

**HOME RULE CHARTER**

**AND CODE**

**OF THE**

**CITY OF EDGEWATER, COLORADO**

**2008**

**Published by**

**COLORADO CODE PUBLISHING COMPANY**

323 West Drake Road, Suite 200  
Fort Collins, CO 80526-8115  
800-352-9229 ♦ 970-498-9229  
colocode@frii.com ♦ www.colocode.com

**OFFICIALS**  
**OF THE**  
**CITY OF EDGEWATER**

*Mayor*  
Bonnie McNulty

*Mayor Pro Tem*  
Kent Johnson

*City Council*  
Devon Barclay  
David Fleck  
Adam Gardner  
Myron A. Keeble  
Laura Keegan  
Todd Riddle  
Kristian A. Teegardin

*City Clerk*  
Beth A. Hedberg, MMC

*City Manager*  
Harold Stalf

*City Attorney*  
Thad Renaud

SUPPLEMENT NO. 5

EDGEWATER MUNICIPAL CODE

Supplementation Instructions

This Supplement contains all ordinances deemed advisable to be included at this time through **Ordinance No. 09-11, adopted June 2, 2011.**

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COLORADO CODE PUBLISHING COMPANY  
Fort Collins, Colorado

August 2011

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EDGEWATER MUNICIPAL CODE

Supplementation Instructions

This Supplement contains all ordinances deemed advisable to be included at this time through **Ordinance No. 09-11, adopted June 2, 2011.**

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August 2011

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EDGEWATER MUNICIPAL CODE

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This Supplement contains all ordinances deemed advisable to be included at this time through **Ordinance No. 19-10, adopted September 16, 2010.**

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COLORADO CODE PUBLISHING COMPANY  
Fort Collins, Colorado

October 2010

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COLORADO CODE PUBLISHING COMPANY  
Fort Collins, Colorado

December 2009

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COLORADO CODE PUBLISHING COMPANY  
Fort Collins, Colorado

March 2009

## SUPPLEMENTATION

Supplements to this Code provide periodic updating through the removal and replacement of pages. This inter-leaf supplementation system requires that each page which is to be removed and replaced is identified so that the updating may be accurately accomplished and historically maintained.

Instructions for supplementation are provided for each supplement, identified by Supplement number, date and inclusive ordinance numbers. The Instructions for posting the removal and replacement of pages must be followed and accomplished in sequence, with the most recent supplementation posted **last**.

When supplementation is completed and the removal and replacement of all pages are accomplished, the Instructions should be placed under the Supplementation tab, behind this page, with the most recent Instruction sheet on top. Previous Instructions should not be removed, so that the user may refer to this tab section to verify whether the code book is fully updated with all supplements included.

The maintenance of a Municipal Code with all supplementation is an important activity which deserves close attention so that the value of the code is maintained as a fully comprehensive compilation of the legislative ordinances of the municipality.

## AMENDMENTS

Amendments may be made to the Code by additions, revisions or deletions therefrom. Those changes may be made as follows:

**Additions:** Additions may be made by ordinance to the Code as follows:

The "Edgewater Municipal Code" is amended by the addition thereto of a new Section 2-2-90, which is to read as follows:

(Set out full section number, title and contents)

or if the location of the new section number or numbers is undetermined, the Code may be amended as follows:

The "Edgewater Municipal Code" is amended by the addition of the following:

(Set out section title and contents)

**Revisions:** A revision of the Code may be accomplished as follows:

Section 2-2-90 of the "Edgewater Municipal Code" is repealed in its entirety and readopted to read as follows:

(Set out section number, title and entire contents of the readopted code section)

or as follows:

Section 2-2-90 of the "Edgewater Municipal Code" is amended to read as follows:

(Set out section number, title and entire contents of the amended code section)

**Repeal:** Sections, articles and chapters may be repealed as follows:

Section 2-2-90 of the "Edgewater Municipal Code" is repealed in its entirety.

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**EDGEWATER**

**MUNICIPAL**

**CODE**

**2008**

A Codification of the General Ordinances  
of the City of Edgewater, Colorado,  
A Home Rule Municipality

Published by

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Fort Collins, Colorado

## PREFACE

The City of Edgewater, a home rule City, has published its Municipal Code in a format which features the following:

The *Table of Contents* is the table containing each chapter and article title, with reference to page location. Preceding each chapter is a chapter table of contents, also identifying each article by the subject name provided.

The *three-place section numbering system* places the chapter number first, followed by the article number and section number, separated by hyphens. Each section may be cited by the chapter, article and section number which are in sequence within each chapter.

The *open chapter and page numbering system* creates reserved chapter and page numbers for expansion or revision of the code without undue complication when changes are made to the code by supplementation.

The *Disposition of Ordinances Table* identifies the source for the contents of the code. This table provides ordinance numbers in chronological order and location by section number for the present code contents. Thus, if there is interest in determining whether an ordinance, or a portion thereof, is contained within the code, the Disposition of Ordinances Table will provide that information. The *Table of Up-to-Date Pages* lists all of the current pages through the most recent supplementation.

The *Index* provides references by common and legal terminology to the appropriate code sections. Cross references are provided with the Index when appropriate.

*Supplements* to the code provide regular updating of the code to maintain it as a current compilation of all the legislation which has general and continuing effect. Without regular supplementation, the code would soon lose its usefulness as a complete source of the general law of the municipality. Supplementation is accomplished by the periodic publication of additions and amendments to the code.

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**STATE OF COLORADO**  
**CITY OF EDGEWATER, COLORADO**

**ORDINANCE NO. 12-08**  
**SERIES OF 2008**

AN ORDINANCE OF THE CITY OF EDGEWATER, ADOPTING BY REFERENCE AND ENACTING A NEW MUNICIPAL CODE FOR THE CITY OF EDGEWATER; PROVIDING FOR THE REPEAL OF CERTAIN ORDINANCES NOT INCLUDED THEREIN; PROVIDING A PENALTY FOR THE VIOLATION THEREOF; PROVIDING FOR THE MANNER OF AMENDING SUCH CODE; AND PROVIDING WHEN SUCH CODE AND THIS ORDINANCE SHALL BECOME EFFECTIVE.

Be It Ordained by the City Council of the City of Edgewater, Colorado:

*Section 1.* The Code entitled the Edgewater Municipal Code published by Colorado Code Publishing Company, consisting of Chapters 1 through 18, with Appendix, Tables and Index, is hereby adopted. Copies of the Edgewater Municipal Code, and of each secondary code adopted therein by reference, are available for inspection in the office of the City Clerk during regular business hours.

*Section 2.* All ordinances of a general and permanent nature enacted on or before the adoption date of this Ordinance, which are inconsistent with the provisions of the Edgewater Municipal Code, to the extent of such inconsistency, are hereby repealed. The repeal established in this Section 2 shall not be construed to revive any ordinance or part thereof that had been previously repealed by any ordinance which is repealed by this Ordinance.

*Section 3.* The following codes were previously adopted by reference and incorporated in the Edgewater Municipal Code. One (1) copy of each is on file in the City Clerk's office:

(1) The Model Traffic Code for Colorado, 2003 edition, published by the Colorado Department of Transportation, as adopted and amended in Section 8-1-10, et seq.;

(2) The International Building Code, 2006 edition, published by the International Code Council, Inc., as adopted and amended in Section 18-2-10, et seq.;

(3) The International Residential Code, 2006 edition, published by the International Code Council, Inc., as adopted and amended in Section 18-3-10, et seq.;

(4) The National Electrical Code, 2005 edition, published by the National Fire Protection Association, as adopted in Section 18-4-10; and

(5) The International Mechanical Code, 2006 edition, published by the International Code Council, Inc., as adopted and amended in Section 18-5-10, et seq.;

(6) The International Plumbing Code, 2006 edition, published by the International Code Council, Inc., as adopted and amended in Section 18-6-10, et seq.; and

(7) The International Fire Code, 2006 edition, published by the International Code Council, Inc., as adopted and amended in Section 18-7-10, et seq.

