

CHAPTER 11

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ARTICLE I

Streets and Sidewalks

Sec. 11-1-10. Removal of snow or ice.

It is unlawful for any owner or occupant of any lot, block or parcel of ground within the Town, or any agent in charge of such property, to allow any snow or ice to accumulate or remain upon any sidewalk alongside such property longer than twenty-four (24) hours from the time of the last accretion of such snow and ice. (Ord. 11, 2002 §1)

Sec. 11-1-20. Street access permits.

(a) No person shall construct, install, connect or enlarge any private street, driveway or access on or to any public street, alley or other right-of-way, nor disturb any public pavement, sidewalk, trail, driveway or other surface, without first securing a permit to do so from the Town and paying the applicable fee therefor; except in cases of clear emergency where immediate action is required to protect public safety and/or property, in which event a written report of such action shall be made to the Town as soon as possible thereafter and a permit for the same shall be applied for. Application for a permit shall be directed to the Streets Superintendent or Town Administrator on forms provided by the Town Clerk.

(b) Physical access or connections made or constructed to any street or road that are part of the state or federal highway system must be approved and permitted in advance by the Colorado Department of Transportation or other appropriate state or federal agency.

(c) Applications for permits submitted under this Section shall substantially conform to the application and procedural requirements contained in Sections 11-2-20 and 11-2-30 below for excavation permits, and such additional requirements as may be implemented for processing and reviewing street access permits, inclusive of bonding. (Ord. 11, 2002 §1)

ARTICLE II

Excavations

Sec. 11-2-10. Excavations prohibited.

No person, public or private utility, or governmental or quasi-governmental entity (hereafter collectively and singularly referred to as *person*) shall cut, excavate, encroach upon or otherwise damage, disturb or destroy any portion or all of any street or way dedicated to public use, or any public place within the Town, except as provided in this Article. (Ord. 7, 1984 §113; Ord. 11, 2002 §1)

Sec. 11-2-20. Permit procedure.

Any person desiring to commit any of the acts set forth in Section 11-2-10 shall apply for a permit to the Streets Superintendent or Town Administrator on an application form provided by the Town Clerk. Such application shall set forth the name, address and telephone number of the applicant and, if the applicant is an agent or independent contractor, the name, address and telephone number of the principal or the person contracting with the applicant. The application shall describe with particularity the location and description

of work, and upon the request of the Town shall be accompanied by a map, plat or plans showing the location and description of work and such other information as might be reasonably required to evaluate the application. The application shall also set forth the estimated commencement and completion dates of work and the estimated time, if any, that any street or other location will be closed to public use. At the time of application, the applicant shall also agree to the following conditions upon issuance of a permit:

(1) The applicant shall use his or her best efforts to avoid complete closure of any street, way or public place to public use. If such closure is unavoidable, however, the applicant shall notify the Town Clerk at least one (1) hour in advance of the time of actual closure and at the time of actual reopening of the street or way.

(2) The applicant shall, prior to commencement of work, take such precautions as may be reasonable and prudent to ensure that the work will not damage or endanger any public utility, whether above or below grade, including but without limitation, consulting with the Fairplay Water Superintendent, the Fairplay Sanitation District and all impacted public utility service providers.

(3) The applicant shall establish and enforce such safety measures as are reasonable to protect the traveling public from any and all harm during the work. The Streets Superintendent or Town Administrator may at the time of approval of the application, or at any time prior to completion of the work, establish such specific safety measures as he or she deems reasonable and appropriate as a condition of the permit.

(4) The applicant's work shall be performed in accordance with accepted good practice and in a workmanlike manner, and shall comply with all of the requirements or recommendations of any federal, state or local laws, statutes, ordinances or regulations that may apply.

(5) The applicant agrees to maintain the work at all times and agrees to indemnify and hold harmless the Town, its agencies, officers and employees from any and all claims, losses, and damages, including costs, expenses and attorney fees, which may be based upon, arise out of or otherwise be connected with the installation, maintenance, alteration, removal or presence of the work, or any work or facility connected thereto, including injury or damage to persons or property.

(6) Only emergency work shall be performed on Saturdays, Sundays or holidays. No open trench or hole may remain so after dark, unless the Streets Superintendent specifically approves in writing because the applicant establishes the necessity thereof. In such case, the safety measures shall include a barrier effective to prevent pedestrians, bicyclists and equestrians from entering the immediate area, with sufficient flashing yellow warning lights to prevent vehicular traffic from entering the immediate area.

