

TITLE 8
ZONING REGULATIONS

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CHAPTER 1

GENERAL ZONING PROVISIONS

SECTION:

- 8-1-1: Title
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- 8-1-3: Zoning Map
- 8-1-4: Interpretation

8-1-1: **TITLE:** This title shall be known and may be cited and referred to as the *ZONING ORDINANCE* of the town. (Ord. 86, 5-9-1966)

8-1-2: **PURPOSE:** This title is designed to encourage the most appropriate use of land in the town and to promote the logical growth of the town; to promote safety from fire and other dangers; to conserve property values; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements; to provide adequate light and air for all purposes; to prevent overcrowding of land; and in general, to promote the health, safety and general welfare of the community. (Ord. 86, 5-9-1966)

8-1-3: **ZONING MAP:**

- A. The boundaries of the zoning districts are hereby established as shown on the map and legend, attached to ordinance 86, and are made a part hereof by reference and designated as the "Flagler zoning district map". A copy of this map shall be kept on file in the office of the town clerk for the use and information of the general public and shall be kept up to date by the prompt indication thereon of all amendments thereto.
- B. Unless otherwise indicated, the district boundaries shall be the centerlines of the streets and alleys or the extensions thereof. In the

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event that a dedicated street or alley shown on the map as a district boundary is vacated, the resulting property line shall be the district boundary.

- C. Any area annexed to the town after the effective date hereof shall, upon annexation, become an R-1 district; provided, that the petition for annexation may request a different classification for part or all thereof, and in such case, the request shall be acted upon by the town board of trustees at the time the annexation ordinance is adopted. (Ord. 86, 5-9-1966)

8-1-4: **INTERPRETATION:**

- A. Whenever the regulations herein require a greater size of yard or require a lower height of building or lesser number of stories or require a greater percentage of lot to be unoccupied or impose other higher standards than are required by other ordinances or laws, the provisions herein shall govern.
- B. Any part of any ordinance of the town which is in conflict herewith is hereby repealed, except that all ordinances now or hereafter enacted relating to nuisances are not repealed, and permitted uses hereunder shall remain expressly subject to such ordinances. (Ord. 86, 5-9-1966)

CHAPTER 2

RULES AND DEFINITIONS

SECTION:

8-2-1: Rules Of Word Construction; Definitions

8-2-1: **RULES OF WORD CONSTRUCTION; DEFINITIONS:** For the purpose of this title, certain terms and words are hereby defined. Words used in the present tense include the future; the singular number shall include the plural, and the plural shall include the singular; the word "building" includes the word "structure"; the word "lot" shall include the word "plot"; the word "shall" is mandatory and not directory; and the words "occupied" or "used" shall be considered as being followed by the words "or intended, arranged or designed to be used or occupied". The words and terms defined herein are as follows:

ACCESSORY BUILDING:	A detached subordinate building, the use of which is customarily incidental to that of the main building or premises, and which is located on the same lot with the main building or use.
ACCESSORY USE:	A use naturally and normally incidental to, subordinate to, and devoted exclusively to the main use of the premises.
ALLEY:	A public thoroughfare which affords only a secondary means of access to abutting property and which is fifteen feet (15') or more in width.
APARTMENT HOUSE:	See definition of Dwelling, Multiple.
BASEMENT:	A story having part, but not more than one-half ($\frac{1}{2}$) of its height below grade. A basement is counted as a story for the purpose of height regulations if subdivided and used for business

	or dwelling purposes by others than a janitor employed on the premises.
BOARDING AND ROOMING HOUSE:	A building, other than a hotel, where, for compensation, meals or lodging are provided for three (3) or more persons, but not exceeding twenty (20) persons.
BUILDING:	Any structure for the shelter, support or enclosure of persons, animals, chattels or property of any kind; and when separated by dividing walls without any openings, each portion of such building so separated shall be deemed a separate building.
BUILDING, HEIGHT OF:	The vertical distance from the grade to the highest point of the roof.
CELLAR:	A story having more than one-half ($\frac{1}{2}$) of its height below grade.
DWELLING:	Any building or portion thereof used exclusively for residential purposes.
Multiple:	A building designed to be used by three (3) or more families, living independently of each other.
Single-Family:	A building designed to be used exclusively by one family.
Two-Family:	A building designed to be used exclusively by two (2) families.
FAMILY:	One or more persons occupying a building and living as a single housekeeping unit, as distinguished from a group occupying a boarding house, lodging house or hotel.
FRONTAGE:	All of the property abutting on one side of a street or place between two (2) intersecting streets or places measured along the line of the street or place, or if the street or place is dead ended, then all of the property abutting on one

side thereof between an intersecting street or place and the dead end.

GARAGE:**Private:**

An accessory building, a detached accessory building or portion of the main building used for the storage of not more than three (3) motor vehicles owned or used by the occupants of the main building.

Public:

A building or portion thereof, other than a private or storage garage, designed or used for servicing, repairing, equipping, hiring, selling or storing motor vehicles.

Storage:

A building or portion thereof designed to be used exclusively for housing four (4) or more motor vehicles, not used by occupants of the lot on which said building or portion thereof is situated.

GRADE:

The average of the finished grade level at the center of all walls of a building.

HOME OCCUPATION:

Any occupation or profession conducted entirely within a dwelling and carried on by a member of a family residing therein and clearly incidental and secondary to the use of the premises as a dwelling and which does not change the character thereof, and in connection with which there is no sign other than one nonilluminated nameplate attached to the building entrance not more than one square foot in area, no commodity sold on the premises, no person employed other than a member of the immediate family residing therein, and no mechanical equipment installed except such that is normally used for household purposes.

HOTEL:

A building used as the temporary abiding place of persons who are for compensation lodged with or without meals and in which there are more than ten (10) sleeping rooms and no

provision made for cooking in any individual rooms.

JUNKYARD:

The use of more than one hundred (100) square feet of the area of any lot for the storage, keeping or abandonment of junk, including inoperative motor vehicles, scrap metals or other scrap materials, or for the dismantling, demolition or abandonment of motor vehicles, or other machinery or parts thereof.

LODGING HOUSE:

A building where lodging only is provided for compensation to three (3) or more, but not exceeding fifteen (15) persons, in contradistinction to hotels open to transients.

LOT:

A parcel of land occupied or designed to be occupied by one or more main buildings, structures or uses, together with its accessory buildings, including the open spaces required herein, and having its principal frontage on a street or an officially designated and approved place.

Corner:

A lot abutting upon two (2) or more streets at their intersection.

Depth Of:

The mean horizontal distance between the front and rear lot lines.

Interior:

A lot other than a corner lot.

Lines:

The lines bounding a lot.

MANUFACTURED HOME:

A dwelling unit no less than twenty four feet (24') wide and thirty six feet (36') in length, installed on a permanent, engineered perimeter foundation, having brick, wood or cosmetically equivalent exterior siding and a pitched roof, and certified by the national manufactured housing construction and safety standards act of 1974.

MOBILE HOME:	A dwelling which is capable of being moved on wheels which are an inherent part of the structure's design. Also known as a trailer or trailer home.
MOBILE HOME PARK:	Any parcel of ground upon which two (2) or more mobile homes are occupied as dwelling units.
MOTEL:	Any group of attached or detached buildings containing individual sleeping or housekeeping units, used temporarily by automobile tourists or transients, with a garage attached or parking space located conveniently to each unit. Such structures are considered a single building for purposes of this title.
NONCONFORMING USE:	A building or premises lawfully occupied by a use which does not conform with the regulations of the district in which it is located.
PARKING LOT:	A parcel of land devoted to unenclosed parking spaces.
PARKING SPACE:	An area, enclosed or unenclosed, sufficient in size to store one motor vehicle, together with a driveway connecting the parking space with a street or alley and permitting ingress and egress of a motor vehicle.
PLACE:	An open, unoccupied space other than a street or alley permanently reserved for use as the principal means of access to abutting property.
RECREATIONAL VEHICLE:	A vehicle designed to be used primarily as temporary living quarters for recreational, camping, travel, or seasonal use that either has its own motor power or is mounted on or towed by another vehicle. "Recreational vehicle" includes camping trailers, fifth wheel trailers, motor homes, travel trailers, and truck campers.

RECREATIONAL VEHICLE PARK:	Any parcel of ground upon which two (2) or more recreational vehicles are parked and occupied for longer than two (2) weeks.
RESTAURANT:	A building, other than a hotel or boarding house, where for compensation food is prepared and dispensed.
SERVICE STATION:	Any building or premises used principally for the storing, dispensing or sale at retail of motor vehicle fuels and other petroleum products, and where service and repair of motor vehicles is done incidentally thereto.
STORY:	That portion of a building, other than a basement, included between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, then the space between the floor and the ceiling next above it.
STORY, HALF:	A space under a sloping roof which has the line of intersection of the roof decking and wall face not more than three feet (3') above the top floor level, and in which not more than two-thirds ($\frac{2}{3}$) of the floor area is finished for use. A half story containing an independent apartment or living quarters shall be counted as a full story.
STREET:	A public thoroughfare which affords principal means of access to abutting property, and any property dedicated for such purposes or subject to public easements for such purpose.
STREET LINE:	A dividing line between a lot, tract or parcel of land and a continuous street.
STRUCTURAL ALTERATION:	Any change in the supporting members of a building, such as bearing walls or partitions, columns, beams or girders, or any substantial change in the roof or in the exterior walls.
STRUCTURE:	Anything constructed or erected, the use of which requires permanent location on the ground, or which is attached to something

permanently located on the ground, but not including fences or walls used as fences less than six feet (6') in height, poles, lines, cables or other transmission or distribution facilities of public utilities.

TOURIST COURT:

See definition of Motel.

USE:

The purpose for which any land, building or structure is designed, maintained or occupied.

YARD:

An open space on the same lot with a building, unoccupied and unobstructed from the ground upward, except as otherwise provided herein. In measuring a yard for the purpose of determining the width of a side yard, the depth of the front yard or the depth of a rear yard, the mean horizontal distance between the lot line and the main building shall be used.

Front:

A yard extending across the front of a lot between the side yard lines and measured as the distance between the street line and the front wall of the building.

Rear:

A yard extending across the rear of a lot measured by the minimum distance between the rear lot line and the rear wall of the main building. On corner lots, the rear yard shall be considered as parallel to the street upon which the lot has its least dimension. On all lots, the rear yard shall be at the opposite end of the lot from the front yard.

