
Call before you dig.

CALL UTILITY AGENCIES LOCATED BY COUNTRYSIDE CALL A BUSINESS BEFORE AN ADDRESS BEING VISITED TO AVOID OR CORRECT FOR THE ADDRESS OF UNDERGROUND UTILITY SERVICES.

**CURVE TABLE** (FACE OF CURB OF EDGE OF PAVEMENT)

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	30.00	18.73	18.80	N 28°37'29" E	22°30'32"
C2	30.00	14.73	14.80	N 63°17'24" E	22°13'59"
C3	3.00	3.30	4.83	S 24°02'54" E	101°08'27"
C4	3.00	3.52	4.77	N 58°43'27" E	109°20'53"
C5	76.80	48.64	47.10	N 12°17'36" W	36°19'13"
C6	76.80	16.68	16.63	N 84°27'10" E	50°19'35"
C7	20.00	10.47	10.38	N 72°17'48" E	30°00'00"
C8	20.00	10.47	10.38	N 72°17'48" E	30°00'00"
C9	2.00	3.62	3.87	N 32°48'37" E	133°11'35"
C10	1.00	2.84	3.88	N 58°23'43" E	188°43'30"
C11	84.00	24.88	24.88	N 12°26'50" E	28°17'11"
C12	1.00	2.81	3.87	N 64°18'30" W	181°18'33"
C13	1.00	2.95	3.87	N 67°43'03" E	134°40'28"
C14	1.00	2.81	3.87	S 72°24'24" E	144°22'41"
C15	3.00	4.22	3.88	S 36°24'34" E	80°38'58"

**BLTYE GROUP** INC.  
 4140 N. 1st Ave.  
 Frisco, TX 75034  
 Phone: 972.241.1111  
 Fax: 972.241.1111  
 www.bltye.com



807 Adams Blvd., Suite A  
 Grand Junction, CO 81502  
 Telephone: 970.243.6268  
 Fax: 970.241.1273  
 www.fruitaliquor.com

FRUITA LIQUOR MART

438 HIGHWAY 8 & 58  
 FRUITA, CO 81521

GRADING PLAN

CITY SUBMITTAL

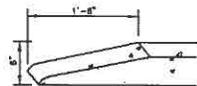
REV. DESC. DATE

DATE: 03/01/18

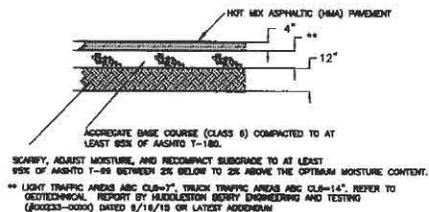
PROJECT: 1815

SHEET #

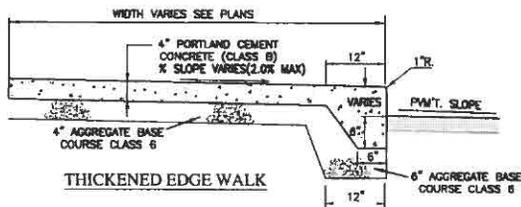
C2-2



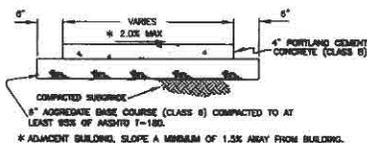
**CURB TRANSITION**  
N.T.S.



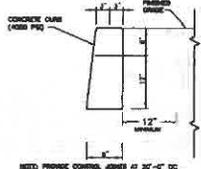
**PARKING LOT PAVEMENT SECTION**  
N.T.S.



**THICKENED EDGE WALK**



**SIDEWALK AREA DETAIL**  
N.T.S.



**CONCRETE CURB HEAD**  
N.T.S.

- NOTES:
1. FINISH 1/2" DIVISION JOINTS AT 20' O.C.
  2. ALL EXPOSED SURFACES SHALL BE STAMPED GREEN, TROWEL & CURE EDGING RUBBED SMOOTH.



Keep what's below.  
Call before you dig.  
CALL UTILITY APPROXIMATE COVERS OF  
COURTESY CALL. A BUSINESS DAY IN  
ADVANCE BEFORE YOU OR YOUR  
OR CONTRACTOR FOR THE SAFETY OF  
UNDERGROUND UTILITY LOCATIONS.



**CONSTRUCTION NOTES**

1. CONSTRUCT APPROX. 254 S.Y. 4" CONCRETE SLAB SEE DETAIL THIS SHEET.
2. ASPHALT PAVING AREA, SEE PAVEMENT DETAIL THIS SHEET.
3. CONSTRUCT CONCRETE CURB. SEE DETAIL ON THIS SHEET.
4. REMOVE ASPHALT AND BASE MATERIAL AS SHOWN FOR LANDSCAPE AREA.
5. CONSTRUCT CONCRETE RAMP ACCORDING TO CITY OF FRUITA STANDARDS AND SPECIFICATIONS.
6. CONSTRUCT APPROX. 15 S.Y. 6" CONCRETE SLAB SEE DETAIL SHEET C2-1.
7. CONSTRUCT SIDEWALK CUT ACCORDING TO CITY OF FRUITA STANDARDS AND SPECIFICATIONS.
8. ADJUST MANHOLE LID TO FINISH GRADE.
9. CONSTRUCT THICKENED EDGE CONCRETE WALK SEE DETAIL ON THIS SHEET.
10. CONSTRUCT CONCRETE CURB TRANSITION. SEE DETAIL ON THIS SHEET.
11. CONSTRUCT SIDEWALK DRAIN TROUGH ACCORDING TO CITY OF FRUITA STANDARDS AND SPECIFICATIONS.

**PARKING SPACES**

PARKING (PROPOSED)	18
PARKING (PROPOSED ACCESSIBLE)	1
<b>TOTAL</b>	<b>19</b>

**UTILITY PROVIDERS**

WATER	CITY OF FRUITA
SEWER	CITY OF FRUITA
GAS	BOULDER - PUBLIC SERVICE CO.
ELECTRIC	BOULDER - PUBLIC SERVICE CO.
SAWTOOTH SERVICE	CITY OF GRAND FRUITA
TELEPHONE	COURTNEY LINK
FIRE	CITY OF FRUITA

**BLYTHE GROUP** co.  
Professional  
Engineering  
Project Management  
418 Road Avenue, Suite 1101  
Fruita, CO 81521  
www.blythegroup.com



609 Ridge Blvd, Suite A  
Lafayette Junction, CO 81527  
Phone: (970) 233-8338  
Fax: (970) 233-4273  
www.blythegroup.com

FRUITA LIQUOR MART  
  
438 HIGHWAY 6 & 56  
FRUITA, CO 81521

SITE PLAN  
UTILITY COMPOSITE

CITY SUBMITTAL

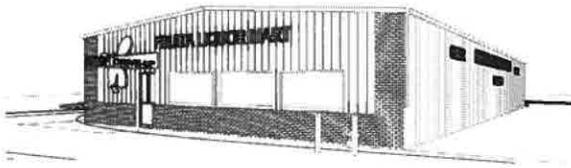
REV. DESC. DATE

DATE: 03/1/18

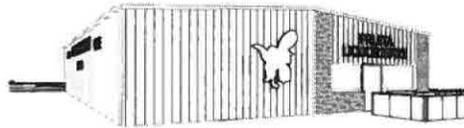
PROJECT #: 1815

SHEET #

C2-1



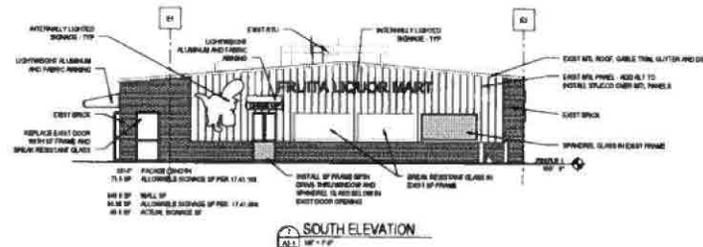
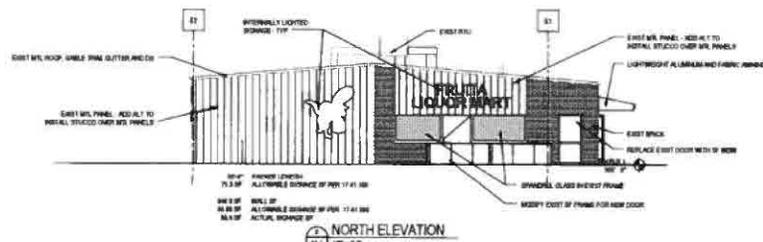
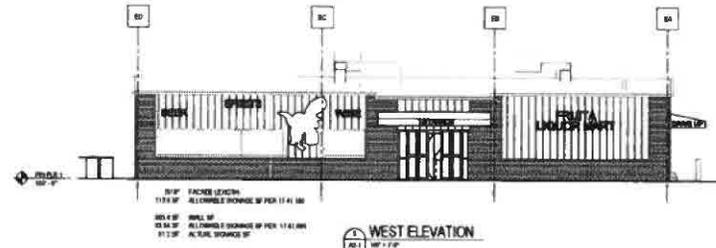
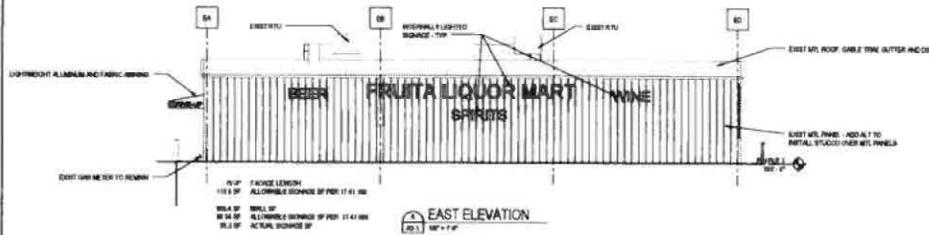
PERSPECTIVE VIEW - EAST



PERSPECTIVE VIEW - NORTH



PERSPECTIVE VIEW - WEST



**BLYTHE GROUP** INC.  
 Architecture  
 Interior Design  
 Project Management  
 414 East Avenue, Suite 1100  
 Fort Collins, CO 80521  
 970.225.1288  
 www.blythegroup.com

