MUNICIPAL CODE

GUNNISON CITY, UTAH

A Codification of the General Ordinances of
Gunnison City, Utah

Published by Authority
of the
City Council of Gunnison City, Utah

1991

AN **ORDINANCE REVISING,** CODIFYING AND **COMPILING THE GENERAL ORDINANCES** OF **GUNNISON** CITY, UTAH.

WHEREAS, the City Council of Gunnison City, Utah, pursuant to the provisions of Sections 10-3-706 through 10-3-710 of Utah Code Annotated, 1953, as amended, has heretofore determined that the ordinances of the City of a general and permanent character should be compiled, revised, codified, and thereafter published in a looseleaf form, to the end that a complete simplified code of the ordinances enforced by the City may be presented, with errors, inconsistencies, repetitions and ambuguities eliminated,and

WHEREAS, The City Council has reviewed the proposed compilation, revision and codification and has made such changes, alterations, modifications, additions and substitutions as it deems best,

NOW THEREFORE, be it ordained by the City Council of Gunnison City, Utah:

PART I ADOPTION OF CODE

That certain book entitled MUNICIPAL CODE OF GUNNISON CITY, UTAH, authorized by and prepared under the direction of the Gunnison City Council, and containing the ordinances of a general and permanent character enforced by the City is hereby adopted.

PART II

EFFECTIVE DATE

The provisions of the MUNICIPAL CODE OF GUNNISON CITY, UTAH, herein-above adopted shall take effect on the 23rd day of July, 1991.

PASSED AND ORDERED PUBLISHED BY THE CITY COUNCIL OF GUNNISON CITY, UTAH, THIS 8th DAY OF July, 1991.

APPROVED:

_____
Mayor

ATTEST:

_____
City Recorder

PUBLISHER'S NOTE

Beginning with the supplement dated May 2006, the Gunnison City Municipal Code, originally published in 1991, is being maintained by Code Publishing Company. During original codification, the ordinances were compiled, edited and indexed under the authority of the City Council of Gunnison City, Utah.

The code is organized by subject matter under an expandable three-factor hyphenated numbering system which is designed to facilitate supplementation without disturbing the numbering of existing provisions. Each section number designates, in sequence, the numbers of the title, chapter, and section. In most instances, sections appear as three numbers separated by hyphens, such as 4-3-13; however, some sections are followed by decimals, such as 9-2-10.5, indicating that sections have been further divided.

In parentheses following certain sections is a legislative history identifying the specific sources for the provisions of that section. All sections amended commencing with Ordinance 1994-1 include this legislative history.

A subject-matter index, with complete cross-referencing, locates specific code provisions by individual section numbers.

The supplement "Directions" page, which should be retained in the front of the code, indicates the last ordinance (and passage date thereof) included with each supplement.

CODE PUBLISHING COMPANY
Seattle, Washington
(206) 527-683

MUNICIPAL CODE OF GUNNISON CITY, UTAH

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(Revised 5/4)

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CHAPTER 1-1

MUNICIPAL NAME, SEAL AND BOUNDARIES

1-1-1 MUNICIPAL NAME

The name of this City shall be Gunnison City, Utah. However, to designate the municipal character of the City, the name may be stated as "Gunnison City, a municipal corporation of the State of Utah." (UCA 10-1-202)

1-1-2 MUNICIPAL SEAL

The City shall have a municipal seal, a facsimile of the seal is reproduced as follows: (UCA 10-1-202)

1-1-3 BOUNDARIES OF CITY

The boundaries or limits of Gunnison City shall be as established on the Official Boundary Map of the City prepared by the City Recorder and approved by the City Council. The Official Boundary Map shall be amended from time to time to show annexations and de-annexations as the same may be made according to this Code and state law. The Official Boundary Map shall be kept on file at all times in the office of the City Recorder.

Chapter 1-1 adopted in Codification

CHAPTER 1-2

TITLE - ADOPTION OF CODE - AMENDMENTS

1-2-1 TITLE OF CODE

The general ordinances of Gunnison City as revised and set forth herein shall be designated and referred to as the "Municipal Code of Gunnison City, Utah". Reference by number to any section of this Code shall refer not only to that section but also to the penalty clause which is applicable thereto.
(UCA 10-3-706. to 10-3-710)

1-2-2 ADOPTION OF CODE - EFFECTIVE DATE

This Code shall be adopted by an Ordinance enacted in accordance with the applicable provisions of Chapter 1-5 of this Title and
Section 10-3-701 Utah Code Annotated, as amended, and shall become effective at the time set forth in the enacting ordinance.
(UCA 10-3-710)

1-2-3 REPEAL OF EXISTING CODE AND SUBSEQUENT GENERAL ORDINANCES - EXCEPTIONS

1-2-3.1 Prior Ordinances Repealed

The REVISED ORDINANCES OF GUNNISON CITY, adopted effective July 1, 1978, All subsequent amendments thereto and all other ordinances of the City of a general and permanent character enacted prior to the adoption of this Code are hereby repealed, except those ordinances which are by the next sub-section or other reference contained herein expressly saved from repeal. (UCA 10-3-709)

1-2-3.2 Exceptions to Repeal

Existing ordinances of the City which are contractual in character, including, but not limited to, franchises, grants, and dedications; special tax ordinances; ordinances relating to bond issues; budget ordinances; ordinances relating to boundaries and annexations; ordinances approving development projects; ordinances establishing, naming or vacating streets or other public places; improvement ordinances; ordinances relating to

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Chapter 1-2 Amended in Codification

elections; ordinances setting the salaries of elected and statutory officers of the City and all other ordinances of a special rather than a general character, are hereby expressly saved from repeal and shall remain in full force and effect.

The ordinances saved from repeal pursuant to this Section include but are not limited to the following:

Ord. No._____ Title/Subject_____ Date of Passage

Granting Utah Power and Light Co. an electric power franchise.

Granting Franchise to Mountain Fuel Supply Company. Granting

Franchise to Community Television of Utah.

1-2-4 CONTINUATION OF SIMILAR PROVISIONS

Insofar as any provision of this Code is the same in substance and effect as a provision in a previously existing general ordinance, such provision shall be construed as a continuation of the previously existing provision and not a new enactment.
(UCA 10-3-709)

1-2-5 PENDING PROCEEDINGS

(1). Nothing contained in this Code, either expressly or by implication, shall be construed or held to repeal a former ordinance, whether such former ordinance is expressly repealed or not, as to any offense committed against such former ordinance or as to any act done, any penalty, forfeiture, or punishment so incurred, or any right accrued or claim arising under the former ordinance, or in any way whatever to affect any such offense or act so committed or done, or any

penalty, forfeiture, or punishment so incurred or any right accrued or claim arising before this Code takes effect, save only that the proceedings thereafter shall conform to the provisions of this Code so far as practicable. If any penalty, forfeiture, or punishment be mitigated by any provision of this Code, such provision shall be applied to any judgement announced after this Code takes effect.

(2) Nothing contained in this Code shall be construed as abating any action now pending under or by virtue of any general ordinance of the City repealed hereby; or as discontinuing, abating, modifying, or altering any penalty accrued or to accrue, or as affecting the liability of any person, firm, or corporation, or as waiving any right of the City under any ordinance or provision thereof in force at the time of the adoption of this Code. (UCA 10-3-709)

1-2-6 AMENDMENTS TO CODE

From and after the effective date of this Code, all ordinances of general and permanent character shall be enacted as amendments or additions to this Code. All such ordinances shall be prepared in a format consistent with this Code and shall be adopted in accordance with the provisions of Chapter 1 -5 of this Title.

CHAPTER 1-3

GENERAL DEFINITIONS AND RULES OF CONSTRUCTION 1-3-1

DEFINITIONS

In the construction of this Code and all ordinances which amend any portion thereof, the following words and terms shall have the meaning herein ascribed to them, unless such definition is inconsistent with the manifest intent or contrary to the context of the ordinance.

1. The word "City" shall mean Gunnison City, Utah.

2. The word "Code", unless otherwise specifically stated, shall mean the Municipal Code of Gunnison City, Utah.

3. The word "municipality", unless otherwise indicated shall mean Gunnison City, Utah.

4. The word "oath" shall include an affirmation in all cases in which by law an affirmation may be submitted for an oath, and in such cases the word "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed".

5. The term "occupant" applied to a building or land shall include any person who occupies the whole or any part of such building or land whether alone or with others.

6. The word "offense" shall mean any act forbidden by any provision of this Code or the omission of any act required by the provision of this Code.

7. Officers, departments, commissions, boards, councils, and employees, when referred to in this Code, shall mean officers, departments, commissions, boards, councils, and employees of Gunnison City, Utah, unless the context clearly indicates otherwise.

8. The word "owner" applied to a building or land shall include any part owner, joint owner, tenant in common, joint tenant or lessee of the whole or of any part of such building or land.

Chapter 1 -3 amended in codification

9. The word "person" shall include any firm, corporation, association, partnership, or any other form of association or organization.

10. The word "property" shall include both real and personal property.

11. The word "street" shall include all roads, alleys, lanes, highways, courts, places, squares, trails, bridges, and sidewalks laid out or erected as such by the public, or dedicated or abandoned to the public, or otherwise made public by any means whatsoever.

12. The term "UCA" shall mean and include Utah Code Annotated, 1953, as amended.

1-3-2 RULES OF CONSTRUCTION

In the construction of this Code and all ordinances amending any part thereof, the following rules shall apply except where such construction would be inconsistent with the manifest intent or contrary to the context of the ordinance:

1. When any subject matter, party, or person is described or referred to by words importing the masculine, the feminine as well as the masculine, and associations and bodies as well as individuals shall be deemed to be included.

2. The singular number shall include the plural and vice versa.

3. The word "shall" is mandatory and not merely directory.

4. The present tense shall include the future tense and the future tense shall include the present tense.

5. In computing any period of time prescribed or allowed by this code, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. In all cases where any provision shall require any act to be done in a reasonable time or reasonable notice to be given, such reasonable time or notice shall be deemed to mean such time only as may be necessary for the prompt performance of such duty, or compliance with such notice.

1-3-3 FOOTNOTES, APPENDICES AND CATCH LINES

The footnotes, appendices and section heading of catch lines contained in this Code are for reference purposes only. They shall not be taken as any part of this Code or of any section thereof unless expressly so provided.

CHAPTER 1-4

SEVERABILITY - GENERAL PENALTY - LIABILITY 1-4-1

PROVISIONS SEVERABLE

Each section and each provision or requirement of any section, sub-section or paragraph of this Code shall be considered severable, and the invalidity of any section of any part of any section shall not affect the validity or enforceability of any other section or part thereof.

1-4-2 GENERAL PENALTY - MINIMUM PENALTY AUTHORIZED - CIVIL PENALTIES

1-4-2.1 General Penalty

For the purpose of enforcing obedience to the provisions of this Code or any duly enacted ordinance of the City, the City Council hereby establishes three classifications of penalties which may be imposed for violation of such code or ordinances and prescribes the fines and terms of imprisonment applicable to each, as follows:

1. Class B Misdemeanor - A fine up to one thousand dollars ($1000) or by a term of imprisonment up to six (6) months, or by both such fine or imprisonment.

2. Class C Misdemeanor - A fine up to seven hundred fifty dollars ($750) or by a term of imprisonment up to ninety (90) days, or by both such fine or imprisonment.

3. Infraction - A fine up to seven hundred fifty dollars ($750), but no term of imprisonment.

Any offense designated a misdemeanor without specification as to class shall be a Class B Misdemeanor. In any case where a person commits any act which is made unlawful or prohibited by this Code, and no other specific penalty is prescribed, such person shall be deemed guilty of a Class B Misdemeanor, provided, that where the text of this Code specifically provides a different penalty, the applicable penalty for violation of such provision shall be as stated therein.
(UCA 10-3-703, 10-3-704 & 10-8-84)

Chapter 1 -4 amended in codification

1-4-2.2 Minimum Penalty Authorized

The City Council may prescribe a minimum penalty for the violation of any municipal ordinance. (UCA 10-3-703)

1-4-2.3 Civil Penalties Authorized

The City Council may impose a civil penalty for the unauthorized use of municipal property, including, but not limited to, the use of parks, streets, and other public grounds or equipment. (UCA 10-3-703)

1-4-3 CONFLICTING PENALTY PROVISIONS

In all cases where the same offense is made punishable or is created by different clauses or sections of this Code, the prosecuting officer may elect under which to proceed; but not more than one penalty shall be had against the same person for the same offense; provided, that the revocation of a license or permit shall not be considered a penalty so as to bar any other penalty being enforced. (UCA 10-8-84)

1-4-4 LIABILITY UNDER CODE

1-4-4.1 Liability of Persons Aiding and Abetting

Every person acting with the mental state required for the commission of an offense, who directly commits the offense, who solicits, requests, commands, encourages or intentionally aids another person to engage in conduct which constitutes an offense shall be criminally liable as a party for such conduct. (UCA 76-2-202)

1-4-4.2 Liability of Officers

No provision of this Code designating the duties of any officer or employee shall be so construed as to make such officer or employee liable for any fine or penalty provided for a failure to perform such duty, unless the intention of the particular section to impose such fine or penalty on such officer or employee is specifically and clearly expressed in the section creating the duty.

CHAPTER 1-5

ORDINANCES AND RESOLUTIONS

1-5-1 ORDINANCES

1-5-1.1 Legislative Power to be Exercised by Ordinance

Except as otherwise specifically provided the City Council shall exercise its legislative powers through Ordinance. (UCA 10-3-701)

1-5-1.2 Form of Ordinances

All ordinances shall contain and be in substantially the following order and form:

1. A number;
2. A title which indicates the nature of the subject matter of the ordinance;
3. A preamble which states the need or reason for the ordinance.
4. An ordaining clause which states "Be it Ordained by the City Council of Gunnison City, Utah."
5. The body or subject of the ordinance, prepared in a manner consistent with the form and outline of this Code.
6. When applicable, a statement indicating the penalty for violation of the ordinance or a reference that the penalty is covered by Section 1-4-2 of this Code prescribing the fines and terms of imprisonment for violation of a municipal ordinance.
7. If of a general character, to be included in this Code, a statement authorizing the insertion of replacement pages in the "Official" copies of the City Code, reflecting the provisions enacted by the amending ordinance.
8. A statement indicating the effective date of the ordinance.
9. A line for the signature of the mayor or acting mayor, and

10 A place for the City Recorder to attest the ordinance and fix the seal of the City.

Notwithstanding the above, no ordinance shall be void or unlawful by reason of its failure to conform to the provisions of paragraphs 1, 2, 3, 4 or 7 of this Section. (UCA 10-3-704 & 10-3-705)

Chapter 1-5 Added in Codification

1-5-1.3 Adoption of Ordinances

The ordinances shall be adopted by roll call vote and shall be recorded. The minimum number of yes votes required to pass any ordinances shall never be less than three. Every ordinance shall be in writing before the vote is taken. (UCA 10-3-506 and 10-3-507)

1-5-1.4 Recording, Numbering and Certification of Ordinances

The City Recorder shall record, in a book used exclusively for that purpose, all ordinances passed by the City Council. The Recorder shall give each ordinance a number if the Council has not already done so. Immediately following each ordinance the Recorder shall make or cause to be made a certificate stating the date of passage and of the date of publication or posting, as required by law. The record and memorandum, or a certified copy thereof, shall be prima facie evidence of the contents, passage, and publication or posting of the ordinance. (UCA 10-3-713)

1-5-1.5 Ordinances to be Published or Posted - Adoption of Published Codes and Provisions of State Law by Reference Permitted

All ordinances, before taking effect, shall be deposited in the office of the City Recorder and a short summary thereof published at least once in a newspaper published within the City or if there is no newspaper published therein, by posting complete copies in three public places within the City.

Any ordinance, code, or book relating to building or safety standards, municipal functions, administration, control or regulations, may be adopted and shall take effect without further publication or posting, if reference is made to the code or book and at least three copies thereof have been filed for use and examination by the public in the officers of the City Recorder prior to the adoption of the ordinance by the City Council. Provisions of State law relating to building or safety standards, municipal functions, administration, control, or regulations may be adopted and shall take effect without further publication if reference is made to the state code. Any exception or other modification to any code, book or State law adopted by reference or any changes necessary to conform such code, book or State law with the City's ordinances shall be noted in the ordinance adopting such code, book or State law.

The ordinance which adopts such code, book or State law shall be published in the manner provided in this Section and by state law. (UCA 10-3-711)

1-5-1.6 Effective Date of Ordinances

Ordinances shall become effective 20 days after publication or posting or 30 days

after final passage by the City Council, whichever is closer to the date of final passage, but ordinances may become effective at an earlier or later date after publication or posting if so provided in the ordinance.
(10-3-711 and 10-3-712)

1-5-2 RESOLUTIONS

1-5-2.1 Purpose of Resolutions

Unless otherwise prohibited by law, the City Council may exercise all administrative powers by resolution including, but not limited to: (1) establishing water and sewer rates; (2) charges for garbage collection and fees charged for municipal services; (3) establishing personnel policies and guidelines; and (4) regulating the use and operation of municipal property.

Punishment, fines or forfeitures may not be imposed by resolution. (UCA 10-3-717)

1-5-2.2 Form of Resolution

Any resolution passed by the City Council shall be in a form and contain sections substantially similar to that prescribed for ordinances. (UCA 10-3-718)

1-5-2.3 Adoption, Recording

All resolutions shall be adopted and recorded in the manner prescribed for ordinances as set forth under section 1-5-1.3 above. Every resolution shall be in writing before the vote is taken.
(UCA 10-3-506 & 507)

1-5-2.4 Publication and Effective Date

Resolutions may become effective without publication or posting and may take effect on passage or at a later date as the City Council may determine, but resolutions may not become effective more than three months from the date of passage. (UCA 10-3-719)

TITLE II

MUNICIPAL ADMINISTRATION

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(Revised 5/06)

(Revised 5/06)

CHAPTER '2-1

GENERAL QUALIFICATIONS AND DUTIES OF OFFICERS

2-1-1 ELIGIBILITY FOR OFFICE

Any person elected to a city office must be a registered voter of the City and shall meet the eligibility requirements of Utah Statute. (UCA 10-3-301)

2-1-2 TERM OF OFFICE FOR MAYOR AND COUNCIL

The Mayor and Councilmen shall enter upon their duties at 12:00 noon on the first Monday in January next succeeding their election. The Mayor and each Councilman shall continue in the office to which they were elected for four years, except in the case of death, resignation, removal or disqualification from office. (UCA 10-3-201)

2-1-3 APPOINTIVE STATUTORY OFFICERS

On or before the first Monday in February following a municipal election, the Mayor, with the advice and consent of the City Council, shall appoint a qualified person to each of the offices of City Recorder, City Treasurer, and Chief of Police, who shall be considered as statutory officers of the City. The City Recorder shall be ex officio the City Auditor and shall perform the duties of such office. (UCA 10-3-916)

2-1-4 ADDITIONAL APPOINTIVE OFFICERS

The City Council may, by resolution or ordinance, provide for such other officers as may be necessary for the order and well-being of the City, define their duties, fix their compensation, and require them to take and subscribe to an oath and give bond. The Mayor, with the advice and consent of the Council may appoint persons to fill the positions so established. (UCA 10-3-901)

Chapter 2-1 Added in Codification

2-1-5 TERM OF APPOINTIVE OFFICERS

Except as otherwise may be provided by law, the term of office of the appointive officers enumerated above shall be until the election next following their appointment and until their respective successors are chosen and qualified, except that they may be sooner removed by the Mayor with the concurrence of a majority of the members of the City Council, or by the City Council with the concurrence of the Mayor. (UCA 10-3-916)

2-1-6 REMOVAL FROM CITY

If any elected officer shall at any time during his term of office be absent from the City for a continuous period of more than 60 days without the consent of the City Council or establish his principal place of residence outside the City during his or her term of office, the office shall thereby become automatically vacant. (UCA 10-3-301)

2-1-7 DELIVERY OF RECORDS

Every officer and employee of the City, upon expiration of his term for any cause whatsoever, shall, within five days after notification and request, deliver to his successor all books and records which may be the property of the City.

2-1-8 VACANCIES

Whenever any vacancy occurs in the office of Mayor or Councilman, the City Council shall by a majority vote, appoint a registered voter in the City to fill the vacancy. The person so appointed shall serve for the remainder of the unexpired term or until the office has been filled at the next election whichever occurs first. If for any reason the City Council does not fill the vacancy within 30 days after the vacancy occurs, the two persons having the highest number of votes of the City Council shall come before the City Council, and if there is not a majority vote by- the City Council, the vacancy shall be filled by lot in the presence of the City Council.

2. If a vacancy shall occur in the office of City Recorder, City Treasurer, or Chief of Police, the Mayor, by and with the consent of the City Council, shall forthwith fill such vacancy by appointment for the unexpired term. (UCA 10-3-302)

2-1-9 OATH OF OFFICE

All officers of the City, whether elected or appointed shall, before they enter upon the duties of their respective offices take, subscribe, and file the constitutional oath of office.

. No official act of any officer shall be invalid for the reason that he failed to take the oath of office. (UCA 10-3-827)

2-1-10 BONDS

Every elected officer of the City and the City Treasurer and Recorder, shall before entering upon the duties of his office, execute a bond with good and sufficient sureties, payable to the City, in such penal sum as may by resolution of the City Council be directed, conditioned on the faithful performance of the duties of his office and the payments of all money received by such officer according to the law and the ordinances of the City. The Treasurer's Bond shall be fixed at a sum not less than $2,500 or such larger amount as may be determined by the State Money Management Council. The bonds of Councilmen shall be approved by the Mayor. The premium charged for any official bond shall be paid by the City. (UCA 10-3-819)

2-1-11 COMPENSATION OF ELECTIVE AND APPOINTIVE OFFICERS

The elective and statutory officers shall receive such compensation for their services as the Council may fix by adoption of an ordinance establishing compensation or compensation schedules. Such ordinance shall be adopted pursuant to the provisions of Section 10-3-818, UCA. (UCA 10-3-818)

2-1-12 ADDITIONAL POWERS AND DUTIES

The duties, powers and privileges of all officers in any way connected with the City not defined in this Code shall be defined from time to time by appropriate ordinance or resolution of the City Council. (UCA 10-3-810)

CHAPTER 2-2

CITY COUNCIL 2-2-1 GOVERNING BODY

The governing body of the City shall be a City Council composed of six members one of whom shall be the Mayor and the remaining five shall be councilmen. (UCA 10-3-105)

2-2-2 MEETINGS - PUBLIC NOTICE REQUIRED

The City Council shall hold regular meetings on the first Monday following the fifth day of each month and also the third Tuesday of each month. Council meetings shall be held at the Gunnison City Building located at 38 West Center Street beginning at 7:30 o'clock p.m.

If at any time the business of the City requires a special meeting of the City Council, such meeting may be ordered by the Mayor or any two members *of* the Council. The order shall be entered in the minutes of the Council. The order shall provide at least three hours notice of the special meeting and notice thereof shall be served by the City Recorder on each member who did not sign the order by delivering the notice personally or by leaving it at the member's usual place of abode. The personal appearance by a member *of* the governing body at any specially called meeting constitutes a waiver of the notice required in this section.

Public notice of all regular and special meetings of the Council shall be given in accordance with the provisions of Section 52-4-6 UCA. (UCA 10-3-502 & 52-4-6)

2-2-3 QUORUM DEFINED - REQUIRED TO CONDUCT CITY BUSINESS EXCEPTIONS

The number of members of the Council necessary to constitute a quorum is three. No action of the Council shall be official or of any effect except when a quorum is present, provided however, that fewer than a quorum may act to adjourn from time to time.

Chapter 2-2 adopted in codification.

The City Council shall have the power to compel the attendance of its own members and provide such penalties as it deems necessary for the failure to comply therewith. (UCA 10-3-503, 10-3-504, & 10-3-505)

2-2-4 MINIMUM VOTE REQUIRED - ROLL CALL VOTE REQUIRED IN CERTAIN CASES

1. The minimum number of affirmative votes required to pass any ordinance, resolution, or to take any other action by the City Council, unless otherwise prescribed by law, shall be a majority of the members of the quorum present but shall never be less than three affirmative votes; provided the Mayor shall not vote on any matter before the Council, except in case of a tie vote.

2. Any ordinance, resolution, or motion of the Council having fewer favorable votes than required herein shall be deemed defeated and invalid, except a meeting may be adjourned to a specific time by a majority vote of those present.

3. A majority of the members of the City Council, regardless of number, may fill any vacancy in the Council.

4. A roll call vote shall be taken and recorded for all ordinances, resolutions, and any action which would create a liability against the City and in any other case at the request of any member of the governing body, by a yes or no vote and shall be recorded.

5. Every resolution or ordinance shall be in writing before the vote is taken.

(UCA 10-3-506, 10-3-507, 10-3-402) **2-2-5 RECONSIDERATION**

Any action taken by the City Council shall not be reconsidered or rescinded at any special meeting unless the number of members of the City Council present at the special meeting is equal to or greater than the number of the members present at the meeting when the action was originally approved. (UCA 10-3-508)

2-2-6 OPEN MEETINGS

Except as otherwise provided in this chapter or by law, all meetings of the City Council shall be open and public. No ordinance, resolution, rule, regulation, contract or other action of the City Council shall have any effect unless passed or approved at a properly held open and public meeting. (UCA 10-3-601)

2-2-7 RULES OF PROCEDURE

Except as otherwise provided by law, the City Council may establish its own rules of procedure for the proper conduct of its meetings. The City Council may fine or expel any member for disorderly conduct on a two-thirds vote of the members of the City Council. This section or any action taken by the City Council pursuant hereto, shall not preclude prosecution under any other provision of law. (UCA 10-3-606 to 10-3-608)

2-2-8 RECORD OF PROCEEDINGS

The City Council shall keep a journal of its proceedings. The books, records, accounts and documents of the City shall be kept at the office of the Recorder and approved copies shall be open and available for public inspection and copying during business hours. The Council may by resolution establish reasonable charges for providing copies of its public records to individuals, except when by law the City must provide the records to the public without cost. (UCA 10-3-603)

2-2-9 ADOPTION OF ORDINANCES - ENFORCEMENT

The City Council may pass any ordinance to regulate, require, prohibit, govern, control or supervise any activity, business, conduct or condition authorized by law or necessary for carrying into effect or discharging all powers and duties conferred by law, and as are necessary and proper to provide for the safety and preserve the health, and promote the prosperity, improve the morals, peace and good order, comfort, and convenience of the City and its inhabitants, and for the protection of property in the City;

They may enforce obedience to the ordinances with fines or penalties as they deem proper, in accordance with the provisions of Section 1-4-2 of this Code. (Provisions relating to the form of ordinances and procedure for adoption are set forth in Chapter 1-5 of this Code). (UCA 10-8-84, 10-3-702, 10-3-703)

2-2-10 COMMITTEE REPORTS

Final action on any report of any committee appointed by the City Council shall be deferred to the next regular meeting of the City Council on the request of any two members, except that the Council may call a special meeting to consider final action. (UCA 10-3-609)

2-2-11 OTHER POWERS

The City Council, as the governing body of the City, shall have, exercise and discharge all the rights, powers and privileges and authority specifically conferred or necessarily implied by the laws of Utah upon Cities of the third class, including but not limited to those hereinabove noted. (UCA 10-3-101, 10-3-102)

CHAPTER 2-3

MAYOR 2-3-1 CHIEF EXECUTIVE OFFICER

The Mayor shall be the Chief Executive of the City and the administrative powers, authority, and duties of the City are vested in the Mayor (UCA 10-3-808)

2-3-2 PRESIDING OFFICER OF CITY COUNCIL - MAYOR PRO TEMPORE

The Mayor shall be the Chairman and preside at the meetings of the City Council. In the absence of the Mayor or because of his inability or refusal to act, the City Council may elect a member of the City Council to preside over the meeting as Mayor Pro Tempore, who shall have all of the powers and duties of the Mayor during his absence or disability. The election of a Mayor Pro Tempore shall be entered in the minutes of the meeting of the City Council. (UCA 10-3-403)

2-3-3 DUTIES OF MAYOR

The Mayor shall have the following powers and duties:

I . Shall be the Chief Executive Officer to whom all employees of the City shall report;
2. Shall keep the peace and enforce the laws of the City;
3. Shall remit fines and forfeitures and may release any person imprisoned for violation of any City ordinance;
4. Shall report such remittance or release to the City Council at its next regular session;
5. Shall perform all duties prescribed by law, resolution or ordinance;
6. Shall insure that all laws and ordinances and resolutions are faithfully executed and observed;
7. May at any reasonable time inspect and examine the books, papers, records, or documents of the City or of any officer, employee or agent of the City;
8. Shall report to the City Council the condition of the City and recommend for Council consideration any measures as deemed to be in the best interests of the City;

Chapter 2-3 added in codification

9. Shall, when necessary, call on the residents of the City over the age of 21 years to assist in enforcing the laws of the State and the ordinances of the City;
10. Shall sign all City Ordinances, Resolutions and licenses and is authorized to sign his name officially for and in behalf of the City to all deeds, bonds, contracts, leases and other writings to which the City is party, when so directed by the Council.

(UCA 10-3-809)

2-3-4 APPOINTMENTS

Except as may be otherwise specifically provided by law or ordinance, the Mayor, by and with the advice and consent of the City Council:

1. Shall, on or before the first Monday in February following a municipal election appoint a qualified person to each of the offices of City Recorder, Treasurer and Chief of Police
2. May also appoint and fill vacancies in all such officers and agents as may be provided for by law or ordinance.
3. Shall appoint persons to fill City offices or vacancies on commissions or committees.
4. May assign or appoint any member or members of the Council to administer one or more department of the City, and/or change the assignment of any member serving in any administrative position.

(UCA 10-3-809, 10-3-916, 10-3-811 & 10-3-812)

CHAPTER 2-4 CITY

ADMINISTRATOR **2-4-1 OFFICE**

CREATED

There is hereby created in and for the City the Office of City Administrator.

2-4-2 APPOINTMENT

The City Administrator shall be appointed by the City Council. The Mayor may make recommendations to the Council concerning the selection and appointment. The City Administrator shall be appointed solely on the basis of his or her abilities, integrity, and prior experience relating to the duties of the office, including but not limited to abilities in public administration and executive leadership. he or she shall possess such managerial capabilities as, in the opinion of Mayor and City Council, befit him or her to provide professional direction to the administration of City affairs.

2-4-3 COMPENSATION

The City Administrator shall receive compensation at the rate and in the form to be determined by the City Council.

2-4-4 REMOVAL

The City Administrator serves at the pleasure of City Council and may be removed for cause by a majority vote of the Council or without cause by a 4/5 vote of the Council. The City Council may, as an alternative, enter into a contract or employment agreement with the Administrator for a term up to three years.

2-4-5 SEVERANCE PAY

The City Council shall cause the City Administrator, upon removal by the City, to be paid any unpaid balance of his or her salary and accrued vacation due to the date of his or her removal, together with his or her salary at the same rate for the next two (2) months following the date of his or her removal; provided, however, that in the event the City Administrator is terminated because of his or her conviction of any illegal act, the City has no obligation to pay the two month severance pay stated above.

Chapter 2-4 adopted by Ordinance 1991-3

2-4-6 POWERS AND **DUTIES**

The City Administrator shall have and exercise such powers and perform such duties as specified by this section, or in such other ordinances as specified by the governing body of the City.

Specifically, the powers of the Administrator shall be:

1. To attend all meetings of the Council with the right to take part in the discussion but not to vote.

2. To recommend and administer standards, rules, and procedures for the personnel system of the City, including the documentation of performance in the form of performance appraisals, commendations, and reprimands.

3. To act as purchasing agent for the City according to the provisions of the City's purchasing ordinance.

4. To assist the budget office (City Recorder) for the City, including preparation of City budgets, exercise of budgetary control over the City departments and services, responsibility for the fiscal operations of the City, and advising the Mayor and City Council of the financial condition and needs of the City.

5. To carry out all policies and programs established by the governing body.

6. To notify the Mayor immediately upon the Administrator's becoming aware of any emergency situation existing in any department or office under his/her supervision, where the emergency condition requires or will likely require future action on the part of the governing body of the City, or where the emergency threatens to interrupt normal City operations. If the Mayor takes no action, and the Administrator feels the Council should be informed, he/she may so advise the Council.

7. To be the Chief appointed administrative officer of the City. (The Mayor is the Chief executive of the City, with final administrative authority. It is the intent of this ordinance that professional management be provided through the appointment of a City Administrator whose selection is based on specific qualifications. The City Administrator shall be the Chief appointed administrative officer of the City. The position of City Administrator is intended to compliment the political leadership of the

Mayor by providing management expertise. The Administrator works under the direction of the Mayor, and the Mayor carries out his administrative duties through the City Administrator.)

8. To have authority, supervision, and direction over all City departments and offices, to direct officers and employees of the City through the designated department heads, and to oversee and evaluate the performance of all departments and offices.

9. To make recommendations on the selection and hiring and firing of City employees and officers. (The authority for hiring and firing all City employees rests with the governing body.)

10. To adhere to the City Management Code of Ethics as adopted and published by the International City Management Association.

EFFECTIVE DATE: This Ordinance shall take effect on the 1st day of January, 1992.

CHAPTER 2-5

CITY RECORDER 2-5-1 **APPOINTMENT -**

GENERAL DUTIES

The Mayor, in accordance with the provisions of this Code and State law shall appoint a person to act in the capacity of City Recorder. The City Recorder shall be the chief accounting and record keeping officer of the City and shall perform all duties which are required by the City ordinance, by direction of the City Council or Mayor, or by State law, including, but not limited to, those hereinafter set forth. (UCA 10-3-902, 10-3-916)

2-5-2 CLERK OF CITY COUNCIL

The City Recorder shall be the Clerk of the City Council. The recorder or deputy recorder shall attend all meetings of the Council and shall keep a record of the proceedings of the Council. (UCA 10-6-137)

2-5-3 ATTEST AND RECORD ORDINANCES

The City Recorder shall attest, affix the City Seal and accurately record all ordinances and resolutions passed by the City Council in a book kept for that purpose and shall certify to the publication of all ordinances and retain the affidavits of publication. (UCA 10-3-704 & 10-3-713

2-5-4 ELECTION

The City Recorder shall prepare and maintain election records and carry out the duties delegated to the Clerk, pursuant to the provisions of the Utah Municipal Election Code.

2-5-5 COUNTERSIGN CONTRACTS

The City Recorder shall countersign all contracts made on behalf of the City and shall maintain a record of all contracts, properly indexed, which records shall be open to inspection by all interested persons. (UCA 10-6-138)

Chapter 2-5 adopted as part of Codification.

2-5-6 ACCOUNTS AND PAYMENTS ON CLAIMS

The City Recorder shall maintain or cause to be maintained the general books for each fund of the City and all subsidiary and detailed records relating thereto, including a list of the outstanding bonds, their purpose, amount, terms, date, and place payable. He shall keep accounts with all receiving and disbursing officers of the City, shall pre-audit all claims and demands against the City before they are allowed by the City Council and shall prepare the necessary checks in payment thereof to be drawn on the appropriate accounts of the City. The recorder shall certify on the voucher copy of said check or other supporting record that:

1. The claim has been pre-audited and found it to be true and correct,

2. The claim has been approved in one of the following ways.:

   a. Purchase order directly approved by the Council or its delegate;
   b. Claim directly approved by the Council; or
   c. Claim directly approved by the financial officer,

3. The claim is within the lawful debt limit of the City, and

4. The claim does not over-expend the appropriate departmental budget established by the City Council. (UCA 10-6-139)

2-5-7 BUDGET OFFICER

The City Recorder is hereby appointed to be the budget officer of the City. The budget officer shall perform all duties which are prescribed by this Code and by the Utah Uniform Fiscal Procedures Act For Utah Cities. (UCA 10-6-101 et. seq.)

CHAPTER 2-6

CITY **TREASURER** 2-6-1 **APPOINTMENT -**

GENERAL DUTIES

The Mayor, in accordance with the provisions of this Code and State law shall appoint a person to act in the capacity of City Treasurer. The City Treasurer shall: (1) be the custodian of all money, bonds, or other securities of the City; (2) determine the cash requirements of the City and provide for the investment of all idle cash; (3) receive all public funds and money payable to the City and deposit the same within three business days after collection, including all taxes, licenses, fines, and intergovernmental revenue, and keep an accurate detailed account thereof as provided by state law and as the Council may by ordinance or resolution from time to time direct; and (4) collect all special taxes and assessments as provided by law and ordinance. (UCA 10-3-916 & 10-6-141, 10-6-146)

2-6-2 **RECEIPTS** FOR **PAYMENTS**

The City Treasurer shall give or cause to be given to every person paying money to the City Treasury, a receipt or other evidence *of* payment therefor, specifying the date of payment and upon what account paid, and shall file the duplicate of such receipt or other evidence of payment in the office of the City Recorder. (UCA 10-6-142)

2-6-3 SIGNING CHECKS

The Treasurer or such other persons as the City Council may by resolution designate, shall sign all checks prepared by the City Recorder. Prior to affixing the signature, the City Treasurer or such other person shall determine that sufficient funds are *on* deposit in the appropriate account of the City to honor such check. (UCA 10-6-143)

Chapter 2-6 added *in* codification

2-6-4 SPECIAL ASSESSMENTS

All money received by the treasurer on any special assessment shall be applied to the payment of the improvement for which the assessment was made. Such money shall be used for the payment of interest and principal on bonds or other indebtedness issued in settlement thereof, and shall be used for no other purpose,
except as otherwise provided by law. The Treasurer shall have such duties as are enumerated by State Law regarding the sale of property for delinquent assessments. (UCA 10-6-145)

2-6-5 MISUSE OF FUNDS

The Treasurer shall keep all money belonging to the City separate and distinct from his own and shall promptly make deposit thereof in the appropriate accounts of the City. Whenever it shall appear to the City Council that the Treasurer is making a profit from public money or is. using the same for any purpose not authorized by law, it shall suspend him from office. Upon his
conviction for such offense his office shall become vacant. (UCA **10-6-146)**

2-6-6 STATEMENT OF UTILITY SERVICES

The **Treasurer** shall mail a written statement at such time as authorized by the Council to each user of water service, sewer service, garbage collection service, or other services of the City and shall be responsible for the collection of all fees and assessments charged for such services.

2-6-7 OTHER DUTIES

The Treasurer shall perform such other duties as may be required by City Ordinance, by direction of the Mayor or City Council, or by State law.

CHAPTER 2-7

CITY COURT 1 ESTABLISHMENT

OF JUSTICE COURT

There is hereby established a Municipal Justice Court in and for the City to be known as the Gunnison City Justice Court. (UCA 10-3-923)

2-7-2 APPOINTMENT AND TERM OF OFFICE

The Mayor, with the advice and consent of the City Council, shall appoint a person to serve as the judge of the court. The person so appointed shall meet the qualifications for office and be appointed and qualified in accordance with the applicable procedures set forth in state law. The term of office of the person so appointed shall be for four (4) years beginning on the first Monday of February, 1992. (UCA 78-5-134)

2-7-3 DUTIES AND POWERS

The Gunnison City Justice Court shall have and exercise all powers granted to such courts by the laws of the State of Utah and ordinances of the City, and shall perform the duties and conduct the business of the Court in accordance therewith. (UCA 78-5-101-139)

2-7-4 COMPENSATION

The City Council shall annually review the compensation paid to the judge and may adjust the amount of compensation paid to the judge in the same manner as for elected and statutory appointed officials of the City but such compensation shall not be diminished during the term for which the judge was appointed. (UCA 78-5-129)

2-7-5 REMOVAL

The judge may be removed from office only in accordance with the procedures set forth in Sections 78-7-28 through 78-7-30, UCA.

Chapter 2-7 adopted in codification.

CHAPTER 2-8

HISTORIC **PRESERVATION** COMMISSION

2-8-1 **PURPOSE**

The City of Gunnison recognizes that the historical heritage of the Gunnison community is among its most valued and important assets. It is therefore the intent of Gunnison to identify, preserve, protect and enhance historical areas and sites lying within the city limits of Gunnison City.

2-8-2 COMMISSION ESTABLISHED - COMPOSITION

In order to more fully carry out the purposes of this Chapter, there is hereby established an Historic Preservation Commission for Gunnison City. The commission shall consist of a minimum of five members each of whom must have exhibited a demonstrated interest, competence, or knowledge in historic preservation prior to being appointed to the commission. To the extent available within the City, two of the commission members shall be professionals, as defined by National Park Service regulations, from the disciplines of history, and architecture or architectural history.

2-8-3 APPOINTMENT OF **MEMBERS -** TERMS OF OFFICE

Each of the members shall be appointed by the Mayor subject to the approval of the City Council and each shall serve at the pleasure of the Mayor and City Council. The term of office of each member of the commission shall be for a period of not less than two years and until their successor has been appointed. Any vacancy in the commission by reason of death, resignation, or otherwise other than the normal expiration of a term, shall be filled by a person appointed by the Mayor subject to the approval of the City Council, and said person shall serve only until the expiration of the term he was appointed to fill.

Chapter 2-8 adopted by Ordinance 1990-1.

2-8-4 MEETINGS - MINUTES TO BE MAINTAINED

The commission will meet at least twice each year and shall conduct business in accordance with the Open Public Meeting Laws of Utah including but not limited to, public notification of meeting place, time, and agenda items. Written minutes of each commission meeting shall be prepared and made available for public inspection.

2-8-5 COMMISSION DUTIES

2-8-5.1 Survey and Inventory Community Historic Resources

The historic preservation commission shall conduct or cause to be conducted a survey of the historic, architectural, and archeological resources within the community. The survey shall be compatible with the Utah Inventory of Historic and Archeological Sites. Survey and inventory documents shall be maintained and open to the public. The survey will be updated at least every ten years.

2-8-5.2 Review Proposed Nomination to the National Register of

Historic Place The historic preservation commission shall review and comment to the State Historic Preservation Officer on all proposed National Register nominations for properties within the boundaries of the community. When the historic preservation commission considers a National Register nomination which is normally evaluated by professionals in a specific discipline and that discipline is not represented on the commission, the commission will seek expertise in this area before rendering its decision.

2-8-5.3 _____ Provide Advice and information

The Commission shall provide advice and information as follows:

1. The historic preservation commission shall act in an advisory role to other officials and departments of local government regarding the identification and protection of local historic and archeological resources.

2. The historic preservation commission shall work toward the continuing education of citizens regarding historic preservation and the community's history.

2-8-5.4 _____ Enforcement of State Historic Preservation_____Laws

The commission shall support the enforcement of all state laws relating to historic preservation. These include, but are not

limited to: Utah Code Annotated, 1953, Sections 11-18-2 et. seq. ("The Historic District Act"); Sections 63-18-25, 27 and 30, regarding the protection of Utah antiquities; and Section **63-18-37** regarding notification of the State Historic Preservation Office of any known proposed action which will destroy or effect a site, building, or object owned by the State of Utah and included on or eligible for the State or National Registers.

CHAPTER 2-9

D OF APPEALS

2-9-1 BOARD ESTABLISHED

Pursuant **to** the provisions of UCA 10-3-1106, There is hereby established an appeal board for the City, to be designated as the Gunnison City appeal Board. (UCA 10-3-1106)

2-9-2 COMPOSITION OF BOARD - TERM OF OFFICE - MODE OF APPOINTMENT

The Board shall consist of five members, three of whom shall be chosen by and from the appointive officers and employees of the City, and two of whom shall be members of the City Council

The term of office of each member of the appeal board shall be for one year. The two (2) members of the appeal board who are members of the City Council shall be appointed by the Mayor on the first City Council meeting in January and shall hold their office until their successors are appointed at the first City Council meeting of the next succeeding January.

The three (3) members to be chosen by and from the appointive officers and employees shall be chosen by an election, held as soon after January 1 of each year as practicable, and they shall hold their offices until their successors are elected the following January. The officers and employees shall elect a chairman of the board who shall certify to the City Council at the first City Council meeting in January of each year the names of those elected to the appeal board. (UCA 10-3-1106)

2-9-3 POWERS AND DUTIES

The **Board** shall have the duty and pow-r to hear and decide appeals submitted to it by any appointive officer or employee of the City, except those specifically excluded under State law (see UCA 10-3-1105), who for any reason is discharged or transferred to a position of less remuneration. (UCA 10-3-1105 & 10-3-1106)

Chapter 2-9 added in codification

2-9-4 RIGHTS OF APPEAL - HOW TAKEN - HEARING

Any officer or employee, except those specifically exempted by State law, who is discharged or transferred to a position of less remuneration shall have and maintain a right to appeal to the Appeal Board. The appeal shall be taken by filing written notice of the appeal with the recorder within ten days after the discharge or transfer, who shall forthwith refer a copy of the same to the Appeal Board. Upon receipt of the referral from the recorder the Board shall forthwith commence its investigation, take and receive evidence, and fully hear and determine the matter which relates to the cause for the discharge or transfer. (UCA 10-3-1106)

2-9-5 HEARING - DECISION OF BOARD

The **officer or employee** who timely files an appeal as set forth above shall be entitled to appear in person and to be represented by counsel, to have a public hearing, to confront the witnesses whose testimony is to be considered, and to examine the evidence to be considered by the Appeal Board.

In the event the Appeal Board upholds the discharge or transfer, the officer or employee may have 14 days thereafter to appeal to the City Council whose decision shall be final. In the event the Appeal Board does not uphold the discharge or transfer the case shall be closed and no further proceedings shall be had.

The decision of the Appeal Board shall be by secret ballot, and shall be certified to the Recorder within 15 days from the date the matter is referred to it. The board may, in its decision, provide that an employee shall receive his salary for the period he was transferred to a position of less remuneration but not to exceed a 15 day period. In no case shall the appointive officer or employee be discharged or transferred, where an appeal is taken, except upon a concurrence of at least a majority of the membership of the City Council.

In the event that the Appeal Board does not uphold the discharge, or transfer, the Recorder shall certify the decision to the employee affected, and also to the head of the department from whose order the appeal was taken. The employee shall be paid his salary, commencing with the next working day following the certification by the Recorder of the Appeal Board's decision, provided that the employee or officer concerned reports for his assigned duties during the next working day. (UCA 10-3-1106)

CHAPTER 2-10

EQUAL EMPLOYMENT OPPORTUNITY

2-10-1 INTENT

It is the policy of Gunnison City to comply with the guidance set forth in Title VII of the Civil Rights Act of 1964, according to public Law 92-261, approved March 24, 1972.

2-10-2 ADOPTION OF **EQUAL** EMPLOYMENT POLICY

Gunnison City will hire, promote, classify, transfer, discipline and discharge all persons concerned without reference to race, color, religion, sex, age or natural origin. No class of jobs will be closed to any individual because of the above referenced criteria.

Personnel will be compensated on the basis of equal pay for equal work. No individual will receive reduced compensation for equal work on the basis of race, color, religion, sex, age or natural origin.

Chapter 2-10 added in Codification Chap.2 -

CHAPTER 2-11
RECORDS ACCESS AND MANAGEMENT

2-11-1 SHORT TITLE

The Ordinance is known as the Gunnison City Government Records Access and Management Act.

2-11-2 **PURPOSE** AND INTENT

1. In enacting this act, the city recognizes two fundamental constitutional rights:

   a. The right of privacy in relation to personal data gathered by the city; and
   b. The public's right of access to information concerning the conduct of the public's business.

2. It is the intent of the city to:

   a. Establish fair information practices to prevent abuse of personal information by the city while protecting the public's right of easy and reasonable access to unrestricted public records; and
   b. Provide guidelines of openness to government information and privacy of personal information consistent with nationwide standards.
   c. Establish and maintain an active, continuing program for the economical and efficient management of the city's records as provided in this Ordinance.

2-11-3 DEFINITIONS

As used in this ordinance:

1. "Audit" means:

   a. A systematic examination of financial, management, program, and related records for the purpose of determining the fair presentation of financial statements, adequacy of internal controls, or compliance with laws and regulations or

   ;

   b. A systematic examination of program procedures and operations for the purpose of determining their effectiveness, economy, efficiency, and compliance with statutes and regulations.

2. "Chronological logs" means the regular and customary summary records of law enforcement agencies and other public safety agencies that show the time and general

nature of police, fire, and paramedic calls made to the agency and any arrests or jail bookings made *by* the agency.

3 "Classification," "classify," and their derivative forms mean determining whether a record series, record, or information within a record is public, private, controlled, or protected, or exempt from disclosure under Utah Code, Section **63-2-201(3)(b).**

4. a. "Computer program" means a series of instructions or statements that permit the functioning of a computer system in a manner designed to provide storage, retrieval, and manipulation of data from the computer system, and any associated documentation and source material that explain how to operate the computer program.

b. "Computer program" does not mean:

(i) the original data, including numbers, text, voice, graphics, and images;

(ii) analysis, compilation, and other manipulated forms of the original data produced by use of the program; or

(iii) the mathematical or statistical formulas (excluding the underlying mathematical algorithms contained in the program) that could be used if the manipulated forms of the original data were to be produced manually.

5. "Controlled record" means a record containing data on individuals that is controlled as provided by Section 11.

6. a. "Contractor means:

(i) any person who contracts with the city to provide goods or services directly to the city: or

(ii) any private, nonprofit organization that receives funds from the city.

"Contractor" does not mean a private provider.

7. "Gross compensation" means every form of remuneration payable for a given period to an individual for services provided including salaries, commissions, vacation pay, severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any similar benefit received from the individual's employer.

8. "Designation," "designate," and their derivative forms mean indicating, based on the city's familiarity with a record series or based on the city's review of a reasonable sample of a record series, the primary classification that a majority of records in a record series would be given if classified and the classification that other records typically present in the record series would be given if classified.

9. a. "Initial contact report" means an initial written or recorded report, however titled, prepared by peace officers engaged in public patrol or response duties describing official actions initially taken in response to either a public complaint about or the discovery of an apparent violation of law, which report may describe:

(i) the date, time, location, and nature of the complaint, the incident, or offense;

(ii) names of victims;

(iii) the nature or general scope of the agency's initial actions taken in response to the incident;

(iv) the general nature of any injuries or estimate of damages sustained in the incident;

(v) the name, address, and other identifying information about any person arrested or charged in connection with the incident;

(vi) the identity of the public safety personnel (except undercover personnel) or prosecuting attorney involved in responding to the initial incident.

b. Initial contact reports do not include follow-up or investigative reports prepared after the initial contact report. However, if the information specified in Subsection (a) appears in follow-up or investigative reports, it may only be treated confidentially if it is private, controlled, protected, or exempt from disclosure under Section 63-2-201(3)(b) of the Utah Code.

10. "Individual means a human being.

11. "Person" means any individual, nonprofit or profit corporation, partnership, =ole proprietorship, or other type of business organization.

12. "Private record" means a record containing data on individuals that is classified private as provided by Section 10.

13. "Private provider" means any person who contracts with the city to provide services directly to the public.

14. "Protected record: means a record that is classified protected as provided by Section 12.

15. "Public record" means a record that has not been appropriately classified private, controlled, or protected as provided in Sections 10, 11, and 12 of this Ordinance.

16. a. "Record" means all books, letters, documents, papers, maps, plans, photographs, films, cards, tapes, recording, or other documentary materials, and electronic data regardless of physical form or characteristics, prepared, owned, used, received, or retained by the city;

b. "Record" does not mean:

(i) temporary drafts or similar materials prepared for the originator's personal use or prepared by the originator for the personal use of an individual for whom he is working;

(ii) materials that are legally owned by an individual in his private capacity;

(iii) materials to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by the city;

(iv) proprietary software;

(v) junk mail or commercial publications received by the city or an official or employee of the city;

(vi) books and other materials that are cataloged, indexed, or inventoried and contained in the collections of libraries open to the public, regardless of physical form or characteristics of the material;

(vii) daily calendars and other personal notes prepared by the originator for the originator's personal use or for the personal use of an individual for whom he is working; or

(viii) computer programs as defined that are developed or purchased by or for the city for its own use.

(ix) notes or internal memoranda prepared as part of the deliberative process by a member of the judiciary,

an administrative law judge, a member of the Board of Pardons, or a member of any other body charged by law with performing a quasi-judicial function.

17. "Record series" means a group of records that may be treated as a unit for purposes of designation, description, management, or disposition.

18 "Records officer" means the City Recorder unless another individual is appointed by the City Manager to work in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records.

19. "Summary data" means statistical records and compilations that contain data derived from private, controlled, or protected information but that **do** no disclose **private,** controlled, or protected information.

2-11-4 RIGHT OF PUBLIC ACCESS

2-11-4.1 Every person has the right to inspect a public record free of charge and the right to take a copy of a public record during normal working hours, subject to the payment of costs and fees pursuant to Section **6** of this Ordinance.

2-11-4.2 All records are public unless otherwise expressly provided by this Ordinance or State or Federal law or regulation.

2-11-4.3 The following records are not public:

a. records that are appropriately classified private, controlled, or protected as allowed by Sections 10, 11, and 12 of this Ordinance; and

b. records to which access is restricted pursuant to court rule, another state statute, federal statute, or federal regulation, including records for which access is governed or restricted as a condition of participation in a state or federal program or for receiving state or federal funds.

2-11-4.4 Only those records specified in Sections 10, 11, or 12 may be classified private, controlled, or protected.

2-11-4.5 a. The city may not disclose a record that is private, controlled, or protected to any person except as provided in Subsection (5)(b) or Section 5.

b. The city may, at its discretion, disclose records that are private under Subsection 10.2 or protected Under Section 12 to persons other than those specified in Section 5 if the city council, or a designee, determines that there is no interest in restricting access to the record, or that the interests favoring access outweigh the interest favoring restriction of access.

2-11-4.6 a. The disclosure of records to which access is governed or limited pursuant to court rule, another state statute, federal statute, or federal regulation, including records for which access is governed or limited as a condition of participation in a state or federal program or for receiving state or federal funds, is governed by the specific provisions of that statute, rule or regulation.

b. This chapter applies to records described in Subsection (a) insofar as this chapter is not inconsistent with the statute, rule, or regulation.

2-11-4.7 The city shall provide a person with a certified copy of a record if:

a. The person requesting the record has a right to inspect it;

b. The person identifies the record with reasonable specificity; and

c. The person pays the lawful fees.

2-11-4.8 a. The city is not required to create a record in response to a request.

b. Nothing in this Ordinance requires the city to fulfill a person's records request if the request unreasonably duplicates prior records requests from that person.

2-11-4.9 If a person requests copies of more than 50 pages of records, and if the records are contained in files that do not contain records that are exempt from disclosure, the city may:

a. provide the requester with the facilities for copying the requested records and require that the requester make the copies himself; or

b. allow the requester to provide his own copying facilities and personnel to make the copies at the city offices, and waive the fees for copying the records.

2-11-4.10 a. If the city owns an intellectual property right and offers the intellectual property right for sale, or license, the City may control by ordinance or policy the duplication, and distribution of the material based on terms the city considers to be in the public interest.

b. Nothing in this Ordinance shall be construed to limit or impair the rights or protections granted to the city under federal copyright or patent law as a result of its ownership of the intellectual property right.

2-11-4.11 The City may not use the physical form, electronic or otherwise, in which a record is stored to deny, or unreasonably hinder the rights of persons to inspect and receive copies of a record under this Ordinance.

2-11-5 ACCESS TO NON PUBLIC RECORDS

2-11-5.1 Upon request the city shall disclose a private record to:

a. The subject of the record;

b. The parent or legal guardian of an unemancipated minor who is the subject of the record;

c. The legal guardian of a legally incapacitated individual who is the subject of the record;

d. any other individual who;

(i) has a power or attorney from the subject of the record; or

(ii) submits a notarized release from the subject of the record or his legal representative dated no later than 90 days before the date the request is made; or

e. Any person to whom the record must be provided pursuant to court order.

2-11-5.2 a. Upon request, the city shall disclose a controlled record to:

(i) a physician, psych.logist, or certified social worker upon submission of a notarized release from the subject of the record that is dated no more than 90 days prior to the date the request is made and a signed acknowledgement of the terms of disclosure of controlled information as provided by Subsection b; and

(ii) any person to whom a record must be disclosed pursuant to Court Order.

b. A person who receives a record from the city in accordance with Subsection 5.2.a(i) may not disclose controlled information from that record to any person, including the subject of the record.

2-11-5.3 If there is more than one subject of a private or controlled record, the portion of the record that pertains to another subject shall be segregated from the portion that the requester is entitled to inspect.

2-11-5.4 Upon request the city shall disclose a protected record to:

a. the person who submitted the information in the record;

b. any other individual who;

(i) has a power of attorney from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification; or

(ii) submits a notarized release from their legal representatives dated no more than 90 days prior to the date the request is made; or

c. any person to whom a record must be provided pursuant to a court order.

2-11-5.5 The city may disclose a record classified private, controlled, or protected to another governmental entity, city, another state, the United States, or a foreign government only as provided by Utah Code annotated 63-2-206.

2-11-5.6 Before releasing a private, controlled, or protected record, the city shall obtain evidence of the requester's identity.

2-11-5.7 The City shall disclose a record pursuant to the terms of a court order signed by a judge from a court of competent jurisdiction, provided that:

a. the record deals with a matter in controversy over which the court has jurisdiction.

b. the court has considered the merits of the request for access to the record; and

c the court has considered and, where appropriate, limited the requester's use and further disclosure of the record in order to protect privacy interests in the case of private or controlled records, business confidentiality interests in the case of records protected under Subsections 63-2304(1) and (2), and privacy interests or the public interest in the case of other protected records;

d to the extent the record is properly classified private, controlled, or protected, the interests favoring access, considering limitations thereon, outweigh the interests favoring restriction of access; and

e. where access is restricted by a rule, statute, or regulation referred to in Subsection 4.3(b), the court has authority independent of this Ordinance to order disclosure.

2-11-5.8 a. The City may disclose or authorize disclosure of private or controlled records for research purposes if the city:

(i) determines that the research purpose cannot reasonably be accomplished without use of disclosure of the information to the researcher in individually identifiable form;

(ii) determines that the proposed research is bona fide, and that the value of the research outweighs the infringement upon personal privacy;

(iii) requires the researcher to assure the integrity, confidentiality, and security of the records and requires the removal or destruction of the individual identifiers associated with the records as soon as the purpose of the research project has been accomplished;

(iv) prohibits the researcher from disclosing the record in individually identifiable form except as provided in Subsection (b), or from using the record for purposes other than the research approved by the city; and

(v) secures from the researcher a written statement of his understanding of and agreement to the conditions of this Subsection and his understanding that violation of the terms of this Subsection may subject him to criminal prosecution under Section 63-2-801 of the Utah Code.

b A researcher may disclose a record in individually identifiable form if the record is disclosed for the purpose of auditing or evaluating the research program and no subsequent use or disclosure of the record in individually identifiable form will be made by the auditor or evaluator except as provided by this section.

c The City may require indemnification as a condition of permitting research under this subsection.

2-11-5.9 a Under Subsections 4.5(b) and Section 16.4 the City may disclose records that are private under Section 10, or protected under Section 12 to persons other than those specified in this section.

b. Under Section 16 the City Council may require the disclosure of records that are private under Section 10, controlled under Section 11, or protected under Section 12 to persons other than those specified in this section.

c. Under Subsection 63-2-404(8) of the Utah Code the court may require the disclosure of records that are private under Section 10, controlled under Section 11, or protected under Section 13 to persons other than those specified in this section.

2-11-6 FEES

2-11-6.1 The city may charge a reasonable fee to cover the city's actual cost of duplicating a record or compiling a record in a form other than that maintained by the city. The fees may be set by Resolution. The initial fee, until changed by Resolution, is as set forth in Exhibit "A" hereto.

a. **A** city may fulfill a record request without charge when it determines that:

(i) releasing the record primarily benefits the public rather than a person;

(ii) the individual requesting the record is the subject of the record; or

(iii) the requester's legal rights are directly implicated by the information in the record, and the requester is impecunious.

b. A city may not charge a fee for:

(i) reviewing a record to determine whether it is subject to disclosure; or

(ii) inspecting a record.

2-11-7 **PROCEDURES** FOR **ACCESS**

2-11-7.1 **A** person making a request for a record shall furnish the city with a written request containing his name, mailing address, daytime telephone number if available, and a description of the records requested that identifies the record with reasonable specificity.

2-11-7.2 As soon as reasonably possible, but no later than ten business days after receiving a written request, or five business days after receiving a written request if the requester demonstrates that expedited response to the record request benefits the public rather than the person, the city shall respond to the request **by:**

(i) approving the request and providing the record;

(ii) denying the request;

(iii) notifying the requester that it does not maintain the record and providing, if known, the name and address of where the record can be found; or

(iv) notifying the requester that because of one of the extraordinary circumstances listed in Subsection 4, it cannot immediately approve or deny the request. The notice shall describe the circumstances relied upon and specify the earliest time and date when the records will be available.

2-11-7.3 Any person who requests a record to obtain information for a story or report for publication or broadcast to the general public is presumed to be acting to benefit the public rather than a person.

2-11-7.4 The following circumstances constitute "extraordinary circumstances" that allow the city to delay approval or denial by an additional period of time as specified in Subsection 7.5 if the city determines that due to the extraordinary circumstances it cannot respond within the time limits provided in Subsection 7.2:

a. Another governmental entity is using the record, in which case the city shall promptly request that the governmental entity currently in possession return the record;

b. another governmental entity is using the record as part of an audit and returning the record before the completion of the audit would impair the conduct of the audit;

c. the request is for a voluminous quantity of records;

d. the city is currently processing a large number of records requests;

e. the request requires the city to review a large number of records to locate the records requested;

f. the decision to release a record involves legal issues that require the city to seek legal counsel for the analysis of statutes, rules, ordinances, regulations, or case law;

g segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires extensive editing; or

h. segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires computer programming.

2-11-7.5 If one of the extraordinary circumstances listed in Subsection **4** precludes approval or denial within the time specified in Subsection 2, the following time limits apply to the extraordinary circumstances:

a. for claims under Subsection 4.a., the governmental entity currently in possession of the record shall return the record to the originating entity within five business days of the request for the return unless returning the record would impair the holder's work.

b. for claims under Subsection 4.b., the originating city shall notify the requester when the record is available for inspection and copying;

c. for claims under Subsection 7.4.c., 7.4.d., and 7.4.e., the city shall:

(i) disclose the records that it has located which the requester is entitled to inspect;

(ii) provide the requester with an estimate of the amount of time it will take to finish the work required to respond to the request; and

(iii) complete the work and disclose those records that requester is entitled to inspect as soon as reasonably possible;

d. for delays under Subsection 7.4.f., the city shall either approve or deny the request within five business days after the response time specified for the original request has expired;

e. for delays under Subsection 7.4.g., the city shall fulfill the request within 15 business days from the date of the original request; or

f. for delays under Subsection 7.4.h., the city shall complete its programming and disclose the requested records as soon as reasonably possible.

2-11-7.6 If the city fails to provide the requested records or issue a denial within the specified time period, that failure is considered the equivalent of a determination denying access to the records.

2-11-8 DENIALS

2-11-8.1 If the city denies the request in whole or part, it shall provide a notice of denial to the requester either in person or by sending the notice to requester's address.

2-11-8.2 The notice of denial shall contain the following information:

a. a description of the record or portions of the record to which access was denied, provided that the description does not disclose private, controlled, or protected information or records to which access' is restricted pursuant to court rule, another state statute, federal statute, or federal regulation, including records for which access is governed or restricted as a condition of participation in a state or federal program or for receiving state or federal funds.

b. citations to the provisions of this Ordinance, another state statute, federal statute, court rule or order or federal regulation that exempt the record or portions of the record from disclosure, provided that the citations do not disclose private, controlled, or protected information;

c. a statement that the requester has the right to appeal the denial to the city council; and

d. a brief summary of the appeals process, and the time limits for filing an appeal.

3-11-8.3 Unless otherwise required by a court or agency of competent jurisdiction, the city may not destroy or give up custody of any record to which access was denied until the period for an appeal has expired or the end of the appeals process, including judicial appeal.

2-11-9 RECORDS THAT MUST BE DISCLOSED

2-11-9.1 The following records are

public.

a. laws and ordinances;

b. names, gender, gross compensation, job titles, job descriptions, business addresses, business telephone numbers, number of hours worked per pay period, dates of employment, and relevant education, previous employment, and similar job qualification of the city's former and present employees and officers excluding undercover law enforcement personnel or investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety;

c. final opinions, including concurring and dissenting opinions, and orders that are made by the city in an administrative, adjudicative, or judicial proceeding except that if the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they obtain information that is private, protected, or controlled;

d. final interpretation of statutes or rules by the city unless classified as protected as provided in Subsections 12 (15), (16) and (17).

e. information contained in or compiled from a transcript, minutes, or report of the open portion of a meeting of the city including the records of all votes of each member of the city council

f. Judicial records unless a court orders the records to be restricted under the rules of civil or criminal procedures or unless the records are private under this Ordinance;

g records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning commissions the Division of State Lands and

Forestry, the Division of Oil, Gas and Mining, the Division of Water Rights, or other governmental entities that give public notice of:

(i) titles or encumbrances to real property;

(ii) restrictions on the use of real property;

(iii) the capacity of persons to take or convey title to real property; of

(iv) tax status for real and personal property;

h. records of the Department of Commerce that evidence incorporations, mergers, name changes, and uniform commercial code filings;

i. Data on individuals that would otherwise be private under this ordinance if the individual who is the subject of the record has given the city written permission to make the records available to the public;

J. documentation of the compensation that the city pays to a contractor or private provider; and

k. summary data.

2-11-9.2 The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under Subsection 4.3(b) or Sections 10, 11, or 12:

a administrative staff manuals, instructions to staff, and statements of policy;

b. records documenting a contractor's or private provider's compliance with the terms of a contract with the city;

c. records documenting the services provided by a contractor or a private provider to the extent the records would be public if prepared by the city;

e. any account, voucher, or contract that deals with the receipt or expenditure of funds by the city;

f. records relating to governmental assistance or incentives publicly disclosed, contracted for, or given by the city, encouraging a person to expand or relocate a business in Utah, except as provided in Subsection 63-2-304(34) of the Utah Code.

g chronological logs and initial contact reports;

h. correspondence by and with the city in which the city determines or states an opinion upon the rights of the state, a political subdivision, the public, or any person;

i. empirical data contained in drafts if:

(i) the empirical data is not reasonably available to the requester elsewhere in similar form; and

(ii) the city is given a reasonable opportunity to correct any errors or make nonsubstantial changes before release;

j drafts that are circulated to anyone other than the city, state or to anyone other than a federal agency if the city, state or federal agency are jointly responsible for implementation of a program or project that has been legislatively approved; and

k. drafts that have never been finalized but were relied upon by the city in carrying out action or policy;

1. original data in a computer program if the city chooses not to disclose the program;

m. arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service;

n. search warrants after execution and filing of the return, except that a court, for good cause, may order restricted access to search warrants prior to trial;

o. records that would disclose information relating to formal charges or disciplinary actions against a past or present city employee if:

(i) the disciplinary action has been completed and all time periods for administrative appeal have expired; and

(ii) the formal charges were sustained;

p records maintained by the Division of State Lands and Forestry or the Division of Oil, Gas and Mining that evidence mineral production on government lands;

q. final audit reports; Chap.2

r. occupational and professional licenses;

business licenses; and

t. a notice of violation, a notice of agency action under Section 63-46b-3 of the Utah Code, or similar records used to initiate proceedings for discipline or sanctions against persons regulated by the city, but not including records that initiate employee discipline.

2-11-9.3 The list of public records in this section is not exhaustive and should not be used to limit **access to records.**

2-11-10 PRIVATE RECORDS

2-11-10.1 The following records are private:

a. records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;

b. records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;

c. records of publicly funded libraries that when examined alone or with other records identify a patron;

d. records received or generated in a Senate or House ethics committee concerning any alleged violation of the rules on legislative ethics if the ethics committee meeting was closed to the public;

e. records concerning a current or former employee of, or applicant for employment with the city that would disclose that individual's home address, home telephone number, social security number, insurance coverage, marital status, or payroll deductions.

2-11-10.2 The following records are private if properly classified by the city:

a. records concerning a current or former employee of, or applicant for employment with the city, including performance evaluations and personal status information such a race, religion, or disabilities, but not including records that are public under Subsections 9.(b), 9.2(o) or private under Subsection 10.1(e).

b. records describing an individual's finances, except that the following are public:

(i) records described in Subsection 9.1;

(ii) information provided to the city for the purpose of complying with a financial assurance requirement; or

(iii) records that must be disclosed in accordance with another statute;

c. records of independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the agency;

d. other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy.

e. records provided by the United States or by a governmental entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it.

2-11-11 CONTROLLED RECORDS

A record is controlled only if;

1. the record contains medical, psychiatric, or psychological data about an individual;

2. the city reasonably believes that:

a. releasing the information in the record to the subject of the record would be detrimental to the subject's mental health or to the safety of any individual; or

b. releasing the information would constitute a violation of normal professional prat;tice and medical ethics; and

c. the city has properly classified the record.

2-11-12 PROTECTED RECORDS

The following records are protected if properly classified by the city:

1. trade secrets as defined in Section 13-24-2 of Utah Code Annotated if the person submitting the trade secret has provided the city with the information specified in Section 63-2-308 of UCA.

2. commercial information or nonindividual financial obtained from a person if:

   a. disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the city to obtain necessary information in the future;

   b. the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

   c. the person submitting the information has provided the city with the information specified in Section 63-2-308 of UCA.

3. commercial or financial information acquired or prepared by the city to the extent that a disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the city or cause substantial financial injury to the city or state economy;

4. test questions and answers to be used in future license, certification, registration, employment, or academic examinations;

5. records the disclosure of which would impair governmental procurement or give an unfair advantage to any person proposing to enter into a contract or agreement with the city, except that this subsection does not restrict the right of a person to see bids submitted to or by the city after bidding has closed;

6. records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless;

   a. public interest in obtaining access to the information outweighs the city's need to acquire the property on the best terms possible;

   b. the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

   c. in the case of records that would identify property, potential sellers of the property described have already learned of the city's plans to acquire the property;

d. in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the city's estimated value of the property;

7. records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:

   a. the public interest in access outweighs the interests in restricting access, including the city's interest in maximizing the financial benefit of the transaction; or

   b. when prepared by or on behalf of the city, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the city.

8. records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes if release of the records:

   a. reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;

   b. reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;

   c. would create a danger of depriving a person of a right to a fair trial or impartial hearing;

   d. reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

   e. reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;

9. records the disclosure of which would jeopardize the life or safety of an individual;

10. records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;

11. records that, if disclosed would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment,. probation or parole;

12. records that if disclosed, would reveal recommendations made to the Board of Pardons by an employee of or contractor for the Department of Corrections, the Board of Pardons, or the Department of Human Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;

13. records and audit work-papers that identify audit, collection, and operational procedures and methods used by the Utah State Tax Commission if disclosure would interfere with audits or collections;

14. records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

15. records prepared by or on behalf of the city solely in anticipation of litigation that are not available under the rules of discovery;

16. records disclosing an attorney's work product, including the mental impressions or legal theories of an attorney or other representative of the city concerning litigation;

17. records of communications between the city and an attorney representing, retained or employed by the city if the communications would be privileged as provided in Section 78/24/8 of Utah Code *Annotated.*

18. drafts, unless otherwise classified as public;

19. records concerning the city's strategy about collective *bargaining* or pending litigation;

20. records of investigations of loss occurrences and analyses of loss occurrences.

