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Join via phone at 1-719-359-4580 **Meeting ID:** 819 4056 2844
Meeting Passcode: 284545

AGENDA

Call to Order

Roll Call

Agenda

Consent Items

- A. Approval of Minutes

Public Comment

Public comments are limited to three (3) minutes. When you are recognized, please stand, state your name, and then address the Board in a professional manner.

The Commissioners may not respond to your comments during this meeting, rather they may take your comments and suggestions under advisement and your questions will be directed to the appropriate person or department for follow-up.

General Business

- A. 2024 Zoning Code_Assembled 2026

Discussion

Adjourn

Agenda Approved By:

Wendy Frenzel,
Chairperson

Agenda Approved By:

Chairperson Wendy Frenzel

Date Posted:

April 28, 2026

Time Posted: 4:00pm

MEETING PROTOCOL AND STANDARDS OF CONDUCT

Public Participation

Public comment is encouraged and will be listed as an agenda item at every regular Planning Commission meeting.

Each individual wishing to be heard during the public comment period will be given up to three (3) minutes to make a comment.

The public comment period will not be used to make political endorsements or for political campaign purposes.

Questions from the Board will be for clarification purposes only. Public comment will not be used as a time for problem-solving or reacting to comments made but, rather, for listening to the comments of citizens without taking any formal action.

The Board may direct the Town Administrator to provide information requested by a speaker during the public comment period.

Speakers are not allowed to make belligerent, accusatory, impertinent, slanderous, threatening, abusive, or disparaging comments.

The Chair may elect to defer public comment on a specific issue that appears on the regular agenda until that specific item is addressed.

The Chair may call for order when sidebar conversations occur in the audience. Those conversations are distracting from the Board addressing the topics at hand.

Members of the public who do not follow proper conduct after a warning in a public meeting may be barred from further participation at that meeting or removed from the Board Chambers pursuant to the Kiowa Municipal Code and Colorado Revised Statutes.

ACTION MAY BE TAKEN ON ANY AND ALL ITEMS LISTED ON THE AGENDA

All visitors must contact the Town Clerk five (5) business days before a scheduled meeting to be placed on the agenda. If special accommodations are necessary per ADA, contact 303-621-2366 prior to the meeting.



*Planning Commission Meeting
Regular Meeting Minutes
404 Comanche St., Kiowa Town Hall
February 18, 2026 @ 6:00 pm*

CALL TO ORDER

The regular meeting of the Town of Kiowa Planning Commission was called to order at 6:03 pm by Chairperson Wendy Frenzel

ROLL CALL

Present: Chairperson Wendy Frenzel, Co-Chairperson Julie Mizak, Commissioner Shannon Lane, Commissioner Todd Lane, Commissioner Lori Rafferty, and Commissioner Sandy Kalish on Zoom.

Also present:

Kim Boyd, Town Administrator

Sasha Davidson, Town Clerk

There was a quorum for conducting business.

CONSENT ITEMS

Chairperson Wendy Frenzel entertained a motion to approve the agenda. Commissioner Sandy Kalish moved to approve the agenda with the change, and Co-Chairperson Julie Mizak seconded the motion, and the motion carried 6-0 with no discussion.

Chairperson Wendy Frenzel entertained a motion to approve the minutes from the November 19, 2025, meeting. Commissioner Sandy Kalish moved to approve of the minutes from the November 19, 2025, meeting. Commissioner Shannon Lane seconded the motion, and the motion carried 6-0 with no discussion.

PUBLIC COMMENT

None

GENERAL BUSINESS

- A. Tacos & Tortas Final Plan Review** – There was a brief presentation and discussion. Chairperson Wendy Frenzen entertained a motion to approve the final plan review and move it to the Town of Kiowa Board for consideration. Commissioner Kalish moved to approve the final plan review and mov it to the Town of Kiowa Board for consideration. Commissioner Todd Lane seconded the motion, and the motion carried 6-0 with no discussion.

CORRESPONDENCE/INFORMATION/REVIEW/DISCUSSION

None

ADJOURN

Chairperson Wendy Frenzel entertained a motion to adjourn the meeting. Commissioner Sandy Kalish moved to adjourn at 6:14pm, and Co-Chairperson Julie Mizak seconded the motion, and the motion carried 6-0 with no discussion.

The next regular meeting will be on March 18, 2026, at Town Hall at 6:00 p.m.

Minutes approved by:

Julie Mizak, Co-Chairperson

Sasha Davidson, Town Clerk

Pre-Review Notes

1. Between September 2023 and February 2024, the Planning Commission held approximately 8 - 10 meetings at which it reviewed and discussed a new zoning code for the Town of Kiowa. In April of 2024, the Board of Trustees, at its regular monthly meeting, voted to adopt the new zoning code via Ordinance No. 2, Series 2024, based on the “recommendation” of the Planning Commission. Following the Board’s adoption of Ordinance No. 2, Series 2024, revisions were made to the new zoning code by Ordinance No. 11, Series 2024, and additional revisions were made to the old zoning code by Ordinance Nos. 01 and 11, Series 2025. The foregoing actions have led to confusion on how to interpret and enforce the Town’s zoning regulations.

The new zoning code was presented to the Planning Commission and the Board of Trustees in disjointed “Parts” (Parts I, II, III, IV) that included regulations copied from multiple sources, including from state statutes, counties, other municipalities, and Kiowa’s own zoning code. Further, the new zoning code Parts were never assembled into a cohesive, usable code document that was presented to the Planning Commission or the Board of Trustees, thereby making it difficult for Planning Commission to understand the comprehensive whole of the new zoning code.

Based on the foregoing, and because it was determined that Ordinance Nos. 2 and 11, Series 2024, were not valid due to procedural defects, the Board of Trustees adopted Ordinance No. 2026-04, declaring Ordinances Nos. 2 and 11, Series 2024, as invalid, and to the extent necessary, both ordinances were repealed by the Board, and in turn, this action effectively nullified the “new zoning code” and any revisions thereto. The Board reinstated the old zoning code as it existed on April 08, 2024, subject to any valid subsequent amendments that had been made thereto.

2. Recognizing the amount of valuable time and energy that the Planning Commission spent on reviewing and discussing the new zoning code, the Board directed the Town Attorney to prepare a comprehensive assembled draft of the new zoning code so that the new code could be presented to the Planning Commission for consideration and then properly adopted by the Board of Trustees at a future meeting.

The attached document is the assembled version of the new zoning code, which includes:

- a. The Parts of the new zoning code that were reviewed and discussed by Planning Commission in 2023-2024;
 - b. Ordinance No. 11, Series 2024 (Revised Non-Residential Use Table);
 - c. Ordinance No. 01, Series 2025 (Food-Trucks and Pushcarts; Business Licensing);
 - d. Ordinance No. 11, Series 2025 (Temporary Signs); and
 - e. Additional provisions considered necessary by the Town Attorney’s office.
3. The draft of the new zoning code that prior town attorney Ruth Borne reviewed with the Planning Commission was broken into Parts I, II, III, and IV. These Parts are shown in the working draft of the new code, but they will not be included in the final draft of the corrected version of the new zoning code.

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4. My work on this new zoning code was limited to putting all of the Parts together, as close as possible, and then incorporating all subsequent revisions and amendments that were made by ordinance. The Planning Commission's meeting videos and written minutes from 2023-2024 were reviewed along with the Parts to track consistency between the drafted code language and the Planning Commission's edits.
 5. **IMPORTANT NOTICE:** A high level review was conducted for a majority of the provisions included in the assembled new zoning code. **My office did not review each provision for legality or internal consistency.** Certain sections were reviewed more closely, such as Articles II and III that will control amendment procedures if this new zoning code is adopted by the Board, but much of the language in the new zoning code remains the same as it was provided to me by Ms. Borne and Town staff.
 6. The following will assist you during your review of the revisions and edits made to the assembled new zoning code:
 - a. Edits made based on my review of the PC meetings are shown as: **Additions** and **Deletions**. When possible, a comment is added that identifies the PC meeting date and timestamp of the meeting video. These reflect revisions requested by PC, but that were not shown in the text of code provided to me.
 - b. Recommended revisions/edits are shown as: **Additions** and **Deletions**.
 - c. Ordinance 2024-11 (Non-residential Use Table and Definitions): **Additions** and **Deletions** [NOTICE: It is recommended that Article VI – Table of Uses, be deleted from the new zoning code until further review by PC and consideration of a legislative, comprehensive zoning district map update is completed. This corresponds with the Board's request that we reinstate the existing zoning districts until the boundaries of the proposed new zoning districts are clearly defined.]
 - d. Ordinance 2025-01 (Food-Trucks and Pushcarts; Business Licensing) – Incorporated in Article XIX. Amendments are shown as : **Additions** and **Deletions**.
 - e. Ordinance 2025-11 (Revised Sign Code) – Incorporated in Article XV.
 - f. Text **highlighted this color** identifies questionable sections, cross-references, and information that will need further review.
 - g. Definitions **highlighted this color** flag a defined term that is not used again in the new zoning code or that contains regulatory language. The lack of highlighting does not mean that a definition is deemed sufficient or appropriate.
 - h. Comments are provided to help guide your review.
 - i. Modernizing section number formatting: [Chapter] – [Article] – [Section]. Example, 16-3-10 = Chapter 16, Article 3, Section 10. This formatting style will be applied to the Town's Municipal Code through future code updates.

PART I

CHAPTER 16 – ZONING CODE

ARTICLE I – DEFINITIONS

16-1-10. **Definitions.**

Unless otherwise specifically provided, or unless otherwise clearly required by the context, the words and phrases defined in this Article shall have the meaning indicated when used in this Chapter. Words, phrases, and terms not defined in this Article but defined elsewhere in this Code shall be construed as defined elsewhere in this Code. Words, phrases, and terms neither defined herein nor elsewhere in this Chapter shall be given usual and customary meanings, except where the context clearly indicates a different meaning. The words *shall* and *will* are mandatory and not permissive; the words *may* and *should* are permissive and not mandatory.

- (1) ***Accepted, open space.*** *Accepted*, when used in regard to open space, shall mean written acceptance upon a recorded plat or other recorded document giving an indication of conveyance of land to be used by the public, or for some other use deemed appropriate by the Board of Trustees.
- (2) ***Accepted, roads and streets.*** *Accepted*, when used in regard to roads and streets, shall mean written acceptance of the road or street for public use by the Board of Trustees and shall construe the responsibility for maintenance.
- (3) *Accessory building* means a detached subordinate building, the use of which is customarily incidental to that of the main building or to the main use of the land and which is located on the same lot as the main building or use.
- (4) *Accessory dwelling unit (ADU)* means a dwelling unit used as living quarters that may include a sleeping place, kitchen and bathroom, or any combination thereof, for one (1) or more individuals, associated with the principal dwelling that can be integrated in the overall design of the principal structure, and it may be a separate structure located on the same lot, secondary to the principal structure.
- (5) ***Accessory Dwelling Unit*** means a dwelling unit is considered an accessory dwelling unit (ADU) if it is a second, subordinate dwelling unit located on the same zone lot as a primary single unit dwelling. An ADU can either be attached to the primary dwelling unit, or it can be a separate, detached structure.
- (6) *Accessory use* means a use naturally and normally incidental to, subordinate to and devoted exclusively to the main use of the premises.
- (7) *Adjacent* means all properties with a common point or line to the subject property and the property which would have a common point or line with the subject property if a public right-of-way separating the properties were not there.
- (8) *Adult entertainment establishment* means any establishment which conducts the sale, rental, display or other offering of live entertainment, dancing, or material which is

Commented [JM1]: Practical Takeaway:

The definitions appear to be overinclusive. Some terms appear to have been imported from subdivision regulation language; older code text; animal-control and licensing concepts; or use categories that were later renamed.

Definitions should be trimmed and conformed to actual usage in the *Zoning Code*.

Commented [JM2]: This is applicable to subdivision. Does not appear to be used again in the zoning code.

Commented [JM3]: Ordinance 2024-11 “adds” this ADU definition without addressing what happens to the existing ADU definition. The existing ADU definition remains until it is deleted.

distinguished or characterized by its emphasis on depicting, exhibiting, describing, or relating to specified sexual activities or specified anatomical areas and including, but not limited to:

- (a) *Adult bookstore* means any establishment which sells or rents adult materials including, but not limited to books, magazines, newspapers, movie films, slides or other photographic or written material, or any visual representation, video tapes and/or devices.
 - (b) *Adult cabaret, restaurant or place of business* means a cabaret, restaurant or place of business which features topless and/or bottomless waitresses, waiters, dancers, go-go dancers, exotic dancers, strippers, male or female impersonators, or similar entertainers.
 - (c) *Adult hotel or motel* means any hotel or motel in which the presentation of adult material is the primary or principal attraction.
 - (d) *Adult mini-motion picture theater* means any fully enclosed theater with a capacity of less than 50 persons in which the presentation of adult material is the primary or principal attraction.
 - (e) *Adult motion picture arcade* means any establishment in which the primary or principal attraction is the presentation of adult material by image-producing devices, typically limited to viewing by five or fewer persons per device.
 - (f) *Adult motion picture theater* means any fully enclosed theatre with a capacity of 50 or more people in which the presentation of adult material is the primary or principal attraction.
 - (g) *Adult novelty store* means any establishment which as a substantial or significant portion of its stock in trade sells or rents adult materials including, but not limited to apparel, bakery products, novelties, gifts, or any visual representation, and/or devices.
- (9) *Agriculture* means farming or ranching uses, including buildings for shelter of farm or ranch animals or property primarily employed in farming or ranching, including the grazing or raising of livestock (except in feedlots). An agricultural use may include those activities necessary to operate the agricultural business, however, it does not include processing of agricultural products, which shall only be permitted pursuant to the underlying zone district for the subject property.
- (10) *Alcoholic beverage and medical marijuana operations* means the manufacturing, production, distribution or sale of alcoholic beverages, except as provided in Section 12-47-106, C.R.S., and the cultivation, manufacturing, distributing or selling of medical marijuana, except by a patient registered pursuant to Section 25-1-5-106, C.R.S., and in compliance with Section 14, Article XVIII, of the Colorado Constitution and Article 43.3, Title 12, et seq., C.R.S.

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- (11) *Alley* means a public or private vehicular passageway dedicated or permanently reserved as a means of secondary access to abutting property and designed as an alley on a final plate.
- (12) *Alteration*, as applied to a building, means any change, addition or modification in construction, occupancy or use.
- (13) *Amphitheater* means a theater, including outdoor theaters, arenas and band shells for outdoor music concerts, circuses, carnivals, rodeos and productions that may or may not be lighted.
- (14) *Animal* means any mammal, bird, fish, reptile, amphibian, or insect.
- (15) *Animal breeder* means any person who is engaged in the operation of breeding and raising animals for the purpose of selling, trading, bartering, giving away or otherwise transferring the same.
- (16) *Applicant* means any owner of a right or title to real property in Town or an authorized representative of such owner who formally requests action on a land use proposal submitted in accordance with this Chapter.
- (17) *Assistance animal* means an animal, having received certification through an accredited program with specific characteristics, becoming a fundamental part of a person's treatment designed to improve the physical, social, emotional and/or cognitive function of the patient/owner, and may include a service animal. An assistance animal that is not otherwise defined as a horse or livestock shall be exempt from any numerical limitations on animals set forth herein.
- (18) *Assisted living residence* means a residential facility that makes available to three or more adults not related to the owner of the facility, either directly or indirectly through an agreement with a resident, room and board and at least the following services: Personal services; protective oversight; social care due to impaired capacity to live independently; and regular supervision that is available on a twenty-four-hour basis and includes a facility operated for persons with intellectual and developmental disabilities, a long-term care facility, and any other facility of a similar nature.
- (19) *Authorized representative* means any individual, partnership or corporation given written authorization by an applicant to process a proposal through the Town.
- (20) *Automotive sales and repair, major* means an establishment primarily engaged in the sale, servicing, maintenance or repair of commercial and heavy truck-oriented vehicles, trailers and similar large mechanical, farm or construction equipment, including paint, body and fender and major engine and engine part overhaul. ~~Overnight outdoor storage of vehicles is prohibited; all sales and repairs must be conducted inside a completely enclosed building.~~ Such use shall not include the retail sale of fuel, gasoline or petroleum products. ~~Automotive sales and repairs and establishments with vehicles left outside overnight are considered to have outdoor storage therefore, not accessory to the establishment. Establishments with outdoor storage shall be located in appropriate zone districts.~~

Commented [JM4]: Edits made per PC meeting on 10/11/2023.

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- (21) *Bar or tavern* means a licensed establishment providing or dispensing fermented malt beverages, and/or malt, vinous or spirituous liquors for consumption on the premises and in which the sale of food products such as sandwiches or light snacks is secondary.
- (22) *Bed and breakfast* means a lodging establishment operating as an overnight guest facility for a fee in a private residence or a portion thereof, which is occupied by the owner or a resident manager. Kitchen and dining facilities serve only residents and overnight guests and are not operated in the manner of a commercial restaurant, and facilities are not used for any commercial activities such as catered private parties or receptions, retail sales or similar activities.
- (23) *Block* means an area of land within a subdivision which is entirely bounded by streets, highways, natural boundaries or the exterior boundary or boundaries of the subdivision.
- (24) *Buffer* means a strip of land established to separate and protect one (1) type of land use from another to screen from objectionable noise, smoke or visual impact, or to provide for future public improvements or additional open space, often in conjunction with a floodplain.
- (25) *Building* means any structure used or intended for supporting or sheltering any use or occupancy. For purposes of the zoning code, the term "building" refers to structures that although movable, are designed primarily to remain in one place once constructed or attached to the ground or a foundation; mobile homes are not buildings; however, manufactured homes are considered buildings.
- (26) *Building height* means the vertical distance from the average finished grade to the highest point of the roof surface. A weighted average on the perimeter of the building may be utilized.
- (27) *Building line* means imaginary lines on a lot delineating the closest points from lot lines, public streets, planning areas or project area boundaries or other applicable perimeter lines, where any main building may be constructed.
- (28) *Bulk storage of dangerous materials* means the bulk storage of dangerous materials for delivery and sale, including but not limited to petroleum products, LPG (wholesale), natural gas, fertilizer, methane, or other volatile, explosive, hazardous or dangerous materials that may create hazardous or commonly recognized offensive conditions.
- (29) *Bulk storage of liquefied petroleum gas* means the bulk storage of LPG used for retail purposes only.
- (30) *Child care center* means a licensed facility, by whatever name known, which is maintained for the whole or part of a day for the care of five or more children who are 18 years of age or younger and who are not related to the owner, operator or manager, whether the facility is operated with or without compensation for such care and with or without stated educational purposes, but specifically excluding a family child care home as defined in this zoning code. Operating a childcare center without proper licensure as required by the Colorado Child Care Licensing Act shall constitute a zoning violation. Reference: Section 26-6-102(1.5), C.R.S.

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- (31) *Church* means a non-secular or non-profit facility or establishment that includes, at a minimum, a sanctuary space, religious education, and/or ministry, and may also include clothing and food distribution (kitchen facility), counseling, employment assistance, study or library space, childcare services, referral services, support groups, and assembly room. A place of worship is limited to one single-family dwelling unit. A place of worship does not include businesses operated by the religious group for support of religious activities or for charitable purposes.
- (32) *Club* means an association of persons, whether incorporated or unincorporated, for some common purpose, but not including groups organized primarily to render a service carried on as a business.
- (33) *Code* shall mean the Town of Kiowa Municipal Code.
- (34) *Commercial animal establishment* means any pet shop, grooming shop, dog training facility, boarding or breeding kennel, or other establishment which handles live animals, excluding veterinary facilities and hospital for animals.
- (35) *Common property* means a parcel of land, an area of water, or a combination of land and water, including easements, private streets, roads and parking areas and trails and pedestrian areas, within the site designated for a planned unit development (PUD) designed and intended primarily for the use or enjoyment of residents, occupants and owners of the planned unit development.
- (36) *Condominium* or *condominium unit* is a privately owned individual unit within a community of other units. It is a type of real estate property that is part of a larger complex or building of units. The ownership of a condominium unit is deemed to consist of a separate estate in an individual air space unit of a multi-unit property together with an undivided interest in common elements.
- (37) *Contractor* is any is someone who performs work that requires a building or mechanical permit. A laborer who works under a contractor's supervision is not considered a contractor.
- (38) *Covenants* means a private written agreement outlining regulations specific to a development. As private restrictions, they are not enforced by the town. In the event of conflict between the covenants and this zoning code, the zoning code controls.
- (39) *Dedicated land* means land area transferred to the Town by deed or other legal method approved by the Town Attorney. Land so transferred and accepted by the Town shall be utilized for public or community purposes, as approved by the Board of Trustees.
- (40) *Dependent mobile home* means a mobile home not containing complete bathroom facilities.
- (41) *Developable area* means the area of a parcel that is capable of being receptive to construction without major grading, draining or floodplain alterations. Areas that would not be considered as developable include, but are not limited to:
- (a) Areas within a 100-year floodplain;

Commented [JM5]: Not clearly used again in this code.

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- (b) Areas within any geological hazard zone;
 - (c) Areas where the slope is greater than 30 percent;
 - (d) Wetlands, as determined by the US Army Corps of Engineers; and
 - (e) Easement areas or designated setbacks.
- (42) *Developer* means any person, corporation, joint venture, partnership or other entity which applies to the Town for any of the following services: annexation, zoning, subdivision, site plan, variance or other administrative, quasi-judicial or legislative function of the Town.
- (43) *Development* means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavating or drilling operations.
- (44) *Development plan* means the written and graphical documents that detail the provisions for development of a planned unit development (PUD). These provisions may include, but need not be limited to, easements, covenants and restrictions relating to use; location and bulk of buildings and other structures; intensity of use or density of development; utilities, private and public streets, ways, roads, pedestrian areas, and parking facilities; common open space, and other public facilities.
- (45) *Disposition* means a contract of sale resulting in the transfer of legal and equitable title to an interest in subdivided land; a lease or an assignment of an interest in subdivided land; or any other conveyance of an interest in subdivided land.
- (46) *Domesticated animals* mean animals accustomed to living in or about the habitation of persons, but of a nature more suited to be outdoors, including but not limited to cats, dogs, birds, such as parrots, cockatiels, parakeets, pot belly pigs and the like; excluding swine, fowl, including but not limited to peacocks, ducks, turkeys, and chickens.
- (47) *Dude ranch* means a resort patterned after a western ranch, featuring camping, horseback riding and other outdoor activities.
- (48) *Dwelling* means any building or portion thereof which is used as the private residence or sleeping place of one (1) or more human beings, but not including hotels, motels, tourist courts, clubs, hospitals, mobile homes or similar uses.
- (49) *Dwelling, multiple family* means a building, or portion thereof, designed for or occupied by three (3) or more families living independently of each other.
- (50) *Dwelling, one-family* means a detached building designed exclusively for occupancy by one (1) family.
- (51) *Dwelling, single-family* means a dwelling situated on 1 lot and arranged, designed or intended for occupancy by not more than one (1) family in compliance with the Town building code. The dwelling must function as a continuous enclosure without

Commented [JM6]: Subdivision regulations term.

any impassable separation such as a wall or floor. Dwelling spaces jointed by a garage or breezeway are considered to be a separate dwelling.

- (52) *Dwelling, two-family* means a detached building designed exclusively for occupancy by two (2) families living independently of each other.
- (53) *Dwelling unit* means one (1) or more rooms in a dwelling, apartment house or apartment hotel designed for occupancy by one (1) family for living or sleeping purposes and having not more than one (1) kitchen.

(54) *Dwelling unit, second* means second family home on same property.

- (55) *Easement* means an acquired right of use, interest or privilege in land owned by another, which interest is recorded in the real estate records of the County.
- (56) *Evidence* means any map, table, chart, contract or any other document or testimony prepared or certified by a qualified person to attest to a specific claim or condition.
- (57) *Excavating* means the mechanical removal of earth material.
- (58) *Exotic Animals* means any exotic animals illegal to own in Colorado. Some exotic species such as monkeys, other primates, exotic pigs, certain kinds of frogs, exotic bovids such as wildebeest, and ruminants like oryx are also illegal to possess in Colorado.
- (59) *Factory-built home* means a dwelling designed for one (1) family which is partially or entirely manufactured in a factory and designed for long-term residential use; built in multiple sections each on a chassis which enables it to be transported to its occupancy site. Factory-built homes must be constructed to the standards of the State of Colorado Factory Built Housing Construction Certification Code (8CCR 1302-3), as the same may be amended from time to time and bear a certification insignia in compliance with those standards.

(60) *Family* means:

- (a) A single individual, doing his or her own cooking, and living upon the premises as an independent housekeeping unit; or
- (b) A collective body of persons doing their own cooking and living together upon the premises as an independent housekeeping unit in a domestic relationship based upon birth, marriage, adoption, cohabitation, guardianship or employment as domestic servants; or
- (c) A group of no more than four persons doing their own cooking and living together on the premises as an independent housekeeping unit, pursuant to a mutual housekeeping agreement, and having a least one bedroom for each such person, excepting therefrom a group occupying a lodge, group home, or hotel.
- (d) From time to time, the town may adopt residential occupancy regulations limiting the number of occupants in a residence. Such regulations shall be enforced as provisions of this zoning code.

Commented [JM7]: (56) and (55) do not appear to be used again in this new zoning code.

Commented [JM8]: Not used again in this new zoning code.

(61) **Family** means an individual or a group of persons, whether related or not, that habitually reside in a single dwelling unit and form a single residential unit, who share common living areas (e.g., laundry, kitchen, living room, garage, etc.) and expenses, and are at least partially dependent upon each other for care of the residential unit. A family shall not include more than one (1) registered sex offender over the age of 18, unless related by blood, marriage, or legal adoption to all other occupants.

Commented [JM9]: Ordinance 2024-11 “adds” this Family definition without addressing what happens to the existing Family definition. The existing Family definition remains until it is deleted.

(62) *Family childcare home* means a licensed facility for childcare in a place of residence of a family or person for the purpose of providing less than 24-hour care for children under the age of 18 years who are not related to the head of such home. Operating a family childcare home without proper licensure as required by the Colorado Childcare Licensing Act shall constitute a zoning violation. Reference: Section 26-6-102(4), C.R.S.

(63) *Fence* means a fence, wall, hedge or other structure forming a boundary or enclosing an area.

(64) *Final plat* means the map or plan of record of a subdivision and any accompanying material, as described in the Town of Kiowa’s subdivision code, as amended from time to time.

(65) *Floor area* means the area of the building measured on the outside walls but excluding unroofed porches and garages.

(66) *Front*, when used in reference to a building or parcel, means the side providing the primary access, whether by public or private street, road or driveway.

(67) *Frontage* means the length of the property line of a parcel which abuts a legally accessible street.

(68) *Funeral home* means a building or establishment used for the preparation of the deceased for burial or cremation, for the display of the deceased and/or for ceremonies or services related thereto, including cremation and the storage of caskets, funeral urns, funeral vehicles and other funeral supplies.

(69) *Gas station* means any establishment, building, land area, premises or portion thereof, where gasoline or other petroleum products or fuels are sold or where light maintenance activities such as engine tune-ups, lubrication, brake services, tire services, transmission services and minor repairs may be conducted.

(70) *Grade (ground level)* is the average of the finished ground level at the center of all walls of a building. In case walls are parallel to and within five (5) feet of a sidewalk, said ground level shall be measured at the sidewalk.

(71) *Grading* means the vertical location of the ground surface.

(72) *Group home aged* means an owner-occupied or nonprofit group home for the exclusive use of not more than eight people 60 years of age or older and the appropriate staff.

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- (73) *Group home, developmentally disabled/mentally ill* means a group home, licensed by the state, for the exclusive use of not more than eight developmentally disabled or mentally ill persons and the appropriate staff.
- (74) ***Health Care Facility* means an entity that is licensed, certified, or otherwise permitted by law to administer medical treatment in Colorado, including a hospital, clinic, hospice entity, community mental health center, federally qualified health center, rural health clinic, organization providing a program of all-inclusive care for the elderly, long-term care facility, continuing care retirement community, or other type of entity where healthcare is provided.**
- (75) *Heavy industrial* means uses engaged in the basic processing and manufacturing of materials or products predominately from extracted or raw materials, or a use engaged in storage of, or manufacturing process using flammable or explosive materials, or storage or manufacturing processes that potentially involve hazardous conditions. Heavy industrial shall also mean solid waste or sanitary waste transfer stations, and recycling processing facilities.
- (76) *Height* means the average distance measured vertically from the mid-point between the eave and the ridge line within the building footprint, on a proposed or existing roof or eave to the existing or finished grade (whichever is more restrictive) located directly below said mid-point.
- (77) *Home occupation* means any use conducted principally within a dwelling and carried on by the inhabitants therein, without paid assistants, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof. The individual office of a professional man or woman or artist without assistants shall be considered a *home occupation*, but the conducting of a clinic, hospital, barber shop, beauty parlor, tearoom, tourist home, animal hospital or any similar use shall not be deemed to be a *home occupation*.
- (78) *Horse and/or equine* means a large solid-hoofed herbivorous ungulate mammal domesticated since prehistoric times and used as a beast of burden, a draft animal or for riding. *Horses* include a pony, mule, burro, miniature horses, zebras and asses.
- (79) *Home occupation* means any occupation, trade or business carried on as a secondary use of property devoted primarily to residential use.
- (80) *Hospital* means an institution providing health services primarily for human inpatient medical or surgical care for the sick or injured and including related facilities such as an emergency room, laboratories, out-patient departments, rehabilitation departments, training and central service facilities and staff offices, medical office buildings or a satellite facility operated by a hospital located outside the Town.
- (81) *Hostel* means a lodging establishment with an owner, manager or staff member required to be present on the premises, which provides overnight accommodations and in which the guests may share bedrooms or dormitory facilities, bathrooms, a kitchen and a lounge. Such accommodations may be provided for a fee or in exchange for services by the guest at the facility.