FRUITA LIQUOR MART

430 HIGHWAY 6 & 16  
 FRUITA, CO 81521

EXTERIOR ELEVATIONS

SCHEMATIC DESIGN

REV. DESC. DATE

DATE 10/01/15

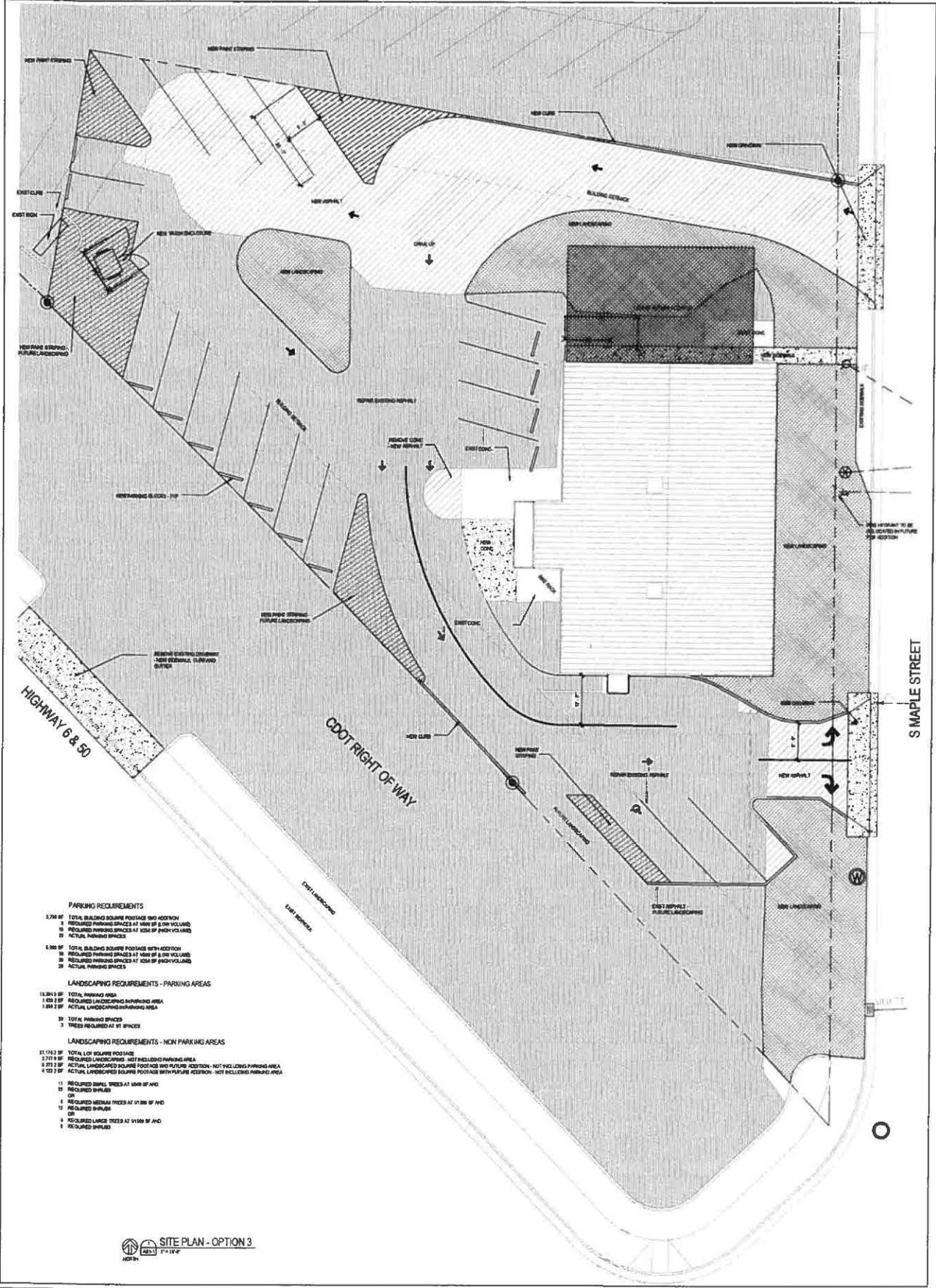
PROJECT # 1915

SHEET #

A2-1







**SITE PLAN - OPTION 3**

<p>AS1-1</p>	<p>DATE: 10/27/13</p>	<p>NO. DATE</p>	<p>DATE</p>	<p>ARCHITECTURAL SITE PLAN</p>	<p>AS1-1</p>	<p>PROJECT NO. 1001</p>	<p>CLIENT: LORIAN MART</p>	<p>BLYTEH GROUP CO.</p> <p>Architecture Interior Design Project Management</p> <p>418 South Avenue Grand Junction, CO 81501</p> <p>oBx: 970.242.1008 www.blythegroup.com</p>
	<p>PROJECT # 1001</p>							



COMMENT ON  
ORIGINAL PROPOSAL  
NO ADDITIONAL COMMENTS  
RECEIVED

**Fruita Community Development Department**

# REVIEW SHEET

**Date: October 8, 2015**

**To: REVIEW AGENCIES**

Application #: 2015-10  
Application Name: Fruita Liquor Mart  
Application Type: Site Design Review  
Applicant: Burke Martin  
Location: 439 Highway 6 & 50  
Zone: Downtown Mixed Used

GRAND VALLEY  
DRAINAGE DISTRICT  
REVIEW COMMENT

Description: This is a request for a Site Design Review approval of a proposed relocation and expansion for Fruita Liquor Mart in a Downtown Mixed-Used (DMU) zone. It will expand the existing building at 439 Highway 6 & 50 from 3700 square feet to 8300 square feet and will increase from one story to two stories on .5 acres.

---

The attached plan has been submitted to your office for review and comment. To ensure any concerns you have are taken into consideration please comment by **October 29, 2015.**

**RETURN TO THE CITY OF FRUITA COMMUNITY DEVELOPMENT  
DEPARTMENT**

Or e-mail to [hhemphill@fruita.org](mailto:hhemphill@fruita.org)

G.U.D.D. has no problems  
with this plan

10-15-15 *Jan Ryan*

**Dahna Raugh**

---

**From:** Hendricks, Scott [scott.hendricks@xcelenergy.com]  
**Sent:** Tuesday, October 13, 2015 10:43 AM  
**To:** Henry Hemphill  
**Subject:** Fruita Liquor Mart

Fruita Liquor Mart  
2015-10  
439 Highway 6 & 50  
Review

I have reviewed this project and have no objections at this time

Completion of this City/County review approval process does not constitute an application with Xcel Energy for utility installation. Applicant will need to contact Xcel Energy's Builder's Call Line/Engineering Department to request a formal design for the project. A full set of plans, contractor, and legal owner information is required prior to starting any part of the construction. Failure to provide required information prior to construction start will result in delays providing utility services to your project. Acceptable meter and/or equipment locations will be determined by Xcel Energy as a part of the design process. Additional easements may be required depending on final utility design and layout. Engineering and Construction lead times will vary depending on workloads and material availability. Relocation and/or removal of existing facilities will be made at the applicant's expense and are also subject to lead times referred to above. Any existing and or future XCEL ENERGY facilities must be provided easement.

**Scott Hendricks**  
**Xcel Energy | Responsible By Nature**  
**Planner / Design Department**  
2538 Blichman Avenue, Grand Junction, CO 81505  
**P:** 970.244.2727 **F:** 970.244.2606  
**E:** [scott.hendricks@xcelenergy.com](mailto:scott.hendricks@xcelenergy.com)

XCEL ENERGY  
REVIEW COMMENT

ORIGINAL SUBMITTAL  
NO ADDITIONAL COMMENTS  
RECEIVED.

**Dahna Raugh**

---

**From:** Roussin - CDOT, Daniel [daniel.roussin@state.co.us]  
**Sent:** Monday, October 26, 2015 6:30 PM  
**To:** Henry Hemphill  
**Cc:** Ken Haley; Kent Harbert; Zane Znamenacek; Sam Atkins  
**Subject:** 439 Highway 6 & 50

Thank you for the opportunity to review the 439 Highway 6 & 50 property. This property does fall into the 2010 US 6 Access Control Plan. This property appears to change in use from a 3700 sq ft sit down restaurant to 8600 sq ft drive through retail liquor store. The current ACP shows that the access shall be closed and all access would be off Maple Street at redevelopment of the site.

Based upon the re-development of the site, it appears that the access shall be closed from SH 6 and all access to the property shall be of the local street system. If the applicant wants to review the change in use, please have them provide a traffic study that demonstrates that this isn't a change in use.

If you have any questions, please let me know.

thanks

Dan Roussin  
Permit Unit Manager  
Traffic and Safety

CDOT REVIEW COMMENT  
(ORIGINAL SUBMITTAL)



P 970.683.6284 | F 970.683.6290  
222 South 6th Street, Room 100, Grand Junction, CO 81501  
[daniel.roussin@state.co.us](mailto:daniel.roussin@state.co.us) | [www.codot.gov/](http://www.codot.gov/) | [www.cotrip.org](http://www.cotrip.org)



**Dahna Raugh**

---

**From:** Roussin - CDOT, Daniel [daniel.roussin@state.co.us]  
**Sent:** Tuesday, April 12, 2016 9:10 AM  
**To:** Henry Hemphill  
**Cc:** Dahna Raugh  
**Subject:** Re: Projects for your review

Henry - Thank you for the opportunity to review the Fruita Liquor Mart application on US 6. The US 6 Access Control Plan shows the access being closed. The site plan needs to show the access being closed on the highway and on the site. There needs to be a curb to restrict the access to the highway. The access closure will need to get an access permit. It appears an access permit will be required at Maple because of the change in use of 20%. CDOT will need to get a traffic study to review the traffic impacts of the proposed development. CDOT will review this at the access permit process.

If you have any questions, please let me know.

thanks

Dan

CDOT REVIEW COMMENT  
3RD VERSION

Dan Roussin  
Permit Unit Manager  
Traffic and Safety



P 970.683.6284 | F 970.683.6290  
222 South 6th Street, Room 100, Grand Junction, CO 81501  
[daniel.roussin@state.co.us](mailto:daniel.roussin@state.co.us) | [www.codot.gov/](http://www.codot.gov/) | [www.cotrip.org](http://www.cotrip.org)



On Tue, Apr 5, 2016 at 12:31 PM, Henry Hemphill <[hhemphill@fruita.org](mailto:hhemphill@fruita.org)> wrote:

A re-submittal of a Site Design Review for Fruita Liquor Mart.

<http://www.fruita.org/cd/page/2015-10-fruita-liquor-mart>

## Dahna Raugh

---

**From:** Mark Angelo  
**Sent:** Monday, November 02, 2015 10:00 AM  
**To:** Henry Hemphill  
**Cc:** Dahna Raugh  
**Subject:** 2015-10: Fruita Liquor Mart review

There is a traffic flow issue.

1. If exit/entrance off Hwy 6&50 is closed (rumor CDOT is eliminating this) the new entrance/exit will be closed in the future if Hwy 6&50 is widened in the future leaving only the entrance/exit on S. Maple St. or S. Elm St. Recommend entrance/exit off Hwy 6&50 remain. If traffic count warrants a right in right out only, signs need to be posted directing traffic accordingly.
2. Drive through lane is in conflict with eastbound traffic through current parking lot; it isn't wide enough for traffic to flow east and west. Plus, parking for current businesses is already striped (parking spots) for traffic to travel east and park.
3. Delivery lane may also create an internal traffic flow conflict when large trucks are backed into the delivery lane.

Mark Angelo  
City of Fruita  
Code Enforcement Officer  
325 E. Aspen Avenue  
Fruita, CO. 81521  
70-858-0763  
[mangelo@fruita.org](mailto:mangelo@fruita.org)

CODE ENFORCEMENT  
REVIEW COMMENT  
on the original design proposal

## Dahna Raugh

---

**From:** Judy Macy  
**Sent:** Tuesday, December 01, 2015 10:33 AM  
**To:** Mark Angelo; Dahna Raugh; Sam Atkins; Henry Hemphill; Ken Haley  
**Cc:** Gary Younger  
**Subject:** RE: 1513|FLM Fruita Liquor revised site plan

Can't argue with the Chief's recommendations! JM

Judy Macy  
Chief of Police | City of Fruita  
157 S. Mesa St.  
Fruita, Co. 81521  
970.858.3008

FRUITA POLICE  
CODE ENFORCEMENT  
REVIEW COMMENTS  
ON THE 2<sup>ND</sup> VERSION.

**From:** Mark Angelo  
**Sent:** Monday, November 30, 2015 9:03 AM  
**To:** Dahna Raugh; Sam Atkins; Henry Hemphill; Ken Haley  
**Cc:** Judy Macy; Gary Younger  
**Subject:** RE: 1513|FLM Fruita Liquor revised site plan

Dahna,

Per our discussion the following is recommended:

1. No left turns out of new exit onto S. Maple St. Too close to intersection of Hwy 6&50 and S. Maple St. This exit can and/or will be safer than the one onto Hwy 6&50 if restricted.
2. Since there is no easement at this time, I recommend a small raised painted asphalt rolled divider to keep traffic in and/or out of the drive-up lane; similar to a speed bump but not even that high or that wide but can be driven over. It doesn't need to be a raised concrete curb because hopefully and eventually an easement will be obtained in the future. This is to remind drive-up drivers to stay in their lane and for the drivers exiting out of the parking spots facing northeast not to drive over into the drive-up lane. This will also keep people from parking next to the Fruita Liquor Mart as they do now when going to Judy's Restaurant in the morning.
3. The drive-up lane needs to be clearly marked to identify it as a drive-up lane and what direction customer's going to Fruita Liquor Mart can travel to get to their business.

Hopefully this makes sense.

Mark Angelo  
City of Fruita  
Code Enforcement Officer  
325 E. Aspen Avenue  
Fruita, CO. 81521  
970-858-0763  
[mangelo@fruita.org](mailto:mangelo@fruita.org)

**From:** Dahna Raugh  
**Sent:** Wednesday, November 25, 2015 5:03 PM  
**To:** Sam Atkins; Henry Hemphill; Ken Haley; Mark Angelo  
**Subject:** FW: 1513|FLM Fruita Liquor revised site plan

REVISED already!!

## Dahna Raugh

---

**From:** Sam Atkins  
**Sent:** Tuesday, December 01, 2015 1:11 PM  
**To:** Judy Macy; Mark Angelo; Dahna Raugh; Henry Hemphill; Ken Haley  
**Cc:** Gary Younger  
**Subject:** RE: 1513|FLM Fruita Liquor revised site plan  
**Attachments:** DOC055.pdf

1. I believe that if we are not changing the parking direction on the parcel to the north that we need a curb at minimum dividing the opposing traffic if not a 2'-4' island. I know that is not desirable so I think I can live with the curb.
2. The exit to the north will need a directional island to prevent left turns into the site. I don't believe signage will stop people from attempting to left turn in from Maple.
3. I would think we should get the sidewalk along Maple for the frontage of this site up to our standard at this point rather than something that is much smaller
4. Attached is a markup sketch of these comments.
5. If there is a change in cross-access agreement down the road, the curbing could be changed, but I think there should still be an east-west curb separating the parking and the drive thru.