21. records, other than personnel evaluations, that contain a personal recommendation *concerning* an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest.

22. records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;

23. records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;

24. records provided by the United States or by a government entity outside the state that are given to the city with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;

25. transcripts, minutes, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-7 of the Open and Public Meeting Act;

26. records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

27. memoranda prepared by staff and used in the decisionmaking process by an administrative law judge, a member of the Board of Pardons, or a member of any other body charged by law with performing a quasijudicial function;

28. records that would reveal negotiations regarding assistance or incentives offered by or requested from the city for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the city at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract; and

29. materials to which access must be limited for the purpose of securing or maintaining the city's proprietary protection of intellectual property rights including patents, copyrights, and **trade secrets.**

2-11-13 RECORDS CLASSIFICATION

2-11-13.1 The city shall:

a. evaluate all record series that it uses or creates;

b. designate those record series as provided by this Ordinance;

c. report the designation of its record services to the state archives.

2-11-13.2 The city may classify a particular record, record series, or information within a record at any time, but is not required to classify a particular record, record series, or information until access to the record is requested.

2-11-13.3 The city may redesignate a record series or reclassify a record or record series, or information within a record at any time.

2-11-14 RECORDS RETENTION

This section shall provide standards for the management and retention of the records of the city comparable to UCA 63-2-903. The initial retention schedule shall be as set forth in Exhibit "B" hereto.

"Schedule B - Retention Schedule" shall read as follows:

> The initial retention schedule of this municipality is the Utah Municipal General Records Retention Schedule that was prepared by the Utah Division of Archives and Records Service and approved by the State Records Committee. [Ord. 1995-12]

2-11-15 SEGREGATION OF RECORDS

Notwithstanding any other provision in this Ordinance, if the city receives a request for access to a record that contains both information that the requester is entitled to inspect and information that the requester is not entitled to inspect under this Ordinance, and, if the information the requester is entitled to inspect is intelligible, the city:

1. shall allow access to information in the record that the requester is entitled to inspect under this Ordinance; and

2. may deny access to information in the record if the information is exempt from disclosure to the requester, issuing a notice of denial.

2-11-16 APPEALS

2-11-16.1

a. Any person aggrieved by the city's access determination under this Ordinance, including a person not a party to the city's proceeding, may appeal the determination to the City Manager and City Council by filing a notice of appeal.

b. If the city claims extraordinary circumstances and specifies the date when the records will be available and, if the requester believes the

extraordinary circumstances do not exist or that the time specified is unreasonable, the requester may appeal the city's claim of extraordinary circumstances or date for compliance within 30 days after notification of a claim of extraordinary circumstances by the city, despite the lack of a "determination" or its equivalent.

2-11-16.2 a. If the appeal involves a record that is the subject of a business confidentiality claim under Section 63-2-308 of the Utah Code, the city recorder shall:

(i) send notice of the requester's appeal to the business confidentiality claimant within three business days after receiving notice, except that if notice under this section must be given to more than 35 persons, it shall be given as soon as reasonably possible;

(ii) send notice of the business confidentiality claim and the schedule for the City Recorder's determination to the requester within three business days after receiving notice of the requester's appeal.

b. The claimant shall have seven business days after notice is sent by the City Recorder to submit further support for the claim of business confidentiality.

2-11-16.3 a. The City Manager shall make a determination on any appeal within the following period of time:

(i) within five business days after the city manager's receipt of the notice of appeal; or

(ii) within twelve business days after the city sends the requester's notice of appeal to a person who submitted a claim of business confidentiality.

b. If the City Manager fails to make a determination within the time specified in Subsection (3)(a), the failure shall be considered the equivalent of an order denying the appeal.

c. The provisions of this section notwithstanding, the parties participating in the proceeding may, by agreement, extend the time periods specified in this section.

2-11-16.4 The City Manager may, upon consideration and weighing of the various interests and public policies pertinent to the classification and ,isclosure or nondisclosure, order the disclosure of information properly

classified as private under Section 10.2 or protected under Section 12 if the interests favoring access outweigh the interest favoring restriction of access.

2-11-16.5 The city shall send written notice of the determination of the city manager to all participants. If the city manager affirms the denial in whole or in part, the denial shall include a statement that the requester has the right to appeal the denial to the city council, and the time limits for filing an appeal.

2-11-16.6 The duties of the city manager under this section may be delegated.

2-11-16.7 The notice of appeal to the city council must be filed with the city recorder no later than 30 days after the city manager has denied the appeal or fails to make a determination within the time specified in Subsection 16.3(a).

2-11-16.8 The notice of appeal shall contain the following information:

a. the petitioner's name, mailing address, and daytime telephone number; and

b. the relief sought.

2-11-16.9 The petitioner may file a short statement of facts, reasons, and legal authority in support of the appeal.

2-11-16.10 No later than three days after receiving a notice of appeal, the recorder shall:

a. schedule a hearing for the city council to discuss the appeal which shall be held no sooner than 15 days and no later than 30 days from the date of the filing of the appeal;

b. At the hearing, the city council shall allow the parties to testify, present evidence, and comment on the issues. The city council may allow other interested persons to comment on the issues.

c. No later than three business days after the hearing, the city council shall issue a signed order either granting the petition in whole or in part or upholding the determination of the city in whole or in part.

d. The order of the city shall include:

(i) a statement of reasons for the decision, including citations to this Ordinance or federal

regulation that governs disclosure of the record, provided that the citations do not disclose private, controlled, or protected information;

(ii) a description of the record or portions of the record to which access was ordered or denied, provided that the description does not disclose private, controlled, or protected information;

(iii) a statement that any party to the appeal may appeal the city's decision to district court; and

(iv) a brief summary of the appeal, and a notice that in order to protect its rights on appeal, the party may wish to seek advice from an attorney.

2-11-16.11 **A** person aggrieved by the city's classification or designation determination under this chapter, but who is not requesting access to the records, may appeal that determination using the procedures provided in this section. If a non-requestor is the only appellant, the procedures provided in this section shall apply, except that the determination on the appeal shall be made within 30 days after receiving the notice of appeal.

2-11-17 JUDICIAL **REVIEW**

Any party to a proceeding before the city council may petition for judicial review by the district court of the city council's order. The petition shall be filed no later than 30 days after the date of the city council's order.

2-11-18 CONFIDENTIAL TREATMENT OF RECORDS FOR WHICH NO EXEMPTION APPLIES

2-11-18.1 A court may, on appeal or in a declaratory or other action, order the confidential treatment of records for which no exemption from disclosure applies if:

a. there are compelling interests favoring restriction of access to the record; and

b. the interests favoring restriction of access clearly outweigh the interests favoring access.

2-11-18.2 If the City requests a court to restrict access to a record under this section, the court shall require the city to pay the reasonable attorney's fees incurred by the lead party in opposing the city's request, if:

a. the court finds that no statutory or constitutional exemption from disclosure could reasonably apply to the record in question; and

b. the court denies confidential treatment under this section.

2-11-18.3 This section does not apply to records that are specifically required to be public under Section 9 of this Ordinance or Section 63-2-301 of the Utah Code, except as provided in Subsection 4.

2-11-18.4 a. Access to drafts and empirical data in drafts may be limited under this section, but the court may consider, in its evaluation of interests favoring restriction of access, only those interests that relate to the underlying information, and not to the deliberative nature of the record.

b. Access to original data in a computer program may be limited under this section, but the court may consider, in its evaluation of interest favoring restriction of access, only those interests that relate to the underlying information, and not to the status of that data as part of a computer program.

2-11-19 **REQUEST** TO AMEND **A** RECORD

2-11-19.1 a. Subject to subsection 7, an individual may contest the accuracy or completeness of any public, or private, or protected record concerning him by requesting the city to amend the record. However, this section does not affect the right of access to private or protected records.

b. The request shall contain the following information:

(i) The requester's name, mailing address, and daytime telephone number; and

(ii) A brief statement explaining why the city should amend the record.

2-11-19.2 The city shall issue an order either approving or denying the request to amend no later than 30 days after receipt of the request.

2-11-19.3 If the city approves the request, it shall correct all of its records that contain the same incorrect information as soon as practical. A city may not disclose the record until it has amended it.

2-11-19.4 If the city denies the request it shall: a.

inform the requester in writing; and

b. provide a brief statement giving its reasons for denying the request.

2-11-19.5 a. If the city denies a request to amend a record, the requester may submit a written statement contesting the information in the record.

b. The city shall:

(i) file the requester's statement with the disputed record if the record is in a form such that the statement can accompany the record or make the statement accessible if the record is not in a form such that the statement can accompany the record; and

(ii) disclose the requester's statement along with the information in the record whenever the city discloses the disputed information.

2-11-19.6 The requester may appeal the denial of the request to amend a record pursuant to section 16 of the ordinance.

2-11-19.7 This section does not apply to records relating to title to real or personal property, medical records, judicial case files, or any other records that the city determines must be maintained in their original form to protect the public interest and to preserve the integrity of the record system.

2-11-20 CRIMINAL **PENALTIES**

2-11-20.1 a. A public employee or other person who has lawful access to any private, controlled, or protected record under this chapter, and who intentionally discloses or provides a copy of a private, controlled or protected record to any person knowing that such disclosure is prohibited, is guilty of a class B misdemeanor.

b. It is a defense to prosecution under subsection (1)(a) that the actor released private, controlled or protected information in the reasonable belief that the disclosure of the information was necessary to expose a violation of law involving government corruption, abuse of office, or misappropriation of public funds or property.

c. It is a defense to prosecution under subsection (1)(a) that the record could have lawfully been

released to the recipient if it had been properly classified.

2-11-20.2 a. A person who by false pretenses, bribery, or theft, gains access to or obtains a copy of any private, controlled, or protected record to which he is not legally entitled is guilty of a class B misdemeanor.

b. No person shall be guilty under subsection (2)(a) who receives the record, information, or copy after the fact and without prior knowledge of or participation in the false pretenses, bribery, or theft.

2-11-20.3 **A** public employee who intentionally refuses to release a record the disclosure of which the employee **knows is** required by law or by final unappealed order from a city, the records committee, or a court, is guilty of a class B misdemeanor.

This ordinance shall take effect on the 1st day of July, 1992.

CHAPTER 2-12

ETHICS ACT AND CONFLICTS OF INTEREST

2-12-1 **PURPOSE**

The purpose of this Ordinance is to establish standards of conduct for elected officials, appointed officers, employees and volunteers serving on city boards, commissions, committees, agencies, councils and foundations and to require these persons to disclose actual or potential conflicts of interest between their public duties and their personal interests.

2-12-2 .CROSS REFERENCE: MUNICIPAL OFFICERS AND EMPLOYEES ETHICS ACT.

Statutory provisions governing conflicts of interest are outlined in 10-3-1301 to 10-3-1312 of the Utah Code Annotated (1953).

2-12-3 DEFINITIONS

As used in this ordinance, the following definitions shall apply.

a. Appointed Officer. Any person appointed to any statutory office or position or any other! person appointed to any position of employment with the City. Appointed officers include, but are not limited to, persons serving on special, regular, part-time, or full-time committees, commissions, agencies, boards, councils, foundations created by the governing body, whether or not such persons are compensated for their services. The use of the word "officer" in this part is not intended to make appointed persons or employees "officers" of the city according to any meaning that term may have elsewhere.

b. Assist. To act, or offer or agree to act, in such a way as to help, represent, aid, advise, furnish information to, or

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Adopted by Ordinance 1993-1 effective March 23, 1993.

otherwise provide assistance to a person or business entity, believing that such action is of help, aid, advice or assistance to such person or business entity and with the intent to so assist such person or business entity.

c. Business Entity. A sole proprietorship, partnership, association, joint venture, corporation, firm, trust, foundation, or other organization or entity used in carrying on a business.

d. **Compensation.** Anything of economic value, however designated, which is paid, loaned, granted, given, donated or transferred to any person or business entity by anyone other than the City for or in consideration of personal services, materials, property, or any other thing whatsoever.

e. Elected Officer. Any person elected or appointed to the office of City Administrator or council member.

f. **Improper** Disclosure. Disclosure of private, confidential, or protected information to any person who does not have both the right and the need to receive the information.

g Municipal Employee. A person who is not an elected or appointed officer who is employed on a full, part-time, or voluntary basis by Gunnison City.

h. Private, Confidential, or Protected Information. Information classified as private, confidential or protected under Chapter 2-11, Government Records Access and Management, or other applicable provision of law.

i. Substantial Interest. The ownership, either legally or equitably, by an individual, his spouse, or his minor children, or an entity he controls, of at least 10% of the outstanding shares of a corporation or 10% interest in any other business entity.

j Volunteer. A person serving on city boards, commissions, committees, agencies, councils and foundations. Volunteers shall be considered "appointed officers" under this ordinance.

2-12-4 USE OF OFFICE FOR PERSONAL BENEFIT PROHIBITED No

elected or appointed officer shall:

a. Improperly disclose private, confidential, or protected information acquired by reason of his official position or

use such information to secure special privileges or exemptions for himself or others:

b. Use or attempt to use his official position to secure special privileges for himself or others; or

c. Knowingly receive, accept, take, seek or solicit, directly or indirectly, any gift or loan for himself or another if the gift or loan tends to influence him in the discharge of his official duties, but this subsection does not apply to:

1. An occasional nonpecuniary gift having a value of less that $50; or

2. An award publicly presented; or

3. Any bona fide loan made in the ordinary course of business; or

4. Political campaign contributions if the contribution is actually used in a political campaign.

2-12-5 COMPENSATION FOR **ASSISTANCE** IN TRANSACTION INVOLVING **MUNICIPALITY -** DISCLOSURE **STATEMENT REQUIRED -** CONTENTS - PUBLIC ACCESS.

2-12-5.1 No elected or appointed officer or municipal employee may receive or agree to receive compensation for assisting any person or business entity in any transaction involving the City in which he is an officer unless he files with the city administrator a sworn statement giving the information required by this section, and if an elected or appointed officer discloses the same in open meeting to the members of the body of which he is a member immediately prior to the discussion the information required by subsection (d)

2-12-5.2 No municipal employee may receive or agree to receive compensation for assisting any person or business entity in any transaction

2-12-5.3 The statement required to ne filed by this section shall be filed 10 days prior to the date of any agreement between the elected or appointed officer or municipal employee and the person or business entity being assisted or 10 days prior to the receipt of compensation by the business entity, whichever is earlier. The statement is public information and shall be available for examination by the public.

2-12-5.4 The statement and disclosure shall contain the following information:

a. The name and address of the officer or employee;

b. The name and address of the person or business entity being or to be assisted or in which the appointed or elected official has a substantial interest; and

c. A brief description of the transaction as to which service is rendered or is to be rendered and of the nature of the service performed, or to be performed.

2-12-6 DISCLOSURE OF INTEREST AFFECTING REGULATION

2-12-6.1 Every appointed or elected officer or municipal employee who is an officer, director, agent or employee or the owner of a substantial interest in any business entity which is subject to the regulation of the city, shall disclose the position held and the nature and value of his interest upon first becoming appointed, elected, or employed by the city and again at any time thereafter if the elected or appointed officer's or employee's position in the business entity has changed significantly or if the value of his interest in the entity has increased significantly since the last disclosure.

2-12-6.2 The disclosure shall be made in a sworn statement filed with the city administrator. The city administrator shall report the substance of all such disclosure statements to the members of the governing body or may provide to the members of the governing body, copies of the disclosure statement within 30 days after the statement is received by him.

2-12-6.3 This section does not apply to instances where the value of the interest does not exceed $2,000, and life insurance policies and annuities shall not be considered in determining the value of any such interest.

2-12-6.4 The disclosure statement required by this section may be in substantially the following form:

DISCLOSURE STATEMENT
State of Utah County of
Sanpete

The undersigned, being first duly sworn, deposes and states: Chap.2

1. Office. i am (name and office) of Gunnison, and my address is _____, Gunnison, Utah.

2. Involvement with business entities. Below are listed all business entities which are (1) subject to regulation by Gunnison, and (2) of which the undersigned is an officer, director, agent, employee, or owner of an interest therein valued in excess of $2,000.

a. Name of Business Entity:
Position Held:
Projected Annual Income':
Projected Value of Interest':

b. Name of Business Entity:
Position Held:
Projected Annual Income':
Projected Value of Interest':

' Represents salary, wages, commission, or fees reasonably anticipated in coming year, if an officer, director, employee, or agent of business entity, or return thus anticipated if investor in business entity.

' Represents estimated present fair market value of interest in business entity, in the case of an investment including pension plan, but not including insurance or annuities.

3. Nature of Involvement. The following more fully describes the nature of my interest in the above-listed business entities, which are referred to by the same letters as in the previous item.

a.
b.

_____, 19 . Subscribed and
this _____ day of _____, 19
My commission expires: _____
The above statements are made as of the _____ day of
worn to before me on
Notary Public _____
Residing in _____

2-12-7 DISCLOSURE OF INTEREST AFFECTING BUSINESS RELATIONS

Every appointed or elected officer or employee who is an officer, director, agent, employee, or owner of a substantial interest in any business entity which does or anticipates doing business with the city, shall publicly disclose to the members of the body of which he is a member, or by which he is employed, immediately prior to any discussion by such body, concerning matters relating to such

business entity, the nature of his interest in that business entity.

The disclosure statement shall be entered in the minutes of the meeting.

Disclosure by a municipal employee under this section is satisfied if the employee makes the disclosure in a manner required by 2-12-5 and 2-12-6 of this ordinance.

2-12-8 OTHER CONFLICTS OF INTEREST

Any personal interest or investment by a municipal employee or by any elected or appointed official of the city which creates a conflict between the employee's or official's personal interests and his public duties shall be disclosed in open meting to the members of the governing body in the manner required by 2-12-5 and 2-12-6.

2-12-9 NEPOTISM **PROHIBITED**

No elected or appointed officer (as defined in the previous part) shall employ, appoint, or vote for the appointment of his or her father, mother, husband, wife, son, daughter, sister, brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law in or to any position or employment, when the salary, wages, pay or compensation of such appointee is to be paid out of any public funds. It is unlawful for such appointee to accept or to retain such employment when his initial appointment thereto was made in contravention of the forgoing sentence by a person within the degrees of consanguinity or affinity therein specified having the direct power of employment or appointment to such position, or by a board or group of which such person is a member.

2-12-10 EXCEPTIONS

The provisions of this part shall not apply among others to the following employment situations:

a. Where the employee or appointee was appointed or employed by the city prior to the time during which said related person assumed said public position therein.

b. Where the employee or appointee was or is eligible or qualified to be employed by a department or agency of the city as the result of his compliance with civil service laws or regulations and merit system laws or regulations or as the result of a certification as to his qualification and

fitness by a department, agency or subdivision of the state or city authorized so to do by law.

c. Where the employee or appointee was or is employed by the employing unit because he was or is the only person available, qualified or eligible for the position.

2-12-11 SEPARATE OFFENSE

Each day any such person, father, mother, husband, wife, son, daughter, sister, brother, uncle, aunt, nephew, niece, first cousins, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law, is retained in office by any of said officials shall be regarded as a separate offense.

2-12-12 CONFLICTING **PRIVATE EMPLOYMENT**

No employee shall engage in, solicit, negotiate for, promise, or accept outside employment, nor render any services to anyone other than the city in return for a valuable consideration, when such employment or services create a conflict of interest with or is inconsistent or incompatible with or tends to impair the proper discharge of that employee's official duties or the exercise of his discretion in an official capacity. No employee shall serve or be involved with projects, businesses, or enterprises, which are subject to regulation by or which have transactions with the city.

2-12-13 CONFLICTING INVESTMENTS

Investments by employees shall be in accordance with this ordinance.

2-12-13.1 No employee shall invest or hold any legal or equitable interest in any business or enterprise which investment or interest create a conflict of interest with or is inconsistent or incompatible with or tends to impair the proper discharge of that employee's official duties or the exercise of his discretion in an official capacity. No employee shall invest in or be involved with projects, businesses, or enterprises which are subject to regulation by or which have transactions with Gunnison.

2-12-13.2 The following investments are exempt from the requirement of this part:

a. Bank, savings and loan, or credit accounts.
b. Insurance policies.
c. Securities listed on a national stock exchange.

d. Investments in any business or enterprise which does not do business in Gunnison.

2-12-14 APPEARANCES

Each employee shall conduct his official affairs in such a manner that will give the clear impression that he cannot be improperly influenced in the performance of his official duties.

2-12-15 COMPLAINTS CHARGING VIOLATIONS - PROCEDURE

If a person is charged with a violation of this ordinance, the complaint shall be filed with the city administrator or city recorder. The city administrator or city recorder shall investigate the complaint and shall give the person an opportunity to be heard. A written report of the findings and the recommendation of the city administrator or the city recorder shall be filed with the governing body. If the governing body finds that the person has knowingly and intentionally violated this ordinance, it may dismiss, remove from office, suspend, or take such other appropriate actions with respect to the person in accordance with state law, city ordinances and city personnel policies and procedures. The governing body may also rescind or void any contract or subcontract entered into pursuant to that transaction without returning any part of the consideration received by the city.

2-12-16 PENALTIES FOR VIOLATION

In addition to any penalty contained in any other provision of law, including but not limited to Section 10-3-1310 of the Utah Code annotated, any person who knowingly and intentionally violates this chapter, shall be guilty of a class "B" misdemeanor.

2-12-17 INDUCING OFFICER TO VIOLATE ORDINANCE PROHIBITED

It is a class B misdemeanor for any person to induce or seek to induce any appointed or elected officer or municipal employee to violate any of the provisions of this ordinance.

2-12-18 NO-ACTION DETERMINATIONS

Employees may follow the procedures below to determine if their activities will be in violation of this Ordinance.

a. Authorized. Prior to undertaking any activity which may violate the provisions of this part, an employee may notify the City Administrator of the contemplated activity and request a determination pursuant to this section. Upon receipts of adequate relevant information, and after any

investigation deemed necessary or advisable, the City Administrator may then determine whether or not the City will take action against the employee if the contemplated activity is undertaken, and advise the employee accordingly. In making this determination, the City Administrator shall consider whether the contemplated activity violates any terms of this part, with attention to the following particulars:

1. Any use for private gain or advantage of City time, facilities, equipment, and supplies, badge, uniform, prestige, office, or equipment; or

2. Receipt by the employee of any money or other consideration for the performance of any act required of him as a City employee;

3. Performance of an act other than in his capacity as an employee, which act may later be subject, directly or indirectly, to control, inspection, **review, audit, or** enforcement by the agency or department in which he is employed;

4. The extent, if any, to which the employee will be acting under color of City authority or subject the city to any potential liability.

b. Effect. If the City Administrator determines that no action will be taken against the employee if he or she undertakes the contemplated activity, then no such action will be taken, unless the contemplated activity proves to be materially different than represented to the City Administrator in making the ruling, or unless material facts were not disclosed to the City Administrator before the ruling was made.

c. Records. Complete, written records of the facts and decision of each no-action request shall be maintained and shall be open to the public for review upon reasonable **request.**

d. No Precidential Effect. The determination of one noaction request shall not necessarily affect the determination of future no-action requests.

e. City Council Review.

1. Reference. The City Administrator may refer any *no-action* request to the City Council for decision, after gathering and presenting to the Council the relevant facts.

2. Appeal. An employee may appeal the denial of his no-action request to the City Ccunci ? within 10 days after notification of the s

decision. The employee shall then have a promptly scheduled opportunity to present his request to the City Council, and the City Administrator may also speak on defense of the denial.

2-12-19 SEVERABILITY

If any part or provision of this Ordinance is held invalid or unenforceable, such invalidity or unenforceability shall not effect any other provision of this Ordinance, and all provisions, clauses and words of this Ordinance shall be severable. This section is to be effective without codification.

CHAPTER 2-13 CAMPAIGN

FINANCE DISCLOSURE 2-13-1 GENERAL

All candidates for elective municipal office shall comply with the campaign finance disclosure requirements set forth in this Chapter. [Ord. 2001-2]

2-13-2 DEFINITIONS

The following definitions shall be applicable to this Chapter:

1. "Candidate" shall mean any person who files a declaration of candidacy for an elective office of the City; or is nominated by a committee, party or petition; or received contributions or made expenditures or consents to another person receiving contributions or making expenditures with a view to bringing about such person's nomination or election to such office; or causes on his/her behalf, any written material or advertisement to be printed, published, broadcast, distributed or disseminated which indicates an intention to seek such office.

2. "Contribution" shall mean monetary and non-monetary contributions such as in-kind contributions and contributions of tangible things but shall not include personal services provided without compensation by individuals volunteering their time on behalf of a candidate.

3. "Election" shall mean both primary and final elections.

4. "Expenditure" shall mean a purchase, payment distribution, loan, advance, deposit or gift of money or anything of value made for the purpose of influencing the nomination or elections of any candidate. [Ord. 2001-2]

2-13-3 FILING OF DISCLOSURE REPORTS

Each candidate for elective office who either receives more than seven hundred fifty dollars ($750.00) in campaign contributions or spends more than seven hundred fifty dollars ($750.00) in campaign expenses shall file with the City Recorder dated and signed financial reports which comply with this chapter. Forms shall be made available by the City. Other forms in substantially the same format are also acceptable. [Ord. 2001-2]

2-13-4 TIME OF FILING

The reports required by this Chapter shall be filed at least seven (7) days before both the primary and general elections and at least once within thirty (30) days following the final election. A candidate losing in the primary election shall file the final report within thirty (30) days of the date of the primary election. [Ord. 2001-2]

2-13-5 CONTENTS OF STATEMENT

The statements filed seven (7) days before the election shall include:

1. A list of each contribution of more than fifty dollars ($50.00) received by the candidate, and the name of the donor;

2. An aggregate total of all contributions of fifty dollars ($50.00) or less received by the candidate; and

3. A list of each expenditure for political purposes made during the campaign period as of ten (10) days before the date of the election, and the recipient of each expense.

The statement filed thirty (30) days after the election shall include:

1. A list of each contribution of more than fifty dollars ($50.00) received after the cutoff date for the statement filed seven (7) days before the election, and the name of the donor;

2. A total of all contributions of fifty dollars ($50.00) or less received by the candidate after the cutoff date for the statement filed seven (7) days before the election;

3. A list of all expenditures for political purposes made by the candidate after the cutoff date for the statement filed seven (7) days before the election, and the recipient of each expense.

All contributions and expenditures related to the candidate's candidacy should be accounted for between the pre-election and post-election statement. [Ord. 2001-2]

2-13-6 PENALTY FOR NONCOMPLIANCE

Any candidate who fails to comply with the provisions of this chapter is guilty of an infraction. [Ord. 2001-2]

TITLE III

REVENUE AND FINANCE

Chapter 3-1	Sales and Use Taxes	3-1
Chapter 3-2	Municipal Energy Sales and Use Tax	3-4
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(Revised 94/06)

CHAPTER 3-1 SALES

AND USE TAXES 3-1-1 TITLE

This Chapter shall be known as the "Uniform Local Sales and Use Tax Ordinance of Gunnison City".

3-1-2 PURPOSE

The 48th Session of the Utah Legislature has authorized municipalities of the State of Utah to enact Sales and Use Tax Ordinances imposing a one percent tax, effective July 1, 1986.

It is the purpose of the Chapter to conform the Sales and Use Tax of the municipality to the requirements of the Sales and Use Tax Act, Chapter 12 of Title 59, Utah Code Annotated, 1953, as currently amended.

3-1-3 EFFECTIVE DATE

This Chapter shall become effective as of 12:01 o'clock a.m., January 1, 1990.

3-1-4 SALES AND USE TAX

3-1-4.1 Retail Sales to be Taxed - Rate of Tax

1. From and after the effective date of this Chapter, there is levied and there shall be collected and paid a tax on every retail sale of tangible personal property, services and meals made within the municipality at the rate of one (1) -percent.

2. An excise tax is· hereby imposed on the storage, use, or other consumption in this municipality of tangible personal property from any retailer on or after the operative date of

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Chapter 3-1 adopted by Ordinance 1990-2, minor amendments in codification.

this ordinance at the rate of one (1) percent of the sales price of the property.

3. For the purpose of this Ordinance all retail sales shall be presumed to have been consummated at the place of business delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out -of-state destination. In the event a retailer has no permanent place of business, the place or places at which the retail sales are consummated shall be as determined under the rules and regulations prescribed by and adopted by the State Tax Commission. Public utilities as defined by Title 54, UCA shall not be obligated to determine the place or places within the municipality where public utility services are rendered, but the place of sale or the sales tax revenue arising from such service allocable to the City shall be as determined by the State Tax Commission pursuant to an appropriate formulas and other rules and regulations to be prescribed and adopted by it.

3-1-4.2 Adoption of State Tax Provisions by Reference - Exceptions

1. Except as hereinafter provided, and except insofar as they are inconsistent with the provisions of the Sales and Use Tax Act, all of the provisions of Chapter 12, Title 59, UCA and in force and effect on the effective date of this Chapter, insofar as they relate to sales taxes, excepting Sections 59-12-101 and 59-12-119 thereof, are hereby adopted and made a part of this Chapter as though fully set forth herein.

2. Wherever, and to the extent that in Chapter 12 of Title 59, UCA, the State of Utah is named or referred to as the taxing agency, the name of this municipality shall be substituted therefor. Nothing in this subsection 3-14.2 shall be deemed to require substitution of the name of the municipality for the word "State" when that word is used as part of the title of the State Tax Commission, or of the Constitution of the State of Utah, nor shall the name of the municipality be substituted for that of the State in any section when the result of that substitution would require action to be taken by or against the municipality or any agency thereof, rather than by or against the State Tax Commission in performing the functions incident to the administration or operation of this Chapter.

3. If an annual license has been issued to a retailer under Section 59-12-106 of the UCA, an additional license shall not be required by reason of this section

4. There shall be excluded from the purchase price paid or charged by which tax is measured:

   A. The amount of any sales or use tax imposed by the State of Utah on a retailer or consumer;
   B. The gross receipts from the sale of or the cost of storage, use or other consumption of tangible personal property upon which a sales or use

tax has become due by reason of the sale transaction to any other municipality and any county in the State of Utah, under the sales or use tax Ordinance enacted by the City in accordance with the Sales and Use Tax Act.

3-1-5 PENALTY

Any person violating any of the provisions of this Chapter shall be deemed guilty of a Class B Misdemeanor.

CHAPTER 3-2

MUNICIPAL ENERGY SALES AND USE TAX

3-2-1 PURPOSE

It is the intent of Gunnison City to repeal its Utility License Fee Ordinance 1996-2 levied on gas and electricity as applicable and adopt the Municipal Energy Sales and Use Tax, pursuant to, and in conformance with, Utah Code Ann. 10-1-301 et seq., "The Municipal Energy Sales and Use Tax Act." [Ord. 1997-3]

3-2-2 DEFINITIONS

1. "Consumer" means a person who acquires taxable energy for any use that is subject to the Municipal Energy Sales and Use Tax.

2. "Contractual franchise fee" means:

   a. A fee:

      (i) Provided for in a franchise agreement; and

      (ii) That is consideration for the franchise agreement; or

   b. (i) A fee similar to Subsection (2)(a) of this Section; or

      (ii) Any combination of Subsections (2)(a) or (b) of this Section.

3. a. "Delivered value" means the fair market value of the taxable energy delivered for sale or use in the municipality and includes:

      The value of the energy itself; and

      Any transportation, freight, customer demand charges, service charges, or other costs typically incurred in providing taxable energy in usable form to each class of customer in the municipality;

   b. "Delivered value" does not include the amount of a tax paid under Part 1 or Part 2 of Chapter 12, Title 59 of the Utah Code Annotated.

4. "Energy supplier" means a person supplying taxable energy, except for persons supplying a de minimis amount of taxable energy, if such persons are excluded by rule promulgated by the State Tax Commission.

5. “Franchise agreement” means a franchise or an ordinance, contract, or agreement granting a franchise.

6. “Franchise tax” means:

   a. A franchise tax;

   b. A tax similar to a franchise tax; or

   c. Any combination of Subsections (6)(a) or (b) of this Section.

7. “Person” includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, this State, any county, city, municipality, district, or other local governmental entity of the State, or any group or combination acting as a unit.

8. “Sale” means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of taxable energy for a consideration. It includes:

   a. Installment and credit sales;

   b. Any closed transaction constituting a sale;

   c. Any transaction under which right to acquire, use or consume taxable energy is granted under a lease or contract and the transfer would be taxable if an outright sale were made.

9. “Storage” means any keeping or retention of taxable energy in Gunnison City for any purpose except sale in the regular course of business.

10. a. “Use” means the exercise of any right or power over taxable energy incident to the ownership or the leasing of the taxable energy.

    b. “Use” does not include the sale, display, demonstration, or trial of the taxable energy in the regular course of business and held for resale.

11. “Taxable energy” means gas and electricity. [Ord. 1997-3]

3-2-3 MUNICIPAL ENERGY SALES AND USE TAX

There is hereby levied, subject to the provisions of this Chapter, a tax on every sale or use of taxable energy made within Gunnison City equaling six percent (6%) of the delivered value of the taxable energy to the consumer. This tax shall be known as the Municipal Energy Sales and Use Tax.

1. The tax shall be calculated on the delivered value of the taxable energy to the consumer.

2. The tax shall be in addition to any sales or use tax on taxable energy imposed by Gunnison City authorized by Title 59, Chapter 12, Part 2 of the Utah Code Annotated, the Local Sales and Use Tax Act. [Ord. 1997-3]

3-2-4 EXEMPTIONS FROM THE MUNICIPAL ENERGY SALES AND USE TAX

1. No exemptions are granted from the Municipal Energy Sales and Use Tax except as expressly provided in Utah Code Ann. 10-1-305(2)(b); notwithstanding an exemption granted by 59-1-104 of the Utah Code.

2. The following are exempt from the Municipal Energy Sales and Use Tax, pursuant to Utah Code Ann. 10-1-305(2)(b):

   a. Sales and use of aviation fuel, motor fuel, and special fuels subject to taxation under Title 59, Chapter 13 of the Utah Code Annotated;

   b. Sales and use of taxable energy that is exempt from taxation under federal law, the United States Constitution, or the Utah Constitution;

   c. Sales and use of taxable energy purchased or stored for resale;

   d. Sales or use of taxable energy to a person, if the primary use of the taxable energy is for use in compounding or producing taxable energy or a fuel subject to taxation under Title 59, Chapter 13 of the Utah Code Annotated;

   e. Taxable energy brought into the State by a nonresident for the nonresident's own personal use or enjoyment while within the State, except taxable energy purchased for use in the State by a nonresident living or working in the State at the time of purchase;

   f. The sale or use of taxable energy for any purpose other than as a fuel or energy; and

   g. The sale of taxable energy for use outside the boundaries of Gunnison City.

3. The sale, storage, use, or other consumption of taxable energy is exempt from the Municipal Energy Sales and Use Tax levied by this Chapter, provided:

   a. The delivered value of the taxable energy has been subject to a municipal energy sales or use tax levied by another municipality within the State authorized by Title 59, Chapter 12, Part 3 of the Utah Code Annotated; and

b. Gunnison City is paid the difference between the tax paid to the other municipality and the tax that would otherwise be due under this Chapter, if the tax due under this Chapter exceeds the tax paid to the other municipality. [Ord. 1997-3]

3-2-5 NO EFFECT UPON EXISTING FRANCHISES - CREDIT FOR FRANCHISE FEES

1. This Chapter shall not alter any existing franchise agreements between Gunnison City and energy suppliers.

2. There is a credit against the tax due from any consumer in the amount of a contractual franchise fee paid if:

   a. The energy supplier pays the contractual franchise fee to Gunnison City pursuant to a franchise agreement in effect on July 1, 1997;

   b. The contractual franchise fee is passed through by the energy supplier to a consumer as a separately itemized charge; and

   c. The energy supplier has accepted the franchise. [Ord. 1997-3]

3-2-6 TAX COLLECTION CONTRACT WITH STATE TAX COMMISSION

1. On or before the effective date of the ordinance codified in this Chapter, Gunnison City shall contract with the State Tax Commission to perform all functions incident to the administration and collection of the Municipal Energy Sales and Use Tax, in accordance with this Chapter. (This contract may be a supplement to the existing contract with the Commission to administer and collect the Local Sales and Use Tax, as provided in the Gunnison City Code as applicable.) The Mayor, with the approval of the City Council is hereby authorized to enter (supplementary, as applicable) agreements with the State Tax Commission that may be necessary to the continued administration and operation of the Municipal Energy Sales and Use Tax Ordinance enacted by this Chapter.

2. An energy supplier shall pay the Municipal Energy Sales and Use Tax revenues collected from consumers directly to Gunnison City monthly if:

   a. Gunnison City is the energy supplier; or

   b. (i) The energy supplier estimates that the Municipal Energy Sales and Use Tax collected annually from its Utah consumers equals one million dollars ($1,000,000.00) or more, and

(ii) The energy supplier collects the Municipal Energy Sales and Use Tax.

3. An energy supplier paying the Municipal Energy Sales and Use Tax directly to Gunnison City may deduct any contractual franchise fees collected by the energy supplier qualifying as a credit and remit the net tax less any amount the energy supplier retains as authorized by 10-1-307(4), Utah Code Annotated. [Ord. 1997-3]

3-2-7 INCORPORATION OF PART 1, CHAPTER 12, TITLE 59, UTAH CODE, INCLUDING AMENDMENTS

1. Except as herein provided, and except insofar as they are inconsistent with the provisions of Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act, as well as this Chapter, all of the provisions of Part 1, Chapter 12, Title 59 of the Utah Code Annotated 1953, as amended, and in force and effect on the effective date of the ordinance codified in this Chapter, insofar as they relate to sales and use taxes, excepting Sections 59-12-101 and 59-12-119 thereof, and excepting for the amount of the sales and use taxes levied therein, are hereby adopted and made a part of this Chapter as if fully set forth herein.

2. Wherever, and to the extent that in Part 1, Chapter 12, Title 59, Utah Code Annotated 1953, as amended, the State of Utah is named or referred to as the "taxing agency," the name of Gunnison City shall be substituted, insofar as is necessary for the purposes of that part, as well as Part 3, Chapter 1, Title 10, Utah Code Annotated 1953, as amended. Nothing in this Subsection shall be deemed to require substitution of the name Gunnison City for the word "State" when that word is used as part of the title of the State Tax Commission, or of the Constitution of Utah, nor shall the name of Gunnison City be substituted for that of the State in any section when the result of such a substitution would require action to be taken by or against Gunnison City or any agency thereof, rather than by or against the State Tax Commission in performing the functions incident to the administration or operation of this Chapter.

3. Any amendments made to Part 1, Chapter 12, Title 59, Utah Code Annotated 1953, as amended, which would be applicable to Gunnison City for the purposes of carrying out this Chapter are hereby incorporated herein by reference and shall be effective upon the date that they are effective as a Utah statute. [Ord. 1997-3]

3-2-8 NO ADDITIONAL LICENSE TO COLLECT THE MUNICIPAL ENERGY SALE AND USE TAX REQUIRED - NO ADDITIONAL LICENSE OR REPORTING REQUIREMENTS

No additional license to collect or report the Municipal Energy Sales and Use Tax levied by this Chapter is required, provided the energy supplier collecting the tax has a license issued under Section 59-12-106, Utah Code Annotated. [Ord. 1997-3]

CHAPTER 3-3

MOBILE TELEPHONE SERVICE REVENUE TAX

3-3-1 DEFINITIONS

For purposes of this Chapter, the following terms are defined as follows:

1. "Customer" means:

   a. The person or entity, having a place of primary use within the City, that contracts with the home service provider for mobile telecommunications services; or

   b. If the end user of mobile telecommunications services is not the contracting party, the end user of the mobile telecommunications services; but this clause applies only for the purpose of determining the place of primary use.

   c. "Customer" does not include:

      (i) A reseller of mobile telecommunications service; or

      A serving carrier under an arrangement to serve the customer outside the home service provider's licensed service area.

2. "Designated database provider" means a corporation, association, or other entity representing all the political subdivisions of a state that is:

   a. Responsible for providing an electronic database prescribed in Subsection 119(a) of Chapter 4, Title 4 of the United States Code if the State has not provided such electronic database; and

   b. Approved by municipal and county associations or leagues of the State whose responsibility it would otherwise be to provide such database prescribed by Sections 116 through 126 of Chapter 4, Title 4 of the United States Code.

3. "Enhanced zip code" means a United States postal zip code of nine or more digits.

4. "Home service provider" means the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

5. "Licensed service area" means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the

customer.

6. "Mobile telecommunications service" means commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations as in effect on June 1, 1999. For purposes of this Chapter, mobile telecommunications services shall not include:

   a. Pager services using mobile devices that do not allow for two-way voice communication;

   b. Narrowband personal communications services; and

   c. Short message services (SMS).

7. "Place of primary use" means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be:

   a. The residential street address or the primary business street address of the customer; and

   b. Within the licensed service area of the home service provider.

8. "Prepaid telephone calling services" means the right to purchase exclusively telecommunications services that must be paid for in advance, that enable the origination of calls using an access number, authorization code, or both, whether manually or electronically dialed, if the remaining amount of units of service that have been prepaid is known by the provider of the prepaid service on a continuous basis.

9. "Reseller" means:

   a. A provider who purchases telecommunications services from another telecommunications service provider and then resells, uses as a component part of, or integrates the purchased services into a mobile telecommunications service; and

   b. Does not include a serving carrier with which a home service provider arranges for the service to its customers outside the home service provider's licensed service area.

10. "Serving carrier" means a facilities-based carrier providing mobile telecommunications service to a customer outside a home service provider's or reseller's licensed service area. [Ord. 2000-4, Sec. 2]

3-3-2 MONTHLY TAX LEVIED

There is levied upon every home service provider a tax of one dollar ($1.00) per month for each telephone number assigned to any customer whose place of primary use is within the

City. The home service provider may or may not pass this tax on to its customers. If the home service provider passes the tax on to the customer, and the tax is reflected on the customer's bill, the tax shall be shown on the bill as a flat rate municipal tax charge. [Ord. 2000-4, Sec. 2]

3-3-3 REMITTANCE DATE

1. Within thirty (30) days after the end of each calendar month, the home service provider taxed hereunder shall file, with the City Treasurer, a report computing the tax. Coincidental with the filing of such report, the business shall pay, to the City Treasurer, the amount of the tax due for the calendar month subject to the report. If the thirtieth (30th) day after the end of each calendar month falls on a Saturday, Sunday, or State or Federal holiday, the deadline for filing the monthly report and remitting payment for that month is extended to the next subsequent business day.

2. Delinquent Payment. Any payment not paid when due shall be subject to a delinquency penalty charge of ten percent (10%) of the unpaid amount. Failure to make full payment and penalty charges within sixty (60) days of the applicable payment date shall constitute a violation of this Chapter. All overdue amounts, including penalty charges, shall bear interest until paid at the rate of an additional ten percent (10%) per annum.

3. Reconciliation. Within three (3) years after the filing of any report or the making of any payment, the City Treasurer may examine such report or payment, determine the accuracy thereof, and, if the City Treasurer finds any errors, report such errors to the home service provider for correction. If any tax, as paid, shall be found deficient, the home service provider shall within sixty (60) days remit the difference, and if the tax as paid shall be found excessive, the City shall within sixty (60) days refund the difference plus interest at the same rate as if such amount was deficient. In the event of a disagreement, the home services provider shall file under protest pending the resolution of the dispute between the parties or through the courts.

4. Record Inspection. The records of the home service provider pertaining to the reports and payment of the tax, including, but not limited to, any records deemed necessary by the City to calculate or confirm proper payment by the home service provider, shall be open for inspection by the City and its duly authorized representatives upon reasonable notice at all reasonable business hours of the home services provider within the statute of limitations period defined in Subsection (3) of this Section.

5. Home Service Provider Duty to Cooperate on Record Inspection.

   a. In order to facilitate any record inspection, the home service provider shall, upon thirty (30) days' prior written request:

(i) Grant the City or its duly authorized representatives reasonable access to those portions of the books and records of the home service provider necessary to calculate and confirm proper payment of the tax; or

Provide the City or its duly authorized representatives with reports containing or based on information necessary to calculate and confirm proper payment of the tax.

b. Any requests for such books, records, reports, or portions thereof shall specify in writing the purpose for such request. Any books, records, reports, or portions thereof provided by the home service provider to the City under a claim that such documents are confidential business records are hereby designated as "protected records" and shall not be copied or disclosed by the City to third parties without the written permission of the home service provider, unless such documents are determined by a court of law to constitute "public records" within the meaning of the Utah Government Records Access and Management Act. [Ord. 2000-4, Sec. 2]

3-3-4 REQUIREMENT TO MAINTAIN ELECTRONIC DATABASE OR ENHANCED ZIP CODE LISTING

1. Electronic Database.

a. Provision of Database. The State may provide an electronic database to a home service provider; or, if the State does not provide such an electronic database, the designated database provider may choose to provide an electronic database to a home service provider.

b. Format.

(i) Such electronic database, whether provided by the State or the designated database provider, shall be provided in a format approved by the American National Standards Institute's Accredited Standards Committee X12, which, allowing for de minimis deviations, designates for each street address in the City, including, to the extent practicable, any multiple postal street addresses applicable to one street location, the appropriate taxing jurisdictions, and the appropriate code identified by one nationwide standard numeric code.

(ii) Such electronic database shall also provide the appropriate code for each street address with respect to political subdivisions that are not taxing jurisdictions when reasonably needed to determine the proper taxing jurisdiction.

(iii) The nationwide standard numeric codes shall contain the same number of numeric digits, with each digit or combination of digits referring to the same level of taxing jurisdiction throughout the United States, using a format similar to FIPS 55-3 or other appropriate standard approved by the Federation of Tax Administrators and the Multistate Tax Commission or their successors. Each address shall be provided in standard postal format.

2. Notice - Updates. The State or designated database provider that provides or maintains an electronic database described in Subsection (1) of this Section shall provide notice of the availability of the then-current electronic database and any subsequent revisions thereof, by publication in the manner normally employed for the publication of informational tax, charge, or fee notices to taxpayers in such State.

3. User Held Harmless. A home service provider using the data contained in an electronic database described in Subsection (1) of this Section shall be held harmless from any tax, charge, or fee liability that otherwise would be due solely as a result of any error or omission in such database provided by the City or designated database provider. The home service provider shall reflect changes made to such database during a calendar quarter, not later than thirty (30) days after the end of such calendar quarter. The State has issued notice of the availability of an electronic database reflecting such changes under Subsection (2) of this Section.

4. Procedure If No Electronic Database Provided.

a. Safe Harbor. If neither the State nor the designated database provider provides an electronic database, a home service provider shall be held harmless from any tax, charge, or fee liability in the City that otherwise would be due solely as a result of an assignment of a street address to an incorrect taxing jurisdiction, if the home service provider employs an enhanced zip code to assign each street address to a specific taxing jurisdiction and exercises due diligence to ensure that each such street address is assigned to the correct taxing jurisdiction. If an enhanced zip code overlaps boundaries of taxing jurisdictions of the same level, the home service provider must designate one specific jurisdiction within such enhanced zip code for use in taxing the activity for such enhanced zip code. Any enhanced zip code assignment changed is deemed to be in compliance with this section. For purposes of this section, there is a rebuttable presumption that a home service provider has exercised due diligence if the home service provider demonstrates that it has:

(i) Expended reasonable resources to implement and maintain an appropriately detailed electronic database of street address assignments to taxing jurisdictions;

(ii) Implemented and maintained reasonable internal controls to

promptly correct misassignments of street addresses to taxing jurisdictions; and

(iii) Used all reasonably obtainable and usable data pertaining to municipal annexations, incorporations, reorganizations, and any other changes in jurisdictional boundaries that materially affect the accuracy of such database.

b. Termination of Safe Harbor. Subsection (4)(a) of this Section applies to a home service provider that is in compliance with the requirements of Subsection (4)(a) of this Section with respect to a state for which an electronic database is not provided, until the later of:

(i) Eighteen (18) months after the nationwide standard numeric code has been approved by the Federation of Tax Administrators and the Multistate Tax Commission; or

(ii) Six (6) months after the State or a designated database provider in the State provides such database. [Ord. 2000-4, Sec. 2]

3-3-5 PLACE OF PRIMARY USE

1. A home service provider is responsible for obtaining and maintaining the customer's place of primary use. Subject to Section 3-3-4 of this Chapter, and if the home service provider's reliance on information by its customer is in good faith, a home service provider:

   a. May rely upon the applicable residential or business street address supplied by the home service provider's customer.

   b. Is not liable for any additional taxes, charges, or fees based on a different determination of the place of primary use for taxes, charges, or fees that are customarily passed on to the customer as a separate address under existing agreements.

2. A home service provider may treat the address used by the home service provider for tax purposes for any customer under a service contract or agreement in effect two (2) years after the date of this amendment to this Chapter as that customer's place of primary use for the remaining term of such service contract or agreement, excluding any extension or renewal of such service contract or agreement, for purposes of determining the taxing jurisdiction to which taxes, charges, or fees on charges for mobile telecommunication services are remitted. [Ord. 2000-4, Sec. 2]

3-3-6 TAX AGAINST CUSTOMER

Each customer shall accurately report the customer's place of primary use. The customer shall be liable for any taxes not paid by the home service provider as a result of the customer's failure to accurately report the customer's place of primary use. [Ord. 2000-4, Sec. 2]

3-3-7 NONAPPLICATION

This Chapter does not apply to the determination of the taxing situs of:

1. Prepaid telephone calling services; or

2. Air-ground radiotelephone service, as defined in Section 22.99 of Title 47 of the Code of Federal Regulations as in effect on June 1, 1999. [Ord. 2000-4, Sec. 2]

3-3-8 IMPLEMENTATION DATE

If the ordinance codified in this Chapter is adopted before January 1, 2001, a home service provider shall have a minimum of thirty (30) days' notice before being obligated to collect the tax described in this Chapter. After January 1, 2001, a home service provider shall have a minimum of sixty (60) days' notice before being obligated to collect the tax described in this Chapter. After January 1, 2001, a home service provider shall receive a minimum of sixty (60) days' notice regarding any changes to this Chapter. [Ord. 2000-4, Sec. 2]

CHAPTER 3-4

TELECOMMUNICATIONS TAX

3-4-1 DEFINITIONS

As used in this Chapter:

1. "Commission" means the state tax commission.

2. Customer.

   a. Subject to Subsections (2)(b) and (c) of this Section, "customer" means the person who is obligated under a contract with a telecommunications provider to pay for telecommunications service received under the contract.

   b. For purposes of this Chapter, "customer" means:

      (i) The person who is obligated under a contract with a telecommunications provider to pay for telecommunications service received under the contract; or

      (ii) If the end user is not the person described in Subsection (2)(b)(i) of this Section, the end user of telecommunications service.

   c. "Customer" does not include a reseller:

      (i) Of telecommunications service; or

      (ii) For mobile telecommunications service, of a serving carrier under an agreement to serve the customer outside the telecommunications provider's licensed service area.

3. End User.

   a. The person who uses a telecommunications service.

   b. For purposes of telecommunications service provided to a person who is not an individual, "end user" means the individual who uses the telecommunications service on behalf of the person who is provided the telecommunications service.

4. "Gross receipts attributed to the municipality" means those gross receipts from a transaction for telecommunications services that is located within the municipality for the purposes of sales and use taxes under Utah Code Annotated Title 59, Chapter

12, Sales and Use Tax Act, and determined in accordance with Utah Code Annotated Section 59-12-207.

5. "Gross receipts from telecommunications service" means the revenue that a telecommunications provider receives for telecommunications service rendered, except for amounts collected or paid as:

   a. A tax, fee or charge:

      (i) Imposed by a governmental entity;

      (ii) Separately identified as a tax, fee or charge in the transaction with the customer for the telecommunications service; and

      (iii) Imposed only on a telecommunications provider;

   b. Sales and use taxes collected by the telecommunications provider from a customer under Utah Code Title 59, Chapter 12, Sales and Use Tax Act; or

   c. Interest, a fee or a charge that is charged by a telecommunications provider on a customer for failure to pay for telecommunications service when payment is due.

6. "Mobile telecommunications service" is as defined in the Mobile Telecommunications Sourcing Act, 4 USC 124.

7. "Municipality" means Gunnison City.

8. Place of Primary Use.

   a. For telecommunications service other than mobile telecommunications service, "place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which shall be:

      (i) The residential street address of the customer; or

      The primary business street address of the customer; or

   b. For mobile telecommunications service, "place of primary use" is as defined in the Mobile Telecommunications Sourcing Act, 4 USC 124.

9. Service Address. Notwithstanding where a call is billed or paid, "service address" means:

a. If the location described in this Subsection is known, the location of the telecommunications equipment:

(i) To which a call is charged; and

(ii) From which the call originates or terminates;

b. If the location described in Subsection (9)(a) of this Section is not known but the location described in this Subsection is known, the location of the origination point of the signal of the telecommunications service first identified by:

(i) The telecommunications system of the telecommunications provider; or

If the system used to transport the signal is not a system of the telecommunications provider, information received by the telecommunications provider from its service provider; or

c. If the locations described in Subsections (9)(a) or (b) of this Section are not known, the location of a customer's place of primary use.

10. Telecommunications Provider.

a. Subject to Subsections (10)(b) and (c) of this Section, "telecommunications provider" means a person that:

(i) Owns, controls, operates or manages a telecommunications service; or

(ii) Engages in an activity described in Subsection (10)(a)(i) of this Section for the shared use with or resale to any person of the telecommunications service.

b. A person described in Subsection (10)(a) of this Section is a "telecommunications provider" whether or not the Public Service Commission of Utah regulates:

(i) That person; or

(ii) The telecommunications service that the person owns, controls, operates or manages.

c. "Telecommunications provider" does not include an aggregator as defined in Utah Code Annotated Section 54-8b-2.

11. "Telecommunications Service" means "telephone service," as defined in Utah Code Section 59-12-102, other than mobile telecommunications service, that originates and terminates within the boundaries of this State; and "mobile telecommunications service," as defined in Utah Code Section 59-12-102:

    a. That originates and terminates within the boundaries of one state; and

    b. Only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 USC 116 et seq. [Ord. 2004-5]

3-4-2 LEVY OF TAX

There is hereby levied a Municipal Telecommunications License Tax on the gross receipts from telecommunications service attributed to this municipality. [Ord. 2004-5]

3-4-3 RATE

The rate of the tax levy shall be four percent (4%) of the telecommunication provider's gross receipts from telecommunications service that are attributed to the municipality. If the location of a transaction is determined to be other than this municipality, then the rate imposed on the gross receipts for telecommunications services shall be determined pursuant to the provisions of Utah Code Section 10-1-407. [Ord. 2004-5]

3-4-4 RATE LIMITATION AND EXEMPTION THEREFROM

The rate of this levy shall not exceed four percent (4%) of the telecommunication provider's gross receipts from telecommunication service attributed to the municipality unless a higher rate is approved by a majority vote of the votes in this municipality that vote in: (a) a municipal general election; (b) a regular general election; or (c) a local special election. [Ord. 2004-5]

3-4-5 EFFECTIVE DATE OF TAX LEVY

This tax shall be levied beginning July 1, 2004. [Ord. 2004-5]

3-4-6 CHANGES IN RATE OR REPEAL OF TAX

This Chapter is subject to the requirements of Utah Code Annotated Section 10-1-403. If the tax rate is changed or the tax is repealed, then the appropriate notice shall be given as provided in Utah Code Section 10-403. [Ord. 2004-5]

3-4-7 INTERLOCAL AGREEMENT FOR COLLECTION OF THE TAX

On or before the effective date of the ordinance codified in this Chapter, the municipality shall enter into the uniform interlocal agreement with the commission as described in Utah Code Section 10-1-405 for the collection, enforcement and administration of this municipal telecommunications license tax. [Ord. 2004-5]

3-4-8 PROCEDURES FOR TAXES ERRONEOUSLY RECOVERED FROM CUSTOMERS

Pursuant to the provisions of Utah Code Section 10-1-408, a customer may not bring a cause of action against a telecommunications provider on the basis that the telecommunications provider erroneously recovered from the customer the municipal telecommunication license tax except as provided in Utah Code Section 10-1-408. [Ord. 2004-5]

3-4-9 REPEAL OF INCONSISTENT TAXES AND FEES

Any tax or fee previously enacted by this municipality under authority of Utah Code Section 10-1-203, or Utah Code Title 11, Chapter 26, local taxation of utilities limitation, is hereby repealed.

Nothing in this Chapter shall be interpreted to repeal any municipal ordinance or fee which provides that the municipality may recover from a telecommunications provider the management costs of the municipality caused by the activities of the telecommunications provider in the rights-of-way of the municipality, if the fee is imposed in accordance with Utah Code Section 72-7-102 and is not related to the municipality's loss of use of a highway as a result of the activities of the telecommunications provider in a right-of-way, or increased deterioration of a highway as a result of the activities of the telecommunications provider in a right-of-way, nor does this Chapter limit the municipality's right to charge fees or taxes on persons that are not subject to the municipal telecommunications license tax under this Chapter and locate telecommunications facilities, as defined in Utah Code Section 72-7-108, in this municipality. [Ord. 2004-5]

CHAPTER 3-5

SALES AND USE TAX FOR HIGHWAYS

3-5-1 HIGHWAYS TAX

1. Established.

   a. There is levied and there shall be collected and paid a tax upon all sales and uses of tangible personal property, services, meals and any and all other sales and services described in Section 59-12-103(1), Utah Code Annotated 1953, within Gunnison City at the rate of one-quarter (1/4) of one percent (1%).

   b. For the purpose of this chapter, all retail sales shall be presumed to have been consummated at the place of business delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. In the event a retailer has no permanent place of business, the place or places at which the retail sales are consummated shall be as determined under the rules and regulations prescribed by and adopted by the State Tax Commission. Public utilities as defined by Title 54, Utah Code Annotated 1953, shall not be obligated to determine the place or places within any county or municipality where public utilities services are rendered, but the place of sale or the sales tax revenue arising from such service allocable to the city shall be as determined by the State Tax Commission pursuant to an appropriate formula and other rules and regulations to be prescribed and adopted by it.

2. Compliance with State Provisions. Except as hereinafter provided, and except insofar as they are inconsistent with the provisions of the Sales and Use Tax Act, all provisions of Chapter 12, Title 59, Utah Code Annotated 1953, as amended, and in force and effect on the effective date of the ordinance codified in this Chapter, insofar as they relate to sales taxes, excepting Sections 59-12-101 and 59-12-119 thereof, are adopted and made a part of this Chapter as though fully set forth herein. [Ord. 1999-1, Sec. 1]

3-5-2 USE OF TAX

1. The tax imposed and collected under this Chapter shall be used for construction and maintenance of highways, roads, streets and public ways under the jurisdiction of the City.

2. Method of Collection. As provided in Section 59-12-1002 of Utah Code Annotated, the tax imposed by this Chapter shall be collected, disbursed and transmitted as provided in that section and administered under the conditions and provisions for collection, disbursement and distribution as provided therein. [Ord. 1999-1, Sec. 2]

TITLE IV

BUSINESS REGULATION

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CHAPTER 4-1

BUSINESS LICENSES 4-1-1 TITLE

This Chapter shall be entitled The Business License Ordinance of Gunnison City, Utah.

4-1-2 PURPOSE

The purpose of this Chapter is to provide for the regulation of all business activities within the City where authorized by statute.

4-1-3 BUSINESS LICENSE REQUIRED - APPLICATION OF CHAPTER

4-1-3.1 License Required - Exceptions

It shall be unlawful for any person, firm, or corporation to maintain, carry on or engage in any business, trade, service or profession; or to hold himself or itself out to the public for such purpose without first procuring a license to do so from the City; provided, that the City Council may, upon appeal, waive the license requirement where, in the opinion of the City Council, the business activity qualifies as an exception as hereinafter set forth:

1. Commercial activities which in the opinion of the City Council are of an infrequent nature and carried on at such an incidental level as to not require regulation by the City.

2. Firms providing incidental delivery of goods purchased by residents from locations outside of the City. Also, wholesale firms delivering supplies and materials to established businesses within the City.

3. Agricultural enterprises producing commodities for sale on the premises.

Chapter 4-1 adopted as Chapter 9-100 of the Rev. Ord. 1978, Completely revised in Codification. Statutory authority 10-1-203 & 10-8-4.

4. Any business operated solely for religious, charitable, eleemosynary or other type of strictly nonprofit purpose, which is tax exempt in such activities under the laws of the United States and the State of Utah

5. Any person engaged in a business specifically exempted from municipal taxation and fees by the laws of the United States of the State of Utah.

4-1-3.2 Application of Business Regulations

This Chapter shall apply to all persons, firms, or corporations engaged in business, trade, service, or profession, who conduct the business operation from (1) a separate structure or location within the City, (2) a home location, subject to prior approval as a home occupation, or (3) an automobile or other type of mobile unit. The provisions of this Chapter relating to the operation or conduct of a business activity shall be applicable whether or not a business license is required.

4-1-3.2 Separate Licenses Required for Each Business __Exceptions

Separate licenses shall be required for each of the business even though conducted by the same person, firm, or corporation. Provided however in those cases where related businesses are combined and conducted by the same person, firm, or corporation on the same premises, and in such a manner that it is reasonable to consider the same as one business, the City Council may, upon application of the licensee, make such adjustment in the license fee as it may find to be equitable, but in no event shall the license fees for each business be less than the fee for any one of the combined businesses.

4-1-3.3 License to be Displayed

Every license issued under this Chapter shall be posted by the licensee in a conspicuous place upon the wall of the building, room, or office of the place of business so that the same may be easily seen. If the licensee's business is such that a license cannot be displayed due to the transient or mobile nature of the business, then the licensee shall carry the license on his person ready to be shown on request by an authorized officer during all such time or times while the licensee is engaged in or pursuing the business for which a license is granted.

4-1-3.4 Transfer of License Prohibited

No license granted or issued under any Chapter of the municipality shall be assigned or transferred to any other person. It shall not be deemed to authorize any person other than therein named to do business or to authorize any other business, calling, trade or profession than is therein names unless by permission of the City Council.

4-1-3.5 Temporary Licenses

Anyone doing business within the municipality for less than six months, including but not limited to, auctioneers, door-to-door salesman, etc., are required to first register with the City Recorder and obtain a temporary license. It shall be a Class "C" Misdemeanor for anyone to engage in door-to-door solicitation or to conduct a public auction without a temporary license.

4-1-4 PROCEDURE FOR APPROVAL OF A BUSINESS LICENSE - RENEWAL OF LICENSES

4-1-4.1 Application for License

Application for a business license shall be made in writing to the City Recorder. Each application shall contain the following:

1. The name of the person desiring a license.
2. A description of the business, trade, service or profession proposed to be provided.
3. The address or location where such proposed business will be conducted.
4. The period of time for which the license is desired.
5. Payment of the initial license fee.

4-1-4.2 City Council Acts on Application

The City Council shall consider the application at a duly called Council meeting and shall act to approve or disapprove said application. If disapproved, the Council shall communicate the reason for such action to the applicant.

The Council may delegate the responsibility for the issuance of temporary licenses for door-to-door peddlers and similar short term commercial activities not operating from a permanent fixed location within the City.

4-1-4.3 Renewal of Permanent Licenses

Once approved by the Council in accordance with Section 4-1-4 above, licenses for permanent uses will be renewed for successive term without further action by the Council provided that payment of the license fee for the next term shall have been received by the City Recorder prior to the date of delinquency as set forth in Section 4-1-6 and the nature of the business activity has remained substantially unchanged from that approved by the Council.

4-1-5 TERM OF LICENSE - DATE OF EXPIRATION

4-1-5.1 Temporary Licenses

Temporary licenses shall be for the period of time specified in the approved application and shall expire on the date set forth on the permit; provided, that no temporary permit shall be issued for a period longer than six (6) months. [Ord. 2003-3]

4-1-5.2 Permanent License

The term of the business licenses for permanent business establishments shall be for a period of one (1) year and all licenses shall expire on the date set by resolution of the Council. [Ord. 2003-3; Ord. 1994-2]

4-1-6 LICENSE FEES

4-1-6.1 City May Assess Business License Fees - Amount of Fees

The City may assess fees for the purpose of regulation and to defray the cost of administration of this Chapter and the provision of municipal services. The amount of fee charged shall be as set forth by resolution of the City Council. All fees for new business shall be paid prior to the time the application is approved by the City Council. [Ord. 2003-3]

4-1-6.2 Payment Dates for Renewal of Annual Licenses - Penalty for Late Payment

License renewal fees for annual licenses shall be due each year and shall become delinquent as set forth by resolution of the City Council. Any license fee not paid prior to the date of delinquency shall be assessed a penalty set by resolution. The amount of penalty shall be added to the original amount of the license and no license shall be issued until all penalties legally assessed have been paid in full. [Ord. 2003-3; Ord. 1994-2]

4-1-6.3 Licenses Issued for New Business

Fees for licenses issued during the first six (6) months of the year shall be for the full amount of the annual license. Fees for licenses issued during the last six (6) months of the year shall be one-half (1/2) the annual fee. [Ord. 2003-3]

4-1-6.4 Fee Not to Constitute Undue Burden on Interstate Commerce

None of the license fees provided for by this Chapter shall be applied as to occasion an undue burden on interstate commerce. [Ord. 2003-3]

4-1-7 ADMINISTRATION AND ENFORCEMENT

4-1-7.1 License Assessor and Collector

The City Recorder is designated and appointed as assessor *of* license fees for the City. On approval of any application for a license, the Recorder shall assess the amount due thereon and shall collect all license fees based upon the rate established pursuant to this Chapter. The Recorder shall enforce all provisions of this Chapter, and shall cause to be filed complaints against all persons violating any *of* the provisions of this Chapter.

4-1-7.2 Nuisances

No business, whether licensed or not, shall be conducted or operated so as to amount to a nuisance.

4-1-7.3 Business to Comply With Other Ordinances

No business, whether licensed or not, shall be conducted, and/or no business license shall be issued for any business activity, if the premises and/or building to be used for the purpose do not fully comply with the requirements of all City ordinances. No such license shall be issued for the conduct of any business or performance of any act which would involve a violation of the Zoning Ordinance of this City and any license so issued shall be null and void.

4-1-7.4 Inspection

Whenever inspections of the premises used for or in connection with the operation of a licensed business or home occupation are required or considered reasonably necessary to secure compliance with any provision of this Chapter or to detect violations thereof, it shall be the duty of the licensee or the person in charge of the premises to be inspected to admit thereto, for the purpose of making the inspection, any officer or employee of the City or other governmental unit who is authorized or directed to make such inspection at any reasonable time that admission is requested.

In addition to any other penalty which may be provided, the Mayor may revoke the license of any licensed proprietor of any business in the City who refuses to permit any such authorized officer or employee to make the inspection, or who interferes with such officer or employee while in the performance of his duty in making such inspection; provided, that no license shall be revoked for cause unless written demand is made upon the licensee or person in charge of the premises, in the name of the City or governmental unit, stating that such inspection is desired at the time it is sought to make the inspection.

4-1-7.5 Revocation or Denial of License - Notice - Procedure

Any license issued pursuant to the provisions of this Chapter may be suspended or revoked and any request for renewal of such license denied by action the City Council because of:

1. The failure of the licensee or applicant to comply with the conditions and requirements of this Chapter or any applicable ordinance of the City.

2. Unlawful activities conducted or permitted on the premises where the business is conducted.

3. The premises and/or the business activity is kept or conducted in an illegal, disorderly, unsanitary, hazardous or ill-governed manner.

Prior to consideration of any action to suspend or revoke a license or to deny a request to renew a valid license, the City Council shall provide a written notice to the licensee of its intent to consider the matter. Said notice shall be mailed or otherwise delivered to the licensee not less than ten (10) days prior to the date of the hearing and shall state the ground of the complaint against the holder of such license and the time and place where the hearing shall be held. The licensee shall have the right to appear at the hearing and to present evidence as to why the license should not be suspended or revoked or the renewal denied

In case any license is suspended such suspension shall be for a period of not less than 15 days nor more than six months. In the case any license is suspended or revoked no part of the license fee shall be returned and it shall be thereafter unlawful for any person to conduct any business on the premises described in the revoked or suspended license until the old license is reinstated or a new license is issued by the City Council

The revocation of the license shall be in addition to any penalty which may be assessed pursuant to Section 4-1-9 of this Chapter.

4-1-7.6 Notice Not Required for Denial of New Applications for Licenses

The preceding Section shall not apply to applications for licenses for businesses which have not previously been licensed by the City, and such applicants need only be informed that their application has been denied.

4-1-8 PENALTY

Violation of an provision of this Chapter shall be a Class B Misdemeanor.

CHAPTER 4-2

ALCOHOLIC BEVERAGES 4-2-1

GENERAL PROVISIONS

4-2-1.1 State Alcoholic Beverage Control Act Adopted by Reference - Exceptions - Citation to Code

A. Pursuant to authorization set forth under Section 10-3-711, Utah Code Annotated, 1953, as amended, the following portions of the Alcoholic Beverage Control Act, as contained in Title 32A, UCA, as amended, 1991, are hereby approved and adopted as Gunnison City Ordinances, with such exceptions and modifications as are hereinafter set forth:

1. Section 32A-1-105 (Definitions)
2. Chapter 4, Part 1 (Restaurant Liquor Licenses)
3. Chapter 10, (Beer Retailer Licenses)
4. Chapter 12, (Criminal Offenses)
5. Chapter 13, (Criminal Procedure)

B. Those portions of the Alcoholic Beverage Control Act, as adopted herein, referring to or dealing with felonies or Class A misdemeanors, or punishments associated with felonies and class A misdemeanors, when enforced as a violation of city ordinances city rather than a violation of the State Code, shall be class B misdemeanors.

C. Where a citation or complaint for violation of the code adopted by Paragraph A above is issued, it shall be sufficient to use the section number of the Utah Code followed by "As Adopted by the ordinances of Gunnison City" to show the Section of the ordinances of the City which has been violated. Nothing in this Section shall be interpreted so as to prohibit the enforcement of the Alcoholic Beverage Control Act as a State Law.

Statutory Authority to adopt regulations regarding the location and licensing of beer and certain liquor sales establishments is set forth in UCA 11-10-1 et.seq., 32A-10-101, 32A-5-102, 32A-4-102.

4-2-1.2 Compliance With Statute and City Ordinance Required

It shall be unlawful for any person to sell, exchange, furnish possess or consume any alcohol beverage, except as expressly permitted by this Chapter and state law. It shall be unlawful for any establishment, association, corporation, club or person to knowingly permit any person to possess alcoholic beverages upon which the seal or cap has been broken, or to consume any alcoholic beverage in any place or establishment where the public is invited to come for business purposes, except where said place or establishment is specifically licensed for such purpose under this Chapter.

It shall be unlawful for any person to consume alcoholic beverages in any place or establishment where the public is invited to come for business purposes except where said place or establishment is specifically licensed for such purpose under this Chapter.

4-2-2 LICENSE REQUIRED

1. It shall be unlawful for any person to engage in the business of the retail sale of beer or the sale of liquor as a restaurant licensee, private club or special use permittee without first procuring a license therefor from the City as provided in this Chapter. A separate license shall be required for each place of sale.

2. It shall be unlawful for any person to operate any association, establishment, restaurant, club or similar business which allows customers, members, guests, visitors or other persons to possess or consume alcoholic beverages on the premises without first procuring a license therefor as provided in this Chapter.