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- (82) *Hotel/motel/lodging establishment* means a building or group of associated buildings designed for occupancy as a temporary lodging place (fewer than 30 days) which is operated under a single management providing the occupants thereof the usual accommodation services and facilities.
- (83) *Intermediate health care facility* means a health-related institution or establishment planned, organized, operated and maintained to provide facilities and services which are supportive, restorative or preventative in nature, with related social care, to individuals who because of a physical or mental condition, or both, require care in an institutional environment but who do not have an illness, injury or disability for which regular medical care and 24-hour per day nursing services are required.
- (84) *Junkyard* means a building, structure or parcel of land, or portion thereof, used for collecting, storage or sale of used parts, rags, scrap metal or discarded material, or for the collection, storage, salvage or demolition of vehicles, machinery or other materials, and including the sale of the whole or parts thereof.
- (85) *Kenel, commercial* means any place where more than three (3) dogs over four (4) months of age are owned, kept, boarded, bred and/or offered for sale; or eight (8) or more dogs, breeding or nonbreeding, are harbored, and upon which a person breeds more than two (2) litters in a calendar year.
- (86) *Kenel, private* means any premises, building or structure in or on which more than three (3) and less than eight (8) nonbreeding dogs of more than four (4) months of age are harbored.
- (87) *Landscape* may include the following features:
- (a) Typical grass, trees, shrubs or existing native vegetation; or
 - (b) Xeriscape design with drought tolerant tree and shrub species with a ground cover of rock, bark mulch, or similar material; or
 - (c) Rock lined drainage swales to accommodate storm drainage needs; or
 - (d) Drought tolerant native seed initially established with above ground irrigation, but cannot exceed 75 percent of required landscape area; or
 - (e) Public use areas which may include seating, activities or games area, public art displays, fountains or other similar uses encouraging public use; or
 - (f) Any combination of the above is allowed and attractive landscaping must be created along street frontages.
- (88) *Light industrial* means uses engaged in the manufacturing, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales or distribution of such products. Light industrial shall also mean uses such as the manufacture of electronic instruments; preparation of food products; the operation, parking and maintenance of vehicles; pharmaceutical manufacturing; research and scientific laboratories or the like;

and transport terminals (truck terminals, public works yard, container storage). Light industrial shall not include uses such as asphalt batch plants, mining and extracting industries, petrochemical industries, rubber refining, primary metal or related industries

- (89) *Light industry* means the assembly, manufacture, processing, packaging or other industrial operation which is conducted in such a manner that all resultant waste, dust, fumes, gases, odors, smoke and vapor are effectively confined to the premises or disposed of so as to avoid any air pollution, and that no noise or lights would be receptive, noticeable or observable by a person at a distance of sixty (60) feet or more from the premises.
- (90) *Livestock* means cattle, sheep, goats, llamas, alpacas, emus, swine of all sizes excluding pot belly pigs.
- (91) *Living unit* means that area actually utilized in a building by the family residing therein. This definition applies to a structure whose use is designed for long-term occupancy and containing hot and cold running water, shower or bath, water closet and sink.
- (92) *Lot* means a parcel of real property as shown with a separate and distinct number or letter on a plat recorded in the records of the County or, when not so platted, in a recorded subdivision a parcel of real property abutting upon at least one (1) public street and held under separate ownership.
- (93) *Lot area* means the total horizontal area within the lot lines of a lot.
- (94) *Lot coverage* means the portion of a lot covered by a building or buildings including roof overhangs, covered porches, covered walkways or other similar covered areas.
- (95) *Lot line, front* means the property line dividing a lot from a street. On a corner lot, only one (1) street line shall be considered as a front line, or the house will be addressed to ensure that setbacks may be met.
- (96) *Lot line, rear* means the lot line not intersecting a front lot line that is most distant from and most closely parallel to the front lot line. A lot bounded by only three (3) lot lines will not have a rear lot line.
- (97) *Lot line, side* means any boundary of a lot that is not a front or rear lot line. On a corner lot, a side lot line may be a street lot line.
- (98) *Lot, reversed corner* means a corner lot, the side street line of which is substantially a continuation of the front lot line of the first lot to its rear.
- (99) *Maintenance* means any person or legal entity having a legal or equitable interest in property to upkeep and repair property to ensure that it remains in good condition and functions as intended and may include routine tasks such as cleaning, landscaping, and repairs to more complex tasks such as plumbing, electrical work, and structural repairs. Maintenance is essential to preserve a property's value, ensure its occupants' safety, and maintain its appearance.
- (100) *Manufactured home* refers to mobile homes, trailer houses, and manufactured homes and specifically defined as follows:

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- (a) *Manufactured Homes* are built to Department of Housing and Urban Development (HUD) standards and placed on a temporary foundation and titled. However, manufactured homes may be placed on a permanent foundation and not titled with proper documentation recorded.
 - (b) *Mobile Homes/Trailer Houses* manufactured prior to June 15, 1976. Most mobile homes were built to American National Standards Institute (ANSI) standards and placed on a temporary foundation and titled by the County Clerk and Recorder.
 - (c) *Titled Manufactured Home* has a Colorado Certificate of Title issued by the County Clerk and Recorder. Titled homes are typically located in a manufactured home park.
 - (d) *Untitled Homes* are a manufactured home that does not have a Certificate of Title because one was not required when the home was placed on a permanent foundation, or the Certificate of Title may have been purged from the records of the County Clerk and Recorder when the home was permanently affixed to the land. Owners of manufactured homes which are permanently affixed to the land must record proper documentation.
- (101) *Miniature horse* means a smaller version of the horse, determined by the height of the animal, which is usually less than thirty-four (34) to thirty-eight (38) inches, as measured at the wither, and retaining horse characteristics. In accordance with the Americans with Disabilities, miniature horses that have been individually trained to do work or perform tasks for people with disabilities shall be permitted where reasonable. Factors to consider for accommodation are whether: the animal is housebroken; under the owner's control; the facility can accommodate the animal's type, size, and weight; and the animal's presence will not compromise the legitimate safety requirements necessary for safe operation of the facility.
- (102) *Modular home* means a dwelling that is partially or entirely manufactured in a factory, is not built on a permanent chassis, and is constructed in conformance to the International Residential Code.
- (103) *Motel* means a roadside hotel designed primarily for motorists, typically having rooms arranged in a low building with parking directly outside.
- (104) *Multifamily*, when referring to a dwelling, means a building containing duplexes, triplexes, fourplexes, townhouses, row houses, condominiums or apartments designed or used as two or more dwelling units, the total number of families in residence not exceeding the total number of dwelling units.
- (105) **Natural Medicine Business means any of the following entities as defined by state law, as amended from time to time:**
- (a) **Healing Center, a facility where an entity is licensed by the State Licensing Authority pursuant to article 50 of title 44 that permits a Facilitator to provide and supervise Natural Medicine Services for a Participant.**

(b) **Natural Medicine Cultivation Facility**, a location where Regulated Natural Medicine is grown, harvested, and prepared in order to be transferred and distributed to either a Healing Center, Facilitator, a Natural Medicine Products Manufacturer, or to another Natural Medicine Cultivation Facility.

(c) **Natural Medicine Products Manufacturer**, a person who manufactures Regulated Natural Medicine Products for transfer to a Healing Center, Facilitator, or to another Natural Medicine Products Manufacturer.

(d) **Natural Medicine Testing Facility**, a public or private laboratory licensed, or approved by the Division, to perform testing and research on Regulated Natural Medicine and Regulated Natural Medicine Product.

- (106) *Nightclub* means a bar, tavern or restaurant licensed to sell alcoholic beverages and containing more than 100 square feet of dance floor area.
- (107) *Nonconforming* means a use, building, structure, lot, parcel or condition that was lawful when initiated, created or constructed, but which does not currently comply with the requirements of the land use code.
- (108) *Nursing care facility* means a health institution or establishment planned, organized, operated and maintained to provide facilities and health services with related social care to inpatients who require regular medical care and 24-hour per day nursing services for illness, injury or disability, which meets the state nursing home licensing standards and the requirements in federal regulations for certification as a qualified provider of nursing facility services. Each patient shall be under the care of a physician licensed to practice medicine in the State of Colorado. The nursing services shall be organized and maintained to provide 24-hour per day nursing services under the direction of a registered nurse employed full time.
- (109) *Occupied* includes arranged, designed, built, altered, converted, rented or leased or intended to be occupied. This definition does not apply to the Town's building code and enforcement.
- (110) *Official zoning district map* means the official zoning district map of the town, together with all ordinances adding to or amending the official zoning district map adopted from time to time by the Town.
- (111) *Office* means a building or portion of a building used for the transaction of administrative, executive, business, professional or clerical operations, such as offices of physicians, dentists, lawyers, architects, engineers, musicians, teachers, accountants, real estate agents, insurance agents, brokers, corporate offices, financial institutions, development companies, insurance companies, design companies, government offices and other similar businesses and professions and services where there is limited storage, sale or display of merchandise for retail sale on the premises accessory to the business, profession or services offered.
- (112) *Off-street parking* means the area on a parcel designed to accommodate a parked motor vehicle as an accessory use of the parcel.

Commented [JM10]: This definition does not make any sense.

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- (113) *Open space* means any specifically designated or dedicated parcel or portion thereof that may be used for park, agricultural, recreation or conservation opportunities. Construction within open space is limited to foot paths, bridges, irrigation structures, erosion protection devices, underground utilities, outdoor recreation facilities, and similar type uses, unless further restricted by conservation easement. Ownership of open space may be deeded to a property owner's association, dedicated to the public, or protected in other forms deemed acceptable to the town. Indoor recreation facilities shall not be included in open space
- (114) *Owner* means a person, as defined by this Article, who, alone, jointly or severally with others or in a representative capacity (including, without limitation, an authorized agent, executor or trustee), has legal or equitable title to any property in question.
- (115) *Outside storage* means the accumulation or storage of parts, appliances, materials, equipment and merchandise not kept within an approved structure; the storage of trailers, whether abandoned or used for business or commercial purposes, as an office, or for the storage of items; the overnight storage of inoperable motor vehicles and/or off-road vehicles, motor vehicles and/or off-road vehicles needing repair, or those which have had valid license plates or other identifying marks removed; the overnight storage of motor vehicles and/or off-road vehicles that have been left unattended or unmoved for more than seven days; and the storage of motor vehicles and/or off-road vehicles that are available for rent. "Outside storage" does not include motor vehicles and/or off-road vehicles for sale (including automobiles, ATVs, snowmobiles, recreational vehicles, motorcycles), the storage of materials within a garage or other fully enclosed structure, and the temporary display of outdoor seasonal merchandise for retail operations for no more than 12 consecutive weeks per year. Outside storage is prohibited, except by special use permits in the I-1, I-2, and the PL-1 zone districts which meet all screening requirements of section 16-13-30.
- (116) *Parcel* means any separately described or conveyed parcel of land that has been created by conveyance, subdivision or otherwise, whether legally subdivided or not, and includes lots, tracts, parcels, outlots, and parcels designated by other names.
- (117) *Park* means a park equipped with improvements or facilities for particular leisure, pastime, and recreational use, such as tennis, basketball, swimming, baseball, batting cages, skateboard parks, soccer, football, horseshoes, ice skating, athletic fields, playground equipment, snow sledding, climbing, walking and other similar and related activities which may or may not be lighted. Parks are usually available to use by the general public.
- (118) *Person* means any individual, entity, firm, partnership, joint venture, association, club, fraternal organization, corporation, estate, trust, business trust, receiver, syndicate, governmental entity, or informal association of the same.
- (119) *Parking Space* means an area, exclusive of drives, turning areas, or loading space, that is devoted to the parking of one (1) vehicle.
- (120) *Pet animal facility* means an establishment required to be licensed by the Colorado Department of Agriculture for the keeping of pet animals for the purpose of adoption,

breeding, boarding, grooming, handling, selling, sheltering, trading, or otherwise transferring such animals. Reference: Pet Animal Care and Facilities Act, C.R.S. § 35-80-101, et seq.

- (121) *Planned unit development (PUD)* means a project of a single owner or a group of owners acting jointly, involving a related group of residences, businesses, or industries and associated uses. Planned as a single entity, the project is subject to development and regulation as one land use unit rather than as an aggregation of individual buildings located on separate lots. The planned unit development does not correspond in lot size, bulk, or type of use, density, lot coverage, open space, or other restriction to the existing land use regulations set forth in this zoning code. The planned unit development shall include usable, functional open space for the mutual benefit of the entire tract and is designed to provide variety and diversity through the variation of normal zoning and subdivision standards so maximum long-range benefits can be gained, and the unique features of the development or site preserved and enhanced while still being in harmony with the surrounding neighborhood. A planned unit development is a separate zone district that may be approved by the town in accordance with the provisions of this chapter. Notwithstanding the approval of a PUD zone district, a final plat must be approved pursuant to the Town of Kiowa's subdivision codes, as amended from time to time, prior to any subdivision or separate conveyance of land within the planned unit development. Any application for a planned unit development shall be submitted and processed simultaneously with the processing of the subdivision application for the same property.
- (122) *Plat* means the maps and supporting materials of a proposed subdivision, prepared in accordance with the requirements of the Town of Kiowa's subdivision codes, as amended from time to time, and utilized as an instrument for recording real estate interests with the Elbert County Clerk and Recorder.
- (123) *Playground* means a parcel used for outside recreation use. Playgrounds may be unimproved or improved with playground facilities, picnic areas, and similar facilities mainly meant to serve children. Playgrounds may or may not be available for use by the general public.
- (124) *Preliminary plan* means the map of a proposed subdivision and specified supporting materials, drawn and submitted in accordance with the Town of Kiowa's subdivision codes, as amended from time to time, to permit the evaluation of the proposal prior to final engineering and design.
- (125) *Professional breeder* means any person who breeds animals of any species for profit or who produces more than two (2) litters or such of a similar nature, in any one (1) calendar year.
- (126) *Professional office* means an office for professions such as physicians, dentists, lawyers, architects, engineers, artists, musicians, designers, realtors, teachers, accountants and others who, through training, are qualified to perform services of a professional nature, and where no storage or sale of merchandise exists.

Commented [JM11]: Subdivision regulation term.

Commented [JM12]: Conflict/Duplicate with "Animal Breeder"?

Commented [JM13]: This specific term is not used again in the code. The term "Office" is used, but there isn't any other distinction between an "Office" and a "Professional Office" in the Code except for in the Definitions.

- (127) *Public facility* means a building or structure owned and operated by a governmental agency to provide a governmental service to the public and owned or controlled by the Town, County, State, federal government or any subdivision thereof.
- (128) *Public hearing* means a meeting called by a public body for which notice has been given and which is held in a place at which the general public may attend to hear issues and to express their opinions.
- (129) *Public meeting* means any meeting of the Board of Trustees, planning and variance board or the board of adjustment open to the public pursuant to Part 4 of Article 6 of Title 24, C.R.S., or any other law of this state.
- (130) *Public water and public sewer facilities* means those facilities of a municipality, public utility, Kiowa Water and Wastewater Authority, nonprofit corporation, sanitation or water or other special district, which are constructed, operated and maintained to provide water or sewerage service and approved by the County Health Officer, state or county regulatory agencies.
- (131) *Quasi-public facility* means a use or facility owned or operated by a nonprofit, religious, or charitable institution that provides educational, cultural, recreational, religious, or similar types of programs.
- (132) *Recreation center* means a building or portion thereof designed for recreational uses, including non-spectator and spectator games, events, sports, and other recreational activities and programs including organized leagues and programs, and individual or unorganized programs. Recreational use includes all uses generally associated with a recreation center, gymnasium or other indoor recreation or sports complex, including basketball, racquetball, swimming, gymnastics, weight-lifting, dancing, volleyball, court games and sports, board games, gym, indoor climbing, boxing, martial arts, theater, art, education programs, and other similar and related activities.
- (133) *Recreation facility, indoor* means an establishment providing completely enclosed recreation, training or fitness activities, including but not limited to bowling, electronic games, roller skating or ice skating, billiards or pool, theater, motion picture theater, dance studio, equestrian center, health club, spa, boxing, martial arts, climbing, swimming, tennis and related amusements. Accessory uses may include the preparation and serving of food and/or sale of clothing and equipment related to such uses.
- (134) *Recreation facility, outdoor* means an outdoor establishment or enterprise whose main purpose is to provide the general public with an entertaining activity, where tickets are sold or fees are collected, including but not limited to miniature golf courses, golf driving ranges, go-kart tracks, water parks, children's rides, outdoor arcades, skateboard parks, rodeo arena or a fairground. Accessory uses may include the preparation and serving of food and/or sale of clothing and equipment related to such uses.
- (135) *Recreational vehicle* is defined as a self-contained transportation structure, self-propelled or capable of being towed by a passenger car, station wagon or pick-up truck, of such size and weight as not to require any special highway movement permits, and primarily designed or constructed to provide temporary, moveable

Commented [JM14]: "Quasi-public" is used in the Code, but not "Quasi-public facility." Further, the inclusion of "use" in the definition along with "facility" suggests that the term should be "Quasi-public."

Commented [JM15]: PC Meeting 10/11/2023

Commented [JM16]: PC 10/25/23 [7:32]

living quarters for recreational, camping, travel and commercial use. Included as recreational vehicles are trailers, trailer coaches, camping trailers, motor homes, pick-up (slide-in) campers, chassis mounts, converted vans, chopped vans, mini-motor homes, and fifth-wheel trailers of recreational vehicle construction (as opposed to commercial fifth-wheel trailers). An *occupied recreational vehicle* shall mean such vehicle is being used as a domicile which shall mean, by way of example, actual daily physical presence, use, and occupancy of the recreational vehicle.

- (136) *Recreational vehicle park* means a parcel of land specifically developed for locating recreational vehicles, travel trailers, mounted camper units, motor homes, tiny houses, and camping trailers; and may also include tents erected for periods not exceeding 30 days for recreational or vacation purposes. Within such a park, a sanitary waste station may be allowed by a special use permit for the purpose of removing and disposing of waste from a self-contained camping vehicle's sewage holding tanks. All recreational vehicle parks shall comply with the Colorado Department of Health Standards and Regulations for campgrounds and recreation areas in addition to the requirements set forth in the Kiowa Municipal Code, except where the two conflict, the Kiowa Municipal Code shall govern.
- (137) *Recycling facility* means a building or lot used for the collection and/or processing of recyclable material including, but not limited to glass, metal, paper, plastic and oil. Processing shall mean the preparation of material for efficient shipment by such means as baling, compacting, flattening, grinding, crushing, mechanical sorting or cleaning. Such a facility, if entirely enclosed within a building or buildings with no outside storage, shall be considered a warehouse.
- (138) *Religious assembly, place of* means a use category comprised of structures or places in which regular worship, ceremonies, rituals and education pertaining to a particular system of beliefs are held, together with its accessory buildings and uses (including buildings used for educational and recreational activities), operated, maintained and controlled under the direction of a religious group. Accessory uses include, but are not limited to, school facilities, parking, caretakers' housing, pastors' housing, day care and group living facilities, such as convents. Examples include churches, temples, synagogues and mosques.
- (139) *Restaurant* means any establishment in which the principal business is the sale of food and beverages to customers in a ready-to-consume state; that may be licensed to produce and sell fermented malt beverages as an accessory use, or to sell fermented malt beverages, vinous and spirituous liquors for consumption on the premises; and from which service of food and beverages may be made from a drive-through facility, at a counter or at a table.
- (140) *Retail business shops or activities* means a business that sells products or services to the final user or consumer who would not be purchasing for resale. The products or services are sold online, in-store, or over the phone. The aim of the retail business is to meet the daily needs of the community.

(141) **Riding academy** means an establishment where horses and ponies are boarded and cared for, where instruction in riding, jumping, and showing may be offered, or where the general public, for a fee, may hire horses for riding.

(142) **Room** means an unsubdivided portion of the interior of a dwelling unit, excluding bathrooms, kitchens, closets, hallways and service porches.

(143) **Salvage or wrecking yard** means a place where motor vehicles and parts are wrecked, disassembled, repaired and resold; a place where secondhand goods including waste paper, bottles, automobile tires, clothing, other scrap materials and salvage are collected to be stored; and a place where used lumber and used building materials are stored for sale or resale.

(144) **Sawmill (saw mill, saw-mill) or lumber mill** means a facility where logs are cut into lumber.

(145) **Self-service storage facilities** means a building or a group of buildings containing separate, individual self-storage units divided from the floor to ceiling by a wall with an independent entrance from the exterior of the building, designed to be rented or leased on a short-term basis to the general public for private storage of personal goods, materials and equipment. If sold by condominium plat, assigned parking and signage for each unit shall be a condition of plat approval.

(146) **Service animal** means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for purposes of this definition. The work or tasks performed by a service animal must be directly related to the handler's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing nonviolent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort or companionship do not constitute work or tasks for the purposes of this definition. A service animal that is not otherwise defined as equine or livestock shall be exempt from any numerical limitations on animals set forth herein.

(147) **Setback** means the minimum distance that a structure can be built from the property line and defines the buildable area of the lot designed to protect properties and ensure uniformity in neighborhoods and more specifically described in Section _____ for each zone district.

(148) **Short term rental** is a residential dwelling unit available for rent for a period ranging from 1 to 29 days and requires a host to get a license to offer a short-term rental in their primary residence. Primary residence means the place in which a person's habitation is fixed for the

Commented [JM17]: The word "room" is too ubiquitous to try to provide it with a single definition. Further, there is only one spot in the code where this definition of room may apply, which is in the defined term Assisted Living Residence, but the context of the definition already informs us what "room" means therein.

term of the license and is the person's usual place of return. A person can have only one primary residence in Kiowa.

- (149) *Single-family residence* means a detached principal building designed as a dwelling unit for the use and occupation of not more than one (1) family and which is neither a manufactured home nor a factory-built home as defined by this Code.

- (150) *Site area, gross* means total ground area purchased by the present owner, including any proposed portions to be dedicated or improved for public use.

Commented [JM18]: Both 150 and 151 are not used again in the Code.

- (151) *Site area, net* means the remaining ground area of the gross site after deleting all portions for public use or public improvement.

- (152) *Site plan* means the plans and supplemental materials, including a grading and drainage plan, a landscape plan and other detailed information, drawn and submitted in accordance with the Town requirements, to evaluate a project prior to issuance of a building permit, subdivision, or development permit is issued.

Commented [JM19]: Site plan can be a zoning approval process for development, but this new code does not include a site plan review process. It is in the Town's subdivision regulations.

- (153) *Sketch plan* means a map of a proposed subdivision and specified supporting materials drawn and submitted in accordance with the Town of Kiowa's subdivision codes, as amended from time to time, to evaluate feasibility and design characteristics at a conceptual state in the planning.

Commented [JM20]: "Sketch plan" is used again in the Code, specifically in the PUD sections, but it is not applicable to a "subdivision," which is what this definition is referring to. Further, sketch plan under the PUD provisions is defined therein.

- (154) *Solar energy flush roof mounted* means solar panels and appurtenances mounted on roof tops parallel to the roof top with no more than a two-foot separation between the roof top and solar panels.

- (155) *Solar energy ground mounted* means one or more solar panels and appurtenances mounted from the ground or other structures not considered a roof top.

- (156) *Special use permit* means a permit issued by the Planning commission following notice and a public hearing, to undertake a use enumerated as "s" or not included in the zone district tables of uses, and which may only be granted upon a showing that the proposed use will not unreasonably adversely affect neighboring parcels. In the staff's discretion, it may also refer to a permit that must be obtained prior to initiating a use which is not listed as a permitted use in the table of uses. Special use permits, if granted, may contain conditions necessary or appropriate to prevent or mitigate adverse effects on neighboring properties.

- (157) *Studio apartment* means an attached dwelling unit not greater than 650 square feet in size consisting of a single room for cooking, eating, sleeping and living, and a separate room for bath and toilet facilities.

- (158) *Street* means a public thoroughfare which affords the principal means of access to abutting property.

- (159) *Structure* means anything constructed or erected that is not primarily intended to be mobile, but not including poles, lines, cables or other transmission or distribution facilities of public utilities, mailboxes and light fixtures.

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- (160) *Subdivision or subdivided land* means any parcel of land which is to be used for condominiums, apartments or any other multiple-dwelling units, unless such land was previously subdivided and the filing accompanying such subdivision complied with municipal regulations applicable to subdivisions of substantially the same density, or the division of any tract of land, lot or parcel into two (2) or more lots, parcels, plats, sites or other divisions of land for the purpose, whether immediate or future, of sale or transfer of ownership, or to offer for sale or development. Lots, tracts, blocks and other subdivisions shall be designated in accordance with the Town of Kiowa's subdivision codes, as amended from time to time.
- (161) *Subdivision improvements agreement* means one (1) or more security arrangements which the Town shall accept to secure the actual cost of construction of such public improvements as required by the Town.
- (162) *Substantial improvement* means any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure either: (a) before the improvement or repair is started; or (b) before damages occurred if the structure is damaged.
- (163) *Tavern/bar* means an establishment serving malt, vinous and spirituous liquors in which the principal business is the sale of such beverages at retail, for consumption on the premises, and where sandwiches and light snacks are available for consumption on the premises.
- (164) *Therapy animal* means an animal provided by prescription or otherwise, that is used to provide comfort and affection to a person other than its handler and is not specifically trained to address a specific need of a disabled person. A therapy animal that is not otherwise defined as equine or livestock shall be exempt from any numerical limitations on animals set forth herein.
- (165) *Townhouse* is defined as a single-family home with at least two floors that share a wall with another house and each townhouse is individually owned.
- (166) *Truck stop* means an establishment engaged primarily in fueling, servicing, repair or parking tractor trucks or similar heavy commercial vehicles, including the sale of accessories and equipment for such vehicles. A truck stop may also include overnight accommodations, showers or restaurant facilities primarily for the use of truck crews.
- (167) *Usable open space* means open space designed for use as common areas, including, but not limited to parks, recreation areas, gardens, paths, walkways and trails. The term shall not include space devoted to streets and parking and loading areas, areas with slopes greater than 30 percent, land under water, lands within critical wildlife habitat areas, lands within riparian areas and 100-year floodplains that are preserved as open space, unless specifically designated as usable open space by the town because of its recreation, wildlife or other aesthetic value.
- (168) *Use* means the purpose for which land, or a building is designed, arranged or intended, or for which either is or may be occupied or maintained.

- (169) *Variance* means authorization for an applicant to depart from the requirements of this zoning code. The purpose of a variance is to allow a property owner to initiate or maintain a use that would otherwise constitute a violation of this zoning code.
- (170) *Veterinary clinic* means any establishment which is maintained by or for the use of a licensed veterinarian in the diagnosis, treatment or prevention of animal disease. A pet animal facility may be allowed as an accessory use by special use permit.
- (171) *Warehouse and distribution* mean a use engaged in storage, wholesale, and distribution or delivery of manufactured products, supplies, equipment or packages, including accessory offices or showrooms, including incidental retail sales.
- (172) ***Water reservoir* means an enlarged lake or body of water behind a dam, usually built to store fresh water, often doubling for hydroelectric power generation. Reservoirs are created by controlling a watercourse that drains an existing body of water, interrupting a watercourse to form an embayment within it, excavating, or building any number of retaining walls or levees to enclose any area to store water.**
- (173) *Width of lot* means the minimum width of a lot shall be fifty (50) feet and if the lot has less width than herein required, the regulations shall not prohibit the erection of a one family dwelling.
- (174) *Wireless telecommunications equipment* means any equipment used to provide wireless telecommunications services, but which is not affixed to or contained within a wireless telecommunications facility but is instead affixed to or mounted on an existing building or structure that is used for some other purpose. Wireless telecommunications equipment also includes a ground mounted base station used as an accessory structure that is connected to an antenna mounted on or affixed to an existing building.
- (175) *Wireless telecommunications facility* means any freestanding facility, building, pole, tower or structure used to provide only wireless telecommunications services, and which consists of, without limitation, antennae, equipment and storage and other accessory structures used to provide wireless telecommunication services.
- (176) *Wireless telecommunication services* mean services providing for the transmission of wireless communications utilizing frequencies authorized by the Federal Communications Commission for paging systems, enhanced specialized wireless telecommunications, personal communication services or cellular telephone.
- (177) *Yard* means an open space other than a court, on a lot, unoccupied and unobstructed from the ground upward, except as otherwise provided in this Chapter.
- (178) *Yard, front* means a yard extending across the full width of the lot between the front lot line and the nearest line or point of the building.
- (179) *Yard, rear* means a yard extending across the full width of the lot between the rear lot line and the nearest line or point of the building.
- (180) *Yard, side* means a yard extending from the front yard to the rear yard between the side lot line and the nearest line or point of the building or accessory building attached thereto.

Commented [JM21]: This is not a definition. This is regulatory language.

Commented [JM22]: The Wireless definitions are highlighted because they are not used again in this code. However, new provision related to wireless site approval should be included.

- (181) *Zoning code, town code, or code* means the regulations contained in title 16 of the Code Town of Kiowa's zoning code found in Chapter 16 of the Kiowa Municipal Code, as may be amended from time to time.

ARTICLE II - ZONING MAP AND DISTRICT BOUNDARIES

16-2-10. Map adopted.

The official zoning district map of the Town of Kiowa, together with all explanatory material thereon, is adopted by reference and declared to be a part of this zoning code.

16-2-20. Map location and identification.

The official zoning district map shall be located in the office of the town clerk and shall be identified by the signature of the mayor, attested to by the town clerk, and shall bear the seal of the town under the following form of certification:

"CERTIFICATION: This is the Official Zoning District Map of the Town of Kiowa, Colorado, adopted pursuant to Ordinance No. ___, and referred to in Chapter 16 of the Kiowa Municipal Code."

16-2-30. Map changes.

No change shall be made in the district boundaries or other matter shown on the official zoning district map except by ordinance. Changes shall supplement the previously adopted official zoning district map.

16-2-40. Map replacement.

In the event that the official zoning district map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and additions, the Board of Trustees shall, by ordinance, adopt a new official zoning district map which shall supersede the prior official zoning district map.

16-2-50. Interpretation of district boundaries.

Where uncertainty exists as to the boundaries of districts as shown on the official zoning district map, the following rules shall apply:

- (1) Boundaries approximately following the centerline of streets or roads shall be construed to follow such centerlines.
- (2) Boundaries approximately following parcel lines shall be construed as following such parcel lines.
- (3) Boundaries indicated as approximately following the town limits shall be construed as following town limits.
- (4) Boundaries indicated as parallel to or extensions of features indicated in subsections (1), (2), and (3) of this Section shall be construed consistent with those subsections.

Commented [JM23]: The Town's Zoning Map was prepared on 12/03/2012, and updated on 10/16/2017. It is assumed that zoning changes after 10/16/2017 have not been captured in the zoning map.

A review of ordinances is required.

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- (5) Where physical or cultural features existing on the ground are at variance with those shown on the official zoning district map or in circumstances not covered by this Section, the Planning commission shall interpret the district boundaries.

16-2-60. Significance of districts—Listing of uses.

No use shall be permitted within any zone district unless it is specifically enumerated in the zone district tables of uses contained in this Chapter as a permitted use. Uses not listed which are consistent with the listed uses and which impose no greater impacts on the need for services and adjacent properties, are permitted upon issuance of a special use permit. Uses not listed which the staff determines are not consistent with the listed uses may be permitted upon issuance of a special use permit.

16-2-70. ~~Key to tables.~~

~~The permission codes listed for uses enumerated in the tables of uses for each of the zone districts have the following meanings:~~

- (1) ~~"P" means permitted. Uses designated "P" are uses by right which are permitted anywhere within the zone district.~~
- (2) ~~"S" means special use permit. Uses designated "S" may be allowed in the zone district indicated only upon issuance of a special use permit by the Planning commission following notice and hearing.~~
- (3) ~~"NP" ~~***~~ means not allowed. Uses designated "*" are not permitted within that zone district.~~

Commented [JM24]: Article VI Tables are currently deleted, thereby making this "key" irrelevant.

ARTICLE III - AMENDMENTS TO ZONING CODE AND OFFICIAL ZONING DISTRICT MAP

16-3-10. Authority.

The regulations, restrictions, and district boundaries set forth in this Chapter may, from time to time, be amended, supplemented, changed, modified, or repealed by the Board of Trustees, as provided by law and in accordance with the procedures set forth in this Chapter.

16-3-20. ~~Initiation~~ of amendments to text of the zoning code.

(1) Clerical corrections:

- a. The town administrator, in consultation with the town attorney, may make administrative determinations regarding any clerical corrections or errors in this Chapter without obtaining approval of the Board of Trustees.

(2) Supplementation and minor changes:

- a. The Board of Trustees may approve minor and supplementary changes to the text of the zoning code by legislative determination of the Board of Trustees, in the manner required for adopting ordinances, with the exception of an added review and recommendation to the Board of Trustees by the Planning Commission. The changes contemplated by this

Commented [JM25]: Edits herein were made for procedural purposes. They seek to balance administrative efficiency with public notice and participation.

subsection are to provide clarity, when necessary, and shall not result in changes to uses that are expressly allowed or prohibited herein or that would create a nonconformity.

(3) Major amendments:

- a. Major amendments to the text of this Chapter may, without limitation, result in changes to expressly allowed or prohibited uses, create nonconforming uses or structures, rezone property, or change zoning district boundaries. Proposed major amendments to the text of this Chapter shall be reviewed by the Planning Commission, which shall provide its recommendation to the Board of Trustees. The Board of Trustees may, by ordinance, approve a major amendment only after the major amendment is considered by the Board of Trustees at a public hearing. Notice for the public hearing must be published in a newspaper of general circulation in the Town at least fifteen (15) days prior to the public hearing date.

16-3-30. Comprehensive zoning map revisions.

Comprehensive revisions of all or a large part of the zone district designations and boundaries shown on the official zoning district map shall be accomplished by legislative determination of the Board of Trustees following review and recommendation by the Planning Commission. The Board of Trustees may, by ordinance, approve a comprehensive revision to the zone district designations and boundaries only after the new zoning district map is considered by the Board of Trustees at a public hearing. Notice for the public hearing must be published in a newspaper of general circulation in the Town at least fifteen (15) days prior to the public hearing date. In addition, the proposed official zoning map shall be made available for public inspection in the town hall during regular business hours for 15 days prior to the public hearing on such revisions.

16-3-40. Zoning amendment process.

