

**New Castle Town Council Regular Meeting
Tuesday May 7, 2024, 7:00 PM**

Call to Order

Mayor Art Riddile called the meeting to order at 7:00 p.m.

Pledge of Allegiance

Roll Call

Present Councilor Carey
 Mayor Pro Tem Hazelton (took over 10:05pm)
 Mayor A. Riddile (left at 10:05pm)
 Councilor Copeland (appeared by ZOOM)
 Councilor Leland
 Councilor G Riddile

Absent Councilor Mariscal

Also present at the meeting were Town Administrator Dave Reynolds, Town Clerk Mindy Andis, Town Treasurer Viktoriya Ehlers, Assistant Town Attorney Haley Carmer, Town Planner Paul Smith, and members of the public.

MOTION: Mayor Art Riddile made a motion to excuse Councilor Mariscal's absence. Councilor Hazelton seconded the motion and it passed unanimously.

Meeting Notice

Clerk Andis verified that her office gave notice of the meeting in accordance with resolution TC 2024-1.

Conflicts of Interest

Councilor G. Riddile he would be recusing himself from item I. The discussion regarding the sale of the 6th Street lot.

Agenda Changes

There were no agenda changes.

Citizen Comments on Items not on the Agenda

New Castle resident Patrick Boas said he had concerns of water line break on his street and nothing was going to be done until tomorrow.

Consultant Reports

Consultant Attorney –present for agenda items only.
Consultant Engineer – not present

Items for Consideration

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Proclamation Honoring the Coal Ridge High School Coed Cheer Team

Mayor A. Riddile read the proclamation into the record.

Proclamation Historic Preservation Month

Mayor A. Riddile read the proclamation into the record.

Proclamation Municipal Clerks' Week

Mayor A. Riddile read the proclamation into the record.

Consider Appointment of Kendall Bakich to the Climate and Environment Commission (CEC)

Councilor Carey introduces Kendall Bakich. Councilor Carey said she works for Colorado Parks and Wildlife, and she is a fish biologist. Councilor Carey said she would be a great fit for the commission.

MOTION: Councilor Carey made a motion to appoint Kendall Bakich to the Climate and Environment Commission. Councilor G. Riddile seconded the motion and it passed unanimously.

Recess the Town Council Meeting, Convene the Local Liquor Licensing Authority

MOTION: Councilor G. Riddile made a motion to recess the Town Council Meeting and Convene the Local Liquor Licensing Authority. Councilor Carey seconded the motion and it passed unanimously.

Consider a Special Events Liquor License from the Town of New Castle for the Rides & Reggae Event on August 2, 2024 and August 3, 2024

Town Clerk Mindy Andis said The Town of New Castle through its representative Adam Cornely requests that the Town of New Castle obtain a special events liquor license for the New Castle Trails Rides & Reggae Event, located in VIX Ranch Park, on Friday, August 2, and Saturday, August 3, 2024. She said if council's consensus is to approve the attached application for a special event liquor permit for the Town of New Castle/New Castle Trails, the clerk's office staff recommends that council consider the following conditions: **1)** That although the application requests a permit time until 11:00 p.m. on August 2 and 4, 2024, staff recommends alcohol be served only until 10:30 p.m., and alcohol be allowed on premises until 11:00 p.m. Staff also suggests that a 100% ID check be conducted, and that wristbands or handstamps be provided to guests over the legal drinking age of 21. **2)** Currently, all of the representatives or members of RFMBA/New Castle Trails SafeServ (TIPS) certificates have expired and should be recertified. **3)** Staff notes that Garfield County Public Health requires an

event plan review application/approval be completed. Staff suggest that New Castle Trails complete the application and submit it since they are the event coordinators.

4) Staff further suggests that approval from Garfield County Public Health must be submitted to the clerk’s office before a liquor license may be issued.

Clerk Andis said Town Administrator Dave Reynolds filed the application on behalf of the Town of New Castle and New Castle Trails through its representative Adam Cornely on March 8, 2024, which is acceptable by the State Liquor Code. The public hearing has been properly noticed. The application is properly completed.

Mayor A. Riddile opened the public hear at 7:30pm. There were no public comments and the public hear hearing was closed at 7:31pm.

Mr. Graham Riddile representative for RFMBA/New Castle Trails said that he and Adam Cornley would be taking the TIPS training on Thursday, May 9, 2024, and would provide the certificates to Clerk Andis. He also said that he would provide food truck information and food menu to Clerk Andis once they have made the decision.

MOTION: Councilor Hazelton made a motion to approve the special events liquor license from the Town of New Castle for the New Castle Rides & Reggae event on August 2, 2024, and August 3, 2024, and that service hours will be as stated in the application. Councilor Copeland seconded the motion and it passed unanimously.

Adjourn the Local Liquor Licensing Authority, Reconvene the Town Council Meeting

MOTION: Councilor Hazelton made a motion to recess the Local Liquor Licensing Authority and Convene the Town Council Meeting. Councilor G. Riddile seconded the motion and it passed unanimously.

Consider Resolution TC 2024-12, A Resolution of the New Castle Town Council Recommending Approval of a Conditional Use Permit for Mobile Vending Carts or Stands (I.E., Food Trucks) on Property Located in the C-1 Zone District

Planner Paul Smith reviewed his staff report with the council.

I. Background:

The Applicant proposes the use of mobile food vendors for the property located at 589 W Main St. in downtown New Castle. “Mobile vending carts or stands,” are listed as conditional uses in the Commercial C-1 district (MC Section 17.36.050). There are currently no conditional use permits for mobile food vendors in New Castle, except temporary permits issued during organized events in public open space such as Burning Mountain Park or VIX Park.

The application submittal, provides context for the request: The applicant is currently repurposing the existing “Texaco” structure for a brewery and tavern. Presently no bona fide restaurant is anticipated on the premises but, per state statue, food will be available for purchase

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within the brewery itself or from the proposed mobile vendors. A small music venue is also being considered for the front exterior sitting area. Exhibit A, shows the proposed food truck locations positioned directly west of the existing building.

On April 10th, 2024 the Planning Commission approved PZ 2024-2 recommending conditional approval of up two (2) mobile food vendors on the premises to improve dining options and provide a rotating selection of food options for patrons of the brewery. Colorado Drifters anticipates having at least one food truck regularly available for breakfast and dinner during the week and implementing a lunch option on a later date. The food truck/trailer location will be prepped and ready by July 2024. No more than two (2) food trucks would be in operation on the premises at any one time.

As a conditional use application, Town Council is required within sixty (60) days from the date of the Planning Commission's written decision, or within such time as is mutually agreed by Council and the Applicant, to approve the application, with or without conditions, or deny the application.

Approval Criteria: An approved application shall:

- 1.) be eligible for conditional review under § 17.84.040;
- 2.) be generally compatible with adjacent land uses;
- 3.) meet all requirements of § 17.84.020 of the Code, is in compliance with Title 17 of the Code, and minimizes potential adverse impact of the conditional use on adjacent properties and traffic flow;
- 4.) be consistent with the comprehensive plan; and
- 5.) evidence that the Town has the capacity to serve the proposed use with water, sewer, fire, and police protection.