(8) The International Fuel Gas Code, 2006 edition, published by the International Code Council, Inc., as adopted and amended in Section 18-8-10, et seq.

(9) The International Existing Building Code, 2006 edition, published by the International Code Council, Inc., as adopted and amended in Section 18-9-10, et seq.

(10) The International Energy Conservation Code, 2006 edition, published by the International Code Council, Inc., as adopted and amended in Section 18-10-10, et seq.

*Section 4.* The penalties provided by the Municipal Code of the City of Edgewater are hereby adopted as follows:

**(1) Sec. 1-4-20. General penalty for violation. (Chapter 1, Article 4, General Penalty)**

(a) Any person convicted of a violation of this Code for which a different penalty is not provided shall be punished by a fine not exceeding nine hundred ninety-nine dollars (\$999.00) or by imprisonment for not more than one hundred eighty (180) days, or by both such fine and imprisonment, except as hereinafter provided in Section 1-4-30. Each day that a violation continues shall be deemed a separate offense.

(b) The suspension or revocation of any license, certificate evidencing accord of inspection services, or other privilege conferred by the City shall not be regarded as a penalty for the purposes of this Code, but shall be in addition to the penalty provided in Subsection (a) hereof.

(c) Nothing herein shall be construed to limit the power of the Municipal Court to take such action as it may deem appropriate, in the sound exercise of its discretion, to summon, try and punish any person who may be found in contempt of the Court.

(d) The Municipal Court may order payment of restitution to the damaged party by the person responsible for damage resulting from a violation of this Code.

**(2) Sec. 1-4-30. Application of penalties to juveniles. (Chapter 1, Article 4, General Penalty)**

Every person who, at the time of commission of the offense, was at least ten (10) but not yet eighteen (18) years of age, and who is subsequently convicted of or pleads guilty or nolo contendere to, a violation of any provision of this Code, shall be punished by a fine of not more than nine hundred ninety-nine dollars (\$999.00) per violation or count. Nothing in this Section shall be construed to prohibit incarceration in an appropriate facility, at the time of charging, of a juvenile violating any section of this Code. No person under the age of eighteen (18) years as of the date of the violation of which convicted shall be subject to imprisonment.

**(3) Sec. 2-5-60. Contempt power. (Chapter 2, Article 5, Municipal Court)**

(a) When the Municipal Court finds any person to be in contempt, the Court may vindicate its dignity by imposing on the contemnor a fine not to exceed three hundred dollars (\$300.00) and imprisonment not to exceed a term of one hundred eighty (180) days.

(b) In cases of indirect contempt, the alleged contemnor shall have all the rights, privileges, safeguards and protections of a defendant in a petty offense case, including but not limited to a formal written complaint, arraignment and trial by jury.

**(4) Sec. 2-5-530. Victim Assistance, Defendant Locator and Law Enforcement Programs. (Chapter 2, Article 5, Municipal Court)**

(a) The City Council hereby finds and determines that the creation of the victim assistance, defendant locator and law enforcement program is consistent with the City's powers as a home rule municipality, and that the exercise of said powers in the manner set forth in this Chapter is in furtherance of the public health, safety and welfare.

(b) A twenty-five-percent surcharge is hereby levied on every fine imposed for a violation of this Code resulting in a conviction, a deferred judgment and sentence, or a plea of guilty or nolo contendere, entered on or after the effective date of the ordinance enacting this Section, provided that the total of said fine and surcharge shall not exceed the maximum fine established for such violation under this Code. This surcharge shall be paid to the Court Clerk, who shall deposit the same in the victim assistance, defendant locator and law enforcement fund established by this Article.

(c) The surcharge levied by this Section shall be mandatory and shall be in addition to any other surcharge, fine or cost. The surcharge levied by this Section may not be suspended or waived by the Municipal Court unless the Municipal Court determines that the defendant is indigent. Calculated surcharge amounts shall be rounded to the nearest whole dollar.

(d) The revenues collected by means of the surcharge imposed pursuant to this Section shall be expended pursuant to the Charter and ordinances of the City and other applicable laws, and subject to the following requirements:

(1) All revenues from said surcharge shall be placed in a special fund which is hereby established in the Mayor-Council portion of the City budget, and which shall be known as the "Victim Assistance, Defendant Locator and Law Enforcement Surcharge Fund."

(2) All monies in said special fund shall be expended, subject to specific authorization of the City Council acting by motion, for the following purposes only:

a. Programs for the assistance of children, juveniles or adults who are victims of crime children, juveniles or adults who are at a special risk of becoming victims of crime and children or juveniles who are at a special risk of other involvement in the juvenile justice system or the criminal justice system;

b. Defraying the costs incurred by the City in locating defendants who have failed to appear in Municipal Court or who have otherwise failed to comply with an order of the Municipal Court;

c. Training of City employees and authorized volunteers of the City concerning victim assistance matters; and

d. Acquisition of equipment required by the City for the performance of law enforcement and victim assistance responsibilities.

(3) The purchase of any equipment, supplies, or services for use by the City, its employees or its authorized volunteers shall be subject to the purchasing provisions of the Charter and this Code.

(4) The use of any funds for any program, activity or service which involves any governmental entity other than the City shall be subject to an intergovernmental agreement approved by the City Council.

(5) The purchase of any equipment, supplies or services for use by any person or entity, other than the City, its employees or its authorized volunteers, and the use of any funds for any program, activity or service which involves any nongovernmental entity, shall be subject to a written contract approved by the Mayor.

(6) All revenues which were collected on or before August 3, 1995, by means of the surcharge imposed pursuant to this Section, and which remain unencumbered as of August 3, 1995, are hereby transferred into the fund established by Subsection (1) hereof.

**(5) Sec. 2-5-540. School Resource Officer Program. (Chapter 2, Article 5, Municipal Court)**

(a) The City Council hereby finds and determines that the creation of the school resource officer fund as provided in this Chapter is consistent with the City's powers as a home rule municipality, and that the exercise of said powers in the manner set forth in this Chapter is in furtherance of the public health, safety and welfare.

(b) A five-dollar surcharge is hereby levied on every fine imposed for a violation of this Code resulting in a conviction, a deferred judgment and sentence, or a plea of guilty or nolo contendere, entered on or after March 1, 2003, provided that the total of said fine and all surcharges shall not exceed the maximum fine established for such violation under this Code. This surcharge shall be paid to the Court Clerk, who shall deposit the same in the school resource officer fund established by this Article.

(c) The surcharge levied by this Section shall be mandatory and shall be in addition to any other surcharge, fine or cost. The surcharge levied by this Section may not be suspended or waived by the Municipal Court unless the Municipal Court determines that the defendant is indigent.

**(6) Sec. 2-5-640. Violation of probation. (Chapter 2, Article 5, Municipal Court)**

(a) It shall be the duty of the Police Department, or such other officers or employees of the City as may be assigned to such duties, whenever they may have reason to believe that the conditions of probation have been violated by any probationer, to bring the matter to the attention of the office of the City Attorney who in turn shall bring the matter to the attention of the Municipal Court.

(b) If facts are presented to the Municipal Court from which it reasonably appears that the conditions of probation have been violated by any person on probation, the Municipal Court shall issue a warrant for the arrest of the person and require that the person be brought before the Municipal Court to show cause why the probation should not be revoked. If the probationer is taken into custody, the Municipal Court may admit such probationer to bail conditioned upon his or her appearance before the Municipal Court on a day certain. Such bail hearing the Municipal Judge determines that such probationer is not guilty of a violation of the conditions of probation, he or she shall enter an order in accordance therewith and forthwith may be continued from time to time until final order of the Municipal Court. If at such a order

the probationer's release, if in custody. If the Municipal Judge determines that the violation of the conditions of such probation has been committed, the Municipal Judge shall either revoke or continue the probation within three (3) days after the hearing. In that event the Municipal Court may impose any sentence which might originally have been imposed, or the Municipal Court may vacate the suspension of sentence and reinstate the sentence originally imposed. Any person who has been admitted to probation and against whom proceedings for the revocation of probation have not been commenced within the term of probation shall be conclusively presumed to have satisfied the sentence and/or fine imposed.