Thanks,

Samuel L. Atkins, PE  
City of Fruita | City Engineer  
325 E Aspen Avenue  
Fruita, CO 81521  
970.858.8377 office  
satkins@fruita.org

CITY ENGINEER  
FOR FRUITA  
ON THE ZMAP VERSION

**CITY OF FRUITA**  
**CITY ENGINEER & PUBLIC WORKS REVIEW SHEET**

PROJECT: Fruita Liquor Mart

Petitioner: Martin Burke

Architect/Client Rep: Blythe Group & Co. (Burke Martin)  
Engineer (Civil): Rolland Consulting Engineers, LLC (Kent Shaffer)  
Engineer (MEP): Bighorn Consulting Engineers, Inc.

3RD VERSION

Reviewer: Sam Atkins

Date: April 19, 2016

REVIEW TYPE:      \_\_\_ Minor Subdivision      \_\_\_ Major Subdivision  
(Check One)      \_\_\_ Lot line Adjustment      \_\_\_ Final Plat  
                         X Site Design Review      \_\_\_ Conditional Use Permit  
                         \_\_\_ Other: PUD Guide Amendment

REVIEW COMMENTS

1. **General:** This application is for the remodel of existing facilities at 439 Hwy 6 & 50, formerly a restaurant. The original footprint is approximately 3,700 sf on a 0.53 acre parcel.
2. **Site Plan/Utility Composite:**
  - a. The Architectural Site Plan and the Civil Site Plan do not match with the drive isle in the northernmost diagonal parking area being shown as 12-ft wide in one plan and 16-ft wide in the other plan. Additionally the geometry at both the entrances are different between plans.
  - b. The access to Highway 6 should be removed and the curb cut should be replaced with curb gutter and sidewalk. Additionally the landscaping and retaining wall shall be installed to minimize the appearance of the opening in the landscaping as a driveway still.
  - c. The sidewalk along the frontage of the property at Maple should be our current standard (7' curb, gutter and sidewalk or a 5' walk adjacent to the existing curb and gutter). The narrow existing section shall be removed and replaced with the full width.
  - d. There appears to be a stamped concrete crossing of the asphalt on the south side of the building. What are the details and section depth of this crossing?
  - e. Show existing sewer service and sewer mains in area of drawing.
  - f. Show existing storm drainage, water, & irrigation mains in area of drawing.
  - g. Will there be any signage that indicates one-way and or do not enter at the south access to Maple? That should be included somewhere.
  - h. The architectural site plan indicates arrows on the exit implying there is a left and right lane.

**CITY OF FRUITA**  
**CITY ENGINEER & PUBLIC WORKS REVIEW SHEET**

**3. Grading Plan:**

- a. There are no contours beyond the site to indicate where the runoff continues. It appears the runoff to the north runs through the existing parking lot. But what about the area due south of the building? It shows a low point but does not call out what is there or where water drains from there.

**4. Plumbing Plan:**

Checklist requires a plumbing plan for the building with proposed fixtures and their flow (EQU→GPM) calculations to verify the exterior plumbing is adequate for the proposed expansion. No sewer service is shown on the plan (Utility Composite). Plan needs to show where existing sewer service is located, the size and its location where connecting to the main. Commercial building sewer services are to be a minimum of 6-inches in diameter and are to be connected to the main at a manhole. It is believed that the existing sewer service runs south out of the building to the manhole in CDOT right of way north of the retaining wall along the north sidewalk. Please verify this is the case and the size of the service.

**5. Impact Fees:**

17.19.090 Public Parks, Open Space, and Trails Dedication/Fee: Not applicable to non-residential development.

17.19.100 School Land Dedication: Not applicable to non-residential development.

17.19.130 Transportation Impact Fee: The transportation impact fee for commercial uses shall be a base rate of \$1,589 multiplied by the factors for each use per unit (usually per 1000 sf floor). The Transportation Impact fee for a change in use shall be the results of developed impacts less the impacts for the pre-existing uses.

17.19.140 Chip and Seal Impact Fee: Not applicable when new public streets are not being constructed.

17.19.150 Drainage Impact Fee: Impact fee calculated as indicated in previous item (Drainage Letter).

Use Tax: A use tax of 3% of the valuation of the building structure (addition) will be charged based on the IBC Code as shown on the Fruita Use Tax Table

The above fee structure is based on the fees in effect through 2016. Fee factors and rates may change in subsequent years.

**RECOMMENDATION:** The Public Works Department and Engineering Department recommend approval of this Site Plan upon satisfactory response to the comments above.

**LOWER VALLEY FIRE PROTECTION DISTRICT**  
**168 N. Mesa**  
**Fruita, CO. 81521**  
**Phone: (970) 858-3133 Fax: (970) 858-7189**

October 13, 2015

City of Fruita  
Community Development Department  
325 East Aspen  
Fruita, CO 81521

ORIGINAL SUBMITTAL

2015-10      Fruita Liquor Mart  
Application:    Site Design Review  
Applicant:     Burke Martin  
Location:      439 Highway 6 & 50  
Zone:          Downtown Mixed Use

Review Comments are for site design plan only:

Relocate fire hydrant on east side of building to the northeast corner of the intersection of South Maple Street and East Cleveland Avenue.

Fire hydrant pumper connections shall be equipped with a five inch non threaded sexless connection (commonly referred to as Storz) and metal cap and can be opened by a standard hex nut hydrant wrench. The two and one half inch butts shall be furnished with National Standard Thread. The center of the pumper connection shall be not less than 22 inches above finished grade. Pumper connections shall face the street unless directed otherwise by the Fire Chief.

The dumpster and box storage must comply with the provisions of Section 304 "Combustible Waste Material" of the 2012 IFC.

Richard Pippenger  
Fire Marshal

**Dahna Raugh**

---

**From:** Dick Pippenger [dpippenger@lvfdfire.org]  
**Sent:** Thursday, December 03, 2015 11:03 AM  
**To:** Dahna Raugh  
**Cc:** Henry Hemphill  
**Subject:** RE: 1513|FLM Fruita Liquor Mart revised site plan

Dahna,

The comments from October 13, 2015 review are still applicable.

Dick

Richard Pippenger  
Fire Marshal  
Lower Valley Fire District  
P. O. Box 520  
Fruita, CO 81521  
970-858-3133

LOWER VALLEY FIRE  
PROTECTION DISTRICT  
REVIEW COMMENTS  
(2ND VERSION)

**LOWER VALLEY FIRE PROTECTION DISTRICT**

**168 N. Mesa**

**Fruita, CO. 81521**

**Phone: (970) 858-3133 Fax: (970) 858-7189**

April 6, 2016

City of Fruita  
Community Development Department  
325 East Aspen  
Fruita, CO 81521

3RD VERSION

2015-10      Fruita Liquor Mart  
Application:    Conditional Use Permit  
Applicant:     Burke Martin  
Location:       439 Highway 6 & 50  
Zone:            Downtown Mixed Use

Review Comments:

No objection to approval of the CUP subject to the following requirement:

Relocate the existing fire hydrant on east side of building to the northeast corner of the intersection of South Maple Street and East Cleveland Avenue. This is required due to the installation of the curb between the adjacent properties and the proximity of to the building of the existing hydrant.

Richard Pippenger  
Fire Marshal

## Henry Hemphill

**From:** Darrell Bay [darrell.bay@mesacounty.us]  
**To:** Henry Hemphill  
**Subject:** Re: FW: Projects for your review

*→ Fruita Liquor Mart  
Sacred Heart Zone Change*

Henry,  
MCBD has no objections to the 2 projects.  
A building permit will be required for a change in use and any remodel work that is going to be done.  
This is NOT a plan review or permit approval.  
Thanks

Darrell Bay  
Building Official  
970-244-1651

On Thu, Apr 7, 2016 at 1:00 PM, Henry Hemphill <[hhemphill@fruita.org](mailto:hhemphill@fruita.org)> wrote:

Hopefully the attachments show up in the message I am forwarding you below. You can check out our website(  
<http://www.fruita.org/cd/page/current-development-projects>) and see the current projects being reviewed by  
staff.

  
Henry Hemphill  
City of Fruita  
Planning Tech.  
970-858-0786  
[hhemphill@fruita.org](mailto:hhemphill@fruita.org)  
[www.fruita.org/cd](http://www.fruita.org/cd)

**From:** Henry Hemphill  
**Sent:** Tuesday, April 05, 2016 12:31 PM  
**To:** [scott.hendricks@xcelenergy.com](mailto:scott.hendricks@xcelenergy.com); [jdaugherty@utewater.org](mailto:jdaugherty@utewater.org); [daniel.roussin@state.co.us](mailto:daniel.roussin@state.co.us); [arthur.valdez@charter.com](mailto:arthur.valdez@charter.com); ick Pippenger; Mark Angelo; ['ed@sandslawoffice.com](mailto:'ed@sandslawoffice.com)'; ['darrell.bay@mesacounty.us](mailto:'darrell.bay@mesacounty.us)'  
**Cc:** Dahna Raugh  
**Subject:** Projects for your review

  
re-submittal of a Site Design Review for Fruita Liquor Mart.

**Fruita Planning Commission**

**Tuesday, May 10, 2016**

**A. CALL TO ORDER**

Chairman Mike Joseph - Welcome to the Fruita Planning Commission meeting for Tuesday May 10, 2016. Please rise for the Pledge of Allegiance.

Planning Commission members in attendance were; Doug Van Etten, Janet Brazfield, Mike Joseph, Keith Schaefer, Dave Karisny. Mel Mulder's term was over and Louis Brackett was elected to City Council

**B. PLEDGE OF ALLEGIANCE**

Mike Joseph led the Pledge of Allegiance

**C. AMENDMENTS TO THE AGENDA**

None.

**D. APPROVAL OF THE AGENDA**

Janet Brazfield- I make a motion that we approve the agenda.

Dave Karisny- I second.

Mike Joseph- We have a motion and a second for approval of the agenda as written.

5 yes votes; motion passes

**E. WITHDRAWN ITEMS**

None.

**F. CONTINUED ITEMS**

Application #: 2016-07  
 Application Name: Sacred Heart Church  
 Applicant: Lance Stewart  
 Application Type: Zone Change  
 Zone: Community Residential  
 Location: 503 E. Aspen Avenue & 433 E. Aspen Avenue  
 Description: This is a request for a zone change from a Community Residential zone to a PUD zone. The Fruita Land Use Code requires a public hearing for all zone change requests.

**\*\* Due to a Public Notice mistake this item must be continued to the next Planning Commission meeting on June 14.**

Dahna Raugh- Staff would like to apologize to the applicant and any members of the public that may be here tonight. We had a problem with the public notice; we missed some of the legally required public notice. So legally we cannot take any action on that particular item. The public was notified that tonight was the time and the place for the meeting to discuss it. The problem with the public notice wasn't discovered until late last week. And that is the reason for the continuance.

**G. CONSENT ITEMS**

Mike Joseph- Approval of the Minutes from the March 8, 2016 meeting.

Janet Brazfield- I have a minor change. Page 14, it should be "right-of-way" instead of "right-or-way".

Doug Van Etten- I make a motion that we approve the minutes with the minor change.

Keith Schaefer- I second.

Mike Joseph- We have a motion and a second.

5 yes votes; motion passes

**H. HEARING ITEMS**

Application #:	2015/10
Application Name:	Fruita Liquor Mart
Application Type:	Conditional Use Permit
Applicant:	Burke Martin
Location:	439 Highway 6 & 50
Zone:	Downtown Mixed Used
Description:	This is a request for a Conditional Use Permit approval of a Drive-Thru at the new location of the Fruita Liquor Mart in a Downtown Mixed-Used (DMU) zone. A Conditional Use Permit is required because of a Drive-Thru at the new location.

Mike Joseph- Is the petitioner here for this application?

Burke Martin- Yes.

Mike Joseph- Would you like to come up to the front and give your presentation please?

Burke Martin- I am Burke Martin with the Blyth Group, and I am representing the owners of Fruita Liquor Mart. They are applying for a conditional use permit. What they are proposing to do is move from their existing build, to a different building in the same area. We are requesting a conditional use permit for them to have a drive-thru.

Mike Joseph- We will now call on staff to give their presentation of the application and then come back to you.

Dahna Raugh- This is a request for a conditional use permit (CUP) for a Liquor Store with drive-thru window service. If the drive-thru window service wasn't there, it would be a staff administrative approval. But because there is a drive-thru, a drive-thru requires a CUP be approved in a Downtown Mixed-Use zone (DMU). The property is zoned DMU so that is why you are hearing this application tonight. The biggest issue that Staff and the applicants ran into when working on this project was the direct access onto Highway 6 & 50. That is what caused the project to be continued several times. Colorado Department of Transportation (CDOT) and the City of Fruita have an agreement; we both adopted the Highway 6 access control plan that speaks to which access points are to remain open and which ones are to be closed. And the access to the subject property was on the list to be closed. Staff and the applicants have worked through these issues. Staff recommends approval of the application with the condition that all review comments be adequately resolved. There were no significant concerns, certainly no concerns that would require a major redesign of the proposed drive-thru service. All of the approval criteria that must be considered for conditional use permits have been met or can be met. And that is why staff is recommending approval.