Side:

A yard between the building and the sideline of the lot and extending from the front lot line to the rear lot line. (Ord. 86, 5-9-1966; amd. Ord. 138, 5-11-1999; Ord. 149, 1-8-2001)

CHAPTER 3**ADMINISTRATION AND ENFORCEMENT****SECTION:**

- 8-3-1: Building Inspector
- 8-3-2: Building Permits
- 8-3-3: Nonconforming Use Certificate
- 8-3-4: Amendments
- 8-3-5: Violation And Penalty

8-3-1: BUILDING INSPECTOR:

- A. Office Created: The office of building inspector is hereby created.
- B. Appointment; Term Of Office: The building inspector shall be appointed by the board of trustees of the town to serve under such terms prescribed by it and at its pleasure.
- C. Duties: It shall be the duty of the building inspector to enforce the provisions of this title and to enforce such rules, regulations and decisions as shall be adopted by the board of adjustment and to bring to the attention of the proper enforcement officers of the town any violations hereof, and when required for the proper enforcement of this title, it shall be the duty of the building inspector to make and file with the marshal a written complaint against any violators hereof. (Ord. 86, 5-9-1966; amd. 1992 Code)

8-3-2: BUILDING PERMITS:

- A. Required: No building or fence, hedge, or wall shall be erected, moved, grown, or structurally altered unless a permit therefor has been issued by the building inspector, and no permit shall be issued unless the building or structure proposed is in full conformance with this title, except in those instances where the permit has been

granted for a variance by the board of adjustment. (Ord. 147, 10-10-2000)

- B. Application: All applications for building permits must be accompanied by drawings to scale showing plot plan and location, floor plan, height and size of all proposed buildings and the location and dimensions of fences, signs and parking and loading areas.
- C. Records Kept: The building inspector shall maintain full and complete records of all applications and accompanying drawings and data and the action taken with respect to such applications. (Ord. 86, 5-9-1966)

8-3-3: **NONCONFORMING USE CERTIFICATE¹:** A nonconforming use certificate shall be issued, upon application, with respect to all nonconforming uses in existence on the effective date hereof. Applications for such certificates must be filed with the building inspector within six (6) months after the effective date hereof. It shall be the duty of the building inspector, promptly upon receipt of such application, to determine the necessary facts and to issue such a certificate if he shall find that the use is a nonconforming use under the terms of this title. Each certificate shall contain such information as is necessary fully to show the extent and nature of the nonconforming use, and a record of all certificates shall be kept on file in the office of the building inspector. (Ord. 86, 5-9-1966)

8-3-4: **AMENDMENTS:** The regulations herein and the boundaries of the districts may, from time to time, be amended, supplemented, changed, modified or repealed by the board of trustees in accordance with the provisions of law and after such notice and hearing as may be required thereby. (Ord. 86, 5-9-1966)

8-3-5: **VIOLATION AND PENALTY:**

- A. Notice Of Violation: Whenever the building inspector shall find a violation of any of the provisions of this title, he shall notify the person responsible for the violation, in writing, and shall order the necessary correction within the period of one month.

1. See also chapter 7 of this title.

- B. Penalty: Failure to comply with any of the provisions of this title, unless a variance has been authorized by the board of adjustment, shall constitute a misdemeanor and, upon conviction, is subject to penalty as provided in section 1-4-1 of this code. (Ord. 86, 5-9-1966; amd. 1992 Code)

CHAPTER 4

BOARD OF ADJUSTMENT

SECTION:

- 8-4-1: Created; Membership; Terms Of Office
- 8-4-2: Qualifications
- 8-4-3: Vacancies
- 8-4-4: Organization
- 8-4-5: Powers And Duties
- 8-4-6: Appeals

8-4-1: **CREATED; MEMBERSHIP; TERMS OF OFFICE:** A board of adjustment is hereby established. The board shall consist of five (5) members to be appointed by the mayor with the approval of the town board of trustees, each to be appointed for a term of three (3) years and until their successors shall be duly qualified; except, that in the case of the board first appointed, two (2) members shall be appointed for a term of two (2) years, and one member shall be appointed for a term of one year. (Ord. 86, 5-9-1966)

8-4-2: **QUALIFICATIONS:** A member of the board of adjustment must have been a resident of the town for at least one year prior to his appointment and must be the owner of real property within the town. (Ord. 86, 5-9-1966)

8-4-3: **VACANCIES:** Vacancies occurring during the term of any member of the board shall be filled for the unexpired term by appointment by the mayor with the approval of the board of trustees. (Ord. 86, 5-9-1966)

8-4-4: **ORGANIZATION:** Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The board shall elect a chairman and other officers, shall adopt

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bylaws or rules and regulations governing their meetings, procedures and hearings and shall keep complete minutes of all board proceedings and decisions. The presence of four (4) members shall be necessary to constitute a quorum. (Ord. 86, 5-9-1966)

8-4-5: **POWERS AND DUTIES:** The board of adjustment shall have such powers and duties as are now or hereafter provided by statute for boards of adjustment. All actions and determinations of the board shall be consistent and in harmony with the general purpose and intent of this title as herein set forth. (Ord. 86, 5-9-1966)

8-4-6: **APPEALS:** Appeal to the board of adjustment may be taken within thirty (30) days after any action or decision of the building inspector by any person aggrieved or by any officer, department or board of the town. A notice of appeal shall be filed with the building inspector and the board, specifying the grounds thereof. The building inspector shall forthwith thereafter transmit to the board all papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings and furtherance of the action appealed from, unless the building inspector certifies to the board of adjustment, after the notice of appeal has been filed with him, that, by reason of fact stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application and on notice to the officer from whom the appeal is taken and on due cause shown. (Ord. 86, 5-9-1966)

CHAPTER 5

DISTRICTS AND REGULATIONS**SECTION:**

- 8-5-1: Districts Established
- 8-5-2: R-1 Residence District
- 8-5-3: R-1A Residence District
- 8-5-4: R-2 Residence District
- 8-5-5: B-1 Business District
- 8-5-6: B-2 Industrial District
- 8-5-7: R-3 Combined Use District
- 8-5-8: Planned Development District
- 8-5-9: Open Space District

- 8-5-1: **DISTRICTS ESTABLISHED:** For the purpose of this title, the town is divided into classes of zoning districts as follows:

- R-1 Residence district
- R-1A Residence district
- R-2 Residence district
- B-1 Business district
- B-2 Industrial district
- R-3 Combined use district
- Planned development district
- OS Open space district

(Ord. 124, 9-12-1988; amd. Ord. 138, 5-11-1999; Ord. 170, 9-14-2005)

Except as hereinafter provided, no building, structure or land shall be used, and no building or part thereof or other structure shall be erected, moved, structurally altered or converted, except as permitted in the district in which it is located. (Ord. 124, 9-12-1988)

8-5-2: **R-1 RESIDENCE DISTRICT:**

A. Permitted Uses:

Churches, provided that before any such use may commence, consent therefor shall first be obtained, in writing, from more than

sixty percent (60%) of the persons owning real estate within three hundred feet (300') of the lot lines of the lot whereon such use is proposed.

Home occupations and the offices of physicians, dentists, musicians, artists or attorneys when situated in the dwelling; provided, that none of the foregoing uses shall have a nameplate exceeding one square foot in area or any other advertising sign of any kind, and provided, that such use shall not be on such a scale or in such a manner as to be offensive to the neighborhood.

Hospitals, clinics and similar medical facilities.

One-family dwellings.

Parks, playgrounds and public buildings, such as libraries, town halls and fire stations owned and controlled by the town.

Public schools and private schools having a similar curriculum.

Truck gardening and nurseries, and the raising, keeping and boarding of poultry, pets and livestock, except for commercial purposes; provided, that before any such use may commence, consent therefor shall first be obtained, in writing, from more than seventy five percent (75%) of the owners of real estate within three hundred feet (300') of the lot lines of the lots whereon such use is proposed, and provided, that such use shall not be on such a scale or in such a manner as to be offensive to the neighborhood.

Accessory buildings and uses customarily incidental to any of the foregoing uses when located on the same lot and not involving the conduct of a business, other than those provided above, on the premises, including one private garage.

- B. Building Height: No building shall exceed two and one-half ($2\frac{1}{2}$) stories or thirty five feet (35') in height, and no building shall be less than one story above the ground.

- C. Area Regulations:

1. Minimum Yard Dimensions: There shall be a front yard of not less than twenty five feet (25'), a side yard of not less than seven and one-half feet ($7\frac{1}{2}$ ') and a rear yard of not less than thirty feet (30').

2. Minimum Lot Area: Each one-family dwelling hereafter erected shall be located on a lot having an area of not less than six thousand (6,000) square feet. (Ord. 86, 5-9-1966; amd. 1992 Code)

8-5-3: R-1A RESIDENCE DISTRICT:

A. Permitted Uses:

Any use permitted in the R-1 residence district, subsection 8-5-2A of this chapter.

B. Building Height: Same as R-1 residence district, subsection 8-5-2B of this chapter.

C. Area Regulations: Same as R-1 residence district, subsection 8-5-2C of this chapter. (Ord. 124, 9-12-1988)

8-5-4: R-2 RESIDENCE DISTRICT:

A. Permitted Uses:

Any use permitted in the R-1 residence district, subsection 8-5-2A of this chapter.

Two-family dwellings, multiple dwellings, and rooming houses.

Accessory buildings and uses customarily incidental to any of the foregoing uses.

B. Building Height: Same as R-1 residence district, subsection 8-5-2B of this chapter.

C. Area Regulations:

1. Minimum Yard Dimensions: Same as R-1 residence district, subsection 8-5-2C of this chapter; except, that front yards and rear yards shall not be less than twenty feet (20').

2. Minimum Lot Area:

a. Each one-family or two-family dwelling hereafter erected shall be located on a lot having an area of not less than five thousand (5,000) square feet.

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b. Each multiple dwelling hereafter erected shall be located on a lot having an area of not less than two thousand five hundred (2,500) square feet per family.

c. Each rooming house hereafter erected shall be located on a lot having an area of not less than one thousand five hundred (1,500) square feet per dwelling unit. (Ord. 86, 5-9-1966)

8-5-5: **B-1 BUSINESS DISTRICT:**

A. Permitted Uses:

Any use permitted in the R-2 residence district, subsection 8-5-4A of this chapter.

Bakery.

Bank.

Barbershop.

Beauty parlor.

Drugstore.

Dry cleaning plant or store.

Electric repair shop.

Florist shop.

