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1. Planning Commission.

1.1 Establishment of Planning Commission

A Planning Commission is hereby established, which shall consist of six (6) members, including the Mayor and a member of the Board of Trustees as ex-officio members, and four other persons appointed by the Board of Trustees.

All members of the Commission shall be bona fide residents of the Town of Empire and, if any member ceases to reside in the Town of Empire, his membership on the Commission shall automatically terminate.

1.2 Proceedings, Organization and Rules

The Commission shall elect its chairman from among the non ex-officio members and shall create and fill such other of its offices as it may determine. The term of the chairman shall be two years with eligibility for re-election. The Commission shall hold at least one regular meeting in each month. It shall keep a record of its resolutions, transactions, findings, and determinations. Furthermore, the Commission shall adopt rules as is necessary for the transaction of business. The Chairman may administer oaths and compel the attendance of witnesses.

1.3 Powers and Duties

1.3.1 The Planning Commission shall have all those powers, duties and responsibilities set forth in the C.R.S. § 31-23-201, et seq. and as thereafter amended.

1.3.2 The Planning Commission shall act as the Zoning Commission and shall have all those powers, duties and responsibilities set forth in the C.R.S. § 31-23-306 and thereafter as amended.

1.4 Terms

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1.4.1 The terms of ex-officio members shall correspond to their respective official tenures.

1.4.2 The terms of the non-ex-officio members shall be two (2) years.

1.4.3 Members other than the member representing the Board of Trustees or the Mayor may be removed, after public hearing, by the Board of Trustees for inefficiency, neglect of duty, or malfeasance in office. The Board of Trustees may remove the member representing it for the same reasons. The Mayor or the Board of Trustees, as the case may be, shall file a written statement of reasons for such removal. Vacancies shall be filled by the Board of Trustees.

2. Board of Adjustment-Appeals, Variances, Interpretations of Activities of Town Officers

The Planning Commission shall serve as the Board of Adjustment for the Town of Empire and shall have the powers, duties and responsibilities enumerated in C.R.S. § 31-23-207 and as thereafter amended. The Board of Adjustment shall have these additional powers and duties:

2.1 **Appeals.** To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Town Zoning Officer in the enforcement of this Ordinance.

2.1.1 Any aggrieved person may appeal a final order or decision of the Town Zoning Officer with the Board of Adjustment where there is an alleged error in the resulting requirement, decision or approval determination appropriate for Board of Adjustment review. An appeal is made by filing with the Town Clerk a written notice of appeal specifying the reasons for the appeal. A notice of appeal shall be considered filed with the Board of Adjustment when delivered to the Town offices, and the date and time of filing shall be entered on the notice by the Town Clerk.

2.1.2 An appeal must be made within 45 days from the date of the decision or order appealed.

2.1.3 Whenever an appeal is filed, the Town Zoning Officer shall forthwith transmit to the Board of Adjustment all records relating to the action.

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2.1.4 An appeal stays all actions by the Town Zoning Officer seeking enforcement of or compliance with the order or decision appealed from, unless the Zoning Officer certifies to the Board of Adjustment the belief that due to the facts contained in the certification, a stay would cause imminent peril to life, safety or property. In that case, proceedings shall not be stayed except by order of the Board of Adjustment or a court of competent jurisdiction, issued on application of the party seeking the stay, for good cause shown, and after notice to the Zoning Officer.

2.2 **Referred matters.** To hear and decide all matters referred to it under the provisions of this Ordinance.

2.3 **Variances.** To authorize upon appeal in specific cases such variances from the regulations or provisions of this Ordinance as will not be contrary to the public interest, where, due to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary, unique or undue hardship, so that the spirit of this Ordinance shall be observed, public safety and welfare secured and substantial justice done. It may reach these conclusions if it finds that:

2.3.1 If the applicant complies strictly with the provisions of this Ordinance, he can make no reasonable use of his property; and

2.3.2 A literal enforcement of the provisions of this ordinance would result in unnecessary hardship. Hardships shall not be limited to the individual owner, but a variance may be given based upon the determination that a hardship may be imposed upon adjacent neighbors and/or the Town as a result of not authorizing the variance; and

2.3.3 The hardship is unique and unusual, or nearly so, rather than one shared by many surrounding properties; and

2.3.4 The hardship is not the result of the applicant's own actions; and

2.3.5 The variance requested is the minimum that will afford relief and the least possible modification of the requirements of this Ordinance; and

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- 2.3.6 The variance will neither result in the extension of a nonconforming situation in violation of Article VI, Section 2, nor conflict with the goals and policies of the Comprehensive Plan.