Mike Joseph- With that being said, we will open it to the public for comments. Is there anyone in the public that would like to speak about this hearing item?

Joe D.- I just have a couple of questions concerning accessibility and traffic control. With how close this store will be to the existing strip mall with Judy's, it seems that it might be a little tight. I am just concerned for the emergency vehicles if there were an emergency.

Dahna Raugh- The subject property is a restaurant that sits on a separate lot. The best access would be combining the accesses from the Strip Mall and the Subject property. I understand that the applicant spoke with the owner of the strip mall and I also spoke with the owner, asking if there were some way to agree to combine the access points. The owner was not interested. So staff had to find another way to provide access to the property from Maple Street. The City Engineer and CDOT Engineers agreed that access to Maple Street was superior to access on Highway 6 & 50 due to traffic safety concerns. I understand the concerns about the access points being close, emergency access would probably be the biggest concern.

Joe D.- Deliveries too.

Dahna Raugh- Deliveries have also been reviewed. The application has been reviewed by the Fruita Police Department, Lower Valley Fire Protection District, all the utility providers, the City Engineer, Public Works Director. Nobody expressed any significant concern when it comes to access. As pointed out in the staff report, there needs to be some curbing and landscaping to try and channel traffic. Staff is confident that everything has been done or can be done to allow for adequate emergency and delivery access.

Mike Joseph- Are you a nearby resident or business owner?

Joe D.- Business.

Mike Joseph- a business in the nearby strip mall?

Joe D.- Next door. (across the street to the west- Elm Street)

Janet Brazfield- What business do you own?

Joe D.- I own a construction business and my wife owns the Liquor Store (In The Middle Liquor)

Mike Joseph- Is there any more input from the public? If not then we would allow the applicant to have a rebuttal.

Burke Martin- Concerning the input about the delivery access. We have gone through quite a bit of work to try and make sure we can get full size semi trucks in and out of the property. The site plan is set up to allow for full size semi trucks to get in and out of the property without being parked on the adjacent streets.

Mike Joseph- Thank you. At this time I would like to bring it to the Planning Commission for discussion.

Keith Schaefer is concerned about the access issues that may come up from Maple Street to the subject property. He suggested an access easement for the future that would combine the access and eliminate the need for having two accesses.

Dave Karisny is relying on Staffs comments to make sure the review comments are addressed to the applicants because of multiple review comments being submitted. Dave Karisny also commented on the location and relocation of the existing fire hydrant. He also suggested that the sidewalk comments in the staff report be addressed. The landscaping requirements must be addressed as well but a sight-distance issue could arise when close to the drive-thru and accesses. Dave Karisny addressed the comments made by Mark Angelo in the staff report and in the review comments about raised curbing along the property lines to separate the strip mall and the subject property.

Doug Van Etten suggested that the applicant address the comments from Mark Angelo as well. He also was concerned about the flow of traffic and the way cars will be exiting the property onto Maple Street.

Burke Martin said he will address those comments as per the Staff Report.

Janet Brazfield was trying to make it clear about what the applicant owns and what CDOT owns. She compared the access points for the proposed project to the access points that the Pizza Hut has on Pine Street, and mentioned that the subject property will be better than the access the Pizza Hut has. Janet also mentioned that she would like to see CDOT close the access from Highway 6 & 50 and not rely on the applicants to do so.

Mike Joseph strongly suggested that curbing all along the two property lines be put in to deter traffic flow from going the wrong way and to show that there are two separate lots on that one parking lot. Mike also wanted to know how the existing CDOT right-of-way, that is recommended to be closed, will be shown as closed off and if it will continue to be a 'used car parking lot'. Mike suggested that the applicant address all review comments in the Staff Report and work with the City Engineer. He also made a note that the fellow commissioners had great comments. Mike was wondering if the City can require the applicants to extend the landscaping along the sidewalk adjacent to Highway 6 & 50.

Dahna Raugh- Yes, the City can require the applicant to extend the landscaping along with putting up vertical curbing along Highway 6 & 50.

Mike Joseph- Those were my comments, does anyone have anything else to add?

Dave Karisny- There needs to be a great appreciation to the line of sight from the subject property to the adjacent street (Maple Street).

Mike Joseph recommends that the traffic issues discussed tonight need to be addressed by the City Engineer and by Staff with the applicant to resolve the right turn and left turn options while exiting the subject property onto Maple Street.

Janet Brazfield and Dave Karisny both agreed with Mike Joseph's statements.

Mike Joseph- Dahna, the Staff Report recommended approval of both the Conditional Use Permit and the Site Design Review. Do we need to separate motions

Dahna Raugh- Yes, do both.

Mike Joseph- Is there any more input?

There was some discussion on which review comments to use (first version, second version or third version) and it was pointed out by Dahna that all review comments have some validity.

Keith Schaefer- I make a motion that the Planning Commission approve the Conditional Use Permit for the retail liquor store drive-thru service window with the condition that all review comments and issues addressed in the Staff Report must be adequately resolved before a planning clearance for the building permit be issued.

Dave Karisny- Second.

Mike Joseph- We have a motion and a second to approve the Conditional Use Permit.

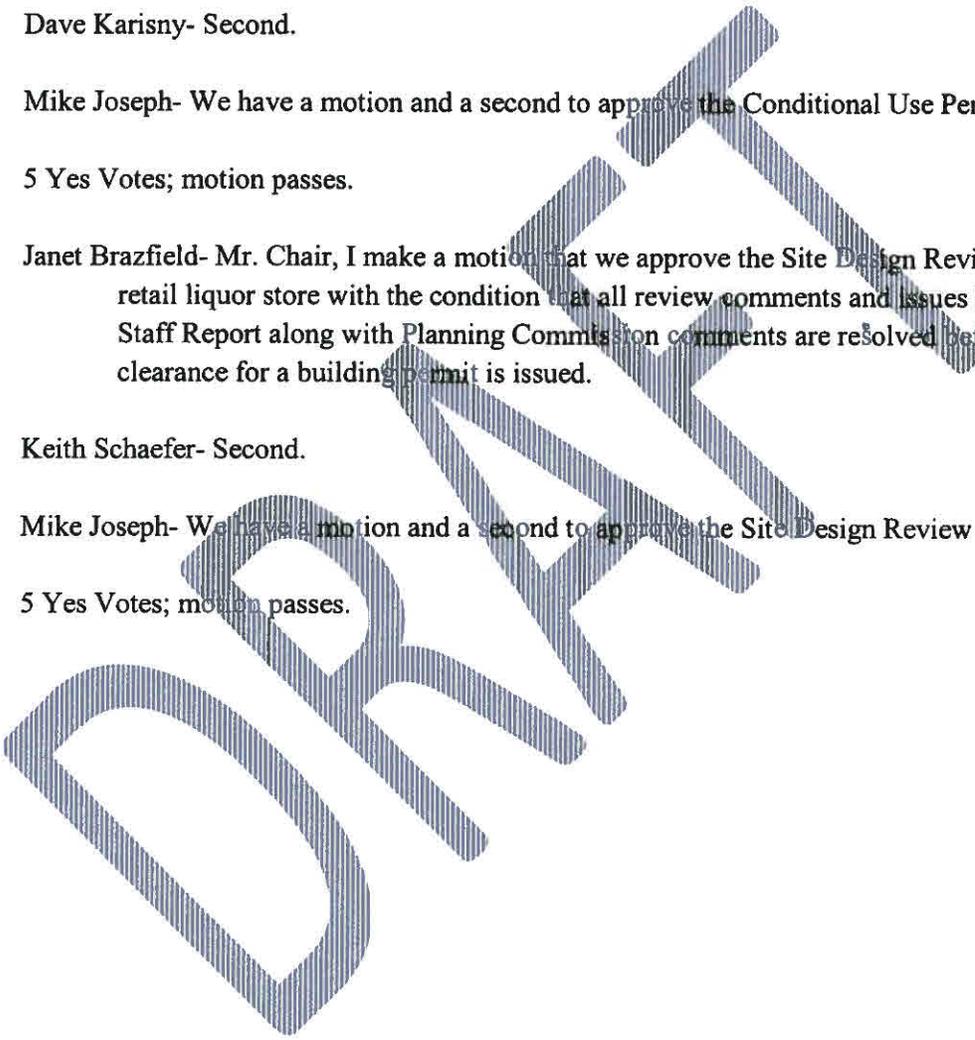
5 Yes Votes; motion passes.

Janet Brazfield- Mr. Chair, I make a motion that we approve the Site Design Review for the new retail liquor store with the condition that all review comments and issues identified in the Staff Report along with Planning Commission comments are resolved before a planning clearance for a building permit is issued.

Keith Schaefer- Second.

Mike Joseph- We have a motion and a second to approve the Site Design Review application.

5 Yes Votes; motion passes.





**FRUITA**  
COLORADO

---

---

<b>AGENDA ITEM COVER SHEET</b>
--------------------------------

---

---

**TO:** Fruita City Council and Mayor

**FROM:** Community Development Department

**DATE:** June 7, 2016

**RE:** Ordinance 2016-01 – Second Reading - An Ordinance Amending Chapter 41, Sign Code, of the Fruita Land Use Code (Application #2015-12)

**BACKGROUND**

The first reading of this proposed Ordinance to amend the Sign Code was held on January 5, 2016. The main reason for amending the sign regulations and the issue that has taken the most discussion is in regard to off-premise signs, mainly the sandwich board type signs displayed on downtown sidewalks. Before this first reading, staff had spoken to many members of the community regarding signs to tell them what was being proposed, and to gather public comments. The second reading was scheduled for February 2, 2016, but was continued several times to allow time for more public comments. Because Council's on-going discussions about signs significantly changed the amendments as first proposed, it was necessary to again speak to interested members of the community about the changes.

On the evening of May 18, 2016, staff held an open-house type meeting at the Cavalcade. Flyers advertising this meeting along with the proposed language for off-premise signs were posted and distributed to businesses in the downtown area. Approximately ten people came to this meeting to discuss sign regulations. Everyone at this meeting seemed to understand the difficulties in allowing off-premise signs at nearby street corners and allowing more than one sign per business; however, everyone also requested that the city investigate some sort of sign program to help direct people to their businesses from I-70 and into downtown. Various options were discussed and staff continues to investigate this issue.

Attached is the language for the amendments to the sign regulations. In addition to off-premise sign issues, an amendment needed to be made regarding the content of signs to avoid violations of free speech rights due to a recent United States Supreme Court decision. For the most part, the issue can be resolved by adding this sentence: Any sign authorized by this Chapter may contain non-commercial copy in lieu of any other copy.

Other changes to the regulations are proposed to remove conflicts and otherwise clarify the regulations.

Changes to the Sign Code were discussed by the Fruita Planning Commission at their December 8, 2015, public meeting. The Planning Commission voted unanimously (6-0) to recommend approval of the Sign Code amendments as presented at that time. The Planning Commission recognized that there could be more applications for signs in the public right-of-way than there is space available to display these signs at certain locations and discussed limits to number of signs and time limits on the signs displayed in the public right-of-way. There were no public comments voiced at this public meeting.

### **FISCAL IMPACT**

Although these amendments to the Sign Code are not expected to have an immediate fiscal impact, these amendments are intended to clarify the Code, resolve conflicts, and other potential problems which are expected to have an overall positive fiscal impact on the city in the long term.

### **APPLICABILITY TO CITY GOALS AND OBJECTIVES**

One of the current City Council's goals is a commitment to review the Land Use Code to help ensure that the regulations reflect the best promotion of the public health, safety, and welfare and improve the fiscal sustainability of the community. The proposed amendments to the Sign Code are intended to help support local businesses while ensuring the best promotion of public health, safety and welfare.

### **OPTIONS AVAILABLE TO COUNCIL**

1. Approval of Ordinance 2016-01 – Second Reading - An Ordinance Amending Chapter 41, Sign Code, Of the Fruita Land Use Code, with or without changes.
2. Denial of the proposed Ordinance.
3. Continue the Ordinance to a later date.

### **RECOMMENDATION**

Staff recommends that the City Council move to approve Ordinance 2016-01 – Second Reading - An Ordinance Amending Chapter 41, Sign Code, of the Fruita Land Use Code.

## **Proposed changes to the Fruita Sign Code**

(additions are shown in red letters and deletions are shown in red-strikeout)  
TO BE DETERMINED AT THE CITY COUNCIL MEETING, June 7, 2016!

### **Section 17.41.040 of the Fruita Sign Code**

- X. ~~Temporary Signs, 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. ~~For freestanding signs, the structure to which the temporary sign is attached must also be brought indoors at the end of each business day.~~ There are no size or height limits associated with these types of temporary signs.
- Y. Temporary, Off-Premise. In lieu of on-premise temporary signs, one temporary off-premise freestanding sign is permitted in the public right-of-way directly abutting the subject property per each business or institutional use as long as the sign meets 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 gravel ground cover), utility structures, and similar items.
  5. Signs affixed to a fence or other structure 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 a public sidewalk 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.

