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## Lone Tree City Council Agenda Tuesday, January 3, 2017

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**Meeting Location:** City Council Meeting Room, Lone Tree Civic Center, 8527 Lone Tree Parkway.  
**Meeting Procedures:** The Lone Tree City Council and staff will meet in a public Study Session at 4:30pm. At 6:00pm and following the meeting, if necessary, the Council Meeting will adjourn and convene in Executive Session. If an Executive Session is not necessary, Council will recess for dinner. The Regular Session will be convened at 7:00pm. Study Sessions and Regular Sessions are open to the public, Executive Sessions are not. Study Sessions are informational sessions and no action is taken. Comments from the public are welcome during the Regular Session at these occasions: 1. Public Comment (brief comments on items not on the agenda or scheduled for public hearing or public input) 2. Public Hearings. To arrange accommodations in accordance with the Americans with Disabilities Act at public meetings, please contact the City Clerk at least 48 hours prior to the meeting.

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### 4:30pm Study Session Agenda

1. Rueter-Hess Recreation Authority Final Master Plan
  2. **Resolution 17-01, A RESOLUTION APPOINTING AN ALTERNATE TO THE RUETER-HESS RECREATION AUTHORITY**
  3. Old Yosemite Street Right-of-Way (ROW) Vacation and Land Disposal by Douglas County
  4. Approval of Commissioner's Choice
  5. CML Centralized Sales Tax Collection
  6. Lone Tree Link Annual Report
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### 6:00pm Executive Session Agenda

1. Roll Call
  2. Executive Session
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### 7:00pm Regular Session Agenda

3. Opening of Regular Meeting/Pledge of Allegiance
4. Amendments to the Agenda and Adoption of the Agenda
5. Conflict of Interest Inquiry
6. Public Comment
7. Announcements
8. Ceremonial Presentations
  - a. Commissions, Boards & Committees (CBC) Recognition of Service

Jay Carpenter	Citizens' Recreation Advisory Committee	2010-2016
Patrick Britti	Youth Commission	2013-2016
Michelle Timmins	Youth Commission	2014-2016
Nora Pearson	Arts Commission	2011-2016
Debi Haning	Arts Commission	2008-2016
Herb Steele	Planning Commission	2013-2016
Angela Hardin	Citizens' Recreation Advisory Committee	2010-2016
Alistair Green	Citizens' Recreation Advisory Committee	2013-2016

- b. GFOA Certificate of Achievement for Excellence in Financial Reporting

9. Consent Agenda
  - a. Minutes of the December 6, 2016 Regular Meeting
  - b. Claims for the Period of November 29-December 26, 2016
  - c. Treasurer's Report for October 2016
10. Community Development
  - a. **Ordinance 17-01, AN ORDINANCE AMENDING CHAPTER 11 OF THE MUNICIPAL CODE TO ADOPT BY REFERENCE AND AMEND THE DOUGLAS COUNTY ROADWAY AND DESIGN STANDARDS; AMEND THE BUILDING MATERIALS ARTICLE; ADD NEW ARTICLES REGARDING STREET AND PEDESTRIAN LIGHTING AND PUBLIC RIGHTS OF WAY; AND PROVIDE FOR PENALTIES (First Reading)**
  - b. **Ordinance 17-02, AN ORDINANCE AMENDING CHAPTER 15 OF THE MUNICIPAL CODE TO ADOPT BY REFERENCE THE 2017 FLOOD INSURANCE STUDY FOR DOUGLAS COUNTY AND ACCOMPANYING FLOOD INSURANCE RATE MAPS, DIGITAL FLOOD RATE MAPS AND FLOOD BOUNDARY FLOODWAY MAPS; AMEND STORMWATER DISCHARGE DEFINITION; ADD A NEW ARTICLE REGARDING CLEARING, GRADING AND LAND DISTURBANCE; AND PROVIDE FOR PENALTIES (First Reading)**
  - c. **Ordinance 17-03, AN ORDINANCE AMENDING CHAPTER 16 OF THE MUNICIPAL CODE TO REPEAL ARTICLE XXXI REGARDING CLEARING, GRADING AND LAND DISTURBANCE; AMEND USE AND STRUCTURE RESTRICTIONS NEAR AIRPORTS; ADD A PROVISION REGARDING RAIN BARRELS; AND AMEND AND UPDATE MISCELLANEOUS PROVISIONS (First Reading)**
  - d. **Ordinance 17-04, AN ORDINANCE AMENDING CHAPTER 17 OF THE MUNICIPAL CODE TO AMEND AND UPDATE MISCELLANEOUS PROVISIONS (First Reading)**
  - e. **Ordinance 17-05, AN ORDINANCE AMENDING CHAPTER 18 OF THE MUNICIPAL CODE TO AMEND THE 2012 INTERNATIONAL RESIDENTIAL CODE REGARDING DRAINAGE EROSION SEDIMENT CONTROL PERMITS (First Reading)**
11. Administrative Matters
  - a. **Resolution 17-01, A RESOLUTION APPOINTING AN ALTERNATE TO THE RUETER-HESS RECREATION AUTHORITY**
  - b. **Public Hearing: Ordinance: 16-07, AN ORDINANCE APPROVING A FRANCHISE AGREEMENT BETWEEN THE CITY OF LONE TREE, COLORADO, AND PUBLIC SERVICE COMPANY OF COLORADO (XCEL ENERGY), GRANTING THE RIGHT TO PROVIDE, SELL AND DELIVER GAS AND ELECTRICITY TO THE CITY AND ITS RESIDENTS USING CITY STREETS AND RIGHTS-OF-WAY, PUBLIC UTILITY EASEMENTS AND OTHER CITY PROPERTY (Second Reading)**
12. Council Comments
13. Adjournment

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### City of Lone Tree Upcoming Events

more info available at [www.cityoflonetree.com](http://www.cityoflonetree.com) & [www.lonetreeartscenter.org](http://www.lonetreeartscenter.org)

- Commissioners' Choice, Thursday, January 5, 2017, LTAC Lobby. Reception date is yet to be determined.
- Seedlings: Creepy Crawly Storytime, Tuesday, January 10<sup>th</sup>, 9:30 and 11:00 am, LTAC Event Hall
- Passport to Culture: Chinese New Year, Sunday, January 15<sup>th</sup>, 1:30 pm, LTAC Main Stage
- City Offices will be closed on January 16<sup>th</sup> in observance of Martin Luther King Jr. Day
- Arts in the Afternoon: Opera Colorado Young Artists, Arias and Ensembles, Wednesday, January 17<sup>th</sup>, 1:30 pm, LTAC Event Hall
- Lone Tree Chief of Police Swearing In Ceremony, January 17<sup>th</sup>, 3:30pm, Lone Tree Civic Center

**MINUTES OF A REGULAR MEETING  
OF THE COUNCIL OF THE  
CITY OF LONE TREE  
HELD  
December 6, 2016**

A regular meeting of the Council of the City of Lone Tree was held on Tuesday, December 6, 2016, at 7:00 p.m., at the Lone Tree City Council Chambers located at 8527 Lone Tree Parkway, Lone Tree, Colorado 80124.

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Attendance

In attendance were:

Jacqueline Millet, Mayor  
Susan Squyer, Mayor Pro Tem  
Cathie Brunnick, Council Member  
Jay Carpenter, Council Member  
Wynne Shaw, Council Member

Also in attendance were:

Seth Hoffman, City Manager  
Jennifer Pettinger, City Clerk  
Steve Hebert, Deputy City Manager  
Torie Brazitis, Assistant to the City Manager  
Jeff Holwell, Economic Development Director  
Interim Chief Ron Pinson, Lone Tree Police Department  
Kristin Baumgartner, Finance Director  
Kelly First, Community Development Director  
Lisa Rigsby Peterson, Lone Tree Arts Center Director  
Gary White, City Attorney, White, Bear and Ankele, P.C.  
Neil Rutledge, Assistant City Attorney, White, Bear and Ankele, P.C.  
John Cotten, Public Works Director, TTG Corp.

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Call to Order

Mayor Millet called the meeting to order at 7:00 p.m., and observed that a quorum was present.

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Pledge of Allegiance

Mayor Millet led those assembled in reciting the Pledge of Allegiance.

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Conflict of Interest

There was no conflict of interest.

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Public Comment

There was no public comment.

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Announcements

Shannel Swiader, Youth Commissioner, gave Council an update on the Youth Commission.

Mayor Millet announced upcoming events.

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Amendments to the Agenda

Mayor Millet noted the Approval of Master IGA with Park Meadows Metro District Addenda #5 has been removed from the agenda.

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Presentations

Mayor Millet also noted the Introduction of the 2016 Holiday Card Winner, Elliana Wiesen, was made at the Study Session.

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Consent Agenda

Mayor Millet noted the following items on the Consent Agenda, which consisted of:

- *Minutes of the November 15, 2016 Regular Meeting*
- *Claims for the period of November 7-28, 2016*

Council Member Shaw moved, Council Member Carpenter seconded, to approve the Consent Agenda. The motion passed with a 5 to 0 vote.

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Administrative Matters

***Public Hearing: Ordinance 16-05 AN ORDINANCE AUTHORIZING THE ISSUANCE OF THE CITY OF LONE TREE, COLORADO, SALES AND USE TAX REVENUE REFUNDING BONDS (RECREATION PROJECTS), SERIES 2017A, FOR THE PURPOSE OF REFUNDING CERTAIN OUTSTANDING SALES AND USE TAX REVENUE BONDS; PLEDGING CERTAIN SALES AND USE TAX REVENUES OF THE CITY FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON SAID BONDS; AND PROVIDING OTHER COVENANTS AND DETAILS IN CONNECTION THEREWITH (Second Reading)***

Mayor Millet opened the public hearing at 7:08 p.m.

Kristin Baumgartner, Finance Director, introduced both Ordinance 16-05 and Ordinance 16-06. David Bell, Bond Consultant, also spoke about the Ordinances.

Mayor Millet opened the public hearing for comment at 7:15 p.m.

There was no public comment.

The public hearing was closed at 7:15 p.m.

Council Member Brunnick moved, Mayor Pro Tem Squyer seconded, to approve **Ordinance 16-05 AN ORDINANCE AUTHORIZING THE ISSUANCE OF THE CITY OF LONE TREE, COLORADO, SALES AND USE TAX REVENUE REFUNDING BONDS (RECREATION PROJECTS), SERIES 2017A, FOR THE PURPOSE OF REFUNDING CERTAIN OUTSTANDING SALES AND USE TAX REVENUE BONDS; PLEDGING CERTAIN SALES AND USE TAX REVENUES OF THE CITY FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON SAID BONDS; AND PROVIDING OTHER COVENANTS AND DETAILS IN CONNECTION THEREWITH on second reading.** The motion passed with a 5 to 0 vote.

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*Public Hearing:* **Ordinance 16-06 AN ORDINANCE AUTHORIZING THE ISSUANCE OF THE CITY OF LONE TREE, COLORADO, SALES AND USE TAX REVENUE REFUNDING BONDS (CULTURAL FACILITIES PROJECTS), SERIES 2017B, FOR THE PURPOSE OF REFUNDING CERTAIN OUTSTANDING SALES AND USE TAX REVENUE BONDS; PLEDGING CERTAIN SALES AND USE TAX REVENUES OF THE CITY FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON SAID BONDS; AND PROVIDING OTHER COVENANTS AND DETAILS IN CONNECTION THEREWITH (Second Reading)**

Mayor Millet opened the public hearing at 7:16 p.m.

Mayor Millet opened the public hearing for comment at 7:16 p.m.

There was no public comment.

The public hearing was closed at 7:16 p.m.

Mayor Pro Tem Squyer moved, Council Member Carpenter seconded, to approve **Ordinance 16-06 AN ORDINANCE AUTHORIZING THE ISSUANCE OF THE CITY OF LONE TREE, COLORADO, SALES AND USE TAX REVENUE REFUNDING BONDS (CULTURAL FACILITIES PROJECTS), SERIES 2017B, FOR THE PURPOSE OF REFUNDING CERTAIN OUTSTANDING SALES AND USE TAX REVENUE BONDS; PLEDGING CERTAIN SALES AND USE TAX REVENUES OF THE CITY FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST**

**ON SAID BONDS; AND PROVIDING OTHER COVENANTS AND DETAILS IN CONNECTION THEREWITH on second reading.** The motion passed with a 5 to 0 vote.

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***RESOLUTION 16-26 ADOPTING THE 2017 CITY OF LONE TREE BUDGET***

Kristin Baumgartner, Finance Director, introduced the item.

Council Member Shaw moved, Council Member Carpenter seconded, to approve **Resolution 16-26 ADOPTING THE 2017 CITY OF LONE TREE BUDGET.** The motion passed with a 5 to 0 vote.

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***Ordinance 16-07, AN ORDINANCE APPROVING A FRANCHISE AGREEMENT BETWEEN THE CITY OF LONE TREE, COLORADO, AND PUBLIC SERVICE COMPANY OF COLORADO (XCEL ENERGY), GRANTING THE RIGHT TO PROVIDE, SELL AND DELIVER GAS AND ELECTRICITY TO THE CITY AND ITS RESIDENTS USING CITY STREETS AND RIGHTS-OF-WAY, PUBLIC UTILITY EASEMENTS AND OTHER CITY PROPERTY (First Reading)***

Steve Hebert, Deputy City Manager, introduced the item. Brandon Dittman, Franchise Counsel, recommended approval of the ordinance. Tom Henley, Xcel Energy, also spoke about the agreement.

Mayor Pro Tem Squyer moved, Council Member Brunnick seconded, to approve **Ordinance 16-07, AN ORDINANCE APPROVING A FRANCHISE AGREEMENT BETWEEN THE CITY OF LONE TREE, COLORADO, AND PUBLIC SERVICE COMPANY OF COLORADO (XCEL ENERGY), GRANTING THE RIGHT TO PROVIDE, SELL AND DELIVER GAS AND ELECTRICITY TO THE CITY AND ITS RESIDENTS USING CITY STREETS AND RIGHTS-OF-WAY, PUBLIC UTILITY EASEMENTS AND OTHER CITY PROPERTY on first reading.** The motion passed with a 5 to 0 vote.

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***RESOLUTION 16-27, ADOPTING THE AMENDED CITY OF LONE TREE ADMINISTRATIVE FEE SCHEDULE***

Jennifer Pettinger, City Clerk, Matt Archer, Building Official, and John Cotten, Public Works Director, introduced the item.

Council Member Carpenter moved, Council Member Shaw seconded, to approve **Resolution 16-27, ADOPTING THE AMENDED CITY OF LONE TREE ADMINISTRATIVE FEE SCHEDULE.** The motion passed with a 5 to 0 vote.

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***RESOLUTION 16-28, REAPPOINTING AND APPOINTING MEMBERS TO THE ARTS COMMISSION FOR THE CITY OF LONE TREE***

Council Member Brunnick moved, Council Member Carpenter seconded, to approve **Resolution 16-28, REAPPOINTING AND APPOINTING MEMBERS TO THE ARTS COMMISSION FOR THE CITY OF LONE TREE (Heaton, Lovelace, McGuire & Urgitus)**. The motion passed with a 5 to 0 vote.

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***RESOLUTION 16-29, REAPPOINTING A MEMBER TO THE CITY OF LONE TREE AUDIT COMMISSION***

Council Member Carpenter moved, Mayor Pro Tem Squyer seconded, to approve **Resolution 16-29, REAPPOINTING A MEMBER TO THE CITY OF LONE TREE AUDIT COMMISSION (Frenchman)**. The motion passed with a 5 to 0 vote.

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***RESOLUTION 16-30, REAPPOINTING MEMBERS TO THE CITY OF LONE TREE BOARD OF ADJUSTMENT AND APPEALS***

Council Member Shaw moved, Council Member Brunnick seconded, to approve **Resolution 16-30, REAPPOINTING MEMBERS TO THE CITY OF LONE TREE BOARD OF ADJUSTMENT AND APPEALS (Godden & Sarkissian)**. The motion passed with a 5 to 0 vote.

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***RESOLUTION 16-31, REAPPOINTING AND APPOINTING MEMBERS TO THE LONE TREE CITIZENS' RECREATION ADVISORY COMMITTEE***

Council Member Carpenter moved, Council Member Brunnick seconded, to approve **Resolution 16-31, REAPPOINTING AND APPOINTING MEMBERS TO THE LONE TREE CITIZENS' RECREATION ADVISORY COMMITTEE (Kammer, Ajie & Lyons)**. The motion passed with a 5 to 0 vote.

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***RESOLUTION 16-32, REAPPOINTING AND APPOINTING MEMBERS TO THE CITY OF LONE TREE PLANNING COMMISSION***

Mayor Pro Tem Squyer moved, Council Member Shaw seconded, to approve **Resolution 16-32, REAPPOINTING AND APPOINTING MEMBERS TO THE CITY OF LONE TREE PLANNING COMMISSION (Heskin & Bereit)**. The motion passed with a 5 to 0 vote.

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***RESOLUTION 16-33, APPOINTING A MEMBER TO THE CITY OF LONE TREE YOUTH COMMISSION***

Council Member Carpenter moved, Mayor Pro Tem Squyer seconded, to approve **Resolution 16-33, APPOINTING A MEMBER TO THE CITY OF LONE TREE YOUTH COMMISSION (Harff)**. The motion passed with a 5 to 0 vote.

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***RESOLUTION 16-34, AUTHORIZING THE PURCHASE OF REAL PROPERTY FOR CONSTRUCTION OF A PEDESTRIAN BRIDGE AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS***

Neil Rutledge, Assistant City Attorney, introduced the item.

Mayor Pro Tem Squyer moved, Council Member Shaw seconded, to approve **Resolution 16-34, AUTHORIZING THE PURCHASE OF REAL PROPERTY FOR CONSTRUCTION OF A PEDESTRIAN BRIDGE AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS**. The motion passed with a 5 to 0 vote.

***RESOLUTION 16-35, REGARDING ANNUAL ADMINISTRATIVE MATTERS FOR THE CITY OF LONE TREE FOR 2017***

Jennifer Pettinger, City Clerk, introduced the item.

Council Member Shaw moved, Mayor Pro Tem Squyer seconded, to approve **Resolution 16-35, REGARDING ANNUAL ADMINISTRATIVE MATTERS FOR THE CITY OF LONE TREE FOR 2017**. The motion passed with a 5 to 0 vote.

Adjournment

There being no further business, Mayor Millet adjourned the meeting at 7:59 p.m.

Respectfully submitted,

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Jennifer Pettinger, CMC, City Clerk



## CITY OF LONE TREE

### STAFF REPORT

#### Project Summary

**Date:** January 3, 2017

**Project Name:** Proposed Amendments to the Lone Tree Municipal Code

**Project Type / #:** Municipal Code Update, RG16-71

**Staff Contacts:** Jennifer Drybread, Senior Planner  
Lisa Albers, Capital Improvement Project Manager  
Matt Archer, Chief Building Official  
Kelly First, Community Development Director  
John Cotten, Public Works Director

**Meeting Type:** Public Hearing, First Reading

**Summary of Request:**

Approval to amend the Lone Tree Municipal Code including:

Chapter 11 - Streets, Sidewalks and Public Property  
Chapter 15 – Public Works  
Chapter 16 – Zoning  
Chapter 17 – Subdivision  
Chapter 18 – Building Regulations

**Planning Commission Recommendation (12/13/2016) for Chapters 16 and 17 only:**

Unanimous approval subject to a minor format change to Chapter 17.

**Suggested Motion or Recommended Action:**

I move to approve on First Reading:

- **ORDINANCE 17-01, AN ORDINANCE AMENDING CHAPTER 11 OF THE MUNICIPAL CODE TO ADOPT BY REFERENCE AND AMEND THE DOUGLAS COUNTY ROADWAY AND DESIGN STANDARDS; AMEND THE BUILDING**

**MATERIALS ARTICLE; ADD NEW ARTICLES REGARDING STREET AND PEDESTRIAN LIGHTING AND PUBLIC RIGHTS OF WAY; AND PROVIDE FOR PENALTIES**

- **ORDINANCE 17-02, AN ORDINANCE AMENDING CHAPTER 15 OF THE MUNICIPAL CODE TO ADOPT BY REFERENCE THE 2017 FLOOD INSURANCE STUDY FOR DOUGLAS COUNTY AND ACCOMPANYING FLOOD INSURANCE RATE MAPS, DIGITAL FLOOD RATE MAPS AND FLOOD BOUNDARY FLOODWAY MAPS; AMEND STORMWATER DISCHARGE DEFINITION; ADD A NEW ARTICLE REGARDING CLEARING, GRADING AND LAND DISTURBANCE; AND PROVIDE FOR PENALTIES**
- **ORDINANCE NO. 17-03, AN ORDINANCE AMENDING CHAPTER 16 OF THE MUNICIPAL CODE TO REPEAL ARTICLE XXXI REGARDING CLEARING, GRADING AND LAND DISTURBANCE; AMEND USE AND STRUCTURE RESTRICTIONS NEAR AIRPORTS; ADD A PROVISION REGARDING RAIN BARRELS; AND AMEND AND UPDATE MISCELLANEOUS PROVISIONS**
- **ORDINANCE NO. 17-04, AN ORDINANCE AMENDING CHAPTER 17 OF THE MUNICIPAL CODE TO AMEND AND UPDATE MISCELLANEOUS PROVISIONS**
- **ORDINANCE NO. 17-05, AN ORDINANCE AMENDING CHAPTER 18 OF THE MUNICIPAL CODE TO AMEND THE 2012 INTERNATIONAL RESIDENTIAL CODE REGARDING DRAINAGE EROSION SEDIMENT CONTROL PERMITS**



**CITY OF LONE TREE  
STAFF REPORT**

**TO:** Mayor Millet and City Council

**FROM:** Jennifer Drybread, Senior Planner  
Lisa Albers, Capital Improvement Project Manager  
Matt Archer, Chief Building Official  
Kelly First, Community Development Director  
John Cotten, Public Works Director

**FOR:** January 3, 2017 City Council Public Hearing

**DATE:** December 28, 2016

**SUBJECT:** Proposed Amendments to the City of Lone Tree Municipal Code  
Project RG16-71

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**A. SUMMARY**

Approval to amend the Lone Tree Municipal Code, Chapters 11, 15, 16, 17, and 18. These proposed amendments include a number of substantive and non-substantive changes (see summary and intent of proposed amendments in Section E. of this report).

**B. SUGGESTED MOTION OR RECOMMENDED ACTION**

I move to approve on First Reading:

- ORDINANCE 17-01, AN ORDINANCE AMENDING CHAPTER 11 OF THE MUNICIPAL CODE TO ADOPT BY REFERENCE AND AMEND THE DOUGLAS COUNTY ROADWAY AND DESIGN STANDARDS; AMEND THE BUILDING MATERIALS ARTICLE; ADD NEW ARTICLES REGARDING STREET AND PEDESTRIAN LIGHTING AND PUBLIC RIGHTS OF WAY; AND PROVIDE FOR PENALTIES
- ORDINANCE 17-02, AN ORDINANCE AMENDING CHAPTER 15 OF THE MUNICIPAL CODE TO ADOPT BY REFERENCE THE 2017 FLOOD INSURANCE STUDY FOR DOUGLAS COUNTY AND ACCOMPANYING FLOOD INSURANCE RATE MAPS, DIGITAL FLOOD RATE MAPS AND FLOOD BOUNDARY

FLOODWAY MAPS; AMEND STORMWATER DISCHARGE DEFINITION; ADD A NEW ARTICLE REGARDING CLEARING, GRADING AND LAND DISTURBANCE; AND PROVIDE FOR PENALTIES

- ORDINANCE NO. 17-03, AN ORDINANCE AMENDING CHAPTER 16 OF THE MUNICIPAL CODE TO REPEAL ARTICLE XXXI REGARDING CLEARING, GRADING AND LAND DISTURBANCE; AMEND USE AND STRUCTURE RESTRICTIONS NEAR AIRPORTS; ADD A PROVISION REGARDING RAIN BARRELS; AND AMEND AND UPDATE MISCELLANEOUS PROVISIONS
- ORDINANCE NO. 17-04, AN ORDINANCE AMENDING CHAPTER 17 OF THE MUNICIPAL CODE TO AMEND AND UPDATE MISCELLANEOUS PROVISIONS
- ORDINANCE NO. 17-05, AN ORDINANCE AMENDING CHAPTER 18 OF THE MUNICIPAL CODE TO AMEND THE 2012 INTERNATIONAL RESIDENTIAL CODE REGARDING DRAINAGE EROSION SEDIMENT CONTROL PERMITS

### **C. BACKGROUND**

From time to time the City staff undertakes an evaluation of the Municipal Code to:

- Ensure regulations are clear and consistent
- Ensure regulations are in line with current practices or procedures
- Eliminate redundant, outdated or unnecessary regulations
- Address existing problems or concerns
- Keep current with changing circumstances or technology, and
- Meet the needs of the City.

Staff from the Public Works and Community Development Departments worked together in 2016 to develop amendments to the Municipal Code that address the above list. Some of the amendments are minor in nature. The more substantive amendments are generally described to include:

- Requirements for newly installed street and pedestrian lights within the right-of-way.
- A section on Public Rights-of-Way to state the requirements for Right-of-Way Use Permits.
- Requirements for Construction and/or Right-Of-Way Permit applicants to remove utility markings within 45 days of work completion.
- Language to provide guidance on rainwater collection for residential (rain barrels).
- Further clarification of allowable nonstormwater discharge and clarification on stormwater violations and associated penalties.
- Updated regulations regarding structures that may be recommended by the Federal Aviation Administration (FAA) for mitigation measures, or for structures determined by the FAA to constitute a hazard to aircraft from Centennial Airport.

- New regulations for drainage and sediment control of single family detached homes.

A more complete description of the intent of the changes by Chapter and Article is provided following the summary of referral responses.

#### **D. SUMMARY OF REFERRAL PROCESS AND RESPONSES**

The proposed amendments were sent to all homeowners associations in the City and to selected referral agencies including utility providers, metro districts, Centennial Airport, special districts, and the Cherry Creek Basin Water Quality Authority. Following is the staff response to these referral entities or individuals:

Dan Clawson:

- Questioned why Section 15-1-50 refers to a flood insurance study date in the future.

Staff Response:

FEMA requires that every respective municipality update their code in conjunction with the revised maps and insurance studies prior to the date of the revised map and study. The February 17, 2017 maps are already approved and published on the FEMA website as “pending” and will become effective on February 17, 2017. Furthermore, the code changes proposed at this time will not take effect until around February 17, 2017.

- Recommended that the Zoning Code, Section 16-2-210, Property Maintenance, be amended to include single family detached homes so that homeowners be subject to the same requirement to remove snow from sidewalks within 24 hours as is required for non-single-family detached properties.

Staff Response:

The City Council has previously considered the issue of regulating sidewalk snow removal in single-family detached neighborhoods. One of the key challenges is effective enforcement. Unlike multi-family or commercial properties where there is an owner or management company readily available to ensure safe access to a property or business, that is not always the case with single-family homes. Residents may be out of town during a snow event or a resident may be physically unable to remove snow in a designated period of time. It would be very labor intensive for code enforcement staff to respond to complaints and achieve compliance in residential areas given the staff available and the variety of circumstances that could be at play. The City can play a role in raising awareness and seeking voluntary action among neighbors.

Rick Solomon, President, Terra Ridge HOA:

(Note: Staff met with Mr. Solomon and other representatives from the Terra Ridge HOA on November 29, 2016 to discuss their issues. Their concerns and questions appear to be satisfactorily resolved, and their follow-up response is included with the referral responses.)

- Concerned about the proposed revisions that address construction trailers and/or trash bins associated with private re-construction projects and that are temporarily stored on the public streets. These must now have a permit from the City (Chapter 11).

Staff Response:

The Municipal Code already allows the use of construction trailers and/or trash bins in the public right-of-way with an approved Right-of-Way Use Permit. Homeowner Associations (HOAs) may have additional restrictions within their covenants which may preclude the use of trailers or trash bins that are more restrictive than the City's requirements. The only proposed revision is a requirement for the permittee to install erosion control devices and traffic control per approved plans.

- Concerned about revisions to Chapters 15 and 17 regarding stormwater and additional expenditures for HOAs.

Staff Response:

The proposed revisions in Chapter 17 are solely for new subdivision construction projects, and do not pertain to existing homeowners associations. The revisions in Chapter 15 are related to the updated Federal Emergency Management Agency (FEMA) flood insurance studies and maps, the addition of three allowable nonstormwater discharges, and the placement of Article V Clearing, Grading and Land Disturbance, which was moved from Chapter 16 to Chapter 15. Article V relates to any construction project which requires a Grading, Erosion and Sediment Control (GESC) permit for construction. For this code update, no additional requirements or changes are proposed to the maintenance of existing stormwater facilities by HOAs.

- Seeks to have an HOA Design Review sign-off in the building permitting process.

Staff Response:

The City cannot legally withhold building permit applications that meet the requirements of the municipal code and building codes. However, applicants are reminded to contact the HOA by Building Division staff. Additionally, the online permit application submittal page prominently displays a reminder and the process requires any building permit applicant to check a box and accept the following disclaimer before beginning their online permit application:

“Home Owners Association Disclaimer

The issuance of a permit does not assume compliance with covenants that may be associated with the property. The permittee must contact their Homeowners Association (if applicable) to ensure that these improvements are in compliance with the Homeowners Association (HOA) covenants. The City cannot and will not enforce HOA standards; however, failure to comply with required Covenants, Conditions and Restrictions may result in delays or fines imposed by the HOA.”

Centennial Airport:

- Airport staff agrees with the proposed revisions by staff to the Zoning code (Chapter 16, Sec 16-2-110 (c) regarding building structures and FAA recommendations and determinations.

**E. SUMMARY AND INTENT OF PROPOSED AMENDMENTS BY CHAPTER AND ARTICLE**

**CHAPTER 11 Streets, Sidewalks and Public Property**

**Article III – Roadway Design and Construction Standards**

- Adopts the latest Douglas County Roadway Design and Construction Standards with amendments relative to the City of Lone Tree. Douglas County Roadway Design and Construction Standards has been updated since our last code revision.
- Added “Violations; penalties” to set the penalty for any violations of the Roadway Design and Construction Standards. The violations/penalties for not following the Roadway Design and Construction Standards were not clear in the code.

**Article IV – Building Materials**

- Changed the reference of City Manager to Director of Public Works or his/her designated representative. The Director of Public Works is responsible for this section of the code.
- Added a requirement for erosion control and traffic control for any storage of building materials on public streets and sidewalks. This requirement is written on the Right-Of-Way Permit, but needed to be added to the code.

**Article VI – Street and Pedestrian Lighting**

- Added a new article to Chapter 11 to define the purpose of street and pedestrian lighting, allowable locations, and City acceptable street light types and wiring. The City has had a policy for 3 years that the street lights must be metered and wired

per City standards in order to be accepted and maintained by the City. This code change memorializes this policy.

### **Article VII – Public Rights of Way**

- Added a new article to Chapter 11 to define allowable construction in the public right-of-way as well as permit requirements, fees, insurance requirements, surety, warranty, inspections, time of completion, locate information, reimbursement of City costs, landscaping, penalties, and removal of utility markings required. Prior to this code update, there was no explicit code that addressed work in the right-of-way.

## **CHAPTER 15 Public Works**

### **Article II – Stormwater Management; Grading, Erosion and Sediment Control; Illicit Discharge**

- Further defines nonstormwater discharges. Three additional allowable nonstormwater discharges were added to the City's MS4 permit, thereby requiring a code update to add the additional allowances.

### **Article III – Flood Damage Prevention**

- Added a requirement that the City Clerk and Floodplain Administrator shall keep a copy of the Flood Insurance Study (FIS), Digital Flood Insurance Rate Maps (DFIRMs), Flood Insurance Rate Maps (FIRMs), and Flood Boundary Floodway Maps (FBFMs) on file and available for public inspection. City Clerk was added to this existing code requirement since he/she maintains all City documents.

### **Article V – Clearing, Grading and Land Disturbance**

- This article was moved from Chapter 16 – Zoning into Chapter 15 – Public Works. The Clearing, Grading and Land Disturbance article applied to more than just Chapter 16, so it was moved to Chapter 15 – Public Works to cover work in the right-of-way, any SIPs, and subdivisions.
- The reference of City Engineer was changed to Director of Public Works or his/her designated representative. The Director of Public Works has the ultimate authority for this section of the code.
- Allows permits to be renewed for two (2) additional six (6) months period by the Director of Public Work or his/her designated representative. Any additional extensions may require City Council approval. Currently, the City does not have a limitation on permit renewals.
- Allows the Director of Public Works or his/her designated representative to reduce the security prior to final release. This addition allows the applicant to reduce their

security based on items that have already been completed, for which the City will not need security.

- Changed the violation of the chapter from \$100 per day to \$1,000 per day. This was changed to match the penalties for all other code violations with regard to Public Works.

## **CHAPTER 16 Zoning**

### **Article II – General Requirements and Exceptions**

- Amended Sec. 16-2-110 to address zoning requirements and procedures rather than building requirements, which are included in Chapter 18 of the Municipal Code. Changed section name from “Building restrictions” to “Use and structure restrictions.”
- Amended outdated language that was a holdover from the original County regulations, on which the City’s code was originally based, regarding Federal Aviation Administration (FAA) determination of hazards or obstructions to airport use. The proposed language provides latitude for the City in the case of mitigation measures recommended by the FAA, and provides that Site Improvement Plan applications to the City will be denied in the case of structures determined to be a hazard by the FAA.
- Added requirements for residential use of rain barrels. Prior to the passage of Colorado House Bill 16-1005, in particular, rainwater collection was not permitted except under specific circumstances. The proposed regulations comply with the requirements of this new law, and adds measures to minimize visual impacts. (Attached is a fact sheet on the State law, prepared by the Colorado State University Extension.)

### **Article XV – PD - Planned Development District**

- Changed reference of City Engineer to Director of Public Works or his/her designated representative in selected sections where the Director of Public Works has the ultimate authority for such regulations.

### **Article XXII – Temporary Structures**

- Changed reference of City Engineer to Director of Public Works or his/her designated representative. The Director of Public Works has the ultimate authority for this section of the code.

### **Article XXVII – Site Improvement Plan (SIP)**

- Changed reference of City Engineer to Director of Public Works or his/her designated representative in selected sections where the Director of Public Works has the ultimate authority for such regulations.

- Deleted requirement for the specifications of irrigation equipment to be included in the SIP, as such equipment is often replaced in the field, rendering this information dated.

### **Article XXXI – Clearing, Grading and Land Disturbance**

- Removed entire article and moved it to Chapter 15, Article VII. The Clearing, Grading and Land Disturbance article applied to more than just Chapter 16, so it was moved to Chapter 15 – Public Works to cover work in the right-of-way, any SIPs, and subdivisions.

### **Article XXXII – Landscaping Standards**

- Changed reference of City Engineer to Director of Public Works or his/her designated representative. The Director of Public Works has the ultimate authority for this section of the code.
- Changed the requirement to allow temporary irrigation to occur for no more than two (2) growing seasons instead of one. This allows more time for plant establishment.
- Primarily deleted irrigation equipment specifications. These are very difficult to inspect for compliance and can change over time with technological advancements.
- Deleted reference to allowing the use of nontreated water for irrigation. This conflicts with the proposed rain barrel provision, and would likely be allowed if the supplying water district and health department approved such.

## **CHAPTER 17 Subdivisions**

### **Article I – Administrative Provisions**

- Repealed the effective date (Sec. 17-1-60) since it is no longer relevant.
- Removed the definition of City Engineer. The Director of Public Works has the ultimate authority for this section of the code.
- Added a definition for Subdivision Improvements.

### **Article II – General Standards, Procedures and Requirements**

- Changed “public improvements” to “subdivision improvements.” This chapter refers to subdivisions and their respective improvements.
- Updated Nonresidential development review process in the chart. This now states that the final plat will be approval by City Council.
- Added references to Chapter 15. This is amended to cite the appropriate chapter.
- Added a requirement for guarantee of subdivision improvements prior to approval of construction plans and issuance of a construction permit. The current code does not state when the guarantee of subdivision improvements is due.

- Changed reference of City Engineer to Director of Public Works or his/her designated representative in selected sections where the Director of Public Works has the ultimate authority for such regulations.

#### **Article V – General Standards, Procedures and Requirements**

- Changed the reference in Sec. 17-5-60(13) from Article IX to Article VIII of Chapter 17.

#### **Article VII – Replat of Subdivision, Where Additional Lots Are Created**

- Made clear the review process where additional lots are created for single-family attached, multi-family, or nonresidential land use, and referenced the correct Article.

### **CHAPTER 18 Building Regulations**

#### **Article III – Residential Code**

- Added new requirements to Chapter 18 of the Municipal Code, which amends Chapter 4 of the International Residential Code. This sets minimum requirements for drainage around homes and establishes controls for sediment leaving lots, as the existing regulations do not clearly address this for single family detached development. Requirements for other development will be regulated by the new Chapter 15.

## **F. PLANNING COMMISSION**

The following has been taken directly from the draft minutes of the Planning Commission meeting held on December 13, 2016 (note that only Chapters 16 and 17 of the Lone Tree Municipal Code were considered by the Planning Commission as required by the Code):

Ms. Drybread introduced the proposed amendments – she stated that periodically staff reviews the municipal code to ensure that regulations address existing problems or concerns, are clear and consistent, are in line with current practices or procedures, are current with changing circumstances or technology, meet the needs of the city, and that redundant, outdated, and/or unnecessary regulations are eliminated. The proposed changes impacted Chapter 16, Zoning and Chapter 17, Subdivisions. Most of the substantive changes were Public Works-related items. The proposed changes were sent out on referral.

Ms. Albers and Ms. Drybread then presented the update in more detail. New requirements for residential rain collection would allow for two, 55-gallon collection

systems per residence (if multifamily, they would only be allowed on units of four or less). This provision was directly taken from new State regulations on residential rain collection with Lone Tree adding aesthetic standards.

Other changes to the code included moving the Article on Clearing, Grading, and Land Disturbance to Chapter 15, Public Works, of the Municipal Code, updating regulations pertaining to irrigation, changing language about public improvements to subdivision improvements, and updating regulations regarding structures that may be recommended by the Federal Aviation Administration (FAA) for mitigation measures or for structures determined by the FAA to constitute a hazard to aircraft from Centennial Airport.

Regarding the FAA regulations, the proposed language requires applicants to submit first to the FAA for review, and then for the FAA's response to be part of the packet that gets submitted to the Planning Commission/City Council. The FAA does not have the power to enforce these regulations – they leave it to the local jurisdiction to enforce standards.

Regarding irrigation, changes included removing very specific references to irrigation equipment products that date the code and change often and allowing for temporary irrigation to last for two seasons instead of one, as it can take plants a long time to get established in Colorado.

Commissioner Dodgen inquired as to whether HOAs could prohibit rain barrels. Mr. Cotten responded that HOAs can only regulate what is in their covenants. Ms. Albers and Commissioner Carlson both expressed their understanding that state law would preempt HOA covenants from prohibiting rain barrels. Mr. Cotten further added that they are only allowed on attached residential developments of four units or less. Mr. Cotten added that HOAs could probably control rain barrel aesthetics.

Mr. Cotten stated that the City currently doesn't have any way of enforcing rain barrel standards. In the update, they would have to be outdoors, above ground, and elevated no more than two feet above ground.

Commissioner Steele inquired about requirements that rain barrels be sealed so that mosquitos don't breed in them. Mr. Cotten responded that mosquitos don't typically breed in deep water; however, they would be required to be sealed.

Commissioner Rodriguez read from a CSU packet on the subject of residential rain collection that supported the earlier assertion that HOAs could not prevent these; however, reasonable aesthetic standards could be enforced. Commissioner Dodgen then inquired as to whether through the regulation of aesthetics, HOAs could have a *de facto* prohibition on the right to have these. Commissioner Rodriguez believed that this would constitute an unreasonable regulation by an HOA and probably be unenforceable under state law.

Commissioner Steele inquired about the cost/benefits factors associated with requiring rain sensors. He was curious about the state of this science, as sometimes the rain sensors seemed to be inaccurate. Ms. Drybread responded that this technology has been around for at least a decade and that it saved money in terms of water conservation. Commissioner Steele replied that it would be nice to understand the quality of this technology as we were requiring it in the code. Mr. Cotten answered that they were getting better all the time – they were more accurate at monitoring conditions and efficiently managing the system.

Commissioner Steele queried Mr. Cotten whether these products were monitored and adjusted following installation. Mr. Cotten replied that in some cases they were.

Commissioner Steele suggested inviting Centennial Airport (APA) to make a presentation to the Planning Commission on their future plans for growth.

Chair Kirchner inquired about removing provisions requiring a certain type of irrigation system; how do we inspect/approve it in the field. Ms. Drybread replied that we do not currently have staff that inspects this in the field.

Chair Kirchner reiterated that having Centennial Airport (APA) present would be a good idea – this would appraise them of the future FAA review process and the airport's plans for growth.

Commissioner Heskin made comments regarding the review process in the Zoning Code, 16-27-90, regarding recommendations for approval with conditions. What was the follow up regarding applicant statements on the record? Ms. First replied that if something didn't rise to the level of a condition, then staff would follow up with the applicant during review and inspection.

Commissioner Heskin inquired about the section of the code stating that if the project were denied, it could not be brought again before the Planning Commission for a year. Commissioner Heskin hypothesized about what would happen if a project that was substantially in compliance with regulations, recommended for approval by staff, and approved by the Planning Commission, was subsequently denied by the City Council for some other reason – what would be the rationale of requiring the applicant to wait one full year before their project could be reconsidered. Ms. Drybread replied that in her 13 years of experience with the City, a project was never denied. Instead, if an applicant was heading towards denial, they would withdraw the project from consideration, revise, and then resubmit.

Chair Kirchner took exception with the order of Chapters being listed as Chapter 16, 15, and 17 in Section 17-2-10 Intent. Instead, they should be in numerical sequence (15, 16, and 17).

Commissioner Steele moved to recommend approval of the proposed amendments to the City of Lone Tree Municipal Code, Chapters 16 and 17, with Commissioner

Dodgen moving to amend the language in Section 17-2-10 Intent so that the reference to Chapter 16, 15, and 17 would be listed in numerical order, Commissioner Spencer seconded, and the motion passed 7 to 0.

Staff note: the minor language change recommended by the Planning Commission has been corrected in the proposed redlined document.

## **G. ATTACHMENTS**

- Proposed code amendments, showing changes redlined. These changes are presented in a variety of colors, due to multiple authors working on the same document
- Referral Responses
- Colorado State University Extension, "Rainwater Collection in Colorado"

## CHAPTER 11 Streets, Sidewalks and Public Property

ARTICLE I - Reserved

ARTICLE II - Reserved

ARTICLE III - Roadway Design and Construction Standards ([AMENDMENTS PROPOSED](#))

ARTICLE IV - Building Materials ([AMENDMENTS PROPOSED](#))

ARTICLE V – Reserved

[ARTICLE VI – Street Lights \(NEW ARTICLE PROPOSED\)](#)

[ARTICLE VII – Public Rights of Way \(NEW ARTICLE PROPOSED\)](#)

### **ARTICLE III Roadway Design and Construction Standards**

[Sec. 11-3-10. Adoption; amendments. \(AMENDMENTS PROPOSED\)](#)

[Sec. 11-3-20. Jurisdiction. \(AMENDMENTS PROPOSED\)](#)

[Sec. 11-3-30. Stop work orders. \(AMENDMENTS PROPOSED\)](#)

[Sec. 11-3-40. Purpose. \(AMENDMENTS PROPOSED\)](#)

[Sec. 11-3-50. Violations; Penalties. \(AMENDMENTS PROPOSED\)](#)

[Sec. 11-3-60. Street and Pedestrian Lighting](#)

#### **Sec. 11-3-10. ~~Adoption; amendments.~~ Adoption by reference: Roadway Design and Construction Standards.**

~~The Douglas County Roadway Design and Construction Standards, as amended in April, 1994 (the "Standards"), are hereby adopted by the City, with the following exceptions:~~

- ~~(1) Where the term *Douglas County* or *County* is found, the term *City of Lone Tree* or *City* shall be substituted; for example, where the term *County Engineer* is used, the term *City Engineer* shall be substituted.~~
- ~~(2) Where the term *Board of County Commissioners* is found, the term *City Council* shall be substituted, unless the context refers to a specific action taken by the Douglas County Board of County Commissioners in its adoption and administration of the Standards.~~
- ~~(3) Where the term *Department of Public Works, Road and Bridge Division, Engineering Division, or Inspection Department* is used, the term *City Engineer* shall be substituted.~~
- ~~(4) Section 1.2 of the Standards, "Jurisdiction," is not adopted.~~

(a) The Douglas County Roadway Design and Construction Standards, as amended, revised and updated from time to time, is hereby adopted by reference and incorporated into this Article as though fully set forth herein as the City of Lone Tree Roadway Design and Construction Standards. Except as otherwise provided, this code is adopted in full.

(b) One (1) copy of the Douglas County Roadway Design and Construction Standards, as amended by this Chapter, shall be on file in the office of the City Clerk and may be inspected by any interested person between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, holidays excepted. This code, as adopted and amended, shall be available for sale to the public at the City offices, at a price reflecting the cost to the City.

[Section 11-3-20 is repealed and replaced by the following:

~~(Ord. 97-1 Art. 3.1)~~

~~Sec. 11-3-20. Jurisdiction.~~

~~The Standards shall apply to all land within the boundaries of the City.~~

~~(Ord. 97-1 Art. 3.2)~~

**Sec. 11-3-20. Amendments.**

The Douglas County Roadway Design and Construction Standards is amended as follows:

(1) The following terms, when used in the codes being adopted, shall have the following meanings:

Authority means the City Council of the City of Lone Tree.

Jurisdiction means the City of Lone Tree.

(2) Where the term *Douglas County or County or unincorporated area of Douglas County or unincorporated Douglas County* is found, the term *City of Lone Tree or City* shall be substituted; for example, where the term *County Engineer* is used, the term *Director of Public Works or his/her designated representative* shall be substituted.

(3) Where the term *Board of County Commissioners* is found, the term *City Council* shall be substituted, unless the context refers to a specific action previously taken by the Douglas County Board of County Commissioners.

(4) Where the term *Department of Public Works, Road and Bridge Division, Engineering Division or Inspection Department* is used, whether standing alone or modified by *Douglas County or County*, the term *Public Works Department* shall be substituted.

(5) Where the term *Director of Engineering Service, Engineer, or Inspector* is used, whether standing alone or modified by *Douglas County or County*, the term *Director of Public Works or his/her designated representative* shall be substituted.

(6) Where the term *Planning or Building* is used, whether standing alone or modified by *Division, Douglas County, or County*, the term *City of Lone Tree Community Development* shall be substituted.

- (7) Where the *Douglas County Roadway Design and Construction Standards* reference sections of the *Douglas County Storm Drainage Design and Technical Criteria* (“*Drainage Manual*”), those references shall be interpreted to apply to the applicable sections of the current version of the *Drainage Manual*.
- (8) Where the term *Blue-line Copies* is used relative to plans submittals, the current industry standard for paper copy prints may be submitted.
- (9) Where reference is made to one or more of the following, the applicable City of Lone Tree forms (where available), as published on the City Website, shall be substituted: *Submittal Form; Certification Notes; Acceptance Block; Required Notes; Forms*.
- (10) Where the term *Douglas County Board of Commissioners* is used in the *Douglas County Code* in reference to approval for temporary road or lane closures, the term *Director of Public Works or his/her designated representative* shall be inserted.
- (11) Section 2.1.6.3 of the *Douglas County Code* shall be revised to substitute the word “*typical*” in place of “*maximum*”.
- (12) Section 2.2.1 of the *Douglas County Code* is amended to note that the initial approval period will be 24 months maximum, or less if so stated in other adopted Codes or standards relative to the specified plans, reports or documents.
- (13) Section 2.3.8 of the *Douglas County Code* (Erosion and Sedimentation Control Plans) shall be amended to reference the City of Lone Tree adopted Grading, Erosion and Sediment Control (GES) regulations.
- (14) Chapter 9 of the *Douglas County Code* shall be amended as necessary to comply with and incorporate the City of Lone Tree Asphalt Pavement Patchback (ST-01) and/or Concrete Pavement Patchback (ST-02) details, as published on the City Website.
- (15) Chapter 10 (Permit Procedures and Suretying Requirements) of the *Douglas County Code* shall be amended as necessary to incorporate the following: City of Lone Tree Public Works, current address and phone number; Right of Way/Construction Permit Fee is as currently adopted and published by the City.
- (16) Sections 10.1.12 and 10.12 (*Licensing*) of the *Douglas County Code* is not adopted.
- (17) Where the term *Surety* is used (e.g. Section 10.4.1 of the *Douglas County Code*), the terms *Company (Corporate)* or *Cashier’s Check or Irrevocable Letter of Credit* shall be substituted.
- (18) Section 15.4 (Alternate Standards) of the *Douglas County Code* shall be amended by deletion of the remainder of the last paragraph of the section, starting with “A County Engineering Inspector will not inspect ....”.

**Sec. 11-3-30. Stop work orders.**

Any person, corporation, quasi-governmental agency, special district, mutual company, electric, gas or communication utility corporation, who, without first having obtained a permit

and/or who having made a cut in a public right-of-way which has settled, has failed or which has not been repaired in conformance with established City standards, shall be subject to a "Stop Work Order" issued by the City whereupon that person, corporation or utility shall, except for emergency repair work, discontinue all work within public rights-of-way within the City until such time as the required repair has been satisfactorily completed. No further permits will be issued until the repair has been made, and/or the City reimbursed for its expenses. The City may, on its own initiative, make required repairs and bill the responsible contractor. Minimum charge shall be a three-hundred-dollar administrative charge, plus costs for labor, materials and equipment on a portal-to-portal basis.

(Ord. 97-1 Art. 3.3)

**Sec. 11-3-40. Purpose.**

Pursuant to Section 31-16-205, C.R.S., the following description of the Standards is provided: The purpose of the ~~Douglas County~~ Roadway Design and Construction Standards, ~~as amended in April, 1994, (the "Standards")~~, is to provide minimum design and technical criteria for the analysis and design of roadway facilities. These standards include submittal procedures for drawings and specifications, submittal requirements for construction plans, design and technical criteria for roadways, pavement, bridges and major drainage structures, criteria for record drawings, roadway inspection and testing procedures, construction guidelines, trench backfill/compaction guidelines, permit procedures and ~~bondsuretying~~ requirements for contractors, acceptance procedures and requirements, utility locations, access requirements and criteria, cost estimating for public improvements, and policies concerning private roads. ~~The Standards were promulgated by the Douglas County Board of County Commissioners, 101 Third Street, Castle Rock, Colorado 80104.~~

**Sec. 11-3-50. Violations; penalties.**

Any person, firm or corporation violating any of the provisions of this Article or any code incorporated herein shall be deemed guilty of a misdemeanor, and any such person, firm or corporation shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation is committed, continued or permitted. Upon conviction of any such violations, such person, firm or corporation shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for not more than one (1) year, or by both such fine and imprisonment. The issuance or granting of a permit or approval of plans and specifications shall not be deemed or construed to be a permit for or an approval of, any violation of any provisions of the Codes adopted herein.

**ARTICLE IV Building Materials**

Sec. 11-4-10. Temporary storage or staging of building materials on public streets and sidewalks. (AMENDMENTS PROPOSED)

Sec. 11-4-20. Enforcement.

Sec. 11-4-30. Violations; penalties. (AMENDMENTS PROPOSED)

**Sec. 11-4-10. Temporary storage or staging of building materials on public streets and sidewalks.**

- (a) No person may place, locate, deposit, store or stage home improvement, construction or landscaping materials or other tangible property intended to be used on residential property for home improvement, construction or landscaping purposes ("building materials") on a public street, as defined in Section 16-36-20 of this Code, or a public sidewalk without first obtaining a permit from the City.
- (b) A person may submit to the City an application for a permit to temporarily store or stage building materials on a public street or sidewalk. The application shall:
  - (1) State the names of the owner and, if different from the owner, the occupant of the residence to which the building materials will be delivered.
  - (2) State the address of the residence to which the building materials will be delivered.
  - (3) Describe in detail the item or items to be stored or staged on the public street or sidewalk, the purpose for which the item or items will be stored or staged, and the area, including approximate dimensions, of the public street or sidewalk that will be occupied by the item or items; and
  - (4) State the length of time needed to store or stage the item or items.
- (c) The ~~City Manager~~Director of Public Works or his or her designee shall review the application and may issue a permit, subject to conditions, intended to decrease any risk that the building materials may pose or to ensure that traffic or other lawful passage is not impeded on the public street or sidewalk. Conditions may include, but are not limited to, a time limit for storing or staging the building materials on the public street or sidewalk, a requirement that the applicant install applicable erosion control devices and traffic control as per plans approved by the City, and a requirement that the applicant clean up and restore the storage or staging area after the building materials are removed.