**(7) Sec. 4-2-420. Recovery of taxes, penalty and interest. (Chapter 4, Article 2, Sales and Use Tax)**

(a) All sums of money paid by the purchaser to the retailer as taxes imposed by this Article shall be and remain public money, the property of the City, in the hands of such retailer, and he or she shall hold the same in trust for the sole use and benefit of the City until paid to the City Treasurer. For failure to so pay to the City Treasurer, such retailer shall be punished as provided herein.

(b) Delinquency.

(1) If a person neglects or refuses to make a return in payment of the sales tax or to pay any sales tax as required by this Article, then the City Treasurer shall make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the taxpayer is delinquent and shall add thereto a penalty of ten percent (10%) thereof and interest on such delinquent taxes at the rate imposed under Section 4-2-450, plus one-half percent ( $\frac{1}{2}\%$ ) per month from the date when due; not exceeding eighteen percent (18%) in the aggregate.

(2) If a person neglects or refuses to make a return in payment of the use tax or to pay any use tax as required by this Article, then the City Treasurer shall make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the taxpayer is delinquent and shall add thereto a penalty equal to ten percent (10%) thereof and interest on such delinquent taxes at the rate imposed under Section 4-2-450, plus one-half percent ( $\frac{1}{2}\%$ ) per month from the date when due.

(3) Promptly thereafter, the City Treasurer shall give to the delinquent taxpayer written notice of such estimated taxes, penalty and interest, which notice shall be sent by first-class mail directed to the last address of such person on file with the Finance Department. Such estimate shall thereupon become a notice of deficiency. Within twenty (20) days after the notice of deficiency is mailed, the taxpayer may petition the City Treasurer for a hearing in the manner provided in Subsection 4-2-510(a) and either may appeal to the District Court as provided in Section 4-2-520 or to the Department of Revenue as provided in Section 4-2-530.

(c) Notice.

(1) If any taxes, penalty or interest imposed by this Article and shown due by returns filed by the taxpayer or as shown by assessments duly made as provided in this Section are not paid within five (5) days after the same are due, then the City Treasurer shall issue a notice, setting forth the name of the taxpayer, the amount of the tax,

penalties and interest, the date of the accrual thereof, and that the City claims a first and prior lien therefor on the real and tangible personal property of the taxpayer except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights have attached prior to the filing of the notice as provided in this Section on property of the taxpayer, other than the goods, stock in trade and business fixtures of such taxpayer.

(2) Said notice shall be on forms furnished by the Finance Department and shall be verified by the Mayor, the City Treasurer or any duly qualified agent of the Mayor or the City Treasurer, whose duties are the collection of such tax, and may be filed in the office of the county clerk and recorder in which the taxpayer owns real or tangible personal property, and the filing of such notice shall create a lien on such property in that county and constitute notice thereof. After said notice has been filed, or concurrently therewith, or at any time when taxes due are unpaid, whether such notice has been filed or not, the City Treasurer may issue a warrant directed to any duly authorized revenue collector, or to the sheriff of the county, commanding him or her to levy upon, seize and sell sufficient of the real and personal property of the amount due together with interest, penalties and costs, as may be provided by law, subject to valid preexisting claims or liens.

(d) Such revenue collector or the sheriff shall forthwith levy upon sufficient of the property of the taxpayer or any property used by such taxpayer in conducting his or her retail business, except property made exempt from the tax lien pursuant to the provisions of Paragraph 4-2-430(a)(2), and said property so levied upon shall be sold in all respects with like effect and in the same manner as is prescribed by law with respect to executions against property upon judgment of a court of record, and the remedies of garnishment shall apply. The sheriff shall be entitled to such fee in executing such warrants as are allowed by law for similar services.

(e) Any lien for taxes as shown on the records of the county clerks and recorders as provided in this Section, upon payment of all taxes, penalties and interest covered thereby, shall be released by the City Treasurer in the same manner as mortgages and judgments are released.

(f) Recovery.

(1) The City Treasurer may also treat any such taxes, penalties or interest due and unpaid as a debt due to the City from the vendor. The return of the taxpayer or the assessment made by the City Treasurer, as provided in this Article, shall be prima facie proof of the amount due.

(2) To recover such taxes, penalties or interest due, the City Treasurer may bring an action in attachment, and a writ of attachment may be issued to the sheriff. In any such proceedings, no bond shall be required of the City Treasurer, nor shall any sheriff require of the City Treasurer an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings. The City Treasurer may prosecute appeals in such cases without the necessity of providing bond therefor. It is the duty of the City Attorney, when requested by the City Treasurer, to commence action for the recovery of taxes due under this Article, and this remedy shall be in addition to all other existing remedies or remedies provided in this Article.

(g) In any action affecting the title to real estate or the ownership or rights to possession of personal property, the City may be made a party defendant for the purpose of obtaining an adjudication or determination of its lien upon the property involved therein. In any such action, service of summons upon the City Treasurer or any person in charge of the office of the City Treasurer shall be sufficient service and shall be binding upon the City.

(h) The City Treasurer is authorized to waive, for good cause shown, any penalty assessed as provided in this Article, and any interest imposed in excess of the rate determined pursuant to Subsection (b) hereof shall be deemed a penalty.

(i) If a taxpayer pays for any tax imposed pursuant to this Article by check for which there are insufficient funds to cover such check, then the City Treasurer may assess a penalty against such taxpayer as follows: (1) ten dollars (\$10.00) for the first violation; (2) twenty-five dollars (\$25.00) for the second violation; and (3) fifty dollars (\$50.00) for each additional violation. If a penalty of twenty-five dollars (\$25.00) or more has been assessed against a taxpayer by the City Treasurer, then the City Treasurer may require such taxpayer to pay all tax payments, whether due or to be due in the future, by certified funds, cashier's check or cash. The penalty imposed by this Section is in addition to all other penalties imposed pursuant to this Article.

(j) The City shall participate with other cities in the State concerning intercity claims for the recovery of sales and use taxes paid to the wrong taxing jurisdiction. The intent and procedure for filing a "claim for recovery" is set forth in this Section.

(k) The City Treasurer may issue summons and complaints for violations of this Article as set forth in this Code.

**(8) Sec. 4-2-470. Penalty interest on unpaid use tax. (Chapter 4, Article 2, Sales and Use Tax)**

Any use tax due and unpaid shall be a debt to the City and shall draw interest at the rate imposed under Section 4-2-450, in addition to the interest provided by Section 4-2-460, from the time when due until paid.

**(9) Sec. 4-4-40. Filing statement. (Chapter 4, Article 4, Telephone Tax)**

(a) On or before January 31 of each year, each telephone utility company subject to this Article shall file with the City Clerk, in such form as the clerk may require, a statement showing the total telephone accounts for which local exchange telephone service was provided within the corporate limits of the City on the preceding January 1.

(b) If any officer, agent or manager of a telephone utility company which is subject to the provisions of this Article fails, neglects or refuses to make or file the annual statement of accounts provided in Subsection (a) hereof, the officer, agent, manager or person shall, on conviction thereof, be punished by a fine not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300.00). Each day after such statement becomes delinquent during which the officer, agent, manager or person so fails, neglects or refuses to make and file such statement shall be considered a separate and distinct offense.

(10) **Sec. 4-4-50. Failure to pay; penalty for late payment. (Chapter 4, Article 4, Telephone Tax)**

If any telephone utility company subject to the provisions of this Article fails to pay the taxes as provided in this Article, the full amount thereof shall be due and collected from such company, and the same, together with an addition of ten percent (10%) of the amount of taxes due, shall be and is declared to be a debt due and owing from such company to the City

(11) **Sec. 4-5-60. Liability and reporting procedure; rules. (Chapter 4, Article 5, Admissions Tax)**

(a) The burden of proving that any transaction is not subject to the tax imposed in this Article shall be upon the person upon whom the duty to collect the tax is imposed by this Article.