Amendments to the official zoning district map affecting individual or small groups of properties may be initiated by the Board of Trustees, town staff, the Planning commission, or by a real property owner in the area to be included in the proposed zoning amendment. Revisions of zone district designations and boundaries shown on the official zoning district map affecting individual or small groups of properties shall be accomplished through the following notice and hearing process, and by ordinance adopted by the Board of Trustees.

- (1) Preapplication conference. The applicant shall attend a preapplication conference with a representative of the town. The purpose of the meeting is to discuss the proposed zoning amendment, submittal requirements and review process.
- (2) Zoning amendment application submittal. The applicant shall submit to the town the complete zoning amendment application package, including a check made payable to the Town of Kiowa based upon the current Town Fee Schedule, containing the following enumerated items in an electronic format acceptable to the department, together with one paper copy of the application package for the file, and shall request that the application be reviewed by the Planning Commission and Board of Trustees.
 - a. A completed land use application.
 - b. A legal description for all property to be considered for rezoning.

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- c. Current proof of ownership of the property to be considered for rezoning in the form of title insurance policy or a title commitment issued within 30 days of submission of the application.
 - d. A zoning amendment map of the area included in the proposed change, 24 inches high by 36 inches wide, with the following information:
 - i. North arrow, scale (1 inch = 100 feet or 1 inch = 200 feet), and date of preparation;
 - ii. The subdivision name or block and lot number of the area to be zoned (if applicable) at the top of each sheet;
 - iii. Legal description of area to be zoned (entire area and individual zone districts). For unsubdivided property, district boundaries shall be determined by a metes and bounds description;
 - iv. Location and boundaries, including dimensions, of the property(s) proposed for rezoning. Note: Generally, district boundaries are to be boundary lines of subdivided parcels or the center lines of physical streets, roads, highways, alleys, railroad rights-of-way, and channelized waterways, or such lines extended along an imaginary line;
 - v. The acreage or square footage of the property(s) proposed for rezoning;
 - vi. All existing land uses in the area proposed for rezoning;
 - vii. Zoning and existing land uses on all lands adjacent to the area proposed for rezoning;
 - viii. The location and dimensions for all existing public rights-of-way including streets, and centerlines of water-courses within and adjacent to the area proposed for rezoning;
 - ix. The names of all adjoining subdivisions with lines of abutting lots, and departing property lines of adjoining properties not subdivided; and
 - x. Certificate and signature blocks for the surveyor, Planning Commission, and the Board of Trustees.
 - e. A written statement describing the proposal and addressing the following points:
 - i. Need for the proposed rezoning;
 - ii. Present and future impacts on the existing adjacent zone districts, uses, and physical character of the surrounding area;
 - iii. Impact of the proposed change on area accesses and traffic patterns;
 - iv. Availability of utilities for any potential development or change in use;
 - v. Present and future impacts on public facilities and services, including, but not limited to, fire, police, water, sanitation, roadways, parks, schools, and transit;
 - vi. The relationship between the proposal and the Town's comprehensive plan; and

- vii. Public benefits arising from the proposal which addresses the benefit to the general public, rather than the benefit to a single landowner, which could be considered to be spot zoning and is prohibited in Colorado.
- f. Adjacent property ownership report. Applicant shall submit a current list (not more than 30 days old) of the names and addresses of adjacent property owners, within 300 feet of the property being considered for rezoning, ~~mineral interest owners of record, mineral and oil and gas lessees for the property and appropriate ditch companies and owners~~. The applicant shall certify that the report is complete and accurate.
- g. Public hearing notification envelopes. Applicant shall provide two sets of stamped, addressed, certified (return receipt requested) envelopes. The envelopes shall have the town's address as the return address and the envelopes shall be addressed to adjacent property owners, ~~mineral interest owners of record, oil and gas lessees for the property~~, and the appropriate referral agencies as designated by the town. It is the applicant's responsibility to ensure that accurate and complete information is provided.
- (3) Zoning amendment application certification of completion. Within a reasonable period of time, the town administrator or the town administrator's designee shall either certify that the application is complete and in compliance with all submittal requirements or reject it as incomplete and notify the applicant of any deficiencies. Applicant shall then correct any deficiencies in the application package, if necessary, and submit the required number of copies of the application to the town. The original application and all documents requiring a signature shall be signed in ink.
- (4) Final staff review and report to Planning Commission. The staff shall complete a final review of the completed application and prepare a report to the Planning Commission explaining how the application is or is not consistent with the criteria for amendments to the official zoning district map set forth below.
- (5) Set zoning amendment public hearing and complete public notification process. The town administrator or the town administrator's designee shall send notice of the hearing to the applicant, adjacent property owners, ~~all mineral interest owners of record, oil and gas lessees of the property~~, and to the appropriate referral agencies, not less than 15 days before the initial Planning Commission hearing on the application. Notice of the hearing shall be mailed, published and posted on the subject property pursuant to the notice requirements set forth in this zoning code ~~not less than 15 days prior to the date of such hearing. Such notice shall not be required for text amendments~~. If the zoning amendment request accompanies another application that is scheduled for a public hearing before the Planning Commission and/or Board of Trustees, a joint public hearing may be held for both applications before each body.
- (6) Planning Commission public hearing and action on the zoning amendment. The Planning Commission shall hold a public hearing to review the zoning amendment based on the criteria for amendments to the official zoning district map hereinafter set forth. The Planning Commission shall then make a recommendation to the Board of Trustees to approve, conditionally approve, or deny the zoning amendment application.

Commented [JM26]: PC 12/13/23 [11:00]

Commented [JM27R26]: Notice to mineral and O&G owners is required by State law in some circumstances.

Commented [JM28]: PC 12/13/23 [11:00]

Commented [JM29]: Sec. 16-22-80.

Commented [JM30]: Text amendments that are equivalent to a rezoning are subject to notice requirements.

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- (7) Revised application based on Planning Commission comments. If the Planning Commission recommends that the applicant amend the application, the applicant shall have the opportunity to make the suggested revisions based on the Planning Commission's comments and resubmit the application.
- (8) Notify adjacent property owners. The town administrator or designee thereof shall provide notice of the Board of Trustees' public hearing on the application to adjacent property owners within 300 feet of the subject property as identified by the applicant pursuant to the notice requirements set forth in this zoning code. Such notice shall not be required for text amendments.
- (9) Board of Trustees' hearing and action on the zoning amendment. The Board of Trustees, after receiving the report and recommendation from the Planning Commission and staff, shall hold a public hearing on the proposed zoning amendment. Notice of the public hearing shall be published pursuant to the notice requirements set forth in this zoning code. The parcel for which such zoning amendment is sought shall be posted by sign pursuant to the notice requirements set forth in this zoning code.
- The Board of Trustees shall consider the comments and evidence presented at the hearing, evaluate the application in accordance with the criteria set forth in section 16-3-50 hereof, and either deny the application in whole or part by resolution, or by ordinance approve the application or approve it with conditions.
- (10) Post approval actions. Upon approval by the Board of Trustees of an amendment to the official zoning district map, the town clerk or town shall cause an appropriate revision of the official zoning district map to be prepared for recording with the Elbert County Clerk and Recorder.

Commented [JM31]: Sec. 16-22-80.

Commented [JM32]: Sec. 16-22-80.

Commented [JM33]: Sec. 16-22-80.

16-3-50. Criteria for amendments to the official zoning district map.

For the purpose of establishing and maintaining sound, stable, and desirable development within the town, the official zoning district map shall not be amended except:

- (1) To correct a manifest error in an ordinance establishing the zoning for a specific property; or
- (2) To rezone an area or extend the boundary of an existing district because of changed or changing conditions in a particular area or in the town generally; or
- (3) When the land to be rezoned was zoned in error and as presently zoned is inconsistent with the policies and goals of the town's land use code or the comprehensive plan, whichever was last updated; or
- (4) When the proposed rezoning is necessary to provide land for a community-related use that was not anticipated at the time of the adoption of the land use code or comprehensive plan, whichever was last updated, and the rezoning will be consistent with the policies and goals of the comprehensive plan; or
- (5) When the area requested for rezoning has changed or is changing to such a degree that it is in the public interest to encourage development or redevelopment of the area.

This declaration of criteria for zoning map amendments shall not apply to amendments that occur as part of a comprehensive revision to the text of the zoning code or official zoning district map accomplished by legislative action of the Board of Trustees. **The creation of overlay districts that supplement an underlying zoning district shall be exempt from this criteria.**

Commented [JM34]: Added for clarity and to allow for creation of development standards.

16-3-60. Map amendment upon zoning establishment or modification.

Upon adoption of any ordinance annexing and establishing zoning or modifying existing zoning for any property, the town shall amend the official zoning district map to include the annexed area with the proper zoning classification or to show the amended classification, as the case may be. The official zoning district map shall contain, in tabular form, the date and number of the ordinance amending it, the date the map was amended to reflect each amendment and the initials of the person who checked and approved the change to the map.

ARTICLE IV - ZONING DISTRICTS

16-4-10. Establishment of Zoning Districts.

In order to carry out the provisions of this Article, provision is hereby made for the division of the Town into the following zoning districts:

R-1 Residential
R-2 Multiple Residential
R-3 High Density Residential
C-1 Retail Business
MU Mixed Use Retail District
C-2 Wholesale/Retail Business
A-1 **Animal Husbandry Agriculture**
I-1 Light Industry
I-2 Heavy Industry
I-3 Athletic Fields
F Floodplain
M-1 Mobile Home Parks
M-2 Overnight Camping Parks
PL-1 Schools and Public Lands
MB-1 Medical Buildings
PD Planned Development

Commented [JM35]: The "zoning districts" listed in the new zoning code reviewed by the PC were deleted in full for the time being. The text in this Article IV duplicates the Zoning Districts in the current Article II of Chapter 16 of the zoning code, which matches the current zoning map.

Discussion Topic: Creation of Overlay Districts (such as Town Center) vs. process to change zoning map.

Commented [JM36]: Not used in old or new code.

The Town is divided into such of the aforesaid districts as are shown on the map entitled "Official Zoning Districts of Kiowa."

16-4-20. R-1 Districts; permitted uses.

- (1) The following uses shall be permitted in the R-1 District:
- a. Single-family residence;

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- b. Park;
 - c. Library; and
 - d. Church.

(2) The following use shall be permitted by special review in the R-1 District: day-care facility.

16-4-30. R-2 Districts; permitted uses.

(1) The following uses shall be permitted in the R-2 District:

- a. Any use permitted in the R-1 District;
- b. Duplex residences; and
- c. Boarding and rooming houses.

(2) The following use shall be permitted by special review in the R-2 District: day-care facility.

16-4-40. R-3 Districts; permitted uses.

(1) The following uses shall be permitted in the R-3 District:

- a. Any use permitted in the R-2 District;
- b. Apartment houses of a density not exceeding fifteen (15) per acre; and
- c. Rest homes not exceeding a density of fifteen (15) per acre.

(2) The following use shall be permitted by special review in the R-3 District: day-care facility.

16-4-50. C-1 Districts; permitted uses.

(1) The following uses and similar uses shall be permitted in the C-1 District:

- a. Retail business shops;
- b. Intercity bus terminal;
- c. Parking lots;
- d. Professional offices;
- e. Service stations and vehicle repair shops;
- f. Small animal veterinarian clinics, excluding hoofed animals; and
- g. Private schools.

(2) The following uses shall be permitted by special review in the C-1 District:

- a. Caretaker residence;
- b. Single-family residence; and
- c. Church.

16-4-60. MU Districts; permitted uses.

- (1) Intent. The Mixed Use (MU) District seeks to allow mixed use development consisting of combined commercial uses and residential uses that provides for consistency with the nature and character of the Town and allows such mixed uses in a manner that is compatible with the adjacent land uses.
- (2) Permitted uses. The following uses and similar uses shall be permitted in the MU District:
 - a. Any use permitted in the C-1 District, with the exception of parking lots, intercity bus terminals and bars/taverns, so long as the commercial uses are combined with a residential use; provided, however, that the commercial component of any mixed use permitted herein shall not be less than fifty percent (50%) of the total buildable area of the zoned property;
 - b. Offices, including general, medical, dental, professional and governmental offices;
 - c. Art galleries;
 - d. Assisted living and independent care living facilities;
 - e. Cultural facilities such as museums and libraries;
 - f. Any other retail business activities, excluding paint stores and sexually oriented businesses; and
 - g. Any use permitted in the R-3 District, so long as it is combined with a commercial use; provided, however, that the residential component of any mixed use permitted herein shall be required to have a minimum of six hundred (600) square feet of living space per dwelling unit, and may not exceed fifty percent (50%) of the total buildable area of the zoned property.
- (3) Development standards. All new construction within the MU District that is located with frontage on State Highway 86 shall be designed with an "Old West" style of architecture that is consistent with the nature and character of the Town business district.

16-4-70. C-2 Districts; permitted uses.

- (1) The following uses and similar uses shall be permitted in the C-2 District:
 - a. Any use permitted in the C-1 District;
 - b. Building materials at wholesale;
 - c. Dairy processing plants;
 - d. Frozen food locker plant;
 - e. Greenhouses;
 - f. Lumber yard;
 - g. Mortuary;
 - h. New and used car sales and body shops;
 - i. Storage of construction machinery not to exceed thirty (30) days; and
 - j. Warehouses; and

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- k. Sexually oriented businesses, subject to the provisions contained in Article V of Chapter 6 of this Code, and subject to the following conditions:
 - i. Sexually oriented businesses shall be located no less than one hundred and fifty (150) feet from the following:
 - 1. Area zoned for residential use.
 - 2. Single-family, two-family or multi-family dwelling.
 - 3. Church.
 - 4. Licensed day-care facility.
 - 5. School or educational facility, serving persons age eighteen (18) or younger.
 - ii. Sexually oriented businesses shall also be located a minimum of one hundred and fifty (150) feet from any other sexually oriented business.
 - iii. Distance between any two (2) sexually oriented businesses shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of each business. Distance between any sexually oriented business and any church, school, day-care facility, dwelling unit or residential district shall be measured in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as part of the premises where the sexually oriented business is conducted to the nearest property line of the premises of a church, school, day-care facility or dwelling unit, or the nearest boundary of a residential district.

(2) The following uses shall be permitted by special review in the C-2 District:

- a. Caretaker residence;
- b. Single-family residence; and
- c. Church.

16-4-80. A-1 Districts; permitted uses.

(1) The following uses shall be permitted in the A-1 District:

- a. Agriculture with or without animals;
- b. Dog kennels;
- c. Horse race tracks;
- d. Park; and
- e. Stables and riding academies.

16-4-90. I-1 Districts; permitted uses.

(1) The following uses and similar uses shall be permitted in the I-1 District:

- a. Light industry;
- b. Taxidermist; and

-
- c. Large animal veterinary clinics, including hoofed animals.
- (2) The following uses shall be permitted by special review in the I-1 District: any use permitted in the R-3 District, so long as it is combined with a permitted industrial use in the I-1 District; provided, however, that the residential component of any mixed use permitted by special review herein shall be required to have a minimum of six hundred (600) square feet of living space per dwelling unit, and may not exceed fifty percent (50%) of the total buildable area of the zoned property.

16-4-100. I-2 Districts; permitted uses.

- (1) The following uses shall be permitted in the I-2 District:
- a. Any use permitted in the I-1 District; and
 - b. Heavy industry, excluding junkyards and landfills.

16-4-110. I-3 Districts; permitted uses.

- (1) The following uses shall be permitted in the I-3 District:
- a. Athletic fields;
 - b. Cemeteries;
 - c. Golf course;
 - d. Gravel pit; and
 - e. Water or sewer treatment plant.

16-4-120. F Districts; permitted uses.

- (1) The following uses shall be permitted in the F District: Park.

16-4-130. M-1 Districts; permitted uses.

- (1) The following uses shall be permitted in the M-1 District:
- a. Mobile home parks;
 - b. Mobile home sales in connection with a mobile home park;
 - c. Mobile home subdivisions;
 - d. Mobile homes on individual lots which are separately owned. ~~Minimum lot size shall be four thousand (4,000) square feet;~~
 - e. Playground or recreation building in connection with a mobile home park; and
 - f. Manufactured homes or factory-built homes on individual lots which are separately owned. ~~Minimum lot size shall be four thousand (4,000) square feet.~~

Commented [JM37]: Moved to 16-5-10.

Commented [JM38]: Moved to 16-5-10.

16-4-140. M-2 Districts; permitted uses.

- (1) The following uses shall be permitted in the M-2 District:
- a. Camping park; and

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- b. Motel or hotel.

16-4-150. PL-1 Districts; permitted uses.

(1) The following uses shall be permitted in the PL-1 District:

- a. Fairgrounds;
- b. Parks;
- c. Public buildings;
- d. Public schools; and
- e. Public facilities.

ARTICLE V - DEVELOPMENT STANDARDS

16-5-10. Development standards.

Lots and structures in the various districts are limited as denoted in the following table:

Dist.	Min. Area	Min. Frontage	Max. Height	Min. Front Yard	Min. Side Yard	Min. Rear Yard
R-1	9000 sf	66'	35'	30'	10'	30'***
R-2	9000 sf	50'	35'	30'	10'	30'***
R-3	4000 sf	90'	35'	30'	15'	30'***
C-1	4500 sf	30'	35'	*	*	20'
MU	4500 sf	30'	35'	**	**	20'
C-2	1 ac.	125'	35'	50'	25'	50'
A-1	20 ac.	330'	35'	330'	150'	330'
I-1	1 ac.	65'	35'	50'	20'	50'
I-2	20 ac.	660'	35'	150'	150'	150'
I-3	10 ac.	500'	20'	100'	100'	100'

M-1	5 ac. ⁺	500'	20'	50'	100'	100'
M-2	5 ac.	250'	20'	50'	75'	75'
PL-1	2 ac.	100'	35'	100'	25'	25'
F	N/A	N/A	N/A	N/A	N/A	N/A
MB-1	4500 sf	30'	35'	10'	10'	20'
* The minimum side yard and minimum front yard setbacks shall be ten (10) feet, unless the property is located with frontage on State Highway 86 from the Kiowa Creek east to County Road 45 on the north side of State Highway 86, and from the Kiowa Creek east to Ute Street on the south side of State Highway 86, in which case no side or front yard setbacks shall be required. ** The minimum side yard and minimum front yard setbacks shall be ten (10) feet, unless the property is located with frontage on State Highway 86 from the Kiowa Creek east to County Road 45 on the north side of State Highway 86, and from the Kiowa Creek east to Ute Street on the south side of State Highway 86, in which case no side or front yard setbacks shall be required. *** Accessory buildings have a minimum rear yard setback of five (5) feet from the property line. ⁺ Minimum lot or stall size for an individual mobile home unit is 4,000 square feet.						

15-5-30. Setback Requirements

Setbacks are measured from the property line on all sides of a lot, including the street side.

- (1) On corner lots, all sides of the lot with street frontage shall meet the applicable front yard setback.
- (2) Permanent features allowed within setbacks shall include:
 - a. Cornices, canopies, eaves or other similar architectural features if they extend no more than two feet into a required setback and if they do not encroach into or overhang an easement.
 - b. Steps or ramps to the principal entrance and necessary landings, provided they do not extend more than six feet into the required setback.
 - c. Landscaping.
 - d. Fences and walls, subject to height and other restrictions.

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- (3) Side and rear setbacks for storage sheds less than 120 square feet in floor area shall be three (3) feet if the storage shed is not placed upon a permanent foundation and is easily moved as determined by the town administrator or the town administrator's designee.
 - (4) For the purpose of minimizing traffic hazards at street intersections, improving visibility for converging vehicles and maintaining a sight triangle at such locations, no fence, structure, or landscaping over 36 inches above the adjacent street elevation shall be permitted to be placed, planted, or erected on any corner lot within the triangular portion of such lot measured from the point of intersection of the lot lines abutting the streets a distance of thirty (30) feet along each such lot line.

15-5-40. Development standards for mobile home parks.

- (1) The minimum lot area for a mobile home park shall be **two five** acres.
- (2) Minimum width for roadways and driveways within a mobile home park shall be 25 feet. An additional eight feet shall be required for each parallel parking space adjacent thereto.
- (3) At least two off-street parking spaces shall be required for each dwelling unit within a mobile home park.
- (4) Streets, driveways and parking spaces within the mobile home park shall be paved, sufficiently illuminated to ensure the safety of park residents, and shall include sidewalks for pedestrians not less than three feet wide. Each space within a mobile home park shall have unobstructed vehicular access to a public street or highway.
- (5) Open space, including playgrounds, shall be provided within the mobile home park, the size of which shall be determined by the total number of spaces within the park, the density of the development and the availability of existing park or playground areas in the immediate vicinity of the mobile home park.
- (6) A landscaping plan for the mobile home park shall be presented to and approved by the town providing for the landscaping and maintenance of the perimeter of the park, all common areas and open space within the park and the individual spaces for mobile homes within the park.

Commented [JM39]: PC 10/25/23 [24:46]
Discussion occurs, but it is not clear if these standards were approved, deleted, or modified.

- (7) **Electrical, water and sewer service shall be provided to each space within the recreational vehicle park designed to accommodate recreational vehicles, travel trailers, mounted camper units, motor homes, or camping trailers. Spaces designed to accommodate tents shall not require such utility service, but occupants of such tent spaces shall have access within the recreational vehicle park to an adequate water supply and to adequate restroom facilities.**
- (8) **No tent shall remain in place in a recreational vehicle park for more than 30 days in a one-year period. Any action toward removal of wheels of a recreational vehicle, or placement of the unit on a foundation, except for temporary purposes of repair, is prohibited. No external appurtenances, such as carports, cabanas, patios or storage facilities may be attached to any recreational vehicle, travel trailer, mounted camper unit, motor home, camping trailer or tent while it is in the park.**

Commented [JM40]: 7 & 8 relate to Recreational Vehicle Parks.

ARTICLE VI – TABLE OF USES **[RESERVED]**

16-6-10. — Nonresidential Zone Districts

Table of nonresidential uses.

Note: Marijuana Caregiver Operations are a permitted use in all areas of Town subject to Colorado law, as amended.

Uses	TC C-1	CP C-2	LI I-1	HI I-2	PD PL-1
Adult Entertainment Establishment	*	* S	S	*	*
Ambulance Services	*	P	P	*	P
Amphitheater	*	P	P	*	P
Automotive Sales and Repair	* S	S	S	S	* S
Bar or Tavern	* S	P	P	*	S
Bed and Breakfast	P	P	P	*	*
Bulk Storage of Dangerous Materials	*	*	P	P	*
Bulk Storage of Liquefied Petroleum Gas (LPG)	*	S	PS	P	*
Childcare Center	* S	S	S	*	P
Church	PS	P	S	*	S
Commercial Parking Lots	PS	P	P	* P	* S
Family Childcare Home	*	*	*	*	S
Fire Station	*	* S	* S	* S	* S
Funeral Home	* P	P	P	*	S
Gas Station	* S	S	S	* S	* S
Gravel and Mineral Extraction or Processing	*	P*	PS	P	*
Heavy Industrial	*	*	*	S	*
Home Occupation	*	P	S	S	S
Hospital	S	S	* S	*	* S
Hostel	* S	* S	* S	*	* S
Hotel/Motel/Lodging Establishment	S	S	* S	*	* S
Intermediate Health Care Facility	* S	P	S	*	* S
Medical and Dental Offices and Clinics	S	PS	PS	*	PS
Medical Marijuana Caregiver Operations	P	P	P	*	*
Medical or Commercial Marijuana or Natural Medicine	*	*	*	*	*
Multifamily	*	*	*	*	*
Nightclub	S	PS	* S	*	* S
Nursing Care Facility	S	S	S	*	* S
Office	SP	P	P	*	SP
Outside Storage	S*	*	S	* S	PS
Park	*	*	S	S	P
Pet Animal Facility – Grooming and Boarding	* S	S	S	*	S
Playground	*	S	P	*	P

Commented [JM41]: For the time being, it is recommended that the use tables be deleted from the new zoning code. This can be revisited in the future in connection with a legislative rezoning that changes zoning boundaries on the official zoning map.

Commented [JM42]: Ordinance 2024-11 amendments shown as aqua highlighting and bold for additions, and red font with strikethrough for deletions.

Recreation Center	S	S	*P	*	SP
Recreation Facility, Indoor	S	PS	P	*	P
Recreation Facility, Outdoor	S	PS	P	*	P
Recreational Vehicle Park	*	*	*S	*S	S
Recycling Facility	*	*	*	S	*
Residential Dwelling Unit	S	S	S	S	S
Restaurant	P	P	S	S	SP
Retail Establishment	P	P	S	*	SP
Salvage or Wrecking Yard	*	P*	PS	PS	*
Self-Service Storage Facilities	*	*	S	S	*
Single-Family Dwelling Unit	*	*	*	*	*
Solar Energy Flush Roof Mounted	S	S	S	S	S
Solar Energy Ground Mounted	S	S	S	S	S
Truck Stop	*	*	S	S	*
Veterinary Clinic	S	S	PS	S	S
Warehouse and Distribution	*	S	P	S	*
Wireless Telecommunications Equipment	*S	*S	PS	*S	*S
Wireless Telecommunications Facility	*	S*	S	S	S
Food Truck Mobile Vending	P	P	P	P	P

- (4) Natural medicine businesses are permissible in accordance with state law except as provided by the following zoning and distance restrictions:
- Natural medicine businesses shall not be located within any Non-Residential Zone District unless co-located with an existing Health Care Facility; and
 - Natural medicine businesses shall not be:
 - Within 1,000 feet of a licensed childcare facility.
 - Within 1,000 feet of any preschool, elementary, middle, junior, or high school, or a residential childcare facility.

16-6-20. Residential Zone Districts

Table of Residential Uses	P = Permitted Use S = Special Use * = Not Allowed						
Uses	MHP	MF	SF			RR	AG
			HD	MD	LD		
Single-Family Dwelling Unit	P	*	P	P	P	P	P
Second Dwelling Unit	*	*	*	*	*	P	P
Accessory Dwelling Unit	*	*	*	*	S	P	P
Multifamily	*	P	*	*	*	*	*
Group Home, Aged	*	S	*	*	*	S	S
Group Home, Developmentally Disabled/Mentally ill	*	PS	*	*	*	S	S
Intermediate Health Care Facility	*	S	*	*	*	*	*
Nursing Care Facility	*	S	*	*	*	*	*

Commented [JM43]: Recommend changing Food Truck to Mobile Vending to match Article re Mobile Vending.

Commented [JM44]: Ord. 2024-11 has this added as Sec. 16-50 to Article II, but that is the old zoning code. I think it fits best here. However, it conflicts with the use chart above.

Accessory Building	S	*	P	P	P	P	P
Alcoholic Beverage and Medical Marijuana Operations	*	*	*	*	*	*	*
Ambulance Services	*	*	*	*	*	S	S
Bed and Breakfast	*	*	*	*	S	S	S
Bus Stop	P	P	P	P	P	P	P
Childcare Center	S	S	S	S	S	P	P
Church, with or w/o Dwelling Unit	*	S	S	S	S	S	S
Commercial Farming/Commercial Greenhouse	*	*	*	*	*	S	P
Country Club	*	*	*	P	P	P	P
Family Childcare Home	S	S	S	P	P	P	P
Fire Station	S	S	*	*	S	S	P
Home Occupation							
Hostel	*	*	*	*	*	*	*
Laundromat	P	P	*	*	*	*	*
Manufactured Home	P	P	P	P	P	P	P
Mobile Home	P	*	*	*	*	*	*
Noncommercial Greenhouse	P	P	P	P	P	P	P
Park	P	P	P	P	P	P	P
Pet Animal Facility	*	*	*	*	*	S	S
Playground	P	P	P	P	P	P	P
Riding Academy/Dude Ranch	*	*	*	*	*	S	S
Sale of Produce/Plants raised on the premises	*	*	*	*	*	S	S
Sawmill, not more than 2 acres	*	*	*	*	*	*	*
School, Public or Private	*	S	S	S	S	S	S
Satellite Dish, Residential	*	P	P	P	P	P	P
Solar Energy Devices, Residential	P	P	P	P	P	P	P
Wind Energy Devices, Residential	S	S	S	S	S	S	S
Water Reservoir	*	*	*	*	*	*	P
Wireless Telecommunication Equipment	*	P	P	P	P	P	P
Wireless Telecommunication Facility	*	*	*	*	*	S	S

Commented [JM45]: Define

Commented [JM46]: Define

Commented [JM47]: Define

Commented [JM48]: Define.

Commented [JM49]: Define.

(1) To protect the public health, safety, and welfare of those persons occupying dwelling units in the Town of Kiowa, it is necessary to establish maximum standards for the number of persons that may occupy a dwelling unit. The following standards shall apply to each dwelling unit in every residential zone district:

- a. Within every dwelling unit in the Town of Kiowa adequate habitable space shall be provided for each of the occupants of the dwelling unit. A "family" (section 18.02.280(2)) that is a domestic relationship based upon birth, marriage, adoption or guardianship shall be limited to the owner(s) or tenant(s) occupying the dwelling unit who are parents or guardians; their children by blood or marriage or adoption; any person for whom an owner(s) or tenant(s) acts as legal guardian;

and any person who is a parent of either the father or mother of such children or legal guardian (hereinafter collectively referred to as "immediate family"). There shall be one bedroom in the dwelling unit for the occupancy of every two members of the immediate family. A "bedroom" for the purposes of this provision and section 18.02.280 shall require a door, a closet, an egress window and a smoke alarm. Other persons who may be related by blood or by marriage to the owner(s) or tenant(s) of the dwelling unit shall not be considered members of the immediate family for purposes of this provision.

- b. Except when authorized as a group home under title 18 or otherwise allowed by state or federal law, the occupancy of any dwelling unit within any residential zone district by any number of persons in excess of the limitations set forth in section 18.02.280 is also prohibited.

- (2) Utility service lines to a structure and utility lines, wires and associated structures within a utility easement.

ARTICLE VII - PARKING REQUIREMENTS

16-7-10. Parking space requirements.

- (1) The following uses shall be subject to the following parking space requirements:
 - a. *Residential*. Two (2) off-street parking spaces shall be provided for each dwelling unit.
 - b. *Retail*. One (1) parking space for each two hundred (200) square feet of usable floor area.
 - c. *Assembly halls*. For auditoriums, arenas, gymnasiums, exhibition halls, theaters, convention centers and other similar public gathering places, at least one (1) parking space for every four (4) seats, or one (1) parking space for each one hundred (100) square feet of usable floor area, whichever is greater.
 - d. *Churches*. At least one (1) parking space for every four (4) fixed seats, or one (1) parking space for each one hundred (100) square feet of usable floor area, whichever is greater.
 - e. *Lodging*. One (1) parking space shall be provided for each guest unit.
 - f. *Offices*. One (1) parking space shall be provided for each two hundred (200) square feet of usable floor area.
 - g. *Eating and drinking places*. At least one (1) parking space for every four (4) seats, or one (1) parking space for each fifty (50) square feet or usable floor area, whichever is greater.
 - h. *Schools*. For high schools, nine (9) parking spaces shall be provided for each classroom, and for all other schools, one and one-half (1½) spaces shall be provided for each classroom.
 - i. *Retail*. One (1) parking space shall be provided for each two hundred (200) square feet of usable floor area.

Commented [JM50]: Follows Sec. 16-114 from CH 16.

- j. *Warehouses.* One (1) parking space shall be provided for each five hundred (500) square feet of usable floor area.
- k. *Hospitals.* One (1) parking space shall be provided for each patient bed.
- l. *All other uses.* One (1) parking space shall be provided for each five hundred (500) square feet of usable floor area.