II. Application Requirements:

The purpose of a conditional use permit is to determine if the nature of the proposed use is appropriate for the location and character of surrounding land uses and poses little negative impact to the health and wellbeing of New Castle residents.

1. Site Plan:

- a. *Adjacent land uses and location of adjacent structures;*

Land uses surrounding the property vary. Single-family homes exist to the north across US 6 and immediately to the east. The Town's public parking lot ("Kamm Lot") is found west off of Kamm Ave. To the south, the property is separated from the railroad tracks by an alleyway. Elsewhere in the vicinity are a restaurant, a hotel, and the Town's sewer treatment facility.

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Staff Comment – The C-1 zone allows for a diverse mix of businesses and services, including restaurants. Though food trucks operate similarly to restaurants, they are unique by virtue of their outdoor service component. Food trucks at the proposed location are generally consistent with the C-1 zoning but, like any establishment, may be prone to adverse effects on the immediate surroundings if not properly managed. Therefore, compliance with the attached performance standards will be enforced throughout the life of the CUP.

b. Boundary and size of lot;

589 W Main Street is 100ftx100ft (about twice the area of a basketball court). The Applicant plans for the mobile food vendors to be situated on the southwest corner of the property at a right angle. The vendors have been purposely located off the main corner of Kamm Ave. & US 6 in order to preserve the line of sight for vehicle and pedestrian safety (See Municipal Code Section 17.72.110). Note also that the submitted site plan shows the food truck footprint only, and omits generators, signage, tables or other accessory items common with these establishments.

Staff Comment – Positioning the vendors on the southwest corner of the lot will help limit the impacts of light, sound, and smells on neighboring residential properties. The food trucks will also be set back from the existing building a minimum of 10ft for life safety. Staff further recommends, instead of a fixed location to the west side of the building, that a 20-25 ft wide parking envelope be considered on the south and west property boundaries. This alternative will provide flexibility of service for both larger events and/or patio dining in the rear of the property. The Applicant is still finalizing plans for the brewery remodel, including outdoor dining. It may be helpful for the Applicant to specify the remaining use of the outdoor space so that Council may ascertain whether the lot size is adequate for the concurrent operation of the brewery and two mobile food trucks.

c. Building location, height and setbacks;

The setbacks for C-1 zone are zero feet in the front/sides and five (5) feet in the rear. Food trucks/trailers will be parked along the side or rear property lines. Also, the Texaco building is approximately 18 ft tall whereas a typical food truck/trailer is about 10 ft tall.

Staff Comment – Mobile food vendors range in size. Staff recommends retaining the aesthetic of downtown by restricting the truck/trailer heights to no more than that of the existing building. If operations are kept to the perimeter of the property, Staff believes the trucks/trailers will act as an enclosure that enhances the dining appeal and safety

of the rear (south) space.

d. Off-street parking and loading areas;

Off-street parking is not a requirement of the C-1 zone district and is therefore not depicted on the site plan. Off-street parking is provided in the nearby Kamm lot (10 total spaces of which two are EV & one is veteran parking). On-street parking is limited to only those spaces on US 6. Public Works is agreeable to two, 60-minute loading spaces on the east side of Kamm Ave. south of the 30' vision triangle. No additional loading areas were considered relevant.

Staff Comment – Kamm Avenue is roughly 34ft wide from face of curb-to-face of curb. Assuming two 12 ft drive lanes, 10 ft may be available for vehicle parking along the street's east side. These few spaces may be advantageous for temporary loading and stocking of the trucks/trailers. Loading areas may also be available in the rear of the lot. Staff recommends that the Applicant specify the use of the south side of the lot (patio seating, food vendors, parking, temp loading, etc.) to aid Council's assessment.

The trucks/trailers themselves may access the premises from either Kamm Ave. or the alleyway. However, other than temporary loading from Kamm Ave., in no instance shall vendors use the public rights-of-way for general business operations unless approved as part of the CUP.

e. Points of ingress and egress;

The property will have an open site plan for dining. Patrons will generally access food vendors from the front (north) side of the premises with some emerging from the rear building exit. An unobstructed means of egress path from the brewery building is expected during all hours.

Staff Comment – In terms of safety and aesthetics, Staff preferences the general southwest lot area for vendor operations. It is possible to stage on the north side of the property, however, this area was rendered less desirable to the Applicant. The mobile food vendors will be prohibited from parking in a manner which interferes with the exit pathway from the south exit of the existing building.

f. Service and refuse areas;

The Applicant has verbally committed to locating trash receptacle on the southeast corner of the lot as depicted on the site plan. All food preparation is expected to occur within the trucks/trailers or off-site in a commissary kitchen.

Staff Comment – Trash pick-up should take into consideration refuse volumes from both brewery and food trucks. Ideally the refuse containers will be located on the southeast corner of the lot to facilitate ease of access for trash collectors and help with curb appeal. Grease or extraneous food waste produced by the mobile food vendors shall be disposed off-site as regulated by Garfield County Public Health and Human Services.

g. Signs and exterior lighting;

Section 17.40.130 requires that exterior lighting in the C-1 district encourage pedestrian activity and, at the same time, limit lighting trespass. The application does not provide lighting or signage specifics, indicating only that signage and lighting will be mounted to the food trucks.

Staff Comment – Exterior lighting shall be downcast and fully shrouded per dark-sky design specifications. “New Castle will require lighting design that minimizes lighting trespass while meeting appropriate safety standards,” as well as “minimize after-hours business lighting,” (Goal EN-4, Comprehensive Plan pg. 66). Flood lights would typically not be permissible. For signage the proprietor of the truck/trailer will be responsible for a sign permit.

h. Fencing, landscaping and screening;

Town code prohibits (Section 17.40.120) exposed mechanical and electrical equipment from undermining the historic character of the district. The submittal does not indicate locations of auxiliary equipment (e.g. generators, power cords, propane tanks), items often indispensable to the operation of a mobile food vendor. Also, food trucks commonly cordon off space around the vehicle with a combination of cones, ropes, flags, or fencing framing the dining location and buffering patrons from ambient street noise.

Staff Comment – Staff recommends that the Applicant provide means and methods for managing any auxiliary equipment or any other apparatus which may detract from the downtown character.

i. Compliance with performance standards;

Compliance with performance standards is required in the Municipal Code, Section 17.72.090. Performance standards protect the public against nuisances such as smoke, particulate matter, odors, glare, vibration, radiation, electrical disturbances, noise and water pollution. Per Town code (and state statute), the noise produced in a commercial zone shall not exceed the limit of 60 db(A) (i.e. normal conversation volume) during 7am-7pm and 55 db(A) during 7pm to 7am, in commercial zones.

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Staff Comment – The application does not speak to potential noise from generators, fumes from cooking, and exhaust from various equipment. Noise and odors are potential nuisances relevant to this CUP. Staff recommends that the Applicant provide strategies for managing potential generator noise and cooking odors as necessary. The applicant has signed the Performance Standards.

j. Anticipated utility requirements;

Utility requirements of food trucks are normally self-reliant with a generator or battery. In some cases electricity may need to be supplemented from the existing building. Propane is the traditional fuel for cooking.

Staff Comment – Other than what is discussed in sections (h.) and (i.), staff does not have further comment on this item.