(7) The applicant shall provide sufficient information accurately to locate any underground installation in the future. In the case of any installation installed by one (1) of the agencies set forth in subsection (2), above, the agency may retain the information. In the case of any installation connected to an installation of one (1) of the agencies listed in subsection (2) above, the information shall be supplied to that agency, and that agency shall be responsible for maintaining such information in a reasonably accessible manner. In the case of any other installation, such information shall be filed with and kept by the Town Clerk. The Town may, as a condition of the permit, require the applicant to post a sign above the ground warning of the installation's existence.

(8) The applicant, if he or she is an agent or independent contractor of another person, shall verify and represent that he or she has authority to bind the principal or person with whom he or she has contracted to all of the conditions imposed by this Article, or by the permit issued pursuant hereto.

(9) Prior to commencing work, the applicant shall post a bond, as hereinafter provided, to ensure the applicant's compliance with the provisions of this Article.

(10) Any underground installation in a road, street or way shall be initially installed beneath the surface of the right-of-way at a minimum depth of thirty (30) inches and all lines, cables, pipes, etc., installed parallel within the roadway shall be placed at least thirty (30) inches into the roadway from the shoulder of the road and around the end of all culverts at a minimum depth of thirty (30) inches below the bottom of all ditches, except in the case of asphalt or other hard surface roads. All installations in the right-of-way of asphalt or other hard surface roads shall be placed in a location agreed upon by the Town and the applicant. All exceptions to the requirements of this Article must be so noted on the applicant's work plans and initialed by the Streets Superintendent or Town Administrator. Any disturbed portion of the right-of-way shall be restored to the condition existing immediately prior to the installation. Backfilling shall be made in minimum two-foot lifts, tamped and packed by mechanical compactor, and the last twelve (12) inches shall be of crushed rock or gravel.

(11) Any underground installation that is three (3) or more inches in diameter and crosses a roadway shall be encased in pipe of larger diameter and the crossing shall be as nearly perpendicular to the roadway as physically possible. This installation shall be installed by the method of boring or jacking beneath the road surface. No water shall be used in the boring and no tunneling shall be permitted. The use of pipe will not be required for installations less than three (3) inches in diameter.

(12) All proposed aboveground installations shall be staked and inspected by the Town prior to commencement of work. All aboveground installations must be located so as not to hinder the Town's normal road maintenance and snow removal operations. (Ord. 7, 1984 §113; Ord. 11, 2002 §1)

Sec. 11-2-30. Approval of application.

The Town's approval of the application shall constitute the permit to commence work, and the applicant may thereafter commence work upon compliance with all of the conditions imposed and upon posting the required bond. The Town may impose such additional conditions as may be reasonable for the preservation of the health, safety and welfare of the Town, its citizens and the traveling public, or to protect the right and privileges of the agencies set forth in Section 11-2-20(2). (Ord. 7, 1984 §113; Ord. 11, 2002 §1)

Sec. 11-2-40. Amount of bond.

(a) All bonds required to be posted shall be in an amount not less than five hundred dollars (\$500.00). The amount of the bond shall be based upon the estimated cost to repair the maximum amount of damage the applicant proposes to do to the street, public way or other place. Notwithstanding the foregoing criteria for determining the amount of the bond, the bond shall be held to ensure full compliance with all of the provisions of this Article. The applicant may petition the Board of Trustees to review the amount of any bond required under this Article.

(b) The Board of Trustees may waive the requirement for a bond for any person who has been granted a franchise by the Town to use and/or occupy the Town's streets and rights-of-way. The Fairplay Sanitation

District shall be exempt from the bond requirements imposed by this Article. Any such waiver or exemption shall in no way relieve any person of liability for failure to comply with any other requirements imposed by this Article. (Ord. 7, 1984 §113; Ord. 11, 2002 §1)

Sec. 11-2-50. Types of bond.

The bond required may be a cash bond, a performance bond or a license and permit bond. In the event the applicant posts a performance bond or a license and permit bond, the bond shall be issued by a corporate surety licensed by the Colorado Insurance Commissioner to do business in the State, or by such other corporate surety as the Town Attorney may approve. The bond shall be irrevocable for one (1) year. (Ord. 7, 1984 §113; Ord. 11, 2002 §1)

Sec. 11-2-60. Release of bond.

The Streets Superintendent or Town Administrator shall inspect the work approximately one (1) year after the completion of work, and shall notify the applicant of any further work that may be required to finish restoration of the right-of-way to its condition prior to the work. Upon satisfactory restoration, the Town Clerk shall release the bond posted by the applicant. The applicant may appeal any adverse decision regarding a bond to the Board of Trustees. If the applicant posted a cash bond, the Town Clerk may release the bond by payment to the applicant or by payment jointly to the applicant and the principal or the person with whom the applicant contracted, at the Town Clerk's sole discretion. In no event shall the Town Clerk be obligated to ascertain the ultimate source of the funds posted. (Ord. 7, 1984 §113; Ord. 11, 2002 §1)

Sec. 11-2-70. Application of bond.