**Sec. 11-4-30. Violations; penalties.**

A violation of any provision of this Article shall be punishable by a fine of not more than five hundred dollars (\$500.00) per day per violation, plus court and administrative costs, as applicable. Each violation shall be deemed a separate offense for purposes of assessing a fine. In addition, the City may cause the removal of building materials, from a public street or ~~sidewalk, that~~sidewalk that are located or stored in violation of this Article and the costs of such removal shall be imposed upon the owner of the building materials.

**ARTICLE VI Street and Pedestrian Lighting (NEW ARTICLE PROPOSED)**

Sec. 11-6-10. Purpose.

Sec. 11-6-20. Acceptable Streetlights.

Sec. 11-6-30. Locations.

**Sec. 11-6-10. Purpose.**

- (a) Purpose. The purpose of this Article is to ensure that street and pedestrian lighting installed in the City rights-of-way is designed to complement the surrounding area

while promoting and protection the public health, safety, and welfare by assisting motorists and by providing improved illumination.

**Sec. 11-6-20. Acceptable Streetlights.**

- (a) All newly installed street and pedestrian lights shall meet the currently approved City of Lone Tree street lighting design standards. All lights shall be on a separately metered system.
- (b) At the completion of construction, the person or entity responsible for constructing street and pedestrian lights shall apply to the City for inspection and acceptance of the installed lights. After any discrepancies have been resolved, the City shall accept the installed lights in the right-of-way for ownership and maintenance.

**Sec. 11-6-30. Locations.**

- (a) No street light shall project into any roadway so as to obstruct or inhibit traffic.
- (b) Street and pedestrian lights shall be installed in areas outside of sidewalks, unless absolutely necessary and as approved by the City prior to construction. In the case where any street or pedestrian light is allowed to be located on a sidewalk, it shall be designed and installed in such a manner as to not obstruct the passage of pedestrians and shall comply with the Americans with Disabilities Act, as amended.
- (c) All new or replacement street or pedestrian lights shall be installed with underground electrical service.

**ARTICLE VII Public Rights of Way (NEW ARTICLE PROPOSED)**

**Division 1**

Sec. 11-7-10. Purpose.

Sec. 11-7-20. Definitions.

Sec. 11-7-30. Authority.

Sec. 11-7-40. Developer Ownership of Infrastructure.

Sec. 11-7-50. Permit Required.

Sec. 11-7-60. Permit Application.

Sec. 11-7-70. Blanket Maintenance Permits.

Sec. 11-7-80. Permit Fees.

Sec. 11-7-90. Insurance.

Sec. 11-7.100. Indemnification.

Sec. 11-7-110. Letters of Credit or other surety accepted by the City.

Sec. 11-7-120. Warranty

Sec. 11-7-130. Inspections.

Sec. 11-7-140. Time of Completion.

Sec. 11-7-150. Locate Information.

Sec. 11-7-160. Newly resurfaced and constructed streets.

Sec. 11-7-170. Reimbursement of City costs.

Sec. 11-7-180. Landscaping.

Sec. 11-7-190. Penalties.

## Division 2

Sec. 11-7-210. Definitions.

Sec. 11-7-220. Removal of utility markings required.

Sec. 11-7-230. Penalty

## **Division 1 - Permits**

### **Sec. 11-7-10. - Purpose.**

- (a) Purpose. The purpose of this Article is to establish principles, standards and procedures for the placement of facilities, construction, excavation, encroachments and work activities within, under or upon any public right-of-way and to protect the integrity of the City's street system.
- (b) Objectives. In the interests of the general welfare, public and private uses of public rights-of-way should be accommodated; however, the City must ensure that the primary purpose of the public right-of-way, passage of pedestrian and vehicular traffic, is protected. The use of the public rights-of-way by private users is secondary to these public objectives. This Article's objectives are to:
- (1) Minimize public inconvenience.
  - (2) Protect the City's infrastructure investment by establishing repair standards for the pavement, facilities and property in the public rights-of-way.
  - (3) Standardize regulations and thereby facilitate work within the rights-of-way.
  - (4) Maintain an efficient permit process.
  - (5) Conserve and fairly apportion the limited physical capacity of public rights-of-way held in public trust by the City.
  - (6) Establish a public policy for enabling the City to discharge its public trust consistent with the rapidly evolving federal and state regulatory policies, industry competition and technological development.
  - (7) Promote cooperation among permittees and the City in the occupation of the public rights-of-way, and work therein, in order to eliminate duplication of facilities that is wasteful, unnecessary or unsightly; lower the permittees' and the City's costs of providing services to the public; and minimize street cuts.
  - (8) Protect the public health, safety and welfare.

**Sec. 11-7-20. - Definitions.**

For purposes of this Article, the following terms shall have the following meanings:

Access structure means any structure providing access to facilities in the public right-of-way.

Approved alignment means the designed horizontal and vertical alignment of facilities to be installed in the public right-of-way which is approved by the City at the time the permit is issued, plus any alignment variance tolerances set forth in the Construction and Excavation Standards and any alignment variances approved by the City in accordance with the Construction and Excavation Standards.

Construction and Excavation Standards means the document entitled Construction and Excavation Standards for Work in Public Rights-of-Way, as adopted by resolution of the City Council and amended from time to time.

Contractor means a person, partnership, corporation or other legal entity which undertakes to construct, install, alter, move, remove, trim, demolish, repair, replace, excavate or add to any improvements or facilities in the public right-of-way, or that requires work, workers or equipment to be in the public right-of-way in the process of performing the above-named activities.

Developer means the person, partnership, corporation or other legal entity improving a parcel of land within the City and being legally responsible to the City for the construction of infrastructure within a subdivision or as a condition of a building permit.

Emergency means any event which may threaten public health or safety, or that results in an interruption in the provision of service, including but not limited to damaged or leaking water or gas conduit systems, damaged, obstructed or leaking sewer or storm drain conduit systems and damaged electrical and communications facilities.

Excavate or excavation means to dig into or in any way remove or penetrate any part of a public right-of-way, including trenchless excavation such as boring, tunneling and jacking.

Facilities means any pipe, conduit, wire, cable, amplifier, transformer, fiber optic cable, antenna, pole, streetlight, duct, fixture, appurtenance or other like equipment used in connection with transmitting, receiving, distributing, offering and providing utility and other services, whether above or below ground.

Infrastructure means any public facility, system or improvement, including water and sewer mains and appurtenances, storm drains and structures, streets, alleys, traffic signal poles and appurtenances, conduits, signs, landscape improvements, sidewalks and public safety equipment.

Landscaping means grass, ground cover, shrubs, vines, hedges, trees and nonliving natural materials commonly used in landscape development, as well as attendant irrigation systems.

Major installation means work in the public right-of-way involving an excavation exceeding five hundred (500) feet in length.

Permit means an authorization for use of the public rights-of-way granted pursuant to this Division.

Permittee means the holder of a valid permit issued pursuant to this Division.

Public right-of-way means any public street, way, place, alley, sidewalk, easement, park, square, median, parkway, boulevard or plaza that is dedicated to public use.

Routine maintenance means maintenance of facilities or landscaping in the public right-of-way which does not involve excavation, installation of new facilities, lane closures, sidewalk closures or damage to any portion of the public right-of-way.

Work means any labor performed within a public right-of-way or any use or storage of equipment or materials within a public right-of-way, including but not limited to excavation; construction of streets, fixtures, improvements, sidewalks, driveway openings, bus shelters, bus loading pads, streetlights and traffic signal devices; construction, maintenance and repair of all underground facilities, such as pipes, conduit, ducts, tunnels, manholes, vaults, cable, wire or any other similar structure; maintenance of facilities and installation of overhead poles used for any purpose. Notwithstanding the foregoing, work shall not include routine maintenance.

#### **Sec. 11-7-30. - Authority.**

- (a) A permittee's rights hereunder shall at all times be subject to the authority of the City, which includes the power to adopt and enforce ordinances, including amendments to this Division, necessary for the safety, health and welfare of the public.
- (b) The City reserves the right to exercise its authority, notwithstanding any provision in this Division or any permit to the contrary. Any conflict between the provisions of any permit and any other present or future lawful exercise of the City's police power shall be resolved in favor of the latter.

#### **Sec. 11-7-40. - Developer ownership of infrastructure.**

The construction of infrastructure in new developments is the responsibility of the developer. Once a public right-of-way has been dedicated to the City, all work in that public right-of-way, including the installation of new infrastructure by a developer, shall be subject to this Chapter.

#### **Sec. 11-7-50. - Permit required.**

- (a) No person except an employee or official of the City or a person exempted by contract with the City shall undertake or permit to be undertaken any work in a public right-of-way without first obtaining a permit from the City as set forth in this Division. Copies of the permit and associated documents shall be maintained on the work site and available for inspection upon request by any officer or employee of the City.

- (b) No permittee shall perform work in an area larger or at a location different, or for a longer period of time than that specified in the permit. If, after work is commenced under an approved permit, it becomes necessary to perform work in a larger or different area or for a longer period of time than what the permit specifies, the permittee shall notify the City immediately and shall file a supplementary application for the additional work within twenty-four (24) hours.
- (c) Permits shall not be transferable or assignable without the prior written approval of the City.
- (d) Any person conducting any work within the public right-of-way without having first obtained the required permit shall immediately cease all activity and obtain a permit before work may be resumed, except for emergency operations.

**Sec. 11-7-60. - Permit application.**

- (a) An applicant for a public right-of-way permit shall file a written application on a form furnished by the City, which includes the following information:
  - (1) The date of application.
  - (2) The name, address and telephone number of the applicant and any contractor or subcontractor which will perform any of the work.
  - (3) A plan showing the work site, the public right-of-way boundaries, all infrastructure in the area and all landscaping in the area.
  - (4) The purpose of the proposed work.
  - (5) A traffic control plan in accordance with the Construction and Excavation Standards.
  - (6) The dates for beginning and ending the proposed work, proposed hours of work and the number of actual work days required to complete the project.
- (b) The applicable permit fees shall accompany the application when submitted.
- (c) For any work in the public right-of-way which includes excavation, in addition to the information required by Subsection (a) hereof, the application shall include the following information:
  - (1) An itemization of the total cost of construction, including labor and materials but excluding the cost of any facilities being installed.
  - (2) Copies of all permits (including required insurance, deposits, letters of credit, and warranties) required to do the proposed work, whether required by federal or state law or City resolution, ordinance or regulation.
- (d) In addition to the information required by Subsections (a) and (c) hereof, an applicant for a public right-of-way permit for a major installation shall submit the following information:
  - (1) Field-verified locates of all existing facilities required to be located by the Construction and Excavation Standards, which locates shall be compiled and submitted according to the Construction and Excavation Standards.
  - (2) Engineering construction drawings or site plans for the proposed work in a format acceptable to the City and signed by a professional engineer licensed in the State, except that an applicant expressly exempt from the signature requirement pursuant to Section 12-25-103, C.R.S., need not include the signature of a licensed professional engineer.
- (e) An applicant shall update a permit application within ten (10) days after any material change occurs.

- (f) Applicants may apply jointly for permits to work in public rights-of-way at the same time and place. Applicants who apply jointly for permits may share in the payment of the permit fees. Applicants must agree among themselves as to the portion each shall pay, and if no agreement is reached, payment in full shall be required of all applicants.
- (g) The applicant for a public right-of-way permit shall be the contractor performing the work
- (h) By signing an application, the applicant is certifying to the City that the applicant is in compliance with all other permits issued by the City and that the applicant is not delinquent in any payment due to the City for prior work. This certification shall not apply to outstanding claims which are honestly and reasonably disputed by the applicant, if the applicant and the City are negotiating in good faith to resolve the dispute.

#### **Sec. 11-7-70. - Blanket maintenance permits.**

- (a) A public right-of-way permit shall not be required for routine maintenance in the public right-of-way, as the term *routine maintenance* is defined in Section 11-3-20. However, other maintenance operations within the public right-of-way which involve traffic lane closures or sidewalk closures shall require a public right-of-way permit. To expedite the process for ongoing maintenance operations, owners of facilities within the public right-of-way may, at their sole option and in the alternative to obtaining individual public right-of-way permits, obtain a blanket maintenance permit pursuant to this Section.
- (b) A blanket maintenance permit shall be valid from the date of issuance of the permit through December 31 of the same year. Under no circumstances shall a blanket maintenance permit be valid for more than one (1) year.
- (c) A blanket maintenance permit shall not, under any circumstances, authorize any pavement disturbance or installation of new facilities. Notwithstanding the foregoing, existing facilities may be removed and replaced with new facilities, if no excavation or pavement disturbance is required.
- (d) Any person seeking a blanket maintenance permit shall file an application on a form provided by the City which includes the following information:
  - (1) The date of application.
  - (2) The name, address and telephone number of the applicant.
  - (3) A general description of the maintenance operations.
  - (4) Any location of maintenance operations known at the time of application.
  - (5) Traffic control plans as required by this Section and the Construction and Excavation Standards.
- (e) The applicable permit fee as set by the Construction and Excavation Standards shall accompany the application when submitted.
- (f) Blanket maintenance permits shall be subject to applicable provisions of the Construction and Excavation Standards.

#### **Sec. 11-7-80. - Permit fees.**

- (a) Before a public right-of-way permit is issued, the applicant shall pay to the City a permit fee, which shall be determined in accordance with the fee schedule contained in the Construction and Excavation Standards. Permit fees shall be reasonably related to the costs of managing the public rights-of-way. These costs include, but are not limited to, the costs of issuing right-of-way permits, verifying right-of-way occupation, mapping

right-of-way occupation, inspecting work, administering this Division and, if applicable, costs relating to restoration of the public right-of-way to remedy degradation of that public right-of-way caused by the permittee.

(b) Restoration fees.

- (1) Restoration fees shall only be charged to the applicant if the applicant chooses not to perform the required restoration of the public right-of-way to the City's standards, making the City responsible for performing the required restoration. The applicant shall decide at the time of application whether the applicant will perform the required restoration, and the applicant's decision shall be final.
- (2) No restoration fees shall be required for a public right-of-way permit which does not include excavation.
- (3) Restoration fees collected by the City shall be placed in a separate account for general street maintenance and construction.
- (4) Restoration fees may be waived in the City's discretion when additional circumstances exist which would make restoration unnecessary, such as poor street quality or proposed street resurfacing or construction by the City. These circumstances are outlined in more detail in the section of the Construction and Excavation Standards addressing permit fees.

**Sec. 11-7-90. - Insurance.**

- (a) Unless otherwise specified in a franchise agreement or maintenance or license agreement between a permittee and the City, prior to the granting of any permit, the permittee shall carry and maintain in full effect at all times the following insurance coverage:
  - (1) Commercial general liability insurance, including broad-form property damage, completed operations contractual liability, explosion hazard, collapse hazard, underground property damage hazard, commonly known as XCU, for limits not less than one million dollars (\$1,000,000.00) each occurrence for damages of bodily injury or death to one (1) or more persons; and five hundred thousand dollars (\$500,000.00) each occurrence for damage to or destruction of property.
  - (2) Workers compensation insurance as required by state law.
- (b) The permittee shall file with the City proof of such insurance coverage in a form satisfactory to the City.
- (c) Upon prior written approval of the City, a permittee may provide self-insurance with the minimum coverage limits set forth in Paragraphs (a)(1) and (a)(2) hereof.

**Sec. 11-7-100. - Indemnification.**

- (a) Each permittee, for himself or herself and his or her related entities, agents, employees, subcontractors and the agents and employees of said subcontractors shall hold the City harmless and defend and indemnify the City, its successors, assigns, officers, employees, agents and appointed and elected officials from and against all liability or damage and all claims or demands whatsoever in nature and reimburse the City for all its reasonable expenses, including reasonable attorney fees and costs, as incurred, arising out of any work or activity in the public right-of-way, including but not limited to the actions or omissions of the permittee, its employees, representatives, agents, contractors, related entities, successors and assigns or the securing of and the exercise

by the permittee of any rights granted in the permit, including any third-party claims, administrative hearings and litigation, whether or not any act or omission complained of is authorized, allowed or prohibited by this Division or other applicable law. A permittee shall not be obligated to hold harmless or indemnify the City for claims or demands to the extent that they are due to the negligence or willful and wanton acts of the City or any of its officers, employees or agents.

- (b) Following the receipt of written notification of any claim, the permittee shall have the right to defend the City with regard to all third-party actions, damages and penalties arising in any way out of the exercise of any rights in the permit. If at any time, however, a permittee refuses to defend the City, and the City elects to defend itself with regard to such matters, the permittee shall pay all expenses incurred by the City related to its defense, including reasonable attorney fees and costs.
- (c) If a permittee is a public entity, the indemnification requirements of this Section shall be subject to the provisions of the Colorado Governmental Immunity Act.
- (d) If any provision of this Section conflicts with any provision of a valid, effective franchise agreement between the permittee and the City, the conflicting provision of this Section shall not apply to the franchisee, and the franchisee shall instead honor the provision of the franchise agreement.
- (e) If any provision of this Section conflicts with any provision of a valid, effective median maintenance agreement between a special district and the City, the conflicting provision of this Section shall not apply to the special district, and the special district shall instead honor the provision of the median maintenance agreement.

**Sec. 11-7-110. - Letters of credit and other City accepted sureties.**

- (a) Before a public right-of-way permit is issued, the applicant shall file with the City surety, (allowable sureties include a company (corporate) check, cashier's check or irrevocable letter of credit), in favor of the City in an amount equal to the total cost of construction, including labor and materials but excluding the cost of any facilities being installed, or five thousand dollars (\$5,000.00), whichever is greater. The surety shall be executed by the applicant as principal and by at least one (1) surety upon whom service of process may be had in the State. The surety shall be conditioned upon the applicant fully complying with all provisions of City ordinances, resolutions and regulations and upon payment of all judgments and costs rendered against the applicant for any violation of any City resolution, regulation or ordinances or state law arising out of any negligent or wrongful acts of the applicant in the performance of work pursuant to the permit.
- (b) The City may bring an action on the surety on its own behalf or on behalf of any person so aggrieved as beneficiary.
- (c) The letter of credit shall be approved by the City prior to the issuance of the permit. The City may waive the requirements of any such letter of credit upon finding that the applicant has financial stability and assets located in the State to satisfy any claims intended to be protected against by the security required by this Section.
- (d) A letter of responsibility, in a form acceptable to the City, shall be accepted from special districts and governmental agencies in lieu of a surety.
- (e) A blanket surety of sufficient amount to cover all proposed work during the upcoming year may be filed with the City on an annual basis in lieu of the project-specific performance sureties or letters of credit required by Subsection (a) hereof. The form and amount of the blanket surety shall be subject to the prior review and approval of the City.

Should the blanket surety be deemed insufficient by the City based on the work to date, the City may require additional, project-specific performance sureties or letters of credit pursuant to Subsection (a) hereof.

- (f) The performance surety, blanket surety, letter of credit or letter of responsibility shall remain in force and effect for a minimum of two (2) years after completion and acceptance of the street cut, excavation or lane closure.
- (g) If any provision of this Section conflicts with any provision of a valid, effective franchise agreement between the applicant and the City, the conflicting provision of this Section shall not apply to the franchisee, and the franchisee shall instead honor the provision of the franchise agreement.
- (h) If any provision of this Section conflicts with any provision of a valid, effective maintenance agreement between a special district and the City, the conflicting provision of this Section shall not apply to the special district, and the special district shall instead honor the provision of the median maintenance agreement.

#### **Sec. 11-7-120. - Warranty.**

- (a) A permittee, by acceptance of the permit, expressly warrants and guarantees complete performance of the work in a manner acceptable to the City and in accordance with this Division and the Construction and Excavation Standards and warrants and guarantees all work done for a period of two (2) years after the date of probationary acceptance.
- (b) Under the warranty, the permittee shall, at its own expense, repair or replace, at the discretion of the City, any portion of the work that fails, is defective, is unsound or is unsatisfactory because of but not limited to design, engineering, materials or workmanship.
- (c) The warranty period shall begin on the date of the City's probationary acceptance of the work. If repairs are required during the warranty period, those repairs need only be warranted until the end of the initial two-year period starting with the date of probationary acceptance.
- (d) At any time prior to completion of the warranty period, the City may notify the permittee in writing of any needed repairs. If the defects are determined by the City to be an imminent danger to the public health, safety and welfare, the permittee shall begin repairs within twenty-four (24) hours of receipt of the written notice and continue the repairs until completion. Nonemergency repairs shall be completed within thirty (30) days after notice.
- (e) The warranty shall cover only those areas of work performed by the permittee which provided the warranty and not directly impacted by the work of any other permittee or the City. If a portion of work warranted by a permittee is subsequently impacted by work of another permittee, another user of the right-of-way or the City during the warranty period, the other permittee or the City, as applicable, shall assume responsibility for repair to the subsequently impacted portion of the public right-of-way.

#### **Sec. 11-7-130. - Inspections.**

- (a) At a minimum, the following four (4) inspections shall take place:
  - (1) Preconstruction inspection. The permittee shall request that the City conduct a preconstruction inspection, to determine any necessary conditions for the permit.
  - (2) Completed work inspection. The permittee shall notify the City immediately after completion of work. The City shall inspect the work within twenty-one (21) days of the

permittee's notification. Probationary acceptance shall be made if all work complies with this Division, the Construction and Excavation Standards and any other applicable City regulation, ordinance or resolution. Written notice of probationary acceptance shall be sent to permittee listed on the permit application.

- (3) Warranty inspection. Approximately thirty (30) days prior to the expiration of the two-year warranty period, the City shall conduct a final inspection of the work. If the work is still satisfactory, the letter of credit shall be returned or allowed to expire, and the City shall issue a notice of final acceptance.
- (4) Utility marking inspection. The City shall conduct a utility marking inspection pursuant to Division 2 of this Chapter.
- (b) Upon review of the application for a permit, the City shall determine how many additional inspections, if any, may be required. Required inspections shall be listed on the permit. For a permit which does not include excavation, the City may waive any or all of the above-listed inspections.

#### **Sec. 11-7-140. - Time of completion.**

- (a) All work covered by the permit shall be completed within the time period stated on the permit, unless an extension has been granted by the City in writing; in which case, all work shall be completed within the time period stated in the written extension. An extension may be assessed a charge and additional fees.
- (b) Permits shall be void if work has not commenced within thirty (30) days after issuance, unless an extension has been granted by the City in writing. The permittee shall submit a written request for such extension, and the City shall either grant or deny the request within five (5) days of receipt of the request.

#### **Sec. 11-7-150. - Locate information.**

- (a) Any person owning facilities in the public right-of-way shall provide field locate information to the City and any other permittee with a valid public right-of-way permit which authorizes locate pothole excavation or other excavation work. Within seven (7) days of receipt of a written request from the City or such a permittee, the facility owner shall field locate facilities in the public right-of-way in which the work will be performed.
- (b) For major installations, a permittee shall obtain a public right-of-way permit to locate other existing facilities as provided in the Construction and Excavation Standards. The location of such facilities shall be field-verified in a manner approved by the City.
- (c) Before beginning excavation in any public right-of-way, a permittee shall contact the Utility Notification Center of Colorado (UNCC) and, to the extent required by Section 9-1.5-102, et seq., C.R.S., make inquiries of all ditch companies, utility companies, districts, local governments and all other agencies that might have facilities in the area of work to determine possible conflicts. The permittee shall contact the UNCC and request field locates of all facilities in the area pursuant to UNCC requirements. Field locates shall be marked prior to commencing work.

#### **Sec. 11-7-160. - Newly resurfaced and constructed streets.**

- (a) For newly resurfaced and constructed streets, no excavation in the pavement shall be permitted within two (2) years of the completion of the resurfacing or construction.

- (b) The City shall publish once, in a newspaper of general circulation in the City each year, a list of those streets that will be resurfaced or constructed in that year. The list shall also be published on the City's website.
- (c) Exemption. In rare circumstances, the City may grant an exemption from this Section in accordance with the following procedures:
- (1) A request for exemption shall be in writing on a form acceptable to the City and shall contain the following information, at a minimum:
- a. A detailed and dimensional engineering plan that identifies and accurately represents all public rights-of-way and other property that will be impacted by the proposed work and the method of construction.
  - b. The location, width, length and depth of the proposed excavation.
  - c. A statement as to how any of the criteria set forth in Paragraph (c)(2) hereof apply to the proposed work.
- (2) Criteria for approval. In determining whether an exemption should be granted, the City shall consider the following criteria:
- a. Whether alternative utility alignments that do not involve excavating in the street are available.
  - b. Whether the proposed excavation can reasonably be delayed until after the two-year period has elapsed.
  - c. Whether duct, conduit or other facilities are reasonably available from another user of the public right-of-way.
  - d. Whether the proposed work involves joint trenching or joint use and the number of users to share in the trenching or use.
  - e. Whether the proposed work is to be by horizontal boring, tunneling or open trenching.
  - f. Whether applicable law requires the applicant to provide service to a particular customer and whether denial of the exemption would prevent the applicant from providing such service.
  - g. Whether the purpose of the proposed work is to provide service to a particular building or a customer within a building who has requested such service and whether denial of the exemption would prevent the applicant from providing such service.
  - h. Whether the work is limited to locate potholing to provide locate information.
- (d) Exemptions for emergency operations. Emergency operations in newly resurfaced or constructed streets shall be permitted.

**Sec. 11-7-170. - Reimbursement of City costs.**

- (a) The City may make any repairs necessary to eliminate any imminent danger to the public health or safety without notice to any permittee, at the responsible permittee's expense.
- (b) For any work not performed by a permittee as directed by the City, but not constituting imminent danger to the public health or safety, the City shall provide written notice to the permittee, ordering that the work be corrected within ten (10) days of the date of the notice. If the work is not corrected within the ten-day period, the City may correct the work at the permittee's expense.
- (c) Costs of any work performed by the City pursuant to this Section shall be billed to the permittee. The permittee shall also be responsible for any direct costs incurred by the

City. The permittee shall pay all such charges within thirty (30) days of the statement date. If the permittee fails to pay such charges within the prescribed time period, the City may, in addition to taking other collection remedies, seek reimbursement through the surety. Furthermore, the permittee may be barred from performing any work in the public right-of-way, and under no circumstances will the City issue any further permits of any kind to said permittee, until all outstanding charges (except those outstanding charges that are honestly and reasonably disputed by the permittee and being negotiated in good faith with the City) have been paid in full.

#### **Sec. 11-7-180. - Landscaping.**

- (a) All hardscape and landscaping installed within the City right of way shall be the responsibility of the adjacent homeowners' association, property association, or special district. The City shall only be responsible for the maintenance and repair of streets, curbs, gutters, approved street lights, and sidewalks.
- (b) Maintenance of landscaping within the right of way for all properties with the exception of single-family detached shall adhere to Section 16-2-210.
- (c) Single-family detached properties and platted subdivisions shall adhere to the requirements in this section.
- (d) Any roadway pavers installed within the City right of way shall be the responsibility of the homeowners' association or special district that installed the pavers. The City will require execution of a maintenance or license agreement which will establish responsibility of the pavers.

#### **Sec. 11-7-190. - Penalties.**

- (a) If any contractor or permittee is found guilty of or pleads guilty to a violation of this Division, he or she shall be punished as provided in Chapter 1, Article 4. Each and every day or portion thereof during which a violation is committed, continues or is permitted shall be deemed a separate offense.
- (b) In addition to or in lieu of the penalties set forth in Subsection (a) hereof, the City may impose the following monetary penalties:
  - (1) For any occupancy of a travel lane or any portion thereof beyond the time periods or days set forth in the traffic control plan approved by the City:
    - a. In arterial and collector streets during the hours of 6:30 a.m. through 8:30 a.m. and 3:30 p.m. through 6:00 p.m., Monday through Friday: one hundred dollars (\$100.00) for each fifteen (15) minutes, or portion thereof, for a maximum of three thousand dollars (\$3,000.00) per day.
    - b. In arterial and collector streets during any time other than the times specified in Subparagraph (b)(1)a. hereof, or in local streets at any time: fifty dollars (\$50.00) for each fifteen (15) minutes, or portion thereof, for a maximum of one thousand five hundred dollars (\$1,500.00) per day.
  - (2) For commencing work without a valid permit: five hundred dollars (\$500.00), plus twice the applicable permit fee.
  - (3) For facilities installed outside of the approved alignment: ten dollars (\$10.00) per linear foot. This penalty shall not be imposed if the facilities are removed or relocated to comply with the approved alignment or the facilities are abandoned per City approval or the alternate alignment is approved by the City.

- (4) For any other violation of a permit: two hundred fifty dollars (\$250.00) per violation, with no maximum amount.
- (c) The penalties set forth in this Section shall not be the City's exclusive remedy for violations of this Division and shall not preclude the City from bringing a civil action to enforce any provision of a public right-of-way permit or to collect damages or recover costs associated with any use of the public rights-of-way. Furthermore, the enforcement of one (1) penalty shall not preclude the City from enforcing any other penalty.

## **Division 2 - Utility Markings**

### **Sec. 11-7-210. - Definitions.**

For the purposes of this Division, the following terms shall have the following meanings:

*Permittee* means the holder of a valid permit issued pursuant to this Division.

*Public right-of-way* means any public street, way, place, alley, sidewalk, easement, park, square, median, parkway, boulevard or plaza that is dedicated to public use.

*Utility marking* means a mark made of colored or metallic paint or similar material or utilizing any adhesive material of whatever description or a flag or similar removable device or item used by a public utility or its agent in a public right-of-way to mark the existing or future location of pipelines, cables, poles, wires or other similar features.

### **Sec. 11-7-220. - Removal of utility markings required.**

All utility markings shall be fully and completely removed or camouflaged from public rights-of-way utilizing a method that is least destructive to the existing improvements, and which method has been approved by the City. The removal shall occur no later than forty-five (45) days after completion of the work. The right-of-way permittee or other persons (not under a City permit) that originally caused the utility markings to be placed shall be solely responsible for removal of the utility marking.

### **Sec. 11-7-230. - Penalty.**

Any person who is convicted of a violation of this Division shall, upon conviction, be punished by a fine not to exceed the maximum fine allowed under Chapter 1 of this Code. Each day such violation is committed or continues shall constitute a separate offense. As an additional means of enforcement, and not as an alternative to or substitute for prosecution for violation of this Division, the City may remove or eradicate any utility markings which are not removed pursuant to this Division and bill the party responsible for such removal the full cost incurred by the City to effect such removal. Any such costs incurred shall be immediately due and payable, and failure to pay such costs in full within thirty (30) days of billing therefor by the City shall subject the responsible party to interest on the unpaid balance at the rate of twelve percent (12%) per annum, compounded

monthly. Any requests for future permits by such permittee shall be denied until all unpaid balances are paid in full.

## CHAPTER 15 Public Works

ARTICLE I - Adoption of Codes by Reference (PROPOSED AMENDMENTS)

ARTICLE II - Stormwater Management; Grading, Erosion and Sediment Control; Illicit Discharge (PROPOSED AMENDMENTS)

ARTICLE III - Flood Damage Prevention

ARTICLE IV - Floodplain - Overlay District

ARTICLE V – Clearing, Grading and Land Disturbance (PROPOSED AMENDMENTS)

### ARTICLE I Adoption of Codes by Reference

Sec. 15-1-10. Adoption by reference: Storm Drainage Design and Technical Criteria Manual.

Sec. 15-1-20. Amendments.

Sec. 15-1-30. Adoption by reference: Grading, Erosion and Sediment Control Manual.

Sec. 15-1-40. Amendments.

Sec. 15-1-50. Adoption by reference: Flood Insurance Study for Douglas County, Colorado and Incorporated Areas. (PROPOSED AMENDMENTS)

**Sec. 15-1-50.** Adoption by reference: Flood Insurance Study for Douglas County, Colorado and Incorporated Areas.

- (a) The Flood Insurance Study for Douglas County, Colorado and Incorporated Areas, a scientific and engineering report by the Federal Emergency Management Agency, dated ~~September 30, 2005~~February 17, 2017, as amended, revised and updated from time to time, with accompanying Flood Insurance Rate Maps, Digital Flood Rate Maps and Flood Boundary Floodway Maps, and any revisions thereto, is hereby adopted by reference and incorporated into this Article as though fully set forth herein. Except as otherwise provided, this Flood Insurance Study is adopted in full.
- (b) One (1) copy of The Flood Insurance Study for Douglas County, Colorado and Incorporated Areas, dated ~~September 30, 2005~~February 17, 2017, as amended, revised and updated from time to time, with accompanying Flood Insurance Rate Maps, Digital Flood Rate Maps and Flood Boundary Floodway Maps, and any revisions thereto, certified to be a true copy by the Mayor and City Clerk, shall be on file in the office of the City Clerk and may be inspected by any interested person between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, holidays excepted. This Flood Insurance Study, as adopted and amended, shall be available for sale to the public at the City offices at a price reflecting the cost to the City.

(Ord. 13-08 Art. 5)

## ARTICLE II Stormwater Management; Grading, Erosion and Sediment Control; Illicit Discharge

[Sec. 15-2-10. Definitions. \(PROPOSED AMENDMENTS\)](#)

[Sec. 15-2-20. Illicit discharge detection and elimination — violations.](#)

[Sec. 15-2-30. Prohibition of illicit connections — violations.](#)

[Sec. 15-2-40. Implementation of BMPS — violations.](#)

[Sec. 15-2-50. Notification of spills — violations.](#)

[Sec. 15-2-60. Grading, erosion and sediment control; drainage, erosion and sediment control — violations.](#)

[Sec. 15-2-70. Operation and maintenance of stormwater management facilities — violations.](#)

[Sec. 15-2-80. Inspections.](#)

[Sec. 15-2-90. Administration and enforcement.](#)

[Sec. 15-2-100. Civil enforcement.](#)

[Sec. 15-2-110. Penalty for violation.](#)

[Sec. 15-2-120. Concurrent regulation.](#)

### Sec. 15-2-10. Definitions.

Unless the context otherwise requires, these terms and phrases shall have the following meanings:

*Nonstormwater discharge* means any discharge to the MS4 that is not composed entirely of stormwater, except as specifically allowed herein. *Nonstormwater discharges* may include, but are not limited to: soil sediments from erosion of soils at construction sites; excessive nutrients such as nitrates and phosphates; paints, varnishes and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter or other discarded or abandoned objects and accumulations that may cause or contribute to pollution; floatables; pesticides, herbicides and fertilizers; hazardous materials and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind. *Nonstormwater discharges* specifically do not include landscape irrigation, lawn watering, diverted stream flows, irrigation return flow, rising groundwaters, uncontaminated groundwater infiltration, uncontaminated pumped groundwater, springs, flows from riparian habitats and wetlands, water line flushing in accordance with the Colorado Department of Public Health and Environment's Low Risk Discharge Guidance: Potable Water, discharges from potable water sources in accordance with the Colorado Department of Public Health and Environment's Low Risk Discharge Guidance: Potable Water, foundation drains, air conditioning condensation, water from crawl space pumps, footing drains, individual residential car washing, dechlorinated swimming pool discharges in accordance with the Colorado Department of Public Health and Environment's Low Risk Discharge Guidance: Swimming Pools, water incidental to street sweeping (including associated sidewalks and medians) and that is not associated with construction, dye testing in accordance with the manufacturer's recommendations, stormwater runoff with incidental pollutants, discharges resulting from emergency fire fighting activities, ~~and~~

discharges authorized by (a) separate Colorado Discharge Permit System (CDPS) or National Pollutant Discharge Elimination System (NPDES) permit, agricultural stormwater runoff, and discharges that are ~~or~~ in accordance with the Colorado Department of Public Health and Environment Water Quality Control Division Low Risk Discharge Guidance documents, as amended.

## **ARTICLE III Flood Damage Prevention**

Division 1 - General Provisions

Division 2 - Flood Hazard Reduction

Division 3 - Critical Facilities

### **Division 1 General Provisions**

[Sec. 15-3-10. Statement of purpose.](#)

[Sec. 15-3-20. Methods of reducing flood losses.](#)

[Sec. 15-3-30. Definitions.](#)

[Sec. 15-3-40. Application.](#)

[Sec. 15-3-50. Basis for establishing the special flood hazard areas; adoption by reference. \(PROPOSED AMENDMENTS\)](#)

[Sec. 15-3-60. Concurrent floodplain regulation.](#)

[Sec. 15-3-70. Establishment of development permit.](#)

[Sec. 15-3-80. Compliance.](#)

[Sec. 15-3-90. Abrogation and greater restrictions.](#)

[Sec. 15-3-100. Interpretation.](#)

[Sec. 15-3-110. Warning and disclaimer of liability.](#)

[Sec. 15-3-120. Severability.](#)

[Sec. 15-3-130. Designation of Floodplain Administrator.](#)

[Sec. 15-3-140. Duties and responsibilities of Floodplain Administrator.](#)

[Sec. 15-3-150. Permit procedures.](#)

[Sec. 15-3-160. Variance procedures.](#)

[Sec. 15-3-170. Penalties.](#)

**Sec. 15-3-50. Basis for establishing the special flood hazard areas; adoption by reference.**

The special flood hazard areas (SFHAs) identified by the Federal Emergency Management Agency in a scientific and engineering report, entitled "The Flood Insurance Study for Douglas County, Colorado and Incorporated Areas," dated ~~March 16, 2016~~ February 17, 2017, as amended from time to time, with accompanying Flood Insurance Rate Maps (FIRMs), Digital

Flood Rate Maps (DFIRMs) and Flood Boundary Floodway Maps (FBFMs), and any revisions thereto, are hereby adopted by reference and declared to be a part of this Chapter. These SFHAs identified by the Flood Insurance Study (FIS) and attendant mapping are the minimum area of applicability of this Article and may be supplemented by studies designated and approved by the City. The City Clerk and Floodplain Administrator shall keep a copy of the Flood Insurance Study (FIS), DFIRMs, FIRMs and FBFMs on file and available for public inspection.

(Ord. 13-08 Art. 5)

**ARTICLE ~~XXXI-V~~ Clearing, Grading and Land Disturbance [Added from Chapter 16, Article XXXI] (PROPOSED AMENDMENTS TO ENTIRE CHAPTER)**

[Sec. ~~16-3415-5-10~~. Intent.](#)

[Sec. ~~16-3415-5-20~~. Permits required.](#)

[Sec. ~~16-3415-5-30~~. Permits not required.](#)

[Sec. ~~16-3415-5-40~~. Review issues.](#)

[Sec. ~~16-3415-5-50~~. Minimum standards.](#)

[Sec. ~~16-3415-5-60~~. Submittal requirements.](#)

[Sec. ~~16-3415-5-70~~. Submittal process.](#)

[Sec. ~~16-3415-5-80~~. Expiration of plan.](#)

[Sec. ~~16-3415-5-90~~. Appeals process.](#)

[Sec. ~~16-3415-5-100~~. Fees.](#)

[Sec. ~~16-3415-5-110~~. Security.](#)

[Sec. ~~16-3415-5-120~~. Insurance.](#)

[Sec. ~~16-3415-5-130~~. Violations.](#)

[Sec. ~~16-3415-5-140~~. Stop Work Order.](#)

[Sec. ~~16-3415-5-150~~. Abatement.](#)

[Sec. ~~16-3415-5-160~~. Applicability of other laws and regulations.](#)

**Sec. ~~16-3415-5-10~~. Intent.**

The purpose of this Article is to:

- (1) Provide a mechanism for the issuance of permits relating to clearing, grading and earth movement so as to limit soil erosion and sedimentation during and after construction; and
- (2) Control nonpoint-source pollution by requiring the implementation of soil erosion and sedimentation control practices for protection of water quality, soil surfaces during and after construction and lands identified as having high open space, visual or vegetative value.

(Ord. 02-01 §3101; Ord. 04-17 §1; Ord. 05-13 §3101)

**Sec. ~~16-3115-5~~-20. Permits required.**

- (a) A grading permit shall be required from the Engineering Division for any of the following uses:
- (1) Grading.
  - (2) Stripping of soil or vegetation.
  - (3) Depositing fill material.
  - (4) Trenching or excavating;
  - (5) Constructing public or private facilities.
- (b) For single-family residential development, a permit may be issued upon approval of a preliminary plan by the City Council. However, a permit may be issued upon the approval of the Community Development Director and the City Engineer~~Director of Public Works or his/her designated representative~~, on a case-by-case basis, prior to approval of a preliminary plan.
- (c) For all uses that require an approved Site Improvement Plan, (SIP), a permit may be issued upon approval of the SIP, ~~by the City SIP Review Board~~. However, a permit may be issued upon the approval of the Director and the City Engineer~~Director of Public Works or his/her designated representative~~, on a case-by-case basis, prior to approval of a SIP.
- (d) A permit may be issued for construction activities not subject to the platting or site improvement plan review process with the approval of the City Engineer~~Director of Public Works or his/her designated representative~~, (i.e., road construction, utility lines).

(Ord. 02-01 §3102; Ord. 05-13 §3102)

**Sec. ~~16-3115-5~~-30. Permits not required.**

- (a) Permits are not required for the following uses:
- (1) Grading in an area of one (1) acre or less which is isolated and self-contained, when the City Engineer~~Director of Public Works or his/her designated representative~~ determines that such grading will not have a negative impact upon private or public property. When a negative impact is identified, the provisions of this Article shall apply.
  - (2) An excavation below finished grade for basements and footings of a building, retaining wall or other structure authorized by a valid building permit. Any fill made with the material from such excavation and any excavation having an unsupported height greater than five (5) feet after the completion of such structure shall be required to have a grading permit.
  - (3) Individual cemetery gravesites.
  - (4) Routine agricultural uses of agricultural land.
  - (5) Exploratory excavations of less than five hundred (500) square feet (excluding mining activity) at the direction of a soil engineer or engineering geologist.
  - (6) A fill less than one (1) foot in depth and placed on natural terrain with a slope flatter than five (5) horizontal feet to one (1) vertical foot (5:1), or less than three (3) feet in depth, not intended to support structures, which does not exceed fifty (50) cubic yards on any one (1) lot and does not obstruct a drainage course.

- (b) Even if a permit is not required, any clearing, grading or land disturbance activities shall be in accordance with the standards set forth in the City's duly adopted Storm Drainage Design and Technical Criteria manual and those set forth in this Article.

(Ord. 02-01 §3103; Ord. 05-13 §3103)

**Sec. ~~16-3115-5~~-40. Review issues.**

Any land-disturbing activity is subject to review by the City and other appropriate agencies regarding:

- (1) Significant wildlife habitat.
- (2) Archaeological or historical sites.
- (3) Lands identified as having high open space, visual or vegetative value.
- (4) Geologically sensitive areas.
- (5) Riparian or wetland areas.
- (6) Unique or distinctive topographic features or other issues as may be identified in the Comprehensive Plan, or Chapter 17 of this Code and other Articles of this Chapter.

(Ord. 02-01 §3104; Ord. 04-17 §1; Ord. 05-13 §3104)

**Sec. ~~16-3115-5~~-50. Minimum standards.**

All erosion and sediment control plans and specifications for activities which disturb soil or vegetation shall meet, at a minimum, the following criteria:

- (1) Plans shall be prepared in accordance with the City's duly adopted Storm Drainage Design and Technical Criteria and Grading, Erosion and Sediment Control Manuals, as amended, and shall be prepared or supervised by a professional engineer licensed in Colorado or a certified professional erosion and sediment control specialist trained and experienced in soil erosion and sedimentation control methods and techniques. Erosion control measures shall be implemented such that the following standards of performance are met:

~~a. During overlot grading and during construction, erosion control measures shall be installed such that the maximum amount of sediment discharge by water shall not exceed historic amounts due to a ten-year, twenty-four-hour rainfall event by more than fifteen percent (15%). In addition, the maximum amount of sediment discharge by wind shall not exceed historic amounts by more than fifteen percent (15%).~~

~~b. After construction, erosion control measures shall be installed such that the maximum amount of sediment discharge, either wind-borne or waterborne, shall not exceed historic amounts.~~

~~Historic sediment discharge is considered to be the amount of sediment discharged from a basin due to water or wind when the land was established in dryland grass having an average ground cover of sixty-five percent (65%).~~

- (2) In addition to the specific performance standards in Paragraph (1) above, all plans shall be prepared and adhered to so that land-disturbing activities shall not:

- a. Result in or contribute to soil erosion or sedimentation that would interfere with any existing drainage course in such a manner as to cause damage to any adjacent property;
  - b. Result in or contribute to deposition of debris or sediment on any private or public property not designed or designated as an area to collect said sediment;
  - c. Create any hazard to any persons or property; or
  - d. Detrimentally influence the public welfare or the ~~total~~ development of any watershed.
- (3) Technical methodologies to meet the standards set forth in Paragraphs (1) and (2) above are described in the City's duly adopted Storm Drainage Design and Technical Criteria manual.

(Ord. 02-01 §3105; Ord. 04-17 §1; Ord. 05-13 §3105)

**Sec. ~~16-3115-5-60~~. Submittal requirements.**

Applicants for a grading permit shall submit the appropriate review fees and an erosion and sedimentation control plan to the ~~City Engineer~~Director of Public Works or his/her designated representative which plan shall, at a minimum, contain the information detailed in the City's duly adopted Storm Drainage Design and Technical Criteria and Grading, Erosion and Sediment Control manuals and the following:

- (1) A vicinity map, at a maximum scale of 1" = 2,000', indicating the site location, as well as the adjacent properties within five hundred (500) feet of the site boundaries.
- (2) A boundary survey or site property lines shown in true location with respect to topographic information.
- (3) A plan of the site, at a maximum scale of 1" = 200', on a 24" x 36" sheet showing:
  - a. Name, address and telephone number of the landowner, developer and petitioner.
  - b. Existing topography (shown by dashed lines) having maximum contour intervals of two (2) feet, unless otherwise specified by the ~~City Engineer~~Director of Public Works or his/her designated representative.
  - c. Proposed topography (shown by solid lines) having contour intervals of two (2) feet, unless otherwise specified by the ~~City Engineer~~Director of Public Works or his/her designated representative, including spot elevations.
  - d. Location of existing structures and natural features, such as stream channels, stands of trees, rock outcroppings, wetlands, historical/archaeological sites, significant wildlife habitats, vegetative stands and potential open space land as identified in the Comprehensive Plan, on the site, adjacent to the site and within one hundred (100) feet of the site boundary line.
  - e. Location of proposed structures or development on the site, if known.
  - f. Elevations, including spot elevations if buildings are shown, dimensions, location, extent and slope of all proposed grading, including building and driveway grades.
  - g. Plans and timing schedule for all temporary or permanent erosion control measures to be constructed with or as a part of the proposed work, including drainage facilities, retaining walls, cribbing and plantings. The timing schedule shall assure that the standards set forth in Section ~~16-3115-5-50~~ above are adhered to from the

commencement of construction. In preparing the site plan, the applicant shall use the soil erodibility zone classifications in the Storm Drainage Design and Technical Criteria manual, the soil classification data for the site identified by the U.S. Soil Conservation Service in the published Soil Survey, or the data which is collected, analyzed and reported upon by a qualified soils engineer registered in the State.

- (4) A written report which includes the following:
  - a. A schedule indicating the anticipated project starting and completion dates, the time of overlot grading, construction phases and completion for vegetative and structural control measures.
  - b. A statement of the quantity of excavation and fill involved, source of the fill material and the total area of land surface to be disturbed.
  - c. Estimated itemized and total cost of the required temporary and permanent soil erosion control measures, which estimates shall include quantities and unit costs.
- (5) Other information or data as may be required by the ~~City Engineer~~Director of Public Works or his/her designated representative, such as a soil investigation report which shall include, at a minimum, data regarding the nature, distribution and supporting ability of existing soils and rock on the site.

(Ord. 02-01 §3106; Ord. 04-17 §1; Ord. 05-13 §3106)

**Sec. ~~16-3415-5~~-70. Submittal process.**

- (a) All plans shall be submitted to the Engineering Division. Incomplete or otherwise inadequate application submittals shall be returned to the applicant with comments. The applicant shall comply with the provisions of this Article.
- (b) The Engineering Division shall review and comment and either accept the plan or return the plan to the applicant within twenty (20) working days from the date the application submittal was determined to be complete. If the Engineering Division cannot review the plan within twenty (20) days, the applicant will be so notified. The Engineering Division and the applicant may mutually agree upon an extension of time for completion of the plan review or for retention of a qualified professional to perform the review. The applicant shall be responsible for all costs associated with the review.
- (c) In the event the applicant desires to amend the plan, an amended plan which complies with the requirements set forth in Sections ~~16-3415-5~~-50 and ~~16-3415-5~~-60 above shall be submitted by the applicant and reviewed by the Engineering Division prior to the commencement of any work pursuant to the amended plan.

(Ord. 02-01 §3107; Ord. 05-13 §3107)

**Sec. ~~16-3415-5~~-80. Expiration of ~~plan~~permit.**

A permit shall be effective for twelve (12) consecutive months from the date of issue. Prior to the expiration date, the permit may be renewed upon approval by the ~~City Engineer~~Director of Public Works or his/her designated representative for a period of time not to exceed twelve (12) months. Two additional extensions of six months per extension may be granted by the Director of Public Works or his/her designated representative. Any further extensions may require the applicant to request City Council approval.

(Ord. 02-01 §3108; Ord. 05-13 §3108)

**Sec. ~~16-3415-5~~-90. Appeals process.**

If the applicant disagrees with the decision of the Engineering Division, the applicant may appeal to the City Council. The appeal shall be based on technical data or other relevant information. The ~~Planning Commission~~City Council may affirm, modify or reverse the findings, conclusions and decision of the Engineering Division or remand the decision to the Engineering Division for further review and findings.

(Ord. 02-01 §3109; Ord. 05-13 §3109)

**Sec. ~~16-3415-5~~-100. Fees.**

- (a) A nonrefundable filing fee shall be paid to the Engineering Division at the time of application. ~~Fees are specified in the Engineering Division User Fee Manual.~~
- (b) Any person, corporation, partnership, firm or other entity applying for a grading permit after commencement or completion of the activities authorized in said permit shall be required to pay double the standard fee.

(Ord. 02-01 §3110; Ord. 05-13 §3110)

**Sec. ~~16-3415-5~~-110. Security.**

- (a) To ensure rehabilitation of the disturbed area, the applicant shall furnish a letter of credit or other form of security acceptable to the City, naming the City as the secured party in an amount and type to be determined by the ~~City Engineer~~Director of Public Works or his/her designated representative based upon the magnitude of the land-disturbing activities and rehabilitation requirements. The amount of security will be one hundred fifteen percent (115%) of the cost estimate set forth in Section ~~16-3415-5~~-60(4) or one hundred fifteen percent (115%) of the cost to vegetate the disturbed land to dryland grasses based upon unit costs determined by the ~~City Engineer~~Director of Public Works or his/her designated representative, whichever is greater. Due to the complexities of erosion control, in no instance shall the amount of security be less than two thousand five hundred dollars (\$2,500.00), except as provided in Paragraph ~~16-3415-5~~-30(a)(1). The ~~City Engineer~~Director of Public Works or his/her designated representative shall have the right to call on the security in the event the schedules required in Subparagraphs ~~16-3415-5~~-60(3)g and ~~16-3415-5~~-60(4)a are not met.
- (b) No erosion and sedimentation control ~~plans permit(s)~~ will be approved without the submittal of the required security.
- (c) The City will accept a cash escrow or letter of credit as security. The cash escrow or letter of credit will be returned to the applicant within sixty (60) days after the completion of the land-disturbing activity and closure of the permit. Completion shall mean the achievement of the final stabilization of the land as indicated on the erosion and sedimentation control plan. Completion shall be determined by a representative of the ~~City Engineer~~Director of Public Works or his/her designated representative who shall notify the applicant in writing. The warranty period for erosion control construction shall be two (2) growing seasons.
- (d) Prior to final release, the Director of Public Works or his/her representative may grant a reduction of the security.