- (2) For the purpose of these parking space regulations, the term *parking space* shall be defined as an off-street, hard-surfaced, dust-free space designed and intended to be occupied by a parked full-sized automobile. The size of the required parking spaces and the width of the vehicular circulation aisle within a parking area shall be as indicated in the table below, entitled Minimum Parking Standards:

Minimum Parking Standards

<i>Parking Angle</i>	<i>Stall Width</i>	<i>Stall Length</i>	<i>Aisle Width</i>
90°	10'—0"	20'—0"	25'—0" (two-way)
Parallel	10'—0"	24'—0"	20'—0" (two-way)
45°	10'—0"	20'—0"	16'—0" (one-way)
60°	10'—0"	20'—0"	15'—0" (one-way)
Accessible stall with access aisle	13'—0"	20'—0"	25'—0" (two-way)
Van accessible stall with access aisle	16'—0"	20'—0"	25'—0" (two-way)

- (3) Where there is a common driveway aisle, the lessee will be required to have a right to use one-half (½) of the aisle. Where parking would be abutting sidewalks, the parking lot is to be designed as not to protrude over any sidewalks.
- (4) Parking ratios:
- a. One (1) van accessible parking space is required for each parking lot, with one (1) additional van accessible space required for each two hundred (200) parking spaces provided.

- b. Accessible parking spaces shall be provided as follows:

<i>Number of Parking Spaces Provided</i>	<i>Number of Accessible Spaces Provided</i>
1—12	1
13—24	2
25—74	3
75—100	4
101—199	5
200—299	6
300—399	7
400 and above	8 plus 1 for each 200 additional parking spaces provided

(5) General provisions.

- a. *Responsibility.* The duty to provide and maintain off-street parking areas shall be the joint and severable responsibility of the operator and owner of land uses and the land for which the off-street parking areas are required to be provided and maintained. All parking areas should be hard-surfaced and maintained free of holes.
- b. *New structure uses.* For structures and/or uses established or placed into operation after the effective date of the ordinance codified herein, there shall be provided the number of off-street parking spaces set forth in this Section.

(6) Deviation. The Board of Trustees is hereby authorized to allow deviation from the parking standards created herein, subject to the following criteria:

- a. The proposed deviation will not cause a shortage of parking for the property being considered, or for any adjacent property or use;
- b. Strict application of the parking standards would cause a hardship to the property that would otherwise be subject to the parking regulations; and
- c. The proposed deviation is in the best interests of the health, safety and welfare of the citizens of the Town.

16-7-20. Parking of recreational vehicles.

- (1) It shall be unlawful to park a recreational vehicle on Town streets and rights of way for more than forty-eight (48) hours in any seven (7) day period. For purposes of this restriction, merely moving a recreational vehicle to another portion of the Town street or right of way shall not commence a new forty-eight (48) hour period. In addition, such parking shall be subject to the following limitations:
 - a. It shall be unlawful to park such recreational vehicle in such a manner so as to obstruct vehicular traffic on the travelled portion of the Town street or right-of-way; and
 - b. It shall be unlawful to park such recreational vehicle in such a manner so as to make the adjacent sidewalk inaccessible for pedestrian traffic.
- (2) It shall be unlawful to park an occupied recreational vehicle on private property not specifically zoned to allow such a use for more than fifteen (15) days in any ninety (90) day period, unless specifically approved by the Board of Trustees.

PART II

ARTICLE VIII -PLANNED UNIT DEVELOPMENT

16-8-10. Purpose and scope.

- (1) The purpose of this Article is to permit the application of new technology, combinations of uses, and greater freedom of design in land development than may be possible under strict interpretation of the other provisions of this Chapter. The intent and purpose of this Article is to permit and encourage innovative design and high-quality master-planned developments through greater flexibility in the application of zoning and development standards. The density of uses and magnitude of development, however, must be of such design and scale to be appropriate and consistent with the character of the town and in harmony with the environment and surrounding neighborhood.
- (2) Any application for a planned unit development (PUD) may be submitted and processed simultaneously with the processing of the subdivision application for the same property.
- (3) Because a PUD is intended to be a combination of different uses (residential and commercial or residential/commercial/industrial), before requesting approval of a PUD zone district limited solely to residential uses, the applicant is encouraged to consider the utilization of existing residential zone districts as established by this zoning code in preference to a PUD in order to achieve this Chapter's purpose of a coordinated, adjusted and harmonious development of the town consistent with its established character. If a PUD zone district limited solely to residential uses is proposed, applicant shall state why existing zone districts could not be utilized for this development.
- (4) A PUD is expected to preserve critical environmental resources, provide above-average open space and recreational amenities, include exceptional design, and provide greater efficiency in the layout and provision of roads, utilities and other infrastructure.
- (5) The scope of review for a PUD by the town shall include architectural approval or control, limited to review consistency and compatibility with the environment, surrounding neighborhood and the town.
- (6) This Article is enacted pursuant to the Planned Unit Development Act of 1972 as amended, §§ 24-67-101, et seq., C.R.S., and the provisions of said Act as now enacted and as hereafter amended are hereby declared to be superseded by the provisions of this Article, § 24-67-107(1), C.R.S.

16-8-20. Standards and requirements.

The following standards and requirements shall govern and shall be applied in the review and consideration of the application for a planned unit development (PUD):

- (1) The PUD shall be consistent with the intent of the comprehensive plan and the policies therein, including the commercial and residential land use designations, and shall include references to specific provisions of the comprehensive plan when appropriate.

-
- (2) Every PUD shall include adequate, safe and convenient arrangements for pedestrian and vehicular circulation, off-street parking, loading space, and sidewalks.
 - (3) The Board of Trustees may require such setbacks, lot widths, street widths and space between buildings as necessary to provide adequate access, fire protection and snow removal, to insure proper ventilation, light, air, snow storage and snow melt between buildings, and to insure that the PUD is compatible with other development in the area.
 - (4) Open space for the PUD shall be planned to produce maximum usefulness to the residents of the development and the general public for purposes of recreation and scenery and to produce a feeling of openness. All areas designated as common or public open space pursuant to the requirements of this Article shall be accessible by proper physical and legal access ways.
 - (5) Water and sewer service shall be provided by connection to central facilities, unless otherwise approved by the Board of Trustees, Kiowa Water & Wastewater Authority, the Colorado Department of Public Health, and the local health authorities.
 - (6) The PUD shall be designed to provide necessary commercial, recreational, and educational facilities conveniently located to residential housing.
 - (7) Clustered housing and other buildings shall be encouraged to promote maximum open space and economy of development and variety in type, design and layout of buildings.
 - (8) The primary and accessory uses in the PUD zone district shall be proposed by the applicant for inclusion in the final PUD development plan. **Only those uses designated P or S in the tables of uses in this zoning code may be proposed or considered for inclusion as permitted uses in a PUD zone district. Accessory uses in a PUD zone district, including home occupations, shall be subject to chapter 16.10.**
 - (9) Applicant shall propose specific development standards, **including, without limitation, setbacks, bulk plane, and encroachments,** for the primary and accessory uses in the PUD to be included in the final PUD development plan **addressing the same requirements set forth in chapter 16.05, development standards, for nonresidential, residential and setbacks and encroachments.**

Commented [JM51]: Defeats the purpose of a PUD. The first sentence is sufficient. It does not require the Town to approve all proposed uses.

Commented [JM52]: Revised placement in sentence.

16-8-30. Criteria for evaluation.

The following criteria shall be utilized by the Planning Commission and the Board of Trustees in evaluating an application for approval of a PUD zone district:

- (1) *PUD development plan.* The application must include a PUD development plan that must provide for, but need not be limited to: primary and accessory uses; development standards; easements, covenants, and restrictions relating to use, location, and bulk of buildings and other structures; intensity of use or density of development; utilities; private and public streets, ways, roads, pedestrian areas, parking facilities, common open space, and other public facilities; and provisions for maintenance of both common and public property. Provisions of the PUD development plan means the written and graphic materials (which shall include architectural renderings) presented in support of the plan presented.
- (2) *Open space.* A minimum of 20 percent of the total PUD area shall be devoted to open air recreation or other usable open space that is public or quasi-public. Unusable open space,

such as unusable drainage detention and conveyance areas, shall not be included in the required 20 percent. Usable open space shall be designed and intended primarily for the use and enjoyment of the residents, occupants, and owners of property within the PUD, but at least one-half of the usable open space within the PUD shall also be open to and accessible by the general public. **Usable open space means open space designed for use as common areas, including, but not limited to parks, recreation areas, gardens, paths, walkways and trails. The term shall not include space devoted to streets and parking and loading areas, areas with slopes greater than 30 percent, land under water, lands within critical wildlife habitat areas, lands within riparian areas and 100-year floodplains that are preserved as open space, unless specifically designated as usable open space by the town Board of Trustees because of its recreation, wildlife or other aesthetic value.**

Commented [JM53]: Pulled from Town of Gypsum, Sec. 18.02.580 Definitions, which was cited in this section.

- (3) *Residential density.* Density shall be limited as required by the Board of Trustees upon consideration of the comprehensive plan adopted in accordance with § 31-23-206(1), C.R.S., and individual characteristics of the subject land, **but shall not exceed 15 residential dwelling units per acre of net developable land area.**
- (4) *Density of other uses.* The density of nonresidential uses shall be limited as required by the Board of Trustees upon consideration of the comprehensive plan and individual characteristics of the subject land.
- (5) *Architecture.* Each structure in the PUD shall be designed in such manner as to be consistent and compatible with other structures in the area, yet to avoid uniformity and lack of variety in structural designs within the PUD.
- (6) *Uses.*
 - a. *Mixed uses.* The PUD shall be designed, insofar as practicable when considering the overall size of the PUD, to provide commercial, recreational, educational and transit amenities to its residents to lessen increased traffic and traffic congestion, and to increase walkability and sustainability of the PUD.
 - b. *Types of uses.* A PUD may include any uses approved by the Board of Trustees as consistent with the comprehensive plan, this zoning code and the characteristics of the subject land, and as may be deemed compatible with other development in the area of the PUD. **Only those uses designated P or S in the tables of uses in this zoning code may be proposed or considered for inclusion as permitted uses in a PUD zone district.**
- (7) *Minimum area.* A PUD shall not be approved on a parcel of land less than five (5) acres in area.
- (8) *Maintenance of common property.* No PUD shall be approved unless the applicant confirms that the landowner has provided for or established an adequate organization for the ownership and maintenance of common open space, private streets, roads, ways, drives, pedestrian areas and parking facilities within the PUD (hereinafter collectively referred to as "common property"). In the event that the organization established to own and maintain such common property, or any successor organization, shall at any time after approval of the PUD fail to maintain the common property in reasonable order and

Commented [JM54]: Potential conflict with Prop 123 funding and affordable housing project.

condition in accordance with the PUD development plan, the following procedures may be initiated by the town.

- a. The town may serve written notice upon the maintenance organization or upon the residents of the PUD setting forth the maintenance deficiencies. The notice shall include a demand that such deficiencies of maintenance be cured within 30 days thereof, and shall state the time, date and place of a hearing thereon before the Town which shall be held within 15 days of the date of notice.
- b. At such hearing, the town may modify the terms of the original notice as to deficiencies, including granting an extension of time within which they shall be cured.
- c. If the maintenance deficiencies set forth in the original notice or in the modifications thereof are not cured within said 30 days or any extension thereof, the town, in order to protect the public health, safety and welfare, ensure the benefits or services intended, preserve the taxable values of the properties within the PUD and to prevent the common property from becoming a public nuisance, may enter upon the common property and maintain the same for a period of one year. Such entry and maintenance shall not vest in the public any rights to use the common property except when it is dedicated to the public by the owners.
- d. Prior to the expiration of the year of town maintenance, the Board of Board of Board of Trustees shall call a public hearing upon notice to the organization responsible for the maintenance of the common property, and to the residents and property owners of the PUD, at which hearing such organization and the property owners shall show cause why such maintenance by the town shall not, at the election of the Board of Trustees, continue for a succeeding year. If the Board of Trustees shall determine that a responsible organization is ready and able to maintain the common property in reasonable condition, the town shall cease to maintain the common property at the end of said year. If the Board of Trustees shall determine that a responsible organization is not ready and able to maintain the common property in a reasonable condition, the town, in its discretion, may continue to maintain the common property during the next succeeding year and, subject to a similar hearing and determination, in each year thereafter.
- e. The cost of maintenance of such common property by the town, plus a surcharge determined by the Board of Trustees in its sole discretion, but not to exceed five percent of the cost of maintenance, shall be assessed to and paid by the owners of properties within the PUD that have a right of enjoyment of the common property. Any unpaid assessments shall become a tax lien on said properties. The town shall file a notice of such lien in the office of the Elbert County Clerk and Recorder upon the properties affected by such lien within the PUD and shall certify such unpaid assessments to the board of county commissioners and the county treasurer for collection, enforcement, and remittance in the manner provided by law for the collection, enforcement, and remittance of general property taxes.
- f. The requirements for maintenance of common property shall be deemed conditions of approval of every PUD, even though the PUD plan may fail to incorporate or recite them. The authority of the town to maintain such common

property in a PUD shall be in addition to any other right or remedy, including but not limited to actions for breach of contract, violations of the Kiowa Municipal Code and the PUD development plan, or nuisance.

- (9) *Consent of landowners.* No PUD may be approved by the Board of Trustees without the written consent of all of the landowners whose properties are included within the PUD. All owners of land within the proposed PUD shall sign each application form requesting consideration or approval of any PUD. Subsequent amendment or modification of a PUD zone district shall not require the consent of all landowners within the PUD but shall require notice and hearing as provided in section 16-8-190. Amendment to PUD, before such amendment or modification is enacted.

16-8-40. Procedure generally.

The provisions set forth in sections 16-8-50 through 16-8-200 shall be observed when an application for PUD approval is submitted for consideration. A PUD application may be considered concurrently with an application for approval of a subdivision preliminary plan.

16-8-50. Preapplication conference.

A preapplication conference shall be held with the Planning Commission for the purpose of establishing general considerations and comments, guidelines and eliciting direction regarding a proposed PUD. The preapplication conference is a vehicle intended to provide the applicant with general guidance and knowledge of the acceptability of any proposed PUD prior to the expenditures of large amounts of time and money in the planning effort.

16-8-60. PUD sketch plan—Requirements.

After the preapplication conference, and at least sixty days prior to the Planning Commission meeting at which it is to be considered, an applicant shall submit to the town in an electronic format acceptable to the town a completed PUD sketch plan application form, the overall PUD development sketch plan, supplemental PUD application information and the proposed PUD development plan (all of these submissions shall be collectively referred to herein as the "PUD sketch plan"). One paper copy of the PUD sketch plan shall also be submitted for the file. The PUD sketch plan shall include all materials and information required by the subdivision regulations for a subdivision sketch plan application, and the following information in conceptual or schematic design or report form:

- (1) Reasons PUD procedure is more desirable than conventional zoning;
- (2) Proposed land uses, building locations and housing unit densities;
- (3) Proposed development standards for the PUD;
- (4) Proposed circulation pattern indicating the status of street ownership;
- (5) Proposed open space and common property uses, including verification by a professional land surveyor that the **2520** percent open space requirement is met;
- (6) Proposed grading and drainage pattern;
- (7) Proposed method of water supply and sewage disposal (Note: Booster stations and lift stations are discouraged);

Commented [JM55]: PC 10/11/2023 [1:07:40]

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- (8) Economic and supporting data to justify any proposed commercial and industrial elements in an area not so zoned;
 - (9) Relation of the proposed PUD to the surrounding area and comprehensive plan;
 - (10) Proposed schedule of PUD phasing;
 - (11) Proposed easements, covenants, conditions and restrictions;
 - (12) Copies of owners' association ("organization") documents that provide an acceptable program for the continuing maintenance of common property within the PUD, such as an owner's association or metropolitan district, and that detail the type of organizational structure responsible for such ongoing maintenance;
 - (13) Draft environmental impact report, unless applicant has requested and has been granted a waiver by the Planning Commission at the preapplication conference;
 - (14) Statement by a qualified professional as to the impact of the proposed PUD upon the public school system;
 - (15) Statement by a qualified professional of the estimated demands for services provided for by the town, including, but not limited to, utilities, transportation network, park and recreation, and law enforcement;
 - (16) Statement by a qualified professional of the projected town sales, use and property tax revenue based upon the previous year's tax levy, and a schedule of projected receipts of that revenue;
 - (17) Conceptual plans of all architectural forms anticipated for development within the PUD;
 - (18) Preliminary site plans and preliminary architectural plans proposed for the first phase of proposed development;
 - (19) Statement by a qualified professional of the estimated demands for fire protection and ambulance service;
 - (20) "Will serve" letters from providers of utility services not provided by the town that are specific to the proposed development in the PUD a full buildout;
 - (21) Statement by a qualified professional as to the impact of the proposed PUD upon wildlife; and
 - (22) Any other documents or materials deemed necessary by the town for review of this application.

16-8-70. PUD sketch plan—Referral.

Prior to consideration of the PUD sketch plan by the Planning Commission, the town shall distribute for comment, copies of the PUD sketch plan to the town administrator, town attorney, town engineer, public works director, planning department, and other referral agencies as required by the subdivision regulations or as otherwise deemed appropriate by the town.

16-8-80. PUD sketch plan—Criteria for review by Planning Commission.

The Planning Commission shall review and consider the PUD sketch plan and comments from referral agencies at a public meeting (PUD sketch plan review meeting), or in its discretion, at a

public hearing. To recommend to the Board of Trustees approval of the PUD sketch plan, the Planning Commission must find that:

- (1) There are special physical conditions or objectives that the PUD will satisfy to warrant a departure from standard zoning code and the PUD is being requested to encourage innovative and creative design and to promote a mix of land uses;
- (2) The PUD will not be inconsistent with the comprehensive plan objectives, unless the Planning Commission determines that the character of the neighborhood has changed since the comprehensive plan was last adopted or that the comprehensive plan was based on erroneous assumptions;
- (3) The areas adjacent to the proposed PUD can be planned to be in substantial harmony with the proposed PUD;
- (4) The adjacent and nearby areas will not be detrimentally affected by the proposed PUD;
- (5) The proposed PUD can be completed within a reasonable period of time;
- (6) Any proposed commercial or industrial development can be justified economically;
- (7) The proposed streets are adequate to support the anticipated traffic and the development will not overload the existing streets outside the PUD or there is adequate provision in the PUD development plan for improvement thereof;
- (8) Proposed public improvements, including utilities and drainage facilities, are adequate to serve the PUD; and
- (9) The PUD development plan, including permitted uses and development standards for the PUD, is acceptable.

16-8-90. PUD sketch plan—Action by Planning Commission.

Within 45 days after the Planning Commission reviews the PUD sketch plan at a public meeting or public hearing, the Planning Commission shall:

- (1) Table the PUD sketch plan for a period not to exceed 95 days from the date of the public meeting or public hearing for additional study, to obtain additional necessary information, or to have the applicant revise the application or PUD development plan;
- (2) Recommend the Board of Trustees approve the PUD sketch plan as submitted, with certain conditions as specified by the Planning Commission, if any; or
- (3) Recommend the Board of Trustees deny the PUD sketch plan, or certain portions thereof, with all reasons for such recommendation clearly stated.

16-8-100. PUD sketch plan—Action by Board of Trustees.

After receiving the Planning Commission's recommendations, the Board of Trustees shall consider the PUD sketch plan and the Planning Commission's recommendations at a public meeting before the Board of Trustees. Based on the same criteria set forth for PUD sketch plan review by the Planning Commission in section 16-8-80, the Board of Trustees shall:

- (1) Approve the PUD sketch plan as submitted, with certain conditions as specified by the Board of Trustees, if any;

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- (2) Deny the PUD sketch plan as submitted, or certain portions thereof, with all reasons for denial clearly stated. An application for a PUD preliminary plan shall not be accepted following denial of a PUD sketch plan;
 - (3) Table the PUD sketch plan for a period of not more than 60 days for additional study, to obtain additional necessary information, or to have the applicant revise the application or PUD development plan; or,
 - (4) Refer the PUD sketch plan back to the Planning Commission with specific instructions for additional study and recommendations, for a period not to exceed 60 days.

16-8-110. PUD preliminary plan—Requirements.

Sixty (60) days prior to the Planning Commission meeting at which it is to be considered, an applicant shall submit to the town in an electronic format acceptable to the town the completed PUD preliminary plan application form, the overall PUD development preliminary plan, the supplemental PUD application information, and the proposed PUD development plan (all of these submissions shall be collectively referred to herein as the "PUD preliminary plan"). One paper copy of the PUD preliminary plan shall also be submitted for the file. The PUD preliminary plan shall include all materials and information required by the subdivision regulations for a subdivision preliminary plan application, all of the information for the PUD sketch plan set forth in section 16-8-60, plus the following information:

- (1) A complete environmental impact study; and
- (2) Any information requested or required by the Board of Trustees as part of its approval of the PUD sketch plan.

16-8-120. PUD preliminary plan—Referral.

Prior to consideration of the PUD preliminary plan by the Planning Commission, the town shall distribute for comment, copies of the PUD preliminary plan to the town administrator, town clerk, town attorney, town engineer, public works, town planning, and other referral agencies as required by the subdivision regulations or as otherwise deemed appropriate.

16-8-130. PUD preliminary plan—Review by commission.

The Planning Commission, at a public hearing, shall review the PUD preliminary plan based on the same criteria for review of the PUD sketch plan as set forth in section 16-8-80, and the conditions of approval set forth in the Board of Trustees' approval of the PUD sketch plan.

16-8-140. PUD preliminary plan—Action by commission.

Within 45 days after the Planning Commission considers the PUD preliminary plan at a public hearing, the Planning Commission shall:

- (1) Table the PUD preliminary plan for a period not to exceed 95 days from the date of the public hearing for additional study, to obtain additional necessary information, or to have the applicant revise the application;
- (2) Recommend the Board of Trustees approve the PUD preliminary plan as submitted, with certain conditions as specified by the commission, if any; or
- (3) Recommend the Board of Trustees deny the PUD preliminary plan, or certain portions thereof, with all reasons for such recommendation clearly stated.

16-8-150. PUD preliminary plan—Action by Board of Trustees.

At a public hearing after receiving the recommendations from the Planning Commission on the PUD preliminary plan, the Board of Trustees shall consider the PUD preliminary plan and the commission's recommendations. The public hearing on the PUD preliminary plan before the Board of Trustees shall afford procedural due process to all interested parties. Public notice of the public hearing shall be given in the manner prescribed in section 16-22-80 for approval of a PUD preliminary plan, including the additional requirement that written notice of the public hearing be delivered or mailed, first class postage prepaid, to adjacent property owners not less than 15 days prior to the date of the public hearing. Based on the same criteria for review of the PUD preliminary plan as incorporated in or as fully set forth in section 16-8-130 by the Planning Commission, the Board of Trustees shall:

- (1) Approve the PUD preliminary plan as submitted, with certain conditions as specified by the Board of Trustees, if any;
- (2) Deny the PUD preliminary plan as submitted, or certain portions thereof, with all reasons for denial clearly stated;
- (3) Table the PUD preliminary plan for a period of not more than 60 days for additional study, to obtain additional information, or to have the applicant revise the application or PUD development plan; or
- (4) Refer the PUD preliminary plan back to the Planning Commission with specific instructions for additional study and recommendations, for a period not to exceed 60 days.

16-8-160. Additional conditions.

In addition to the requirements of this Article, the Board of Trustees may attach conditions to its approval of a PUD preliminary plan that the Board of Trustees finds necessary to carry out the purpose of this Chapter. These may include, but are not limited to:

- (1) A requirement that, prior to approval of a final plat in the PUD by the Board of Trustees, the applicant shall provide construction security to secure the construction of the required improvements, as identified in a subdivision improvement agreement connected to the final plat, in the form of a letter of credit, bond, cash or other financial security that is easily convertible into cash in a form acceptable to the town to assure that the PUD is completed according to the PUD preliminary plan approved by the Board of Trustees; and
- (2) Approval of development of the PUD in phases, if requested by the applicant.

16-8-170. Final plat—Requirements. Post-Approval Actions

Approval of the PUD preliminary plan shall be considered the final step for approval of the PUD zone district. However, completion of the PUD process shall also require passage of an ordinance by the Board of Trustees identifying and designating the PUD zone district upon completion of the submission requirements for the final plat, including approval thereof by the Planning Commission and approval by the Board of Trustees of the final plat. The final plat shall include and be consistent with the PUD preliminary plan as finally approved and shall include all of the terms and conditions of the PUD development plan, including all permitted uses and development standards for the PUD, and any other requirements established by the planning

Commented [JM56]: Include in 16-22-80.

Commented [JM57]: Does not work with current subdivision regulations.

director. No final plat shall be approved without submission of proof by the applicant that the organization for maintenance of common property has been established as proposed by the applicant.

Upon final passage and publication of the ordinance establishing the PUD zone district, a certified copy of the ordinance shall be recorded in the real estate records of the Elbert County Clerk and Recorder and the property shall be identified on the official zoning district map with the symbol "PUD" and the name of the planned unit development.

16-8-180. Vested Property Rights.

An applicant who wishes a PUD preliminary plan approval to have the effect of creating vested property rights pursuant to Article 68 of Title 24, C.R.S., as amended, shall follow the procedures for the creation of vested property rights set forth in Article X of this Chapter. Failure to follow those procedures shall result in no vested property rights having been created by the approval.

16-8-190. Amendments to PUD.

The PUD zone district as finally approved by the Board of Trustees shall be binding and shall not be changed during the construction of the PUD or thereafter, except upon application under the following procedures:

- (1) *Conditions for amendment.* A PUD zone district or an approved PUD development plan may be amended or modified, if the applicant demonstrates that the proposed amendment or modification:
 - a. Is consistent with the efficient development and preservation of the entire PUD, both as proposed and as completed to the date of the application;
 - b. Does not affect in a substantially adverse manner either the enjoyment of land adjacent to the PUD or the public interest;
 - c. Is not granted solely to confer a special benefit upon any person;
 - d. Does not include any new proposed uses that detract from other uses previously approved for this PUD;
 - e. Contains street and utility plans that are coordinated with planned and existing streets and utilities for the remainder of the PUD; and
 - f. Does not increase water and sewer demands or create adverse traffic impacts.
- (2) *Application.* When proposing any amendment or modification to a PUD zone district or PUD development plan, the applicant shall first request a preapplication meeting with the town administrator or the town administrator's designee to discuss procedures, requirements (including the required notice and public hearing), and the town's goals and policies. The applicant shall provide for the conference:
 - a. An application for amendment of a PUD zone district or PUD development plan, plus the appropriate application fee as set in the Town's Fee Schedule;
 - b. A sketch of the proposed amendments or modifications depicting: topography of the land and the allowed and proposed changes to the existing street system and

approximate right-of-way widths, uses including common areas and open space or parks, and densities, and their locations;

- c. A written summary of the amendments or modifications being requested and a statement setting forth the reasons the proposed amendments or modifications meet the conditions for amendment set forth in subsection (1) of this Section; and
- d. Proof of ownership and consent to the amendment or modifications from the owners of all lots directly affected by the proposed amendments or modifications. Application by or written consent from all of the owners of land in the PUD zone district is not required, if their property is not directly affected by the proposed amendments or modification and whose use or the configuration of their property is not being changed.

- (3) At the preapplication conference, the town administrator or the town administrator's designee shall classify the proposed amendment or modification as a minor or major amendment, based on the classification criteria set forth below in subsection (4). If the town administrator or the town administrator's designee cannot determine on the basis of the criteria specified whether the proposed amendments or modifications should be classified as a minor or major amendment, the Planning commission shall make a determination at its next regular meeting.

- (4) *Classification of amendments.*

- a. Minor amendment would include locations, sittings, bulk of structures, height or character of building, each of which may be authorized by the town administrator or the town administrator's designee, without a public hearing, if required by circumstances not foreseen at the time the PUD zone district or PUD development plan was approved.
- b. Major amendment would include all other changes in use, any rearrangement of lots or access, all changes in the provisions of open space or density, all of which may only be approved by the Board of Trustees, by following the same procedures for approval of the PUD preliminary plan as set forth in this Article, including review and recommendations by the Planning Commission and notice and a public hearing before the Board of Trustees. In addition to any other notice of public hearing required by the provisions of this Article, any persons owning property in or residing within the PUD zone district, whether such person has signed the application or provided written consent to the amendments or modification or not, and adjacent property owners, shall be given written notice of the public hearing, delivered or mailed, first class postage prepaid, not less than 15 days prior to the date of the public hearing.

Commented [JM58]: Move to 16-22-80?

- (5) *Review of PUD amendments.* At the public hearing, the Board of Trustees shall review and consider the major amendment to the PUD zone district or PUD development plan and the recommendations of the Planning Commission. Based on the same criteria for review of the PUD preliminary plan as incorporated in or as fully set forth in section 16-8-130 by the Planning Commission, the Board of Trustees shall:

- a. Approve the major amendment as submitted, with certain conditions as specified by the Board of Trustees, if any;

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- b. Deny the major amendment as submitted, or certain portions thereof, with all reasons for denial clearly stated;
 - c. Table the major amendment for a period of not more than 60 days for additional study, to obtain additional information, or to have the applicant revise the application for major amendment; or
 - d. Refer the major amendment back to the Planning Commission with specific instructions for additional study and recommendations, for a period not to exceed 60 days.

- (6) *Major amendment to a PUD zone district.* Approval of a major amendment to a PUD zone district shall be complete upon passage of an ordinance by the Board of Trustees amending the ordinance which originally identified and designated the PUD zone district.

An amended final plat shall also be prepared and submitted by the applicant for the major amendment incorporating the provisions of the major amendment for recording in the records of the Elbert County Clerk and Recorder, together with a certified copy of the ordinance approving the major amendment.

Commented [JM59]: Not required by subdivision code.

16-8-200. Building permits—Issuance or termination.

- (1) Development within a PUD zone district cannot occur unless and until a final plat for the portion of the property to be developed has been approved and recorded as provided in the subdivision regulations.
- (2) Building permits for construction within a PUD zone district shall be issued only on the basis of an approved final plat and PUD development plan. No building permit shall be issued for vertical construction within a PUD zone district until all public improvements have been completed, accepted and dedicated to the town, unless otherwise allowed by a development agreement entered with the town.
- (3) If no building permit for construction within a PUD zone district has been issued within two years of the date of approval of a final plat, the approval of the final plat may be rescinded by the Board of Trustees and Board of Trustees may initiate the process to repeal the ordinance establishing the PUD zone district.

ARTICLE IX - ANNEXATIONS

16-9-10. Prepetition Process.

- (1) Purpose.
 - a. It is the purpose of the pre-petition process to assist persons interested in annexing property to the Town of Kiowa in identifying issues and impacts that the proposed annexation may create, so as to allow sufficient analysis and investigation by the land owners to insure compliance with Kiowa's annexation policies and the Municipal Annexation Act of 1965, prior to submission of the petition for annexation and consideration by the Board of Trustees. The Board of Trustees may, in its sole discretion, refuse to consider any petition for annexation for which the petitioners did not first submit to the pre-petition process outlined in this Article.
- (2) Prepetition submittals.

-
- a. Any petitioner intending to submit a petition for annexation must first submit to the Town a mission statement and written outline of the proposed annexation and development of the subject property. The mission statement shall concisely define the proponents' reasons for seeking annexation and the benefit to the town of approving annexation. The outline should include a map showing the property and a general discussion of all items required of a development plan upon submission of an annexation petition.
- (3) Process.
- a. Through the pre-petition process, the annexation proponents, town staff, Planning Commission, and Board of Trustees will attempt to identify terms, if any, upon which a petition for annexation may be deemed beneficial to the town. Upon submission of a pre-annexation outline, town staff shall schedule the proposal for one or more work sessions between the proponents, town staff, Planning Commission, and if desired, the Board of Trustees. At such work sessions, the proposal, and the potential impacts, benefits, and detriments to the town shall be discussed.

16-9-20. Petitions for Annexation.