2.4 Procedure for a Variance

2.4.1 Filing

An application for a variance shall be submitted to the Board of Adjustment by filing a copy of the application with the Town Clerk, and shall be accompanied by a fee as indicated on the fee schedule. Applications shall be complete. A staff report shall accompany the application to the Board of Adjustment.

2.4.2 Hearing

The Board of Adjustment shall give notice and hold a public hearing on the appeal as provided in Article III, Section 7. At the hearing any party or affected person may appear in person or by an attorney at law representing that party. The Board of Adjustment shall set forth its decision in writing within thirty (30) days after completion of the hearing on the appeal.

- 2.4.3 A property owner who has been denied a variance by the Board of Adjustment shall be prohibited from seeking a substantially similar variance for the same property for a period of twelve (12) months from the date that the prior variance request was filed.

2.5 Conditions Regarding Granting of Variances.

In granting any variance, the Board of Adjustment may impose such conditions and requirements with respect to location, construction, maintenance and operation, in addition to any which may be stipulated in this Ordinance as deemed necessary for the protection of adjacent properties and the public interest and welfare. Violation of such conditions and requirements, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance and shall be punishable under Article III, Section 3, Subsection 3.4.1. After notice and an opportunity to be heard at a

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public hearing, such violation may additionally result in revocation of the variance or modification of variance conditions, as determined by the Board of Adjustment.

2.5.1 A variance may be issued for an indefinite duration or for a specified duration.

2.5.2 The nature of the variance and any conditions attached to it shall be entered on the face of the building permit, or the building permit may simply note the issuance of the variance and refer to the written record of the variance for further information. All such conditions are enforceable in the same manner as any other applicable requirement of this Ordinance.

2.6 Burden of proof in Appeals and Variances

2.6.1 When an appeal is taken to the Board of Adjustment, the Town Zoning Officer shall have the initial burden of presenting to the Board sufficient evidence and agreement to justify the order or decision under appeal. The burden of presenting evidence and agreement to the contrary then shifts to the appellant, who shall also have the burden of persuasion.

2.6.2 The burden of presenting evidence sufficient to allow the Board of Adjustment to reach any conclusions, as well as the burden of persuasion on relevant issues, remains with the applicant seeking the variance.

2.7 Decisions of the Board of Adjustment

2.7.1 In exercising the above-mentioned powers, the Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination being appealed and may make such order as ought to be made.

2.7.2 The concurring vote of four (4) members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination of the Town Zoning Officer, or to decide in favor of the applicant on any matter upon

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which it is required to pass under this Ordinance, or to effect any variation in the application of this Ordinance. The grounds of every such determination shall be stated in writing.

- 2.7.3 A property owner who has been denied a variance by the Board of Adjustment shall be prohibited from seeking a substantially similar variance for the same property for a period of twelve (12) months from the date that the prior variance request was filed.

2.8 Transfer of Authority

When the Board of Adjustment is precluded from casting the necessary four (4) votes on any matter within its authority due to conflicts of interest, or for any other reason, the authority of the Board of Adjustment shall be temporarily transferred to the Board of Trustees, pursuant to C.R.S. 31-23-307(4).

3. Enforcement and Review

3.1 Complaints and Violations

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Whenever a violation of this Ordinance occurs or is alleged to have occurred, any person may file a complaint in writing with the Town Clerk, stating fully the causes and basis thereof. Upon the filing of a complaint, the Board of Trustees shall direct the appropriate staff person to investigate and take action thereon as provided by this Ordinance.

3.2 Persons Liable

The owner, tenant, or occupant of any building or land or part thereof as well as any architect, builder, contractor, agent, or other person who participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this Ordinance may be held responsible for the violation and suffer the penalties and be subject to the remedies herein provided.

3.3 Procedures upon Discovery of Violations

3.3.1 If the Zoning Officer finds that any provision of this Ordinance is being violated, he shall send a written notice to the person or persons responsible for such violation, indicating the nature of the violation and suggesting the action necessary to correct it. The first written notice will also contain an invitation to discuss the violation and the Town's concerns, and the opportunity to negotiate a reasonable solution to the violation that meets these concerns. Additional written notices may be sent at the Zoning Officer's discretion, and may order the action necessary to correct the violation. The written notice shall state that action the Zoning Officer intends to take if the violation is not corrected and shall advise that the Zoning Officer's decision or order may be appealed to the Board of Adjustment. In all cases an agreement or other enforcement action to end the violation shall be reached within ninety (90) days of the violation being recognized by the Town.

3.3.3 Notwithstanding the foregoing, in cases when delay would seriously threaten the effective enforcement of this Ordinance or pose a danger to the public health, safety, or welfare, the Zoning Officer may seek enforcement without prior written notice by invoking any of the penalties or remedies authorized in Subsection 3.4 below.

