

Posted on April 9, 2024 at: _____



TOWN OF WIGGINS

**BOARD of TRUSTEES
WORK SESSION**

April 10, 2024 at 7:00 P.M.

**304 CENTRAL AVENUE
WIGGINS, CO 80654**

***THE PUBLIC IS INVITED & ENCOURAGED TO ATTEND THE MEETING VIA ZOOM
OR WATCH ON YOUTUBE IF THEY ARE UNABLE TO ATTEND MEETING IN PERSON***

GO TO THE FOLLOWING SITE <https://us06web.zoom.us/j/82016603203> FOR THE MEETING LINK

WORK SESSION AGENDA

<u>AGENDA TOPIC</u>	<u>ESTIMATED TIME</u>
1. Discussion on Ordinance Approving Municipal Code Document	15 minutes
2. Discussion on Maintenance License Agreement with Kiowa Park HOA	10 minutes
3. Discussion on Public Works Projects Sewer Lagoon Waste Sludge Removal Squeegee Test on South Main Culvert Installation – Agate Street and 2nd Avenue Culvert Installation – Emerald Street and Elm Avenue Complete Karen Street Drainage/Roadwork	45 minutes
4. Discussion on Banning Dog Exercise/Walking at Teets Park	15 minutes
5. Discussion on Water and Tap Fees for Multi-Family	30 minutes
6. Updates and Other Items	5 minutes



STAFF SUMMARY

Board of Trustees Work Session

April 10, 2024

DATE: April 3, 2024

AGENDA ITEM NUMBER: 1

TOPIC: Discussion of Codification of Town Ordinances and Land Development Code

STAFF MEMBER RESPONSIBLE: Hope Becker, Planning & Zoning Administrator

BACKGROUND:

Codification is the process of taking the Town's Ordinances and organizing them into a concise Municipal Code document. The process of codification allows local governments to identify inconsistent and duplicate laws. The Town's various ordinances over time can become vague and uncertain due to amendments, repeals, and redundancy. The Municipal Code can be in paper and electronic digital format uploaded to the Town's web site, allowing users to do key word searches and get results from all Town ordinances. Users can also subscribe to receive email updates as new ordinances are adopted and added to the Municipal Code.

The Town received a grant from the Statewide Internet Portal Authority (SIPA) in the amount of \$6,500 to go toward the codification of the Town's ordinances. The Board of Trustees approved Resolution 39-2022, recognizing the SIPA grant on October 26, 2022. The Board of Trustees approved Resolution 07-2023 on January 25, 2023 to enter into a contract with American Legal to codify the Town's Ordinances.

SUMMARY:

American Legal has completed the codification and the Town's Municipal code is ready for adoption by the Board of Trustees. The approval process for the codification requires the Board of Trustees to introduce the ordinance in a meeting and set the public hearing for approval. Staff will then advertise the public hearing eight and 15 days prior to the hearing date. Staff has prepared a draft ordinance for the Board of Trustees to review.

FISCAL IMPACT:

Approving the Ordinance and setting the hearing date will not have a negative impact on the Town's budget. Future Budgets will need to include annual codification fees (estimated at \$500.00 per year) to incorporate new ordinances and to maintain online hosting.

APPLICABILITY TO TOWN OBJECTIVES AND GOALS TO PROVIDE SERVICES:

Codifying the Town's Ordinances and Land Development Code supports the Town's goals to continue providing public access and transparency to the community.

QUESTIONS/INFORMATION REQUESTED FROM THE BOARD OF TRUSTEES

- Does the Board of Trustees have any questions of staff?
- Does the Board of Trustees want staff to move forward with introducing the Codification Ordinance at the next board meeting?

TOWN OF WIGGINS, COLORADO
ORDINANCE NO. _____

AN ORDINANCE ADOPTING BY REFERENCE AND ENACTING A NEW MUNICIPAL CODE FOR THE TOWN OF WIGGINS; PROVIDING FOR THE REPEAL OF CERTAIN ORDINANCES NOT INCLUDED THEREIN; PROVIDING FOR THE ADOPTION OF SECONDARY CODES BY REFERENCE; 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.

WHEREAS, Town staff and American Legal Publishing Corporation have prepared a codification of the general and permanent ordinances of the Town of Wiggins; and

WHEREAS, the Board of Trustees desires to adopt the new code of ordinances; and

WHEREAS, the Board of Trustees after proper notice has held a public hearing on this ordinance providing for the adoption of the new Town of Wiggins Code of Ordinances.

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

Section 1. The code entitled the *Town of Wiggins, Colorado Code of Ordinances*, published by American Legal Publishing Corporation, consisting of Titles I through XV, and the tables and indices thereto, each inclusive (the “Code”), is hereby adopted.

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 *Town of Wiggins, Colorado Code of Ordinances*, to the extent of such inconsistency, are hereby repealed.