I. Staff Recommendations:

Staff recommends approval of Resolution 2024-02 with the following conditions:

1. No more than two mobile food vendors will be permitted on the premises within the allowable parking location as depicted in green on **Exhibit B**. Other types of mobile vendors are not authorized to operate under this conditional use permit.
2. Daily hours of operation will be no earlier than 7:00 am and no later than 10:00 pm.
3. The bathroom facilities of the Texaco building shall be made available to food truck/trailer employees during all hours of operation. Alternatively, 3rd-party bathrooms and hand washing stations shall be supplied per the requirements of Garfield County Public Health and Human Services.
4. Any auxiliary equipment, materials, or supplies necessary for the function of any food trucks/trailers shall be stored out of site or otherwise screened from public view by means of fencing, landscape ornamentation or other approved means of concealment.
5. Adequate trash receptacles shall be maintained on the southeast corner of the premises.
6. Illustrate locations of on-site parking or designated loading areas as necessary. Any on-site parking shall comply with the accessibility requirements of the International Building Code, Section 1106. Two, 60-minute loading spaces (10' wide x 20' long) are permitted on the east

side of Kamm Ave. south of the 30' vision triangle illustrated in Appendix B.

7. The use approved in the application shall not be conducted until the Town Planner has issued a conditional use certificate. That certificate shall be issued only after the Applicant has entered into an agreement with the Town specifying that all conditions imposed by Town Council will be completed and that the use and improvements will be in accordance with the approved application site plan and development schedule. The conditional use certificate must be issued within one year of the date of final approval by Town Council, or the application is deemed withdrawn by the Applicant and is of no further force and effect.
8. No approved conditional use may be altered or expanded in ground area unless the site plan is amended and approved in accordance with the procedures applicable to approval of a conditional use as set out in § 17.84.070 of the Code.
9. In the event the Town receives any complaints about the use of the site or observes or becomes aware of any violations of the conditional use approval, the Applicant and/or owner may be summoned before the Town Council in a public meeting to show cause why the permit should not be revoked, suspended, or additional conditions imposed. Such show-cause hearing shall be open to the public and the applicant or owner may present testimony or offer other evidence on its behalf.
10. Applicant shall comply with all applicable building and municipal code requirements, including the sign code and all accessibility requirements, as well as all performance standards, county licensing, and public health requirements.
11. Any added exterior lighting will be dark sky compliant pursuant to the Comprehensive Plan Goal EN-4.
12. All representations of the Applicant in written and verbal presentations submitted to the Town or made at public hearings before the Planning Commission or Town Council shall be considered part of the application and binding on the Applicant.
13. The Applicant shall reimburse the Town for any and all expenses incurred by the Town regarding this approval, including without limitation all costs incurred by the Town's outside consultants such as legal and engineering costs.

Councilor Carey asked if the restroom and handwash station are a requirement from the county and does there need to be additional restrooms available if there are two food trucks at the same time. Planner Smith said his understanding was from the county is there needs to be restroom and a handwashing station. If Drifters is not open then the food truck would need to have a port-a-potty and handwashing station. Joe Hemelt, owner of Drifters said if by some chance Drifters is not open then the food truck would have access to the building, which would be part of their agreement with the food truck.

Mayor A. Riddile asked if there would always be two food trucks on the property. Alex Polly, partner of Drifters, said there would be one main food truck, possible two if there is an event going on in town. Ellery's Eatery Food Truck would be the main truck on the property.

Bryan Flemming, owner of Ellery's Eatery Food Truck, said the idea is to have breakfast and diner style food. The options would be hamburgers, wings, hot sandwiches and such. The menu will rotate as there will be weekly if not daily specials.

Councilor Hazelton expressed concern with the second food truck. His concern is making sure the food trucks that appear for a night, or a weekend has the appropriate licensing and have been through the health department process.

Councilor G. Riddile said he didn't believe there was a concern because the county process is in the CUP and if there becomes a problem then the CUP could come back to council for review.

Councilor Carey said she would like to see the second food truck at bigger town events such as Burning Mountain Festival. Mr. Polly said that was the idea to promote the business. They would be thoughtful of other businesses in town and have a variety of food available.

Councilor Hazelton said he is in support of the one food truck and would like to have the second truck to be reconsidered at some point.

Councilor Carey asked when the second food truck would come in. Mr. Polly said they would like to bring the second truck in once there is enough demand for it. He would like to offer a second food truck three times between now and the fall.

Councilor G. Riddile suggested to have the applicant come back to council in a year to report how the second food truck has worked out. Mr. Polly said that would be fine.

Councilor Hazelton asked about the electricity or the generators for one or two food trucks. Mr. Hemelt said he is putting in a large amp electricity and there will be plenty of electricity for the food truck without running a generator. Mr. Flemming said the health department would prefer there not be generators running. The food truck would be hooked to electricity and water on the property like setting up in an RV Park. He said his gray water would be serviced through a local company. He would not be running a generator at all unless the power goes out.

Assistant Town Attorney Haley Carmer said there needs to be a change in the conditions in the resolution. The first change is condition B match condition 2 in the staff report. The condition should read: *Daily hours of operation will be no earlier than 7:00am and no later than 10:00pm.* The second change is condition F in the resolution. The condition should match condition 6 in the staff report. The condition should read: *Illustrate locations of on-site parking or designated loading areas as necessary. Any on-site parking shall comply with the accessibility requirements of the International Building Code, Section 1106. Two, 60-minute loading spaces (10' wide x 20' long) are permitted on the east side of Kamm Ave. south of the 30' vision triangle illustrated in Appendix B.* She said the addition condition regarding the food truck would be: *After one year of operation of the use approved by the resolution, applicant shall meet with town council to review the operations and impacts of the second food truck approved by the resolution.*

MOTION: Mayor A. Riddile made a motion to approve Resolution TC2024-12 - A Resolution of the New Castle Town Council Recommending Approval of a Conditional Use Permit for Mobile Vending Carts or Stands (I.E., Food Trucks) on Property Located in the C-1 Zone District with the conditions outlined by Town Attorney Carmer. Councilor G. Riddile seconded the motion and it passed unanimously.

Recess the Town Council Meeting, Convene as the Water and Sewer Enterprise
MOTION: Councilor G. Riddile made a motion to recess the Town Council Meeting and Convene the Water and Sewer Enterprise. Councilor Hazelton seconded the motion and it passed unanimously.

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Consider Reduction of Water & Sewer Tap Fees for Drifters/Down Vally Brewing Company

Administrator Dave Reynolds said Drifters Coffee and the new brewery business will be at the old Texaco building. Business owner Joe Hemelt and his business partners are in the process of renovating the old Texaco building on Main Street and moving Drifters Coffee to the new location. The new shop will feature a Brewery/ Brew Pub type business and is expected to change the look and feel of this historic downtown building. The Town of New Castle has taken significant steps on behalf of this endeavor by helping to facilitate the sale of the property, making arrangements to relocate the existing U-Haul Business, changing the Municipal Code to allow Breweries as a permitted use in Downtown, considering a Conditional Use Permit to allow the operations of a Food Truck on the Texaco property, and consulting with the owners to help walk them through various processes. Like any new business, the owners of this endeavor are investing significant funds into the renovation of the building, the move of their existing business, and the startup of a new business venture. As funding becomes tight for the project the owners are looking for avenues to cut expenses to keep the project moving forward. One significant expense that the owners would like to explore their options for is the Town's Tap Fee costs. New Castle Municipal Code Sec 13.20.160 allows qualified downtown business owners to work with the town to explore and negotiate Tap Fee Agreements. Town staff has prepared calculations for the tap fee costs related to this business endeavor and will provide the council with the *Approval Criteria* and options available related to Tap Fee Agreements.