3. All licenses shall comply with all applicable provisions of state and local law, including the Alcoholic Beverage Control Act of Utah, the regulations of the Utah State Liquor Control Commission and this Chapter.

4. All licenses required hereunder shall be in addition to any business or other license required by law or by this Code, including licenses required under the Alcohol beverage Control Act. The license provided under this Chapter shall constitute the business license provided in UCA 11-10-1 et.seq. A license issued under this Chapter constitutes consent of the City within the meaning of UCA Title 32A, the Alcoholic Beverage Control Act.

4-2-3 LICENSE CLASSIFICATION - NUMBER OF LICENSES TO BE ISSUED 4-2-3.1

License Classification

Alcoholic beverage licenses issued by the City shall be of the following classes and carry the following privileges. Each license classification is exclusive of the others and each license permits only those privileges set forth under its particular classification. All other types of establishments specified under the provisions of UCA Title 32A, the Alcoholic Beverage Control Act, which require the prior consent of the local authority or provide for the issuance of a local liquor license are hereby specifically prohibited within the City.

1. Class A License (Retail Beer License)
   Persons under twenty-one (21) years of age are permitted on the licensed premises. Class A licenses shall entitle the licensee to sell beer in the original containers having the label of the makers thereon to persons twenty-one (21) years of age and older in accordance with the Alcoholic Beverages Control Act of Utah and the ordinances of the City, for consumption off the premises.

2. Class B License (Restaurant Beer License)
   Persons under twenty-one (21) years of age are permitted on the licensed premises. Class B licenses shall entitle the licensee to sell beer in original containers or on draught for consumption on the premises in conjunction with the purchase of food menu items to persons twenty-one (21) years of age and older in accordance with the Alcoholic Beverage Control Act of Utah and the ordinances of the City. Only bona fide restaurants, where a variety of hot food is prepared and cooked and complete meals are served to the general public in connection with indoor dining accommodation and which food sales constitute not less than 70 percent of the gross dollar value of the licensee's business shall be entitled to a Class B license.

3. Class C License (Tavern License)
   Persons under twenty-one (21) years of age are not permitted on the licensed premises. Class C licenses shall entitle the licensee to sell beer in original containers or on draught to persons twenty-one (21) years of age and older in accordance with the Alcoholic Beverage Control Act of Utah and the ordinances of the *City,* provided that if the beer sold or given is in an open container, or if opened on the premises, the beer must remain on the licensed premises until it is consumed or disposed of in the drains or sewer of the licensed premises.

4. Class D License (Restaurant Liquor License)

   Persons under twenty-one (21) years of age are permitted on the licensed premises. Class D licenses shall entitle the licensee to sell liquor and beer for consumption on the premises in conjunction with the purchase of food

menu items to persons twenty-one (21) years of age and older in accordance with the Alcoholic Beverage Control Act of Utah and the ordinances of the City. Only bona fide restaurants, where a variety of hot food is prepared and cooked and complete meals are served to the general public in connection with indoor dining accommodation and which food sales constitute not less than seventy (70) percent of the gross dollar value of the licensee's business shall be entitled to a Class D license

4-2-4 PROCEDURE FOR OBTAINING A LICENSE - CITY COUNCIL TO APPROVE

All applications for licenses authorized by this Chapter shall be submitted to and may be granted only by the City Council.

4-2-4.1 Content of License Application

All applications for licenses authorized herein shall be on a form provided by the City and shall be accompanied by evidence of payment of the required license fee in the amount as established by resolution of the City Council. The applications shall contain the following information:

1. The name, current address and telephone number of the applicant.
2. The age and date of birth of the applicant.
3. The social security number of the applicant.
4. All addresses of the applicant for previous five (5) years.
5. The type of license desired.
6. The location of the premises to be licensed.
7. A statement verifying that the applicant meets all the requirements of the UCA 11-10-2 and the Alcoholic Beverage Control Act.
8. A statement verifying that the applicant has never been convicted of any felony or of any law or ordinance relating to alcoholic beverages, or of drunken driving, or of keeping a gambling or disorderly house, or in the case of application for a Class B, C or D license, of any misdemeanor involving moral turpitude.
9. A sworn statement signed by the applicant that all the facts included in the application are true.
10. Any other information that the City many require.

If the applicant is a partnership, association or corporation, the above information shall be provided with respect to each partner, association member or corporate officer and director, although the application need only be signed by a single partner, member or officer.

If the establishment for which the applicant seeks a license will be managed or operated by a person other than the applicant, the City may also require that the manager or operator submit an application for the purpose of a background investigation and if the manager or operator does not meet the requirements of

this Section, the City may deny the applicant's request for a license.

4-2-4.2 City Council to Act on Application

The City Council shall consider the application at a duly called Council meeting and shall act to approve or disapprove said application. If disapproved the Council shall communicate the reasons for such action to the applicant.

4-2-5 SPECIAL PROVISIONS FOR ESTABLISHMENTS CONDUCTING OTHER BUSINESSES ON PREMISES

If an applicant for a Class C license intends to engage in business other than the sale of beer, he shall designate on the application a room or the portion of the building intended to be used for the sale of beer or the consumption of any alcoholic beverage. The room or portion of the building so designated shall be deemed to be the licensed premises if the license is granted. Such room or building portion must be separated from the rest of the business establishment or building by a substantial solid permanent wall from floor to ceiling, composed of materials that will completely shut off all visibility and normal sounds and having no more than one (1) door in the interior walls connecting it with the remainder of the building.

4-2-6 INVESTIGATION OF LICENSE APPLICANTS BY THE CHIEF OF POLICE

The Chief of Police shall review all applications and conduct an investigation into the background and character of each applicant. Following the investigation, the findings and recommendations of the Chief of Police shall be made in writing to the City Council.

4-2-7 PERSONS NOT ENTITLED TO CLASS A, B, C or D LICENSES

No Class A, B D license shall be granted unless the applicant is over the age of twenty-one (21) years, is of good moral character and meets the qualifications of state law; Nor shall a license be issued to anyone who has been convicted of a felony or of any violation of any law relating to the sale or distribution of Alcoholic beverages or of keeping a gambling or disorderly house. If the applicant is a partnership, association or corporation, each partner, association member or corporate officer and director shall meet all of the foregoing restrictions as if such individual were the applicant.

4-2-8 LICENSE FOR BEER SALES ONLY NOT PERMITTED

No Class A license shall be granted to any applicant or retained by any licensee for the retail sale of beer only. An applicant or licensee must have retail sale of food or of items other than petroleum and beer of at least thirty percent (30%) of total sales in order to qualify for or maintain such license and shall, upon request therefor, furnish certified documentation substantiating such sales. The City may at any time require such documentation.

4-2-9 DENIAL OF LICENSE

The City reserves the right to deny any application for a license. If, on an application for a Class A, B, C or D license, the City Council finds that any applicant does not meet the requirements of or is disqualified under any Section of this Chapter, or that the application is deficient in any way or any of the facts provided thereon are false or in question, the application shall be denied. With respect to Class C License, the City Council shall have absolute discretion to either grant or deny them; and it is hereby declared that the intent of the City is and shall be to strictly limit the future granting of such licenses to occasions when the Council finds that the granting of a Class C license is essential to desired development and will not contribute significantly to any law enforcement problems commonly associated with the consumption of alcoholic beverages.

4-2-10 SUSPENSION AND REVOCATION

Licenses issued pursuant the provisions of this Chapter may, or shall, be suspended or revoked as hereinafter set forth:

1. Upon conviction of a violation any of the provisions of this Chapter or any other applicable ordinance of the City or State law relating to the possession, consumption, storage or sale of alcoholic beverages by the licensee or the licensee's employee or agent, the license of said establishment <u>shall</u> be suspended or revoked as follows:

   A. In the case of a first offense the license shall be suspended for a period of fourteen (14) days.

   B. In the case of a second offense occurring within two years from the date of the first offense the license shall be suspended for a period of thirty (30) days.

   C. In the case of a third offense occurring within two years from the date of the second offense the license shall be permanently revoked.

Provided, where the City Council determines that a first or second offense constitutes a gross or blatant violation they may, after conducting a show-cause hearing thereon, order the revocation of the license.

2. Where it is determined by the City Council that the licensee is no longer qualified to hold a license under the standards set forth in this Chapter. it may, after conducting a show-cause hearing thereon suspend or revoke the license

Any notice of hearing required under the terms of this section shall be in writing and shall be served at least ten (10) days prior to the date of the hearing upon the licensee or his agent. Such notice shall state the grounds of the complaint against the licensee and the time and place where such hearing shall be held.

4-2-11 OPERATING FOLLOWING LICENSE REVOCATION PROHIBITED

If at any time a license under the provisions of this Chapter is denied, suspended, revoked, or allowed to expire it shall thereafter be unlawful for any person to possess or consume alcoholic beverages on the premises or to buy alcoholic beverages for consumption off the premises described in the denied application or the revoked, suspended or expired license until such license is reinstated or a new one is issued.

4-2-12 LICENSE TO BE DISPLAYED

Each license issued pursuant to this title shall be displayed at all times on or in the licensed premises in a place readily visible to the public.

4-2-13 LICENSE PERIOD - DATE OF EXPIRATION

The license period for each license issued pursuant to the provisions of this Chapter shall be annual. All such licenses shall expire at 12:00 Noon on the last working day of June next following the date of issuance.

4-2-14 RENEWAL OF LICENSES

Once approved by the City Council in accordance with Section 4-2-4, the license shall be renewed without further Council action, provided that the payment of the annual license fee shall have been received by the City Recorder prior to the date of expiration, as set forth in Section 4-2-13 that the facility has operated in accordance with the terms of this Chapter during the preceding license period.

4-2-15 AMOUNT OF LICENSE FEE - TIME OF PAYMENT

The amount of the license fees shall be as established by resolution of the City Council; provided however, that under no circumstances shall the fee be higher than allowed by state law.

Payment of the license renewal fee for the next license period shall be due and payable on the first day of the last month of the license period and shall be delinquent if not paid by the date and time of expiration.

The amount of fee for new licenses issued for a portion of a license period shall be prorated according to the date on which the applicant commences operations under authority of the license.

4-2-16 LICENSES NOT TRANSFERABLE

Licenses issued under this Chapter are not transferable. A license fee may be refunded after a license has been issued and thereafter canceled on request of the licensee. The amount of fee refunded shall be prorated for the remainder of the license period. Any refund shall be based upon good cause being shown therefor as determined by the City Council after examination of all facts and conditions relative to the application for refund. There shall be no refunds of fees paid for licenses which have been revoked; such fees shall be forfeited to the City.

4-2-17 TRAINING AND CERTIFICATION OF EMPLOYEES IN CLASS B, C AND D REQUIRED

4-2-17.1 Persons Serving Alcoholic Beverages to be Trained

No person shall be granted a license to operate a Class B, C or D establishment if such person operates an establishment which, as part of its business serves alcoholic beverages to the public for consumption on the premises, unless that person shall show by certificate(s), that each employee of the business engaging in serving, selling or furnishing of such alcohol on the premises has completed the Alcohol Training and Education Seminar as required under Section 62A-8-401 et.seq., UCA.

4-2-17.2 New Employees to Receive Training Within Six Months

Every new employee hired after the licensee has been licensed in compliance with the above paragraph who is required to complete this seminar shall do so within six months of commencing employment.

4-2-17.3 Failure to be Grounds for Revocation of License

Violation of this Section shall result in the revocation of the license granted pursuant to this Chapter, unless compliance with the terms of this Section is completed within two (2) months of the time that the licensee first became aware that the violation occurred. (UCA 32A-1-401 et seq.)

4-2-18 HOURS OF OPERATION - SUNDAY SALES

4-2-18.1 Hours of Operation

It shall be unlawful for any establishment possessing a Class B, C or D license to sell or offer to sell beer between the hours of 12:01 a.m. and 10:00 a.m. of any weekday or between the hours of 1:00 a.m. and 10:00 a.m. on any Saturday or legal holiday.

The hours at which liquor may be sold or offered for sale by the holder of a Class D license shall be as set forth in UCA 32A-4-106(8).

4-2-18.2 Sunday Sale Restricted

It shall be lawful for any off-premises licensee to sell beer within the corporate limits of Gunnison City on the first day of the week, commonly called "Sunday," but will not allow on-premises consumption. [Ord. 2005-4, Sec. 1]

4-2-19 PENALTY

Any person violating any provision of this Chapter shall be guilty of a Class B misdemeanor.

CHAPTER 4-3

SEXUALLY ORIENTED BUSINESS 4-3-1 TITLE

FOR CITATION

The provisions codified in this Chapter shall he known and may be referred to as the "Sexually Oriented Business and Employee Licensing Ordinance." [Ord. 2002-4, Sec. 1 (Exh. A)]

4-3-2 PURPOSE OF PROVISIONS

It is the purpose and object of this Chapter that the City establish reasonable and uniform regulations governing the time, place and manner of operation of sexually oriented businesses and their employees in the City. This Chapter shall be construed consistent with the governmental interests of the City in protecting its citizens from increased crime in the preservation of its quality of life and property values and the character of the City's neighborhoods and businesses; and to deter the spread of urban blight and to protect against the spread of sexually transmitted diseases. [Ord. 2002-4, Sec. 1 (Exh. A)]

4-3-3 APPLICATION OF PROVISIONS

This Chapter imposes regulatory standards and license requirements on certain business activities which are characterized as sexually oriented businesses and certain employees of those businesses characterized as sexually oriented business employees. Except where the context or specific provisions require, this Chapter does not supersede or nullify any other related ordinances, including, but not limited to, those codified in other chapters and provisions of the business regulations of the City. [Ord. 2002-4, Sec. 1 (Exh. A)]

4-3-4 DEFINITIONS

For the purpose of this Chapter, the following words shall have the following meanings:

1. "Adult bookstore," "adult novelty store" or "adult video store" means a commercial establishment:

    a. Which excludes minors from more than fifteen (15) percent of the retail floor or shelf space of the premises; or

    b. Which, as one of its principal purposes, offers for sale or rental, for any form of consideration, any one (1) or more of the following: books, magazines, periodicals, or other printed matter; or photographs, films, motion pictures,

video cassettes, or video reproductions, slides, or other visual representation, the central theme of which depicts or describes "specified sexual activities" or "specified anatomical areas"; or instruments, devices, or paraphernalia which are designated for use in connection with "specified sexual activities," except for legitimate medically recognized contraceptives.

c. An establishment may have other principal business purposes that do not involve the offering for sale, rental or viewing of materials depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as an adult bookstore, adult novelty store, or adult video store. Such other business purposes will not serve to exempt such establishments from being categorized as an adult bookstore, adult novelty store or adult video store so long as one of its principal business purposes is offering for sale or rental, for some form of consideration, the specified materials which depict or describe "specified anatomical area" or "specified sexual activities," or "instruments" and "devices" for use in connection with "specified sexual activities."

2. "Adult business" means an adult motion picture theater, adult bookstore, or adult video store.

3. "Adult motion picture theater" means a commercial establishment which:

a. Excludes minors from the showing of two (2) consecutive exhibitions (repeated showings of any single presentation shall not be considered a consecutive exhibition); or

b. As its principal business, shows, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions which are primarily characterized by the depiction or description of specified sexual activities or specified anatomical areas.

4. "Adult theater" means a theater, concert hall, auditorium, or similar commercial establishment which:

a. Holds itself out as such a business; or

b. Excludes minors from the showing of two (2) consecutive exhibitions (repeated performance of the same presentation shall not be considered a consecutive exhibition); or

c. As its principal business, features persons who appear in live performances in a state of semi-nudity or which are characterized by the exposure of specified anatomical areas or by specified sexual activities.

5. "Employ" means hiring an individual to work for pecuniary or any other form of compensation, whether such person is hired on the payroll of the employer, as an independent contractor, as an agent, or in any other form of employment relationship.

6. "Escort" means any person who, for pecuniary compensation, dates, socializes, visits, consorts with, or accompanies or offers to date, consort, socialize, visit, or accompany another or others to or about social affairs, entertainment, or places of amusement, or within any place of public or private resort or any business or commercial establishment or any private quarters. "Escort" shall not be construed to include persons who provide business or personal services, such as licensed private nurses, aides for the elderly or handicapped, social secretaries or similar service personnel whose relationship with their patron is characterized by a bona fide contractual relationship having a duration of more than twelve (12) hours and who provide a service not principally characterized as dating or socializing. "Escort" shall also not be construed to include persons providing services such as singing telegrams, birthday greetings, or similar activities characterized by appearances in a public place, contracted for by a party other than the person for whom the service is being performed and of a duration not longer than one (1) hour.

7. "Escort service" means an individual or entity who, for pecuniary compensation, furnishes or offers to furnish escorts, or provides or offers to introduce patrons to escorts.

8. "Escort service runner" means any third person not an escort, who, for pecuniary compensation, acts in the capacity of an agent or broker for an escort service, escort, or patron by contacting or meeting with escort services, escorts or patrons at any location within the City, whether or not such third person is employed by such escort service, escort, patron, or by another business, or is an independent contractor or self-employed.

9. "Nudity" means a state of dress in which the female breast, below a point immediately above the top of the areola or male or female genitals, pubic region, or anus are covered by less than the covering required in the definition of semi-nude.

10. "Outcall services" means services of a type performed by a sexually oriented business employee outside of the premises of the licensed sexually oriented business, including but not limited to escorts, models, dancers and other similar employees.

11. "Patron" means any person who contracts with or employs any escort services or escort or the customer of any business licensed pursuant to this Chapter.

12. "Pecuniary compensation" means any commission, fee, salary, tip, gratuity, hire, profit, reward, or any other form of consideration.

13. "Person" means any person, unincorporated association, corporation, partnership, or other legal entity.

14. "Semi-nude" means a state of dress in which opaque clothing covers no more than the female breast below a point immediately above the top of the areola; and the male or female genitals, pubic region, and anus shall be fully covered by an opaque covering no narrower than four inches (4") wide in the front and five inches (5") wide in the back, which shall not taper to less than one inch (1") wide at the narrowest point.

15. "Semi-nude dancing agency" means any person, agency, firm, corporation, partnership, or any other entity or individual which furnishes, books, or otherwise engages or offers to furnish, book, or otherwise engage the service of a professional dancer licensed pursuant to this Chapter for performance or appearance at a business licensed for adult theaters.

16. "Semi-nude entertainment business" means a business, including adult theater, where employees perform or appear in the presence of patrons of the business in a state of semi-nudity. A business shall also be presumed to be a semi-nude entertainment business if the business holds itself out as such a business.

17. "Sexually oriented business" means semi-nude entertainment businesses, sexually oriented outcall services, adult businesses, and semi-nude dancing agencies, as defined in this Chapter.

18. "Sexually oriented business employees" means those employees who work on the premises of a sexually oriented business in activities related to the sexually oriented portion of the business. This includes all managing employees, dancers, escorts, models, and other similar employees, whether or not hired as employees, agents, or as independent contractors. Employees shall not include individuals whose work is unrelated to the sexually oriented portion of the business, such as janitors, bookkeepers, and similar employees. Sexually oriented business employees shall not include cooks, serving persons, and similar employees, except where they may be managers or supervisors of the business. All persons making outcall meetings under this Chapter, including escorts, models, guards, escort runners, drivers, chauffeurs, and other similar employees, shall be considered sexually oriented business employees.

19. "Specified anatomical areas" means the human male or female pubic area or anus with less than a full opaque covering, or the human female breast from the beginning of the areola, papilla, or nipple to the end thereof with less than full opaque covering.

20. "Specified sexual activities" means:

a. Acts of:

(i) Masturbation,

(ii) Human sexual intercourse,

(iii) Sexual copulation between a person and a beast,

(iv) Fellatio,

(v) Cunnilingus,

(vi) Bestiality,

(vii) Pederasty,

(viii) Buggery, or

(ix) Any anal copulation between a human male and another human male, human female, or beast;

b. Manipulating, caressing or fondling by any person of:

(i) The genitals of a human,

(ii) The pubic area of a human,

(iii) The uncovered female nipple and areola;

c. Flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of the one so clothed. [Ord. 2002-4, Sec. 1 (Exh. A)]

4-3-5 OBSCENITY AND LEWDNESS - STATUTORY PROVISIONS

Notwithstanding anything contained in this Chapter, nothing in this Chapter shall be deemed to permit or allow the showing or display of any matter which is contrary to the provisions of Title 7 of this Code or other applicable Federal or State statutes prohibiting obscenity or lewdness. [Ord. 2002-4, Sec. 1 (Exh. A)]

4-3-6 LOCATION AND ZONING RESTRICTIONS

It is unlawful for any sexually oriented business to do business at an location within the City not zoned for such business. Sexually oriented businesses licensed as adult businesses or as

semi-nude entertainment businesses pursuant to this Chapter shall only be allowed in areas zoned for their use pursuant to Title 10 of this Code. [Ord. 2002-4, Sec. 1 (Exh. A)]

4-3-7 BUSINESS LICENSE REQUIRED

It is unlawful for any person to operate a sexually oriented business, as specified herein, without first obtaining a sexually oriented business license. The business license shall specify the type of business for which it is obtained. [Ord. 2002-4, Sec. 1 (Exh. A)]

4-3-8 EXEMPTIONS FROM LICENSE REQUIREMENTS

The provisions of this Chapter shall not apply to any sex therapist or similar individual licensed by the State to provide bona fide sexual therapy or counseling, licensed medical practitioner, licensed nurse, psychiatrist, psychologist, nor shall it apply to any educator licensed by the State for activities in the classroom. [Ord. 2002-4, Sec. 1 (Exh. A)]

4-3-9 LEGITIMATE ARTISTIC MODELING

1. The City does not intend to unreasonably or improperly prohibit legitimate modeling which may occur in a state of nudity for purposes protected by the First Amendment or similar State protections. The City does intend to prohibit prostitution and related offenses occurring under the guise of nude modeling. Notwithstanding the provisions of this Chapter prohibiting nudity, a licensed outcall employee may appear in a state of nudity for legitimate nude modeling before a customer or patron, providing that a written contract for such appearance was entered into between the customer or patron and the employee and signed at least forty-eight (48) hours before the nude appearance. All of the other applicable provisions of this Chapter shall still apply to such nude appearance.

2. In the event of a contract for nude modeling or appearance signed more than forty-eight (48) hours in advance of the modeling or appearance, the individual to appear nude shall not be required to obtain a license pursuant to this Chapter. During such unlicensed nude appearance, it is unlawful to:

    a. Appear nude or semi-nude in the presence of persons under the age of eighteen (18);

    b. Allow, offer, or agree to any touching of the contracting party or other person by the individual appearing nude;

    c. Allow, offer, commit, or agree to commit prostitution, solicitation of prostitution, solicitation of a minor or activities harmful to a minor as validly defined by City ordinances or State statute;

d. Allow, offer, commit, or agree to any sex act as validly defined by City ordinances or State statute;

e. Allow, offer, agree, or permit the contracting party or other person to masturbate in the presence of the individual contracted to appear nude;

f. Allow, offer, or agree for the individual appearing nude to be within five feet (5') of any other person while performing or while nude or semi-nude. [Ord. 2002-4, Sec. 1 (Exh. A)]

4-3-10 BUSINESS CATEGORIES - NUMBER OF LICENSES

It is unlawful for any business premises to operate or be licensed for more than one (1) category of sexually oriented business, except that a business may have a license for both outcall services and a semi-nude dancing agency on the same premises.

The categories of sexually oriented businesses are:

1. Outcall services;

2. Adult businesses;

3. Semi-nude entertainment businesses;

4. Semi-nude dancing agencies. [Ord. 2002-4, Sec. 1

(Exh. A)] **4-3-11 EMPLOYEE LICENSES**

It is unlawful for any sexually oriented business to employ or for any individual to be employed by a sexually oriented business in the capacity of a sexually oriented business employee, unless that employee first obtains a sexually oriented business employee license. [Ord. 2002-4, Sec. 1 (Exh. A)]

4-3-12 LICENSE - APPLICATION - DISCLOSURES REQUIRED

Before any applicant may be licensed to operate a sexually oriented business or as a sexually oriented business employee pursuant to this Chapter, the applicant shall submit, on a form to be supplied by the City license authority, the following:

1. The correct legal name of each applicant, corporation, partnership, limited partnership, or entity doing business under an assumed name;

2. If the applicant is a corporation, partnership, or limited partnership, or

individual or

entity doing business under an assumed name, the information required below for individual applicants shall be submitted for each partner and each principal of an applicant, and for each officer, director, and any shareholder (corporate or personal) of more than ten percent (10%) of the stock of any applicant. Any holding company, or any entity holding more than ten percent (10%) of an applicant, shall be considered an applicant for purposes of disclosure under this Chapter;

3. All corporations, partnerships, or noncorporate entities included on the application shall also identify each individual authorized by the corporation, partnership, or noncorporate entity to sign the checks for such corporation, partnership, or noncorporate entity;

4. For all applicants or individuals, the application must also state:

   a. Any other names or aliases used by the individual,

   b. The age, date, and place of birth,

   c. Height,

   d. Weight,

   e. Color of hair,

   f. Color of eyes,

   g. Present business address and telephone number,

   h. Present residence and telephone number,

   i. Utah driver's license or identification number, and

   j. Social security number;

5. Acceptable written proof that any individual is at least eighteen (18) years of age or, in the case of employees to be employed in businesses where a different age is required, proof of the required age;

6. Attached to the form, as provided above, two (2) color photographs of the applicant clearly showing the individual's face and the individual's fingerprints on a form provided by the Police Department. For persons not residing in the City, the photographs and fingerprints may be on a form from the law enforcement jurisdiction where the person resides. Fees for the photographs and fingerprints shall be paid by the applicant directly to the issuing agency;

7. For any individual applicant required to obtain a sexually oriented business employ-

ee license as an escort or a semi-nude entertainer, a certificate from the Sanpete County Health Department, stating that the individual has, within thirty (30) days immediately preceding the date of the application, been examined and found to be free of any contagious or communicable diseases;

8. A statement of the business, occupation, or employment history of the applicant for three (3) years immediately preceding the date of the filing of the application;

9. A statement detailing the license or permit history of the applicant for the five (5) year period immediately preceding the date of the filing of the application, including whether such applicant previously operating or seeking to operate, in this or any other County, City, State, or territory, has ever had a license, permit, or authorization to do business denied, revoked, or suspended, or has had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the date, the name of the issuing or denying jurisdiction, and state in full the reasons for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application;

10. All criminal convictions or pleas of nolo contendere, except those which have been expunged, and the disposition of all such arrests for the applicant, individual, or other entity subject to disclosure under this Chapter, for ten (10) years prior to the date of the application. This disclosure shall include identification of all ordinance violations, excepting minor traffic offenses (any traffic offense designated as a felony shall not be construed as a minor traffic offense), stating the date, place, nature of each conviction or plea of nolo contendere, and sentence of each conviction or other disposition, identifying the convicting jurisdiction and sentencing court, and providing the court identifying case numbers or docket numbers. Application for a sexually oriented business or employee license shall constitute a waiver of disclosure of any criminal conviction or plea of nolo contendere for the purposes of any proceeding involving the business or employee license;

11. In the event the applicant is not the owner of record of the real property upon which the business or proposed business is or is to be located, the application must be accompanied by a notarized statement from the legal or equitable owner of the possessory interest in the property specifically acknowledging the type of business for which the applicant seeks a license for the property. In addition to furnishing such notarized statement, the applicant shall furnish the name, address, and phone number of the owner of record of the property, as well as the copy of the lease or rental agreement pertaining to the premises in which the service is or will be located;

12. A description of the services to be provided by the business, with sufficient detail to allow reviewing authorities to determine what business will be transacted on the premises, together with a schedule of usual fees for services to be charged by the licensee, any rules, regulations, or employment guidelines under or by which the business intends to operate. This description shall also include:

a. The hours that the business or service will be open to the public, and the methods of promoting the health and safety of employees and patrons and preventing them from engaging in illegal activity.

b. The methods of supervision preventing the employees from engaging in acts of prostitution or other related criminal activities.

c. The methods of supervising employees and patrons to prevent employees and patrons from charging or receiving fees for services or acts prohibited by this Chapter or other statutes or ordinances.

d. The methods of screening employees and customers in order to promote the health and safety of employees and customers and prevent the transmission of disease, and prevent the commission of acts of prostitution or other criminal activity. [Ord. 2002-4, Sec. 1 (Exh. A)]

4-3-13 LICENSE - FEES

Each applicant for a sexually oriented business or employee license shall be required to pay regulatory license fees as set forth in a fee schedule determined by the City. An application is not complete until all appropriate fees have been paid. [Ord. 2002-4, Sec. 1 (Exh. A)]

4-3-14 LICENSE - BOND

Each application for a sexually oriented business license shall post, with the City's Recorder, a cash or corporate surety bond payable to Gunnison City in the amount of two thousand dollars ($2,000.00). Any fines assessed against the business, officers, or managers for violations of City ordinances shall be taken from this bond if not paid in cash within ten (10) days after notice of the fine, unless an appeal is filed as provided by this Chapter. In the event the funds are drawn against the cash or surety bond to pay such fines, the bond shall be replenished to two thousand dollars ($2,000.00) within fifteen (15) days of the date of notice of any draw against it. [Ord. 2002-4, Sec. 1 (Exh. A)]

4-3-15 LICENSE - PREMISES LOCATION AND NAME

1. It is unlawful to conduct business under a license issued pursuant to this Chapter at any location other than the licensed premises. Any location to which telephone calls are automatically forwarded by such business shall require a separate license.

2. It is unlawful for any sexually oriented business to do business in the City under any name other than the business name specified in the application. [Ord. 2002-4, Sec. 1 (Exh. A)]

4-3-16 LICENSE - ISSUANCE CONDITIONS

The City shall approve the issuance of a license to the applicant within thirty (30) days after the receipt of an application, unless the City finds one (1) or more of the following:

1. The applicant is under eighteen (18) years of age, or any higher age if the license sought requires a higher age;

2. The applicant is overdue in payment to the City of taxes, fees, fines, or penalties assessed against the applicant or imposed on the applicant in relation to a sexually oriented business;

3. The applicant has falsely answered a material question or request for information as authorized by this Chapter;

4. The applicant has violated a provision of this Chapter or similar provisions found in statutes or ordinances from any jurisdiction within two (2) years immediately preceding the application; a criminal conviction for a violation of a provision of this Chapter or similar provision from any jurisdiction, whether or not appealed, is conclusive evidence of a violation, but a conviction is not necessary to prove a violation;

5. The premises to be used for the business have been disapproved by Gunnison City, the County Health Department, the Fire Department, the Police Department, the building officials, or the zoning officials as not being in compliance with applicable laws and ordinances of the City. If any of the foregoing reviewing agencies cannot complete their review within the thirty (30) day approval or denial period, the agency or department may obtain from the City an extension of time of no more than fifteen (15) days of their review. The total time for the City to approve or deny a license shall not exceed forty-five (45) days from the receipt of an application. Businesses located outside of the corporate boundaries of the City, but requiring a license under this Chapter, may be denied a license pursuant to this Chapter if the business does not have a valid business license to conduct business at the business location from the appropriate jurisdiction for that location:

   a. Upon receipt of an application, all departments required to review the application shall determine within ten (10) working days whether or not the application is incomplete in items needed for processing. Incomplete applications shall immediately be returned to the applicant with a specification of the items which are incomplete;

   b. The time for processing applications specified in this Section shall begin to run from the receipt of a complete application;

   c. In the event that a license for semi-nude entertainment, semi-nude dancing agencies, adult businesses, or semi-nude entertainment businesses has not

been disapproved within thirty (30) days or the forty-five (45) days allowed after an extension, the City shall issue the license pending completion of the City's review;

d. Any license issued pursuant to Subsection (5)(c) of this Section may be revoked by the City, pursuant to the revocation procedures provided for, if the completed review determines that the license should have been denied;

6. The required fees have not been paid;

7. All applicable sales and use taxes have not been paid;

8. An applicant for the proposed business is in violation of or not in compliance with this Chapter, or similar provisions found in statutes or ordinances from any jurisdiction;

9. An applicant has been convicted or pled nolo contendere to a crime:

a. Involving prostitution; exploitation of prostitution; aggravated promotion of prostitution; aggravated exploitation of prostitution; solicitation of sex acts; sex acts for hire; compelling prostitution; aiding prostitution; sale, distribution, or display of material harmful to minors; sexual performance by minors; possession of child pornography; possession of or distribution of pornography; lewdness; indecent exposure; any crime involving sexual abuse or exploitation of a child; sexual assault or aggravated sexual assault; rape; forcible sodomy; forcible sexual abuse; incest; harboring a runaway child; criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses or offenses involving similar elements from any jurisdiction, regardless of the exact title of the offense; for which:

(i) Less than two (2) years have elapsed from the date of conviction, if the conviction is of a misdemeanor offense, or less than five (5) years if the convictions are of two (2) or more misdemeanors within the five (5) years; or

Less than five (5) years have elapsed from the date of conviction, if the offense is a felony;

b. The fact that a conviction is being appealed shall have no effect on the disqualification pursuant to this Section. [Ord. 2002-4, Sec. 1 (Exh. A)]

4-3-17 LICENSE - TERM

Sexually oriented business and employee licenses issued pursuant to this Chapter shall be valid from the date by any fee of issuance through March 1st of each succeeding year. The

license fees required Fee Schedule shall not be prorated for any portion of a year, but shall be paid in full for whatever portion of the year the license is applied for. [Ord. 2002-4, Sec. 1 (Exh. A)]

4-3-18 LICENSE - NOTICE OF CHANGE OF INFORMATION

Any change in the information required to be submitted under this Chapter for either a sexually oriented business license or sexually oriented business employee license shall be given, in writing, to the City Recorder and the Police Department within fourteen (14) days after such change. [Ord. 2002-4, Sec. 1 (Exh. A)]

4-3-19 LICENSE - TRANSFER LIMITATIONS

Sexually oriented business licenses granted under this Chapter shall not be transferable. It is unlawful for a license held by an individual to be transferred. It is unlawful for a license held by a corporation, partnership, or other noncorporate entity to transfer any part in excess of ten percent (10%) thereof, without filing a new application and obtaining prior City approval. If any transfer of the controlling interest in a business license occurs, the license is immediately null and void, and the business shall not operate until a separate new license has been properly issued by the City as provided in this Chapter. [Ord. 2002-4, Sec. 1 (Exh. A)]

4-3-20 LICENSE - DISPLAY

It is unlawful for any sexually oriented business location within the boundaries of the City to fail to display the license granted pursuant to this Chapter in a prominent location within the business premises. It is unlawful for any individual licensed pursuant to this Chapter to fail to carry, at all times while engaged in licensed activities within the corporate boundaries of the City, their employee license on their person. If the individual is nude, such license shall be visibly displayed within the same room where the employee is performing. When requested by police, City licensing or other enforcement personnel or health official, it is unlawful to fail to show the appropriate licenses while engaged in licensed activities within the corporate boundaries of the City. [Ord. 2002-4, Sec. 1 (Exh. A)]

4-3-21 LICENSE - STATEMENT IN ADVERTISEMENTS

It is unlawful for any advertisement by the sexually oriented business or employee to fail to state that the business or employee is licensed by the City, and shall include the City license number. [Ord. 2002-4, Sec. 1 (Exh. A)]

4-3-22 REGULATIONS AND UNLAWFUL ACTIVITIES

It is unlawful for any sexually oriented business or sexually oriented business employee to:

1. Allow persons under the age of eighteen (18) years on the licensed premises, except that in adult businesses which exclude minors from less than all of the business premises, minors shall not be permitted in excluded areas;

2. Allow, offer or agree to conduct any outcall business with persons under the age of eighteen (18) years;

3. To allow, offer, or agree to allow any alcohol to be stored, used, or consumed on or in the licensed premises;

4. Allow the outside door to the premises to be locked while any customer is in the premises;

5. Allow, offer, or agree to gambling on the licensed premises;

6. Allow, offer, or agree to any sexually oriented business employee touching any patron or customer, except that outcall employees and customers may touch, except that any touching of specified anatomical areas, whether clothed or unclothed, is prohibited;

7. Allow, offer, or agree to illegal possession, use, sale or distribute controlled substances while engaged in the activities of the business;

8. Allow sexually oriented business employees to possess, use, sell, or distribute controlled substances while engaged in the activities of the business;

9. Allow, offer, or agree to commit prostitution, solicitation of prostitution, solicitation of a minor, or committing activities harmful to a minor to occur on the licensed premises or, in the event of an outcall employee or business, the outcall employee committing, offering, or agreeing to commit prostitution, attempting to commit prostitution, soliciting prostitution, soliciting a minor, or committing activities harmful to a minor;

10. Allow, offer, commit, or agree to any sex act as validly defined by City ordinances or State statute in the presence of any customer or patron;

11. Allow, offer, or agree to any outcall employee appearing before any customer or patron in a state of nudity;

12. Allow, offer, or agree to allow a patron or customer to masturbate in the presence of a sexually oriented business employee or on the premises of a sexually oriented business;

13. Allow, offer, or agree to commit an act of lewdness as defined by ordinance or State law. [Ord. 2002-4, Sec. 1 (Exh. A)]

4-3-23 OUTCALL SERVICES - OPERATION REQUIREMENTS

It is unlawful for any business or employee to provide outcall services contracted for in the City to fail to comply with the following requirements:

1. All businesses licensed to provide outcall services pursuant to this Chapter shall provide to each patron a written contract in receipt of pecuniary compensation for services. The contract shall clearly state the type of services to be performed, the length of time such services shall be performed, the total amount such services shall cost the patron, and any special terms or conditions relating to the services to be performed. The contract need not include the name of the patron. The business licensee shall keep and maintain a copy of each written contract entered into pursuant to this Section for a period of not less than one year from the date of provision of services thereunder. The contracts shall be numbered and entered into a register listing the contract number, date, names of all employees involved in the contract, and pecuniary compensation paid.

2. All outcall businesses licensed pursuant to this Chapter shall maintain an open office or telephone at which the licensee or licensee's designated agent may be personally contacted during all hours outcall employees are working. The address and phone number of the license location shall appear and be included in all patron contracts and published advertisements. For outcall businesses which premises are licensed within the corporate limits of the City, private rooms or booths where the patrons may meet with the outcall employee shall not be provided at the open office or any other location by the service, nor shall patrons meet outcall employees at the business premises.

3. Outcall services shall not advertise in such a manner that would lead a reasonably prudent person to conclude that specified sexual activities would be performed by the outcall employee.

4. All employees of outcall services who provide outcall services within the City shall be licensed in accordance with this Chapter, regardless of the primary location of the business. [Ord. 2002-4, Sec. 1 (Exh. A)]

4-3-24 ADULT BUSINESS - DESIGN OF PREMISES

1. In addition to the general requirements of disclosure for a sexually oriented business, any applicant for a license as an adult business shall also submit a diagram, drawn to scale, of the premises of the license. The design and construction, prior to granting a license or opening for business, shall conform to the following:

a. The interior of the premises shall be configured in such a manner that there is an unobstructed view from the manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms.

b. Restrooms may not contain any video reproduction equipment or any of the business merchandise. Signs shall be posted requiring only one person being allowed in the restroom per stall, and only one person in any stall at a time, and requiring that patrons shall not be allowed access to manager's station areas.

c. For businesses which exclude minors from the entire premises, all windows, doors and other apertures to the premises shall be darkened or otherwise constructed to prevent anyone outside the premises from seeing the inside of the premises. Businesses which exclude minors from less than all of the premises shall be designed and constructed so that minors may not see into the area from which they are excluded.

d. The diagram required shall not necessarily be a professional engineer's or architect's blueprint, however, the diagram must show marked internal dimensions, all overhead lighting fixtures, and ratings for illumination capacity.

2. It shall be the duty of the licensee and the licensee's employees to ensure that the views from the manager's station in Subsection (1) of this Section remain unobstructed by any doors, walls, merchandise, display racks, or any other materials at all times that any patron is present in the premises, and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.

3. The premises shall at all times be equipped and operated with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one foot-candle, measured at floor level. It shall be the duty of the licensee and the licensee's employees present on the premises to ensure that the illumination described above is maintained at all times that any patron is present in the premises. [Ord. 2002-4, Sec. 1 (Exh. A)]

4-3-25 SEMI-NUDE ENTERTAINMENT BUSINESS - DESIGN OF PREMISES It is unlawful for business premises licensed for semi-nude entertainment to:

1. Permit a bed, sofa, mattress, or similar item in any room on the premises, except that a sofa may be placed in a reception room open to the public or in any office to which patrons are not admitted, and except that in an adult theater such items may be on the stage as part of a performance;

2. Allow any door on any room used for the business, except for the door to an office to which patrons shall not be admitted, outside doors, and restroom doors, to be lockable from the inside;

3. Provide any room in which the employee or employees and the patron or patrons are alone together without a separation by a solid physical barrier at least three feet (3') high and six inches (6") wide. The patron or patrons shall remain on one side of the barrier and the employee or employees shall remain on the other side of the barrier;

4. Adult theaters shall also require that the performance area shall be separated from the patrons by a minimum of three feet (3'), which separation shall be delineated by a physical barrier at least three feet (3') high. [Ord. 2002-4, Sec. 1 (Exh. A)]

4-3-26 SEMI-NUDE ENTERTAINMENT BUSINESS - LOCATION RESTRICTION

It is unlawful for any business licensed for semi-nude entertainment to be located within five hundred feet (500') of a business licensed for the sale or consumption of alcohol. [Ord. 2002-4, Sec. 1 (Exh. A)]

4-3-27 ALCOHOL PROHIBITED

1. It is unlawful for any business licensed pursuant to this Chapter to allow the sale, storage, supply, or consumption of alcoholic beverages on the premises.

2. It is unlawful for any person to possess or consume any alcoholic beverage on the premises of any sexually oriented business. [Ord. 2002-4, Sec. 1 (Exh. A)]

4-3-28 SEMI-NUDE DANCING AGENCIES

1. It is unlawful for any individual or entity to furnish, book, or otherwise engage the services of a professional dancer, model, or performer to appear in a state of semi-nudity for pecuniary compensation in or for any semi-nude entertainment business or adult theater licensed pursuant to this Chapter, unless such agency is licensed pursuant to this Chapter.

2. It is unlawful for any individual or entity to furnish, book, or otherwise engage at permit any person to perform as a professional dancer, model, or performer in a state of semi-nudity or nudity, either gratuitously or for compensation, in or for any business licensed pursuant to this Chapter, unless such person is licensed pursuant to this Chapter. [Ord. 2002-4, Sec. 1 (Exh. A)]

4-3-29 PERFORMERS - PROHIBITED ACTIVITIES

It is unlawful for any professional dancer, model, or performer, while performing in any business licensed pursuant to this Chapter to:

1. Touch in any manner any other person;

2. Throw any object or clothing off the stage area;

3. Accept any money, drink, or any other object directly from any person; or

4. Allow another person to touch such performer or to place any money or object on the performer or within the costume or person of the performer; or

5. Place anything within the costume or adjust or move the costume while performing so as to render the performer in a state of nudity. [Ord. 2002-4, Sec. 1 (Exh. A)]

4-3-30 PATRONS - PROHIBITED ACTIVITIES

It is unlawful for any person or any patron of any business to touch in any manner any performer; to place any money or object on or within the costume or person of any performer; or to give or offer to give any such performer any drinks, money, or object while such performer is performing; except that money may be placed on the stage, which shall not be picked up by the performer except by hand. [Ord. 2002-4, Sec. 1 (Exh. A)]

4-3-31 NUDITY - DEFENSES TO PROSECUTION

It is a defense to prosecution or violation under this Chapter that a person appearing in a state of nudity did so in a modeling class operated:

1. By a proprietary school licensed by the State, or a college, junior college, or university supported entirely or partly by taxation;

2. By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation. [Ord. 2002-4, Sec. 1 (Exh. A)]

4-3-32 EXISTING BUSINESSES - COMPLIANCE TIME LIMITS

The provisions of this Chapter shall be applicable to all persons and businesses described herein, whether the herein-described activities were established before or after the effective date of the provisions codified in this Chapter and regardless of whether such persons and businesses are currently licensed to do business in the City.

1. All such persons and businesses requiring outcall service licenses shall have forty-five (45) days from the effective date of the ordinance codified in this Chapter, or until their current license expires, whichever is first in time, to comply with the provisions of this Chapter.

2. All semi-nude dancing agency licenses shall have seventy-five (75) days from the effective date of the ordinance codified in this Chapter, or until their license must be renewed, whichever is first, to comply with the provisions of this Chapter.

3. All adult businesses and semi-nude entertainment businesses shall have one hundred thirty-five (135) days from the effective date of the ordinance codified in this Chapter, or until their current license must be renewed, whichever is first, to comply with the provisions of this Chapter. [Ord. 2002-4, Sec. 1 (Exh. A)]

4-3-33 VIOLATION - INJUNCTION WHEN

An entity or individual who operates or causes a sexually oriented business to be operated without a valid license, or who employs or is employed as an employee of a sexually oriented business, or who operates such a business or functions as such an employee in violation of the provisions of this Chapter is subject to a suit for injunction in addition to the civil and criminal violations provided herein, and any other remedy available at law or in equity. [Ord. 2002-4, Sec. 1 (Exh. A)]

4-3-34 VIOLATION - LICENSE SUSPENSION OR REVOCATION

1. The City may issue a notice suspending or revoking a sexually oriented business or employee license granted under this Chapter if a license or an employee of the licensee has:

   a. Violated or is not in compliance with this Chapter;

   b. Refused to allow any inspection of the premises of the sexually oriented business specifically authorized by this Chapter or by any other statute or ordinance;

   c. Failed to replenish the cost bond as provided in this Chapter (such a suspension shall extend until the bond has been replenished);

   d. Given materially false or misleading information in obtaining the license;

   e. Knowingly operated the sexually oriented business or worked under the employee license during the period when the business license or employee licensee's license was suspended;

f. A licensee has committed an offense which would be grounds for denial of a license for which the time period required has not elapsed;

g. On two or more occasions within a twelve (12) month period, a person or persons committed in or on, or solicited for on the licensed premises, or an outcall employee solicited or committed on or off the premises, an offense which would be grounds for denial of a license for which a conviction has been obtained, and the person or persons were employees, whether or not licensed, of the sexually oriented business at the time the offenses were committed;

h. A license is delinquent in payment to the City for ad valorem taxes, or sales taxes related to the sexually oriented business.

2. Suspension or relocation shall take effect within fifteen (15) days of the issuance of notice.

3. The fact that a conviction is being appealed shall have no effect on the revocation of the license. [Ord. 2002-4, Sec. 1 (Exh. A)]

4-3-35 EFFECT OF LICENSE REVOCATION

When a license issued pursuant to this Chapter is revoked, the revocation shall continue for one year from its effective date, and the licenses shall not be issued a sexually oriented business or employee license for one year from the date of such revocation. [Ord. 2002-4, Sec. 1 (Exh. A)]

4-3-36 REVOCATION AND DENIAL OF LICENSE

The denial, suspension, or revocation of any license issued pursuant to this Chapter shall be in accordance with the general provisions for business licenses set forth in this Title. [Ord. 2002-4, Sec. 1 (Exh. A)]

4-3-37 VIOLATION - PENALTY

1. In addition to revocation or suspension of a license, as provided in this Chapter, each violation of this Chapter shall, upon citation by the City Police Department, require the licensee to pay a civil penalty in the amount of five hundred dollars ($500.00). Such fine shall be deducted from the cost bond posted pursuant to this Chapter, unless paid within ten (10) days of notice of the fine or the final determination after any appeal. In addition to the civil fines provided in this Chapter, the violation of any provision of this Chapter shall be a Class B misdemeanor. Each day of a violation shall be considered a separate offense.

2. A sexually oriented business licensee and/or operator shall be responsible for the conduct of all employees while on the licensed premises, and any act or omission of any employee constituting a violation of the provisions of this Chapter shall be deemed the act or omission of the licensee and/or operator for the purposes of determining whether the licensee's license shall be revoked, suspended, or renewed. [Ord. 2002-4, Sec. 1 (Exh. A)]

TITLE V

HEALTH AND SANITATION

Chapter 5-1	Public Nuisances	5-1
Chapter 5-2	Abatement of Weeds and Unsightly Objects	5-5
Chapter 5-3	Solid Waste Disposal	5-10

CHAPTER 5-1

PUBLIC NUISANCES 5-1-1 PUBLIC

NUISANCES PROHIBITED

Every act or condition made, allowed, permitted or continued in violation of Section 5-1-2 is hereby declared to constitute a public nuisance. It shall be unlawful for any person to maintain or commit any public nuisance, or to permit any public nuisance to exist upon his property or property under his control, or to willfully omit to perform any legal duty relating to the removal of a public nuisance after receiving notice to abate the same.
(UCA 10-8-60)

5-1-2 PUBLIC NUISANCE DEFINED

A public nuisance shall be a crime against the order and economy of the City and shall consist of one or more of the following:

1. Any act or condition which is dangerous to human life or health and/or renders soil, air, water or food impure or unwholesome.

2. Any act or omitting to perform any duty, which act or omission either:

   A. Annoys, injures, or endangers the comfort, repose, health, or safety of three or more persons; or

   Offends public decency; or

   C. Unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, any lake, stream, canal, or basin, or any public park, square, street, or highway; or

   D. In any way renders three or more persons insecure in life or the use of property;

Statutory Authority, UCA 10-8-60 & 76-10-801 **et.seq. Chapter 5-1 added in** Codification.

An act which affects three or more persons in any of the ways specified in this paragraph is still a nuisance regardless of whether the extent of annoyance or ,.damage inflicted on individuals is unequal.

3. Any building, which because of its unsanitary or unsafe condition constitutes a menace to life or health or is unfit for human occupancy.

4. Anything which unreasonably or unlawfully interferes with, obstructs, or tends to obstruct or renders dangerous for passage and public or private street, highway, sidewalk stream ditch or drainage way without first securing written permission from the City Council.

5. Any accumulation of rubbish, trash, refuse, junk, abandoned materials, metals lumber, machinery or inoperable vehicles.

6. Noxious or unreasonable odors, fumes, gas, smoke, soot or cinders.

7. Any condition constituting an attractive nuisance as hereinafter described.

8. Permitting any lot or excavation to become the repository of stagnant water or decaying or offensive substance.

9. An act or condition specified under the provisions of Sections 76-10-801 et.seq., Utah Code Annotated, 1953, as amended, which Sections are hereby adopted by reference for application within the City.

5-1-3 ATTRACTIVE NUISANCE

It shall be unlawful to cause, create, maintain or be the author of an attractive nuisance within the City. Any vacant lot or open area of ground into which the public, and particularly children, has access within which any of the following conditions occur is an attractive nuisance:

1. Ponding or impounding of water;
2. Open pits, shafts, caves, or dilapidated non-occupied buildings;
3. Any abandoned, unattended or discarded refrigerator or similar container having a lid or door snaplock or other locking device which may not be released from inside.

(UCA 10-8-60)

5-1-4 ADMINISTRATION AND ENFORCEMENT

5-1-4.1 Abatement of Nuisances - Rights of Inspection

It shall be the right and duty of the City health authority and the Chief of Police or other person so authorized by the *City* Council to cause all nuisances or conditions declared to be such under the provisions of this Chapter to be abated.

The City health authority, Chief of Police or other person so designated by the Council shall have authority in the daytime to enter any house, stable, store, building or parcel of land, in order to make a thorough examination of the premises to ascertain whether a nuisance exists; and to cause all stagnant water to be drained off and pools, sinks, vaults, drains, holes, or low grounds to be cleaned, filled up, or otherwise purified, and to cause all noisome substances to be abated or removed.

5-1-4.2 Closure of Unsanitary Buildings

Whenever, in the opinion of the City health authority, any building or dwelling, because of its unsanitary condition has become a menace to life or health, or unfit for human habitation, the health authority shall have the power to close to occupancy said building or dwelling and cause the same to be vacated until the same is put in a clean and sanitary condition as required by the regulations of the City or health authority. It shall be the duty of the health authority to notify the owner, agent or lessee in writing of the action and post a conspicuous sign on said building that the same has been closed by order of the health authority. It shall be unlawful for any person to occupy, lodge, or sleep in any building or dwelling or other place closed to occupancy by order of the health authority.

5-1-4.3 Notice to Abate Nuisance - Appeal Permitted

in order to carry out the provisions of this Chapter, the health authority, Chief of Police or other designated enforcement agent, may serve a notice in writing upon the owner, occupant, or agent thereof of any lot, building, or premises in or upon which any nuisance may be found, or upon him who may be the cause of such nuisance, requiring him to abate the same in such manner as the notice directs and to do so within a reasonable time to be fixed in the notice. Provided, that failure to give a notice as provided herein shall not relieve the author of any nuisance from the obligation to abate such nuisance or from the penalty provided for the maintenance thereof.

The notice shall advise the recipient that he has a right of appeal, and shall set forth the steps required to perfect an appeal. All appeals shall be conducted in the manner set forth under Sections 5-2-4 and 5-2-5 of this Code. Abatement shall not be required before the end of the appeal time provided in the notice.

5-1-4.4 Refusal to Abate Nuisance

In case of neglect or refusal of any person to abate any nuisance, after notice in writing has been served upon him as provided in this Chapter and within the time specified in said notice, the health authority shall, with the assistance of the Chief of Police, if necessary, abate or procure the abatement of said nuisance and the expenses of such abatement shall be collected from the person so offending.

In addition to the provisions of this Chapter the City may initiate action for abatement of nuisances in the manner set forth in Section 76-10-806, UCA.

5-1-5 DESIGNATION OF HEALTH AUTHORITY

For purposes of this Chapter the Central Utah Health District is hereby designated as the health authority of the City.

5-1-6 PENALTY

Any person who shall create, increase, maintain, or fail to immediately remove and abate any nuisance upon receiving notice to abate the same, shall be guilty of a Class B misdemeanor. A separate offense shall be deemed committed upon each day that a nuisance is maintained or continues to exist.

CHAFFER 5-2

ABATEMENT OF WEEDS AND UNSIGHTLY OBJECTS 5-2-1

WEEDS AND UNSIGHTLY OR DELETERIOUS OBJECTS PROHIBITED

The use of City streets, sidewalks, or other public property, or private property for the deposit or growth of injurious or noxious weeds, garbage, refuse, or any unsightly or deleterious objects or structures is hereby prohibited.

5-2-2 INTENT AND PURPOSE

It is the purpose of this Chapter to establish a means whereby the *City* may remove or abate or cause the removal or abatement of injurious and noxious weeds, and of garbage, refuse or unsightly or deleterious objects or structures pursuant to the powers granted to it by 10-11-1 et. seq., UCA 1953, as amended. It is hereby declared that the above listed weeds, objects, and structures shall constitute a nuisance when they create a fire hazard, source of contamination, or pollution of water, air, or property, a danger to health, a breeding place or habitation for insects or rodents or other forms of life deleterious to human habitation, or an attractive nuisance likely to cause damage to small children, or are unsightly or deleterious to their surroundings.

5-2-3 INSPECTOR TO BE APPOINTED - DUTIES

5-2-3.1 Appointment of Inspector

There is hereby established the office of inspector. The Mayor by and with the consent of the Council shall appoint an individual or committee of residents to serve as the inspector. (UCA 10-11-1)

5-2-3.2 Duties

The inspector is hereby directed to make careful examination and investigation of growth and spread of injurious and noxious weeds, and of garbage, refuse or unsightly or deleterious objects or structures for the purpose of

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Chapter 5-2 included in prior code as Section 10-320.
substantially modified in codification

determining whether or not the existence of said weeds or objects creates a fire hazard or constitutes a source of contamination or other danger to health and safety, or otherwise creates nuisances as above declared.

5-2-4 NOTICE TO CORRECT - APPEALS PERMITTED - PROOF OF NOTICE TO BE FILED

5-2-4.1 Notice To Correct

If the inspector concludes that a dangerous or unhealthy condition exist in whole or in part, he shall ascertain the names of the owners and occupants and description of the premises where such objects and conditions exist, he shall serve notice in writing upon the owner and occupant of such land, either personally or by mailing notice, postage prepaid, by registered mail, addressed to the owner or occupant at their last known post office addresses, as disclosed by the records of the County Assessor, or as otherwise ascertained, requiring such owner or occupant, or both, as the case may be, to eradicate or destroy and remove the same with such time as the inspector may designate, which shall not be less than ten days from the date of service of such notice. (UCA 10-11-2)

5-2-4.2 Owner Mav Appeal

The inspector shall inform the owner or occupant or both by means of said notice or any attached document that in the event he disagrees with the determination of the inspector and does not wish to remove said objects or objectionable conditions, he may request in writing a hearing before the City Council at a time and place to be set by the Council. A written application for a hearing shall state the time within which the owner or occupant must conform to the decision of the inspector. In the event the owner or occupant makes such a request for a hearing, the City Council shall set the time and place for hearing said objections and the Recorder shall notify said owner or occupant in writing of the time and place at which he may appear and be heard. Said hearing shall not he less than five days from the date of service or mailing of such notice. (UCA 10-11-2)

5-2-4.3 Proof Of Service

The inspector shall make a proof of service of such notice under oath, and file the same in the office of the County Treasurer. One notice shall be deemed sufficient on any lot or parcel of property for the entire season of weed growth during that year. (UCA 10-11-2)

5-2-5 HEARING - DECISION

5-2-5.1 Council To Conduct Hearing

Upon receipt of a written request of any owner or occupant ordered to remove or abate said weeds, objectionable conditions or objects from his real property, the Council shall conduct an informal hearing (which need not be reported) wherein said owner or occupant may present such evidence and arguments as is pertinent to the question of whether or not the removal or abatement of said objects or conditions is properly within the purview of this Chapter. The Council shall also permit the presentation of evidence and argument by the inspector and other interested parties. Within not more than ten days the Council shall render its written decision, a copy of which shall be mailed to or served upon the owner or occupant by the inspector.
(UCA 10-11-2)

5-2-5.2 Decision Of Council - May Modify Determination of Inspector

1. In the event the decision of the Council upholds the determination of the inspector, the notice originally given by the inspector as above provided shall be deemed to be sufficient to require the owner or occupant to remove or abate said objects or conditions and he shall have up to ten days from the date of notice of the decision within which to conform thereto.

2. In the event that the decision of the Council either overrules of modifies the determination of the inspector, the written decision of the Council shall apprise him of that fact and set forth the details and extent to which the owner or occupant must make removal or other abatement of said objects or conditions, if any. The owner or occupant shall be required to conform to the decision of the Council within ten days after service or mailing a copy of said decision, and said decision shall be deemed to be the modified decision of the inspector.

3. Upon receipt of the decision of the Council the inspector shall promptly prepare an amended notice and proof of service of said notice and file the same in the office of the County Treasurer.

5-2-6 REMOVAL OF MATERIALS BY CITY PERMITTED - OWNER TO PAY COSTS

5-2-6.1 City To Remove Materials

If the owner or occupant of property described in the notice or decision provided for under 5-2-4 or 5-2-5 above shall fail or neglect to conform to the requirements of such notice or decision relating to the eradication or destruction or removal of such

weeds, garbage, refuse, objects, or structures, the inspector shall employ all necessary assistance to cause such materials to be removed, or destroyed at the expense of the City.
(UCA 10-11-3)

5-2-6.2 City To Prepare Statement *Of* Expense - Notification *of* Charges

The inspector shall prepare an itemized statement of all expenses incurred in the removal and destruction of said materials and shall mail a copy thereof, by registered mail, to the owner or occupant, or both, demanding payment within twenty (20) days of the date of mailing. Said notice shall be deemed delivered when mailed by registered mail addressed to the property owner's or occupant's last known address. (UCA 10-11-3)

5-2-6.3 Failure To Pay

In the event the owner or occupant fails to make payment of the amount set forth in said statement of expenses to the City within the twenty day period, the inspector either may cause suit to be brought in an appropriate court or refer the matter to the County Treasurer as hereinafter provided. (UCA 10-11-3)

5-2-7 COLLECTION OF COSTS

5-2-7.1 Collection by Suit

In the event collection of expenses of destruction and removal are pursued through the courts, the City shall sue for and receive judgement for all of said expenses of destruction and removal, together with reasonable attorney's fees, interest and costs of court, and shall execute on such judgement in the manner provided by law. (UCA 10-11-3)

5-2-7.2 Collection Through Taxes

In the event that the matter is referred to the County Treasurer for inclusion in the tax notice of the property owner, the inspector shall make in triplicate an itemized statement of all expenses incurred in the destruction and removal of the same and deliver three copies of said statement to the County Treasurer within ten days after the expiration of the twenty day period in which the owner or occupant may pay voluntarily. Thereupon the cost of said work shall be pursued by the County Treasurer in accordance with the provision of 10-11-4, UCA, and the owner or occupant shall have such rights and shall be subject to such powers as are granted therein. (UCA 10-11-3)

5-2-8 ENFORCEMENT

The City may enforce this Chapter by injunction. In addition to civil remedies, violation of this Chapter shall be an Infraction.

Nothing herein shall be construed to prohibit enforcement of similar provisions through the zoning ordinance or any applicable nuisance statute, nor shall the imposition of any criminal sanction inhibit or prevent the imposition of civil remedies provided for hereunder.

CHAPTER 5-3

SOLID WASTE DISPOSAL

5-3-1 INTENT

The intent of the Chapter shall be:

1. To prohibit the creation of nuisances or health hazards to the community and it's residents as the result of the unsafe accumulation of garbage or other waste material or the improper disposal of such materials.

2. To prohibit the indiscriminate dumping of solid waste material except in established disposal sites which have been approved and are maintained in accordance with public health standards.

3. To encourage the efficient collection and disposal of solid waste material in a safe, sanitary manner.

5-3-2 IMPROPER DISPOSAL OF SOLID WASTE PROHIBITED

It shall be unlawful for any person to dump or otherwise dispose of any solid waste material on any property within the City. It shall also be unlawful for any owner of land to allow such unlawful dumping or disposal of solid waste on property belonging to said owner. It shall be unlawful to burn any solid waste within the City's corporate limits except as permitted by City ordinance and by rules and regulations of the fire department and State Board of Health.

5-3-3 ACCUMULATION OF WASTE MATERIAL PROHIBITED - EXCEPTION

It shall be unlawful for any person owning or occupying any premises to permit solid waste matter to collect or remain upon such premises except that the temporary accumulation of solid waste matter for subsequent disposal by the City, as provided in this Chapter shall be permitted provided:

1. The period of accumulation shall not exceed two weeks

Statutory Authority - UCA 10-8-62: Chapter 5-3 Added in Codification.

2. All accumulated waste shall be placed in covered containers which conform with the provisions of section **5-3-4.3**

5-3-4 WASTE MATERIAL PICKUP SERVICE

5-3-4.1 City'to Remove Solid Waste

The City, either by City department or contract with one or more licensed contractors, shall provide solid waste collection and disposal service to all producers of solid waste material within the City. All dwellings, and other producers of waste **material** are to utilize such removal service unless they shall **have** made **application** to and received authorization from the City Council to remove and dispose of their own waste matter. Any commercial establishment is to provide for the proper' disposal of any solid waste at an approved solid waste facility. This may be accomplished by use of a private contractor.

5-3-4.2 Waste Material to be Made Available for Collection

All persons having charge of or occupying any property in the City shall make all solid waste created or collected on said property available for collection and disposal on a regular basis in accordance with the terms of this Chapter and with such other ordinances, rules and regulations as the City Council shall make. It shall be unlawful to accumulate and/or place in a container for disposal pursuant to the provisions of this Chapter of any waste matter defined herein as hazardous waste.

5-3-4.3 Collection Containers

The owner and/or occupant of any residence or other premises where solid waste is produced shall be provided by Gunnison City with an approved container sufficient in size to contain normal household amounts of solid waste. An' additional containers or larger containers may be provided upon request for an additional fee. Commercial establishments shall ensure that approved animal-proof, weather-proof containers are used to store and dispose of any solid waste.

In the case of multiple dwellings, commercial or industrial users, the City may approve the use of bulk disposal containers. Where so authorized, bulk containers shall be so constructed as to be **capable** of being picked up and emptied by disposal vehicles designed for that purpose. Such containers shall be of a condition and state of repair to permit safe operation and **shall** be kept clean, neat and sanitary. Bulk containers shall be placed at locations, as specified by the City, which **are readily accessible** for emptying and will not constitute a nuisance or hazard. Any defacing, burning, altering, cutting, marring or any other abuse to such containers shall result in a Class C

misdemeanor and utility services shall be denied until such action is resolved.

5-3-4.4 Time and Place of Pickup

Individual containers shall be set out at the front curb line not earlier than the evening prior to the day of collection and shall *be* **removed** within 24 hours after collection. Ownership of the contents *of* such containers when placed out for collection shall vest in the City. The disposal of all solid waste shall be at an approved and designated solid waste facility and in accordance
with the rules and regulations now and hereinafter established for said facility.

5-3-5 FEES - TO BE *SET BY* COUNCIL - METHOD OF COLLECTION - ENFORCEMENT

A schedule of fees shall be adopted by the City Council for the collection and disposal of solid wastes, which schedule shall be filed with the City Recorder and may be amended from time to time. Such charges shall apply to all residences, and other premises where solid waste is produced, whether or not the owner or occupants elect to utilize the service.

The fees hereinabove imposed shall be collected monthly as part of the customer utility billing and shall be paid by all persons who have the service available to them. Failure to pay fees will result in the *discontinuance of* utility **services.**

5-3-6 DEFINITIONS

For the purpose of this Chapter the *following* terms, phrases, words, and their derivations shall have the meaning given herein.

1. Disposal means the discharge, deposit, injection, dumping, spilling, leaking, burning, or placing or any solid wastes or hazardous wastes into or on any land or water.

2. Hazardous Waste means a solid waste, or combination of solid wastes which because of its quantity, concentration, or physical chemical, or infectious character may pose a threat to human healthy, safety, or welfare to animal, plant life, or property, when improperly treated, stored, transported, disposed of, or otherwise managed.

3. Solid Waste means any garbage, trash, refuse, sludge, or discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from residential, industrial, commercial, mining, or agricultural activities and from community activities, but does not include solid or dissolved materials in domestic sewage or in irrigation return flows or discharge for which a permit is required under the Utah Code Annotated (1953) as amended.

4. Solid Waste Facility means any land, facility, or appurtenances thereto, used for the treatment or disposal of solid wastes, including hazardous wastes.

5-3-7 PENALTY

Failure to comply with the provisions as set forth herein shall be deemed a nuisance and punishable as a Class C misdemeanor.

5-3-8 EFFECTIVE DATE

This Chapter shall take effect on December 16, 1991.,

TITLE VI

PUBLIC SAFETY

Chapter 6-1	Police Department	6-1
Chapter 6-2	Traffic and Vehicles	6-3
Chapter 6-3	Fire Department	6-6
Chapter 6-4	Animal Control	6-10
Chapter 6-5	Recovery of City Expenses Incurred in Response to Hazardous Materials Emergencies	6-23

(Revised

CHAPTER 6-1

POLICE DEPARTMENT

6-1-1 POLICE DEPARTMENT

6-1-1.1 Police Department Established

There is hereby created a police department which shall consist of the Chief of Police and such other peace officers and employees as may be provided for from time to time by the City Council.

6-1-1.2 Duties and Powers - General

The peace officers of the City shall have the same powers and responsibilities as a deputy sheriff. It shall be the duty of the police force in the City at all times to preserve the public peace, prevent crime, detect and arrest offenders, suppress riots, protect persons and property, remove nuisances existing in the public streets, roads, and highways, enforce every law relating to the suppression of offenses, and perform all other duties required of them by ordinance or resolution of the City Council and in so carrying out their responsibilities shall have the power and authority, without process, to arrest and take into custody any person who shall commit or threaten or attempt to commit in the presence of the officer, or within his view, any breach of the peace, or any offense directly prohibited by the laws of this State or City. (UCA 10-3-913 & 10-3-914)

6-1-2 CHIEF OF POLICE

6-1-2.1 Appointment - Term of Office

The Mayor, in accordance with the provisions of this Code and State law, shall appoint a qualified person to serve as the Chief of Police. The person so appointed shall continue in office until his successor is appointed and qualified but may be removed at any time by the Mayor with the consent of the City Council. (UCA 10-3-916)

6-1-2.2 Power and Responsibilities

The .Chief of Police shall be responsible for the operation of the department and shall direct the affairs of the department and other members in the exercise of their functions and duties. In the discharge of his duty, the Chief shall have the

same powers and responsibilities as Sheriff; he shall suppress riots, disturbances, and breaches of the peace, and apprehend all persons committing any offense against the laws of the State or the ordinances of the City. He shall at all times diligently and faithfully discharge his duties and enforce all ordinances and regulations of the City for the preservation of peace, good order, and the protection of the rights and property of all persons and in so doing shall have all of the powers, rights and duties conferred as set forth under UCA 10-3-913 through 10-3-915. (UCA 10-3-913 and 10-3-919)

CHAPTER 6-2 TRAFFIC AND VEHICLES

6-2-1 ADOPTION OF STATE TRAFFIC AND RELATED CODES

Pursuant to authorization set forth under Section 10-3-711, UCA, the City Council hereby adopts by reference the following State Codes or parts thereof relating to traffic, highways and vehicles, with such exceptions and modifications as are hereinafter set forth. Copies *of* said codes are on file in the office *of* the City Recorder for examination and use by the public.

6-2-1.1 State Traffic Code

Chapters 1, 2, 6, 7, 8, 12a, 22 and 25 of Title 41, UCA, as amended and effective July 1, 1991, dealing with motor vehicles.

6-2-1.2 State Highway Code

All of Chapter 12 *of* Title 27, UCA, as amended and effective July 1, 1991, entitled Highway Code

6-2-1.3 Motor Vehicle Insurance

All of Sections 301 through 310 *of* Chapter 22 Title 31A, UCA, as amended and effective July 1, 1991, entitled Motor Vehicle Insurance.

6-2-1.4 Exceptions and modifications to Adopted Codes

Those portions of the Utah Code adopted herein, referring to or dealing with felonies, or punishments associated with felonies and those portions of the Utah Code adopted herein referring to or dealing with Class A misdemeanors are specifically excepted and are not part of the adopted code of the City.

6-2-1.5 Citation for Violation

Where a citation or complaint for violation of the code adopted by 6-2-1.1 above is issued, it shall be sufficient to use the number of the Utah Code followed by "Adopted by the ordinances of Gunnison City" to show the section of the ordinance of

the City which has been violated.

6-2-2 UNLAWFUL PARKING

6-2-2.1 Storage of Vehicles on Public Streets Prohibited

It shall be unlawful for any person to park or leave standing on any public road, street, alley, or municipal property, any licensed or unlicensed automobile, camper, trailer, cycle, recreational vehicle, boat, mobile home, or other motor vehicle for 72 or more consecutive hours.

Any such automobile, camper, boat or other vehicle which reasonably appears to have remained unmoved for the period of time specified above may be removed and impounded by the City. For purposes of impoundment and removal, any police officer of the City may, after making a reasonable effort to locate the owner, impound and remove or cause to be removed any such vehicle found in violation. All costs for the removal and impoundment of said vehicle shall be charged to the owner or any per(,u who claims the impounded vehicle and shall be paid prior to the release thereof.