**These proposed Sign Code amendments will be discussed by the  
City Council at a public meeting on June 7, 2016.**

**If you have any questions or concerns, please contact Dahna Raugh at the  
Fruita Civic Center at 325 E. Aspen Avenue or email [draugh@fruita.org](mailto:draugh@fruita.org) or call (970) 858-0786.**

Flyer Back  
Page



**Business Owners and Fruita Residents:**  
**You're invited to attend a meeting about SIGNS!**

Let's work together to solve problems before they occur.  
Join City Council and City Staff for a discussion about SIGNS.

**Wednesday, May 18, 2016 7:00 pm**  
at the Cavalcade 201 E. Aspen Avenue

*Topics to be discussed: Proposed Sign Code changes; Sandwich Board signs, banners, and other temporary signs; How to create an inviting and safe pedestrian walkway; City regulations regarding sidewalk displays, etc...*



Please bring your questions and comments to this meeting!

**The Fruita City Council will be discussing  
amendments to the Fruita Sign Code  
at their June 7, 2016, public meeting,  
7:00 p.m. at the Fruita Civic Center, 325 E. Aspen Avenue.**

*Flyer Front  
Page*

**ORDINANCE 2016-01  
AN ORDINANCE AMENDING CHAPTER 41, SIGN CODE,  
OF THE FRUITA LAND USE CODE**

**WHEREAS**, there is a need to amend Fruita's regulations regarding signs to address a recent United States Supreme Court decision regarding signs, and to address the growing number off-premise signs and signs in the public right-of-ways around the city, and

**WHEREAS**, there is a need to clarify and improve other sections of the Sign Code, and

**WHEREAS**, the Fruita Planning Commission held a public hearing on December 8, 2015, regarding proposed amendments to the Sign Code and recommended approval of the proposed amendments with no specific changes, and

**WHEREAS**, a public hearing was held before the Fruita City Council on January 5, 2016, and February 2, 2016, May 3, 2016, and June 7, 2016, regarding the proposed amendments to the Sign Code.

**NOW THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA COLORADO AS FOLLOWS:**

SEE ATTACHED LANGUAGE

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL, THIS  
7<sup>th</sup> DAY OF JUNE, 2016.**

City of Fruita

ATTEST:

\_\_\_\_\_  
Lori Buck, Mayor

\_\_\_\_\_  
City Clerk

Changes to the language are shown in red letters for additions, ~~red strikeout~~ for deletions, and comments are shown in [red brackets] and are not intended to be part of the amended language.

**Chapter 17.41**  
**SIGN CODE**

**Section:**

<b>17.41.010</b>	<b>Purposes</b>
<b>17.41.020</b>	<b>Sign Permits and Administration</b>
<b>17.41.030</b>	<b>Enforcement and Penalties</b>
<b>17.41.040</b>	<b>Exempt Signs</b>
<b>17.41.050</b>	<b>Prohibited Signs</b>
<b>17.41.060</b>	<b>Measurement of Sign Area, Height and Construction</b>
<b>17.41.070</b>	<b>Sign Illumination</b>
<b>17.41.080</b>	<b>Sign Installation and Maintenance</b>
<b>17.41.090</b>	<b>Standards for Specific Types of Signs</b>
<b>17.41.100</b>	<b>Sign Standards by Zone</b>
<b>17.41.110</b>	<b>Creative Signs</b>
<b>17.41.120</b>	<b>Bus Shelter and Bench Advertising</b>

**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.

**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). ~~Separate planning clearances for signs requiring a building permit will be required.~~ 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.
- ~~5. **Reconsideration of Denial of Sign Variance.** Whenever the City Council denies an application for a sign variance, such action may not be reconsidered by the Council 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. [This section is redundant with section 17.05.080.]~~

#### **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.

**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. ~~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. [This sign is the same as an Identification Sign, and "Address sign" is used only twice in the entire Land Use Code - once in the definitions in Chapter 3 and once in Chapter 7. Staff is preparing amendments to these chapters of the Code also to resolve this issue.]~~
- D. Architectural features. Integral decorative or architectural features of buildings so long as such features do not contain letters, trademarks, moving parts or lights.
- ED. 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.
- FE. 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.
- GF. ~~Civic club and religious off-premises signs limited to four (4) square feet and limited to five (5) per organization.~~
- H. 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.

~~I~~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.

~~J~~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.

~~K~~I. Directional. On-premises directional and instructional signs not exceeding six (6) square feet in area each.

~~L~~J. Doors. Signs affixed to door which identify the name and/or address of an establishment limited to four (4) square feet.

~~M~~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.

~~N~~. ~~Garage, Estate, Yard Sale or Farm Auction. Such signs shall be displayed no more than three times per year per dwelling unit for a period not to exceed three (3) days. [This conflicts with the requirements for Temporary Use Permits and is redundant with Temporary Signs~~

(defined below). You can have signs with a temporary use, and garage sales and similar do not require a temporary use permit or a sign permit (unless it is an unusually large or long garage sale).]

- ØL. 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.
- PN. Memorial. Memorial signs, plaques or grave markers which are non-commercial in nature.
- QO. 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.
- RP. 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 ~~sixteen (16)~~ 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.
- SQ. 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.)
- TR. Religious Symbols. Religious symbols located on a building or lot used for organized religious purposes.

US. 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.

VT. 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.

WU. Scoreboards. Scoreboards for athletic fields.

XV. 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 ~~clear, bulb~~ 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;

~~Y~~W. ~~Temporary Signs, 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. ~~For freestanding signs, the structure to which the temporary sign is attached must also be 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 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;
- ~~ZY~~. 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.
- ~~AAZ~~. 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.
- ~~BBAA~~. 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.
- ~~CCBB~~. 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.
- ~~DDCC~~. 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.
- ~~EEDD~~. Vending Machine Signs. Vending machine signs provided that the advertisement upon the vending machine sign is limited to the product vended.

**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. ~~except for time and temperature devices and courtesy signs no larger than four (4) square feet when displayed in a window;~~  
[This line is redundant with Section 17.41.070.E & G.]
- 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 ~~such as for temporary real estate directional signs~~;
- 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.

#### **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.

#### **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.

**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.

**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. [I know this is a repeat from above, but I think it is good to put this in again as a reminder to avoid free speech issues.]

- 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.

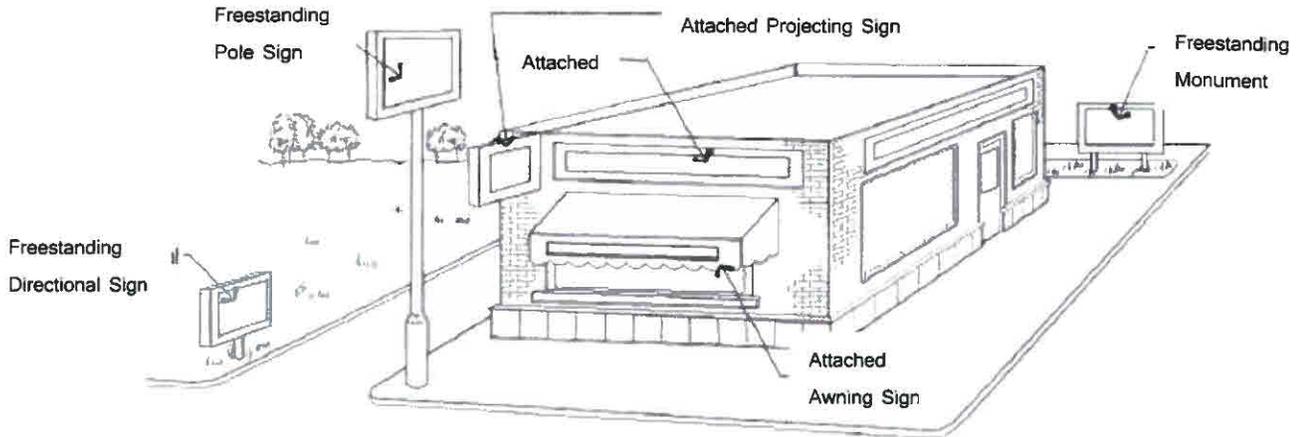
2. Awning or Canopy Signs. ~~An awning or canopy sign is an attached sign projecting from and sheltering an area next to a building and supported entirely by the exterior wall of a building and composed of a covering of rigid or non-rigid material and/or fabric on a supporting framework that may be either permanent or retractable.~~ [This definition was moved to Chapter 3 of the Code which contains all definitions.]

- 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. ~~Awnings or canopies on which signs are mounted may extend over a public right-of-way no more than eight (8) feet from the face of a supporting building. No awning or canopy, with or without signage, shall extend above the roof line of any building.~~

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 projecting sign is any sign supported by a building wall and projecting there from more than twelve (12) inches horizontally beyond the surface of the building to which the sign is attached.~~ [This definition was moved to Chapter 3 of the Code which contains all definitions.]
- 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. ~~A freestanding sign is a sign which is supported by one (1) or more columns, uprights, poles or braces extended from the ground, or which is erected on the ground but does not include a sign attached to a building.~~ [This definition was moved to Chapter 3 of the Code which contains all definitions.]
- 1. Location. ~~The sign may be located only on a site frontage adjoining a public street.~~ 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 in non-residential zones land uses must not may~~ 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.

1a. Freestanding: Limited to thirty-five (35) feet in height and three hundred (300) square feet in size.

2b. Attached: Limited to three hundred (300) square feet in size.

**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), ~~River Conservation (RC)~~ 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	<del>20</del> 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 ~~Tourist Commercial (TC)~~, General Commercial (GC), ~~Limited Industrial and Research and Development (LIRD)~~ and non-residential land use portions of the Downtown Mixed Use (DMU) and Community Mixed Use (CMU) ~~Zzone Districts~~ 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'**

Type of Sign	Number of Signs	Maximum Area (sq. ft.)***	Maximum Height of Freestanding Signs
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.

~~When electrical service is provided to freestanding signs, all such electrical service shall be underground. [This is redundant with section 17.41.070.D.]~~

\*\* One Freestanding sign per lot or parcel up to thirty-five (35) feet in height is permitted for: ~~all properties zoned TC or LIRD~~; ~~properties touching the right-of-way for Highway 6 & 50 or Highway 340 which are zoned TC, LIRD, GC, DMU or CMU, and~~; ~~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 (50) square feet is permitted for a freestanding sign regardless of the width of the street frontage and/or building facade; 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;
2. 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.

#### **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.

**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 ~~Tourist Commercial (TC)~~, the General Commercial (GC), ~~Downtown Mixed Use (DMU)~~ and ~~Limited Industrial and Research and Development (LIRD)~~ zones and are allowed only on major collector, minor arterial, and major arterial streets and roads, as designated in ~~the Grand Valley Circulation Plan and~~ the 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 ~~Tourist Commercial (TC)~~, ~~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 ~~Tourist Commercial (TC)~~, General Commercial (GC), ~~Downtown Mixed Use (DMU)~~ and ~~Limited Industrial and Research and Development (LIRD)~~ 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.



**Community Development Department  
Staff Report  
December 4, 2015**

**Application #:** 2015-12  
**Project Name:** Chapter 39, Sign Code Amendment  
**Application:** Land Use Code Amendment  
**Representative:** Dahna Raugh, City of Fruita  
**Request:** This is a request to amend Chapter 39 of the Fruita Land Use Code regarding signs.

**Project Description:**

A couple of recent developments have created the need to amend Fruita's regulations regarding signs which are contained in Chapter 39 of the Land Use Code.

A recent United States Supreme Court decision struck down an Arizona city's regulations regarding what type information people can post on signs. In many instances, sign regulations regulate free speech, and the court determined, in a nutshell, that if knowing what the sign says is needed to determine if the sign is permitted by the Code, then the Code is most likely violating free speech rights.

The language in the Code that was determined to be unconstitutional by the Supreme Court is similar to language in Fruita's Code. Fruita's Code should be amended to avoid a violation of free speech rights. A majority of local governments throughout the United States are looking at amending their sign regulations. Staff understands that both Mesa County and Grand Junction are examining their sign regulations but have not proposed any changes at this time.

Staff recommends resolving this issue by adding this language to the Code: Any sign authorized by this Chapter may contain non-commercial copy in lieu of any other copy.

Another development that has created the need to amend the Code regards off-premise advertising, specifically the portable sandwich board type signs that can be seen on downtown street corners and a few other areas of the city. Many of these signs are in the public right-of-way and are currently prohibited by Fruita's sign regulations. Because these signs can be beneficial to businesses and other groups, amendments to the Code are proposed to allow these signs to be legally displayed while at the same time protecting the public health, safety and welfare. Changes specific to this issue are shown on pages 8 & 15 of the attachment.

As with all Land Use Code amendments, staff also has proposed amendments to clarify and improve the regulations for signs.