Frozen food locker plant.

Grocery or meat shop.

Hardware store.

Hotel and motel.

Laundry plant and store.

Lodge hall and private club.

Lumberyard.

Meeting halls, including those used for public dances and as gymnasiums.

Motor vehicle and machinery sale and repair shop.

Motor vehicle washing facility.

Newspaper plant and office.

Offices and office buildings.

Painting and decorating shop.

Parking lot or public garage.

Plumbing, heating or tinsmithing shop.

Pool hall.

Restaurant or cafe.

Service and filling station.

Storage, processing, manufacture, packaging, and transport of birdseed for export and retail sales.

Store or shop for the conduct of a retail business similar to the types of businesses listed above in this subsection.

Theater, the seating capacity of which does not exceed five hundred (500) persons.

Tourist court and mobile home park.

Variety shop.

Accessory buildings customarily incidental to any of the above uses. (Ord. 86, 5-9-1966; amd. Ord. 89, 5-29-1967; Ord. 176, 9-10-2007)

B. Height Regulations: No building shall exceed fifty feet (50') in height.

C. Area Regulations:

1. Minimum Yard Dimensions: For dwelling uses, same as R-2 residence district, subsection 8-5-4C1 of this chapter; for other uses,

there shall be a front yard of not less than twenty feet (20'), subject to provisions of section 8-6-3 of this title; no side yard required, but if provided on the side of a lot abutting a dwelling, not less than five feet (5'); and a rear yard of not less than twenty five feet (25').

2. Minimum Lot Area: For dwelling uses, same as R-2 residence district, subsection 8-5-4C2 of this chapter; for other uses, no area requirement. (Ord. 86, 5-9-1966)

- D. Special Use Review¹: Business uses, not presently allowed as a permitted use shall be allowed, provided that the proposed business or use is approved by the board pursuant to a special use review. A special use review shall require the applicant to complete an application form as provided by the town, provide requested information and documentation, and shall further require a review before the board and a public hearing. At the conclusion of such hearing, the board may grant the proposed use if it is determined by the board that such use is in the best interests of the town and the applicant agrees to all reasonable conditions imposed by the board. (Ord. 138, 5-11-1999)

8-5-6: **B-2 INDUSTRIAL DISTRICT:**

- A. Permitted And Prohibited Uses: Buildings and premises may be used for any purpose not prohibited by law or by any ordinance of the town; provided, however, that no premises shall be occupied for any of the following uses:

Explosive manufacture or storage.

Garbage, offal or dead animal reduction or dumping.

Junkyard.

Stockyard.

- B. Building Height: No building shall exceed fifty feet (50') in height.
- C. Area Regulations: For dwelling uses, same as R-2 residence district, subsection 8-5-4C of this chapter; for other uses, no minimum yard dimensions or minimum lot area requirements. (Ord. 86, 5-9-1966)

1. See also subsection 8-6-2E of this title.

8-5-7: R-3 COMBINED USE DISTRICT:**A. Permitted Uses:**

All uses permitted in the R-1 and R-2 Residence Districts.

All uses allowed in the B-1 Business District, and B-2 Industrial District.

Mobile homes and mobile home parks. (Ord. 138, 5-11-1999)

8-5-8: PLANNED DEVELOPMENT DISTRICT: An area of land within the Town proposed for development or which concerns an application for a unique use which use does not meet a "permitted use" as defined for the district in which the property is located. Any owner seeking to create a Planned Development District shall make application to the Town on a form provided by the Town, and shall meet all requirements imposed by the Town, including review and public hearing, before the board shall consider and/or approve such district. The board shall not approve a proposed Planned Development District unless the board determines that the proposed district is in the best interests of the Town. The board may enter into a development agreement with the applicant to address any and all concerns that the board may have concerning the proposed district. (Ord. 138, 5-11-1999)

8-5-9: OPEN SPACE DISTRICT:

A. Purpose: The Open Space Districts shall allow single-family residences, and usual and normal agricultural purposes historically allowed on the subject properties zoned as "Open Space", including the planting, raising, and harvest of crops. Additionally, Open Space Districts may allow public parks, playgrounds, other public recreation areas, and similar open space areas. (Ord. 170, 9-14-2005)

CHAPTER 5A

MEDICAL MARIJUANA

SECTION:

- 8-5A-1: Findings
- 8-5A-2: Definitions
- 8-5A-3: Prohibited
- 8-5A-4: Penalties And Remedies For Violations
- 8-5A-5: Statutory Authority

8-5A-1: **FINDINGS:** Findings under Colorado Revised Statutes 12-43.3-101, et seq.

- A. The Colorado Medical Marijuana Code clarifies Colorado law regarding the scope and extent of amendment 20 to the Colorado Constitution (article XVIII, section 14).
- B. Colorado Revised Statutes 12-43.3-310 of the Colorado Medical Marijuana Code specifically authorizes a municipality in part to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses, based on local government zoning, health, safety, and public welfare laws.
- C. The Board of Trustees of the Town of Flagler has carefully considered the provisions of the Colorado Medical Marijuana Code, article XVIII, section 14 of the Colorado Constitution, and the impact of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses on the health, safety, and welfare of the Town and the Town inhabitants, and has determined as an exercise of its local land use authority that such medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses should be prohibited and not be located within the corporate limits of the Town. (Ord. 185, 11-8-2010)

8-5A-2: **DEFINITIONS:** For purposes of this chapter, the following terms shall have the following meanings:

MEDICAL MARIJUANA: Means marijuana that is grown and sold for a purpose authorized by section 14 of article XVIII of the Colorado Constitution.

MEDICAL MARIJUANA CENTER: Means a person authorized to be licensed to operate a business as described in the Colorado Medical Marijuana Code that sells medical marijuana to registered patients or primary caregivers as defined in section 14 of article XVIII of the Colorado Constitution, but is not a primary caregiver, and which a municipality is authorized to prohibit as a matter of law.

MEDICAL MARIJUANA-INFUSED PRODUCTS MANUFACTURER: Means a person licensed pursuant to the Colorado Medical Marijuana Code to operate a business known as a medical marijuana-infused products manufacturing license, and which a municipality is authorized to prohibit as a matter of law.

OPTIONAL PREMISES CULTIVATION OPERATION: Means a person licensed pursuant to the Colorado Medical Marijuana Code to operate a business known as an optional premises grow facility in order to grow and cultivate marijuana for a purpose authorized by section 14 of article XVIII of the Colorado Constitution, and which a municipality is authorized to prohibit as a matter of law.

PERSON: Means a natural person, partnership, association, company, corporation, limited liability company, or organization, or a manager, agent, owner, director, servant, officer, agent, or employee thereof. (Ord. 185, 11-8-2010)

8-5A-3: **PROHIBITED:** It is unlawful for any person to operate, cause to be operated, or permit to be operated a medical marijuana center, optional premises cultivation operation, or facility for which a medical marijuana-infused products manufacturers' license could otherwise be obtained, within the Town, and all such uses are hereby prohibited in

any location within the Town, or within any area hereinafter annexed to the Town. (Ord. 185, 11-8-2010)

8-5A-4: **PENALTIES AND REMEDIES FOR VIOLATIONS:** In addition to those remedies set forth in this Code, or ordinances, the Town is specifically authorized to seek an injunction, abatement, restitution, or any other remedy necessary to prevent, enjoin, abate, or remove the violation and may seek a fine of five hundred dollars (\$500.00) for each day that the subject property is in violation. (Ord. 185, 11-8-2010)

8-5A-5: **STATUTORY AUTHORITY:** The Board hereby finds, determines and declares that it has the power and authority to adopt this chapter pursuant to the Colorado Medical Marijuana Code; the Local Government Land Use Control Enabling Act, article 20 of title 29, Colorado Revised Statutes; section 31-15-103, Colorado Revised Statutes; section 31-15-401, Colorado Revised Statutes; and section 31-15-501, Colorado Revised Statutes. (Ord. 185, 11-8-2010)

CHAPTER 6

SUPPLEMENTAL REGULATIONS

SECTION:

- 8-6-1: General Provisions
- 8-6-2: Manufactured Homes, Mobile Homes And Mobile Home Parks
- 8-6-3: Minimum Front Yards
- 8-6-4: Off Street Parking
- 8-6-5: Fences, Hedges And Walls
- 8-6-6: Recreational Vehicles And Recreational Vehicle Parks

8-6-1: **GENERAL PROVISIONS:**

- A. The district regulations set forth in this chapter qualify or supplement, as the case may be, the district regulations appearing elsewhere in this title.
- B. Where a lot in separate ownership has a smaller area than the minimum herein required, and the muniment of title was on record on the effective date hereof, such lot may be occupied by a one-family dwelling and the usual accessory buildings; provided, however, that the yard requirement shall not be reduced except by order of the board of adjustment.
- C. On lots which are not corner lots and which have a frontage on two (2) nonintersecting streets, no building shall project beyond the front yard line of either of the abutting streets.
- D. In a residence district, an accessory building may not be more than twelve feet (12') in height and may not occupy more than thirty percent (30%) of a required rear yard; provided, that on a corner lot, no accessory building shall be nearer a street than the main building on the same lot and, in the case of reversed frontage, not nearer the side street than the front line of buildings on the lot at the rear; and provided, further, that no detached accessory building shall be nearer the front lot line than sixty feet (60') nor nearer any side or

rear lot line than two feet (2') nor nearer any alley abutting the rear of the lot than five feet (5').

- E. On corner lots in a residence district where the frontage has been reversed, the side yard on the street side of the lot shall be the same as the front yard required on the lots at the rear of the corner lot. For both corner lots and interior lots with reversed frontage, the front yard shall be not less than fifteen feet (15') and the rear yard not less than seven feet (7').
- F. Every part of a required yard shall be open to the sky, except for ordinary and reasonable projections from buildings. An open, unenclosed porch or paved terrace may project into a front yard not more than ten feet (10').
- G. No yard or other open space provided about any building, for the purpose of complying with this title, shall be considered as providing a yard or open space for any other buildings.
- H. No signs, except church or similar bulletin boards and signs not exceeding twelve (12) square feet in area pertaining to the lease or sale of a building or premises, shall be permitted in any residence district.
- I. The height regulations shall not apply to or restrict the height or chimney stacks, grain elevators, water towers, radio, television and similar towers and antennas and spires, steeples and belfries. (Ord. 86, 5-9-1966)

8-6-2: MANUFACTURED HOMES, MOBILE HOMES AND MOBILE HOME PARKS:

- A. **Prohibited Uses:** No mobile homes shall be located within the town of Flagler except in the R-3 combined use district or in a mobile home park. Mobile homes located within the town as of the date hereof and meeting all applicable town ordinances, regulations, or restrictions, shall be allowed to remain in present locations subject to section 8-3-3 of this title, as amended herein.
- B. **Manufactured Homes Allowed:** Manufactured homes shall be allowed in all districts applicable to residences and businesses, provided that the manufactured home meets the definition and criteria as set forth in this title for manufactured homes. (Ord. 138, 5-11-1999)

C. Redesignation Of Mobile Home Parks:

1. The following portions of the town of Flagler shall remain designated as mobile home parks:

a. Lots Eleven (11) through (16), Block Twelve (12), Madoles Addition to the Town of Flagler.

b. The West Half ($W\frac{1}{2}$) of Block Three (3); and Lots Eight (8) through Fourteen (14), Block Two (2), McGonigals Addition to the Town of Flagler.