(b) The City Clerk may require any person to make such return, render such statement or keep and furnish such records as the City Clerk may deem sufficient and reasonable to show whether or not such person is liable under this Article for the payment or collection of the tax imposed herein.

(c) Every owner or operator who charges or causes to be charged admission to any place or event that is open to the public shall be liable for the collection and remittance of the tax levied in this Article.

(d) Every owner, operator or person who has the duty to collect the tax imposed in this Article shall report, on forms prescribed by the City Clerk, such taxes and remit to the City the collected taxes within the following time periods:

(1) For regularly continuing or recurring events, such as the charging of admission to motion picture theaters, reports and remittances must be filed with the City Clerk on or before the seventh day of the month for the preceding month or months under report;

(2) For single, noncontinuing or nonrecurring events, such as the charge of admission to a single performance or concert, reports and remittances are due within three (3) calendar days of the performance or event, unless specific arrangements are made in advance with the City Clerk;

(3) If remittances and reports are not received on the due dates, a penalty shall be imposed in the amount of twenty percent (20%) of the tax liability and the total amount due, including tax and penalty, will bear interest at the rate of one percent (1%) per month or a fraction thereof until such reports and remittances are received by the City Clerk.

(e) The City Clerk may require an advance deposit of the estimated amount of admissions tax due under this Article from any owner or operator who holds single, noncontinuing or nonrecurring events, or any owner or operator who has been delinquent in any remittances or reports required by this Article. The amount of the deposit shall be made by the City Clerk based upon the owner's or operator's reasonable estimate of the number of taxable admissions to be sold during the month in the case of regularly continuing or recurring events, and for the event in the case of a single, noncontinuing, or nonrecurring event. In addition to any other applicable penalty, if the owner or operator fails to provide a deposit as

required by this Subsection, the City Clerk may revoke, suspend, not issue or not renew any license or permit that the owner or operator is required to obtain pursuant to this Code. The City Clerk shall determine, following the end of the month or the completion of the event, as applicable, whether the deposit constituted an underpayment or overpayment of actual taxes due, and shall require an additional remittance or grant a refund, as the case may be. The owner or operator shall have the burden of establishing, by competent evidence, the actual number of taxable admissions sold.

(f) The City Clerk is authorized to promulgate rules and regulations regarding the payment, deposit, collection, reporting and accounting criteria and periods, settlement of disputes over payment, refund and enforcement of the tax imposed by this Article.

**(12) Sec. 6-4-80. Expired license. (Chapter 6, Article 4, Contractors)**

In addition to any other penalty, any person required to be licensed under this Article and found to be performing work with an expired license will be subject to the initial license fee plus a twenty-five-percent penalty.

**(13) Sec. 6-9-200. Penalties. Chapter 6, Article 9, Sexually Oriented Businesses)**

(a) It is unlawful for any person, corporation or other entity to violate any provision of this Article, and any such violation shall be subject to Section 1-4-20.

(b) In the event of violation of any of the terms and regulations set forth herein, the City may obtain equitable relief, including injunctive relief, to require compliance with the provisions hereof. In the event the City is successful in obtaining injunctive or other equitable relief, the costs and attorney fees incurred by the City in such action shall be awarded to the City in addition to any other relief.

(c) Nothing contained herein shall preclude the City from enforcing the suspension and revocation provisions of this Article in addition to simultaneously or subsequently prosecuting alleged violations of this Article under this Section.

**(14) Sec. 8-1-50. Violations. (Chapter 8, Article 1, Model Traffic Code)**

(a) It is unlawful for any person to violate any of the provisions of this Article for which no specific penalty has been provided or for which the sole penalty provided is a fine, which violations are hereby deemed traffic infractions. A traffic infraction shall be a civil matter for which punishment by imprisonment shall not be available, and for which a penalty assessment notice shall be issued. Every person who is convicted of a traffic infraction, or against whom a judgment is entered for a traffic infraction, is subject to a penalty of at least ten dollars (\$10.00), but not more than one hundred fifty dollars (\$150.00) for a first offense within any twenty-four-month period, exclusive of any court costs and surcharges.

(b) For any violation of any provision of this Article which is a traffic infraction, no trial by jury shall be available, no arrest warrant shall be issued for failure to appear or to pay, no privilege against self-incrimination shall apply, the standard of proof shall be a preponderance of the evidence, and the conduct of all proceedings applicable to such a violation shall otherwise be in conformity with those generally applicable to civil matters.

(c) For any violation of any provision of this Article which is a traffic infraction, the Municipal Court may enter a judgment of liability by default against the defendant for failure to appear or to pay, and may assess such penalty, together with such court costs and surcharges, as are established by law. The Municipal Court may establish, by written order, rules and regulations for the administration of any violation of this Article which is a traffic infraction, including but not limited to schedules establishing the amount of penalties payable without a court appearance, and schedules establishing discounts from those amounts for early payment of penalties. Such early payment discounts shall apply only to penalties paid within twenty (20) days of issuance of the penalty assessment notice for the infraction.

(d) The City Attorney may establish a City Attorney's plea bargain procedure, which shall be printed on the penalty assessment form and which, in conjunction with any early payment discount, shall provide for the automatic reduction of points assessed for a traffic infraction as follows:

(1) A four-point or three-point violation may be reduced to a two-point violation; and

(2) A two-point violation may be reduced to a one-point violation.

(e) It is unlawful for any person to violate any of the following provisions of this Chapter, which violations are hereby deemed criminal offenses. Every person convicted of a violation of the following provisions of this Chapter shall be punished by a fine not exceeding nine hundred ninety nine dollars (\$999.00), exclusive of any court costs and surcharges, or by imprisonment not exceeding six (6) months, or by both such fine and imprisonment:

(1) Section 1101 of the Model Traffic Code, where the speed as driven is twenty (20) miles per hour or more over the lawful speed.

(2) Section 1105 of the Model Traffic Code, speed contest.

(3) Section 1401 of the Model Traffic Code, reckless driving.

(4) Section 1402 of the Model Traffic Code, careless driving.

(5) Section 1409 of this Chapter, no insurance.

(6) Section 1413 of the Model Traffic Code, eluding or attempting to elude a police officer.

(7) Section 1903 of the Model Traffic Code, stopping for school buses.

**(15) Sec. 10-7-60. Selling tobacco to minors. (Chapter 10, Article 7, Minors)**

(a) For purposes of this Code, the following words shall have the meanings ascribed hereafter:

*Cigarettes* means premanufactured cigarettes and/or hand-rolled cigarettes.

*Minor* means a person under the age of eighteen (18) years.

*Tobacco products* means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour, Cavendish, plug and twist tobacco, fine cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such a manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking.

(b) It is unlawful for any person to furnish to any person who is under eighteen (18) years of age by gift, sale or any other means any cigarettes or tobacco products. Any person who knowingly furnishes to a minor, by gift, sale or any other means, any cigarettes or tobacco products commits an offense and, upon conviction thereof, shall be punished by a fine of two hundred dollars (\$200.00). It shall be an affirmative defense to a prosecution under this Subsection that the person furnishing the cigarettes or tobacco products was presented with and reasonably relied upon a valid state driver's license or other government-issued form of identification which identified the person receiving the cigarettes or tobacco products as being eighteen (18) years of age or older.

(c) It is unlawful for any person under the age of eighteen (18) to purchase any cigarettes or tobacco products as defined in Subsection (a) of this Section. Any minor who purchases or attempts to purchase any cigarettes or tobacco products, and/or is found to be in possession of any cigarettes or tobacco products commits an offense and, upon conviction thereof, shall be punished by a fine of one hundred dollars (\$100.00); except that, following a conviction or adjudication for a first offense under this Subsection, the Municipal Court in lieu of the fine may sentence the person to participate in a tobacco education program. The Municipal Court may allow such person to perform community service and be granted credit against the fine and court costs at the rate of five dollars (\$5.00) for each hour of work performed, for up to fifty percent (50%) of the fine and court costs.