**Review of Land Use Code Requirements:**

**Section 17.13.070.B of the Land Use Code (2009, as amended), states that amendments to the Land Use Code may be made upon a finding that the amendment is consistent with the City's goals, policies and Master Plan.**

One of the current City Council's goals is a commitment to review the Land Use Code to help ensure that the regulations reflect the best promotion of the public health, safety, and welfare. The proposed amendments to avoid free speech violations and to allow temporary off-premise signs while still protecting the public health and safety and welfare is consistent with this goal and consistent with the goals and policies of the Master Plan.

It appears that this criterion has been met.

**Review Comments:**

No review comments have been received regarding this proposed Land Use Code amendment.

**Public Comments:**

At this time, no written public comments have been received regarding this proposed Land Use Code amendment. Staff will be visiting businesses that will be impacted by the proposed revisions regarding off-premise signs to solicit public comments. Staff also has provided a copy of the revisions to the Chamber of Commerce to distribute to their members.

**Staff Recommendation:**

Staff recommends approval of the proposed Land Use Code amendments to the regulations regarding signs contained in Chapter 39 of the Fruita Land Use Code.

**Fruita Planning Commission: (December 8, 2015)**

**Fruita City Council: (January 5, 2015 & February 2, 2015)**

Fruita Planning Commission

Tuesday, December 8, 2015

**A. CALL TO ORDER**

Chairman Mike Joseph- This is the City of Fruita Planning Commission meeting for Tuesday December 8, 2015. It's now in session (7:00pm). Planning Commission members in attendance were; Doug Van Etten, Mel Mulder, Mike Joseph, Keith Schaefer, Dave Karisny and Louis Brackett. Janet Brazfield was absent.

**B. PLEDGE OF ALLEGIANCE**

Mike Joseph- If you would join me in the Pledge of Allegiance. (Mike Joseph led)

**C. AMENDMENTS TO THE AGENDA**

Mike Joseph- Do we have any amendments to the agenda tonight?

Dahna Raugh- Mr. Chair, we have a request to continue Fruita Liquor Mart to the next Planning Commission agenda. They have run into some difficulties and would like to continue the project to the next Planning Commission meeting.

Mike Joseph- Is there anyone opposed to continuing this item?

Mike Joseph- We have a motion and a second to continue the item.

Dahna Raugh- I would like to note, for the record, the only person in the audience is the applicant for Fruita Liquor Mart. So there is no one from the public to make any comments to the application.

6 Yes Votes; Motion passes.

**D. APPROVAL OF THE AGENDA**

6 yes votes; motion passes

**E. WITHDRAWN ITEMS**

None.

**F. CONTINUED ITEMS**

None.

**G. CONSENT ITEMS**

Dave Karisny- Mr. Chair I move that we approve the Consent Agenda.

Keith Schaefer- I second.

Mike Joseph – We have a motion and a second to approve the consent agenda.

6 yes votes: motion passes

**H. HEARING ITEMS**

Mike Joseph- Hearing item 2015-12 Sign Code Amendment.

Dahna Raugh- Staff is proposing an amendment to the Sign Code mainly for two reasons. The first reason is that earlier this year the Supreme Court of the United States heard a case regarding signs. This was a City in Arizona and a church was putting out directional signs to their services. This was a small church congregation that would rent different buildings from time to time and kept putting out little signs to direct people to where the next meeting was going to be. Even though the City changed the sign code again and again to accommodate them, they were treating the church’s directional signs differently than other temporary signs in the City that are similar, like political signs and ideological signs. Somehow this went all the way to the Supreme Court and where the Supreme Court came down on the issue was basically, if you need to know what the sign says in order to figure out if it is permitted that would be a violation of the Constitution, in particular Free Speech. I have been looking at how to amend the Sign Code in various ways to try and resolve the issue. I know that nationwide, all local governments with Sign Codes are having to amend their sign code. Our Sign Code is very similar to other Sign Codes nationwide. I think we can solve the issue by the statement in the Staff Report, “any sign authorized by our Land Use Code may contain noncommercial copy in lieu of commercial copy”. For example, if Hot Tomato get mad at one of the commissioners and decides to put out a sign that says Planning Commissioner (Name) shouldn’t be on the Planning Commission. They can take their Hot Tomato sign and put that sign up instead. It can’t be a new sign or a different sign, they can only use the sign that is permitted by code. They can change out The Hot Tomato and put anything they want there as long as it is not violating other aspects of the Land Use Code or Municipal Code.

So that is a very simple fix to the Sign Code without having to change a whole lot of things in there. The other reason staff is recommending an amendment to the Sign Code is for temporary

signs. Especially in the downtown area, we are starting to see a lot of temporary signs, like sandwich board signs and other signs put out by restaurants and other businesses to direct them to their business. A lot of those signs are put on the public sidewalks, all of those signs are put off-premise, meaning the signs are not placed exactly where the business is located. Another example would be when you are coming out of the City Market onto Plum Street, there is a sign for Center Town Liquors which is actually the next street over. So that sign is sitting on the Napa Auto Parts property but it is advertising the liquor store on the next street over. That is an off-premise sign not currently permitted by the Code. But staff and I think a lot of other people in the City are recognizing the value of those signs to help the businesses succeed. The people looking for those businesses can find the businesses. But we are also noticing that there are some other strange signs going up, and people are starting to squabble about who gets which location and where the signs go. I have started to hear about signs blocking the public sidewalk, so staff thinks it is time to put some regulations to those signs. We have kind of looked the other direction, because we know they are valuable to the businesses in Fruita and we do know they violate the Code. It has gotten to the point that we need to write some rules and regulations to figure out how we can allow the signs that help the businesses and still try to avoid squabbles about who gets to put their sign where and problems with signs blocking the sidewalks and other signs that have nothing to do with the downtown businesses.

Those are the two main reasons staff is recommending an amendment to the Sign Code. Of course, with all amendments I usually make amendments to clarify parts of the code that don't seem to be very clear and also resolve a few other issues. One other issue I would like to point out is, it came up with the Drive-Thru Coffee Shop on Highway 6 & 50. It is a really small building on a really small lot, the way our Sign Code is written it gives them a really small sign and it just doesn't work for them. One of the amendments I have made is to allow at least a 50 square foot attached sign to the building and at least a 50 square foot freestanding sign so that a business like that has the ability to advertise logically without having to put their advertising on a sign that is too small to see along the highway.

That concludes my presentation at this time.

Mel Mulder- I appreciate what you are doing with the sandwich board signs. They are appropriate as long as they are in a safe place. The question I have, could Pablo's Pizza (1 mile south) put a sandwich board sign in front of The Hot Tomato?

Dahna Raugh- Staff has thought about that. We have adding the language in the proposed Sign Code to say, if you are going to have off-premise signs it has to be within 500 feet of the business. So they can't put their signs in downtown.

Mel Mulder- That's what I needed to hear. Thank you.

Keith Schaefer- Basically we can control the size and the location but we cannot control the content?

Dahna Raugh- That is correct, yes.

Keith Schaefer- So if someone wanted to use a different interpretation of 'WTF' then they could do that?

Dahna Raugh- As long as it is not offensive; slanderous; or violating other rules or regulations.

Keith Schaefer- What if it is offensive to me but not to the person who put up the sign?

Dahna Raugh- You would be getting into a situation where you would probably need a lawyer. I don't know if it has a lot to do with signs as more it has to do with a public nuisance. I can't absolutely answer your question because I don't know where the legal rules draw the line between obscene and not obscene.

Keith Schaefer- We will see it when we see it. Thank you.

Mel Mulder- I know that the new liquor store is paying close attention to this, because there is going to be signage involved.

Dave Karisny- Just a couple of comments. I don't have much to say about the language you are going to use that is called 'commercial copy' and 'noncommercial copy'. In talking about the changes in the Sign Code, I see it as being reasonable and responding to an issue that you have comments on. Not trying to complicate it but you did say there may be some competition for some off site locations to put a sign. And in the Sign Code, it kind of says first come first serve. I am wondering if there could be some kind of time limit that allowed other people to use that same spot if in fact it was an issue. For example, if Pablo's Pizza had this great spot and Gene Taylors wanted to use that same spot but couldn't because Pablo's came in and got their approved sign permit (because they need to do that to put it in the right-of-way). If there is competition for an off-site location, there doesn't seem to be any recourse in the Sign Code to deal with that.

Dahna Raugh- I am currently not aware of concerns of off-site competition. It would be nice to have some competition, which would mean we had a lot of businesses. But we currently don't have any competition; everyone seems to be playing nicely. But I do know what you are saying and we did think about that. Because there are some premium locations for those signs, I know on the corner where the Cavalcade is located there are already a Hot Tomato sign, No Coast Sushi sign and I think if they get one or two more it could get really crowded. First come, first served you really get the primo spot. I'm not really sure how you to resolve that issue, we will cross that bridge when we get there. If you have any suggestions, I am more than happy to hear

what anyone has to suggest. I am willing to wait and cross my fingers that the businesses will play nicely and we figure out a way to work together to make it work for everyone. It is Fruita, and I hope a Fruita spirit takes over and everybody plays nicely.

Dave Karisny- Everything else sounds reasonable. Thank you.

Louis Brackett- I just had a concern about the coordination between departments (City of Fruita Departments) to ensure the signage is not going to be a public safety issue and cause no traffic problems. All departments can provide their input to ensure safety, and that it not only meets the code but also a common sense stand point.

Dahna Raugh- With the Code amendments that we are proposing, it certainly went to all of Staff for input. I don't think Ken Haley, our Public Works Director, wants to sit a talk about signs with me anymore. I know our Code Enforcement Officer, Mark Angelo, has looked at these and we have written into the Sign Code Regulations cannot propose a public safety issue.

Louis Brackett- Thank you.

Doug Van Etten- I don't see any particular issues that haven't already been addressed. One small point is "...the sign shall be brought indoors at the end of each business day", is that something that we are going to presume 'it's Fruita and everybody plays nice'. Seems that if the sign is 499 feet away from your business, are you really going to have an employee go out and take that sign in everyday or does it matter?

Dahna Raugh-Well, that it is our regulations right now. If you have a temporary sign on or off-site, you need to take it in at the end of the business day. I know there are some that don't, but most of them do. I think most of them think their sign will be taken. That is probably an ongoing problem, I am not wondering around Pablo's Pizza to see when they are closing to make sure they take their sign in each night. We haven't had a complaint yet and we have our fingers crossed that if there is somebody not taking their signs in every night that it is not going to cause a problem. But if it does start to cause a problem, we will certainly take a more stern approach to the issue.

Doug Van Etten- Thank you.

There was a brief discussion about vehicles that have signs attached to or painted on them. If the vehicle is used as a vehicle more than a sign then it is okay. But if the vehicle is unable to run or has a flat tire then it is acting like a sign and needs to be removed.

Mike Joseph- I have a few questions. On page 41-15 in section 17.41.010 C-2 where it describes temporary off-premise signs. One of the questions that came to my mind, having dealt with this in the past, when we start talking about allowing signs in the right-of-way. I know that CDOT

(Colorado Department of Transportation) has their right-of-ways and their own sign regulations and they indicated to Fruita that they have authority over us when dealing with their right-of-ways in our City.

Dahna Raugh- Yes they do.

Mike Joseph- So my question on this section was, when we talk about that are we accounting for CDOT's regulations and what comes to mind is Highway 340 and Highway 6 & 50?

Dahna Raugh- So something that has been helping us, is on our sign permit application there is an area that says if your sign is along the Highway or Interstate or can be seen from the Highway or Interstate that they need to call CDOT and ask them if there is going to be any problems. Because the people at CDOT change and their interpretation of their rules change with it, we cannot keep up with what they think. So we have Sign Permit Applicants call CDOT to make sure their sign meets CDOT's requirements.

Mike Joseph- In the same section, it talks about where not to put stuff. I didn't see anything in here about not affixing temporary signs to a utility pole or traffic sign. People may have a tendency to do that.

Dahna Raugh- It is under section 17.41.010-2B, the sign shall not be affixed to the ground or any other structure.

Mike Joseph- There it is. I read right over it. I had one more question. Under 17.41.050 D it says "Off premises advertising signs except specifically permitted by this Chapter such as for temporary real estate directional signs". So this is under Prohibited Signs and it says off premise signs are prohibited except temporary real estate signs. I'm wondering if it should just point to a whole section or just take out the real estate directional signs at the end of that section.

Dave Karisny- If I could just add something to what Mr. Joseph had mentioned about the right-of-way. I wonder if you went to page 41-15 and section A where it says, "An approved sign permits required before signs are places in the public right-of-way," I'm wondering if you could just call it City of Fruita public right-of-way. That might help clarify what right-of-way you are talking about.

Dahna Raugh- So if someone wanted to put a sign along the Highway 6 & 50 right-of-way and CDOT was okay with that, I think I would still want to issue a permit to help keep a record of where that is or that it has been permitted. So it could mean that signs not in the City of Fruita's right-of-way wouldn't need a permit from the City even though they are in the City Limits.