Administrator Reynolds reviewed calculations for the tap fees (**Exhibit B, C & D**). Administrator Reynolds reviewed the 7 requirements to be met to enter into a tap fee agreement (**Exhibit E**).

Mr. Hemelt thanked town staff for all of their help with the process of expanding their business. He is asking the town for help with the fees to help them to be able to open the business. Mr. Hemelt was asking for the fees to be either waived or to be paid by the town. He said in two years' time the taxes paid to the town from the sales would be more than paid back in kindness.

Planner Smith asked if Mr. Hemelt considered being historic designated. Mr. Hemelt said yes. He is currently going through the state process.

Councilor Leland said with the monitoring of the brewery for a period of two years the town would know how much of a tap fee to charge. Mr. Hemelt said he would like all of the fees to be waived. Councilor Leland asked if the tap fees to be charged would be at 2024 rate or the rate in two years. Administrator Reynolds said the fees would be the 2024 rate.

New Castle business owner, Troy Tritschler, said Drifters has been a great asset to the town and owners are community minded.

Glenwood Springs resident and business owner, Mitchell Wigner, said he agreed with Mr. Tritschler.

New Castle resident Sharon Dryden, said she also agrees with what has been said.

New Castle resident Timothy Lavin urged the council to help Drifters with the fees. New Castle is a small town and the owners have done good things for the community.

The council discussed many options regarding the tap fees and what would be appropriate. The council agreed to an approximately \$6,000 tap fee agreement and approximately \$6,000 grant. The agreement would be five years with one year payment deferment with zero percent interest. Staff will speak with Mr. Hemelt and partners to create a tap fee agreement. The agreement will come back to the council to review the agreement.

Adjourn the Water and Sewer Enterprise, Reconvene the Town Council Meeting

MOTION: Councilor G. Riddile made a motion to recess the Water and Sewer Enterprise and Convene the Town Council Meeting. Councilor Carey seconded the motion and it passed unanimously.

Consider Reduction of Town Fees for Drifters/Down Vally Brewing Company

Administrator Reynolds said business owner Joe Hemelt and his business partners are in the process of renovating the old Texaco building on Main Street and moving Drifters Coffee to the new location. The new shop will feature a Brewery / Brew Pub type business and is expected to change the look and feel of this historic downtown building.

In connection with the new business operations, Joe and his team are asking for reductions in Town Fees which include Tap Fees, Permit Fees, Conditional Use Permit Fees, and Demolition Permit Fees.

To date the endeavor has paid \$25 for a Demolition Permit, \$500 for the Food Truck Conditional Use Permit, and a \$500 deposit that is used by the Town for professional consulting fees during the Food Truck CUP process (this deposit is refundable if not used).

Based on information provided by Joe and his team, staff calculates that the Building Permit Fees will be as follows:

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Building Permit	\$1,027.00
Plan Review Fee	\$ 667.55
Use Tax	\$ 900.00
Mechanical Permit	\$ 225.00
Plumbing Permit	\$ 225.00
Water Meter	\$ 292.00

Total Permit Fees: \$3,336.55

Per Council direction, the staff has issued the Building Permits but has not yet charged the above fees pending Town Council direction on this matter.

MOTION: Councilor Carey made a motion to waive the fees for building permit, plan review fee, mechanical permit, plumbing permit and water meter for Drifters/Down Valley Brewing. Councilor Leland seconded the motion and it passed unanimously.

Consider Ordinance TC2024-2, Authorizing the Sale of Real Property Owned by the Town (First Reading).

Councilor G. Riddile left at 9:42pm

Attorney Carmer said the town charter requires the town to approve the real sale by passing an ordinance. The ordinance also authorizes the town administrator to the mayor to sign the closing documents. The ordinance to for 600 West Main Street.

MOTION: Councilor Leland made a motion to approve ordinance TC2024-2, Authorizing the Sale of Real Property Owned by the Town (First Reading). Councilor Carey seconded the motion and it passed on a roll call vote: Councilor Leland: yes; Councilor Copeland: yes; Mayor A. Riddile: yes; Councilor Hazelton: yes; Councilor Carey: yes.

Councilor G. Riddile returned at 9:44pm.

Executive Session for a conference with the Town Attorney for the purpose of receiving legal advice on specific legal questions under CRS Section 24-6 402(4)(b) regarding pending litigation against CVR Investors, Inc.

Motion: Councilor Leland made a Motion at 9:45p.m. to go into Executive Session for a conference with the Town Attorney for the purpose of receiving legal advice on specific legal questions under C.R.S. 24-6-402(4)(b) regarding pending litigation against CVR Investors, Inc. Councilor Hazelton seconded the motion and it passed unanimously.

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Executive session concluded.

At the end of the executive session, mayor Pro Tem Hazelton made the following statement:

"The time is now 10:00p.m. and the executive session has been concluded. The participants in the executive sessions were: Councilor Carey, Councilors Copeland, Councilor Leland, Town Administrator Reynolds, Town Clerk Andis, Assistant Town Attorney Haley, Town Planner Paul Smith and Town Treasurer Viktoria Ehlers. For the record, if any person who participated in the executive session believes that any substantial discussion of any matters not included in the motion to go into the executive session occurred during the executive session, or that any improper action occurred during the executive session in violation of the Open Meetings Law, I would ask that you state your concerns for the record."

No concerns were stated.

MOTION: Councilor Leland made a motion to extend the meeting past 10:00pm. Councilor Carey seconded the motion and it passed unanimously.

Executive Session for a conference with the Town Attorney for the purpose of receiving legal advice on specific legal questions under CRS Section 24-6 402(4)(b) regarding pending litigation against CVR Investors, Inc.

Motion: Councilor Leland made a Motion at 10:01p.m. to go into Executive Session for a conference with the Town Attorney for the purpose of receiving legal advice on specific legal questions under C.R.S. 24-6-402(4)(b) regarding pending litigation against CVR Investors, Inc. Councilor Hazelton seconded the motion and it passed unanimously.

Executive session concluded.

At the end of the executive session, Mayor Pro Tem Hazelton made the following statement:

"The time is now 10:02p.m. and the executive session has been concluded. The participants in the executive sessions were: Councilor Carey, Councilors Copeland, Councilor Leland, Town Administrator Reynolds, Town Clerk Andis, Assistant Town Attorney Haley, Town Planner Paul Smith and Town Treasurer Viktoria Ehlers. For the record, if any person who participated in the executive session believes that any substantial discussion of any matters not included in the motion to go into the executive session occurred during the executive session, or that any improper action occurred during the executive session in violation of the Open Meetings Law, I would ask that you state your concerns for the record."