(d) No retailer shall sell or permit the sale of cigarettes or tobacco products by use of a vending machine or other coin-operated machine; except that cigarettes may be sold at retail through vending machines only in:

- (1) Factories, businesses, offices or other places not open to the general public;
- (2) Places to which minors are not permitted access at any time during the day or night; or
- (3) Places where the vending machine is under the direct supervision of the owner of the establishment or an adult employee of the owner, including but not limited to establishments holding a valid liquor license issued pursuant to Article 47 of Title 12, C.R.S.

(e) Any person who sells or offers to sell any cigarettes or tobacco products shall display a warning sign as specified in this Subsection. Said warning sign shall be displayed in a prominent place in the building and on such machine at all times, shall have a minimum height of three (3) inches and a width of six (6) inches, and shall read as follows:

WARNING: IT IS ILLEGAL FOR ANY PERSON UNDER 18 YEARS OF AGE  
TO PURCHASE CIGARETTES AND TOBACCO PRODUCTS, AND,  
UPON CONVICTION, A \$100.00 FINE MAY BE IMPOSED

(f) Any violation of Subsection (e) hereof shall not constitute a violation of any other provision of this Section.

**(16) Sec. 10-9-10. Graffiti; defacing property. (Chapter 10, Article 9, Graffiti)**

(a) It is unlawful to deface or to cause, aid in or permit the defacing of public or private property by means of painting, drawing, writing, etching or carving with paint, spray paint, ink, knife or any other similar method.

(b) In addition to any other penalty, the Municipal Court may order any person convicted under this Section to repair personally any property within the City that was defaced, with the permission of the property owner.

(c) In addition to any other penalty, the Municipal Court shall order any person convicted of violating this Section or pleading guilty or no contest to a violation of this Section to pay a minimum fine of:

(1) Two hundred dollars (\$200.00) for the first offense within any consecutive twelve-month period;

(2) Four hundred dollars (\$400.00) for the second offense within any consecutive twelve-month period;

(3) Six hundred fifty dollars (\$650.00) for the third and subsequent offenses within any consecutive twelve-month period.

The Municipal Court shall have the authority to suspend these fines, in whole or in part, only when it orders such defendant to perform, and the defendant does perform, useful community service within the City. The Municipal Court shall establish a dollar amount for each hour of community service to be performed and shall credit the amount earned toward payment of the fine imposed when the community service is completed.

**(17) Sec. 10-9-40. Sale and display of prohibited graffiti materials. (Chapter 10, Article 9, Graffiti)**

(a) Definitions. Prohibited graffiti material means those objects which a person under the age of eighteen (18) years is forbidden to purchase, procure, or possess pursuant to Section 10-9-30.

(b) Sale. It is unlawful for any person, other than a parent, legal guardian, school teacher or law enforcement officer in the performance of duty, to sell, exchange, give, deliver, loan or otherwise furnish, or cause or permit to be sold, exchanged, given, delivered, loaned or otherwise furnished any prohibited graffiti material to any person under the age of eighteen (18) years unless such person under the age of eighteen (18) years is accompanied by such person's parent or legal guardian. It shall be an affirmative defense to prosecution under this Subsection that the employer has adopted and enforces a written policy against selling prohibited graffiti materials to persons under the age of eighteen (18) years, has informed its employees of the applicable laws regarding sales of prohibited graffiti materials, requires employees to verify the age of prohibited graffiti materials customers by way of a photo identification document, and has established and imposes sanctions for noncompliance.

(c) Signs required. It is unlawful for any person who sells or offers to sell any prohibited graffiti material to fail to display a warning sign. Such warning sign shall be displayed in a prominent place in the building at all times, shall have a minimum height of fourteen (14) inches and a width of eleven (11) inches, with lettering of at least one-half (½) inch in height and shall read as follows:

WARNING:

IT IS ILLEGAL FOR ANY PERSON UNDER EIGHTEEN YEARS OF AGE TO PURCHASE OR POSSESS SPRAY PAINT, SPRAY PAINT NOZZLE, BROAD-TIPPED MARKER PEN, PAINT PEN, GLASS-CUTTING TOOL, OR GLASS-ETCHING TOOL OR INSTRUMENT UNLESS ACCOMPANIED BY THEIR PARENT OR LEGAL GUARDIAN AND, UPON CONVICTION, A \$999.00 FINE MAY BE IMPOSED.

(d) Display and storage. It is unlawful for any person who owns, conducts, operates or manages a business where prohibited graffiti materials are sold or who sells or offers for sale any prohibited graffiti material to store or display, or cause to be stored or displayed prohibited graffiti material in an area that is accessible to the public without employee assistance in the regular course of business pending legal sale or other disposition. This Subsection shall not be construed to preclude or prohibit the storage or display of prohibited graffiti material in an area viewable by the public so long as such items are not accessible to the public without employee assistance.

(e) Contributing to unlawful possession. It is unlawful for any person, except a law enforcement officer in the performance of duty, to knowingly allow a person under the age of eighteen (18) years to possess prohibited graffiti materials upon any public or private real property. It shall be an affirmative defense to charges under this Subsection that the person under the age of eighteen (18) years possessing the material was:

- (1) Within the person's home;
- (2) At the person's place of employment; or
- (3) Upon real property with permission from the owner, occupant or person having lawful control of such property, to possess such materials.

Persons convicted of violating this Subsection shall, in addition to any penalty imposed by the Municipal Court, pay restitution for abatement or repair of any defacement or damage caused by the use of prohibited graffiti material by the person under the age of eighteen (18) years.

**(18) Sec. 10-10-260. Possession of marijuana. (Chapter 10, Article 10, Alcoholic Beverages and Drugs)**

(a) Any person who knowingly possesses or openly and publicly displays or consumes, transfers or dispenses to another person without consideration not more than one (1) ounce of marijuana commits a criminal offense and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars (\$100.00).

(b) Whenever a person is arrested or detained for a violation of Subsection (a) hereof, the arresting or detaining officer shall prepare a written notice or summons for such person to appear in Municipal Court. The written notice or summons shall contain the name and address

of such arrested or detained person, the date, time and place where such person shall appear and a place for the signature of such person indicating the person's written promise to appear on the date and at the time and place indicated on the notice or summons. One (1) copy of said notice or summons shall be given to the person arrested or detained, one (1) copy shall be sent to the Municipal Court and such other copies as may be required by the Police Department shall be sent to the places designated by the Police Department. The date specified in the notice or summons to appear shall be at least five (5) days after such arrest or detention unless the person arrested or detained demands an earlier hearing. The arrested or detained person, in order to secure release from arrest or detention, shall promise in writing to appear in court by signing the notice or summons prepared by the arresting or detaining officer.

(c) Any person who openly and publicly displays, consumes or uses not more than one (1) ounce of marijuana commits an offense and, upon conviction thereof, shall be punished, at a minimum, by a fine of not less than one hundred dollars (\$100.00) or, at a maximum, by a fine of not more than one hundred dollars (\$100.00) and, notwithstanding the provisions of Section 18-1.3-503, C.R.S., by fifteen (15) days in jail.

(d) The provisions of this Section shall not apply to any person who possesses or uses marijuana pursuant to the Dangerous Drugs Therapeutic Research Act.

**(19) Sec. 10-11-20. Domestic violence unlawful; penalties. Chapter 10, Article 11, Domestic Violence)**

(a) It is unlawful for any person to commit an act of domestic violence.

(b) No person who is arrested on a charge of domestic violence shall be released at the scene of the alleged offense.

(c) Whenever the Court finds a substantial likelihood that a defendant, if released from custody following an arrest on a charge of domestic violence, would commit additional acts of domestic violence, the Court may order that the defendant be held without bond pending arraignment or advisement of rights regarding the charge. The procedures pertaining to the issuance of such an order shall be established in rules and regulations adopted by the Court.

(d) A person who is found guilty at trial, or who pleads guilty or no contest to a violation of this Section, shall be punishable by a fine or imprisonment, or both, as provided in Section 1-4-20.