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3.4 Violations and Penalties

- 3.4.1 Violation of the provisions of this Ordinance, or failure to comply with any of its requirements, shall constitute a misdemeanor. Any person who violates this Ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than nine hundred ninety-nine dollars (\$999.00) or imprisoned for not more than ninety (90) days, or both, and in addition, shall pay all costs and expenses; including legal fees, expert fees, and costs involved in the case.
- 3.4.2 Each day of such violation will constitute a distinct and separate offense.
- 3.4.3 The Town, in its sole discretion may institute a civil action for injunction, abatement or any other appropriate action to prevent, enjoin, abate or remove any violation of this Ordinance, in which case any individual or entity found in violation of this Ordinance shall be required to pay the Town, in addition to any actual damages incurred, the Town's court costs, expert fees and reasonable attorneys' fees.
- 3.4.4 Any act constituting a violation of the provisions of this Ordinance or a failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with the grants of variances or conditional-use permits, shall also subject the offender to a civil penalty of \$250. If the offender fails to pay this penalty within 10 days after being cited for a violation, the penalty may be recovered by the Town in a civil action in the nature of debt. A civil penalty may not be appealed to the Board of Adjustment if the offender was sent a final notice of violation and did not take an appeal to the Board of Adjustment within the prescribed time.
- 3.4.5 Any one, all or any combination of the foregoing penalties and remedies may be used to enforce this Ordinance.

4. Permit Revocation

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4.1 A sign, conditional use, variance, building permit, or any other permit may be revoked by the Town Board if the permit recipient fails to develop or maintain the property in accordance with the plans submitted, the requirements of this Ordinance, or any additional requirements lawfully imposed by the Town or if the information on which the permit approval was based is found to be false or inaccurate.

4.2 Before any permit may be revoked, notice and an opportunity to be heard shall be provided to the offender. The notice shall inform the permit recipient of the alleged grounds for the revocation, the date of the hearing and the opportunity to present evidence on its behalf. All hearings shall be before the Town Board.

4.2.1 The burden of presenting evidence sufficient to convince the Town to revoke a permit for any of the reasons set forth in Subsection 4.1 shall be upon the party advocating that position. The burden of persuasion shall also be upon that party.

4.2.2 Revocation of a permit shall include, insofar as practicable, a statement of the specific reasons or findings of fact that support the revocation.

4.3 No person may continue to make use of land or buildings in the manner authorized by any zoning, building, sign, special-use or conditional-use permit after such permit has expired or has been revoked in accordance with this section. The Town may, after revocation, abate any dangerous, unsightly, or any unlawful condition existing on the land or structure at the land owner's expense.

5. Establishment of Districts

5.1 Official Zoning District Map

5.1.1 The Town of Empire is hereby divided into zoning districts as shown on the Official Zoning Map of the Town of Empire, which, together with all

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explanatory material thereon, is hereby adopted by reference and declared to be a part of this Ordinance.

- 5.1.2 The Official Zoning District Map, which shall be located in the office of the Town Clerk, shall be identified by the signature of the Mayor, attested by the Town Clerk, and shall bear the seal of the Town under the following words:

“This is to certify that this is the Official Zoning District Map referred to in Subsection 5.1.2, of Section 5, Article III of this Ordinance of the Town of Empire Colorado”, together with the date of adoption of this Ordinance.

5.2 Changes in Official Zoning District Map

If, in accordance with the amendment provision of this Ordinance, changes are made in district boundaries or other matters shown on the Official Zoning District Map, such changes shall be made promptly after the amendment has been approved by the Board of Trustees, together with an entry on the Official Zoning District Map noting the date of the change and brief description of the nature of the change, which entry shall be signed by the Mayor of the Town of Empire and attested by the Town Clerk. The amending Ordinance shall provide that such changes or amendments shall not become effective until they have been duly entered upon the Official Zoning District Map. No amendment to this Ordinance which involves matter shown on the Official Zoning District Map shall become effective until after such changes and entry has been made on said map.

- 5.2.1 No changes of any nature shall be made on the Official Zoning District Map or matter shown thereon except in conformity with the procedures set forth in this Ordinance. Any unauthorized change of whatever kind by any person or persons shall be punishable as provided under Article III, Section 3, Subsection 3.4 of this Ordinance.

5.3 Replacement of Official Zoning District Map

In the event that the Official Zoning District Map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and additions, the Board of Trustees may, by resolution, adopt a new Official Zoning District Map, which shall supersede the prior Official Zoning District Map. The new Official Zoning District

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Map may correct drafting or other errors or omissions in the prior Official Zoning District Map, but no such correction shall have the effect of amending the original zoning Ordinance or any subsequent amendment thereto.