If the applicant fails or refuses to perform the work required to restore the right-of-way or other place within a reasonable time after written notice by the Town of the work required, which notice shall set forth a time reasonable under all the circumstances, the Town may proceed to perform such work. Upon completion of the work, the Town shall determine the cost for such completion, and shall promptly provide written notice of the cost to the applicant and, if applicable, the surety. If the applicant posted a cash bond, the Town Clerk shall immediately apply the bond to the payment of the cost of completion, and shall thereupon release the excess, if any. If the applicant posted a performance bond or a license and permit bond, the applicant or his or her surety shall pay the cost of completion to the Town Clerk within thirty (30) days after the Town Clerk sends the written notice of the cost of completion. (Ord. 7, 1984 §113; Ord. 11, 2002 §1)

Sec. 11-2-80. Violations.

Knowingly violating or failing to comply with any of the provisions of this Article or conditions of the permit shall constitute a violation of this Article and shall be punishable as provided in the general penalty provisions of this Code. It is also unlawful for any person to remove any safety warnings or barricades emplaced pursuant to this Article. (Ord. 7, 1984 §113; Ord. 11, 2002 §1)

ARTICLE III

Gold Panning

Sec. 11-3-10. Boundaries for panning.

Gold panning shall be allowed on Town property only on the north side of the Middle Fork of the South Platte River and only below a point twenty (20) feet downstream from the footbridge erected over the spillway. The point below which gold panning will be allowed will be designated by signs. (Ord. 2, 1991 §1; Ord. 5, 1993 §1; Ord. 11, 2002 §1)

Sec. 11-3-20. Panning equipment allowed.

Panning shall be limited to individual persons using hand tools consisting of a pick, a shovel and a gold pan, and to gravity flow sluices. All other mechanical, electrical or hand-pump sluice devices are prohibited and shall be subject to confiscation by the Town if found on or within the boundaries of the river-bottom property of the Town. (Ord. 2, 1991 §2; Ord. 11, 2002 §1)

Sec. 11-3-30. Removal of materials.

No rocks or earth may be removed from the site, except those materials which the individual believes to contain gold. In no event shall material quantities in excess of one (1) gallon be removed from the site. (Ord. 2, 1991 §3; Ord. 11, 2002 §1)

Sec. 11-3-40. Improvements to be undamaged.

Improvements have been made to the Fairplay Reservoir and Beach Project which include the altered river channel or spillway, a footbridge over the altered river channel, the dam structure, leveling and grading of the old river channel, the picnic area, the fishing dock, paved pathways and the road. Panning shall be conducted in such a manner as to leave all improvements intact and untouched. (Ord. 2, 1991 §4; Ord. 11, 2002 §1)

Sec. 11-3-50. Permit required.

No panning shall occur absent a duly authorized permit. Permits shall not be issued without the full and timely payment of the permit fee established from time to time by the Board of Trustees. Merchants who are authorized by the Town to sell permits may retain up to one-half (½) of the daily permit fee per permit sold. (Ord. 2, 1991 §5; Ord. 8, 1996 §1; Ord. 4, 2001 §1; Ord. 11, 2002 §1)

Sec. 11-3-60. Penalty.

Anyone found violating this Article shall be subject to a fine as set forth in the general penalty provisions of this Code. Any equipment or other property utilized for mining or panning on Town property and not authorized by this Article shall be subject to confiscation. Any person convicted of violating this Article upon an express finding by the trier of fact that such violation involved the use of mechanical or hydraulic means for extracting, panning or mining, or any person convicted of violating this Article upon an express finding by the trier of fact that such violation impaired or damaged improvements owned by the Town, shall be punished by a minimum fine of one hundred dollars (\$100.00), and no portion of such minimum fine may be suspended. Restitution shall also be made to the Town for all damage to Town-owned property. (Ord. 2, 1991 §6; Ord. 8, 1996 §2; Ord. 11, 2002 §1)

ARTICLE IV

Fairplay Reservoir

Sec. 11-4-10. General.

This Article shall pertain to the area of the Town known as the Fairplay Beach and Reservoir. (Ord. 11, 2002 §1)

Sec. 11-4-20. Fishing.