6-2-2.2 On-street Parking of Large Vehicles Prohibited - Exceptions

It shall be unlawful to park any vehicle having a registered Maximum Gross Weight of 36,000 pounds or greater upon the right-of-way of any public street within the City except upon the fbllowing designated streets:

1. U.S. Highway No. 89

2. State Highway No. 28

3. State Highway No. 137

6-2-2.3 Vehicles for Sale

It shall be unlawful to park any vehicle on any street for the purpose of displaying it for sale.

6-2-2.4 Sale of Merchandise From Parked Vehicles Prohibited

It shall be unlawful to park any vehicle on the right-of-way of any street within the City and to peddled merchandise therefrom. Provided, this provision shall not apply to vehicles transporting merchandise for delivery to adjacent premises.

6-2-3 SPEED LIMITS

1. When appropriate traffic control or regulatory signs giving notice of speeds are posted, the prima facie maximum speed limits designated upon said signs shall apply to the appropriate streets or portions of streets so posted.

2. In the absence of any speed limit sign designating a speed limit applicable thereto, the prima facie speed limit shall be twenty-five (25) miles per hour.

6-2-4 USE OF COMPRESSION BRAKE PROHIBITED

It shall be unlawful for the operator of any vehicle to engage and operate the compression brake (Jake Brake) on any street or portion thereof within the City whereon regulatory signs giving notice of such prohibited use have been posted.

6-2-5 PENALTY

Any person violating, causing or permitting a violation of any provision of this Chapter shall be guilty of a Class B misdemeanor.

6-2-6 OFF-HIGHWAY VEHICLE ACT

6-2-6.1 Adoption

Chapter 22 of Title 41 of the Utah Code Annotated 1953, as it applies to all off-highway vehicles, shall constitute the Gunnison City ordinances as to the rules and regulations governing off-highway vehicles (hereinafter OHV) and the same shall be construed to make them applicable as City ordinances.

Gunnison City adopts Utah Code 41-22-1 through 41-22-36 in full as to the rules and regulations governing off-highway vehicles, with the following additions. [Ord. 2004-7]

6-2-6.2 Driver's License Required

OHV operators shall be required to have a valid Utah driver's license. Operators under sixteen (16) years of age who possess a valid Utah OHV operator's certificate may utilize the OHV routes designated under Subsection 6-2-6.6 of this section if they are under the direct visual supervision of an adult who is at least eighteen (18) years of age. [Ord. 2004-7]

6-2-6.3 Required Equipment

Every OHV and motor-driven cycle shall be equipped with the following items:

1. One (1) head lamp;

2. One (1) tail lamp;

3. One (1) red reflector on the rear, either as part of the tail lamp or separately;

4. One (1) stop lamp;

5. A braking system. [Ord. 2004-7]

6-2-6.4 Noise

A noise decibel level according to State standards of 7.6 decibels will be enforced. [Ord. 2004-7]

6-2-6.5 Passengers

1. A person operating an OHV or motor-driven cycle shall ride only upon the permanent and regular seat attached thereto and such operator shall not carry any other person nor shall any other person ride on an OHV unless such vehicle is designed to carry more than one (1) person, in which event a passenger may ride upon the permanent and regular seat, if designed for two (2) persons, or upon another seat firmly attached to the OHV at the rear of the operator.

2. A person shall ride upon an OHV only while sitting astride the seat, facing forward, with one (1) leg on either side of the OHV.

3. No person shall operate an OHV while carrying any package, bundle, or other article which prevents him from keeping both hands on the handlebars.

4. No operator shall carry any person, nor shall any person ride, in a position that will interfere with the operation of the OHV or the view of the operator. [Ord. 2004-7]

6-2-6.6 Designation of OHV Routes

Utah Code 41-22-10.5 provides that routes can only be designated for the "specific purpose of allowing off-highway vehicle operators to gain direct access to or from a private or public area open for off-highway vehicle use." This Chapter shall designate all Gunnison City streets as permissible routes for the use of OHV subject to all other rules and regulations outlined in this Chapter. It should be noted that Main Street is U.S. Highway 89 and State Road 28 and 600 South is State Highway 137 and do not fall under the jurisdiction of Gunnison City. Main Street may be crossed perpendicularly at the following intersections: 100 North and Main and 200 South and Main. State Road 137 may be crossed perpendicularly at 300 East and 600 South or S.R. 137. [Ord. 2004-7]

6-2-6.7 Speed Limits

The maximum speed for off-highway vehicles shall be fifteen (15) miles per hour. [Ord. 2004-7]

6-2-6.8 Penalty

Any violation of this Chapter, pertaining to OHV, shall constitute a Class B misdemeanor. [Ord. 2004-7]

CHAPTER 6-3

FIRE DEPARTMENT 6-3-1

ESTABLISHMENT OF DEPARTMENT

There is hereby established a volunteer fire department to be known as the Gunnison Volunteer Fire Department.

6-3-2 DEPARTMENT TO ENACT RULES OF OPERATION

The members of the department may adopt a constitution, by-laws, and such other rules and regulations as may be necessary for the effective operation of the department not inconsistent with the terms of this Chapter. All such rules and regulations governing the operation of the fire department shall be approved by the City Council.

6-3-3 AUTHORIZED STRENGTH OF DEPARTMENT

The Council does hereby establish that the maximum number of members of the department (Authorized Strength) at any one time shall be twenty (20).

6-3-4 APPOINTMENT OF MEMBERS

Appointments to the Department shall be made by the City Council, subject to the prior recommendation of the department, through its Chief.

6-3-5 FIRE CHIEF - OFFICERS OF DEPARTMENT

There is hereby created the position of Chief of the fire department. The Fire Chief and such other officers as may be provided for in the constitution and by-laws of the department shall be appointed by the Mayor, with the advice and consent of the Council. The persons so appointed shall continue in office until their successor is appointed, but may be removed at any time by the Mayor with the consent of the Council.

Chapter 6-3 Added in Codification. Statutory Authority
UCA 10-8-55

6-3-6 FIRE CHIEF - DUTIES AND RESPONSIBILITIES

1. The Fire Chief shall have responsibility for the general supervision of the department.

2. The Fire Chief shall have the sole and entire command over all officers and members of the Department at fires, and in his absence the highest ranking officer of the Department at the fire shall have command.

3. The Fire Chief shall have full charge at all times of all apparatus and appurtenances belonging to the department and shall be responsible for its proper *care* and maintenance. He shall also be responsible for the maintenance and operation of the firehouse.

4. The Chief shall responsible for the preparation and submittal of the annual budget to the City Council and **make** reports to the Council concerning, the activities of the department when so requested by the Mayor or Council.

5. The Fire Chief shall have the right to issue, refuse, revoke, postpone, or cancel fire permits within the city limits when he finds it necessary in the interest of public safety.

6. The Fire Chief may appoint a designee in the Fire Department to issue fire permits, also.

   a. During the closed fire season June 1 to October 31 burning within the city limits is prohibited without first securing a written burn permit issued by the City Fire Chief or appointed designee.

   b. The burning permit shall not relieve an individual from personal liability due to neglect or incompetence. Where a fire escapes control of the permittee and necessitates fire control action or does injury to the property of another, this may be held prima facie evidence that the fire was not safe. (UCA 65A-8-11).

6-3-7 RESPONSIBILITY OF DEPARTMENT

1. The Fire Department, under the direction of the Fire Chief shall have the duty of extinguishing fires and of protecting life and property within the City. The volunteer members of the Department shall also assist in keeping the fire fighting apparatus in proper condition for immediate use.

. . . . . .

6-3-6(5,6) adopted by Ordinance No. 1993-2 Sept. 21, 1993.

2. The Fire Department may periodically inspect business establishments to check for fire hazards, and at the request or with permission of the owner inspect private homes for fire hazards. and may divide the City into fire districts.

6-3-8 POWERS WHEN FIGHTING FIRES

1. Right of Way - It is hereby provided that the fire trucks of the City and the vehicles of members of the Fire Department of the City shall have the right of way over all other vehicles of every kind in the City.

2. May Blockade Streets - Whenever a fire shall occur it shall be lawful for the Fire Chief, or the officer in command, to blockade any street, avenue, alley, sidewalk, or other place if in his judgement it is necessary to secure the efficient working of the men, hose, engines, or hook and ladder apparatus under his command, and to protect the hose of said department from injury. It shall be unlawful for any person to break through said blockade.

3. Right of Entry - The members of the Fire Department shall have the right to enter upon any premises for the purpose of extinguishing or controlling fires and of investigating the cause thereof. No search warrant shall be necessary during or immediately following a fire (exigent circumstances exception).

4. Removal of Obstructions - When a fire is in progress, the Fire Chief, on in his absence the officer in charge, may order the removal or destruction of any building, fence, or any telephone, telegraph or electric light poles or wires or any other obstruction in order to prevent the progress of the fire, but neither the Fire Chief nor any other officer

   or member of the department shall *unnecessarily* or recklessly destroy or injure any building or other property.

5. Use of Water - The Chief of the Fire Department or other officer in charge, shall have the right to use water from any source for the purpose of extinguishing fires or for saving property in danger of being destroyed by fire.

6. Investigation of Fire - The Fire Chief, or in his absence, his assistants in charge of the fire, shall, after its extinguishment, make a prompt and thorough investigation of the cause of the fire, the time of breaking out, the amount of loss and insurance, a description of the affected building and premises, and shall secure all other useful information and data available, and record the same in a record book kept for that purpose in the office of the Department and shall report the same to the City Council at such times as it may direct. If the officer making this investigation determines that the fire appears to be of

suspicious origin, he shall immediately notify the State Fire Marshal to that effect.

6-3-9 UNLAWFUL INTERFERENCE AT FIRE PROHIBITED

It shall be unlawful for any person to willfully hinder any officer or fireman in the discharge of his duty at a fire, or in any manner injure, deface or destroy any engine, hose or apparatus belonging to the City, or disobey the lawful orders of any police officer or fireman, or offer any resistance to or interference with the efforts of any fireman in extinguishing the fire.

6-3-10 FALSE FIRE ALARMS PROHIBITED

It shall be unlawful for any person, without cause, to give an alarm of fire by outcry, ringing of bells, notification by telephone, or otherwise. In addition to any criminal penalty, any person who shall knowingly give a false alarm shall be responsible for the payment of all costs incurred, including reasonable attorneys' fees, by the City in responding to such alarm, and the City may, collect such costs through appropriate legal action.

6-3-11 PENALTY

Any person violating, causing or permitting a violation of any provision of this Chapter shall be guilty of a Class B Misdemeanor.

CHAPTER 6-4

ANIMAL CONTROL

6-4-1 GENERAL PROVISIONS

6-4-1.1 Title

This Chapter shall be entitled the Animal Control Ordinance of Gunnison City, Utah.

6-4-1.2 Animals May be Kept in City - Conditions

1. Animals and fowl may be kept within the city limits subject to compliance with the provisions of this Chapter and all applicable statutes, ordinances or regulation relative to the care and keeping of animals.

2. Animal owners or keepers must comply with the following conditions of animal ownership. In instance of dogs or other animals required to be licensed the city may require, as a condition of licensing, that the owners or keepers sign a contract agreeing to comply with such conditions:

   A. Animals shall be restrained or confined as required by law.
   B. Animals shall be humanely treated at all times.
   C. Vaccinations, licenses and permits shall be obtained as required by law.
   D. Animal premises shall be kept sanitary, and shall not constitute a fly-breeding reservoir, a source of offensive odors, or of human or animal disease.
   E. Animals and animal premises shall not be permitted to disturb the peace or constitute a public nuisance or hazard.

6-4-1.3 Care of Animals

1. No owner shall fail to provide his animals with sufficient good and wholesome food and water, proper shelter and protection from the weather, veterinary care when needed to prevent suffering, and with human care and treatment.

Statutory Authority UCA 10-8-59, 10-8-64 & 10-8-65. Chapter 6-4 Substantially amended in Codification.

No person shall organize or permit any dogfight, cockfight, bullfight, or other combat between animals or between animals and humans.

2. No person shall beat, cruelly ill treat, torment, overload, overwork, or otherwise abuse an animal.

3. No owner of an animal shall abandon such animal.

4. No person shall crop a dog's ears, except when a licensed veterinarian issues a signed certificate that the operation is necessary for the dog's health and comfort, and in no event shall any person except a licensed veterinarian perform such an operation.

5. Any person who, as the operator of a motor vehicle, strikes a domestic animal shall stop and render such assistance as may be reasonably possible and shall immediately report such injury or death to the animal's owner; in the event the owner cannot be ascertained and located such operator shall at once report the accident to the appropriate law enforcement agency or to the local humane society.

6. No person shall expose any known poisonous substance, whether mixed with food or not, so that the same shall be liable to be eaten by any animal; provided, that it shall not be unlawful for a person to expose on his own property common rat poison mixed only with vegetable substance.

7. No animal shall be unreasonably confined.

6-4-2 DOGS 6-4-2.1 Dogs to Be Licensed

Any person owning, keeping, harboring, or having custody of any dog over four (4) months of age within the City must obtain a license as herein provided.

1. Application. Written application for licenses shall be made to the City Recorder, within thirty (30) days after obtaining a dog over six (6) months, except that this requirement will not apply to a non-resident keeping a dog within the municipality for no longer than sixty (60) days. Said application shall include name and address of applicant, description of the animal, the appropriate fee and rabies certificate issued by a licensed veterinarian or anti-rabies clinic.

2. Tags Required. Upon acceptance of the license application and payment of the fee as hereinafter provided, the Licensing Authority shall issue a durable tag stamped with an identifying number and the year of issuance. Said tag shall be fastened or riveted to the animal's collar or harness. Dogs must wear identification tags or collars at all times when off the premises of the owners.

3. License Fees. The City may assess fees for licensing of dogs for the purpose of regulation and to defray the cost of administration of this Chapter. The amount of fee charged shall be as set forth by resolution of the City Council.

4. License Period. The City Council shall, by resolution, establish an annual license year. Licenses for the keeping of dogs shall be valid for the year in which they are purchased. Thereafter the annual licensing period shall begin with the start of the license year as established by the Council and shall run through the date of expiration. Application for renewal of a license for the coming year may be made sixty (60) days prior to, and up to thirty (30) days after the start of, the license year.

5. City to Maintain Record of Licenses. The City licensing authority shall maintain a record of the identifying numbers of all tags issued and shall make this record available to the public.

6. License Not Transferable. No person may use any license for any dog other than the animal for which it was issued. [Ord. 1998-1]

6-4-2.2 Vaccinations Required

1. It shall be unlawful for any person to own, keep, or harbor a dog over the age of six (6) months within the limits of this City unless such dog has been vaccinated for rabies by a licensed veterinarian within two (2) years preceding the date on which such dog is kept or harbored, and unless the owner or keeper of such dog has a certificate from such veterinarian showing the date of the last vaccination and the number of the vaccination tag issued by the veterinarian at the time of the vaccination.

2. Every owner or keeper of any dog shall cause to be attached to such dog's collar required by Section 6-4-2.1 a rabies vaccination tag for such dog.

3. It shall be unlawful for the owner or keeper of any dog which has bitten a person so as to cause an abrasion of the skin to fail, refuse, or neglect to allow, or in any way prevent an examination of such dog by a licensed veterinarian upon the request of an animal control officer, a police officer, or appropriate health official, or to fail, refuse, or neglect to allow, or in any way prevent such dog from being impounded or quarantined.

6-4-2.3 Running at Large Prohibited

It shall be unlawful for the owner or keeper of any dog, whether registered according to this Chapter or not, to permit said dog to run at large at any time within the limits of this City and the owner *of* any dog found running at large shall be deemed to be in violation of this Chapter. Running at large shall mean off the premises *of* the owner or keeper and not under the control *of* the owner or keeper or a member of his immediate family either by leash, cord, chain, or other means by which the dog can be adequately controlled.

It shall be the duty *of* the animal control officer to apprehend and impound any dog found running at large within the limits *of* the City; and in the discharge of this duty such officer, when in pursuit of a dog found running at large, shall have the right and is hereby authorized to enter and go upon the premises of the owner or keeper of such dog and there apprehend the same.

6-4-2.4 Fierce or Dangerous Dogs

It shall be unlawful for any person to harbor, keep, own, or possess, a rabid, dangerous or vicious dog within the limits of the City, and such dog is hereby declared to be a nuisance. In the event that such dog is running at large within the limits of the City, any police officer is authorized to kill or cause to be killed such dog wherever it may be found. In addition to any fine which may be imposed, any person convicted *of* harboring or keeping a rabid, dangerous or vicious dog within the limits of the City shall immediately cause such dog to be removed from the City limits. In the event such dog is not immediately removed from the City limits by the owner or keeper, an animal control officer shall destroy such dog. In the discharge of his duties hereunder, such officer shall have the right and is hereby authorized to enter and go upon the premises of the owner or keeper of such dog and there apprehend or destroy the same.

6-4-3 ANIMAL CONTROL OFFICER

6-4-3.1 Animal Control Officer Appointed

The Chief of Police with the consent of the Mayor and Council shall employ one (1) or more Animal Control Officers for the City.

6-4-3.2 Duties and Powers

Animal Control Officers shall have the following duties and powers:

1. To enforce the provisions of this Chapter.

2. To see that all dogs and dog kennels in the City required to have a license or permit shall comply with this Chapter.

3. To collect the carcasses of all dead dogs, cats, and other vertebrate creatures from the streets and elsewhere in the City and deliver them, together with the carcasses of all animals he shall have put to death as hereinafter provided, to such place as may be designated by the City Council.

4. To keep an accurate account of all monies collected by him and from whom collected for all animal licenses, kennel permits and for any other services rendered by him in his capacity as Animal Control Officer, and to account for said funds to the City Treasurer within three (3) days of collection.

5. To keep a register showing the breed, sex, and color of each animal impounded, and date and reason for such impounding and the disposition of such animal.

6. To supervise the City Animal Shelter and keep the same in a sanitary and orderly condition. [Ord. 1998-1]

6-4-4 IMPOUNDMENT

1. Unrestrained dogs and nuisance animals shall be taken by the Police, Animal Control Officers, or Humane Officers and impounded in an animal shelter and there confined in a humane manner.

2. If by a license tag or other means the owner of an impounded animal can be identified, the Animal Control Officer shall immediately upon impoundment notify the owner by telephone or mail.

3. Impounded dogs and cats shall be kept for not more than three (3) working days. Any dog or cat not reclaimed by its owner within this period of time shall become the property of the local government authority or humane society, and shall be

placed for adoption in a suitable home or humanely euthanized. Any livestock animal not reclaimed by its owner within thirty (30) days shall become the property of the local government authority and may be auctioned off to defray expenses.

4. An owner reclaiming an impounded animal shall pay a reclamation fee plus a fee for the costs of maintenance of such animal during the period of impoundment. The amount of such fees shall be as established by resolution of the City Council.

5. In addition to or in lieu of impounding an animal found at large, the Animal Control Officer, Humane Officer, or Police Officer may issue to the known owner of such animal a notice of ordinance violation. Such notice shall impose upon the owner a penalty in the amount of the animal reclamation fee as set by resolution of the City Council which may, at the discretion of the animal owner, be paid to any agent designated by the licensing authorities within seventy-two (72) hours in full satisfaction of the assessed penalty. In the event that such penalty is not paid within the time period prescribed, a criminal warrant shall be initiated before a magistrate and upon conviction of a violation of this ordinance, the owner shall be punished as provided in Section 6-4-8.3 of this Chapter.

6. The owner of an impounded animal may also be proceeded against for violation of this Chapter. [Ord. 1998-1]

6-4-5 MISCELLANEOUS PROVISIONS

6-4-5.1 Keeping of Wild Animals

1. No person shall keep or permit to be kept on his premises any wild or vicious animal for display or for exhibition purposes, whether gratuitously or for a fee. This Section shall not be construed to apply to zoological parks, performing animals exhibitions, or circuses.

2. No person shall keep or permit to be kept any wild animal as a pet.

6-4-5.2 Performing Animal Exhibitions

1. No performing animal exhibition or circus shall be permitted in which animals are induced or encouraged to perform through the use of chemical, mechanical, electrical or manual devices in a manner which will cause, or is likely to cause, injury or suffering.

2. All equipment used on a performing animal shall fit properly and be in good working condition.

6-4-5.3 Animal Waste

The owner of every animal shall be responsible for the removal of any excreta deposited by his animal(s) on public walks, recreation areas, or private property.

6-4-5.4 Sterilization

No unclaimed dog or cat shall be released for adoption without being sterilized, or without a written agreement from the adopter guaranteeing that such animal will be sterilized.

6-4-5.5 Isolation of Biting Animals

Whenever a dog bites a person so as to cause an abrasion of the skin, any person having knowledge of that fact shall immediately notify an animal control officer who shall have the dog impounded and quarantined for a period of two weeks. The dog shall be examined immediately after it has bitten anyone and again at the end of the two week period. If at the end of two weeks a veterinarian is convinced that the dog is then free from rabies, the dog shall be released from quarantine or from the pound as the case may be. If the dog dies in the meanwhile, it's head shall be sent to the State Department of Health for examination for rabies.

Notwithstanding the foregoing provision, the City Health Department, licensing authorities, humane officers, or animal control officers may authorize, with the permission of the owner and other legal restrictions permitting, the euthanasia of a biting animal for the purpose of laboratory examination for rabies using the florescent rabies and antibody (FRA) test in an approved public health laboratory.

6-4-5.6 Poisoning Animals Prohibited

Any person who willfully, unlawfully and maliciously administers any poison to any animal which is the property of another, or who maliciously exposes any poisonous substance with intent that the same shall be taken or swallowed by any such animals, shall be guilty of a misdemeanor.

6-4-5.7 Hindering or Obstructing Enforcement Prohibited

It is unlawful for any person to interfere with, molest, hinder or prevent the animal control officer from discharging his duties. Any person who hinders, delays, interferes with or obstructs the animal control officer while engaging in capturing, securing or taking to the shelter any animal or animals to be impounded, or who breaks open or in any manner, directly or indirectly, aids, counsels or advises the breaking open of any animal shelter or ambulance, wagon

or other vehicle used for the collecting or conveying of any animals to the shelter, shall be deemed guilty of a misdemeanor.

6-4-6 COMMERCIAL ANIMAL ESTABLISHMENTS

6-4-6.1 Permit Required

1. No person, partnership, or corporation shall operate a commercial animal establishment or animal shelter without first obtaining a permit in compliance with this Section.

2. All such establishments or shelters shall comply with the provisions of this ordinance and other applicable laws.

6-4-6.2 Issuance of Permit - Fee - Conditions

1. Upon a showing by an applicant for a permit that he is willing and able to comply with the regulations and provisions of this Chapter, a permit shall be issued upon payment of the applicable fee.

2. The City may assess fees for licensing of commercial animal establishments for the purpose of regulation and to defray the cost of administration of this Chapter. The amount of fee charged shall be as set forth by resolution of the City Council.

3. The permit period shall begin on the effective date as established by the Council and shall run one (1) year. Renewal applications for permits shall be made sixty (60) days prior to, and up to thirty (30) days after the start of, the license year. Any license not paid prior to the date of delinquency shall be assessed a penalty in the amount of ten percent (10%) of such license fee. Applications for permit to establish a new commercial animal establishment under the provisions of this Chapter may be made at any time.

4. If there is a change in ownership of a commercial animal establishment, the new owner may have the current permit transferred to his name upon payment of a transfer fee.

5. Every facility regulated by this Chapter shall be considered a separate enterprise and shall require an individual permit.

6. Persons operating kennels for the breeding of dogs or cats may elect to license such animals individually as provided under Section 6-4-2.

7. No fee may be required to any veterinary hospital, animal shelter, or government-operated zoological park.

8. Failure to obtain a permit before opening any facility covered in this Section shall be punishable as an infraction.

9. Any person who has a change in the category under which a permit was issued shall be subject to reclassification and appropriate adjustment of the permit fee shall be made. [Ord. 1998-1]

6-4-7 DEFINITIONS

As used in this Chapter, the following terms mean:

1. Animal: Any live vertebrate creature, domestic or wild;

2. Animal Control Officer: A person or persons designated by the City to enforce the provisions of this ordinance, including the collection of licensing and permit fees and the performance of other delineated duties;

3. Animal Shelter: Any facility operated by a humane society, municipal agency, or its authorized agents for the purpose of impounding or caring for animals held under the authority of this Chapter or State law;

4. Auctions: Any place or facility where animals are regularly bought, sold, or traded, except for those facilities otherwise defined in this ordinance. This Section does not apply to individual sales of animals by owners;

5. Circus: A commercial variety show featuring animal acts for public entertainment;

6. Commercial Animal Establishment: Any pet shop, grooming shop, auction, riding school or stable, zoological park, circus, performing animal exhibition, or kennel;

7. Grooming Shop: A commercial establishment where animals are bathed, clipped, plucked or otherwise groomed;

8. Humane Killing: Killing by any instantaneous and/or painless method;

9. Humane Officer: Any person designated by the State of Utah, a municipal government, or a humane society as a Law Enforcement Officer who is qualified to perform such duties under the laws of this State;

10. Kennel: Any premises wherein any person engages in the business of boarding, breeding, buying, letting for hire, training for a fee, or selling dogs and cats;

11. Licensing Authority: The City Recorder of Gunnison, Utah, or his designated agent;

12. Owner: Any person, partnership, or corporation owning, keeping or harboring one or more animals, or any said person, partnership, or corporation who allows another person, partnership, or corporation to keep or harbor one or more animals. An animal shall be deemed to be harbored if it is fed or sheltered for three consecutive days or more;

13. Performing Animal Exhibition: Any spectacle, display, act, or event other than circuses, in which performing animals are used;

14. Pet: Any animal kept for pleasure rather than utility;

15. Pet Shop: Any person. partnership, or corporation. whether operated separately or in connection with another business enterprise except for a licensed kennel that buys, sells, or boards any species of animal;

16. Public Nuisance: Any animal or animals which: (1) molests passersby or passing vehicles; (2) attacks other animals; (3) trespasses on school grounds; (4) is repeatedly at large (other than cats); (5) damages private or public property; (6) barks, whines, or howls in an excessive, continuous, or untimely fashion;

17. Restraint: Any animal secured by a leash or lead, or under the control of a responsible person and obedient to that persons commands, or within the real property limits of its owner;

18. Veterinary Hospital: Any establishment maintained and operated by a licensed veterinarian for surgery, diagnosis and treatment of disease and injuries of animals;

19. Vicious Animal: Any animal or animals that constitute a physical threat to human beings or other animals;

20. Wild Animal: Any live monkey (non-human primate), raccoon, skunk, fox, poisonous snake, leopard, panther, tiger, lion, lynx, or other warm blooded animal which can normally be found wild in the state;

21. Zoological Park: Any facility, other than a pet shop or kennel, displaying or exhibiting one or more species of nondomesticated animals operated by a person, partnership, corporation or government agency.

6-4-8 ENFORCEMENT

6-4-8.1 Revocation of Licenses or Permits

1. The City Council may revoke any permit or license of the person holding the permit or license refuses or fails to comply with this Chapter, the regulations promulgated by said authorities, or any law governing the protection and keeping of animals.

2. Any person whose permit or license is revoked shall, within ten days thereafter, humanely dispose of all animals owned, kept, or harbored by such person and no part of the permit of license fee shall be refunded.

3. It shall be a condition of the issuance of any permit or license that the licensing authorities, animal control officer, and humane officer shall be permitted to inspect all animals and the premises where animals are kept at any time and shall, if permission for such inspections is refused, revoke the permit or license of the refusing owner.

4. If the applicant has withheld or falsified any information on the application, the licensing authorities shall refuse to issue a permit or license.

5. No person who has been convicted of cruelty to animals shall be issued a permit or license to operate a commercial animal establishment.

6. Any person having been denied a license or permit may not re-apply for a period of thirty days.

6-4-8.2 Enforcement - Notice

1. Upon any violation of this Chapter, the animal control officer or his representative, or an agent of the City Health Department may prepare in triplicate or more, copies of a written notice to the person in violation to appear in Court; containing the name and address of such person, the license number, the breed, sex and color of the animal, the time, place and offense charged, and also the time and place where such person shall appear on Court.

2. The time specified in said notice to appear shall be not less than five days nor more than 14 days after such issuance, unless the person in violation shall demand an earlier hearing.

. . . . . .

6-4-8.2(2) Adopted by Ordinance 1992-5 November 9, 1992. Previously stated "at least 10 days after such issuance".

3. The place specified in said notice to appear must be made before a magistrate within the City.

4. The person in violation may make a written promise to so appear in Court by signing at least one (1) copy of the written notice. If the written promise to appear is signed, a copy of said notice shall be given to the person promising to appear, and the original shall be filed with the magistrate before whom he is to appear. The original of this notice filed with the Court shall, in lieu of a verified complaint, constitute a complaint to which the defendant may plead guilty. Any person who fails to appear after the written promise to appear in Court is guilty of a violation of this Chapter.

5. If the person in violation refuses to sign the promise to appear, a verified complaint must be filed before a magistrate within the City against the person in violation, thereupon a Summons to appear will be issued out of the magistrate's Court.

6-4-8.3 Penalty

Any person violating any provisions of this Chapter shall be guilty of a Class B misdemeanor.

6-4-9 CARE AND KEEPING OF ANIMALS

6-4-9.1 Animals at Large

No cattle, horses, mules, sheep, goats, or swine shall be allowed to run at large or to be herded, picketed, or staked out upon any street, sidewalk, or other public place within the limits of this municipality, and all such animals so found may be impounded. Nothing herein contained shall be construed as to prevent any person from driving cows, horses, mules or other animals from outside municipal limits to any enclosure within the municipal limits or from any enclosure in the municipality to a place outside the municipality or from one (1) enclosure to another within the limits of the municipality. [Ord. 2003-2, Sec. 1]

6-4-9.2 Abandonment

It shall be unlawful for any person to abandon or turn out at large any sick, diseased, or disabled animal, but such animal shall, when rendered useless by reason of sickness or other disability, be killed by the owner thereof and its carcass disposed of in such a manner as to create no nuisance or hazard to health. [Ord. 2003-2, Sec. 1]

6-4-9.3 Trespassing Animals and Fowl

It shall be unlawful for any owner or caretaker of any domestic fowl or animal to permit

such fowl or animal to trespass upon the premises of another person. [Ord. 2003-2, Sec. 1]

6-4-9.4 Penalty Provision

Every person whose animal violates any provision of this Chapter is guilty of a Class C misdemeanor. [Ord. 2003-2, Sec. 1]

CHAPTER 6-5

RECOVERY OF CITY EXPENSES INCURRED IN RESPONSE TO HAZARDOUS MATERIALS EMERGENCIES

6-5-1 HAZARDOUS MATERIALS DEFINED

Definitions as used in this section:

1. "Hazardous materials emergency" means a sudden and unexpected release of any substance that because of its quantity, concentration, or physical, chemical or infectious characteristics presents a direct and immediate threat to public safety or the environment, and requires immediate action to mitigate the threat.

2. "Expenses" means actual labor costs of government and volunteer personnel including workers compensation benefits, fringe benefits, administrative overhead, cost of equipment, cost of equipment operations, cost of materials, and the cost of any contract labor and materials. [Ord. 1997-1, Sec. 2]

6-5-2 PROCESS OF RECOVERY

6-5-2.1 Costs to Be Recovered

Upon certification of costs by the Fire Chief to the City Administrator, the City Administrator may authorize the City Recorder to recover from those persons whose operations or actions caused the hazardous materials emergency expenses incurred by the City that are directly associated with a response to a hazardous materials emergency. [Ord. 1997-1, Sec. 2]

6-5-2.2 Payment Does Not Constitute Liability

The payment of expenses under this Subsection does not constitute an admission of liability or negligence in any legal action for damages. [Ord. 1997-1, Sec. 2]

6-5-2.3 Attorney Assistance

The City Administrator may request assistance from an attorney's office to assist the department in recovering expenses. Expenses may include reasonable attorney's fees and litigation costs. [Ord. 1997-1, Sec. 2]

6-5-2.4 Severability

If any provision of this Chapter is declared invalid by a court of competent jurisdiction, the remainder shall not be affected thereby. [Ord. 1997-1, Sec. 2]

TITLE VII

PEACE, MORALS AND WELFARE

Chapter 7-1	Criminal Code	7-1
Chapter 7-2	Controlled Substances	7-2
Chapter 7-3	Offenses Relating to Minors	7-3

CHAPTER 7-1

CRIMINAL CODE 7-1-1 UTAH

CRIMINAL CODE ADOPTED

7-1-1.1 State Criminal Code Adopted by Reference

Pursuant to authorization set forth under Section 10-3-711, UCA, the Utah Criminal Code, as contained in Title 76, UCA, as amended and effective July 1, 1991, is hereby adopted as the Criminal Code of Gunnison City, Utah, with such exceptions and modifications as are hereinafter set forth.

7-1-1.2 Exceptions and Modifications

Those portions of the Utah Criminal Code, as adopted herein, referring to or dealing with felonies, or punishments associated with felonies, and those portions of the Utah Criminal Code, as adopted herein, referring to or dealing with class A misdemeanors are specifically excepted, and are not part of the adopted code of the city.

7-1-1.3 Citation to Code

Where a citation or complaint for violation of the code adopted by 7-1-1.1 above is issued, it shall be sufficient to use the section number of the Utah Code to designated the section number of the city code which has been violated.

CHAPTER 7-2

CONTROLLED SUBSTANCES 7-2-1

UTAH CONTROLLED SUBSTANCES ACT ADOPTED

7-2-1.1 State Controlled Substances Acts Adopted by Reference

Pursuant to authorization set forth under Section 10-3-711, UCA, the Utah Controlled Substances Act, as contained in Chapter 37 of Title 58, UCA, as adopted and effective July 1, 1991, the Utah Drug Paraphernalia Act, as contained in Chapter 37a of Title 58, UCA, as adopted and effective July 1, 1991 and the Utah Imitation Controlled Substances Act, as contained in Chapter 37b of Title 58, UCA, as adopted and effective July 1, 1991, are adopted and incorporated as part of the ordinances of Gunnison City. These acts are referred to hereafter as the "Controlled Substances Acts".

7-2-1.2 Exceptions and Modifications

Those portions of the Controlled Substances Acts, as adopted herein, referring to or dealing with felonies, or punishments associated with felonies, and those portions of the Controlled Substances Acts, as adopted herein, referring to or dealing with class A misdemeanors are specifically excepted, and are not part of the adopted code of the city.

7-2-1.3 Citation to Code

Where a citation or complaint for violation of the codes adopted under Section 7-2-1.1 above is issued, it shall be sufficient to use the section number of the Utah Code to designate the section number of the city code which has been violated.

CHAPTER 7-3

OFFENSES RELATING TO MINORS

7-3-1 CURFEW FOR MINORS

7-3-1.1 Certain Activities of Minors Prohibited During Nighttime Hours

1. It shall be unlawful for any minor between the ages of sixteen (16) and seventeen (17) to remain, idle, wander, stroll or play in any public place or in any private place without the actual consent of the owner or lessee thereof, either on foot or to drive about without a set destination in any vehicle, in the City between the hours of 1:00 a.m. and 5:00 a.m. each night, without regard to weekends, legal holidays, or summer vacation.

2. It shall be unlawful for any minor under the age of sixteen (16) to remain, idle, wander, stroll or play in any public place without the actual consent of the owner or lessee thereof, either on foot or to drive about without a set destination in any vehicle, in the City between the hours of 11:00 p.m. and 5:00 a.m. each night, without regard to weekends, legal holidays, or summer vacations. [Ord. 1995-5]

7-3-1.2 Exceptions

The provisions of Section 7-1-3.1 shall not apply to minors who are:

1. Emancipated;

2. Accompanied by a parent, guardian, custodian, or other adult person having legal custody or control of said minor;

3. Returning home from, going to, or being in attendance at any religious or school function, organized dance, theater, sports event, or other such associational activity; provided, that going to or returning from such activity shall be by direct route and within a reasonable time of the commencement or termination of such event;

4. Returning from, going to, or engaging in legitimate and gainful employment, and can produce evidence of such employment; provided, that going to or returning from the place of employment shall be by a direct route and

within a reasonable time of the commencement or termination of the minor's hours of actual employment;

5. On an emergency errand;

6. Engaged in a specific business or activity pursuant to legal and proper instructions of a parent, guardian, custodian, or other adult person having legal custody or control of said minor;

7. In a motor vehicle engaged in normal travel, while traveling to, from, or through the City on an intercity trip; or

8. Upon the private property wherein such minor

resides. 7-3-1.3 Responsibility for Proof of Compliance

When a police officer stops a minor because he or she has reason to believe that the minor is violating the provisions of Section 7- 1 -3.1 above, the minor shall have the burden of establishing that the minor comes within one of the exceptions set forth in Section 7-3-1.2.

7-3-1.4 Definitions

For the purposes of this Chapter, the following phrases or terms shall have the meaning set forth herein:

1. "Parent" shall mean the natural or adoptive parent of a minor.

2. "Guardian" shall mean any person, other that a parent, who has legal guardianship of a minor.

3. "Custodian" shall mean any person over the age of eighteen (18) years who is in loco parentis to a minor.

4. "Public place" shall mean any street, alley, highway, sidewalk, playground, or place to which the general public has access and a right to resort for business, entertainment, or other lawful purposes. It shall include, but not be limited to, any store, shop, restaurant, tavern, bowling alley, cafe, theater, drug store, pool room, shopping center and any other place devoted to amusement or entertainment of the general public, and the immediate vicinity of the same.

5. "Emancipated" shall mean that the minor is not subject to the care, custody, nor financial support of his or her parent, guardian, or custodian, and has not other wise obtained his or her majority by marriage.

7-3-2 AIDING OR ASSISTING CURFEW VIOLATION

Any person assisting, aiding, abetting, permitting, or encouraging any minor to violate the provisions of Section 7-3-1 shall be guilty of a Class C misdemeanor.

7-3-3 LEAVING CHILDREN IN VEHICLE

It shall be unlawful for any person having in his care, custody, control or under his guidance any child under six (6) years of age to leave such child unattended in any automobile, truck, trailer or other vehicle upon a public street, alley or parking lot open to the public. A child is unattended within the meaning of this Section if he is left in the vehicle alone or if not alone, the oldest person with the child is under twelve (12) years of age. Violation of this provision shall be a Class C misdemeanor.

7-3-4 MISREPRESENTATION OF AGE

It shall be unlawful for any minor to misrepresent his age, or for any other person to knowingly misrepresent the age of a minor, for the purpose of obtaining tobacco or an alcoholic beverage. Violation of this provision shall be a Class C misdemeanor.

7-3-5 ALCOHOLIC BEVERAGES AND MINORS

1. It shall be unlawful for alcoholic beverages to be given, sold, or otherwise supplied to any person under the age of twenty-one (21) years.

2. It shall be unlawful for any person under the age of twenty-one (21) years to have possession of beer or any intoxicating liquor. [Ord. 1995-11]

TITLE VIII

BUILDING AND CONSTRUCTION

Chapter 8-1	Building Inspector	8-1
Chapter 8-2	Building Codes	8-2

CHAPTER 8-1

BUILDING INSPECTOR 8-1-1 BUILDING

INSPECTOR APPOINTED

There is hereby created the position of Building Inspector. The Mayor, by and with the consent of the Council may appoint an individual to serve in the position of Building Inspector.

8-1-2 DUTIES AND POWERS OF BUILDING INSPECTOR

The Building Inspector shall have the following duties and powers.

1. To enforce the provisions of the codes hereinafter adopted.

2. To enforce the provisions of the Development Code (Zoning Ordinance)

3. To review permit applications for conformance with the above codes and to refuse to issue permits where plans do not comply. Also, wherever violations occur, to consult with the City Attorney and to issue stop orders and citations and/or to give testimony, prepare exhibits, and provide other data which may be needed in the enforcement of said codes.

4. To perform such other duties as are from time to time assigned to him by the City Council.

Chapter 8-1 added in codification

CHAPTER 8-2

BUILDING CODES 8-2-1 ADOPTION

OF BUILDING CODES

Pursuant to the authorization set forth under Section 10-3-710 and 58-54-4, UCA, and in accordance with the provisions of R153-56-4 of the Utah Uniform Building Standards Rules, ("State Rules") the City Council hereby adopts, by this reference, the following codes and any amendments thereto which shall have been adopted by the State. One copy of said codes have been filed with the City Recorder for examination and use by the public.

8-2-1.1 Building and Mechanical Codes

1. The Uniform Building Code, 1988 edition, and The Uniform Building Code Standards, 1988 Edition, together with the following appendix chapters:

   A. No. 11 - Agricultural Buildings.
   B. No. 12 - Requirements for Group R, Division 3 Occupancies
   C. Guidelines for Manufactured Housing Installations, 1983 edition, (portions relating to permanent foundation attachment only).

2. The Uniform Mechanical Code, 1988 edition.

All of the above as published by the International Conference of Building Officials.

8-2-1.2 Plumbing Code

The Uniform Plumbing Code, 1988 edition, as published by the International Association of Plumbing and Mechanical Officials.

8-2-1.3 Electrical Code

The National Electric Code, 1987 edition as published by the National Fire Protection Association.

Chapter 8-2 added in codification

8-2-1.4 Abatement of Dangerous Buildings

The Uniform Building Code for the Abatement of Dangerous Buildings, 1988 Edition.

8-2-2 **FEES**

The City Council shall, by resolution, establish and set the amount of permit and inspection fees relating to the construction activities covered by the codes adopted under Section 8-2-1 above and to provide for the assessment and collection thereof. In addition, pursuant to the provisions of State Rule R153-56-10, the City shall assess and collect a surcharge equal to one (1) percent of the fees charged for any building permit and distribute such surcharge in accordance with such State Rule. All fee schedules so adopted shall take precedence over the fees stated in said codes.

8-2-3 **APPEALS**

Any person disputing the application or interpretation of a code requirement may appeal such decision to the State Uniform Building Codes Commission in the manner authorized by Section 58-56-8(3) UCA.

8-2-4 PENALTY

Violation of the provisions of this Chapter or the codes adopted pursuant hereto shall be punishable as a Class C misdemeanor.

TITLE IX

PUBLIC UTILITIES AND PROPERTY

Chapter 9-1	Utility Services	9-1
Chapter 9-2	Water and Sewer System	9-6
Chapter 9-3	Irrigation Water System	9-20
Chapter 9-4	Streets and Sidewalks	9-31
Chapter 9-5	City Cemetery	9-35
Chapter 9-6	Drinking Water Protection Plan	9-42

(Revised

CHAPTER 9-1 UTILITY SERVICES

9-1-1 UNAUTHORIZED USE OF CITY UTILITY SERVICES PROHIBITED

It shall be unlawful for any person, his family, or agents to open any stop-cock valve or other fixture attached to the water system and/or to use the water coming through the water mains or, to discharge sewage into the sewage system, or to obtain garbage collection service or other utility service provided by the City without first submitting an application for such service and receiving a permit to do so, as provided for in this Chapter. [Ord. 1991-2 Sec. 12]

9-1-2 REQUESTS FOR UTILITY SERVICE - EXISTING CONNECTIONS

9-1-2.1 Application For Utility Service

Any person desiring to obtain culinary water, sewer, garbage collection or other City provided utility service to a premises which has been previously connected to the City's culinary water system shall submit to the City:

1. An application for service, to be submitted on forms furnished by the City.

2. An executed Utility Service Use Agreement whereby the applicant agrees to abide by all rules and regulations governing the use of the water, sewer, garbage collection and other applicable utility service and to pay promptly for the services received as set forth on the billing notice.

Upon satisfactory completion of the application process the City will turn on the valve and/or read the meter and establish the service account for the user. [Ord. 1991-2 Sec. 6]

9-1-2.2 Services to Tenants - Responsibility of Property Owner

In the event that the application is made by a tenant or person other than the owner of the premises, the applications for utility services must, in addition

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The provisions of Chapter 9-1 relating to culinary water were adopted by Ordinance 1991-2. Minor modifications made in codification.

to the above requirements, be guaranteed by an agreement signed by the owner of the premises or his duly authorized agent in substantially the following form:

> "In consideration of the acceptance of the application for water service submitted by _____(tenant), I or we will pay for all charges, fees and costs at _____(premises) in case such tenant or occupant shall fail to pay for the same according to the ordinances, rules and regulations or resolutions enacted by the City."
>
> DATED this day of_____, 19_.

Any property owner shall be liable for the payment of such services until such time the owner notifies the City that the services to the premises are to be terminated. Such notification must be in writing or in person. [Ord. 1991-2 Sec. 7]

9-1-3 REQUESTS FOR NEW CONNECTION

9-1-3. Application for a New Connection - Single User

Any person, other than a subdivider or developer seeking multiple connections, who desires to obtain culinary water, sewer, garbage collection or other City provided utility service to a premises which has not been previously connected to the City's culinary water system shall be authorized to make such connection and receive service subject to:

A. Receipt of an executed application and agreement form, to be submitted on forms furnished by the City.

B. Receipt of payment of the required connection fee, and

C. A determination by the City that there is sufficient capacity in the system at the address at which the service is being requested.

Upon satisfactory completion of the application process the applicant shall be entitled to make connection to the City water and/or sewer system and to receive utility services, and the City shall establish the utility service account for the user. [Ord. 1991-2 Sec. 7]

9-1-3.2 Application for New Connection - Subdivider or Developer

Whenever a subdivider or developer desires or is required to install water or sewer connections and extensions for a subdivision or development, the subdivider or developer shall enter into a written extension agreement which shall constitute an application for permission to make the extensions and connections and an agreement specifying the terms and conditions under which the water extensions and connections shall be made and the payments that shall be required, all of which shall be fixed by the City and paid by the applicant. Any such request and agreement shall be consistent with the provisions of Section 10-7-6.3 of the City's Development Code. Any application for approval of a subdivision or other development shall also constitute a request for extension of the system as required by this Section. [Ord. 1991-2 Sec. 5]

9-1-3.3 Application for New Connection - Non-Resident

The owner of property located outside the corporate limits of the City, who desires to obtain culinary water, sewer, garbage collection or other City provided utility service to the premises may request service by the City, and the City may authorize the providing of one or more of such services to the premises subject to:

A. Receipt and approval by the City Council of an executed application and agreement form, to be submitted on forms furnished by the City.

B. Receipt of payment of the required connection fee, and

C. A determination by the City that there is sufficient capacity in the system at the address at which the service is being requested.

Upon satisfactory completion of the application process the applicant shall be entitled to make connection to the City water and/or sewer system and to receive utility services, and the City shall establish the utility service account for the user. [Ord. 1991-2 Sec. 8]

9-1-3.4 Temporary Connections

Any contractor or person engaged in construction work requiring the use of water may apply and be granted a permit to install a temporary connection. Any such temporary connection shall be made at the expense of the contractor and the use of water shall be metered. The City may require a deposit as a condition for granting a temporary connection.

9-1-4 USER CHARGES AND CONNECTION FEES - BOARD OF EQUALIZATION

9-1-4.1 Rates and Fees to be Established by Council

The amount of the rates and charges for use, penalty fees for delinquency in payment, fees for connection to the water and sewer system, inspection fees, and other charges incidental to the connection to the City's water and sewer systems or providing of utility services shall be fixed from time to time by resolution enacted by the City Council. The Council may also establish, by resolution, various classes of users, enact rules for levying, billing, guaranteeing and collecting charges for water, sewer and other utility services, determining criteria for what constitutes as a satisfactory payment history and setting forth such other regulations as are necessary for the management and control of the systems. Rates for services furnished shall be uniform with respect to each class or classes of service established or that may hereafter be established. Rates may be established at different levels for premises outside the corporate boundaries of the City. [Ord. 1991-2 Sec. 9]

9-1-4.2 Special Rates for Sewers Permitted

The Council may from time to time fix by agreement or resolution special rates and conditions, upon such terms as they may deem proper, for those users of the sewer service discharging wastes of unusual characteristics or making use thereof under exceptional circumstances

9-1-4.3 Council to Act as Board Of Equalization

The Council is hereby constituted as the Board Of Equalization of water and sewer rates to hear complaints and make corrections of any assessments or charges deemed to be illegal, unequal, or unjust.

9-1-4.4 Disposition of Funds

All connection fees and monthly user charges collected under the provisions of this Chapter shall be deposited in the Gunnison City Utility Fund and used to meet the operation and maintenance cost of the systems and facilities; debt service on obligations appertaining to the construction associated with the completion of the systems; and Such other allocations as City Council may by resolution provide. [Ord. 1991-2 Sec.9]

9-1-5 BILLING AND PAYMENT OF SERVICE FEES - FAILURE TO PAY - DISCONNECTION OF SERVICE PERMITTED

9-1-5.1 Billing and Payment of Service Fee

The Recorder or Superintendent shall furnish to each user, or mail to, or leave at his place of residence or usual place of business, a written or printed statement stating thereon the amount of water, sewer, garbage and any other service charges assessed against him once each month or at such other regular intervals as the City Council shall direct. The statement shall specify the amount of the bill for each such service provided and the place of payment and date due. [Ord. 1991-2, Sec. 13]

9-1-5.2 Due Date of Payment - Failure to Pay

If any person fails to pay the full amount of the utility service charges within thirty (30) days from the date due, the Recorder or Superintendent shall give the consumer notice in writing of intention to discontinue the water service to the consumer unless the consumer pays the bill in full within five (5) days from the date of notice. [Ord. 1991-2, Sec. 13]

9-1-5.3 Disconnection of Water Service for Nonpayment Authorized - Other Remedies

In the event any person shall fail to pay for the utility services furnished or shall use such services in violation of the provisions of this Chapter or the rules and regulations adopted pursuant hereto the City may cause the water to be shut off from such premises.

Before any water service which has been shut off as a result of non-payment of service fees shall be restored, all past due service charges, delinquency fees and such extra charge for turning the water on and off as the Council may have established by resolution shall be paid in full.

The City is authorized and empowered to enforce the payment of all delinquent utility service charges by any action at law in the corporate name of the City. [Ord. 1994-1; Ord. 1991-2 Sec. 13], (UCA 10-7-11 & 10-8-38)

9-1-5.4 Turning on Water After Being Turned Off Prohibited

It is unlawful for any person, after the water shall have been turned off from the premises for nonpayment of service charges or other violation of the rules and regulations pertaining to the water or sewer system, to turn on the water or allow it to be turned on or used without authorization to do so from the Superintendent or City Recorder. [Ord. 1991-2, Sec. 14]

9-1-6 PENALTY

Violation of any of the provisions of this Chapter shall be a Class C Misdemeanor.

CHAPTER 9-2

WATER AND SEWER SYSTEM

9-2-1 WATER AND SEWER DEPARTMENT

9-2-1.1 Establishment of Department

There is hereby established a water and sewer department. It shall comprise all of the property, equipment and personnel necessary to the maintenance and operation of the City's culinary water and sewage collection and disposal systems. The department shall administer the operation and maintenance of the City's water and sewer systems. So far as is practically appropriate, this Department shall operate and be governed separately from the irrigation water system of the City. [Ord. 1991-2 Sec. 1]

9-2-1.2 Superintendent - Appointment - Water Defined

There is hereby created the position of Superintendent of the water and sewer system. His title shall be sometime stated "Superintendent" to indicate and parallel the custom, usage and practice of distinguishing an culinary water supervisor or administrator as a "Superintendent" and also to distinguish his office from that of the irrigation water system "Watermaster". Said position shall be filled by appointment of the mayor with the advice and consent of the City Council.

When the term "water" is used in this Chapter, including its use in the application for water revenue embodied in this Chapter it shall be deemed to apply specifically and exclusively to culinary water, except where the context indicates to the contrary, particularly but not exclusive where intermingling of culinary and irrigation water is prohibited. [Ord. 1991-2 Sec. 2]

9-2-1.3 Duties and Powers of Superintendent

The Superintendent of the System shall manage and supervise the operation of the water and sewer system pursuant to the provisions of this Chapter and pursuant to resolutions, rules and regulations adopted by the City Council from time to time prescribing his powers and duties and directing the manner and frequency with which he shall make reports to the Mayor relating

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The provisions of Chapter 9-2 relating to culinary water were adopted by Ordinance 1991-2. Minor modifications made in codification.

to the water and sewer systems. All of the functions and activities of the Superintendent shall be carried on under the direction of the Mayor or council member appointed by the Mayor. [Ord. 1991-2 Sec.3]

9-2-2 GENERAL PROVISIONS

9-2-2.1 Ownership of Water and Sewer Systems

The water system constructed or otherwise acquired by the City to supply the City with culinary water, and the sewer system constructed or otherwise acquired by the City to provide the City with a sanitary municipal sewage disposal system, are the property of the City and shall be under the sole and exclusive control and jurisdiction of the City. The City Council may, from time to time, direct the making of needed additions,
improvements, alterations and repairs to said systems, and may also make such rules and regulations as it deems necessary for the operation and control thereof. (UCA 10-7-4)

9-2-2.2 Council to Adopt rules and regulations

The City Council, in addition to the regulatory provisions set forth expressly in this Chapter, shall have the power and right to adopt additional regulations controlling the *manner* and circumstances under which the water and sewer systems may be used.

9-2-2.3 Injury to Water System Prohibited

It shall be unlawful to injure, deface or impair any part or appurtenance of the water system or to cast anything into any reservoir or facilities appurtenant or contributing to the culinary water system. It shall be a criminal offense in any way to pollute any water source, watershed, drainage area, or any part of or contributing to the culinary water system.

9-2-2.4 Injury to Sewer System prohibited

It shall be unlawful for any person to destroy, deface, injure or interfere with the operation of any part or appurtenance of the sewer system.

9-2-2.5 Liability for Damage to System or Equipment.

All damage or injury to the lines, meters, or other materials of the City on or near the users premises caused by a neglect of the user shall in the discretion of the City be repaired by and at the expense of the user, and the user shall pay all costs and expenses, including a reasonable attorney's fee, which may arise or accrue to the City through its efforts to repair the damage to the line, meters, or to other equipment of the department or collect such costs from the user.
[Ord. 1991-2 Sec. 20]

9-2-2.6 Connection to City Sewer Mandatory - Exceptions

It shall be unlawful for the owner or any other person occupying or having charge of any building used for human occupancy which is located within 300 feet of an available sewer main to dispose of sewage therefrom by any means other than by use of the municipal sewer system. The City may act to require the connection of any such premises to the City sewer system and utilize any means permitted by law to secure compliance with this requirement. The cost incurred in making the hookup shall be borne by the owner.

Where compliance with the provisions of the above paragraph is not possible the City Council may authorize the use of an alternative individual sewage disposal systems, subject to the receipt of an application to do so and upon a showing of good cause and the absence of a reasonable opportunity to make use of the municipal sewer system.

Prior to granting approval for the construction of any individual disposal system by the Council, the applicant shall submit evidence from the City Health authority indicating approval of the proposed system. **(UCA 10-8-38)**

9-2-3 WATER SYSTEM - OPERATION AND USE

9-2-3.1 Opening or Closing of Valves Prohibited

It shall be unlawful for any person to open or close any water gate valve unless duly authorized by the Superintendent or his designated representative.

9-2-3.2 Water Connections to be Metered

All structures, dwelling units, and other establishments, using water from the City water system shall be connected to said system through a water meter.

9-2-3.3 Waste of Water Unlawful

It shall be unlawful for any water user to waste water, or to allow it to be wasted, by imperfect stops, taps, valves, leaky joints or pipes, or to allow tanks or water troughs to leak or overflow or to wastefully run water from hydrants, faucets, or stops or through basins, water closets, urinals, sinks, or other apparatus, or to use water in violation of the rules, regulations, or ordinances for controlling the water supply. [Ord. 1991-2 Sec. 24]

9-2-3.4 Waste of Water - Termination of Water Service Authorized - Procedure

A. Users of water from the culinary water system shall not permit water to continue to run wastefully and without due efforts to conserve water. If, in the judgment of the Superintendent or of any of the officers of the City, a user of culinary water engages in practices which result in the needless waste water and continues to do so after the notice to discontinue wastefulness has been given, the Superintendent or any officer may refer the matter to the City Council.

B. The city Council may thereupon consider terminating the right of the individual to use culinary water. If it elects to consider the matter of termination, it shall give notice to the water user of the intention to terminate his water connection at least five (s) days prior to the meeting of the City Council at which termination of water service is to be considered. The notice shall inform him of the time and place of the meeting and of the charges which lead to the consideration of the termination.

C. A water user whose right to utilize culinary water is being reviewed shall have opportunity to appear with or without counsel and present his reasons why his water service should not be discontinued.

D. After due hearing, the City Council may arrive at a determination. If the determination is to discontinue the wasteful water user's service connection, it shall notify him of decision and of the period during which the service will remain discontinued. [Ord. 1991-2 Sec. 30]

9-2-3.5 Water Not to be Supplied to Motors and Syphons

No water shall be supplied from the pipes of the City water system for the purpose of driving motors, syphon, turbine, or other wheels, or any hydraulic engines, or elevators, or for driving or propelling machinery of any kind whatsoever, nor shall any license be granted or issued for any such purpose except by special permission of the City Council. [Ord. 1991-2 Sec. 28]

9-2-3.6 Scarcity of Water

In time of scarcity of water, wherever in the judgment of the City, it shall in the judgment of the Mayor and City Council be necessary, the Mayor shall, by proclamation, limit the use of water to such extent as may be necessary for public good. It shall be unlawful for any person by himself, family, or agents, to violate any proclamation made by the Mayor in pursuance of this Chapter. [Ord. 1991-2 Sec. 19 & 29] (UCA 10-7-12)

9-2-3.7 City Not Liable For Damages

The City shall not be liable for any damage to a water service user by reason of stoppage or interruption of his water supply service caused by fires, scarcity of water, accidents to the water system or its mains, or as the result of maintenance and extension operations, or from any other unavoidable cause. This Section shall not be construed to expand the liability of the City beyond that provided in the Governmental Immunity Act. [Ord. 1991-2 Sec. 27]

9-2-3.8 Unauthorized Users

It is unlawful for any water service user to permit any person from other premises or any unauthorized persons to use or obtain water services regularly from his premises or water facilities, either outside or inside his premises. [Ord. 1991-2 Sec. 21]

9-2-3.9 Fire Hydrants

All public fire hydrants shall be under the control of and shall be kept in repair by the City, and in case of fire, the fire department shall have free access to said fire hydrants. It shall be unlawful for any person to obstruct the approach to a fire hydrant or to open or operate a fire hydrant or attempt to draw water therefrom without first obtaining special permission from the Superintendent.

9-2-3.10 Interconnection With Irrigation System Prohibited

No interconnection, cross-connection or other joining of the culinary and irrigation systems by any existing or future water user of the City shall be permitted. Any such interconnection shall be punishable as a Class C Misdemeanor and the owner of record of such property found to have such interconnection upon it shall bear all costs associated with the destruction and removal of such interconnecting device or apparatus. [Ord. 19912 Sec. 16]

9-2-3.10.1 Exceptions

To allow exception, Gunnison City will consider applications for relief only during times of extreme drought or other emergencies declared by the City Council.

a. Gunnison City water users may petition the Council to make special connections from Irrigation to Culinary water for normal residential and commercial landscaping use (lawns, small garden, etc.). Such connections are to be approved by the City Council, County Building Inspector, and City Utilities Supervisor.

b. All installation of apparatus(s) must meet the present codes: a) Utah Plumbing Code chapter 10. b) Utah Administrative Code R449-102-4. c) Public Drinking Water Regulation section 2.4.

c. The customer/user shall be required to pay for all expenses incurred in installation, maintenance, servicing, inspection, and disconnection.

d. All provisions of Subsections (a), (b), and (c) of this Section are required in order to reconnect to the irrigation system.

9-2-3-10.1 adopted by Ordinance 1992-3 August 14, 1992.

9-2-3.11 No Open Discharge of Pressurized Water from City System

There shall be no open discharge of water from the culinary water system which may or could intermingle culinary water with irrigation water. Any discharge from the culinary water system not out of a sprinkler or nozzle shall be a violation of this system and shall be punishable as a Class C misdemeanor and the owner of record of such property found to have any open discharge shall bear all costs required to repair or rectify the violation. [Ord. 1991-2, Sec. 17]

9-2-3.12 Sprinkling Vehicles

Vehicles for sprinkling shall be regulated and controlled by the Water Department through the Superintendent of the Water Department. [Ord. 1991-2, Sec. 25]

9-2-3.13 Water Use Efficiency in Amenity Landscape Irrigation

1. Time-of-Day Watering Parameters. Sprinkler irrigation of all landscapes is prohibited between the hours of 10:00 a.m. and 6:00 p.m.

2. Applicability of Time-of-Day Watering Ordinance. The provisions of this Section shall apply to all landscapes within the city. This Section does not apply to the following situations:

   a. New lawns that require frequent irrigation for establishment purposes within ninety (90) days of planting.

   b. Short cycles required for testing, inspecting and maintaining irrigation systems.

   c. Other situations as permitted by Gunnison City.

3. Penalty. Every person who violates this Section is guilty of a Class C misdemeanor. [Ord. 2003-3, Secs. 1, 2 & 3]

9-2-4 SEWER SYSTEM - OPERATION AND USE

9-2-4.1 Discharge of Inflammable and Destructive Substances Prohibited

It shall be unlawful for any person to injure, break or remove any part or portion of any sewer appliance or appurtenance, or to discharge into a sewer any inflammable gas, gasoline or oil, any calcium carbide or residue therefrom, or any liquid or other materials or substance which will emit an inflammable gas when in contact with water, sewage or fire. Oil separators installed in any building where volatile fluids are used must not be connected directly or indirectly with a sewer.

It shall be unlawful to discharge any waters containing toxic or poisonous solids, liquids or gasses in sufficient quantity, either singly or in combination with other wastes, to injure or interfere with any treatment process, constitute a hazard to humans or animals, create a public nuisance or produce injury to components to the system.

9-2-4.2 Pre-treatment of Wastes Required for Certain Users - Additional Charges Permitted

It shall be unlawful to discharge the waste from water filter, gas engines, air compressors, dry cleaners, automobile repair and wash racks, facilities for the stabling or keeping of horses, cows and other animals, establishments using or processing organic matter and similar establishments which produce strengths of wastes (i.e. Biochemical Oxygen Demand, Chemical Oxygen Demand, Total Suspended Solids) or a volume of effluent above the average residential user into the sewer system unless such effluent is first discharged into settling tanks properly trapped and vented and/or subjected to on-site pre-treatment, as applicable.

In addition to any pre-treatment which may be required, the City may assess any such contributor a surcharge in the sewer fee in an amount sufficient to cover the costs of treating the above normal strength or volume of waste produced by the user.

9-2-4.3 Discharge of Obstructive Materials Prohibited

It shall be unlawful for any person to discharge into the public sanitary sewer any garbage, refuse or other similar matter of substance likely to obstruct the sewer.

9-2-4.4 Discharge of Drainage Waters Prohibited

It shall be unlawful for any person to connect with a public sanitary sewer any roof downspout, foundation or area drains, the contents of any spring, flowing well, creek, ditch, or any other sources of surface runoff or ground-water.

9-2-4.5 Injury To Sewer Prohibited

It shall be unlawful for any unauthorized person to willfully or negligently break, damage, destroy, uncover, deface of tamper with any structure, appurtenance or equipment which is part of the City's sanitary sewer facilities or sewage works.

9-2-4.6 Sewer Manholes

It shall be unlawful for any person to open any sewer manhole without permission from the superintendent.

9-2-5 INSTALLATION & MAINTENANCE OF SERVICE LATERALS

9-2-5.1 Separate Connection Required For Each Premises

A separate and independent service lateral shall be provided for each premises for both water and sewer.

9-2-5.2 Reserved

9-2-5.3 Installation of Water Meters

Water meters will be furnished, installed and maintained by the City.

9-2-5.4 Ownership of Water Service Lateral - Responsibility For Installation and Maintenance - Cost of Installation

All water service lines located between the meter box and the connection to the main line (Corp Stop) including the meter box and meter setter shall be installed by or under the direction of the City and be owned and maintained by the City. The allocation of cost of installation of the water service lateral shall be determined by resolution of the Council.

9-2-5.5 Ownership of Sewer Service Laterals - Responsibility For Installation and Maintenance - Cost of Installation

All sewer service laterals lying within the right-of-way of a City street shall be installed by or under the direction of the City and be owned by the City; provided however, that all maintenance of said service lateral and any damage to the building or contents that may arise as a result of a blockage of said lateral shall be the responsibility of the property owner and/or occupant. The allocation of cost of installation of the sewer lateral shall be as determined by resolution of the Council.

9-2-5.6 Installation of Service Laterals in New Subdivisions

Water and Sewer service laterals shall be installed from the main line to the outer edge of the public street as part of the required improvements for a subdivision. Water service laterals shall include the installation of the meter box and meter setter. The allocation of cost of installation shall be as determined by resolution of the Council.

9-2-5.7 All Installation to be in Accordance With City Standards

All materials and construction used in connection with the installation of a sewer or water lateral or the extension of the City's water or sewer system shall be in accordance with City standards.

9-2-6 EXTENSIONS OF WATER AND SEWER SYSTEM - NOT CONSTRUCTED AS PART OF NEW SUBDIVISION PROJECT

9-2-6.1 Application of Section

The terms of this Section shall be applicable to all requests for extension to the City's culinary water and sewage collection systems when NOT included as part of a proposed subdivision, planned development or similar project.

9-2-6.2 Procedure For Approval

A. Application for extension - Any person desiring to extend water or sewer mains within the City may make application to the City. Said application shall contain a description of the proposed extension accompanied by a map showing the location thereof. The Council may grant or deny the application as in its discretion seems best for the welfare of the existing users in the City.

B. Detailed plans to be submitted - Upon receiving preliminary approval from the Council the applicant shall submit detailed engineering plans showing the location and size of all mains, service laterals, and any other facilities to be included as part of the extension together with an estimate of the whole cost of expense in making the extension. The applicant shall also submit to the Council documentation, acceptable to the Council, agreeing to construct all required off-site or over-size facilities as shown on the plans and accepting the conditions relating to reimbursement.

C. City Council to act on application - Upon receipt of the documents and the report of the Superintendent, the City Council shall consider the question of the extension, and upon a motion properly presented shall act to approve or deny the extension.

D. If the City Council grants the petition, the amount of the costs of making the extension, as certified by the superintendent, shall be deposited with the

City Recorder before any work shall be done on such extensions. The deposit shall be made within thirty (30) days, or such other time as the City Council shall indicate, after the granting thereof.

9-2-6.3 Design Requirements and Criteria

A. Conformance with City standards The design, location, materials and standards of construction shall be in accordance with City standards.

The design and sizing of all extensions shall be based upon considerations of adequacy to meet both present and future requirements for domestic water supply, fire protection, and sanitation within the City.

B. To be Connected to Existing Mains - The requested water or sewer main extension shall be connected to the nearest adequate existing main as determined by the City and shall extend the full width of the property to be served by the extension.

C. Oversize and off-site Facilities May be Required - The City may require the construction of off-site and/or oversize lines and facilities as a condition of approval of the extension.

9-2.6.4 Cost of Extension to be paid by Applicant - Reimbursement Authorized

All cost in connection with the construction shall be borne by the applicant. Except that off-site or oversize lines or facilities constructed by the applicant shall be eligible for reimbursement as hereinafter provided.

9-2-6.5 Reimbursement for Off-site Improvements

A. Reimbursement Permitted - How Determined - All applicants shall be eligible for reimbursement for that proportion of the cost incurred in making the extension which benefit properties fronting on the extension, other than those owned by the applicant. The amount eligible for reimbursement and the method of payment shall be as follows:

Upon completion of an extension the City Superintendent shall make a determination of the per-front-foot cost for such extension. The City will enter a deferred credit in an amount equal to cost of the extension less the pro-rated amount represented by the length of frontage of the property owned by the applicant and any existing public street. Thereafter the applicant or his successor or assigns will be reimbursed by the City upon collection for fees assessed against the benefitted properties, as service connections are made. The period of reimbursement shall extend for a period of seven (7) years from the date of completion of the extension or until the initial pro-rated cost of the extension along the frontage not owned by the applicant shall have been refunded.

B. City to Levy Extension Reimbursement Fees - Amount of Fee - A water or sewer main extension reimbursement fee for each subsequent service connection to an extension installed under the provisions of this section shall be paid before such service connection is made, except for frontage owned by the applicant. The water or sewer main extension fee is separate and in addition to any other charges required by the City.

The amount of the extension fee to be paid by the benefitted property shall be determined by multiplying the number of linear feet of frontage in the lot or parcel for which service connection is requested by one-half (1/2) the average cost per linear foot of said extension.

All extension fees levied for purposes of reimbursement of off-site utilities shall be determined using the costs for installing water mains of six (6) inches in diameter and sewer mains of eight (8) inches in diameter.

9-2-6.6 Oversized Lines and Facilities - Reimbursement Permitted

A. City may require - Reimbursement Permitted - Where the Council determines that the future development within an area requires the construction of a water or sewer main or other facility which is larger than required to serve an immediate development, the City may require the construction of such oversize line or facility as a condition of approval of the extension.

The applicant shall be eligible for reimbursement for that portion of the cost incurred in the construction of the oversized line or facility which benefits properties other than those owned by the applicant. The amount of reimbursement and the method of payment shall be as follows:

The Council shall first make a determination of either the total area or number of potential connections which is to be benefitted by the oversized facility. Thereafter, the City shall enter a deferred credit in an amount equal to the cost of the actual cost of constructing that portion of oversized line or facility which is in excess of the cost of the standard line or facility, less a pro-rated share of the cost of the oversize facility in an amount equal to the proportion of the territory or number of potential connections (as applicable) within the defined service area which is owned by the applicant.

Thereafter the applicant or his successors or assignee will be reimbursed by the City upon collection of fees assessed against the benefitted properties as service connections are made thereto. The period for which the applicant shall remain eligible shall be as determined by agreement between the City and the applicant.

B. City to Levy Fees - Amount to be Determined - A facility reimbursement fee will be charged for each and every subsequent service connection located within the designated service area. Said fee shall be paid before any water or sewer service connection is made, except that no fee shall be required for development occurring on land owned by the applicant. The fee required under this provision shall be in addition to all other charges levied by the City. The amount to be levied shall be a proportionate share of the cost of said oversize line or facility as determined by the City in accordance with the criteria established at the time of approval of the facility.

9-2-7 ADMINISTRATION

9-2-7.1 Qualified Plumbing Necessary

It shall be unlawful for any person to connect any drain or sewer pipe with the municipal sewer system or to connect any water pipe to the water system unless the person is a duly licensed plumber or unless, in the absence of a duly licensed plumber, any proposed connection to, alteration of, or change of connection to the water or sewer system shall be first submitted to the Superintendent for review and approval. After such approval, the installation or work done shall be subject to inspection by the Superintendent or his agent.

9-2-7.2 Permits For Installation

It shall be unlawful for any person to lay, repair, alter, or connect any pipe to the water or sewer system without first having received a permit from the office of the Superintendent. [Ord. 1991-2 Sec. 31]

9-2-7.3 When Permits Shall Not Be Issued

Permits to connect to the water or sewer system shall not be issued unless the plumbing in the house or building to be connected is in accordance with the provisions of the City's building and plumbing codes.

9-2-7.4 Revocation of Permits

All construction permits for water or sewer connections or installations shall be issued to the plumber who is to do the work or to the owner of the property, subject to the supervision and inspection by the Superintendent or his agents. The Council or Superintendent may at any time revoke a permit because of defective work or because of undue delay in completing the permitted work.