(e) In addition to or in lieu of any fine or imprisonment, the Court shall have discretion to order a sentence which includes one (1) or more of the following elements: restitution, treatment for substance abuse, probation counseling for domestic violence, counseling for mental health disorders, corrective training, participation in a community service program, deferred judgment and sentence, or the issuance of one (1) or more restraining orders pursuant to this Article. If any of such elements is ordered as part of a sentence, the Court shall impose court costs in an amount determined by the Court to be sufficient to defray the costs of supervision of the defendant. The amount of such court costs shall not be less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000.00).

(f) Whenever the Court orders counseling as part of a sentence, the Court shall order such counseling to occur in a treatment program certified pursuant to Section 18-6-801, C.R.S.

**(20) Sec. 11-2-60. Damage to sidewalks. (Chapter 11, Article 2, Sidewalks and Curbcuts)**

It is unlawful for any person to damage or cause the damage of any sidewalk within the public right-of-way of the City. Any person convicted of a violation of this Section, in addition to any fine or penalty imposed, shall be assessed the costs for repairing such damages by the court with applicable jurisdiction.

**(21) Sec. 11-4-110. Pruning and removal of dead or diseased trees by City. (Chapter 11, Article 4, City Trees and Overhanging Trees)**

(a) When it is determined by the Arborist that a property owner is in violation of Section 11-4-90 or 11-4-100, the City shall cause a written notice of such violation to be mailed by certified mail, return receipt requested, to the property address and the address of the property owner as shown on the tax rolls, directing the owner of the property to remove such violation as provided herein within thirty (30) days or the cost of such removal shall be assessed against the property. In the event the owner of the property does not comply with the notice, the City may cause the pruning or removal of the tree or shrub at the expense of the property owner. Such expense shall include the cost of removal, together with ten percent (10%) for inspection and incidental costs and fifteen percent (15%) penalty for costs of collection.

(b) After causing the trees or shrubs to be pruned and/or removed, the Director of Public Works shall certify to the City Clerk the legal description of the property upon which the work was done, together with the name of the owner as last shown by the tax rolls of the County, a statement of the work performed, the date of performance and the cost.

(c) Upon receipt of the statement of cost from the Director of Public Works, the City Clerk shall mail a written notice to the owner of the premises as last shown upon the tax rolls, by certified mail, return receipt requested, notifying the owner that work has been performed, stating the date of performance of the work and the nature of the work, and demanding payment of the cost, as certified by the Director of Public Works, together with ten percent (10%) for inspection and other incidental costs. The notice shall state that, if the amount is not paid within thirty (30) days of mailing the notice, it shall become an assessment on and a lien against the property of the owner, describing the same, and will be certified as an assessment against the property, together with a fifteen-percent penalty for collection, in the same manner as the real estate taxes upon the property.

(d) The City Council may grant exceptions to certain property owners from paying all or a portion of the costs of pruning or removing trees, shrubs, or bushes as required in this Section. Exceptions shall only be allowed for undue financial hardships imposed upon the property owner by the requirement of payment of all or a portion of such costs. The City Council shall establish the criteria and procedures for such exceptions by resolution prior to considering requests for exceptions. The burden of proving such hardship shall be upon the property owner, who shall request a hearing pursuant to City Council procedures; to consider such exception. The property owner shall provide documents such as, by illustration only, tax returns, financial statements, business records, personal financial records or files, or bank statements to verify the undue financial hardship.

(e) If the City Clerk does not receive payment within the period of thirty (30) days following the mailing of a notice of assessment, the City Clerk shall inform the City Council of such fact, and the City Council will thereupon consider the enactment of an ordinance assessing the whole cost of the work, including ten percent (10%) for inspection and other incidental costs, upon the lots and tracts of land from which the trees or shrubs have been pruned or removed, together with a fifteen-percent penalty for cost of collection.

(f) Following passage of an ordinance for collection of costs, the City Clerk shall certify the same to the County Treasurer, who shall collect the assessment, including the fifteen-percent penalty for cost of collection, in the same manner as other taxes are collected. Each such assessment shall be a lien against each lot or tract of land until paid, and shall have priority over all other liens except general taxes and prior special assessments.

**(22) Sec. 13-2-430. Unpaid bills. (Chapter 13, Article 2, Water System)**

(a) All water bills unpaid by the tenth day following the date of the bill shall have added thereto a penalty of ten percent (10%) of the amount of the bill. If any such bill and the ten-percent penalty remain unpaid by closing time on the twentieth day following the due date of the bill, the City Clerk shall give the occupant and owner of every premises served with the water utility, so delinquent, notice in writing to be sent by first-class mail, to the last known address of the occupant and owner as shown on the City's water records, that the bill and the ten-percent penalty must be paid in five (5) days from the date of mailing of the notice or water shall be turned off from the premises for which the bill and penalty remain unpaid. The City shall have the right to enter upon private property for the purpose of disconnecting service. Such notice shall be mailed on the twenty-first day following the due date of the bill and posted on a door to the premises. There shall be a fee of ten dollars (\$10.00) charged for the delivery of said delinquent notice. No suspension of service shall be made until written notice of the proposed suspension is provided to the occupant and owner of the premises served. The notice shall include the following:

(1) Notification that the water service shall be suspended on the date specified in the notice, which date shall be no sooner than five (5) days after the date of mailing of the notice;

(2) The reasons for suspension of service; and

(3) An advertisement that, if the occupant or owner does not believe reasonable cause exists for the proposed suspension, a conference may be requested and held with the City Clerk prior to suspension.

(b) The owner or occupant may request, prior to the date of service suspension set forth in the notice, a conference with the City Clerk. At the conclusion of the conference, the City Clerk shall decide whether reasonable cause exists for the proposed suspension and shall inform the owner or occupant of his or her decision. If a conference has been requested and held and the City Clerk has determined that reasonable cause exists for the proposed suspension or, if prior to 5:00 p.m. on the date specified in the notice the conference has not been requested and held or full payment of delinquent bills and charges has not been made and no arrangement for such payment has been made, then water service shall be suspended and shall not be reinstated until the cause for the suspension has been cured, all delinquent bills and charges due are paid in full, a service charge of ten dollars (\$10.00) for turning off the water

and a service charge of ten dollars (\$10.00) for turning on the water have all been paid in full. The City Clerk shall only accept full payment of delinquent bills and charges.

(c) In addition, if any user's water has been turned off as a result of unpaid bills within any calendar year, the cost of said turning off and restoring service shall escalate as follows:

Second shutoff	\$30.00
Third shutoff	\$50.00
Each subsequent shutoff	\$75.00

**(23) Sec. 13-3-540. Penalty. (Chapter 13, Article 3, Sewers and Sewage Disposal)**

No person shall dispose of harmful wastes or wastewater or use the City's sanitary sewers or POTW or cause the same to be done contrary to or in violation of any provision of this Division. Any person who is found to have violated any provision of this Division, including the technical code adopted by reference in Section 13-3-530, or the orders or permits issued thereunder, shall be punished by a penalty not to exceed one thousand dollars (\$1,000.00) for such violation, or by imprisonment not to exceed ninety (90) days per offense, or by both such fine and imprisonment. Each day on which a violation occurs or continues shall be deemed a separate and distinct violation. Such penalties shall be in addition to any other remedies provided for in this Chapter.

**(24) Sec. 16-1-60. Penalty. (Chapter 16, Article 1, General Provisions)**

(a) Penalty for violations. It is unlawful to erect, construct, reconstruct, alter, maintain or use any building or structure or to use any land in violation of any provision of this Chapter. Any person, either as owner, lessee, occupant or otherwise, who violates or interferes in any manner with any person in the performance of a right or duty granted or imposed upon him or her by this Chapter, is guilty of a misdemeanor and the penalty for violations of this Chapter shall be as prescribed in Section 1-4-20.

(b) Legal action. In case any building or structure is or is proposed to be erected, constructed, altered, maintained or used, or any land is proposed to be used, in violation of any provision of this Chapter, the City Council, the City Attorney or any owner of real estate within the City, in addition to other remedies provided by law, may institute injunction, mandamus, abatement or any other appropriate action or proceeding to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alteration, maintenance or use.