- (1) *Annexation.* Annexation to the town shall be in accordance with the Municipal Annexation Act of 1965, Title 31, Article 12, C.R.S., and the terms and conditions of this Article.
- (2) *Petitions.* Petitions seeking annexation of land into the town shall comply with all requirements of the Municipal Annexation Act of 1965 and the Colorado Constitution. In addition, petitions shall be accompanied by the following:
 - a. *Fees.* Each petition or series of petitions for annexation shall be accompanied by a fee and deposit as stated in Town's Fee Schedule. If the actual out-of-pocket costs of the town for processing the application are greater than the amount of fees paid, the Board of Trustees will condition the granting of the petition contingent upon the payment of the additional out-of-pocket cost incurred by the town. The fees required are intended to reimburse the town for its actual costs reviewing, considering, and processing the petition, including professional consultant fees, and are in addition to any other fees, charges, impositions, or requirements that the town may impose as a condition of granting the petition.
 - b. *Development plan.* Each petition for annexation shall be accompanied by the following:
 - i. If the property is undeveloped or not previously subdivided, a proposed development plan which shall contain, at a minimum, a sketch plan sufficient to meet the Kiowa Municipal Code's subdivision sketch plan requirements, and a proposed zoning plan showing the existing and proposed zoning sufficient to meet the Kiowa Municipal Code requirements for a proposed zoning amendment.
 - ii. Evidence that all municipal services are capable of being extended to the property, the demands for such services that will be created by annexation and/or development, the costs of the services that will be necessitated by the

annexation and/or development, and a detailed plan for providing such services at no cost to the town or the applicable service provider. Municipal services and facilities that must be analyzed include: law enforcement; fire protection; emergency medical; library; transportation, including roads, sidewalks, and pedestrian and bicycle paths/trails; solid waste collection and treatment; wastewater collection, conveyance, and treatment; parks and recreation; stormwater drainage; open space; schools; and planning and building administration.

- iii. An analysis of revenues, if any, that will be generated to the town and other municipal service providers from the annexation and development.
- iv. Proof that the property is currently being provided adequate water and sewage treatment service, or a detailed plan showing how water and sewage treatment service will be provided to the property, at no cost to the town or applicable service provider. Such plans shall include:
 - 1. The estimated requirements for water and sewage treatment services upon full buildout and the impact on applicable water and sewage treatment plants and conveyance systems.
 - 2. The existing capacity of applicable water and sewage treatment plants and transmission facilities, capacity necessary to serve existing properties within Kiowa that have not yet been developed based on their current zoning and subdivision, and the remaining capacity, if any, which will be left in the treatment plants and transmission facilities if all properties within the town and the property proposed for annexation are developed.
 - 3. Engineering data sufficient to show the feasibility of the proposal and compliance with all federal, state, and local regulations and requirements.
- c. *Fire protection.* Each petition for annexation shall be accompanied by proof that the area to be annexed is within the boundaries of the Kiowa Fire Protection District, or proof that an application for inclusion of the property within the boundaries of the Kiowa Fire Protection District has been filed. In addition, if the property is currently within the boundaries of any other fire protection district, proof must be submitted that a petition for exclusion of the area from such other fire protection district has also been filed.

16-9-30. Eligibility for Annexation.

In addition to the findings of fact required by the Municipal Annexation Act of 1965, in order for property to be annexed to the town, the Board of Trustees must first find and determine that the petition is consistent with town policies concerning annexation, and the benefits of annexation to the citizens of the town outweigh any impacts.

16-9-40. Subdivision and Zoning.

The Board of Trustees may require as a condition of approval of any annexation petition that the property be contemporaneously zoned. The owner of any property annexed to the town without being zoned under the Kiowa Municipal Code shall petition for zoning within 60 days, and the

property shall be zoned within 90 days of the effective date of the annexation. During such period, no building permits or other development approvals shall be granted.

16-9-50. Annexation Agreement.

Unless waived by the Board of Trustees, an annexation agreement, acceptable to the Board of Trustees, must be presented for consideration prior to or contemporaneously with the final reading of the proposed ordinance for annexing the property. Proposed annexation agreements shall provide for compliance with all zoning, subdivision, and development standards of the town, including but not limited to the following:

- (1) Properly constructed and dedicated roads;
- (2) Properly constructed and dedicated water and sewer facilities;
- (3) Provision for adequate storm drainage;
- (4) Dedication of useable land for public purposes or cash payment-in-lieu thereof, based on the value of the property upon subdivision approval, necessary to meet Kiowa Municipal Code requirements and offset the impacts on all municipal service providers identified in the annexation development plan;
- (5) Compliance with water dedication requirements;
- (6) Installation of all service and utility lines underground;
- (7) The provision of necessary easements for all public purposes; and
- (8) Compliance with all ordinances, resolutions, and policies of the Town of Kiowa, and conditions imposed by the Board of Trustees to mitigate impacts of the annexation on the town.

16-9-60. Conditions of annexation.

The Board of Trustees may grant any annexation petition contingent on any conditions deemed necessary or appropriate, in the sole discretion of the Board of Trustees. Such conditions shall be incorporated into the annexation agreement, and may include, without limitation, additional requirements beyond any imposed by the Kiowa Municipal Code regarding subdivision and zoning, for construction of public facilities, dedications or conveyances of property, limitation or restrictions on the use of the property, the construction and timing of construction of public improvements and facilities, cash payments to the town, and the conveyance of property, including water rights, to the town.

ARTICLE X - VESTED PROPERTY RIGHTS

16-10-10. Intent.

This Article is intended to define a site specific development plan for the Town pursuant to Section 24-68-103, C.R.S., and to establish a procedure to govern the creation of vested rights in accordance with Section 24-68-101 *et seq.*, C.R.S. Nothing in this Article is intended to create a vested property right, but only to implement the provisions of Section 24-68-101 *et seq.*, C.R.S.

16-10-20. Definitions.

- (1) *Site Specific Development Plan* means a map, plat, plan or other document but only as are more particularly described below, including all terms and conditions thereof or which are incorporated by reference which also describes with reasonable certainty the type and intensity of use permitted for a specific parcel or parcels of land:
 - a. Final Subdivision Plat, as that term is used, referenced and defined in the Town Subdivision Regulations as approved by the Board of Trustees;
 - b. PUD development plan as that term is used, referenced and defined in Article VII of this Chapter as approved by the Board of Trustees;
 - c. Such other map, plat or other document wherein a specific written agreement designating the same as a "site specific development plan" has been executed between the Board of Trustees and the property owner for a specific project or development; or
 - d. No other map, plat, other document or approval of any nature submitted and/or obtained pursuant to the town's zoning or subdivision regulations shall constitute a site specific development plan.
- (2) *Vested real property right* means the right to undertake and complete the development and use of property under the terms and conditions of a site specific development plan.

16-10-30. Creation of Vested Rights.

- (1) No vested rights shall be created except by the approval of a site specific development plan by the Board of Trustees.
- (2) If the applicant seeks approval of a site specific development plan to create vested property rights, the application shall include a prominent, clear statement on the application that it is being submitted for designation as a site specific development plan. The plat, plan, map, or other document submitted for approval as a site specific development plan shall contain a prominent, clear statement that the instrument is a site specific development plan for the purposes of creating vested property rights. Failure to include such statement on the application and the instrument to be approved shall result in no vested property rights being created by the approval of the application.

16-10-40. Other Regulations.

Approval of a site specific development plan shall not constitute an exemption from or waiver of any other provisions or requirements of the town pertaining to the development and use of the property adopted before the approval of a site specific development plan.

16-10-50. Waiver or Forfeiture.

- (1) Failure to abide by any terms or conditions imposed by the town on the approval of any site specific development plan shall constitute a forfeiture of any vested right created by the plan, unless otherwise expressly agreed to by the town in writing.
- (2) A petition for annexation to the town shall describe all vested property rights approved by any local government in effect at the time of the petition, if any, and be accompanied by all site specific development plans approved by any local government. Failure to so identify

any previously approved vested property right and provide all approved site specific development plans shall constitute a waiver of the vested property right created by any other local government upon annexation to the town, unless expressly provided otherwise in the annexation ordinance adopted by the town.

- (3) Any land use application submitted to the town that does not conform to a previously approved site specific development plan shall waive and terminate any vested property rights granted under the previously approved site specific development plan that was approved by the town or any other local government for the property that is subject to the new land use application.

16-10-60. Notice.

It shall be the applicant's responsibility to comply with the publication requirements of Section 24-68-103(1)(c), C.R.S., following approval of a site specific development plan by the town. Failure to perfect the publication requirements is an automatic invalidation of any claim to vested property rights.

PART III

ARTICLE XI - ACCESSORY USES

16-11-10. Location.

All accessory uses and structures except fences, landscaping, retaining walls and unenclosed parking shall be located inside the minimum setback line.

16-11-20. Home Occupations.

In any zone district in which a home occupation is a permitted use or has been authorized by a special use permit, the establishment and continuance of a home occupation shall be an accessory use subject to the following limitations and restrictions:

- (1) Properties within SF/HD, SF/MD, SF/LD, R-1, R-2, or A-1 zone districts:
 - a. Such use shall be conducted entirely within a dwelling and carried on principally by the residents thereof. No dwelling may be used for a home occupation unless it is devoted primarily to a residential use.
 - b. Such use shall be clearly incidental and secondary to the use of the dwelling for residential purposes, and shall not change the residential character thereof.
 - c. The total area used for a home occupation shall not exceed the equivalent of one-half the floor area of the first floor of the dwelling unit.
 - d. There shall be no advertising, display, or other indications of home occupation on the premises, except one sign without neon or flashing lights, no bigger than six square feet.
 - e. A home occupation may not primarily involve on-site retail sales. A home occupation primarily involves on-site retail sales if one-half or more of all customer trips to the dwelling unit consist of the customer coming to the dwelling to complete a sale or pick up purchased goods. Retail sales may be made in connection with other permitted home occupations.
 - f. There shall not be exterior storage on the premises of material used in the home occupation.
 - g. There shall not be excessive traffic, significant and frequent truck deliveries, or excessive noise, vibration, smoke, dust, mud, dirt, odors, or glare noticeable at or beyond the property line, as a result of the home occupation. Such conditions shall be considered excessive if they exceed the typical ambient range of variability present in the neighborhood.
 - h. The owner of the property in which a home occupation is being conducted shall comply with all applicable on-street parking restrictions and shall provide additional off-street parking spaces reasonably adequate to accommodate the needs created by the home occupation of not less than one off-street parking space for any home occupation and one additional off-street parking space for each additional 300 square feet of floor area devoted to the home occupation or for each employee, whichever is greater.

Commented [JM60]: Conformity.

- i. Only one operational vehicle that exceeds 22,000 pounds is allowed upon the property and such vehicle cannot be allowed to idle before 7:00 AM or after 7:00 PM.
- j. Maximum of three employees working for the owner of the property in which the home occupation is being conducted.
- k. Washing of vehicles, **excluding personal-use, noncommercial passenger vehicles**, or heavy machinery is not permitted.

Commented [JM61]: PC 12/13/23 [20:00]

(2) Properties within **R-3, C-1, C-2, and MU** zone districts:

- a. Such use shall be conducted entirely within a dwelling and carried on principally by the residents thereof. No dwelling may be used for a home occupation unless it is devoted primarily to residential use.
- b. Such use shall be clearly incidental and secondary to the use of the dwelling for residential purposes, and shall not change the residential character thereof.
- c. The total area used for a home occupation shall not exceed the equivalent of one-half the floor area of the first floor of the dwelling unit.
- d. There shall be no advertising, display, or other indications of home occupation on the premises.
- e. There shall be no on-site **retail sales**.
- f. There shall not be exterior storage on the premises of material used in the home occupation.
- g. There shall not be excessive traffic, significant and frequent truck deliveries, or excessive noise, vibration, smoke, dust, mud, dirt, odors, or glare noticeable at or beyond the property line, as a result of the home occupation. Such conditions shall be considered excessive if they exceed the typical ambient range of variability present in the neighborhood.
- h. There shall not be any additional parking spaces needed for the home occupation above the spaces required for the dwelling unit.
- i. No vehicles over 22,000 pounds are allowed on the property related to the home occupation.
- j. No employee(s) other than those who also reside in the dwelling shall operate out of the property in which the home occupation is being conducted.
- k. Washing of vehicles or heavy machinery is not permitted.

Commented [JM62]: PC 12/13/23 [30:00]

Pampered chef, Mary Kay, etc. are not retail. It is a direct sales model. Retail = you operate a store out of your house where you are the retailer selling goods you stock in your home.

Baking goods are closer, but there is a State exception. Further, there is a distinction between purchase and stock of good for retail sale vs. preparing the good yourself and selling it.

16-11-30. Fences.

The maximum height of any fence or wall shall be:

- (1) Forty-two (42) inches in height for any fence that is located within the required minimum front yard area and six (6) feet in height in any other permitted location within any lot in the R-1, R-2 or R-3 zone district;
- (2) Six (6) feet within any lot in the **MU** zone district;
- (3) Eight (8) feet within any lot in the **C-1, C-2**, I-1, or I-2 zone district; and

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- (4) Eight (8) feet within any lot in the PL zone district, except that fences that are determined by the Board of Trustees to be necessary for the safety and function of any athletic facilities shall not be subject to the height limitations set forth herein.
 - (5) Fence regulations for PD, M-1, and F zone districts are controlled by regulations specific thereto as set forth in this Chapter.

16-11-40. Accessory Dwelling Units.

- (1) *Limited use.* Accessory dwelling units (ADUs) are a limited use subject to the requirements of this section, receipt of an ADU permit from the town, and allowed only on lots with a single-family home within **R-1** residential zone district or within a planned unit development unless prohibited by the PUD.
- (2) *ADU permits.*
 - a. *Permits for new ADUs.*
 - i. An owner of a single-family home in an approved residential zone district may apply for a permit to construct and operate an ADU on the property. Applications must be made in writing on forms provided by the town, submitted to the town planner or his or her duly authorized representative, showing how and in what manner the criteria of this section are met, and must include a statement of current ownership, a legal description of the property, an executed deed restriction as required by subsection 16-11-40(3)(n) in the form provided by the town, and an application fee as set in the Town's Fee Schedule. If the property is not served by the town for water, the applicant must also provide evidence of sufficient water rights to accommodate the additional use created by the ADU. If the property is not served by the town for sewer, the applicant must also provide approval from the Elbert County Health Department that the property has an adequate septic system to serve the additional use created by the ADU.
 - ii. Applications must be submitted concurrently with either the application for a building permit for construction of a detached ADU, or, if the ADU is to be integrated into a new single-family dwelling, with the building permit application for the single-family dwelling unit. A certificate of occupancy will only be granted to an ADU after it has been granted to the primary dwelling unit.
 - iii. ADU permits will be issued administratively by the town planner or his or her designee and may contain conditions designed to minimize the adverse impacts of the proposed use on neighboring properties as determined by the town planner or designee. No notice or public hearing is required prior to issuance of an ADU permit. In determining whether to grant an ADU permit, the town planner or his or her duly authorized representative shall review the completeness of the application, payment of all required fees, and whether the application meets all requirements of this section, and if so, the town planner or his or her duly authorized representative will issue an ADU permit.
 - iv. The town may provide copies of approved ADU permits to emergency service providers, including but not limited to the Elbert County Sheriff, Kiowa Fire

Commented [JM63]: PC 12/13/23 [46:55]
Discussion re: lot size requirement.

Protection District, Elbert County, and the Elbert County Health Service District.

- v. ADU permits for new ADUs automatically expire one year after issuance if the property owner has not received a certificate of occupancy for the ADU.
- vi. ADU permits are only valid for the individual or entity who is the property owner at the time of approval. ADU permits may be transferred to a new property owner, provided the property passes a re-inspection by the town and upon payment to the town of a \$50.00 permit transfer fee. The inspection and transfer fee may be waived if, prior to closing, the town performed a pre-sale inspection and were paid a reinspection fee pursuant to section 16-11-40(4). If the ADU permit is not transferred for any reason within 120 days of closing, the permit shall expire.
- vii. Approval, approval with conditions, or denial of an ADU permit are actions that may be appealed by the property owner to the Planning Commission, and which shall follow the process set forth in 16-11-40(5)(b).

(3) *ADU requirements.*

- a. In addition to the off-street parking provided for the primary residence each property with an ADU shall have a minimum of one dedicated off-street parking space per ADU bedroom, but no more than two total parking spaces dedicated to the ADU. Parking is prohibited on landscaping and yard areas, must be contained within a garage or on a driveway, and must comply with all requirements of the Town Code. If the ADU is in an area where on-street parking is permitted and the property cannot legally accommodate additional off-street parking for the ADU, in lieu of off-street parking the town will issue up to two on-street parking passes for use by residents of the ADU.
- b. No ADU shall be used as a short-term vacation rental of fewer than 30 days.
- c. Only one ADU is allowed on each lot. The ADU may be integrated within the basement or other floor of the single-family home, as a detached structure in the rear or side of the property, or as a unit above an attached or detached garage.
- d. An ADU shall not exceed 800 square feet of gross floor area, or 50 percent of the gross floor area of the primary single-family dwelling unit, whichever is less. For the purposes of this subsection, square footage calculations shall exclude any garage, porch or similar area. This requirement shall not apply to existing ADUs.
- e. An ADU shall not be subdivided or sold separately from the primary dwelling unit.
- f. ADUs are not permitted on lots smaller than 6,500 square feet, regardless of the zone district. This requirement shall not apply to existing ADUs.
- g. The exterior of an ADU shall be similar in appearance to that of the primary dwelling unit, including but not limited to, materials, color, roof pitch and detailing.
- h. Utility service requirements. ADUs may be served through the utility services of the primary dwelling unit or may have separate services. Additional municipal

service fees will be charged for each ADU pursuant to the Town Code. ~~To comply with chapter 8.04 of the Town Code, each ADU must have its own container and pay separate fees for the container and collection and disposal of refuse.~~

- i. Prohibited accessory dwelling units. Mobile homes, travel trailers and recreational vehicles shall be prohibited for use as an ADU.
- j. Building code compliance and declaration of use.
 - i. ADUs shall meet all requirements of this chapter and chapter 18. ~~This requirement shall not apply to existing ADUs that receive an ADU permit pursuant to subsection 16.10.040(b)(2).~~
 - ii. If a new construction or remodel appears to create a new dwelling unit which includes a stovetop, the property owner will be required to obtain an ADU permit even if the owner has no intention of renting the ADU. However, if the area that meets the requirements of an accessory dwelling unit does not include a stovetop, the property owner must sign a declaration of use in a form acceptable to the town which will be recorded with the Elbert County Clerk and Recorder stating that the property may not be used as a separate dwelling unit at any time, and that the unit currently is and will continue to be used only by the occupant of the primary dwelling, or the occupant's immediate family, and not rented separately.
- k. No home occupations shall be permitted in either the primary residence or the ADU.
- l. Owner occupancy. The property owner, as reflected in title records and evidenced by voter registration, vehicle registration or other similar means, must occupy either the primary residence or the ADU. This requirement shall not apply to existing ADUs, unless the property is sold.
- m. Occupancy. No more than two persons per bedroom shall occupy an accessory dwelling unit.
- n. Deed restriction. Upon issuing an ADU permit the town may file with the Elbert County Clerk and Recorder, the signed declaration of restrictions in reference to the deed under which the property was acquired by the present owner stating that:
 - i. The ADU shall not be sold separately from the primary dwelling unit, nor shall the lot on which it is situated be subdivided unless such subdivision is permissible in accordance with all provisions of the Town Code;
 - ii. The ADU shall be restricted to the approved size;
 - iii. The ADU is the only ADU on the property;
 - iv. Home occupations are prohibited in the ADU and in the primary residence;
 - v. The above restrictions run with the land and are binding upon any successor in ownership of the property;
 - vi. It shall be unlawful for any property owner or tenant not to comply with the deed restrictions;

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- vii. The deed restrictions shall lapse upon removal of the ADU. To affect this intent and upon verification of such removal, the town shall record appropriate documentation releasing such encumbrance. The property owner shall pay all required recording fees, and it shall be the property owner's responsibility to ensure that such recording is successfully completed.
- (4) *Pre-sale inspection.* Prior to the sale of any property with an ADU, the owner shall schedule a re-inspection by the town to determine continued compliance with the Code and the ADU and pay a \$50.00 re-inspection fee. An approved inspection shall be valid for a period of 120 days. If no sale has taken place within that time an additional re-inspection shall be required, and the town may charge an additional re-inspection fee.
- (5) *Enforcement.*
- a. *Violations.* The town may investigate violations of this section and violations of conditions of an ADU permit, issue notices, assess fines, and abate violations in the same manner as provided for nuisances and general violations of the Kiowa Municipal Code.
- b. *Revocation of permit.* The town administrator is hereby granted concurrent power and authority to revoke any ADU permit for violation of any regulations of the Town of Kiowa, including violations of this section, or for violations of any of the conditions imposed upon the ADU permit. Written notice will be served on the property owner at the address contained in the permit, setting forth a clear and concise allegation of the violation. If such person does not reside within the Town, service may be made by U.S. Mail, postage prepaid, to the mailing address on file with the county assessor's office. A property owner may appeal to the Planning Commission any decision to revoke or deny an ADU permit. Such appeal must be in writing, submitted to the town clerk within seven days of the decision, and must state the reasons why such permit should not be suspended, revoked, or the application denied. Within 45 days of the submittal of the appeal, the Planning Commission will hold an administrative hearing to determine whether to uphold or overturn the decision. The town clerk will provide the applicant or permit holder with seven days' notice of the time and place of such hearing. After hearing evidence from the property owner and the town planner or designee, the Planning Commission may issue a verbal decision and may thereafter issue written findings which shall be final and conclusive. The Planning Commission may promulgate additional rules and regulations or procedures to govern any such hearing and/or review. The decision of the Planning Commission shall be subject to review by the municipal court by filing a complaint that includes the specific allegations of error no more than 14 days after the final decision by the Planning Commission. The municipal court's review shall be limited to a determination of whether the Planning Commission exceeded his or her jurisdiction or abused his or her discretion, based on the evidence in the record before the Planning Commission. Any appeal of the decision of the municipal court shall be brought in district court as a civil matter pursuant to Rule 106 of the Colorado Rules of Civil Procedure.
- c. *Removal required.* Within 60 days of the expiration or revocation of an ADU permit, no person shall continue to occupy an ADU as a separate dwelling unit

and the property owner shall remove the ADU and return the property to its single-family use status as a single dwelling unit by either:

- i. Removing the kitchen within the ADU and any physical separation between the ADU and the balance of the unit, and obtaining inspection by the town verifying completion of the removal; or
 - ii. Leaving the kitchen within the ADU and removing any physical separation between the ADU and the balance of the unit and obtaining inspection by the town verifying completion. Owner and/or the town shall also sign a declaration of use in a form acceptable to the town planner, which will be recorded with the Elbert County Clerk and Recorder stating that the property may not be used as a separate dwelling unit at any time, and that the unit currently is and will continue to be used only by the occupant of the primary dwelling, or the occupant's immediately family, and not rented separately.
- d. *Limitations on re-application.* Upon revocation of an ADU permit or the failure of the owner of an existing ADU to apply for a permit or to remove an ADU as required by this section, the property owner shall be prohibited from reapplying for an ADU permit for any location within the town for a period of three years following the date of revocation or conviction.

ARTICLE XII – NONCONFORMING USES

16-12-10. Nonconformance.

Certain uses of land and buildings may be found to be in existence at the time of enactment of this Chapter. It is the intent of this Article to allow the continuance of such nonconforming uses.

16-12-20. Alterations and extensions.

No building or use that is nonconforming with the Town Code as of August 12, 1975, shall be expanded in any way that would increase the degree of nonconformance. The following changes or alterations may be made to a nonconforming building:

- (1) Repair to a building that has officially been declared unsafe, to restore such building to a safe condition.
- (2) Maintenance repairs that are necessary to maintain the good condition of the building.
- (3) Any structural alteration that would reduce the degree of nonconformance or change the use to a conforming one.

16-12-30. Discontinuance of Nonconforming Use.

Whenever a nonconforming use has been discontinued for a period of six (6) months, it shall not thereafter be reestablished. Any future use shall be in conformance with the provisions of this Chapter.

16-12-40. Nonconforming lots.

Nonconforming lots on record on August 12, 1975, may be built upon, provided that yard requirements are met. Homes built by January 1, 1975, on lots smaller than permitted shall be deemed conforming.

Commented [JM64]: PC 10/25/23 [32:00] This Article was discussed as Part II document reviewed by PC on this night. In all other documents provided to me, including what Ruth provided, this is in Part III.

16-12-50. Change to a nonconforming use.

Nonconforming use of a building or lot shall be changed to another nonconforming use.

ARTICLE XIII - SPECIAL USE PERMITS

16-13-10. Intent.

In the tables of uses for zone districts, uses may be allowed in the zone district indicated, only upon issuance of a special use permit by the Planning Commission following notice and hearing. The issuance of a special use permit may, in some manner, contradict the purpose and intent of this zoning code. The following criteria shall be used to guide the town administrator or the town administrator's designee or the Planning Commission in determining that the proposed use is appropriate:

- (1) Relation to and effect upon the comprehensive plan generally;
- (2) Effect upon light and air, distribution of population, transportation, water, sewage, schools, parks and other public improvements and requirements;
- (3) Effect upon traffic in the streets, with particular reference to congestion, automotive and pedestrian safety and convenience, traffic flow and control, including control and flow of traffic entering public streets from private property, access and maneuverability and removal of snow from the streets under circumstances of heavy accumulation;
- (4) Effect upon the character of a particular zoning district, including the effect upon characteristic use within such district, and the characteristic physical attractiveness of such district, its architecture and landscaping;
- (5) Effect upon the value of existing buildings and improvements;
- (6) The appropriateness of the proposed use in relation to the land uses generally throughout the town;
- (7) Complete list of the names and mailing addresses of adjacent property owners within 300 feet of subject property required to be notified of the hearing on the application for special use permit;
- (8) Whether the granting of the application would amount to granting to the applicant a special favor not available to other persons; and
- (9) The possible adverse effect of approval or denial as a precedent in future cases.

16-13-20. Process, submittal requirements and procedures.

The form of application, submittal requirements and procedures for an application for a special use permit are available from the town for the Town of Kiowa.

A person proposing a use which requires a special use permit shall submit a written application to the town specifying or including:

- (1) The name and address of the applicant;

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- (2) The legal description and street address of the subject property.
 - (3) That the applicant is the owner of the subject property or has the written permission of the owner (copy to be enclosed), to make the application.
 - (4) The nature of the proposed use for which a special use permit is required by this zoning code, fully describing the intended use of the property;
 - (5) An appropriate number of 11-inch by 17-inch reductions of the site plan as determined by the town;
 - (6) Unless services are already being provided to the property, letter(s) from the appropriate utility service providers and fire district stating the availability to serve the proposed use;
 - (7) Complete list of the names and mailing addresses of adjacent property owners within 300 feet of subject property required to be notified of the hearing on the application for special use permit;
 - (8) Pay fee to the Town of Kiowa as set forth in fee schedule; and
 - (9) Additional information may be requested by the town as appropriate to the particular application, or portions of the information required above may be waived by the planning director if it is deemed to be inappropriate to the particular application.

16-13-30. Screening requirements for outside storage by special use permit.

Outside storage is prohibited, except in the I-1, I-2, and PL-1 zone districts but only if approved by special use permit and when the following conditions are met:

- (1) Screening means the physical obstruction or impedance of view from outside the property through the methods specified in this section.
- (2) Screening of outside storage is required along all street frontage sides, bike paths, or pedestrian trails, and along property lines with adjacent properties that are not within the same zone district.
- (3) If the entire property is not used for outside storage, only those areas used for outside storage must be screened.
- (4) Screening must be achieved either with fencing, landscaping, wall materials, or a combination that reaches a minimum height of six feet;
 - a. Fence material must be chain link fence with privacy slats comprised of metal, plastic, PVC, or other rigid synthetic material in earth tones of beige, brown, green, or black color;
 - b. Wood and decorative concrete fences are permitted in earth tones of beige, brown, green, or black color;
 - c. Fencing or wall materials shall be repaired and maintained as needed to maintain the screening as to not provide gaps, sections which hang off the fence, or conditions in which the screening method is not reasonably functioning as intended;
 - d. Privacy/windscreen mesh material may not be used;

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- e. Any properties using privacy/windscreen mesh material prior to January 30, 2024, may retain it until the screening does not achieve the physical obstruction or impedance intended by section 16-13-30(1). Once screening no longer functions as intended, the requirements of section 16-13-30(4) shall be in effect;
 - f. Screening by landscaping may accomplish the height requirement of section 16-13-30(4), with or without a berm, but must include trees and, or shrubs planted in a linear or a staggered (zipper) planting arrangement. Boulders may also be incorporated as a screening element. Landscaping shall be maintained by irrigation and must be replaced if it becomes damaged, diseased, or infested and cannot be treated, or if a tree or shrub dies. Only tree and shrub species that are native to the area are permitted; other species providing similar year-round screening may be considered if the applicant provides thorough information on the species of interest, planting locations, and maintenance plan and are approved through the special use permit. The special use permit shall include a detailed landscaping plan showing location, species type, species height, number of trees and shrubs, berm dimensions, and other relevant information about the site. Approved native tree and shrub species are listed below:
 - i. Rocky Mountain Juniper/Red Cedar with trunks a maximum of ten feet apart;
 - ii. Green Giant or Emerald Green Arborvitae with trunks a maximum of ten feet apart;
 - iii. Other native examples include the Colorado Spruce, Pinon Pine, Ponderosa Pine, Sage Brush, or other similar native tree or shrub species;
 - iv. Distances between alternatively suggested vegetation must be within reason and meet the intent of section 16-13-30(1) in providing screening;
 - g. Combinations of fencing materials and landscaping may be used,
 - h. If an applicant would like to propose alternative screening options not specifically permitted by this Section, such as fence materials, fence designs, other landscaping species, or more creative options to achieve the purposes of screening, the applicant may submit design plans to be considered by the Planning Commission at no additional cost to the applicant.
 - i. Any alternate species proposed must be native to the area. It must be demonstrated that the species will grow at a rate similar to that of the approved species and never demand more water than the property has the right to use for landscaping;
 - ii. Any screening method proposed must, within reason, accomplish the intent set out by section 16-13-30(1).

16-13-40. Action by town administrator or designee, special use permit.

A special use permit must be obtained prior to initiating certain uses as noted in the table of uses for various zone districts contained herein, or before initiating a use which imposes no greater impacts on the need for services and adjacent properties and is consistent with a permitted use, but which is not listed as a permitted use in the tables of uses. Special use permits shall be issued administratively by the town administrator or the town administrator's designee and may contain

conditions designed to minimize the adverse impacts of the proposed use on neighboring properties as determined by the town administrator or the town administrator's designee. No notice or public hearing is required prior to issuance of a special use permit.

The town administrator or the town administrator's designee shall act to grant or deny an application for a special use permit within 30 days of the receipt of the application by the town. The applicant shall be notified in writing of approval or denial of the application. If the application is denied, the reasons for denial shall be set forth in the notice. Upon approval, a special use permit will be issued with any conditions as determined by the town administrator or the town administrator's designee and will become effective upon the signature of the permittee and the town administrator or the town administrator's designee.

Special use permits shall be permanent upon completion of the proposed use. However, if the proposed use is not completed within one year from the date of issuance of the special use permit, the special use permit shall become null and void and of no effect, except the town administrator or the town administrator's designee may extend the expiration date for a period of no more than one year upon good cause being shown in writing for failure to complete the use as proposed. Any such extension so granted shall be in writing. Any fees paid to the town, other than the application fee, in conjunction with the issuance of the special use permit which is null and void may be returned or refunded as determined by the town administrator. Any special use permit issued under the terms of this Article shall become null and void at the expiration of one year after the use for which it is issued shall have been discontinued.

Approval, approval with conditions, or denial of a special use permit are actions that may be appealed to the Planning Commission which shall follow the same process for an appeal set forth in Article XXII of this Chapter.

16-13-50. Action by Planning Commission, special use permit.

A special use permit may be obtained from the Planning Commission, following notice and a public hearing, to undertake a use so enumerated as requiring a special use permit as set forth in this Chapter. A special use permit may only be granted upon a showing that the proposed use will not adversely affect neighboring parcels in a manner the commission finds to be unreasonable. Special use permits may be issued by the Planning Commission, following notice and a public hearing, recommendations, if any, of the town to grant or deny the application, and may contain conditions necessary or appropriate to prevent adverse effects on neighboring properties.

At the staff's discretion, a special use permit may also be required prior to initiating a use which is not listed as a permitted use in the table of uses. When a special use permit is so required, final approval and the grant of such special use permit shall require approval of the Board of Trustees upon the recommendation of the Planning Commission after a public hearing before the Planning Commission, or the Board of Trustees may deny the special use permit or approve it with conditions, all after consideration of the criteria set forth in section 16-13-10.