2. Further, the following property previously designated as a mobile home park shall no longer be designated as a mobile home park and any mobile home located upon the property as of the effective date hereof shall be considered a nonconforming use:

Lots Twenty Two (22) through Twenty Eight (28) Block Four (4), Original Town of Flagler.
(Ord. 149, 1-8-2001)

D. Restoration Or Repair Of Mobile Homes¹: Any mobile home located outside of an R-3 district or mobile home park damaged or destroyed by involuntary fire, explosion, flood, or similar natural disaster, regardless of the extent of the damage, may be repaired or replaced on the site of the damage provided that the repair or replacement is accomplished within one year of the natural disaster, and provided that a replacement mobile home is a model no older than the replaced mobile home, and provided that the replacement or repairs meets the guidelines and requirements of the national manufacturers housing construction and safety act of 1974.

E. Improvements To Mobile Homes: Enclosed additions or enlargements to mobile homes not located within an R-3 district or mobile home park are not allowed unless approved by the town board pursuant to a special use review as defined in this title, normally used in B-1 districts². Renovations or improvements within the mobile home, or minor improvements such as the addition of a deck, replacement of siding, concrete steps, and maintenance procedures which do not expand a nonconforming use are allowed as set forth in this title. (Ord. 138, 5-11-1999)

1. See also section 8-7-4 of this title.

2. See subsection 8-5-5D of this title.

8-6-3: MINIMUM FRONT YARDS: Where forty percent (40%) or more of the frontage on one side of the street between two (2) intersecting streets is improved with dwellings having an average front yard depth with a variation of not more than six feet (6'), the average front yards of such dwellings shall be the minimum front yard required for all dwellings hereafter erected or structurally altered in said frontage. The same provisions shall apply to buildings other than dwellings, as a separate category. (Ord. 86, 5-9-1966)

8-6-4: OFF STREET PARKING: For every building hereafter erected and listed below, off street parking spaces shall be provided as follows:

One-family dwelling, two-family dwelling, multiple dwelling, boarding and rooming house, hotel, motel, lodging house and mobile home park	1 parking space for each dwelling or rental unit
Churches	1 parking space for every 12 members
Schools	1 parking space for every 2 permanent employees and for every 3 regularly enrolled students 16 years of age or older, plus adequate parking space for all school buses
Medical clinics, hospitals, nursing homes and other medical facilities	1 space for each permanent employee, but not less than $\frac{1}{4}$ the gross floor area

(Ord. 86, 5-9-1966; amd. Ord. 138, 5-11-1999)

8-6-5: FENCES, HEDGES AND WALLS:

A. Permitted; Conditions And Requirements: Fences, hedges, and walls may be permitted in the yard areas of any district of the town of Flagler subject to the following conditions and requirements:

1. All fences, hedges, and walls are subject to the applicable sections of any ordinance or code of the town of Flagler.

2. No fence, hedge, or wall may extend beyond or across a property line unless with the joint agreement of the abutting property owners. It shall be the responsibility of the property owner to locate all property lines prior to the placement of a fence, hedge, or wall.

3. No fence, hedge, or wall shall be placed upon public property, including any easement granted to the town of Flagler, without the written consent of the town, or its designated agent or employee.

4. No fence shall be constructed of barbed wire or sharp pointed materials, be electrically charged, or be visibly displeasing or objectionable to the general public as determined by the board.

5. Fences, hedges, or walls shall not exceed three feet (3') in height when such fences are located within the required front yard area. Further, fences, hedges, or walls shall not exceed three feet (3') in height when located in areas that would restrict the sight of an automobile driver or bicyclist when turning on streets or entering or exiting an alley. Side and backyard fences shall not exceed fifteen feet (15') in height unless such fence creates the visual safety problem described herein. The height shall be measured at the finished grade on the side of the fence nearest the street, alley, or abutting property.

B. Nonconforming Use: Any such fence, hedge, or wall which was constructed prior to the adoption hereof shall be deemed a nonconforming use and allowed to remain subject to the provisions of chapter 3 of this title unless the town through its designated employees or agents determines that the placement of the fence, hedge, or wall constitutes a safety problem or nuisance, restricts the vision of automobile drivers or bicyclists turning on a public street, turning into or out of an alley, or if the placement of the fence, hedge, or wall interferes with a town policy or proper exercise of the town police power. In such case the town shall give written notice to the owner of the fence, hedge, or wall notifying the person served to remove the fence, hedge, or wall for the reasons given. Such notice shall direct that the fence be removed within thirty (30) days of the notice.

C. Abatement And Penalty: Should any fence, hedge, or wall be found within the town contrary to the provisions of this title or should an owner refuse to remove a fence, hedge, or wall upon proper notice by the town, the town shall cause any such fence, hedge, or wall to be removed, trimmed, or otherwise altered to meet the requirements of this title, and the expense of such removal shall be recovered

under the abatement procedures of the town through the town of Flagler municipal court. (Ord. 147, 10-10-2000)

8-6-6: RECREATIONAL VEHICLES AND RECREATIONAL VEHICLE PARKS:

- A. **Recreational Vehicles; Use As Dwelling Prohibited:** No recreational vehicles shall be used as dwellings within the town of Flagler except in a recreational vehicle park. This restriction shall not apply to recreational vehicles parked or stored at a residence or business and not being used as a dwelling or to recreational vehicles temporarily being used as a dwelling for no longer than two (2) consecutive weeks in any four (4) month period of time.
- B. **Designation Of Recreational Vehicle Park:** The following portion of the town of Flagler shall be designated as the recreational vehicle park:

Lots One (1) through Seven (7), Block Two (2), McGonigals Addition to the Town of Flagler.
- C. **Regulations And Restrictions Applicable To Recreational Vehicle Parks:** All recreational vehicles located within a recreational vehicle park must comply with all applicable town ordinances, must receive a permit from the town clerk and pay any applicable permit fee prior to locating in the park, and may not remain in the park for longer than four (4) consecutive months in a one year period without the approval of the town board or its designated employee. (Ord. 149, 1-8-2001)

CHAPTER 7

NONCONFORMING USES¹

SECTION:

- 8-7-1: Existing Uses
- 8-7-2: Abandonment Of Use
- 8-7-3: Change In Use
- 8-7-4: Restoration
- 8-7-5: Expansion
- 8-7-6: Elimination Of Certain Nonconforming Uses

8-7-1: **EXISTING USES:** The lawful use of any building, structure or land existing on the effective date hereof (or upon the effective date of any amendments to this title which restricts or prohibits a previously permitted use), although such use does not conform to the provisions hereof, may be continued, subject to the provisions of this title. (Ord. 138, 5-11-1999)

8-7-2: **ABANDONMENT OF USE:** Whenever a nonconforming use has been discontinued for a period of twelve (12) consecutive months, such use shall not thereafter be reestablished, and any future use of the building, structure, or land shall be in conformance with this title. A finding of abandonment shall include a failure of the owner or his or her tenants or invitees to inhabit a mobile home existing in a district other than an R-3 district or mobile home park for three hundred sixty five (365) consecutive days. (Ord. 138, 5-11-1999)

8-7-3: **CHANGE IN USE:** When a nonconforming use of a building or premises is hereafter changed to a more restricted use or to a conforming use, such use shall not thereafter be changed to a less restricted or nonconforming use. (Ord. 138, 5-11-1999)

1. See also section 8-3-3 of this title.

8-7-4: **RESTORATION¹:** Except as to mobile homes being used outside of an R-3 district or mobile home park as hereinbefore addressed, if any building, the use of which does not conform to the use regulations of this title, is damaged by fire, explosion, flood or similar natural disaster to the extent of more than seventy five percent (75%) of its fair market value, it shall not be restored or rebuilt except in conformity with the regulations of the district in which it is situated. Buildings damaged to the extent of less than seventy five percent (75%) may be repaired and restored to their previous use provided that the restoration is completed within one year of the damage and provided that the restoration does not create an increased or expanded nonconforming use from what previously existed. (Ord. 138, 5-11-1999)

8-7-5: **EXPANSION:** A nonconforming use shall not be expanded, except with the approval of the board of adjustment. (Ord. 86, 5-9-1966)

8-7-6: **ELIMINATION OF CERTAIN NONCONFORMING USES:**
Any nonconforming use which is a "junkyard", as defined in section 8-2-1 of this title, shall be changed to a use conforming with this title within a period of two (2) years after the effective date hereof. (Ord. 86, 5-9-1966)

1. See also subsection 8-6-2D of this title.

CHAPTER 8

VARIANCES AND APPEALS

SECTION:

- 8-8-1: Authority To Grant Variances; Restrictions
- 8-8-2: Application For Variance
- 8-8-3: Public Hearing
- 8-8-4: Action By Board Of Adjustment
- 8-8-5: Supplemental Conditions And Safeguards
- 8-8-6: Appeals From Board Of Adjustment

8-8-1: AUTHORITY TO GRANT VARIANCES; RESTRICTIONS:

The zoning board of adjustment may authorize, in specific cases, such variance from the terms of this title as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this title would result in unnecessary hardship. No nonconforming use of neighboring lands, structures or buildings in the same district and no permitted or nonconforming use of lands, structures or buildings in other districts shall be considered grounds for issuance of a variance. Variances shall not be granted on the grounds of convenience or profit, but only where strict application of the provisions of this title would result in unnecessary hardship. (1992 Code)

8-8-2: APPLICATION FOR VARIANCE: A variance from the terms of this title shall not be granted by the zoning board of adjustment unless and until a written application has been submitted to the building inspector and recommended by the building inspector to the zoning board of adjustment, which application shall contain the following:

- A. Name, address and telephone number of applicant(s).
- B. Legal description of property.
- C. Description of nature of variance requested.