Dave Karisny- So in your process, if there is a sandwich board sign out there that is off-premise that doesn't have an approved sign permit then that sign shouldn't be there?

Dahna Raugh- Right. And we would contact the business owner that it is advertising and inform them that they need a permit.

Mike Joseph- I don't think we have anything further. Are you looking for this to go forward to the Council?

Dahna Raugh- This is scheduled for a first reading in front of the City Council for the first Tuesday in January with a second reading for the first Tuesday in February. The second reading is usually where Council discusses things. I do have one question for the Planning Commission. When I was drafting the amendments, one of the things I did was I looked at all the signs that were out there to see how I could write the regulations so that the signs that are out there can stay there. The City Manager and I were walking around to all the businesses downtown letting them know there will be a change in the Sign Code but not to worry about it. However, there is a furniture business on South Mesa in the old bank building, and they have a sign that we haven't seen before. And it wouldn't be permitted with what we have written in the amendments. It is a really nice vertical banner sign; it is about 10 feet tall and is attached to a flag in the ground. I am wondering how I can make the regulations so that they can keep their sign. So I ask the Planning Commission, have you seen this sign and know what I am talking about? And what would your opinion be for that kind of sign on a downtown sidewalk? I think it is appropriate for a temporary sign on premise like the ones at The Maverick (gas station) and the ones near the Kokopelli area. What does the Planning Commission think about those types of signs, as long as they don't block the sidewalk?

Mike Joseph- I think it comes down to the public safety. Does it distract driver's type of thing? I think if you could put something like that in here and stay business friendly.

Dahna Raugh- We are trying hard. The problem that they will have is on page 41-8 Section Y number 1, "height shall not exceed 4 feet." It will be a problem for the particular businesses that have these tall and skinny vertical banner signs if this language gets approved. Maybe we don't have a height limit.

Mike Joseph- So these things have become pretty popular in the past decade or so and now we see them all over. Other people must be having to get these into their Code. Have you looked at what anyone else is doing?

Dahna Raugh- One of the things that causes a problem when people start thinking about signs is the issue with temporary and permanent is less an issue of how it is built. It is more of an issue of how long is it going to be there. It is not an issue of how it is built, it is an issue of how long is it going to stay there. So when we talk about banners, we don't have anything that regulates banners. You could put up a banner and keep it there for decades, if it's a good banner.

\*Discussion about what defines a sign and what defines a flag and how they are used.

Dahna Raugh – We have a square feet regulation of 6 total square feet for temporary signs.

Mike Joseph- I think maybe square feet would be a good way to regulate it.

Dave Karisny- I think if you are talking about sandwich board signs, I think 4 feet (height) is reasonable. But I think if you are talking about the vertical banner signs, you need to see how tall it is (the sign at the furniture store in the old bank building) and you want to say 10 feet than that is reasonable. But you need to be able to differentiate through some standards for specific signs or something like that. I don't know if you can say sandwich board signs can be 10 feet in height though. So I would limit sandwich board signs to 4 feet and create something for the vertical banner signs.

Mel Mulder- There are businesses on North Avenue in Grand Junction that have full size manikins as signs that are or seem to be pretty much permanent.

Mike Joseph- What is your question?

Mel Mulder- They are startling.

Mike Joseph- Anyone want to make a motion?

Dave Karisny- Mr. Chair I make a motion that we approve the proposed Land Use Code amendments to the regulations regarding signs contained in chapter 39 of the Fruita Land Use Code.

Doug Van Etten- I second.

Mike Joseph- We have a motion and a second to approve this amendment.

6 yes votes; motion passes.

**I. OTHER BUSINESS**

None.

**J. ACTIVITY REPORT**

\*Discussed the Community Development Activity Report.

\*Discussed the Greenway Business Park.

**ADJOURNMENT AT 8:01PM**

Respectfully submitted,

Henry Hemphill

City of Fruita Planning Technician



---

## AGENDA ITEM COVER SHEET

---

**TO: FRUITA CITY COUNCIL AND MAYOR**

**FROM: KEN HALEY, PUBLIC WORKS DIRECTOR**

**DATE: JUNE 7, 2016**

**RE: RESOLUTION 2016-19: AN INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN THE CITY OF FRUITA AND THE 5-2-1 DRAINAGE AUTHORITY FOR PROVISION OF COLORADO DISCHARGE PERMIT SYSTEM (CDPS) STORMWATER PERMIT SERVICES**

### **BACKGROUND**

The 5-2-1 Drainage Authority was created on June 14, 2004 by and between Mesa County, the Town of Palisade, the City of Fruita and the Grand Valley Drainage District to provide stormwater related services within and across their respective jurisdictions.

In 2010, the 5-2-1 Drainage Authority consolidated, and began administering, the State stormwater permits for the MS4 partnering agencies. At that time, Fruita was not included in the “urbanized area” defined by the State and was not subject to the Colorado Discharge Permit System (CDPS) Regulations related to stormwater quality. Due to budget constraints, the 5-2-1 Drainage Authority has focused almost entirely on administering the stormwater permits since 2010.

Although Fruita has not been subject to the same regulations, the City has continued to support the 5-2-1 and continues to have an appointed board member to the 5-2-1 Drainage Authority. However, the City of Fruita is now considered to be within the “urbanized area” due to population and will be subject to the new CDPS permits that will be effective starting July 1, 2016.

The City has known for a few years that Fruita would be subject to the CDPS permit requirements once the State issued the new stormwater permits and has planned accordingly. In preparation for this, the City adopted Ordinance 2015-03 in March of 2015 that established the stormwater regulations and enforcement measures necessary to comply with the State required stormwater program.

The biggest challenge in implementing this type of stormwater program is the finding the resources necessary. Fruita has remained a partnering agency of the 5-2-1 Drainage Authority in preparation for uploading the administration of the CDPS permits to the 5-2-1. Consolidating these permit requirements to one entity for the entire Grand Valley was determined, and remains, to be the most effective and efficient method for implementing a stormwater program that complies with the requirements of the State. This approach also helps reduce some of the risks associated with compliance by having a combined approach rather than each agency

having their own program.

An Intergovernmental Agreement (IGA) is required to upload the administration of the CDPS permit to the 5-2-1 Drainage Authority.

### **FISCAL IMPACT**

The City of Fruita has been a contracting party of the 5-2-1 Drainage Authority and has contributed financial to 5-2-1 on an annual basis. Entering into an IGA with the 5-2-1 will not increase Fruita's financial commitments to the 5-2-1.

### **APPLICABILITY TO CITY GOALS AND OBJECTIVES**

Although the CDPS regulations are mandated by the State of Colorado as a provision of the Water Quality Control Act (C.R.S. 25-8-101), implementing a stormwater program focused on water quality directly corresponds with the City's goals to provide services necessary for the life, health, and safety of the community. It is also the responsibility of the City to work with other agencies to provide these services in an effective and efficient manner.

### **OPTIONS AVAILABLE TO COUNCIL**

1. Approve Resolution 2016-19 entering into an Intergovernmental Agreement (IGA) between the City of Fruita and the 5-2-1 Drainage Authority for Provision of Colorado Discharge Permit System (CDPS) Municipal Separate Storm Sewer (MS4) Stormwater Phase II Permit Services.
2. Deny Resolution 2016-19 entering into an Intergovernmental Agreement (IGA) between the City of Fruita and 5-2-1 Drainage Authority for Provision of Colorado Discharge Permit System (CDPS) Municipal Separate Storm Sewer (MS4) Stormwater Phase II Permit Services.

### **RECOMMENDATION**

1. It is the recommendation of staff that Council:

Approve Resolution 2016-19 entering into an Intergovernmental Agreement (IGA) between the City of Fruita and the 5-2-1 Drainage Authority for Provision of Colorado Discharge Permit System (CDPS) Municipal Separate Storm Sewer (MS4) Stormwater Phase II Permit Services.

**RESOLUTION 2016-19**

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT (IGA)  
BETWEEN THE CITY OF FRUITA AND THE 5-2-1 DRAINAGE AUTHORITY  
FOR  
COLORADO DISCHARGE PERMIT SYSTEM (CDPS)  
MUNICIPAL SEPARATE STORM SEWER (MS4)  
STORMWATER PHASE II PERMIT SERVICES**

WHEREAS, Authority was created by an Intergovernmental Agreement on June 14, 2004, pursuant to CRS29-1-204.2, as amended, by and between Mesa County, the Town of Palisade, the City of Fruita, and the Grand Valley Drainage District referred to as "Contracting Parties," to provide stormwater related services within and across their respective jurisdictions, and

WHEREAS, Colorado law allows the Authority to accept responsibility for compliance with Federal and State Stormwater Phase II permits and procedures on behalf of the Contracting Parties, and

WHEREAS, it is consistent with the intent and purposes of the Authority to provide consolidated services to entities within its jurisdictional boundaries which are required to hold individual Colorado Discharge Permit System (CDPS) Municipal Separate Storm Sewer System (MS4) Stormwater Phase II discharge permits, including both the individual Contracting Parties of the Authority as well as others that may desire similar services from the Authority on a fee-for-service basis, and

WHEREAS, all of the areas subject to CDPS MS4 Stormwater Phase II discharge permitting within the jurisdictional boundaries of the City, as identified by the Bureau of the Census and the Colorado Department of Public Health and Environment ("CDPHE") lie within the jurisdictional boundaries of the Authority, and

WHEREAS, the City is desirous to have the program elements of the permit administered by, the Authority and

WHEREAS, the City has placed a high priority on functional stormwater management and stormwater quality and is desirous of joining the consolidated Grand Valley CDPSMS4 Stormwater Phase II Discharge Permit Services Agreement with the Authority and Authority is desirous of providing the same.

**NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL  
OF THE CITY OF FRUITA THAT:**

The City Council of the City of Fruita hereby authorizes the Mayor to execute the Intergovernmental Agreement (IGA) between the City of Fruita and the 5-2-1 Drainage Authority for provision of Colorado Discharge Permit System (CDPS) Municipal Separate Storm Sewer (MS4) Stormwater Phase II Permit Services.

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL  
THIS 7th DAY OF JUNE, 2016.**

CITY OF FRUITA, COLORADO

\_\_\_\_\_  
Lori Buck, Mayor

ATTEST:

\_\_\_\_\_  
Margaret Sell, City Clerk

**INTERGOVERNMENTAL AGREEMENT  
FOR PROVISION OF  
COLORADO DISCHARGE PERMIT SYSTEM (CDPS)  
MUNICIPAL SEPARATE STORM SEWER (MS4)  
STORMWATER PHASE II PERMIT SERVICES**

THIS SERVICES AGREEMENT is made and entered into this 7th day of June, 2016 by and between the 5-2-1 DRAINAGE AUTHORITY, a Political subdivision of the State of Colorado, (hereinafter referred to as "Authority") and the CITY OF FRUITA, a political subdivision of the State of Colorado, by and through its City Council, with its principal office located at 325 E. Aspen Avenue, Fruita, CO 81521, (hereinafter referred to as "city" or "the City").

**RECITALS:**

WHEREAS, Authority was created by an Intergovernmental Agreement on June 14, 2004, pursuant to CRS29-1-204.2, as amended, by and between Mesa County, the Town of Palisade, the City of Fruita, and the Grand Valley Drainage District referred to as "Contracting Parties," to provide stormwater related services within and across their respective jurisdictions, and

WHEREAS, Colorado law allows the Authority to accept responsibility for compliance with Federal and State Stormwater Phase II permits and procedures on behalf of the Contracting Parties, and

WHEREAS, it is consistent with the intent and purposes of the Authority to provide consolidated services to entities within its jurisdictional boundaries which are required to hold individual Colorado Discharge Permit System (CDPS) Municipal Separate Storm Sewer System (MS4) Stormwater Phase II discharge permits, including both the individual Contracting Parties of the Authority as well as others that may desire similar services from the Authority on a fee-for-service basis, and

WHEREAS, all of the areas subject to CDPS MS4 Stormwater Phase II discharge permitting within the jurisdictional boundaries of the City, as identified by the Bureau of the Census and the Colorado Department of Public Health and Environment ("CDPHE") lie within the jurisdictional boundaries of the Authority, and

WHEREAS, the City is desirous to have the program elements of the permit administered by, the Authority and

WHEREAS, the City has placed a high priority on functional stormwater management and stormwater quality and is desirous of joining the consolidated Grand Valley CDPS MS4 Stormwater Phase II Discharge Permit Services Agreement with the Authority and Authority is desirous of providing the same.