The public hearing before the Planning Commission shall be scheduled not less than 30 and not more than 60 days after receipt of the application for special use permit by the town. Notice of the public hearing shall be published once at least ten days prior to the date of the hearing in a newspaper of general circulation within the town. The parcel for which such special use permit is

sought shall be posted by sign at least ten days prior to the date of the public hearing and continuously through the date of the public hearing. Such notice shall also be mailed by first class United States mail, postage prepaid to the applicant and to adjacent property owners as such owners; names and addresses may appear in the tax records of the town or Elbert County at least ten days prior to the date of the public hearing. Notice shall be given by inclusion in the agenda of the Planning Commission at which the application shall be heard. The names and addresses of the adjacent property owners required to be notified shall be determined by the applicant and such information shall be submitted to the town with the application.

The Planning Commission may table an application for 30 days after the hearing for further information or consideration or the commission may continue the hearing to a specific date and time for receipt of additional information and for consideration of that information by the commission. The Planning Commission shall grant or deny the application for special use permit by resolution after consideration of the criteria set forth in section 16-13-10 and only after finding that granting the application will not cause a material adverse effect on the neighborhood involved or on the town; does not frustrate the general goals of the comprehensive plan and the zoning code; and does not give the applicant a special favor not available to others in the community. In granting any special use permit, the commission may impose conditions necessary or appropriate to prevent or mitigate adverse effects on neighboring properties. The determination of the Planning Commission to grant or deny the application for special use permit shall be final, and any appeal of the decision shall be to the Board of Trustees; see section 16-22-70.

Special use permits may be temporary or permanent. The applicant shall be notified in writing of approval or denial of the application. If the application is denied, the reasons for denial shall be set forth in the resolution. Upon approval, a special use permit will be issued with any conditions as determined by the commission and will become effective upon the signature of the permittee and the chair of the Planning Commission.

Special use permits shall be permanent upon completion of the proposed use. However, if the proposed use is not completed within one year from the date of issuance of the special use permit, the special use permit shall become null and void and of no effect, except the Planning Commission may extend the expiration date of the permit upon good cause being shown for failure to complete the use as proposed. Any fees paid to the town, other than the application fee, in conjunction with the issuance of the special use permit which is null and void may be retained or refunded as determined by the Planning Commission. Any special use permit issued under the terms of this Article shall become null and void at the expiration of one year after the use for which it is issued shall have been discontinued.

Temporary special use permits shall not be granted for a term of more than one year and an expiration date shall be specified when the permit is issued. A temporary special use permit shall not be renewed or extended beyond its expiration date. A new temporary use permit may be issued upon a new application after notice and a public hearing as provided herein.

16-13-50. Enforcement.

The Planning Commission is hereby granted concurrent (see section 16-22-60) power and authority to suspend or revoke any special use permit for violation of any regulations of the town or for violation of any of the conditions imposed upon the special use permit. Upon receipt of

notice of a violation, the Planning Commission shall cause written notice to be served on the permittee, or that person successors or assigns, at the address contained in the permit, setting forth a clear and concise allegation of the violation and directing the permittee, or that person successors or assigns, to appear at a date and time certain before the commission not less than ten days nor more than 30 days after the date of service of the notice of violation. If such person does not reside within the town, service may be made by certified mail, return receipt requested.

The Planning Commission shall hold a hearing to determine the nature and extent of the alleged violation and shall have the power, on good cause being shown to cancel, suspend or revoke the special use permit or special use permit theretofore issued to the permittee, or to require corrective measures to be taken, or to direct the town or its agents to enter onto the premises and to take the corrective measures required by the commission, the costs of such corrective measures completed by the town to be assessed against the permittee, or that person successors or assigns, and the property for which the permit was issued.

16-13-60. Unlawful acts.

- (1) It shall be unlawful for any person to violate any of the provisions of this Article.
- (2) It shall be unlawful for any person to use any land, building or structure for any purpose for which a special use permit or special use permit is required by any of the provisions of this zoning code, without first obtaining such permit. If found in violation, in addition to any fine that may be imposed in the municipal court, violators shall also be responsible for court fees and attorney fees incurred by the town in bringing any enforcement action.
- (3) It shall be unlawful for any person, while any special use permit or special use permit is null and void for failure to complete the proposed use, canceled, suspended or revoked, to use any land, building or structure for any purpose for which such a permit is required by the provisions of this zoning code. If found in violation, in addition to any fine that may be imposed in the municipal court, violators shall also be responsible for court fees and attorney fees incurred by the town in bringing any enforcement action.

ARTICLE XIV - VARIANCES

16-14-10. Authority.

The Planning Commission shall have the power to grant variances from the requirements of the zoning code in respect to any use, building or structure classified under Articles IV, V, VII, XI, and XV of this Chapter. No variance may be granted to permit a use not otherwise permitted in the applicable zone district, except that a variance may be granted to permit a use that is limited by a PUD and which would otherwise be permitted by this zoning code in the corresponding zone district. Variances shall be granted only in cases of unusual hardship which are not self-imposed, as provided in this Article.

Commented [JM65]: PC 12/13/23 [50:00] Change from Board of Adjustment.

Commented [JM66]: Use variances should only be granted by the BOT. Variances to setbacks, height restrictions, and such can go to the PC.

16-14-20. Application—Required.

A person desiring a variance shall submit a written application to the town for determination by the Planning Commission, specifying:

- (1) The name and address of the applicant;

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- (2) The legal description and street address of the subject property;
 - (3) That the applicant is the owner of the subject property or has the written permission of the owner (copy to be enclosed), to make the application;
 - (4) The nature of the proposed use, or other item proposed, which is not permitted by this Chapter;
 - (5) The nature of the hardship which would be created by a strict interpretation of this Chapter;
 - (6) The justification for the applicant being granted a variance;
 - (7) An appropriate number of 11-inch by 17-inch reductions of the site plan as determined by the town shall be submitted in an electronic format acceptable to the department, together with one (1) paper copy of the site plan for the file;
 - (8) Letter from the appropriate utility providers and fire district stating the availability to serve the proposed use;
 - (9) Complete list of the name and mailing addresses of adjacent property owners within 300 feet of subject property required to be notified of the hearing on the application for variance;
 - (10) A fee in the amount set forth in the Town's Fee Schedule shall be tendered by check with the application submitted to the town (check made payable to the Town of Kiowa);
 - (11) Additional information may be requested by the town as appropriate to the particular application, or portions of the information required above may be waived by the town administrator or the town administrator's designee if it is deemed to be inappropriate to the particular application.

16-14-30. Application—Hearing and review.

The public hearing on the application for variance before the Planning Commission shall be scheduled not less than 30 and not more than 60 days after receipt of the application for variance by the town. Notice of the public hearing shall be published once at least ten days prior to the date of the hearing in a newspaper of general circulation within the town. The parcel for which such variance is sought shall be posted by sign at least ten days prior to the date of the public hearing and continuously through the date of the public hearing. Such notice shall also be mailed by first class United States mail, postage prepaid to the applicant and to adjacent property owners as such owners' names and addresses may appear in the tax records of the town or Elbert County at least ten days prior to the date of the public hearing. Notice shall be given by inclusion in the agenda of the Planning Commission at which the application shall be heard. The names and addresses of the adjacent property owners required to be notified shall be determined by the applicant and such information shall be submitted to the town with the application.

In reviewing and considering an application for variance, the Planning Commission shall consider the following factors:

- (1) Relation to and effect upon the comprehensive plan generally;
- (2) Effect upon light and air, distribution of population, transportation, water, sewage, schools, parks and other public improvements and requirements;

Commented [JM67]: PC 12/13/23 [53:00]
Discussion re: publication of certain notices in a place other than a newspaper.

Is Ranchland News sufficient if it is no longer circulated?

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- (3) Effect upon traffic in the streets, with particular reference to congestion, automotive and pedestrian safety and convenience, traffic flow and control, including control and flow of traffic entering public streets from private property, access and maneuverability and removal of snow from the streets under circumstances of heavy accumulation;
 - (4) Effect upon the character of a particular zoning district, including the effect upon characteristic use of such district, and the characteristic physical attractiveness of such district, its architecture and landscaping;
 - (5) Effect upon the value of existing buildings and improvements;
 - (6) The appropriateness of the proposed use in relation to the land uses generally throughout the town;
 - (7) The advisability of any imposition of conditions it finds necessary for the protection of the community or the immediate neighborhood from adverse effects of the use or building involved;
 - (8) The cause, uniqueness and severity of the hardship claimed by the applicant;
 - (9) Whether the granting of the application would amount to granting the applicant a special favor not available to other persons;
 - (10) The possible adverse effect of approval or denial as a precedent in future cases;
 - (11) Alternative variances which deviate less from the strict requirements of this Chapter.

16-14-40. Action by Planning Commission.

- (1) The Planning Commission may table an application for variance for 30 days after the public hearing for further information or consideration or the commission may continue the hearing to a specific date and time for receipt of additional information and for consideration of that information by the commission. Except in unusual circumstances, or during the time an applicant is obtaining additional information requested by the commission, an application for variance shall not be tabled longer than 30 days after its first hearing.
- (2) The Planning Commission shall grant or deny an application for variance by resolution. The Planning Commission may grant a variance only after consideration of the factors listed in section 16-14-30, and only after finding that the granting of the variance:
 - a. Will not cause a material adverse effect on the neighborhood involved or on the town;
 - b. Does not frustrate the general goals of the comprehensive plan and the zoning code;
 - c. Is justified because of any unusual hardship imposed on the subject property by a strict interpretation of this zoning code, which hardship is not the fault of the applicant or his predecessors in interest in the subject property;
 - d. Does not give the applicant a special favor not available to others in the community.

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- (3) In granting any variance, the Planning Commission may impose conditions for the reasonable protection of the immediate neighborhood from adverse effects of the building or use involved.
 - (4) The applicant shall be notified in writing of approval or denial of the application. If the application is denied, the reasons for denial shall be set forth in the resolution. Upon approval, a variance in written form shall be issued with any conditions as determined by the Planning Commission and shall become effective upon the signature of the permittee and the chair of the Planning Commission.
 - (5) Any variance granted by the Planning Commission shall be permanent upon completion of the proposed use or other action proposed by the applicant. However, if the proposed use or action is not completed within one year from the date of issuance of the variance, the variance shall become null and void and of no effect, except the Planning Commission may extend the expiration date of the variance in writing upon good cause being shown in writing by the applicant for failure to complete the use or take the action as proposed. Any variance issued under the terms of this Article shall become null and void at the expiration of one year after the use for which it is issued shall have been discontinued.
 - (6) Any decision to grant or deny an application may be appealed to the Board of Trustees as provided in section 16-22-70.

ARTICLE XV – SIGN CODE

16-15-10. Sign regulations.

- (1) Signs shall be permitted in the various zone districts as accessory uses in accordance with the regulations contained in this Article.
- (2) The primary goal of these regulations is to protect the health, safety, and welfare of the public by ensuring that signs are safely constructed, located, and maintained to prevent hazards and nuisances.
- (3) Generally, signs in the Town:
 - a. Must be designed and located so that it does not obstruct visibility for traffic or create confusion with traffic control devices, and it shall not pose a danger to motorists, pedestrians, or cyclists by impairing visibility;
 - b. Should avoid visual clutter and maintain the rural charm and aesthetic quality of the Town;
 - c. Be well-designed and contribute to the property values and appeal of the surrounding area;
 - d. Be permanently affixed to the ground, building, or other structure, unless the sign meets the requirements of being a temporary sign as set forth in this Article; and
 - e. Not be a prohibited sign, as set forth in this Article.

16-15-20. Prohibited signs.

The following types of signs are prohibited in all zone districts:

Commented [JM68]: PC 12/13/23 [1:23:00] Kim wants something to handle the commercial signs that are being put up. Such as permits and stickers and limits on signs.

Commented [JM69]: PC 1/3/24 [2:57] Adoption of Elizabeth sign code.

Commented [JM70]: Ord. 2025-11, Section D, has been incorporated herein.

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- (1) Signs that revolve, rotate or have any other mechanical motion;
 - (2) Signs that are designed to use strobe lights, flashing, or display animations, including electronic message boards;
 - (3) Signs larger than fifteen (15) square feet with flashing or variable lights;
 - (4) Signs with searchlights, inflatable signs, and any other type of temporary feature intended solely to attract attention;
 - (5) Signs that make noise;
 - (6) Signs that obstruct visibility of traffic or pedestrians, create confusion with traffic control devices, or present a safety hazard;
 - (7) Business signs for businesses that are not licensed to do business in the boundaries of the Town of Kiowa, except when a temporary permit has been obtained from the Town; and
 - (8) Off-premises signs, portable signs, temporary signs, banners or pennants, except as allowed under these regulations for special events or a temporary sign permit.

16-15-30. Nonconforming signs.

- (1) Defined. A nonconforming sign is any sign which on the effective date of the ordinance codified in this Article was lawfully maintained and had been lawfully erected in accordance with the provisions of this Code then in effect, but which sign does not conform to the limitations established by this Article.
- (2) Continuance of nonconforming sign. Subject to the provisions of subsection (3) below, any nonconforming sign lawfully existing at the time of adoption of this Article may be continued in operation and maintained after the effective date of the ordinance codified herein, provided that no such sign shall be changed in any manner that increases the noncompliance of such sign.
- (3) Termination. Any nonconforming sign that has been damaged in excess of fifty percent (50%) of its replacement cost shall not be restored except in conformance with the provisions of this Article. Nonconforming temporary signs are not eligible for the renewal of a temporary sign permit.

16-15-40. Permit required – Permanent Signs.

- (1) The erection or replacement of any permanent sign larger than ten (10) square feet shall require a permit from the Town.
- (2) Sign permits shall be issued administratively by the Town staff. Sign permit applications shall be accompanied by detailed drawings indicating the dimensions, location and engineering of the particular sign and site plans when applicable. Sign permit fees shall be established by the Board of Trustees.

16-15-50. Residential signs.

Signs permitted in residential zone districts shall be limited to the following types and sizes of signs accessory to any residential use:

- (1) One (1) identification sign per dwelling unit, single- or double-faced, provided that such sign does not exceed two (2) square feet in area per face;

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- (2) One (1) identification sign per two-family or multi-family building, wall-mounted, provided that such sign does not exceed ten (10) square feet in face area;
 - (3) One (1) "for sale" or "for rent" sign per dwelling unit or lot, single- or double-faced, provided that such sign does not exceed ten (10) square feet in area per face and is unlighted;
 - (4) Project identification signs during the construction of a development, provided that the placement and use of all such signs shall be subject to the following limitations:
 - a. The maximum size for project identification signs shall be forty (40) square feet in area per face, single- or double-faced.
 - b. All such signs shall be located within the development and must be located along streets adjacent to or within the development and subject to the following limitations:
 - i. No more than one (1) such sign shall be permitted on any single boundary of the development.
 - ii. Signs may not be internally illuminated.
 - iii. Signs may not exceed six (6) feet in height.
 - c. Project identification signs must be removed when the development sales office closes.
 - (5) One (1) community identification sign per vehicular entrance to the development identifying a subdivision or housing project, provided that such sign does not exceed twenty (20) square feet in area per face (single- or double-faced), does not exceed six (6) feet in height and is not internally illuminated.

16-15-60. Public and semipublic use signs.

Signs permitted in non-residential zone districts shall be limited to the following types and sizes of signs accessory to any public or semipublic use: one (1) identification sign per building for a public or semipublic use, provided that such sign does not exceed thirty-six (36) square feet in area per face (single- or double-faced), is wall-mounted or does not exceed six (6) feet in height.

16-15-70. Commercial signs.

Signs permitted in the commercial zone districts, and for the commercial use component, shall be limited to the following types and sizes of signs accessory to any commercial use:

- (1) One (1) freestanding identification sign on each street frontage of the lot, provided that such sign does not exceed forty (40) square feet in area per face (single- or double-faced) and does not exceed twenty-five (25) feet in height. The sign must be placed within thirty (30) feet of the street right-of-way.
- (2) One "for sale" or "for rent" sign per each four hundred (400) feet of the lot's street frontage, provided that each sign does not exceed forty (40) square feet in area per face (single- or double-faced).
- (3) Tenant or building wall signs, including window signs, with the following limitations:

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- a. For the first one hundred (100) feet in length for an individual exterior building wall, the maximum sign area permitted on that wall shall be equal to three-quarters (0.75) of a square foot of sign area for each linear foot of exterior building wall length that the sign is placed on.
 - b. For any building with an individual exterior wall longer than one hundred (100) feet, the maximum sign area permitted on that wall shall be equal to seventy-five (75) square feet, plus an additional one-quarter (0.25) square foot of sign area for each linear foot of exterior building wall length over one hundred (100) feet.
 - c. Building-mounted signs must be placed on a building wall that is oriented toward the street or parking area.

16-15-80. Measurement of sign face area.

The sign face area shall be calculated as follows:

- (1) Where the letters or identification elements are mounted onto, cut out of, painted on or otherwise affixed to a background or panel, the size of the sign shall be calculated as the rectangular area encompassing the entire background, panel or framed area.
- (2) Where letters or identification elements are individually mounted on a building surface, the size of the sign shall be calculated as the rectangular area encompassing the perimeter of the entire message.

16-15-90. Canopy or awning signs.

Signs that are affixed to, mounted on or printed onto a building canopy, shed roof or awning are considered wall signs and subject to the wall sign limitations for the wall onto which the canopy, roof or awning is affixed.

16-15-100. Temporary Signs

- (1) *Definition.* Under this Article, a temporary sign is any sign used for the purpose of identifying or advertising a business, profession, or other establishment, that is not permanently attached or fixed to the ground, a building, or a permanent structure. Temporary signs include, but are not limited to, portable signs, pennants, feather banners, sock signs, banners, and sandwich boards.

- (2) *Special events*

Temporary signs, including off-premises signs, are allowed in any zone district for the purpose of advertising an upcoming special event. Special events include community events and fairs; public elections; garage sales; sidewalk sales; and church, club or school-sponsored events.

These signs are permitted provided that they do not cause a safety hazard, they remain in good condition and they are not a nuisance to the public. The signs must be removed immediately following the conclusion of the event that they are advertising.

Special event signs shall not be allowed more than thirty (30) days before the scheduled special event.

- (3) *Temporary Business Signs.*

- a. *Eligibility for Temporary Signs*

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- i. Temporary signs may only be placed by licensed business located within the Town of Kiowa.
 - ii. Temporary signs may only be placed by business operating temporarily, such as contractors within the Town of Kiowa, who have obtained an approved business license and permit. As such, contractors can only place the signs where they are conducting business/work.
 - iii. Businesses operating outside of the Town limits of Kiowa are prohibited from placing temporary signs within the Town.
- b. Permitted Number and Duration:
- i. A business may display two (2) temporary signs per calendar quarter.
 - ii. The sign may remain on the property for a maximum of sixty (60) consecutive days within the calendar quarter.
 - iii. One (1) standard-sized sandwich board sign is allowed daily during business hours, provided it is removed after business hours and does not obstruct nor impair access to a public sidewalk.
- c. Size and Location Restrictions:
- i. Temporary signs shall not exceed eight (8) feet in height.
 - ii. The total area of a temporary sign shall not exceed thirty-two (32) square feet.
 - iii. Temporary signs must be displayed only on the private property of the business and must not extend beyond the boundaries of that property.
- d. Maintenance and Safety:
- i. All temporary signs must be maintained in good condition, free from rips, tears, or other physical damage, and securely fastened.
 - ii. Temporary signs must not cause noise or movement that may be disruptive to the surrounding area.
 - iii. Temporary signs must not be a prohibited sign under Section 16-15-20.
 - iv. The business owner shall be responsible for the removal of any temporary sign upon the expiration of the permitted timeframe or the end of the sixty (60) day period.
- (4) Permit requirement:
- a. An annual temporary sign permit shall be required for the placement of temporary business signs.
 - b. Only one (1) temporary sign permit may be issued per business establishment per calendar year.
 - c. The permit will grant two (2) temporary signs per calendar quarter, per property.
 - d. The owner must notify the Town by email when each temporary sign will be displayed.
 - e. There shall be an administrative fee for processing temporary sign permits, as set forth in the Town' fee schedule adopted by the Board of Trustees.

16-15-110. Enforcement

- (1) The Town of Kiowa reserves the right to inspect any sign to ensure compliance with the provisions of this Article.
- (2) Violation and Penalties: Any business owner found in to be in violation of this Article shall be subject to the removal of the sign and potential revocation of the sign permit.
- (3) Notice of Violation: A written notice will be provided to the business owner and provide a period of five (5) calendar days to correct a violation. After five (5) calendar days, the sign violation may be removed by the Town at the business owner's expense.

Part IV

ARTICLE XVI - SPECIAL EVENTS PERMITS

16-16-10. Consent to use Town property.

Consent of the town is required to use any town **park, recreational property or other properties** and facilities owned or operated by the town, except as otherwise permitted by the Kiowa Municipal Code and rules or regulations associated with such property. In evaluating any request to use a town property or facility, the town shall determine whether such use shall be allowed only pursuant to a special events permit.

Commented [JM71]: PC 12/13/23 [1:05:16]
Discussion on whether or not use of the town park by a group of persons should fall under a special event permit.

Commented [JM72]: PC 12/13/23 [1:11:30]
Discussion occurred, but no final decision.

16-16-20. Special events permits.

A special events permit granted pursuant to this Article is required in advance for all events **occurring on or after June 1, 2009, which** **that** are held on or in town parks, recreational properties or other properties and facilities owned or operated by the town where the activities or uses associated with the event:

- (1) Are not allowed by the applicable zoning, or a special use permit or zoning variance; or
- (2) Would otherwise violate the Kiowa Municipal Code; or
- (3) Are determined by the town when evaluating the request to use the town property or facility to require special conditions to mitigate the anticipated impacts from the special event on adjacent property, the neighborhood, and the public.

16-16-30. Special events permit holder rights.

A special events permit shall allow the permit holder to conduct the event for the time period, activities and uses specified in the permit, subject to compliance with the conditions of the permit. A special events permit shall be valid for a specific period of time, not to exceed 120 days, and shall not be transferable.

16-16-40. Application procedure.

Applications for a special events permit shall be submitted to the Town Administrator or designee no later than 60 days prior to a proposed special event. No more than one special events permit application shall be required for any organized special event, such as a festival, involving more than one activity or site or held for a duration of more than one day or for a series of periodic, related events, so long as the application is otherwise complete as to each such activity, site, occurrence or time period.

- (1) The Town Administrator or designee shall refer the application for comments to other departments or agencies, as determined by the Town Administrator or designee to be appropriate.
- (2) The Town Administrator or designee shall determine whether to approve, approve with conditions, or deny the special events permit application.
- (3) The town shall publish notice of a decision to approve or deny a special events permit at least 30 days prior to a proposed special event.

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- (4) Any person alleged to be negatively affected by the granting or denial of a special events permit application may file with the Town Administrator or designee a written appeal of the decision within seven days after notice of the decisions is published. The Board of Trustees shall hold a hearing to consider the appeal upon not less than three days notice to the applicant and the person filing the appeal. An administrative appeal to the Board of Trustees is a requirement of any judicial challenge or appeal to the approval or denial of a special events permit, any of the permit conditions or the holding of the event based on the terms of an approved permit.

16-16-50. Grounds for approval or denial.

- (1) A special events permit application shall be approved by the Town Administrator or designee if, based on conditions and requirements imposed upon the permit, it meets all of the following criteria:
- a. The applicant has obtained permission to use all properties or facilities associated with the special event.
 - b. The proposed special event will not be detrimental to property or improvements in the surrounding area or to the public health, safety or general welfare.
 - c. The particular location requested can reasonably accommodate the special event, given the proposed nature, size, or duration of the event.
 - d. The applicant complies with any other required approvals, conditions or permits.
 - e. The proposed special event shall not create an unreasonable risk of:
 - i. Significant damage to public or private property;
 - ii. Injury to persons;
 - iii. Public or private nuisances;
 - iv. Unsafe impediments or distractions to, or congestion of, vehicular or pedestrian travel; or
 - v. Unduly burdensome police, fire, trash removal, maintenance, or other public service demands.
 - i. The time and location for the proposed special event is not already permitted or reserved for other activities.
 - j. The applicant has provided sufficient proof of liability insurance to reasonably cover any potential claims that could arise as from the special event, the policy for which shall name the town as an additional insured.
 - k. The applicant shall agree to indemnify and hold the town harmless for any and all claims and liabilities arising from the special event.
- (2) Prior approval of a special events permit shall not be grounds for requiring a permit to be issued for any other event requested to be held by the same applicant, or any subsequent occurrence of the same or similar event.
- (3) Failure of an applicant to conduct a previous event in compliance with applicable laws, regulations or permit conditions shall be a basis of denial of a special events application.

16-16-60. Conditions and restrictions.

- (1) The following restrictions shall apply to all special events permits:
 - a. Permanent alterations to the site inconsistent with applicable zoning are prohibited.
 - b. Permanent signs are prohibited. All approved temporary signs associated with the temporary use shall be removed when the activity ends.
 - c. Except for variances or exceptions specifically allowed by the special events permit terms, which may include but not be limited to exceptions to requirements or limitations regarding zoning, noise, curfew and operation of vehicles and movement of pedestrians, the special event shall be conducted in compliance with all provisions of the Kiowa Municipal Code and applicable local, state and federal laws and regulations.
- (2) In approving special events permits, the Town Administrator or designee may impose such conditions reasonably necessary to reduce or minimize potential unreasonable adverse impacts upon the health, safety, convenience or general welfare of the citizens of the town. The Town Administrator or designee shall consider characteristics of the proposed event including but not limited to the frequency, duration, hours and days involved in the special event, the number of persons attending, and the number of properties and persons affected. Significant, frequent impacts of long duration between the hours of 11:00 p.m. and 7:00 a.m. that are specific to one or a small number of properties or persons, shall require greater consideration of mitigating conditions than impacts of less significance, frequency and duration occurring between 7:00 a.m. and 11:00 p.m. that are general to large neighborhoods or the town or the public as a whole.
- (3) Permit conditions may include, but are not limited to, the following:
 - a. Requirements for adequate parking.
 - b. Requirements for adequate pedestrian and vehicular access and egress.
 - c. Requirement for adequate emergency services access.
 - d. Requirements for adequate traffic control.
 - e. Limits on lighting, sound volume, noise, vibrations, smoke, dust, dirt, odors, gases and heat.
 - f. Regulation of temporary buildings, structures, and facilities, including placement, height and size, location of equipment and open spaces, including buffer areas.
 - g. Provision of sanitary facilities.
 - h. Provision of solid waste collection and disposal.
 - i. Requirements of trash and debris clean up at the site of the special event and any other public or private property potentially impacted by the special event.
 - j. Provision of security and safety measures.
 - k. Provision of emergency services, including emergency medical services.

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- l. Modification or elimination of certain proposed activities that may have unmitigated and unreasonable adverse impacts.
 - m. Limitations on the duration, days and hours of public or private attendance at the special event.
 - n. Limitations on the duration, days and hours of set up, tear down and clean up for the special event.
- (4) Submission of a performance bond or other financial guarantee to ensure that any temporary facilities or structures used for such proposed temporary use will be removed from the site within a reasonable time following the event and that the property will be restored to its former condition.
- (5) The Town Administrator or designee may temporarily suspend any special events permit and order a special event to discontinue operations for violation of the terms of this Article or the terms or conditions of the permit. The provisions of this Article and terms and conditions of any special events permit may be enforced by an action brought in the municipal court, which shall have the power to revoke any special use permit and impose fines and penalties as provided generally for violations of the Kiowa Municipal Code.

Article XVII - MEDICAL MARIJUANA

16-17-10. Definitions.

The following words, terms and phrases when used in the Article shall have the following meanings unless the context clearly indicates otherwise:

Medical marijuana, medical marijuana center, medical marijuana infused product, optional premises, and optional premises cultivation operation, shall have the same meanings as set forth in the Colorado Medical Marijuana Code, Article 43.3, C.R.S., as the same may from time to time be amended.

Patient shall have the same meaning as set forth in Article XVIII, Section 14(1) of the Colorado Constitution.

Primary caregiver shall have the same meaning as set forth in Article XVII, Section 14(1) of the Colorado Constitution and Section 25-1.5-106 C.R.S.

16-17-20. Findings.

The Board of Trustees makes the following findings:

- (1) The Colorado Medical Marijuana Code, C.R.S. Section 12-43.3-1041, et seq., clarifies Colorado law regarding the scope and extent Article XVII, Section 14 of the Colorado Constitution.
- (2) This Article is necessary to protect and is enacted in furtherance of the public health, safety and welfare of the town.
- (3) This Article is intended to apply and shall apply to all property, businesses and business enterprises operating within the town, whether stationary, mobile or virtual.

16-17-30. Uses prohibited.

- (1) It is unlawful for any person to operate, cause to be operated or permit to be operated a medical marijuana center, an optional premises cultivation operation or a medical marijuana-infused products manufacturing facility in the town.
- (2) Medical marijuana centers, medical marijuana-infused products manufacturers and optional premises cultivation operations may not be operated as a primary land use, or as an incidental activity to another lawful land use, or as a home occupations.
- (3) It is unlawful for any person who is not registered as a patient or primary caregiver pursuant to 25-1.5-106 C.R.S to cultivate or sell medical marijuana within the town. Any person cultivating or selling marijuana in violation of this Article and Section 25-1.5-106 C.R.S shall not be entitled to the affirmative defense provided in Section 14 of Article XVII of the Colorado Constitution.

Commented [JM73]: Too broad? Home cultivation for private use is protected.

CRS 18-18-406(3)
Colo. Const. Art. XVIII, Sec. 16(5)(f).

16-17-40. Penalty; nuisance declared.

- (1) It is unlawful for any person to violate any provision of this Article. Any such violation is hereby designated a criminal offense and any person found guilty of violating any of the provisions of the Article shall, upon conviction thereof, be punished by a fine or imprisonment or both pursuant to section 16-22-60 and Article IV of Chapter 1 of this Code. Each day that a violation of any of the provisions of this Article continues to exist shall be deemed a separate and distinct violation.
- (2) The conduct of any activity or business in violation of this Article is hereby declared to be a public nuisance, which may be abated pursuant to the provisions for the enforcement of the zoning code provided in section 16-22-60 of this Code. All violations of this Article shall be considered an emergency violation as provided in section 16-22-60 of this Code.
- (3) The town is specifically authorized to seek an injunction, abatement, restitution, or any other remedy necessary to prevent, enjoin, abate or remove the violation.
- (4) Any remedies provided for herein shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law or in equity.
- (5) There shall be no appeals to the Board of Trustees as provided in section 16-22-70 of the zoning code for any violation of this Article XVII.

ARTICLE XVIII - MARIJUANA ESTABLISHMENTS

16-18-10. Authority.

The Board of Trustees hereby finds and determines and declares that it has the power and authority to adopt this Article pursuant to the following:

- (1) Article XVIII, Section 16 of the Colorado Constitution;
- (2) The authority granted to home rule municipalities by Article XX of the Colorado Constitution;
- (3) The powers contained in the Town of Kiowa Home Rule Charter;

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- (4) The Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.;
 - (5) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers);
 - (6) Section 31-15-103, C.R.S. (concerning municipal police powers);
 - (7) Section 31-15-401, C.R.S. (concerning municipal police powers); and
 - (8) Section 31-15-501, C.R.S. (concerning municipal authority to regulate businesses).

16-18-20. Definitions.

The following words, terms and phrases when used in this Article shall have the following meanings unless the context clearly indicates otherwise:

Community grow operation is the growing of marijuana on a single piece of land by a collective group of individuals and/or entities utilizing either individual or shared plots.

Marijuana or *marihuana* means all parts of the plant of the genus *cannabis* whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marihuana concentrate. "Marijuana" or "marijuana" does not include industrial hemp, nor does it include fiber produced from the stalks, oil, or cake made from the seed of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

Marijuana club means an entity or place of assembly that allows members and their guests, or any other persons, to consume marijuana or marijuana products whether for-profit or not-for-profit. Marijuana clubs shall not include social gatherings within a residential zone of adults 21 years of age and older, where a fee is not charged, or goods are not sold, or no profit is made by the individual or entity hosting the gathering.