D. A narrative statement demonstrating that the requested variance conforms to the following standards:

1. Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district.

2. A literal interpretation of the provisions of this title would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this title.

3. Special conditions and circumstances do not result from the actions of the applicant.

4. Granting the variance requested will not confer on the applicant any special privilege that is denied by this title to other lands, structures or buildings in the same district.

E. A list of the names and mailing addresses of all property owners whose property is within an area bounded by lines three hundred feet (300') from the subject property.

A variance shall not be granted unless the zoning board of adjustment makes specific findings of fact based directly on the particular evidence presented to it which supports conclusions that the above mentioned standards and conditions have been met by the applicant. (1992 Code)

8-8-3: **PUBLIC HEARING:** Upon receipt of the application for an appeal or a variance, the zoning board of adjustment shall hold a public hearing, publish notice in a newspaper and give written notice to all parties as required for special use permits. (1992 Code)

8-8-4: **ACTION BY BOARD OF ADJUSTMENT:** Within thirty (30) days after the public hearing, the board of adjustment shall either approve, conditionally approve or disapprove the request for appeal or variance or may delay such decision for a definite period of time for further study.

Upon granting or denying an application, the board of adjustment shall specify:

A. The ordinance and standards used in evaluating the application.

- B. The reasons for approval or denial.
- C. The actions, if any, that the applicant could take to obtain a permit. (1992 Code)

8-8-5: **SUPPLEMENTAL CONDITIONS AND SAFEGUARDS:** Under no circumstances shall the board of adjustment grant an appeal or variance to allow a use not permissible under the terms of this title in the district involved, or any use expressly or by implication prohibited by the terms of this title in said district. In granting any appeal or variance, the board of adjustment may prescribe appropriate conditions and safeguards in conformity with this title. Violation of such conditions and safeguards, when made a part of the terms under which the appeal or variance is granted, shall be deemed a violation of this title. (1992 Code)

8-8-6: **APPEALS FROM BOARD OF ADJUSTMENT:** Any person or persons jointly or severally aggrieved by any decision of the board, or any resident, taxpayer, or other officer, department, board or commission of the municipality may appeal such decision by appropriate legal action to a court of record having legal jurisdiction thereof. Such appeal shall be filed no more than thirty (30) days from the date of the board action. (1992 Code)

ORDINANCE NO. 149

AN ORDINANCE BY THE BOARD OF TRUSTEES OF THE TOWN OF FLAGLER TO AMEND AND MODIFY THE ZONING ORDINANCE OF THE TOWN OF FLAGLER BY CREATING A RECREATIONAL VEHICLE PARK AND ESTABLISHING CERTAIN DEFINITIONS, REGULATIONS, AND RESTRICTIONS, APPLICABLE TO THE RECREATIONAL VEHICLE PARK, AND AMENDING PRIOR DESIGNATION OF MOBILE HOME PARKS.

Whereas, the Town of Flagler, (hereinafter referred to as the "Town"), located in the County of Kit Carson and the State of Colorado, is the body corporate operating as a statutory town pursuant to the general statutes of the State of Colorado; and

Whereas, in May, 1966, the Board of Trustees of the Town of Flagler, hereinafter referred to as the "Board" did pass Ordinance No. 86, also referred to as the "Zoning Ordinance", which ordinance initially established four classes of zoning districts; and

Whereas, on May 11, 1999, the Board did pass Ordinance No. 138, which created an additional zoning district (R-3 Combined Use District), allowed for the creation of Planned Development Districts, defined and created three separate mobile home parks, amended the definition of "nonconforming uses", and created a procedure for special use review; and

Whereas, Article IX, Section 1 of the Zoning Ordinance and Colorado Revised Statutes, 31-23-301 through 31-23-305 give to the Board the authority to amend its zoning ordinances and regulations and proscribes the procedure for such amendments; and

Whereas, the Board has determined that the residents of the Town would benefit from a revision of the zoning ordinance so as to remove the designation of one existing mobile home park and to create a recreational vehicle park;

IT IS THEREFORE ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF FLAGLER, COLORADO:

SECTION I: DEFINITIONS.

Article II of the Zoning Ordinance, concerning definitions, shall be amended to include the following definition:

"Recreational Vehicle" means a vehicle designed to be used primarily as temporary living quarters for recreational, camping, travel, or seasonal use that either has its own motor power or is mounted on or towed by another vehicle. "Recreational vehicle" includes camping trailers, fifth wheel trailers, motor homes, travel trailers, and truck campers."

"Recreational Vehicle Park: Any parcel of ground upon which two or more recreational vehicles are parked and occupied for longer than two weeks."

SECTION II: RECREATIONAL VEHICLES.

Article III of the Zoning Ordinance shall be amended to state that no recreational vehicles shall be used as dwellings within the Town of Flagler except in a Recreational Vehicle Park. This restriction shall not apply to recreational vehicles parked or stored at a residence or business and not being used as a dwelling or to recreational vehicles temporarily being used as a dwelling for no longer than two consecutive weeks in any four month period of time.

SECTION III: DESIGNATION OF RECREATIONAL VEHICLE PARK.

The following portion of the Town of Flagler shall be designated as the recreational vehicle park:

Lots One (1) through Seven (7), Block Two (2), McGonigals Addition to the Town of Flagler.

SECTION IV: REGULATIONS AND RESTRICTIONS APPLICABLE TO RECREATIONAL VEHICLE PARK.

All recreational vehicles located within a recreational vehicle park must comply with all applicable Town ordinances, must receive a permit from the Town Clerk and pay any applicable permit fee prior to locating in the park, and may not remain in the park for longer than four consecutive months in a one year period without the approval of the Town Board or its designated employee.

SECTION V: REDESIGNATION OF MOBILE HOME PARKS.

The following portions of the Town of Flagler shall remain designated as mobile home parks:

- a. Lots Eleven (11) through (16), Block Twelve (12), Madoles Addition to the Town of Flagler.
- b. The West Half (W1/2) of Block Three (3); and Lots Eight (8) through Fourteen (14), Block Two (2), McGonigals Addition to the Town of Flagler.

Further, the following property previously designated as a mobile home park shall no longer be designated as a mobile home park and any mobile home located upon the property as of the effective date of the passage of this ordinance shall be considered a nonconforming use:

Lots Twenty Two (22) through Twenty Eight (28) Block Four
(4), Original Town of Flagler.

SECTION V: SEPARABILITY.

If any one or more sections or parts of this Ordinance shall be adjudged unenforceable or invalid, such judgment shall not affect, impair, or invalidate the remaining provisions of this Ordinance, it being the intention that the various provisions hereof are severable.

SECTION VI: ENFORCEMENT DATE.

This Ordinance shall take effect thirty days after publication of the Ordinance as provided by law.

Adopted and Approved this 8 day of Jan 2001, 2000.

Signed

James E. Hannebaum
JAMES HANNEBAUM, Mayor

(S E A L)

Attest:

Dolly Mae Sharp
DOLLY MAE SHARP, Town Clerk

ORDINANCE NO. 196

AN ORDINANCE OF THE TOWN OF FLAGLER ANNEXING A PARCEL OF LAND LOCATED IN KIT CARSON COUNTY, COLORADO, TO THE TOWN OF FLAGLER, COLORADO, AND EXTENDING THE CORPORATE LIMITS OF THE TOWN OF FLAGLER TO INCLUDE THE DESCRIBED PARCEL.

WHEREAS, the Town of Flagler, hereinafter referred to as the "Town", is a statutory town located in Kit Carson County, Colorado; and

WHEREAS, the Board of Trustees of the Town of Flagler, hereinafter referred to as the "Board", has the authority, pursuant to Colorado Revised Statutes 31-12-101, et. seq., to annex real property into the Town provided that the annexation meets all statutory criteria and requirements and all ordinances and codes of the Town; and

WHEREAS, a Petition for the annexation of the property described herein, has been submitted to the Town from an entity appointed to do so by the real property owners, seeking permission from the Town to annex all of the property into the Town pursuant to state statutes; and

WHEREAS, Resolution No. TOF - 119 was passed by the Board on October 14, 2019, and the Resolution and a Notice of Public Hearing was properly published in the Town's official newspaper; and

WHEREAS, copies of the Resolution and Notice of Public Hearing were timely mailed to the Kit Carson County Board of Commissioners, the Kit Carson County Attorney, Flagler Fire Protection District, and Arriba - Flagler Consolidated School No. R-20; and

WHEREAS, the Board approved Resolution No. TOF - 119 on October 14, 2019, which pursuant to Colorado Revised Statutes 31-12-110, meets the requirement that the Board must set forth its findings of fact and conclusions with regard to (a) whether the requirements of the applicable parts of C.R.S. 31-12-104 and 105 have been met, (b) whether an election is required under C.R.S. 31-12-107(2), and (c) whether additional terms or conditions are to be imposed; and

WHEREAS, the Board has by the aforementioned Resolution found and determined that the land described in the Petition for Annexation is eligible for annexation and that the Petition was executed according to and in compliance with the requirements of C.R.S. 31-12-107; and

WHEREAS, on the date of this Ordinance also being the date set for the public hearing as required by C.R.S. 31-12-109, i.e. November 18, 2019, the Board did hear comments from the public and after deliberating on the comments as well as examining the entire record in this matter, did determine that the annexation of the subject real property is in the best interests of the citizens of the Town of Flagler;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF FLAGLER, COLORADO:

SECTION I: That the owners of one hundred percent (100%) of the area to be annexed have petitioned for annexation (excluding public roads, streets, and alleyways).