5.4 Interpretation of District Boundaries

Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning District Map, the following rules shall apply:

- 5.4.1 Boundaries indicated as approximately following the centerlines of streets or highways shall be construed as following such centerlines.
- 5.4.2 Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
- 5.4.3 Boundaries indicated as approximately following Town limits shall be construed as following such Town limits.
- 5.4.4 Boundaries indicated as approximately following the centerline of streams, rivers or canals shall be construed to follow such centerlines, and in the event of change in the centerline, shall be construed as moving with the actual centerline.
- 5.4.5 Boundaries indicated as parallel to or extensions of features indicated in Subsection 5.4.1 through 5.4.5 above shall be so construed. The scale of the Map shall determine distances not specifically indicated on the Official Zoning District Map.
- 5.4.6 Where physical structures existing on the ground are at variance with those shown on the Official Zoning District Map, or in circumstances not covered by Subsections 5.4.1 through 5.4.5 above, the Board of Adjustment shall interpret the district boundaries.

6. Amendments

6.1 Authority to Amend

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The Board of Trustees may amend, supplement, change or repeal the regulations, restrictions and district boundaries set forth in this Ordinance, after public notice and hearing as provided in Article III, Section 7 and after first submitting the proposal to the Planning Commission for report and recommendation. The Planning Commission shall submit a written recommendation to the Board of Trustees within forty-five (45) days after receipt of such submittal. Upon failure of the Planning Commission to submit a recommendation within forty-five (45) days, the Board of Trustees may amend, supplement, change or repeal the regulations, restrictions and district boundaries set forth in this Ordinance, after public notice and hearing as provided herein

6.2 Procedure to Amend

6.2.1 Initiation. A proposal to amend the text or change the district mapping of this Ordinance may be initiated by the Board of Trustees on its own motion, by recommendation of the Planning Commission or by petition of one (1) or more property owners.

6.2.2 Filing. A petition for change or amendment submitted by a private property owner shall be prepared in duplicate on forms provided for that purpose and filed with the Town Clerk and shall be accompanied by a fee as indicated on schedule, as a deposit against actual expenses incurred by the Town in the cost of giving notice, investigation and other administrative processing. Moneys after all expenses have been paid by the Town, shall be refunded to petitioner. If additional review costs are incurred in excess of the deposit, petitioner shall pay such costs. Said fee may be changed by resolution from time to time by resolution of the Board of Trustees.

6.2.3 Information required. In addition to all information required on the petition form, the petitioner shall also supply the following:

6.2.3(a) Three (3) copies of a map prepared at a scale of one hundred (100) feet to one (1) inch, showing the land in question, its location, the length and direction of each boundary thereof, the location and use of all buildings on such land and the principal use of all properties within three hundred (300) feet of such land.

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6.2.3(b) The names and addresses of the owners of all properties within three hundred (300) feet of any part of the land included in the proposed change.

6.2.3(c) All other information which may be required by the Planning Commission in order to facilitate the making of a comprehensive written report to the Board of Trustees.

6.3 Referral

The Town Clerk shall transmit one (1) copy of the petition to the Planning Commission. The Planning Commission shall conduct a study and investigation upon the proposal.

6.4 Public hearing

The Planning Commission shall give public notice and hold a public hearing upon the petition as provided in Article III, Section 7.

6.5 Action

Within thirty (30) days after such public hearing, the Planning Commission shall forward a written report and recommendation to the Board of Trustees. Upon receiving the recommendation of the Planning Commission, the Board of Trustees shall act to approve, approve with modifications, or disapprove the proposed change or amendment within 45 days. Should the Board of Trustees not concur in the recommendation of the Planning Commission, it shall return the petition to the Planning Commission for reconsideration before taking final action. An approved change shall be by appropriate ordinance, and necessary changes in the Official Zoning District Map shall be made promptly.

7. Public Hearing

7.1 No regulation, restriction or boundary of this Ordinance shall become effective, nor shall any such regulation, restriction or boundary be amended until after a public hearing thereon, at which parties in interest and citizens shall have an opportunity to be heard.

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- 7.2 Upon the filing of an application, petition or other document, the designated hearing authority shall set a date for a public hearing at the next regularly scheduled monthly meeting and in no event exceeding 45 days.
- 7.3 Not less than fifteen (15) days prior to the date set for the hearing, the hearing authority shall cause a notice stating the time, place and purpose of such hearing to be published once in a newspaper in general circulation in the County of Clear Creek. When the hearing involves a proposed change in the zoning district classification of any property, or the granting of a conditional use or a variance, a notice stating the time, place and purpose of such hearing shall be posted upon the property for which proposed change has been applied for fifteen (15) days prior to the public hearing. All property owners within one hundred (100) feet, or adjacent to the property line of the property in question, shall be notified by first-class mail fifteen (15) days prior to the public hearing of the time, place and purpose of such hearing.

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