Marijuana cultivation facility means an entity licensed to cultivate, prepare, and package marijuana and sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

Marijuana establishment means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, a retail marijuana store, or a community grow operation.

Marijuana product manufacturing facility means an entity licensed to purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

Marijuana products means concentrated marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.

Marijuana testing facility means an entity licensed to analyze and certify the safety and potency of marijuana.

Person means a natural person, partnership, association, company, corporation, limited liability company, or organization, or a manager, agent, owner, director, servant, officer, or employee thereof.

Retail marijuana store means an entity licensed to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana products manufacturing facilities and to sell marijuana and marijuana products to consumers.

16-18-30. Uses prohibited.

- (1) It is unlawful for any person to operate, cause to be operated, or permit to be operated, any marijuana establishment or marijuana club within the town, and all such uses are hereby prohibited in any location within the town.
- (2) Marijuana establishments and marijuana clubs may not be operated as a primary land use, or as an incidental activity to another lawful land use, or as a home occupation.

16-18-40. Penalties; nuisance declared.

A violation of the provisions of this Article shall be punishable as follows:

- (1) By a fine or imprisonment, or both, pursuant to section 16-22-60 and Article IV of Chapter 1 of this Code. Each day that a violation of any provision of this Article continues to exist shall be deemed a separate and distinct violation.
- (2) The conduct of any activity or business in violation of this Article is hereby declared to be a public nuisance, which may be abated pursuant to the provisions for the enforcement of the zoning code provided in section 16-22-60 of this Code. All violations of this Article shall be considered an emergency violation as provided in section 16-22-60 of this Code.
- (3) The town is specifically authorized to seek an injunction, abatement, restitution, or any other remedy necessary to prevent, enjoin, abate, or remove the violation.
- (4) Any remedies provided for herein shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law or in equity.
- (5) There shall be no appeals to the Board of Trustees as provided in section 16-22-70 of the zoning code for any violations of this Article XVIII.

ARTICLE XIX - MOBILE VENDING

16-19-10. Purpose and intent.

The purpose of this Article is to promote the public health, safety and welfare through the permitting and regulations of mobile vendors who operate within the Town of Kiowa. The Board of Trustees recognizes that mobile vendors provide value to the town in the form of jobs, services, sales tax revenue, and entertainment. The provisions of this Article are intended to:

- (1) Preserve the unique character of the Town of Kiowa;
- (2) Protect the public from safety, sanitation, parking, and other hazards and nuisances that could result from mobile vending; and
- (3) Ensure mobile vending occurs only on properties that are compatible in use, location, size, and parking availability for mobile vending.

Commented [JM74]: PC 1/3/24 [2:37]
Inclusion of Elizabeth Ordinance in this Zoning Code.

16-19-20. Definitions.

As used in this Article, unless the context requires otherwise:

- (1) *Area of operation* means the area with a 30-foot circumference of the mobile vendor vehicle unless otherwise specified through a mobile vending permit.
- (2) *Long-term mobile vending* means mobile vending that occurs on the same property for a time period exceeding three consecutive days, or totaling more than ten days within a 365-day period. For purposes of "long-term mobile vending", any part of a 24-hour period in which mobile vending occurs, regardless of total length or duration, is considered a "day."
- (3) *Mobile food vendor* means a retail establishment that provides food services from a mobile vendor vehicle.
- (4) *Mobile vending* means the sale, or intent to sell or offer to the public, any services, goods, wares, or merchandise, including without limitation food or beverage, from a mobile vendor vehicle.
- (5) *Mobile vendor* means a person who sells or attempts to sell, or offers to the public, any services, goods, wares, or merchandise, including without limitation food or beverage, from a mobile vendor vehicle. **Mobile vendor includes a mobile food vendor.**
- (6) *Mobile vendor vehicle* means a truck, trailer, pushcart, wagon, mobile or temporary stand, motor vehicle or other vehicle, or other appurtenances used to conduct mobile vending; excluding authorized sales on a golf course which will not require a permit.
- (7) *Short-term mobile vending* means mobile vending that occurs on the same property for a time period not exceeding three consecutive days, and fewer than ten total days within a 365-day period or a vendor who provides services from multiple locations within a single day. For purposes of "short-term mobile vending", any part of a 24-hour period in which mobile vending occurs, regardless of total length or duration, is considered a "day."
- (8) *Licensed mobile premises* means the area approved for the use of mobile vending pursuant to a mobile vending special use permit.

Commented [JM75]: Satisfies the definitions for Mobile Food Truck and Pushcart in Ord. 2025-01.

16-19-30. Mobile vendor license.

- (1) **License required for mobile vending.** Every mobile vendor shall obtain a business license from the town before engaging in mobile vending in the town by submitting an application in writing to the town that includes the following information:
 - a. Name and address of the mobile vendor;
 - b. Driver's license number of the mobile vendor;
 - c. Identify whether the mobile vendor transacts business as a principal or agent;
 - i. If as an agent, the name and address of the principal;
 - d. If a mobile food vendor, the kind and classes of food and beverage items to be sold;
 - e. State sales tax number or certificate of sales tax exemption; and

Commented [JM76]: This covers the "Application required" provisions.

f. A site plan that includes the following information:

- i. The distance from the mobile vendor vehicle to any property lines and other structures on the site;**
- ii. Details concerning site access;**
- iii. Location, dimensions and use of any existing structures on the property and property lines;**
- iv. Proposed parking areas to be used and the total number of available stalls;**
- v. The location of any ADA-accessible parking spaces within a proposed parking area; and**
- vi. Any additional information deemed necessary by the Town to review the application.**

(2) Issuance and term; fees.

a. Upon receipt of a complete application for a mobile vendor license and of the license fee therefor, the Town Clerk shall issue to the applicant a mobile vendor license, authorizing the applicant to engage in business as a mobile vendor in the town. A mobile vendor license shall be signed by the Town Clerk and sealed with the town seal. No such license shall be transferable and shall be good for a period not to exceed thirty (30) days of issuance, subject to the town's discretion. Notwithstanding the foregoing, a mobile vendor license may be good for a period exceeding thirty (30) days when the mobile vendor has obtained a mobile vending permit.

b. The fees under this Article shall be set in the Town's Fee Schedule.

16-19-40. Mobile vending permit.

(1) *Permit required for long-term mobile vending.* Any person or entity wishing to engage in long-term mobile vending within the Town of Kiowa shall obtain a mobile vending permit. An application for such permit must be submitted to the Town Clerk on forms provided by the town, and shall include the following information at a minimum:

- a. The location for which the permit is required. If on private property, a written and signed letter authorizing the use of the property for mobile vending by the owner will be required;
- b. A scaled drawing of the dimensions of the proposed mobile vendor vehicle, and any displays, signage, furniture, or other appurtenances thereto;
- c. A site plan of the property or properties in which the mobile vendor intends to operate, including an indication of whether the applicant is applying for a specific site designated for such use by the town, **and said site plan shall include the following information:**

- i. The distance from the mobile vendor vehicle to any property lines and other structures on the site;**

Commented [JM77]: PC 12/13/23 [1:17:00]
Remove distinction between long-term and short-term vending. It all lasts for one year.

Commented [JM78]: Application required (g).

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- ii. Details concerning site access;**
 - iii. Location, dimensions and use of any existing structures on the property and property lines;**
 - iv. Proposed parking areas to be used and the total number of available stalls;**
 - v. The location of any ADA-accessible parking spaces within a proposed parking area; and**
 - vi. Any additional information deemed necessary by the town to review the application; and**
- d. A written plan for waste disposal. Signed approvals should be provided if another party's waste disposal dumpster or trash can is involved;
 - e. Evidence of all required permits and licenses, including without limitation a Colorado sales tax license, a town business license, town building permits, and if the mobile vending activity includes any food product, a mobile retail food establishment license from the Elbert County Department of Public Health and Environment;
 - f. Additional information may be requested by the town as appropriate to the particular application, or portions of the information required above may be waived by the planning director or town administrator if it is deemed to be inappropriate to the particular application.
- (2) *Criteria.* The Town clerk may administratively approve an application for a long-term mobile vending permit if the application is complete based on the requirements of section 16-19-40(1) and is appropriate based on the following criteria:
- a. Compatibility with this Code;
 - b. Compatibility with the character of the surrounding area such that the increased utilization of property will not adversely impact neighboring properties with a specific concern towards ensuring that the parking can be handled on site;
 - c. Long-term mobile vending is permitted only in non-residential zone districts.
 - d. Orientation and siting with respect to impact on adjacent properties and public ways;
 - e. Landscaping, including without limitation surface materials, plants, benches, tables, and trash receptacles;
 - f. Design, size, and placement of signage and awnings; and
 - g. Appropriateness of lighting.
- (3) *Conditional approval.* The Town Clerk may approve a mobile vending permit with reasonable conditions if such conditions would allow the application to comply with the above-referenced criteria. Such conditions shall be specified in the mobile vending permit.

- (4) *Modification to permit.* Any changes to location or scope of the long-term mobile vending will require the submission of a modified permit in which the changes are addressed and explained.

16-19-50. Standards of conduct, maintenance, improvement, and repairs.

All long-term and short-term mobile vendors shall comply with the following standards:

- (1) The mobile vendor shall ensure that the area of operation, **including the sidewalks, roadways and other spaces adjacent to the mobile vendor's business location**, is kept clean, free of trash, and in compliance with any applicable section of this Code, including being kept free of nuisances and outdoor storage. Mobile vendors shall empty and remove their trash, **including all trash containers maintained by the mobile vendor**, from the area of operation upon the closing of any day of operation.
- (2) The mobile vendor shall post its hours and days of operation to the public with appropriate signage on ~~or adjacent to~~ its mobile vendor vehicle. **Signage shall be permanently affixed to the mobile vendor vehicle. During hours of operation, a mobile vendor may affix one (1) menu or sandwich board.**
- (3) A long-term mobile vendor shall be open a minimum of 24 hours per week when parked on a permitted premises.
- (4) Parking must be accommodated either on the property in which the mobile vending takes place or through public parking spaces. It is unlawful for property owners hosting a mobile vendor on their property to prevent customers of the mobile vendor from utilizing the property's off-street parking.
- (5) Mobile vendors may not operate in public parking spaces in permitted non-residential zone districts without prior approval.
- (6) It is unlawful for a mobile vendor to operate within 20 feet of an intersection, **in public rights-of-way**, or operate in any area so as to interrupt or interfere with the normal flow of vehicular traffic.
- (7) It is unlawful for a mobile vendor to stop or to place a mobile vending vehicle, food, tables, chairs or other fixtures, furniture, devices, generators, or awnings used to conduct the operations of a mobile vendor so as to obstruct the free travel of pedestrians or vehicles. **Additional structures, canopies, tables, and chairs associated with the operation of a mobile vendor vehicle are prohibited unless otherwise expressly permitted by the Town.**
- (8) ~~It~~ is unlawful to engage in mobile vendor operations upon any property without the express written permission of the owner.
- (9) Mobile vendors may only operate between the hours of 5:00 a.m. and 11:00 p.m.
- (10) It is unlawful for any person to operate as a mobile vendor within the town without first obtaining a business license **from the Town**, Colorado sales tax license, and a mobile retail food establishment license from the Elbert County Department of Public Health and Environment if the vendor includes any food product.
- (11) It is unlawful for any person to operate as a long-term mobile vendor without first obtaining a mobile vending permit.

Commented [JM79]: Additional operational standards (a).

Commented [JM80]: Additional operational standards (a).

Commented [JM81]: Additional operational standards (e).

Commented [JM82]: Additional operational standards (c).

Commented [JM83]: Additional operational standards (d).

Commented [JM84]: Satisfies Ord. 2025-01, Setback and parking requirements (a).

Commented [JM85]: License required section.

(12) It is unlawful for any person to operate as a mobile vendor on public property without prior approval.

(13) Unless a mobile vendor receives prior written consent from a restaurant owner, a mobile vendor and mobile vendor vehicle shall operate 100 feet from a restaurant while the restaurant is open for business, as measured from the property line of the operating restaurant to the closest point of the mobile vendor vehicle.

Commented [JM86]: Setback and parking requirements (b).

(14) A mobile vendor vehicle shall not occupy on-street parking spaces while operating.

Commented [JM87]: Setback and parking requirements (c).

(15) A mobile vendor vehicle shall be set back at least 20 feet from the front property line unless the building setback in a zone district is less than 20 feet, in which case the mobile vendor vehicle shall comply with the front building setback in the underlying zone district.

Commented [JM88]: Setback and parking requirements (d).

(16) A mobile vendor vehicle shall comply with the side and rear building setback requirements in the underlying zone district.

Commented [JM89]: Setback and parking requirements (e).

(17) A mobile vendor shall obey all parking and traffic laws.

Commented [JM90]: Setback and parking requirements (f).

(18) A mobile vendor vehicle shall not be parked in any ADA-accessible parking spaces.

Commented [JM91]: Setback and parking requirements (g).

(19) A mobile vendor vehicle shall be parked and operated on paved or all-weather surfaces.

Commented [JM92]: Setback and parking requirements (h).

(20) A mobile vendor vehicle that occupies parking spaces must ensure that the parking spaces that remain unobstructed accommodate parking for the principle use of the property.

Commented [JM93]: Setback and parking requirements (i).

(21) Mobile vendor vehicles are prohibited in single-family residential zoning districts, except in circumstances of block parties or special events wherein the mobile vendor will seek and shown written permission to park in front of specified residence by the homeowner hosting the block party or special event. When not in use, a maximum of one mobile vendor vehicle may be stored on property used for single-family, duplex, or multi-family dwellings.

Commented [JM94]: Additional operational standards (b).

(22) Prior to the operation of a mobile vendor vehicle within a multi-tenant shopping center, the property owner shall provide written notice to the tenants of such shopping center.

Commented [JM95]: Additional operational standards (f).

16-19-60. Suspension and revocation.

(1) Grounds for suspension or revocation of a permit and business license issued under this Article shall include, without limitation:

- a. A violation of any provision of the permit, this Article or any other applicable law;
- b. Conducting mobile vending activities in such a manner as to create a public nuisance or constitute a danger to the public health, safety and welfare;
- c. Failure to pay state or local taxes that are related to the operation of the business associated with the permit or license; or
- d. Fraud, misrepresentation or a false statement of material fact contained in the original or renewal permit or license application.

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- (2) The Town Clerk shall deliver certified written notice to the permittee and property owner stating the action taken and the reason supporting such action. The written notice may be hand-delivered to the permittee and property owner, emailed to the addresses provided on the application, and/or certified mail to the permittee's and property owner's last known mailing address. This section supersedes the revocation process set forth in section 16-22-60.

16-19-70. Enforcement.

Enforcement of this Article is pursuant to the provisions of section 16-22-60.

16-19-80. Appeal.

An appeal of any decision by the Town Clerk made pursuant to this Article, including denial, suspension, or revocation of a permit, may be made by filing with the town a written notice of appeal to the Town Administrator, pursuant to the requirements and process set forth in section 16-22-70.

ARTICLE XX - LOCATION AND EXTENT REVIEW FOR DEVELOPMENT OF PUBLIC FACILITIES

16-20-10. Intent.

The location and extent of public uses and facilities as provided by Section 31-23-209, C.R.S., which are not permitted within the applicable zone district pursuant to the tables of uses herein contained, shall be subject to review pursuant to this Article. The intent of this Article is to define the factors to be considered in the "location and extent" process, and to prescribe procedures for the orderly consideration of a location and extent application in order to effect the purposes of the state statute. Any public use or facility commenced within the town prior to the adoption of this Article that was not approved pursuant to a location and extent process may, but is not required to, subsequently seek approval pursuant to this Article.

Commented [JM96]: PC 12/13/23 [1:20:20]

16-20-20. General requirements and procedure.

- (1) No street, road, square, park, public way, ground, or open space, no public building or structure, or publicly or privately owned public utility shall be constructed or authorized in the Town of Kiowa unless and until the proposed location, character and extent thereof has been submitted to and approved by the Kiowa Planning commission at a public meeting. Routine extensions of public utility lines and minor modifications to existing facilities shall not be subject to this procedure.
- (2) If the Planning Commission disapproves of the proposed public facility, the commission shall communicate the reasons for such disapproval to the town board, which has the power to overrule such disapproval by a recorded vote of not less than two-thirds of its entire membership.
- (3) If the public way, ground space, building, structure or utility is one the authorization or financing of which does not, under the law or charter provisions governing the same, fall within the province of the town board, the submission to the Planning Commission shall be by the governmental body having jurisdiction and the commission's disapproval of

such application may be overruled by said governmental body having jurisdiction by a vote of not less than two-thirds of its membership, Section 31-23-209, C.R.S..

- (4) The failure of the Planning Commission to act within 60 days from and after the date of official submission of the location and extent application to the commission shall be deemed approval, Section 31-23-209, C.R.S.
- (5) The Planning Commission, and the town board when applicable, may approve the proposed public facility as submitted, approve it with conditions, or deny the facility. The conditions to be imposed are those necessary, at the discretion of the Planning Commission or town board, to mitigate or eliminate any adverse impacts of the proposed facility on the surrounding area.
- (6) Upon approval of the location and extent application, the applicant shall submit a location and extent plat consisting of an original drawing in black ink on 24-inch by 36-inch single/double matte mylar to the town for the signature of the chair of the Planning Commission. The mylar will be kept on file at the town.
- (7) Approval of a location and extent application shall be subject to stipulations and/or conditions precedent which the applicant is deemed to accept by preparing a reproducible mylar for signature by the chair of the Planning Commission within 60 days from approval date. If no mylar is submitted, the planning director shall recommend the Planning Commission rescind approval of the application.
- (8) After the commission chair signs the mylar, a building permit may be issued upon a proper application and the location and extent application shall be considered to be approved.

16-20-30. Submittal requirements.

- (1) The location and extent application shall be submitted in an electronic format acceptable to the town and shall contain the following information:
 - a. Name of proposed facility.
 - b. Land area and legal description.
 - c. Vicinity map (one mile radius with emphasis on major roadways).
 - d. Proposed land use for each area and its area in square feet.
 - e. Existing and proposed public and private rights of way serving the site, types of surfacing and width of paving.
 - f. The existing zoning of the property to be used, as well as the zoning and residential density of all adjacent properties.
 - g. All easements and drainageways should be identified.
 - h. Existing and proposed finished grade topography shown at two-foot contours, corresponding with datum acceptable to the town.
 - i. The location(s) and dimension(s) of all existing and proposed structures, the use(s) to be located therein, the building elevations, gross floor area and locations of entrances and loading points.

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- j. Location of outdoor waste disposal systems.
 - k. All existing and proposed curb cuts, driveways, parking (including number of spaces) and storage areas.
 - l. The location(s) and dimension(s) of existing curb cuts and driveways on adjacent properties and across right-of-way.
 - m. All walks, open space and recreation areas with a description of these improvements.
 - n. An illustrative landscape plan showing locations, general types and sizes of all proposed landscaping materials, fences, walls, planters and any other landscaping features.
 - o. Provisions for access by emergency vehicles.
 - p. Signage and lighting devices fully detailed.
 - q. Utility lines and appurtenances.
- (2) Applicant shall provide a public improvement guarantee, in the form of a dedication of rights-of-way, sidewalk construction, etc., if required by the Planning Commission.
 - (3) Additional information may be requested for inclusion by the town administrator or the town administrator's designee if appropriate to the application, and information required above may be waived by the town administrator or the town administrator's designee if it is deemed to be inappropriate to the application.

16-20-40. Amendments.

- (1) *Minor changes.* The town administrator or the town administrator's designee will make the determination of whether the proposed amendment to the location and extent application is minor. Appeals of that determination may be made to the Planning Commission. If the changes are deemed minor, the minimum requirements are: one completed application form, one letter of intent, and one revised reproducible mylar of the amended location and extent plat for signature of the chair of the Planning Commission.
- (2) *Significant changes.* If the town administrator or the town administrator's designee determines that the changes are significant, the proposed amendment to the location and extent application shall require a resubmittal of documents and a meeting of the Planning Commission for approval of the changes.
- (3) *Location and extent amendment documentation.* An amended location and extent application shall contain all the original information, plus the items that are being changed. When possible, the development standards should appear in a chart format comparing the approved and proposed standards. Also, an amendment history must be added to the document. If the amendment is required to be approved by the Planning Commission, the submittal requirements for the location and extent application described in section 16-20-30 shall be required for the amendment.

ARTICLE XXI - BUILDING PERMITS

16-21-10. Required.

No building or other structure shall be erected, moved, added to or structurally altered without a permit issued by the building official. Building permits shall be issued in conformity and compliance with the provisions of the latest adopted version of the building code, the Kiowa Municipal Code, including but not limited to the land use code, and the applicable zoning, PUD and subdivision plat for the affected lot.

16-21-20. Expiration and cancellation.

- (1) If the work described in any building permit has not begun within 90 days from the date of issuance thereof, the permit shall automatically expire without any further action by the town or notice to the permittee, except the building official may extend the expiration date upon good cause being shown in writing for failure to begin construction as required. Any such extension so granted shall be in writing. Any fees paid to the town, other than the application fee and any review fees for the building permit, in conjunction with the issuance of the building permit which has expired may be returned or refunded as determined by the town administrator.
- (2) If the work described in any building permit has begun, but has not been substantially completed within 16 months of the date of issuance thereof, the building permit shall automatically expire without any further action by the town or notice to the permittee.
- (3) Any fees paid to the town, other than the application fee and any review fees for the building permit, in conjunction with the issuance of the building permit, for a project that never started may be refunded as determined by the town administrator.
- (4) Upon the expiration of any building permit, the building official shall make a reasonable effort to provide the permittee with written notice of the expiration and that further work as described in the expired building permit shall not proceed unless and until a new building permit is obtained. Failure of the building official to provide this notice shall not invalidate the expiration of a building permit for failure to begin or substantially.

ARTICLE XXII – ADMINISTRATION AND ENFORCEMENT

16-22-10. Planning Commission.

- (1) The members of the Planning Commission shall be appointed by the Board of Trustees for a term of four (4) years ending in January or until the member's successor takes office. Appointments to the Planning Commission shall be made in January following any general municipal election in November and the members so appointed shall take office at the first meeting following their appointment. Terms shall be staggered so that three members are appointed in one cycle and two members in the next cycle of appointments. One member of the Planning Commission shall be an elected member of the Board of Trustees. When a Board of Trustees member of the Planning Commission leaves office of the Board of Trustees, he or she shall no longer serve as a member of the Planning Commission. (Ord. 6 series 1995 S1)

Commented [JM97]: Only Article V in the CHARTER has provisions applicable to the planning commission. Nowhere in Article V does it require BOT members to sit on the planning commission.

It is not advised for BOT members to sit on the Planning Commission. This creates a legal conflict with quasi-judicial review procedures, ex parte communications, and due process rights whenever the PC considers any land use applications.

Commented [JM98]: JOSH: Revise. Make it an appointment for 4 year terms, rotating, and do not include member remains until successor takes office. No term limit.

- a. The Planning Commission shall consist of a minimum of five (5), but no more than nine (9), members appointed by the Board. The Board may appoint additional voting members to the Planning Commission, thereby exceeding the minimum requirement of five (5) members, as long as the number of voting members on the Planning Commission remains an odd-number (7 or 9). An even-numbered member (6 or 8) appointed to the Planning Commission shall be treated as an alternate and may only vote when the number of present voting members is an even number due to absence or once an additional odd-numbered member is appointed to the Planning Commission.
- b. The appointment of a member to the Planning Commission shall require a majority vote of the Board and removal of a member shall require a two-thirds affirmative vote by the Board and, in no case, fewer than five (5) affirmative votes for removal.
- c. Membership shall be composed as follows:
- At least four (4) members, and at all times no less than a majority of the voting members serving on the Planning Commission, shall be residents of the Town who have resided in the Town continuously for at least one (1) year immediately preceding the date of the member's appointment, and who shall hold no other office or position with the Town.
 - One (1) member, and at all times less than the total number of serving resident members, may be a nonresident, who owns a business that has a physical business address and operates within the corporate limits of the Town. If the business is owned by an entity, the entity must be a duly organized or formed Colorado entity, in good standing with the Colorado Secretary of State, and said entity may designate one officer of the entity to act as the representative of the entity on the Planning Commission. Once appointed by the Board, the designated officer of the entity cannot be changed without approval by the Board.
- d. Whenever a vacancy occurs, the Board of Trustees shall cause public notice of such vacancy to be made and encourage qualified persons to seek appointment.
- (2) Annually, at the first regular meeting in January, the Planning Commission shall elect from its membership a chairperson and vice-chairperson, with each being eligible for reelection. At the same meeting, the Planning Commission shall appoint a secretary for the purpose of keeping minutes of all meetings, for notifying all members of times and dates of meetings, and for keeping files and records.
- (3) The chairperson shall preside at all meetings and public hearings of the Planning Commission and shall decide all points of order and procedure. The chairperson shall also certify plans and plats, if required by the Town's Code, and shall cause reports and recommendations of the Planning Commission to be transmitted to the Board of Trustees.
- (4) The vice-chairperson shall assume the duties of the chairperson in the absence of the chairperson and shall act in the capacity of chairperson of all special committees created by the Planning Commission. Should the vice-chairperson and the chairperson be absent from a meeting or public hearing, a majority of the members of the Planning Commission in attendance shall appoint a member to serve as the presiding officer for that meeting or public hearing.

Commented [JM99]: REVISED: This follows the intent of the PC, but it includes revisions that are necessary for procedural effectiveness.

- 1.The number of members should always be capped to avoid stacking (it is harder to remove a member before end of term than it is to appoint new members).
- 2.The number of "voting" members should always be odd to avoid ties. A tie = motion does not pass. Sometimes, there will be an even number of members voting on a motion because one or more members are not present. That cannot be helped. However, that does not mean that an even number of voting members should be allowed to be appointed.
- 3.An provision for an "alternate" member is included to allow for the Board to appoint an interested resident to the planning commission even if there isn't another person seeking appointment to make it an odd-numbered commission. The alternate does not have voting power when all voting members are present or when the number of voting members present is an odd-number (5 or 7). The alternate acts as the odd-numbered vote when needed.

Commented [JM100]: Charter Sec. 5.02(5).

Commented [JM101]: Subsections i. and ii. are revised versions of Code Sec. 16-172(a)(1) and (2).

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- (5) The town clerk shall transmit to the chairperson all official correspondence received by the town which may require consideration or action by the Planning Commission.
- (6) The Board of Trustees may replace any member of the Planning Commission if that member misses more than three consecutive meetings or 40 percent of the meetings in a six-month period, unless the absences were due to reasons determined to be valid by the chairperson of the Planning Commission.
- (7) Regular meetings shall be held upon notice as required by Colorado Law, on such days and at such times as set from time to time by resolution of the Board of Trustees. Special meetings may be called as necessary by the chairperson or a majority of the members of the Planning Commission at any regular meeting or upon 24 hours actual notice to all members, and such other notice as required by Colorado law. Attendance by a member at any meeting shall constitute conclusive evidence of adequate notice. Any member may waive the actual notice requirement for special meetings at any time. If it becomes necessary to change the day or time of the regular meetings, the Board of Trustees may by resolution authorize such changes providing notice is published at least one time in a paper of general circulation.
- (8) Any meeting at which a quorum of the Planning Commission is expected to be in attendance shall be held only after posting at the Kiowa Town Hall no less than 24 hours in advance of the meeting, an agenda of the meeting. The Planning Commission shall by resolution at the first meeting of each calendar year designate the Kiowa Town Hall as its designated public place for posting meeting notices. Failure to adopt such resolution shall not invalidate any notice otherwise validly posted. A posted meeting agenda may be amended by a majority vote of the members in attendance. Notice of meetings may also be provided by any other additional means deemed appropriate. The Planning Commission shall adopt rules and regulations that control its operations and procedures, including public notice requirements that comply with the Colorado Open Meetings Law.
- (9) Notice of any public hearing before the Planning Commission shall be published, mailed or posted as provided in section 18.16.060 or such other provision of the Kiowa Municipal Code requiring such notice.
- (10) No official action may be taken at a meeting unless a quorum is present. A quorum shall consist of a majority of the appointed four members. A majority of the members present must vote in the affirmative on a motion for the motion to pass. A recused member may be counted to meet quorum, but a majority of the quorum must vote in the affirmative on a motion for the motion to pass. Once a quorum is established, it is not automatically destroyed if a member leaves before the end of the meeting, and business of the Planning Commission may continue as if a quorum continues to exist. If a member refuses to vote on a motion, then that member's vote shall be counted as a negative vote against the motion.
- (11) Each member of the Planning Commission shall receive compensation in an amount of \$50.00 per meeting attended, paid monthly. 16-22-20. Authority to grant variances.

The Planning Commission may grant variances in respect to any use, building or structure classified under these regulations, and may issue a variance for such use, building or structure in accordance with the procedures set forth in this Chapter 16.

Commented [JM102]: Required action of BOT upon adoption of the new zoning code.

16-22-30. Imposition of fees.

The Board of Trustees may by resolution establish the fees to be imposed for applications for any permit, variance, rezoning, or other action under this Chapter. ~~The Board of Trustees may also delegate to the town administrator or the town administrator's designee, the authority to set fees for such applications and to recover for the town the expenses incurred in processing such applications or any action required under this title.~~ Any fee collected with an application shall be for the town's administrative expenses in processing the application, whether the application is granted or denied.

Commented [JM103]: I don't know if this is really allowed. The formal adoption of a fee schedule needs to stay with the Board to keep formal adoption procedures in place.

16-22-40. Payment of expenses for professional services.

- (1) All land use applicants shall be required to execute a charge back agreement with the Town in a form approved by the Board of Trustees to cover the costs of administration, inspection, publication of notice, and all costs of professional and consulting services that the Town incurs as a result of a land use application. Professional or consulting services include, but are not limited to, planning, legal, engineering and hydrological services. The process for reimbursement of all such fees, costs and expenses shall be as follows:
 - a. ~~The applicant shall pay the Town the actual cost to the Town for engineering, planning, surveying, inspection and legal services rendered in connection with the review of the proposed development application, plus fifteen percent (15%) to cover administrative costs.~~ The Town will send the applicant a statement for the actual and administrative costs incurred by the Town for the services rendered by the Town. The applicant shall pay the amount due on the statement within fifteen (15) days of the date of issuance of such statement.
 - b. In the event the applicant fails to pay the amount due on the statement within the time period specified above, the Town shall immediately stop the review process for the proposed development. The application will be deemed withdrawn if the statement is not paid in full within thirty (30) days of the date of issuance of the statement. If the statement is not paid in full within thirty (30) days after issuance of the statement, in addition to the application being withdrawn, the Town shall impose interest on the amount due and outstanding at the rate of one and one-half percent (1.5%) per month from the date when due.
 - c. In addition to the Town's remedies to stop the review process upon nonpayment of such statement, and to impose penalty interest, the Town shall additionally possess the right to initiate an enforcement action against the applicant for nonpayment of such fees. Such enforcement action may be initiated either in the Elbert County District Court or County Court or in the Kiowa Municipal Court. In the event such collection action is determined in favor of the Town, the Town shall be awarded its attorneys' fees and court costs in addition to the unpaid fees as part of any judgment. The payment of fees or the costs of professional and consulting services under this Section shall be due and payable as set forth within this Section, regardless of whether the project is completed or approved, and/or regardless of whether the applicant chooses to complete the Town's land review process.

Commented [JM104]: Recommended that the Town implement a deposit requirement instead of a statement of amounts due.

16-22-50. Development Impact Fees.

Any person who seeks approval of a land development activity resulting from annexation, subdivision, zoning, approval of a planned unit development, or issuance of a conditional use

permit, special use permit or variance, any of which require additional public services, shall pay development impact fee as provided in Chapter 4 of the Kiowa Municipal Code, together with any other impact fee or fees approved and authorized by the Board of Trustees.

16-22-60. Enforcement.