No concerns were stated.

Consider Approval of Settlement Agreement with CVR Investors, Inc.

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MOTION: Councilor G. Riddile made a motion to postpone the approval of the settlement agreement until the next meeting, May 21, 2024, due to one councilor and the mayor being absent. Councilor Carey seconded the motion and it passed unanimously.

Consent Agenda

April 16, 2024 Minutes

April Bills \$678,448.98

Report of Changes for Kum & Go Liquor License

MOTION: Councilor Leland made a motion to approve the consent agenda. Councilor G. Riddile seconded the motion and it passed unanimously.

Staff Reports

Town Administrator – Administrator Reynolds said he had spoken with Mr. Hemelt after they spoke to council verifying a decision was not made tonight in regard to the tap fees. Administrator Reynolds asked them to come back with a proposal and to meet with him to create a tap fee agreement which would be suitable for both Drifters and the town council. The agreement would come back to the council on June 4, 2024, for a review. Councilor G. Riddile suggested the next time something like this happens there needs to be a subcommittee created with two councilors to create an agreement and then bring the agreement to the council in a regular meeting. Administrator Reynolds said he did meet with the owners of Drifters and walked them through the process and what Administrator Reynolds would be reporting to the council. He also gave them time to prepare for the council meeting and figure out exactly what they were going to be asking for. Mayor Pro Tem Hazelton said he is willing to work with the owners of Drifters but also need to be realistic about the ask.

Administrator Reynolds said he called Public Works Director John Wenzel in regard to Mr. Boas concern regarding the water line break. Director Wenzel told Administrator Reynolds that the service line into Mr. Boas's house broke and the break was under the road. The Public Works Department went and met with Mr. Boas. Public Works assessed the situation and realized Public Works didn't have the right materials to tear up the road, shutoff the neighborhood and do the project today. The water is coming up through the road and the water would not ruin Mr. Boas foundation. The water is running down the road and into the gutter. Public Works made the decision to gather the materials needed today and shutoff the water tomorrow and make the repair. Public works noticed the neighborhood about the shutoff. Administrator Reynolds called Mr. Boas back and spoke with him and explained that the Public Works Department had gone out and assessed the water break and had informed Mr. Boas of what the plan was going to be.

Administrator Reynolds said Representative Lauren Bobert had put out an announcement through AGNC. There is funding called "Community Funding" and Rep. Bobert has been allocated \$20million to local communities for projects. Staff was able to put together a grant asking for \$3.5million for the southside intercept project. The grant was due on Thursday and the town was notified Friday morning that Rep. Bobert had chosen the towns application to move forward in the review and approval process. Rep. Bobert's office reached out to the town needing letters of support. Staff went around town to have

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local businesses sign the letter and also had Steve Rippey sign the letter as well. Administrator Reynolds reminded council about the Ice Cream Social schedule for July 12, 2024, from 3pm – 5pm at Burning Mountain Park. Staff has received a lot of interest from town partners such as the library, fire department etc.. Administrator Reynolds also reminded council about the “Redneck” BINGO the town is the host for the chamber. BINGO is June 13, 2024, at the Community Center at 6:30pm. Staff will be running the concessions and will have the option to decided how to use the money from the concessions.

Administrator Reynolds said he will be leaving on vacation tomorrow afternoon and will not be back until late Tuesday, May 21, 2024. So, he will miss Tuesday, May 21, 2024 council meeting.

Administrator Reynolds said Kathryn Senior Elementary (KSE) PTA approached staff to have a meeting with two of the PTA members. The PTA want to do new playground equipment that would be handicap assessable. The PTA would be looking at Great Outdoors Colorado (GOCO) grants. However, the school doesn't qualify for the grants, but the town does. GOCO will not give money to a school unless the grant is sponsored by the town. Staff also suggested FMLD grant and doing a partnership grant. The playground equipment wanting to be replaced would be open to all of the town. The PTA will be coming to council in June.

Administrator Reynolds said the town was awarded the grant for the round-about. It would be a good idea to have the Capital Committee meet again to reevaluate the funds in the capital project fund.

Administrator Reynolds asked the council about the July 2, 2024, council meeting, if the council would want to cancel or reschedule that council meeting, since the 4th falls on a Thursday this year.

Administrator Reynolds said the town's cemetery caregiver, Mike Miller, has resigned from the maintenance of the cemetery. Mr. Miller would like to continue marking graves and placement of headstones. Administrator Reynolds said he met with Director John Wenzel and decided to have the parks department take over the maintenance of the cemetery. Administrator Reynolds said Mr. Miller would like to create rules for the cemetery in regard to decorating plots and also placing signage on where people could and couldn't walk. Administrator Reynolds said HPC is researching and considering designating the cemetery as a historical landmark.

Administrator Reynolds said Chief Burrows will be gone on vacation from May 15, 2024 – May 24, 2024. He said Lieutenant Stu Curry has been given distinct direction on how to handle situations that may come up. Administrator Reynolds said there have been two new officers sworn in and another will be sworn in. Chief Burrows has received an application from another applicant who would be a good candidate for the police department. The applicant has a mission trip planned and a vacation planned, and the town is willing to work around that. Chief Burrows has made a job offer pending final oral board review and physical review. Once the applicant is hired the police department will be fully staffed. Councilor G. Riddile said the police department can't or shouldn't stop recruiting. Administrator Reynolds said the town should start looking for a school resource officer and a code enforcement officer to help the planning department.

Administrator Reynolds said Glenwood Springs has had an issue with one of their officers who was a roommate of one of our officers. There have been conversations with our

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officer to ensure there would be no surprises.

Administrator Reynolds said there will be an Open House for the Round-About on June 11, 2024, at the Community Center. The plans for the round-about will be laid out and would like to get public feedback.

Town Clerk – Clerk Andis said since it's late she would report at the next meeting.

Town Treasurer – Treasurer Ehlers said the public works department received their new truck. She said she is almost at the end of the audit. The auditor is asking for additional items now. She will have the quarterly report done and sent to council. Administrator Reynolds thanked Treasurer Ehlers for all of her hard work she has done for the audit.

Town Planner – Planner Smith said there is another CUP tomorrow night with P&Z for Xcel Energy. He said R2 Development does have their preliminary plan application submitted and will be going to P&Z on June 26, 2024.

Public Works Director – not present

Commission Reports

Planning & Zoning Commission – nothing to report

Historic Preservation Commission – nothing to report

Climate and Environment Commission – nothing to report.

Senior Program – nothing to report

AGNC – nothing to report

GCE – nothing to report

EAB - nothing to report

Detox – nothing to report

Council Comments

Councilor Graham Riddile said at this point the Elk Creek bridge is scheduled to be destroyed by CDOT. Mayor Pro Tem Hazelton said the bridge should be salvaged if possible.

Items for Future Council Agenda

Councilor Carey asked if there would be a presentation from the Colorado River Conservation District to discuss the Shoshone water rights purchase. She also asked if Jake Straton from CPW will be doing a presentation on bear awareness. Clerk Andis said yes. Both topics will be on the next council agenda.

MOTION: Mayor Pro Tem Hazelton made a motion to adjourn. Councilor Carey seconded the motion and it passed unanimously.