SECTION II: That the annexation of the parcel situated in the County of Kit Carson and State of Colorado, be and the same is hereby ordained and approved and the said parcel is hereby described jointly and incorporated into and made a part of the Town of Flagler, Colorado, to wit:

Property located in the County of Kit Carson, State of Colorado, which property is legally described as follows:

A portion of the Southwest Quarter of Section 1, Township 9 South, Range 51 West of the 6th P.M., also being a portion of the tract described by document (Reception No. 201600571053, Kit Carson County, Colorado records), situate in "unincorporated" Flagler, Kit Carson County, Colorado, described as follows:

Beginning at the Northeasterly corner of said tract, being a found yellow plastic cap, PLS No. 2438 (all bearings in this description are relative to the Easterly line of said tract, which bears S01°13'20"E "assumed"); thence S01°13'20"E along said tract's Easterly line, 240.06 feet; thence S88°26'10"W, 231.56 feet to a point on the Westerly line of said tract, said line also being coincident with the Easterly right-of-way line of Ruffner Avenue (r.o.w width varies), which exists thirty (30) feet Easterly of and parallel to the West line of said Section 1's Southwest Quarter; thence N01°34'00"W along said coincident lines, 240.05 feet to the Northwestern corner of said tract; thence N88°26'00"E along the Northerly line of said tract, 233.01 feet to the Point of Beginning and the terminus point of this description, containing 1.280 acres (55,761 square feet), more or less.

SECTION III: That the Board has made the following findings of fact:

- a. As the Petition has been accepted and completed simultaneously, more than one-sixth (1/6) of the perimeter of the area proposed to be annexed is contiguous with the Town of Flagler. Such contiguity is not affected by the existence of a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, public lands, whether owned by the state, the United States, or an agency thereof.

- b. No property owned in a separate tract is divided by the boundary of the proposed annexation without consent of such property owner.
- c. This annexation will not result in extending the Town of Flagler's boundaries more than three miles in any direction in any one year.
- d. A community of interest exists between the area proposed to be annexed and the Town of Flagler.
- e. The area to be annexed has no annexation proceedings initiated with another municipality.
- f. The area to be annexed does not result in the detachment of the area from a school district and its removal to another school district.

SECTION IV. Upon approval of this Ordinance, the Town shall obtain from the Petitioner and record a plat of the annexed property.

SECTION V. An annexation impact report, as defined in C.R.S. 31-12-108.5(1) is not required due to the size of the parcel.

SECTION VI. The zoning for the subject property shall be "Business" until a zoning hearing is held and decision made by the Town.

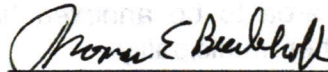
SECTION VII SEPARABILITY. If any portion or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such portion or provision shall not affect any of the remaining provisions of this Ordinance, the intention being that the same are severable.

SECTION IX. AUTHENTICATION AND RECORDING. Pursuant to the laws of the State of Colorado, immediately upon the passage of this Ordinance by the Board of Trustees, the Ordinance shall take effect. The Ordinance shall then be authenticated by the signatures of the Mayor and Clerk, shall be published as required by law, and shall be recorded in the records of the Kit Carson County Clerk and Recorder. One copy of the annexation plat, prepared by the Town and reflecting the final legal description of the parcels, together with the original ordinance shall be filed in the office of the Town Clerk and two certified copies of the annexation ordinance and the plat of the area to be annexed and containing the legal description of such area shall be filed and recorded with the County Clerk and Recorder of Kit Carson County, Colorado, and the Clerk and Recorder shall file one certified copy of the annexation ordinance and plat with the Division of Local Government of the Department of Local Affairs.

AN ORDINANCE OF THE TOWN OF FLAGLER ANNEXING A PARCEL OF LAND LOCATED IN KIT CARSON COUNTY, COLORADO, TO THE TOWN OF FLAGLER, COLORADO, AND EXTENDING THE CORPORATE LIMITS OF THE TOWN OF FLAGLER TO INCLUDE THE DESCRIBED PARCEL;

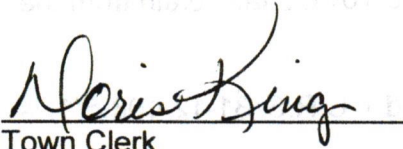
Signature page 4.

ADOPTED AND APPROVED this 09th day of December, 2019.



Mayor

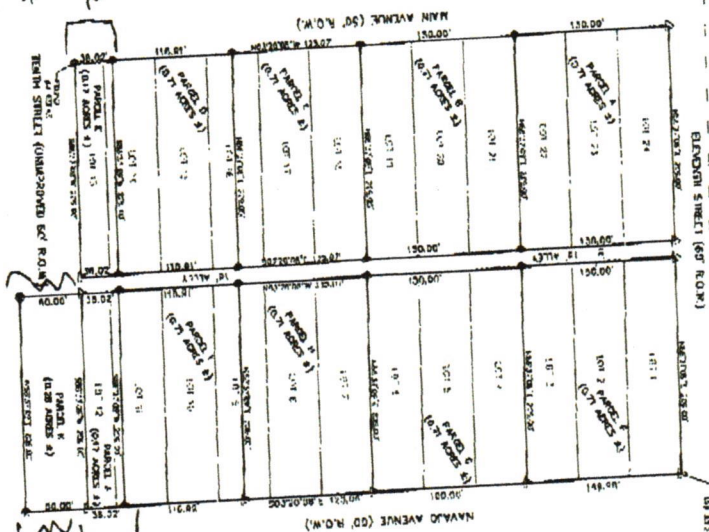
(SEAL)



Town Clerk

10th new for Legal Street

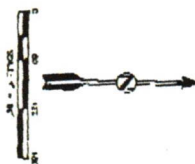
ORDER OF THE COURT
CHIEF OF THE COURT
IN THE COURT OF THE
COMMONS OF THE
STATE OF NEW YORK
IN SENATE
JANUARY 19, 1901



LEADS	
NAME	ALAN B. BERRY
ADDRESS	1440 N. 14th St.
CITY	PHOENIX, ARIZ.
STATE	ARIZ.
DATE	10-1-57
BY	W. J. BERRY
REMARKS	10-1-57

to
10⁵ St

3/ vacate



ON THE THEORY OF SPECTRA.
 OF THE EDITOR, "THE LANCET," LONDON, ON THE
 "THEORY OF SPECTRA," BY DR. J. STURGEON, F.R.S.,
 AND DR. J. STURGEON, F.R.S., LONDON, 1861.



125-107-1416 OF 007-0316:
 Received at 15th Dec 1964
 The report of the 15th Dec 1964
 is the basis of the 15th Dec 1964
 is the basis of the 15th Dec 1964



for James T. East
743 North Ave. 78

High Prairie Survey Co.

LAND SURVEYING CONSTRUCTION STAKING

CV NUMBER 00077. Sub B 000000

01.11.2011	10.11.2011	11.11.2011	12.11.2011	13.11.2011	14.11.2011	15.11.2011	16.11.2011	17.11.2011	18.11.2011	19.11.2011	20.11.2011	21.11.2011	22.11.2011	23.11.2011	24.11.2011	25.11.2011	26.11.2011	27.11.2011	28.11.2011	29.11.2011	30.11.2011	01.12.2011	02.12.2011	03.12.2011	04.12.2011	05.12.2011	06.12.2011	07.12.2011	08.12.2011	09.12.2011	10.12.2011	11.12.2011	12.12.2011	13.12.2011	14.12.2011	15.12.2011	16.12.2011	17.12.2011	18.12.2011	19.12.2011	20.12.2011	21.12.2011	22.12.2011	23.12.2011	24.12.2011	25.12.2011	26.12.2011	27.12.2011	28.12.2011	29.12.2011	30.12.2011	31.12.2011	01.01.2012	02.01.2012	03.01.2012	04.01.2012	05.01.2012	06.01.2012	07.01.2012	08.01.2012	09.01.2012	10.01.2012	11.01.2012	12.01.2012	13.01.2012	14.01.2012	15.01.2012	16.01.2012	17.01.2012	18.01.2012	19.01.2012	20.01.2012	21.01.2012	22.01.2012	23.01.2012	24.01.2012	25.01.2012	26.01.2012	27.01.2012	28.01.2012	29.01.2012	30.01.2012	31.01.2012	01.02.2012	02.02.2012	03.02.2012	04.02.2012	05.02.2012	06.02.2012	07.02.2012	08.02.2012	09.02.2012	10.02.2012	11.02.2012	12.02.2012	13.02.2012	14.02.2012	15.02.2012	16.02.2012	17.02.2012	18.02.2012	19.02.2012	20.02.2012	21.02.2012	22.02.2012	23.02.2012	24.02.2012	25.02.2012	26.02.2012	27.02.2012	28.02.2012	29.02.2012	01.03.2012	02.03.2012	03.03.2012	04.03.2012	05.03.2012	06.03.2012	07.03.2012	08.03.2012	09.03.2012	10.03.2012	11.03.2012	12.03.2012	13.03.2012	14.03.2012	15.03.2012	16.03.2012	17.03.2012	18.03.2012	19.03.2012	20.03.2012	21.03.2012	22.03.2012	23.03.2012	24.03.2012	25.03.2012	26.03.2012	27.03.2012	28.03.2012	29.03.2012	30.03.2012	31.03.2012	01.04.2012	02.04.2012	03.04.2012	04.04.2012	05.04.2012	06.04.2012	07.04.2012	08.04.2012	09.04.2012	10.04.2012	11.04.2012	12.04.2012	13.04.2012	14.04.2012	15.04.2012	16.04.2012	17.04.2012	18.04.2012	19.04.2012	20.04.2012	21.04.2012	22.04.2012	23.04.2012	24.04.2012	25.04.2012	26.04.2012	27.04.2012	28.04.2012	29.04.2012	30.04.2012	01.05.2012	02.05.2012	03.05.2012	04.05.2012	05.05.2012	06.05.2012	07.05.2012	08.05.2012	09.05.2012	10.05.2012	11.05.2012	12.05.2012	13.05.2012	14.05.2012	15.05.2012	16.05.2012	17.05.2012	18.05.2012	19.05.2012	20.05.2012	21.05.2012	22.05.2012	23.05.2012	24.05.2012	25.05.2012	26.05.2012	27.05.2012	28.05.2012	29.05.2012	30.05.2012	31.05.2012	01.06.2012	02.06.2012	03.06.2012	04.06.2012	05.06.2012	06.06.2012	07.06.2012	08.06.2012	09.06.2012	10.06.2012	11.06.2012	12.06.2012	13.06.2012	14.06.2012	15.06.2012	16.06.2012	17.06.2012	18.06.2012	19.06.2012	20.06.2012	21.06.2012	22.06.2012	23.06.2012	24.06.2012	25.06.2012	26.06.2012	27.06.2012	28.06.2012	29.06.2012	30.06.2012	01.07.2012	02.07.2012	03.07.2012	04.07.2012	05.07.2012	06.07.2012	07.07.2012	08.07.2012	09.07.2012	10.07.2012	11.07.2012	12.07.2012	13.07.2012	14.07.2012	15.07.2012	16.07.2012	17.07.2012	18.07.2012	19.07.2012	20.07.2012	21.07
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198-129-126