(Ord. 02-01 §3111; Ord. 04-17 §1; Ord. 05-13 §3111)

**Sec. ~~16-3115-5~~-120. Insurance.**

Every applicant, before commencing operations, shall be insured to the extent of two hundred thousand dollars (\$200,000.00) per person, five hundred thousand dollars (\$500,000.00) per occurrence, against liability arising from activities or operations conducted or carried on pursuant to any of the provisions of this Chapter, and such insurance shall be kept in full force and effect during the period of such activities or operations, including site rehabilitation. A certificate indicating protection by such insurance shall be filed by the applicant together with his or her application for permit. Said insurance shall not be released until final inspection and approval has been completed by the Engineering Division.

(Ord. 02-01 §3112; Ord. 05-13 §3112)

**Sec. ~~16-3115-5~~-130. Violations.**

- (a) Any person, corporation, partnership, firm or other entity of whatever description violating any provision of these regulations shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred-thousand dollars (\$1,000.00), or by imprisonment for not more than ten (10) days, or by both such fine and imprisonment. Each day during which a violation exists shall constitute, and shall be punishable as, a separate offense.
- (b) This Article may be enforced by injunction, including both the enjoining of actions or inactions in violation of this Article (i.e., land-disturbing activities undertaken without, or in violation of the terms of, a permit as required herein), and a mandatory injunction to require the removal of excavation or fill accomplished without, or in violation of the terms of, such a permit. In any such injunctive action, the City shall be entitled to an award of its costs of suit and any costs incurred in the removal of fill and/or restoration of areas where fill or excavation activities have been undertaken in violation of the provisions of this Article.
- (c) The City shall be entitled to recover its attorney's fees incurred in bringing any action to compel compliance with the provisions of these regulations or to compel compliance with any plan approved hereunder.

(Ord. 02-01 §3113; Ord. 05-13 §3113)

**Sec. ~~16-3115-5~~-140. Stop Work Order.**

The ~~City Engineer~~Director of Public Works or his/her designated representative is authorized to order work stopped on any project which disturbs the land and which is not in compliance with the provisions of this Article.

(Ord. 02-01 §3114; Ord. 05-13 §3114)

**Sec. ~~16-3115-5~~-150. Abatement.**

- (a) In the event a landowner determines or discovers that a plan is not being adhered to, said landowner shall take immediate steps to abate said violation and shall notify the ~~City Engineer~~Director of Public Works or his/her designated representative of the deviation from the plan and the efforts undertaken to bring the work into compliance with said plan. ~~The~~

~~landowner shall be granted a period of five (5) calendar days from the date of discovery of said deviation to bring the work into compliance with the plan.~~

- (b) In the event the ~~City Engineer~~Director of Public Works or his/her designated representative discovers a deviation from the plan, the landowner or authorized representative shall be notified in writing of said deviation and shall be required to bring the work into compliance with the plan ~~within no more than five (5) calendar days from the date of notification~~. The written notice shall specify the areas of deviation from the plan. Failure to correct the deviation from the plan within the time period provided in the notice shall entitle the City to invoke the provisions of Section ~~16-3415-5~~-130 above.

(Ord. 02-01 §3115; Ord. 05-13 §3115)

**Sec. ~~16-3415-5~~-160. Applicability of other laws and regulations.**

Nothing contained herein relieves any person, corporation, firm or entity from the obligation to comply with any applicable state or federal laws or regulations relating to water quality or water quality standards or any other standards contained within this Chapter. Ord. 02-01 §3116; Ord. 05-13 §3116)

## CHAPTER 16 Zoning

ARTICLE I - Administrative Provisions and Procedures

ARTICLE II - General Requirements and Exceptions (AMENDMENTS PROPOSED)

ARTICLE III - Reserved

ARTICLE IV - Reserved

ARTICLE V - Reserved

ARTICLE VI - Reserved

ARTICLE VII - SR - Suburban Residential District (SR-1—SR-M)

ARTICLE VIII - MF - Multi-family District (MF-1, MF-2)

ARTICLE IX - I - Institutional District

ARTICLE X - Reserved

ARTICLE XI - B - Business District

ARTICLE XII - C - Commercial District

ARTICLE XIII - Reserved

ARTICLE XIV - Reserved

ARTICLE XV - PD - Planned Development District

ARTICLE XVI - P & OS - Parks and Open Space District

ARTICLE XVII - Utility Service and Telecommunication Facility - Overlay District

ARTICLE XVIII - Reserved

ARTICLE XIX - Reserved

ARTICLE XX - Nonconforming Uses and Structures

ARTICLE XXI - Use by Special Review

ARTICLE XXII - Temporary Structures (AMENDMENTS PROPOSED)

ARTICLE XXII-A - Temporary Uses (AMENDMENTS PROPOSED)

ARTICLE XXII-B - Outdoor Storage

ARTICLE XXIII - Home Occupation

ARTICLE XXIV - Reserved

ARTICLE XXV - Rezoning

ARTICLE XXVI - Variance and Appeal Standards and Procedures

ARTICLE XXVII - Site Improvement Plan (SIP) (AMENDMENTS PROPOSED)

ARTICLE XXVIII - Parking Standards (AMENDMENTS PROPOSED)

ARTICLE XXIX - Sign Standards

ARTICLE XXX - Lighting Standards

ARTICLE XXXI - Clearing, Grading and Land Disturbance (AMENDMENTS PROPOSED)

ARTICLE XXXII - Landscaping Standards (AMENDMENTS PROPOSED)

ARTICLE XXXIII - Reserved

ARTICLE XXXIV - Vested Property Rights

ARTICLE XXXV - Solar and Wind Energy Standards

ARTICLE XXXVI - Definitions (AMENDMENTS PROPOSED)

## **ARTICLE II - General Requirements and Exceptions**

Sec. 16-2-10. Districts.

Sec. 16-2-20. Incorporation of maps.

Sec. 16-2-30. District boundaries.

Sec. 16-2-40. Disconnected land.

Sec. 16-2-50. Exclusion of uses.

Sec. 16-2-60. Inclusion of use not listed.

Sec. 16-2-70. Trash, junk, inoperative vehicles.

Sec. 16-2-80. Reserved.

Sec. 16-2-90. Public access.

Sec. 16-2-100. Minimum area.

Sec. 16-2-110. Building Use and structure restrictions. (AMENDMENTS PROPOSED)

Sec. 16-2-120. Merger by contiguity.

Sec. 16-2-130. Satisfied dedication requirements.

Sec. 16-2-140. Review fees.

Sec. 16-2-150. Reserved.

Sec. 16-2-160. Setbacks for infill lots.

Sec. 16-2-170. Household pets.

Sec. 16-2-180. Planned Developments.

Sec. 16-2-190. Dedication of land.

Sec. 16-2-200. Group homes.

Sec. 16-2-210. Property maintenance. (AMENDMENTS PROPOSED)

Sec. 16-2-220. Variances to height and setback requirements.

Sec. 16-2-230. Rain Barrels. (NEW SECTION ADDED)

**Sec. 16-2-110. Building Use and structure restrictions.**

- (a) ~~It shall be unlawful to erect, construct, reconstruct, alter or change the use of any building or other structure, including surface and subsurface structures, or to move a structure from one property to another within the incorporated area of the City without first obtaining a building permit from the Building Division. The plans, submitted with the building permit application, for the proposed erection, construction, reconstruction, alteration or use shall conform to all applicable provisions of this Chapter and shall be constructed in accordance with the City's duly adopted or authorized Building Code. No structure shall be altered, built or moved, and no structure or land shall be used or occupied, which does not conform to all applicable provisions of this Chapter in which the structure or land is located.~~
- (b) No structure ~~requiring a building permit may~~ shall be erected, placed upon or extended over any easement unless approved in writing by the agency or agencies having jurisdiction over such easement. A copy of such approval shall be submitted to the Building Division Community Development Department prior to building permit issuance.
- (c) (c) It shall be unlawful to construct, build, establish or continue to maintain any building, tree, smokestack, chimney, flagpole, wires, tower or other structure or appurtenance thereto which may constitute a hazard or obstruction to the safe navigation, landing and takeoff of aircraft at a publicly used airport under the regulation of the United State Civil Aeronautics Authority. Applicants are responsible for providing any prior required notice to the Federal Aviation Administration (FAA) of the proposed construction or alteration of a structure that may constitute an obstruction to the safe navigation, landing, or takeoff of aircraft at a publicly used airport, as required by regulations at 14 C.F.R. Part 77. Copies of all written communications with and final determinations by the FAA shall be submitted to the Planning Division prior to approval of a Site Improvement Plan (SIP) application. Upon the issuance by the FAA of a Determination of No Hazard to Air Navigation which includes mitigation measures, the mitigation measures recommended by the FAA may be required. Upon the issuance by the FAA of a Determination of Hazard to Air Navigation, the SIP application shall be denied.

### **Sec. 16-2-210. Property maintenance.**

The following provisions apply to all properties except single-family detached:

- (1) All improvements on the property shall be maintained in a state of good repair consistent with the approved SIP. This includes proper upkeep and maintenance of all structures, paved surfaces, access, parking areas, lighting, signage and similar improvements.
- (2) Landscaping shall be maintained in a neat, clean and healthy condition. This shall include proper pruning, mowing of lawns, weeding, fertilizing, mulching, trimming, removal of litter and regular irrigation of all plantings, as applicable. Should any plant material die or its condition be deteriorated significantly as determined by staff, the owner shall be responsible for the replacement of the plant(s) within one (1) planting season. Dead plant materials shall be removed and replaced with healthy planting materials of comparable size and species as shown on the SIP, and shall meet the original intent of the approved landscape design. Undeveloped properties eligible for a Site Improvement Plan must also be maintained in a state of good repair. This includes regular mowing, weeding, mud and erosion control, as well as trash removal. Clear space above public walks shall be seven (7) feet or greater.
- (3) Sidewalks and landscaping in the public right-of-way adjacent to commercial, multi-family or single-family attached properties are the responsibility of the adjoining property owner or managing entity. Sidewalks must be maintained in a condition free from snow or ice within twenty-four (24) hours after its accumulation.
- (4) Maintenance access shall be provided to all storm drainage facilities to ensure continuous operational capability of the system. The property owner shall be responsible for the maintenance of all drainage facilities, including inlets, pipes, culverts, channels, ditches, hydraulic structures and detention basins located on the property, unless such maintenance responsibility is provided by an alternate entity, with City approval, through a separate written agreement with a copy on file with the ~~City Engineer~~Director of Public Works or his/her designated representative. If the City determines that the property is not in compliance with the above requirements, it may contact the owner to remedy the violations within a timeframe specified by the Director. If the owner fails to remedy the violation in the time specified, the City shall have the right to enter the land for the purposes of operations and maintenance. All such maintenance costs shall be assessed to the property owner.

### **Sec. 16-2-230. Rain Barrels.**

The City promotes the benefits of the use of rain barrels while recognizing the need to blend their use into a residential setting. To balance the environmental, drainage and other benefits of rain barrels with the potential for nuisance, aesthetic or other issues that may result from the

use of the same, precipitation from a rooftop that is collected in a rain barrel is permitted subject to the following:

- (1) A rain barrel collecting precipitation from a downspout is allowed adjacent to any building façade, when the rain barrel is:
  - (a) Fifty-five (55) gallons or less in capacity;
  - (b) Blends with the building's façade and surrounding landscaping and vegetation;
  - (c) Outdoors, above ground, not elevated more than 24 inches above adjacent grade, placed on a stable surface, and maintained in such a way as to prevent tipping;
  - (d) Secured with a sealable lid;
  - (e) Maintained in a safe and functional condition and kept in good repair;
  - (f) Maintained to prevent any offensive odors, any mosquito or other insect eggs and larvae, any other nuisance or any other City code violation; and
  - (g) Has associated permanent or temporary piping that reasonably blends in with surrounding landscaping and vegetation.
- (2) Shall meet all provisions of the State laws, including:
  - (a) Collection is from a rooftop of a building that is used primarily as a single-family residence (defined as a separate building or an individual residence that is part of a row of residences joined by common sidewalls) or a multi-family residence with four or fewer units;
  - (b) The collected precipitation is used on the property on which it is collected;
  - (c) No more than two rain barrels, with a total of one hundred ten (110) gallons of storage, are allowed per residence;
  - (d) The collected precipitation is used solely for outdoor purposes including the irrigation of lawns and gardens;
  - (e) Precipitation collected shall not be used for drinking water or indoor household purposes.

## **ARTICLE XXII - Temporary Structures**

Sec. 16-22-10. Intent.

Sec. 16-22-20. General requirements.

Sec. 16-22-30. Temporary permit process.

Sec. 16-22-40. Temporary construction office. (AMENDMENTS PROPOSED)

Sec. 16-22-50. Temporary residential sales office.

Sec. 16-22-60. Temporary nonresidential office.

Sec. 16-22-70. Temporary commercial structures.

### **Sec. 16-22-40. Temporary construction office.**

A temporary structure for the storage of construction materials and a construction office to be used for managing a construction job shall be allowed in all districts, provided that:

- (1) A building permit has been issued for a permanent structure, or, in the case of a road construction project, approval has been granted by the ~~City Engineer~~Director of Public Works or his/her designated representative.

- (2) The structure is used only during normal construction hours by the construction employees. The structure shall not be used for living quarters.
- (3) The structure is located within the area of a recorded plat or an approved Site Improvement Plan.
- (4) A permit for a temporary electrical meter has been issued by the Building Division.
- (5) The temporary structure shall be removed upon issuance of a certificate of occupancy or completion of the permanent structure.

## **ARTICLE XXII - A Temporary Uses**

Sec. 16-22A-10. Intent.

Sec. 16-22A-20. General requirements.

Sec. 16-22A-30. Markets, festivals and fairs; specific requirements.

Sec. 16-22A-40. Grand openings, anniversary celebrations and other special occasions; specific requirements.

Sec. 16-22A-50. Christmas tree sales lot; specific requirements.

Sec. 16-22A-60. Fruit and vegetable stands; specific requirements.

Sec. 16-22A-70. Outdoor sales and promotions; specific requirements.

Sec. 16-22A-80. Temporary Use Permit; permitting procedure. **(AMENDMENTS PROPOSED)**

Sec. 16-22A-90. Grounds for denial of permit.

Sec. 16-22A-100. Temporary Use Permit; submittal requirements.

### **Sec. 16-22A-80. Temporary Use Permit; permitting procedure.**

- (a) The applicant shall submit the application fee and the information required in Section 16-22A-100 of this Article to the Community Development Department.
- (b) The submittal shall be reviewed for completeness and the applicant notified of any inadequacies. Once the submittal is determined complete, the Community Development Department and other agencies such as the ~~City Engineer~~ Director of Public Works or his/her designated representative in Division, the affected fire district and the health department may be asked to review the application.
- (c) After review by applicable departments and referral agencies, the Community Development Department shall approve, approve with conditions, or deny the Temporary Use Permit.
- (d) Denial of the Temporary Use Permit may be appealed to the City Council, in writing, within ten (10) days of denial by the Community Development Department.

## **ARTICLE XXVII – Site Improvement Plan (SIP)**

Sec. 16-27-10. Intent.

Sec. 16-27-20. Applicability.

Sec. 16-27-30. Variances.

Sec. 16-27-40. Design guidelines.

Sec. 16-27-50. General submittal requirements.

Sec. 16-27-60. Narrative submittal requirements.

Sec. 16-27-70. SIP submittal requirements. (AMENDMENTS PROPOSED)

Sec. 16-27-80. Review process. (AMENDMENTS PROPOSED)

Sec. 16-27-90. Approval provisions. (AMENDMENTS PROPOSED)

Sec. 16-27-100. Post-approval submittal and review process. (AMENDMENTS PROPOSED)

Sec. 16-27-110. SIP amendments. (AMENDMENTS PROPOSED)

### **Sec. 16-27-70. SIP submittal requirements.**

#### **(b) Cover Sheet.**

- (1) Notes or requirements specific to the SIP shall be provided on Sheet 1. Included on all SIPs shall be the following note:

"The property herein is subject to all applicable requirements of the Lone Tree Zoning Code, including but not limited to maintenance, lighting, parking, signage, and outdoor storage, except as may otherwise be addressed in an approved Development Plan or Sub-Area Plan."
- (2) A vicinity map at a scale of 1" = 2,000' shall be provided showing the relationship of the site to the surrounding area within a two-mile radius superimposed on a current map of the City that shows streets and lots, keeping the same scale. If the site is within a Planned Development, a filing or Planned Development map at 1" = 1,000' for a one-mile radius shall also be included.
- (3) The following approval signature block shall be placed on Sheet 1 of the SIP plan:

APPROVAL CERTIFICATE

THIS SIP HAS BEEN REVIEWED AND FOUND TO BE COMPLETE AND IN ACCORD WITH CITY REGULATIONS, AS APPROVED BY THE CITY ON (DATE).

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

Name: \_\_\_\_\_  
Title: Community Development Director

Date: \_\_\_\_\_

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

Name: \_\_\_\_\_  
Title: ~~City Engineer~~ Director of Public Works or his/her designated representative

Date: \_\_\_\_\_

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

Name: \_\_\_\_\_  
Title: Mayor

Date: \_\_\_\_\_

The owner(s) of the lands described herein, hereby agree(s) (1) to develop and maintain the property described hereon in accordance with this approved Site Improvement Plan and in compliance with Chapter 16 of the Lone Tree Municipal Code and that (2) the heirs, successors and assigns of the owner(s) shall also be bound. The signatures of the owner(s)'(s) representative(s) below indicate that any required authorizations to enter this agreement, including any corporate authorizations, have been obtained.

\_\_\_\_\_  
(Name of Owner)

\_\_\_\_\_  
(Signature of Owner)

\_\_\_\_\_  
(Printed Name and Title)

State of \_\_\_\_\_ )

) ss.

County of \_\_\_\_\_ )

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_

Witness my hand and official seal.

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

---

Notary Public

Approval by the City of Lone Tree does not signify that the requirements of the Americans with Disabilities Act (ADA) have been satisfied. The applicant is responsible to ensure that said ADA requirements have been met.

- (e) Irrigation Plan. The irrigation plan shall be prepared consistent with the standards set forth in Section 16-32-110 of this Chapter. The irrigation plan shall be prepared at a scale of 1" = 40' or 1" = 20' or another scale approved by staff, which allows for maximum clarity of the proposal. Additionally, the irrigation plans shall be the same scale as the landscaping plans. The ~~landscape-irrigation~~ plan shall contain the following:
- (1) The type of irrigation proposed for each hydrozone based on exposure, plant selection and slope. To conserve on water, irrigated turf shall not be allowed on slopes greater than 3:1. Shrubs or trees irrigated with a drip line are acceptable as is drought-tolerant grasses with temporary irrigation systems for areas with slope greater than 3:1.
  - (2) The location of the backflow preventer(s).
  - (3) The location of the master valve.
  - (4) The location and type of weather-based smart controller(s).
  - (5) The location of the rain sensor that will override the irrigation cycle of the sprinkler.
  - ~~(6) In chart form, the symbol, manufacture model number, description and installation details for all proposed irrigation equipment.~~

**Sec. 16-27-80. Review process.**

- (a) Presubmittal meeting. Prior to submittal of the SIP, the applicant shall communicate with the Community Development Department staff to discuss the procedures and submittal requirements and ensure the project is in conformance with the Comprehensive Plan, this Chapter, the Subdivision Regulations, the Design Guidelines and applicable Planned Developments and Sub-Area Plans.
- (b) Submittal to the Community Development Department. The applicant shall submit to the Community Development Department all information and fees in accordance with the submittal requirements in Subsection 16-27-50(a) of this Article. The submittal to the Community Development Department shall be reviewed for general completeness within fifteen (15) working days after such submittal. The applicant shall be notified of any inadequacies. An incomplete or poorly prepared submittal may not be processed.
- (c) Submittal to the Engineering Division. In addition to the Community Development Department submittal, the applicant shall submit to the Engineering Division all information and fees in accordance with the submittal requirements in Subsection 16-27-50(b) of this Article.
- (d) Referral review.
  - (1) When staff has determined the submittal to be complete, the applicant will be notified to submit to staff an electronic file, such as a PDF or other file format approved by staff, and any additional hard copies. Staff will distribute plans to referral agencies. Any revised plans shall be provided by the applicant, as required by staff.
  - (2) The referral period shall be thirty-five (35) days; however, such period may be reduced by staff.

- (3) All referral comments received in writing from residents or homeowners' associations shall be forwarded in the packet to the Planning Commission and City Council. Other written referral agency comments that expand upon technical or standard comments, or have not otherwise been addressed through the review process, may be forwarded to the Planning Commission and City Council, as determined by staff.
- (e) Planning Commission review.
    - (1) Following submittal of the revised SIP based on staff and referral comments, staff shall schedule a public meeting before the Planning Commission, providing notice of such meeting to the applicant. Staff will prepare a staff report for consideration by the Planning Commission. The report shall include staff findings and a recommendation for SIP approval, approval with conditions or denial, based upon conformance with the approval standards stated herein.
    - (2) At the scheduled meeting, the Planning Commission shall consider the SIP and shall recommend its approval, approval with conditions or denial, based upon conformance with the approval standards stated herein. The Planning Commission may continue the SIP to a subsequent meeting if it feels additional information is necessary in order to render a recommendation.
  - (f) City Council review. Staff shall schedule a public meeting at which the City Council shall consider the SIP for approval and provide notice of such meeting to the applicant.
    - (1) The recommendations of the staff and the Planning Commission concerning the SIP shall be forwarded to the City Council for final action. At the scheduled meeting the City Council shall consider the SIP and shall approve, approve with conditions or deny the application, based upon conformance with the approval standards stated herein. The City Council may continue the SIP to a subsequent meeting if it feels additional information is necessary in order to render a decision.
    - (2) The City Council may, at its discretion at a public meeting, set a City Council public meeting date for an SIP application which has been continued by the Planning Commission for City Council consideration, with or without Planning Commission recommendation.
    - (3) If the SIP is denied by the City Council, the submittal of a new application and processing fee shall be required in order to pursue a new SIP. A resubmittal of the same or substantially similar request, as determined by the Director, shall not be accepted within one (1) year of such denial.
  - (g) Inactive SIPs. SIP applications (not yet approved) shall be deemed inactive and void if the applicant has failed to submit additional information for a period of more than one hundred eighty (180) days. The resubmittal of a new application and fees shall be required to pursue the SIP request. The Director may grant no more than one (1) extension of time, of no more than one hundred eighty (180) days, upon a written request by the applicant.
  - (h) Review of building permit applications concurrent with SIP review. For nonresidential, single-family attached or multi-family structures, a building permit shall be issued only when an SIP has been approved. However, with the approval of the Director, an applicant may submit a building permit application to the Building Division concurrent with the SIP application, at which point the permit may be issued upon SIP approval by the City Council. Building permits shall not be issued for any development that is not in conformance with the approved SIP. Approval of construction drawings by the ~~City Engineer~~Director of Public Works or his/her

designated representative and by any relevant service providers, e.g., utilities or special districts, may be required prior to issuance of building permits.

**Sec. 16-27-90. Approval provisions.**

- (a) Approval standards. SIPs must be in conformance with the Comprehensive Plan, the Design Guidelines, applicable chapters of this Code and applicable Planned Developments and Sub-Area Plans, as well as all applicable roadway, grading, drainage and erosion control standards.
- (b) Approval period/effective date.
  - (1) The SIP shall be effective for a period of three (3) years from the date of approval, unless stated otherwise in such approval. Building permits shall not be issued after three (3) years of SIP approval if it is determined by the Director that updated regulations or changing conditions warrant a new submittal. For multi-phased plans, building permits shall not be issued more than three (3) years from the date of Phase I approval when it is determined by the Director that updated regulations or changing conditions warrant a new submittal.
  - (2) The Director may grant one (1) extension, of not more than six (6) months, upon a written request by the applicant prior to the expiration of the SIP. The Director shall determine if updated City regulations or standards shall apply and whether a reinstatement of the expired SIP will be processed administratively or involve review by the Planning Commission and/or City Council.
- (c) Building permit approval. Prior to issuance of a building permit, final approval from the Community Development Department and City Engineer/Director of Public Works or his/her designated representative is required for final SIP approval. Engineering approval may be contingent upon approval of a Grading, Erosion and Sediment Control (GESC) Report and Plan(s); a Drainage Report or Drainage Conformance Letter; Civil Site Development construction plan(s); and/or a Site Improvement Plan Improvements Agreement (SIPIA), as applicable. Submittal of the finally-approved SIP Mylars to the Community Development Department, signed by the applicant, shall be required prior to the issuance of a building permit.
- (d) Certificates of Occupancy. When the construction of all buildings and all site improvements has been completed in accordance with the approved SIP, building permit and approved civil site engineering construction plans, a Certificate of Occupancy (CO) may be issued subject to review and approval by the Building Official or designee.
- (e) Temporary Certificates of Occupancy.
  - (1) Temporary occupancy may be granted by a Temporary Certificate of Occupancy (TCO) with site improvements subsequently being completed within the timeframe established in the TCO subject to review and approval by the Building Official or designee. A TCO agreement, signed by the applicant, shall be submitted to the City in a form approved by the Director. The Director may, for good cause shown, grant no more than one (1) extension of not more than six (6) months upon a written request by the applicant prior to the expiration of the TCO.
  - (2) A TCO may be issued provided that financial security such as an irrevocable letter of credit, a cashier's check or some other City-approved form of payment has been submitted and accepted by the City. This financial security shall be in an amount equal to the cost of the unfinished work plus fifteen percent (15%), and shall be submitted prior

to the issuance of a TCO. The financial security will be held by the City and released or reimbursed when the work is deemed complete by the Director and ~~City Engineer~~Director of Public Works or his/her designated representative.

**Sec. 16-27-100. Post-approval submittal and review process.**

- (a) Proof sets. Upon City approval of the SIP, the applicant shall prepare and submit two (2) proof sets of the SIP for submittal to the Community Development Department, reflecting all conditions and changes to the plan as required by the City.
- (b) Final SIP. Once the SIP is deemed satisfactory, staff will authorize preparation and submittal of the final SIP of record to the City. This shall include:
  - (1) One (1) Mylar set of the SIP (24" x 36") prepared and submitted in accordance with the following:
    - a. The Mylar SIP shall be prepared on 24" x 36" flat, spliceless, tapeless and creaseless sheets of double matte Mylar film with a uniform thickness of not less than three-thousandths (.003) of an inch. The Mylar should be Right Reading [i.e., plotted or photomylar with the drawing on the front) of an original drawing, using only permanent black ink that will adhere to drafting films (no ballpoint, transfer type or sticky backs are permitted), or an acceptable photographic reproduction or computer-generated reproduction of the original drawing. Inaccurate, incomplete or poorly drawn plans, as well as Diazo (sepia) or electrostatic-generated (photocopied) plans shall be rejected.
    - b. The Mylar shall be submitted with the notarized signature of the landowner and any lenders as applicable, as noted by the Certification Block (see Paragraph 16-27-70(b)(3) of this Article). Unsigned Mylars will not be accepted.
    - c. A revised material sample board, if changes were approved during the review process. The applicant is responsible for preparing and keeping a duplicate of the approved material sample board for use in the field.
- (c) Financial security and SIPIA.
  - (1) A Site Improvement Plan Improvements Agreement (SIPIA) and associated surety(ies) may be required in order to guarantee the completion of site improvements and shall specify the nature and timing of the work to be completed. An SIPIA will be required whenever any improvements on or associated with the site are within the public right-of-way or are (or may become) the City's to maintain, and in other circumstances as determined by Public Works.
  - (2) In order to quantify the required amount of financial security for the required improvements, the City may require the applicant to provide, at no cost to the City, up to three (3) bids from qualified contractors for the applicable required improvements. Alternatively, the City may accept detailed construction cost estimates prepared by and signed/sealed by the applicant's Professional Engineer and/or Professional Landscape Architect (as applicable based on the work covered by the SIPIA). Based on these quotes and/or estimates, the Director and the ~~City Engineer~~Director of Public Works or his/her designated representative shall determine the amount of security required.
  - (3) Except for force majeure causes, failure by the applicant to complete the work or to request a time extension within the specified time period may result in a forfeiture of the security and may cause the City to initiate the construction of such improvements, as

detailed in the SIPIA. Except for force majeure causes, the Director may grant no more than two (2) time extensions of not more than six (6) months each upon receipt of a written request, accompanied by an extension of the financial security. A separate request must be submitted for each requested extension, and such request must be submitted prior to the date the construction was to have been completed.

- (d) Inspection of the constructed SIP. Staff inspection of building design, materials and colors, landscaping, grading, drainage and erosion control is required prior to issuance of a Certificate of Occupancy. At the early stages of final exterior building material and color application, the applicant is responsible for contacting staff to schedule on-site inspections. The applicant is strongly encouraged to provide a sample mock-up of a representative portion of the building to expedite the inspection process and ensure compliance with the approved plans and material sample board.

**Sec. 16-27-110. SIP amendments.**

- (c) Additional conditions applied to minor and major amendments.
  - (1) All amendments must meet the intent of the SIP requirements and the Design Guidelines.
  - (2) A change in land use does not necessarily require an amendment to the SIP as long as the new use is a use by right in the underlying zone district.
  - (3) Elements not specifically addressed in the table in Subsection (b) above, such as minor changes to the traffic circulation or drainage, may be considered for administrative amendments upon approval by the City Manager, and when applicable (e.g., for engineering-related items) the City Engineer/Director of Public Works or his/her designated representative.
  - (4) All applications will be sent to the appropriate referral agencies for comment.
  - (5) The Director/City Manager reserves the right to forward any application to the Planning Commission and shall forward any application deemed major to the City Council for approval.
  - (6) If a variance has been granted previously for a specific application, the request may be reviewed by the Planning Commission, as required by the Director.
  - (7) A "change in architectural character" warranting Planning Commission review includes:
    - a. Multiple changes to an SIP. Even in cases where no single change exceeds the threshold requiring Planning Commission review, staff will consider the cumulative effect of all the changes.
    - b. Significant changes to the "skin" or materials used to surface a building, e.g., greater than twenty percent (20%) of the surface area.
    - c. Significant changes to the color of the building materials.
    - d. Significant changes in the lines of the architecture, such as significant modification of rooflines.

## ARTICLE XXVIII - Parking Standards

Sec. 16-28-10. Intent.

Sec. 16-28-15. Applicability.

Sec. 16-28-20. General provisions.

Sec. 16-28-30. Parking plan requirements.

Sec. 16-28-40. Design standards for parking spaces.

Sec. 16-28-50. Design standards for parking areas. (AMENDMENTS PROPOSED)

Sec. 16-28-55. Maximum parking requirements.

Sec. 16-28-60. Minimum requirements for off-street parking; general provisions.

Sec. 16-28-70. Requirements for off-street parking; specific use.

Sec. 16-28-80. Bicycle parking.

### Sec. 16-28-50. Design standards for parking areas.

- (a) Access. Each required off-street parking area shall have adequate access to a public street or other thoroughfare. Alleys, where they are utilized, shall only be used as secondary means of access to a lot or parcel.
- (b) Off-street loading area. Loading areas shall be provided as required and shall not be used to supply off-street parking spaces. The loading area shall not occupy or intrude into any fire lane and shall not be located in setback areas.
- (c) Marking traffic flow. Parking which is designed for one-way traffic should be clearly indicated as such by the use of a sign and/or arrow designating the direction of traffic flow.
- (d) Grading. All off-street parking areas shall be properly graded. The ~~City Engineer~~Director of Public Works or his/her designated representative must approve the drainage and stormwater detention design.
- (e) Surfacing. Each off-street parking area shall be surfaced with asphalt, Portland cement concrete or some other material approved by the ~~City Engineer~~Director of Public Works or his/her designated representative.
- (f) Wheel stops. Wheel stops may be required in parking lots to prevent cars from impacting adjacent landscaping, fencing or walkways.
- (g) Landscaping. See Section 16-32-70 of this Chapter for landscape requirements for parking lots.

## ARTICLE XXXI – ~~MOVED TO CHAPTER 15, ARTICLE Clearing, Grading and Land Disturbance~~

~~Sec. 16-31-10. Intent.~~

~~Sec. 16-31-20. Permits required.~~

~~Sec. 16-31-30. Permits not required.~~

~~Sec. 16-31-40. Review issues.~~

Sec. 16-31-50. Minimum standards.

Sec. 16-31-60. Submittal requirements.

Sec. 16-31-70. Submittal process.

Sec. 16-31-80. Expiration of plan.

Sec. 16-31-90. Appeals process.

Sec. 16-31-100. Fees.

Sec. 16-31-110. Security.

Sec. 16-31-120. Insurance.

Sec. 16-31-130. Violations.

Sec. 16-31-140. Stop Work Order.

Sec. 16-31-150. Abatement.

Sec. 16-31-160. Applicability of other laws and regulations.

**Sec. 16-31-10. Intent.**

The purpose of this Article is to:

- (1) ~~Provide a mechanism for the issuance of permits relating to clearing, grading and earth movement so as to limit soil erosion and sedimentation during and after construction; and~~
- (2) ~~Control nonpoint source pollution by requiring the implementation of soil erosion and sedimentation control practices for protection of water quality, soil surfaces during and after construction and lands identified as having high open space, visual or vegetative value.~~

~~(Ord. 02-01 §3101; Ord. 04-17 §1; Ord. 05-13 §3101)~~

**Sec. 16-31-20. Permits required.**

(a) ~~A grading permit shall be required from the Engineering Division for any of the following uses:~~

- (1) ~~Grading.~~
- (2) ~~Stripping of soil or vegetation.~~
- (3) ~~Depositing fill material.~~
- (4) ~~Trenching or excavating;~~
- (5) ~~Constructing public or private facilities.~~

(b) ~~For single family residential development, a permit may be issued upon approval of a preliminary plan by the City Council. However, a permit may be issued upon the approval of the Director and the City Engineer, on a case-by-case basis, prior to approval of a preliminary plan.~~

(c) ~~For all uses that require an approved Site Improvement Plan, (SIP), a permit may be issued upon approval of the SIP, by the City SIP Review Board. However, a permit may be issued~~

~~upon the approval of the Director and the City Engineer, on a case-by-case basis, prior to approval of a SIP.~~

- ~~(d) A permit may be issued for construction activities not subject to the platting or site improvement plan review process with the approval of the City Engineer, (i.e., road construction, utility lines).~~

~~(Ord. 02-01 §3102; Ord. 05-13 §3102)~~

**~~Sec. 16-31-30. Permits not required.~~**

- ~~(a) Permits are not required for the following uses:~~

~~(1) Grading in an area of one (1) acre or less which is isolated and self-contained, when the City Engineer determines that such grading will not have a negative impact upon private or public property. When a negative impact is identified, the provisions of this Article shall apply.~~

~~(2) An excavation below finished grade for basements and footings of a building, retaining wall or other structure authorized by a valid building permit. Any fill made with the material from such excavation and any excavation having an unsupported height greater than five (5) feet after the completion of such structure shall be required to have a grading permit.~~

~~(3) Individual cemetery gravesites.~~

~~(4) Routine agricultural uses of agricultural land.~~

~~(5) Exploratory excavations of less than five hundred (500) square feet (excluding mining activity) at the direction of a soil engineer or engineering geologist.~~

~~(6) A fill less than one (1) foot in depth and placed on natural terrain with a slope flatter than five (5) horizontal feet to one (1) vertical foot (5:1), or less than three (3) feet in depth, not intended to support structures, which does not exceed fifty (50) cubic yards on any one (1) lot and does not obstruct a drainage course.~~

- ~~(b) Even if a permit is not required, any clearing, grading or land disturbance activities shall be in accordance with the standards set forth in the City's duly adopted Storm Drainage Design and Technical Criteria manual and those set forth in this Article.~~

~~(Ord. 02-01 §3103; Ord. 05-13 §3103)~~

**~~Sec. 16-31-40. Review issues.~~**

~~Any land-disturbing activity is subject to review by the City and other appropriate agencies regarding:~~

~~(1) Significant wildlife habitat.~~

~~(2) Archaeological or historical sites.~~

~~(3) Lands identified as having high open space, visual or vegetative value.~~

~~(4) Geologically sensitive areas.~~

~~(5) Riparian or wetland areas.~~

~~(6) Unique or distinctive topographic features or other issues as may be identified in the Comprehensive Plan, or Chapter 17 of this Code and other Articles of this Chapter.~~

~~(Ord. 02-01 §3104; Ord. 04-17 §1; Ord. 05-13 §3104)~~

**~~Sec. 16-31-50. Minimum standards.~~**

~~All erosion and sediment control plans and specifications for activities which disturb soil or vegetation shall meet, at a minimum, the following criteria:~~

~~(1) Plans shall be prepared in accordance with the City's duly adopted Storm Drainage Design and Technical Criteria, as amended, and shall be prepared or supervised by a professional engineer licensed in Colorado or a certified professional erosion and sediment control specialist trained and experienced in soil erosion and sedimentation control methods and techniques. Erosion control measures shall be implemented such that the following standards of performance are met:~~

~~a. During overlot grading and during construction, erosion control measures shall be installed such that the maximum amount of sediment discharge by water shall not exceed historic amounts due to a ten-year, twenty-four-hour rainfall event by more than fifteen percent (15%). In addition, the maximum amount of sediment discharge by wind shall not exceed historic amounts by more than fifteen percent (15%).~~

~~b. After construction, erosion control measures shall be installed such that the maximum amount of sediment discharge, either wind-borne or waterborne, shall not exceed historic amounts.~~

~~*Historic sediment discharge* is considered to be the amount of sediment discharged from a basin due to water or wind when the land was established in dryland grass having an average ground cover of sixty-five percent (65%).~~

~~(2) In addition to the specific performance standards in Paragraph (1) above, all plans shall be prepared and adhered to so that land-disturbing activities shall not:~~

~~a. Result in or contribute to soil erosion or sedimentation that would interfere with any existing drainage course in such a manner as to cause damage to any adjacent property;~~

~~b. Result in or contribute to deposition of debris or sediment on any private or public property not designed or designated as an area to collect said sediment;~~

~~c. Create any hazard to any persons or property; or~~

~~d. Detrimentially influence the public welfare or the total development of any watershed.~~

~~(3) Technical methodologies to meet the standards set forth in Paragraphs (1) and (2) above are described in the City's duly adopted Storm Drainage Design and Technical Criteria manual.~~

~~(Ord. 02-01 §3105; Ord. 04-17 §1; Ord. 05-13 §3105)~~

**~~Sec. 16-31-60. Submittal requirements.~~**

~~Applicants for a grading permit shall submit the appropriate review fees and an erosion and sedimentation control plan to the City Engineer which plan shall, at a minimum, contain the~~

information detailed in the City's duly adopted Storm Drainage Design and Technical Criteria manual and the following:

- ~~(1) A vicinity map, at a maximum scale of 1" = 2,000', indicating the site location, as well as the adjacent properties within five hundred (500) feet of the site boundaries.~~
  - ~~(2) A boundary survey or site property lines shown in true location with respect to topographic information.~~
  - ~~(3) A plan of the site, at a maximum scale of 1" = 200', on a 24" x 36" sheet showing:
    - ~~a. Name, address and telephone number of the landowner, developer and petitioner.~~
    - ~~b. Existing topography (shown by dashed lines) having contour intervals of two (2) feet, unless otherwise specified by the City Engineer.~~
    - ~~c. Proposed topography (shown by solid lines) having contour intervals of two (2) feet, unless otherwise specified by the City Engineer, including spot elevations.~~
    - ~~d. Location of existing structures and natural features, such as stream channels, stands of trees, rock outcroppings, wetlands, historical/archaeological sites, significant wildlife habitats, vegetative stands and potential open space land as identified in the Comprehensive Plan, on the site, adjacent to the site and within one hundred (100) feet of the site boundary line.~~
    - ~~e. Location of proposed structures or development on the site, if known.~~
    - ~~f. Elevations, including spot elevations if buildings are shown, dimensions, location, extent and slope of all proposed grading, including building and driveway grades.~~
    - ~~g. Plans and timing schedule for all temporary or permanent erosion control measures to be constructed with or as a part of the proposed work, including drainage facilities, retaining walls, cribbing and plantings. The timing schedule shall assure that the standards set forth in Section 16-31-50 above are adhered to from the commencement of construction. In preparing the site plan, the applicant shall use the soil erodibility zone classifications in the Storm Drainage Design and Technical Criteria manual, the soil classification data for the site identified by the U.S. Soil Conservation Service in the published Soil Survey, or the data which is collected, analyzed and reported upon by a qualified soils engineer registered in the State.~~~~
  - ~~(4) A written report which includes the following:
    - ~~a. A schedule indicating the anticipated project starting and completion dates, the time of overlot grading, construction phases and completion for vegetative and structural control measures.~~
    - ~~b. A statement of the quantity of excavation and fill involved, source of the fill material and the total area of land surface to be disturbed.~~
    - ~~c. Estimated itemized and total cost of the required temporary and permanent soil erosion control measures, which estimates shall include quantities and unit costs.~~~~
  - ~~(5) Other information or data as may be required by the City Engineer, such as a soil investigation report which shall include, at a minimum, data regarding the nature, distribution and supporting ability of existing soils and rock on the site.~~
- ~~(Ord. 02-01 §3106; Ord. 04-17 §1; Ord. 05-13 §3106)~~

**~~Sec. 16-31-70. Submittal process.~~**

- ~~(a) All plans shall be submitted to the Engineering Division. Incomplete or otherwise inadequate application submittals shall be returned to the applicant with comments. The applicant shall comply with the provisions of this Article.~~
- ~~(b) The Engineering Division shall review and comment and either accept the plan or return the plan to the applicant within twenty (20) working days from the date the application submittal was determined to be complete. If the Engineering Division cannot review the plan within twenty (20) days, the applicant will be so notified. The Engineering Division and the applicant may mutually agree upon an extension of time for completion of the plan review or for retention of a qualified professional to perform the review. The applicant shall be responsible for all costs associated with the review.~~
- ~~(c) In the event the applicant desires to amend the plan, an amended plan which complies with the requirements set forth in Sections 16-31-50 and 16-31-60 above shall be submitted by the applicant and reviewed by the Engineering Division prior to the commencement of any work pursuant to the amended plan.~~

~~(Ord. 02-01 §3107; Ord. 05-13 §3107)~~

**~~Sec. 16-31-80. Expiration of plan.~~**

~~A permit shall be effective for twelve (12) consecutive months from the date of issue. Prior to the expiration date, the permit may be renewed upon approval by the City Engineer for a period of time not to exceed twelve (12) months.~~

~~(Ord. 02-01 §3108; Ord. 05-13 §3108)~~

**~~Sec. 16-31-90. Appeals process.~~**

~~If the applicant disagrees with the decision of the Engineering Division, the applicant may appeal to the City Council. The appeal shall be based on technical data or other relevant information. The Planning Commission may affirm, modify or reverse the findings, conclusions and decision of the Engineering Division or remand the decision to the Engineering Division for further review and findings.~~

~~(Ord. 02-01 §3109; Ord. 05-13 §3109)~~

**~~Sec. 16-31-100. Fees.~~**

- ~~(a) A nonrefundable filing fee shall be paid to the Engineering Division at the time of application. Fees are specified in the Engineering Division User Fee Manual.~~
- ~~(b) Any person, corporation, partnership, firm or other entity applying for a grading permit after commencement or completion of the activities authorized in said permit shall be required to pay double the standard fee.~~

~~(Ord. 02-01 §3110; Ord. 05-13 §3110)~~

**Sec. 16-31-110. Security.**

- ~~(a) To ensure rehabilitation of the disturbed area, the applicant shall furnish a letter of credit or other form of security acceptable to the City, naming the City as the secured party in an amount and type to be determined by the City Engineer based upon the magnitude of the land-disturbing activities and rehabilitation requirements. The amount of security will be one hundred fifteen percent (115%) of the cost estimate set forth in Section 16-31-60(4) or one hundred fifteen percent (115%) of the cost to vegetate the disturbed land to dryland grasses based upon unit costs determined by the City Engineer, whichever is greater. Due to the complexities of erosion control, in no instance shall the amount of security be less than two thousand five hundred dollars (\$2,500.00), except as provided in Paragraph 16-31-30(1). The City Engineer shall have the right to call on the security in the event the schedules required in Subparagraphs 16-31-60(3)g and 16-31-60(4)a are not met.~~
- ~~(b) No erosion and sedimentation control plans will be approved without the submittal of the required security.~~
- ~~(c) The City will accept a cash escrow or letter of credit as security. The cash escrow or letter of credit will be returned to the applicant within sixty (60) days after the completion of the land-disturbing activity. Completion shall mean the achievement of the final stabilization of the land as indicated on the erosion and sedimentation control plan. Completion shall be determined by a representative of the City Engineer who shall notify the applicant in writing. The warranty period for erosion control construction shall be two (2) growing seasons.~~  
~~{Ord. 02-01 §3111; Ord. 04-17 §1; Ord. 05-13 §3111}~~

**Sec. 16-31-120. Insurance.**

~~Every applicant, before commencing operations, shall be insured to the extent of two hundred thousand dollars (\$200,000.00) per person, five hundred thousand dollars (\$500,000.00) per occurrence, against liability arising from activities or operations conducted or carried on pursuant to any of the provisions of this Chapter, and such insurance shall be kept in full force and effect during the period of such activities or operations, including site rehabilitation. A certificate indicating protection by such insurance shall be filed by the applicant together with his or her application for permit. Said insurance shall not be released until final inspection and approval has been completed by the Engineering Division.~~

~~{Ord. 02-01 §3112; Ord. 05-13 §3112}~~

**Sec. 16-31-130. Violations.**

- ~~(a) Any person, corporation, partnership, firm or other entity of whatever description violating any provision of these regulations shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars (\$100.00), or by imprisonment for not more than ten (10) days, or by both such fine and imprisonment. Each day during which a violation exists shall constitute, and shall be punishable as, a separate offense.~~
- ~~(b) This Article may be enforced by injunction, including both the enjoining of actions or inactions in violation of this Article (i.e., land-disturbing activities undertaken without, or in violation of the terms of, a permit as required herein), and a mandatory injunction to require the removal of excavation or fill accomplished without, or in violation of the terms of, such a permit. In any such injunctive action, the City shall be entitled to an award of its costs of suit and any costs~~

~~incurred in the removal of fill and/or restoration of areas where fill or excavation activities have been undertaken in violation of the provisions of this Article.~~

- ~~(c) The City shall be entitled to recover its attorney's fees incurred in bringing any action to compel compliance with the provisions of these regulations or to compel compliance with any plan approved hereunder.~~

~~(Ord. 02-01 §3113; Ord. 05-13 §3113)~~

**~~Sec. 16-31-140. Stop Work Order.~~**

~~The City Engineer is authorized to order work stopped on any project which disturbs the land and which is not in compliance with the provisions of this Article.~~

~~(Ord. 02-01 §3114; Ord. 05-13 §3114)~~

**~~Sec. 16-31-150. Abatement.~~**

- ~~(a) In the event a landowner determines or discovers that a plan is not being adhered to, said landowner shall take immediate steps to abate said violation and shall notify the City Engineer of the deviation from the plan and the efforts undertaken to bring the work into compliance with said plan. The landowner shall be granted a period of five (5) calendar days from the date of discovery of said deviation to bring the work into compliance with the plan.~~

- ~~(b) In the event the City Engineer discovers a deviation from the plan, the landowner or authorized representative shall be notified in writing of said deviation and shall be required to bring the work into compliance with the plan within no more than five (5) calendar days from the date of notification. The written notice shall specify the areas of deviation from the plan. Failure to correct the deviation from the plan within the time period provided shall entitle the City to invoke the provisions of Section 16-31-130 above.~~

~~(Ord. 02-01 §3115; Ord. 05-13 §3115)~~

**~~Sec. 16-31-160. Applicability of other laws and regulations.~~**

~~Nothing contained herein relieves any person, corporation, firm or entity from the obligation to comply with any applicable state or federal laws or regulations relating to water quality or water quality standards or any other standards contained within this Chapter.~~

**ARTICLE XXXII - Landscaping Standards**

Sec. 16-32-10. Intent.

Sec. 16-32-20. Applicability.

Sec. 16-32-30. Water-efficient landscaping principles.

Sec. 16-32-40. Landscape design.

Sec. 16-32-50. Minimum area to be landscaped.

Sec. 16-32-60. Parking lot landscaping. (AMENDMENTS PROPOSED)

Sec. 16-32-70. Minimum plant size.

Sec. 16-32-80. Minimum plant quantity.

Sec. 16-32-90. Plant selection.

Sec. 16-32-100. Soil amendment.

Sec. 16-32-110. Irrigation. (AMENDMENTS PROPOSED)

Sec. 16-32-120. Mulching/groundcover.

Sec. 16-32-130. Plant replacement.

Sec. 16-32-140. Field change orders.

**Sec. 16-32-60. Parking lot landscaping.**

- (a) Landscape islands shall be placed at the end of surface parking bays. Surface parking lot bays shall extend no more than fifteen (15) parking spaces without an intervening canopy tree(s) in an interior landscape island or landscape peninsula. Other options for parking lot landscaping may be considered by the City where it provides similar or greater reduction in the heat-island effect, visually interrupts expansive areas of pavement and promotes tree health.
- (b) Landscape islands and landscape peninsulas shall be at a minimum, eight (8) feet in width and be the length of the adjacent parking spaces. Two (2) two-inch caliper canopy trees, and shrubs or ornamental grasses, and acceptable groundcover and mulch, are required for landscape islands, and one (1) two-inch caliper canopy tree, with shrubs or ornamental grasses, and acceptable groundcover and mulch, are required for landscape peninsulas.
- (c) Additional landscaping in surface parking areas may be required to include medians and pedestrian walkways.
- (d) All plant material except sod, groundcover or trees shall be set back a minimum of one (1) foot from any curb edge where necessary to prevent vehicle overhang from harming plant materials.
- (e) Tree trunks shall be set back at least four (4) feet from the back of curbs or sidewalks, driveways and other hard surfaces to buffer from stress caused by salt, snow piling, vehicle overhang and compacted soils.
- (f) The use of planting strips and shallow landscaped depressions in parking lots and along roads is encouraged to help trap and remove pollutants from storm water runoff as approved by the ~~City Engineer~~Director of Public Works or his/her designated representative and the Community Development Department.
- (g) The City may require three-to four-foot tall landscaping in any one (1) or combination of the following: a decorative wall, an earthen berm with slopes no greater than 3:1 or fencing to screen parking lots from streets and/or adjoining land uses. Maximum screening heights may be required where necessary for security purposes.

(Ord. 11-05 Art. 4)

**Sec. 16-32-110. Irrigation.**

The following irrigation standards shall apply:

- (1) All landscaped areas shall be served by a functioning automatic irrigation system.
- (2) Temporary irrigation (no more than ~~one-two~~ [42] seasons) may be used to establish native grasses and native vegetation.
- (3) Irrigation systems shall be designed with separate zones for different equipment or water requirements based on exposure, plant selection and slope.
- (4) Master valves and backflow preventers are required.
- ~~\_(5) Drip emitters and sprinklers shall be placed on separate valves.~~
- (6) Irrigation systems shall be designed to minimize overspray and runoff onto adjacent impervious surfaces such as roads, sidewalks and parking lots. ~~For landscaped areas less than ten (10) feet wide, irrigation shall be limited to subsurface drip irrigation, drip irrigation (point source) or multi-trajectory rotating strip nozzles.~~
- (7) Rain sensors are required that will suspend the irrigation cycle when rainfall has occurred in an amount sufficient to negate the need for irrigation at the scheduled time.
- (8) The installation of weather-based or soil-moisture-based smart controllers is required and shall be designed, installed and managed to apply the appropriate amount of water to maintain healthy plant material.
- ~~\_(9) Rotors, pop-up spray and drip emitters must be equipped with internal check valves to minimize water waste.~~
- ~~\_(10) Pop-up spray heads shall be equipped with internal pressure regulation.~~
- ~~\_(11) Pop-up spray heads or rotator heads shall be a minimum six (6) inches in height unless the mature height of the plant material being irrigated requires taller risers.~~
- ~~\_(12) Drip irrigation shall be point source drip or subsurface drip irrigation.~~
- ~~\_(13) Use of nontreated water for irrigation may be allowed if a permanent, legal and suitable supply is available.~~

## ARTICLE XXXVI – Definitions

Sec. 16-36-10. Rules of construction.