*Section 5.* Section 16-1-50 of the Edgewater Municipal Code adopted by reference by this Ordinance is hereby amended by the addition of a new definition for "Bulk plane" to read in its entirety as follows:

*Bulk plane* means an imaginary line (plane) above which a structure may not extend. The bulk plane shall not exceed a height of fifteen feet (15') at the property line extending to the center of the property at a forty-five degree (45°) angle.

*Section 6.* Notwithstanding Section 1 above, Article 28 of Chapter 16 of the Edgewater Municipal Code adopted by reference by this Ordinance shall read in its entirety as follows:

## ARTICLE 28

### Planned Unit Developments

#### **Sec. 16-28-10. Purpose.**

The purpose of this Article is to provide for greater variety and choice of design for urban living, to gain efficiency, to coordinate design development efforts, to conserve and make available open space, to utilize new technology in urban land development and to gain flexibility over conventional land control regulations.

#### **Sec. 16-28-20. Scope**

The PUD is a type of customized zoning that may be utilized in any underlying zone district to achieve those purposes set forth in Section 16-28-10. An application for a PUD shall comply with the rezoning requirements of Article 25 of this Chapter.

#### **Sec. 16-28-30. Underlying district regulations and development design standards and guidelines to apply.**

All requirements applicable to the underlying zone district or districts in which the property is located as set forth in this Chapter and Chapter 17, and in any adopted City development design standards and guidelines, including but not limited to lot area, lot coverage, lot width, height, setbacks, parking, signage and buffers, shall apply. However, any such requirements, including the location of residential units in the residential-commercial zone districts, may be modified through the approval process of the planned unit development if it is determined that the spirit and intent of the development plan criteria are met and that the modification or waiver is warranted by the design and amenities incorporated in the development plan. Such approval pursuant to this Article shall constitute approval of any exceptions or variances that would otherwise be required under Subsection 2-10-30(2).

#### **Sec. 16-28-40. Preapplication conference.**

Prior to accepting application for approval of a PUD, the City Engineer shall conduct a preliminary review of the submittal, identify any deficiencies and, if determined necessary, hold a preapplication conference with the applicant to discuss the PUD procedures and guidelines with the applicant.

#### **Sec. 16-28-50. Application.**

Twenty-one (21) copies of an application for approval of a PUD shall be filed with the City Clerk by the owner or agent of the owner of the entire land area to be included within the project, which application shall be signed by all owners or their representatives. The application shall contain the following items:

- (1) The applicant's name, address and interest in the application.
- (2) The names and addresses of all owners of the property and the holders of deeds of trust, identifying which owners and holders of trust are represented by the applicant.
- (3) A legal description and map of the property drawn to scale, which shall include:

a. The land area within the PUD and the use and present zone classification of the designated;

b. The zone classification and use of all properties within two hundred (200) feet of the subject property;

c. All public and private rights-of-way and easements bounding and intersecting the subject property which are proposed to be continued, created, relocated and/or abandoned;

d. The location of all existing and proposed structures and the specific use or uses of each; and

e. Topographical information, including contour at two-foot intervals.

(4) A development plan, drawn at a scale of not less than one (1) inch per fifty (50) feet and on paper at least eight and one-half (8½) by eleven (11) inches, and a written description of the proposed development. The development plan and/or the description shall show or stipulate the general location, arrangement, extent and character for each of the following where applicable, unless determined by the City Engineer to be unnecessary:

a. Adjacent streets and alleys;

b. Land uses by type, including the gross acreage or square footage of each proposed use;

c. Structures or building envelopes by type of use, maximum height of structures, maximum gross floor area for each land use and land coverage of buildings and impervious areas;

d. Residential densities by housing type and maximum number of dwelling units, to be calculated as the ratio of the number of living units per net acre of development;

e. Any interior streets or drives;

f. Parking, loading and outdoor storage areas and access thereto, including any areas for storage of boats, campers, trailers and recreational vehicles;

g. Public and private open and recreation space, indicating proposed ownership and responsibilities for maintenance thereof;

h. Landscape plan for the site and City right-of-way, including typical materials;

i. For any application other than for exclusively residential uses, a traffic study;

j. Buffer areas and fencing, including purpose, type, timing of construction and height;

- k. Pedestrian circulation;
- l. Existing and proposed utilities and any extension necessary to serve the development, including easements where necessary for the construction, maintenance and operation of each utility;
- m. Dimensions of separations between buildings, streets and other features;
- n. Land dedications and public improvements;
- o. Drainage plan, addressing areas subject to flooding, retention areas and surface drainage;
- p. Location, size and lighting of signs;
- q. Treatment of sound, vibration, glare, radiation, fumes and heat emission which will extend beyond the PUD;
- r. Elevation views of the structure and landscaping, including a bulk plane line in conformance with Section 16-1-50 of this Code;
- s. Fire protection facilities and access means for firefighting equipment;
- t. Other elements, such as architectural concepts, building elevations, façade treatments and exterior building materials, as necessary to establish how the proposed PUD uses and structures relate to the neighborhood property; and
- u. Such other information as determined necessary by the City Engineer for proper review and evaluation of the application.

(5) A written statement generally describing the proposed PUD and the market which it is intended to serve; its relationship to the Comprehensive Plan; and how the proposed PUD is to relate to the use of the neighboring property. Where the applicant's objectives are not in substantial conformance with the Comprehensive Plan, the statement shall include the changed or changing conditions that justify approval of the proposed PUD.

(6) A proposed development schedule of improvements setting forth timing for construction of the development.

**Sec. 16-28-60. Criteria for approval.**

PUD approval shall be granted by the City only if the applicant demonstrates that:

- (1) The proposed project shall not be detrimental to present and potential surrounding land uses.
- (2) Streets and sidewalks, existing and proposed, are suitable and adequate to carry anticipated traffic within the proposed project and in the vicinity of the proposed project.
- (3) Services, including potable water, sanitary sewer and storm drainage, are available or can be provided by the development prior to occupancy so as to comply with level of service standards or guidelines contained in the Comprehensive Plan.

(4) The proposed development contains the required parking spaces, recreation spaces, landscape and utility areas necessary for creating and sustaining a desirable and stable environment.

(5) The project conforms with the purposes and standards prescribed in this Chapter.

(6) The project is compatible with the general purpose, goals, objectives and standards of the Master Plan.

(7) The project provides benefits to the City that outweigh its adverse effects.

(8) The project provides for the installation of permanent address identification signs on the front of each building and on the alley side of the garage to allow quick identification by emergency service personnel.

**Sec. 16-28-70. Review.**

(a) Upon receipt of a completed application, the City Clerk, shall transmit a copy of such application to the City Engineer, Planning and Zoning Commission, City Council, Public Works Director, City Attorney and such other agencies, either public or private, as may be deemed by the City Engineer to have an interest.

(b) The Planning and Zoning Commission shall cause notice to be posted upon the property to be affected and published in a newspaper of general circulation within the city at least ten (10) days prior to the public hearing concerning the PUD application. The applicant shall mail notice of the public hearing on the PUD application to all property owners within fifty (50) feet of each property line at least ten (10) days prior to the public hearing. The names and addresses of the current property owners shall be obtained from the County Assessor's Office. The applicant shall provide a copy of the mailed notice, a list of the notice recipients and an affidavit of mailing at the time of the hearing. The applicant or a representative of the applicant must attend the public hearing before the Planning and Zoning Commission and demonstrate that the PUD application is in compliance with the criteria for approval set forth in this Article.

(c) At the conclusion of the public hearing, the Planning and Zoning Commission shall pass a resolution recommending approval, with or without conditions, if the PUD application is in compliance with the criteria for approval set forth under this Article. If the PUD application is not in compliance with the criteria for approval set forth under this Article, the Planning and Zoning Commission shall pass a resolution recommending denial of the application. A copy of the resolution passed by the Planning and Zoning Commission shall be transmitted to the City Council prior to its next regularly scheduled meeting, and the City Council shall schedule and hold a public hearing in accordance with Subsection (e).