The meeting adjourned at 11:02p.m.

Respectfully submitted,





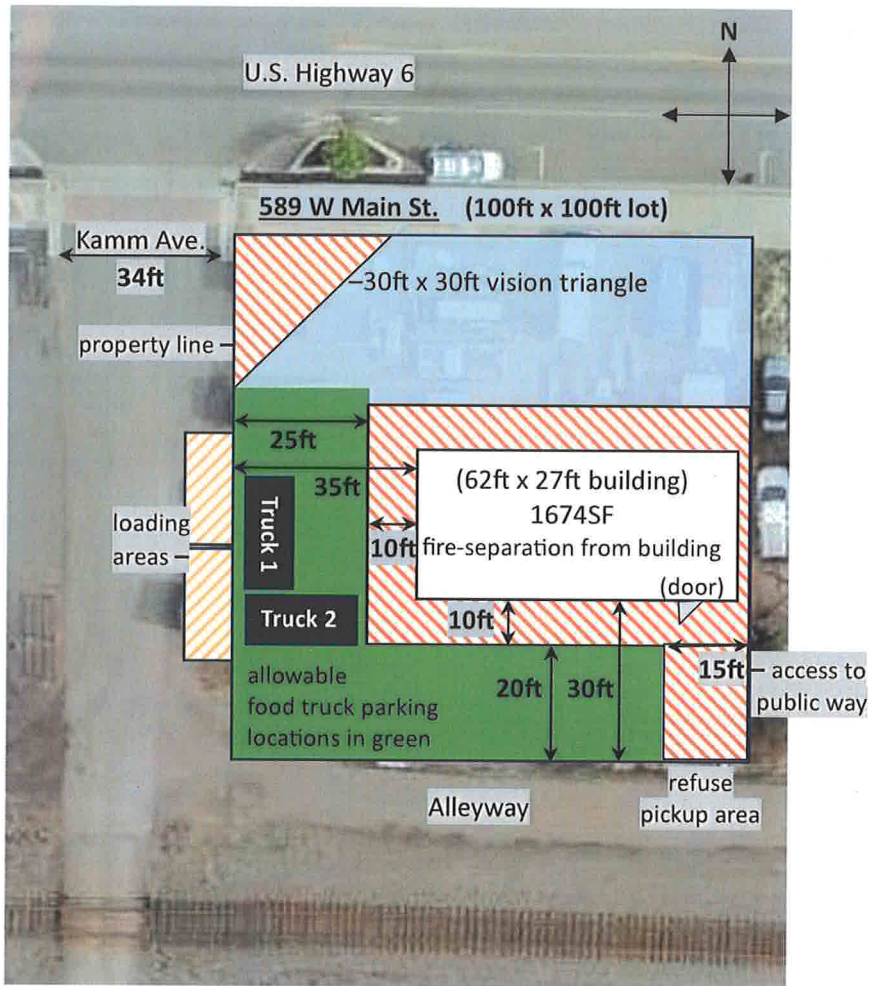
Mayor Pro Tem Grady Hazelton



Town Clerk Mindy Andis, CMC

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Staff Recommended Site Plan:



57.24

PERMIT FEE CALCULATOR - Residential Valuation: \$40,001.00 - \$100,000.00

Address: 589 W Main St (Drifters Remodel)

Permit #:
24-032

Valuation:

	Area (sf)	Price/sf
First Level:	NA	
Second Level:	NA	
Basement - Finished:	NA	
Decks/Patios:	NA	
Garage:	NA	
Basement - Unfinished:	NA	
Assumed Valuation:		\$100,000.00

Building Permit Fee:

\$487.00 for first \$40K of valuation, plus \$9.00 for each additional \$1,000 of valuation, or fraction thereof, to and including \$100K	\$487.00 \$540.00	
	Building Permit Fee:	\$1,027.00

Plan Review Fee:

65% of Building Permit Fee: \$667.55

Use Tax:

0.9% of total valuation (or 2% of building material costs): \$900.00

Tap Fees Brewery:

\$9,700 Water per EQR:	\$9,700 per 0.105 EQRs =	\$1,018.50
\$9,700 Sewer per EQR:	\$9,700 per 0.105 EQRs =	\$1,018.50
Dedication Fee \$6,000 per EQR	\$6,000 per 0.105 EQRs=	<u>\$630.00</u>
	Brewery Total	\$2,667.00

Tap Fees Restaurant (60 seats):

\$9,700 Water per EQR:	\$9,700 per 0.864 EQRs =	\$8,380.80
\$9,700 Sewer per EQR:	\$9,700 per 0.864 EQRs =	\$8,380.80
Dedication Fee \$6,000 per EQR	\$6,000 per 0.864 EQRs=	<u>\$5,184.00</u>
	Restaurant Total	\$21,945.60

Other Permits & Fees:

Mechanical Permit Fee:	\$225.00
Plumbing Permit Fee:	\$225.00
3/4" Water Meter Fee:	\$292.00
Total Tap Fees (Restaurant + Brewery):	\$24,612.60

SUBTOTAL: \$29,986.15
DEPOSIT PAID: \$-
TOTAL DUE: \$29,986.15

Calculation Worksheet for Texaco Tap Fees

Restaurant Business:

Outdoor Seating = 32 Seats *Indoor Seating* = 28 Seats *Total Seating* = 60 Seats

Per Code Sec. 13.20.060

Seats 1-24 = 1.0 EQR

Seats 25-60 (36 seats) = .024 EQR's per seat or 36 seats x .024 = .864 EQR's

Conclusion: As drawn, the restaurant business has a total of 60 seats. The total calculated EQR requirement for a 60-seat restaurant is 1.864 EQR's.

Possible Options: It is reasonable to conclude that the outdoor seating area may not be used year-round. If the outdoor area was expected to only operate for 6 months, it may be reasonable to reduce the outdoor seating count from 32 seats to 16 seats. Reducing the time that the outdoor seating is available for practical use would reduce the total seating count to 44 seats.

Seats 1-24 = 1 EQR

Seats 25-44 (20 seats) = .024 EQR's per seat or 20 seats x .024 = .48 EQR's

This seasonal option would yield a total EQR requirement of 1.48 EQR's for the Restaurant side of the business.

Brewery Business:

The Town Code formulates that 500 barrels of beer produced annually shall be equal to 1 EQR. This formula assumes that it takes on average 8 gallons of water to produce 1 gallon of beer and that each barrel contains 31 gallons of beer.

Therefore 500 barrels of beer = 124,000 gallons of water.

31 gal. beer x 8 gal. water x 500 barrels produced = 124,000 gallons of water annually.

Note: Because the proposed Texaco brewery is only doing a portion of the actual brewing process in New Castle, the applicant estimates that they will use only 13,400 gallons of water per year and will produce beer at a ratio of approximately .8 gallons of water to 1 gallon of beer.

Given the assumptions above the calculated EQR estimates for the Brewery = .105 EQR's

Possible Options: Because the brewery is new and water usage is only an estimate, accurate EQR's for the brewery are not yet known. Staff recommends that the applicant install a second water meter in the building to monitor the brewery specific water usage over time. After a period (staff suggests 2 years),

the issue of accurately assessing water usage for the brewery can be revisited using actual data from both the brewery and the restaurant sections of the business. If the two businesses combined do not exceed an average use of 127,750 (calculated use for a typical EQR), staff recommends that no additional EQR's be charged. If the water usage exceeds the estimates then staff recommends that appropriate Tap Fees be charged at that time.