9-2-7.5 Facilities to be Kept in Good Repair

All users of the water or sewer services shall keep their service pipes, connections, and other apparatus in good repair and protected from frost at their own expense.

No person, except under the direction of the Superintendent, shall be allowed to dig into the street for the purpose of removing or repairing any service pipe or main. [Ord. 1991-2 Sec. 22]

9-2-7.6 Quality of Service Pipe - Location of Lines Serving Adjoining Premises to he approved

A. All service and other pipes used in conjunction with the water and sewer services of the municipality shall be of such material, quality and specifications as the Council may from time to time by resolution provide and shall be installed at such distances below ground as may be specified by regulations relating to the installation of water and sewer systems. All work, alterations or extensions affecting water and sewer pipes shall be subject to the acceptance of the Superintendent and no connection with any water or sewer mains shall be made without first obtaining a permit therefore from the City.

No consumer shall be permitted to conduct water or sewer pipes across lots or buildings to adjoining premises without permission from the Superintendent and subject to such requirements relating to controls as may be imposed by him.

[Ord. 1991-2 Sec. 23]

9-2-7.7 Department to Have Free Access

The Superintendent and his agents shall, at all ordinary hours, have free access to places supplied with water or sewer service from the municipal system for the purpose of determining whether the water or sewer service is being used, that the manner of its use is consistent with City requirements, and to make all necessary shutoffs for vacancy, delinquency or violation of ordinances, rules or regulations enacted by the City. [Ord. 1991-2 Secs. 26 & 39]

9-2-8 EXTRA TERRITORIAL JURISDICTION WITH RESPECT TO WATER SYSTEM

The City may construct or authorize the construction of waterworks within or without the City limits. For the purpose of maintaining and protecting the same from injury and the water from pollution, its jurisdiction shall extend over the territory occupied by such works, and over all reservoirs, streams, canals, ditches, pipes and drains used in and necessary for the construction, maintenance and operation of the same, and over the stream or source from which the water is taken, for fifteen miles above the point from which it is taken and for a distance of three hundred feet on each side of such stream and over highways along such . stream or watercourse within said fifteen miles and said three hundred feet.

The City Council may adopt and enforce such ordinances and regulations as it considers necessary for preventing pollution or contamination of the streams or watercourses from which the inhabitants of the City derive their water supply, in whole or in part, for domestic and culinary purposes. This Section prohibits the construction or maintenance of any closet, privy, outhouse or urinal within the area over which the City has jurisdiction, and provides for permits for the construction and maintenance of the same, applications for which permits must be made to the City Council. In granting such permits the Council may annex thereto such reasonable conditions and requirements for the protection of the public health as they deem proper, and may, if deemed advisable, require that all closets, privies and urinals along such streams shall be provided with effective septic tanks or other germ-destroying instrumentalities.

All such ordinances and regulations, including this Chapter, are deemed necessary to carry the power herein conferred into effect.

9-2-9 ENFORCEMENT

9-2-9.1 Penalty

Violation of the provisions of this Chapter shall be a Class C misdemeanor.

9-2-9.2 Termination of Water Service

In addition to the provisions of Section 9-2-9.1, and as a means of securing compliance with the provisions of this Chapter or any rules and regulations adopted pursuant hereto, the Mayor and/or Superintendent may, after due notice given, terminate water service to any user found in violation of the ordinance or rules. (UCA 10-7-11 & 10-8-38)

9-2-10 IMPACT FEES*

*Code Reviser's Note: Appendices A and B are on file in the City Recorder's office.

9-2-10.1 Definitions

For the purposes of this Chapter, the words set out in this Section shall have the following meanings:

1. "Accessory structure" means a subordinate building or structure, located on the same lot with the main building, occupied by or devoted to an accessory use. When an accessory structure is attached to the main building in a substantial manner, as by a wall or roof, such accessory structure shall be considered part of the main building.

2. "Accessory use" means a use that:

a. Is subordinate in area, extent and purpose to, and serves a principal use;

b. Is customarily found as an incident to such principal use;

c. Contributes to the comfort, convenience or necessity of those occupying, working at or being serviced by such principal use;

d. Is located on the same zoning lot as such principal use; and

e. Is under the same ownership or control as the principal use.

3. "Act" means the Utah Impact Fees Act, Utah Code Title 11, Chapter 36, as in existence on the effective date of the ordinance codified in this Chapter or as hereafter amended.

4. "Building permit" means an official document or certification which is issued by the building officials of the City and which authorizes the construction, alteration, enlargement, conversion, reconstruction, remodeling, rehabilitation, erection, demolition, moving or repair of a building or structure.

5. "Capital facilities" means the facilities or improvements included in a capital budget.

6. "City" means Gunnison, Utah.

7. "Council" means the Municipal Council of the City.

8. "Developer" means an individual, group of individuals, partnership, corporation, limited liability company, association, municipal corporation, State agency, or other person undertaking development activity, and their successors and assigns.

9. "Development activity" means any construction or expansion of a building, structure or use; any change in use of a building or structure; the subdivision of land; the seeking of plat approval, PD approval, site plan approval, lot line adjustment, or conditional permit approval; or any other change in use of land that creates additional demand and need for wastewater and/or culinary water facilities.

10. "Development approval" means any written authorization from the City, other than a building permit, which authorizes the commencement of a development activity, including, but not limited to, plat approval, PD approval, site plan approval, lot line adjustment, and a conditional use permit.

11. "Encumbered" means to reserve, set aside, or otherwise earmark impact fees in order to pay for commitments, contractual obligations, or other liabilities incurred for planned facilities.

12. “Fee payer” means a person, corporation, partnership, incorporated association, or any other similar entity, or a department or bureau of any governmental entity or municipal corporation commencing a development activity which creates the demand for planned facilities and which requires the issuance of a building permit. “Fee payer” includes an applicant for an impact fee credit.

13. “HUD” means the United States Department of Housing and Urban Development.

14. “Impact fee” means a payment of money imposed by the City on development activity pursuant to this Chapter as a condition of granting a building permit in order to pay for the planned facilities needed to serve new growth and development activity. “Impact fee” does not include a tax, a special assessment, a hook-up fee, a fee for project improvements, a reasonable permit or application fee, the administrative fee for collecting and handling impact fees, the cost of reviewing independent impact fee calculations, or the administrative fee required for an appeal.

15. “Impact fee account” or “account” means the account or accounts established for the planned facilities for which impact fees are collected.

16. “Net positive fiscal impact” means new revenue to the City in excess of the cost of the necessary infrastructure and municipal services attributable to a development activity.

17. “Owner” means the owner of record of real property, or a person with unrestricted written option to purchase property; provided, that if the real property is being purchased under a recorded real estate contract, the purchaser shall be considered the owner of the real property.

18. “Residential unit” means any building or portion thereof which contains living facilities including provisions for sleeping, cooking, eating, and sanitation, as required by the City, for not more than one (1) family, and including site-built buildings, manufactured homes and modular homes.

19. “State” means the State of Utah. [Ord. 2003-4, Sec. 1]

9-2-10.2 Applicability

The collection of impact fees shall apply to all new development activity in the City unless otherwise provided herein. Until any impact fee required by this Section has been paid in full, no building permit for any development activity shall be issued. A stop work order shall be issued on any development activity for which the applicable impact fee has not been paid in full. [Ord. 2003-4, Sec. 1]

9-2-10.3 Service Areas

1. The following impact fee service areas are hereby established:

a. For the purposes of wastewater impact fees, the service area shall be all of the incorporated area of the City, including future annexed area.

b. For the purposes of culinary water impact fees, the service area shall be all of the incorporated area of the City, including future annexed area.

2. Impact fees shall be assessed only on development activity within the service area.

3. Impact fees collected within a service area shall be spent within that service area.

4. The appropriateness of the designation and boundaries of the service areas shall be reviewed periodically by the City as part of the impact fee revision process. Following such review and a public hearing, the service areas may be amended. [Ord. 2003-4, Sec. 1]

9-2-10.4 Calculation of Impact Fees Based on Fee Impact fees shall be calculated as follows:

1. The impact fees shall be calculated for the proposed development activity based on the permit allowing the use, according to the fee schedule in Appendix "A."*

2. The impact fee schedule attached as Appendix "A"* is hereby adopted and incorporated herein by reference.

3. The units of development activity specified in the fee schedule shall be interpreted as follows:

a. Residential impact fees shall be collected by unit. For purposes of this Chapter, modular or manufactured homes are considered residential.

b. A wastewater table and culinary water Tables 1 through 3 are included in Appendix "B"* to help in determination of impact fees for connections other than single residence.

4. For categories of uses not specified in the applicable impact fee schedule, the City Council shall apply the category of use set forth in the applicable fee schedule that is deemed to be most similar to the proposed use.

5. If the development plan approval or permit for the proposed development activity indicates a mix of uses in the development, the impact fees shall be calculated separately for each use according to the fee schedule, and the results aggregated.

6. For an addition to or remodeling or replacement of existing structures, or for a change in use of an existing structure, the impact fee to be paid shall be the difference, if any, between:

a. The fee, if any, that would be payable for existing development activity on the site or, in the case of demolition or removal of a structure, the previous development activity on the site; provided, that the demolition or removal has occurred within twelve (12) months after the date of submittal of the application for which impact fees are assessed; and

b. The fee, if any, that would be payable for the total development activity on the site for the new development. [Ord. 2003-4, Sec. 1]

9-2-10.5 Exemptions

1. The following shall be exempted from the payment of all impact fees:

a. Replacement of a structure with a new structure of the same size and use at the same site or lot when a building permit for such replacement is obtained within twelve (12) months after the demolition or destruction of the prior structure or mobile home and the replacement is completed within twenty-four (24) months after the granting of the building permit.

b. Alterations, expansion, enlargement, remodeling, rehabilitation, or conversion of an existing unit where no additional units are created and the use is not materially changed.

c. Construction of accessory structures that will not create significant impacts on the planned facilities.

d. Miscellaneous accessory improvements to use, including but not limited to fences, walls, swimming pools, and signs.

e. Demolition or moving of a structure.

f. Placing on a lot in the City a temporary construction trailer or office, but only for the life of the building permit issued for the construction served by the trailer or office.

The City shall use monies in its general fund for the exempted development activity.

2. The City Council shall determine whether a particular development activity falls within an exemption identified in this Section, in any other Section, or under other applicable law, or to ensure that the impact fees are otherwise imposed fairly. Determinations of the City Council shall be in writing and shall be subject to the appeals procedures set forth in this Chapter.

3. Upon determination of the City Council, following the filing with the City Council of a petition of the developer, if any portion of the development activity is funded or subsidized in whole or in part with City funds or funds of the City's redevelop-

ment agency, the impact fee allocable to such funded or subsidized portion of the development activity shall be reduced by the amount of such funding or subsidy. The City shall use monies in its general fund to pay for any planned facilities necessitated by the exempted development activity. [Ord. 2003-4, Sec. 1]

9-2-10.6 Challenges and Appeals

1. a. Any fee payer that has paid an impact fee may challenge the impact fee by filing:

(i) An appeal pursuant to Subsection (2) of this Section;

(ii) A request for arbitration as provided in Utah Code Section 11-36-402(1), as amended; or

(iii) An action in district court as provided in Utah Code 11-36401(4)(c)(iii), as amended.

Such a challenge may not be initiated unless it is initiated within one (1) year after the fee payer pays the impact fee.

b. The sole remedy for a challenge under Subsection (1)(a) of this Section shall be a refund of the difference between what the fee payer paid as an impact fee and the amount the impact fee should have been if it had been correctly calculated.

c. Nothing in this Section shall be construed to require a fee payer to exhaust administrative remedies with the City before filing an action in district court under Subsection (1)(a) of this Section.

2. a. Any fee payer may pay the impact fees imposed by this Chapter under protest in order to obtain a building permit, and thereafter may appeal the validity of amount of such payment to the Council. Appeals regarding the impact fees imposed on any development activity may only be taken by the fee payer of the property where such development activity will occur. No appeal shall be permitted unless and until the impact fees at issue have been paid.

b. Appeals shall be made by filing a written notice of appeal with the Council, specifying the grounds thereof, and depositing with the Council an administrative fee in the amount of fifty dollars ($50.00). The appellant shall also submit, in writing, a request for information relative to the impact fee. The Council shall, within fourteen (14) calendar days after receiving the notice of appeal, hold a hearing to consider the evidence and arguments of the appellant, and shall record the hearing and retain such evidence. The Council shall issue a written decision on the appeal within thirty (30) calendar days

after the date the appeal was filed.

3. If, pursuant to Utah Code Section 11-36-402 as amended, a person submits an impact fee challenge to arbitration, the City shall not agree to participate in binding arbitration. [Ord. 2003-4, Sec. 1]

9-2-10.7 Collection of Impact Fees

The impact fees for all new development activity shall be calculated and collected in conjunction with the application for the first building permit for such development activity. [Ord. 2003-4, Sec. 1]

9-2-10.8 Fund Accounting for Impact Fees

1. The City shall establish a separate interest-bearing accounting fund for each type of planned facility for which an impact fee is collected. Such fees shall be invested by the City and the yield on such fees, at the actual rate of return to the City, shall be credited to such accounting fund periodically in accordance with the accounting policies of the City, subject to a deduction by the City of a reasonable cash management fee. Such funds need not be segregated from other City monies for banking purposes. Interfund loans may be made between such accounting funds.

2. Any yield on such accounting fund into which the fees are deposited shall accrue to that fund and shall be used for the purposes specified for such fund.

3. The City shall maintain and keep financial records for each such accounting fund, showing the source and amount of all monies collected, earned and received by the fund, and each expenditure from such fund, in accordance with normal City accounting practices, and at the end of the fiscal year shall prepare a report on each such fund showing such information. The records of such fund shall be open to public inspection in the same manner as other financial records of the City.

4. Impact fees shall be expended or encumbered within six (6) years after their receipt, unless the Council identifies, in writing, an extraordinary and compelling reason to hold the impact fees longer than six (6) years. Under such circumstances, the Council shall establish an absolute date by which the impact fees shall be expended. [Ord. 2003-4, Sec. 1]

9-2-10.9 Refunds

1. If the City fails to expend or encumber the impact fees as required by Section 9-210.8, all current owners of the property on which impact fees have been paid shall receive a pro rata refund of such impact fees. In determining whether impact fees have been expended or encumbered, impact fees shall be considered expended or encumbered on a first in, first out basis.

2. The City shall notify the owner or owners of property for which such refund may be made, by first class mail deposited with the United States Postal Service, at the last known address of such property owners.

3. In order to receive such a refund, the owner or owners of the subject property must, within twelve (12) months after the mailing of such notice by the City, make a written request for a refund to the City Council, including a certification that such person is a record owner of the property and that he or she is entitled to the refund. The City Council may rely on such certification, in the absence of a written certification by another person asserting that the proposed payee is not the proper payee. If in doubt as to whom to pay such funds, the City Council may deposit the funds with an appropriate court for disposition as the court may determine. In that event, the City may deduct from the funds deposited an amount equal to the reasonable costs, including attorney's fees, of causing the funds to be deposited with the court.

4. Any impact fees for which no application for a refund has been made within such one (1) year period shall be retained by the City and expended on appropriate planned facilities.

5. Refunds of impact fees under this Section shall include any interest earned on the impact fees by the City.

6. When the City seeks to terminate any or all components of the impact fee program, all unexpended or unencumbered impact fees from any terminated component of components, including interest earned, shall be refunded pursuant to this Section. The City shall publish notice of such termination and the availability of refunds in a newspaper of general circulation at least two (2) times and shall notify all owners of property for which a refund may be made by first class mail at the last known address of such property owners. All funds available for refund shall be retained for a period of twelve (12) months following the second publication. At the end of that period, any remaining funds shall be retained by the City, but must be expended for appropriate planned facilities. This notice requirement shall not apply if there are no unexpended or unencumbered balances within the impact fee account(s) being terminated.

7. The City shall refund to a developer any impact fees paid by that developer, plus interest earned on the impact fees, if: (a) the developer does not proceed with the development activity for which the impact fees were imposed; (b) the developer files with the City Council a written request for the refund not later than thirty (30) calendar days after the expiration of the building permit (or any extension thereof) in connection with which the impact fees were assessed; and (c) the City Council determines that no impact has resulted from the contemplated development activity.

8. The City shall charge an administrative fee for verifying and computing the refund equal to the lesser of three percent (3%) of the amount of the refund or the City's actual cost of such verification and computing. [Ord. 2003-4, Sec. 1]

9-2-10.10 Use of Funds

1. Impact fees shall be used solely for the purposes for which they were received.

2. Except as provided in Section 9-2-10.9(4) or (6), impact fees shall not be imposed to make up for deficiencies in existing facilities serving existing developments.

3. Impact fees shall not be used for maintenance or operation.

4. Impact fees may be spent for planned facilities, including but not limited to planning, land acquisition, construction, engineering, architectural, permitting, financing, and administrative expenses, mitigation costs, capital equipment pertaining to planned facilities, and any other similar expenses which can be capitalized pursuant to generally accepted accounting principles.

5. Impact fees may also be used to recoup improvement costs previously incurred by the City to the extent that new growth and development activity will be served by the previously constructed improvements or incurred costs.

6. Impact fees may be used to pay debt service on bonds or similar debt instruments issued to finance planned facilities to the extent such planned facilities serve the development activity for which the impact fees were imposed. [Ord. 2003-4, Sec. 1]

9-2-10.11 Impact Fee as Supplemental Regulation to Other Financing Methods

Except as otherwise provided herein, impact fees are in addition to any other requirements, taxes, fees, or assessments imposed by the City on development activity or the issuance of building permits or certificates of occupancy. Impact fees are intended to be consistent with the City's General Plan, Capital Facilities Plan, land development ordinances, and other City policies, ordinances and resolutions by which the City seeks to ensure the provision of capital facilities in conjunction with development activity.

In addition to the use of impact fees, the City may finance qualifying capital improvements through the issuance of bonds, the formation of assessment districts, or any other authorized mechanism, in such manner and subject to such limitations as may be provided by law. [Ord. 2003-4, Sec. 1]

9-2-10.12 Adjustments

1. The City Council may adjust the impact fees or service areas periodically, after a study and proper notice as provided in Utah Code Title 11, Chapter 36, as amended.

2. The City Council may adjust the standard impact fee in the schedule of impact fees at the time the fee is charged to:

   a. Respond to unusual circumstances in specific areas.

b. Ensure that the impact fees are imposed fairly. [Ord. 2003-4, Sec. 1]

9-2-10.13 Penalty Provision

A violation of this Chapter is a Class B misdemeanor. Upon conviction, the violator shall be punishable according to law; however, in addition to or in lieu of any criminal prosecution, the City shall have the power to sue in civil court to enforce the provisions of this Chapter. [Ord. 2003-4, Sec. 1]

CHAPTER 9-3

IRRIGATION WATER SYSTEM

9-3-1 IRRIGATION WATER DEPARTMENT

9-3-1.1 Establishment of Department

The Irrigation Water Department of Gunnison City is hereby created. It shall administer the operation and maintenance of the irrigation water system of the municipality. So far as is practically appropriate, this Department shall operate and be governed separately from the culinary water system of Gunnison City. [Ord. 1986-6 Sec.1]

9-3-1.2 Watermaster - Appointment

There is hereby created the position of Watermaster of the Pressurized Irrigation Water System. His title shall be sometimes be stated "Watermaster" to indicate and parallel the custom, usage and practice of distinguishing an irrigation water supervisor or administrator as a "watermaster" and also to distinguish his office from that of a culinary water system "superintendent". When the term "water" is used in this Ordinance including its use in the application for water revenues embodied in this Ordinance it shall be deemed to apply specifically and exclusively to irrigation water furnished under this System, except where the context indicates to the contrary, particularly but not exclusive where intermingling of culinary and irrigation water is prohibited. [Ord 1986-6 Sec.2]

9-3-1.3 Duties and Powers of Watermaster

The Watermaster of the System shall manage and supervise the System pursuant to the provisions of this Ordinance and pursuant to resolutions, rules and regulations adopted by the City Council from time to time prescribing his powers and duties and directing the manner and frequency with which he shall make reports to the Mayor relating to the water system. All of the functions and activities of the Watermaster shall be carried on under the direction of the Mayor or council member appointed by the Mayor. [Ord. 1986-6 Sec.3]

The provisions of Chapter 9-3 were adopted as Ord. 1986-6. The provisions of the Ordinance were reorganized and minor amendments added in Codification.

9-3-2 GENERAL PROVISIONS

9-3-2.1 Ownership of System

The irrigation water system constructed or otherwise acquired by the City to deliver Irrigation Water are the property of the City and shall be under the sole and exclusive control of and jurisdiction of the City. The City Council may from time to time direct the making of needed additions, improvements, alterations and repairs to said system, and may from time to time make such rules and regulations as it deems necessary for the operation and control thereof.

9-3-2.2 City to Provide Service to all Areas Served by Irrigation System - Service to Non-subscribers Permitted - Conditions

Service shall be provided to all areas of Gunnison City presently served by the Gunnison City Irrigation System. The City may provide water service to non-subscribers whose property is capable of being served by the City irrigation system subject to the following:

1. The property lies within the City limits.

2. The Council determines that there is sufficient capacity in the system to accommodate the user.

3. The user shall have satisfied the water rights conveyance requirements set forth in Section 9-3-4.3 of this Chapter. [Ord. 1986-6, Sec.20]

9-3-2.3 Unauthorized Use of Irrigation System Prohibited

It shall be unlawful for any person to utilize water from the Irrigation water system without first having made application for and obtained permission to do so in accordance with the provisions of Section 9-3-3 of this Chapter.

It shall be unlawful for any water service user to permit any person from other premises or any unauthorized person to use or obtain water service regularly from his premises or water facilities, either outside or inside his premises. [Ord. 1986-6, Sec. 22]

9-3-2.4 Repairs to Irrigation System to be Approved

It shall be unlawful for any person to lay, repair, alter or connect any water line to the municipal irrigation water system without first having obtained a construction permit from the officer or the Clerk or from the Watermaster.
[Ord. 1986-6, Sec.32]

9-3-2.5 Separate Connection Required for Each User

A water connection shall be required for each individual unit as established in Gunnison City. For the purpose of this Ordinance, an individual unit is defined as a separate residence, garden lot or tract, vacant lot or other unit for use or served by irrigation water, whether or not maintained in the same group as other units or parcels and each separate unit shall be required to pay minimum rates herein specified. [Ord. 1986-6, Sec.10]

9-3-2.6 Shared Connections Prohibited - Exceptions

It shall be unlawful for two or more families or service users to be supplied from the same service pipe, connection, riser or water outlet or discharge unless special permission for such combination usage has been granted by the City Council and the premises served are owned by the same owner. In all such cases, a failure on the part of any one of the users to comply with this section shall warrant a withholding of a supply of water through the service connections until compliance or payment has been made, and in any event, the property owner shall be primarily liable to the municipality for all water services utilized on all such premises. Nothing herein shall be deemed to preclude the power of the municipality to require separate pipes or connections at a subsequent time.[Ord 1986-6, Sec.14]

9-3-2.7 Unlimited Use of Water Permitted

Except during those times when the City Council may find that a shortage exists, no limitation shall be placed on the usage of irrigation water. [Ord. 1986-6, Sec.18]

9-3-2.8 Scarcity of Water

In times of scarcity of water, whenever it shall in the judgment of the Mayor and City Council be necessary, the mayor shall, by proclamation, limit the use of water to such extent as may be necessary. It shall be unlawful for any person, his family, servants or agents to violate any proclamation made by the mayor in pursuance of this part.
[Ord. 1986-6, Sec.30]

9-3-2.9 City Council to Determine Period of Irrigation Service

The City Council shall in consultation with the Watermaster and a designated representative of the officer of Gunnison Irrigation Company determine the dates when water shall be available through the pressurized irrigation system, and when such service shall be terminated at the end of the irrigation season. [Ord. 1986-6, Sec.19]

9-3-2.10 Waste of Water Prohibited

A. Users of water from the irrigation water system shall not permit water to continue to run wastefully and without due efforts to conserve water. If, in the judgment of the Watermaster or of any of the officers of the municipality, a user of irrigation water engages in practices which result in the needless waste of water and continues to do so after the notice to discontinue wastefulness has been given, the superintendent or any officer may refer the matter to the City Council.

B. The City Council may thereupon consider terminating the right *of* the individual to use irrigation water. If it elects to consider the matter of termination, it shall give notice to the water user of the intention to terminate his water connection at least five (5) days prior to the meeting of the City Council at which termination of water service is to be considered. The notice shall infirm him of the time and place of the meeting and of the charges which lead to the consideration of the termination.

C. A water user whose right to utilize irrigation water is being reviewed shall have opportunity to appear with or without counsel and present his reasons why his water service should not be discontinued.

D. After due hearing, the City Council may arrive at a determination. If the determination is to discontinue the wasteful water user's service connection, it shall notify him of the decision and of the period during which the service will remain discontinued.

[Ord. 1986-6, Sec.31]

9-3-3 REQUESTS FOR WATER SERVICE - EXISTING CONNECTIONS

9-3-3.1 Application for Water Service

Any person who desires or is required to secure Irrigation water service when such service is available from the municipal Irrigation water system, shall file with the irrigation water department.

1. An application for irrigation water service, to be submitted on forms furnished by the City.

2. An irrigation water use agreement whereby the applicant agrees to abide by all rules and regulations governing the use *of* the pressurized irrigation system and to pay promptly for the services received.

Upon satisfactory completion of the application process the City shall authorize use of the system and establish the account for the user. [Ord. 1986-6 Sec.?]

9-3-3.2 Non-owner Applicant - Agreement of Owner

Applications for water service made by the tenant of any owner must in addition to the above requirements be guaranteed by an agreement signed by the owner of the premises or his duly authorized agent in substantially the following form:

"In consideration of the acceptance of the application for water service submitted by _____(tenant), I or we will pay for all water services for any such tenant or any other occupant of premises in case such tenant or occupant shall fail to pay for the same according to the ordinances, rules and regulations or resolutions enacted by the municipality."

DATED this day of _____ , 19_

[Ord.1986-6, Sec.7]

9-3-4 REQUESTS FOR NEW CONNECTIONS TO SYSTEM

9-3-4.1 Application for New Connection - Single User

Any person, other than a subdivider or developer seeking multiple connections, who desires or is required to secure a new connection to the Irrigation System for a premises which has not been previously connected to the system shall be authorized to make such connection and receive service subject to:

1. Receipt of an executed connection application and agreement form, to be provided by the City.

2. Receipt of payment of the required connection fee, water rights conveyance or in-lieu payment and any other required submittal.

3. A determination by the City that there is sufficient capacity in the system at the address at which the service is being requested.

4. Compliance with the applicable provisions of Section 10-3-3.26(3) of the Development Code.

Upon completion and approval of the application the applicant shall be entitled to connect to the system and to receive service therefrom, and the City shall establish a service account for the user. [Ord. 1986-6, Sec. 4]

9-3-4.2 Application for New Connection(s) - Subdivider

Whenever a subdivider or developer desires or is required to install water connections and extensions for a subdivision or development, the subdivider or developer shall be entitled to make such extension and connections subject to:

1. Compliance with the applicable provisions of Sections 10-7-6.3 and 10-33.26(3) of the Development Code.

2. Receipt of payment of the required connection fee, water rights conveyance or in-lieu payment and any other required submittal. [Ord. 1986-6, Sec.5]

9-3-4.3 Additional Water Required for New Connections - Water Rights to be Conveyed to City - In-lieu Cash Payments Permitted - Conditions

All connections within the City limits that are not served by the irrigation water rights owned by Gunnison City shall be required to have an appropriate amount of water diverted into the system from an existing irrigation water right not presently owned by Gunnison City and the rights to said water conveyed to the City. The amount of water and water right required will be based on the total area of the property where the irrigation is to take place at a rate of one (1) share of Gunnison Irrigation Company stock per one-half acre (1/2) acre of property. In the event a sufficient water right is not available, as determined by the Council, the City may, in lieu of the conveyance of the water right, accept a cash payment in an amount equal to the then market value of the water right required. However, the City reserves the right to require conveyance of the water stock rather than the in-lieu payment. [Ord. 1986-6, Sec.20] (See also 10-3-3.26(3) of the Development Code)

9-3-5 EXTENSIONS TO SYSTEM

9-3-5.1 Extensions Permitted - Application Required

Any person or persons, including any subdivider, who desires to have the water mains extended within the municipality and is willing to advance the whole expense of such extension, may make application to the City Council by petition. The petition shall contain a description of such proposed extension accompanied by a map showing the location of the proposed extension, together with an offer to advance the whole expense thereof, which cost shall be verified by the water superintendent. The City Council may grant or deny the petition as in its discretion seems best for the welfare of existing water users in the municipality Such extension, when completed, shall become a part of the municipality's irrigation water system.
[Ord. 1986-6, Sec.33]

9-3-5.2 City to Determine Cost of Extensions - Applicant to Pre-pav - Return of Surplus Funds

Upon the receipt of such petition and map and before the petition is granted, the City Council shall obtain from the watermaster a certified statement showing the whole cost of expense of making such extensions.

If the City Council grants the petition, the amount of the cost of making the extension, as certified by the Watermaster shall be deposited with the City Recorder before any work shall be done on such extensions. The deposit shall be made within thirty (30) days, or such other items as the City Council shall indicate, after the granting thereof.

At the time the City Council decides whether or not to grant petition for an extension, it shall also decide whether or not any portion of the costs is to be refunded and the manner and circumstances under which such refund shall be made or credited to the applicant, his successors or representatives. Such determination shall be duly recorded in writing and a copy thereof furnished to the applicant. [Ord. 1986-6, Secs.34,35 &361

9-3-5.3 Ownership of Extension

Any such extension shall, upon completion of construction and acceptance by the Council, be deemed the property of the municipality. [Ord. 1986-6, Sec.37]

9-3-6 RATES AND CHARGES

9-3-6.1 Rates and Charges to be Set by Resolution

The rates, penalty fee for delinquency in payment, connection fee, reservoir fee, inspection fee, reconnection fees, and other charges incidental to the connection and services from the City's irrigation water system shall be fixed from time to time by resolution enacted by the City Council. The City council may, from time to time, promulgate rules for levying, billing, guaranteeing and collecting charges for irrigation water services and all other rules necessary for the management and control of the System. Rates for services furnished shall be uniform with respect to each class or classes of service established or that may hereafter be established. [Ord. 1986-6, Sec.8]

9-3-6.2 Disposition of Funds

All connection fees and monthly user charges collected under the provisions of this Ordinance shall be deposited in the Gunnison City Pressurized Irrigation System Fund and used to meet the operation and maintenance cost of the System; debt service on obligations appertaining to the construction of such System; the payment of actual construction costs associated with the completion of the system;

and such other allocations as the City Council may by resolution provide. [Ord. 1986-6, Sec. 39]

9-3-7 BILLING AND PAYMENT

9-3-7.1 Billing Procedure

The Recorder or Watermaster shall furnish to each user or mail to, or leave at his place of residence or usual place of business, a written or printed statement stating thereon the amount of water service charges assessed against him once each month or at such other regular intervals as the City Council shall direct. The statement shall specify the amount of the bill for the water service and the place of payment and date due. [Ord. 1986-6, Sec. 12]

9-3-7.2 Discontinuance of Water Service for Nonpayment Permitted

If any person fails to pay the water charges within thirty (30) days from the date due, the Recorder or Watermaster shall give the customer notice in writing of intention to discontinue the service to the customer unless the customer pays the bill in full within five (5) days from the date of notice. [Ord. 1994-1; Ord. 1986-6, Sec. 12]

9-3-7.3 Discontinuance of Service - Procedure for Restoration

If the irrigation water service is thereafter discontinued for failure to make payment, then before the water service to the premises shall again be provided, all delinquent water charges must have been paid to the Treasurer or arrangements made for their payment in a manner satisfactory to the municipality. In the event water is turned off for non-payment of water charges, then before the water service to the premises shall again be provided, the customer shall pay, in addition to all delinquent water charges, such extra charge for turning the water on and off as the City Council may have established by resolution. Furthermore, in addition to such payments and penalties, a delinquent customer may be required to make and file a new application and deposit if the previous deposit has theretofore been applied to the payment of delinquent bills. The Recorder is hereby authorized and empowered to enforce the payment of all delinquent water charges by an action at law in the name of Gunnison City. [Ord. 1986-6, Sec. 12]

9-3-7.4 Turning On of Water After Being Turned Off Prohibited

It shall be unlawful for any person, after the water has been turned off from the premises for non-payment of irrigation water charges or other violations of the ordinances, rules, regulations, or resolutions pertaining to the water supply, to turn on or to allow the water to be turned on or used without authority from the Watermaster or City Recorder. [Ord. 1986-6, Sec. 13]

9-3-8 OPERATION AND USE OF THE SYSTEM

9-3-8.1 Use Without Payment Prohibited

It shall be unlawful for any person by himself, family, servants or agents to utilize the irrigation water system without paying therefor, as herein provided, or without authority, to open any pipe, line, connection, stopcock, valve or other fixtures attached to the system of irrigation water supply unless it is done pursuant to proper application, agreement or resolution. [Ord. 1986-6, Sec.11]

9-3-8.2 Faulty Equipment

It shall be unlawful for any water user to:

(a) Waste water:

(b) Allow it to be wasted by stops, taps, valves, leaky joints or pipes, or to allow tanks or water troughs to leak or overflow;

(c) Wastefully run water from hydrants, faucets or stops or through basins, water closets, urinals, sinks or other apparatus:(d) Use the water for purposes other than for those which he has applied, or to use water in violation of the rules and regulations for controlling the water supply. [Ord. 1986-6, Sec.25]

9-3-8.3 Facilities to be Kept in Good Repair

All users of water service shall keep their service pipes, connections, risers and other apparatus in good repair and protected from frost at their own expense. No person except under the direction of the Watermaster shall be allowed to dig into the street fbr the purpose of laying, removing or repairing any service pipe. [Ord. 1986-6, Sec.23]

9-3-8.4 Quality of Service Pipe - Location of Lines Serving Adjoining Premises to be Approved

A. All service and other pipe used in conjunction with the water services of the municipality shall be of such material, quality, and specifications as the City Council may, from time to time by resolution, provide and shall be installed at such distances below ground as may be specified by regulations relating to the Irrigation water department as determined by the Watermaster. All work, alterations, or extensions affecting water pipes shall be subject to the acceptance of the water superintendent and no connections with any water mains shall be made without first obtaining a permit therefor from the City Recorder.

B. No consumer shall be permitted to conduct water pipes across lots or - buildings to adjoining premises without permission from the watermaster

and subject to such requirements relating to controls as may be imposed by him.
[Ord. 1986-6, Sec.24]

9-3-8.5 Injury to System Prohibited

It shall be unlawful to injure, deface or impair any part or appurtenance of the water system or to cast anything into any reservoir or facilities appurtenant or contributing to the irrigation water system. [Ord. 1986-6, Sec.ll]

9-3-8.6 Liability For Damaged Equipment

All damages or injury to the lines, meters, or other materials of the municipality on or near the customer's premises caused **by** any act or neglect of the customer shall in the discretion of the municipality be repaired by and at the expense of the customer, and the customer shall pay all costs and expenses, including a reasonable attorney's fee, which may arise or accrue to the municipality through its efforts to repair the damage to the lines, meters, or to other equipmen department or collect such costs from the customer. [Ord.1896- , Sec.21]

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9-3-8.7 Cross-Connection With Culinary System Prohibited

No interconnection, cross-connection or other joining of the culinary and irrigation systems by any existing or future water user of the City shall be permitted, and any such interconnection shall be punishable by a fine of not more than $299.00, and/or 30 days in jail and the owner of record of such property found to have such interconnection upon it shall bear all costs associated with the destruction and removal of such interconnecting device or apparatus. [Ord.1986-6, Sec.15]

9-3-8.7.1 Exceptions

a. Gunnison City water users may petition the Council to make special connections from Irrigation to Culinary water for normal residential and commercial landscaping use (lawns, small garden, etc.). Such connections are to be approved by the City Council, County Building Inspector, and City Utilities Supervisor.

b. All installation of apparatus(s) must meet the present codes: a) Utah Plumbing Code chapter 10. b) Utah Administrative Code R449-102-4. c) Public Drinking Water Regulation section 2.4.

c. The customer/user shall be required to pay for all expenses incurred in installation, maintenance, servicing, inspection, and disconnection.

Section 9-3-8.7.1 adopted by Ordinance 1992-4 Aug.14, 1992.

d. All provisions of section 1,2, and 3 are required in order to reconnect to the irrigation system.

9-3-8.8 No Open Discharge

There shall be no open discharge of water from the pressurized irrigation water system. There shall be a 3/4-inch diameter maximum size nozzle or sprinkler installed at the terminal of each connection and any discharge not out of a sprinkler or nozzle shall be a violation of this System and shall be punishable by a fine of not more than **$299.99,** and/or 30 **days in** jail and the owner of record of such property found to have any open discharge shall bear all costs required to repair or rectify the violation. [Ord. 1986-6, Sec.16]

9-3-8.9 Sprinkling Vehicles

Vehicles for sprinkling shall be regulated and controlled by the water department through the watermaster. [Ord 1986-6, Sec.26]

9-3-8.10 Department to Have Free Access

The Watermaster and his agents shall at all ordinary hours have free access to any place supplied with water service from the municipal system for the purpose of examining the apparatus and ascertaining the amount of water service being used and the manner of its use. [Ord. 1986-6, Sec.27]

9-3-8.11 City Not Liable For Damages

The municipality shall not be liable for any damage to a water service user by reason of stoppage or interruption of his or her water supply service caused by fires, scarcity of water, accidents to the water system or its mains, or which occurs **as** the result of maintenance and extension operations, or from any other unavoidable cause. This section shall not be construed to extend the liability of the municipality beyond that provided in the Governmental Immunity Act. [Ord. 1986-6, Sec.28]

9-3-8.12 Water Not Supplied to Motors and Siphon, Etc.

No water shall be supplied from the pipes of the municipal water system for the purpose of driving motor, syphon, turbine, or other wheels, or any hydraulic engines, or elevators, or for driving or propelling machinery of any kind whatsoever, nor shall any license be granted or issued for any such purpose except by special permission of the City Council. **[Ord. 1986-6, Sec.29]**

9-3-9 PENALTY

Without altering or diminishing the effect of any other sanction, penalty or consequence provided in this Chapter elsewhere, the violation of, failure to observe, or omission to comply with any provision of this Chapter shall be a Class C misdemeanor. Each day of continued violation shall be a separately punishable offense and this Section shall be in addition to any other penalty, sanction, consequence or remedy for enforcement of this Chapter.

9-3-10 IMPACT FEES

9-3-10.1 Definitions

For the purposes of this Section, the words set out in this Subsection shall have the following meanings:

1. "Act" means the Utah Impact Fees Act, Utah Code Title 11, Chapter 36, as in existence on the effective date of the ordinance codified in this Section or as hereafter amended.

2. "Building permit" means an official document or certification which is issued by the building officials of the City and which authorizes the construction, alteration, enlargement, conversion, reconstruction, remodeling, rehabilitation, erection, demolition, moving, or repair of a building or structure.

3. "Capital facilities" means the facilities or improvements included in a capital budget.

4. "City" means Gunnison, Utah.

5. "Council" means the Municipal Council of the City.

6. "Developer" means an individual, group of individuals, partnership, corporation, limited liability company, association, municipal corporation, State agency, or other person undertaking development activity, and their successors and assigns.

7. "Development activity" means any construction or expansion of a building, structure or use; any change in use of a building or structure; the subdivision of land; the seeking of plat approval; Planning Department approval, site plan approval, lot line adjustment, or conditional permit approval; or any other change in use of land that creates additional demand and need for secondary water facilities.

8. "Development approval" means any written authorization from the City, other than a building permit, which authorizes the commencement of a development activity, including, but not limited to, plat approval, Planning Department approval, site plan

approval, lot line adjustment, and a conditional use permit.

9. "Encumbered" means to reserve, set aside, or otherwise earmark impact fees in order to pay for commitments, contractual obligations, or other liabilities incurred for planned facilities.

10. "Farm system" means the system that existed before and is now separated from the pressurized irrigation facilities. The farm system will continue to supply farms to the south and east of Gunnison and most of the properties in Gunnison City that are south of the San Pitch River.

11. "Fee payer" means a person, corporation, partnership, incorporated association, or any other similar entity, or a department or bureau of any governmental entity or municipal corporation commencing a development activity which creates the demand for planned facilities and which requires the issuance of a building permit. "Fee payer" includes an applicant for an impact fee credit.

12. "Impact fee" means a payment of money imposed by the City on development activity pursuant to this Chapter as a condition of granting a building permit in order to pay for the planned facilities needed to serve new growth and development activity. "Impact fee" does not include a tax, a special assessment, a hook-up fee, a fee for project improvements, a reasonable permit or application fee, the administrative fee for collecting and handling impact fees, the cost of reviewing independent impact fee calculations, or the administrative fee required for an appeal.

13. "Impact fee account" or "account" means the account or accounts established for the planned facilities for which impact fees are collected.

14. "Net positive fiscal impact" means new revenue to the City in excess of the cost of the necessary infrastructure and municipal services attributable to a development activity.

15. "Owner" means the owner of record of real property, or a person with unrestricted written option to purchase property; provided, that if the real property is being purchased under a recorded real estate contract, the purchaser shall be considered the owner of the real property.

16. "Pressurized irrigation facilities" or "secondary irrigation facilities" means the regulating pond, pipelines, valves, air vents, and any other appurtenances that make up the Gunnison City secondary irrigation system.

17. "State" means the State of Utah. [Ord. 2004-4, Sec. 1]

9-3-10.2 <u>Applicability</u>

The collection of impact fees shall apply to all new connections to the pressurized irrigation

facilities unless otherwise provided herein. Until any impact fee required by this Section has been paid in full, no building permit for any development activity shall be issued. A stop work order shall be issued on any development activity for which the applicable impact fee has not been paid in full. [Ord. 2004-4, Sec. 1]

9-3-10.3 Service Area

1. The service areas for the impact fees are hereby established as:

   a. All of the incorporated area of the City, including future annexed area within the service area of the pressurized irrigation facilities.

   b. All of the unincorporated area that has been planned to be within the reach of the pressurized irrigation facilities.

2. Impact fees shall be assessed only on new connections within the service area.

3. The appropriateness of the designation and boundaries of the service areas shall be reviewed periodically by the City as part of the impact fee revision process. Following such review and a public hearing, the service areas may be amended. [Ord. 2004-4, Sec. 1]

9-3-10.4 Challenges and Appeals

1. a. Any fee payer that has paid an impact fee may challenge the impact fee by filing:

   (i) An appeal pursuant to Subsection (2) of this Section;

   (ii) A request for arbitration as provided in Utah Code Section 11-36-402(1), as amended; or

   (iii) An action in district court as provided in Utah Code 11-36401(4)(c)(iii), as amended.

   Such a challenge may not be initiated unless it is initiated within one (1) year after the fee payer pays the impact fee.

   b. The sole remedy for a challenge under Subsection (1)(a) of this Section shall be a refund of the difference between what the fee payer paid as an impact fee and the amount the impact fee should have been if it had been correctly calculated.

   c. Nothing in this Section shall be construed to require a fee payer to exhaust administrative remedies with the City before filing an action in district court under Subsection (1)(a) of this Section.

2. a. Any fee payer may pay the impact fees imposed by this Chapter under protest in order to obtain a building permit, and thereafter may appeal the validity of amount of such payment to the Council. Appeals regarding the impact fees imposed on any development activity may only be taken by the fee payer of the property where such development activity will occur. No appeal shall be permitted unless and until the impact fees at issue have been paid.

b. Appeals shall be made by filing a written notice of appeal with the Council, specifying the grounds thereof, and depositing with the Council an administrative fee in the amount of fifty dollars ($50.00). The appellant shall also submit, in writing, a request for information relative to the impact fee. The Council shall, within fourteen (14) calendar days after receiving the notice of appeal, hold a hearing to consider the evidence and arguments of the appellant, and shall record the hearing and retain such evidence. The Council shall issue a written decision on the appeal within thirty (30) calendar days after the date the appeal was filed.

3. If, pursuant to Utah Code Section 11-36-402 as amended, a person submits an impact fee challenge to arbitration, the City shall not agree to participate in binding arbitration. [Ord. 2004-4, Sec. 1]

9-3-10.5 Collection of Impact Fees

The impact fees for all new connections shall be calculated and collected in conjunction with the application for a building permit or an application to connect to the secondary facilities. [Ord. 2004-4, Sec. 1]

9-3-10.6 Fund Accounting for Impact Fees

1. The City shall establish a separate interest-bearing accounting fund for each type of planned facility for which an impact fee is collected. Such fees shall be invested by the City and the yield on such fees, at the actual rate of return to the City, shall be credited to such accounting fund periodically in accordance with the accounting policies of the City, subject to a deduction by the City of a reasonable cash management fee. Such funds need not be segregated from other City monies for banking purposes. Interfund loans may be made between such accounting funds.

2. Any yield on such accounting fund into which the fees are deposited shall accrue to that fund and shall be used for the purposes specified for such fund.

3. The City shall maintain and keep financial records for each accounting fund, showing the source and amount of all monies collected, earned, and received by the fund, and each expenditure from such fund, in accordance with normal City accounting practices, and at the end of the fiscal year shall prepare a report on each such fund showing such information. The records of such funds shall be open to public inspec-

tion in the same manner as other financial records of the City.

4. Impact fees shall be expended or encumbered within six (6) years after their receipt, unless the Council identifies, in writing, an extraordinary and compelling reason to hold the impact fees longer than six (6) years. Under such circumstances, the Council shall establish an absolute date by which the impact fees shall be expended. [Ord. 2004-4, Sec. 1]

9-3-10.7 Use of Funds

1. Impact fees shall be used solely for the purposes for which they were received.

2. Impact fees shall not be used for maintenance or operation.

3. Impact fees may be spent for planned facilities, including but not limited to planning, land acquisition, construction, engineering, architectural, permitting, financing, and administrative expenses, mitigation costs, capital equipment pertaining to planned facilities, and any other similar expenses which can be capitalized pursuant to generally accepted accounting principles.

4. Impact fees may also be used to recoup improvement costs previously incurred by the City to the extent that new growth and development activity will be served by the previously constructed improvements or incurred costs.

5. Impact fees may be used to pay debt service on bonds or similar debt instruments issued to finance planned facilities to the extent such planned facilities serve the development activity for which the impact fees were imposed. [Ord. 2004-4, Sec. 1]

9-3-10.8 Impact Fee as Supplemental Regulation to Other Financing Methods

Except as otherwise provided herein, impact fees are in addition to any other requirements, taxes, fees, or assessments imposed by the City on development activity or the issuance of building permits or certificates of occupancy. Impact fees are intended to be consistent with the City's General Plan, Capital Facilities Plan, land development ordinances, and other City policies, ordinances, and resolutions by which the City seeks to ensure the provision of capital facilities in conjunction with development activity.

In addition to the use of impact fees, the City may finance qualifying capital improvements through the issuance of bonds, the formation of assessment districts, or any other authorized mechanism, in such manner and subject to such limitations as may be provided by law. [Ord. 2004-4, Sec. 1]

9-3-10.9 Adjustments

1. The City Council may adjust the impact fees or service areas periodically, after a study and proper notice as provided in Utah Code Title 11, Chapter 36, as amended.

2. The City Council may adjust the standard impact fee in the schedule of impact fees at the time the fee is charged to:

   a. Respond to unusual circumstances in specific areas.

   b. Ensure that the impact fees are imposed fairly. [Ord. 2004-4, Sec. 1]

9-3-10.10 Penalty Provision

A violation of this Chapter is a Class B misdemeanor. Upon conviction, the violator shall be punishable according to law; however, in addition to or in lieu of any criminal prosecution, the City shall have the power to sue in civil court to enforce the provisions of this Chapter. [Ord. 2004-4, Sec. 1]

9-3-10.11 Impact Fee Schedule

Impact fees shall be one thousand dollars ($1,000) per acre if application is made and paid before July 1, 2004. As of July 1, 2004, the impact fee will increase to one thousand five hundred dollars ($1,500) per acre. Lots smaller than one (1) acre will pay a proportional amount of the impact fee (i.e., one-half (1/2) acre lots will be charged an impact fee of five hundred dollars ($500.00) before July 1, 2004, and seven hundred fifty dollars ($750.00) as of July 1, 2004). Impact fees may be paid in a lump sum payment or until July 1, 2004, at a twenty-one (21) year, two percent (2%) interest repayment schedule to the City. These payments will be on a monthly basis and paid to Gunnison City with the utility bill. The remaining payment may be paid off at any time without penalty. Any new properties requiring secondary water on either the farm system or the pressurized irrigation facilities will be required to pay impact fees to Gunnison City. [Ord. 2004-4, Sec. 1]

CHAPTER 9-4

STREETS AND SIDEWALKS

9-4-1 STREET DEPARTMENT

9-4-1.1 Creation of Department

There is hereby created a street department which shall consist of a superintendent and such other employees as shall be provided for by the City Council.

9-4-1.2 Duties of Superintendent

The superintendent of the street department shall be responsible for the maintenance of all street and walks in the City, for the control of all signs and other structures on public streets, except for traffic control signs and devices.

9-4-2 STREET EXCAVATIONS

9-4-2.1 Permit Required for Excavations in City Streets - Bond Required

It shall be unlawful for any person, firm or corporation to: (1) make an excavation in any street, lane or alley, (2) remove, destroy or replace any asphalt or pavement or any roadbed medium on any street, lane or alley, or (3) remove, destroy or replace any curb, gutter sidewalk or other street improvement located on any city street right-of-way or public property, without first obtaining a permit from the City Council or its designated representative.

The permit above mentioned shall be issued only upon condition that adequate security in the form of cash or bond be posted by the applicant with the City Recorder guaranteeing that all improvements and restoration will be completed by a certain date and pursuant to City standards and any conditions which may be imposed by the as part of the approval.

9-4-2.2 Safety Barricades and Lights Required - Removal Prohibited

It shall be unlawful for any person, by or for whom any excavation is made in a public street, to fail to cause a barricade, rail or other sufficient fence to be placed so as to enclose such excavation, together with any dirt, gravel or other material thrown therefrom, and to maintain such barricade during the period of time such

excavation continues. It shall be unlawful for any person to fail to have lighted lanterns or some other proper and sufficient lights fixed to parts of such barricade, or in some other proper manner over or near the excavation, and over and near the dirt, gravel or other material taken therefrom. Such lanterns or lights shall be kept lighted from the beginning of twilight through each night during which such excavation exists.

It is unlawful for any person, maliciously or wantonly and without legal cause, to extinguish, remove or diminish such lights, or to tear down or remove any rail, fence or barricade fixed in accordance with the provisions of this Section.

9-4-2.3 Failure to Restore Street Prohibited

It is unlawful for any person having made an excavation in any street, whether under a permit or otherwise, to fail, neglect or refuse, for a period of five days after notice, to restore such street to its normal condition.

9-4-2.4 Replacement of Existing Curb. Gutter and Sidewalk Improvements

Any owner of property desiring to have the curb, gutter or sidewalk contiguous to said property replaced shall submit a request therefore to the City Council. The Council may authorize the replacement of said curb, gutter or sidewalk improvements and may participate in the cost of their construction. The procedure for accomplishing construction and the terms and amounts of City participation in financing the replacement improvements shall be as established by resolution of the City Council.

9-4-3 PRIVATE STRUCTURES ON CITY STREETS PROHIBITED

No structure as hereinafter defined, used for private purposes, shall be permitted to be erected, placed or maintained on any street within the City except where such structure is of a temporary nature and shall have been first approved by the City Council. Any permit granted under this section may be revoked, altered or modified whenever the Council shall deem it to be in the best interests of the City, and it shall be unlawful for any person to fail to comply with any order or condition imposed by the City Council.

For purposes of this Section the word "Structure" shall mean and include any sign, sign post, sign board, arch, advertisement, merchandise, material, banner, rack, fence, object or similar structure erected, located, deposited, or placed above, over, in or upon any street right-of-way.

9-4-4 USE OF STREETS AND SIDEWALKS

9-4-4.1 Obstructions and Littering Prohibited

It shall be unlawful for any person to cast, place or deposit upon any street, gutter or public place the following, without permission *of* the Chief of Police or other designated representative:

1. Any broken ware, glass, rubbish, refuse matter, ice, water, mud, garbage, ashes, tin cans, or other like substances;

2. Any vehicles, lumber, wood, boxes, fences or fencing materials, dead trees, tree stumps, merchandise, or any article or thing which would obstruct such street or sidewalk or any part thereof, or obstruct the free use and enjoyment thereof, or the free passage over or upon the same, or any part thereof;

3. Any stones, gravel, sand, coal, dirt, manure, garbage, leaves, lawn or hedge clippings or rubbish of any kind, or any other substance which shall render such street unsafe or unsightly, or shall interfere with travel thereon.

9-4-4.2 Cleaning by Property Owner

It shall be unlawful for any occupant, or the owner of any property abutting on any street within the City, to neglect or fail to clean and keep clean of all weeds, ice, snow or rubbish, the sidewalks in front *of* his premises.

9-4-4.3 Discharging Water onto Sidewalks

It shall be unlawful for any person owning, occupying or having control of any premises to suffer or permit water from the roof or eaves *of* any such house, building or other structure, or from any other source under the control of such person, to be discharged and spread upon the surface of any sidewalk.

9-4-4.4 Flooding Streets and Sidewalks

Every person who wilfully, carelessly or negligently obstructs, injures or floods any street or sidewalk by the flow or seepage of water, or who wilfully, carelessly or negligently permits water under his control to escape in any manner so as to obstruct, injure or flood any street or sidewalk within the City shall be guilty of a misdemeanor.

9-4-4.5 Driving or Riding on Sidewalks Prohibited

It shall be unlawful for any person to drive a self-propelled vehicle upon any sidewalk, except across a sidewalk at established crossings.

9-4-5 REMOVAL OF SNOW AND ICE

It shall be the duty of the owner or tenant of any premises abutting or adjoining any public sidewalk to remove or cause to be removed all snow and/or ice from the sidewalk abutting such premises. It shall be unlawful for the owner, occupant, lessor or agent of any property abutting on a paved sidewalk to fail to remove, or have removed from such sidewalk all hail, snow or sleet within a reasonable time after such hail, snow or sleet has fallen.

9-4-6 PENALTY

Violation of any of the provisions of this Chapter shall be a Class C Misdemeanor.

CHAPTER 9-5

CITY CEMETERY

9-5-1 PURCHASE AND SALE OF BURIAL PRIVILEGES

9-5-1.1 Procedure for Purchase - Certificates to be Issued

All applications for the sale of burial privileges shall be made to the Sexton who shall designate the grave site(s) or lot to be sold and the price thereof then in effect. Upon receipt by the City of the full purchase price and perpetual care fee, the Sexton shall be authorized to deliver to each purchaser a CERTIFICATE OF BURIAL RIGHT showing the description of the grave site or lot(s) by lot and section, the number of grave sites purchased, the price paid and any conditions and/or restrictions as may be imposed thereon. Said certificate shall be signed by the sexton and countersigned by the City Recorder.

9-5-1.2 Nature of Title to Graves

The legal title to all property in the cemetery shall reside in the City. The purchasers of any grave site or lot within the cemetery shall acquire only the right to be buried or bury the remains of other persons and to have said grave site or lot cared f'or in accordance with City policies and rules with respect to the care and maintenance of the cemetery.

9-5-1.3 Restrictions on Resale

After the effective date of this Chapter no person who now owns fee simple title to any grave site or lot within the cemetery shall sell such grave site or lot to any buyer except the City. The *City* shall buy any vacant grave site or lot offered to it for the original selling price paid for said lot from the City or the current selling price of similar site or lot, whichever is lower. Gifts of grave sites or lots may be made by deeding the site or lot to the City with a request for reissuance to the donee together with the payment of a transfer fee. The Recorder shall thereupon issue a new certificate in the name(s) of the donee(s).

Provisions relating to the operation of the cemetery were contained in Chapter 8-200 of 1978 City Code. Substantially revised in codification.

9-5-1.4 Transfer of Burial Rights

Any person owning burial privileges in any grave site or lot in the cemetery may transfer such rights to another person by first depositing the certificate of *such* burial privileges with the City Recorder together with a fee in such amount as may be set by resolution of the City Council and instructions to reissue said certificate to the transferee. Such transfer may be made with or without consideration.

9-5-1.5 Sale Subject to Rules

Burial privileges sold are subject to the rules and regulations set forth in this Chapter and such rules and regulations as may hereafter be adopted by the City for the protection of lot owners, and those holding burial rights and the remains of the dead.

9-5-2 DIVISION OF CEMETERY - MONUMENTS - DECORATION OF GRAVES

9-5-2.1 Division of Cemetery into Sections

For purposes of facilitating the sale of burial rights and to assist in the enforcement of regulations relating to the placement of monuments, the City cemetery may be divided into Sections. The boundaries of each section and the location of each grave site within the cemetery shall be as set forth on the official map of the cemetery on file in the office of the Sexton.

9-5-2.2 Placement of Monuments and Markers

All headstones, monuments or other markers shall consist of granite or other durable material approved by the Sexton and shall be placed on a concrete foundation of sufficient size and depth to support the same. All such foundation structures shall be approved by the Sexton prior to commencing construction thereof.

9-5-2.3 Private Additions to Cemetery Grounds

It shall be unlawful for any person to erect or maintain any fence, corner posts, coping hedge or boundary of any kind upon any grave site, lot or lots, street, alley or walk in the cemetery or grade the ground or land thereof. The Sexton shall, whenever required, furnish the true lines of any lots according to official survey, and shall prevent and prohibit any marking of the same except by official land marks and shall prevent and prohibit any grading thereof that might destroy or interfere with the general slope of the land.

9-5-2.4 Plants and Flowers

No shrubbery, vines, trees, flowers or other plants shall be planted in any part of the cemetery, without the consent and except under the direction of the sexton, who shall have sole charge of all planting, under supervision of the City Council. Cut flowers may be placed upon graves provided the owner of said graves provides suitable flower containers embedded even with the sod line which will not interfere with mowing operations, said containers to be approved in advance by the sexton.

9-5-3 BURIALS AND DISINTERMENTS

9-5-3.1 Only Humans to be Buried

There shall be no interment or burial of anything other than the remains of human bodies in the City Cemetery and no interment of any deceased human shall be made in any place within the City limits other than the City cemetery.

9-5-3.2 Burial Permit - Required

It shall be unlawful for any person to bury the body of a deceased person in the cemetery without first obtaining written or verbal authorization from the Sexton and paying the required grave opening fee. No such authorization shall be issued by the City except to the owner of a lot or "Certificate of Burial Right" to the grave site proposed to be used, as applicable, or to the holder of a written permit, signed by the owner or nearest living relative, authorizing the use of such grave site.

9-5-3.3 City to be Notified

All persons in charge of bodies to be buried in the cemetery must make the necessary arrangements for the opening of graves, time of arrival at the cemetery, supplier of vault and other pertinent matters at least 48 hours prior to any burial. Families desiring to purchase grave space for any burial must contact the Sexton at least 48 hours prior to burial time.

9-5-3.4 Vaults Required

It shall be unlawful for any person to be buried in the cemetery unless the casket shall be placed in a concrete, fiberglass or steel vault substantially constructed and covered with a substantial concrete, fiberglass or steel top or lid. All lots and graves marked or sold hereafter shall be of sufficient size to accept a vault.

9-5-3.5 Disinterments

It shall be unlawful for any person to disinter any body buried in the cemetery except under the direction of the Sexton; and before disinterment of any body, the sexton shall require a permit from the County or State Health Department and a written order from the owner of the lot, authorizing such disinterment, which order shall be filed and preserved and all such removals shall be recorded in a book kept for that purpose. It shall be unlawful for any person to remove the body of a person who died from a contagious disease within two years from the date of burial, unless such body has been buried in a hermetically sealed coffin and is found to be so encased.

9-5-3.6 Registration of Burials

The Sexton shall be the registrar of burial for the City and shall be responsible for compliance with the procedures and conditions of State law and this Chapter with respect to interments, disinterments and the keeping and submission of records.

9-5-3.7 Burial of Indigent

The Sexton with the advice and consent of the City Council may designate a portion of the cemetery for the burial of indigent. Whenever it is made to appear to the Mayor that any person who has died does not have an estate sufficient to pay the purchase price of a grave site in the cemetery and the nearest relative or representative of such deceased person desires to have the body interred in the cemetery, the Sexton may grant burial space for such deceased person upon written request of the next of kin.

9-5-4 MANAGEMENT OF CEMETERY

9-5-4.1 Sexton Appointed - Duties

The Mayor, subject to the advice and consent of the City Council, shall designate a person to act as Sexton. The person so appointed shall be responsible for the opening and closing of grave sites, the prevention of destruction or defacing any marker placed within the cemetery, the proper care and maintenance of cemetery facilities, the enforcement of adopted rules and regulations regarding the erection of markers, fences and other obstructions and such other duties as set forth in this Chapter or as may be assigned by the Mayor or Council.

9-5-4.2 Sexton to Maintain Records

The Sexton shall keep a record of all certificates issued for the sale of lots or parts thereof and shall maintain and keep current a plat showing the description of all lots, and where applicable, the owner thereof, as part of the records of his office.

9-5-4.3 Rules and Regulations

The Sexton may, from time to time, with the advice and consent of the City Council make such additional rules and regulations as he shall deem necessary and proper for the administration of the cemetery. Such rules and regulations shall not become effective until approved by resolution of the City Council and a copy of said rules and regulations must be available for review by the public at all times with both the Sexton and the City Recorder.

9-5-4.4 Right to Maintain Reserved by City

The City rei . ves the right to enter upon any grave and to perform all work necessary for the care and upkeep of all lots and graves in the cemetery.

9-5-4.5 Disclaimer of City Liability for Grave Openings

Under no circumstances will the City assume responsibility for errors in opening graves when orders are given by telephone.

9-5-4.6 Children

Children under the age of 12 years shall not be allowed in the cemetery unless accompanied by parents or other responsible adults.

9-5-4.7 Animals Prohibited

No animals shall be allowed in the cemetery at any time.

9-5-5 PERPETUAL CARE FUND

9-5-5.1 Perpetual Care Fund Established - Payment of Perpetual Care Fee Required

There is established a perpetual care and maintenance trust fund for the benefit o the City cemetery. The trust fund shall consist of all payments received by the City for perpetual care and maintenance of cemetery lots and such other sums as may be received as gifts or as may be directed to be paid into such fund by the City Council. The purchase price of each grave site or lot shall include therein a perpetual care fee in an amount to be set by resolution by the Council, which fee shall immediately upon payment be recorded and deposited in the trust fund.

9-5-5.2 Perpetual Care Fund to be Invested

Such cemetery trust funds shall be invested in such manner as the City Council deems advisable and may be commingled for investment if the income therefrom is divided in the proportion that each invested fund contributed to the sum invested.

The income from the cemetery trust fund shall be used solely for the general care, maintenance, and embellishment of the City's cemetery in such manner as the City Council may from time to time determine to be in the best interest of the cemetery. Monies deposited in the fund shall not be invaded or withdrawn from the fund except as provided in Section 10-6-131 of the Uniform Fiscal Procedures Act. (UCA 10-8-62)

9-5-5.3 Perpetual Care - Lot Maintenance

Once such fees have been paid, the City shall then and forever, at its own expense, care for, maintain and furnish water for the purchased burial sites and to retain the same in grass or some other type of appropriate vegetation.

9-5-6 DEFINITIONS

1. Sexton "Sexton" means the keeper of the cemetery as appointed by the Mayor with the advice and consent of the City Council, provided, where no sexton has been so appointed, it shall mean the City Council cemetery representative.

2. Cemetery "Cemetery" means any cemetery owned and/or maintained by the City for the purpose of receiving the remains of deceased human beings.

3. Lot Owner, Grave Owner, Owner, or Purchaser "Lot owner", "grave owner", "owner", or "purchaser" means the owner or purchaser of burial rights to any grave site and/or lot, as evidenced by a certificate for said site or lot or by proved and recognized descent or devise from the original owner or by certificate issued by the City.

4. Lot "Lot" means an area in the cemetery designated by the sexton which contains either four or eight grave spaces.

5. Care and Maintenance "Care and Maintenance" means the general care and upkeep provided by the City for the cemetery including mowing of all lots and graves at reasonable intervals, also resodding, seeding and filling in of sunken graves, sodding of the surface of graves to level, removal of dead flowers and other decorations, trimming of trees and shrubbery where necessary, raking and cleaning lots, straightening of titled stones or markers, and watering of the sod and shrubbery. Care and Maintenance does not include the repair or replacement of markers or memorial structures of any kind except where the need for repair or replacement is the fault of the City.

9-5-7 MISCELLANEOUS PROVISIONS - PENALTY

9-5-7.1 Injury to Tombstone or Other Property Prohibited

It shall be unlawful for any person to injure, molest, or deface any such monument, headstone, curb, fence, tree, shrub flower or any property in the City cemetery.

It shall be unlawful for any person to remove or disturb any monument, headstone, curbing, fence, tree, shrub, flower or any property in the City cemetery without authority from the Sexton.

9-5-7.2 Fees and Charges

The City Council shall by resolution establish fees and charges for the sale of burial privileges, grave opening and closing, disinterment, transfer of burial privileges and other fees applicable to the operation of the cemetery.

9-5-7.3 Abandoned Lots

The remedy of forfeiture, for lots which have been abandoned by their owners shall be governed by the applicable provisions of Section 8-5-1 et. seq. Utah Code Annotated, which provisions are hereby adopted by reference.

9-5-7.4 Council May Establish Times of Operation

The Council may, by resolution, establish times of opening and closing for the cemetery and shall provide notice of such times at all entrances to the cemetery. Access to the cemetery at times other than when listed as "open", without the prior consent of the sexton shall be considered a violation of this Chapter

9-5-7.5 ' Penalty

Violation of the provisions of this Chapter shall be a Class B Misdemeanor.

CHAPTER 9-6

DRINKING WATER PROTECTION PLAN

9-6-1 SHORT TITLE AND PURPOSE

1. This Chapter shall be known as the "Drinking Water Source Protection Ordinance."

2. The purpose of this Chapter is to ensure the provision of a safe and sanitary drinking water supply for the Gunnison City water system by the establishment of drinking water source protection zones surrounding the wellhead/springhead for all wells/ springs which are the supply sources for the Gunnison City water system and by the designation and regulation of property uses and conditions which may be maintained within such zones. [Ord. 2002-2, Sec. 1]

9-6-2 DEFINITIONS

When used in this Chapter the following words and phrases shall have the meanings given in this Section:

1. "Design standard" means a control which is implemented by a potential contamination source to prevent discharges to the groundwater. Spill protection is an example of a design standard.

2. "Land management strategies" means zoning and non-zoning controls which include, but are not limited to, the following: zoning and subdivision ordinances, site plan reviews, design and operating standards, source prohibitions, purchase of property and development rights, public education programs, groundwater monitoring, household hazardous waste collection programs, water conservation programs, memoranda of understanding, written contracts and agreements, and so forth.

3. "Pollution source" means point source discharges of contaminants to groundwater or potential discharges of the liquid forms of "extremely hazardous substances" which are stored in containers in excess of "applicable threshold planning quantities" as specified in SARA Title III. Examples of possible pollution sources include, but are not limited, to the following: storage facilities that store the liquid forms of extremely hazardous substances, septic tanks, drain fields, Class V underground injection wells, landfills, open dumps, landfilling of sludge and septage, manure piles, salt piles, pit privies, and animal feeding operations with more than ten (10) animal units. The following clarify the definition of pollution source:

   a. "Animal feeding operation" means a lot or facility where the following conditions are met: animals have been or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12)

month period, and crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. Two (2) or more animal feeding operations under common ownership are considered to be a single feeding operation if they adjoin each other, if they use a common area, or if they use a common system for the disposal of wastes.

b. "Animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over fifty-five (55) pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

c. "Extremely hazardous substances" means those substances which are identified in the Sec. 302 (EHS) column of the "Title III List of Lists – Consolidated List of Chemicals Subject to Reporting Under SARA Title III." (EPA 560/4-91-011)

4. "Potential contamination source" means any facility or site, which employs an activity or procedure, which may potentially contaminate groundwater. A pollution source is also a potential contamination source.

5. "Regulatory agency" means any governmental agency with jurisdiction over hazardous waste as defined herein.

6. "Sanitary landfill" means a disposal site where solid wastes, including putrescible wastes, or hazardous wastes, are disposed of on land by placing earth cover thereon.

7. "Septic tank/drain-field systems" means a system which is comprised of a septic tank and a drain-field which accepts domestic wastewater from buildings or facilities for subsurface treatment and disposal. By their design, septic tank/drain-field system discharges cannot be controlled with design standards.

8. "Wellhead/springhead" means the upper terminal of a well/spring, including adapters, ports, seals, valves, and other attachments. [Ord. 2002-2, Sec. 2]

9-6-3 ESTABLISHMENT OF DRINKING WATER SOURCE PROTECTION ZONES

There are hereby established use districts to be known as zones one, two, three, and four of the drinking water source protection area, identified and described as follows:

1. Zone one is the area within a one hundred (100) foot radius from the wellhead or springhead.

2. Zone two is the area within a two hundred fifty (250) day groundwater time of travel to the wellhead or springhead, the boundary of the aquifer(s) which supplies water to the groundwater source, the boundary of the management area, or the groundwater divide, whichever is closer.

3. Zone three is the area within a three (3) year groundwater time of travel to the wellhead or springhead, or margin of the collection area, the boundary of the aquifer(s) which supplies water to the groundwater source, or the groundwater divide, whichever is closer.

4. Zone four is the area within a fifteen (15) year groundwater time of travel to the wellhead or springhead, the boundary of the aquifer(s) which supplies water to the groundwater source, or the groundwater divide, whichever is closer. [Ord. 2002-2, Sec. 3]

9-6-4 PERMITTED USES

The following uses shall be permitted within drinking water source protection zones:

1. Any use permitted within existing agricultural, single family residential, multi-family residential, and commercial districts so long as uses conform to the rules and regulations of the regulatory agencies.

2. Any other open land use where any building located on the property is incidental and accessory to the primary open land use. [Ord. 2002-2, Sec. 4]

9-6-5 PROHIBITED USES

The following uses or conditions shall be and are hereby prohibited within drinking water source protection zones, whether or not such use or condition may otherwise be ordinarily included as a part of a use permitted under Section 9-6-4:

1. Zone One. The location of any pollution source as defined herein.

2. Zone Two. The location of a pollution source unless its contaminated discharges can be controlled with design standards.

3. Zones Three and Four. The location of a potential contamination source unless it can be controlled through land management strategies. [Ord. 2002-2, Sec. 5]

9-6-6 ADMINISTRATION

The policies and procedures for administration of any source protection zone established

under this Chapter, including without limitation those applicable to nonconforming uses, exceptions, enforcement and penalties, shall be the same as provided in the existing zone ordinance for the County of Sanpete, as the same is presently enacted or may from time to time be amended. [Ord. 2002-2, Sec. 6]

TITLE X

DEVELOPMENT CODE

Chapter	10-1	Title, Intent and Purpose,	**10-1**
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CHAPTER 10-1

TITLE - INTENT AND PURPOSE - INTERPRETATION

10-1-1 TITLE

This ordinance shall be entitled, and known as THE DEVELOPMENT CODE OF GUNNISON CITY, UTAH, and may be so cited and pleaded.