- (1) *Enforcement powers.* The town administrator, the town planner, the code enforcement officer and their designees, shall have the duty to enforce this zoning code and the powers necessary for such enforcement, including but not limited to the following:
 - a. Conduct investigations and surveys to determine compliance or noncompliance with the provisions of this zoning code, including reinvestigations of any land or structure to investigate alleged violations of the zoning code and to determine if a violation under an earlier notice or order has been corrected.
 - b. Enter into agreements with violators for the abatement of zoning violations.
 - c. Issue written orders requiring compliance with the provisions of this zoning code.
 - d. Issue notices of violations for noncompliance with the provisions of this zoning code and take action to abate violations of this zoning code in the same manner as provided in Article IV of Chapter 1 of the Code.
 - e. Institute, in courts of proper jurisdiction, proceedings to enforce the provisions of this zoning code, administrative orders and determinations made hereunder, and settlement agreements made hereunder.
- (2) *Noncompliance prohibited.* It shall be deemed a strict liability offense for any owner, lessee, occupant or agent of such person to allow or permit to exist, or to otherwise let happen, any condition or to take any action not permitted by the zoning code on the land or in the structure to which the owner, lessee, occupant, or agent has legal or equitable title or right of possession.
- (3) *Enforcement and abatement.* The town administrator, the town planner, the code enforcement officer and their designees may enforce violations of this zoning code pursuant to the investigation, notice, abatement, and enforcement procedures outlined Article IV of Chapter 1 of the Code.
- (4) *Additional remedies.* In addition to all other remedies available, the town may take any of the following remedial actions to enforce this zoning code:
 - a. *Deny/withhold permits.*
 - i. The town may deny and withhold any permit, license, business license, certificate, variance, or other form of authorization to use or develop any land, structure or improvement thereon for any property which is subject to, or any property owner, agent or other person who has any outstanding violation of chapters 16, 17 or 18 of the Kiowa Municipal Code until the violation related to such property, use, or development is corrected. This provision shall apply whether or not the current owner or applicant is responsible for the violation.
 - ii. The denial or withholding of a permit may be appealed to the Board of Trustees as provided in section 16-22-70.

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- b. *Revocation of permits.* The Board of Trustees, after notice and a public hearing, may revoke any permit, license, business license, certificate, variance, building permit or other authorization to use or develop any land, structure or improvement.
- i. *Notice of public hearing.* The public hearing on the revocation of a permit, variance, building permit or other authorization shall be conducted during a regular or special meeting of the Board of Trustees not less than ten days from the date the notice is given. Notice of the hearing shall be deemed given to the owner, the owner's agent, or other person to whom the development permit, variance, building permit or other authorization was issued, upon deposit of said notice in the U.S. mail, certified mail, return receipt requested, addressed to the last known address of said person. Additional methods of notice may be utilized to give notice of the public hearing at the discretion of the town attorney.
- ii. *Findings.* Following the public hearing, the Board of Trustees, upon a finding of any of the following, may revoke any permit, license, business license, certificate, variance, building permit, or other authorization to use or develop any land, structure or improvement:
1. There is a departure from the approved plans, specifications, or conditions of approval;
 2. There is a violation of any provision of title 15, 17 or 18 of the Code;
 3. The permit, variance, building permit or other authorization was obtained by false representation; or
 4. The permit, license, business license, certificate, variance building permit or other authorization to use or develop was issued in error.
- iii. *Notice of revocation.* Written notice of revocation shall be served upon the owner, owner's agent, applicant or other person to whom the permit, license, business license, certificate, variance building permit or other authorization to use or develop was issued in error, by certified mail, return receipt requested. Such notice may also be posted in a prominent location at the place of the violation. No work or construction at or use of the property shall proceed after service of the notice of revocation.
- c. *Stop work order.* The town may issue a written order to stop work on any property where the building official finds any work regulated by the Code being performed in a manner either contrary to the provisions of this Code or dangerous or unsafe, or when there is a violation of a provision of this zoning code, any provision of the Code, or a provision of the permit, license, business license, certificate, variance, building permit, or when an authorization to use or develop was issued in error. The stop work order shall specify the specific violation alleged and any appeal and/or variance procedures available and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work, either in person or by posting notice on the premises. Upon issuance of a stop work order, the cited work shall immediately cease. Any person who shall continue any work after having been served a stop work order shall be subject to fines as set forth in Article IV of Chapter 1 of the Code for each day work continues after issuance of the stop work order.

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- (5) *Remedies cumulative.* The remedies provided for violations of this zoning code shall be cumulative and in addition to any other remedy provided by law and may be exercised in any order.
 - (6) *Liability of town.* The zoning code shall not be construed to hold the town responsible for any damages to persons or property by reason of the inspection or reinspection, by reason of the failure to inspect or reinspect, by reason of issuing any permit, or by reason of pursuing or failing to pursue any action to enforce any provision of the Code or obtain injunctive relief.

16-22-70. Appeals.

- (1) *Appointment of board of adjustment.* Upon receipt of an appeal pursuant to this section, the Board of Trustees shall, by resolution, appoint a five-member board of adjustment. The Board of Trustees may alternatively appoint the board of appeals established pursuant to section 15.04.022 of the town code to sit as the board of adjustment, or, if the appeal is from a decision made by an administrative official, the Board of Trustees may appoint the Planning Commission to serve as the board of adjustment.
- (2) *Notice of appeal.* Any aggrieved person of interest may appeal a denial of any permit or variance, the conditions imposed upon any permit or variance granted, or any order, requirement, decision, interpretation or determination made by an administrative official or the Planning Commission charged with the enforcement of this zoning code by filing a written notice of appeal with the town clerk and paying the fee set by the current fee schedule.
- (3) *Time for appeal.* Any appeal to the board of adjustment shall be made within 30 days after denial of any permit, or receipt of written notice of any determination made pursuant to the zoning code. Failure to make timely appeal shall be considered a waiver of the appellant's right to appeal to the board of adjustment.
- (4) *Record.* The town clerk shall forward a copy of the notice of appeal to the town administrator or other appropriate administrative officer, who shall have prepared a record of the town action that is being appealed for consideration by the board of adjustment.
- (5) *Stay.* An appeal stays all proceedings in furtherance of the action appealed from unless the officer or commission from whom the appeal is taken certifies to the board of adjustment after the notice of appeal has been filed that, by reason of facts stated in the certificate, a stay would, in his, her or the commission's opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by the municipal court on application, on notice to the officer or commission from whom the appeal is taken, and on due cause shown.
- (6) *Public hearing and action on appeal.* The board of adjustment shall hear the appeal and make a decision on the appeal at a public hearing, notice of which shall be provided as set forth in sections 18.16.060, and 18.16.070. The names and addresses of the adjacent property owners required to be notified shall be determined by the appellant as such owner's names and addresses may appear in the tax records of the town or Elbert County, and such information shall be submitted to the town clerk with the notice of appeal. At the public hearing, appellant shall have the burden of proof to establish facts to warrant favorable action by the board of adjustment. The board of adjustment shall have all the powers of the applicable town administrative official or the Planning Commission on the action appealed.

The board of adjustment may in whole or in part affirm, reverse, or amend the decisions of the applicable town administrative official or the Planning Commission. The board of adjustment may impose reasonable conditions in its order to be complied with by the appellant in order to further the purposes and intent of the Zoning Code. The concurring vote of a majority of the board of adjustment shall be necessary to reverse any order, requirement, interpretation, or determination of any administrative official or the Planning Commission. No single decision of the board of adjustment shall set a precedent for future appeals. Any decision of the board of adjustment shall be made on the particular facts of each case.

- (7) *Appeal criteria.* The board of adjustment in hearing an appeal shall consider only the criteria required to be considered by the original decision-maker by any applicable provisions of the zoning code.
- (8) *Appeals to municipal court.* Decisions of the board of adjustment shall be subject to review by the municipal court by filing a complaint that includes the specific allegations of error no more than 14 days after the final decision by the board of adjustment. The municipal court's review shall be limited to a determination of whether the board exceeded its jurisdiction or abused its discretion, based on the evidence in the record before the board. Any appeal of the decision of the municipal court shall be brought in district court as a civil matter pursuant to Rule 106 of the Colorado Rules of Civil Procedure.

16-22-80. **Notice requirements.**

Certain zoning actions require a public hearing, notice of which shall be given in the manner and within the times set forth in the following notice requirements:

Type of Action	Hearing Requirement	Notice in Newspaper	Service or Mailing	Posting
Planned Unit Development (PUD)				
PUD Preliminary Plan (18.08.150)	Board of Trustees	15 days	15 days	15 days
Amendments to PUD (18.08.180)	Board of Trustees	15 days	15 days	15 days
Maintenance of Common Property (18.08.030)	Board of Trustees	N/A	15 days	N/A
Suspension/Revocation (18.12.050)	Planning commission	No	10 days	No
Revocation (18.16.040(c))	Board of Trustees	Optional	7 days	Optional
Special Use Permit				
Special Use Permit (18.12.040)	Planning commission	10 days	10 days	10 days
Suspension/Revocation (18.12.050)	Planning commission	No	10 days	No

Commented [JM105]: THIS SECTION WAS NOT CLOSELY REVIEWED OR CROSS-CHECKED.

Revocation (18.16.040(c))	Board of Trustees	Optional	7 days	Optional
Variance				
Variance (18.13.030)	Planning commission	10 days	10 days	10 days
Appeal	Board of Adjustment	10 days	10 days	10 days
Revocation (18.16.040(c))	Board of Trustees	Optional	7 days	Optional
Location and Extent				
Location and Extent (18.14)	None	N/A	N/A	N/A
Zoning Code and Map Amendments (18.15.040)				
Text, Not Site Specific	Planning commission	15 days	None	None
Site Specific Amendment	Planning commission	15 days	15 days	15 days
Text, Not Site Specific	Board of Trustees	15 days	None	None
Site Specific Amendment	Board of Trustees	10 days	10 days	10 days
Violations				
Notice of Violation/Corrective Action Order, Nonemergency (18.16.040(c))	None	None	30 days	30 days (alternative)
Revocation of Building Permit (18.16.040(c))	Board of Trustees	Optional	10 days	Optional
Stop Work Order (18.16.040(c))	None	None	Immediate	Immediate
Appeals (18.16.050)	Board of Adjustment	10 days	10 days	10 days

16-22-90. Posting.

- (1) *Responsibility.* Posting of a sign on the property giving notice of a public hearing shall be the responsibility of the applicant. Staff shall advise the applicant in writing of this posting requirement and the location and number of signs required for the application. All signs must be prepared by or for the applicant at the applicant's expense. All signs must be posted on the property not less than number of days required under Section 16-22-80 for the application type prior to the public hearing held thereon. The applicant must take a clear and distinct photograph of the sign(s) and submit the photograph(s) to the town immediately upon posting the property. No later than noon on Friday prior to the scheduled public hearing, the applicant shall present a certificate of posting in the following form to the town.

(2) *Certificate of posting.*

Certificate of Posting

I hereby certify under oath that a sign (or signs (____)) was posted on the property known by street name and number as _____ on _____, 20____, at least _____ days prior to the public hearing on the Application for _____, as shown in the photograph(s) submitted in support of this Certificate, as notice of this public hearing before the Planning Commission/Board of Adjustment/Board of Trustees on _____, 20____ at _____m.

Dated this ____ day of _____, 20____.

Applicant

State of Colorado)
) ss.
County of Elbert)

Subscribed and sworn to before me this ____ day of _____, 20____ by _____ as Applicant.

My commission expires _____.

Notary Public

Failure to timely present the certificate of posting and submit the photograph(s) to the Town will result in a rescheduling of the public hearing and require a new posting of notice on the property.

- (3) *Sign specifications.* A sign for posted notice shall not be less than three feet by four feet in size, and it shall be erected on posts no lower than four feet above natural grade and be legible from the nearest dedicated public right-of-way. Title of the sign shall be in letters not less than five inches in height. Said sign shall be removed by the applicant within two weeks of the conclusion of the public hearing. A sample format for the sign may be provided by the Town.

ARTICLE XXIII - Floodplain Regulations

16-23-10. Definitions.

Unless specifically defined below, words or phrases used in this Article shall be interpreted so as to give them the meaning they have in common usage and to give this Article its most reasonable application:

- (1) *Alluvial fan flooding* means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.
- (2) *Apex* means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

Commented [JM106]: Added from Article VII of Chapter 16 in the old zoning code. Floodplain Regulations are required.

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- (3) *Area of shallow flooding* means a designated AO, AH, or VO zone on the Town's Flood Insurance Rate Map (FIRM) with a one (1) percent chance or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.
- (4) *Special flood hazard area* is the land in the floodplain within the Town subject to a one (1) percent or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Insurance Rate Map (FIRM). After detailed ratemaking has been completed, Zone A usually is refined into Zones A, AE, AH, or AO.
- (5) *Base flood* means the flood having a one (1) percent chance of being equaled or exceeded in any given year.
- (6) *Base Flood Elevation (BFE)* means the elevation shown on a FEMA Flood Insurance Rate Map for Zones AE, AH, A1-A30, AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/AO, V1-V30, and VE that indicates the water surface elevation resulting from a flood that has a one (1) percent chance of equaling or exceeding that level in any given year.
- (7) *Basement* means any area of the building having its floor sub-grade (below ground level) on all sides.
- (8) *Conditional Letter of Map Revision (CLOMR)* means FEMA's comment on a proposed project, which does not revise an effective floodplain map, that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodplain.
- (9) *Critical facility* means a structure or related infrastructure, but not the land on which it is situated, as specified in Article 5, Section H, that if flooded may result in significant hazards to public health and safety or interrupt essential services and operations for the community at any time before, during and after a flood. See Article 5, Section H.
- (10) *Development* means any manmade change in improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.
- (11) *Elevated building* means a non-basement building (i) built, in the case of a building in Zones A1-30, AE, A, A99, AO, AH, B, C, X, and D, to have the top of the elevated floor, or in the case of a building in Zones V1-30, VE, or V, to have the bottom of the lowest horizontal structure member of the elevated floor elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the flow of the water and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1-30, AE, A, A99, AO, AH, B, C, X, and D, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters.
- (12) *Existing construction* means for the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."

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- (13) *Existing manufactured home park or subdivision* means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.
- (14) *Expansion to an existing manufactured home park or subdivision* means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).
- (15) *Flood or flooding* means a general and temporary condition of partial or complete inundation of normally dry land areas from:
- a. The overflow of inland or tidal waters.
 - b. The unusual and rapid accumulation or runoff of surface waters from any source.
- (16) *Flood insurance rate map (FIRM)* means an official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.
- (17) *Flood insurance study* is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, water surface elevation of the base flood, as well as the Flood Insurance Rate Maps.
- (18) *Floodplain or flood-prone area* means any land area susceptible to being inundated by water from any source (see definition of flooding).
- (19) *Floodplain Administrator* means the community official designated by title to administer and enforce the floodplain management regulations.
- (20) *Floodplain development permit* means a permit required before construction or development begins within any Special Flood Hazard Area (SFHA). If FEMA has not defined the SFHA within a community, the community shall require permits for all proposed construction or other development in the community including the placement of manufactured homes, so that it may determine whether such construction or other development is proposed within flood-prone areas. Permits are required to ensure that proposed development projects meet the requirements of the NFIP and this floodplain management ordinance.
- (21) *Floodplain management* means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.
- (22) *Floodplain management regulations* means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such State or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.
- (23) *Flood protection system* means those physical structural works for which funds have been

authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the areas within a community subject to a special flood hazard and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

- (24) *Flood proofing* means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.
- (25) *Floodway (regulatory floodway)* means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. The Colorado Statewide standard for the designated height to be used for all newly studied reaches shall be one-half (½) foot (six (6) inches). Letters of map revision to existing floodway delineations may continue to use the floodway criteria in place at the time of the existing floodway delineation.
- (26) *Functionally dependent use* means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.
- (27) *Highest adjacent grade* means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
- (28) *Historic structure* means any structure that is:
 - a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
 - b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
 - c. Individually listed on a State Inventory of Historic Places in states with historic preservation programs which have been approved by the Secretary of Interior; or
 - d. Individually listed on a local inventory or historic places in communities with historic preservation programs that have been certified either:
 - i. By an approved State program as determined by the Secretary of the Interior or;
 - ii. Directly by the Secretary of the Interior in states without approved programs.
- (29) *Letter of Map Revision (LOMR)* means FEMA's official revision of an effective Flood Insurance Rate Map (FIRM), or Flood Boundary and Floodway Map (FBFM), or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations

(BFEs), or the Special Flood Hazard Area (SFHA).

- (30) *Letter of Map Revision Based On Fill (LOMR-F)* means FEMA's modification of the Special Flood Hazard Area (SFHA) shown on the Flood Insurance Rate Map (FIRM) based on the placement of fill outside the existing regulatory floodway.
- (31) *Levee* means a manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.
- (32) *Levee system* means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.
- (33) *Lowest floor* means the lowest floor of the lowest enclosed area (including basement). Any floor used for living purposes which includes working, storage, sleeping, cooking and eating, or recreation or any combination thereof. This includes any floor that could be converted to such a use such as a basement or crawl space. The lowest floor is a determinate for the flood insurance premium for a building, home or business. An unfinished or flood resistant enclosure, usable solely for parking or vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of Section 60.3 of the National Flood insurance Program regulations.
- (34) *Manufactured home* means a structure transportable in one (1) or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".
- (35) *Manufactured home park or subdivision* means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.
- (36) *Mean sea level* means, for purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD) of 1988 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.
- (37) *New construction* means, for the purpose of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.
- (38) *New manufactured home park or subdivision* means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

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- (39) *Recreational vehicle* means a vehicle which is:
- a. Built on a single chassis;
 - b. Four hundred (400) square feet or less when measured at the largest horizontal projections;
 - c. Designed to be self-propelled or permanently towable by a light duty truck; and
 - d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
- (40) *Start of construction* includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
- (41) *Structure* means a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.
- (42) *Substantial damage* means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.
- (43) *Substantial improvement* means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before "start of construction" of the improvement. This includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:
- a. Any project for improvement of a structure to correct existing violations of State or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary conditions; or
 - b. Any alteration of a "historic structure" provided that the alteration will not preclude the structure's continued designation as a "historic structure."
- (44) *Variance* is a grant of relief to a person from the requirement of this ordinance when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by this ordinance. (For full requirements see Section 60.6 of the National Flood Insurance Program regulations.)
- (45) *Violation* means the failure of a structure or other development to be fully compliant with

the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

- (46) *Water surface elevation* means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

16-23-20. General provisions.

- (1) Lands to which this Article applies. The Article shall apply to all areas of special flood hazard and areas removed from the floodplain by the issuance of a FEMA Letter of Map Revision Based on Fill (LOMR-F) within the jurisdiction of the Town.
- (2) Basis for establishing the areas of special flood hazard. The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled, "The Flood Insurance Study for Elbert County, Colorado and Incorporated Areas," effective March 17, 2013, with accompanying Flood Insurance Rate Maps (FIRM) and any revisions thereto are hereby adopted by reference and declared to be a part of this ordinance.
- (3) Establishment of development permit. A development permit shall be required to ensure conformance with the provisions of this Article.
- (4) Compliance. No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this Article and other applicable regulations.
- (5) Abrogation and greater restrictions. This Article is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Article and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- (6) Interpretation. In the interpretation and application of this ordinance, all provisions shall be:
 - a. Considered as minimum requirements;
 - b. Liberally construed in favor of the governing body; and
 - c. Deemed neither to limit nor repeal any other powers granted under State statutes.
- (7) Warning and disclaimer or liability. The degree of flood protection required by this Article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur and flood heights may be increased by manmade or natural causes. This Article does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This Article shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

16-23-30. Administration.

- (1) Designation of the Floodplain Administrator. The Board of Trustees hereby appoints the Town Administrator as the Floodplain Administrator to administer and implement the provisions of this Article and other appropriate Sections of 44 CFR (National Flood Insurance Program Regulations) pertaining to floodplain management.
- (2) Duties and responsibilities of the Floodplain Administrator. Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:
 - a. Maintain and hold open for public inspection all records pertaining to the provisions of this ordinance.
 - b. Review permit application to determine whether proposed building site, including the placement of manufactured homes, will be reasonably safe from flooding.
 - c. Review, approve or deny all applications for development permits required by adoption of this ordinance.
 - d. Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.
 - e. Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation.
 - f. Notify, in riverine situations, adjacent communities and the State Coordinating Agency prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
 - g. Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.
 - h. When base flood elevation data has not been provided in accordance with Section 16-23-20(2), the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a Federal, State or other source, in order to administer the provisions of Article 5.
- (3) Permit procedures. Application for a development permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:
 - a. Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;
 - b. Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;
 - c. A certificate from a registered professional engineer or architect that the

nonresidential floodproofed structure shall meet the floodproofing criteria of Section 16-23-40(2)(b);

- d. Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development;
 - e. Maintain a record of all such information in accordance with Section 16-23-30(2)(a).
- (4) Approval or denial of a development permit by the Floodplain Administrator shall be based on all of the provisions of this ordinance and the following relevant factors:
- a. The danger to life and property due to flooding or erosion damage;
 - b. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - c. The danger that materials maybe swept onto other lands to the injury of others;
 - d. The compatibility of the proposed use with existing and anticipated development;
 - e. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - f. The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;
 - g. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;
 - h. The necessity to the facility of a waterfront location, where applicable;
 - i. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - j. The relationship of the proposed use to the comprehensive plan for that use.
- (5) Variance procedures.
- a. The Board of Adjustment shall hear and render judgment on requests for variances from the requirements of this ordinance.
 - b. The Board of Adjustment shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this ordinance.
 - c. Any person or persons aggrieved by the decision of the Board of Adjustment may appeal such decision in the courts of competent jurisdiction.
 - d. The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
 - e. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (½) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors for variances have been fully considered. As the lot size increases

beyond the one-half (½) acre, the technical justification required for issuing the variance increases.

- f. Upon consideration of the factors noted above and the intent of this ordinance, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this Article.
- g. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- h. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- i. Prerequisites for granting variances:
 - i. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - ii. Variances shall only be issued upon:
 - 1) Showing a good and sufficient cause;
 - 2) A determination that failure to grant the variance would result in exceptional hardship to the applicant, and
 - 3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances;
 - iii. Any application to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- j. Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:
 - i. The criteria outlined in this Article are met; and
 - ii. The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

16-23-40. Provisions for flood hazard reduction.

- (1) General standards. In all areas of special flood hazards the following provisions are required for all new construction and substantial improvements:
 - (a) All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

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- (b) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
 - (c) All new construction or substantial improvements shall be constructed with materials resistant to flood damage;
 - (d) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
 - (e) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
 - (f) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and,
 - (g) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- (2) Specific standards. In all areas of special flood hazards where base flood elevation data has been provided as set forth in (i) Section 16-23-20(2)(a), (ii) Section 16-23-30(2)(h), or (iii) Section 16-23-40(3)(c), the following provisions are required:
- (a) Residential Construction - new construction and substantial improvement of any residential structure shall have the lowest floor (including basement) electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), elevated to one (1) foot above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this subsection as proposed in Section 16-23-30(3), is satisfied.
 - (b) Nonresidential Construction - new construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), elevated to one (1) foot above the base flood elevation or together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the Floodplain Administrator.
 - (c) Manufactured Homes - Require that all manufactured homes to be placed within Zone A on a community's FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes

must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

- (d) Enclosures - New construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access, or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered Colorado Professional Engineer or Architect or meet or exceed the following minimum criteria:

- a) A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided.
- b) The bottom of all openings shall be no higher than one (1) foot above grade.
- c) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

- (3) Standards for subdivision proposals.

- (a) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with this Article.
- (b) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet applicable Development Permit requirements of Section 16-23-20(3), Section 16-23-30(3), and Section 16-23-40 of this Article.
- (c) Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than fifty (50) lots or five (5) acres, whichever is less, if not otherwise provided pursuant to the provisions of Section 16-23-20(2) or Section 16-23-30(2)(h) of this Article.
- (d) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
- (e) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

- (4) Alteration of a watercourse. For all proposed developments that alter a watercourse within a Special Flood Hazard Area, the following standards apply:

- (a) Channelization and flow diversion projects shall appropriately consider issues of sediment transport, erosion, deposition, and channel migration and properly mitigate potential problems through the project as well as upstream and downstream of any improvement activity. A detailed analysis of sediment transport and overall channel

stability should be considered, when appropriate, to assist in determining the most appropriate design.

- (b) Channelization and flow diversion projects shall evaluate the residual one hundred-year floodplain.
 - (c) Any channelization or other stream alteration activity proposed by a project proponent must be evaluated for its impact on the regulatory floodplain and be in compliance with all applicable Federal, State and local floodplain rules, regulations and ordinances.
 - (d) Any stream alteration activity shall be designed and sealed by a registered Colorado Professional Engineer or Certified Professional Hydrologist.
 - (e) All activities within the regulatory floodplain shall meet all applicable Federal, State and Town floodplain requirements and regulations.
 - (f) Maintenance shall be required for any altered or relocated portions of watercourses so that the flood-carrying capacity is not diminished.
- (5) Properties removed from the floodplain by fill. A floodplain development permit shall not be issued for the construction of a new structure or addition to an existing structure on a property removed from the floodplain by the issuance of a FEMA Letter of Map Revision Based on Fill (LOMR-F), unless such new structure or addition complies with the following:
- (a) Residential construction. The lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), must be elevated to one (1) foot above the Base Flood Elevation that existed prior to the placement of fill.
 - (b) Nonresidential construction. The lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), must be elevated to one (1) foot above the Base Flood Elevation that existed prior to the placement of fill, or together with attendant utility and sanitary facilities be designed so that the structure or addition is watertight to at least one (1) foot above the base flood level that existed prior to the placement of fill with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.
- (6) Standards for critical facilities. A Critical Facility is a structure or related infrastructure, but not the land on which it is situated, as specified in Rule 6 of the Rules and Regulations for Regulatory Floodplains in Colorado, that if flooded may result in significant hazards to public health and safety or interrupt essential services and operations for the community at any time before, during and after a flood.
- (a) Classification of critical facilities. Critical Facilities are classified under the following categories: (a) Essential Services; (b) Hazardous Materials; (c) At-risk Populations; and (d) Vital to Restoring Normal Services.
 - i. Essential services facilities include public safety, emergency response, emergency medical, designated emergency shelters, communications, public utility plant

facilities, and transportation lifelines. These facilities consist of:

- 1) Public safety (police stations, fire and rescue stations, emergency vehicle and equipment storage, and, emergency operation centers);
 - 2) Emergency medical (hospitals, ambulance service centers, urgent care centers having emergency treatment functions, and non-ambulatory surgical structures but excluding clinics, doctors offices, and non-urgent care medical structures that do not provide these functions);
 - 3) Designated emergency shelters;
 - 4) Communications (main hubs for telephone, broadcasting equipment for cable systems, satellite dish systems, cellular systems, television, radio, and other emergency warning systems, but excluding towers, poles, lines, cables, and conduits);
 - 5) Public utility plant facilities for generation and distribution (hubs, treatment plants, substations and pumping stations for water, power and gas, but not including towers, poles, power lines, buried pipelines, transmission lines, distribution lines, and service lines); and
 - 6) Air Transportation lifelines (airports (municipal and larger), helicopter pads and structures serving emergency functions, and associated infrastructure (aviation control towers, air traffic control centers, and emergency equipment aircraft hangars).
 - 7) Specific exemptions to this category include wastewater treatment plants (WWTP), non-potable water treatment and distribution systems, and hydroelectric power generating plants and related appurtenances.
 - 8) Public utility plant facilities may be exempted if it can be demonstrated to the satisfaction of the community governing body that the facility is an element of a redundant system for which service will not be interrupted during a flood. At a minimum, it shall be demonstrated that redundant facilities are available (either owned by the same utility or available through an intergovernmental agreement or other contract) and connected, the alternative facilities are either located outside of the one hundred-year floodplain or are compliant with the provisions of this Article, and an operations plan is in effect that states how redundant systems will provide service to the affected area in the event of a flood. Evidence of ongoing redundancy shall be provided to the community governing body on an as-needed basis upon request.
- ii. Hazardous materials facilities include facilities that produce or store highly volatile, flammable, explosive, toxic and/or water-reactive materials. These facilities may include:
- 1) Chemical and pharmaceutical plants (chemical plant, pharmaceutical manufacturing);
 - 2) Laboratories containing highly volatile, flammable, explosive, toxic and/or water-reactive materials;
 - 3) Refineries;

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- 4) Hazardous waste storage and disposal sites; and
 - 5) Above ground gasoline or propane storage or sales centers.
 - 6) Facilities shall be determined to be Critical Facilities if they produce or store materials in excess of threshold limits. If the owner of a facility is required by the Occupational Safety and Health Administration (OSHA) to keep a Material Safety Data Sheet (MSDS) on file for any chemicals stored or used in the work place, AND the chemical(s) is stored in quantities equal to or greater than the Threshold Planning Quantity (TPQ) for that chemical, then that facility shall be considered to be a Critical Facility. The TPQ for these chemicals is: either five hundred (500) pounds or the TPQ listed (whichever is lower) for the three hundred fifty-six (356) chemicals listed under 40 C.F.R. § 302 (2010), also known as Extremely Hazardous Substances (EHS); or ten thousand (10,000) pounds for any other chemical. This threshold is consistent with the requirements for reportable chemicals established by the Colorado Department of Health and Environment. OSHA requirements for MSDS can be found in 29 C.F.R. § 1910 (2010). The Environmental Protection Agency (EPA) regulation "Designation, Reportable Quantities, and Notification," 40 C.F.R. § 302 (2010) and OSHA regulation "Occupational Safety and Health Standards," 29 C.F.R. § 1910 (2010) are incorporated herein by reference and include the regulations in existence at the time of the promulgation this ordinance, but exclude later amendments to or editions of the regulations.
 - 7) Specific exemptions to this category include:
 - a. Finished consumer products within retail centers and households containing hazardous materials intended for household use, and agricultural products intended for agricultural use.
 - b. Buildings and other structures containing hazardous materials for which it can be demonstrated to the satisfaction of the local authority having jurisdiction by hazard assessment and certification by a qualified professional (as determined by the local jurisdiction having land use authority) that a release of the subject hazardous material does not pose a major threat to the public.
 - c. Pharmaceutical sales, use, storage, and distribution centers that do not manufacture pharmaceutical products.
 - d. These exemptions shall not apply to buildings or other structures that also function as critical facilities under another category outlined in this Article.
 - iii. At-risk population facilities include medical care, congregate care, and schools. These facilities consist of:
 - 1) Elder care (nursing homes);
 - 2) Congregate care serving twelve (12) or more individuals (day care and assisted living);
 - 3) Public and private schools (pre-schools, K—12 schools), before-school and

after-school care serving twelve (12) or more children.

- iv. Facilities vital to restoring normal services including government operations. These facilities consist of:

- 1) Essential government operations (public records, courts, jails, building permitting and inspection services, community administration and management, maintenance and equipment centers);
- 2) Essential structures for public colleges and universities (dormitories, offices, and classrooms only).
- 3) These facilities may be exempted if it is demonstrated to the community governing body that the facility is an element of a redundant system for which service will not be interrupted during a flood. At a minimum, it shall be demonstrated that redundant facilities are available (either owned by the same entity or available through an intergovernmental agreement or other contract), the alternative facilities are either located outside of the one hundred-year floodplain or are compliant with this ordinance, and an operations plan is in effect that states how redundant facilities will provide service to the affected area in the event of a flood. Evidence of ongoing redundancy shall be provided to the community governing body on an as-needed basis upon request.

- (b) Protection for critical facilities. All new and substantially improved critical facilities and new additions to critical facilities located within the Special Flood Hazard Area shall be regulated to a higher standard than structures not determined to be critical facilities. For the purposes of this ordinance, protection shall include one (1) of the following:

- i. Location outside the Special Flood Hazard Area; or
- ii. Elevation of the lowest floor or floodproofing of the structure, together with attendant utility and sanitary facilities, to at least two (2) feet above the base flood elevation.

- (c) Ingress and egress for new critical facilities. New critical facilities shall, when practicable as determined by the community governing body, have continuous non-inundated access (ingress and egress for evacuation and emergency services) during a one hundred-year flood event.