Other Factors:

Both the Municipal Code and the Downtown Plan give guidance regarding Tap Fee charges in the Downtown area. Section 13.20.160 of the Municipal Code sets specific approval criteria by which the Town Council may consider entering into a Tap Fee Agreement with Downtown business owners. The Town's 2018 Downtown Plan also encourages the Town to work with business owners to stimulate a more vibrant business environment in Downtown.

As calculated by adhering strictly to the Municipal Code, the restaurant would be required to purchase an additional .864 EQRs plus Water Dedication fees. These fees would total \$21,945.60.

As calculated by adhering strictly to the Municipal Code, the brewery would be required to purchase .105 EQRs plus Water Dedication Fees. These fees would total \$2,667.00.

Total estimated Tap Fees for restaurant and brewery = \$24,612.60.

Possible Business Relief Options available to Town Council:

- Lower the restaurant EQR requirement to 1.48 EQRs (allowing for seasonal seating). Note, the building already owns 1 EQR, leaving .48 EQRs to be purchased.
- Remove all Water Dedication Fees with the understanding that the Downtown corridor has historically had water allotments that would have allowed for various water consuming business over the past decades.
- Allow the actual water usage of the brewery to be monitored over time to establish actual use along with reasonable and appropriate Tap fees.
- Work with the business owner to establish a suitable Tap Fee Agreement by which the Tap fees owed might be financed over time or otherwise paid.

The above recommendations would make the business responsible for .48 EQRs for the restaurant with additional fees possible for the brewery as future usage dictates.

Using the above recommendations, the estimated Tap Fee charges would be reduced to \$9,312 for the additional .48 EQRs. (original charge \$24,612.60)

C. It is unlawful for any person not authorized by this chapter to make any connection with any main of the water or sewer utility or for any unauthorized person to connect to the water and sewer utility or for any person to make a water consuming addition or change in service contrary to the provisions of this chapter.

D. All utility connection permits as required by this chapter shall be issued by the town clerk and shall set forth all those requirements specified in Section 13.20.040(A). The town clerk shall keep a duplicate or record of all utility connection permits issued.

E. Any permit issued pursuant to this section shall expire upon failure to make the authorized utility connection, at the time of expiration of the building permit for the structure or structures proposed to be serviced, or upon expiration of the sixty (60) day period provided for in Section 13.20.040(D). In the event of expiration of a utility connection permit, the applicant, on request, shall be refunded any tap fees not expended by the town for the benefit of the applicant.

F. All permits issued pursuant to this section and all taps permitted under this chapter are appurtenant to the real property for which they are issued. Permits and taps may not be sold or otherwise transferred separate from the real property they are intended to serve. (Ord. 2004-3 § 10 (part); prior code § 11-06-050) (Ord. No. 2009-9, § 2(A), 8-3-2009)

13.20.060 Tap fees.

A. No water or sewer service shall be furnished to any new connection or to any water consuming addition to an existing service until all tap fees and utility hookup charges have been paid as provided by this chapter.

B. All water and sewer connections to the main service lines shall be done by the town's public works department or a contractor approved by the town council.

C. The following tap fees shall be assessed, except as otherwise set by the town council:

1. Residential Water Service.

a. Fee for each EQR unit, where both the tap and all points of consumption are within the corporate limits of the town: nine thousand seven hundred dollars (\$9,700.00).

b. Fee for each EQR unit, where the tap or any point of consumption is outside the corporate limits of the town: sixteen thousand two hundred dollars (\$16,200.00).

2. Commercial Water Service.

a. Fee for each EQR unit, where both the tap and all points of water consumption are within the corporate limits of the town: nine thousand seven hundred dollars (\$9,700.00).

b. Fee for each EQR unit, where the tap or any point of water consumption is outside the corporate limits of the town: sixteen thousand two hundred dollars (\$16,200.00).

TABLE OF EQUIVALENT UNITS

Classification	EQR
1. Single-family residential unit, not exceeding 3,000 square feet in habitable space, housing a statistical average of 3.5 persons each using 100 gallons per day and having not more than two thousand five hundred (2,500) square feet of irrigated lawn or garden	1.0

Classification	EQR
2. Multifamily residential units, four units or more, apartments, condominiums, townhomes, when in one building and billed collectively:	
A. Efficiency apartment (a space not exceeding 600 square feet and not having more than 1 bathroom and one kitchen facility)	0.6
B. One or two bedroom apartment	0.8
C. Three bedroom or more apartment	1.0
D. Coin-operated washing machine	0.5
E. Mobile home (trailer) in court with not more than two thousand five hundred (2,500) square feet of irrigated lawn or garden	1.0
3. Transient rental units, hotels, motels, bed and breakfast:	
A. First unit or manager's apartment	1.0
B. Each additional rental unit without cooking facilities	0.4
C. Each additional rental unit with cooking facilities	0.5
D. Each coin-operated washing machine	0.5
4. Accessory dwelling units:	
A. One bedroom	0.5
B. Capable of having 2 bedrooms	0.8
5. Bars, restaurants—The applicant shall submit a seating plan to the building official. The actual number of seats shall be confirmed from time to time by the building official:	
A. For a business with less than 25 seating capacity	1.0
B. For each seat in excess of 24 seats	0.024
6. Service stations:	
A. Full service, no bays	1.0
B. Self-service, no bays	1.0
C. With one work/lubrication bay	1.2
D. Each additional work/lubrication bay	0.2
E. With one car wash bay	2.0
F. Each additional car wash bay	2.0
7. Commercial or public buildings such as stores, offices, industrial warehouses, and similar, having industrial wastes, process water or waste loads (i.e., which are used for nonsolid waste disposal):	
A. One bathroom (1 to 3 water using fixtures)	1.0
B. For each additional sink	0.2
C. For each additional toilet	0.2
D. For each additional urinal	0.2
E. For each additional bath tub	0.2
F. For each additional water fixture not listed above	0.2

tracts, parcels, sites, separate interests in common, condominium interests or other divisions for the purpose, whether immediate or future, of transfer of ownership, or for building or other development, or for street use by reference to such subdivision or a recorded plat thereof.

“Sufficient legal priority” means that the water rights proposed for dedication may reasonably be expected to provide a dependable water supply throughout the season of use in the amount for which they are decreed, including in drought years, available at the point of diversion determined exclusively by the town. In making this determination, factors to be considered shall include, but not by way of limitation, the adjudication date and appropriation date of the water rights, the decreed use(s), the historic use of the water under the decree, the physical flow available, and the administration practices of the office of the state engineer.

“Town” means the town of New Castle, Colorado.