774 FAX 303-471-7763	774 FAX 303-471-7763
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	U.S. #10	
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Ordinance No. 197

**An Ordinance granting Black Hills Colorado Gas, Inc.
d/b/a Black Hills Energy, its lessees, successors and assigns,
a natural gas franchise and the authority to construct, operate, maintain, and extend
a natural gas distribution plant and system, and granting the right to use the streets, alleys,
and other public places within the present or future corporate limits of the
Town of Flagler, Colorado**

Be it ordained by the Board of Trustees of the Town of Flagler, Colorado, as follows:

FRANCHISE GRANTED

The Town of Flagler, Colorado (hereinafter referred to as "Grantor"), hereby grants a non-exclusive franchise to Black Hills Colorado Gas, Inc. d/b/a Black Hills Energy, (hereinafter called "Grantee"), its lessees, successors and assigns. Grantee is hereby granted the right, privilege, franchise, permission and authority to lay, construct, install, maintain, operate and extend in, along, over or across the present and future streets, alleys, avenues, bridges, public rights-of-way and public easements as are now within the present or future limits of said Grantor, a natural gas distribution system and all facilities necessary for the purpose of supplying natural gas or processed gas and other operations connected therewith or incident thereto for all purposes to the inhabitants of said Grantor and consumers in the vicinity thereof, and for the distribution of natural gas from or through said Grantor to points beyond the limits thereof. Such facilities shall include, but not be limited to, all mains, services, pipes, conduits and all other apparatus and appliances necessary or convenient for transporting, distributing and supplying natural gas for all purposes for which it may be used, and to do all other things necessary and proper in providing natural gas service to the inhabitants of Grantor and in carrying on such business.

TERM

This franchise shall take effect on the first day of the month following the date this Ordinance is finally approved by the Colorado Public Utilities Commission (the "Effective Date"), at which time Grantee will begin to collect the franchise fee set forth herein, and this franchise shall remain in effect for a period of twenty (20) years from the Effective Date of this Ordinance.

FRANCHISE FEES OR TAXES

In exchange for the franchise granted herein, Grantee shall collect from all customers located within the corporate limits of Grantor as depicted on the Map (as defined below), but not from the Town of Flagler, and pay to Grantor an amount equal to five percent (5%) of gross receipts Grantee derives from the sale, distribution or transportation of gas within the present of Grantor. Gross receipts as used herein are revenues received from the sale, distribution or transportation of gas, after adjustment for the net write-off of uncollectible accounts and corrections of bills theretofore rendered.

The amount paid by Grantee shall be in lieu of, and Grantee shall be exempt from, all other fees, charges, taxes or assessments which the Grantor may impose for the privilege of doing business within the limits of Grantor, including, without limitation, excise taxes, occupation taxes, licensing fees, or right-of-way permit fees, and in the event the Grantor imposes any such fee, charge, tax or assessment, the payment to be made by Grantee in accordance with this Ordinance shall be reduced in an amount equal to any such fee, charge, tax or assessment imposed upon the Grantee. Ad valorem property taxes imposed generally upon all real and personal property within the present or future corporate limits of Grantor shall not be deemed to affect Grantee's obligations under this Ordinance.

Grantee shall report and pay any amount payable under this Ordinance on a semi-annual basis. Such payment shall be made no more than thirty (30) days following the close of the period for which payment is due. Initial and final payments shall be prorated for the portions of the periods at the beginning and end of any franchise granted by the Grantor to Grantee.

Grantee shall list the franchise fee collected from customers as a separate item on bills for utility service issued to its customers. If at any time the Colorado Public Utilities Commission or other authority having proper jurisdiction prohibits such recovery, then Grantee will no longer be

obligated to collect and pay the franchise fee until an alternate lawful franchise fee can be negotiated and implemented. Any customer refunds ordered by the Commission or other authority due to an unlawful or prohibited collection of the franchise fee collected by Grantee and remitted to Grantor shall be refunded by Grantor. In addition, Grantee may reduce the franchise fee payable for gas delivered to a specific customer when such reduction is required to attract or retain the business of that customer.

Within ten (10) days of the date of this ordinance, Grantor shall provide Grantee with a map of its corporate limits (the "Map"). The Map shall be of sufficient detail to assist Grantee in determining whether their customers reside within Grantor's corporate limits. The Map along with Grantee's Geographic Information System ("GIS") mapping information shall serve as the basis for determining Grantee's obligation hereunder to collect and pay the franchise fee from customers; provided, however, that if the Grantor's corporate limits are changed by annexation or otherwise, it shall be the Grantor's sole responsibility to (a) update the Map so that the changes are included therein, and (b) provide the updated Map to the Grantee. Grantee's obligation to collect and pay the franchise fee from customers within an annexed area shall not commence until the later: (a) of sixty (60) days after Grantee's receipt from Grantor of an updated Map including such annexed area, or (b) such time after Grantee's receipt from the Grantor of an updated Map including such annexed area as is reasonably necessary for Grantee to identify the customers in the annexed area obligated to pay the franchise fee.

Grantor shall provide copies of annexation ordinances to Grantee on a timely basis to ensure appropriate franchise fee collection from customers within the corporate limits of the city as set forth above.

Grantor shall indemnify Grantee from claims of any nature, including attorney fees, arising out of or related to the imposition and collection of the franchise fee. In addition, Grantee shall not be liable for paying franchise fees from or to any customer originally or subsequently identified, or incorrectly identified, by Grantor or by Grantee, as being subject to the franchise fee or being subject to a different level of franchise fees or being exempt from the imposition of franchise fees.

Grantor shall have access to and the right to examine, during normal business hours, Grantee's books, receipts, files, records and documents as is reasonably necessary to verify the accuracy of payments due hereunder; provided, that the Municipality shall not exercise such right more than twice per calendar year. If it is determined that a mistake was made in the payment of any franchise fee required hereunder, such mistake shall be corrected promptly upon discovery such that any under-payment by Grantee shall be paid within thirty (30) days of recalculation of the amount due, and any over-payment by Grantee shall be deducted from the next payment of such franchise fee due by Grantee to Grantor; provided, that neither party shall have the obligation to correct a mistake that is discovered more than one (1) year after the occurrence thereof.

GOVERNING RULES AND REGULATIONS

The franchise granted hereunder is subject to all conditions, limitations and immunities now provided for, or as hereafter amended, and applicable to the operations of a public utility, by state or federal law. The rates to be charged by Grantee for service within the present or future corporate limits of Grantor and the rules and regulations regarding the character, quality and standards of service to be furnished by Grantee, shall be under the jurisdiction and control of such regulatory body or bodies as may, from time to time, be vested by law with authority and jurisdiction over the rates, regulations and quality and standards of service to be supplied by Grantee. Provided however, should any judicial, regulatory or legislative body having proper jurisdiction take any action that precludes Grantee from recovering from its customers any cost associated with services provided hereunder, then Grantee and Grantor shall renegotiate the terms of this Ordinance in accordance with the action taken. In determining the rights and duties of the Grantee, the terms of this Ordinance shall take precedence over any conflicting terms or requirements contained in any other ordinance enacted by the Grantor.

PROVISION FOR INADEQUATE ENERGY SUPPLIES

If an energy supplier is unable to furnish an adequate supply of energy due to an emergency, an order or decision of a public regulatory body, or other acts beyond the control of the Grantee, then the Grantee shall have the right and authority to adopt reasonable rules and regulations limiting, curtailing or allocating extensions of service or supply of energy to any customers or

prospective customers, and withholding the supply of energy to new customers, provided that such rules and regulations shall be uniform as applied to each class of customers or prospective customers, and shall be non-discriminatory as between communities receiving service from the Grantee.

CONSTRUCTION AND MAINTENANCE OF GRANTEE'S FACILITIES

Any pavements, sidewalks or curbing taken up and any and all excavations made shall be done in such a manner as to cause only such inconvenience to the inhabitants of Grantor and the general public as is reasonably necessary, and repairs and replacements shall be made promptly by Grantee, leaving such properties in as good as condition as existed immediately prior to excavation.

Grantee agrees that for the term of this franchise, it will use its best efforts to maintain its facilities and equipment in a condition sufficient to meet the current and future energy requirements of Grantor, its inhabitants and industries. While maintaining its facilities and equipment, Grantee shall obtain permits as required by ordinance and will fix its excavations within a commercially reasonable time period, except that in emergency situations Grantee shall take such immediate unilateral actions as it determines are necessary to protect the public health, safety, and welfare; in which case, Grantee shall notify Grantor as soon as reasonably possible. Within a reasonable time thereafter, Grantee shall request and Grantor shall issue any permits or authorizations required by Grantor for the actions conducted by Grantee during the emergency situation.

Grantor will give Grantee reasonable notice of plans for street improvements where paving or resurfacing of a permanent nature is involved that affects Grantee's facilities. The notice shall contain the nature and character of the improvements, the rights-of-way upon which the improvements are to be made, the extent of the improvements, and the time when the Grantor will start the work, and, if more than one right-of-way is involved, the order in which the work is to proceed. The notice shall be given to the Grantee as soon as practical in advance of the actual commencement of the work, considering seasonable working conditions, to permit the Grantee to make any additions, alterations, or repairs to its facilities.

EXTENSION OF GRANTEE'S FACILITIES

Upon receipt and acceptance of a valid application for service, Grantee shall, subject to its own economic feasibility criteria as approved by the Colorado Public Utilities Commission make reasonable extensions of its distribution facilities to serve customers located within the current or future corporate limits of Grantor.

RELOCATION OF GRANTEE'S FACILITIES

If Grantor elects to change the grade of or otherwise alter any street, alley, avenue, bridge, public right-of-way or public place for a public purpose, unless otherwise reimbursed by federal, state or local legislative act or governmental agency, Grantee, upon reasonable notice from Grantor, shall remove and relocate its facilities or equipment situated in the public rights-of-way, at the cost and expense of Grantee, if such removal is necessary to prevent interference.

If Grantor orders or requests Grantee to relocate its facilities or equipment for the primary benefit of a commercial or private project, or as a result of the initial request of a commercial or private developer or other non-public entity, and such removal is necessary to prevent interference, then Grantee shall receive payment for the cost of such relocation as a precondition to relocating its facilities or equipment.