All fishing shall be conducted from the shore or constructed dock, or while wading, and shall be in accordance with applicable state laws and regulations. All manner of flotation crafts or devices are prohibited. (Ord. 4, 1991 §1; Ord. 6, 2004)

Sec. 11-4-30. Boating prohibited.

Use of any boat or flotation device is prohibited, including but not limited to boats, canoes, inflatable rafts, sail boards and other inflatable or buoyant devices. (Ord. 4, 1991 §2)

Sec. 11-4-40. Swimming prohibited.

No swimming or wading shall be allowed. (Ord. 4, 1991 §3)

Sec. 11-4-50. Fires.

Open fires shall be prohibited, except that gas-fueled stoves used for cooking may be allowed at designated locations. (Ord. 4, 1991 §4; Ord. 7, 2002 §1)

Sec. 11-4-60. Camping.

Overnight camping may be allowed pursuant to such regulations as approved by the Board of Trustees from time to time. All overnight camping shall be by permit only, a reasonable fee for which may be established as deemed appropriate by the Board of Trustees. (Ord. 4, 1991 §5; Ord. 7, 2002 §2)

Sec. 11-4-70. Trash.

All trash shall be deposited in receptacles provided or shall be removed from the area. It shall not be a justification or defense for violation of this Section that trash receptacles are not provided. Trash shall not be deposited in toilets or in the river. (Ord. 4, 1991 §6)

Sec. 11-4-80. Pets.

Any person owning or having charge of any animal shall not permit such animal to run at large and shall maintain reasonable control over such animal. Solid waste from pets must be removed from the area. (Ord. 4, 1991 §7)

Sec. 11-4-90. Defacing public property.

No person shall deface any property located within the area, by moving, removing, breaking, burning, painting, marking or in any other way altering any structure, sign, formation of soil or rock, vegetation or trees. This provision shall not apply to the area designated for gold panning and gravity sluice mining. No foreign substances shall be introduced into the river, except substances commonly and regularly used as bait in fishing. (Ord. 4, 1991 §8; Ord. 11, 2002 §1)

Sec. 11-4-100. Application of provisions.

This Article is in addition to all other ordinances of the Town, and is not intended to repeal or alter the substance or effect of such ordinances, except as specifically provided herein. (Ord. 4, 1991 §9)

Sec. 11-4-110. Penalty.

Anyone found violating this Article and/or any regulations adopted hereunder shall be subject to a fine or imprisonment as set forth in the general penalty provisions of this Code. Any person convicted of violating this Article upon an express finding by the trier of fact that such violation impaired or damaged the improvements made to the project, or that such violation required restoration or repair to the area, shall be punished by a minimum fine of one hundred dollars (\$100.00), and no portion of such minimum fine may be suspended. (Ord. 4, 1991 §10; Ord. 11, 2002 §1)

ARTICLE V

Public Property

Sec. 11-5-10. Hours of closure.

(a) Time restrictions for Cohen Park will follow Town curfew, 10:00 p.m. until 5:00 a.m.

(b) The Fairplay Cemetery shall follow the guidelines of the Cemetery Board.

(c) The Fairplay Beach will have no time restrictions, as overnight camping is allowed. (Ord. 1, 1993 §1; Ord. 11, 2002 §1; Ord. 7, 2004)

Sec. 11-5-20. Permit available.

Any person or group who wishes to use Cohen Park, the Fairplay Cemetery or the Fairplay Beach during the hours of closure shall make application to the Town Clerk, stating the name, address and telephone number of the applicant, the number of people who will be present if the permit is issued, and the date and hours the applicant wishes to use the park, cemetery or beach. Application may be made by providing the above information to the Town Clerk no later than fourteen days (14) before the scheduled event. Permits shall be granted by the Board of Trustees unless it determines that use of the park, cemetery or beach during hours of closure would disturb the peace and quiet of the surrounding neighborhood or endanger the health, welfare or safety of the public. If no meeting of the Board of Trustees will occur between the date of the application and the proposed event, the Mayor shall be authorized to review the application and issue or deny a permit. A reasonable permit fee as established by the Board of Trustees shall be charged for use of the park, cemetery or beach. Groups using any of the areas during hours of closure will be required to clean up and

remove any trash generated by their use. Depending upon the size of the group for which application is made, the Board of Trustees may require a deposit to insure that the Town will be reimbursed for any cleanup performed by Town employees. (Ord. 1, 1993 §2; Ord. 11, 2002 §1)

Sec. 11-5-30. Posting.

Hours of closure and the availability of a permit shall be posted in a prominent place at the entrances to Cohen Park, the Fairplay Cemetery and the Fairplay Beach. (Ord. 1, 1993 §4; Ord. 11, 2002 §1)