Section 3. The repeal established in Section 2 of this Ordinance 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 4. The following secondary codes were previously adopted by reference and incorporated in the *Town of Wiggins, Colorado Code of Ordinances*. One (1) copy of each is on file in the Town Clerk’s office:

(1) The *Model Traffic Code for Colorado*, 2020 edition, promulgated and published by the Colorado Department of Transportation, Traffic Engineering and Safety Branch, as adopted and amended in Chapter 70 of the Code.

(2) The *International Building Code*, 2018 Edition, as published by the International Code Council, as adopted and amended in Chapter 151 of the Code.

(3) The *International Residential Code*, 2018 Edition, as published by the International Code Council, as adopted and amended in Chapter 151 of the Code.

(4) The *International Mechanical Code*, 2018 Edition, as published by the International Code Council, as adopted and amended in Chapter 151 of the Code.

(5) The *International Fuel Gas Code*, 2018 Edition, as published by the International Code Council, as adopted and amended in Chapter 151 of the Code.

(6) The *International Energy Conservation Code*, 2018 Edition, as published by the International Code Council, as adopted and amended in Chapter 151 of the Code.

(7) The *International Property Maintenance Code*, 2018 Edition, as published by the International Code Council, as adopted and amended in Chapter 151 of the Code.

(8) The *International Existing Building Code*, 2018 Edition, as published by the International Code Council, as adopted and amended in Chapter 151 of the Code.

(9) The *International Swimming Pool and Spa Code*, 2018 Edition, as published by the International Code Council, as adopted and amended in Chapter 151 of the Code.

(10) *International Plumbing Code*, 2018 Edition, as published by the International Code Council, as adopted and amended in Chapter 151 of the Code.

(11) National Electrical Code NFPA 70, 2020 Edition, as promulgated by the National Fire Protection Association, Inc., as adopted and amended in Chapter 151 of the Code.

Section 5. The penalties provided by the *Town of Wiggins, Colorado Code of Ordinances* are hereby adopted as follows:

§ 10.99 General Penalty (Chapter 10, General Provisions)

(A) Violations. It is a violation of this code for any person to do any act which is forbidden or declared to be unlawful or to fail to do or perform any act required in this code.

(B) General penalty for violation.

(1) Unless otherwise provided in this code or by ordinance, whenever in this code or any other ordinance, resolution or rule of the town, the doing of any act is required, prohibited or declared to be unlawful or an offense or a misdemeanor, and no definite fine or specific penalty is provided for a violation thereof, any person who shall be convicted of or plead guilty or no contest to a violation of any such provision of this code or other ordinance, resolution or rule of the town, whether now in existence or hereinafter enacted, shall be punished by a fine of not more than \$2,650, as shall be adjusted for inflation annually in accordance with C.R.S. § 13-10-113, except as hereinafter provided in division (D) below. In

addition, such person shall pay all costs and expenses in the case, including attorney fees. Every day such violation continues shall constitute a separate offense.

(2) Whenever in this code or any ordinance of the town a minimum but not a maximum fine or penalty is imposed, the court may, in its discretion, fine the offender any sum exceeding the minimum fine or penalty so imposed, but not exceeding the maximum fine set forth in division (B)(1) above.

(3) The suspension or revocation of any license, permit or other privilege conferred by the town shall not be regarded as a penalty for the purposes of this code.

(4) All penalties in codes adopted by reference in this code are hereby superseded by this section.

(C) Application of penalties to juveniles. Every person who, at the time of commission of the offense, was at least ten but not yet 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 the maximum fine set forth in division (B) above per violation or count. Any voluntary plea of guilty or nolo contendere to the original charge or to a lesser or substituted charge shall subject the person so pleading to all fines and/or penalties applicable to the original charge. Nothing in this division (C) shall be construed to prohibit confinement in an appropriate facility, at the time of charging, of a juvenile violating any section of this code in accordance with state law.

(D) Penalty for violations of ordinances adopted after adoption of code. Any person who violates any provision of any ordinance of a permanent and general nature passed or adopted after adoption of this code, either before or after it has been inserted in this code by a supplement, shall, upon conviction thereof, be punishable as provided by division (A) above unless another penalty is specifically provided for the violation.

(E) Interpretation of unlawful acts. Whenever in this code any act or omission is made unlawful, it is also unlawful to cause, allow, permit, aid, abet or suffer such unlawful act or omission. Concealing or in any manner aiding in the concealing of any unlawful act or omission is similarly unlawful.

§ 33.14 Violations (Chapter 33, Taxation, Use Tax)

It is a violation of this subchapter for any person subject to the tax levied by this subchapter to refuse to make any return provided to be made; to make any false or fraudulent return or any false statements in any return; to fail or refuse to make payment to the Town Manager of any taxes due the town; or in any manner to evade the payment of the tax, or any part thereof imposed by this subchapter; or for any person to aid or abet another in any attempt to evade the payment of the tax imposed by this subchapter.

§ 33.99 Penalty (Chapter 33, Taxation, Lodging Occupation Tax)

(A) Any person convicted of a violation of this chapter shall be punished as provided in § 10.99 of this code.