10-1-2 INTENT AND PURPOSE

It is the intent and purpose of the City Council of Gunnison City, Utah to avail itself of the powers granted under 10-9-1 to 10-9-30; 57-5-1 et.seq., 57-8-35; and 10-2-401 et. seq. Utah Code Annotated, 1953, as amended, in a manner that will promote the health, safety, morals, convenience, order, prosperity, and general welfare of the present and future inhabitants of the City, and to this end:

1. To encourage and facilitate orderly growth and development within the City.
2. To secure economy in municipal expenditures and to facilitate adequate provision for transportation, water, sewage, parks, schools and other public requirements.
3. To lessen congestion in the streets, prevent the overcrowding of land, and provide adequate light and air.
4. To secure safety from fires, floods, traffic hazards, and other dangers.
5. To stabilize and improve property values.
6. To protect the tax base.
7. To promote the development of a more attractive, wholesome and serviceable city.
8. To create conditions favorable to prosperity, civic activities, and recreational, educational, and cultural opportunities.

10-1-3 INTERPRETATION

In interpreting and applying the Development Code, the provisions thereof shall be held to be the minimum requirements needed to promote the public health, safety, morals, convenience, order

Development Code adopted as Ord. 90-1. Incorporated into Municipal Code without change.

prosperity, and general welfare of the present and future inhabitants of the City. Where the provisions of the Code impose a greater restriction than is required by any ordinance, code, regulation, standard or other provisions of law or by any easement, covenant or private agreement, the provisions of the Code shall govern.

CHAPTER 10-2

MUNICIPAL PLANNING

10-2-1 CITY COUNCIL - POWERS AND DUTIES WITH RESPECT TO PLANNING

10-2-1.1 Appointments

1. Planning Commission
   The Mayor, with the advice and consent of the Council shall appoint a Planning Commission for the City of Gunnison. The number of members, terms of office, mode of appointment and other details relating to the organization and procedure of the Commission shall be as set forth under Chapter 10.03 of this Title. (UCA 10-9-19 and 10-9-4)

2. Board of Adjustment
   The Mayor, with the advice and consent of the Council shall appoint a Board of Adjustment, the number of members, terms of office, and other details relating to powers and duties of said Board shall be the same as set forth under Chapter 10.04 of this Title. The City Council may also fix per diem compensation for members of the Board of Adjustment based on necessary and reasonable expenses and meetings actually attended. (UCA 10-9-6 and 10-9-18)

3. Zoning Administrator
   The City Council may appoint and fix compensation for a Zoning Administrator. The powers and duties of said administrator shall be the same as set forth under Chapter 10.05 of this Title. (UCA 10-9-8 and 10-9-18)

10-2-1.2 Adoption of Comprehensive Plan - Effect of Adoption

The City Council may adopt a comprehensive plan of the City or any part thereof.

Upon the adoption of such plan any acceptance, widening, removal, extension, relocation, narrowing, vacation, abandonment, change of use, acquisition of land for, or sale or lease of any street or other public way, ground, place, property, or structure; or any authorization or construction of any street, park or other public way, ground, place or space, or any public building or structure, or public utility, whether publicly or privately owned, shall either (1) conform to said plan, as to the location and extent thereof, or (2) shall have been submitted to and approved by

the Planning Commission, or in the instance of a disapproval by such Commission, overruled by the Council, all in accordance with the Section 10-9-21 Utah Code Annotated. (UCA 10-9-21)

10-2-1.3 Adoption and Implementation of Official Map

The City Council may establish an official map of streets for the whole or any part or parts *of* the City and may adopt such map by ordinance. The content of such map and all actions relating to the preparation, adoption and enforcement shall be in accordance with Sections 10-9-23 and 10-9-24, Utah Code Annotated, and any other applicable provisions *of* State Law. (UCA 10-9-23 & 10-9-24)

10-2-1.4 Adoption and Administration of Zoning Regulations

The City Council, upon: (1) the receipt of proposed regulations for the zoning of the City (and any subsequent amendment to such regulations) from the Planning Commission, and (2) the holding of a public hearing thereon in accordance with the provisions *of* UCA 10-9-5, may, by ordinance, enact zoning regulations within the City for the purpose of promoting health, safety, morals, and the general welfare of the community.

Such regulations shall be made in accordance with a Comprehensive Zoning Plan designed to lessen congestion in the streets, to secure safety from fire, panic and other danger, to promote health and the general welfare, to encourage energy efficient patterns of development, the use of energy conservation, solar, and renewable energy sources, and to assure access to sunlight for solar energy devices, to provide adequate light and air, to prevent the overcrowding of land, to avoid undue concentration *of* population, to facilitate adequate provision for transportation, water, sewage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, to the character *of* the zone and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the City.

In order to accomplish the above stated purposes the zoning ordinance may divide the City into districts or zones and may regulate the location and use *of* buildings, structures, and land for trade, industry, residence, or other purposes, the erection, construction or reconstruction of buildings and structures, the height, number *of* stories and size of buildings and other structures, the height and location of trees and other vegetation, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population and such other characteristics as may be permitted by law. Thereafter all construction or change in use of land or buildings shall conform with the applicable provisions of the adopted ordinance. (UCA 10-9-1, 10-9-2, 10-9-3 & 10-9-4)

10-2-1.5 Adoption and Administration of Subdivision Regulations

The City Council, upon: (1) the receipt of proposed regulations governing the subdivision of land (and any subsequent amendment to such regulations) from the Planning Commission, and (2) the holding of a public hearing thereon, may adopt said regulations for the municipality by ordinance.

Thereafter, no plat of a subdivision of land within the City shall be filed or recorded until it shall have been submitted to and approved by the City Council, in accordance with the terms *of* said subdivision regulations, and such approval entered in writing on the plat. The approval by the City Council shall be in addition to that required by the Planning Commission. The filing or recording of a plat of a subdivision without such approval shall be null and void and the sale of lots in any such unapproved subdivision shall be considered a violation for each lot sold. (UCA 10-9-25 and 10-9-26)

10-2-1.6 Adoption and Administration *of* Regulations Relating to Condominium Projects

Upon receipt of proposed condominium regulations as prepared by the Planning Commission, the City Council may adopt such regulations by ordinance.

No condominium project or any record *of* survey map, declaration or other required material shall be recorded until it shall have been submitted to and approved by the City Council. The approval by the City Council shall be in addition to the approval required by the Planning Commission. (UCA 57-8-35)

10-2-1.7 Enforcement of Development Regulations

The City Council shall have the authority and responsibility for ensuring compliance with the adopted zoning, subdivision and official map ordinances, and in carrying out such responsibility may:

1. Withhold the issuance of building permits when the proposed development is not in conformance with the adopted regulations (UCA 10-9-18)

2. Prosecute any violation *of* such regulations as a misdemeanor. (UCA 10-9-30)

3. Institute injunction, mandamus, abatement or any other appropriate action to prevent, enjoin, abate, or remove any unlawful building, use or act. (UCA 10-9-30)

10-2-2 PLANNING COMMISSION

10-2-2.1 Establishment - Composition - Appointment of Members

Pursuant to authority granted in Title 10-9-19 UCA 1953, as amended, the City Council hereby creates a Planning Commission within and for the City to be known as the Gunnison City Planning Commission. The Planning Commission shall consist of five (5) regular members and up to two (2) alternate members. One regular member shall be appointed by the City Council from its own members, with the remaining regular and alternate members to be appointed by the mayor with the advice and consent of the City Council from among the residents of the City. The members shall be selected without respect to political affiliations and shall serve without compensation except for reasonable expenses. (UCA 10-9-19)

10-2-2.2 Terms of Office of Members - Filling Vacancies - Removal of Members

The term of office of the City Council representative shall be as determined by action of the Council.

The terms of the appointive members shall be for four (4) years and until their successors have been appointed, provided that the terms of the members holding office at the time of passage of this Code shall be arranged such that the term of one (1) member shall expire each year. Appointments made thereafter will be made for a full three year term.

The terms of the alternate members shall be for a period of one (1) year and until their successors have been appointed. Alternate members shall be designated as first and second alternate, in accordance with their respective time of appointment.

Vacancies occurring otherwise than through the expiration of terms shall be filled for the remainder of the unexpired term.

Members may be removed after a public hearing by a majority vote of the City Council.

10-2-2.3 Organization - Adoption of Rules - Record of Proceedings

At the first meeting of each year the Planning Commission shall elect from its membership a Chairman who shall serve for a term of one (1) year and until a new chairman is elected. It shall be the duty of the Chairman to preside over and conduct all meetings of the Commission. The Chairman, with the consent of the Commission, shall make such assignments and delegations to the members of the Commission and the staff and consultants as are deemed necessary or desirable for the carrying out of the Commission's business.

The Commission shall adopt rules for its own organization and for the transaction of its business not in conflict with this section or other ordinances, and shall keep an accurate record of disposition of all matters coming before it.

10-2-2.4 Quorum Defined - Minimum Vote Required - When Alternate Members to Act

A minimum of four (4) regular and/or alternate members in attendance at the meeting is required to constitute a quorum. The minimum number of "yes" votes necessary to carry an action of the Commission shall be a majority of the members of the quorum in attendance, but shall never be less than three (3).

All regular members shall be entitled to vote on matters coming before the Commission. Alternate members shall be designated to sit as voting members of the Commission at any time one or more regular members are absent from the meeting. The designation of the alternate member to voting status shall be made by the chairman at the commencement of the meeting in accordance with the seniority of the alternate members in attendance at the time, and any alternate so designated shall serve as a voting members until the conclusion of the meeting. If during the course of a meeting the number of voting members and alternate members designated to voting status in attendance exceeds five (5) the membership of the Commission shall, until the conclusion of the meeting, be expanded to the number of voting members and designated alternate members in attendance.

10-2-2.5 Employees - Expenditures

The Planning Commission may appoint such other employees and staff as it may deem necessary for its work and may contract with city planners and other consultants provided its expenditures, exclusive of gifts, shall be within the amounts appropriated for that purpose by the City Council.

10-2-2.6 Duties and Powers

The City Planning Commission shall have such powers as may be necessary to enable it to perform its functions and promote municipal planning as follows:

1. Preparation of Comprehensive Plan
It shall be the function and duty of the Planning Commission, after holding public hearings, to make and adopt and certify
to the City Council, a Comprehensive Plan for the physical development of the City including any areas outside of its boundaries which, in the Commission's judgement, bear relation to the planning of the City. The Comprehensive Plan, with the accompanying maps, plats, charts and descriptive and explanatory matter, shall show the Planning Commission's recommendations for the physical development of the City and may include among other things, the general location and extent of street and other

methods of circulation and transportation; the general location and extent of public utilities for water, power, sanitation, or other purposes; the general location and extent of parks, playgrounds, and drainage facilities; and the use of land whether for residences, commerce, industry, agriculture, flood channels, or open space. (UCA 10-9-20)

2. Prepare Reports and Recommendations. Entry Upon Land
The Planning Commission may make reports and recommendations relating to the plan and development of the City to public officials and agencies, other organizations and citizens. It may recommend to the executive or legislative officials, programs for public improvements and the financing thereof. The Planning Commission, its members, and employees, in the performance of its functions, may enter upon any land at reasonable times to make examinations and surveys and place and maintain necessary monuments and marks thereon.
(UCA 10-9-22)

3. Regulations Governing Subdivision of Land
It shall be the duty of the Planning Commission to prepare regulations governing the subdivision of land within the City or amendment to such regulations and to submit said regulations or amendments to the City Council for public hearing and adoption. (UCA 10-9-25)

4. Approve Subdivision Plans and Plats
It shall be the duty of the Planning Commission to review and approve all subdivision developments. No plat of a subdivision of land within the City shall be filed or recorded in the County Recorder's Office until it shall have been submitted to and approved by the Planning Commission and such approval entered in writing on the plat. The approval by the Planning Commission shall be in addition to the approval required from the City Council. The filing or recording of a plat of a subdivision without approval of the Planning Commission shall be null and void and the sale of lots in any such unapproved subdivision shall be considered a violation of the subdivision ordinance for each lot sold.
(UCA 10-9-25, 10-9-26 and 10-9-30)

5. Prepare and Recommend Amendments to the Zoning Regulations The Planning Commission through its own initiative, may, or upon receipt of a petition from an affected property owner, or by order of the City Council, shall make and certify to the City Council recommendations for the amendment of the zoning regulations and map. No amendment to the text or map may be adopted by the City Council unless the Planning Commission has reviewed and made recommendations to the Council regarding that amendment. The Planning Commission shall have thirty (30) days from the date the request is made to the Chairman to respond to any request from the Council for recommendation.
(UCA 10-9-4 and 10-9-5)

6. Preparation of Regulations Governing Condominium Developments The Planning Commission shall prepare regulations governing the approval, construction and maintenance of condominium projects, or amendments to such regulations and shall submit said regulations to the City Council for adoption.
(UCA 57-8-35)

7. Review and Approval of Condominium Projects
It shall be the duty of the Planning Commission to review and approve all condominium projects. The filing or recording of any record of survey map, declaration or other material for condominium projects, without such approval, shall be null and void. The approval by the Planning Commission shall be in addition to the approval from the City Council.

8. Preparation of a Capital Improvement Program
The Planning Commission through its own initiative may, or by order of the City Council shall, make and recommend to the City Council a capital improvement program which shall set forth an orderly program for the acquisition of land, and/or the construction of buildings, utilities and other facilities needed for City purposes. (UCA 10-9-22)

9. Conducting Hearings and Meetings
The Planning Commission may conduct hearings and meetings with interested property owners, officials and citizens in the process of carrying out the functions and duties of their office. (UCA 10-9-22)

10-2-3 BOARD OF ADJUSTMENT

10-2-3.1 Establishment - Appointment - Composition - Vacancies

Pursuant to authority granted in Title 10-9-6 UCA 1953, as amended, the City Council hereby creates a Board of Adjustment within and fbr the City. Said Board of Adjustment shall consist of five members and such alternate members as the mayor with the advice and consent of the Council deems appropriate, each to be appointed by the mayor with the advice and consent of the Council fbr a term of five years, provided that the terms of the members appointed shall be such that the term of one member shall expire each year. Alternate members shall serve in the absence of a member under rules established by the Council. Provided that no more than two alternate members shall sit at any meeting of the board at any one time. One member, but not more than one member of the Planning Commission shall be a member of the Board of Adjustment. Any member of the Board of Adjustment may be removed for cause by the City Council upon written charges and after public hearing, if such public hearing is requested by the member. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. (UCA 10-9-7)

10-2-3.2 Organization of Board - Meetings - Duties of Members

The Board of Adjustment shall organize and elect a chairman and adopt rules for its proceedings. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine.

The chairman or, in his absence, the acting chairman may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote indicating such fact, and shall keep records of its examinations and other official actions; all of which shall be immediately filed in the office of the board and shall be public record. (UCA 10-9-8)

10-2-3.3 Powers and Duties of Board

The Board of Adjustment shall have the following powers:

1. Appeal of an Administrative Ruling
   To hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination made by the Zoning Administrator or other official responsible for the enforcement of the zoning regulations.

2. Special Exception
To hear and decide appeals for approval of special exceptions to the terms of the zoning regulations. The Board shall not authorize a special exception unless specifically granted authority to do so under the terms of the zoning regulations.

3. Variances
To authorize upon appeal such variance from the terms of the zoning regulations as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the applicable provision will result in unnecessary hardship; provided that the spirit of the ordinance shall be observed and substantial justice done. Before any variance may be authorized, however, it shall be shown that:

A. The variance will not substantially affect the Comprehensive Plan or zoning regulations of the City and that adherence to the strict letter of the zoning regulations will cause difficulties and hardships, the imposition of which upon the petitioner is unnecessary in order to carry out the general purpose of the plan.

B. There are special circumstances attached to the property covered by the application which do not generally apply to the other property in the same zone.

C. That because of said special circumstances, the property covered by the application is deprived of privileges possessed by other properties in the same zone; and that the granting of the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone. (UCA 10-9-12)

4. Interpretation of Text or Map
To make, upon appeal, an interpretation of the zone map regarding the location of zone boundary lines, or decide the meaning of disputed terms or phrases within the text of the zoning regulations.

5. Approval of Building Permit Within Proposed Street on Official Map.
To authorize upon appeal the grant of a permit for a building or structure or part thereof within any mapped street location in any case in which the Board of Adjustment, upon the evidence, finds:

A. That the property of the appellant of which such mapped street location forms a part, will not yield a reasonable return to the owner unless such permit be granted, or

B. That, balancing of interest of the City in preserving the integrity of the official map and the interest of the owner in the use and benefits

of the property, the grant of such permit is required by consideration of justice and equity.

In the event that the Board of Adjustment decides to authorize a building permit, it shall have the power to specify the exact location, ground area, height, and other details and conditions of extent and character and also the duration of the building, structure, or part thereof to be permitted. (UCA 10-9-24)

10-2-3.4 Power of Board Limited

The Powers and duties of the Board are limited to the judicial and administrative actions specifically authorized in the zoning regulations. The Board shall not have the authority to amend this ordinance or to act outside the rules governing the activities of the Board as set forth in the zoning regulations; and all decisions shall be made in such a way so as not to destroy the intent and purpose of the ordinance.

10-2-3.5 Appeals to the Board -Time Limit - Persons Entitled to Appeal - Transmission of Records

Any person, organization, corporation or unit or department of government which has been aggrieved by a decision allegedly made in error by the Zoning Administrator or is requesting approval of a special exception, variance or other action upon which the Board is authorized to act may do so by filing a formal request in writing with the Board; Provided, any appeal from a decision made by the Zoning Administrator shall be made by filing an application with the Board within a period not to exceed forty-five (45) days from the date of the contested action. (UCA 20-9-9)

10-2-3.6 Stay of Proceedings Pending Appeal

An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board of Adjustment after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause eminent peril of life or property. In such case proceedings shall not be stayed otherwise than by restraining order which may be granted by the Board of Adjustment or by the District Court on application and notice and on due cause shown. (UCA 10-9-10)

10-2-3.7 Notice of Appeal - Right of Appearance

The Board of Adjustment shall fix a reasonable time for the hearing of the appeal or request, give public notice thereof as well as due notice to the parties in interest, and shall decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney. (UCA 10-9-11)

10-2-3.8 Decision on Appeal

In exercising the above-mentioned powers such board may, in conformity with the provisions of the zoning regulations, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers *of* the Zoning Administrator and such other powers as herein provided. (UCA 10-9-13)

10-2-3.9 Vote Necessary for Reversal

The concurring vote of three members of the hoard shall be necessary to reverse any order, requirement, or determination of any such administrative official, or to decide in favor of the appellant on any matter upon which it is required to pass under any such Ordinance, or to affect any variation in the provision of such regulations. (UCA 10-9-14)

10-2-3.10 Judicial Review of Board Decisions

The City or any person aggrieved by any decision of the Board of Adjustment may have and maintain a plenary action for relief therefrom in any court of competent jurisdiction; provided petition for such relief is presented to the court within thirty days after the filing of such decision in the office of the Board.
(UCA 10-9-15)

1.0-2-4 ZONING ADMINISTRATOR

10-2-4.1 Zoning Administrator Appointed

There is hereby created the office of Zoning Administrator. The Mayor, with the advice and consent of the Council, shall appoint a persons to act as Zoning Administrator. Said Administrator is hereby charged with the administration and enforcement of the Development Code and such other duties as are set forth in 10-2-4.2 of this Code.

10-2-4.2 Powers and Duties of Zoning

Administrator It shall be the duty of the Zoning

Administrator:

1. To review all applications for building permits and certificates *of* zoning compliance.
2. To refuse to issue any permit unless the plans of and for the proposed erection, construction, or use fully conform to all regulations in effect within the City.
3. To enforce the provisions of the zoning regulations and, wherever violations

occur, to consult with the city attorney, to post or issue citations, to prepare

exhibits, testimony, and other data which may be needed in such enforcement.

4. To render administrative decisions on those certain routine and uncontested matters as are delegated to him by the Council or Board of Adjustment and pursuant to established guidelines relating thereto.

CHAPTER 10-3

ZONING - GENERAL REQUIREMENTS

10-3-1 GENERAL PROVISIONS

10-3-1.1 Uses Prohibited in Zones Unless Expressly Permitted

Uses of land which are not expressly permitted within a zone are hereby declared to be expressly prohibited therein, except as may be permitted by action of the Planning Commission or City Council, pursuant to express authority given under terms of this Code. Neither the Planning Commission, Board of Adjustment, nor the Zoning Administrator shall permit a use within a zone which is not expressly permitted by the terms of this Code.

10-3-1.2 Status of Pre-Existing Illegal Uses

Any building or use of land or any construction thereon, or any subdivision of land, which was not authorized by or under the pre-existing zoning or subdivision regulations, as amended, or which is illegal under such regulations, shall remain unauthorized and illegal unless expressly authorized or permitted in the provisions of this Code.

10-3-1.3 Uses on Leased Land to Comply With Code

Any person who may obtain State or Federal properties by purchase, lease, or other arrangement must utilize such properties in accordance with the provisions of this Code.

10-3-1.4 Review Fees

All costs for the processing of applications for subdivision, large scale developments, zone changes, Board of Adjustment rulings, and similar actions required under the terms of ti i code shall be borne by the applicant. The City Council may, by resolution, establish fees for the processing of such applications and the administration of this Code and provide for the assessment and collection thereof.

10-3-2 NON-CONFORMING BUILDINGS AND USES

10-3-2.1 Non-conforming Buildings and Uses May Be Continued - Repair permitted

The owners of land and buildings shall not be deprived of any use of property for the purpose to which it is lawfully devoted at the time of the enactment of this Code.

Any building, structure or use of land, including but not limited to the raising of livestock, which is existing and lawful at the time of the enactment of this Code, but which does not conform to the provisions of this Code, shall be considered a non-conforming use and shall be allowed to continue, to the same extent and character as that which legally existed on the effective day of the applicable regulations, although such use does not conform to provisions of the Code or amendment.

Repairs may be made to a non-conforming building or structure, or to a building or structure housing a non-conforming use, provided such repair: (1) shall be made in accordance with the provisions of the City building regulations, when applicable, and (2) does not have the effect of increasing the size or altering the character of the non-conforming building, structure or use.

10-3-2.2 Damaged Building and Structures Mav Be Restored

A non-conforming building or structure or a building or structure occupied by a non-conforming use which is damaged or destroyed by fire, flood or other calamity or act of nature may be restored or reconstructed and the use thereof resumed, provided that such restoration or reconstruction: (1) is commenced within a period of two years from the date of occurrence of the damage, and (2) does not have the effect of increasing the size of building or structure or the floor space in excess of that which existed at the time the building became non-conforming, except when approved in accordance with the provisions of Section 10-3-3.4 below.

Any such restored or reconstructed structure shall be constructed in accordance with the provisions of the current City building regulations.

10-3-2.3 Expansion of Non-conforming Uses Within Existing Structures Permitted

A non-conforming use located within a building may extended through the same building in which said non-conforming use is located, provided no structural change is made or proposed in the building for the purpose of accommodating such extension.

10-3-2.4 Extension (Enlargement) and Reconstruction of Non-conforming Buildings - Conditions

A non-conforming building or structure or a building housing a nonconforming use may be extended or enlarged or reconstructed, subject to the prior approval by the City Council, after recommendation of the planning commission and upon compliance with the following:

1. The proposed extension or replacement shall be located entirely on the same lot or parcel as the present non-conforming structure and will conform with all existing setback and location requirements

2. The applicant shall submit a detailed site plan showing the location of existing and proposed structures on the site and in the vicinity, existing lot boundaries, roads, driveways, parking areas utilities, and other significant features on the site and in the immediate vicinity.

3. A finding made by a majority vote of the Council that:

   a) The proposed enlargement or extension will not significantly alter the character of the building or use or its impact upon the area.

   b) The building or use, if extended, will not have the effect of diminishing the value of property or the quality of the living environment of adjacent properties.

   c) The proposed enlargement will not significantly increase the number of vehicles or pedestrians, or result in the establishment or increase of a safety hazard to the area.

   d) The proposed enlargement will not result in the establishment of a condition incompatible with the neighborhood area and the stated objective of the Zone in which it is located.

The Council may attach such conditions to its approval as are necessary adequately protect the property and uses in the surrounding territory and the intent of the zone, including but not limited to, the providing of off-street parking, access ways, landscaping features and additional setback of structures.

10-3-2.5 Substitution of Non-conforming Uses

A non-conforming use or building may be changed to a conforming use or building. Any non-conforming building or use which has been changed to a conforming building or use shall not thereafter be changed back to a non-conforming use.

A non-conforming use of a building or lot shall not be changed to another non-conforming use whatsoever. Changes in use shall be made only to a conforming use.

10-3-2.6 Discontinuance or Abandonment

A non-conforming building or structure or portion thereof, or a lot occupied by a non-conforming use which is, or which hereafter becomes, abandoned or discontinued for a continuous period of two (2) years or more shall not thereafter be occupied, except by a use which conforms to the regulations of the zone in which it is located. Provided, the City Council may, upon appeal, authorize the re-establishment of a non-conforming use which has been discontinued for a period longer than provided herein, where the weight of evidence clearly shows that the owner had no intention to terminate the non-conforming use and that the longer period of discontinuance was beyond the control of the owner.

10-3-2.7 Reclassification of Territory

The provisions pertaining to non-conforming uses of land and buildings shall also apply to land and buildings which hereafter become non-conforming due to an amendment of this Ordinance or the zone map.

10-3-2.8 Non-conforming Lots of Record

A building permit may be issued for construction of a single-family dwelling on any lot or parcel of land, even though such lot or parcel does not comply with the area or width requirements for one family dwellings within the zone, subject to compliance with all of the following:

1. The lot or parcel qualifies as a non-conforming lot of record (Existed as a separately described parcel on the records of the County Recorder prior to the effective date of the Ordinance) and the parcel does not constitute an illegal subdivision lot.

2. One-family dwellings are listed as a permitted use in the present zone, and

3. All setbacks, height, building size and special provision requirements of the existing zone and all applicable supplementary regulations can be met.

10-3-2.9 Removal of Non-conforming Mobile Homes

Whenever a non-conforming mobile home is removed from an individual lot, said lot may not be subsequently occupied except by a use or structure which conforms to the requirements of the present ordinance.

10-3-3 SUPPLEMENTARY REGULATIONS WITHIN ZONES

10-3-3.1 Intent

The intent of this section is to provide for several miscellaneous land development standards which are applicable in more than one zone. The requirements of this section shall be in addition to development standards contained within the various zones. Where the provisions of this section may be in conflict with other provisions of this Code, the more stringent shall prevail.

10-3-3.2 Yard Space For One Building Only

All required yards (setback areas) shall be situated on the same lot as the building or structure to which it applies. No required yard, area or other open space around a building or use which is needed to comply with the area, setback, or open space requirements of this Code shall be considered as providing the required area, yard, setback or open space for any other building or use; nor shall any area, yard, setback or other required open space on an adjoining lot be considered as providing the area, setback, or open space requirement of a building or use.

10-3-3.3 Sale or Lease of Required Space Prohibited

No space needed to meet the area, frontage, width, coverage, offstreet parking, frontage on a public street, or other requirement of this Code for a lot or building may be sold, bequeathed, or leased apart from such lot or building unless other space so complying is provided, nor shall any land be sold which will result in an existing or future lot that does not comply with all of the provisions of this Code. Any lot or parcel created in violation of this provision shall not acquire the status of a non-conforming lot of record or otherwise be considered as a Zoning Lot.

10-3-3.4 Each Dwelling to be on a Zoning Lot

Only one building which contains a dwelling shall be located and maintained on each Zoning Lot.

10-3-3.5 Area of Accessory Buildings

Accessory buildings shall cover not more than twenty-five (25) percent of the required rear yard area.

10-3-3.6 Accessory Building Prohibited as Living Quarters

Living and sleeping quarters shall not be permitted in any accessory building.

10-3-3.7 Storage of Junk and Debris Prohibited

No yard or other open space shall be used for the storage, keeping, dismantling or abandonment of junk, debris, scrap metal, building materials, inoperable motor vehicles or machinery, household furnishings and appliances, or any parts thereof, at a level which constitutes the establishment of a "Junk or Automobile Wrecking yard", except in those zone districts where such use is specifically permitted pursuant to the terms of this Code.

For purposes of determining compliance with this Section, any more than two such items on any one property shall constitute a "Junk or Automobile Wrecking Yard"

10-3-3.8 Yards to be Unobstructed - Projections Excepted

Every part of a required yard shall be open to the sky and unobstructed except for permitted accessory buildings and except for ordinary and customary projection of sills, belt courses, cornices, and other ornamental features and unenclosed steps and unwalled stoops, porches, and carports, which may project up to three (3) feet into a required yard.

10-3-3.9 Exception to Front and Side Setback Requirements

The setback from the street for any dwelling located between two existing dwellings may be the same as the average for said two existing dwellings, provided the existing dwellings are on the same side of the street, and are located within one hundred fifty (150) feet of each other, and provided that no dwelling shall be located closer than twenty (20) feet from the right-of-way or easement line of said street.

10-3-3.10 Clear View of Intersecting Streets

In all zones which require a front setback, no obstruction which will prevent a clear view to automobile drivers of approaching vehicles or pedestrians shall be placed within a triangular area formed by the street property lines and a line connecting them at points 45 feet from the point of intersection of said street lines. Provided that where both intersecting streets have a right-of-way width of more than 80 feet, the required distance from the point of intersection shall be reduced to 30 feet.

10-3-3.11 Setback of Buildings From Proposed Streets

The front or side setback for structures abutting on a proposed future street or an existing street needing to be widened, as shown on the Major Street Plan as a future street, shall be measured from the planned street line. For purposes of determining the setback requirement and similar location standards, said planned street line shall be considered as the property line.

10-3-3.12 Additional Height Allowed for Public Buildings

Public buildings and churches in residential zones may be erected to any height provided the building is set back from required building setback lines a distance of at least one (1) foot for each additional foot of building height above the maximum height otherwise permitted in the zone in which the building is located.

10-3-3.13 Drainage

Surface water from roof tops shall not be allowed to drain onto adjacent lots or streets, except after written agreement between the two parties. Surface drainage from corrals, pens, or coops shall not be permitted to drain into a waterway that drains into a natural stream.

10-3-3.14 Fences, Walls and Hedges

No fence, wall, hedge, or similar device extending into or enclosing all or any part of the front yard area adjacent to a street shall be constructed or maintained at a height greater than thirty-six (36) inches; provided that where the fence fabric is to be of the chain link or other open mesh type, and the fence will remain non-sight obscuring, the maximum height may be increased to not greater than forty-eight (48) inches. The maximum height of any fence, hedge, wall, or similar enclosing device situated within any other portion of a lot shall be six (6) feet.

On corner lots the side yard area adjacent to a street may be enclosed by a fence or wall not exceeding the maximum height, provided that any such fence or wall will not result in the establishment of a hazardous condition and will be consistent with the provisions of Section 10-3-3.10.

All fences and walls shall be constructed of substantial material and the design and construction shall be consistent with the quality of dwellings and other improvements within the surrounding area.

Before commencing construction, plans for all fences and walls shall first be submitted to and approved by the Zoning Administrator.

Where, in the opinion of the Administrator, a proposed fence or wall does not conform to the above criteria, he shall refer the application to the Board of Adjustment for action.

Any applicant aggrieved by a decision may appeal said decision to the Board of Adjustment who shall have the authority to reverse, affirm or modify any decision of the Administrator.

10-3-3.15 Utility Buildings and Structures Permitted in Residential Zones.

Utility buildings and structures such as electric buildings and sub-stations may be constructed in all residential zones but only after approval has been given by the Board of Adjustment as a special exception. The Board of Adjustment may require conditions which are reasonably necessary to protect surrounding property values and residential amenities.

10-3-3.16 Off-Street Parking

1. Intent
Regulations relating to off-street parking have been established to increase safety and lessen congestion in the public streets, to provide adequately for parking needs associated with the development of land and increased automobile usage, to set standards for off-street parking according to the amount of traffic generated by each use, and to reduce the on-street storage of vehicles.

2. Number of Off-street Parking Spaces

a) Residential Uses: There shall be not less than two (2) off-street parking spaces provided for each dwelling unit located on the premises.

b) Commercial and Residential Uses: The number of spaces, conditions and standards relating to access, circulation, lighting, landscaping, location, control, and continuity shall be provided in accordance with standards as established by resolution by the City Council.

10-3-3.17 Temporary Uses

1. Intent The following regulations are provided to accommodate certain uses which are temporary or seasonal in nature.

2. Permitted Temporary Uses
Certain uses may be permitted on a temporary basis in any zone when approved by the City Council. Said temporary uses may include but will not be limited to:

A. Carnivals and circuses
B. Christmas tree sales lots
C. Promotional displays and exhibits
D. Fireworks sales stands (Commercial Zones only)
E. Itinerant merchants (Commercial and Industrial zones only)
F. Other uses determined by the City Council to be similar to those set forth above

3. Application for Temporary Use

Prior to the establishment of any temporary use, an application for a temporary use permit shall be submitted to and approved by the City Council. Said application shall contain the following information:

A. A description of the proposed use.
B. A description of the property to be used, rented, or leased for the temporary use, including all information necessary to accurately portray the property.
C. Sufficient information to determine the yard requirements, sanitary facilities, and availability of parking space to service the proposed use.
D. A copy of the lease agreement or other evidence of the right of the applicant to occupy the proposed site.

4. Approval Required

The City Council may approved said application provided the Council finds:

A. That the proposed use is listed as a permitted temporary use or in the opinion of the City Council is similar to those uses permitted.
B. That the proposed use will not create excessive traffic hazards or other unsafe conditions in the area, and that if traffic control is required, it will be provided at the expense of the applicant.
C. That the proposed use shall occupy the site for a period not to exceed ten (10) days, except for Christmas tree lots which shall not exceed forty (40) days and fireworks sales which shall be in accordance with the time limits as set forth in State Law.
D. That the applicant will have liability insurance for the requested use or event.
E. That the applicant shall provide, at his own expense, for the restoration of the site to its original condition including clean-up and replacement of facilities as may be necessary.
F. That there is adequate access, provision for sanitation and solid waste disposal, and other essential elements of the proposed use.
G. That all required fees have been paid disposal.

5. City Council Mav Delegate Approval Responsibility - Exceptions

A. The City Council may authorize the Zoning Administrator to issue temporary use permits for certain temporary uses without Council review. Where the request is for a temporary use which is not listed or where, in the opinion of the Zoning Administrator, the characteristics of the proposed use are not in compliance with the above standards, the Zoning Administrator shall refer the application to the City Council for their action.
B. In granting approval, the City Council may attach additional conditions as they deem appropriate to insure that the use will not pose any detriment to persons or property. The Council may also

require a bond to insure that necessary clean-up or restoration work will be performed.

10-3-3.18 Home Occupations

1. Intent

The following regulations have been established to provide minimum standards for the establishment and operation of home occupations within residential zones.

2. Anplication and Approval Required

Home occupations may be permitted by the Planning Commission following receipt of an application and subject to the following conditions:

A. Home occupations are listed as a permitted use in the zone.
B. The home occupation is conducted entirely within a dwelling and is carried on in the dwelling only by members of the residing family.
C. The home occupation does not involve the use of any accessory buildings or yard space for storage or activities outside of the dwelling.
D. The home occupation shall contain no facilities for the display of goods. Any sale of goods and services shall constitute a clearly incidental part of the operation of the home occupation.
E. No commercial vehicles are used except one delivery truck which does not exceed three-fourths ton rated capacity.
F. The home occupation is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character of the building from that of a dwelling.
G. Signs are limited to one non-flashing sign not larger in area than two square feet.
H. Not more than the equivalent of twenty-five percent (25%) of the ground floor area of the dwelling is devoted to the home occupation.
I. The home occupation shall obtain a business license from the City.
J. Entrance to the home occupation from outside shall be the same entrance normally used by the residing family except when required otherwise by regulation of the State Health Department or other public agency.
K. The physical appearance, traffic, and other activities in connection with the home occupation are not contrary to the intent of the zone in which the home occupation is located and do not depreciate surrounding values as determined by the Administrator.

3. Commission May Attach Conditions

In order to achieve the objectives of this Code and to protect the health, safety and quality of life in the community the Planning Commission may attach conditions to the granting of a home occupation consistent with the standards hereinabove stated.

4. Continuing Obligation - Business License Required
All home occupations shall be operated in compliance with the conditions hereinabove set forth and any conditions which may be attached as part of the approval. Upon approval of a home occupation the applicant shall be eligible to acquire a business license to operate. Issuance of the Business License shall be conditioned upon continued performance of the conditions of approval and said license shall be refused or revoked upon failure of the owner and/or operator to maintain or operate the home occupation in accordance therewith.

The approval shall be valid for the remainder of the year in which it is first granted. Thereafter the approval will be extended for successive one year periods, commencing on July 1 of the calendar year provided (1) that the home occupation remains substantially the same as initially approved and (2) that the home occupation has remained active as evidenced by the acquisition of a valid business license for the previous year

10-3-3.19 Public Buildings and Structures to be Approved

Prior to the construction of any building or other structure by a local governmental entity (i.e. School District, County, Special Service District) within the City, a site plan for the same shall be submitted to and approved by the City in accordance with the provisions of Section 10-3-3.20.

10-3-3.20 Site Plan Review

Wherever the terms of this Code require submission and approval of a Site Plan such review shall be conducted in accordance with the following provisions.

1. Designated Review Agency to Approve
The Planning Commission, or such other agency as may be designated by the Code, shall have the function, duty and power to approve or disapprove a project plan and to attach such modifications or conditions as may be deemed appropriate to improve the layout of the project, to ensure that the project will not pose any detrimental effect to persons or property, or to protect the health, safety, and general welfare of the citizens of the City.

2. Application Required Application for site plan approval shall be submitted in writing to the City and shall be accompanied by maps and drawings showing the following:

   A. The location of all existing and proposed buildings and structures on the site, with full dimensions showing the distance between buildings and distances from buildings to adjacent property lines.
   B. The location of all parking spaces, driveways, and points of vehicular ingress and egress.

C. A landscaping plan showing the location, types, and initial sizes of all planting materials to be used together with the location of fences, walls, hedges, and decorative materials.

D. Preliminary elevations of main buildings showing the general appearance and types of external materials to be used.

E. The locations of solid waste receptacles and trash pick-up areas.

F. Evidence of satisfaction of all applicable water supply, sewage disposal and fire protection requirements, including, when applicable, the installation of fire sprinkler systems.

3. Approval of Site Plan - Appeals Permitted

The Planning Commission shall review the proposed site plan and shall issue a decision within a reasonable time. Any person aggrieved by a determination of the Planning Commission may request a hearing before the City Council who shall have the authority to reverse, affirm or modify any decision of the Commission. Provided, any such appeal shall be filed within ten (10) days of the determination of the Commission.

4. Building Permit

No building permit shall be issued for any use, building or structure or external alterations thereto which requires site plan approval until the provisions of this Section have been complied with. Any construction not in conformance with an approved site plan shall be considered a violation of this Code. Any building permit issued shall ensure that development is undertaken and completed in conformity with the plans as approved.

5. Business License not to be Issued Without Site Plan Approval

No business license shall be issued for any use requiring site plan approval until such approval shall have been obtained in accordance with the terms of this Section. Any license so issued shall be null and void.

10-3-3.21 Earth Shelter Home Projects

An earth shelter home may be approved by the Planning Commission subject to the following findings and standards.

1. Earth shelter home projects are listed as a permitted use in the zone and the minimum height requirements of the zone allow the placement of earth shelter homes.

2. In the opinion of the Planning Commission, the design of all above ground structures and other surface features appurtenant to the proposed home will be compatible with traditional housing styles present and/or anticipated in the vicinity of the home and consistent with the intent of the zone.

3. All portions of the lot not devoted to above ground structures will be landscaped following good landscape practices.

4. A detailed site plan for the lot showing the location of the home and all surface features and proposed landscape treatment shall be submitted and approved.

10-3-3.22 Caretaker Dwellings

Caretaker dwellings may be permitted upon approval by the Planning Commission and upon a finding that a proposed dwelling complies with all of the following conditions:

1. Caretaker dwellings are permitted within the zone.

2. The primary use for which the dwelling is requested is permitted within the zone.

3. In the opinion of the Planning Commission, a caretaker dwelling is reasonably necessary for the successful operation of the primary use.

4. The caretaker dwelling is clearly incidental to the primary use.

5. The caretaker dwelling will be located on the same site as the primary use.

6. The dwelling will be occupied only by individuals or families employed at the site in the capacity of a caretaker or watchman.

10-3-3.23 Special Provisions Relating to Dwellings

1. Application. The provisions of this Subsection shall be applicable to dwellings located on individual lots, but shall not apply to dwellings located within approved mobile home parks.

2. Standards and Criteria.

   a. The dwelling shall meet the requirements of the current edition of the Uniform Building Code as adopted by the City or, in the instance of a manufactured housing unit, the current version of the HUD Code.

   b. In the event that the dwelling has had prior occupancy the dwelling shall meet the requirements of the existing applicable code.

   c. The dwelling shall be approved for permanent connection to all required utilities in accordance with the provisions of Section 10-3-3.26.

   d. Each dwelling shall have a code approvable site-built foundation capable of transferring design dead loads and live loads and any other design loads unique to local homes (i.e., wind, seismic or water conditions, etc.) that are

imposed by or upon the structure into the underlying soil or bedrock without failure, and shall be adequately tied to the foundation.

e. The space beneath the structure shall be enclosed at the perimeter with a foundation which meets the requirements of the Uniform Building Code or, in the instance of a manufactured housing unit, a concrete or masonry skirting wall. The perimeter foundation or skirting wall, as applicable, shall be continuous, except for the placement of doors, windows or access openings and shall be placed upon footings which are not less than thirty inches (30") below grade, as measured to the bottom of the footing, for frost protection.

f. In the instance of a manufactured dwelling or similar moved-on structure, any tongues, axles, wheels or other devices required for the transportation of a dwelling and not required to retain the structural integrity of the building shall be removed at the time of installation.

g. Dwellings shall have a roof surface of wood shakes, asphalt, composition, wood shingles, concrete, vinyl, metal, fiberglass or slate tiles, or built up gravel materials, excluding rolled roofing.

h. Where the design provides for a pitched roof, the pitch shall be not less than 3:12. There shall be a roof overhang at the eaves and gable ends of not less than six inches (6"), excluding the rain gutters, as measured from the outer surface of the adjacent vertical wall. The roof overhang requirement shall not apply to areas above porches, alcoves, and similar appendages, which together do not exceed twenty percent (20%) of the length of the structure.

i. Dwellings shall have exterior siding material consisting of wood, hard-board, brick, concrete, stucco, glass, metal or vinyl lap, tile or stone.

j. At each exit door there must be a landing that is a minimum of thirty-six inches (36") by thirty-six inches (36") and constructed to meet the requirements of the Uniform Building Code. [Ord. 1996-3, Sec. 3]

10-3-3.24 Recreation Vehicles and Mobile Home Prohibited - Exceptions

It shall be unlawful to place any recreation vehicle on any lot or parcel of land and to use the same for human habitation, except when located in a recreation vehicle court.

It shall be unlawful to place a mobile home on any lot or parcel and to use the same for human habitation, except in compliance with one or more of the following conditions.

1. When located in a licensed mobile home park.
2. When temporarily located on a lot on which a building is being constructed, but not to exceed one (1) year, provided that the mobile home is connected to approved water and sewer facilities, and provided further that a bond or financial guarantee in an amount as set by resolution is posted with the City to guarantee the removal of said home from the lot upon completion of construction.

10-3-3.25 Division of Large Lots Permitted

Where a lot or parcel, existing at the time of the adoption of this Code, is at least one and eight-tenths times as wide and one and eight-tenths times as large in area as required for a lot in the zone, the Board of Adjustment may, as a special exception, permit the division of the parcel into two lots, provided:

1. That all access and setback requirements for the zone can be complied with without the need for variances.
2. That the division will not constitute a circumvention of the subdivision provisions.
3. That all required improvements are in place or properly bonded for.
4. That in the opinion of the Board of Adjustment, the exception may be granted without significant detriment to surrounding properties.

10-3-3.26 Connection to Utility Services Required.

All dwellings and other habitable structures shall be connected to the City's water, sewer and pressurized irrigation system, as follows:

1. Culinary Water
   A separate culinary water connection shall be required for each one family dwelling, for each dwelling unit in a two-family dwelling and for each separate commercial or other non-residential structure intended for human occupancy. For multi-family dwellings, and similar multi-unit developments the City may authorize the use of a common connection where: (A) because of the design of the structure, separate connections for individual units are not reasonably possible and, (B) the several units in the structure or project are, and will remain in the same ownership.

2. Sewage Disposal
   A separate sewage connection shall be required for each one-family dwelling, for each dwelling unit in a two-family dwelling and for each separate commercial or other non-residential structure intended for human occupancy. For multi-family dwellings, and similar multi-unit developments

the City may authorize the use of a common connection where: (A) because of the design of the structure, separate connections for individual units are not reasonably possible, and (B) the several units in the structure or project are, and will remain, in the same ownership.

Where, because of topographic or other physical condition, connection to the sewer system is not reasonably possible, the City Council may approve the use of a septic tank or similar individual system. Before granting approval for use of an individual system the applicant shall provide written evidence of approval of such system from the applicable health agency.

3. Irrigation Water System. Each lot or dwelling site within a proposed development project (subdivision, PUD, mobile home park) and each residence or other habitable structure requiring water for landscaping, irrigation or other non-culinary purposes shall be connected to either the City's pressurized irrigation system or the pressurized irrigation system operated by the Gunnison Pipeline Company.

   Satisfaction with this requirement shall be achieved by compliance with one of the following alternatives, whichever is applicable:

   Alternative A - Where the proposed development project or individual user (1) lies within the boundary of Special Improvement District established by the City for the purpose of constructing a pressurized irrigation system (hereafter referred to as "City SID area"), and (2) the owner thereof has contributed to the construction of said system in accordance with the terms of the District regulations and policies, the structure may be connected subject to:

   a. A determination by the City Council that there is adequate capacity to accommodate the proposed development project or individual structure,

   b. The installation, by the owner, of any extension of the main line or riser installation required to provide service to the user (see Section 9-3-5), and

   c. Payment of the applicable irrigation system connection fee.

   Alternative B - Where the proposed development project or individual user (1) lies outside the "City SID area," and (2) is proposed to be served directly from the pipeline company (farmers) system or from a privately owned extension to said system, the City may act to grant approval, subject to:

   a. Receipt of a letter or other written evidence from the pipeline company and the owner of the private system, where applicable: (a) authorizing connection of each lot or unit within the development project or individual structure to the system, as applicable, and (b) indicating that the capacity of the system in the proposed location is sufficient to meet the non-culinary needs of the proposed use.

b. Approval by the City of the location, size and placement of any line extensions, risers and other details concerning the design and construction of the improvements. All proposed improvements shall conform to City standards.

c. (i) The owner shall submit to the City a certificate of stock for one (1) share per one-half (1/2) acre in Gunnison Irrigation Company. Multiple permits may be issued with a corresponding number of shares for each multiple of contiguous or adjacent building premises or lots. The stock certificate evidencing the water right shall be "lettered" with an inscription stamped on the certificate to the effect that this share(s) of stock is appurtenant to the lot, block or other designation or legal description of the property on which the water is to be used and the stock shall not thereafter be sold except as an appurtenance to and a right running with the land. The City Recorder shall notify the irrigation company of the legend and the dedication of that specific certificate to the land on which an improvement is to be placed.

(ii) Receipt of a written notice and waiver from the applicant absolving the City of all responsibility for maintenance of the irrigation lines serving the proposed user and all liability which may arise therefrom. A copy of the notice shall be recorded in the office of the County Recorder. In the instance of a subdivision or development project said notification shall be placed on the final plat prior to recording in the office of the County Recorder.

In lieu of recording the notice and waiver, as provided above, the City may act to accept title and maintenance responsibility for the pipeline provided: (1) the City Council determines that the proposed line represents a logical extension of the City system and has the capacity to provide adequate service therefrom, (2) the applicant conveys to the City, at no cost, one (1) share of Gunnison Irrigation Company stock for each structure or lot in the project or for each one-half (1/2) acre of area proposed to be served, whichever is less, and (3) the applicant provides satisfactory evidence that all outstanding assessments against the stock, with regard to the pressurized irrigation system (payment of the costs of the holding pond and transmission line and other joint improvements) have been satisfied.

NOTE:The Legend (stamp) referred to in Alternative B (c)(i) shall read as follows: "The water right represented by this Certificate is irrevocably dedicated as a perpetual appurtenance to land in Lot ____ Block ____ Serial Number_____ , Gunnison City Survey and may not be alienated or otherwise used. Consult City officials for any further information."

Alternative C - Where the proposed development project or individual user lies within the "City SID area," but has been exempted from payment of SID assessments, or lies outside the "City SID area" and is not to be served by the pipeline company (farmers) system, the City may authorize the connection of the user or

project to the City system subject to:

a. A determination by the City Council that there is adequate capacity in the lines serving the proposed development project or individual user to accommodate the anticipated users, and that the additional demand will not be detrimental to the proper function of the system in the future.

b. The installation, by the applicant, of any required extensions to the main line, when applicable, and installation of individual riser, where required (see Section 9-3-5).

c. Conveyance to the City, at no cost, of one (1) share of Gunnison Irrigation Company stock for each one-half (1/2) acre or building lot in the proposed project served, whichever is greater. Also, the applicant shall provide satisfactory evidence that all assessments against the stock with regard to pressurized irrigation system (payment of the costs of holding pond and transmission line and any other joint improvements) have been satisfied (see Section 9-3-4.3).

d. Payment of the applicable irrigation system connection fee.

4. The size, location and placement of any extensions and risers and other details concerning the design and construction water, sewer or pressurized irrigation system shall conform to City standards, as directed by the City. The provisions of this paragraph shall also be applicable to any extensions to the irrigation company system. [Ord. 1995-4]

10-3-3.27 Placement and Operation of Residential Facilities for Handicapped Persons

Residential facilities for handicapped persons shall be located and maintained in accordance with the following standards and conditions:

1. The structure conforms to all applicable building, safety and health requirements.

2. The structure is capable of use for the purpose without structural or landscaped alterations that would change the residential character of the structure.

3. The structure shall contain not more than eight (8) persons, excluding the house family.

4. No residential facility for handicapped persons shall be established or maintained within three-quarters (3/4) of a mile of another existing dwelling occupied as a residential facility for handicapped persons.

5. The operator of the facility shall provide adequate off-street parking space.

6. The operator of the facility provides written assurances to the City that the residents will be adequately supervised on a twenty-four (24) hour basis.

7. The operator of the facility may establish a community advisory committee through which complaints and concerns of neighbors may be addressed.

8. No person who is being treated for alcoholism or drug abuse or is violent shall be housed in the structure. Placement in the structure shall not be part of or in lieu of confinement, rehabilitation, or treatment in a custodial or correctional institution.

9. The use of the structure as a residential facility for handicapped persons is non-transferable and shall automatically terminate at such time as there is any change in the character of the persons occupying the structure, it becomes devoted to a use other than that for which it was originally approved, or at such time as the structure or use fails to comply with applicable health, safety and building codes or the terms of this Section.

10-3-3.28 Criteria for Determining Compliance with Minimum Lot Width Requirements

For purposes of determining compliance with the lot width (frontage) requirements, measurement of the lot width shall be the straight line distance between the two (2) side lot lines, as measured at the point on said side lot lines located twenty-five (25) feet back from the front lot line.

10-3-3.29 Reserved

10-3-3.30 Signs and Advertising Structures

The purpose of this Subsection is to provide standards and requirements relating to the location and design of accessory signs and similar structures.

1. Permitted Signs in All Zone Districts. The following accessory signs shall be permitted in all zones; provided, that no sign shall be positioned in such a manner as to result in the creation of an unsafe visual clearance at any intersection or driveway location:

   a. Signs Not Requiring a Permit. The following signs shall be permitted without the necessity of requiring a permit:

      (i) Real Estate Sales Signs. One (1) sign per street frontage advertising the sale, rental, or lease of the premises; provided, that such signs shall not exceed six (6) square feet in residential zones or eight (8) square feet in other zones.

      (ii) Political Signs. Signs for the purpose of promoting the candidacy of any person or persons seeking public office or measures on election

ballots; provided, that such signs shall be removed within seven (7) days following the election.

(iii) Produce Signs. One (1) accessory sign announcing the sale of locally produced agricultural products; provided, that such signs shall be removed at the end of the local season for said produce.

(iv) Unlighted Identification Nameplates and Accessory Nameplates. Accessory name plates for professional persons or home occupations, which shall not exceed two (2) square feet.

(v) Governmental Signs. Signs erected by a governmental unit for regulatory or informational purposes, such as traffic signs, street signs, and public notices.

(vi) Public Signs. Signs of a non-advertising nature intended to identify a condition or provide information to the public, such as public utility information signs, safety and danger signs, "no trespass" signs, and entrance and exit signs, provided no sign shall exceed two (2) square feet in area.

b. Signs Requiring a Permit. The following temporary and permanent accessory signs shall be permitted in all zones upon the acquisition of a permit therefor:

(i) Building Project Identification Signs. One (1) sign per street frontage of a building which is under construction or structural alteration or repair, announcing the character of the building enterprise or the purpose for which the building is intended, including names of architects, engineers, contractors, developers, financiers, and others, provided the area of such sign shall not exceed sixteen (16) square feet in residential districts or thirty-two (32) square feet in other districts, and provided the sign shall be removed upon completion of construction.

(ii) Subdivision Project Identification. One (1) sign per street entrance to the subdivision located on the property to be subdivided, provided such sign shall not exceed thirty-two (32) square feet in area. Such a sign may not be erected until the subdivision has received final approval by the appropriate City officials and may be displayed for a period of one (1) year from the date of such approval, or until all lots are sold, whichever is less.

(iii) Development Project Identification Signs. A sign denoting the name of any apartment structure containing five (5) or more units, or the name of any residential, commercial or industrial complex provided

such sign shall not exceed twelve (12) square feet in area.

(iv) Directional and Public Services Signs. Signs which identify or provide direction to scenic or historic areas or points of interest, public buildings, sports facilities, etc., or signs which serve as community entrance signs, or which convey community service information; provided, that no such sign shall have a sign face exceeding twenty-four (24) square feet, except when approved by the City Council.

(v) Institutional Identification Signs. One (1) sign, with or without a changeable text bulletin board, located on the premises and denoting the name of the public building, school, or charitable or religious institution; provided, that such signs shall contain a sign face area of not more than twenty-four (24) square feet and the design and location of any such sign shall be first approved by the Planning Commission.

2. Requirements Within the General Commercial and Industrial Sign Location Overlay Zone. In addition to the signs permitted under Paragraph 1 of this Subsection, the following accessory signs shall be permitted in the R&C-1, CC-1 and I-1 Zones, subject to the conditions specified and the prior acquisition of a permit therefor:

a. Facia and Canopy Signs. Accessory facia and canopy signs identifying and advertising the names of the business, the products sold, trade names and/or the business or activity conducted, subject to the following:

(i) There shall be not more than two (2) signs per building street frontage. Where a building fronts on more than one (1) street, each street shall be considered a separate frontage.

(ii) Where a building contains more than one (1) owner or tenant (e.g., strip mall), the portion applicable to each owner/tenant shall be considered as a separate building street frontage.

(iii) The maximum sign face area of all facia and canopy sign(s) shall be determined by the size of the building face, or that portion of the building face occupied by an owner/tenant (in the instance of a multi-tenant building), in accordance with the provisions of Chart 2-5.31-A.

(iv) Each sign shall be painted upon or attached to the wall of the building most nearly parallel to the applicable fronting street. No portion of the sign shall project more than fifteen inches (15") from the vertical face of the building to which it is attached.

(v) The sign shall not extend above the roof line of the structure to which it is attached.

b. Projecting Signs. Accessory projecting signs identifying and advertising the name of the business, the products sold, trade names and/or the business or activity conducted subject to the following:

(i) There shall be not more than one (1) projecting sign for each owner/ tenant. Each sign shall be attached to the building face adjacent to the portion of the building face occupied by the owner/tenant to which it applies.

(ii) The sign shall not extend above the wall to which it is attached.

(iii) No projecting sign shall exceed thirty (30) square feet in area. Also, where the owner/tenant utilizes the facia or canopy sign, the combined total of the projecting sign and facia or canopy sign shall be not greater than the maximum area allowed for facia or canopy signs in accordance with the provisions of Chart 2-5.31-A.

(iv) No such sign shall be placed above or project into the air space above a public right-of-way.

(v) The sign shall have a minimum clearance of twelve feet (12') above the ground and fourteen feet (14') above a driveway, alley or other vehicular access way.

c. Freestanding Pylon and Monument Signs. Permanent accessory, freestanding pylon and monument signs identifying and advertising the name of the business, the products sold, trade names and/or the business activity conducted may be erected upon the premises occupied by the business, subject to the following:

(i) Each project area may include one (1) freestanding pylon sign.

(ii) The maximum height of any pylon sign shall be thirty-five (35) feet above the adjacent ground level.

(iii) Each sign shall have a maximum of two (2) sign faces. The maximum area of each sign face shall be determined by the length of the street frontage along which the sign is to be placed in accordance with the provisions of Chart 2-5.31-B.

(iv) No portion of any sign shall project into the air space above a public right-of-way.

(v) Where the project area fronts upon two (2) or more public streets, a freestanding monument sign may be constructed adjacent to each street frontage, not including the frontage upon which the pylon sign is constructed. Each freestanding monument sign shall have a maximum of two (2) sign faces. Each face shall have a maximum sign face area of not more than sixty (60) square feet and shall be designed and constructed in accordance with Chart 2-5.31-C.

(vi) No freestanding pylon or monument sign shall be placed or constructed in such a manner as to produce an unsafe visual clearance at any intersection or driveway location.

(vii) A freestanding monument sign may be substituted for the freestanding pylon sign permitted pursuant to Paragraph (2)(c) of this Subsection.

3. Signage Plan Required. Any commercial or industrial development project which requires approval of a site plan by the Planning Commission, pursuant to the terms of the City's Development Code, shall include a signage plan, showing the intended location of all freestanding signs and the general design and maximum size of each proposed sign, as part of the materials required to be submitted for review by the Planning Commission. No freestanding pylon sign, monument sign or project identification sign will be permitted unless the location of such sign and the design thereof shall have been approved as a part of the site plan.

4. Prohibited Signs. Except as specified herein, the following signs shall be prohibited within the City:

a. Non-Accessory Signs - Billboards. Non-accessory signs shall not be permitted within the City.

b. Temporary Signs. Except as may be specifically authorized by other provisions of the Development Code, temporary signs shall not be permitted.

c. Hazardous Signs. Any sign which purports to be or resembles an official traffic sign or signal or which is constructed or maintained in such a manner as to conflict or be confused with an official traffic sign or signal.

d. Banner Signs. Permanent banner signs shall be prohibited, except that banner signs may be permitted on a temporary basis in the instance of a new or relocated business establishment until such time as the permanent signs have been installed, but not to exceed ninety (90) days.

e. Portable Signs. Portable signs shall be prohibited, except that portable signs may be permitted on a temporary basis in the instance of a new or relocated business establishment until such time as the permanent signs have been in-

stalled, but not to exceed ninety (90) days. f.

Garage Sale/Handbill Signs.

(i) No person shall paint, mark, write on, post or otherwise affix any handbill or sign to or upon any public utility pole, street lamp pole, street sign, traffic sign, tree, fence, hydrant, or stake.

(ii) Any handbill or sign found posted upon any public property contrary to the provisions of this Paragraph may be removed by the Police Department, Zoning Administrator or other person designated by the City for that purpose. The person responsible for such posting shall be liable for the cost incurred in the removal, storage and/or disposal thereof and the City is authorized to effect the collection of said cost. [Ord. 2002-3, Sec. 2]

Chart 2-5.31-A
FACIA AND CANOPY SIGN AREA

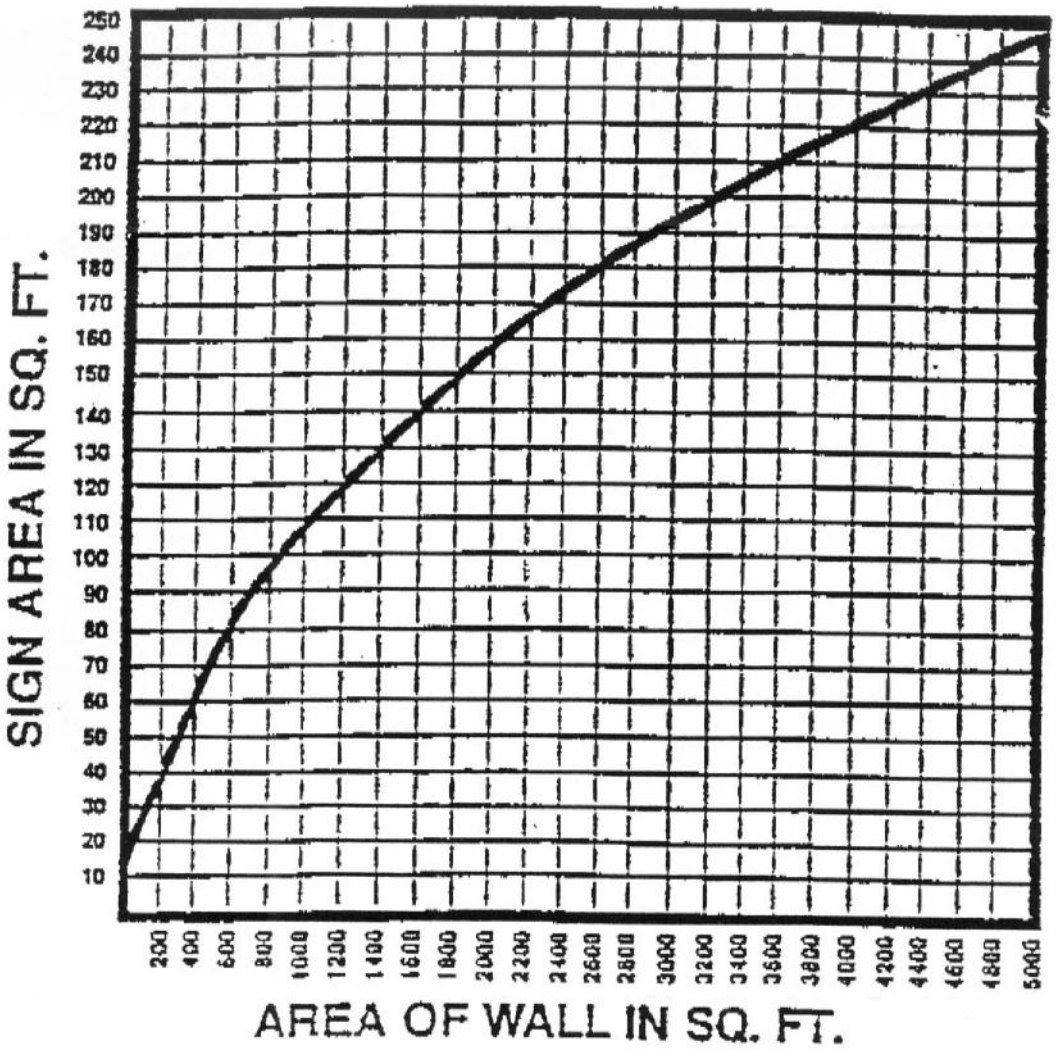


Chart 2-5.31-B
PYLON SIGN AREA (GENERAL COMMERCIAL OVERLAY)

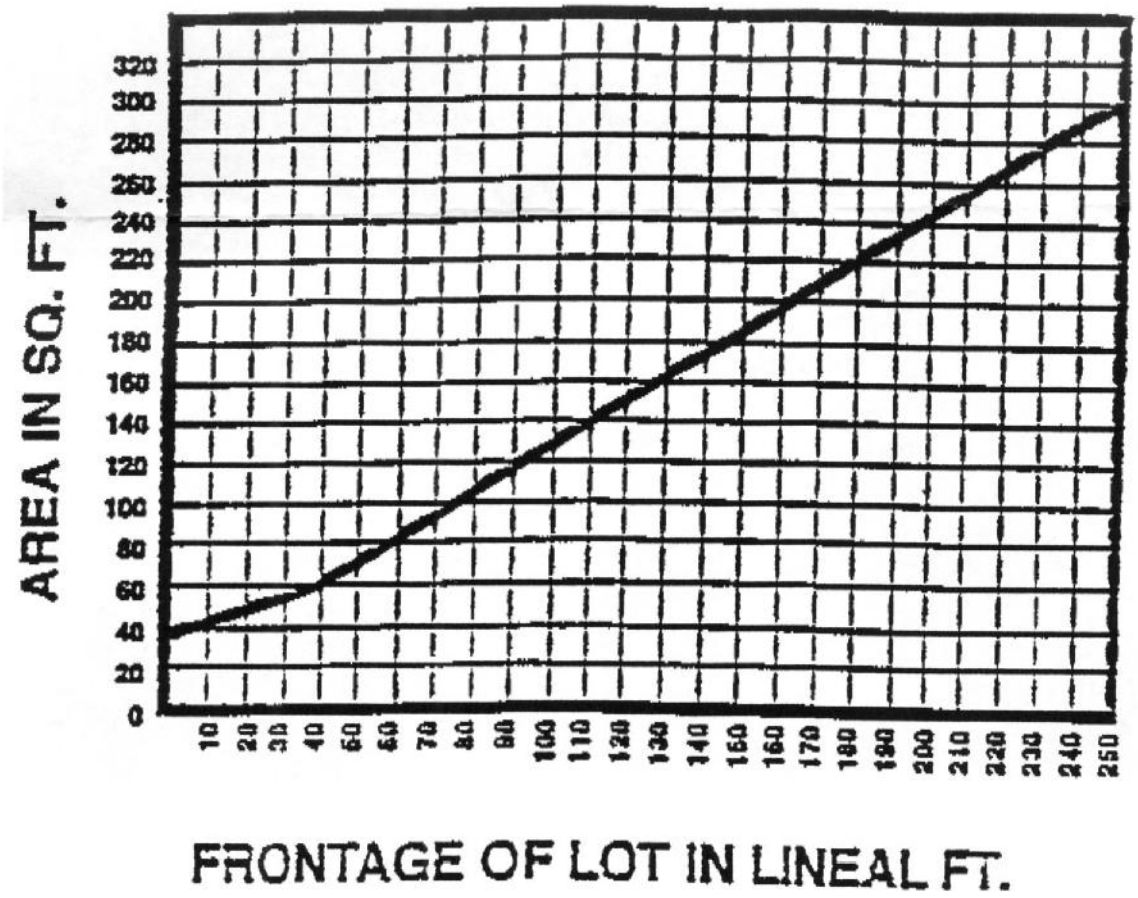
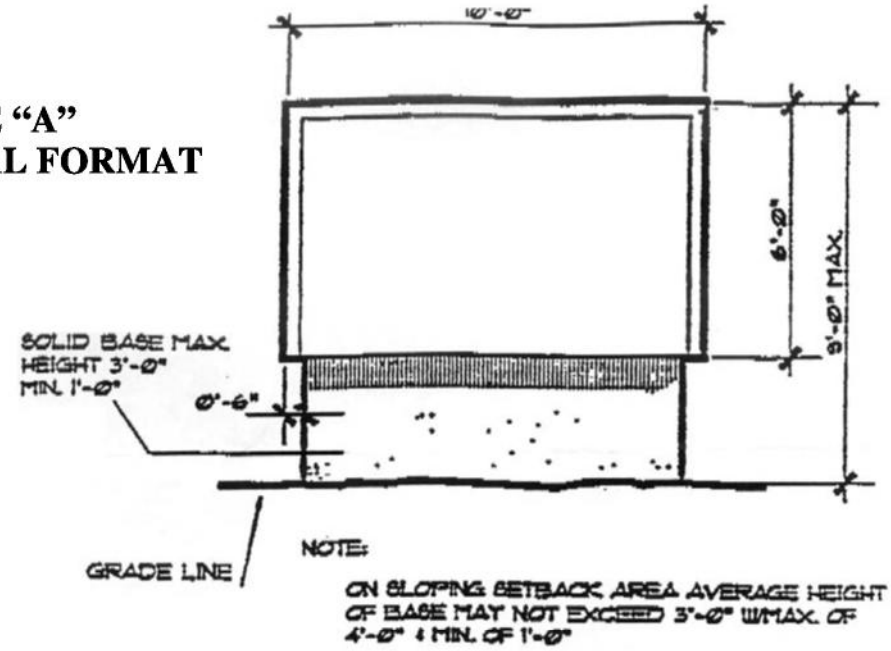
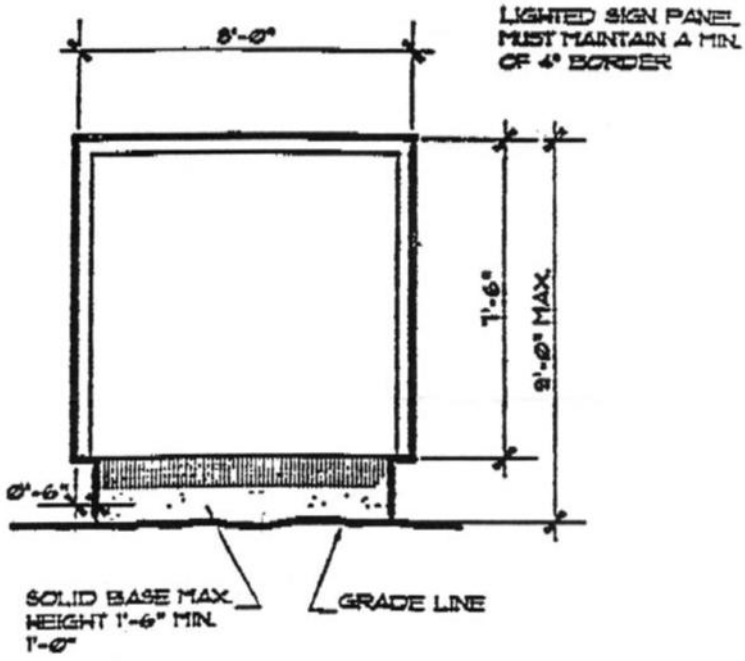


Chart 2-5.31-C

ALTERNATE "A"
HORIZONTAL FORMAT



ALTERNATE "B"
VERTICAL FORMAT



NOTES:

SIGNS MAY BE INSTALLED ON A BERM NOT EXCEEDING 18" SUCH AS HEIGHT FROM BACK OF SIDEWALK DOES NOT EXCEED 10'-6"

ON SLOPING SETBACK AREA AVERAGE HEIGHT OF BASE MAY NOT EXCEED 1'-6" W/MAX. OF 2'-0" & MIN. OF 1'-0"

BASE MATERIALS TO MATCH PRIMARY BUILDING MATERIALS

MONUMENT SIGNS
ILLUMINATED BACKGROUND

CHAFFER 10-4

ESTABLISHMENT OF ZONES - ZONE MAP 10-4-1 ZONES

ESTABLISHED

In order to carry out the purposes of this Code, the City is hereby divided into zones as follows:

A-1 Agricultural Zone
RR-1 Rural Residential Zone
R-2-10,000 Residential Zone
R-4-7,500 Multiple Residential Zone
R-1-MHP Mobile Home Park Zone
R&C-1 Residential and Commercial (Mixed use) Zone
CC-1 Central Commercial Zone
I-1 Light Industrial Zone
S-1 Special Institutional Zone

-4-2 LOCATION OF ZONES - ADOPTION OF ZONE MAP

The location and boundaries of each zone shall be as set forth on the official ZONE MAP OF GUNNISON, UTAH, 1989 - Revised, which map is appended hereto and by this reference included as a part of this Code.