NOW, THEREFORE, in consideration of the recitals, terms, conditions and mutual benefits herein contained, the Authority and the City agree as follows:

1. **Duties of the Authority.** The Authority shall provide CDPS MS4 Stormwater Phase II permit services on behalf of the City upon terms and conditions hereinafter set forth. The Authority will provide for the City the Services stated in the scope of work attached hereto as Exhibit A and incorporated by this reference as if fully set forth.
2. **Duties of the City**
  - A. The City agrees to reasonably assist the Authority with the performance of the Authority's duties as defined in Exhibit A of this Agreement by:
    - I. Providing accurate records, files, mapping, mailing lists and other documents and information necessary to establish the jurisdictional boundaries, type and ownership of properties within the jurisdictional boundaries, and physical facilities of the City for which the Authority will be providing services, and shall reasonably provide any updates or changes to this information as needed.
    - II. Assisting with public education and participation activities performed on behalf of the City, as part of Authority's duties listed under Section A.i. and A.ii. of the Scope of Work.
    - III. Providing assistance with scheduling and coordinating training sessions for City staff, and audits of City facilities as required by Sections B.i. d. and e., and Sections B.ii. a. and b. of the Scope of Work.
  - B. The City agrees to reasonably assist the Authority with the consolidated Permit submittal as defined in Exhibit A to this Agreement by: providing documentation such as current permit program descriptions and annual reports, existing ordinances and resolutions, and other technical data necessary for the consolidated permit application preparation and submittal process; passing or adopting new ordinances, resolution, or policies needed to meet State approval criteria.
  - C. The City shall inform Authority, and provide a duplicate copy of, any permit related correspondence with regulatory agencies which may affect Authority's performance of its duties under Section 1 of this Agreement.
3. **Term.** The Authority and City agree that their respective duties under this agreement shall commence by July 1, 2016 and continue for a period concurrent with the life of the City's CDPS MS4 Phase II Stormwater permit, subject to the following:
  - A. The parties mutually agree that the City shall maintain responsibility for stormwater management reviews, approvals, permits, and inspections for all projects and development accepted into the City review process prior to July 1, 2016.
  - B. The parties mutually agree that either party may initiate a review and negotiated modification of this agreement on a yearly basis, beginning no sooner than October 1st of each calendar year, to take effect January 1<sup>st</sup> of the subsequent year. Amendments or modifications of this Agreement shall require written agreement executed by the parties hereto.
  - C. Notwithstanding any provision herein contained, either party to this agreement may terminate the Agreement upon written notification to the remaining party ninety (90) calendar days in advance of such termination date. Upon termination or expiration of this Contract, Authority shall immediately cease service work, and deliver to the City all documents, keys, papers, calculations, notes, reports, drawings, or other technical papers prepared by or provided to Authority under the terms of this Contract.

- D. It is understood that if a consolidated, valley-wide permit is obtained by the Authority consistent with the provisions of Section C of the attached Exhibit A, this Agreement may need significant amendment or modification, or replacement with a new agreement. Pending execution of an amendment, modification, or replacement agreement, Authority and the City agree to perform, or continue to perform their respective duties as identified under this agreement.
4. Fee for Service. By virtue of their status as an original contracting party of the Authority and their continued annual financial contributions thereto, commensurate with the Services rendered to City by the Authority as identified in Exhibit A, no specific fees for specific services shall apply to City under this Agreement.
  5. Relationship between Parties. Authority is contracted only for the purpose and to the extent set forth in this agreement, and its relationship to the City shall be that of independent contractor.
  6. Indemnification Reciprocal. To the extent authorized by law the City shall indemnify and hold the Authority harmless against any loss or liability resulting from any claim asserted against the Authority by reason of its acting pursuant to and in accordance with the terms, provisions and conditions of this agreement.
  7. Assignment. Neither party shall assign such party's rights or interest under this agreement without the prior written consent of the other.
  8. Entire Agreement. This agreement shall constitute the entire agreement between the Authority and the City. Any prior understanding or representation of any kind preceding the date of this agreement shall not be binding on either party except to the extent incorporated in this agreement.
  9. Amendment. Any modification of this agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if in writing signed by each party or an authorized representative of each party.
  10. Non-Waiver. The failure of either party to this agreement to insist on the performance of any of the terms and conditions of this agreement or the waiver of any breach of any of the terms and conditions of this agreement shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.
  11. Attorney Fees and Costs. This agreement shall be formed in accordance with laws of the State of Colorado and venue for any action hereunder shall be in the District Court of Mesa County, Colorado. In the event any action is filed in relation to this agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all the sums that either party may be called on to pay, a reasonable sum for the successful party's attorney fees and costs, including the value of in-house Counsel.

12. Agreement Revisions Severable. If any of the provisions of this agreement are deemed to be invalid or unenforceable, such provisions shall be deemed severable from the remainder of this agreement and shall not cause the invalidity or unenforceability of the remainder of this agreement. If any provisions shall be deemed invalid because of its scope, this provision shall be deemed valid to the extent of the scope permitted by law.
13. Standard of Care. The Authority shall fully and faithfully perform the work required under this Agreement in accordance with the appropriate standards of care, skill, training, diligence and judgment provided by contractors who perform work of a similar nature to the work described in this Agreement.
14. Dispute Resolution. Disputes arising under or related to this Agreement or the work which is the subject of this Agreement shall be first addressed by mediation. If mediation is unsuccessful, the parties expressly reserve the right to arbitrate or file a cause of action pursuant to the Colorado Rules of Civil Procedure. The parties hereto agree that a final determination from mediation shall be a precondition to other action being taken.

END OF AGREEMENT

5-2-1 DRAINAGE AUTHORITY

CITY OF FRUITA

By \_\_\_\_\_  
Chairman

By \_\_\_\_\_  
Mayor

ATTEST:

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
City Clerk

[Corporate Seal affixed here]

[Corporate Seal affixed here]

NOTARY

EXHIBIT A  
SCOPE OF WORK

- A. Authority shall budget for, administer, coordinate, and perform all the following program elements shown as Minimum Control Measures (MCM's) within the City's current CDPS MS4 Phase II Stormwater Management Program Description no later than July 1, 2016, subject to the specific terms of the Agreement. All Public Education and Outreach activities described under MCM1 within the City's Stormwater Phase II Program Description, as approved by the State of Colorado.
- i. All Public Education and Outreach activities described under MCM1 within the City's Stormwater Phase II Program Description, as approved by the State of Colorado.
  - ii. All Public Participation and Involvement activities described under MCM2 within the City's Stormwater Phase II Program Description, as approved by the State of Colorado.
  - iii. Construction program activities as described under MCM4 within the City's Phase II Stormwater Program Description, as approved by the State of Colorado, specifically including review and approval of Construction Site Stormwater Management Plans (CSWMPs), issuance of Construction Stormwater Permits, and associated construction related inspection and auditing activities, and specifically excluding certain enforcement activities as further delineated in section v. below.
  - iv. Post-Construction program activities as described under MCM5 within the City's Phase II Program Description, as approved by the State of Colorado, specifically including: review and approval of Post Construction BMPs contained within Final Drainage Reports or other applicable documents; associated post-construction inspection and auditing activities; and specifically excluding certain enforcement activities as further delineated in section v. below.
  - v. As part of its duties under section I.a. iii and iv. above, Authority shall work directly with developers and/or property owners of sites that require Construction Stormwater Permits and Post-Construction BMPs to maintain sites in compliance with stormwater quality requirements contained within the City's CDPS MS4 Stormwater Phase II discharge permit, without involvement of the City. If continued non-compliance, or blatant disregard of stormwater requirements is documented by the Authority, or work is being done without appropriate approval and further enforcement steps are needed, the Authority and the City understand and agree that the Authority has no independent ability to enforce and sanction compliance with construction and post construction related requirements without the support and involvement of the City. The Authority and the City therefore agree it is Authority's affirmative responsibility to make appropriate referrals to the City. The Authority and the City therefore agree that the Authority is responsible for performing the following pre-enforcement activities:

- a) identification and documentation of continued non-compliance or blatant disregard for stormwater requirements,
  - b) communication, via a written compliance advisory to the developer, contractor, property owner and/or other responsible party for the site that requires a Construction Stormwater Permit and/or Post-Construction BMPs, describing the nature of the violation(s), and timeframe for correction, and submitting a copy of this advisory along with a request for enforcement action to City,
  - c) providing documentation and field support as needed to City, and
  - d) providing testimony, or other support, as needed, for legal actions initiated by City.
- vi. Authority and the City jointly understand and agree that enforcement provisions and processes described in paragraph A.v. above may require re-adoption or modification, if so mandated by State requirements as part of obtaining the Valley-wide MS4 permit identified in Section C below.
- B. To the extent allowed by law, the Authority shall budget for, administer, coordinate and perform the following tasks, associated with program elements shown as Minimum Control Measures (MCM's) within the City's current CDPS MS4 Phase II Stormwater Management Program Description no later than July 1, 2016:**
- i. **Illicit Discharge Detection and Elimination (IDDE) activities specifically identified below and described under MCM3 within the current City's Phase II Program Description, as approved by the State of Colorado.**
    - a. Operation of the 5-2-1 Hotline.
    - b. Coordination and performance of storm drain system mapping efforts.
    - c. Continuation of pollution awareness efforts, such as the billboard campaign, and distributing items such as brochures pencils, magnets, and stickers with the Hotline phone number.
    - d. Coordinate training activities for City's field staff to ensure compliance with City's MCM4 Program Description.
    - e. The Authority shall audit the City's IDDE program on an annual basis to ensure compliance with the CDPS MS4 Stormwater Phase II discharge permit requirements. The Authority shall submit a detailed audit report to the attention of Fruita staff or corrective actions.
  - ii. **Pollution Prevention and Good Housekeeping for Municipal Operations activities specifically identified below and described under MCM6 within the current City's Phase II Program Description, as approved by the State of Colorado.**
    - a. Coordinate training activities for City's staff to ensure compliance with City's MCM6 Program Description.
    - b. The Authority shall audit the City's Pollution Prevention and Good Housekeeping for Municipal Operations program on an annual basis to ensure compliance with the CDPS MS4 Stormwater Phase II discharge permit requirements. The Authority shall submit a detailed audit report to the attention of City staff or corrective actions.

- C. The Authority shall diligently pursue, and continue to hold a Grand Valley-wide CDPS MS4 Phase II Stormwater Permit, to be held by the Authority, consistent with State of Colorado regulations and approval criteria, to include the City as an entity covered under said Permit. Authority shall coordinate with CDPHE on the type and extent of required submittals, accumulate existing documents and/or prepare or coordinate creation of new documents as required for the permit submittals.
- i. It is understood that the transfer of responsibility, administration, and management of the proposed permit from the City to the Authority will be contingent on State approval.
  - ii. Authority shall administer, maintain, prepare annual reports for, and renew the Phase II permit once obtained.
  - iii. Authority may pursue State approval and/or designation as a qualified local program for the construction permitting program if such designation is the best interest of the City.
  - iv. Nothing in this section is intended to force Authority to obtain, hold, or continue to hold a CPDS MS4 Stormwater Phase II Permit on behalf of the City in violation of State approval criteria or in violation of applicable law. It is understood that the State retains the right to rescind Authority's ability to hold the CPDS MS4 permit on behalf of City if future conditions so warrant.
- D. Authority shall establish a Technical Advisory Committee (TAC), chaired by the Authority Manager, and comprised of staff representatives from all parties represented on the Board of the Authority. Staff representatives to the TAC shall be determined solely by their respective entities and shall be the primary conduit for communicating information between their organization and the Authority. The general role of the TAC is to provide recommendations and advice to the Authority Board and Authority Manager on technical, strategic planning, and permit compliance issues, in order to assist the Authority in performing its duties identified in the Agreement(s).
- i. The Authority Manager shall hold TAC meetings at least monthly, or at such other frequency as determined by the TAC members.
  - ii. The Authority Manager is responsible for ensuring the Board is kept informed of issues being discussed by the TAC, transmitting recommendations and advice from the TAC to the Authority Board, and for transmitting information from the Board to the TAC.
  - iii. The Authority Manager shall apprise TAC members and seek recommendations from the same before seeking board decisions or implementing activities directly associated with the CDPS MS4 permit compliance commitments of the contracting parties. For Board decisions or implementation activities directly associated with MS4 permit compliance commitments of an individual party, individual TAC members shall identify to the Authority Manager any areas of disagreement or discussion they wish to be included in the information transmitted by the Authority Manager to the Board.

END OF EXHIBIT A



**FRUITA**  
COLORADO

---

## **AGENDA ITEM COVER SHEET**

---

**TO: FRUITA CITY COUNCIL AND MAYOR**

**FROM: KEN HALEY, PUBLIC WORKS DIRECTOR**

**DATE: JUNE 7, 2016**

**RE: UPDATE ON PUBLIC WORKS**

### **BACKGROUND**

This agenda item will include an informational presentation from Staff on the operations of the Public Works Department and an overview of the City's infrastructure and maintenance programs.

### **OPTIONS AVAILABLE TO THE COUNCIL**

This is an informational presentation and does not require action by the Council.