Sec. 16-36-20. Definitions. (AMENDMENTS PROPOSED)

*Engineer* means the City's designated ~~City Engineer~~ Director of Public Works or his/her designated representative as set forth by resolution or other City Council action, to perform the engineering functions for the City as set forth in this Chapter.

## CHAPTER 17 Subdivisions

ARTICLE I - Administrative Provisions (AMENDMENTS PROPOSED)

ARTICLE II - General Standards, Procedures and Requirements (AMENDMENTS PROPOSED)

ARTICLE III - Preliminary Plan for Single-Family Detached Development

ARTICLE IV - Final Plat for Single-Family Detached Development

ARTICLE V - Final Plat for Single-Family Attached, Multi-Family and Nonresidential Development (AMENDMENTS PROPOSED)

ARTICLE VI - Condominium Plat

ARTICLE VII - Plat Amendments and Vacations (AMENDMENTS PROPOSED)

ARTICLE VIII - Certifications

ARTICLE IX - Exemptions

ARTICLE X - Dedication Standards

ARTICLE XI - Vested Property Rights

APPENDIX 17-A - PLAT CORRECTION CERTIFICATE

APPENDIX 17-B - VACATION APPROVAL CERTIFICATE

APPENDIX 17-C - LOT LINE ADJUSTMENT CERTIFICATE

### **ARTICLE I - Administrative Provisions**

Sec. 17-1-10. Title.

Sec. 17-1-20. Purpose.

Sec. 17-1-30. Authority.

Sec. 17-1-40. Jurisdiction.

Sec. 17-1-50. Interpretation.

Sec. 17-1-60. Effective date. (AMENDMENTS PROPOSED)

Sec. 17-1-70. Repeals.

Sec. 17-1-80. Rules of construction.

Sec. 17-1-90. Definitions. (AMENDMENTS PROPOSED)

Sec. 17-1-100. Severability.  
Sec. 17-1-110. Enforcement.  
Sec. 17-1-120. Amendments.  
Sec. 17-1-130. Control over platting.  
Sec. 17-1-140. Review fees.  
Sec. 17-1-150. Impact fees.  
Sec. 17-1-160. Waivers.  
Sec. 17-1-170. Powers of Planning Commission.  
Sec. 17-1-180. Powers of City Council.  
Sec. 17-1-185. Powers of the City Manager.  
Sec. 17-1-190. Major activity notice.

**Sec. 17-1-60. ~~Effective date.~~(Repealed)**

~~The ordinance codified herein shall take effect on February 1, 2014.~~

(Ord. 13-12 Art. 4)

**Sec. 17-1-90. Definitions.**

~~City Engineer means the City's designated engineer as authorized by resolution, contract or other Council action, who performs the engineering functions as set forth in this Chapter.~~

~~Subdivision Improvements shall mean the street, drainage and other improvements including, but not limited to, landscaping, retaining walls, hardscape, etc., as shown on the approved construction plans.~~

~~Subdivision improvements agreement or subdivision agreement means one (1) or more security arrangements which the City shall accept to secure the actual cost of construction of such public improvements~~subdivision improvements~~, as are required by this Chapter or other applicable regulations, within the subdivision. The subdivision improvements agreement (SIA) may include any one (1) or a combination of the types of security or collateral listed in this definition, ~~and the subdivider may substitute security in order to release portions of the subdivision for sale.~~~~

**ARTICLE II - General Standards, Procedures and Requirements**

Sec. 17-2-10. Intent. (AMENDMENTS PROPOSED)

Sec. 17-2-20. Description of subdivision process. (AMENDMENTS PROPOSED)

Sec. 17-2-30. Applicant's responsibility.

Sec. 17-2-40. Subdivision improvements. (AMENDMENTS PROPOSED)

Sec. 17-2-50. Streets. (AMENDMENTS PROPOSED)

Sec. 17-2-60. Erosion and sediment control plan. (AMENDMENTS PROPOSED)

Sec. 17-2-70. Drainage study. (AMENDMENTS PROPOSED)

Sec. 17-2-80. Other ~~public improvements~~ subdivision improvements. (AMENDMENTS PROPOSED)

Sec. 17-2-90. Guarantee of ~~public improvements~~ subdivision improvements. (AMENDMENTS PROPOSED)

Sec. 17-2-100. Release of security. (AMENDMENTS PROPOSED)

Sec. 17-2-110. Additional review fees.

Sec. 17-2-120. Withdrawal of application.

Sec. 17-2-130. Inactive applications.

### **Sec. 17-2-10. Intent.**

The following provisions apply to all subdivisions of land in the City to assure the creation of lots which can be developed in conformance with ~~this~~ Chapter 15, Chapter 16, and this Chapter 17, Chapter 16, the Building Code, Roadway Design and Construction Standards, Storm Drainage Design and Technical Criteria Manual, design guidelines and other applicable City regulations.

(Ord. 13-12 Art. 4)

### **Sec. 17-2-20. Description of subdivision process.**

- (a) Single-family detached development. The steps required to obtain approval of a subdivision for single-family detached development include preliminary plan and final plat. Each is a distinct process involving the submittal of an application, an application fee, required plans and reports and referrals of the proposal to other agencies and entities. At each step of the process, the level of design and engineering increases in order to relieve the applicant from major and potentially unnecessary expenses in situations that may require a redesign and, therefore, a revision of expensive engineering or planning reports. Approval of the preliminary plan does not ensure approval of the final plat. The processes include:
  - (1) Preliminary plan. The review of the feasibility of the project, including technical engineering, preliminary design and relationship to surrounding land uses; location and mitigation of geologic and other natural hazards; identification of visual and environmentally sensitive areas and critical wildlife habitat areas; identification of historic and archeologically sensitive sites; ability to obtain water and sanitation and other required services; adequacy of vehicular and pedestrian circulation; and conformance with the Comprehensive Plan, Zoning Code and applicable planned development sub-area plans. The preliminary plan shall be reviewed by the Planning Commission and reviewed and approved by the Council at a public meeting prior to submittal of the final plat for single-family detached development.
  - (2) Final plat. The review of all final engineering plans, subdivision improvement agreements and other legal requirements with final approval by the City Manager.
- (b) Single-family attached, multi-family. The steps required to obtain approval of a subdivision for single-family attached, multi-family development includes final plat. In this case, the final plat shall be reviewed by the Planning Commission and reviewed and approved by the City

Council. It is an abbreviated process as it does not require preliminary plan review and approval; however, more information on the project is generally forthcoming, as these applications often accompany the site improvement plan for the site.

- (c) Nonresidential. The steps required to obtain approval of a subdivision for nonresidential development includes final plat. In this case, the final plat shall be reviewed by the Planning Commission and reviewed and approved by the City Council. It is an abbreviated process as it does not require preliminary plan review and approval; however, more information on the project is generally forthcoming, as these applications often accompany the site improvement plan for the site.

<b>Review Process</b>	<b>Preliminary Plan</b>	<b>Final Plat</b>
Single-family detached development	Reviewed by Planning Commission and approved by City Council	Approved by City Manager
Single-family attached and multi-family development	N/A	Reviewed by Planning Commission and approved by City Council
Nonresidential development	N/A	Reviewed by Planning Commission and <a href="#">reviewed approved</a> by City Council

- (d) If any proposed plan or plat is denied by the Council or City Manager, a new subdivision application for the same or substantially the same request, as determined by the Director, shall not be accepted within one (1) year of such denial. The applicant may appeal the decision of the Director, in writing, to the Council within ten (10) days from the date of the decision.

(Ord. 13-12 Art. 4)

**Sec. 17-2-40. Subdivision improvements.**

In each subdivision, the City shall determine the type, location and extent of necessary [public improvements](#)~~subdivision improvements~~, depending upon the characteristics of the proposed development and its relationship to surrounding areas. The developer shall provide for the construction, at no cost to the City, of all utilities and other public infrastructure, as required by the City, and provide the necessary security needed to ensure such improvements are made as determined by the City. Improvements shall be made according to plans and specifications prepared by a qualified professional engineer in accordance with the Roadway Design and Construction Standards, the Storm Drainage Design and Technical Criteria Manual, the Grading,

Erosion and Sediment Control Manual, [Chapter 15](#), the Building Code and other applicable regulations. Underground placement of utility lines shall be required in all subdivisions.

**Sec. 17-2-50. Streets.**

All streets and road rights-of-way shall be constructed in conformance with the roadway standards specified in the Roadway Design and Construction Standards, the Storm Drainage Design and Technical Criteria Manual, the Grading, Erosion and Sediment Control Manual, [Chapter 15](#) and other applicable regulations.

**Sec. 17-2-60. Erosion and sediment control plan.**

An erosion and sediment control plan shall be submitted which addresses the existing and potential erosion and sediment problems created by the proposed development. Conservation measures used to mitigate these concerns shall be in accordance with Chapter 16 of this Code, the Roadway Design and Construction Standards, the Storm Drainage Design and Technical Criteria Manual and the Grading, Erosion and Sediment Control Manual, [and Chapter 15](#). If applicable, the Soil Conservation District shall be consulted regarding erosion and sediment control.

**Sec. 17-2-70. Drainage study.**

Drainage studies shall be submitted as part of the subdivision submittal requirements in conformance with the Storm Drainage Design and Technical Criteria Manual [and Chapter 15](#).

**Sec. 17-2-80. Other ~~public improvements~~ [subdivision improvements](#).**

Other reasonable improvements not specifically mentioned herein and found appropriate and necessary by the City shall be constructed at the applicant's expense within such time and in conformance with such specifications as deemed necessary and appropriate.

(Ord. 13-12 Art. 4)

**Sec. 17-2-90. Guarantee of ~~public~~ [subdivision](#) improvements.**

- (a) No final plat shall be recorded until the applicant has submitted, and the Public Works Department has reviewed and accepted, one (1) or a combination of the following:
- (1) A subdivision improvement agreement to construct any required ~~public improvements~~ [subdivision improvements](#) shown in the final plat documents [and approved construction plans](#).
  - (2) Other agreements or contracts setting forth the plan, method and parties responsible for the construction of any required ~~public improvements~~ [subdivision improvements](#) shown in the final plat documents which, in the judgment of the Public Works Department, will make reasonable provision for completion of said improvements in accordance with design and time specifications.
  - (3) Documentation that there are no required ~~public~~ [improvements](#) [subdivision improvements](#) associated with the final plat.

- (b) When required, the applicant shall provide security, in a form acceptable to the City, for the ~~public improvements~~subdivision improvements as follows:
- (1) The applicant shall provide the City with an itemized estimate of the cost of required improvements on a standardized form available from the Public Works Department in accordance with the requirements of the Roadway Design and Construction Standards and the Storm Drainage Design and Technical Criteria Standards. Upon review, the Public Works Department shall require one (1) of the following:
    - a. Security of one hundred fifteen percent (115%) of the total cost of the required ~~public improvements~~subdivision improvements shall be paid by the applicant ~~if any lots or parcels of the subdivision are to be sold or transferred, or issuance of building permits, prior to completion and probationary acceptance of all required public improvements, prior to the approval of the construction plans and issuance of a construction permit.~~
    - b. Security of fifteen percent (15%) of the total cost of required ~~public improvements~~subdivision improvements shall be paid by the applicant prior to the sale or transfer of lots, or issuance of building permits, when the required ~~public improvements~~subdivision improvements have been completed and been granted probationary acceptance by the Public Works Department.
    - c. No security is required toward the total cost of required ~~public improvements~~subdivision improvements that have been completed and have been granted final acceptance by the Public Works Department (at the end of the two-year probationary period).
  - (c) The ~~City Engineer~~Director of Public Works or his/her designated representative shall review the SIA and the cost estimates and recommend changes as necessary to complete the required improvements.
  - (d) The City Attorney shall review any modifications made by the applicant to the SIA and notify the applicant of any deficiencies or required changes. The SIA shall be in the form provided by the City Attorney and approved by the City Manager.
  - (e) The ~~City Engineer~~Director of Public Works or his/her designated representative shall monitor the SIA and any performance agreements.
  - (f) At the discretion of the City Manager, the City may waive the requirement for security by federal, state or local governments, including metropolitan districts, special districts and the like.

**Sec. 17-2-100. Release of security.**

As improvements are completed, the subdivider may apply to the Public Works Department for a release of part or all of the security. Upon inspection by the ~~City Engineer~~Director of Public Works or his/her designated representative and upon their approval, the City shall release the security or portion thereof. If the City determines that any improvements are not constructed in substantial compliance with the specifications, it shall furnish the applicant a list of specific deficiencies and shall retain security sufficient to ensure such compliance. If the City determines that the applicant has not constructed any or all of the improvements in accordance with all of the specifications, the City may withdraw and employ from the deposit of security such funds as may be necessary to construct the improvement in accordance with the specifications. If the submitted security is not sufficient to cover the improvements, the applicant is responsible for the additional

costs. Security to cover the cost of repair of such improvements is required during the warranty period in accordance with the requirements of the subdivision improvements agreement.

## **ARTICLE V - Final Plat for Single-Family Attached, Multi-Family and Nonresidential Development**

- Sec. 17-5-10. Intent.
- Sec. 17-5-20. – Approval standards.
- Sec. 17-5-30. – Prerequisite.
- Sec. 17-5-40. – Submittal process.
- Sec. 17-5-50. – General submittal requirements.
- Sec. 17-5-60. – Final plat Exhibit (**Proposed Amendments**)
- Sec. 17-5-70. – Final development reports and plans.
- Sec. 17-5-80. – Vested property rights.
- Sec. 17-5-90. – Post-approval procedure.
- Sec. 17-5-100. – Expiration of approval.

**Sec. 17-5-60. (13)** The following certifications on a single sheet shall be provided in accordance with Article ~~IX~~VIII of this Chapter: Surveyor, Dedication Statement, Storm Drainage Facilities Statement, General Overlot Drainage Note, City Manager, County Clerk and Recorder's office and Title Verification.

## **ARTICLE VII - Plat Amendments and Vacations**

- Sec. 17-7-10. – Intent.
- Sec. 17-7-20. – Approval standards.
- Sec. 17-7-30. – Plat amendment and vacation process provisions.
- Sec. 17-7-40. – Plat correction.
- Sec. 17-7-50. – Lot line and/or utility easement vacation.
- Sec. 17-7-60. - Lot line/building envelope adjustment.
- Sec. 17-7-70. – Replat of subdivision where additional lots are created. (**Proposed Amendments**)
- Sec. 17-7-80. – Vacation of plat without platted dedication and/or constructed public infrastructure.
- Sec. 17-7-90. – Vacation of plat with platted dedication and/or constructed public infrastructure.
- Sec. 17-7-100 – Vacation of public ways.
- Sec. 17-7-110. – Public notice.
- Sec. 17-7-120. – Application resubmittal.
- Sec. 17-7-130. – Lot numbering.

### **Sec. 17-7-70. - Replat of subdivision where additional lots are created.**

Replats of subdivided land, where additional lots are created requires the following review process:

- 
- (1) When three (3) or fewer lots are created for single-family detached land use, the replat may be acted on by the City Manager, according to the submittal and review requirements of Article IV of this Chapter.
  - (2) When more than three (3) lots are created for single-family detached land use, the replat shall be processed in accordance with the submittal and review requirements of Article IV of this Chapter, except that it shall be acted on only by the City Council.
  - (3) When any lots are created for single-family attached, multi-family or nonresidential land use, the replat shall be acted on only by the City Council, following a 21-day referral period. according to the submittal ~~and review~~ requirements of Article ~~IV~~V of this Chapter. The post-approval procedure and expiration of approval requirements of Article V shall also apply.

## Chapter 18 – Residential Code

**Staff note: This chapter of the Lone Tree Municipal Code adopts by reference the International Residential Code in its entirety, except as “as otherwise provided” by the City. The following are proposed new standards and process for a Drainage Erosion Sediment Control permit for single-family detached development in Section 401 of the Residential Code.**

### **R401.3 Projects that Require a Drainage Erosion Sediment Control (DESC) Permit.**

City of Lone Tree requires that a DESC Permit be obtained prior to the start of land disturbing activities within the City of Lone Tree for new single family detached homes or an addition to single family detached homes.

#### **R401.3.1 Drainage Plan Design Elements.**

The Drainage Plan shall be lot specific, and shall provide the detailed final grading for the lot, and or disturbed area(s). The Drainage Plan shall reflect information provided in the Phase III Drainage Plan for the given area and comply with the following requirements:

1. Slope Requirements. A minimum constant slope of 10% and a maximum constant slope of 33% in the first 10 feet away from the foundation walls and window wells shall be established for pervious surfaces. All other disturbed areas shall have a minimum of 2% slope. All pervious and impervious areas shall slope continuously to the lowest point where stormwater discharges from the lot (e.g., sidewalk, gutter, inlet, adjacent property, or easement). At this point, the discharge water shall be dispersed into a sheet flow and directed in a manner as to not cause harm to downslope properties. Where minimum slopes cannot be attained, alternate means to adequately convey the water from the lot shall be designed and submitted by the Designer to the Building Division for acceptance. Impervious surfaces adjacent to the foundation shall have adequate drainage away from the foundation as determined by the Designer. Refer to the International Residential Code, as amended, for specific requirements.
2. Drainage Swales. Drainage swales may not be located within the foundation backfill zone unless limited by property lines. Drainage swales shall have adequate depth, width and longitudinal gradient to convey the stormwater off the lot in an effective, non-damaging manner. Drainage swales shall be designed to spread flows out as much as feasible.
3. Retaining Walls. Proposed slopes steeper than 3 to 1 are difficult to vegetate and maintain. Long term rill and gully erosion are likely on such slopes. Approved permanent stabilization shall be required to control grades on sites that cannot be graded at a 3 to 1 slope. Retaining walls may be necessary to control grades on a site. Retaining walls shall not encroach onto adjacent properties. Retaining walls taller than 4 feet (including footing) or that carry a surcharge require a separate Building Permit and shall be designed by a Professional Engineer.
4. Driveways. Driveways shall have a minimum slope of 2% away from the foundation for a distance that will allow adequate drainage away from the garage entrance as determined by the Designer.
5. Downspouts and Sump Pumps. Downspouts and sump pumps shall discharge a minimum of 4 feet away from the foundation wall and outside the foundation backfill

zone unless limited by property lines. Downspouts shall not directly discharge onto adjacent properties.

6. Designing to the Phase III Drainage Plan. The Designer shall ensure that the Drainage Plan functions in accordance with the Phase III Drainage Plan for the development, if applicable.

#### **R401.3.2 Drainage Plan Requirements.**

The Drainage Plan shall be lot specific, and shall provide the detailed final grading for the lot, and or disturbed area(s). The Drainage Plan shall be shown, at a minimum, on 8.5" x 11" or a scale of 1 inch equals 20 feet. The Drainage Plan shall include:

1. Basic property information including; street address, subdivision, filing, lot and block.
2. North Arrow.
3. All property lines, easements and setbacks.
4. 100 Year Floodplain limits shall be shown if there is floodplain on the lot.
5. Spot elevations and drainage flow arrows to accurately illustrate the site drainage patterns. At a minimum the plan shall contain:
  - a) Drainage swales labeled with spot elevations to the nearest 1/10 of a foot, and drainage flow arrows, illustrated to the nearest 1%, starting at the high point(s) and along the swale at 25 foot intervals.
  - b) Spot elevations, to the nearest 1/10 of a foot at:
    - Each foundation corner.
    - Each point of foundation elevation change.
    - Top of driveway at the garage entrance.
    - Point of driveway discharge.
    - Top of Wall and Bottom of Wall elevations for all retaining walls at each end and at 20 foot intervals.
  - c) Slopes illustrated with an arrow showing the direction of flow to the nearest 1%, for a distance of 10 feet from the top of backfill at foundation for:
    - Each foundation corner.
    - Along the foundation at 20 foot intervals.
    - Each point of foundation elevation change.
  - d) Additional information (e.g., contours) may be required by the City depending on site specific conditions.
6. Location(s) where existing storm water runoff enters the lot and discharges from the lot to adjacent rights-of-way, properties and easements labeled.
7. Name, address and phone number of the Designer's firm.
8. DESC Drawing Designer's signature block with name, date and registration number.

#### **R401.3.3 DESC Inspections.**

##### **R401.3.3.1 Final Grade Inspection.**

Final Grade inspection shall be made after the permitted work is complete and prior to the issuance of the Certificate of Occupancy

##### **R401.3.3.2 Other Inspections.**

In addition to the called inspection above, the Building Official may make or require any other inspections to ascertain compliance with this code or other laws enforced by the Building Official.

#### **R401.3.4 Final Drainage Certificate.**

To ensure conformance with the approved design and to ensure adequate drainage away from the foundation and off the lot, a Final Drainage Certificate shall be certified by a Registered Professional Engineer (PE) or a Registered Professional Land Surveyor (PLS) and approved by the City of Lone Tree before a Certificate of Occupancy can be issued. The following items shall be clearly illustrated on a copy of the approved Drainage Plan:

- All vertical and horizontal deviations to grades, drains, spot elevations, slopes and drainage patterns throughout the lot as shown on the approved DESC Plan.
- Location(s) of the sump pump discharge, if applicable.
- The Final Drainage Certificate shall be signed and stamped by a PE or a PLS.

The Drainage Certificate requirement will be waived for non-habitable accessory structures and small additions if:

- Compliant drainage has been verified by the Inspector during a Final Grade Inspection.

#### **R401.3.5 DESC Permit Closeout.**

DESC Permits will be closed at the completion of construction and prior to the approval of the Certificate of Occupancy only when the following conditions are met:

1. All of the previously disturbed soil areas are covered with the building structure, grass/sod, rock, mulch, pavers, or other approved landscape materials; or
2. In the case that landscaping improvements have not been completed, the Permittee(s) shall install the Final Erosion and Sediment Control BMPs shown on the approved DESC Plan. Additional sediment controls may be required at the discretion of the Inspector in order to protect adjacent lots and the storm sewer system.

#### **R401.3.6 Posting Surety.**

The City of Lone Tree recognizes that, in some cases, final grading and drainage measures cannot be immediately achieved prior to the need to close a transaction, and occupy a property. In the event that the final grading and drainage measure cannot be completed prior to the need for a Certificate of Occupancy, Surety and a DESC permit fee shall be posted with the Building Division. The Certificate of Occupancy will be released upon receipt of the Surety and after the Inspector has verified that the Erosion and Sediment Control BMPs are effectively implemented in accordance with the approved DESC Plan.

##### **R401.3.6.1 Amount of Surety.**

The amount of Surety required shall be \$2,500.00. For lots larger than 1.0 acre, the required Surety shall be \$2,500.00 per disturbed acre.

##### **R401.3.6.2 Forms of Surety.**

The City of Lone Tree accepts 3 different forms of security. Surety can be deposited as a Corporate or Cashier's Check, Irrevocable Letter of Credit or by Credit Card.

**R401.3.6.3 Release of Surety.**

Surety will be returned upon completion of the Final Grade inspection and acceptance of the Final Drainage Certification.

## Jennifer Drybread

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**From:** Dan Clawson <dbclawson@qwest.net>  
**Sent:** Sunday, November 06, 2016 11:19 AM  
**To:** Jennifer Drybread  
**Cc:** Linda Langewisch; Marilee Wing  
**Subject:** RE: Proposed Amendments to the City of Lone Tree Municipal Code

**Categories:** Red Category

Jennifer,

Two items of note in the proposed modifications.

Section 15-1-50 refers to a flood insurance study dated 2-17-17, a date in the future. Shouldn't it refer to a 2016 study rather than a study on a future date.

Section 16-2-210, Property Maintenance, specifically excludes single family detached homes such as mine. I believe it should be amended to include single family detached homes in order that these homeowners also be subject to the same requirement to remove snow from sidewalks within 24 hours like all other residents, associations and businesses in the city.

Thanks,  
Dan Clawson  
10516 Rivington Ct.

---

**From:** Jennifer Drybread [mailto:Jennifer.Drybread@cityoflonetree.com]  
**Sent:** Friday, November 04, 2016 3:16 PM  
**To:** lbradley@tmmccares.com; val@coloradomanagement.com; silvia@westwindmanagement.com; borch101@aol.com; sharonvanram@comcast.net; breid@managementandmaintenance.net; Borch101@aol.com; ehubbard@cchoapros.com; corpoffice@pcms.net; acmoore5@comcast.net; silvia@westwindmanagement.com; shannon.torgerson@claconnect.com; hrvfiel35@gmail.com; Bobbi@westwindmanagement.com; jfletcher@pcms.net; davidw.montecitohoaboard@gmail.com; jeffn.montecitohoaboard@gmail.com; kevin Spencer3@icloud.com; president@muirfieldatlonetree.org; LLangewisch@msihoa.com; doc@maximummgt.com; dbclawson@qwest.net; tammy@maximummgt.com; rich.steinberg@emerson.com; mpeck@tmmccares.com; dirtbag918@aol.com; corpoffice@pcms.net; seth@stcinc.com; Place, Charles <Charles.Place@qwest.com>; doc@maximummgt.com  
**Subject:** Proposed Amendments to the City of Lone Tree Municipal Code

Greetings,

I apologize in advance if you have been sent this email twice. Sorry for any inconvenience.

Attached is a summary and proposed amendments to Chapters 11, 15, 16, and 17 of the Lone Tree Municipal Code for your review and comment. **Please provide any written comments to me by Monday, November 21, 2016.** Comments can be sent via email ([jennifer.drybread@cityoflonetree.com](mailto:jennifer.drybread@cityoflonetree.com)), fax (303-225-4949), or via postal mail in care of my attention at the address below. We are also attaching a referral response form if you prefer.

Please contact me should you have any questions. Thank you!

9568 La Quinta Drive  
Lone Tree, Colorado 80124

November 6, 2016

Jennifer Drybread, Senior Planner  
City of Lone Tree  
9220 Kimmer Drive #100  
Lone Tree, CO 80124

RE: Proposed Municipal Code Changes RG-16-71

On behalf of the Terra Ridge HOA, an association of 177 single family homes which were platted under Douglas County through two filings, then included in the original incorporation of the City of Lone Tree appreciates the opportunity to offer comments to the proposed code changes.

Over +20 years, our HOA Board of Directors and Design Review Committee have struggled at times with the City's codified administrative process that often overlooked gray areas we are unable to control, regulate or oversee at our grass roots level. Most of the code revisions appear to show with better clarity, the responsibilities of the City. If these code revisions prevail and are adopted, our HOA board will request a "workshop" with City staff including legal counsel, to assist us recraft our bylaws and covenants where we may avoid duplication, shed light on said gray areas, and to ensure we are covering items we have omitted and are responsible for. Before this meeting, our association request that a qualified City staff member review our recorded subdivision covenants and Design Guidelines to advise us of where oversights exist and where duplicated matters can be eliminated.

We wish to highlight two examples in the packet where proposed revisions will affect the way we do business at the HOA level:

(1) The proposed revisions now cover construction trailers and/or trash bins associated with private re-construction projects and planned to be temporarily stored on the public streets; as they must now have a permit from the City (Chapter 11). Terra Ridge's long standing subdivision covenants have a provision that on-street storage is not allowed for extended periods of time and we have been compelled to engage our management company & legal counsel when a homeowner is not abiding. Having the City now cover this for us is a "game changer" and requires our Management Company, Board & Architectural Committee members to understand how it now may be regulated and enforced by the City, including traffic control for safety.

(2) Revisions relative to storm water (i.e. chapters 15 & 17) will require expenditures on our part as our original covenants did not foresee or anticipate our need to use our reserve funds for these responsibilities. Furthermore, we homeowners are not hydrologist, flood or water quality control experts and the ponds that lie within our common areas present a significant liability challenge to us. We are not clear if these changes only apply to new subdivisions or are applicable to existing subdivisions and their associations for such common areas that fall into our silo of maintenance obligations.

Most if not all HOA's in the City are Covenant Controlled. Given that the City is opening up the code for revision, we see this as a long overdue opportunity to integrate an HOA Design Review sign-off in the building permitting process. One recurring yet important issue we see is how colors, style, patterns and other exterior design compatibility features regulated by each HOA, are not recognized by the building department and have been minimized to a 'suggestion' within the instructions for building permits. We have asked our "Home Rule" City on repeated occasions that building permits require a checkbox for the HOA sign-off before consideration to issue a permit that has implications for exterior appearance and compatibility. Failure to enable the HOA board to pre-approve exterior changes in essence subjugates the purpose & need for an HOA Board and a covenant-controlled neighborhood. We clearly would acquiesce to situations of emergency repairs.

We have only highlighted a few examples of changes being proposed, which have the best of intentions, but do not clarify for the HOA's, how we are to effectively embrace them. In some situations, these revisions will absolve us of our responsibilities, but in others, create non-funded mandates. That is why we request a "workshop" be offered to all HOA groups so that we may understand what needs to be done to bring our rules into compliance.

We wish to express our gratitude to the City Council for understanding the implications that these revisions and changes present to the HOA groups who share the same interest of process and predictability, protecting property values, property rights, and the other inalienable rights within a "Home Rule" City like Lone Tree.

Sincerely,

A handwritten signature in blue ink that reads "Rick Solomon". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Rick Solomon, President  
Terra Ridge HOA

cc. PCMS  
TR Board & DRC

## Jennifer Drybread

---

**From:** Lisa Albers  
**Sent:** Thursday, December 01, 2016 7:46 AM  
**To:** Taylor Goertz; Ward Mahanke; Jennifer Drybread  
**Cc:** John Cotten  
**Subject:** FW: THANK YOU !!

From Rick Solomon. Please see below.

Lisa A. Albers, P.E.  
Capital Improvement Project Manager  
City of Lone Tree  
9222 Teddy Lane  
Lone Tree, CO 80124  
Direct: (303) 551-0153  
Cell: (720) 688-3331

**From:** Rick Solomon [mailto:dirtbag918@aol.com]  
**Sent:** Wednesday, November 30, 2016 5:16 PM  
**To:** Lisa Albers <Lisa.Albers@cityoflonetree.com>; Kelly First <Kelly.First@cityoflonetree.com>; John Cotten <John.Cotten@cityoflonetree.com>  
**Cc:** Timmaley@comcast.net; kbattilega@gmail.com; mrsbbfire@gmail.com; esalehiamin@gmail.com; phannan@ch2m.com; sandschiel@me.com; corpoffice@pcms.net; Jackie Millet <Jackie.Millet@cityoflonetree.com>; Susan Squyer <Susan.Squyer@cityoflonetree.com>; Cathie Brunnick <Cathie.Brunnick@cityoflonetree.com>; Jay Carpenter <Jay.Carpenter@cityoflonetree.com>; Wynne Shaw <Wynne.Shaw@cityoflonetree.com>  
**Subject:** THANK YOU !!

Lisa: Please pass along to the other staff in attendance, our gratitude for the time you spent with the Terra Ridge HOA in a "workshop" fashion to go over our covenants and guidelines as they relate to the City Charter and codes. We both have an appreciation and respect for each others challenges of managing a City and an HOA in a responsible & sustainable fashion.

We will follow up with PCMS to investigate how we may engage some of the ideas you shared with us and use their expertise - which we pay for.  
We all have that innate desire to be the best stewards during our time of service.

Rick Solomon, President  
Terra Ridge HOA

PS. I would venture to say, most folks who visit our City and neighborhoods would say it is "pretty nice" but have no idea how much work and attention to detail is involved.  
For all you do - hidden behind the curtain, we again express our appreciation.



**CENTENNIAL AIRPORT**  
ARAPAHOE COUNTY PUBLIC AIRPORT AUTHORITY

7800 South Peoria Street, Unit G1  
Englewood, Colorado 80112  
main: 303.790.0598  
fax: 303.790.2129  
www.centennialairport.com

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November 21, 2016

Ms. Jennifer Drybread  
City of Lone Tree Community Development Dept.  
9220 Kimmer Drive Suite 100  
Lone Tree, CO 80124

Re: PROPOSED MUNICIPAL CODE AMENDMENTS; RG16-71

Dear Ms. Drybread,

Thank you for the opportunity to review the Proposed Municipal Code Amendments. We agree with the proposed amendments to Sec. 16-2-110 of the Lone Tree Municipal Code.

Please feel free to call me if you have any questions.

Sincerely,

Aaron Repp  
Noise & Environmental Specialist



Right of Way & Permits  
1123 West 3<sup>rd</sup> Avenue  
Denver, Colorado 80223  
Telephone: 303.571.3306  
Facsimile: 303. 571.3284  
donna.l.george@xcelenergy.com

November 21, 2016

City of Lone Tree Community Development Department  
9220 Kimmer Drive, #100  
Lone Tree, CO 80124

Attn: Jennifer Drybread

**Re: Lone Tree Municipal Code Update 2016**

Public Service Company of Colorado (PSCo) has reviewed the **Lone Tree Municipal Code Update 2016** and has **no apparent conflict**.

It is requested that the finalized code update be sent to me at the above email address or mailing address.

If you have any questions about this referral response, please contact me at (303) 571-3306.

Donna George  
Contract Right of Way Referral Processor  
Public Service Company of Colorado



CITY OF LONE TREE  
Community Development Department

# REFERRAL REQUEST

Today's date: November 4, 2016, 2016

**Project Type: Proposed Lone Tree Municipal Code Amendments,  
Project RG16-71**

**Comments Due By: November 21, 2016**

If you are unable to respond by the due date, please contact the project planner

Dear Referral Organization:

Information on the above referenced proposal in the City of Lone Tree is provided for your review and comment. Please submit your response no later than the due date to ensure adequate time to consider comments and enter them into the public record.

If you have difficulty viewing or understanding any of the information or have questions, please contact me at 303-708-1818. Printed materials and extra sets of materials are available upon request. Plans may also be viewed at the City offices from 8am-5pm.

We have no comments regarding this proposal

Please note the following concerns this organization has:

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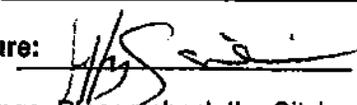
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See attached letter for comments regarding this proposal

Organization Name: South Metro Fire Rescue

Your name: Jeff Scelli

Your signature:  Date: 11/16/16

This project may be subject to public meetings. Please check the City's web site ([www.cityoflonetree.com](http://www.cityoflonetree.com)) for posted agendas or contact this office. Thank you for your consideration.

Jennifer Drybread

Senior Planner

**PLEASE RETURN THIS PAGE AND ANY  
COMMENTS TO:**

City of Lone Tree Community Development Dept.  
9220 Kimmer Drive Suite 100  
Lone Tree, CO 80124  
Ph: 720-509-1273  
Fx: 303-225-4949  
[jennifer.drybread@cityoflonetree.com](mailto:jennifer.drybread@cityoflonetree.com)

## Jennifer Drybread

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**From:** Cathleen Valencia <CValencia@arapahoegov.com>  
**Sent:** Tuesday, November 15, 2016 12:55 PM  
**To:** Jennifer Drybread  
**Cc:** Chuck Haskins; Julio Iturreria  
**Subject:** outside referral - Lone Tree Municipal Code

Jennifer,

Arapahoe County Engineering thanks you for giving us the opportunity to review the Lone tree Municipal Code changes. The Engineering Division has no comments regarding the referral at this time based on the information submitted.

Please know that other Divisions in the Public Works Department may submit comments as well.

Sincerely,

Cathleen Valencia, P.E.  
Engineering Services Division  
Arapahoe County Public Works & Development  
6924 South Lima Street  
Centennial, CO 80112 (720) 874-6500  
[cvalencia@arapahoegov.com](mailto:cvalencia@arapahoegov.com)



**ARAPAHOE COUNTY**  
COLORADO'S FIRST

## Jennifer Drybread

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**From:** Julio Iturreria <JIturreria@arapahoegov.com>  
**Sent:** Monday, November 14, 2016 4:29 PM  
**To:** Jennifer Drybread  
**Subject:** Lone Tree Municipal Code

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hello Jennifer,  
Thanks for the opportunity to review the Code, however I have no comment on this document.  
Hope everything is going well.  
Best,  
Julio

Julio G Iturreria  
Long Range Planning Manager  
Arapahoe County  
720-874-6657 (direct)



CITY OF LONE TREE  
Community Development Department

# REFERRAL REQUEST

Today's date: November 4, 2016, 2016

**Project Type:** Proposed Lone Tree Municipal Code Amendments,  
Project RG16- 71

**Comments Due By: November 21, 2016**

If you are unable to respond by the due date, please contact the project planner

Dear Referral Organization:

Information on the above referenced proposal in the City of Lone Tree is provided for your review and comment. Please submit your response no later than the due date to ensure adequate time to consider comments and enter them into the public record.

If you have difficulty viewing or understanding any of the information or have questions, please contact me at 303-708-1818. Printed materials and extra sets of materials are available upon request. Plans may also be viewed at the City offices from 8am-5pm.

**We have no comments regarding this proposal**

**Please note the following concerns this organization has:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**See attached letter for comments regarding this proposal**

**Organization Name:** \_\_\_\_\_

**Your name:** Laura Leary

**Your signature:**  **Date:** 11/14/16

This project may be subject to public meetings. Please check the City's web site ([www.cityoflonetree.com](http://www.cityoflonetree.com)) for posted agendas or contact this office. Thank you for your consideration.

Jennifer Drybread

Senior Planner

**PLEASE RETURN THIS PAGE AND ANY COMMENTS TO:**

City of Lone Tree Community Development Dept.

9220 Kimmer Drive Suite 100

Lone Tree, CO 80124

Ph: 720-509-1273

Fx: 303-225-4949

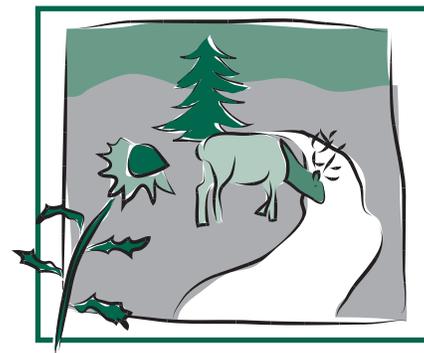
[jennifer.drybread@cityoflonetree.com](mailto:jennifer.drybread@cityoflonetree.com)

# Rainwater Collection in Colorado

Fact Sheet No. 6.707

Natural Resources Series | **Water**

by P.E. Cabot, C.C. Olson, R.M. Waskom and K.G. Rein\*



The purpose of this factsheet is to provide information about the regulatory and health aspects of rainwater collection in Colorado. The information provided in this factsheet is based primarily on language in Colorado House Bill 16-1005 and is intended to inform citizens on how to properly use rain barrels in accordance with Colorado law.

## What is Rainwater Collection?

Rainwater collection, also called rainwater “harvesting,” is the process of capturing, storing and directing rainwater runoff and putting it to use. Water from roof gutter downspouts is usually directed onto landscaped areas and is incidentally consumed by plants, but this form of use is not regarded as rainwater harvesting.

Actual rainwater harvesting involves the collection of rainfall runoff from rooftops, concrete patios, driveways and other impervious surfaces. Rainwater collection systems vary from the simple and inexpensive to the complex and costly. Typically, rooftop rainwater collection systems are simple, consisting of gutters, downspouts, and storage containers. Inexpensive rainwater storage systems commonly make use of an above ground container such as a barrel or plastic tank with a lid to reduce evaporation and bar access for mosquitos to breed. Any container capable of collecting the rain shedding from a roof or patio can be used as a rainwater harvesting system, but to be in conformance with Colorado water law, the container additionally must be equipped with a sealable lid. More sophisticated systems have “first flush” diverters that are recommended to exclude capture of the initial rain that might carry impurities from the roof.

\*P.E. Cabot, Research Scientist, Extension and Colorado Water Institute, Colorado State University, C.C. Olson, Research Associate, Dept. of Civil and Environmental Engineering, Colorado State University, R. M. Waskom, Director, Colorado Water Institute, Colorado State University, K.G. Rein, Deputy State Engineer, Colorado Division of Water Resources, 4/2016

## Water Rights Issues Concerning Rainwater Collection

Colorado residents should understand that water rights in Colorado are unique compared to other parts of the country. The use of water in this state and other western states is governed by what is known as the prior appropriation doctrine. This doctrine of water allocation controls who uses water, how much water may be used, the types of uses allowed, and when those waters can be used. A simplified way to explain this system is often referred to as the priority system or “first in time, first in right.” It may seem strange that rainwater harvesting in Colorado is so carefully watched, but understanding why this is so can provide valuable insight into the way water is shared in Colorado. In our arid environment, every drop counts and water rights holders depend upon the runoff from snowmelt and rainfall to supply the beneficial uses to which they apply their water rights. Captured precipitation that is consumed “out of priority” may deprive downstream and/or senior water right holders of their right to use water from the natural stream, which comprises water that originates as snow and rain. Even though the detention of rooftop precipitation might only be temporary and minimal, it may still alter the nature of historic flow patterns.

## How to Use Rain Barrels Legally in Colorado

In order to safeguard senior holders of Colorado water rights, diverting and storing water is allowed only during times when all water rights in the basin are satisfied. It is impractical, however, for homeowners to know at all times whether water rights are satisfied. To collect rainwater without regard for other water rights, there are two laws which establish allowances for the limited collection of rainwater from rooftops of residential dwellings. These laws are further

## Quick Facts

- Most homeowners in Colorado are now allowed to use rain barrels to collect rainwater.
- A maximum of two rain barrels with a combined storage of 110 gallons or less are allowed at each household.
- Collected rainwater may be used to irrigate outdoor lawns, plants or gardens.
- Untreated rainwater collected from roofs is not safe to drink.

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extension.colostate.edu



described below. Prior to the passage of House Bill 16-1005, in particular, rainwater collection was not permitted except under specific circumstances.

There are several restrictions that are important to follow in order to use rain barrels legally in Colorado. These restrictions differ depending on your residential situation.

## Rain barrel use under HB16-1005

Under House Bill 16-1005, rain barrels can only be installed at single-family households and multi-family households with four (4) or fewer units. A maximum of two (2) rain barrels can be used at each household and the combined storage of the 2 rain barrels cannot exceed 110 gallons. Rain barrels can only be used to capture rainwater from rooftop downspouts and the captured rainwater must be used on the same property from which the rainwater was captured, for only outdoor purposes, including to water outdoor lawns, plants and/or gardens. Rain barrel water cannot be used for drinking or other indoor water uses.

It is important for rain barrel users to understand that the capture and use of rainwater using rain barrels does not constitute a water right. HB16-1005 includes language that could result in the State Engineer curtailing the use of individual rain barrels if a water right holder can prove that those rain barrels have impacted their ability to receive the water that they are entitled to by virtue of their water right.

## Rain barrel use under SB09-080

Under special circumstances explained in Senate Bill 09-080, rural residents that qualify for “exempt” wells may collect rainwater with a Rooftop Precipitation Collection System Permit from the Colorado Division of Water Resources. Though these collection system permits do not limit the size of the rain barrel, the water must be collected from the roof of the primary residence and the rainwater may only be used for the uses allowed under the resident’s exempt well permit. For example, if the well permit allows for household uses only, then the rainwater could only be applied to non-potable uses in the residence; if the well permit allows for

household uses and outdoor uses including lawn and garden irrigation and/or animal watering, then the rainwater could also be used for those uses.

Colorado residents that qualify for exempt well permits may be able to collect 110 gallons of water under HB16-1005 and collect rainwater for additional uses under SB09-080, so long as they can meet the restrictions described for the two laws.

Rooftop Precipitation Collection System Permit applications can be obtained from the Colorado Division of Water Resources. The application provides notice of intent to collect precipitation and a description of how it will be captured. Instructions on acquiring a rooftop precipitation collection permit can be found at the website for the Colorado Division of Water Resources, under the category “Well Permitting” and sub-category “Rainwater Collection (requiring Exempt Well).” To qualify for a Rooftop Precipitation Collection System Permit, you must satisfy these conditions:

- The property on which you collect the rainwater is residential property.
- You have a permit to use an exempt well, or you are legally entitled to an exempt well for the water supply.
- You collect rainwater only from the rooftop of your domestic residence.
- You use the water only for those uses that are allowed by, and identified on your well permit.

## Rainwater collection under HB09-1129

Another special circumstance outlined in Colorado HB09-1129 allows developers to participate in pilot projects that harvest rainwater and put it to beneficial, though non-essential, use in the subdivision. These projects may only operate according to an engineered plan, submitted to the state engineer for approval and eventually, to the water court. Individual landowners are not eligible for these pilot projects.

## Concerns about Mosquitos

In order to prevent rain barrels from becoming mosquito breeding grounds, it is important to follow several best practices. First, although any container can be used to collect rainwater, House Bill 16-1005 requires the container to be equipped with a sealable lid. Fortunately, many rain barrels that can be purchased online or from a local home supply store

have lids. Second, the rain barrel should be completely emptied every month (or less). If you plan to be away from the home for more than a week, you should disconnect your rain barrel from the downspout.

## Concerns about Water Quality

Rain in urban and industrialized areas may contain various impurities absorbed from the atmosphere, including arsenic and mercury. In Colorado, rain is infrequent, but rainwater quality is generally good. However, the infrequency of rainfall results in accumulation of bird droppings, dust and other impurities on rooftops between rain events. The presence of these impurities in collected rainwater is affected by roofing materials, pitch, and area and may occur in high concentrations when it does rain. Heavy metals such as cadmium, copper, lead, zinc, and chromium have been detected in rainwater collected from rooftops. The phenomenon of acid rain can also cause chemical compounds to be leached from roofing materials.

The best strategy is to filter and screen out contaminants before they enter the storage container. Dirty containers may also become a health hazard or a breeding ground for insects and other pests. Various methods can be used to purify rainwater. First-flush diverters ensure a certain degree of water quality in harvested rainwater. The first several gallons of runoff from a gutter, roof, or other surface are likely to contain various impurities such as bird droppings and dust. A first-flush device prevents this initial flow from draining into the storage tank. Many first-flush devices have a simple design. Such devices include tipping buckets that dump when water reaches a certain level. In addition, there are containers with a ball that floats with the rising water to close off an opening after an inflow of 5 gallons. Water is then diverted to a pipe leading to the storage container. This use of simple technology is an attractive feature of rainwater harvesting. Roof washing is not needed for water used solely for irrigation purposes.

Due to concerns surrounding microbial contamination of harvested rainwater, it is not recommended as a source of drinking water for humans. However, properly designed, constructed, and maintained systems that include disinfection steps have been successfully used for private domestic water supplies.

## Homeowner's Association Rain Barrel Restrictions

A homeowner's association (HOA) cannot ban the use of rain barrels by its members, however it can impose "reasonable" aesthetic requirements about the location and/or appearance of rain barrels. For example, an HOA may require that rain barrels be placed in backyards and/or be a certain color that blends into the outdoor landscape.

## Frequently Asked Questions (FAQs)

**Q. Do I Need a Permit to Use Rain Barrels?**

The passage of HB16-1005 allows the use of two rain barrels without the need for obtaining a special permit, as long as the collected precipitation is used for outdoor purposes, including irrigation of lawns and gardens. However, if you want to use rain barrels as described and allowed by SB09-080, you will need to obtain a rainwater collection permit from the Colorado Division of Water Resources.

**Q. Can I send downspout water onto my garden?**

Yes. This situation is acceptable as long as rainwater is directed from the rooftop to the garden.

**Q. How much irrigation could I expect to accomplish with rain barrels?**

Each time you collect the maximum 110 gallons of water allowed in rain barrels, you can adequately irrigate approximately 180 square feet (a bit smaller than a 15 foot by 15 foot area) of vegetable garden or lawn area with the captured water. This estimate is based on CSU Extension recommendations to water lawns and vegetable gardens with about 1 inch of water during each irrigation cycle. However, a typical rain barrel user can only expect the rain barrels to completely fill about 10-15 times during the growing season, while vegetable gardens and lawns need to be irrigated at least twice as times per year depending on watering practices. Thus, supplemental irrigation will still be necessary to maintain a healthy lawn and vegetable garden.

**Q. Can I use rainwater to water my horse/sheep/chickens?**

HB16-1005 permits rainwater collection specifically for landscape uses only. Therefore, rainwater collected in rain barrels as allowed by HB16-1005 cannot be used for animal watering. However, rainwater collected in rain barrels as allowed by a Rooftop Precipitation Collection System Permit issued under SB09-080 can be used for animal watering, but only if the exempt well permit allows animal watering. Refer to the Rain barrel use under SB09-080 section above for more detail.

**Q. Can I water an attached greenhouse? Can I water houseplants? What's the line between many houseplants and a greenhouse? Is a sunroom with plants legal?**

HB16-1005 permits rainwater collection specifically for outdoor uses. The basic SB09-080 permit stipulating "ordinary household use in one single-family dwelling (no outside use)" would support a reasonable understanding of "ordinary household use in one single-family dwelling (no outside use)" that includes watering of typical household plants in a sunroom or otherwise, especially if the water is taken from indoors. The SB09-080 permit would NOT allow for watering plants in a greenhouse where such a building is specifically dedicated to growing plants. There is no definitional line between "many houseplants" and a greenhouse, unless obviously the greenhouse is an attached room or detached building used specifically dedicated to growing plants.

**Q. Can I wash my car with collected rainwater?**

HB1005 states that captured rainwater must be used on the same property from which the rainwater was captured, for outdoor purposes only. This could include uses such as washing your car on your property. Permits authorized under SB09-080 stipulate "ordinary household use" in one single-family dwelling (no outside use) and would NOT allow for car washing. Such use is limited to drinking and sanitary uses inside the home.

**Q. Can I fill my outdoor hot tub with rainwater?**

No. The permit authorized under SB09-080 stipulating "ordinary household use" would NOT allow the use of captured

An appropriation is made when an individual physically takes water from a stream or well (when legally available) and puts that water to beneficial use. The first person to appropriate water and apply that water to use has the first right to that water within a particular stream system. This person, after receiving a court decree verifying their priority status, then becomes the senior water right holder and that water right must be satisfied before any other water rights are filled. In Colorado, the state engineer and director of the Colorado Division of Water Resources, has the statutory obligation to protect all vested water rights. The process of allocating water to various water users is traditionally referred to as water rights administration, and is the responsibility of the Division of Water Resources.

rainwater to fill an outdoor hot tub. This includes single-family or multiple dwelling unit situations.

**Q. Can I flush my toilet with rainwater?** HB16-1005 permits rainwater collection specifically for nonpotable outdoor uses only. Therefore, rainwater collected in rain barrels as allowed HB16-1005 cannot be used for flushing toilets. However, flushing toilets would be considered "ordinary household use" and rainwater collected in rain barrels as allowed by a Rooftop Precipitation Collection System Permit issued under SB09-080 would be allowed.

**Q. Can I put a dog – water dish outside? Can I wash my windows outside? Can I empty used water outside? Can I water a pot of flowers by my front door?**

There are endless scenarios that are both humorous and pedantic. The basics of rainwater collection in Colorado are that it may be collected and used for lawns, gardens and landscapes. If you have a permit for rainwater collection under SB09-080, you may use the rainwater as a substitute for water that would ordinarily be pumped from your private exempt well and subject to the limitations of your well permit.

## References and additional resources

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2. CDWR. 2008. Rainwater Collection in Colorado – Information Brochure. Available at: [http://water.state.co.us/DWRIPub/Documents/DWR\\_RainwaterFlyer.pdf](http://water.state.co.us/DWRIPub/Documents/DWR_RainwaterFlyer.pdf) (last accessed February 2, 2016).
3. Jones K., Gross M., and Swift C.E. 2014. Watering Established Lawns – Colorado Extension Fact Sheet 7.199. <http://extension.colostate.edu/docs/pubs/garden/07199.pdf>
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5. Lye, Dennis J. 2009. Rooftop runoff as a source of contamination: A review. Science of the Total Environment 407: 5429-5434.
6. Whiting D., O'Meara C., and Wilson, C. 2015. Irrigating the Vegetable Garden – Colorado Master Gardener Fact Sheet #714. <http://www.ext.colostate.edu/mg/Gardennotes/714.html>
7. Yaziz M., Gunting H., Sapari N., and Ghazali A. 1989. Variations in rainwater quality from roof catchments. Water Research 23(6): 761-765

**ORDINANCE OF THE  
CITY OF LONE TREE**

Series of 2017

Ordinance No. 17-01

**AN ORDINANCE AMENDING CHAPTER 11 OF THE MUNICIPAL CODE  
TO ADOPT BY REFERENCE AND AMEND THE DOUGLAS COUNTY ROADWAY AND  
DESIGN STANDARDS; AMEND THE BUILDING MATERIALS ARTICLE; ADD NEW  
ARTICLES REGARDING STREET AND PEDESTRIAN LIGHTING AND PUBLIC  
RIGHTS OF WAY; AND PROVIDE FOR PENALTIES**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LONE TREE,  
COLORADO:**

**ARTICLE 1 – AUTHORITY**

The City of Lone Tree (the "City") is a home rule municipality operating under the Lone Tree Home Rule Charter (the "Charter") adopted on May 5, 1998 and a Municipal Code (the "Code"), codified and adopted on December 7, 2004. Pursuant to the Charter, the Municipal Code and the authority given home rule cities, the City may adopt and amend Ordinances.