10-4-3 RULES FOR DETERMINING ZONE BOUNDARIES

Where uncertainty exists with respect to the boundaries of zones, as shown on the Zone Map the following rules shall apply:

A. Where the indicated boundaries of the Zone Map are approximately street or land survey lines, said street or land survey lines shall be construed to be the zone boundaries.

B. Where the indicated boundaries are approximately canals, natural streams, or similar water course the center of said canal, natural stream, or watercourse shall be construed to be the zone boundary line.

C. In the absence of any street, land survey, canal, natural stream, or watercourse as forming the boundaries of any zone, the scale or

measurement shown on the map shall be used to determine the zone boundary line.

D. Where other uncertainty exists, the Board of Adjustment shall interpret the map.

CHAPTER 10-5

REGULATIONS WITHIN ZONES 10-5-1

DECLARATION

The specific regulations and restrictions applicable within each zone and governing: (a) the location and use of land, buildings and other structures for residential, commercial, industrial or other purposes; (b) the size of yards, courts and other open spaces; (c) the height, number of stories and size of buildings and other structures; (d) the density of population (e); the percentage of a lot that may be occupied and (e) such other elements of development as authorized by law or court action, shall be as hereinafter set forth.

10-5-2 A-1 AGRICULTURAL ZONE

10-5-2.1 Legislative Intent

The objective in establishing the A-1 Agricultural Zone is to provide a location within the community devoted primarily to the raising of livestock and/or the growing of crops, and to preserve and protect the continued use of the property for agricultural purposes by excluding the location of residential and other incompatible development. The Zone includes those areas of the City where the combination of soil quality, size of land parcel, availability of water, historic use of land and lack of urban development activity make the land most suited to agricultural and livestock purposes.

Representative of the uses within the A-1 Zone are livestock grazing, dairies, livestock feed yards, farm caretaker dwellings. Uses which are inconsistent with and tend to militate against the continued use of the land for agriculture and livestock raising are excluded from the zone.

10-5-2.2 Permitted Uses

The following buildings , structures and uses of land shall be permitted upon compliance with the applicable requirements of this Code:

1. The raising of crops in the field.
2. Grazing of livestock
3. Care and keeping of Livestock and fowl without restriction as to numbers.

4. Barns, stables, corrals, pens, coops and other buildings for the care and keeping of domestic livestock.

5. Dairy farms, including the facilities and equipment incidental to the operation of the farm unit. Also the storage, packaging and processing of milk produced on the premises.

6. Livestock farms and/or feedyards and the facilities and equipment incidental to the operation the farm unit (i.e., grain storage, silos, mills).

7. Crop farming operation, including the facilities and equipment incidental to the operation of the farm unit.

8. Electric, water, gas, telephone and similar utility transmission lines and facilities.

9. An accessory sign pertaining to the sale of real property or produce raised on the premises; provided, that such sign shall not exceed thirty-two (32) square feet.

10. Private kennels, when included as part of the designated farm unit and subject to the following:

    a. The maximum number of dogs kept on the premises shall be six (6) adult dogs and any suckling offspring less than four (4) months. The maximum number of dogs authorized by this Paragraph shall include all dogs maintained on the premises, including any dogs considered as household pets.

    b. All dogs and kennel maintained on the premises shall be licensed in the name of the occupant of the parcel upon which the kennel is located, in accordance with applicable City regulations.

    c. The kennel shall not be used to board or house dogs owned by others or for other commercial purpose.

    d. The kennel or other enclosure used for the confinement of the dogs shall be subject to the setback requirements for livestock as set forth under Section 10-5-4.2(6).

11. Roping and riding arenas.

12. Foster care homes, when a part of a farm caretaker dwelling, and containing not more than three (3) non-related foster care occupants. [Ord. 2003-8, Sec. 3]

10-5-2.3 Conditional Uses

The following buildings, structures and uses of land may be permitted upon compliance with the requirements of this Code and subject to the prior approval by the designated review agency.

1. Farm Caretaker Dwellings. Conventional construction or manufactured housing unit, when located on a designated farm unit, and subject to the provisions of Section 10-3-3.22 of this Code.

2. Home occupations subject to the provisions of Section 10-3-3.18 of this Code.

3. Residential facility for handicapped persons, when operated as a part of a farm caretaker dwelling and subject to the provisions of Section 10-3-3.27 of this Code.

10-5-2.4 Area Requirements

The minimum lot area and width requirements for a zoning lot shall be as follows:

1. Each crop farm, dairy farm, livestock farm, feedyard, and similar permitted farm operation and each farm caretaker dwelling shall be located upon a "designated farm unit." Each designated farm unit shall contain not less than forty (40) acres, except that the Council may approve a farm unit having less than forty (40) acres, upon presentation of satisfactory evidence by the applicant and a finding by the Council that the proposed farm unit constitutes a bona fide farm operation.

10-5-2.5 Access Requirements

Each designated farm unit shall: (1) front upon and have direct access to a public street for a distance of not less than two hundred (200) feet, or (2) shall have direct and uninterruptable access to a public street over a deeded private travel easement.

10-5-2.6 Location Requirements

All dwellings and other main buildings shall be set back not less than twenty-five (25) feet from the right-of-way line of any public street and not less than ten (10) feet from any lot line not adjacent to a public street.

10-5-2.7 Height of Building

1. The maximum height of any dwelling or other building used for human occupancy shall be thirty (30) feet or two (2) and one-half (1/2) stories, whichever is higher.

2. The minimum height of a building used as a dwelling shall be not less than eight (8) feet except when approved as an Earth Shelter Home Project (see Section 10-3-3.21).

10-5-2.8 Utility Requirements

All dwellings and other structures used for human occupancy shall be served by the City's water, sewer and pressurized irrigation system in accordance with the provisions of Section 10-3-3.26, except that the requirement for connection to one (1) or more of the above-mentioned systems may be waived by the City Council upon a finding that: (1) connection to one (1) or more of the above utility systems is not reasonably practicable and (2) an alternative method of providing the service to the premises has been secured (i.e., approved domestic well right, septic tank approval by health agency).

10-5-2.9 Dwelling Requirements

1. Area of Dwelling. Each dwelling shall conform to one (1) of the following:

   a. The ground floor living area of any one-family dwelling shall contain not less than one thousand one hundred (1,100) square feet, or

   b. The dwelling shall meet or exceed all of the following:

      (i) The dwelling shall have a total "building footprint area" of not less than one thousand one hundred (1,100) square feet as measured from the outside of the foundation wall.

      (ii) Not less than nine hundred fifty (950) square feet of the "building footprint area" shall be devoted exclusively to living space (portions of the footprint area occupied by garages, porches, breezeways and similar areas shall be excluded), and shall contain a total living area of not less than one thousand five hundred (1,500) square feet.

   c. The main floor footprint living area of any two-family dwelling shall contain not less than one thousand four hundred (1,400) square feet and must contain a total living area of two thousand two hundred (2,200) square feet with each unit containing not less than one thousand one hundred (1,100) square feet of living area.

2. Minimum Dimension. The minimum width or length dimension of any dwelling as measured from the outside wall shall be not less than twenty-four (24) feet. Non-living spaces such as garages, porches, and sheds shall not be included in determining compliance with this requirement.

3. Off-Street Parking. Not less than two (2) off-street parking spaces shall be required for each dwelling unit. Each off-street parking space shall be not less than ten (10) by twenty (20) feet per space and shall not be located within any portion of a front or side setback area adjacent to a street. [Ord. 2001-5, Sec. 1; Ord. 1996-3, Sec. 1]

10-5-3 (RESERVED)

10-5-4 RR-1 RURAL RESIDENTIAL ZONE

10-5-4.1 Legislative Intent

The objective in establishing the RR-1 Rural Residential Zone is to provide a location within the City for a residential and agricultural environment where the residents may engage in significant agricultural pursuits, including the keeping of livestock. A minimum of vehicular traffic and quiet residential conditions favorable to family living and the rearing of children shall also be characteristic of this zone.

Representative of the uses within the RR-1 Zone are one-family dwellings, the keeping of domestic livestock, parks, playgrounds, churches and other community facilities designed in harmony with the characteristics of the zone.

Residents and developers within the zone should bear in mind that the proximity of animals to dwellings is an integral part of the zone and should occupy the residences in recognition thereof.

The specific regulations necessary for the accomplishment of the intent of the zone are hereinafter set forth.

10-5-4.2 Permitted Uses

The following buildings, structures and uses of land shall be permitted upon compliance with the standards and requirements as set forth in this Code.

1. One-family dwellings - conventional construction.
2. One-family dwellings - manufactured housing, subject to the provisions of Section 10-3-3.23.
3. Customary residential accessory structures.
4. Gardens, Orchards and field crops.
5. The raising, care and keeping of livestock and fowl in an amount not exceeding eight (8) animal units per acre of lot area.
6. Corrals and pens for the enclosure of livestock. Also, barns, stables, coops, sheds, hutches or similar buildings used for the housing or confinement of livestock and fowl, provided that any such corral or pen or any building used for the housing of livestock or fowl shall be located not closer than seventyfive (75) feet to an existing dwelling or other occupied structure located on an adjacent lot or forty (40) feet to such dwelling or structure on the same lot
7. Pastures for the enclosure of livestock, provided that the fence forming the boundary of a pasture shall be located not less than the minimum side setback distance within the zone from any dwelling or occupied structure located on the same or any adjacent lot. This provision shall apply only as long as the enclosed area qualifies as a pasture. If at any time the enclosed

area no longer functions as a pasture the setback provisions of Item 6 above shall apply.

8. Public agency parks and playgrounds.

9. Churches.

10. Household pets.

11. Minor utility transmission projects.

12. Fences, walls and hedges subject to the requirements of Section 10-3-3.14.

13. Temporary signs not exceeding twelve (12) square feet advertising the sale of the premises.

14. Foster care homes containing not more than three (3) non-related foster care occupants.

15. Private kennels, subject to the following:

    a. The lot upon which the kennel is placed shall be not less than one (1) acre.

    b. The maximum number of dogs kept on the premises shall be six (6) adult dogs and any suckling offspring less than four (4) months. The maximum number of dogs authorized by this Paragraph shall include all dogs maintained on the premises, including any dogs considered as household pets.

    c. The kennel and all dogs maintained on the premises shall be licensed in the name of the occupant of the lot upon which the kennel is located, in accordance with applicable City regulations.

    d. The kennel shall not be used to board or house dogs owned by others or for other commercial purpose.

    e. The kennel or other enclosure used for the confinement of the dogs shall be subject to the setback requirements for livestock as set forth under Section 10-5-4.2(6). [Ord. 2003-8, Sec. 2]

10-5-4.3 <u>Conditional Uses</u>

The following buildings, structures and uses of land shall be permitted upon compliance with the requirements set forth in this Code and after approval has been given by the designated reviewing agencies. (Approval of other agencies or levels of government may be required.)

1. Home occupations subject to the provisions of Section 10-3-3.18 of this Code and prior approval by the Planning Commission.

2. Earth shelter home projects subject to the provisions of Section 3-3-21 and the prior approval of a site plan in accordance with the provisions of Section 10-3-3.20.

3. Residential facility for handicapped persons subject to the provisions of Section 10-3-3.27 of this Code.

4. Public schools, buildings and grounds, not including storage yards, subject to the conditions of Section 10-3-3-19.

10-5-4.4 Area and Width Requirements

The minimum area and width requirements of a zoning lot shall be as follows:

USE	MINIMUM AREA	MINIMUM WIDTH
1. One-family dwellings	1 acre	130 feet
2. Churches	2.5 acres	200 feet
3. Schools	5 acres	200 feet

10-5-4.5 Access Requirements

Each lot shall abut upon and have direct access to a City street. The distance *of* said abutting side shall be not less than the minimum width requirement *of* the zone except that the length *of* said abutting side may be reduced to not less than seventy (70) feet when the lot fronts upon a cul-de-sac or curve in a designated city street and the lot lines radiate in such a manner that the width of the lot will meet or exceed the minimum width requirements of the zone at a distance of eighty (80) feet from the front setback line as measured along the side lot line.

10-5-4.6 Location Requirements

1. Main Buildings. All dwellings and other main buildings and structures shall be set back in accordance with the following:

   A. Front Setback. All dwellings and other main buildings shall be set back not less than twenty five (25) feet from the front lot line, provided that on lots approved in conformance with the provisions *of* 10-5-4.5 above, the front setback shall be the distance from the front lot line at which the minimum width requirements are met, but not less than twenty five (25) feet.

   B. Side Setback.
      (1) Interior Lots. All dwellings and other main buildings including any attached carport, garage, or similar structure shall be set back not less than fifteen (15) feet from the side lot line.
      (2) Corner Lots - Side Abutting a Street. All dwellings and other main buildings shall be set back not less than twenty five (25) feet from the side lot line which abuts on a street.

   C. Rear Setback.
      (1) Interior Lots. All dwellings or other main buildings shall be set back not less than thirty (30) feet from the rear lot line.
      (2) Corner Lots. All dwellings and other main buildings shall be set back not less than thirty (30).

1. Accessory Buildings

   All accessory buildings shall be located in accordance with the following:

   A. Setback from Main Building and Street Line. Accessory buildings shall be set back not less than twenty (20) feet from the closest part of the main building and not less than twenty five (25) feet from any lot line which abuts on a street. Accessory buildings located twenty

(20) feet or closer to a main building shall be considered as part of the main building.

B. Side and Rear Setback - Interior Lot Line. Accessory buildings shall be set back not less than five (5) feet from the lot line, except that no minimum side setback shall be required when all the following conditions are met:

(1) The accessory building is located more than twenty five (25) feet from any existing dwelling on an adjacent lot.
(2) The accessory building contains no openings on the side contiguous to the lot line,
(3) No drainage from the roof will be discharged onto an adjacent lot,
(4) The accessory building shall be constructed of noncombustive materials or have fire resistive walls rated at two (2) hours or more, and
(5) The building will not be placed on land designated as a utility easement upon which any underground utility system or lines shall have been constructed.

10-5-4.7 Height of Building

1. The maximum height of any building shall be thirty (30) feet or two and one-half (2 1/2) stories, whichever is higher. Where the ground is uneven in height, the average elevation thereof shall apply.

Chimneys, flag poles, television antennas, church towers, and similar ancillary structures not used for human occupancy shall be excluded in determining height, provided that no such ancillary structure shall extend to a height in excess of fifteen (15) feet above the building except when approved by the Planning Commission as set forth under Section 10-3-3.20.

2. The minimum height of a buildings used as a dwelling shall be not less than eight (8) feet except when approved as an Earth Shelter Home Project (see 10-3-3.21)

10-5-4.8 Utility Requirements

All dwellings and other structures used for human occupancy shall be served by the City's water, sewer and pressurized irrigation system in accordance with the provisions of Section 10-3-3.26, except that the requirement for connection to one or more of the above mentioned systems may be waived by the City Council upon a finding that: (1) connection to one or more of the above utility systems is not reasonable practicable and, (2) an alternative method of providing the service to the premises has been provided for. (ie. approved domestic well right, septic tank approval by health agency.)

10-5-4.9 Dwelling Requirements

1. Area of Dwelling. Each dwelling shall conform to one (1) of the following:

   a. The ground floor living area of any one-family dwelling shall contain not less than one thousand one hundred (1,100) square feet, or

   b. The dwelling shall meet or exceed all of the following:

      (i) The dwelling shall have a total "building footprint area" of not less than one thousand one hundred (1,100) square feet as measured from the outside of the foundation wall.

      (ii) Not less than nine hundred fifty (950) square feet of the "building footprint area" shall be devoted exclusively to living space (portions of the footprint area occupied by garages, porches, breezeways and similar areas shall be excluded), and shall contain a total living area of not less than one thousand five hundred (1,500) square feet.

   c. The main floor footprint living area of any two-family dwelling shall contain not less than one thousand four hundred (1,400) square feet and must contain a total living area of two thousand two hundred (2,200) square feet with each unit containing not less than one thousand one hundred (1,100) square feet of living area.

2. Minimum Dimension. The minimum width or length dimension of any dwelling as measured from the outside wall shall be not less than twenty-four (24) feet. Non-living spaces such as garages, porches, and sheds shall not be included in determining compliance with this requirement.

3. Off-Street Parking. Not less than two (2) off-street parking spaces shall be required for each dwelling unit. Each off-street parking space shall be not less than ten (10) by twenty (20) feet per space and shall not be located within any portion of a front or side setback area adjacent to a street. [Ord. 2001-5, Sec. 1; Ord. 1996-3, Sec. 1]

10-5-5 (RESERVED)

10-5-6 R-2-10,000 RESIDENTIAL ZONE

10-5-6.1 Legislative Intent

The R-2-10,000 Residential Zone covers the portion of the City which is primarily suited for residential development represented by a co-mingling of one-family and two-family dwellings, limited agricultural activities and parks, playgrounds, schools, churches, and other community facilities designed to serve the residents of the City. The zone is characterized by spacious lots, uncrowded buildings, and quiet residential conditions favorable to the rearing of children. Owners and developers of property within this zone should bear in mind that primacy is given to residential development and maintain their properties in recognition thereof.

The specific regulations necessary for the accomplishment of the intent of the zone are hereinafter set forth.

10-5-6.2 Permitted Uses

The following buildings, structures, and uses of land shall be permitted upon compliance with the applicable requirements of this code:

1. One-family and two-family dwellings - conventional construction.
2. One-family and two-family dwellings - manufactured housing, subject to the provisions of Section 10-3-3.23.
3. Customary residential accessory structures.
4. Public agency parks and playgrounds.
5. Churches.
6. Household pets, but not including kennels.
7. Minor utility transmission projects.
8. Gardens, orchards, and field crops.
9. Fences, walls, and hedges subject to the requirements of Section 10-3-3.14.
10. Temporary signs advertising the sale of the premises not exceeding twelve (12) square feet.
11. Foster care homes containing not more than three (3) non-related foster care occupants.

10-5-6.3 Conditional Uses

The following buildings, structures, and uses of land shall be permitted upon compliance with the applicable requirements of this code and after approval has been given by the designated review agency.

1. Planned unit developments and residential condominium projects subject to the applicable provisions of Section 10-6-1 et. seq. of this Code.
2. Home occupations subject to the provisions of Section 10-3-3.18 of this Code and prior approval by the Planning Commission.

3. Earth shelter home projects subject to the provisions of Section 3-3-21 and the prior approval of a site plan in accordance with the provisions of Section 10-3-3.20.
4. Residential facility for handicapped persons subject to the provisions of section 10-3-3.27 of this Code.
5. Public Schools, buildings and grounds, not including storage yards, subject to the conditions of Section 10-3-3-19.
6. The raising, care and keeping of limited numbers of animals and fowl for family food or recreation subject to the following:

A. Each lot or parcel upon which livestock or fowl are to be kept shall contain a designated Livestock Management Area as defined in this Code.

B. The total number of animals or fowl kept on any lot shall not exceed one Animal Unit (See Section 10-11-2.1 for definition) for each four thousand five hundred (4500) square feet of Livestock Management Area, provided that no bovine, equine or similar large animal shall be kept on any lot or parcel where the Livestock Management Area is less than *nine* thousand (9,000) square feet.

On any lot which contains a dwelling the Livestock Management Area shall not include territory required to meet the area or setback requirements for an appurtenant dwelling (ie. the first 10,000 square feet for a one family dwelling)

D. All corrals and pens for the enclosure of livestock and all barns, stables, coops, sheds, hutches or similar buildings used for the housing or confinement of livestock or fowl shall be located not closer than seventy-five (75) feet to an existing dwelling or other occupied structure located on an adjacent lot or forty (40) feet to such dwelling or structure on the same lot.

E. Where the Livestock Management Area includes a pasture the fence forming the boundary of the pasture shall be located not less than the minimum side setback distance of the zone from any dwelling or occupied structure located on the same or any adjacent lot. This provision shall apply only as long as the enclosed area qualifies as a pasture. If at any time the enclosed area no longer functions as a pasture the setback provisions of Paragraph D above shall apply.

F. The parcel or any portion thereof proposed to be used for livestock raising purposes shall be first approved by the Zoning Administrator as a qualified Livestock Management Area.

G. For animals other than bovine or equine, partial animal units shall be permitted to be prorated in accordance with the amount of territory within the Livestock Management Area.

10-5-6.4 Area and Width Requirements

The minimum area and width requirements for a zoning lot shall be as follows:

USE	MINIMUM AREA (in sq. ft.)	MINIMUM WIDTH (in ft.)
One-family dwellings	10,000	100'
Two-family dwellings	15,000	150'
Churches	2 acres	200'
Schools	5 acres	200'

[Ord. 2002-5, Sec. 1]

10-5-6.5 Access Requirements

Each lot shall abut upon and have direct access to a City street. The distance of said abutting side shall be not less than the minimum width requirement of the zone except that the length of said abutting side may be reduced to not less than sixty (60) feet when the lot fronts upon a cul-de-sac or curve in a designated city street and the lot lines radiate in such a manner that the width of the lot will meet or exceed the minimum width requirements of the zone at a distance of forty (40) feet from the front setback line as measured along the side lot line.

10-5-6.6 Location Requirements

1. Main Buildings. All dwellings and other main buildings and structures shall be set back in accordance with the following:

A. Front Setback. All dwellings and other main buildings shall be set back not less than twenty-five (25) feet from the front lot line; provided, that on lots approved in conformance with the provisions of Section 10-5-6.5 above, the front setback shall be the distance from the front lot line at which the minimum width requirements are met, but not less than twenty-five (25) feet.

B. Side Setback.

(1) Interior Lots. All dwellings and other main buildings including any attached carport, garage, or similar structure shall be set back not less than eight (8) feet from either side lot line and the combined total distance of the two side setbacks shall be not less than twenty (20) feet.

(2) Corner Lots - Side Abutting a Street. All dwellings and other main buildings shall be set back not less than twenty five (25) feet from the side lot line which abuts on a street.

C. Rear Setback.

(1) Interior Lots. All dwellings or other main buildings shall be set back not less than twenty (20) feet from the rear lot line.

(2) Corner Lots. All dwellings and other main buildings shall be set back not less than twenty five (25) feet from the rear lot line, except that where a carport or garage is attached to the rear of the dwelling, the required rear setback for said carport or garage may be reduced to not less than twelve (12) feet as measured from the rear lot line to the closest part of the building.

2. Accessory Buildings

All accessory buildings shall be located in accordance with the following:

A. Setback from Main Building - Front Setback Accessory buildings shall be set back not less than twelve (12) feet to the rear of the closest rear wall of the main building, and not less than twelve (12) feet from the closest side wall of the main building. Accessory buildings which are located twelve (12) feet or closer to a main building shall be considered as part of the main building. Where no main building exists on a lot, a detached accessory building shall be set back not less than seventy-five (75) feet from the front lot line.

B. Side Setback - Corner Lot, Side Abutting a Street. Accessory buildings shall be set back not less than twenty-five (25) feet from the side lot line which abuts on a street. (Ord. 1992-1, Jun.22, 1992)

C. Side and Rear Setback - Interior Lot Line. Accessory buildings shall be set back not less than five (5) feet from the lot line, except that no minimum side setback shall be required when all the following conditions are met:

1. The accessory building is located more than twelve (12) feet from an existing dwelling on the same or an adjacent lot.

(2) The accessory building contains no openings on the side contiguous to the lot line,

(3) No drainage from the roof will be discharged onto an adjacent lot,

(4) The accessory building shall be constructed of non-combustive materials or have fire-resistive walls rated at two (2) hours or more, and

(5) The building will not be placed on land designated as a utility easement upon which any underground utility system or lines shall have been constructed.

10-5-6.7 Height of Building

1. The maximum height of any building shall be thirty (30) feet or two (2) and one-half (1/2) stories, whichever is higher. Where the ground is uneven in height, the average elevation thereof shall apply.

   Chimneys, flag poles, television antennas, and similar ancillary structures not used for human occupancy shall be excluded in determining height; provided, that no such ancillary structure shall extend to a height in excess of fifteen (15) feet above the building except when approved by the Planning Commission as set forth under Section 10-3-3.20.

2. The minimum height of a building used as a dwelling shall be not less than eight (8) feet except when approved as an Earth Shelter Home Project (see 10-3-3.21).

10-5-6.8 Utility Requirements

All dwellings and other structures to be used for human occupancy shall be served by the City's water, sewer, and pressurized irrigation system in accordance with the provisions of-Section 10-3-3.26.

10-5-6.9 Dwelling Requirements

1. Area of Dwelling. Each dwelling shall conform to one (1) of the following:

   a. The ground floor living area of any one-family dwelling shall contain not less than one thousand one hundred (1,100) square feet, or

   b. The dwelling shall meet or exceed all of the following:

      (i) The dwelling shall have a total "building footprint area" of not less than one thousand one hundred (1,100) square feet as measured from the outside of the foundation wall.

(ii) Not less than nine hundred fifty (950) square feet of the "building footprint area" shall be devoted exclusively to living space (portions of the footprint area occupied by garages, porches, breezeways and similar areas shall be excluded), and shall contain a total living area of not less than one thousand five hundred (1,500) square feet.

c. The main floor footprint living area of any two-family dwelling shall contain not less than one thousand four hundred (1,400) square feet and must contain a total living area of two thousand two hundred (2,200) square feet with each unit containing not less than one thousand one hundred (1,100) square feet of living area.

2. Minimum Dimension. The minimum width or length dimension of any dwelling as measured from the outside wall shall be not less than twenty-four (24) feet. Non-living spaces such as garages, porches, and sheds shall not be included in determining compliance with this requirement.

3. Off-Street Parking. Not less than two (2) off-street parking spaces shall be required for each dwelling unit. Each off-street parking space shall be not less than ten (10) by twenty (20) feet per space and shall not be located within any portion of a front or side setback area adjacent to a street. [Ord. 2001-5, Sec. 1; Ord. 1996-3, Sec. 1]

10-5-8 R-4-7500 MULTIPLE RESIDENTIAL ZONE

10-5-8.1 Legislative Intent

The R-4-7500 Multiple Residential Zone has been established for the purpose of providing a location within the city where one, two and multiple-family dwellings, up to a maximum of four dwelling units per structure, can be located most appropriately. This zone is characterized by a variety of dwelling types and more dense residential environment than is characteristic of the other residential zones. However, attractive lawns, shrubs, trees, and other landscape plantings about the houses and the parking areas are also characteristic of this zone. It is anticipated that area placed in this zone will be relatively small and will be distributed in throughout the community where higher density development can be best accommodated and where the commingling of various types of residential uses, churches and schools can occur with minimum disruption of traditional development patterns.

Representative of the uses of this zone are one, two, three, and four family dwellings mingled with churches, schools, and parks. Commercial uses, office buildings and industrial establishments are inconsistent with the intent of the zone and are not permitted.

The specific regulations necessary for the accomplishment of the zone are hereinafter set forth.

10-5-8.2 Permitted Uses

The following buildings, structures, and uses of land shall be permitted upon compliance with the applicable requirements of this Code.

1. One, two, three, and four-family dwellings - conventional construction.
2. One, two, three, and four-family dwellings - manufactured housing subject to the provisions of Section 10-3-3.23
3. Customary residential accessory structures.
4. Public agency parks and playgrounds.
5. Churches.
6. Household pets, but not including kennels.
7. Minor utility transmission projects.
8. Gardens, orchards, and field crops.
9. Fences, walls, and hedges subject to the requirements of Section 3-3-14.
10. Temporary signs advertising the sale of the premises not exceeding twelve (12) square feet.
11. Foster care homes containing not more than three (3) non-related foster care occupants.

10-5-8.3 Conditional Uses

The following buildings, structures, and uses of land shall be permitted upon compliance with the applicable requirement of this Code and after approval has been given by the designated review agency.

1. Planned unit developments and residential condominium projects subject to the applicable provisions of Section 10-6-1 et. seq. of this Code.
2. Home occupations subject to the provisions of Section 10-3-3.18 *of* this Code and prior approval by the Planning Commission.
3. Earth shelter home projects subject to the provisions of Section 3-3-21 and the prior approval of a site plan in accordance with the provisions of Section 10-3-3.20.
4. Residential facility for handicapped persons subject to the provisions *of* section 10-3-3.27 of this Code.
5. Public Schools, buildings and grounds, not including storage yards, subject to the conditions of Section 10-3-3-19.

10-5-8.4 Area and Width Requirements

The minimum area and width requirements of a zoning lot shall be as follows:

MAIN USE	MINIMUM AREA (in sq. ft.)	MINIMUM WIDTH
One-family dwellings	7,500	75'
Two-family dwellings	10,000	90'
Three-family dwellings	12,500	100'
Four-family dwellings	15,000	110'
Churches	2 acres	200'
Schools	5 acres	200'

Access Requirements

10-5-8.5

Each lot shall abut upon and have direct access to a City street. The distance of said abutting side shall be not less than the minimum width requirement of the zone except that the length of said abutting side may be reduced to not less than

sixty (60) feet when the lot fronts upon a cul-de-sac or curve in a designated city street and the lot lines radiate in such a manner that the width of the lot will meet or exceed the minimum width requirements of the zone at a distance of forty (40) feet from the front setback line as measured along the side lot line.

10-5-8.6 Location Requirements

1. Main Buildings. All dwellings and other main buildings and structures shall be set back in accordance with the following:

A. Front Setback. All dwellings and other main buildings shall be set back not less than twenty five (25) feet from the front lot line, provided that on lots approved in conformance with the provisions of 10-5-8.5 above, the front setback shall be the distance from the front lot line at which the minimum width requirements are met, but not less than twenty five (25) feet.

Side Setback.

(1) Interior Lots. All dwellings and other main buildings including any attached carport, garage, or similar structure shall be set back not less than eight (8) feet from either side lot line and the combined total distance of the two side setbacks shall be not less than sixteen (16) feet.

(2) Corner Lots - Side Abutting a Street. All dwellings and other main buildings shall be set back not less than twenty five (25) feet from the side lot line which abuts on a street.

C. Rear Setback.

(1) Interior Lots. All dwellings or other main buildings shall be set back not less than twenty (20) feet from the rear lot line.

(2) Corner Lots. All dwellings and other main buildings shall be set back not less than twenty-five (25) feet from the rear lot line, except that where a carport or garage is attached to the rear of the dwelling, the required rear setback for said carport or garage may be reduced to not less than twelve (12) feet as measured from the rear lot line to the closest part of the building.

1. Accessory Buildings

All accessory buildings shall be located in accordance with the following:

A. Setback from Main Building - Front Setback Accessory buildings shall be set back not less than twelve (12) feet to the rear of the closest rear wall of the main building, and not less than twelve (12) feet from the closest side wall of the main building. Accessory

buildings which are located twelve (12) feet or closer to a main building shall be considered as part of the main building. Where no main building exists on a lot, a detached accessory building shall be set back not less than seventy-five (75) feet from the front lot line.

B. Side Setback - Corner Lot, Side Abutting a Street. Accessory buildings shall be set back not less than twenty-five (25) feet from the side lot line which abuts on a street. (Ord. 1992-1, Jun.22, 1992.)

C. Side and Rear Setback - Interior Lot Line. Accessory buildings shall be set back not less than five (5) feet from the lot line, except that no minimum side setback shall be required when all the following conditions are met:

(1) The accessory building is located more than twelve (12) feet from an existing dwelling on the same or an adjacent lot.
(2) The accessory building contains no openings on the side contiguous to the lot line,
(3) No drainage from the roof will be discharged onto an adjacent lot,
(4) The accessory building shall be constructed of non-combustive materials or have fire resistive walls rated at two (2) hours or more, and
(5) The building will not be placed on land designated as a utility easement upon which any underground utility system or lines shall have been constructed.

10-5-8.7 Height of Building

1. The maximum height of any building shall be thirty (30) feet or two and one-half (21) stories, whichever is higher. Where the ground is uneven in height, the average elevation thereof shall apply.

Chimneys, flag poles, television antennas, church towers, and similar ancillary structures not used for human occupancy shall be excluded in determining height, provided that no such ancillary structure shall extend to a height in excess of fifteen (15) feet above the building except when approved by the Planning Commission as set forth under Section 10-3-3.20.

2. The minimum height of a buildings used as a dwelling shall be not less than eight (8) feet except when approved as an Earth Shelter Home Project (See 10-3-3.21)

All dwellings and other structures to be used for human occupancy shall be served by the City's water, sewer, and pressurized irrigation system subject to the provisions of 10-3-3.26.

10-5-8.9 Dwelling Requirements

1. Area of Dwelling. Each dwelling shall conform to one (1) of the following:

   a. The ground floor living area of any one-family dwelling shall contain not less than one thousand one hundred (1,100) square feet, or

   b. The dwelling shall meet or exceed all of the following:

      (i) The dwelling shall have a total "building footprint area" of not less than one thousand one hundred (1,100) square feet as measured from the outside of the foundation wall.

      (ii) Not less than nine hundred fifty (950) square feet of the "building footprint area" shall be devoted exclusively to living space (portions of the footprint area occupied by garages, porches, breezeways and similar areas shall be excluded), and shall contain a total living area of not less than one thousand five hundred (1,500) square feet.

   c. The main floor footprint living area of any two-family dwelling shall contain not less than one thousand four hundred (1,400) square feet and must contain a total living area of two thousand two hundred (2,200) square feet with each unit containing not less than one thousand one hundred (1,100) square feet of living area.

2. Minimum Dimension. The minimum width or length dimension of any dwelling as measured from the outside wall shall be not less than twenty-four (24) feet. Non-living spaces such as garages, porches, and sheds shall not be included in determining compliance with this requirement.

3. Off-Street Parking. Not less than two (2) off-street parking spaces shall be required for each dwelling unit. Each off-street parking space shall be not less than ten (10) by twenty (20) feet per space and shall not be located within any portion of a front or side setback area adjacent to a street. [Ord. 2001-5, Sec. 1; Ord. 1996-3, Sec. 1]

10-5-8.10 Special Provisions

1. Prior to the issuance of a building permit for any dwelling containing three (3) or more units, a site plan shall be submitted to and approved by the Planning Commission in accordance with the provisions of Section 10-3-3.20.

10-5-9 (RESERVED)

10-5-10 R-1-MHP MOBILE HOME PARK ZONE

10-5-10.1 Legislative Intent

The intent in establishing the R-1-MHP Mobile Home Park Zone is to provide a location where mobile home parks can be located within the City in a manner which will provide a suitable residential environment for both the occupants of the park and the surrounding residents.

10-5-10.2 Permitted Uses

The following buildings, structures and uses of land shall be permitted in the R-1-MHP Zone.

1. Any uses permitted in the R-2-10,000 Zone subject to the requirements of said zone.

10-5-10.3 Conditional Uses

The following buildings, structures and uses of land shall be permitted upon compliance with the applicable requirements of this Code and after approval has been given by the designated review agency.

1. Mobile Home Parks subject to the provisions of Section 10-6-5 of this Code.
2. Any use permitted in the R-2-10,000 Zone subject to the requirements of said zone.

10-5-11 (RESERVED)

10-5-12 R&C-1 RESIDENTIAL AND COMMERCIAL (MIXED USE) ZONE

10-5-12.1 Legislative Intent

It is the intent of this zone to provide a location within the City allowing a mixture of residential and office, retail and service commercial activities under conditions not inimical to either residential living or the reasonable conduct of commerce.

The Zone is to be applied to the existing built-up area of the City adjacent to the central business area and adjacent to the main highway in the south and eastern part of the City.

The zone is characterized by a mixture of one and two-family dwellings interspersed with relatively small office buildings and retail and service commercial structures in pleasant landscaped settings typical of low density residential areas.

10-5-12.2 Permitted Uses

The following buildings, structures and uses of land shall be permitted upon compliance with the requirements set forth in this code:

1. One-family and two-family dwellings - conventional construction.
2. One-family and two-family dwellings - manufactured housing, subject to the provisions of Section 10-3-3.23.
3. Customary residential accessory structures.
4. Public agency parks and playgrounds.
5. Churches.
6. Household pets not including kennels.
7. Minor utility transmission projects.
8. Gardens, orchards, and field crops.
9. Fences, walls, and hedges subject to the requirements of Section 10-3-3.14.
10. Temporary signs advertising the sale of the premises not exceeding twelve (12) square feet.
11. Foster care homes containing not more than three (3) non-related foster care occupants.
12. General retail stores and shops providing goods and services for sale at retail in the customary manner. Also, manufacturing and processing activities which are an integral part of and incidental to a permitted retail establishment.
13. Office buildings
14. Commercial recreation enterprises including movie theaters, bowling alleys, recreation centers, athletic clubs, etc.
15. Accessory signs in accordance with the provisions of Section 10-3-3.30 of this Code.

16. Pre-schools and day-care nurseries subject to approval of a site plan in accordance with the provisions of Section 10-3-3.20.

10-5-12.3 Conditional Uses

The following buildings, structures, and uses of land shall be permitted upon compliance with the applicable requirements of this code and after approval has been given by the designated review agency.

1. Planned unit developments and residential condominium projects subject to the applicable provisions of Section 10-6-1 et. seq. of this Code.
2. Home occupations subject to the provisions of Section 10-3-3.18 of this Code and prior approval by the Planning Commission.
3. The raising, care and keeping of limited numbers of animals and fowl for family food or recreation subject to the following:

   A. Each lot or parcel upon which livestock or fowl are to be kept shall contain a designated Livestock Management Area as defined in this Code.

   B. The total number of animals or fowl kept on any lot shall not exceed one Animal Unit (See Section 10-11-2.1 for definition) for each four thousand five hundred (4500) square feet of Livestock Management Area, provided that no bovine, equine or similar large animal shall be kept on any lot or parcel where the Livestock Management Area is less than nine thousand (9,000) square feet.

   C. On any lot which contains a dwelling the Livestock Management Area shall not include territory required to meet the area or setback requirements for an appurtenant dwelling (the first 10,000 square feet for a one family dwelling)

   D. All corrals and pens for the enclosure of livestock and all barns, stables, coops, sheds, hutches or similar buildings used for the housing or confinement of livestock or fowl shall be located not closer than seventy-five (75) feet to an existing dwelling or other occupied structure located on an adjacent lot or forty (40) feet to such dwelling or structure on the same lot.

   E. Where the Livestock Management Area includes a pasture the fence forming the boundary of the pasture shall be located not less than the minimum side setback distance of the zone from any dwelling or occupied structure located on the same or any adjacent lot. This provision shall apply only as long as the enclosed area qualifies as a pasture. If at any time the enclosed area no longer functions as a pasture the setback provisions of Paragraph D above shall apply.

F The parcel or any portion thereof proposed to be used for livestock raising purposes shall be first approved by the Zoning Administrator as a qualified Livestock Management Area.

G. For animals other than bovine or equine partial animal units shall be permitted, to be prorated in accordance with the amount of territory within the Livestock Management Area.

4. Combined residential and commercial projects (Separate commercial and residential structures located on the same parcel), subject to the approval of a site plan in accordance with the provisions of 10-3-3.20.

5. Mixed use structures (Joint use of a single structure for commercial and residential purposes) subject to the approval of a site plan in accordance with the provisions of 10-3-3.20.

6. Recreation Vehicle courts subject to the provisions of Section 10-3-3.31, and the approval of a site plan in accordance with the provisions of Section 10-3-3.20.

7. Residential facility for handicapped persons subject to the provisions of section 10-3-3.27 of this Code.

8. Public Schools, buildings and grounds, not including storage yards, subject to the conditions of Section 10-3-3-19.

9. Earth shelter home projects subject to the provisions of Section 3-3-21 and the prior approval of a site plan in accordance with the provisions of Section 10-3-3.20.

10-5-12.4 <u>Area and Width Requirements</u>

1. For residential, mixed use structures (joint use of a single structure for commercial purposes), churches and schools the minimum area and width requirements shall be the same as the R-2-10,000 zone.

Keep

2. For general retail, office and commercial uses there shall be no minimum lot

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i area or width requirements, except that the parcel shall have a width sufficient to provide reasonable and safe vehicular ingress and egress to the use and an area sufficient to accommodate the structure, landscape areas, minimum setback, required off-street parking, loading and unloading, all as provided on the site plan provided in accordance with the provisions of Section 10-3-3.20.

3. For combined residential and commercial projects (separate residential and commercial buildings on the same parcel) the minimum width requirement shall be the same as required for a dwelling in the R-2-10,000 zone and the area requirement shall be the same as required for a dwelling in the R-210,000 zone, plus the amount required to accommodate the commercial use, determined in accordance with paragraph 2 above.

10-5-12.5 Access Requirements

1. All dwellings and mixed use structures shall conform to the access requirements of the R-2-10,000 zone.

2. Each lot occupied by an a retail business, office, or similar commercial use or a combined residential and commercial project shall abut upon and have direct access to a City street. The width of the abutting side shall be as shown on the approved site plan.

10-5-12.6 Location Requirements

All dwellings, retail, office and similar commercial structures shall conform to the setback requirements for main buildings as set forth in the R-2-10,000 Zone or as may be required pursuant to other provisions of this code, whichever is the more restrictive. All accessory buildings shall conform to the setback requirements for such structures as set forth in the R-2-10,000 zone.

10-5-12.7 Height of Building

1. The maximum height of any building shall be thirty (30) feet or two and one-half (2 1/2) stories, whichever is higher. Where the ground is uneven in height, the average elevation thereof shall apply.

   Chimneys, flag poles, television antennas, and similar ancillary structures not used for human occupancy shall be excluded in determining height, provided that no such ancillary structure shall extend to a height in excess of fifteen (15) feet above the building except when approved by the Planning Commission as set forth under Section 10-3-3.20.

2. The minimum height *of* a buildings used as a dwelling shall be not less than eight (8) feet except when approved as an Earth Shelter Home Project (See 10-3-3.21)

10-5-12.8 Utility Requirements

All dwellings and other structures to be used for human occupancy shall be served by the city's water, sewer, and pressurized irrigation system in accordance with the provisions 10-3-3.26, except that in the instance of a commercial building not requiring water for non-culinary purposes, the Council may, upon appeal, waive the requirement for connection to the pressurized irrigation system.

in the instance *of* combined residential and commercial projects the City may require separate connections for the commercial and residential component.

Where a common connection is allowed it shall be considered as a commercial connection.

10-5-12.9 Minimum Building Size Requirements

1. Area of Dwelling. Each dwelling shall conform to one (1) of the following:

   a. The ground floor living area of any one-family dwelling shall contain not less than one thousand one hundred (1,100) square feet, or

   b. The dwelling shall meet or exceed all of the following:

      (i) The dwelling shall have a total "building footprint area" of not less than one thousand one hundred (1,100) square feet as measured from the outside of the foundation wall.

      (ii) Not less than nine hundred fifty (950) square feet of the "building footprint area" shall be devoted exclusively to living space (portions of the footprint area occupied by garages, porches, breezeways and similar areas shall be excluded), and shall contain a total living area of not less than one thousand five hundred (1,500) square feet.

   c. The main floor footprint living area of any two-family dwelling shall contain not less than one thousand four hundred (1,400) square feet and must contain a total living area of two thousand two hundred (2,200) square feet with each unit containing not less than one thousand one hundred (1,100) square feet of living area.

2. Minimum Dimension. The minimum width or length dimension of any dwelling as measured from the outside wall shall be not less than twenty-four (24) feet. Non-living spaces such as garages, porches, and sheds shall not be included in determining compliance with this requirement.

3. Off-Street Parking. Not less than two (2) off-street parking spaces shall be required for each dwelling unit. Each off-street parking space shall be not less than ten (10) by twenty (20) feet per space and shall not be located within any portion of a front or side setback area adjacent to a street. [Ord. 2001-5, Sec. 1; Ord. 1996-3, Sec. 1]

10-5-12.10 Special Provisions

1. Off-Street Parking. No portion of any front setback area shall be devoted to off-street parking for any commercial or mixed use. No off-street parking area which requires backing onto the street right-of-way in order to exit shall be permitted. All ingress and egress shall be by forward motion only.

2. Site Plan Required for Commercial Structures - To Include Proposed Landscaping. All commercial, combined residential and commercial projects and mixed uses

shall require the submission of and approval of a site plan as set forth under Section 10-3-3.20 of this Code. In addition to all other required elements, said site plan shall show the intended landscape treatment of the front and side setback area and all other portions of the site proposed to be devoted to landscaping.

3. Conversion of Residential Structures to Commercial Use. Any proposal to convert an existing residential structure or portion thereof to commercial purposes shall require the submission and approval of a

site plan by the planning commission in accordance with the provisions 10-3-3.20. Existing residential structures or portions thereof proposed to be occupied for commercial purposes shall first be made to conform to the applicable provisions of the building, mechanical, electrical, and plumbing codes for commercial structures.

4. Conversion of Commercial Structures to Residential Use. No commercial structure shall be occupied as a residence without first having a site plan approved by the planning commission. Before granting approval of a site plan the Commission shall make a determination that the proposed structure conforms to all of the provisions of the R-2-10,000 zone relating to residential structures, including, but not limited to the setback, landscaping and off-street parking provisions.

5. Trash Storage. No trash, used materials, or wrecked or abandoned vehicles or equipment shall be stored in an open area.

   Containers for trash storage of a size, type and quantity approved by the City shall be maintained in a location as shown on the Site Plan.

10-5-13 RESERVED

10-5-14 CC-1 CENTRAL COMMERCIAL ZONE

10-5-14.1 Legislative Intent

The CC-1 Central Commercial Zone has been established to provide an area in which the primary use of the land is for retail commercial and service use to accommodate the needs of the residents and traveling public. This zone is also intended to serve as the commercial core of the community.

The Zone is characterized by a mixture of retail and service commercial uses such as stores, restaurants, office structures and a wide variety of specialty shops. In general, areas placed in this zone should be located adjacent to major traffic arteries.

Manufacturing residential uses and other activities which would be inconsistent with the use of the land for commercial activities are not permitted in the zone.

The specific regulations necessary for the accomplishment of the intent of the zone are hereinafter set forth.

10-5-14.2 Permitted Uses

The following buildings, structures and uses of land shall be permitted in the CC-1 Zone upon compliance with the requirements set forth in this Code:

1. General retail stores and shops providing goods and services for sale at retail in the customary manner, provided that all storage and sales activity shall be contained within a building; also, manufacturing and processing activities which are an integral part of and incidental to the retail establishment.
2. Office buildings.
3. Restaurants and food drive-ins.
4. Personal service establishments such as barber and beauty shops, shoe repair, laundries and similar establishments.
5. Automotive service establishments, including gasoline stations, car washes, parking lots and storage garages, minor automotive repair establishments.
6. Automobile, motorcycle, snow mobile sales structures and lots (for both new and used units). Also, the related repair facilities when such facilities are included as an integral part of the sales structure.
7. Recreational enterprises including but not limited to recreation centers, motion picture theaters.
8. Funeral homes.
9. Accessory signs, in accordance with the provisions of Section 10-3-3.30 of this Code.
10. Hotels and motels.

11. Accessory uses and structures shall be permitted in the CC-1 Zone, provided they are incidental to and do not substantially alter the character of the permitted principle use or structure. Such permitted accessory uses and structures include, but are not limited to, buildings such as garages, carports, equipment and supply storage buildings which are customarily used in conjunction with and incidental to a principle use or structure permitted in the CC-1 Zone.

10-5-14.3 Conditional Uses

The following buildings, structures and uses of land shall be permitted upon compliance with the requirements set forth in this Code and after approval has been given by the designated reviewing agencies: (Approval of other agencies or levels of government may be required.)

1. Recreation vehicle courts, subject to the provisions of Section 10-3-3.31, and approval .of a site plan in accordance with the provisions of 10-3-3.20.
2. Commercial condominium projects subject to the applicable provisions of 106-1 et. seq. of this Code.

10-5-14.4 Area and Width Requirements

There shall be no area or width requirements.

10-5-14. Access Requirements

Each lot used for commercial purposes shall abut directly upon and have access to a designated City street.

10-5-14.6 Location Requirements

There shall be no minimum setback requirements.

10-5-14.7 Utility Requirements

All structure used for human occupancy shall be served by the City's water, sewer and pressurized irrigation system in accordance with the provisions 10-3-3.26, except that in the instance of a commercial building not requiring water for non-culinary purposes, the council may, upon appeal, waive the requirement for connection to the Pressurized irrigation system.

10-5-14.8 Special Provisions

1. Uses Within Buildings
All uses shall be conducted entirely within a fully enclosed building, except those uses deemed by the City to be customarily and appropriately

conducted in the open, including, but not limited to, service stations, drive-in restaurants, plant nursery displays, etc.

2. Site Plan to Be Approved For All New Commercial Uses
Prior to the establishment of a new commercial use or the construction of a new building, a site plan shall be submitted to and approved by the Planning Commission, in accordance with the provisions of Section 103-3.20.

3. Off-street Parking
No off-street parking area which requires backing onto the street right-of-way in order to exit shall not be permitted. All ingress and egress shall be by forward motion only.

4. Trash Storage No trash, used materials, or wrecked or abandoned vehicles or equipment shall be stored in an open area.

Containers fir trash storage of a size, type and quantity approved by the City shall be maintained in a location as shown on the Site Plan.

10-5-16 I-i LIGHT INDUSTRIAL ZONE

10-5-16.1 Legislative Intent

The 1-1 Light Industrial Zone has been established for the purpose of providing a place where firms engaged in light manufacturing, processing, warehousing and fabrication of goods and materials can locate with minimum conflict or deleterious effect on surrounding properties and uses and with a high degree of protection from encroachment of residential and commercial uses. It is also intended in this zone to promote the economic well-being of the people and broaden the tax base.

The zone is characterized by a mixture of industrial establishments with ready access to major transportation routes and served by adequate streets, power, water and other utilities and facilities. Some of the territory designated will consist of open land intended for future industrial development. Accordingly, some of the territory will be used for agriculture or other open land uses until its industrial potential is realized.

Representative of the uses within the zone are structures utilized for light manufacturing, fabrication, processing, storage, warehousing and wholesale distribution under conditions which limit the generation of noise, vibration, smoke, odor, dust, fumes or hazard from explosion. Residential and retail commercial developments and other activities which would be inconsistent with the use of the land for industrial purposes are not permitted in the zone.

The specific requirements necessary for the accomplishment of the purposes of the zone are hereinafter set forth.

10-5-16.2 Permitted Uses

The following buildings, structures and uses of land shall be permitted upon compliance with the standards and requirements set forth in this Code:

1. The manufacturing, compounding, processing, fabrication and warehousing of goods and materials, provided that all activities shall be conducted in a manner that no fumes, smoke, noise, vibration or odor is emitted which is discernible beyond the limits of the zone boundary.
2. The raising, care and keeping of animals and fowl.
3. Production of fruit and crops in the field.
4. Buildings, silos and other structures for the storage and keeping of agricultural products and machinery.
5. Structures and buildings for the sorting, grading, packaging, storage and processing of fresh fruits and vegetables.
6. Barns, stables, corrals, pens, coops and other buildings for the care and keeping of domestic livestock.
7. Forest and plant nurseries and greenhouses.
8. Minor utility transmission projects.

9. Animal hospitals and veterinary clinics.

10. Livestock and commodity auctions.

11. Accessory advertising signs.

12. Non-accessory advertising signs, subject to the conditions of Section 10-3-3.30.

13. Truck terminals.

14. The incidental sale of products manufactured on the premises or utilized in the manufacturing process carried out by the primary use.

10-5-16.3 Conditional Uses

The following buildings, structures and uses of land shall be permitted upon compliance with the requirements set forth in this Code and after approval has been given by the designated reviewing agency (approval by other agencies or levels of government may be required):

1. Caretaker dwellings subject to the conditions set forth in Section 10-3-3.22.

2. Sexually oriented businesses, subject to the conditions set forth in Chapter 4-3. [Ord. 2002-6, Sec. 1]

10-5-16.4 Area Requirements

There shall be no minimum area requirements except that an area sufficient to accommodate location requirements, off-street parking, landscaping, loading and unloading and vehicular access shall be provided and maintained.

10-5-16.5 Width Requirements

Each zoning lot shall have a minimum width of one hundred (100) feet, measured at the front property line.

10-5-16.6 Access Requirements

Each zoning lot shall abut upon and have access to a street having a width and quality of construction sufficient to accommodate the type and weight of anticipated vehicles.

10-5-16.7 Location Requirements

1. Buildings shall be set back from the lot lines as follows:

   a. Front Setback. All buildings shall be set back not less than twenty-five (25)

feet; provided, that where it is proposed that the front setback area be used for off-street parking, the minimum front setback shall be increased to forty (40) feet.

b. Side Setback.

(i) Side Abutting Street. Same as required for front setbacks.

(ii) Interior Side. All buildings shall be set back not less than twenty (20) feet from the lot line.

c. Rear Setback. Same as required under Paragraph (1)(b)(ii) of this Subsection.

2. Restrictions on Locations of Sexually Oriented Businesses.

a. No sexually oriented business shall be located:

(i) Within one thousand (1,000) feet of any school, public park, library, religious institution, cemetery, or other sexually oriented business.

(ii) Within one thousand (1,000) feet of any residential zoning boundary.

b. Distance requirements between structures and uses specified in this Section shall be measured in a straight line, without regard to intervening structures or zoning districts, from the property boundaries of the school, public park, religious institution, cemetery or other sexually oriented business to the structure of the sexually oriented business.

c. Distance requirements from residential zoning districts for this Section shall be measured in a straight line, without regard to intervening structures or zoning districts, from the closest zoning boundary of a residential or agricultural district to the structure of the sexually oriented business. [Ord. 2002-6, Sec. 2]

10-5-16.8 Parking and Loading Requirements

Each lot or parcel shall provide parking and access facilities which are sufficient to accommodate the needs of the proposed use as determined by the City.

10-5-16.9 Area and Location Requirements

Each individual zone shall contain a minimum of five (5) acres and each zone shall abut upon and have access to a collector or arterial class road as shown on the City's Major Street Plan.

10-5-16.10 Site Plan Approval Required for Certain Non-Conditional Uses

Prior to commencing operation or construction of any industrial building or the establishment of any non-conditional industrial use or building, a site plan shall be submitted to and approved by the City in accordance with the provisions of Section 3-3-20.

10-5-16.11 Utility Requirements

1. Culinary Water. All caretaker dwellings and structures used for human occupancy shall be served by the City's central water system.

2. Sewage Disposal Facilities. All buildings used for human occupancy shall be served by the City's sewage disposal system. No industrial use shall discharge any substance into the sewage system which would have the effect of reducing the bacterial action of the treatment lagoons.

10-5-16.12 Special Provisions

1. Uses Within Buildings All uses shall be conducted entirely within a fully enclosed building, except those uses deemed by the City to be customarily and appropriately conducted in the open.

2. Trash Storage No trash, used materials, or wrecked or abandoned vehicles or equipment shall be stored in an open area.

   Containers for trash storage of a size, type and quantity approved by the Town shall be maintained in the location as shown on the approved site plan.

3. Outside Storage Areas All outside storage areas shall be enclosed within a fence or wall of not less than six (6) feet in height.

4. Maintenance of Premises The yards around buildings shall be kept free of debris, refuse, weeds and other flammable material which may constitute a fire hazard.

5. Landscaping Required
   As a means of mitigating potential safety hazards or significant adverse visual impacts, the City may require, as a condition of site plan approval, the installation of landscape features and/or peripheral landscape screens. When landscaping is required the site plan shall, in addition to all other plan elements, contain a landscape plan showing the location, types and initial sizes of all plantings materials and other landscape features, and the location of required sprinkler systems.

10-5-16 RESERVED

10-5-18 S-1 SPECIAL INSTITUTIONAL ZONE

10-5-18.1 Legislative Intent

The S-1 Special Institutional Zone has been established as a district in which the primary use of land is for the location of buildings, structures, parking areas and related facilities for the housing and care of the persons occupying and working at the regional prison facility. The objective in establishing the zone is to coordinate the design and construction of the systems and facilities essential to the operation of the institution with the needs and requirements of the adjacent territory and the City as a whole.

Representative of the uses in the zone are administrative buildings, housing structures for the occupants of the institution, recreational and vocational training facilities and service buildings and areas incidental to the purposes of the institution.

The zone is characterized by a grouping of various buildings, a fenced compound, roadways and off-street parking areas, landscaped areas and other facilities and areas essential to the operation of the regional prison.

10-5-18.2 Permitted Uses

The following buildings, structures and uses of land shall be permitted in the S-1 Special Institutional Zone.

1. Administrative, residential and maintenance and service buildings, structures and areas, owned and administered by the State of Utah and used to accommodate the administrative, housing, training, recreational maintenance and service activities of the regional prison, constructed in accordance with the approved site plan.

10-5-18.3 Adoption of Site Plan - Plan to Constitute Zone Requirements

The site plan for the regional prison showing the location of the buildings, fenced compound, vehicular travelways and other areas and facilities, heretofore prepared and filed with the City shall constitute the zone requirements of the S-1 zone.

CHAPTER 10-6

LARGE SCALE DEVELOPMENTS

10-6-1 GENERAL PROVISIONS

10-6-1.1 Intent

The intent and purpose of the Large Scale Development provisions of this Code shall be:

1. To facilitate the orderly development of the City in accordance with the City's Comprehensive Plan.
2. To permit developers to vary density, architectural styles and building forms on a project-by-project basis, rather than on the basis of traditional zoning concepts.
3. To reduce the tax burden for special services, the costs of which can be more appropriately charged to property owners within the developments.
4. To facilitate a more economical arrangement of buildings, circulation systems, land use, drainage, and utilities, than would otherwise be possible.
5. To promote superior maintenance of buildings and jointly owned open space and facilities within the development, through the use of agreements between the City and homeowners or property owners associations.
6. To facilitate proper development of otherwise derelict and inaccessible parcels.
7. To establish more definitively the rights, duties, and responsibilities of land developers and unit owners with respect to the development and maintenance of large scale projects.
8. To coordinate the requirements of the Condominium Enabling Act and the Planning Enabling Act.

10-6-1.2 Large Scale Developments Permitted

The following types of large scale developments may be constructed, within the City, but may be located only in the zone(s) in which such development is listed as a permitted conditional use.

1. Planned Unit Developments
2. Condominium Projects
3. Mobile Home Parks

10-6-1.3 Planning, Design, and Documentation

The layout and design of all large scale developments and all plans, plats, documents, agreements, brochures, statements, and other submissions shall be prepared in accordance with the provisions of this Code and City standards as directed by the Planning Commission or their authorized representative.

10-6-1.4 Construction Requirements

1. Developer Must Construct Improvements in Accordance With Plans All individual large scale developments shall be constructed in accordance with the approved final plans and all final plans, plats, documents, and agreements shall be binding on the developer, his successors, grantees, and assignees and shall limit the use of the land in the development as set forth in the approved plans, documents and agreements. In the event that the developer performs construction work which is not in accordance with approved final plans, the City Engineer or other authorized representative shall cause further work to be discontinued and the City Council shall obtain compliance or shall revoke all permits relating thereto.

2. Developer Must Construct Improvements Within Permitted Time Period All improvements required under the terms of the applicable type of large scale development shall be constructed within the time period specified for the duration of the guarantee of performance, except that the City Council, upon recommendation of the Planning Commission, may require the developer to install the landscaping on all or part of the common open space or to construct other specific required improvements on all or part of an approved large scale development within a time period which is less than the maximum time period specified but which shall not be less than six (6) months from the date of said approval. If no development has occurred pursuant to the adopted plan within twelve (12) months after the date of final approval, the City Council may revoke any building permits issued and may repeal all prior approvals of the development.

3. Stage Construction Permitted
Development may be carried out in progressive stages, provided assurance is given to the City Council that the requirements and intent of this Code with respect to each stage, shall be fully complied with. Each stage shall be considered as a separate application.

10-6-2 PROCEDURE FOR APPROVAL OF A LARGE SCALE DEVELOPMENT

The procedure to be followed in securing approval of a Large Scale Development project shall be as follows:

1. Pre-Submission Conference

   Any person desiring to undertake a large scale development project within the City shall meet from the Planning Commission or their designated representative to discuss the basic concept of the proposed large scale development and to obtain information concerning the City's requirements for approval and construction. The purpose of the conference is to acquaint the developer with the range of opportunities for development under the large scale development provision, and also to insure that the developer is fully aware of the approval procedure, the requirements and standards for design and construction of the project and the content of the required documents and statements.

2. Pre-Application Conference

   The developer shall prepare and present to the Planning Commission or their designated representative:

   A. A sketch plan(s) and general written description of the project.
   B. A summary of data required to be included in the information brochure.
   C. A statement indicating the present ownership status of the land.

   The purpose of the conference is to provide informal assistance to the developer in the preparation of the plans early in the process. The City may suggest changes in the proposed layout or brochure data in order that the project may be more fully consistent with the City's Comprehensive Plan and also with the City's development regulations and policies.

   The sole purpose in holding the conference shall be to aid the developer in the preparation of his plans and documents. In no way shall the conference or any of the suggestions made therein be construed to constitute approval of the plan.

3. Developer Prepares and Submits Preliminary Plans and Documents and Submits to City

   Following the pre-application conference the developer shall prepare and submit the required preliminary plans and documents to the Planning Commission or its designated representative. The materials submitted shall include:

   A. An application for approval of the large scale development.
   B. Four (4) copies of all required preliminary plans, documents, and statements.

C. Evidence of payment of the required review fee.
D. Evidence of compliance with the water rights conveyance requirements of this Code.

The application and all other material must be submitted at least fifteen (15) days prior to the meeting of the Planning Commission at which it is to be considered.

4. Planning Commission Reviews and Takes Action on Preliminary Plans and Documents
The Planning Commission shall review the preliminary plans, documents, and statements and shall act to approve or disapprove the proposal or approve it subject to modification.

The action of the Planning Commission shall be communicated to the City Council within thirty (30) days following first consideration of the application.

Approval by the Planning Commission shall not constitute final approval of the project but shall be deemed as a positive recommendation to the City Council that a public hearing on the proposed project be advertised and held and the project approved.

5 City Council Reviews Plans and Documents and Calls Public Hearing The City Council shall review the preliminary plans, documents, and statements as recommended by the Planning Commission and shall advertise and hold a public hearing on the proposed project. Said hearing shall be called in the same manner as an amendment to this Code.

6. City Council Takes Action on Preliminary Plans and Documents. Following the public hearing, the City Council shall act upon the preliminary plans and documents to approve, disapprove, or approve subject to modification.

If disapproved, no further action is required. If approved subject to modification, the plans, documents and documents shall be returned to the Planning Commission with instructions that the developer should modify the plans and/or documents in accordance with required changes and to resubmit the modified proposal to the Planning Commission for its further review and recommendation.

If approved, the preliminary plans and documents shall be returned to the Planning Commission with instruction to authorize the developer to proceed to prepare and submit the final plans and documents through the Planning Commission.

Upon passage of a motion by the Planning Commission and City Council to approve the preliminary plans and documents the City shall be committed to grant final approval of the final plans and documents upon compliance with all procedures, standards, requirements, and any conditions attached to said approval relating to the applicable large scale developments.

The preliminary plans and documents shall be valid *for* twelve (12) months from the date of action by the City Council. The time limit may be extended *for* an additional year upon approval by the Planning Commission. Any extension of time shall be officially requested in writing, and submitted to the Planning Commission office thirty-one (31) days prior to the end of the twelve month preliminary approval period.

No construction shall be permitted until final approval of the development has been obtained.

7. Developer Prepares and Submits Final Plats, Plans and Documents After receiving authorization to proceed, the developer shall prepare and submit to the Planning Commission:

   A. Application for Final Approval.
   B. One (1) reproducible tracing and three (3) copies of the final plat, where applicable.
   C. Three (3) copies of the final plans.
   D. Three (3) copies of the final documents and statements.
   E. Three (3) copies of an itemized estimate of the cost of constructing the required improvements.
   F. Evidence of payment of review and recording fee.
   G. Documents conveying evidence of compliance with water rights requirements of the City.
   H. A policy of title insurance or preliminary report of title verifying that the owners listed in the Owner's Dedication Certificate of the final plat have sufficient control over the premises to effectuate said dedication without boundary exceptions.

   All submissions shall be prepared in accordance with City standards. In order for the development to be placed on the agenda, the final plans, plat, and documents must be submitted to the Planning Commission office at least seven (7) days prior to the meeting at which the plans are to be considered.

8. Maiming Commission Acts on Final Plat. Plans, Documents, and Statements
   When the plans, plat, documents, cost estimates, and other materials required for approval have been completed in final form, the developer may make application to the Planning Commission and the Planning

Commission will grant final approval after reviewing the final plan and ascertaining that:

A. The final plans conform with the conditions of the preliminary approval.
B. The final plat complies with the requirements and standards relating to the applicable type of large scale development.
C. The final documents and statements comply with the standards relating to the applicable type of large scale development.
D. The estimates of cost of constructing the required improvements are acceptable.
E. Tax liabilities of the common open space (wherever a large scale development involves the reservation of common open space) have been determined.
F. The proposed performance guarantee is in accordance with the provisions of Chapter 10-8 of this Code and is in an amount sufficient to cover the cost of the outstanding required improvements.

Upon a finding of approval, the chairman shall be authorized to sign required final plats.

9. Developer Submits Performance Guarantees
Upon approval by the Planning Commission the applicant shall proceed to make arrangements suitable to the City for posting a bond or other financial assurance guaranteeing construction of all uncompleted required improvements. Said performance guarantee shall be in conformance with the provisions of Chapter 10-8 of this Code.

10. City Council Acts on Final Plans, Plats, and Documents
After the Planning Commission has approved the final plans, plat, documents, and other materials a copy of the same shall be submitted to the City Council for its approval. The Council will review said materials and also the proposed performance guarantees and, subject to a properly presented motion may approve said plans; execute all appropriate documents, agreements and final plats; and accept all public dedications.

Final approval shall be by adoption and publication of an ordinance of approval. Said ordinance shall show and identify the area included within the development and shall constitute an amendment of the ordinance and zone map. Upon adoption and publication of the ordinance of approval the specific requirements of the underlying zone shall be considered modified in conformance with the plans, plats, documents, and agreements as approved by the City Council.

11. City Records Plats and Documents Upon acceptance of the performance guarantees, compliance with any conditions of approval, receipt of all executed documents and passage and

publication of the amending ordinance, the City shall record all final plats, documentation and agreements in the office of the County Recorder and shall notify the developer to proceed with construction.

12. Amendments

The plans, plats, documents and statements may be amended by following the same procedure required for initial approval. No change shall be made which is contrary to the intent of the City's Land Use Plan or the standards and requirements of this Code. Any amendment of a recorded final plat which also qualifies as a subdivision shall not be approved or recorded until the existing recorded plat has been vacated.

10-6-3 PLANNED UNIT DEVELOPMENTS (PUD) - SPECIFIC REQUIREMENTS

10-6-3.1 Intent

The intent the PUD provisions of this Code are:

1. To provide an alternative form of development for residential housing projects within the City which permits increased flexibility and encourages ingenuity in design while preserving a quality of residential amenities equal or superior to that possible under conventional subdivision requirements. In order to qualify for approval as a Planned Unit Development it must be demonstrated that the proposed project will: (1) adequately recognize and incorporate natural conditions present on the site, (2) efficiently utilize the land resource and provide increased economy to the public in the delivery of municipal services and utilities, (3) provide increased variety in the style and quality of residential dwellings available within the City, (4) preserve open space to meet the recreational, scenic, and public service needs; and (5) do all the above in a manner which is consistent with the objectives of the underlying zone and under conditions which will result in the creation of a residential environment of sustained desirability.
2. To establish criteria and standards for the design of such development projects by developers and also guidelines for their evaluation by the City.
3. To clearly establish the relationship of the City and the developer with respect to the review and approval of such projects.
4. To set forth the duties and responsibilities of developers and residents with respect to the approval, construction, and maintenance of such projects.

Anyone not wishing to comply with the provisions of this Section or conditions which may be attached by the City, as authorized herein may proceed to develop under the requirements for conventional subdivisions as provided elsewhere in this Code.

10-6-3.2 Permitted Uses

The following buildings, structures and uses of land may be permitted within a PUD

1. Any use permitted within the underlying zone and those authorized under this section.
2. Common areas and recreational facilities for the use and enjoyment of the residents.
3. Driveways, streets, fences, walls, utility systems and facilities, common storage areas, landscape features and similar uses and structures incidental to the main use.

10-6-3.3 Approval Procedure

Anyone desiring to obtain approval to construct a Planned Unit Development shall follow the procedure in Section 10-6-2 of this Code.

10-6-3.4 Project Evaluation Guidelines

The Planning Commission shall review the proposal and may recommend approval upon finding that:

1. All plans, documents, and other materials required for consideration have been submitted in a form suitable for evaluation.
2. The plan conforms in all respects to the applicable design standards and criteria.
3. The site is suitable for development of the proposed PUD and the project will be consistent with existing development in the vicinity and compatible with the Master Plan for the area.
4. The arrangement of the buildings, roadways, open space and other project elements will result in a safe and attractive living environment equal or superior to that which would be produced under lot by lot development.
5. The project, if developed, will accomplish the objectives for PUD's as stated under 10-6-3.1 above.

The Planning Commission may require changes in the plan in order to more fully accomplish the intent of the PUD provisions. Such changes may include but are not limited to, adjustments in the density or the number of structures, relocation of project elements, redesign of the road system, increase in the amount of open space and provisions for the disposal of surface water drainage.

10-6-3.5 Special Provisions for One-Family and Two-Family (Duplex) Projects

1. Area. Density and Lot Size

A. The requirements for area, density, and lot size within a one-family or two-family PUD project shall be as set forth in the following schedule:

Zone	Min. Area in Project (in Acres)	Max. D.U./	Max. Density (DU / Acre - Net Area)	Mina Lot Size (sq. feet)
R-2-10,000	3	2	5	7,500
R-4-7500 & R&C-1				
1-family	3	1	5	7,500
2-family (duplex)	3	2	7	5,500

B. All portions of a proposed project devoted to streets or travel easements shall be excluded in determining compliance with the allowable density and common open space requirements (net area), but are included in meeting the minimum project area requirements.

C. The density stauJards shown above (column 4) are the maximum which may be permitted under any circumstance. The City may allow a project to contain the maximum number of units when, in its opinion, the shape of the parcel and natural conditions present on the site are such that the parcel is capable of accommodating the maximum number; that the proposed design provides a high degree of compatibility with existing development in the vicinity and is consistent with the intent of both the underlying zone and the Planned Unit Development provisions.

D. Subsequent additions to the project may contain less than the minimum project area as set forth in the above table provided that the addition represents a logical extension of the project and all other requirements are met.

Design Criteria

A. Streets and Pedestrian Ways
All streets shall contain a right-of-way not less than fifty (50) feet in width which shall be improved in accordance with City standards for both vehicular and pedestrian travel and dedicated to the City.