“Transfer of water rights” means the conveyance of legal title to water rights to the town in addition to referring to all actions required under the laws of the state of Colorado to be brought in the Water Court, Water Division No. 5, to ensure that the dedication requirement is fulfilled. Such action may include, but not by way of limitation, a change in the type, place, or time of use, a change in the point of diversion, a change from a fixed point of diversion to alternate or supplemental points of diversion, a change from alternate or supplemental points of diversion to a fixed point of diversion, a change in the means of diversion, a change in the place of storage, a change from direct application to storage and subsequent application, a change from storage and subsequent application to direct applica-

tion, a change from a fixed place of storage to alternate places of storage, a change from alternate places of storage, or any combination of such changes. “Transfer of water rights” includes transfer of conditional as well as absolute water rights.

“Water right” means a decreed right to use in accordance with its priority a certain portion of the waters of the state by reason of the appropriation of the same or a contract to use water rights owned by a governmental water supplier. (Ord. 2008-3 § 3 (part))

13.24.040 Basic dedication requirement.

A. 1. A dedication or transfer of direct flow and/or storage water rights to the town shall be required for any extension of service which shall include: (a) the approval of the annexation of any land to the town; (b) all extensions of municipally treated water service outside the town limits as such boundaries exist on the effective date of the ordinance codified in this chapter; (c) the subdivision or replatting of any land now located within the town if such subdivision or replatting requires a change of zone district or increases the demand for municipal water service; and (d) an expansion of use on an existing platted property that increases the demand for municipal water service beyond the definition of an EQR or previous water right dedications made to the town.

2. For any extension of service or new or enlarged use of water for residential or non-residential purposes, the applicant shall submit to the town an estimate of water demands based on the dedication requirements provided in the table of equivalent units as set forth in Section 13.20.060, as such table may be amended, on forms provided by the town.

3. Applicant shall provide the town with adequate information to facilitate a review of the water rights in order to determine that the water rights have sufficient legal priority. Such information shall include a historical use affidavit and a detailed list of all water rights and water resources owned or controlled by the applicant. For those persons whose compliance with this section results in a total demand of greater than thirty (30) EQR, no historical use affidavit shall be required, but an engineering analysis, acceptable to the town, of the historic use of the water rights proposed for dedication shall be required.

4. The basic requirement shall be 0.54 acre foot/year of historic consumptive use of a water right of sufficient legal priority for each EQR. It is assumed that 0.54 acre foot of historic consumptive use water is necessary to satisfy an average demand of 0.14 acre foot of consumptive use which allowance is made for the location of the town's municipal water diversion and wastewater treatment plant together with reasonable transit and transfer losses.

5. For raw water uses, the dedication requirement shall be in conformance with the town's Raw Water Irrigation Ordinance (Code Section 13.38.010 et seq.). Other uses not calculated under the table of EQRs, the basic requirement shall be the quantity of water to be required ultimately in the satisfaction of those use(s) as contemplated by the applicant. The amount of such use shall be quantified by a registered professional engineer.

6. The basic requirement shall be satisfied by the person seeking approval of annexation, subdivision, replacing, or the extension or expansion of municipally treated water service, whether or not that person will be the ultimate user(s).

7. Sufficient water rights shall be dedicated so as to enable the town to divert a quantity of water at any point of diversion it may determine, which will allow for the total consumption by the town of the quantities set forth in subsection (A)(4) of this section.

B. The town may, in its sole discretion, require dedication before the issuance of a building permit or upon discovery of an expanded use of additional EQRs, including partial EQRs, for uses which do not conform to the definition of EQR.

C. The council shall have sole and exclusive discretion in determining whether the basic dedication requirement should be increased or decreased, on a case by case basis, after consideration of the place, method, and efficiency of water use and wastewater treatment. (Ord. 2008-3 § 3 (part))

13.24.050 Exceptions.

A. Council may substitute or waive any conditions or requirements deemed necessary to meet the purposes of this section.

B. This chapter does not apply to the extension of new municipally treated water service or raw water service for which the basic dedication requirement has been previously complied with by any person and where no increase in demand will occur.

C. This chapter does not apply to the extension of new municipally treated water service where the terms for extension of such service are addressed in an annexation and/or development agreement approved by council, as such agreement(s) may be amended. (Ord. 2008-3 § 3 (part))

13.24.060 Dedication of water rights for open space.

The owner of any property proposed to be annexed or subdivided who dedicates property

repaired within forty-eight (48) hours from the time of such notice being served upon the water user or agent, the town may shut off the water from the premises and immediately notify the customer. It is unlawful for any person to fail or refuse to comply with the order provided in this section. (Prior code § 11-06-130)

13.20.140 Disconnections.

A. In case any owner of premises on which water is used shall cease to use water, and desires to disconnect his or her premises, he or she shall not be permitted to remove the corporation stop, curb stop, curb box and appurtenances, except by order of the town council. Corporation stops, curb stops, and curb boxes are the property of the town and shall be removed only by order of the town council.

B. The owner of property serviced shall be responsible for the repair and maintenance of the service line, curb stop, curb box, and meter, and is further responsible for insuring that none of the above become inaccessible by reason of landscaping, foliage, or construction of improvements on the premises.

C. In the event a meter is damaged, or concealed or otherwise made inaccessible for reading, the town council shall direct that the water user be billed the flat rate for his or her water service until such time as the meter is again made operable or accessible by the owner. (Prior code § 11-06-140)

13.20.150 Penalties.

It is unlawful for any person to violate any of the provisions stated or adopted in this chapter. Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any

of the provisions of this chapter is committed, continued or permitted, and upon conviction of any such violation, such person shall be punished by a fine of not more than three hundred dollars (\$300.00) or by imprisonment for not more than ninety (90) days or by both such fine and imprisonment. (Prior code § 11-06-150)

13.20.160 Tap fee agreements.

A. Town council or the town's enterprises may, at their sole discretion, enter into a tap fee agreement with a person concerning the payment of tap fees. In order to enter into such an agreement, the approving body must make the following findings:

1. That the proposed utility service will serve a commercial use;

2. That the user is proposing to operate the commercial use within the town's downtown core as it is defined in the comprehensive plan;

3. That the tap fee agreement is necessary for the town's economic development;

4. That absent the tap fee agreement the proposed commercial use may not locate within the town;

5. That the agreement would not violate or conflict with the terms of any grant, loan, bond issuance, or other agreement that addresses the collection and allocation of tap fee revenues for the town;

6. That sufficient monies have been budgeted and appropriated from funds other than the enterprise fund at the time of such agreement to cover the full amount of tap fees that would otherwise be due to the enterprise; and

7. That the user has made an adequate demonstration of how it proposes to repay the tap fee over the amortization period.

B. The form of the agreement is subject to review and approval by the town, on such terms and conditions as it deems necessary to ensure full repayment of all appli-

cable tap fees. Approved agreements will be recorded against the property to be served by the tap. Such terms may include, but are not necessarily limited to:

1. Interest on the outstanding tap fee balance;
2. Amortization of the tap fee over a period not in excess of five years;
3. A repayment schedule;
4. Acceleration and/or default provisions including but not limited to a right of the town to collect default interest, costs and attorney fees as part of any collection efforts;
5. A provision concerning disconnection of service in the case of non-payment or default.
6. A notice that the user understands that the tap is appurtenant to the real property it serves and may not be sold or transferred separate from that property;
7. A due on sale clause.

(Ord. No. 2009-9, § 2(C), 8-3-2009)