**ARTICLE 2 – DECLARATIONS OF POLICY**

- A. The City Council recognizes the need to revise from time to time the Streets, Sidewalks and Public Property Chapter of the Municipal Code and to provide for penalties for violations in order to promote and protect the public health, safety and welfare.
- B. The City Council wishes to ensure that the City is up to date in its roadway design and construction standards and regulates materials stored on public streets and sidewalks.
- C. The City Council also desires to clarify and set standards and requirements for street and pedestrian lighting and for construction in public rights of way.

**ARTICLE 3 – SAFETY CLAUSE**

The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare.

**ARTICLE 4 – REPEAL AND ADOPTION**

Articles III and IV of Chapter 11 of the Municipal Code are hereby repealed in their entirety and new Articles III, IV, VI and VII are adopted as attached to this Ordinance as Exhibit A.

**ARTICLE 5 – CAUSES OF ACTION RETAINED**

Nothing in this Ordinance or in the provisions hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

**ARTICLE 6 - SEVERABILITY**

If any part or provision of this Ordinance, or its application to any person or circumstance is adjudged to be invalid or unenforceable, the invalidity or unenforceability of such part, provision or application shall not affect any of the remaining parts, provisions or applications of this Ordinance which can be given the effect without the invalid provision, part or application, and to this end the provisions and parts of this Ordinance are declared to be severable.

**ARTICLE 7 - EFFECTIVE DATE**

This Ordinance shall take effect thirty (30) days following publication after the first reading if no changes are made on second reading, or twenty (20) days after publication following second reading if changes are made upon second reading.

**INTRODUCED READ AND ORDERED PUBLISHED ON JANUARY 3RD, 2017.**

**CITY OF LONE TREE:**

\_\_\_\_\_  
Jacqueline A. Millet, Mayor

**ATTEST:**

(SEAL)

\_\_\_\_\_  
Jennifer Pettinger, CMC, City Clerk

## EXHIBIT A

### CHAPTER 11 Streets, Sidewalks and Public Property

#### ARTICLE III Roadway Design and Construction Standards

##### Sec. 11-3-10. Adoption by reference: Roadway Design and Construction Standards.

- (a) The Douglas County Roadway Design and Construction Standards, as amended, revised and updated from time to time, is hereby adopted by reference and incorporated into this Article as though fully set forth herein as the City of Lone Tree Roadway Design and Construction Standards. Except as otherwise provided, this code is adopted in full.
- (b) One (1) copy of the Douglas County Roadway Design and Construction Standards, as amended by this Chapter, shall be on file in the office of the City Clerk and may be inspected by any interested person between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, holidays excepted. This code, as adopted and amended, shall be available for sale to the public at the City offices, at a price reflecting the cost to the City.

##### Sec. 11-3-20. Amendments.

The Douglas County Roadway Design and Construction Standards is amended as follows:

- (1) The following terms, when used in the codes being adopted, shall have the following meanings:

*Authority* means the City Council of the City of Lone Tree.

*Jurisdiction* means the City of Lone Tree.

- (2) Where the term *Douglas County* or *County* or *unincorporated area of Douglas County* or *unincorporated Douglas County* is found, the term *City of Lone Tree* or *City* shall be substituted; for example, where the term *County Engineer* is used, the term *Director of Public Works* or *his/her designated representative* shall be substituted.
- (3) Where the term *Board of County Commissioners* is found, the term *City Council* shall be substituted, unless the context refers to a specific action previously taken by the Douglas County Board of County Commissioners.
- (4) Where the term *Department of Public Works, Road and Bridge Division, Engineering Division* or *Inspection Department* is used, whether standing alone or modified by *Douglas County* or *County*, the term *Public Works Department* shall be substituted.
- (5) Where the term *Director of Engineering Service, Engineer, or Inspector* is used, whether standing alone or modified by *Douglas County* or *County*, the term *Director of Public Works* or *his/her designated representative* shall be substituted.

- (6) Where the term *Planning or Building* is used, whether standing alone or modified by *Division, Douglas County, or County*, the term *City of Lone Tree Community Development* shall be substituted.
- (7) Where the *Douglas County Roadway Design and Construction Standards* reference sections of the *Douglas County Storm Drainage Design and Technical Criteria* (“*Drainage Manual*”), those references shall be interpreted to apply to the applicable sections of the current version of the *Drainage Manual*.
- (8) Where the term *Blueline Copies* is used relative to plans submittals, the current industry standard for paper copy prints may be submitted.
- (9) Where reference is made to one or more of the following, the applicable City of Lone Tree forms (where available), as published on the City Website, shall be substituted: *Submittal Form; Certification Notes; Acceptance Block; Required Notes; Forms*.
- (10) Where the term *Douglas County Board of Commissioners* is used in the Douglas County Code in reference to approval for temporary road or lane closures, the term *Director of Public Works or his/her designated representative* shall be inserted.
- (11) Section 2.1.6.3 of the Douglas County Code shall be revised to substitute the word “*typical*” in place of “*maximum*”.
- (12) Section 2.2.1 of the Douglas County Code is amended to note that the initial approval period will be 24 months maximum, or less if so stated in other adopted Codes or standards relative to the specified plans, reports or documents.
- (13) Section 2.3.8 of the Douglas County Code (Erosion and Sedimentation Control Plans) shall be amended to reference the City of Lone Tree adopted Grading, Erosion and Sediment Control (GESC) regulations.
- (14) Chapter 9 of the Douglas County Code shall be amended as necessary to comply with and incorporate the City of Lone Tree Asphalt Pavement Patchback (ST-01) and/or Concrete Pavement Patchback (ST-02) details, as published on the City Website.
- (15) Chapter 10 (Permit Procedures and Suretying Requirements) of the Douglas County Code shall be amended as necessary to incorporate the following: City of Lone Tree Public Works, current address and phone number; Right of Way/Construction Permit Fee is as currently adopted and published by the City.
- (16) Sections 10.1.12 and 10.12 (*Licensing*) of the Douglas County Code is not adopted.
- (17) Where the term *Surety* is used (e.g. Section 10.4.1 of the Douglas County Code), the terms *Company (Corporate)* or *Cashier’s Check or Irrevocable Letter of Credit* shall be substituted.
- (18) Section 15.4 (Alternate Standards) of the Douglas County Code shall be amended by deletion of the remainder of the last paragraph of the section, starting with “A County Engineering Inspector will not inspect ....”.

**Sec. 11-3-30. Stop work orders.**

Any person, corporation, quasi-governmental agency, special district, mutual company, electric, gas or communication utility corporation, who, without first having obtained a permit and/or who having made a cut in a public right-of-way which has settled, has failed or which has not been repaired in conformance with established City standards, shall be subject to a "Stop Work Order" issued by the City whereupon that person, corporation or utility shall, except for emergency repair work, discontinue all work within public rights-of-way within the City until such time as the required repair has been satisfactorily completed. No further permits will be issued until the repair has been made, and/or the City reimbursed for its expenses. The City may, on its own initiative, make required repairs and bill the responsible contractor. Minimum charge shall be a three-hundred-dollar administrative charge, plus costs for labor, materials and equipment on a portal-to-portal basis.

**Sec. 11-3-40. Purpose.**

Pursuant to Section 31-16-205, C.R.S., the following description of the Standards is provided: The purpose of the Roadway Design and Construction Standards is to provide minimum design and technical criteria for the analysis and design of roadway facilities. These standards include submittal procedures for drawings and specifications, submittal requirements for construction plans, design and technical criteria for roadways, pavement, bridges and major drainage structures, criteria for record drawings, roadway inspection and testing procedures, construction guidelines, trench backfill/compaction guidelines, permit procedures and surety requirements for contractors, acceptance procedures and requirements, utility locations, access requirements and criteria, cost estimating for public improvements, and policies concerning private roads.

**Sec. 11-3-50. Violations; penalties.**

Any person, firm or corporation violating any of the provisions of this Article or any code incorporated herein shall be deemed guilty of a misdemeanor, and any such person, firm or corporation shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation is committed, continued or permitted. Upon conviction of any such violations, such person, firm or corporation shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for not more than one (1) year, or by both such fine and imprisonment. The issuance or granting of a permit or approval of plans and specifications shall not be deemed or construed to be a permit for or an approval of, any violation of any provisions of the Codes adopted herein.

## **ARTICLE IV Building Materials**

### **Sec. 11-4-10. Temporary storage or staging of building materials on public streets and sidewalks.**

- (a) No person may place, locate, deposit, store or stage home improvement, construction or landscaping materials or other tangible property intended to be used on residential property for home improvement, construction or landscaping purposes ("building materials") on a public street, as defined in Section 16-36-20 of this Code, or a public sidewalk without first obtaining a permit from the City.
- (b) A person may submit to the City an application for a permit to temporarily store or stage building materials on a public street or sidewalk. The application shall:
  - (1) State the names of the owner and, if different from the owner, the occupant of the residence to which the building materials will be delivered.
  - (2) State the address of the residence to which the building materials will be delivered.
  - (3) Describe in detail the item or items to be stored or staged on the public street or sidewalk, the purpose for which the item or items will be stored or staged, and the area, including approximate dimensions, of the public street or sidewalk that will be occupied by the item or items; and
  - (4) State the length of time needed to store or stage the item or items.
- (c) The Director of Public Works or his or her designee shall review the application and may issue a permit, subject to conditions, intended to decrease any risk that the building materials may pose or to ensure that traffic or other lawful passage is not impeded on the public street or sidewalk. Conditions may include, but are not limited to, a time limit for storing or staging the building materials on the public street or sidewalk, a requirement that the applicant install applicable erosion control devices and traffic control as per plans approved by the City, and a requirement that the applicant clean up and restore the storage or staging area after the building materials are removed.

### **Sec. 11-4-30. Violations; penalties.**

A violation of any provision of this Article shall be punishable by a fine of not more than five hundred dollars (\$500.00) per day per violation, plus court and administrative costs, as applicable. Each violation shall be deemed a separate offense for purposes of assessing a fine. In addition, the City may cause the removal of building materials, from a public street or sidewalk that are located or stored in violation of this Article and the costs of such removal shall be imposed upon the owner of the building materials.

## **ARTICLE VI Street and Pedestrian Lighting**

### **Sec. 11-6-10. Purpose.**

- (a) Purpose. The purpose of this Article is to ensure that street and pedestrian lighting installed in the City rights-of-way is designed to complement the surrounding area while promoting and

protection the public health, safety, and welfare by assisting motorists and by providing improved illumination.

**Sec. 11-6-20. Acceptable Streetlights.**

- (a) All newly installed street and pedestrian lights shall meet the currently approved City of Lone Tree street lighting design standards. All lights shall be on a separately metered system.
- (b) At the completion of construction, the person or entity responsible for constructing street and pedestrian lights shall apply to the City for inspection and acceptance of the installed lights. After any discrepancies have been resolved, the City shall accept the installed lights in the right-of-way for ownership and maintenance.

**Sec. 11-6-30. Locations.**

- (a) No street light shall project into any roadway so as to obstruct or inhibit traffic.
- (b) Street and pedestrian lights shall be installed in areas outside of sidewalks, unless absolutely necessary and as approved by the City prior to construction. In the case where any street or pedestrian light is allowed to be located on a sidewalk, it shall be designed and installed in such a manner as to not obstruct the passage of pedestrians and shall comply with the Americans with Disabilities Act, as amended.
- (c) All new or replacement street or pedestrian lights shall be installed with underground electrical service.

**ARTICLE VII Public Rights of Way**

**Division 1 - Permits**

**Sec. 11-7-10. - Purpose.**

- (a) Purpose. The purpose of this Article is to establish principles, standards and procedures for the placement of facilities, construction, excavation, encroachments and work activities within, under or upon any public right-of-way and to protect the integrity of the City's street system.
- (b) Objectives. In the interests of the general welfare, public and private uses of public rights-of-way should be accommodated; however, the City must ensure that the primary purpose of the public right-of-way, passage of pedestrian and vehicular traffic, is protected. The use of the public rights-of-way by private users is secondary to these public objectives. This Article's objectives are to:
  - (1) Minimize public inconvenience.
  - (2) Protect the City's infrastructure investment by establishing repair standards for the pavement, facilities and property in the public rights-of-way.

- (3) Standardize regulations and thereby facilitate work within the rights-of-way.
- (4) Maintain an efficient permit process.
- (5) Conserve and fairly apportion the limited physical capacity of public rights-of-way held in public trust by the City.
- (6) Establish a public policy for enabling the City to discharge its public trust consistent with the rapidly evolving federal and state regulatory policies, industry competition and technological development.
- (7) Promote cooperation among permittees and the City in the occupation of the public rights-of-way, and work therein, in order to eliminate duplication of facilities that is wasteful, unnecessary or unsightly; lower the permittees' and the City's costs of providing services to the public; and minimize street cuts.
- (8) Protect the public health, safety and welfare.

**Sec. 11-7-20. - Definitions.**

For purposes of this Article, the following terms shall have the following meanings:

*Access structure* means any structure providing access to facilities in the public right-of-way.

*Approved alignment* means the designed horizontal and vertical alignment of facilities to be installed in the public right-of-way which is approved by the City at the time the permit is issued, plus any alignment variance tolerances set forth in the Construction and Excavation Standards and any alignment variances approved by the City in accordance with the Construction and Excavation Standards.

*Construction and Excavation Standards* means the document entitled *Construction and Excavation Standards for Work in Public Rights-of-Way*, as adopted by resolution of the City Council and amended from time to time.

*Contractor* means a person, partnership, corporation or other legal entity which undertakes to construct, install, alter, move, remove, trim, demolish, repair, replace, excavate or add to any improvements or facilities in the public right-of-way, or that requires work, workers or equipment to be in the public right-of-way in the process of performing the above-named activities.

*Developer* means the person, partnership, corporation or other legal entity improving a parcel of land within the City and being legally responsible to the City for the construction of infrastructure within a subdivision or as a condition of a building permit.

*Emergency* means any event which may threaten public health or safety, or that results in an interruption in the provision of service, including but not limited to damaged or leaking water or gas conduit systems, damaged, obstructed or leaking sewer or storm drain conduit systems and damaged electrical and communications facilities.

*Excavate or excavation* means to dig into or in any way remove or penetrate any part of a public right-of-way, including trenchless excavation such as boring, tunneling and jacking.

*Facilities* means any pipe, conduit, wire, cable, amplifier, transformer, fiber optic cable, antenna, pole, streetlight, duct, fixture, appurtenance or other like equipment used in connection with transmitting, receiving, distributing, offering and providing utility and other services, whether above or below ground.

*Infrastructure* means any public facility, system or improvement, including water and sewer mains and appurtenances, storm drains and structures, streets, alleys, traffic signal poles and appurtenances, conduits, signs, landscape improvements, sidewalks and public safety equipment.

*Landscaping* means grass, ground cover, shrubs, vines, hedges, trees and nonliving natural materials commonly used in landscape development, as well as attendant irrigation systems.

*Major installation* means work in the public right-of-way involving an excavation exceeding five hundred (500) feet in length.

*Permit* means an authorization for use of the public rights-of-way granted pursuant to this Division.

*Permittee* means the holder of a valid permit issued pursuant to this Division.

*Public right-of-way* means any public street, way, place, alley, sidewalk, easement, park, square, median, parkway, boulevard or plaza that is dedicated to public use.

*Routine maintenance* means maintenance of facilities or landscaping in the public right-of-way which does not involve excavation, installation of new facilities, lane closures, sidewalk closures or damage to any portion of the public right-of-way.

*Work* means any labor performed within a public right-of-way or any use or storage of equipment or materials within a public right-of-way, including but not limited to excavation; construction of streets, fixtures, improvements, sidewalks, driveway openings, bus shelters, bus loading pads, streetlights and traffic signal devices; construction, maintenance and repair of all underground facilities, such as pipes, conduit, ducts, tunnels, manholes, vaults, cable, wire or any other similar structure; maintenance of facilities and installation of overhead poles used for any purpose. Notwithstanding the foregoing, *work* shall not include routine maintenance.

**Sec. 11-7-30. - Authority.**

- (a) A permittee's rights hereunder shall at all times be subject to the authority of the City, which includes the power to adopt and enforce ordinances, including amendments to this Division, necessary for the safety, health and welfare of the public.
- (b) The City reserves the right to exercise its authority, notwithstanding any provision in this Division or any permit to the contrary. Any conflict between the provisions of any permit and any other present or future lawful exercise of the City's police power shall be resolved in favor of the latter.

**Sec. 11-7-40. - Developer ownership of infrastructure.**

The construction of infrastructure in new developments is the responsibility of the developer. Once a public right-of-way has been dedicated to the City, all work in that public right-of-way, including the installation of new infrastructure by a developer, shall be subject to this Chapter.

**Sec. 11-7-50. - Permit required.**

- (a) No person except an employee or official of the City or a person exempted by contract with the City shall undertake or permit to be undertaken any work in a public right-of-way without first obtaining a permit from the City as set forth in this Division. Copies of the permit and associated documents shall be maintained on the work site and available for inspection upon request by any officer or employee of the City.
- (b) No permittee shall perform work in an area larger or at a location different, or for a longer period of time than that specified in the permit. If, after work is commenced under an approved permit, it becomes necessary to perform work in a larger or different area or for a longer period of time than what the permit specifies, the permittee shall notify the City immediately and shall file a supplementary application for the additional work within twenty-four (24) hours.
- (c) Permits shall not be transferable or assignable without the prior written approval of the City.
- (d) Any person conducting any work within the public right-of-way without having first obtained the required permit shall immediately cease all activity and obtain a permit before work may be resumed, except for emergency operations.

**Sec. 11-7-60. - Permit application.**

- (a) An applicant for a public right-of-way permit shall file a written application on a form furnished by the City, which includes the following information:

- (1) The date of application.
  - (2) The name, address and telephone number of the applicant and any contractor or subcontractor which will perform any of the work.
  - (3) A plan showing the work site, the public right-of-way boundaries, all infrastructure in the area and all landscaping in the area.
  - (4) The purpose of the proposed work.
  - (5) A traffic control plan in accordance with the Construction and Excavation Standards.
  - (6) The dates for beginning and ending the proposed work, proposed hours of work and the number of actual work days required to complete the project.
- (b) The applicable permit fees shall accompany the application when submitted.
- (c) For any work in the public right-of-way which includes excavation, in addition to the information required by Subsection (a) hereof, the application shall include the following information:
- (1) An itemization of the total cost of construction, including labor and materials but excluding the cost of any facilities being installed.
  - (2) Copies of all permits (including required insurance, deposits, letters of credit, and warranties) required to do the proposed work, whether required by federal or state law or City resolution, ordinance or regulation.
- (d) In addition to the information required by Subsections (a) and (c) hereof, an applicant for a public right-of-way permit for a major installation shall submit the following information:
- (1) Field-verified locates of all existing facilities required to be located by the Construction and Excavation Standards, which locates shall be compiled and submitted according to the Construction and Excavation Standards.
  - (2) Engineering construction drawings or site plans for the proposed work in a format acceptable to the City and signed by a professional engineer licensed in the State, except that an applicant expressly exempt from the signature requirement pursuant to Section 12-25-103, C.R.S., need not include the signature of a licensed professional engineer.
- (e) An applicant shall update a permit application within ten (10) days after any material change occurs.

- (f) Applicants may apply jointly for permits to work in public rights-of-way at the same time and place. Applicants who apply jointly for permits may share in the payment of the permit fees. Applicants must agree among themselves as to the portion each shall pay, and if no agreement is reached, payment in full shall be required of all applicants.
- (g) The applicant for a public right-of-way permit shall be the contractor performing the work.
- (h) By signing an application, the applicant is certifying to the City that the applicant is in compliance with all other permits issued by the City and that the applicant is not delinquent in any payment due to the City for prior work. This certification shall not apply to outstanding claims which are honestly and reasonably disputed by the applicant, if the applicant and the City are negotiating in good faith to resolve the dispute.

**Sec. 11-7-70. - Blanket maintenance permits.**

- (a) A public right-of-way permit shall not be required for routine maintenance in the public right-of-way, as the term *routine maintenance* is defined in Section 11-7-20. However, other maintenance operations within the public right-of-way which involve traffic lane closures or sidewalk closures shall require a public right-of-way permit. To expedite the process for ongoing maintenance operations, owners of facilities within the public right-of-way may, at their sole option and in the alternative to obtaining individual public right-of-way permits, obtain a blanket maintenance permit pursuant to this Section.
- (b) A blanket maintenance permit shall be valid from the date of issuance of the permit through December 31 of the same year. Under no circumstances shall a blanket maintenance permit be valid for more than one (1) year.
- (c) A blanket maintenance permit shall not, under any circumstances, authorize any pavement disturbance or installation of new facilities. Notwithstanding the foregoing, existing facilities may be removed and replaced with new facilities, if no excavation or pavement disturbance is required.
- (d) Any person seeking a blanket maintenance permit shall file an application on a form provided by the City which includes the following information:
  - (1) The date of application.
  - (2) The name, address and telephone number of the applicant.
  - (3) A general description of the maintenance operations.
  - (4) Any location of maintenance operations known at the time of application.

(5) Traffic control plans as required by this Section and the Construction and Excavation Standards.

(e) The applicable permit fee as set by the Construction and Excavation Standards shall accompany the application when submitted.

(f) Blanket maintenance permits shall be subject to applicable provisions of the Construction and Excavation Standards.

**Sec. 11-7-80. - Permit fees.**

(a) Before a public right-of-way permit is issued, the applicant shall pay to the City a permit fee, which shall be determined in accordance with the fee schedule contained in the Construction and Excavation Standards. Permit fees shall be reasonably related to the costs of managing the public rights-of-way. These costs include, but are not limited to, the costs of issuing right-of-way permits, verifying right-of-way occupation, mapping right-of-way occupation, inspecting work, administering this Division and, if applicable, costs relating to restoration of the public right-of-way to remedy degradation of that public right-of-way caused by the permittee.

(b) Restoration fees.

(1) Restoration fees shall only be charged to the applicant if the applicant chooses not to perform the required restoration of the public right-of-way to the City's standards, making the City responsible for performing the required restoration. The applicant shall decide at the time of application whether the applicant will perform the required restoration, and the applicant's decision shall be final.

(2) No restoration fees shall be required for a public right-of-way permit which does not include excavation.

(3) Restoration fees collected by the City shall be placed in a separate account for general street maintenance and construction.

(4) Restoration fees may be waived in the City's discretion when additional circumstances exist which would make restoration unnecessary, such as poor street quality or proposed street resurfacing or construction by the City. These circumstances are outlined in more detail in the section of the Construction and Excavation Standards addressing permit fees.

**Sec. 11-7-90. - Insurance.**

(a) Unless otherwise specified in a franchise agreement or maintenance or license agreement between a permittee and the City, prior to the granting of any permit, the permittee shall carry and maintain in full effect at all times the following insurance coverage:

- (1) Commercial general liability insurance, including broad-form property damage, completed operations contractual liability, explosion hazard, collapse hazard, underground property damage hazard, commonly known as XCU, for limits not less than one million dollars (\$1,000,000.00) each occurrence for damages of bodily injury or death to one (1) or more persons; and five hundred thousand dollars (\$500,000.00) each occurrence for damage to or destruction of property.
  - (2) Workers compensation insurance as required by state law.
- (b) The permittee shall file with the City proof of such insurance coverage in a form satisfactory to the City.
  - (c) Upon prior written approval of the City, a permittee may provide self-insurance with the minimum coverage limits set forth in Paragraphs (a)(1) and (a)(2) hereof.

**Sec. 11-7-100. - Indemnification.**

- (a) Each permittee, for himself or herself and his or her related entities, agents, employees, subcontractors and the agents and employees of said subcontractors shall hold the City harmless and defend and indemnify the City, its successors, assigns, officers, employees, agents and appointed and elected officials from and against all liability or damage and all claims or demands whatsoever in nature and reimburse the City for all its reasonable expenses, including reasonable attorney fees and costs, as incurred, arising out of any work or activity in the public right-of-way, including but not limited to the actions or omissions of the permittee, its employees, representatives, agents, contractors, related entities, successors and assigns or the securing of and the exercise by the permittee of any rights granted in the permit, including any third-party claims, administrative hearings and litigation, whether or not any act or omission complained of is authorized, allowed or prohibited by this Division or other applicable law. A permittee shall not be obligated to hold harmless or indemnify the City for claims or demands to the extent that they are due to the negligence or willful and wanton acts of the City or any of its officers, employees or agents.
- (b) Following the receipt of written notification of any claim, the permittee shall have the right to defend the City with regard to all third-party actions, damages and penalties arising in any way out of the exercise of any rights in the permit. If at any time, however, a permittee refuses to defend the City, and the City elects to defend itself with regard to such matters, the permittee shall pay all expenses incurred by the City related to its defense, including reasonable attorney fees and costs.
- (c) If a permittee is a public entity, the indemnification requirements of this Section shall be subject to the provisions of the Colorado Governmental Immunity Act.
- (d) If any provision of this Section conflicts with any provision of a valid, effective franchise agreement between the permittee and the City, the conflicting provision of this Section shall

not apply to the franchisee, and the franchisee shall instead honor the provision of the franchise agreement.

- (e) If any provision of this Section conflicts with any provision of a valid, effective median maintenance agreement between a special district and the City, the conflicting provision of this Section shall not apply to the special district, and the special district shall instead honor the provision of the median maintenance agreement.

**Sec. 11-7-110. - Letters of credit and other City accepted sureties.**

- (a) Before a public right-of-way permit is issued, the applicant shall file with the City surety, (allowable sureties include a company (corporate) check, cashier's check or irrevocable letter of credit), in favor of the City in an amount equal to the total cost of construction, including labor and materials but excluding the cost of any facilities being installed, or five thousand dollars (\$5,000.00), whichever is greater. The surety shall be executed by the applicant as principal and by at least one (1) surety upon whom service of process may be had in the State. The surety shall be conditioned upon the applicant fully complying with all provisions of City ordinances, resolutions and regulations and upon payment of all judgments and costs rendered against the applicant for any violation of any City resolution, regulation or ordinances or state law arising out of any negligent or wrongful acts of the applicant in the performance of work pursuant to the permit.
- (b) The City may bring an action on the surety on its own behalf or on behalf of any person so aggrieved as beneficiary.
- (c) The letter of credit shall be approved by the City prior to the issuance of the permit. The City may waive the requirements of any such letter of credit upon finding that the applicant has financial stability and assets located in the State to satisfy any claims intended to be protected against by the security required by this Section.
- (d) A letter of responsibility, in a form acceptable to the City, shall be accepted from special districts and governmental agencies in lieu of a surety.
- (e) A blanket surety of sufficient amount to cover all proposed work during the upcoming year may be filed with the City on an annual basis in lieu of the project-specific performance sureties or letters of credit required by Subsection (a) hereof. The form and amount of the blanket surety shall be subject to the prior review and approval of the City. Should the blanket surety be deemed insufficient by the City based on the work to date, the City may require additional, project-specific performance sureties or letters of credit pursuant to Subsection (a) hereof.
- (f) The performance surety, blanket surety, letter of credit or letter of responsibility shall remain in force and effect for a minimum of two (2) years after completion and acceptance of the street cut, excavation or lane closure.

- (g) If any provision of this Section conflicts with any provision of a valid, effective franchise agreement between the applicant and the City, the conflicting provision of this Section shall not apply to the franchisee, and the franchisee shall instead honor the provision of the franchise agreement.
- (h) If any provision of this Section conflicts with any provision of a valid, effective maintenance agreement between a special district and the City, the conflicting provision of this Section shall not apply to the special district, and the special district shall instead honor the provision of the median maintenance agreement.

**Sec. 11-7-120. - Warranty.**

- (a) A permittee, by acceptance of the permit, expressly warrants and guarantees complete performance of the work in a manner acceptable to the City and in accordance with this Division and the Construction and Excavation Standards and warrants and guarantees all work done for a period of two (2) years after the date of probationary acceptance.
- (b) Under the warranty, the permittee shall, at its own expense, repair or replace, at the discretion of the City, any portion of the work that fails, is defective, is unsound or is unsatisfactory because of but not limited to design, engineering, materials or workmanship.
- (c) The warranty period shall begin on the date of the City's probationary acceptance of the work. If repairs are required during the warranty period, those repairs need only be warranted until the end of the initial two-year period starting with the date of probationary acceptance.
- (d) At any time prior to completion of the warranty period, the City may notify the permittee in writing of any needed repairs. If the defects are determined by the City to be an imminent danger to the public health, safety and welfare, the permittee shall begin repairs within twenty-four (24) hours of receipt of the written notice and continue the repairs until completion. Nonemergency repairs shall be completed within thirty (30) days after notice.
- (e) The warranty shall cover only those areas of work performed by the permittee which provided the warranty and not directly impacted by the work of any other permittee or the City. If a portion of work warranted by a permittee is subsequently impacted by work of another permittee, another user of the right-of-way or the City during the warranty period, the other permittee or the City, as applicable, shall assume responsibility for repair to the subsequently impacted portion of the public right-of-way.

**Sec. 11-7-130. - Inspections.**

- (a) At a minimum, the following four (4) inspections shall take place:
  - (1) Preconstruction inspection. The permittee shall request that the City conduct a preconstruction inspection, to determine any necessary conditions for the permit.

- (2) Completed work inspection. The permittee shall notify the City immediately after completion of work. The City shall inspect the work within twenty-one (21) days of the permittee's notification. Probationary acceptance shall be made if all work complies with this Division, the Construction and Excavation Standards and any other applicable City regulation, ordinance or resolution. Written notice of probationary acceptance shall be sent to permittee listed on the permit application.
  - (3) Warranty inspection. Approximately thirty (30) days prior to the expiration of the two-year warranty period, the City shall conduct a final inspection of the work. If the work is still satisfactory, the letter of credit shall be returned or allowed to expire, and the City shall issue a notice of final acceptance.
  - (4) Utility marking inspection. The City shall conduct a utility marking inspection pursuant to Division 2 of this Chapter.
- (b) Upon review of the application for a permit, the City shall determine how many additional inspections, if any, may be required. Required inspections shall be listed on the permit. For a permit which does not include excavation, the City may waive any or all of the above-listed inspections.

**Sec. 11-7-140. - Time of completion.**

- (a) All work covered by the permit shall be completed within the time period stated on the permit, unless an extension has been granted by the City in writing; in which case, all work shall be completed within the time period stated in the written extension. An extension may be assessed a charge and additional fees.
- (b) Permits shall be void if work has not commenced within thirty (30) days after issuance, unless an extension has been granted by the City in writing. The permittee shall submit a written request for such extension, and the City shall either grant or deny the request within five (5) days of receipt of the request.

**Sec. 11-7-150. - Locate information.**

- (a) Any person owning facilities in the public right-of-way shall provide field locate information to the City and any other permittee with a valid public right-of-way permit which authorizes locate pothole excavation or other excavation work. Within seven (7) days of receipt of a written request from the City or such a permittee, the facility owner shall field locate facilities in the public right-of-way in which the work will be performed.
- (b) For major installations, a permittee shall obtain a public right-of-way permit to locate other existing facilities as provided in the Construction and Excavation Standards. The location of such facilities shall be field-verified in a manner approved by the City.

- (c) Before beginning excavation in any public right-of-way, a permittee shall contact the Utility Notification Center of Colorado (UNCC) and, to the extent required by Section 9-1.5-102, et seq., C.R.S., make inquiries of all ditch companies, utility companies, districts, local governments and all other agencies that might have facilities in the area of work to determine possible conflicts. The permittee shall contact the UNCC and request field locates of all facilities in the area pursuant to UNCC requirements. Field locates shall be marked prior to commencing work.

**Sec. 11-7-160. - Newly resurfaced and constructed streets.**

- (a) For newly resurfaced and constructed streets, no excavation in the pavement shall be permitted within two (2) years of the completion of the resurfacing or construction.
- (b) The City shall publish once, in a newspaper of general circulation in the City each year, a list of those streets that will be resurfaced or constructed in that year. The list shall also be published on the City's website.
- (c) Exemption. In rare circumstances, the City may grant an exemption from this Section in accordance with the following procedures:
  - (1) A request for exemption shall be in writing on a form acceptable to the City and shall contain the following information, at a minimum:
    - a. A detailed and dimensional engineering plan that identifies and accurately represents all public rights-of-way and other property that will be impacted by the proposed work and the method of construction.
    - b. The location, width, length and depth of the proposed excavation.
    - c. A statement as to how any of the criteria set forth in Paragraph (c)(2) hereof apply to the proposed work.
  - (2) Criteria for approval. In determining whether an exemption should be granted, the City shall consider the following criteria:
    - a. Whether alternative utility alignments that do not involve excavating in the street are available.
    - b. Whether the proposed excavation can reasonably be delayed until after the two-year period has elapsed.
    - c. Whether duct, conduit or other facilities are reasonably available from another user of the public right-of-way.
    - d. Whether the proposed work involves joint trenching or joint use and the number of users to share in the trenching or use.
    - e. Whether the proposed work is to be by horizontal boring, tunneling or open trenching.
    - f. Whether applicable law requires the applicant to provide service to a particular customer and whether denial of the exemption would prevent the applicant from providing such service.

- g. Whether the purpose of the proposed work is to provide service to a particular building or a customer within a building who has requested such service and whether denial of the exemption would prevent the applicant from providing such service.
  - h. Whether the work is limited to locate potholing to provide locate information.
- (d) Exemptions for emergency operations. Emergency operations in newly resurfaced or constructed streets shall be permitted.

**Sec. 11-7-170. - Reimbursement of City costs.**

- (a) The City may make any repairs necessary to eliminate any imminent danger to the public health or safety without notice to any permittee, at the responsible permittee's expense.
- (b) For any work not performed by a permittee as directed by the City, but not constituting imminent danger to the public health or safety, the City shall provide written notice to the permittee, ordering that the work be corrected within ten (10) days of the date of the notice. If the work is not corrected within the ten-day period, the City may correct the work at the permittee's expense.
- (c) Costs of any work performed by the City pursuant to this Section shall be billed to the permittee. The permittee shall also be responsible for any direct costs incurred by the City. The permittee shall pay all such charges within thirty (30) days of the statement date. If the permittee fails to pay such charges within the prescribed time period, the City may, in addition to taking other collection remedies, seek reimbursement through the surety. Furthermore, the permittee may be barred from performing any work in the public right-of-way, and under no circumstances will the City issue any further permits of any kind to said permittee, until all outstanding charges (except those outstanding charges that are honestly and reasonably disputed by the permittee and being negotiated in good faith with the City) have been paid in full.

**Sec. 11-7-180. - Landscaping.**

- (a) All hardscape and landscaping installed within the City right of way shall be the responsibility of the adjacent homeowners' association, property association, or special district. The City shall only be responsible for the maintenance and repair of streets, curbs, gutters, approved street lights, and sidewalks.
- (b) Maintenance of landscaping within the right of way for all properties with the exception of single-family detached shall adhere to Section 16-2-210.
- (c) Single-family detached properties and platted subdivisions shall adhere to the requirements in this section.
- (d) Any roadway pavers installed within the City right of way shall be the responsibility of the homeowners' association or special district that installed the pavers. The City will require

execution of a maintenance or license agreement which will establish responsibility of the pavers.

**Sec. 11-7-190. - Penalties.**

- (a) If any contractor or permittee is found guilty of or pleads guilty to a violation of this Division, he or she shall be punished as provided in **Chapter 1, Article 4**. Each and every day or portion thereof during which a violation is committed, continues or is permitted shall be deemed a separate offense.
- (b) In addition to or in lieu of the penalties set forth in Subsection (a) hereof, the City may impose the following monetary penalties:
  - (1) For any occupancy of a travel lane or any portion thereof beyond the time periods or days set forth in the traffic control plan approved by the City:
    - a. In arterial and collector streets during the hours of 6:30 a.m. through 8:30 a.m. and 3:30 p.m. through 6:00 p.m., Monday through Friday: one hundred dollars (\$100.00) for each fifteen (15) minutes, or portion thereof, for a maximum of three thousand dollars (\$3,000.00) per day.
    - b. In arterial and collector streets during any time other than the times specified in Subparagraph (b)(1)a. hereof, or in local streets at any time: fifty dollars (\$50.00) for each fifteen (15) minutes, or portion thereof, for a maximum of one thousand five hundred dollars (\$1,500.00) per day.
  - (2) For commencing work without a valid permit: five hundred dollars (\$500.00), plus twice the applicable permit fee.
  - (3) For facilities installed outside of the approved alignment: ten dollars (\$10.00) per linear foot. This penalty shall not be imposed if the facilities are removed or relocated to comply with the approved alignment or the facilities are abandoned per City approval or the alternate alignment is approved by the City.
  - (4) For any other violation of a permit: two hundred fifty dollars (\$250.00) per violation, with no maximum amount.
- (c) The penalties set forth in this Section shall not be the City's exclusive remedy for violations of this Division and shall not preclude the City from bringing a civil action to enforce any provision of a public right-of-way permit or to collect damages or recover costs associated with any use of the public rights-of-way. Furthermore, the enforcement of one (1) penalty shall not preclude the City from enforcing any other penalty.

**Division 2 - Utility Markings**

**Sec. 11-7-210. - Definitions.**

For the purposes of this Division, the following terms shall have the following meanings:

*Permittee* means the holder of a valid permit issued pursuant to this Division.

*Public right-of-way* means any public street, way, place, alley, sidewalk, easement, park, square, median, parkway, boulevard or plaza that is dedicated to public use.

*Utility marking* means a mark made of colored or metallic paint or similar material or utilizing any adhesive material of whatever description or a flag or similar removable device or item used by a public utility or its agent in a public right-of-way to mark the existing or future location of pipelines, cables, poles, wires or other similar features.

**Sec. 11-7-220. - Removal of utility markings required.**

All utility markings shall be fully and completely removed or camouflaged from public rights-of-way utilizing a method that is least destructive to the existing improvements, and which method has been approved by the City. The removal shall occur no later than forty-five (45) days after completion of the work. The right-of-way permittee or other persons (not under a City permit) that originally caused the utility markings to be placed shall be solely responsible for removal of the utility marking.

**Sec. 11-7-230. - Penalty.**

Any person who is convicted of a violation of this Division shall, upon conviction, be punished by a fine not to exceed the maximum fine allowed under Chapter 1 of this Code. Each day such violation is committed or continues shall constitute a separate offense. As an additional means of enforcement, and not as an alternative to or substitute for prosecution for violation of this Division, the City may remove or eradicate any utility markings which are not removed pursuant to this Division and bill the party responsible for such removal the full cost incurred by the City to effect such removal. Any such costs incurred shall be immediately due and payable, and failure to pay such costs in full within thirty (30) days of billing therefor by the City shall subject the responsible party to interest on the unpaid balance at the rate of twelve percent (12%) per annum, compounded monthly. Any requests for future permits by such permittee shall be denied until all unpaid balances are paid in full.

**ORDINANCE OF THE  
CITY OF LONE TREE**

Series of 2017

Ordinance No. 17-02

**AN ORDINANCE AMENDING CHAPTER 15 OF THE MUNICIPAL CODE TO  
ADOPT BY REFERENCE THE 2017 FLOOD INSURANCE STUDY FOR DOUGLAS  
COUNTY AND ACCOMPANYING FLOOD INSURANCE RATE MAPS, DIGITAL  
FLOOD RATE MAPS AND FLOOD BOUNDARY FLOODWAY MAPS; AMEND  
STORMWATER DISCHARGE DEFINITION; ADD A NEW ARTICLE REGARDING  
CLEARING, GRADING AND LAND DISTURBANCE; AND PROVIDE FOR  
PENALTIES**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LONE TREE,  
COLORADO:**

**ARTICLE 1 – AUTHORITY**

The City of Lone Tree (the "City") is a home rule municipality operating under the Lone Tree Home Rule Charter (the "Charter") adopted on May 5, 1998 and a Municipal Code (the "Code"), codified and adopted on December 7, 2004. Pursuant to the Charter, the Municipal Code and the authority given home rule cities, the City may adopt and amend Ordinances.

**ARTICLE 2 – DECLARATIONS OF POLICY**

- A. The City Council recognizes the need to revise from time to time the legal underpinnings of the Public Works Department in its regulation, oversight and enforcement of flood damage protection within the City in order to promote and protect the public health, safety and welfare.
- B. The City Council wishes to ensure that the City continues to be in compliance with the Federal Emergency Management Agency's National Flood Insurance Program.
- C. Douglas County's Flood Insurance Study (FIS) and Flood Insurance Rate Map (FIRM), as adopted by the City of Lone Tree, has been updated, effective February 17, 2017. As a result, the City needs to amend its associated Flood Plain ordinances to reflect the new FIS and FIRM, in order to stay current with the FEMA National Flood Insurance Program (NFIP).
- D. The City Council also finds it more appropriate to include clearing, grading and land disturbance requirements into the Public Works Chapter of the Municipal Code, as opposed to the Zoning Chapter, as they apply to more than just zoning issues and regulations.

### ARTICLE 3 – SAFETY CLAUSE

The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare.

### ARTICLE 4 – ADOPTION

A. Section 15-1-50 of the Code is repealed and replaced by the following:

**Sec. 15-1-50.** Adoption by reference: Flood Insurance Study for Douglas County, Colorado and Incorporated Areas.

- (a) The Flood Insurance Study for Douglas County, Colorado and Incorporated Areas, a scientific and engineering report by the Federal Emergency Management Agency, dated February 17, 2017, as amended, revised and updated from time to time, with accompanying Flood Insurance Rate Maps, Digital Flood Rate Maps and Flood Boundary Floodway Maps, and any revisions thereto, is hereby adopted by reference and incorporated into this Article as though fully set forth herein. Except as otherwise provided, this Flood Insurance Study is adopted in full.
- (b) One (1) copy of The Flood Insurance Study for Douglas County, Colorado and Incorporated Areas, dated February 17, 2017, as amended, revised and updated from time to time, with accompanying Flood Insurance Rate Maps, Digital Flood Rate Maps and Flood Boundary Floodway Maps, and any revisions thereto, certified to be a true copy by the Mayor and City Clerk, shall be on file in the office of the City Clerk and may be inspected by any interested person between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, holidays excepted. This Flood Insurance Study, as adopted and amended, shall be available for sale to the public at the City offices at a price reflecting the cost to the City.

B. The definition of *Nonstormwater discharge* in Section 15-2-10 of the Code is repealed and replaced by the following:

**Sec. 15-2-10. Definitions.**

*Nonstormwater discharge* means any discharge to the MS4 that is not composed entirely of stormwater, except as specifically allowed herein. *Nonstormwater discharges* may include, but are not limited to: soil sediments from erosion of soils at construction sites; excessive nutrients such as nitrates and phosphates; paints, varnishes and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter or other discarded or abandoned objects and accumulations that may cause or contribute to pollution; floatables; pesticides, herbicides and fertilizers; hazardous materials

and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind. *Nonstormwater discharges* specifically do not include landscape irrigation, lawn watering, diverted stream flows, irrigation return flow, rising groundwaters, uncontaminated groundwater infiltration, uncontaminated pumped groundwater, springs, flows from riparian habitats and wetlands, water line flushing in accordance with the Colorado Department of Public Health and Environment's Low Risk Discharge Guidance: Potable Water, discharges from potable water sources in accordance with the Colorado Department of Public Health and Environment's Low Risk Discharge Guidance: Potable Water, foundation drains, air conditioning condensation, water from crawl space pumps, footing drains, individual residential car washing, dechlorinated swimming pool discharges in accordance with the Colorado Department of Public Health and Environment's Low Risk Discharge Guidance: Swimming Pools, water incidental to street sweeping (including associated sidewalks and medians) and that is not associated with construction, dye testing in accordance with the manufacturer's recommendations, stormwater runoff with incidental pollutants, discharges resulting from emergency firefighting activities, discharges authorized by (a) separate Colorado Discharge Permit System (CDPS) or National Pollutant Discharge Elimination System (NPDES) permit, agricultural stormwater runoff, and discharges that are in accordance with the Colorado Department of Public Health and Environment Water Quality Control Division Low Risk Discharge Guidance documents, as amended.

C. Section 15-3-50 is repealed and replaced by the following:

**Sec. 15-3-50. Basis for establishing the special flood hazard areas; adoption by reference.**

The special flood hazard areas (SFHAs) identified by the Federal Emergency Management Agency in a scientific and engineering report, entitled "The Flood Insurance Study for Douglas County, Colorado and Incorporated Areas," dated February 17, 2017, as amended from time to time, with accompanying Flood Insurance Rate Maps (FIRMs), Digital Flood Rate Maps (DFIRMs) and Flood Boundary Floodway Maps (FBFMs), and any revisions thereto, are hereby adopted by reference and declared to be a part of this Chapter. These SFHAs identified by the Flood Insurance Study (FIS) and attendant mapping are the minimum area of applicability of this Article and may be supplemented by studies designated and approved by the City. The City Clerk and Floodplain Administrator shall keep a copy of the Flood Insurance Study (FIS), DFIRMs, FIRMs and FBFMs on file and available for public inspection.

D. A new Chapter 15, Article V, Clearing, Grading and Land Disturbance, is hereby adopted as follows:

## **ARTICLE V Clearing, Grading and Land Disturbance**

### **Sec. 15-5-10. Intent.**

The purpose of this Article is to:

- (1) Provide a mechanism for the issuance of permits relating to clearing, grading and earth movement so as to limit soil erosion and sedimentation during and after construction; and
- (2) Control nonpoint-source pollution by requiring the implementation of soil erosion and sedimentation control practices for protection of water quality, soil surfaces during and after construction and lands identified as having high open space, visual or vegetative value.

### **Sec. 15-5-20. Permits required.**

- (a) A grading permit shall be required from the Engineering Division for any of the following uses:
  - (1) Grading.
  - (2) Stripping of soil or vegetation.
  - (3) Depositing fill material.
  - (4) Trenching or excavating;
  - (5) Constructing public or private facilities.
- (b) For single-family residential development, a permit may be issued upon approval of a preliminary plan by the City Council. However, a permit may be issued upon the approval of the Community Development Director and the Director of Public Works or his/her designated representative, on a case-by-case basis, prior to approval of a preliminary plan.
- (c) For all uses that require an approved Site Improvement Plan, (SIP), a permit may be issued upon approval of the SIP. However, a permit may be issued upon the approval of the Director and the Director of Public Works or his/her designated representative, on a case-by-case basis, prior to approval of a SIP.
- (d) A permit may be issued for construction activities not subject to the platting or site improvement plan review process with the approval of the Director of Public Works or his/her designated representative, (i.e., road construction, utility lines).

### **Sec. 15-5-30. Permits not required.**

- (a) Permits are not required for the following uses:
  - (1) Grading in an area of one (1) acre or less which is isolated and self-contained, when the Director of Public Works or his/her designated representative determines that such grading will not have a negative impact upon private or public property. When a negative impact is identified, the provisions of this Article shall apply.

- (2) An excavation below finished grade for basements and footings of a building, retaining wall or other structure authorized by a valid building permit. Any fill made with the material from such excavation and any excavation having an unsupported height greater than five (5) feet after the completion of such structure shall be required to have a grading permit.
  - (3) Individual cemetery gravesites.
  - (4) Routine agricultural uses of agricultural land.
  - (5) Exploratory excavations of less than five hundred (500) square feet (excluding mining activity) at the direction of a soil engineer or engineering geologist.
  - (6) A fill less than one (1) foot in depth and placed on natural terrain with a slope flatter than five (5) horizontal feet to one (1) vertical foot (5:1), or less than three (3) feet in depth, not intended to support structures, which does not exceed fifty (50) cubic yards on any one (1) lot and does not obstruct a drainage course.
- (b) Even if a permit is not required, any clearing, grading or land disturbance activities shall be in accordance with the standards set forth in the City's duly adopted Storm Drainage Design and Technical Criteria manual and those set forth in this Article.

**Sec. 15-5-40. Review issues.**

Any land-disturbing activity is subject to review by the City and other appropriate agencies regarding:

- (1) Significant wildlife habitat.
- (2) Archaeological or historical sites.
- (3) Lands identified as having high open space, visual or vegetative value.
- (4) Geologically sensitive areas.
- (5) Riparian or wetland areas.
- (6) Unique or distinctive topographic features or other issues as may be identified in the Comprehensive Plan, or Chapter 17 of this Code and other Articles of this Chapter.

**Sec. 15-5-50. Minimum standards.**

All erosion and sediment control plans and specifications for activities which disturb soil or vegetation shall meet, at a minimum, the following criteria:

- (1) Plans shall be prepared in accordance with the City's duly adopted Storm Drainage Design and Technical Criteria and Grading, Erosion and Sediment Control Manuals, as amended, and shall be prepared or supervised by a professional engineer licensed in Colorado or a certified professional erosion and sediment control specialist trained and experienced in soil erosion and sedimentation control methods and techniques.

- (2) In addition to the specific performance standards in Paragraph (1) above, all plans shall be prepared and adhered to so that land-disturbing activities shall not:
  - a. Result in or contribute to soil erosion or sedimentation that would interfere with any existing drainage course in such a manner as to cause damage to any adjacent property;
  - b. Result in or contribute to deposition of debris or sediment on any private or public property not designed or designated as an area to collect said sediment;
  - c. Create any hazard to any persons or property; or
  - d. Detrimentally influence the public welfare or the development of any watershed.
- (3) Technical methodologies to meet the standards set forth in Paragraphs (1) and (2) above are described in the City's duly adopted Storm Drainage Design and Technical Criteria manual.

**Sec. 15-5-60. Submittal requirements.**

Applicants for a grading permit shall submit the appropriate review fees and an erosion and sedimentation control plan to the Director of Public Works or his/her designated representative which plan shall, at a minimum, contain the information detailed in the City's duly adopted Storm Drainage Design and Technical Criteria and Grading, Erosion and Sediment Control manuals and the following:

- (1) A vicinity map, at a maximum scale of 1" = 2,000', indicating the site location, as well as the adjacent properties within five hundred (500) feet of the site boundaries.
- (2) A boundary survey or site property lines shown in true location with respect to topographic information.
- (3) A plan of the site, at a maximum scale of 1" = 200', on a 24" x 36" sheet showing:
  - a. Name, address and telephone number of the landowner, developer and petitioner.
  - b. Existing topography (shown by dashed lines) having maximum contour intervals of two (2) feet, unless otherwise specified by the Director of Public Works or his/her designated representative.
  - c. Proposed topography (shown by solid lines) having contour intervals of two (2) feet, unless otherwise specified by the Director of Public Works or his/her designated representative, including spot elevations.
  - d. Location of existing structures and natural features, such as stream channels, stands of trees, rock outcroppings, wetlands, historical/archaeological sites, significant wildlife habitats, vegetative stands and potential open space land as identified in the Comprehensive Plan, on the site, adjacent to the site and within one hundred (100) feet of the site boundary line.
  - e. Location of proposed structures or development on the site, if known.
  - f. Elevations, including spot elevations if buildings are shown, dimensions, location, extent and slope of all proposed grading, including building and driveway grades.