(d) When reviewing a PUD application for residential development, a recommendation of the Planning and Zoning Commission for approval shall constitute final approval unless the applicant requests, or the City Council directs, City Council review of the application. An applicant request for review shall be filed in writing by no later than the close of business on the Monday before the next regular City Council meeting that is scheduled to be held at least seven (7) days after said Planning and Zoning Commission meeting at which the Planning and

Zoning Commission adopted its recommendation. A City Council request for review shall be approved by motion made at the next regular City Council meeting scheduled to be held at least seven (7) days after said Planning and Zoning Commission meeting.

(e) Any PUD application which requires a rezoning or which is for other than exclusively residential use will be submitted to the City Council for action. The City Council shall hold a public hearing on the application and may approve, disapprove, approve with conditions or modifications or request that the PUD application be further reviewed by the Planning and Zoning Commission. Notice of the public hearing shall be posted upon the property to be affected and published in a newspaper of general circulation within the City at least ten (10) days prior to the public hearing.

(f) After the PUD has been granted final approval by the Planning and Zoning Commission or the City Council, it shall be recorded with the County Clerk and Recorder at the applicant's expense.

**Sec. 16-28-80. Construction procedures and building permits.**

(a) Subject to subsection (b) hereof, the appropriate officials shall issue building permits for buildings and structures in the area covered by the approved PUD, provided the PUD has been recorded, if such buildings and structures are in conformity with the approved PUD and with all other applicable ordinances and regulations.

(b) No building permit shall be issued more than thirty-six (36) months after final approval of the PUD development plan unless an extension of time is approved by City Council and issuance is within such extension.

**Sec. 16-28-90. Amendments to development plan.**

No changes may be made in an approved PUD development plan prior to or during construction of the PUD except upon application to the City under the procedures provided below:

(1) Minor changes in the location, siting and height of buildings and structures and other minor changes may be authorized by the City Engineer if such changes are required by engineering or other circumstances not foreseen at the time the PUD development plan was approved. Any administrative approvals granted under this Section shall be transmitted to the Planning and Zoning Commission and the City Council for their information by written memorandum from the City Engineer.

(2) All changes in use or density of the PUD, changes in the arrangements of lots, blocks and buildings, any changes in the provision of common open spaces and all other changes in the approved development plan, except those that are minor changes under Subsection (1) hereof, must be approved under the procedure authorized for the original plan approval.

(3) Any changes that are approved for the development plan must be recorded at the applicant's expense as an amendment to the recorded copy of the development plan.

(4) All changes for which authorization is required under Subsection (1) or (2) hereof shall comply with adopted City development ordinances, design standards and guidelines.

**Sec. 16-28-100. Enforcement of development schedule and plan.**

(a) PUD development plans approved pursuant to this Article shall be binding upon the owner of the property and his or her successors and assigns, and may be enforced pursuant to Section 16-1-60 or as set forth in this Section, at the City's option.

(b) From time to time, the Planning and Zoning Commission shall hold a public hearing to compare the actual development accomplished in the various PUDs previously approved with the development schedule and the development plan of each project. If the owner of the property in the PUD has failed to meet the approved development schedule or development plan and any supplementary agreements, proceedings to review the previously approved development plan and schedule may be initiated. Such review shall occur in the same manner as review of the initial development plan and, upon such review, the PUD approval may be revoked or the limits of the development schedule may be extended. As a condition of approval, no certificate of occupancy shall be issued if the Planning and Zoning Commission or the City Council, as applicable, determines that the development does not conform to the approved plan.

(c) Adequate assurance, including but not limited to a public improvements development agreement and/or a bond, letter of credit or other guarantee, may be required to ensure that the common open space and other public improvements required by the development plan will be provided and developed at the expense of the applicant.

**Sec. 16-28-110. Control of development after completion.**

After the PUD has been substantially completed, the use of the land and the construction, modification or alteration of any buildings or structures within the PUD will be governed by the approved development plan rather than by any other provisions of this Chapter. No changes may be made in the approved development plan except upon application to the City under the procedures provided below:

(1) Any minor extension, alteration or modification of existing buildings or structures may be authorized by the City Engineer if they are consistent with the purposes and intent of the final plan.

(2) Any uses not authorized by the approved final plan, but permitted as of right or by special review in the zone district in which the PUD is located, may be added to the development plan pursuant to the procedures for amendment to the PUD.

(3) A building or structure that is totally or substantially destroyed may be reconstructed only in compliance with the approved development plan unless an amendment to the development plan is approved.

(4) All other changes in the development plan, including changes in the use of common open space, must be approved in the same manner provided in this Article for initial development approval. No changes shall be approved in the development plan unless they are required for the continued successful functioning of the PUD, or unless

they are required by changes in conditions that have occurred since the PUD was approved or by changes in the development policy of the community.

**Sec. 16-28-120. Powers.**

Notwithstanding any other provision of this Article, the Board of Adjustment has the power under Section 11.5 of the Charter to hear and decide, and grant or deny, applications for variances on individual lots from the provisions of an approved PUD development plan if all legal requirements have been met.

**Sec. 16-28-130. Assurances of completion.**

In those cases where a PUD is applied for on one (1) or more subdivided lots, but which does not have in place an agreement with the City for the completion of public improvements as required in Section 17-5-20, such an agreement shall be executed, and improvement guarantee required by Section 17-5-30 shall be posted, prior to recording any documents relating to the PUD.

**Sec. 16-28-140. Fees.**

(a) Principal buildings. The applicant shall pay a fee to the City for the review of the PUD application, in accordance with the following schedule:

(1) Application fee:

a. For projects with a total materials and labor cost of less than fifteen thousand dollars (\$15,000.00), the application fee shall be one hundred dollars (\$100.00);

b. For projects with a total materials and labor cost of fifteen thousand dollars (\$15,000.00) or more but less than twenty thousand dollars (\$20,000.00), the application fee shall be one hundred fifty dollars (\$150.00);

c. For projects with a total materials and labor cost of twenty thousand dollars (\$20,000.00) or more, the application fee shall be two hundred dollars (\$200.00).

(2) Publication/public notice fee of forty five dollars (\$45.00).

(b) Accessory buildings. The applicant shall pay a fee of forty dollars (\$40.00) for review and publication/public notice of the PUD application.

(c) Cost of staff review, mailing and publication of public notices. Notwithstanding the foregoing, applicants will be charged the actual cost of staff review, mailing and publication of public notices. Costs given are for staff review of a project of moderate complexity, an average of fourteen (14) mailings, and public notice with a legal description of average length. Applications with extraordinary staff review or mailing requirements, or with lengthy legal descriptions, will be charged the additional costs incurred by the City.

*Section 7.* Additions or amendments to the Code, when passed in the form as to indicate the intention of the City to make the same a part of the Code, shall be deemed to be incorporated in the Code, so that reference to the Code includes the additions and amendments.

*Section 8.* Ordinances adopted after this Ordinance that amend or refer to ordinances that have been codified in the Code shall be construed as if they amend or refer to those provisions of the Code.

*Section 9.* This Ordinance and the Edgewater Municipal Code adopted herein shall become effective at 12:00 a.m. on the sixth (6th) day after publication thereof.

INTRODUCED, READ, PASSED ON FIRST READING AND ORDERED PUBLISHED this 1st day of May, 2008.

CITY OF EDGEWATER , COLORADO

ATTEST:

/s/  
Bonnie McNulty  
Mayor

/s/  
Elizabeth A. Hedberg, CMC  
City Clerk

(SEAL)

/s/  
David Cooke  
City Council President

PASSED AND ADOPTED ON SECOND READING AND ORDERED PUBLISHED on this 10th day of July, 2008.

CITY OF EDGEWATER , COLORADO

ATTEST:

/s/  
Bonnie McNulty  
Mayor

/s/  
Elizabeth A. Hedberg, CMC  
City Clerk

(SEAL)

/s/  
David Cooke  
City Council President

APPROVED AS TO FORM:

/s/  
Thad W. Renaud  
City Attorney



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