B. Width of Lot. Each interior lot shall be not less than 60 feet in width for a one-family dwelling and 80 feet in width for a two-family

dwelling, as measured at the designated setback line. Corner lots shall be not less than 10 feet greater in width

C. Access to Lots. Each lot shall abut upon and have access to a City street. The distance to said abutting side shall be not less than 60 feet except that the length of said abutting side may be reduced in accordance with the following:

(1) The side abutting the street may be reduced to not less than 30 feet when the lot fronts upon a culde-sac or curve and the side lot lines radiate in such a manner that the width requirement will be met at a distance of not more than 45 feet from the abutting front line, or

(2) The side abutting the street may be reduced to not less than 20 feet when the lot qualifies and is approved as a "flag lot".

D. Setback of Building. All dwellings shall be set back in accordance with setback lines shown on the final site plan provided that said setback lines shall be established in accordance with the following criteria.

(1) Front Setback - A minimum of 25 feet as measured from the street right-of-way line.

(2) Side Setback - Corner Lot - A minimum of 25 feet as measured from the street right-of-way line adjacent to the side lot line

(3) Side Setback - Interior Lot Lines - A minimum of 5 feet with a combined total for the two side yards of 15 feet, except that when part of a zero lot line or duplex project, the setback requirement on the zero lot line or common wall side shall be reduced to zero.

10-6-3.6 Special Provisions for Multiple Family Projects

1. Area, density and dwellings units per structure.

A. The requirements for area, density and dwelling units per structure shall be as follows:

Zone	Min. Area in project (in acres)	DU/Structure Min.	DU/Structure Max.	Max. DU/AC
R-4-7500	2.5 acres	3	4	13

B. All portions of a proposed project devoted to streets or travel easements shall be excluded in determining compliance with the allowable density and common open space requirements, but are included in meeting the total project area requirements.

C. Subsequent additions to a project may contain less than the minimum project area required under the table, provided that said addition represents a logical extension of the project and that all other requirements are met.

D. The density standards shown in columns 3 and 4 of the above table are the maximum which may be permitted under any circumstance. The City may allow a project to contain the maximum number of units and/or the maximum dwelling units per structure when in its opinion the shape of the parcel and the natural conditions present on the site are such that the maximum conditions may be granted and that the proposed design provides a high degree of compatibility with existing development in the vicinity and is consistent with the intent of both the underlying zone and the PUD provisions.

2. Design Criteria

A. Streets, and Vehicular Travelways

(1) The project shall be served by an internal travelway system which provides safe and convenient access to each dwelling unit and adequate circulation within the project.

(2) The City may accept dedication of major access roads within the project. Any roads proposed for dedication to the City shall: (1) be constructed in accordance with City street standards, (2) be designated to provide continuous forward motion through the project except fir approved cul-de-sacs, (3) not provide direct access to any individual off-street parking spaces.

(3) Private travelways shall provide safe and convenient vehicular movement to and from all off-street parking spaces. Private travelways shall be not less than 22 feet in width-except that when serving as the driveway for 8 parking spaces or less, the portion of the driveway not abutting off-street parking spaces may be reduced to 18 feet in width.

C. Off-Street Parking and R.V. Storage

(1) Off-street parking shall be provided at the rate of two resident parking spaces per dwelling unit plus .25 spaces per unit for visitor parking. All resident parking spaces shall be located within 100 feet of an entrance door to the dwelling unit they are intended to serve.

(2) All parking spaces and areas shall be designated and constructed in accordance with City standards.

(3) Not less than one space shall be covered and designated for the exclusive use of a specific unit

(4) Each project shall contain an area for the storage of recreation vehicles in the amount of 150 square feet per dwelling unit. Said area shall be lighted and enclosed within a fence or wall not less than six feet in height and shall be readily accessible from the development street system. Said area may also include enclosed storage units for the use of the residents.

D. Building Location

(1) Buildings shall be separated from one another a distance of 20 feet or one foot for each foot in height whichever is greater.

(2) Buildings located adjacent to public streets shall be set back a minimum of 30 feet as measured from the right-of-way or pedestrian way line, as applicable.

(3) No building containing a dwelling or otherwise used for human habitation or a building having a height of 15 feet shall be located closer than 20 feet to any adjacent property line.

E. Common Open Space - Sealed Surface

Not less than fifteen (15) percent of the net area of the development shall be retained as common open space, parks, playgrounds, and recreational facilities for the use and benefit of the residents. Land proposed to be used for parking, pedestrian walkway area, driveways, R.V. storage, private open space or land surrounding structures required to conform with building location or setback requirements and isolated small parcels not practically useful or accessible to the residents shall not be included in meeting this open space requirement.

F. Private Open Space

Each unit shall have a private outdoor living area as follows:

(1) Ground Floor Dwellings - Each dwelling shall have an appurtenant private patio, atrium or similar open space having a minimum area of 300 square feet and a minimum dimension of 12 lineal feet. Such space shall be designed for the sole enjoyment of the dwelling occupants and shall be directly accessible from a room within the dwelling. The City may require that said area be enclosed with a fence, wall, or similar enclosure to provide privacy.

(2) Above Ground Dwellings - Each dwelling shall have an appurtenant private balcony having a minimum area of 200 square feet and a minimum dimension of 8 lineal feet.

G. Private Storage Space

Each dwelling shall have not less than 225 cubic feet of enclosed, waterproof and lockable private storage space adjacent to or within the immediate vicinity of the unit. Said space may be located within the private open space area provided for under paragraph E-(1) above, in conjunction with and as an integral part of the covered parking structure required under B-(4) above, or other location approved by the City.

H. Landscaping

All area not otherwise occupied by buildings, parking, roadways, etc., shall be landscaped. Watering of vegetation.

I. Sealed Surface

Notwithstanding any of the above, not more than 50 percent of the gross area of any development shall be covered by buildings, paving or other surface which would prohibit the downward percolation of surface water.

J. Solid Waste Disposal

The development shall provide solid waste disposal facilities as follows:

(1) Common Disposal Facilities - Where common disposal facilities are to be used they shall be conveniently available to all dwelling units and readily and safely accessible to maintenance equipment and shall be enclosed with solid fence or walls not less than six feet in height.

(2) Individual Disposal Facilities - Where the project design permits, individual waste disposal methods may be used.

K. Perimeter Fencing

The outer perimeter of the project shall be enclosed in a continuous fence or wall having a height of approximately six (6) feet in height, provided that this provision may be waived along boundaries which are adjacent to or abutting upon a street or travelway.

L. Utilities

(1) Culinary Water - Each dwelling unit shall be served by the city's water system. The city may require individual water connections and meters for each unit or, at their discretion, may authorize the use of oversize connections and a master meter for the project. Each unit shall be equipped with an easily accessible shutoff valve.

(2) Sewer - Each unit shall be connected to the city's sewer system either by an individual or common lateral whichever is determined applicable by the City.

(3) Irrigation Water - The project shall be served by the pressurized irrigation system (See 10-6-3.9)

(4) Utilities to be Underground - All utility systems shall be placed underground.

10-6-3.7 Improvement Requirements

The following improvements shall be constructed by the developer in each Planned Unit Development in accordance with City standards.

1. Streets and private travelways shall be graveled and hard-surfaced.

2. Curbs, gutters, and sidewalks.
3. Drainage and flood control structures and facilities.
4. Water and sewer mains (on-site and off-site).
5. Extensions to pressurized irrigation system.
6. Fire hydrants.
7. Electric, telephone and cable TV (to be placed underground).
8. Landscaping in the common area and walkways.
9. Fences, walls, and all other common areas facilities, systems, and structures proposed for the development as shown on the final plans.
10. Common storage area. (when provided)
11. Street lighting and signs.

Developers may install other improvements, however, the construction of other improvements shall not be required as a condition of approval of a PUD project.

10-6-3.8 Document Requirements

The following documents shall be prepared and submitted by the developer for each PUD project.

1. Article of Incorporation for Home Owner's Association.
2. Corporation By-laws.
3. Covenants, conditions, restrictions and management policies.

4. Management Agreement.
5. Open Space Easement.
6. Sales Brochure.
7. Evidence of satisfaction of requirements relating to the pressurized irrigation system (as applicable).

Where, in the opinion of the City a particular document required herein is inapplicable for the particular project proposed the City may waive the requirement for submitting said document.

10-6-3.9 Irrigation Water System

The Planned Unit Development project and each parcel or lot therein shall be served by the pressurized irrigation system, in accordance with the applicable provisions of Section 10-3-3.26 of this Code.

10-6-4 CONDOMINIUM PROJECTS - SPECIFIC REQUIREMENTS

10-6-4.1 Intent and Application

The intent of this Section is to establish guidelines dealing specifically with the approval process, design, construction and operation of proposed new condominium projects or the conversion of existing buildings or developments to condominium project status. These provisions shall be supplemental and in addition to the general requirements for Large Scale Developments contained under Section 106-1 of this Code, and also the requirements of Chapter 57-8 of the Utah Code Annotated, 1953, as amended.

10-6-4.2 Permitted Uses

Uses permitted within a condominium project shall be limited to those uses specifically permitted within the zone which underlies the area of the project.

10-6-4.3 Location and Design Requirements

1. Where the proposed condominium project consists of a use or structure which is authorized as a use-by-right (Permitted Non-conditional use) within the zone, said use or structure shall comply to the use, location, area, width, access and similar requirements of the underlying zone with.

2. Where the proposed condominium project is to be developed under the provisions relating to a Planned Unit Development or other permitted conditional use within the zone all uses or structures shall comply with the plans for such project as approved by the City.

10-6-4.4 Approval Procedure

1. The procedure leading to approval shall be as set forth in Section 10-6-2 of this Code.

2. Where a condominium project is being developed as a Planned Unit Development or similar planned development, the procedures may be combined.

3. Where a condominium project is a conversion of an existing structure, such conversion shall be constitute a change in use and the *City* may, as a condition of approval, require the installation of separate water and sewer connections, construction of off-street and covered parking facilities, and such other site amendments as are required for the structure to be in substantial compliance with current standards for design and construction of condominium projects.

10-6-4.5 Required Documents

The following documents shall be prepared and submitted by the developer for each condominium project:

1. Articles of Incorporation
2. Corporation By-Laws
3. Declaration of Covenants, Conditions, Restrictions and Management Policies/Declaration of Condominium
4. Management Agreement
5. Open Space Agreement
6. Sales Brochure
7. Record of Survey Map/Final Subdivision Plat (when applicable)

Where, in the opinion of the City Council, a particular document required under this Section is inapplicable for the particular condominium project proposed, the City may waive the requirement for submitting said document.

10-6-4.6 Unlawful to Record Unapproved Project

It shall be unlawful to record any record of survey map or declaration of a condominium project in the office of the County Recorder, unless the same shall bear thereon final approval of the Planning Commission and City Council as required under the terms of this Code, and any record of survey map or declaration so recorded without such approval shall be null and void. Any owner, or agent of any owner, *of* land or units located within a purported condominium project, who transfers or sells any land, structure, or condominium unit in such a purported condominium project, before obtaining the final approval by the Planning Commission and City Council on the record *of* survey map and declaration, and recording the same in the office of the County Recorder, shall be guilty of a misdemeanor for each lot, parcel of land, structure or condominium unit so transferred or sold.

10-6-5 MOBILE HOME PARKS - SPECIFIC REQUIREMENTS

10-6-5.1 Intent

The intent of these regulations is to establish guidelines dealing specifically with design, construction and operation of mobile home parks. These provisions shall be supplemental and in addition to the general requirement for large scale developments.

10-6-5.2 Permitted Uses

Permitted uses within a mobile home park shall be limited to the following:

1. One-family mobile homes and manufactured homes.
2. Caretaker dwellings.
3. Customary accessory uses including, but not limited to, carports and storage buildings on individual pad sites for use by the occupants. Also, park and recreation areas, office structures, laundries and similar service facilities incidental to the operation of the park.

10-6-5.3 Area and Density

Mobile home parks shall have a minimum area of two and one half (2.5) acre and a maximum density of seven (7) dwelling sites per acre.

10-6-5.4 Approval Procedure

Same as required under Section 10-6-2.

10-6-5.5 Plans Required

Preliminary plans of Mobile Home Parks shall be submitted to the Planning Commission. Said plans shall show the following information:

1. Proposed layout of the park.
2. Location and size of mobile homes pad sites and other buildings and structures.
3. Location and size of existing and proposed water secondary irrigation and sewer lines and other utilities.
4. Typical cross sections of roads.
5. Location and dimensions of curbs and sidewalks.
6. Drainage features, showing how the surface drainage will be handled. Layout and location of improvements of a typical mobile home space. General planting
7. plans showing the areas to be landscaped and the types of plants and architectural features to be used.

9. Tabulations showing:
   A. Total number of acres in the proposed development.
   B. Number of mobile homes.
   C. Number of mobile homes per acre.
   D. Number of off-street parking spaces.
   E. Percentage of the area to be used for off-street parking.
   F. Percentage of area to be devoted to roadways.
   G. Percentage of area to be devoted to parks, playgrounds, and other common facilities.
   H. Any other data or information required by the Planning Commission.

10-6-5.6 Design Standards and Criteria

1. There shall be architectural unity and harmony within the development and with the surrounding area.
2. Grouping and spacing of pad sites and buildings shall provide for a restful and uncrowded environment. Landscaped area, rather than off-street parking areas, shall be the dominant feature of the development.
3. Not less than ten (10) percent of the gross area of the project shall be designated for parks and playgrounds for the use of occupants. The land covered by vehicular roads and off-street parking and the yards surrounding mobile homes which constitute open space appurtenant to individual mobile home sites and area devoted to service buildings, shall not be included in computing the required area for parks and playgrounds.
4. All mobile home buildings used for human occupancy when completed shall be served by a water system and sewage disposal system which have been approved by the city health authority.
5. Each pad site shall be served by the pressurized irrigation system.
6 The mobile home park shall be in one ownership and shall remain in one ownership.
7. A combined area of at least one hundred (100) square feet for each mobile home space shall be provided for the storage of boats, campers, etc. Said storage must be enclosed within a sight-obscuring fence of six (6) to eight (8) feet in height.
8. Off-street parking space shall be provided at the rate of two (2) parking spaces per mobile home space contained within the park.
9. At least two foot candles lighting shall be required along all roadways.
10. All mobile homes shall be set back at least ten (10) feet from all roadways which are part of the development and at least thirty (30) feet from any public street.
11. Roadways (curb to curb) must be of adequate width to accommodate anticipated traffic as follows:

    A. Minor roadways - For two-way traffic where parking is allowed on only one side of the roadway - at least thirty (30) feet in width.

B. Collector and entrance roadways - At least thirty-six (36) feet in width.

12. Roll type curbs must border the sides of streets.
13. A strip of land at least fifteen (15) feet wide surrounding the mobile home park shall be landscaped to afford privacy to the development, provided however, that a sight-obscuring fence six (6) feet to eight (8) feet in height may be substituted for up to eight (8) feet of the required landscaped strip.
14. Fences and walls within the front yard shall not exceed two (2) feet in height.
15. No mobile home or add-on shall be located closer than fifteen (15) feet to the nearest portion of any other mobile home or add-on, except when a four (4) hour fire-resistive wall, having a height of at least eight (8) feet separates them, in which case the distance apart may be reduced to ten (10) feet.
16. In addition to mobile homes, the development may include a launderette, club house, and other non-profit or public recreation buildings.
17. All mobile homes shall be skirted around the entire structure, so as to conceal the space underneath.
18. All roads shall be surfaced in accordance with City standards as directed by the Planning Commission or its authorized representative.
19. All utilities shall be placed underground, except for transformers and other necessary appurtenances.
20. In addition to meeting the above requirements, all mobile home parks shall also conform to current State Health Department requirements for mobile home parks.

10-6-5.7 Improvement Requirements

The following improvements shall be installed in all developments. Said improvements shall meet minimum Towii standards and shall be completed within one year from the date of final approval of the project by the Town Council; except that, upon a showing of good and sufficient cause, the Town Council may authorize an extension of the time limit for a period up to six (6) months. Financial assurances guaranteeing the construction of all required improvements shall be required as a condition of approval. Said assurances shall be in accordance with the provisions in Chapter 10-8.

1. Streets, driveways and parking areas which shall be graded. graveled and hard-surfaced.
2. Drainage and flood control structures and facilities.
3. Water and sewer mains, both on-site and off-site, complying with the utility requirements of the City. Also extensions to the pressurized irrigation system.
4. Fire hydrants.
5. Electric and telephone lines (which shall be placed underground.
6. Landscaping.
7. Sprinkling or other suitable irrigation systems.

8. Fences, walls and all other common area, facilities, systems and structures proposed for the development as shown on the final plans.
9. Recreation vehicle storage area.
10. Street lighting.

10-6-5.8 Required Documents

The following documents shall be prepared and submitted by the Developer for each development.

1. Evidence of satisfaction of requirements relating to the pressurized irrigation system.
2. Written evidence from the health authority that the proposed park complies with applicable Health Department requirements.

10-6-5.9 Special Provisions

1. Prerequisite to the operation of any mobile home park shall be the obtaining of an annual license which shall be issued only after inspection by the Zoning Administrator. It shall be unlawful to operate a mobile home park without first obtaining a license and said license shall be refused or revoked upon failure of the owner and/or operator to maintain the park in accordance with the standards and requirements as herein set forth.

2. Each space within a mobile home park shall be used for only one mobile home at the same time. No lot or space shall be rented or leased for a period of less than thirty (30) days.

CHAPTER 10-7

SUBDIVISIONS 10-7-1 INTENT

The intent of this Chapter is as follows:

1. To facilitate the orderly development of the City.

2. To implement the City's Major Street Plan.

3. To facilitate the development of a safe and efficient street system.

4. To facilitate the orderly transfer of the ownership of building sites in a manner consistent with state law.

5. To ensure the providing of adequate water, sewer, drainage, utilities, and other services to developing areas of the City. To establish the rights, duties, and responsibilities of subdividers with respect to the development of land within the City.

10-7-2 SUBDIVISION PLATS REQUIRED - TO BE RECORDED

No person shall subdivide any tract of land within the incorporated limits of the City; nor shall any person sell, exchange, purchase or otherwise convey a parcel of land which is part of a larger tract, if such sale or agreement would have the effect of creating a subdivision as defined by this Code, unless and until a final plat, prepared in accordance with the provisions of this Code, shall have been first approved by the Planning Commission and City Council and recorded in the Office of the County Recorder.

In subdivisions of less than ten (10) lots, land may be sold by metes and bounds, without the necessity of recording a plat, if all of the following requirements are met:

1. A plan and plat of the subdivision and all necessary documentation pursuant to Section 10-7-4 has been submitted to and approved in writing by the Planning Commission.

2. Each lot meets the requirements of the zone in which it is located.

3. Each lot fronts on, and has legal access to, an existing or designated and dedicated public road and conforms to existing street improvements as approved by the City Council prior to approval of said subdivision by the Planning Commission.

4. The subdivision is not traversed by the mapped lines of a proposed street as shown

in the general plan and does not require the dedication of any land for streets or other public purposes.

5. Each lot shall have legal access to existing or planned and dedicated utility services required by Gunnison City pursuant to Section 10-3-3.26. Any Gunnison City utility lines must be extended at the cost of the subdivider. [Ord. 1995-3]

10-7-3 PROCEDURE FOR APPROVAL OF A SUBDIVISION

10-7-3.1 Pre-Submission Conference

Any person wishing to subdivide land within the City shall secure from the Planning Commission or their designated representative information pertaining to the requirements for subdivisions and the City's plan of streets, parks, drainage, zoning and other Master Plan requirements affecting the land to be subdivided.

10-7-3.2 Prepare and Submit Concept Plan

The subdivider shall then prepare a Concept Plan and shall submit Seven (7) copies of the same to the Planning Commission not less than seven (7) days prior to the next regularly scheduled Planning Commission meeting. Said plan shall be prepared in accordance with City standards. Where a subdivider owns or controls more land than he proposes to submit for preliminary approval, the Planning Commission may require that a Concept Plan for the larger area be submitted. Said plan shall indicate the portion proposed to be submitted initially for preliminary approval and the portion to be held for future submission.

10-7-3.3 Obtain Planning Commission Approval of Concept Plan

The Planning Commission shall review the Concept Plan and shall act to: (1) Approve the plan, (2) Disapprove the plan, (3) Approve the plan subject to modification, or (4) Where considered necessary or desirable, act to table further consideration of the plan. Approval of the Concept Plan shall not be construed to constitute approval of the subdivision but shall be deemed as an expression of acceptance of the basic concept and feasibility of the proposed subdivision which the subdivider may use as a guide in the preparation of the Preliminary Plan.

10-7-3.4 Prepare Preliminary Plan and Improvement Drawings

Upon approval of the Concept Plan by the Planning Commission, the subdivider shall prepare a preliminary plan of the subdivision and shall submit seven (7) copies of the same to the Planning Commission not less than seven (7) days prior to the next regularly scheduled Planning Commission meeting. The Preliminary Plan shall be prepared in accordance with the provisions of Section 10-7-4.2 of this Chapter. The Concept Plan and Preliminary Plan may be submitted concurrently.

10-7-3.5 Obtain Planning Commission Approval of Preliminary Plan

The Planning Commission shall review the Preliminary Plan and shall act to: (1) Approve the plan, (2) Disapprove the plan, (3) Approve the plan subject to modification, or (4) Where considered by the Planning Commission to be necessary or desirable, act to table further consideration of the Plan.

Approval by the Planning Commission shall be granted upon a finding that:

1. All plans and other materials required for consideration have been submitted in a form suitable for evaluation, and all preliminary plan review and processing fees have been paid.
2. The plan conforms to the design standards for subdivision.
3. The design adequately recognizes the natural and man caused conditions on or in the vicinity of the proposed subdivision

4. Each lot conforms to the requirements of the zone and will be adequately serviced.
5. The arrangement of roads, lots, easements, and other elements will provide adequate circulation and access and will result in a healthy, safe and attractive living environment.
6. The utility systems serving the area have sufficient capacity to provide adequate utility service to the development.
7. The subdivision layout will be consistent with the major street plan and other applicable elements of the Major Plan for the area.

The action of the Planning Commission shall be written on the face of two copies of the plan, one of which shall be retained in the files of the Planning Commission, and one of which shall be returned to the subdivider. If the plan is disapproved, the Planning Commission shall express its reasons therefor to the subdivider. **Upon approval of the preliminary plan, the Planning Commission shall be committed to grant approval of the final plat, subject to full compliance with any conditions attached, unless in** the opinion of the Planning Commission, the preliminary approval was given based on inaccurate or incomplete representations or that changes have occurred in conditions relating to the property which were not known or present at the time preliminary approval was given, and which would result in a significant detrimental effect to the public if the project were carried out as initially presented. Approval of the preliminary plan shall remain valid for a period of one year. Said approval may be extended or reaffirmed by the Planning Commission, for a period not to exceed one year, upon receipt of a written request from the owner.

10-7-3.6 Prepare and Submit Final Plat. Engineering Drawings, and Documents to Planning Commission

Upon approval of the preliminary plan by the Planning Commission, the subdivider shall prepare the final plat, final engineering drawings and documents and shall submit the same to the Planning Commission not less than seven (7) days prior to the next regularly scheduled Planning Commission meeting. The Final Plat and other required drawings and documents shall include the materials set forth in Section 10-7-4.3 of this Chapter and shall be prepared in accordance with City standards. Failure to submit the final plats and material in accordance with said standards shall be grounds for denial.

10-7-3.7 Planning Commission Takes Action on Final Plat

The Planning Commission shall review the final plat, final engineering drawings, and other required submissions, and shall act to: (1) approve the plat, (2) disapprove the plat, (3) approve the plat subject to modifications or (4) where considered by the Planning Commission to be necessary, table further consideration of the plat.

Upon approval by the Planning Commission, the chairman shall approve and sign the plat forward it to the City Council with the **recommendation that the plat** be approved and the proposed **dedications** accepted.

10-7-3.8 Subdivider Posts Performance Guarantee

Upon approval by the Planning Commission, the subdivider shall proceed to post or make arrangements suitable to the City for posting a bond or other financial assurance guaranteeing construction of the required improvements. Said performance guarantee shall be in conformance with the provisions of Chapter 108 of this Code.

10-7-3.9 City Council Takes Action on Final Plat

Upon receipt of the final plat, bearing all required signatures, and also submission of evidence of ability to satisfy the performance guarantee requirements, the City Council shall consider the plat and performance guarantee and shall act to approve or disapprove the plat or approve it with modification. If disapproved, the City Council shall state its reasons therefor to the subdivider. If modifications are required such modifications must first be referred to and accepted by the Planning Commission. If approved, the plat shall be signed by the City Council and retained for recording. **The signature of the** City **Council on the final plat shall constitute final approval.**

0-7-3.10 Final Plat to he Recorded in Office of County Recorder

Upon approval of the Final Plat and performance guarantees, compliance with any conditions attached to the approval and receipt of the executed documents and all other outstanding submissions and fees, the City shall submit the plat for recording in the Office of the County Recorder and the building inspector may thereafter issue a building permit for the construction of the subdivision improvements. Upon the recording of the plat the owner may thereafter proceed to convey title to the lots as described by the plat.

10-7-3.11 Release of Performance Guarantees

All partial and final releases of performance guarantees shall be approved by action of the City in accordance with the provisions _10-8-4 or 10-8-5 as applicable. The granting of the final release by the Council shall constitute the acceptance of the improvements by the City.

10-7-3.12 Release of Durability Retainer

At the conclusion of the durability guarantee period and subject to compliance with the provisions of Section 10-8-7 the Council shall authorize the release of the improvements durability retainer and the subdivider shall thereafter be released from any obligation with respect to the improvements.

10-7-4 DOCUMENTATION REQUIREMENTS

10-7-4.1 Concept Plan

The Concept Plan shall consist of the Following:

1. A plan of the entire project area drawn at a scale of not smaller than 1" = 200' and showing the general layout of the proposed subdivision and its relationship to the adjacent properties; the location of each proposed lot; the location, width and general configuration of proposed roads in the subdivision , and their relationship to the existing road system and major street plan; and major canals and water courses in the vicinity.

2. A written or verbal statement indicating the intent and manner for complying with the improvement guarantee, pressurized irrigations system and similar requirements.

3. Evidence of payment of the subdivision application fee (See fee resolution).

10-7-4.2 Preliminary Plan

The Preliminary Plan shall consist of the following:

1. A layout plan, drawn at a scale of not less than 1" = 100 feet and showing the following:

   A. The boundary lines of the tract proposed to be subdivided
   B. A contour map at appropriate intervals when required by the Planning Commission
   C. The location, width and other applicable dimensions of all proposed lots, streets, easements, open space areas and indicating all territory proposed for dedication to the City.
   The location of all existing and proposed canals and major ditches, bridges, culverts, drains.
   E. The size and location of all existing and proposed water mains, fire hydrants, storm drainage facilities, curb, gutter and sidewalk improvements, irrigation lines and ditches and appurtenant improvements, and any other proposed or required facilities.
   F. The proposed location of the building setback lines.

2. Preliminary engineering drawings showing the proposed cross-section for all streets within or adjacent to the subdivision (including the placement *of* blacktop, curb, gutter, sidewalk, water lines, and other street improvements, the proposed road grades (when required by the Planning Commission), irrigation pipes and ditches and the proposed engineering treatment *of* any

proposed canal or ditch piping and any culverts and bridges, storm water retention facilities or other significant engineering features.

3. A statement indicating the type of performance guarantee proposed to be offered as security for construction of the required public improvements.

4. Evidence of ability to satisfy the pressurized irrigation system and water rights conveyance requirements.

5. Notice of acceptability of the area to accommodate septic tanks, as evidenced by a letter from the City-County Health Department, where applicable.

6. Evidence of payment of all preliminary plan submission and processing fees.

7. Any other material or information required by the Planning Commission

Failure to submit the required material in accordance with the above standards and requirements shall be grounds for denial.

10-7-4.3 Final Plat and Engineering Drawings

The Final Plats and Plans shall consist of the following:

1. The original Final Plat mylar, prepared on the forms approved by County Recorder for use in the County,

2. One (1) duplicate mylar of the Final Plat together with the required number of paper copies.

3. Copies of the final engineering drawings.

Documents indicating full compliance with the pressurized irrigation system and water rights conveyance requirements.

5. An itemized estimate of the cost of constructing all required improvements. This estimate shall be used as the basis for setting the amount of the performance guarantee.

6. Final copies of the performance guarantee documents.

7. A title report, covering the property within the final plat area, to identify all interests in the property which have an effect on the title, and to establish that the land proposed for subdivision is free of boundary conflicts (when required by the City Council).

8. Final copies of all other required documentation, as applicable.

9. Evidence of payment of final plat checking and recording fees.

Failure to submit the above final plat material shall be grounds for denial.

10-7-5 DESIGN STANDARDS AND REQUIREMENTS

The layout and design of all subdivision developments and the content of all plats, engineering plans, documentation, and other required submissions shall be in accordance with the standards as contained herein and or as may be adopted by the City pursuant to the provisions Section 10-7-8.1.

10-7-5.1 Streets and Roads - General Criteria

1. Subdivision Plans to be Consistent With Street Plan
Subdivision plans shall be consistent with the Master Street Plan as adopted by the City, as follows:

A. Collector Streets (feeder) - Where the area of a proposed subdivision includes any Collector class streets, as shown on the Major Street Plan, the subdivision plan shall incorporate such streets in the location shown on the Street Plan and the approval of the Final Plat shall include the dedication of the right-of-way and its improvement in accordance with the applicable City standards.

B. Minor Streets (local service) - Where the area of a proposed subdivision includes any Minor class streets, as shown on the Major Street Plan, the subdivision plan shall provide for such street in the approximate location shown on the Street Plan and the approval of the Final Plat shall include the dedication of the right-of-way and its improvement in accordance with the applicable City standards.

C. No subdivision plan which proposes the deletion or significant realignment of any street shown on the Major Street Plan shall be given preliminary approval unless and until the Plan shall have been amended in accordance with State Law.

2. Relationship to Adjacent Streets.
The proposed street system shall properly align and be compatible with adjacent streets.

3. Access to Adjacent Properties.
In order to facilitate the development of an adequate and convenient circulation system within the City and to provide access for the logical development of adjacent vacant properties, the City may, as a condition of approval, require the subdivision plan to include one or more temporary dead end street (stub streets) which extend to the boundary of the

subdivision. All such stub streets shall be fully developed to the boundary of the subdivision. Any plan for the subsequent development of the adjacent property shall provide for the continuation of any such stub street

10-7-5.2 Streets and Roads - Right-of-way Width

The minimum width *of* Right-of-way for streets shown on the major street plan shall conform to the width as designated on the plan. The minimum right-of-way width for streets not shown on the plan shall be as follows:

	Class *of* Street	Right-of-way width
1.	Minor class	50 feet
2.	Collector class	60 feet

10-7-5.3 Streets and Roads - Width *of* Pavement and other Requirements

All streets within and adjacent to the subdivision shall be hard surfaced. The width of the hard surfacing and the location and type *of* other required street improvements shall be in accordance with the applicable street cross-section standard adopted by the City Council.

10-7-5.4 Streets and Roads - System Design Standards

1. Reverse Curves Reverse curves shall have a tangent *of* at least one hundred (100) feet, unless in the opinion of the Planning Commission such is not necessary.

2. Street intersection
Streets shall intersect each other as nearly as possible at right angles. Minor streets shall approach the major or collector streets at an angle of not less than eighty (80) degrees. Offsets in street alignment of more than fifteen (15) feet or less than one hundred twenty (120) feet shall be prohibited.

3. Street Grades
The maximum grade of any street in the subdivision shall be 8 percent. Where the observance of this standard is not feasible, the City Council, subject to the prior recommendation of the Planning Commission, shall have the power to grant an exception when special pavement surfaces and adequate leveling areas are installed and in the opinion of the City the best subdivision of the land is thereby secured.

4. Street Curves

Where the street lines within a block deflect from each other at any one point more than ten (10) degrees, there should be a connecting curve. The radius of the curve for the inner street line should be not less than 350 feet for Collector class streets, 250 feet for an important Minor class street, and 100 feet for Minor streets.

5. Curbs

Where curbs are required said curbs at intersections shall be rounded with curves having a minimum radius of 15 feet for minor streets, and 25 feet for collector streets. Property lines at street intersections should be rounded with a curve where necessary to fit the curb radius.

6. Street Names

New street names should not duplicate those already existing. A street obviously a continuation of another already in existence should bear the same name. Before the street is named, the proposed name must be submitted to and approved by the City.

7. Cul-de-sacs

Cul-de-sacs (dead end streets) shall be used only where unusual conditions exist which make other designs undesirable. Each cul-de-sac shall have a minimum right-of-way width of fifty (50) feet and must be terminated by a turn-around of not less than one hundred (100) feet in diameter. The maximum length of a cul-de-sac street shall be 400 feet. Surface water must drain away from the turnaround, except that where surface water cannot be drained away from the turnaround along the street, due to grade, necessary catch basins and drainage easements shall be provided.

8. Easements

Easements of not less than eight (8) feet on each side of rear lot lines and side lines will be required where necessary for poles, wire, conduits, sewers, gas and water mains, and other public utilities. Easements of greater width may be required along property lines where necessary for surface overflow or for the extension of main sewers or similar utilities.

10-7-5.5 Blocks - Design Standards

1. Length

The maximum length of blocks, generally, shall be one thousand two hundred (1,200) feet and the minimum length of blocks shall be five hundred (500) feet. In blocks over eight hundred (800) feet in length, the subdivider may be required to dedicate a walkway through the block at approximately the center of the block. Such walkway shall not be less than ten (10) feet in width.

2. Width The width of blocks generally shall be sufficient to allow two (2) tiers of lots.

3. Use
Blocks intended for business or industrial use shall be designed especially for such purposes with adequate space set aside for off-street parking and delivery facilities.

10-7-5.6 Lots - Design Standards

1. Building Sites
The lot arrangement, design, and shape shall be such that lots will provide satisfactory and desirable sites for buildings, be properly related to topography and conform to requirements set forth herein. Lots shall not contain peculiarly shaped elongations solely to provide necessary square footage which would be unusable for normal purposes.

2. Lots to Conform to Zoning Provisions All lots shown on the subdivision plat must conform to the minimum requirements of the zone in which the subdivision is located.

3. Corner Lots Corner lots shall have ten feet extra width to accommodate the additional setback requirements.

4. Angle of Lot Lines
Side lot lines shall be approximately at right angles, or radial to the street line, except where topographic conditions make it advisable to have side lot lines deflect at sharper angles.

5. Parts of Lots
All remnants of lots below minimum size left over after subdividing of a larger tract must be attached to adjacent lots rather than allowed to remain as unusable parcels. Protection strips shall not be permitted.

6. Multiple Ownership of Lots
Where the land covered by a subdivision includes two or more parcels in separate ownership and the lot arrangement is such that a property ownership line divides one or more lots, the land in each lot so divided shall be transferred by deed to single ownership before approval of the final plat, and such transfer recorded in the County Recorder's office before being certified to the Planning Commission by the subdivider or the subdivision shall be considered as a joint project and the final plat shall be signed by all affected property owners.

7. Water, Sewer and Pressurized Irrigation Utilities

Each lot within the subdivision shall be served by the City's water system through lines providing flow for both culinary and fire purposes. Each lot within the subdivision shall be served by the City's sewage collection system, except that the City may authorize the development of a subdivision project utilizing septic tanks or other individual disposal facilities where it is determined that connection of the subdivision project to the sewer system is not reasonably feasible. Each lot in the subdivision shall be served by the pressurized irrigation system in accordance with the provisions of Section 10-3-3.26.

10-7-6 SUBDIVISION IMPROVEMENTS

10-7-6.1 Improvements Required in Subdivision Projects - To Meet City Specifications - To Be Shown on Preliminary Plan

The improvements set forth under Section 10-7-6.3 shall be required to be installed for all areas shown on the final plat and at all off-site locations designated at the time of final plat approval. The required improvements shall meet minimum City standards for design and quality of materials and shall be installed in accordance with minimum City standards and specifications (see Section 10-7-8.1) as directed by the City. The placement and design of required improvements shall be shown on the preliminary plan.

10-7-6.2 Required Improvements to Be Installed in a Timely Manner - Performance Guarantees Required

All required improvements not in place prior to the approval of the final plat by the City Council shall be installed by the subdivider within one (l) year from the date of final approval; provided however, that upon a showing of good and sufficient cause, the City Council may approve a longer period of time for completing construction of part or all of the uncompleted improvements.

A performance guarantee securing the installation of all required improvements which have not been completed and accepted by the City Council prior to final plat approval shall be required as a condition of final plat approval. The performance guarantee shall be in accordance with the provisions of Chapter 10-8.

10-7-6.3 List of Required Improvements

The minimum improvements required for subdivisions within the City shall be as follows:

1. Streets and Roads - All streets, roads and vehicular travel ways shall be dedicated to the City for use by the public and shall be improved in accordance with the City standards, except that curb, gutter and sidewalk improvements will not be required for subdivisions or portions thereof adjacent to streets which are owned by the City and/or have been designated as proposed streets on the City Master Street Plan. The

only improvement necessary on this street is a twenty-four-foot (24') hard surface travel way.

Cul-de-sacs are excluded from this Section and must meet all of the requirements of the subdivision requirements, including curb, gutter and sidewalk. [Ord. 1995-8]

2. Culinary Water - Culinary water service shall be provided to the subdivision and each lot therein, as follows:

A. Where the subdivision is not adjacent to an existing City water main which is adequate to supply the development, the subdivider shall install one (1) or more lines connecting the subdivision with the closest adequate City line. Said off-site line(s) shall be considered as part of the required subdivision improvements.

B. Both off-site and on-site water mains and appurtenant valves and facilities shall be adequate to meet both culinary and fire flow requirements. In no case shall the water mains be less than six (6) inches in diameter.

C. To the maximum extent possible water mains shall be located in the right-of-way lines of public streets in the locations specified by City standards. Said mains shall be extended to the boundary of the territory shown in the final plat, including any stub streets required to provide for future access to adjacent property.

D. Water service laterals shall be installed to each lot within the subdivision. The lateral shall extend from the main line to the outer edge of the right-of-way and shall include the installation of a meter box and meter setter.

3. Fire Hydrants - All subdivisions shall have fire hydrants installed in such a manner that no dwelling unit on a lot will be more than five hundred (500) feet distance from the closest hydrant, measured along the street.

4. Sewers - Each lot within the subdivision shall be served by the City's sewage collection system, as follows:

A. Where the subdivision is not adjacent to an existing City sewer main which is adequate to serve the development, the subdivider shall install one (1) or more mains connecting the subdivision with the closest adequate main. Any required off-site mains shall be considered as part of the required subdivision improvements.

B. Both off-site and on-site sewer mains and appurtenant manholes and facilities shall be adequate to meet both existing and future needs for the area. In no case shall the sewer main be less than eight (8) inches in diameter.

C. To the maximum extent possible sewer mains shall be located in the right-of-way lines of public streets in the locations specified by City standards. Said mains shall be extended to the boundary of the territory shown in the final plat, including any stub streets required to provide for future access to adjacent property.

D. Sewer service laterals shall be installed to each lot within the subdivision. The lateral shall extend from the its connection to the sewer main to the outer edge of the right-of-way.

5. Irrigation Water System - Each lot within the subdivision shall be served either by the City's pressurized irrigation system or by the pressurized irrigation system in accordance with the applicable provisions of Section 10-3-3.26.

6. Electric and Telephone - Electric power and telephone lines shall be provided to each lot. All lines and appurtenant facilities shall be located underground, except when the subdivider can show that the placement underground is not practically feasible.

7. Street Signs - Street signs shall be installed at all locations indicated on the preliminary plan. The location and design of said signs shall conform to minimum City standards.

8. Storm Drains and Facilities - To the maximum extent possible surface water produced from the subdivision development shall be properly disposed of within the boundaries of the subdivision through the use of sumps or other on site techniques. All sumps, culverts, drains and other facilities for the collection and disposal of surface water shall be installed as directed by the by the City Engineer.

9. Environmental Hazards

Adverse environmental conditions must be eliminated or accommodated as follows:

A. Soils:

1) The placement of streets, buildings and the designation of building sites on areas of unstable soil shall be prohibited.

2) Soils with a significant erosion hazard shall be protected. Revegetation or other erosion control measures may be imposed as a condition of subdivision approval.

B. Flooding:

1) All subdivision proposals shall be consistent with the need to minimize flood damage and in accordance with the City's flood hazard mitigation ordinance.

2) The subdivision layout shall make adequate provision for natural drainage channels and floodways.

3) All water, sewer and other utility systems and facilities located in designated flood areas shall be designed and constructed to minimize flood damage including the infiltration of flood water into the system, or discharge of the system into the flood waters.

C. Other - Where applicable, other adverse environmental conditions must also be eliminated or adequately accommodated. The additional conditions shall include, but not be limited to seismic, land slide, and ground water.

10. Street Lights - Within subdivisions the responsibility for providing street lights lies with the developer of the subdivision, not the City. If a subdivision plan does not provide for street lights, it shall be so written on the plat for that subdivision. If street lights are desired by the future property owners, the cost of installing these improvements will be the responsibility of the property owners themselves and not the City.

11. Permanent Survey Monuments - No less than two permanent survey monuments shall be installed in each subdivision. The location of the monuments shall be shown on the final plat. Also, all corners on the subdivision and all lot corners in the subdivision shall be marked.

10-7-7 SUBDIVISION COSTS AND CHARGES

Costs and charges in connection with the planning and development of subdivisions shall be borne by the subdivider.

10-7-8 GENERAL REQUIREMENTS

10-7-8.1 Standards and Specifications

The Planning Commission shall prepare standards and specifications for the content of subdivision plans and for the layout, design and construction of subdivisions and required improvements. Said standards and specifications shall

be adopted by resolution of the City Council. All such requirements shall be considered the minimum standards which must be met and shall apply to all subdivisions.

10-7-8.2 Streets to be Dedicated

All streets shall be dedicated for public use and shall conform to the minimum standards for width and improvement, except that the City Council may accept the dedication of partial width street provided:

1. That said street is located at the border of the subdivision.
2. That the width proposed for dedication shall be sufficient to accommodate the minimum travel way and all utility systems as set forth in City standards.
3. That there are not existing conditions which would prevent the subsequent development *of* the remaining portion *of* the street.
4. That construction of a partial width street at the proposed location will not create an unsafe or hazardous condition.

10-7-8.3 Lots Must Abut on Public Street

Each lot in a subdivision shall abut on a street dedicated to the City by the subdivision plat or an existing public street, either dedicated or which has become public by right of use, and is more than fifty feet wide. Interior lots having frontage on two streets are prohibited except in instances where topographic conditions make such design desirable.

10-7-8.4 Amended Plats

No change shall be made in a plat which has received final approval unless and until approval for said change has been given by both the Planning Commission and City Council.

Any proposed vacation, alteration or amendment of a subdivision or portion of a subdivision for which a Final Plat has been recorded in the office of the County Recorder, or of any street, lot or alley contained in the plat shall require: (1) that the entire plat or portion affected by the proposed change be vacated in accordance with the procedure set forth in Section 57-5-5 et. seq, Utah Code Annotated,1953 as amended, and (2) that a new plat of the affected area, showing the proposed changes shall have been approved by the Planning Commission and Council and filed in accordance with the procedures and requirements of this Code.

10-7-8.5 Work to be Done by Engineer or Surveyor

All engineering work must be done by, or under direction of, a professional engineer registered in the State of Utah. All land survey work must be done by, or under the direction of, a land surveyor registered in the State of Utah.

10-7-8.6 Drawings of Record Required

Plans showing the location, size, grade and depth of all water and sewer mains, valves, manholes and other subsurface utility and service lines and facilities shall be required prior to the release of performance guarantees.

10-7-8.7 Variances

Variances to the strict application of the standards and specifications adopted pursuant to Section 10-7-8.1 may be authorized by the City Council after recommendation from the Planning Commission. Such variances will be granted only upon a finding that, because of topographic or other unique physical condition, the standard appealed from:

1. Is unnecessary for the proper development of the subdivision and will not be required in the future.
2. Would cause an unreasonable hardship if adhered to, and
3. May be granted without destroying the intent of the standard of this Code.

Any variance so authorized shall be stated on the final plat.

10-7-8.8 Review Fees

(See 10-3-1.4)

CHAPTER 10-8

PERFORMANCE GUARANTEES 10-8-1

APPLICATION

Wherever a performance guarantee is required under the terms of this Code, said guarantee shall be submitted in conformance with this Chapter.

10-8-2 TYPE AND AMOUNT OF GUARANTEE

The performance guarantee shall be one of the following:

1. A deposit of cash in a separate escrow account in an amount not less than 125 percent of the estimated cost of performing the work for which the guarantee is required. Said account shall be made with a financial institution acceptable to the City and shall be established in such a manner that any release therefrom shall require the advance written consent of the City. Any interest derived from the account shall inure to the benefit of the developer.

2. A performance bond in an amount not less than 125 percent of the estimated cost of performing the work for which the guarantee is required, as established by the City.

3. An irrevocable letter of credit from a financial institution acceptable to the City, in an amount not less than 125 percent of the estimated cost of performing the work. The letter of credit shall be established in such a manner that any release of funds to the developer shall require the advance written consent of the City.

10-8-3 DURATION OF GUARANTEE

The duration of the performance guarantee shall be for the period of time specified for each particular type of development or activity. (See Section 10-7-6.2) and any extensions to such period as may have been approved by the City Council. The date of beginning for the performance period shall be the date of final approval by the City.

10-8-4 PARTIAL RELEASE PERMITTED

Where a guarantee is posted for the purpose of insuring the timely installation of required improvements in a subdivision, Planned Unit Development, or similar project, the City may authorize a release of a portion of the guarantee in an amount commensurate with the proportion of improvements completed.

10-8-5 FINAL DISPOSITION AND RELEASE

At the completion of the work, or not less than ten (10) days prior to the release date of the bond or other assurance, the developer shall submit to the City one copy of a Certificate of Completion. Following receipt of the certificate, the City Engineer shall make a preliminary inspection and shall submit a report to the City Council setting forth the conditions of such facilities. If the condition of said improvements or activities for which the guarantee is required are found to be satisfactory, and all liens are paid, the Council shall authorize release of the remainder of the guarantee except for that portion to be held as a durability retainer.

If the condition of material or workmanship shows unusual depreciation or does not comply with the acceptable standards of durability or if any outstanding liens are not paid, or the terms of the guarantee have not been satisfied, the matter shall be referred to the City Council and, in accordance with the provisions of 10-8-6, the Council may declare the developer in default.

10-8-6 DEFAULT

Where, in the opinion of the City Council, a developer fails or neglects to satisfactorily install the required improvements or make required corrections, or to pay all liens in connection with said improvements, or otherwise fails in carrying out the activity for which the performance guarantee was required, the City Council may, after a public hearing with due notice on the matter, declare the performance guarantee forfeited and thereafter may install or cause the required improvement to be installed using the proceeds from the guarantee to defray the costs. Provided that the City shall not be responsible for work beyond the limits of the bond amount. Any funds remaining after completion of the required improvements will be returned to the developer.

10-8-7 DURABILITY RETAINAGE

A retainage of not less than twenty-five (25) percent of the total amount of the guarantee shall be retained by the City for a period of not less than one year following the date of final acceptance of the improvements by the City. Such retainage shall be a guarantee of the durability of said improvements. If during the one year period, the durability of said improvements are found to be

satisfactory, said retainage may be released following the procedure outlined under Section 10-8-5. If however, during said period, the condition or material or workmanship of the improvement or improvements fails or shows unusual depreciation, or it if becomes evident that certain work was not completed, or that said improvements do not otherwise comply with accepted standards of durability, said condition shall be corrected by the person giving the performance guarantee. If the corrections are not made within a reasonable time, the City Council, in accordance with Section 10-8-6, may declare such person in default and use the retainage to defray the cost of any required work. At the conclusion of the durability guarantee period, the retainage may be released by the City in accordance with the release procedure outlined under Section 10-8-5.

CHAPTER 10-9

ANNEXATIONS

RESERVED

CHAPTER 10-10

AMENDMENTS

10-10-1 DEVELOPMENT CODE AND ZONING MAP MAY BE AMENDED - PROCEDURE

This Development Code, and the zoning map adopted as a part thereof, may be amended from time to time by the City Council, but all proposed amendments must first be submitted to the Planning Commission for its recommendation. The procedure to be followed in amending the Code and map shall be as set forth below.

10-10-1.1 Written Petition Required - City-Initiated Amendments Permitted

Any person seeking an amendment of the Development Code or zoning map shall submit to the Planning Commission a written petition designating the change desired and the reasons therefor, and shall pay a non-refundable filing fee in an amount established by resolution of the City Council.

Amendments to the Code and map may also be initiated by action of the Planning Commission or upon request of the City Council.

10-10-1.2 Planning Commission to Make Recommendation - Time Limit

Upon receipt of the petition the Planning Commission shall consider the request and shall submit its recommendations with respect thereto to the City Council.

The Planning Commission shall submit its recommendations to the Council within thirty (30) days from the date of the next regularly scheduled meeting occurring after receipt of the request. Failure of the Planning Commission to submit its recommendations to the City Council within said thirty (30) day period shall be deemed to constitute a recommendation of approval unless a longer period is granted by the petitioner.

10-10-1.3 Public Hearing Required Before Amending - Notice of Hearing to Be Published

No amendment to the map or Code may be adopted by the City Council unless and until the Council shall have advertised and held a public hearing thereon at which parties in interest and citizens have an opportunity to be heard.

Notice of the time, place and purpose of such hearing shall be published in a newspaper of general circulation within the City at least fourteen (14) days prior to the date of the hearing.

No material change in or departure from the amendment as recommended by the Planning

Commission shall be made after the hearing unless such proposed change or departure shall

have been first resubmitted to the Planning Commission for its consideration and recommendation with respect thereto. [Ord. 1995-9]

10-10-1.4 <u>Amendments to Be Adopted by Ordinance - Public Notice of Adoption Required</u>

All amendments to the Code and map shall be adopted, published or posted and recorded in accordance with the applicable provisions of UCA 10-3-701 et seq.

10-10-2 INTENT WITH RESPECT TO AMENDMENTS

All amendments to this Code shall be made in accordance with the Comprehensive Plan of Land Use. It is hereby declared to be public policy that this Code shall not be amended unless it can be shown that changed or changing conditions make the proposed amendment reasonably necessary to the promotion of the purposes of this Code.

CHAPTER 10-11
DEFINITIONS

10-11-1 INTENT

For the purposes of this Code, certain words and terms are defined as hereinafter set forth:

Words in the present tense include the future and the future includes the present; the singular number includes the plural and the plural the singular; the word "lot" includes the word "tract or parcel of land"; the term "erected" means "constructed, altered, moved, or repaired"; the words "shall" and "must" are always mandatory. The term "district" is synonymous with the term "zone"; the term "ordinance" is synonymous with the term "Code." Words not included herein, but which are defined in the Building Code, shall be construed as defined therein.

10-11-2 LIST OF DEFINITIONS

1. Accessory Building - A building located on a lot or parcel of land, the use of which is appropriate, subordinate, and customarily incidental to that of the main building and/or principle use of the land.

2. Animal Unit - An animal unit shall be one or a proportionate combination of the following:

a. One (1) cow (bovine), horse (equine), or similar large animal.

b. Four (4) adult sheep or feeder lambs.

c. Four (4) goats.

d. Twenty (20) chickens.

e. Thirty (30) pigeons or similar small fowl.

f. Thirty (30) rabbits or similar small animals.

For types of animals not specified above, the Board of Adjustment shall determine the number which shall constitute an animal unit, except that, for purposes of compliance with this Code, porcine (pig) and mink are specifically excluded from consideration as part of an animal unit.

For the purpose of determining compliance, said definition shall not include the unweaned offspring less than six (6) months old of any residing animal.

3. **Buildable Area - A portion of a site which conforms to all minimum criteria required for placement of a structure.**

4. **Building - Any structure built for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind, but not including fences or corrals.**

4.1. **Building Footprint - The area circumscribed within the outside perimeter of a proposed building, as determined along the outside edge of the foundation wall. [Ord. 1996-3, Sec. 2]**

5. **Common Area - An area designated to serve two (2) or more dwelling units in separate ownership with convenient access to the area.**

6. **Comprehensive Plan (Master Plan) - A coordinated plan which has been prepared and adopted for the purpose of guiding development, including but not limited to a plan or plans of land use, resources, circulation, housing, and public facilities and grounds.**

7. **Condominium - The ownership of a single unit in a multi-unit project together with an undivided interest in common in the common areas and facilities of the property.**

8. **Condominium Project - A development project whereby two (2) or more units, together with an undivided interest in the common area or facility, are separately offered or proposed to be offered for sale. This definition shall apply to existing or proposed apartments, commercial or industrial buildings or structures. "Condominium project" shall also mean the property when the context so requires.**

9. **Corral - A fence or other barrier used for the confinement of livestock for which the primary source of food is provided from other than grazing of grass or herbage growing on the site.**

10. **Customary Residential Accessory Structure - A structure constructed on the same zoning lot as a dwelling and which is intended for the incidental and exclusive use of the residents of said dwelling, including but not limited to detached garages, carports, swimming pools, tennis courts, greenhouses, storage buildings, and satellite dishes.**

11. **Density - The term shall mean the number of dwelling units per acre of land.**

12. **Designated City Street - A Federal or State highway or City street as shown on the Official Street Map of the City.**

13. **Documentation - Declaration - The legal instruments required under the provisions of this Code and applicable State law for approval of large scale development or subdivisions.**

14. Dwelling.

a. Dwelling Unit - One (1) or more rooms in a building designed for living purposes (bathing, eating, and sleeping) and occupied by one (1) family.

b. Dwelling, One-Family - A detached residence designed for or occupied by one (1) family.

c. Dwelling, Two-Family - A single building containing two (2) dwelling units. To qualify, the footprint of the structure shall be covered by a common roof and the units shall be connected to each other either with a common floor/ceiling (stacked unit) or along a common wall running along the entire length of each dwelling unit or not less than twenty-five feet (25'), whichever is less (side-by-side unit).

d. Dwelling, Multiple-Family - A single building containing three (3) or more dwelling units. To qualify, the footprint of the structure shall be covered by a common roof and all units shall be connected to other units in the structure either with a common floor/ceiling (stacked unit) or along a common wall running along the entire length of the adjacent dwelling unit or not less than twenty-five feet (25'), whichever is less (side-by-side unit).

e. Dwelling, Caretaker's - A dwelling which is occupied by an individual or family whose livelihood is derived primarily from watching or taking care of a farm, industry or other use which is located on the same premises as the dwelling.

f. Dwelling - Conventional Construction - A dwelling which is constructed in compliance with the provisions of the Uniform Building Code, Uniform Mechanical Code, National Electric Code, and State Plumbing Code as adopted by the City. [Ord. 2003-8, Sec. 4]

15. Family - An individual or two (2) or more persons related by blood, marriage, or adoption, living together in a single dwelling unit and maintaining a common household. A family may include two (2), but not more than two (2), non-related persons living with the residing family. The term "family" shall not be construed to mean a group of non-related individuals, a fraternity, club, or institutional group.

16. Day-Care Center - A dwelling unit wherein ordinary care and supervision are provided during customary daytime periods by the resident family to nonrelated persons. To qualify, said dwelling must be approved by the State Division of Social Services or other appropriate State agency.

17. Fence, Sight-Obscuring - A fence which permits vision through not more than twenty percent (20%) of each square foot.

18. Final Plat - Record of Survey Map - A plat of survey of land within a subdivision or large-scale development, which has been prepared in accordance with applicable City standards and/or State statutes for the purposes of recording in the office of the County Recorder.

19. Floor Area - The sum of the areas of the several floors of the building, including basements, mezzanines, and penthouses of headroom height six (6) feet measured from the exterior walls or from the center line of walls separating buildings. The floor area does not include unoccupied features such as pipe trenches, exterior terraces or steps, chimneys, roof overhangs, etc.

20. Grade of Building.

    a. For buildings fronting one (1) street only - the elevation of the sidewalk or center line of street, whichever is higher, at right angles to the midpoint of the fronting walls.

    b. For buildings fronting on more than one (1) street - the average of the elevations of the sidewalk or center line of street out from the midpoint of the fronting wall.

    c. For buildings having no walls fronting the streets - the average level of sidewalk or center line or surrounding streets, whichever is higher.

21. Grade of Streets and Driveways - Grade shall mean the ratio of vertical distance along such a street or driveway expressed in either percentage or degree.

22. Health Agency - The Health Department or any representative authorized by the City Council to represent them in matters relating to health and sanitation.

23. Height of Building - The vertical distance from the grade to the square of the building.

24. Home Occupation - Any occupation conducted within a dwelling and carried on by persons residing in the dwelling.

25. Household Pets - Animals or fowl customarily permitted within the house and/or on the premises and kept for the company or pleasure of the occupants, such as dogs, cats, and canaries, but not including livestock or a sufficient number of dogs to constitute a kennel.

26. Information Brochure - A written statement setting forth the organizational structure of a Home Owners Association, and the rights and obligations of the developers, Home Owners Association, lot owners and the City.

27. Kennel.

a. Kennel - General Definition - The use of land and/or buildings for the care and keeping of three (3) or more dogs which are more than four (4) months old.

b. Private Kennel - A kennel located on a parcel of land containing a residence, for the care and keeping of dogs, owned by the occupant of the dwelling and kept for the private use and enjoyment of the residents of the parcel. [Ord. 2003-8, Sec. 1]

28. Landscaping - Landscaping shall mean the use and integration of a combination of planted trees, shrubs, vines, groundcovers, lawns, rocks, foundations, pools, art works, screens, walls, fences, benches, or surfaced walkways set into an aesthetically pleasing arrangement as determined by the Planning Commission or their authorized representatives. However, the use of structures or surfaced walkways alone, in the absence of planted trees, lawns, etc., shall not meet the requirements of this Code.

29. Livestock Management Area - All portions of a lot devoted exclusively to the care and keeping of livestock, including, but not limited to, barns, sheds, pens, coops, corrals, and pastures, but not including any portion of a parcel devoted to a dwelling, yard, garden, parking area or unutilized open area.

29.1. Living Area - Those portions of a dwelling having a headroom height of not less than seven (7) feet and used for customary living activities. For purposes of this Code, the term "living area" shall not include those portions of a dwelling intended for parking of vehicles, unenclosed porches, storage rooms having only outside access and similar areas. [Ord. 1996-3, Sec. 2]

30. Lot - (a) An independently described parcel of land as shown on the records of the County Recorder, or (b) two (2) or more contiguous parcels each of which qualify under Subsection (a) of this definition and for which a Declaration of Zoning Lot has been approved and filed in the office of the County Recorder.

31. Lot - Corner - A lot abutting on two (2) intersecting or intercepting streets where the interior angle of intersection or interception does not exceed one hundred thirtyfive (135) degrees.

32. Lot - Interior - A lot other than a corner lot.

33. Lot Line, Front - The front boundary line of a lot bordering on the street or in the case of a flag lot the boundary line located closest to and approximately parallel to the street upon which the driveway portion abuts.

34. Lot Line, Rear - A lot line which is opposite and most distance from the front lot

line. In the case of an irregular, triangular, or gore-shaped lot, the rear lot line shall be a line within the lot parallel to and at the maximum distance from the front lot line, having a length of at least ten (l0) feet.

35. Lot Line, Side - Any lot boundary line not a front lot line or a rear lot line.

36. Main Building - One (1) or more of the principal buildings upon a lot. Garages, carports and other buildings which are attached to a dwelling or other main building or which are situated closer to the main building than the minimum distance specified in the zone requirements shall be considered as a part of the main building.

36.1. Main Floor Living Area - The area of a dwelling, measured from the outside wall line on a horizontal plane, which, when viewed from above, contains living area on one (1) or more floors or levels, which floors or levels are located entirely above the finished ground level surrounding the dwelling. [1996-3, Sec. 2]

37. Manufactured Housing - A dwelling constructed in accordance with the HUD Code for manufactured housing.

38. Minor Utility Transmission Project - The construction of transmission and distribution facilities for electric power, telephone, gas and oil, water, cable TV, microwave and similar commodities for the purpose of supplying such services or commodities primarily to structures in the immediate vicinity.

39. Mobile Home - A dwelling unit which designed to be transported, after fabrication, on its own wheels or on detachable wheels and which is designed and intended for permanent occupancy as an independent dwelling unit, but which does not comply with the City's adopted building, mechanical, electrical, and plumbing codes or the HUD code for manufactured housing. The term "mobile home" shall also include any vehicle meeting the above description which is used for an office, classroom, laboratory, processing, manufacturing, retail sales, or other such use.

40. Mobile Home Park - An area or tract of land used to accommodate two (2) or more mobile homes.

41. Non-Conforming Use or Building - A building or structure, or portion thereof, or use of a building or land existing at the time of the passage of this Code which does not conform to the zoning regulations as set forth herein but which legally existed prior to the effective date of the now controlling provision.

42. Non-conforming Lot of Record - A parcel of land which does not conform to the minimum area and/or width requirements for the zone in which it is located, but which was legally created and was shown on the records of the County Recorder as a conforming lot of record prior to the effective date of the now controlling provisions. Substandard lots in illegal subdivisions shall not be considered as nonconforming lots of record.

43. Off-Street Parking - An area adjoining a building providing for the parking of automobiles which does not include a public street, but has convenient access to it.

44. Pasture - An area confined by wire, wood or other fence structure used for the confinement of livestock for which the primary source of food is obtained from the grazing of grass or herbage growing on the site.

45. Public Agency Park - A tract of land which is owned by a governmental agency and which has been partially or totally developed or designated for recreation or open space purposes.

46. Public Building - A building, together with appurtenant off-street parking and landscape facilities, owned or leased on a long-term basis (twenty (20) years or longer) by the government of the United States of America, the State of Utah or an agency or political subdivision thereof including, but not limited to, buildings, housing, administrative offices, libraries, post offices, hospitals and similar activities readily accessible to the general public, but not including areas and/or structures used primarily for storage and repair of vehicles, equipment or materials or occupied for group housing. [Ord. 1999-2, Sec. 1]

47. Public School - One or more buildings, together with the appurtenant yards, incidental structures, parking areas, etc., operated by the school district or other public agency for educational purposes.

48. Recreation Vehicle - A vehicle used, designed, or maintained primarily as a temporary dwelling for travel, vacation, or recreation purposes, having a width of not more than eight (8) feet and length of not more than forty (40) feet, and which can be driven or pulled upon the highways without a special permit.

49. Recreation Vehicle Court - An area or tract of land used to accommodate two (2) or more recreation vehicles or camper units for a short period of time (less than thirty (30) days).

50. Setback - The shortest distance between the property line and the building or part thereof.

51. Sign - General Definitions - Any device designed and intended to bring the subject thereof to the attention of the public; provided, however, that the following shall not be included in the application of the regulations herein: (1) flags or insignia of any government, except when displayed in connection with a commercial promotion; (2) legal notices, traffic regulation signs, and signs used for identification of public structures and facilities and informational purposes, when erected by a governmental body; and (3) signs directing and guiding traffic and parking on private property but bearing no advertising matter.

a. Accessory Sign - A sign which directs attention to merchandise, service,

business or profession conducted on the premises of the sign's location.

b. Sign Face Area - That area enclosed by one (1) continuous line connecting the extreme points or edges of those portions of a sign containing text, lighting or logo, together with any frame or material which forms an integral part of the display, but not including the necessary support uprights on which the sign is placed. Where the sign consists of open letters or symbols, the area shall be considered to be that of the smallest parallelogram or triangle which encompasses all the letters or symbols. The area shall be determined using the largest silhouette useable at any one (1) time. Freestanding or projecting signs having parallel planes not more than twenty-four inches (24") apart shall be considered as a single sign both as to number and area.

c. Banner Sign - Any sign made of cloth, plastic or similar fabric material, with no enclosing framework, that is mounted to a pole or building.

d. Canopy Sign - Any sign that is part of or attached to an awning, canopy or other fabric, plastic or structural protective cover over a door, entrance window or outdoor service area.

e. Freestanding Pylon Sign - An accessory sign, not attached to or part of a building, and having a height greater than nine feet (9').

f. Freestanding Monument Sign - An accessory sign, not attached to or part of a building, and having a height of nine feet (9') or less.

g. Facia Sign - A sign attached to or erected against a wall or building with the face parallel to the building wall.

h. Non-Accessory Sign/Billboard - A sign which directs attention to a business, commodity, service, or entertainment conducted, sold or offered elsewhere than on the premises, and only incidentally on the premises, if at all.

i. Portable Sign - A sign not permanently attached to the ground or building or a sign designed to be transported including, but not limited to, signs designed to be transported by means of wheels; A-frame and T-frame signs; balloons used as signs; banner signs; and signs attached to, displayed upon or painted on vehicles parked and visible from the public right-of-way, unless the vehicle is used in the normal day-to-day operation of the business.

j. Projecting Sign - A sign attached to a building or other structure and extending in whole or in part more than fifteen inches (15") away from the wall or the building or structure. [Ord. 2002-3, Sec. 1]

52. Structure - Anything constructed or erected which requires location on the ground, but not including a tent or vehicle.

53. **Subdivision - The division of a tract, lot, or parcel of land into plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale or building development. [Ord. 1995-3]**

54. **Yard - Any space on a lot other than a court, which is open and unobstructed from the ground to the sky.**

55. **Yard, Front - A yard extending across the full width of the lot, the depth of which is the minimum horizontal distance between the main building and the front of the lot.**

56. **Yard, Required - The open space around buildings which is required by the terms of this Code.**

57. **Zoning Lot - A unit of land composed of one (1) or more parcels which:**

a. **Meets all existing area, width, access and other applicable requirements for lots within the zone in which it is located, and**

b. **Is shown as a separate lot in a subdivision or large-scale development which has been approved in accordance with the applicable ordinance or is legally exempted from compliance with said ordinance. A parcel which is part of an unapproved or illegal subdivision shall not qualify as a zoning lot.**

CHAFFER 10-12

ADMINISTRATION AND ENFORCEMENT

10-12-1 ADMINISTRATION AND ENFORCEMENT

10-12-1.1 Enforcement Officer

The Zoning Administrator shall be charged with the administration and enforcement of this Code.

10-12-1.2 Zoning Clearance Required

No building permit shall be issued for construction within the City until the application therefor has been approved by the Zoning Administrator. The Zoning Administrator shall not give such approval until he is satisfied that the proposed construction and subsequent use of the building proposed to be constructed will comply with the requirements of the zone in which the building will be situated.

10-12-1.3 Buildings to be on Zoning Lot

No building permit authorizing the use of land or the construction or alteration or moving of a building or structure on a lot shall be issued unless the parcel of land upon which the use is to be conducted or the building constructed, altered, or moved shall qualify as a zoning lot as defined in this Code.

10-12-1.4 Building Permit to Comply With Code

From the effective date of this Code, no permit shall be granted for the construction or alteration of any building or structure or for the moving of a building or structure on to a lot or for the change of use of any land, building or structure if such construction, alteration, moving or change of use would be a violation of any of the provisions of this Code, nor shall any sewer or water service line or electric utilities be installed to serve the premises if such use would be a violation of this Code.

10-12-1.5 Construction and Use to Comply With Permit

Permits issued on the basis of plans and specifications approved by the Zoning Administrator authorize only the use, arrangement, and construction set forth in such approved application. Any use, arrangement, or construction at variance with that authorized shall be deemed to be a violation of this Code.

10-12-1.6 Permits Granted Prior to This Code

Authorization granted by the City to construct a building or structure, or to change the use of land, shall not be denied or abridged in the event that construction has taken place thereon to the extent of one thousand dollars ($1,000) or more in replaceable value by the date on which this Code or an amendment thereto shall become effective; Provided however, that such authorization to construct a building or structure shall be denied if construction would not have complied with all applicable laws and ordinances existing prior to the effective date of this Code or amendment. Replaceable value shall be construed to mean the expenditure necessary to duplicate the material and labor at market prices.

10-12-1.7 License to Comply With Code

No business or similar permit shall be issued which would not be in conformance with the provisions of this Code. Any permit so issued shall be null and void.

10-12-1.8 Responsibility for Violation

It shall be the responsibility of the owner and any and all builders, contractors, sub-contractors, real estate agents and any other persons having to do with the establishment of any use of land or the erection, altering or relocation of any building to make sure that a proper permit has been obtained before work is begun. Any person doing any work on a project for which a proper permit has not been obtained shall be deemed guilty of a violation of this Code.

10-12-1.9 Utility Installation Unlawful Without Building Permit

It shall be unlawful for any person, firm, or corporation to install or allow to be installed, any sewer or water service lines, or any gas, telephone or electric utility connection to serve the premise before a building permit has been properly approved and issued by the Zoning Administrator, and any person who shall install or authorize the installation of any such line or connection shall be in violation of this Code. Each day such violation is continued shall be considered as a separate offense.

10-12-1.10 Iniured Person May Recover Damages - City Not Liable

Any person purchasing a lot or parcel or land who may be injured as the consequence of a denial of a building permit, which purchase was made pursuant to inaccurate, incorrect, untrue or fraudulent information on the part of the seller or his agent, may recover damages from the seller or his agent by civil action. However, the City shall not be civilly liable for any damages that may occur as a consequence of the denial of a building permit based upon such information.

CHAPTER 10-13

ADOPTION - PENALTY - EFFECTIVE DATE 10-13-1

PRIOR ZONING AND SUBDIVISION ORDINANCES REPEALED.

The Ordinance entitled THE ZONING ORDINANCE OF GUNNISON CITY, UTAH, adopted by the City Council _____ and the ordinance adopting the building Codes, Regulations and Subdivisions enacted by the City Council , together with all subsequent amendments to said ordinances are hereby repealed to become effective concurrent with the effective date of this Code.

10-13-2 CONFLICTING PROVISIONS.

Whenever the provisions of this Code conflict with the provisions of any other ordinance, resolution or part thereof, the more stringent shall prevail.

10-13-3 SEVERABILITY

This Code and the various sections, clauses and paragraphs are hereby declared to be severable. If an part sentence, clause or phrase is adjudged to be unconstitutional or invalid it is hereby declared that the remainder of the ordinance shall not be affected thereby.

10-13-4 PENALTY - OTHER REMEDIES FOR VIOLATION

Any person, firm or corporation, whether as principle, agent, employee or otherwise who shall erect, construct, reconstruct, alter or move a structure which is subject to the provisions of this Code without first complying with the relevant provisions and, when applicable, obtaining a building permit therefore; or who shall change the use of any building or territory, create a subdivision of land, or perform any act in violation of any provision of this Code, or any subsequent amendment thereto shall be guilty of a Class C misdemeanor, as defined by State Law, for each such offense.

The City Council, City Attorney, Zoning Administrator or any owner of real estate within the City may, in addition to other remedies provided by law, institute injunction, mandamus, abatement or any other appropriate action or proceeding to prevent, enjoin, abate or remove the unlawful building, use or act.

10-13-5 EACH DAY A SEPARATE VIOLATION - EACH ILLEGAL SUBDIVISION LOT A SEPARATE VIOLATION

Each person, firm or corporation found guilty of violation shall be deemed guilty of a separate offense for every day during which any violation of any provision of this Code is committed, continued or permitted.

Each person,firm or corporation who transfers or sells land in a subdivision without preparing and having approved a plat thereof in accordance with Chapter 10-7 of this Code shall be deemed guilty of a violation for each lot transferred or sold and the description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt such transaction from such violation. (UCA 10-9-26)

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