- g. Plans and timing schedule for all temporary or permanent erosion control measures to be constructed with or as a part of the proposed work, including drainage facilities, retaining walls, cribbing and plantings. The timing schedule shall assure that the standards set forth in Section 15-5-50 above are adhered to from the commencement of construction. In preparing the site plan, the applicant shall use the soil erodibility zone classifications in the Storm Drainage Design and Technical Criteria manual, the soil classification data for the site identified by the U.S. Soil Conservation Service in the published Soil Survey, or the data which is collected, analyzed and reported upon by a qualified soils engineer registered in the State.
- (4) A written report which includes the following:
    - a. A schedule indicating the anticipated project starting and completion dates, the time of overlot grading, construction phases and completion for vegetative and structural control measures.
    - b. A statement of the quantity of excavation and fill involved, source of the fill material and the total area of land surface to be disturbed.
    - c. Estimated itemized and total cost of the required temporary and permanent soil erosion control measures, which estimates shall include quantities and unit costs.
  - (5) Other information or data as may be required by the Director of Public Works or his/her designated representative, such as a soil investigation report which shall include, at a minimum, data regarding the nature, distribution and supporting ability of existing soils and rock on the site.

**Sec. 15-5-70. Submittal process.**

- (a) All plans shall be submitted to the Engineering Division. Incomplete or otherwise inadequate application submittals shall be returned to the applicant with comments. The applicant shall comply with the provisions of this Article.
- (b) The Engineering Division shall review and comment and either accept the plan or return the plan to the applicant within twenty (20) working days from the date the application submittal was determined to be complete. If the Engineering Division cannot review the plan within twenty (20) days, the applicant will be so notified. The Engineering Division and the applicant may mutually agree upon an extension of time for completion of the plan review or for retention of a qualified professional to perform the review. The applicant shall be responsible for all costs associated with the review.
- (c) In the event the applicant desires to amend the plan, an amended plan which complies with the requirements set forth in Sections 15-5-50 and 15-5-60 above shall be submitted by the applicant and reviewed by the Engineering Division prior to the commencement of any work pursuant to the amended plan.

**Sec. 15-5-80. Expiration of permit.**

A permit shall be effective for twelve (12) consecutive months from the date of issue. Prior to the expiration date, the permit may be renewed upon approval by the Director of Public Works or

his/her designated representative for a period of time not to exceed twelve (12) months. Two additional extensions of six months per extension may be granted by the Director of Public Works or his/her designated representative. Any further extensions may require the applicant to request City Council approval.

**Sec. 15-5-90. Appeals process.**

If the applicant disagrees with the decision of the Engineering Division, the applicant may appeal to the City Council. The appeal shall be based on technical data or other relevant information. The City Council may affirm, modify or reverse the findings, conclusions and decision of the Engineering Division or remand the decision to the Engineering Division for further review and findings.

**Sec. 15-5-100. Fees.**

- (a) A nonrefundable filing fee shall be paid to the Engineering Division at the time of application.
- (b) Any person, corporation, partnership, firm or other entity applying for a grading permit after commencement or completion of the activities authorized in said permit shall be required to pay double the standard fee.

**Sec. 15-5-110. Security.**

- (a) To ensure rehabilitation of the disturbed area, the applicant shall furnish a letter of credit or other form of security acceptable to the City, naming the City as the secured party in an amount and type to be determined by the Director of Public Works or his/her designated representative based upon the magnitude of the land-disturbing activities and rehabilitation requirements. The amount of security will be one hundred fifteen percent (115%) of the cost estimate set forth in Section 15-5-60(4) or one hundred fifteen percent (115%) of the cost to vegetate the disturbed land to dryland grasses based upon unit costs determined by the Director of Public Works or his/her designated representative, whichever is greater. Due to the complexities of erosion control, in no instance shall the amount of security be less than two thousand five hundred dollars (\$2,500.00), except as provided in Paragraph 15-5-30(a)(1). The Director of Public Works or his/her designated representative shall have the right to call on the security in the event the schedules required in Subparagraphs 15-5-60(3)g and 15-5-60(4)a are not met.
- (b) No erosion and sedimentation control permit(s) will be approved without the submittal of the required security.
- (c) The City will accept a cash escrow or letter of credit as security. The cash escrow or letter of credit will be returned to the applicant within sixty (60) days after the completion of the land-disturbing activity and closure of the permit. Completion shall mean the achievement of the final stabilization of the land as indicated on the erosion and sedimentation control plan. Completion shall be determined by a representative of the Director of Public Works or his/her designated representative who shall notify the applicant in writing. The warranty period for erosion control construction shall be two (2) growing seasons.

- (d) Prior to final release, the Director of Public Works or his/her representative may grant a reduction of the security.

**Sec. 15-5-120. Insurance.**

Every applicant, before commencing operations, shall be insured to the extent of two hundred thousand dollars (\$200,000.00) per person, five hundred thousand dollars (\$500,000.00) per occurrence, against liability arising from activities or operations conducted or carried on pursuant to any of the provisions of this Chapter, and such insurance shall be kept in full force and effect during the period of such activities or operations, including site rehabilitation. A certificate indicating protection by such insurance shall be filed by the applicant together with his or her application for permit. Said insurance shall not be released until final inspection and approval has been completed by the Engineering Division.

**Sec. 15-5-130. Violations.**

- (a) Any person, corporation, partnership, firm or other entity of whatever description violating any provision of these regulations shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars (\$1,000.00), or by imprisonment for not more than ten (10) days, or by both such fine and imprisonment. Each day during which a violation exists shall constitute, and shall be punishable as, a separate offense.
- (b) This Article may be enforced by injunction, including both the enjoining of actions or inactions in violation of this Article (i.e., land-disturbing activities undertaken without, or in violation of the terms of, a permit as required herein), and a mandatory injunction to require the removal of excavation or fill accomplished without, or in violation of the terms of, such a permit. In any such injunctive action, the City shall be entitled to an award of its costs of suit and any costs incurred in the removal of fill and/or restoration of areas where fill or excavation activities have been undertaken in violation of the provisions of this Article.
- (c) The City shall be entitled to recover its attorney's fees incurred in bringing any action to compel compliance with the provisions of these regulations or to compel compliance with any plan approved hereunder.

**Sec. 15-5-140. Stop Work Order.**

The Director of Public Works or his/her designated representative is authorized to order work stopped on any project which disturbs the land and which is not in compliance with the provisions of this Article.

**Sec. 15-5-150. Abatement.**

- (a) In the event a landowner determines or discovers that a plan is not being adhered to, said landowner shall take immediate steps to abate said violation and shall notify the Director of Public Works or his/her designated representative of the deviation from the plan and the efforts undertaken to bring the work into compliance with said plan.

- (b) In the event the Director of Public Works or his/her designated representative discovers a deviation from the plan, the landowner or authorized representative shall be notified in writing of said deviation and shall be required to bring the work into compliance with the plan. The written notice shall specify the areas of deviation from the plan. Failure to correct the deviation from the plan within the time period provided in the notice shall entitle the City to invoke the provisions of Section 15-5-130 above.

**Sec. 15-5-160. Applicability of other laws and regulations.**

Nothing contained herein relieves any person, corporation, firm or entity from the obligation to comply with any applicable state or federal laws or regulations relating to water quality or water quality standards or any other standards contained within this Chapter.

**ARTICLE 5 - PROVISIONS EFFECTIVE**

The provisions of this Ordinance shall go into effect on February 27, 2017.

**ARTICLE 6 – CAUSES OF ACTION RETAINED**

Nothing in this Ordinance or in the provisions hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

**ARTICLE 7 - SEVERABILITY**

If any part or provision of this Ordinance, or its application to any person or circumstance is adjudged to be invalid or unenforceable, the invalidity or unenforceability of such part, provision or application shall not affect any of the remaining parts, provisions or applications of this Ordinance which can be given the effect without the invalid provision, part or application, and to this end the provisions and parts of this Ordinance are declared to be severable.

**ARTICLE 8 - EFFECTIVE DATE**

This Ordinance shall take effect thirty (30) days following publication after the first reading if no changes are made on second reading, or twenty (20) days after publication following second reading if changes are made upon second reading.

**INTRODUCED READ AND ORDERED PUBLISHED ON JANUARY 3RD, 2017.**

**CITY OF LONE TREE:**

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Jacqueline A. Millet, Mayor

**ATTEST:**

(SEAL)

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Jennifer Pettinger, CMC, City Clerk

**ORDINANCE OF THE  
CITY OF LONE TREE**

Series of 2017

Ordinance No. 17-03

**AN ORDINANCE AMENDING CHAPTER 16 OF THE MUNICIPAL CODE  
TO REPEAL ARTICLE XXXI REGARDING CLEARING, GRADING AND LAND  
DISTURBANCE; AMEND USE AND STRUCTURE RESTRICTIONS NEAR  
AIRPORTS; ADD A PROVISION REGARDING RAIN BARRELS; AND AMEND AND  
UPDATE MISCELLANEOUS PROVISIONS**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LONE TREE,  
COLORADO:**

**ARTICLE 1 – AUTHORITY**

The City of Lone Tree (the "City") is a home rule municipality operating under the Lone Tree Home Rule Charter (the "Charter") adopted on May 5, 1998 and a Municipal Code (the "Code"), codified and adopted on December 7, 2004. Pursuant to the Charter, the Municipal Code and the authority given home rule cities, the City may adopt and amend Ordinances.

**ARTICLE 2 – DECLARATIONS OF POLICY**

- A. The City Council recognizes the need to revise from time to time the legal underpinnings of the Zoning Chapter of the Municipal Code, including landscaping and irrigation standards, in order to promote and protect the public health, safety and welfare.
- B. The City Council wishes to update provisions related to structures and uses located near airports.
- C. The City Council acknowledges that the Director of Public Works is the proper title of the person authorized to oversee certain provisions of this Chapter.
- D. The City Council also finds it more appropriate to delete clearing, grading and land disturbance requirements from the Zoning Chapter, as they apply to more than just zoning issues and regulations, and include them into the Public Works Chapter of the Municipal Code.
- E. The Community Development Director prepared a preliminary report on the proposed Amendments which was delivered to the Planning Commission for consideration at a public hearing.

- F. A public hearing before the Planning Commission was held on December 13, 2016, for which public notice was duly given in compliance with Section 16-1-120 of the Municipal Code. At the hearing, the Planning Commission allowed testimony from the public, reviewed staff reports and the preliminary report, and evaluated the proposed Amendments to the Zoning Chapter.
- G. The Planning Commission, through the Community Development Department, prepared a final report containing a recommendation to the City Council for approval of the proposed Amendments.
- H. A public hearing before the City Council was scheduled to hear public testimony and consider the proposed Amendments for which public notice was duly given in compliance with Section 16-1-120 of the Municipal Code.
- I. The City Council has determined that the proposed Amendments to the Zoning Chapter are in the best interests of the health, safety and welfare of the public and the residents of the City.

### **ARTICLE 3 – SAFETY CLAUSE**

The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare.

### **ARTICLE 4 – ADOPTION**

- A. Section 16-2-110 of the Code is repealed and replaced by the following:

#### **Sec. 16-2-110. Use and structure restrictions.**

- (a) No structure shall be altered, built or moved, and no structure or land shall be used or occupied, which does not conform to all applicable provisions of this Chapter in which the structure or land is located.
- (b) No structure shall be erected, placed upon or extended over any easement unless approved in writing by the agency or agencies having jurisdiction over such easement. A copy of such approval shall be submitted to the Community Development Department prior to building permit issuance.
- (c) Applicants are responsible for providing any prior required notice to the Federal Aviation Administration (FAA) of the proposed construction or alteration of a structure that may constitute an obstruction to the safe navigation, landing, or takeoff of aircraft at a publicly used airport, as required by regulations at 14 C.F.R. Part 77. Copies of all written communications with and final determinations by the FAA shall be submitted to the Planning Division prior to approval of a Site Improvement Plan (SIP) application. Upon the issuance

by the FAA of a Determination of No Hazard to Air Navigation which includes mitigation measures, the mitigation measures recommended by the FAA may be required. Upon the issuance by the FAA of a Determination of Hazard to Air Navigation, the SIP application shall be denied.

B. Section 16-2-210 of the Code is repealed and replaced by the following:

**Sec. 16-2-210. Property maintenance.**

The following provisions apply to all properties except single-family detached:

- (1) All improvements on the property shall be maintained in a state of good repair consistent with the approved SIP. This includes proper upkeep and maintenance of all structures, paved surfaces, access, parking areas, lighting, signage and similar improvements.
- (2) Landscaping shall be maintained in a neat, clean and healthy condition. This shall include proper pruning, mowing of lawns, weeding, fertilizing, mulching, trimming, removal of litter and regular irrigation of all plantings, as applicable. Should any plant material die or its condition be deteriorated significantly as determined by staff, the owner shall be responsible for the replacement of the plant(s) within one (1) planting season. Dead plant materials shall be removed and replaced with healthy planting materials of comparable size and species as shown on the SIP, and shall meet the original intent of the approved landscape design. Undeveloped properties eligible for a Site Improvement Plan must also be maintained in a state of good repair. This includes regular mowing, weeding, mud and erosion control, as well as trash removal. Clear space above public walks shall be seven (7) feet or greater.
- (3) Sidewalks and landscaping in the public right-of-way adjacent to commercial, multi-family or single-family attached properties are the responsibility of the adjoining property owner or managing entity. Sidewalks must be maintained in a condition free from snow or ice within twenty-four (24) hours after its accumulation.
- (4) Maintenance access shall be provided to all storm drainage facilities to ensure continuous operational capability of the system. The property owner shall be responsible for the maintenance of all drainage facilities, including inlets, pipes, culverts, channels, ditches, hydraulic structures and detention basins located on the property, unless such maintenance responsibility is provided by an alternate entity, with City approval, through a separate written agreement with a copy on file with the Director of Public Works or his/her designated representative. If the City determines that the property is not in compliance with the above requirements, it may contact the owner to remedy the violations within a timeframe specified by the Director. If the owner fails to remedy the violation in the time specified, the City shall have the right to enter the land for the purposes of operations and maintenance. All such maintenance costs shall be assessed to the property owner.

C. A new Section 16-2-230 of the Code, Rain Barrels, is adopted as follows:

**Sec. 16-2-230. Rain Barrels.**

The City promotes the benefits of the use of rain barrels while recognizing the need to blend their use into a residential setting. To balance the environmental, drainage and other benefits of rain barrels with the potential for nuisance, aesthetic or other issues that may result from the use of the same, precipitation from a rooftop that is collected in a rain barrel is permitted subject to the following:

(1) A rain barrel collecting precipitation from a downspout is allowed adjacent to any building façade, when the rain barrel is:

- (a) Fifty-five (55) gallons or less in capacity;
- (b) Blends with the building's façade and surrounding landscaping and vegetation;
- (c) Outdoors, above ground, not elevated more than 24 inches above adjacent grade, placed on a stable surface, and maintained in such a way as to prevent tipping;
- (d) Secured with a sealable lid;
- (e) Maintained in a safe and functional condition and kept in good repair;
- (f) Maintained to prevent any offensive odors, any mosquito or other insect eggs and larvae, any other nuisance or any other City [code](#) violation; and
- (g) Has associated permanent or temporary piping that reasonably blends in with surrounding landscaping and vegetation.

(2) Shall meet all provisions of the State laws, including:

- (a) Collection is from a rooftop of a building that is used primarily as a single-family residence (defined as a separate building or an individual residence that is part of a row of residences joined by common sidewalls) or a multi-family residence with four or fewer units;
- (b) The collected precipitation is used on the property on which it is collected;
- (c) No more than two rain barrels, with a total of one hundred ten (110) gallons of storage, are allowed per residence;
- (d) The collected precipitation is used solely for outdoor purposes including the irrigation of lawns and gardens;
- (e) Precipitation collected shall not be used for drinking water or indoor household purposes.

D. Section 16-22-40 of the Code is repealed and replaced by the following:

**Sec. 16-22-40. Temporary construction office.**

A temporary structure for the storage of construction materials and a construction office to be used for managing a construction job shall be allowed in all districts, provided that:

- (1) A building permit has been issued for a permanent structure, or, in the case of a road construction project, approval has been granted by the Director of Public Works or his/her designated representative.

- (2) The structure is used only during normal construction hours by the construction employees. The structure shall not be used for living quarters.
- (3) The structure is located within the area of a recorded plat or an approved Site Improvement Plan.
- (4) A permit for a temporary electrical meter has been issued by the Building Division.
- (5) The temporary structure shall be removed upon issuance of a certificate of occupancy or completion of the permanent structure.

E. Section 16-22A-80 of the Code is repealed and replaced by the following:

**Sec. 16-22A-80. Temporary Use Permit; permitting procedure.**

- (a) The applicant shall submit the application fee and the information required in Section 16-22A-100 of this Article to the Community Development Department.
- (b) The submittal shall be reviewed for completeness and the applicant notified of any inadequacies. Once the submittal is determined complete, the Community Development Department and other agencies such as the Director of Public Works or his/her designated representative, the affected fire district and the health department may be asked to review the application.
- (c) After review by applicable departments and referral agencies, the Community Development Department shall approve, approve with conditions, or deny the Temporary Use Permit.
- (d) Denial of the Temporary Use Permit may be appealed to the City Council, in writing, within ten (10) days of denial by the Community Development Department.

F. Subsections 16-27-70(b) and (e) of the Code are repealed and replaced by the following:

**Sec. 16-27-70. SIP submittal requirements.**

(b) Cover Sheet.

- (1) Notes or requirements specific to the SIP shall be provided on Sheet 1. Included on all SIPs shall be the following note:
 

"The property herein is subject to all applicable requirements of the Lone Tree Zoning Code, including but not limited to maintenance, lighting, parking, signage, and outdoor storage, except as may otherwise be addressed in an approved Development Plan or Sub-Area Plan."
- (2) A vicinity map at a scale of 1" = 2,000' shall be provided showing the relationship of the site to the surrounding area within a two-mile radius superimposed on a current map of the City that shows streets and lots, keeping the same scale. If the site is within a Planned Development, a filing or Planned Development map at 1" = 1,000' for a one-mile radius shall also be included.

(3) The following approval signature block shall be placed on Sheet 1 of the SIP plan:

APPROVAL CERTIFICATE

THIS SIP HAS BEEN REVIEWED AND FOUND TO BE COMPLETE AND IN ACCORD WITH CITY REGULATIONS, AS APPROVED BY THE CITY ON (DATE).

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

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

Title: Community Development Director

Date: \_\_\_\_\_

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

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

Title: Director of Public Works or his/her designated representative

Date: \_\_\_\_\_

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

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

Title: Mayor

Date: \_\_\_\_\_

The owner(s) of the lands described herein, hereby agree(s) (1) to develop and maintain the property described hereon in accordance with this approved Site Improvement Plan and in compliance with Chapter 16 of the Lone Tree Municipal Code and that (2) the heirs, successors and assigns of the owner(s) shall also be bound. The signatures of the owner(s)'(s) representative(s) below indicate that any required authorizations to enter this agreement, including any corporate authorizations, have been obtained.

\_\_\_\_\_  
(Name of Owner)

\_\_\_\_\_  
(Signature of Owner)

\_\_\_\_\_  
(Printed Name and Title)

State of \_\_\_\_\_ )

) ss.

County of \_\_\_\_\_ )

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_

Witness my hand and official seal.

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

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

Approval by the City of Lone Tree does not signify that the requirements of the Americans with Disabilities Act (ADA) have been satisfied. The applicant is responsible to ensure that said ADA requirements have been met.

- (e) Irrigation Plan. The irrigation plan shall be prepared consistent with the standards set forth in Section 16-32-110 of this Chapter. The irrigation plan shall be prepared at a scale of 1" = 40' or 1" = 20' or another scale approved by staff, which allows for maximum clarity of the proposal. Additionally, the irrigation plans shall be the same scale as the landscaping plans. The irrigation plan shall contain the following:
- (1) The type of irrigation proposed for each hydrozone based on exposure, plant selection and slope. To conserve on water, irrigated turf shall not be allowed on slopes greater than 3:1. Shrubs or trees irrigated with a drip line are acceptable as is drought-tolerant grasses with temporary irrigation systems for areas with slope greater than 3:1.
  - (2) The location of the backflow preventer(s).
  - (3) The location of the master valve.
  - (4) The location and type of weather-based smart controller(s).
  - (5) The location of the rain sensor that will override the irrigation cycle of the sprinkler.

G. Subsection 16-27-80(h) of the Code is repealed and replaced by the following:

**Sec. 16-27-80. Review process.**

- (h) Review of building permit applications concurrent with SIP review. For nonresidential, single-family attached or multi-family structures, a building permit shall be issued only when an SIP has been approved. However, with the approval of the Director, an applicant may submit a building permit application to the Building Division concurrent with the SIP application, at which point the permit may be issued upon SIP approval by the City Council. Building permits shall not be issued for any development that is not in conformance with the approved SIP. Approval of construction drawings by the Director of Public Works or his/her designated representative and by any relevant service providers, e.g., utilities or special districts, may be required prior to issuance of building permits.

H. Subsections 16-27-90(c) and (e) of the Code are repealed and replaced by the following:

**Sec. 16-27-90. Approval provisions.**

- (c) Building permit approval. Prior to issuance of a building permit, final approval from the Community Development Department and Director of Public Works or his/her designated representative is required for final SIP approval. Engineering approval may be contingent upon approval of a Grading, Erosion and Sediment Control (GESC) Report and Plan(s); a Drainage Report or Drainage Conformance Letter; Civil Site Development construction plan(s); and/or a Site Improvement Plan Improvements Agreement (SIPIA), as applicable. Submittal of the finally-approved SIP Mylars to the Community Development Department, signed by the applicant, shall be required prior to the issuance of a building permit.
- (e) Temporary Certificates of Occupancy.
  - (1) Temporary occupancy may be granted by a Temporary Certificate of Occupancy (TCO) with site improvements subsequently being completed within the timeframe established in the TCO subject to review and approval by the Building Official or designee. A TCO agreement, signed by the applicant, shall be submitted to the City in a form approved by the Director. The Director may, for good cause shown, grant no more than one (1) extension of not more than six (6) months upon a written request by the applicant prior to the expiration of the TCO.
  - (2) A TCO may be issued provided that financial security such as an irrevocable letter of credit, a cashier's check or some other City-approved form of payment has been submitted and accepted by the City. This financial security shall be in an amount equal to the cost of the unfinished work plus fifteen percent (15%), and shall be submitted prior to the issuance of a TCO. The financial security will be held by the City and released or reimbursed when the work is deemed complete by the Director and Director of Public Works or his/her designated representative.

I. Subsection 16-27-100(c) of the Code is repealed and replaced by the following:

**Sec. 16-27-100. Post-approval submittal and review process.**

- (c) Financial security and SIPIA.
  - (1) A Site Improvement Plan Improvements Agreement (SIPIA) and associated surety(ies) may be required in order to guarantee the completion of site improvements and shall specify the nature and timing of the work to be completed. An SIPIA will be required whenever any improvements on or associated with the site are within the public right-of-way or are (or may become) the City's to maintain, and in other circumstances as determined by Public Works.
  - (2) In order to quantify the required amount of financial security for the required improvements, the City may require the applicant to provide, at no cost to the City, up to three (3) bids from qualified contractors for the applicable required improvements. Alternatively, the City may accept detailed construction cost estimates prepared by and

signed/sealed by the applicant's Professional Engineer and/or Professional Landscape Architect (as applicable based on the work covered by the SIPIA). Based on these quotes and/or estimates, the Director and the Director of Public Works or his/her designated representative shall determine the amount of security required.

- (3) Except for force majeure causes, failure by the applicant to complete the work or to request a time extension within the specified time period may result in a forfeiture of the security and may cause the City to initiate the construction of such improvements, as detailed in the SIPIA. Except for force majeure causes, the Director may grant no more than two (2) time extensions of not more than six (6) months each upon receipt of a written request, accompanied by an extension of the financial security. A separate request must be submitted for each requested extension, and such request must be submitted prior to the date the construction was to have been completed.

J. Subsection 16-27-110(c) of the Code is repealed and replaced by the following:

**Sec. 16-27-110. SIP amendments.**

(c) Additional conditions applied to minor and major amendments.

- (1) All amendments must meet the intent of the SIP requirements and the Design Guidelines.
- (2) A change in land use does not necessarily require an amendment to the SIP as long as the new use is a use by right in the underlying zone district.
- (3) Elements not specifically addressed in the table in Subsection (b) above, such as minor changes to the traffic circulation or drainage, may be considered for administrative amendments upon approval by the City Manager, and when applicable (e.g., for engineering-related items) the Director of Public Works or his/her designated representative.
- (4) All applications will be sent to the appropriate referral agencies for comment.
- (5) The Director/City Manager reserves the right to forward any application to the Planning Commission and shall forward any application deemed major to the City Council for approval.
- (6) If a variance has been granted previously for a specific application, the request may be reviewed by the Planning Commission, as required by the Director.
- (7) A "change in architectural character" warranting Planning Commission review includes:
  - a. Multiple changes to an SIP. Even in cases where no single change exceeds the threshold requiring Planning Commission review, staff will consider the cumulative effect of all the changes.
  - b. Significant changes to the "skin" or materials used to surface a building, e.g., greater than twenty percent (20%) of the surface area.
  - c. Significant changes to the color of the building materials.

- d. Significant changes in the lines of the architecture, such as significant modification of rooflines.

K. Subsections 16-28-50(d) and (e) of the Code are repealed and replaced by the following:

**Sec. 16-28-50. Design standards for parking areas.**

- (d) Grading. All off-street parking areas shall be properly graded. The Director of Public Works or his/her designated representative must approve the drainage and stormwater detention design.
- (e) Surfacing. Each off-street parking area shall be surfaced with asphalt, Portland cement concrete or some other material approved by the Director of Public Works or his/her designated representative.

L. Article XXXI, Chapter 16 of the Municipal Code, Clearing, Grading and Land Disturbances, is hereby repealed in its entirety.

M. Subsection 16-32-60(f) of the Code is repealed and replaced by the following:

**Sec. 16-32-60. Parking lot landscaping.**

- (f) The use of planting strips and shallow landscaped depressions in parking lots and along roads is encouraged to help trap and remove pollutants from storm water runoff as approved by the Director of Public Works or his/her designated representative and the Community Development Department.

N. Section 16-32-110 of the Code is repealed and replaced by the following:

**Sec. 16-32-110. Irrigation.**

The following irrigation standards shall apply:

- (1) All landscaped areas shall be served by a functioning automatic irrigation system.
- (2) Temporary irrigation (no more than two [2] seasons) may be used to establish native grasses and native vegetation.
- (3) Irrigation systems shall be designed with separate zones for different equipment or water requirements based on exposure, plant selection and slope.
- (4) Master valves and backflow preventers are required.
- (5) Irrigation systems shall be designed to minimize overspray and runoff onto adjacent impervious surfaces such as roads, sidewalks and parking lots.

- (6) Rain sensors are required that will suspend the irrigation cycle when rainfall has occurred in an amount sufficient to negate the need for irrigation at the scheduled time.
- (7) The installation of weather-based or soil-moisture-based smart controllers is required and shall be designed, installed and managed to apply the appropriate amount of water to maintain healthy plant material.

O. The definition of *Engineer* in Section 16-36-20 of the Code is repealed and replaced by the following:

**Sec. 16-36-20. Definitions.**

*Engineer* means the City's designated Director of Public Works or his/her designated representative as set forth by resolution or other City Council action, to perform the engineering functions for the City as set forth in this Chapter.

**ARTICLE 5 - PROVISIONS EFFECTIVE**

The provisions of this Ordinance shall go into effect on February 27, 2017.

**ARTICLE 6 – CAUSES OF ACTION RETAINED**

Nothing in this Ordinance or in the provisions hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

**ARTICLE 7 - SEVERABILITY**

If any part or provision of this Ordinance, or its application to any person or circumstance is adjudged to be invalid or unenforceable, the invalidity or unenforceability of such part, provision or application shall not affect any of the remaining parts, provisions or applications of this Ordinance which can be given the effect without the invalid provision, part or application, and to this end the provisions and parts of this Ordinance are declared to be severable.

**ARTICLE 8 - EFFECTIVE DATE**

This Ordinance shall take effect thirty (30) days following publication after the first reading if no changes are made on second reading, or twenty (20) days after publication following second reading if changes are made upon second reading.

**INTRODUCED READ AND ORDERED PUBLISHED ON JANUARY 3RD, 2017.**

**CITY OF LONE TREE:**

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Jacqueline A. Millet, Mayor

**ATTEST:**

(SEAL)

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Jennifer Pettinger, CMC, City Clerk

**ORDINANCE OF THE  
CITY OF LONE TREE**

Series of 2017

Ordinance No. 17-04

**AN ORDINANCE AMENDING CHAPTER 17 OF THE MUNICIPAL CODE TO  
AMEND AND UPDATE MISCELLANEOUS PROVISIONS**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LONE TREE,  
COLORADO:**

**ARTICLE 1 – AUTHORITY**

The City of Lone Tree (the "City") is a home rule municipality operating under the Lone Tree Home Rule Charter (the "Charter") adopted on May 5, 1998 and a Municipal Code (the "Code"), codified and adopted on December 7, 2004. Pursuant to the Charter, the Municipal Code and the authority given home rule cities, the City may adopt and amend Ordinances.

**ARTICLE 2 – DECLARATIONS OF POLICY**

- A. The City Council recognizes the need to revise from time to time the legal underpinnings of the Subdivisions Chapter of the Municipal Code, including administrative procedures and standards, in order to promote and protect the public health, safety and welfare.
- B. The City Council acknowledges that the Director of Public Works is the proper title of the person authorized to oversee certain provisions of this Chapter.
- C. The Community Development Director prepared a preliminary report on the proposed Amendments which was delivered to the Planning Commission for consideration at a public hearing.
- D. A public hearing before the Planning Commission was held on December 13, 2016, for which public notice was duly given in compliance with Section 17-1-120 of the Municipal Code. At the hearing, the Planning Commission allowed testimony from the public, reviewed staff reports and the preliminary report, and evaluated the proposed Amendments to the Subdivisions Chapter.
- E. The Planning Commission, through the Community Development Department, prepared a final report containing a recommendation to the City Council for approval of the proposed Amendments.

- F. A public hearing before the City Council was scheduled to hear public testimony and consider the proposed Amendments for which public notice was duly given in compliance with Section 17-1-120 of the Municipal Code.
- G. The City Council has determined that the proposed Amendments to the Subdivisions Chapter are in the best interests of the health, safety and welfare of the public and the residents of the City.

### **ARTICLE 3 – SAFETY CLAUSE**

The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare.

### **ARTICLE 4 – ADOPTION**

A. Section 17-1-60 of the Code is hereby repealed.

B. Section 17-1-90 of the Code is amended by adding a new definition of *Subdivision Improvements* and the definition of *Subdivision improvements agreement* or *subdivision agreement* is repealed and replaced by the following:

#### **Sec. 17-1-90. Definitions.**

*Subdivision Improvements* shall mean the street, drainage and other improvements including, but not limited to, landscaping, retaining walls, hardscape, etc., as shown on the approved construction plans.

*Subdivision improvements agreement* or *subdivision agreement* means one (1) or more security arrangements which the City shall accept to secure the actual cost of construction of such subdivision improvements, as are required by this Chapter or other applicable regulations, within the subdivision. The subdivision improvements agreement (SIA) may include any one (1) or a combination of the types of security or collateral listed in this definition.

C. Section 17-2-10 of the Code is repealed and replaced by the following:

#### **Sec. 17-2-10. Intent.**

The following provisions apply to all subdivisions of land in the City to assure the creation of lots which can be developed in conformance with Chapter 15, Chapter 16, and this Chapter 17, the

Building Code, Roadway Design and Construction Standards, Storm Drainage Design and Technical Criteria Manual, design guidelines and other applicable City regulations.

D. Subsection 17-2-20(c) of the Code is repealed and replaced by the following:

**Sec. 17-2-20. Description of subdivision process.**

(c) Nonresidential. The steps required to obtain approval of a subdivision for nonresidential development includes final plat. In this case, the final plat shall be reviewed by the Planning Commission and reviewed and approved by the City Council. It is an abbreviated process as it does not require preliminary plan review and approval; however, more information on the project is generally forthcoming, as these applications often accompany the site improvement plan for the site.

<i>Review Process</i>	<i>Preliminary Plan</i>	<i>Final Plat</i>
Single-family detached development	Reviewed by Planning Commission and approved by City Council	Approved by City Manager
Single-family attached and multi-family development	N/A	Reviewed by Planning Commission and approved by City Council
Nonresidential development	N/A	Reviewed by Planning Commission and approved by City Council

E. Sections 17-2-40 through 17-2-100 of the Code are repealed and replaced by the following:

**Sec. 17-2-40. Subdivision improvements.**

In each subdivision, the City shall determine the type, location and extent of necessary subdivision improvements, depending upon the characteristics of the proposed development and its relationship to surrounding areas. The developer shall provide for the construction, at no cost to the City, of all utilities and other public infrastructure, as required by the City, and provide the

necessary security needed to ensure such improvements are made as determined by the City. Improvements shall be made according to plans and specifications prepared by a qualified professional engineer in accordance with the Roadway Design and Construction Standards, the Storm Drainage Design and Technical Criteria Manual, the Grading, Erosion and Sediment Control Manual, Chapter 15, the Building Code and other applicable regulations. Underground placement of utility lines shall be required in all subdivisions.

**Sec. 17-2-50. Streets.**

All streets and road rights-of-way shall be constructed in conformance with the roadway standards specified in the Roadway Design and Construction Standards, the Storm Drainage Design and Technical Criteria Manual, the Grading, Erosion and Sediment Control Manual, Chapter 15 and other applicable regulations.

**Sec. 17-2-60. Erosion and sediment control plan.**

An erosion and sediment control plan shall be submitted which addresses the existing and potential erosion and sediment problems created by the proposed development. Conservation measures used to mitigate these concerns shall be in accordance with Chapter 16 of this Code, the Roadway Design and Construction Standards, the Storm Drainage Design and Technical Criteria Manual and the Grading, Erosion and Sediment Control Manual, and Chapter 15. If applicable, the Soil Conservation District shall be consulted regarding erosion and sediment control.

**Sec. 17-2-70. Drainage study.**

Drainage studies shall be submitted as part of the subdivision submittal requirements in conformance with the Storm Drainage Design and Technical Criteria Manual and Chapter 15.

**Sec. 17-2-80. Other subdivision improvements.**

Other reasonable improvements not specifically mentioned herein and found appropriate and necessary by the City shall be constructed at the applicant's expense within such time and in conformance with such specifications as deemed necessary and appropriate.

**Sec. 17-2-90. Guarantee of subdivision improvements.**

- (a) No final plat shall be recorded until the applicant has submitted, and the Public Works Department has reviewed and accepted, one (1) or a combination of the following:
  - (1) A subdivision improvement agreement to construct any required subdivision improvements shown in the final plat documents and approved construction plans.
  - (2) Other agreements or contracts setting forth the plan, method and parties responsible for the construction of any required subdivision improvements shown in the final plat documents which, in the judgment of the Public Works Department, will make reasonable provision for completion of said improvements in accordance with design and time specifications.

- (3) Documentation that there are no required subdivision improvements associated with the final plat.
- (b) When required, the applicant shall provide security, in a form acceptable to the City, for the subdivision improvements as follows:
  - (1) The applicant shall provide the City with an itemized estimate of the cost of required improvements on a standardized form available from the Public Works Department in accordance with the requirements of the Roadway Design and Construction Standards and the Storm Drainage Design and Technical Criteria Standards. Upon review, the Public Works Department shall require one (1) of the following:
    - a. Security of one hundred fifteen percent (115%) of the total cost of the required subdivision improvements shall be paid by the applicant prior to the approval of the construction plans and issuance of a construction permit.
    - b. Security of fifteen percent (15%) of the total cost of required subdivision improvements shall be paid by the applicant prior to the sale or transfer of lots, or issuance of building permits, when the required subdivision improvements have been completed and been granted probationary acceptance by the Public Works Department.
    - c. No security is required toward the total cost of required subdivision improvements that have been completed and have been granted final acceptance by the Public Works Department (at the end of the two-year probationary period).
- (c) The Director of Public Works or his/her designated representative shall review the SIA and the cost estimates and recommend changes as necessary to complete the required improvements.
- (d) The City Attorney shall review any modifications made by the applicant to the SIA and notify the applicant of any deficiencies or required changes. The SIA shall be in the form provided by the City Attorney and approved by the City Manager.
- (e) The Director of Public Works or his/her designated representative shall monitor the SIA and any performance agreements.
- (f) At the discretion of the City Manager, the City may waive the requirement for security by federal, state or local governments, including metropolitan districts, special districts and the like.

**Sec. 17-2-100. Release of security.**

As improvements are completed, the subdivider may apply to the Public Works Department for a release of part or all of the security. Upon inspection by the Director of Public Works or his/her designated representative and upon their approval, the City shall release the security or portion thereof. If the City determines that any improvements are not constructed in substantial compliance with the specifications, it shall furnish the applicant a list of specific deficiencies and shall retain security sufficient to ensure such compliance. If the City determines that the applicant has not constructed any or all of the improvements in accordance with all of the specifications, the City may withdraw and employ from the deposit of security such funds as may be necessary to

construct the improvement in accordance with the specifications. If the submitted security is not sufficient to cover the improvements, the applicant is responsible for the additional costs. Security to cover the cost of repair of such improvements is required during the warranty period in accordance with the requirements of the subdivision improvements agreement.

F. Subsection 17-5-60 (13) of the Code is repealed and replaced by the following:

**Sec. 17-5-60. Final plat exhibit.**

(13) The following certifications on a single sheet shall be provided in accordance with Article VIII of this Chapter: Surveyor, Dedication Statement, Storm Drainage Facilities Statement, General Overlot Drainage Note, City Manager, County Clerk and Recorder's office and Title Verification.

G. Section 17-7-70 of the Code is repealed and replaced by the following:

**Sec. 17-7-70. - Replat of subdivision where additional lots are created.**

Replats of subdivided land, where additional lots are created requires the following review process:

- (1) When three (3) or fewer lots are created for single-family detached land use, the replat may be acted on by the City Manager, according to the submittal and review requirements of Article IV of this Chapter.
- (2) When more than three (3) lots are created for single-family detached land use, the replat shall be processed in accordance with the submittal and review requirements of Article IV of this Chapter, except that it shall be acted on only by the City Council.
- (3) When any lots are created for single-family attached, multi-family or nonresidential land use, the replat shall be acted on only by the City Council, following a 21-day referral period, according to the submittal requirements of Article V of this Chapter. The post-approval procedure and expiration of approval requirements of Article V shall also apply.

**ARTICLE 5 – CAUSES OF ACTION RETAINED**

Nothing in this Ordinance or in the provisions hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance

**ARTICLE 6 - SEVERABILITY**

If any part or provision of this Ordinance, or its application to any person or circumstance is adjudged to be invalid or unenforceable, the invalidity or unenforceability of such part, provision or application shall not affect any of the remaining parts, provisions or applications of this Ordinance which can be given the effect without the invalid provision, part or application, and to this end the provisions and parts of this Ordinance are declared to be severable.

**ARTICLE 7 - EFFECTIVE DATE**

This Ordinance shall take effect thirty (30) days following publication after the first reading if no changes are made on second reading, or twenty (20) days after publication following second reading if changes are made upon second reading.

**INTRODUCED READ AND ORDERED PUBLISHED ON JANUARY 3RD, 2017.**

**CITY OF LONE TREE:**

\_\_\_\_\_  
Jacqueline A. Millet, Mayor

**ATTEST:**

(SEAL)

\_\_\_\_\_  
Jennifer Pettinger, CMC, City Clerk

**ORDINANCE OF THE  
CITY OF LONE TREE**

**Series of 2017**

**Ordinance No. 17-05**

**AN ORDINANCE AMENDING CHAPTER 18 OF THE MUNICIPAL CODE  
TO AMEND THE 2012 INTERNATIONAL RESIDENTIAL CODE  
REGARDING DRAINAGE EROSION SEDIMENT CONTROL PERMITS**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LONE TREE,  
COLORADO:**

**ARTICLE 1 – AUTHORITY**

The City of Lone Tree (the "City") is a home rule municipality operating under the Lone Tree Home Rule Charter (the "Charter") adopted on May 5, 1998 and a Municipal Code (the "Code"), codified and adopted on December 7, 2004. Pursuant to the Charter, the Municipal Code and the authority given home rule cities, the City may adopt and amend Ordinances.

**ARTICLE 2 – DECLARATIONS OF POLICY**

- A. The City Council has adopted the 2012 International Residential Code (IRC), addressing the standards for the design and construction of residential buildings that adequately protects the public health, safety and welfare.
- B. The City Council, in adopting the IRC, addressed issues regarding drainage.
- C. The City Council believes there is a need to strengthen those provisions to provide for required drainage plan design elements as part of obtaining a Drainage Erosion Sediment Control Permit.

**ARTICLE 3 – SAFETY CLAUSE**

The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare.

## **ARTICLE 4 – ADOPTION**

A new Subsection 18-3-40 (12) of the Municipal Code, is hereby adopted as follows, with the remaining Subsections renumbered:

### **Sec. 18-3-40. Amendments.**

(12) Section R401.3, Drainage, is deleted in its entirety and replaced by the following:

#### **R401.3 Projects that Require a Drainage Erosion Sediment Control (DESC) Permit.**

City of Lone Tree requires that a DESC Permit be obtained prior to the start of land disturbing activities within the City of Lone Tree for new single family detached homes or an addition to single family detached homes.

##### **R401.3.1 Drainage Plan Design Elements.**

The Drainage Plan shall be lot specific, and shall provide the detailed final grading for the lot, and or disturbed area(s). The Drainage Plan shall reflect information provided in the Phase III Drainage Plan for the given area and comply with the following requirements:

1. Slope Requirements. A minimum constant slope of 10% and a maximum constant slope of 33% in the first 10 feet away from the foundation walls and window wells shall be established for pervious surfaces. All other disturbed areas shall have a minimum of 2% slope. All pervious and impervious areas shall slope continuously to the lowest point where stormwater discharges from the lot (e.g., sidewalk, gutter, inlet, adjacent property, or easement). At this point, the discharge water shall be dispersed into a sheet flow and directed in a manner as to not cause harm to downslope properties. Where minimum slopes cannot be attained, alternate means to adequately convey the water from the lot shall be designed and submitted by the Designer to the Building Division for acceptance. Impervious surfaces adjacent to the foundation shall have adequate drainage away from the foundation as determined by the Designer. Refer to the International Residential Code, as amended, for specific requirements.
2. Drainage Swales. Drainage swales may not be located within the foundation backfill zone unless limited by property lines. Drainage swales shall have adequate depth, width and longitudinal gradient to convey the stormwater off the lot in an effective, non-damaging manner. Drainage swales shall be designed to spread flows out as much as feasible.
3. Retaining Walls. Proposed slopes steeper than 3 to 1 are difficult to vegetate and maintain. Long term rill and gully erosion are likely on such slopes. Approved permanent stabilization shall be required to control grades on sites that cannot be graded at a 3 to 1 slope. Retaining walls may be necessary to control grades on a site. Retaining walls shall not encroach onto adjacent properties. Retaining walls taller than 4 feet (including footing) or that carry a surcharge require a separate Building Permit and shall be designed by a Professional Engineer.

4. Driveways. Driveways shall have a minimum slope of 2% away from the foundation for a distance that will allow adequate drainage away from the garage entrance as determined by the Designer.
5. Downspouts and Sump Pumps. Downspouts and sump pumps shall discharge a minimum of 4 feet away from the foundation wall and outside the foundation backfill zone unless limited by property lines. Downspouts shall not directly discharge onto adjacent properties.
6. Designing to the Phase III Drainage Plan. The Designer shall ensure that the Drainage Plan functions in accordance with the Phase III Drainage Plan for the development, if applicable.

#### **R401.3.2 Drainage Plan Requirements.**

The Drainage Plan shall be lot specific, and shall provide the detailed final grading for the lot, and or disturbed area(s). The Drainage Plan shall be shown, at a minimum, on 8.5" x 11" or a scale of 1 inch equals 20 feet. The Drainage Plan shall include:

1. Basic property information including; street address, subdivision, filing, lot and block.
2. North Arrow.
3. All property lines, easements and setbacks.
4. 100 Year Floodplain limits shall be shown if there is floodplain on the lot.
5. Spot elevations and drainage flow arrows to accurately illustrate the site drainage patterns. At a minimum the plan shall contain:
  - a) Drainage swales labeled with spot elevations to the nearest 1/10 of a foot, and drainage flow arrows, illustrated to the nearest 1%, starting at the high point(s) and along the swale at 25 foot intervals.
  - b) Spot elevations, to the nearest 1/10 of a foot at:
    - Each foundation corner.
    - Each point of foundation elevation change.
    - Top of driveway at the garage entrance.
    - Point of driveway discharge.
    - Top of Wall and Bottom of Wall elevations for all retaining walls at each end and at 20 foot intervals.
  - c) Slopes illustrated with an arrow showing the direction of flow to the nearest 1%, for a distance of 10 feet from the top of backfill at foundation for:
    - Each foundation corner.
    - Along the foundation at 20 foot intervals.
    - Each point of foundation elevation change.
  - d) Additional information (e.g., contours) may be required by the City depending on site specific conditions.
6. Location(s) where existing storm water runoff enters the lot and discharges from the lot to adjacent rights-of-way, properties and easements labeled.
7. Name, address and phone number of the Designer's firm.
8. DESC Drawing Designer's signature block with name, date and registration number.

### **R401.3.3 DESC Inspections.**

#### **R401.3.3.1 Final Grade Inspection.**

Final Grade inspection shall be made after the permitted work is complete and prior to the issuance of the Certificate of Occupancy.

#### **R401.3.3.2 Other Inspections.**

In addition to the called inspection above, the Building Official may make or require any other inspections to ascertain compliance with this code or other laws enforced by the Building Official.

### **R401.3.4 Final Drainage Certificate.**

To ensure conformance with the approved design and to ensure adequate drainage away from the foundation and off the lot, a Final Drainage Certificate shall be certified by a Registered Professional Engineer (PE) or a Registered Professional Land Surveyor (PLS) and approved by the City of Lone Tree before a Certificate of Occupancy can be issued. The following items shall be clearly illustrated on a copy of the approved Drainage Plan:

- All vertical and horizontal deviations to grades, drains, spot elevations, slopes and drainage patterns throughout the lot as shown on the approved DESC Plan.
- Location(s) of the sump pump discharge, if applicable.
- The Final Drainage Certificate shall be signed and stamped by a PE or a PLS.

The Drainage Certificate requirement will be waived for non-habitable accessory structures and small additions if:

- Compliant drainage has been verified by the Inspector during a Final Grade Inspection.

### **R401.3.5 DESC Permit Closeout.**

DESC Permits will be closed at the completion of construction and prior to the approval of the Certificate of Occupancy only when the following conditions are met:

1. All of the previously disturbed soil areas are covered with the building structure, grass/sod, rock, mulch, pavers, or other approved landscape materials; or
2. In the case that landscaping improvements have not been completed, the Permittee(s) shall install the Final Erosion and Sediment Control BMPs shown on the approved DESC Plan. Additional sediment controls may be required at the discretion of the Inspector in order to protect adjacent lots and the storm sewer system.

### **R401.3.6 Posting Surety.**

The City of Lone Tree recognizes that, in some cases, final grading and drainage measures cannot be immediately achieved prior to the need to close a transaction, and occupy a property. In the event that the final grading and drainage measure cannot be completed prior to the need for a Certificate of Occupancy, Surety and a DESC permit fee shall be posted with the Building Division. The Certificate of Occupancy will be released upon receipt of

the Surety and after the Inspector has verified that the Erosion and Sediment Control BMPs are effectively implemented in accordance with the approved DESC Plan.

**R401.3.6.1 Amount of Surety.**

The amount of Surety required shall be \$2,500.00. For lots larger than 1.0 acre, the required Surety shall be \$2,500.00 per disturbed acre.

**R401.3.6.2 Forms of Surety.**

The City of Lone Tree accepts 3 different forms of security. Surety can be deposited as a Corporate or Cashier's Check, Irrevocable Letter of Credit or by Credit Card.

**R401.3.6.3 Release of Surety.**

Surety will be returned upon completion of the Final Grade inspection and acceptance of the Final Drainage Certification.

**ARTICLE 5 – CAUSES OF ACTION RETAINED**

Nothing in this Ordinance or in the Residential Code hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

**ARTICLE 6 – SEVERABILITY**

If any part or provision of this Ordinance, or its application to any person or circumstance, is adjudged to be invalid or unenforceable, the invalidity or unenforceability of such part, provision, or application shall not affect any of the remaining parts, provisions or applications of this Ordinance which can be given effect without the invalid provision, part or application, and to this end the provisions and parts of this Ordinance are declared to be severable.

**ARTICLE 7 - EFFECTIVE DATE**

This Ordinance shall take effect thirty (30) days following publication after the first reading if no changes are made on second reading, or twenty (20) days after publication following second reading if changes are made upon second reading.

**INTRODUCED, READ AND ORDERED PUBLISHED ON JANUARY 3RD, 2017.**

**CITY OF LONE TREE:**

\_\_\_\_\_  
Jacqueline A. Millet, Mayor

**ATTEST:**

\_\_\_\_\_  
Jennifer Pettinger, CMC, City Clerk

(SEAL)

**CITY OF LONE TREE  
RESOLUTION NO. 17-01**

**A RESOLUTION APPOINTING AN ALTERNATE TO  
THE RUETER-HESS RECREATION AUTHORITY**

WHEREAS, the Lone Tree City Council approved the formation of and the City’s participation in the Rueter-Hess Recreation Authority (the “Authority”) at its meeting on July 7, 2015; and

WHEREAS, the Authority was duly established through an Intergovernmental Agreement (the “IGA”) in August 2015, signed by the City of Lone Tree, Parker Water and Sanitation District, Douglas County, the City of Castle Pines, the Towns of Parker and Castle Rock; and

WHEREAS, the purpose of the Authority is to plan, develop and provide recreational uses and amenities around Rueter-Hess Reservoir for the benefit of the participating members, their constituents and the public, provided that the recreational activities do not interfere with the primary purpose of Rueter-Hess Reservoir; and

WHEREAS, the IGA provides for a Board of Directors comprised of a representative from each of the six signatories to the IGA; and

WHEREAS, the City Council desires to appoint a representative and an alternate to the Board of Directors to carry out the objectives of the IGA; and

WHEREAS, the City Council appointed initial representatives from the City to the Board of Directors at their October 20<sup>th</sup>, 2015 regular meeting.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LONE TREE, COLORADO:**

1. Victoria Brazitis is hereby appointed as an alternate to Mr. Cotten, replacing Seth Hoffman, on any occasion that Mr. Cotten is not available to participate in the Board of Directors’ activities.
2. Mr. Cotten and Ms. Brazitis shall serve at the pleasure of the Lone Tree City Council.

**APPROVED AND ADOPTED THIS 3RD DAY OF JANUARY, 2017.**

**CITY OF LONE TREE**

\_\_\_\_\_  
Jacqueline A. Millet, Mayor

ATTEST:

\_\_\_\_\_  
Jennifer Pettinger, CMC, City Clerk

(SEAL)



## CITY OF LONE TREE

### STAFF REPORT

**TO:** Mayor Millet and City Council

**FROM:** Steve Hebert, Deputy City Manager

**FOR:** January 3, 2017 Council Meeting

**DATE:** December 16, 2016

**SUBJECT:** Ordinance 16-07, an Ordinance Approving a Franchise Agreement between the City of Lone Tree and Public Service Company of Colorado (Xcel Energy)

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#### Summary

If adopted, Ordinance 16-07 will approve a franchise agreement between the City of Lone Tree and Public Service Company of Colorado (a.k.a. Xcel Energy). The agreement grants the Company the right to use the city's streets and rights-of-way, public utility easements and other city property to provide gas and electricity to the city and to the residents and businesses within the city limits. Throughout this staff report, the terms Public Service Company of Colorado, the Company and Xcel Energy are the same.

The Council approved Ordinance 16-07 on first reading on December 6, 2016.

#### Cost

There is no direct cost to the City. The franchise agreement sets the gas and electric franchise fee at three percent (3%) of Xcel's gross revenues.

#### Suggested Motion or Recommended Action

After City Council review and consideration, staff recommends the following motion:

*"I move to approve on Second Reading Ordinance 16-07, an ordinance approving a franchise agreement between the City of Lone Tree, Colorado and Public Service Company of Colorado, granting the right to provide, sell and deliver gas and electricity to the City and its residents, using city streets and rights-of-way, public utility easements and other City property pursuant to the terms of the franchise agreement; and, to authorize the mayor to sign the Franchise Agreement and side letter agreement addressing Underground Conversion and Contingency Fee Audits."*

## **Existing Xcel Franchise Agreement**

The existing franchise agreement was approved by City Council on January 7, 1997 with a twenty (20) year term. The existing agreement expires on January 7, 2017.