Grantor shall consider reasonable alternatives in designing its public works projects and exercising its authority under this section so as not to arbitrarily cause Grantee unreasonable additional expense. If alternative public right-of-way space is available, Grantor shall also provide a reasonable alternative location for Grantee's facilities. Grantor shall give Grantee written notice of an order or request to vacate a public right-of-way; provided, however, that its receipt of such notice shall not deprive Grantee of its right to operate and maintain its existing facilities in such public right-of way until it (a) if applicable, receives the reasonable cost of relocating the same and (b) obtains a reasonable public right-of-way, dedicated utility easement, or private easement alternative location for such facilities.

CONFIDENTIAL INFORMATION

Grantor acknowledges that certain information it might request from Grantee pursuant to this Ordinance may be of a proprietary and confidential nature, and that such requests may be subject to the Homeland Security Act or other confidentiality protections under state or federal law. If Grantee requests that any information provided by Grantee to Grantor be kept confidential due to its proprietary or commercial value, Grantor and its employees, agents and representatives shall maintain the confidentiality of such information, to the extent allowed by law. If Grantor is requested or required by legal or administrative process to disclose any such proprietary or confidential information, Grantor shall promptly notify Grantee of such request or requirement so that Grantee may seek an appropriate protective order or other relief.

FORCE MAJEURE

It shall not be a breach or default under this Ordinance if either party fails to perform its obligations hereunder due to force majeure. Force majeure shall include, but not be limited to, the following: 1) physical events such as acts of God, landslides, lightning, earthquakes, fires, freezing, storms, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery, equipment or distribution or transmission lines; 2) acts of others such as strikes, work-force stoppages, riots, sabotage, insurrections or wars; 3) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, executive order, or regulation promulgated by a governmental authority having jurisdiction; and (4) any other causes, whether of the kind herein enumerated or otherwise not reasonably within the control of the affected party to prevent or overcome. Each party shall make reasonable efforts to avoid force majeure and to resolve such event as promptly as reasonably possible once it occurs in order to resume performance of its obligations hereunder; provided, however, that this provision shall not obligate a party to settle any labor strike.

HOLD HARMLESS

Grantee, during the term of this Ordinance, agrees to save harmless Grantor from and against all claims, demands, losses and expenses arising directly out of the negligence of Grantee, its employees or agents, in constructing, operating, and maintaining its distribution and transmission facilities or equipment; provided, however, that Grantee need not save Grantor harmless from claims, demands, losses and expenses arising out of the negligence of Grantor, its employees or agents.

SUCCESSORS AND ASSIGNS

All rights, privileges and authority granted to Grantee hereunder shall inure to the benefit of Grantee's lessees, successors and assigns, subject to the terms, provisions and conditions herein contained, and all obligations imposed upon Grantee hereunder shall be binding upon Grantee's lessees, successors and assigns.

NO THIRD PARTY BENEFICIARIES

This Ordinance constitutes a franchise agreement between the Grantor and Grantee. No provision of this Ordinance shall inure to the benefit of any third person, including the public at large, so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action for any person not a party hereto.

SEVERABILITY

If any clause, sentence or section of this Ordinance is deemed invalid by any judicial, regulatory or legislative body having proper jurisdiction, the remaining provisions shall not be affected.

NON WAIVER

Any waiver of any obligation or default under this Ordinance shall not be construed as a waiver of any future defaults, whether of like or different character.

REPEAL CONFLICTING ORDINANCES

This Ordinance, when accepted by Grantee as provided below, shall constitute the entire agreement between the Grantor and the Grantee relating to the franchise granted by Grantor hereunder, and the same shall supersede all prior ordinances relating thereto, and any terms and conditions of such prior ordinances or parts of ordinances in conflict herewith are hereby repealed. Ordinance No. 145 of the Town of Flagler, Colorado, is hereby repealed as of the Effective Date hereof.


EFFECT AND INTERPRETATION OF ORDINANCE

The captions that precede each section of this Ordinance are for convenience and/or reference only and shall not be taken into consideration in the interpretation of any of the provisions of this Ordinance.

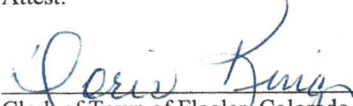
ACCEPTANCE

Upon final passage and approval of this Ordinance by Grantor, in accordance with applicable laws and regulations, Grantee shall file its acceptance by written instrument, within sixty (60) days of passage by the Board of Trustees, with the Clerk of the Town of Flagler, Colorado. The Clerk of the Town of Flagler, Colorado shall sign and affix the community seal to acknowledge receipt of such acceptance, and return one copy to Grantee. If Grantee does not, within sixty (60) days following passage of this Ordinance, either express in writing its objections to any terms or provisions contained therein, or reject this Ordinance in its entirety, Grantee shall be deemed to have accepted this Ordinance and all of its terms and conditions.

Passed and approved by the Board of Trustees of Town of Flagler, Colorado, this 09 day of November, 2020.


[Mayor or other Authorized Official]

Attest:


Clerk of Town of Flagler, Colorado

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FLAGLER, KIT CARSON COUNTY, COLORADO, FINDING THAT THE PETITION OF VAQUERO FLAGLER PARTNERS, LP, TEXAS LIMITED PARTNERSHIP, SEEKING ANNEXATION OF CERTAIN REAL PROPERTY TO THE TOWN OF FLAGLER IS IN SUBSTANTIAL COMPLIANCE WITH STATE AND LOCAL ORDINANCE AND THAT THE SUBJECT REAL PROPERTY IS ELIGIBLE FOR ANNEXATION TO THE TOWN OF FLAGLER AND AUTHORIZING THE HOLDING OF A PUBLIC HEARING

Whereas, in accordance with Colorado Revised Statute, 31-12-107, Vaquero Flagler Partners, LP, through its partners and managers, hereinafter referred to as the "Petitioner", did submit it's Petition for Annexation to the Town on or before October 14, 2019, seeking pursuant to Colorado Revised Statutes 31-12-101, et. seq., to annex a parcel of real property into the Town of Flagler; and

Whereas, the parcel sought to be annexed by the Petitioner is reflected on the proposed plat as being approximately 1.28 acres in size to be annexed into the Town of Flagler, hereinafter referred to as the "Town"; and

Whereas, the parcel of property to be annexed into the Town is described in the annexation map, as submitted by the Petitioner, and is presently on file in the office of the Town Clerk, which plat was prepared by ALTO / NSPS Land Title Survey, dated September 3, 2019, and

Whereas, Colorado law requires that the Town Board determine whether or not the petition for annexation establishes that the subject property is eligible for annexation into the Town, and if so, to set the matter of the annexation for public hearing; and

Whereas, the Board has determined that the Petition for annexation is proper and statutorily correct, and further wishes to proceed with the annexation process pursuant to state statute;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF FLAGLER:

1. The legal description of the real property which the Petitioner seeks to have annexed into the Town of Flagler is described in a metes and bounds fashion as follows:

A portion of the Southwest Quarter of Section 1, Township 9 South, Range 51 West of the 6th P.M., also being a portion of that tract described by document (Reception No. 201600571053, Kit Carson County, Colorado records), situate in "unincorporated" Flagler, Kit Carson County, Colorado, described as follows:

Beginning at the Northeasterly corner of said tract, being a found yellow plastic cap, PLS No. 2438 (all bearings in this description are relative to the Easterly line of said tract, which bears S01°13'20"E "assumed"); thence S01°13'20"E along said tract's Easterly line, 240.06 feet; thence S88°26'10"W, 231.56 feet to a point on the Westerly line of said tract, said line also being coincident with the Easterly right-of-way line of Ruffner Avenue (r.o.w. width varies), which exists thirty (30) feet Easterly of and parallel to the West line of said Section 1's Southwest Quarter; thence N01°34'00"W along said coincident lines, 240.05 feet to the Northwestern corner of said tract; thence N88°26'00"E along the Northerly line of said tract, 233.01 feet to the Point of Beginning and the terminus point of this description;

Containing 1.280 acres (55,761 square feet), more or less.

2. The Board shall consider the request of the Petitioner, in accordance with C.R.S. 31-12-104(1)(a); C.R.S. 31-12-105; C.R.S. 31-12-107; and C.R.S. 31-12-108, at a public hearing

3. The Board finds that the property proposed for annexation as described above is eligible for annexation because the Board has concluded that the requirements of the applicable parts of Colorado Revised Statutes 31-12-104 and 105 have been met as follows:

a. Owners of more than fifty percent (50%) of the area to be annexed including street and alleys have signed the Petition for annexation pursuant to Colorado Revised Statutes 31-12-105(1)(e.3) and 31-12-107(1)(g).

b. More than one-sixth of the perimeter of the area proposed to be annexed is contiguous with the Town of Flagler.

c. No property owned in a separate tract is divided by the boundary of the proposed annexation without consent of such property owner.

d. The annexation will not result in extending the Town of Flagler's boundaries more than three miles in any direction in any one year.

e. A community of interest exists between the area proposed to be annexed and the Town of Flagler because the area proposed to be annexed is commercial in nature, amenable to certain Town services, and the area is integrated with or is capable of being integrated with the Town.

f. The area to be annexed has no annexation proceedings initiated with another municipality.

g. The area to be annexed does not result in the detachment of the area from a school district and its removal to another school district.

3. No election is required under Colorado Revised Statute 31-12-107(2).

4. An annexation impact report is not required as the size of the proposed annexation does not exceed ten (10) acres.

5. The Board shall set a public hearing date upon the adoption of this Resolution. The Resolution and a Notice of Public Hearing shall be published in accordance with Colorado Revised Statute 31-12-108(2).

6. Copies of the Resolution and Notice of Public Hearing shall also be sent by the Town Attorney to the following entities in a timely manner and as required by Colorado Revised Statute 31-12-108(2):

- a. Kit Carson County Board of Commissioners.
- b. Kit Carson County Attorney.
- c. Flagler Fire Protection District
- d. Arriba - Flagler Consolidated School No. 20.

7. Following the public hearing, the Board shall set forth in writing its findings of fact and conclusion as required by Colorado Revised Statutes 31-12-110.

8. If any portion or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such portion or provision shall not affect any of the remaining provisions of this Resolution, the intention being that the same are severable.

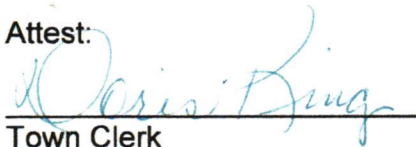
Resolved, Adopted, and Approved this 14th day of October, 2019.



Mayor

(SEAL)

Attest:



Town Clerk