## **Proposed Franchise Agreement**

The proposed agreement is similar in principle to the previous agreement. However, it is more extensive in several areas and includes new elements and provisions that have been developed over the last several years as the Company negotiated franchise agreements with other municipalities. This agreement embodies most, if not all, of the concepts in recently negotiated agreements with other cities and towns in the Denver region. While the Lone Tree agreement is similar to agreements adopted in other municipalities, Xcel usually proposes changes from time to time, so there will always be some differences between franchise agreements in the region, depending upon when they were adopted.

Below is a summary of the key provisions in the agreement.

### Grant of Franchise

The City grants to the Company the non-exclusive right to use the City Streets, Public Utility Easements (as applicable) and Other City Property (subject to the terms contained in the franchise) to provide Utility Service to the City and to its residents.

The agreement will be in effect from January 7, 2017 through January 6, 2037, unless extended by mutual consent.

### City Police Powers

The City maintains all of its police powers and Xcel agrees to comply with all ordinances and regulations adopted pursuant to the City's police powers. The City also commits to make a good faith effort to advise the Company if the City considers changes to its regulations that would have a significant impact on the Company.

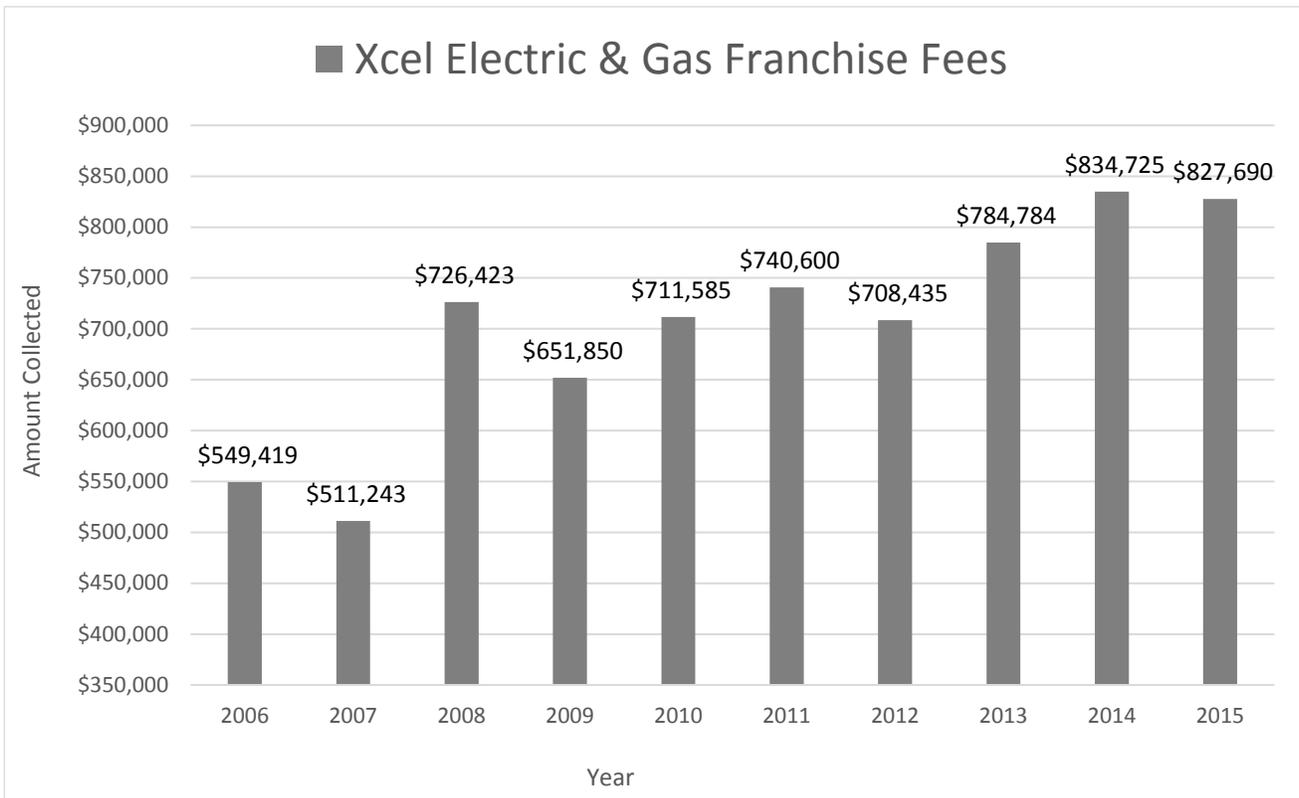
The City agrees to make a good faith effort to make our regulations and permit conditions consistent with industry standards and take into consideration input from the Company when the Company believes new regulations will unnecessarily increase its costs. However, the City retains the authority to adopt regulations that may not be consistent with industry standards if it deems it appropriate.

The Company acknowledges the City's rights to enforce its regulations and require permits for work the Company might perform.

## Franchise Fee

In exchange for use of the City’s streets, rights-of-way, public utility easements and other property, the Company will pay the City a sum equal to three percent (3%) of all Gross Revenues. The proposed fee is the same as the three percent fee in the 1997 agreement and similar to fees paid by the Company to other municipalities throughout Colorado.

In 2015, the Xcel franchise fee generated \$827,690. The chart below shows the annual Xcel franchise fee revenue from 2006 – 2015. Some of the factors affecting demand for gas and electricity include the amount of new development in the city; weather conditions, and related the need for heating and cooling throughout the year; and more energy efficient HVAC systems, lighting and appliances. Therefore, even though our population has increased over the years, there is not a direct correlation with the total demand for gas and electricity.



Pursuant to the agreement, every three years the City has the right to request an audit to determine the correctness of the franchise fee paid to the City. The agreement sets forth the process for conducting such an audit and settling disputes, if any.

### Administration of Franchise

The Company agrees to coordinate its activities in City streets, public utility easements and other City property. The City and the Company will meet annually to exchange short-term and long-term forecasts and/or plans for construction and other similar work that may affect City streets. The Company agrees to share information on significant upgrades to infrastructure within the City. The City agrees to provide the Company notice of private and public land development projects that may require significant upgrades to future gas and/or electric utility development by the Company.

### Supply, Construction and Design

All work within City streets and other City property shall be high-quality; timely and expeditious; reasonably minimize inconvenience to the public; cost-effective and in accordance with applicable laws, ordinances and regulations.

The Company's work covered under this agreement is subject to permit, inspection and approval by the City in accordance with applicable laws. The Company is also required to restore City streets or other City property to a condition substantially the same as existed before the work. The Company is required to submit as-built drawings to the City of any Company facility installed within the City streets or contiguous to the City streets.

Perhaps one of the most significant provisions of any local franchise agreement is the requirement that the Company shall relocate any Company facility such as a gas line or electric line at no cost or expense to the City when the City determines the relocation is necessary for the completion of a public project. Examples include when the City widens a street to add additional lanes or when repairs to City-owned storm sewers require relocation.

Finally, under this section there is a provision that states the City is not required to advance funds when the Company installs facilities to provide utility service to the City when the City is the customer.

### Reliability

The Company commits to operate and maintain Company facilities efficiently, economically, in accordance with industry standards and in accordance with the standards, systems, methods and skills consistent with the provision of adequate, safe and reliable utility service. The City can request the Company provide a report

regarding the reliability of the Company's facilities and utility service. The actual provision of service is governed by the Colorado Public Utilities Commission (PUC). If the Company were to provide inadequate service, and the City is not able to resolve the issue with the Company, the City would have the choice of either bringing legal action in court for a franchise violation, or filing a complaint with the PUC, seeking PUC action to require improvements in service delivery.

### Company Performance Obligations

The Company commits to completing each project requested by the City within a reasonable time, not to exceed 180 days. The agreement sets forth the process for defining and requesting projects. If the Company were to exceed the time allowed to complete a project, the City would have a claim for breach of the franchise agreement, and could seek recover in court for any damages caused by the delay.

### Use of Company Facilities

The City is permitted to use the Company electric distribution poles in the City, subject to Tariffs, without a use fee for the placement of City equipment or facilities necessary to serve a legitimate police, fire, emergency, public safety or traffic control purpose.

This section also requires the Company to offer to grant to the City use of transmission rights-of-way within the City for trails, parks and open space.

### Undergrounding of Overhead Facilities

Upon payment to the Company, the Company shall place all newly constructed electrical distribution lines in newly developed areas of the City underground in accordance with applicable laws, regulations and orders of the City, consistent with industry standards.

As in the current franchise agreement, the Company shall budget and allocate an annual amount equivalent to one percent (1%) of the preceding year's electric gross revenues, for the purpose of undergrounding its existing overhead electric distribution lines in the City in city streets and other city property. This is often referred to as the One Percent Fund. Money in the current Lone Tree fund will be used to underground overhead lines on the north and south side of Park Meadows Drive near the Willow Creek open space and trail.

### Purchase or Condemnation

The franchise agreement recognizes the right of the City to construct, own and operate its own municipal utility, and to purchase pursuant to a mutually acceptable agreement or condemn any Company facilities located in the territorial boundaries of the City, subject to the constitution, statutes and case law of the State of Colorado. If the City intends to purchase or condemn such facilities, the City shall give the Company at least one (1) year's notice.

### Municipally Produced Utility Service

The City expressly reserves the right to engage in the production of utility service to the extent permitted by law.

The franchise also includes articles with provisions and stipulations under the headings of Definitions; Billing and Payment; Environment and Conservation; Transfer of Franchise; Continuation of Utility Service (in the event the agreement expires or is terminated); Indemnification and Immunity; Breach; Amendments; Equal Opportunity and Miscellaneous.

### **Summary of Negotiations and Consensus**

Throughout the negotiations on the proposed agreement, the City's objective was to continue to allow the Company the right to use the City's streets and rights-of-way, public utility easements and other City property to provide gas and electricity to the City and to the residents and businesses within the City limits.

Although not without periodic challenges and frustrations, the City's relationship with Xcel over the last twenty years has been a good one. The Company's ability to plan for and provide high quality electric and gas service to the community has allowed the Lone Tree community to prosper. Xcel's ability to provide adequate and reliable utility service is a key factor in building an attractive community in which to live and work.

The City's negotiating team was led by Ken Fellman, an attorney with Kissinger & Fellman, P.C., assisted by Brandon Dittman, attorney with the same firm. Neil Rutledge of the City Attorney's office and Steve Hebert, Deputy City Manager also participated in the negotiations. Throughout the negotiations, the intent was to accommodate within reason the Company's needs while protecting the interests of the City and the Xcel customers within the City.

Some of the key points of contention that were eventually resolved include:

#### City Police Powers and Industry Standards

In an attempt to prevent the City from adopting regulations that would either violate or be contrary to industry standards, Xcel proposed language stipulating the Company would comply with local laws, regulations, permits and orders, but only if they were consistent with industry standards. The City objected to such a provision because it would be almost impossible for the City to know of all the various industry standards, not to mention the fact that such language would limit the City's police powers and the authority of City Council to adopt otherwise valid laws that would apply to other rights of way users, but not Xcel..

The resolution of this conflict was adding language whereby the City will make a good faith effort to make its regulations and permit conditions consistent with industry standards and the Company agrees to make good faith efforts to advise the City of industry standards that affect the Company's operations. The City retains ultimate authority however, to decide what police power ordinances and regulations to adopt.

#### Reliance on Third Party Data for Franchise Fee Audits

If an audit shows that the City has been underpaid, Xcel is responsible for the past due amounts. If the underpayment is more than 2%, Xcel is required to pay the costs of the audit. Xcel originally proposed language that they would not be responsible for paying the City audit costs if the underpayment was the result of errors in data provided to Xcel by third party contractors. This was unacceptable to the City. Resolution was reached with language that "the Company shall not be responsible for the costs of the City's audit when underpayment is caused by errors from information provided by an entity certified by the Colorado Department of Revenue as a "hold harmless entity" or other similar entity recognized by the Department of Revenue." The State certifies certain companies as "hold harmless" entities, meaning that if taxpayers use these certified databases and are found to have underpaid taxes, they will not be liable for sales and use taxes otherwise owed to the State and state-collected municipalities, counties and special districts. The City has agreed that if Xcel underpays based upon data from one of these State-certified companies, it will not be responsible for paying the City's audit costs. Staff believes this was a fair compromise.

#### Undergrounding of Overhead Facilities

Xcel wants to limit the Underground Conversion Program (or One Percent Fund) to existing overhead electric distribution lines and not all electric distribution facilities, which might include transformers and other equipment. This is likely to be a

significant issue for other municipalities that have many older overhead facilities. However, the City of Lone Tree only has a limited number of such overhead lines and equipment. The City has agreed to the more restrictive language of distribution lines only because it is not likely to be an issue for the City of Lone Tree in the future. The City and the Company have proposed a “side letter agreement” that clarifies why the City has agreed to limit the applicability of the underground conversion program to existing overhead “lines” as opposed to existing overhead Distribution Facilities.

#### Contingency Fee-Based Audits

The parties were not able to come to agreement on language proposed by Xcel related to audits of franchise obligations conducted by third parties retained by the City, whereby the auditor is to be compensated on a contingency fee basis. The City insisted, and Xcel finally agreed, that there would be no such language in the franchise agreement. The parties did agree however, that if, at some future date, the City decides to audit financial obligations of the Franchise, whereby the auditor is to be compensated based upon a contingency fee, Xcel retains all rights to challenge the propriety of such an audit and compensation structure on any ground. Likewise, the City retains all rights on any ground it may have to support whatever compensation structure it may be proposing for its auditor at such time. While it is unlikely that the City would propose a contingency fee based audit, it is the City’s legal right to do so, and we were successful in keeping a restriction on this activity in the franchise agreement.

The above language is also included in the “side letter agreement” mentioned earlier and attached to this report.

#### Attachments:

- A. Ordinance 16-07
- B. Franchise Agreement Between the City of Lone Tree, Colorado and Public Service Company of Colorado
- C. Draft “Side Letter Agreement”

**ORDINANCE OF THE  
CITY OF LONE TREE**

**Series of 2016**

**Ordinance No. 16-07**

**AN ORDINANCE APPROVING A FRANCHISE AGREEMENT BETWEEN THE CITY OF LONE TREE, COLORADO, AND PUBLIC SERVICE COMPANY OF COLORADO, GRANTING THE RIGHT TO PROVIDE, SELL AND DELIVER GAS AND ELECTRICITY TO THE CITY AND ITS RESIDENTS USING CITY STREETS AND RIGHTS-OF-WAY, PUBLIC UTILITY EASEMENTS AND OTHER CITY PROPERTY.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LONE TREE, COLORADO:**

**ARTICLE 1 – AUTHORITY**

The City of Lone Tree (the "City") is a home rule municipality operating under the Lone Tree Home Rule Charter (the "Charter") adopted on May 5, 1998 and a Municipal Code (the "Code"), codified and adopted on December 7, 2004. Pursuant to the Charter, the Municipal Code and the authority given home rule cities, the City may adopt and amend Ordinances.

**ARTICLE 2 – FINDINGS OF FACT**

1. The City currently has in effect a franchise agreement with Public Service Company of Colorado ("PSC"), a Colorado corporation and an Excel Energy company, dated January 7, 1996, for a twenty year term.

2. The City has negotiated a new franchise agreement with PSC (the "Franchise Agreement") for the payment of franchise fees, and granting PSC the right to provide, sell and deliver gas and electricity to the City and its residents using City streets and rights-of-way, public utility easements and other City property, with additional terms and conditions.

3. The City Council finds it is in the best interest of the public to enter into a new and continuing Franchise Agreement with PSC subject to the terms and conditions of the Franchise Agreement.

4. The City Council has determined that the approval and adoption of the Franchise Agreement by ordinance is desirable and necessary.

### **ARTICLE 3 – ADOPTION OF PSC FRANCHISE AGREEMENT**

The Franchise Agreement (Exhibit A), attached hereto and incorporated herein, is hereby approved, enacted and adopted in its entirety.

### **ARTICLE 4 - AGREEMENT EFFECTIVE**

The provisions of the Franchise Agreement (Exhibit A) shall go into effect on January 7, 2017.

### **ARTICLE 5 – SAFETY CLAUSE**

The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare.

### **ARTICLE 6 – CAUSES OF ACTION RETAINED**

Nothing in this Ordinance hereby adopted shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby amended, repealed or replaced; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance. This Ordinance shall not be construed nor shall it be deemed to constitute any waiver or release of any legal rights, authority, permits, franchises or written agreements that the City of Lone Tree may have with Public Service Company of Colorado.

### **ARTICLE 7 – SEVERABILITY**

If any part or provision of this Ordinance, or its application to any person or circumstance, is adjudged to be invalid or unenforceable, the invalidity or unenforceability of such part, provision, or application shall not affect any of the remaining parts, provisions or applications of this Ordinance which can be given effect without the invalid provision, part or application, and to this end the provisions and parts of this Ordinance are declared to be severable.

### **ARTICLE 8 - EFFECTIVE DATE**

This Ordinance shall take effect thirty (30) days following publication after the first reading if no changes are made on second reading, or twenty (20) days after publication following second reading if changes are made upon second reading.

**INTRODUCED, READ AND ORDERED PUBLISHED ON DECEMBER 6, 2016.**

**PUBLISHED IN THE DOUGLAS COUNTY NEWS PRESS ON DECEMBER 22, 2016, LEGAL NOTICE NO. 93068-930272.**

**APPROVED AND ADOPTED WITH NO CHANGES ON SECOND READING ON JANUARY 3, 2017, TO BECOME EFFECTIVE ON JANUARY 21, 2017.**

**CITY OF LONE TREE**

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Jacqueline A. Millet, Mayor

**ATTEST:**

(S E A L)

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Jennifer Pettinger, CMC, City Clerk

Exhibit A – Franchise Agreement

**FRANCHISE AGREEMENT BETWEEN THE CITY OF LONE TREE, COLORADO  
AND PUBLIC SERVICE COMPANY OF COLORADO**

ARTICLE 1 DEFINITIONS  
ARTICLE 2 GRANT OF FRANCHISE  
ARTICLE 3 CITY POLICE POWERS  
ARTICLE 4 FRANCHISE FEE  
ARTICLE 5 ADMINISTRATION OF FRANCHISE  
ARTICLE 6 SUPPLY, CONSTRUCTION, AND DESIGN  
ARTICLE 7 RELIABILITY  
ARTICLE 8 COMPANY PERFORMANCE OBLIGATIONS  
ARTICLE 9 BILLING AND PAYMENT  
ARTICLE 10 USE OF COMPANY FACILITIES  
ARTICLE 11 UNDERGROUNDING OF OVERHEAD FACILITIES  
ARTICLE 12 PURCHASE OR CONDEMNATION  
ARTICLE 13 MUNICIPALLY PRODUCED UTILITY SERVICE  
ARTICLE 14 ENVIRONMENT AND CONSERVATION  
ARTICLE 15 TRANSFER OF FRANCHISE  
ARTICLE 16 CONTINUATION OF UTILITY SERVICE  
ARTICLE 17 INDEMNIFICATION AND IMMUNITY  
ARTICLE 18 BREACH  
ARTICLE 19 AMENDMENTS  
ARTICLE 20 EQUAL OPPORTUNITY  
ARTICLE 21 MISCELLANEOUS

## TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS.....	1
§1.1    “City” .....	1
§1.2    “Clean Energy” .....	1
§1.3    “Company” .....	1
§1.4    “Company Facilities”.....	1
§1.5    “Council” or “City Council”.....	1
§1.6    “Distribution Facilities” .....	1
§1.7    “Electric Gross Revenues”.....	1
§1.8    “Energy Conservation” .....	2
§1.9    “Energy Efficiency” .....	2
§1.10   “Force Majeure”.....	2
§1.11   “Gross Revenues” .....	2
§1.12   “Industry Standards” .....	2
§1.13   “Open Space” .....	2
§1.15   “Parks” .....	3
§1.16   “Private Project” .....	3
§1.17   “Public Project” .....	3
§1.18   “Public Utilities Commission” or “PUC” .....	3
§1.19   “Public Utility Easement” .....	3
§1.20   “Relocate,” “Relocation,” or “Relocated” .....	3
§1.21   “Renewable Energy Resources” .....	3
§1.22   “Residents” .....	4
§1.23   “Streets” or “City Streets” .....	4
§1.24   “Supporting Documentation”.....	4
§1.25   “Tariffs” .....	4
§1.26   “Transmission Facilities” .....	4
§1.27   “Utility Service”.....	4
ARTICLE 2 GRANT OF FRANCHISE .....	4
§2.1    Grant of Franchise.....	4
§2.2    Conditions and Limitations.....	6
§2.3    Effective Date and Term.....	6
ARTICLE 3 CITY POLICE POWERS .....	6
§3.1    Police Powers.....	6
§3.3    Compliance with Laws .....	6
§3.4    Industry Standards .....	7
ARTICLE 4 FRANCHISE FEE .....	7
§4.1    Franchise Fee.....	7
§4.2    Remittance of Franchise Fee.....	8
§4.3    Franchise Fee Payment Not in Lieu of Permit or Other Fees .....	9
ARTICLE 5 ADMINISTRATION OF FRANCHISE.....	9

§5.1	City Designee.....	9
§5.2	Company Designee .....	10
§5.3	Coordination of Work.....	10
ARTICLE 6 SUPPLY, CONSTRUCTION, AND DESIGN.....		10
§6.1	Purpose.....	10
§6.2	Supply .....	11
§6.3	Charges to the City for Service to City Facilities .....	11
§6.4	Restoration of Service.....	11
§6.5	Obligations Regarding Company Facilities.....	11
§6.6	As-Built Drawings.....	12
§6.7	Excavation and Construction .....	13
§6.8	Restoration .....	13
§6.9	Relocation of Company Facilities.....	14
§6.10	New or Modified Service Requested by City .....	15
§6.11	Service to New Areas.....	15
§6.12	City Not Required to Advance Funds.....	16
§6.13	Technological Improvements.....	16
ARTICLE 7 RELIABILITY.....		16
§7.1	Reliability.....	16
§7.2	Franchise Performance Obligations .....	16
§7.3	Reliability Reports .....	16
ARTICLE 8 COMPANY PERFORMANCE OBLIGATIONS .....		16
§8.1	New or Modified Service to City Facilities .....	16
§8.2	Adjustments to Company Facilities .....	17
§8.3	Third Party Damage Recovery.....	18
ARTICLE 9 BILLING AND PAYMENT.....		18
§9.1	Billing for Utility Services.....	18
§9.2	Payment to City.....	19
ARTICLE 10 USE OF COMPANY FACILITIES.....		19
§10.1	City Use of Company Electric Distribution Poles .....	19
§10.2	Third Party Use of Company Electric Distribution Poles.....	19
§10.3	City Use of Company Transmission Rights-of-Way .....	20
§10.4	Emergencies .....	20
ARTICLE 11 UNDERGROUNDING OF OVERHEAD FACILITIES .....		20
§11.1	Underground Electrical Lines in New Areas .....	20
§11.2	Underground Conversion at Expense of Company. ....	20
§11.3	Undergrounding Performance.....	21
§11.4	Audit of Underground Program .....	23
§11.5	Cooperation with Other Utilities.....	23
§11.6	Planning and Coordination of Undergrounding Projects.....	23
ARTICLE 12 PURCHASE OR CONDEMNATION.....		24

§12.1	Municipal Right to Purchase or Condemn.....	24
ARTICLE 13	MUNICIPALLY PRODUCED UTILITY SERVICE .....	24
§13.1	Municipally Produced Utility Service. ....	24
ARTICLE 14	ENVIRONMENT AND CONSERVATION.....	25
§14.1	Environmental Leadership .....	25
§14.2	Conservation .....	25
§14.3	Continuing Commitment. ....	26
§14.4	PUC Approval.....	26
ARTICLE 15	TRANSFER OF FRANCHISE.....	26
§15.1	Consent of City Required.....	26
§15.2	Transfer Fee .....	27
ARTICLE 16	CONTINUATION OF UTILITY SERVICE.....	27
§16.1	Continuation of Utility Service.....	27
ARTICLE 17	INDEMNIFICATION AND IMMUNITY .....	27
§17.1	City Held Harmless.....	27
§17.2	Immunity.....	28
ARTICLE 18	BREACH .....	28
§18.1	Change of Tariffs .....	28
§18.2	Breach. ....	28
ARTICLE 19	AMENDMENTS .....	29
§19.1	Proposed Amendments .....	29
§19.2	Effective Amendments.....	29
ARTICLE 20	EQUAL OPPORTUNITY .....	30
§20.1	Economic Development.....	30
§20.2	Employment.....	30
§20.3	Contracting.....	31
§20.4	Coordination .....	31
ARTICLE 21	MISCELLANEOUS .....	31
§21.1	No Waiver.....	31
§21.2	Successors and Assigns.....	32
§21.3	Third Parties.....	32
§21.4	Notice.....	32
§21.5	Examination of Records.....	33
§21.6	Confidential or Proprietary Information .....	34
§21.7	List of Utility Property.....	34
§21.8	PUC Filings.....	34
§21.9	Information .....	34
§21.10	Payment of Taxes and Fees.....	35

§21.11 Conflict of Interest ..... 35  
 §21.12 Certificate of Public Convenience and Necessity..... 35  
 §21.13 Authority ..... 35  
 §21.14 Severability ..... 36  
 §21.15 Force Majeure ..... 36  
 §21.16 Earlier Franchises Superseded ..... 36  
 §21.17 Titles Not Controlling ..... 36  
 §21.18 Applicable Law ..... 36  
 §21.19 Payment of Expenses Incurred by City in Relation to Franchise Agreement..... 36  
 §21.20 Costs of Compliance with Franchise ..... 36  
 §21.21 Conveyance of City Streets, Public Utility Easements or Other City Property ..... 36  
  
 Signature Page..... 37

**ARTICLE 1**  
**DEFINITIONS**

For the purpose of this franchise agreement (“Franchise”), the following words and phrases shall have the meaning given in this Article. When not inconsistent with context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural. The word “shall” is mandatory and “may” is permissive. Words not defined in this Article shall be given their common and ordinary meaning.

- §1.1 “City” refers to the City of Lone Tree, a municipal corporation in the State of Colorado.
- §1.2 “Clean Energy” means energy produced from Renewable Energy Resources, eligible energy sources, and by means of advanced technologies that cost-effectively capture and sequester carbon emissions produced as a by-product of power generation. For purposes of this definition, “cost” means all those costs as determined by the PUC.
- §1.3 “Company” refers to Public Service Company of Colorado, a Colorado corporation, and an Xcel Energy company and its successors and assigns including affiliates or subsidiaries that undertake to perform any of the obligations under this Franchise.
- §1.4 “Company Facilities” refers to all facilities of the Company reasonably necessary or desirable to provide gas and electric service into, within and through the City, including but not limited to plants, works, systems, substations, transmission and distribution structures and systems, lines, equipment, pipes, mains, conduit, transformers, underground lines, gas compressors, meters, meter reading devices, communication and data transfer equipment, control equipment, gas regulator stations, street lights, wire, cables and poles as well as all associated appurtenances.
- §1.5 “Council” or “City Council” refers to and is the legislative body of the City.
- §1.6 “Distribution Facilities” refers to those lines designed to operate at the utility’s distribution voltages in the area defined in the Company’s Tariffs including substation transformers that transform electricity to a distribution voltage and also includes other equipment within a transforming substation which is not integral to the circuitry of the utility’s transmission system.
- §1.7 “Electric Gross Revenues” refers to those amounts of money that the Company receives from the sale or delivery of electricity in the City, after adjusting for refunds, net write-offs of accounts, corrections, or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments pursuant to federal or state regulation. “Electric Gross Revenues” shall exclude any revenue from the sale or delivery of electricity to the City as a customer of the Company.

- §1.8 “Energy Conservation” means the decrease in energy requirements of specific customers during any selected time period, resulting in a reduction in end-use services.
- §1.9 “Energy Efficiency” means the decrease in energy requirements of specific customers during any selected period with end-use services of such customers held constant.
- §1.10 “Force Majeure” means the inability to undertake an obligation of this Franchise due to a cause that could not be reasonably anticipated by a party or is beyond its reasonable control after exercise of best efforts to perform, including but not limited to fire, strike, war, riots, terrorist acts, acts of governmental authority, acts of God, floods, epidemics, quarantines, labor disputes, unavailability or shortages of materials or equipment or failures or delays in the delivery of materials. Neither the City nor the Company shall be in breach of this Franchise if a failure to perform any of the duties under this Franchise is due to a Force Majeure condition.
- §1.11 “Gross Revenues” refers to those amounts of money that the Company receives from the sale of gas and electricity within the City under rates authorized by the Public Utilities Commission, as well as from the transportation of gas to its customers within the City, as adjusted for refunds, net write-offs of uncollectible accounts, corrections, or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments pursuant to federal or state regulation. “Gross Revenues” shall exclude any revenues from the sale of gas or electricity to the City or the transportation of gas to the City.
- §1.12 “Industry Standards” refers to standards developed by government agencies and generally recognized organizations that engage in the business of developing utility industry standards for materials, specifications, testing, construction, repair, maintenance, manufacturing, and other facets of the electric and gas utility industries. Such agencies and organizations include, but are not limited to the U.S. Department of Transportation, the Federal Energy Regulatory Commission (FERC), the North American Electric Reliability Corporation (NERC), the Pipeline and Hazardous Materials Safety Administration (PHMSA), the Colorado Public Utilities Commission, the American National Standards Institute (ANSI), the American Society for Testing and Materials (ASTM), the Pipeline Research Council International, Inc. (PRCI), the American Society of Mechanical Engineers (ASME), the Institute of Electric and Electronic Engineers (IEEE), the Electric Power Research Institute (EPRI), the Gas Technology Institute (GTI), the National Fire Protection Association (NFPA), and specifically includes the National Electric Safety Code (NESC).
- §1.13 “Open Space” refers to privately-owned property protected by real covenant, or publicly-owned property protected by covenant and/or designated by ordinance or resolution of the City Council, which covenant or designation designates the property for use as one (1) or more of the following: a community buffer; a wildlife corridor and habitat area; a wetland; a view corridor; agricultural land; an area of archeological, historical, geologic or topographic significance; an area containing significant renewable and/or nonrenewable natural resources; and/or other undesignated, typically non-irrigated, undeveloped land uses. Open Space shall not include Parks.

- §1.14 “Other City Property” refers to the surface, the air space above the surface and the area below the surface of any property owned by the City or directly controlled by the City due to the City’s real property interest in the same or hereafter owned by the City, that would not otherwise fall under the definition of “Streets,” but which provides a suitable location for the placement of Company Facilities as specifically approved in writing by the City. Other City Property does not include Public Utility Easements.
- §1.15 “Parks” refers to land area owned by the City, either independently or with another governmental or quasi-governmental entity, that is developed and maintained for active or passive recreational use and is open for the general public’s use and enjoyment; which, by way of example only, may include public playfields, courts, and other recreation facilities, or may include greenways, water features, picnic areas, or natural areas.
- §1.16 “Private Project” refers to any project which is not covered by the definition of Public Project.
- §1.17 “Public Project” refers to (1) any public work or improvement within the City that is wholly owned by the City; or (2) any public work or improvement within the City where fifty percent (50%) or more of the funding is provided by any combination of the City, the federal government, the State of Colorado, or any Colorado county, but excluding all entities established under Title 32 of the Colorado Revised Statutes.
- §1.18 “Public Utilities Commission” or “PUC” refers to the Public Utilities Commission of the State of Colorado or other state agency succeeding to the regulatory powers of the Public Utilities Commission.
- §1.19 “Public Utility Easement” refers to any platted easement over, under, or above public or private property, expressly dedicated to, and accepted by, the City for the use of public utility companies for the placement of utility facilities, including but not limited to Company Facilities.
- §1.20 “Relocate,” “Relocation,” or “Relocated” refers to the definition assigned such terms in Section 6.8.A of this Franchise.
- §1.21 “Renewable Energy Resources” means wind, solar, and geothermal resources; energy produced from biomass from nontoxic plant matter consisting of agricultural crops or their byproducts, urban wood waste, mill residue, slash, or brush, or from animal wastes and products of animal wastes, or from methane produced at landfills or as a by-product of the treatment of wastewater residuals; new hydroelectricity with a nameplate rating of ten (10) megawatts or less; and hydroelectricity in existence on January 1, 2005, with a nameplate rating of thirty (30) megawatts or less; fuel cells using hydrogen derived from a Renewable Energy Resource; and recycled energy produced by a generation unit with a nameplate capacity of not more than fifteen (15) megawatts that converts the otherwise lost energy from the heat from exhaust stacks or pipes to electricity and that does not combust additional fossil fuel, and includes any

eligible renewable energy resource as defined in §40-2-124(1)(a), C.R.S., as the same shall be amended from time to time.

- §1.22 “Residents” refers to all persons, businesses, industries, governmental agencies, including the City, and any other entity whatsoever, presently located or to be hereinafter located, in whole or in part, within the territorial boundaries of the City.
- §1.23 “Streets” or “City Streets” refers to the surface, the air space above the surface and the area below the surface of any City-dedicated or City-maintained streets, alleys, bridges, roads, lanes, access easements, and other public rights-of-way within the City, which are primarily used for vehicle traffic. Streets shall not include Public Utility Easements and Other City Property.
- §1.24 “Supporting Documentation” refers to all information reasonably required or needed in order to allow the Company to design and construct any work performed under the provisions of this Franchise. Supporting Documentation may include, but is not limited to, construction plans, a description of known environmental issues, the identification of critical right-of-way or easement issues, the final recorded plat for the property, the date the site will be ready for the Company to begin construction, the date gas service and meter set are needed, and the name and contact information for the City’s project manager.
- §1.25 “Tariffs” refer to those tariffs of the Company on file and in effect with the PUC or other governing jurisdiction, as amended from time to time.
- §1.26 “Transmission Facilities” refers to those lines and related substations designed and operating at voltage levels above the utility’s voltages for Distribution Facilities, including but not limited to related substation facilities such as transformers, capacitor banks, or breakers that are integral to the circuitry of the Company’s transmission system.
- §1.27 “Utility Service” refers to the sale of gas or electricity to Residents by the Company under rates and Tariffs approved by the PUC, as well as the delivery of gas to Residents by the Company.

## ARTICLE 2 GRANT OF FRANCHISE

### §2.1 Grant of Franchise.

A. Grant. The City hereby grants to the Company, subject to all conditions, limitations, terms, and provisions contained in this Franchise, the non-exclusive right to make reasonable use of City Streets, Public Utility Easements (as applicable) and Other City Property:

- (1) to provide Utility Service to the City and to its Residents under the Tariffs;  
and

(2) to acquire, purchase, construct, install, locate, maintain, operate, upgrade and extend into, within and through the City all Company Facilities reasonably necessary for the generation, production, manufacture, sale, storage, purchase, exchange, transportation, transmission and distribution of Utility Service within and through the City.

B. Street Lighting and Traffic Signal Lighting Service. The rights granted by this Franchise encompass the nonexclusive right to provide street lighting service and traffic signal lighting services as directed by the City and, where applicable, the provisions of this Franchise shall apply with full and equal force to street lighting service and traffic signal lighting service provided by the Company pursuant to its Tariffs. In the event of a conflict between the provisions of this Franchise and the Tariffs, the Tariffs shall control. Wherever reference is made in this Franchise to the sale or provision of Utility Service these references shall be deemed to include the provision of street lighting service and traffic signal lighting service

C. New Company Facilities in Other City Property, Excluding Parks and Open Space. For all Other City Property that is not a Park or Open Space, the City's grant to the Company of the right to locate Company Facilities in, on, over or across such Other City Property shall be subject to the Company's already having or first receiving from the City approval of the location of such Company Facilities, in the City's reasonable discretion; and (2) the terms and conditions of the use of such Other City Property shall be governed by this Franchise as may be reasonably supplemented to account for the unique nature of such Other City Property; by way of illustration and example only, the City may want to condition the use of Other City Property that is a golf course upon the Company not constructing Company Facilities in fairways or greens or during peak golf season. Nothing in this subsection C. shall modify or extinguish pre-existing Company property rights. Further, this paragraph shall not prohibit the Company from modifying, replacing or upgrading Company Facilities already located in Parks or Open Space in accordance with the terms and conditions of the City license agreement, permit or other agreement that granted the Company the right to use such Other City Property or, if there is no such license agreement, permit or other agreement, in accordance with this Franchise.

D. New Company Facilities in Other City Property that are Parks or Open Space. The City's grant to the Company of the right to locate Company Facilities in, on, over or across Other City Property that is a Park or Open Space shall be subject to (1) the Company's already having or first receiving from the City a revocable license, permit or other agreement approving the location of such Company Facilities, which the City may grant or deny in its sole discretion; and (2) the terms and conditions of such revocable license agreement, permit or other written agreement. Nothing in this subsection D. shall modify or extinguish pre-existing Company property rights. Further, this paragraph shall not prohibit the Company from modifying, replacing or upgrading Company Facilities already located in Parks or Open Space in accordance with the terms and conditions of the City license agreement, permit or other agreement that granted the Company the right to use such Parks or Open Space or, if there is no such license agreement, permit or other agreement, in accordance with this Franchise.

§2.2 Conditions and Limitations.

- A. Scope of Franchise. The grant of this Franchise shall extend to all areas of the City as it is now or hereafter constituted that are within the Company's PUC-certificated service territory; however, nothing contained in this Franchise shall be construed to authorize the Company to engage in activities other than the provision of Utility Service.
- B. Subject to City Usage. The right to make reasonable use of City Streets to provide Utility Service to the City and its Residents under this Franchise is subject to and subordinate to any City usage of said Streets.
- C. Prior Grants Not Revoked. This grant and Franchise is not intended to revoke any prior license, grant, or right to use the Streets, Other City Property or Public Utility Easements and such licenses, grants or rights of use are hereby affirmed.
- D. Franchise Not Exclusive. The rights granted by this Franchise are not, and shall not be deemed to be, granted exclusively to the Company, and the City reserves the right to make or grant a franchise to any other person, firm, or corporation.

§2.3 Effective Date and Term.

- A. Term. This Franchise shall take effect on January 7, 2017 and shall supersede any prior franchise grants to the Company by the City. This Term of this Franchise shall terminate on January 6, 2037, unless extended by mutual consent.

ARTICLE 3  
**CITY POLICE POWERS**

- §3.1 Police Powers. The Company expressly acknowledges the City's right to adopt, from time to time, in addition to the provisions contained herein, such laws, including ordinances and regulations, as it may deem necessary in the exercise of its governmental powers. If the City considers making any substantive changes in its local codes or regulations that in the City's reasonable opinion will significantly impact the Company's operations in the City's Streets, Public Utility Easements and Other City Property, it will make a good faith effort to advise the Company of such consideration; provided, however, that lack of notice shall not be justification for the Company's non-compliance with any applicable local requirements.
- §3.2 Regulation of Streets or Other City Property. The Company expressly acknowledges the City's right to enforce regulations concerning the Company's access to or use of the Streets, and Other City Property. In addition, the Company acknowledges the City's right to require the Company to obtain permits for work in Streets, Other City Property , and Public Utility Easements.
- §3.3 Compliance with Laws. The Company shall promptly and fully comply with all laws, regulations, permits and orders lawfully enacted by the City. Nothing herein provided

shall prevent the Company from legally challenging or appealing the enactment or applicability of any laws, regulations, permits and orders enacted by the City. To the extent that the Company believes that any City regulations, permits and orders are inconsistent with Industry Standards, the City agrees to meet with the Company upon the Company's written request for consideration of the matters at issue within a reasonable period of time.

§3.4 Industry Standards. In enacting laws and regulations and issuing permits that affect the Company's access to or use of the Streets, Other City Property and Public Utility Easements, the City agrees to make good faith efforts to make its regulations and permit conditions consistent with Industry Standards to the extent practicable, and the Company agrees to make good faith efforts to advise the City of Industry Standards that affect the Company's operations within the City. Without limiting the City's police power in any way, the City will take into consideration any input from the Company on new regulations and permit conditions that the Company believes unnecessarily increase its cost of operations within the City.

#### ARTICLE 4 FRANCHISE FEE

##### §4.1 Franchise Fee.

A. Fee. In consideration for this Franchise, which provides the certain terms related to the Company's use of City Streets, Public Utility Easements and Other City Property, which are valuable public properties acquired and maintained by the City at the expense of its Residents, and in recognition of the fact that the grant to the Company of this Franchise is a valuable right, the Company shall pay the City a sum equal to three percent (3%) of all Gross Revenues. To the extent required by law, the Company shall collect this fee from a surcharge upon City Residents who are customers of the Company.

B. Obligation in Lieu of Fee. In the event that the Franchise fee specified herein is declared void for any reason by a court of competent jurisdiction, unless prohibited by law, the Company shall be obligated to pay the City, at the same times and in the same manner as provided in this Franchise, an aggregate amount equal to the amount that the Company would have paid as a Franchise fee as partial consideration for use of the City Streets, Public Utility Easements and Other City Property. Such payments shall be made in accordance with applicable provisions of law. Further, to the extent required by law, the Company shall collect the amounts agreed upon through a surcharge upon Utility Service provided to City Residents who are customers of the Company.

C. Changes in Utility Service Industries. The City and the Company recognize that utility service industries are the subject of restructuring initiatives by legislative and regulatory authorities, and are also experiencing other changes as a result of mergers, acquisitions, and reorganizations. Some of such initiatives and changes may have an adverse impact upon the Franchise fee revenues provided for herein. In recognition of the length of the term of this Franchise, the Company agrees that in the event of any such initiatives or changes and to the extent permitted by law, upon receiving a written request

from the City, the Company will cooperate with and assist the City in making reasonable modifications of this Franchise in an effort to provide that the City receives an amount in Franchise fees or some other form of compensation that is the same amount of Franchise fees paid to the City as of the date that such initiatives and changes adversely impact Franchise fee revenues.

D. Utility Service Provided to the City. No Franchise fee shall be charged to the City for Utility Service provided directly or indirectly to the City for its own consumption, including street lighting service and traffic signal lighting service, unless otherwise directed by the City in writing and in a manner consistent with Company policy.

#### §4.2 Remittance of Franchise Fee.

A. Remittance Schedule. Franchise fee revenues shall be remitted by the Company to the City as directed by the City in monthly installments not more than thirty (30) days following the close of each month.

B. Correction of Franchise Fee Payments. In the event that either the City or the Company discovers that there has been an error in the calculation of the Franchise fee payment to the City, either party shall provide written notice of the error to the other party. Subject to the following sentence, if the party receiving written notice of the error does not agree with the written notice of error, that party may challenge the written notice of error pursuant to Section 4.2.D of this Franchise; otherwise, the error shall be corrected in the next monthly payment. However, if the error results in an overpayment of the Franchise fee to the City, and said overpayment is in excess of Five Thousand Dollars (\$5,000.00), correction of the overpayment by the City shall take the form of a credit against future Franchise fees and shall be spread over the same period the error was undiscovered or the City shall make a refund payment to the Company. If such period would extend beyond the term of this Franchise, the Company may elect to require the City to provide it with a refund instead of a credit, with such refund to be spread over the same period the error was undiscovered, even if the refund will be paid after the termination date of this Franchise. All Franchise fee underpayments shall be corrected in the next monthly payment, together with interest computed at the rate set by the PUC for customer security deposits held by the Company, from the date when due until the date paid. Subject to the terms of the Tariffs, in no event shall either party be required to fund or refund more than five (5) years of any overpayment or underpayment made as a result of a Company error which occurred more than five (5) years prior to the discovery of the error.

C. Audit of Franchise Fee Payments.

(1) At the request of the City, every three (3) years commencing at the end of the third year of this Franchise, the Company shall conduct an internal audit, in accordance with the Company's auditing principles and policies that are applicable to electric and gas utilities that are developed in accordance with the Institute of Internal Auditors, to investigate and determine the correctness of the Franchise fee paid to the City. Such audit shall be limited to the previous three (3) calendar years. The Company

shall provide a written report to the City Clerk summarizing the audit procedures followed along with any potential findings.

(2) If the City disagrees with the results of the audit, and if the parties are not able to informally resolve their differences, the City may conduct its own audit at its own expense, in accordance with generally accepted auditing principles applicable to electric and gas utilities, and the Company shall cooperate by providing the City's auditor with non-confidential information that would be required to be disclosed under applicable state sales and use tax laws and applicable PUC rule and regulations.

(3) If the results of a City audit conducted pursuant to subsection C(2) concludes that the Company has underpaid the City by two percent (2%) or more, in addition to the obligation to pay such amounts to the City, the Company shall also pay all reasonable costs of the City's audit. The Company shall not be responsible for the costs of the City's audit when the underpayment is caused by errors from information provided by an entity certified by the Colorado Department of Revenue as a "hold harmless entity" or other similar entity recognized by the Department of Revenue.

D. Fee Disputes. Either party may challenge any written notification of error as provided for in Section 4.2.B of this Franchise by filing a written notice to the other party within thirty (30) days of receipt of the written notification of error. The written notice shall contain a summary of the facts and reasons for the party's notice. The parties shall make good faith efforts to resolve any such notice of error before initiating any formal legal proceedings for the resolution of such error.

E. Reports. To the extent allowed by law, upon written request by the City, but not more than once per year, the Company shall supply the City with the names and addresses of registered gas suppliers and brokers of natural gas that utilize Company facilities to sell or distribute natural gas in Colorado. The Company shall not be required to disclose any confidential or proprietary information.

§4.3 Franchise Fee Payment Not in Lieu of Permit or Other Fees. Payment of the Franchise fee does not exempt the Company from any other lawful tax or fee imposed generally upon persons doing business within the City, except that the Franchise fee provided for herein shall be in lieu of any occupation, occupancy or similar tax or fee for the use of City Streets, Public Utility Easements and Other City Property under the terms set forth in this Franchise.

## ARTICLE 5 ADMINISTRATION OF FRANCHISE

§5.1 City Designee. The City Clerk shall designate in writing to the Company an official having full power and authority to administer this Franchise. The City Clerk may also designate one or more City representatives to act as the primary liaison with the Company as to particular matters addressed by this Franchise and shall provide the Company with the names and telephone numbers of said City representatives. The City Clerk may change these designations by providing written notice to the Company. The

City's designee shall have the right, at all reasonable times, to inspect any Company Facilities in City Streets and Other City Property.

§5.2 Company Designee. The Company shall designate a representative to act as the primary liaison with the City and shall provide the City with the name, address, and telephone number for the Company's representative under this Franchise. The Company may change its designation by providing written notice to the City. The City shall use this liaison to communicate with the Company regarding Utility Service and related service needs for City facilities.

§5.3 Coordination of Work.

A. The Company agrees to coordinate its activities in City Streets, Public Utility Easements and Other City Property with the City. The City and the Company will meet annually upon the written request of the City designee to exchange their respective short-term and long-term forecasts and/or work plans for construction and other similar work which may affect City Streets, including but not limited to any planned City Streets paving projects. The City and Company shall hold such meetings as either deems necessary to exchange additional information with a view toward coordinating their respective activities in those areas where such coordination may prove beneficial and so that the City will be assured that all applicable provisions of this Franchise, applicable building and zoning codes, and applicable City air and water pollution regulations are complied with, and that aesthetic and other relevant planning principles have been given due consideration.

B. In addition to the foregoing meetings, the Company and the City agree to use good faith efforts to provide notice to one another whenever a) the Company initiates plans to significantly upgrade its infrastructure within the City, including without limitation the replacement of utility poles and overhead lines; and b) third party applicants within the City initiate private land uses and projects or the City initiates a public project that requires significant upgrade to future gas and/or electric utility development by the Company, in order to allow for mutual City and Company input and consultation for beneficial coordination of activities.

## ARTICLE 6 SUPPLY, CONSTRUCTION, AND DESIGN

§6.1 Purpose. The Company acknowledges the critical nature of the municipal services performed or provided by the City to the Residents that require the Company to provide prompt and reliable Utility Service and the performance of related services for City facilities. The City and the Company wish to provide for certain terms and conditions under which the Company will provide Utility Service and perform related services for the City in order to facilitate and enhance the operation of City facilities. They also wish to provide for other processes and procedures related to the provision of Utility Service to the City.

§6.2 Supply. Subject to the jurisdiction of the PUC, the Company shall take all reasonable and necessary steps to provide a sufficient supply of gas and electricity to Residents at the lowest reasonable cost consistent with reliable supplies.

§6.3 Charges to the City for Service to City Facilities. No charges to the City by the Company for Utility Service (other than gas transportation which shall be subject to negotiated contracts) shall exceed the lowest charge for similar service or supplies provided by the Company to any other similarly situated customer of the Company. The parties acknowledge the jurisdiction of the PUC over the Company's regulated intrastate electric and gas rates. All charges to the City shall be in accord with the Tariffs.

§6.4 Restoration of Service.

A. Notification. The Company shall provide to the City daytime and nighttime telephone numbers of a designated Company representative from whom the City designee may obtain status information from the Company on a twenty-four (24) hour basis concerning interruptions of Utility Service in any part of the City.

B. Restoration. In the event the Company's gas system or electric system within the City, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore such system to satisfactory service within the shortest practicable time, or provide a reasonable alternative to such system if the Company elects not to restore such system.

§6.5 Obligations Regarding Company Facilities.

A. Company Facilities. All Company Facilities within City Streets and Other City Property shall be maintained in good repair and condition.

B. Company Work within the City. All work within City Streets and Other City Property performed or caused to be performed by the Company shall be done:

- (1) in a high-quality manner that is in accordance with Industry Standards;
- (2) in a timely and expeditious manner;
- (3) in a manner that reasonably minimizes inconvenience to the public;
- (4) in a cost-effective manner, which may include the use of qualified contractors; and
- (5) in accordance with all applicable laws, ordinances and regulations.

C. No Interference with City Facilities. Company Facilities shall not unreasonably interfere with any City facilities, including without limitation water facilities, sanitary or storm sewer facilities, communications facilities, or other City uses of the Streets, Public Utility Easements or Other City Property. Company Facilities shall be installed and maintained in City Streets and Other City Property so as to reasonably minimize

interference with other property, trees, and other improvements and natural features in and adjoining the Streets and Other City Property in light of the Company's obligation under Colorado law to provide safe and reliable utility facilities and services.

D. Permit and Inspection. The installation, renovation, and replacement of any Company Facilities in the City Streets or Other City Property by or on behalf of the Company shall be subject to permit, inspection and approval by the City in accordance with applicable laws. Such permitting, inspection and approval may include, but shall not be limited to, the following matters: location of Company Facilities, cutting and pruning of trees and shrubs and disturbance of pavement, sidewalks and surfaces of City Streets or Other City Property; provided, however, the Company shall have the right to cut, prune, and/or remove vegetation in accordance with its standard vegetation management requirements and procedures. The Company agrees to cooperate with the City in conducting inspections and shall promptly perform any remedial action lawfully required by the City pursuant to any such inspection.

E. Compliance. Subject to the provisions of Section 3.3, the Company and all of its contractors shall comply with the requirements of applicable municipal laws, ordinances, regulations, permits, and standards lawfully adopted, including but not limited to requirements of all building and zoning codes, and requirements regarding curb and pavement cuts, excavating, digging, and other construction activities. The Company shall use commercially reasonable efforts to require that its contractors working in City Streets and Other City Property hold the necessary licenses and permits required by law.

#### §6.6 As-Built Drawings.

A. Within thirty (30) days after written request of the City designee, but no sooner than fourteen (14) days after project completion, the Company shall commence its internal process to permit the Company to provide, on a project by project basis, as-built drawings of any Company Facility installed within the City Streets or contiguous to the City Streets. The Company shall provide the requested documents no later than forty-five (45) days after it commences its internal process.

B. If the requested information must be limited or cannot be provided pursuant to regulatory requirements or Company Tariffs, the Company shall promptly notify the City of such restrictions. The City reserves the right to challenge the Company's position. The City acknowledges that the requested as-built drawings are confidential information of the Company and the Company asserts that disclosure to members of the public would be contrary to the public interest. Accordingly, the City shall deny the right of inspection of the Company's confidential information as set forth in C.R.S. §24-72-204(3)(a)(IV), as may be amended from time to time. If an Open Records Act request is made by any third party for confidential or proprietary information that the Company has provided to the City pursuant to this Franchise, the City will immediately notify the Company of the request and shall allow the Company to defend such request at its sole expense, including filing a legal action in any court of competent jurisdiction to prevent disclosure of such information. In any such legal action the Company shall join the person requesting the information and the City. In no circumstance shall the City provide to any third-party

confidential information provided by the Company pursuant to this Franchise without first conferring with the Company. Provided the City complies with the terms of this Section, the Company shall defend, indemnify and hold the City harmless from any claim, judgment, costs or attorney fees incurred in participating in such proceeding.

C. As used in this Section, as-built drawings refers to hard copies of the facility drawings as maintained in the Company's business records and shall not include information maintained in the Company's geographical information system. The Company shall not be required to create drawings or data that do not exist at the time of the request.

§6.7 Excavation and Construction. Subject to section 3.3, the Company shall be responsible for obtaining, paying for, and complying with all applicable permits, in the manner required by the laws, ordinances, and regulations of the City. Although the Company shall be responsible for obtaining and complying with the terms of such permits when performing Relocations requested by the City under Section 6.8 of this Franchise and undergrounding requested by the City under Article 11 of this Franchise, the City will not require the Company to pay the fees charged for such permits. Upon the Company submitting a construction design plan, the City shall promptly and fully advise the Company in writing of all requirements for restoration of City Streets in advance of Company excavation projects in City Streets, based upon the design submitted, if the City's restoration requirements are not addressed in publicly available standards.

§6.8 Restoration. Subject to the provisions of Section 6.5.D, when the Company does any work in or affecting the City Streets or Other City Property, it shall, at its own expense, promptly remove any obstructions placed thereon or therein by the Company and restore such City Streets or Other City Property to a condition that is substantially the same as existed before the work, and that meets applicable City standards. If weather or other conditions do not permit the complete restoration required by this Section, the Company may with the approval of the City, temporarily restore the affected City Streets or Other City Property, provided that such temporary restoration is not at the City's expense and provided further that the Company promptly undertakes and completes the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Upon the request of the City, the Company shall restore the Streets or Other City Property to a better condition than existed before the Company work was undertaken, provided that the City shall be responsible for any incremental costs of such restoration not required by then-current City standards, and provided the City seeks and/or grants, as applicable, any additional required approvals. If the Company fails to promptly restore the City Streets or Other City Property as required by this Section, and if, in the reasonable discretion of the City immediate action is required for the protection of public health, safety or welfare, the City may restore such Streets or Other City Property or remove the obstruction therefrom; provided however, City actions do not interfere with Company Facilities. The Company shall be responsible for the actual cost incurred by the City to restore such City Streets or Other City Property or to remove any obstructions therefrom. In the course of its restoration of City Streets, Public Utility Easements or Other City Property under this Section, the City shall not perform work on Company Facilities unless specifically authorized by the Company in writing on

a project-by-project basis and subject to the terms and conditions agreed to in such authorization.

§6.9 Relocation of Company Facilities.

A. Relocation Obligation. The Company shall temporarily or permanently remove, relocate, change or alter the position of any Company Facility (collectively, “Relocate(s),” “Relocation(s),” or “Relocated”) in (i) City Streets, or (ii) in Other City Property at no cost or expense to the City whenever the City determines such Relocation is necessary for the completion of any Public Project. In the case of Relocation that is necessary for the completion of any Public Project in a Public Utility Easement that is not in a City Street, the Company shall not be responsible for any relocation costs. For all Relocations, the Company and the City agree to cooperate on the location and Relocation of the Company Facilities in the City Streets or Other City Property in order to achieve Relocation in the most efficient and cost-effective manner possible. Notwithstanding the foregoing, once the Company has Relocated any Company Facility at the City’s direction, if the City requests that the same Company Facility be Relocated within two (2) years, the subsequent Relocation shall not be at the Company’s expense. Nothing provided herein shall prevent the Company from recovering its Relocation costs and expenses from third parties.

B. Private Projects. Subject to Section 6.9.F, the Company shall not be responsible for the expenses of any Relocation required by Private Projects, and the Company has the right to require the payment of estimated Relocation expenses from the party causing, or responsible for, the Relocation before undertaking the Relocation.

C. Relocation Performance. The Relocations set forth in Section 6.9.A of this Franchise shall be completed within a reasonable time, not to exceed one hundred twenty (120) days from the later of the date on which the City designee requests, in writing, that the Relocation commence, or the date when the Company is provided all Supporting Documentation. The Company shall receive an extension of time to complete a Relocation where the Company’s performance was delayed due to Force Majeure or the failure of the City to provide adequate Supporting Documentation. The Company has the burden of presenting evidence to reasonably demonstrate the basis for the delay. Upon written request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold or condition any such extension.

D. City Revision of Supporting Documentation. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding Company Facility Relocation shall be deemed good cause for a reasonable extension of time to complete the Relocation under this Franchise.

E. Completion. Each such Relocation shall be complete only when the Company actually Relocates the Company Facilities, restores the Relocation site in accordance with

Section 6.7 of this Franchise or as otherwise agreed with the City, and properly abandons on site all unused Company Facilities, equipment, material and other impediments.

F. Scope of Obligation. Notwithstanding anything to the contrary in this Franchise, the Company shall not be required to Relocate any Company Facilities from property (a) owned by the Company in fee; or (b) in which the Company has a property right, grant or interest, including without limitation an easement but excluding Public Utility Easements, which are addressed in Section 6.9.A.

G. Underground Relocation. Underground Company Facilities shall be Relocated underground. Above ground Company Facilities shall be Relocated above ground unless the Company is paid for the incremental amount by which the underground cost would exceed the above ground cost of Relocation, or the City requests that such additional incremental cost be paid out of available funds under Article 11 of this Franchise.

H. Coordination.

(1) When requested in writing by the City designee or the Company, representatives of the City and the Company shall meet to share information regarding anticipated projects which will require Relocation of Company Facilities in City Streets and Other City Property. Such meetings shall be for the purpose of minimizing conflicts where possible and to facilitate coordination with any reasonable timetable established by the City for any Public Project.

(2) The City shall make reasonable best efforts to provide the Company with two (2) years advance notice of any planned Street repaving. The Company shall make reasonable best efforts to complete any necessary or anticipated repairs or upgrades to Company Facilities that are located underneath the Streets within the two-year period if practicable.

I. Proposed Alternatives or Modifications. Upon receipt of written notice of a required Relocation, the Company may propose an alternative to or modification of the Public Project requiring the Relocation in an effort to mitigate or avoid the impact of the required Relocation of Company Facilities. The City shall in good faith review the proposed alternative or modification. The acceptance of the proposed alternative or modification shall be at the discretion of the City. In the event the City accepts the proposed alternative or modification, the Company agrees to promptly compensate the City for all additional costs, expenses or delay that the City reasonably determines resulted from the implementation of the proposed alternative.

§6.10 New or Modified Service Requested by City. The conditions under which the Company shall install new or modified Utility Service to the City as a customer shall be governed by this Franchise and the Company's Tariffs and the Tariffs shall control in the event of a conflict.

§6.11 Service to New Areas. If the territorial boundaries of the City are expanded during the term of this Franchise, the Company shall, to the extent permitted by law, extend service

to Residents in the expanded area at the earliest practicable time if the expanded area is within the Company's PUC-certificated service territory. Service to the expanded area shall be in accordance with the terms of the Tariffs and this Franchise, including the payment of Franchise fees.

§6.12 City Not Required to Advance Funds. Upon receipt of the City's authorization for billing and construction, the Company shall install Company Facilities to provide Utility Service to the City as a customer, without requiring the City to advance funds prior to construction. The City shall pay for the installation of Company Facilities once completed in accordance with the Tariffs. Notwithstanding anything to the contrary, the provisions of this Section to allow the City to not advance funds prior to construction shall apply unless prohibited by PUC rules or the Tariffs. The parties agree that as of the date of execution of this Agreement, Company Tariff Sheet R120 governs the terms of installation of Company Facilities for the City and allows installation of Company Facilities without the City advancing funds prior to construction.

§6.13 Technological Improvements. The Company shall use its best efforts to incorporate, as soon as practicable, technological advances in its equipment and service within the City when such advances are technically and economically feasible and are safe and beneficial to the City and its Residents.

## ARTICLE 7 RELIABILITY

§7.1 Reliability. The Company shall operate and maintain Company Facilities efficiently and economically, in accordance with Industry Standards, and in accordance with the standards, systems, methods and skills consistent with the provision of adequate, safe and reliable Utility Service.

§7.2 Franchise Performance Obligations. The Company recognizes that, as part of its obligations and commitments under this Franchise, the Company shall carry out each of its performance obligations in a timely, expeditious, efficient, economical and workmanlike manner.

§7.3 Reliability Reports. Upon written request, the Company shall provide the City with a report regarding the reliability of Company Facilities and Utility Service.

## ARTICLE 8 COMPANY PERFORMANCE OBLIGATIONS

§8.1 New or Modified Service to City Facilities. In providing new or modified Utility Service to City facilities, the Company agrees to perform as follows:

A. Performance. The Company shall complete each project requested by the City within a reasonable time. Other than traffic facilities, where the Company's performance obligations are governed by Tariff, the parties agree that a reasonable time shall not

exceed one hundred eighty (180) days from the date upon which the City designee makes a written request and provides the required Supporting Documentation for all Company Facilities other than traffic facilities, including a copy to the Area Manager as designated in Section 21.4 below. Provided that the City provides the Company's designated representative with a copy of the Supporting Documentation, the Company shall notify the City within twenty (20) days of receipt of the request if the Supporting Documentation is sufficient to complete the project. The Company shall be entitled to an extension of time to complete a project where the Company's performance was delayed due to Force Majeure. Upon request of the Company, the City designee may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

B. City Revision of Supporting Documentation. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or substantially change its plans regarding new or modified service to City facilities shall be deemed good cause for a reasonable extension of time to complete the Relocation under this Franchise.

C. Completion/Restoration. Each such project shall be complete only when the Company actually provides the service installation or modification required, restores the project site in accordance with the terms of this Franchise or as otherwise agreed with the City and properly abandons on site any unused Company Facilities, equipment, material and other impediments.

§8.2 Adjustments to Company Facilities. The Company shall perform adjustments to Company Facilities that are consistent with Industry Standards, including manhole rings and other appurtenances in Streets and Other City Property, to accommodate City Street maintenance, repair and paving operations at no cost to the City. In providing such adjustments to Company Facilities, the Company agrees to perform as follows:

A. Performance. The Company shall complete each requested adjustment within a reasonable time, not to exceed thirty (30) days from the date upon which the City makes a written request and provides to the Company all information reasonably necessary to perform the adjustment. The Company shall be entitled to an extension of time to complete an adjustment where the Company's performance was delayed due to Force Majeure. Upon request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

B. Completion/Restoration. Each such adjustment shall be complete only when the Company actually adjusts and, if required, readjusts, Company Facilities to accommodate City operations in accordance with City instructions following City paving operations.

C. Coordination. As requested by the City or the Company, representatives of the City and the Company shall meet regarding anticipated Street maintenance operations which will require such adjustments to Company Facilities in Streets or Other City

Property. Such meetings shall be for the purpose of coordinating and facilitating performance under this Section.

§8.3 Third Party Damage Recovery.

A. Damage to Company Interests. If any individual or entity damages any Company Facilities, to the extent permitted by law the City will notify the Company of any such incident of which it has knowledge and will provide to the Company within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.

B. Damage to Company Property for which the City is Responsible. If any individual or entity damages any Company Facilities for which the City is obligated to reimburse the Company for the cost of the repair or replacement, to the extent permitted by law, the Company will notify the City of any such incident of which it has knowledge and will provide to the City within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.

C. Meeting. The Company and the City agree to meet periodically upon written request of either party for the purpose of developing, implementing, reviewing, improving and/or modifying mutually beneficial procedures and methods for the efficient gathering and transmittal of information useful in recovery efforts against third parties for damaging Company Facilities.

ARTICLE 9  
**BILLING AND PAYMENT**

§9.1 Billing for Utility Services.

A. Monthly Billing. Unless otherwise provided in the Tariffs, the rules and regulations of the PUC, or the Public Utility Law, the Company shall render bills monthly to the offices of the City for Utility Service and other related services for which the Company is entitled to payment.

B. Address for Billing. Billings for service rendered during the preceding month shall be sent to the person(s) designated by the City and payment for same shall be made as prescribed in this Franchise and the applicable Tariffs.

C. Supporting Documents. To the extent requested by the City, the Company shall provide all billings and any underlying Supporting Documentation reasonably requested by the City in an editable and manipulatable electronic format that is acceptable to the Company and the City.

D. Annual Meetings. The Company agrees to meet with the City designee on a reasonable basis at the City's request, but no more frequently than once a year, for the purpose of developing, implementing, reviewing, and/or modifying mutually beneficial and acceptable billing procedures, methods, and formats which may include, without

limitation, electronic billing and upgrades or beneficial alternatives to the Company's current most advanced billing technology, for the efficient and cost effective rendering and processing of such billings submitted by the Company to the City.

§9.2 Payment to City. In the event the City determines after written notice to the Company that the Company is liable to the City for payments, costs, expenses or damages of any nature, and subject to the Company's right to challenge such determination, the City may deduct all monies due and owing the City from any other amounts currently due and owing the Company. Upon receipt of such written notice, the Company may request a meeting between the Company's designee and a designee of the City to discuss such determination. The City agrees to attend such a meeting. As an alternative to such deduction and subject to the Company's right to challenge, the City may bill the Company for such assessment(s), in which case, the Company shall pay each such bill within thirty (30) days of the date of receipt of such bill unless it challenges the validity of the charge. If the Company challenges the City determination of liability, the City shall make such payments to the Company for Utility Service received by the City pursuant to the Tariffs until the challenge has been finally resolved.

## ARTICLE 10 USE OF COMPANY FACILITIES

§10.1 City Use of Company Electric Distribution Poles. The City shall be permitted to make use of Company electric distribution poles in the City, subject to the Tariffs, without a use fee for the placement of City equipment or facilities necessary to serve a legitimate police, fire, emergency, public safety or traffic control purpose. The City shall notify the Company in advance and in writing of its intent to use Company distribution poles and the nature of such use unless it is impracticable to provide such advance notice because of emergency circumstances, in which event the City shall provide such notice as soon as practicable. The City shall be responsible for costs associated with modifications to Company electric distribution poles to accommodate the City's use of such Company electric distribution poles and for any electricity used. No such use of Company electric distribution poles may occur if it would constitute a safety hazard or would interfere with the Company's use of Company Facilities. Any such City use must comply with the National Electric Safety Code and all other applicable laws, rules, regulations and Industry Standards.

§10.2 Third Party Use of Company Electric Distribution Poles. If requested in writing by the City, the Company may allow other companies who hold franchises, or otherwise have obtained consent from the City to use the Streets, to utilize Company electric distribution poles in City Streets and Other City Property, subject to the Tariffs, for the placement of their facilities upon approval by the Company and agreement upon reasonable terms and conditions, including payment of fees established by the Company. No such use shall be permitted if it would constitute a safety hazard or would interfere with the Company's use of Company Facilities. The Company shall not be required to permit the use of Company electric distribution poles for the provision of utility service except as otherwise required by law.

§10.3 City Use of Company Transmission Rights-of-Way. The Company shall offer to grant to the City use of transmission rights-of-way which it now, or in the future, owns in fee within the City for trails, parks and open space on terms comparable to those offered to other municipalities; provided, however, that the Company shall not be required to make such an offer in any circumstance where such use would constitute a safety hazard or would interfere with the Company's use of the transmission right-of-way. In order to exercise this right, the City must make specific, advance written request to the Company for any such use and must enter such written agreements as the Company may reasonably require.

§10.4 Emergencies. Upon written request, the Company shall assist the City in developing an emergency management plan that is consistent with Company policies. The City and the Company shall work cooperatively with each other in any emergency or disaster situation to address the emergency or disaster.

## ARTICLE 11 UNDERGROUNDING OF OVERHEAD FACILITIES

§11.1 Underground Electrical Lines in New Areas. Upon payment to the Company of the charges provided in the Tariffs or their equivalent, the Company shall place all newly constructed electrical distribution lines in newly developed areas of the City underground in accordance with applicable laws, regulations and orders of the City. Such underground construction shall be consistent with Industry Standards.

§11.2 Underground Conversion at Expense of Company.

A. Underground Conversion Program. The Company shall budget and allocate an annual amount, equivalent to one percent (1%) of the preceding year's Electric Gross Revenues, for the purpose of undergrounding its existing overhead electric distribution lines in the City in City Streets (excluding alleys and access easements) and Other City Property, as may be requested by the City designee (the "Underground Program"), so long as the underground conversion does not result in end use customers of the Company incurring any costs related to the conversion and does not require the Company to obtain any additional land use rights. If the City requires Relocation of overhead electric lines in the Streets and Other City Property and there is no room to relocate the lines overhead, the Company may relocate the lines underground, and may charge the cost of undergrounding to the Underground Program.

B. Unexpended Portion and Advances. Any unexpended portion of the Underground Program shall be carried over to succeeding years and, in addition, upon request by the City, the Company agrees to advance and expend amounts anticipated to be available under the preceding paragraph for up to three (3) years in advance provided there are at least three (3) years remaining under the term of this Franchise. Any amounts so advanced shall be credited against amounts to be expended in succeeding years. Any funds left accumulated under any prior franchise shall be carried over to this Franchise. Notwithstanding the foregoing, the City shall have no vested interest in monies allocated to the Underground Program and any monies in the Underground Program not expended

at the expiration or termination of this Franchise shall remain the property of the Company. At the expiration or termination of this Franchise, the Company shall not be required to underground any existing overhead facilities pursuant to this Article, but may do so in its sole discretion.

C. System-wide Undergrounding. If, during the term of this Franchise, the Company should receive authority from the PUC to undertake a system-wide program or programs of undergrounding its electric distribution lines system wide, the Company will budget and allocate to the program of undergrounding in the City such amount as may be determined and approved by the PUC, but in no case shall such amount be less than the one percent (1%) of annual Electric Gross Revenues provided above.

D. City Requirement to Underground. In addition to the provisions of this Article, the City may require any above ground Company lines in Streets and Other City Property to be moved underground at the City's expense.

§11.3 Undergrounding Performance. Upon receipt of a written request from the City, the Company shall underground Company Facilities pursuant to the provisions of this Article, in accordance with the procedures set forth in this Section.

A. Estimates. Promptly upon receipt of an undergrounding request from the City and the Supporting Documentation necessary for the Company to design the undergrounding project, including a copy to the Area Manager as designated in Section 21.4 below, the Company shall prepare a detailed, good faith cost estimate of the anticipated actual cost of the requested project for the City to review and, if acceptable to the City, the City will issue a project authorization. The Company shall notify the City within twenty (20) days of receipt of the request if the Supporting Documentation is insufficient to prepare the cost estimate for the project. The City and the Company agree to meet upon the request of either party during the period when the Company is preparing its estimate to discuss all aspects of the project toward the goal of enabling the Company to prepare an accurate cost estimate. At the City's request, the Company will provide all documentation that forms the basis of the estimate that is not proprietary. The Company will not proceed with any requested project until the City has provided a written acceptance of the Company's estimate.

B. Performance. The Company shall complete each undergrounding project requested by the City within a reasonable time considering the size and scope of each project, not to exceed two hundred forty (240) days from the later of the date upon which the City designee makes a written request or the date the City provides to the Company all Supporting Documentation. The Company shall have one hundred twenty (120) days after receiving the City's written request to design project plans, prepare the good faith estimate, and transmit same to the City designee for review. If City approval of the plans and estimate has not been granted, the Company's good faith estimate will be void sixty (60) days after delivery of the plans and estimate to the City designee. If the plans and estimate are approved by the City, the Company shall have one hundred twenty (120) days to complete the project, from the date of the City designee's authorization of the underground project, plus any of the one hundred twenty (120) unused days in preparing

the good faith estimate. At the Company's sole discretion, if the good faith estimate has expired because the City designee has not approved the same within sixty (60) days, the Company may extend the good faith estimate or prepare a new estimate using current prices. The Company shall be entitled to an extension of time to complete each undergrounding project where the Company's performance was delayed due to a Force Majeure condition. Upon written request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

C. City Revision of Supporting Documentation. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding an undergrounding project shall be deemed good cause for a reasonable extension of time to complete the undergrounding project under this Franchise.

D. Completion/Restoration. Each such undergrounding project undertaken pursuant to this Article shall be complete only when the Company actually undergrounds the designated Company Facilities and restores the undergrounding site in accordance with Section 6.7 of this Franchise, or as otherwise agreed with the City. "Unused" for the purposes of this Section shall mean that the Company is no longer using the Company facilities in question and has no plans to use the Company Facilities in the foreseeable future. When performing underground conversions of overhead lines, the Company shall make reasonable efforts consistent with its contractual obligations to persuade joint users of Company distribution poles to remove their facilities from such poles within the time allowed by this Article.

E. Report of Actual Costs. Upon completion of each undergrounding project undertaken pursuant to this Article, the Company shall submit to the City a detailed report of the Company's actual cost to complete the project and the Company shall reconcile this total actual cost with the accepted cost estimate. The report shall be provided within one hundred twenty (120) days after completion of the project and written request from the City.

F. Audit of Underground Projects. The City may require the Company to undertake an independent audit of up to two (2) undergrounding projects in any calendar year. The City shall make any such request in writing within one hundred twenty (120) days of receipt of the report of actual costs, as referenced in Section 11.3.E. Such audits shall be limited to projects completed within twelve (12) months prior to the date when the audit is requested. The cost of any such independent audit shall reduce the amount of the Underground Program balance. The Company shall cooperate with any audit and the independent auditor shall prepare and provide to the City and the Company a final audit report showing the actual costs associated with completion of the project. If a project audit is required by the City, only those actual project costs confirmed and verified by the independent auditor as reasonable and necessary to complete the project shall be charged against the Underground Program balance.

§11.4 Audit of Underground Program. Upon written request, every three (3) years commencing at the end of the third year of this Franchise, the Company shall cause an independent auditor to investigate and determine the correctness of the charges to the Underground Program. Such audits shall be limited to the previous three (3) calendar years. Audits performed pursuant to this Section shall be limited to charges to the Underground Program and shall not include an audit of individual underground projects. If the City has concerns about any material information contained in the audit, the parties shall meet and make good faith attempts to resolve any outstanding issues. The independent auditor shall provide to the City and the Company a written report containing its findings. The Company shall reconcile the Underground Program balance consistent with the findings contained in the independent auditor's written report. The costs of the audit and investigation shall be charged against the Underground Program balance.

§11.5 Cooperation with Other Utilities. When undertaking an undergrounding project the City and the Company shall coordinate with other utilities or companies that have their facilities above ground to attempt to have all facilities undergrounded as part of the same project. When other utilities or companies are placing their facilities underground, to the extent the Company has received prior written notification, the Company shall cooperate with these utilities and companies and undertake to underground Company facilities as part of the same project where financially, technically and operationally feasible. The Company shall not be required to pay for any costs of undergrounding the facilities of other companies or the City.

§11.6 Planning and Coordination of Undergrounding Projects. The City and the Company shall mutually plan in advance the scheduling of undergrounding projects to be undertaken according to this Article as a part of the review and planning for other City and Company construction projects. The City and the Company agree to meet, as required, to review the progress of the current undergrounding projects and to review planned future undergrounding projects. The purpose of such meetings shall be to further cooperation between the City and the Company in order to achieve the orderly undergrounding of Company overhead lines. Representatives of both the City and the Company shall meet periodically to review the Company's undergrounding of Company overhead lines and at such meetings shall review:

- A. Undergrounding, including conversions, Public Projects and replacements that have been accomplished or are underway, together with the Company's plans for additional undergrounding; and
- B. Public Projects anticipated by the City.

ARTICLE 12  
**PURCHASE OR CONDEMNATION**

§12.1 Municipal Right to Purchase or Condemn.

A. Right and Privilege of City. The right and privilege of the City to construct, own and operate a municipal utility, and to purchase pursuant to a mutually acceptable agreement or condemn any Company Facilities located within the territorial boundaries of the City, and the Company's rights in connection therewith, as set forth in applicable provisions of the constitution, statutes and case law of the State of Colorado relating to the acquisition of public utilities, are expressly recognized. The City shall have the right, within the time frames and in accordance with the procedures set forth in such provisions, to condemn Company Facilities, land, rights-of-way and easements now owned or to be owned by the Company located within the territorial boundaries of the City. In the event of any such condemnation, no value shall be ascribed or given to the right to use City Streets or Other City Property granted under this Franchise in the valuation of the property thus sold.

B. Notice of Intent to Purchase or Condemn. The City shall provide the Company no less than one (1) year's prior written notice of its intent to purchase or condemn Company Facilities. Nothing in this Section shall be deemed or construed to constitute a consent by the Company to the City's purchase or condemnation of Company Facilities, nor a waiver of any Company defenses or challenges related thereto.

ARTICLE 13  
**MUNICIPALLY PRODUCED UTILITY SERVICE**

§13.1 Municipally Produced Utility Service.

A. City Reservation. The City expressly reserves the right to engage in the production of utility service to the extent permitted by law. The Company agrees to negotiate in good faith long term contracts to purchase City-generated power made available for sale, consistent with PUC requirements and other applicable requirements. The Company further agrees to offer transmission and delivery services to the City that are required by judicial, statutory and/or regulatory directive and that are comparable to the services offered to any other customer with similar generation facilities.

B. Franchise Not to Limit City's or Company's Rights. Nothing in this Franchise prohibits the City from becoming an aggregator of utility service or from selling utility service to customers should it be permissible under law, nor does it affect the Company's rights and obligations pursuant to any Certificate of Public Convenience and Necessity granted by the PUC.

ARTICLE 14  
**ENVIRONMENT AND CONSERVATION**

§14.1 Environmental Leadership. The City and the Company agree that sustainable development, environmental excellence and innovation shall form the foundation of the Utility Service provided by the Company under this Franchise. The Company agrees to continue to actively pursue reduction of carbon emissions attributable to its electric generation facilities with a rigorous combination of Energy Conservation and Energy Efficiency measures, Clean Energy measures and promoting and implementing the use of Renewable Energy Resources on both a distributed and centralized basis. The Company shall continue to cost-effectively monitor its operations to mitigate environmental impacts; shall meet the requirements of environmental laws, regulations and permits; shall invest in cost-effective, environmentally sound technologies; shall consider environmental issues in its planning and decision making; and shall support environmental research and development projects and partnerships in our communities through various means, including but not limited to corporate giving and employee involvement. The Company shall continue to explore ways to reduce water consumption at its facilities and to use recycled water where feasible. The Company shall continue to work with the U.S. Fish and Wildlife Service to develop and implement avian protection plans to reduce electrocution and collision risks by eagles, raptors and other migratory birds with transmission and distribution lines. If requested in writing by the City on or before December 1<sup>st</sup> of each year, the Company shall provide the City a written report describing its progress in carbon reduction and other environmental efforts, and the parties shall meet at a mutually convenient time and place for a discussion of such. In meeting its obligation under this Section, the Company is not precluded from providing existing internal and external reports that may be used for other reporting requirements.

§14.2 Conservation. The City and the Company recognize and agree that Energy Conservation programs offer opportunities for the efficient use of energy and possible reduction of energy costs. The City and the Company further recognize that creative and effective Energy Conservation solutions are crucial to sustainable development. The Company recognizes and shares the City's stated objectives to advance the implementation of cost-effective Energy Efficiency and Energy Conservation programs that direct opportunities to Residents to manage more efficiently their use of energy and thereby create the opportunity to reduce their energy bills. The Company commits to offer programs that attempt to capture market opportunities for cost-effective Energy Efficiency improvements such as municipal specific programs that provide cash rebates for efficient lighting, energy design programs to assist architects and engineers to incorporate Energy Efficiency in new construction projects, and recommissioning programs to analyze existing systems to optimize performance and conserve energy according to current and future demand side management ("DSM") programs. In doing so, the Company recognizes the importance of (i) implementing cost-effective programs the benefits of which would otherwise be lost if not pursued in a timely fashion; and (ii) developing cost-effective programs for the various classes of the Company's customers, including low-income customers. The Company shall advise the City and its Residents of the availability of assistance that the Company makes available for investments in

Energy Conservation through newspaper advertisements, bill inserts and Energy Efficiency workshops and by maintaining information about these programs on the Company's website. Further, at the City's request, the Company's Area Manager shall act as the primary liaison with the City who will provide the City with information on how the City may take advantage of reducing energy consumption in City facilities and how the City may participate in Energy Conservation and Energy Efficiency programs sponsored by the Company. As such, the Company and the City commit to work cooperatively and collaboratively to identify, develop, implement and support programs offering creative and sustainable opportunities to Company customers and Residents, including low-income customers. The Company agrees to help the City participate in Company programs and, when opportunities exist to partner with others, such as the State of Colorado, the Company will help the City pursue those opportunities. In addition, and in order to assist the City and its Residents' participation in Renewable Energy Resource programs, the Company shall: notify the City regarding eligible Renewable Energy Resource programs; provide the City with technical support regarding how the City may participate in Renewable Energy Resource programs; and advise Residents regarding eligible Renewable Energy Resource programs. Notwithstanding the foregoing, to the extent that any Company assistance is needed to support Renewable Energy Resource Programs that are solely for the benefit of Company customers located within the City, the Company retains the sole discretion as to whether to incur such costs.

§14.3 Continuing Commitment. It is the express intention of the City and the Company that the collaborative effort provided for in this Article continue for the entire term of this Franchise. The City and the Company also recognize, however, that the programs identified in this Article may be for a limited duration and that the regulations and technologies associated with Energy Conservation are subject to change. Given this variability, the Company agrees to maintain its commitment to sustainable development and Energy Conservation for the term of this Franchise by continuing to provide leadership, support and assistance, in collaboration with the City, to identify, develop, implement and maintain new and creative programs similar to the programs identified in this Franchise in order to help the City achieve its environmental goals.

§14.4 PUC Approval. Nothing in this Article shall be deemed to require the Company to invest in technologies or to incur costs that it has a good faith belief the PUC will not allow the Company to recover through the ratemaking process.

## ARTICLE 15 TRANSFER OF FRANCHISE

§15.1 Consent of City Required. The Company shall not transfer or assign any rights under this Franchise to an unaffiliated third party, except by merger with such third party, or, except when the transfer is made in response to legislation or regulatory requirements, unless the City approves such transfer or assignment in writing. The City may impose reasonable conditions upon the transfer, but Approval of the transfer or assignment shall not be unreasonably withheld, conditioned or delayed.

§15.2 Transfer Fee. In order that the City may share in the value this Franchise adds to the Company's operations, any transfer or assignment of rights granted under this Franchise requiring City approval, as set forth herein, shall be subject to the condition that the Company shall promptly pay to the City a transfer fee in an amount equal to the proportion of the City's then-population provided Utility Service by the Company to the then-population of the City and County of Denver provided Utility Service by the Company multiplied by one million dollars (\$1,000,000.00). Except as otherwise required by law, such transfer fee shall not be recovered from a surcharge placed only on the rates of Residents.

## ARTICLE 16 CONTINUATION OF UTILITY SERVICE

§16.1 Continuation of Utility Service. In the event this Franchise is not renewed at the expiration of its term or is terminated for any reason, and the City has not provided for alternative utility service, the Company shall have no obligation to remove any Company Facilities from Streets, Public Utility Easements or Other City Property or discontinue providing Utility Service unless otherwise ordered by the PUC, and shall continue to provide Utility Service within the City until the City arranges for utility service from another provider. The City acknowledges and agrees that the Company has the right to use Streets, Other City Property and Public Utility Easements during any such period. The Company further agrees that it will not withhold any temporary Utility Services necessary to protect the public. The City agrees that in the circumstances of this Article, the Company shall be entitled to monetary compensation as provided in the Tariffs and the Company shall be entitled to collect from Residents and, upon the City's compliance with applicable provisions of law, shall be obligated to pay the City, at the same times and in the same manner as provided in this Franchise, an aggregate amount equal to the amount which the Company would have paid as a Franchise fee as consideration for use of the City's Streets and Other City Property. Only upon receipt of written notice from the City stating that the City has adequate alternative utility service for Residents and upon order of the PUC shall the Company be allowed to discontinue the provision of Utility Service to the City and its Residents.

## ARTICLE 17 INDEMNIFICATION AND IMMUNITY

§17.1 City Held Harmless. The Company shall indemnify, defend and hold the City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of or directly arising from the grant of this Franchise, the exercise by the Company of the related rights, but in both instances only to the extent caused by the Company, and shall pay the costs of defense plus reasonable attorneys' fees. The City shall (a) give prompt written notice to the Company of any claim, demand or lien with respect to which the City seeks indemnification hereunder; and, (b) unless in the City's judgment a conflict of interest may exist between the City and the Company with respect to such claim, demand or lien, shall permit the Company to assume the defense of such claim, demand, or lien with counsel reasonably satisfactory to the City. If such defense is assumed by the Company, the Company shall not be subject to liability

for any settlement made without its consent. If such defense is not assumed by the Company or if the City determines that a conflict of interest exists, the parties reserve all rights to seek all remedies available in this Franchise against each other. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or intentional act or failure to act of the City or any of its officers, agents or employees or to the extent that the City is acting in its capacity as a customer of record of the Company.

§17.2 Immunity. Nothing in this Section or any other provision of this Franchise shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the City may have under the Colorado Governmental Immunity Act (§24-10-101, C.R.S., *et. seq.*) or of any other defenses, immunities, or limitations of liability available to the City by law.

## ARTICLE 18 BREACH

§18.1 Change of Tariffs. The City and the Company agree to take all reasonable and necessary actions to assure that the terms of this Franchise are performed. The Company reserves the right to seek a change in its Tariffs, including but not limited to the rates, charges, terms, and conditions of providing Utility Service to the City and its Residents, and the City retains all rights that it may have to intervene and participate in any such proceedings.

§18.2 Breach.

A. Notice/Cure/Remedies. Except as otherwise provided in this Franchise, if a party (the “Breaching Party”) to this Franchise fails or refuses to perform any of the terms or conditions of this Franchise (a “Breach”), the other party (the “Non-Breaching Party”) may provide written notice to the Breaching Party of such Breach. Upon receipt of such notice, the Breaching Party shall be given a reasonable time, not to exceed thirty (30) days in which to remedy the Breach or, if such Breach cannot be remedied in thirty (30) days, such additional time as reasonably needed to remedy the Breach, but not exceeding an additional thirty (30) day period, or such other time as the parties may agree. If the Breaching Party does not remedy the Breach within the time allowed in the notice, the Non-Breaching Party may exercise the following remedies for such Breach:

(1) specific performance of the applicable term or condition to the extent allowed by law; and

(2) recovery of actual damages from the date of such Breach incurred by the Non-Breaching Party in connection with the Breach, but excluding any special, punitive or consequential damages.

B. Termination of Franchise by City. In addition to the foregoing remedies, if the Company fails or refuses to perform any material term or condition of this Franchise (a “Material Breach”), the City may provide written notice to the Company of such Material Breach. Upon receipt of such notice, the Company shall be given a reasonable time, not to exceed sixty (60) days in which to remedy the Material Breach or, if such Material Breach cannot be remedied in sixty (60) days, such additional time as reasonably needed to remedy the Material Breach, but not exceeding an additional sixty (60) day period, or such other time as the parties may agree. If the Company does not remedy the Material Breach within the time allowed in the notice, the City may, in its sole discretion, terminate this Franchise. This remedy shall be in addition to the City’s right to exercise any of the remedies provided for elsewhere in this Franchise. Upon such termination, the Company shall continue to provide Utility Service to the City and its Residents (and shall continue to have associated rights and grants needed to provide such service) until the City makes alternative arrangements for such service and until otherwise ordered by the PUC and the Company shall be entitled to collect from Residents and, upon the City complying with applicable provisions of law, shall be obligated to pay the City, at the same times and in the same manner as provided in this Franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the City Streets and Other City Property. Unless otherwise provided by law, the Company shall be entitled to collect such amount from Residents.

C. Company Shall Not Terminate Franchise. In no event does the Company have the right to terminate this Franchise.

D. No Limitation. Except as provided herein, nothing in this Franchise shall limit or restrict any legal rights or remedies that either party may possess arising from any alleged Breach of this Franchise.

## ARTICLE 19 AMENDMENTS

§19.1 Proposed Amendments. At any time during the term of this Franchise, the City or the Company may propose amendments to this Franchise by giving thirty (30) days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). However, nothing contained in this Section shall be deemed to require either party to consent to any amendment proposed by the other party.

§19.2 Effective Amendments. No alterations, amendments or modifications to this Franchise shall be valid unless executed in writing by the parties, which alterations, amendments or modifications shall be adopted with the same formality used in adopting this Franchise, to the extent required by law. Neither this Franchise, nor any term herein, may be changed, modified or abandoned, in whole or in part, except by an instrument in writing, and no subsequent oral agreement shall have any validity whatsoever. Any amendment of the Franchise shall become effective only upon the approval of the PUC, if such PUC approval is required.

ARTICLE 20  
**EQUAL OPPORTUNITY**

§20.1 Economic Development. The Company is committed to the principle of stimulating, cultivating and strengthening the participation and representation of persons of color, women and members of other under-represented groups within the Company and in the local business community. The Company believes that increased participation and representation of under-represented groups will lead to mutual and sustainable benefits for the local economy. The Company is committed also to the principle that the success and economic well-being of the Company is closely tied to the economic strength and vitality of the diverse communities and people it serves. The Company believes that contributing to the development of a viable and sustainable economic base among all Company customers is in the best interests of the Company and its shareholders.

§20.2 Employment.

A. Programs. The Company is committed to undertaking programs that identify, consider and develop persons of color, women and members of other under-represented groups for positions at all skill and management levels within the Company.

B. Businesses. The Company recognizes that the City and the business community in the City, including women and minority owned businesses, provide a valuable resource in assisting the Company to develop programs to promote persons of color, women and members of under-represented communities into management positions, and agrees to keep the City regularly advised of the Company's progress by providing the City a copy of the Company's annual affirmative action report upon the City's written request.

C. Recruitment. In order to enhance the diversity of the employees of the Company, the Company is committed to recruiting diverse employees by strategies such as partnering with colleges, universities and technical schools with diverse student populations, utilizing diversity-specific media to advertise employment opportunities, internships, and engaging recruiting firms with diversity-specific expertise.

D. Advancement. The Company is committed to developing a world-class workforce through the advancement of its employees, including persons of color, women and members of under-represented groups. In order to enhance opportunities for advancement, the Company will offer training and development opportunities for its employees. Such programs may include mentoring programs, training programs, classroom training and leadership programs.

E. Non-Discrimination. The Company is committed to a workplace free of discrimination based on race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability or any other protected status in accordance with all federal, state or local laws. The Company shall not, solely because of race, creed, color, religion, gender, sexual orientation, marital status, age, military status, national origin or ancestry, or physical or mental disability, refuse to hire,

discharge, promote, demote or discriminate in matters of compensation, against any person otherwise qualified.

F. Board of Directors. The Company shall identify and consider women, persons of color and other under-represented groups to recommend for its Board of Directors, consistent with the responsibility of boards to represent the interests of the Shareholders, customers and employees of the Company.

### §20.3 Contracting.

A. Contracts. It is the Company's policy to make available to minority and women owned business enterprises and other small and/or disadvantaged business enterprises the maximum practical opportunity to compete with other service providers, contractors, vendors and suppliers in the marketplace. The Company is committed to increasing the proportion of Company contracts awarded to minority and women owned business enterprises and other small and/or disadvantaged business enterprises for services, construction, equipment and supplies to the maximum extent consistent with the efficient and economical operation of the Company.

B. Community Outreach. The Company agrees to maintain and continuously develop contracting and community outreach programs calculated to enhance opportunity and increase the participation of minority and women owned business enterprises and other small and/or disadvantaged business enterprises to encourage economic vitality. The Company agrees to keep the City regularly advised of the Company's programs.

C. Community Development. The Company shall maintain and support partnerships with local chambers of commerce and business organizations, including those representing predominately minority owned, women owned and disadvantaged businesses, to preserve and strengthen open communication channels and enhance opportunities for minority owned, women owned and disadvantaged businesses to contract with the Company.

§20.4 Coordination. City agencies provide collaborative leadership and mutual opportunities or programs relating to City based initiatives on economic development, employment and contracting opportunity. The Company agrees to review Company programs and mutual opportunities responsive to this Article with these agencies, upon their request, and to collaborate on best practices regarding such programs and coordinate and cooperate with the agencies in program implementation.

## ARTICLE 21 MISCELLANEOUS

§21.1 No Waiver. Neither the City nor the Company shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions, to insist upon or to seek compliance with any such terms and conditions.

§21.2 Successors and Assigns. The rights, privileges, and obligations, in whole or in part, granted and contained in this Franchise shall inure to the benefit of and be binding upon the Company, its successors and assigns, to the extent that such successors or assigns have succeeded to or been assigned the rights of the Company pursuant to Article 15 of this Franchise. Upon a transfer or assignment pursuant to Article 15, the Company shall be relieved from all liability from and after the date of such transfer, except as otherwise provided in the conditions imposed by the City in authorizing the transfer or assignment and under state and federal law.

§21.3 Third Parties. Nothing contained in this Franchise shall be construed to provide rights to third parties.

§21.4 Notice. Both parties shall designate from time to time in writing representatives for the Company and the City who will be the persons to whom notices shall be sent regarding any action to be taken under this Franchise. Notice shall be in writing and forwarded by certified mail, reputable overnight courier or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party, delivered in person or by certified mail. Notice shall be deemed received (a) three (3) days after being mailed via the U.S. Postal Service, (b) one (1) business day after mailed if via reputable overnight courier, or (c) upon hand delivery if delivered by courier. Until any such change shall hereafter be made, notices shall be sent as follows:

To the City:

City Clerk  
City of Lone Tree  
9220 Kimmer Drive, Suite 100  
Lone Tree, Colorado 80124

To the Company:

Regional Vice President, Customer and Community Relations  
Public Service Company of Colorado  
P.O. Box 840  
Denver, Colorado 80201

With a copy to:

Legal Department  
Public Service Company of Colorado  
P.O. Box 840  
Denver, Colorado 80201

and

Area Manager  
Public Service Company of Colorado  
P.O. Box 840  
Denver, Colorado 80201

Any request involving any audit specifically allowed under this Franchise shall also be sent to:

Audit Services  
Public Service Company of Colorado  
P.O. Box 840  
Denver, Colorado 80201

§21.5 Examination of Records. The parties agree that any duly authorized representative of the City shall have access to and the right to examine any books, documents, papers, and records of the Company reasonably related to the Company's compliance with the terms and conditions of this Franchise. Information shall be provided within thirty (30) days of any written request. Any books, documents, papers, and records of the Company in any form that are requested by the City, that contain confidential information shall be conspicuously identified as "confidential" or "proprietary" by the Company. In no case shall any privileged communication be subject to examination by the City pursuant to the terms of this Section. "Privileged Communication" means any communication that would not be discoverable due to the attorney client privilege or any other privilege that is generally recognized in Colorado, including but limited to the work product doctrine. The work product doctrine shall include information developed by the Company in preparation for PUC proceedings.

- (1) The City will maintain the confidentiality of the information by keeping it under seal and segregated from information and documents that are available to the public;
- (2) The information shall be used solely for the purpose of determining the Company's compliance with the terms and conditions of this Franchise;
- (3) The information shall only be made available to City employees and consultants who represent in writing that they agree to be bound by the provisions of this subsection;
- (4) The information shall be held by the City for such time as is reasonably necessary for the City to address the Franchise issue(s) that generated the request, and shall be returned to the Company when the City has concluded its use of the information. The parties agree that in most cases, the information should be returned within one hundred twenty (120) days. However, in the event that the information is needed in connection with any action that requires more time, including, but not necessarily limited to litigation, administrative proceedings and/or other disputes, the City

may maintain the information until such issues are fully and finally concluded.

§21.6 Confidential or Proprietary Information. If an Open Records Act (§§24-72-201 *et seq.* C.R.S.) request is made by any third party for confidential or proprietary information that the Company has provided to the City pursuant to this Franchise, the City will promptly notify the Company of the request and shall allow the Company to defend such request at its sole expense, including filing a legal action in any court of competent jurisdiction to prevent disclosure of such information. In any such legal action the Company shall join the person requesting the information and the City. In no circumstance shall the City provide to any third party confidential information provided by the Company pursuant to this Franchise without first conferring with the Company. The Company shall defend, indemnify and hold the City harmless from any claim, judgment, costs or attorney fees incurred in participating in such proceeding. Unless otherwise agreed between the parties, the following information shall not be provided by the Company: confidential employment matters, specific information regarding any of the Company's customers, information related to the compromise and settlement of disputed claims including but not limited to PUC dockets, information provided to the Company which is declared by the provider to be confidential, and which would be considered confidential to the provider under applicable law.

§21.7 List of Utility Property. The Company shall provide the City, upon request not more than once every two (2) years, a list of electric utility-related real property owned in fee by the Company within the County in which the City is located. The list shall include the legal description of the real property, and where available on the deed, the physical street address. If the physical address is not available on the deed, if the City requests the physical address of the real property described in this Section 21.6, to the extent that such physical street address is readily available to the Company, the Company shall provide such address to the City. All such records must be kept for a minimum of three (3) years or such shorter duration if required by Company policy.

§21.8 PUC Filings. Upon written request by the City, the Company shall provide the City non-confidential copies of all applications, advice letters and periodic reports, together with any accompanying non-confidential testimony and exhibits, filed by the Company with the Public Utilities Commission. Notwithstanding the foregoing, notice regarding any gas and electric filings that may affect Utility Service rates in the City shall be sent to the City upon filing.

§21.9 Information. Upon written request, the Company shall provide the City Clerk or the City Clerk's designee with:

- A. A copy of the Company's or its parent company's consolidated annual financial report, or alternatively, a URL link to a location where the same information is available on the Company's website;

B. Maps or schematics indicating the location of specific Company Facilities (subject to City executing a confidentiality agreement as required by Company policy), including gas or electric lines, located within the City, to the extent those maps or schematics are in existence at the time of the request and related to an ongoing project within the City. The Company does not represent or warrant the accuracy of any such maps or schematics; and

C. A copy of any report required to be prepared for a federal or state agency detailing the Company's efforts to comply with federal and state air and water pollution laws.

§21.10 Payment of Taxes and Fees.

A. Impositions. Except as otherwise provided herein, the Company shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises, or imposts, whether general or special, or ordinary or extraordinary, of every name, nature, and kind whatsoever, including all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge against this Franchise ("Impositions"), provided that the Company shall have the right to contest any such Impositions and shall not be in breach of this Section so long as it is actively contesting such Impositions.

B. City Liability. The City shall not be liable for the payment of late charges, interest or penalties of any nature other than pursuant to applicable Tariffs.

§21.11 Conflict of Interest. The parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and the Company further agrees not to hire or contract for services any official, officer or employee of the City to the extent prohibited by law, including ordinances and regulations of the City.

§21.12 Certificate of Public Convenience and Necessity. The City agrees to support the Company's application to the PUC to obtain a Certificate of Public Convenience and Necessity to exercise its rights and obligations under this Franchise.

§21.13 Authority. Each party represents and warrants that except as set forth below, it has taken all actions that are necessary or that are required by its ordinances, regulations, procedures, bylaws, or applicable law, to legally authorize the undersigned signatories to execute this Franchise on behalf of the parties and to bind the parties to its terms. The persons executing this Franchise on behalf of each of the parties warrant that they have full authorization to execute this Franchise. The City acknowledges that notwithstanding the foregoing, the Company requires a Certificate of Public Convenience and Necessity from the PUC in order to operate under the terms of this Franchise.

- §21.14 Severability. Should any one or more provisions of this Franchise be determined to be unconstitutional, illegal, unenforceable or otherwise void, all other provisions nevertheless shall remain effective; provided, however, to the extent allowed by law, the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft one or more substitute provisions that will achieve the original intent of the parties hereunder.
- §21.15 Force Majeure. Neither the City nor the Company shall be in breach of this Franchise if a failure to perform any of the duties under this Franchise is due to Force Majeure, as defined herein.
- §21.16 Earlier Franchises Superseded. This Franchise shall constitute the only franchise between the City and the Company related to the furnishing of Utility Service, and it supersedes and cancels all former franchises between the parties hereto.
- §21.17 Titles Not Controlling. Titles of the paragraphs herein are for reference only, and shall not be used to construe the language of this Franchise.
- §21.18 Applicable Law. Colorado law shall apply to the construction and enforcement of this Franchise. The parties agree that venue for any litigation arising out of this Franchise shall be in the District Court for Douglas County, State of Colorado.
- §21.19 Payment of Expenses Incurred by City in Relation to Franchise Agreement. The Company shall pay for expenses reasonably incurred by the City for the adoption of this Franchise, limited to the publication of notices, publication of ordinances, and photocopying of documents and other similar expenses.
- §21.20 Costs of Compliance with Franchise. The parties acknowledge that PUC rules, regulations and final decisions may require that costs of complying with certain provisions of this Franchise be borne by customers of the Company who are located within the City.
- §21.21 Conveyance of City Streets, Public Utility Easements or Other City Property. In the event the City vacates, releases, sells, conveys, transfers or otherwise disposes of a City Street, or any portion of a Public Utility Easement or Other City Property in which Company Facilities are located, the City shall reserve an easement in favor of the Company over that portion of the Street, Public Utility Easement or Other City Property in which such Company Facilities are located. The Company and the City shall work together to prepare the necessary legal description to effectuate such reservation. For the purposes of Section 6.8.A of this Franchise, the land vacated, released, sold, conveyed, transferred or otherwise disposed of by the City shall no longer be deemed to be a Street or Other City Property from which the City may demand the Company temporarily or permanently Relocate Company Facilities at the Company's expense.

(Signature page follows.)



The Honorable Jacqueline A. Millet  
Mayor, City of Lone Tree  
9220 Kimmer Drive, Suite 100  
Lone Tree, Colorado 80124

January \_\_, 2017

Dear Mayor Millet:

The purpose of this letter is to set forth several issues of understanding between Public Service Company of Colorado, a Colorado corporation (hereinafter, "PSCo") and the City of Lone Tree, Colorado (hereinafter, "the City") that are in addition to the Franchise Agreement to be adopted by ordinance on or about \_\_\_\_\_ (hereinafter, "the Franchise"). These items have been negotiated in good faith, agreed to as part of the franchise renewal process and specifically relate to the unique issues that exist in the City.

- A. **Underground Conversion at the Expense of PSCo:** Underground conversion is addressed in Section 11.2 of the Franchise. PSCo has requested that the City agree to substitute references to "Distribution Facilities" (a defined term) with "distribution lines" (an undefined term) in Section 11.2. Given that there is only one area within the City that does not contain underground Facilities or is in the process of being undergrounded, the City has agreed to limit the applicability of the underground conversion program to existing overhead "lines" as opposed to existing overhead Distribution Facilities.
- B. **Contingency Fee Audits:** The City and PSCo (referenced as the "parties") were not able to come to agreement on language proposed by PSCo related to audits of franchise obligations conducted by third parties retained by the City, whereby the auditor is to be compensated on a contingency fee basis. The parties have agreed, at the City's request, not to include any such language in the Franchise. The parties agree however, that if, at some future date, the City decides to audit financial obligations of the Franchise, whereby the auditor is to be compensated based upon a contingency fee, PSCo retains all rights to challenge the propriety of such an audit and compensation structure on any ground. It is PSCo's position that such contingency audits are unethical and PSCo has a policy of not allowing contingency audits. Likewise, the City retains all rights it may have to support whatever compensation structure it may be proposing for its auditor at such time.

Sincerely,

**Public Service Company of Colorado, Inc.**

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By: Jerome Davis

Its: Regional Vice President, Customer and Community Relations

Date: \_\_\_\_\_

Acknowledged and agreed to this \_\_\_\_ day of \_\_\_\_\_, 2017.

**City of Lone Tree, Colorado**

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By: Jacqueline A. Millet

Its: Mayor

Date: \_\_\_\_\_