(B) It is a violation of §§ 33.01 through 33.14 for any person subject to the tax levied by §§ 33.01 through 33.14 to refuse to make any return provided to be made; to make any false or fraudulent return or any false statements in any return; to fail or refuse to make payment to the Town Manager of any taxes due the town; or in any manner to evade the payment of the tax, or any part thereof imposed by §§ 33.01 through 33.14; or for any person to aid or abet another in any attempt to evade the payment of the tax imposed by §§ 33.01 through 33.14. Any person convicted of a violation of §§ 33.01 through 33.14 shall be punished by a fine of not more than \$2,650 (as adjusted for inflation from time to time, pursuant to C.R.S. § 13-10-113). Each day a violation exists shall be considered a separate punishable violation.

(C) (1) Any person convicted of a violation of §§ 33.25 through 33.40 shall be punished by a fine of not more than \$2,650 (as adjusted for inflation from time to time, pursuant to C.R.S. § 13-10-113). Each day, or portion thereof, that any violation of §§ 33.25 through 33.40 continues shall constitute a separate offense.

(2) A penalty in the amount of 10% of the tax due or the sum of \$10, whichever is greater, shall be imposed upon the vendor and become due in the event the tax is not remitted by the tenth day of the month as required by §§ 33.25 through 33.40, or such other date as prescribed in writing by the Town Clerk, and 1.5% interest shall accrue each month on the unpaid balance. The Town Clerk is hereby authorized to waive for good cause shown any penalty assessed.

(3) Any part of a deficiency is due to negligence or intentional disregard of the provisions of §§ 33.25 through 33.40 or rules and regulations concerning the same, but without intent to defraud, then there shall be added 10% of the total amount of the deficiency. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added 50% of total amount of the deficiency. The penalty under this division (C)(3) shall be in addition to the penalty under division (C)(2) above, and, in all cases, the whole amount of the unpaid tax, together with all penalties and interest, shall become due and payable ten days after written notice and demand by the Town Clerk.

(4) If any vendor fails to make a return and pay the tax imposed by §§ 33.25 through 33.40, the town may make an estimate, based upon available information of the amount of tax due and add the penalties and interest provided above. The town shall mail notice of such estimate, by certified mail, to the vendor at his or her address as indicated in the town records. Such estimate shall thereupon become an assessment, and such assessment shall be final and due and payable from the taxpayer to the Town Clerk ten days from the date of service of the notice or the date of mailing by certified mail; provided, however, that within the ten-day period such delinquent taxpayer may petition the Town Clerk for a modification of such assessment and shall, within such ten-day period, furnish

the Town Clerk the documents, facts and figures showing the correct amount of the taxes due and owing.

(5) Such petition shall be in writing and the facts and figures submitted shall be submitted either in writing or orally, and shall be given by the taxpayer under penalty or perjury. Thereupon, the Town Clerk may modify such assessment in accordance with the facts submitted in order to effectuate the provisions of §§ 33.25 through 33.40. Such assessment shall be considered the final order of the Town Clerk, and may be reviewed under the Rule 106(a)(4) of the Colorado Rules of Civil Procedure, provided that the taxpayer gives written notice to the Town Clerk of its intention to seek review within ten days after receipt of the final order of assessment.

§ 50.99 Penalty (Chapter 50, Public Utilities)

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) Any person convicted of violating any of the provisions of §§ 50.01 through 50.04 shall be punished by a fine of not less than \$250 and not more than \$2,650, as shall be adjusted for inflation from time to time, pursuant to C.R.S. § 13-10-113. Each act or omission in violation of one or more of the provisions of §§ 50.01 through 50.04 shall be deemed a separate violation for each and every day that such act(s) or omission(s) occur(s).

§ 52.99 Penalty (Chapter 52, Water Conservation)

(A) Any person violating any provision of this chapter may be punished by a minimum fine of \$250 and a maximum fine of \$2,650, as shall be adjusted for inflation from time to time pursuant to C.R.S. § 13-10-113. Each day that a violation of this chapter occurs is a separate offense.

(B) (1) Upon a third and each subsequent conviction for such an offense, and in addition to such fine, the town may discontinue water service to the property served, or the town may install a flow restriction device, at the expense of the customer, upon the service line to the property served to limit water service to that necessary for health and sanitary purposes only.

(2) At least ten days' notice and an opportunity to be heard before the Town Manager shall be given prior to each discontinuance or restriction of water service pursuant to this chapter.

§ 53.00 Penalty (Chapter 53, Backflow and Cross Connections)

Any person convicted of violating any of the provisions of this chapter shall be punished by a fine of not less than \$150 and not more than \$2,650, as shall be adjusted for inflation from time to time pursuant to C.R.S. § 13-10-113. Each act or omission in violation of one or more of the provisions of this chapter shall be deemed a separate violation for each and every day that such act(s) or omission(s) occur.

§ 70.07 Violations; Traffic Offenses (Chapter 70, Model Traffic Code)

The violation of the following sections of the Model Traffic Code, as adopted herein, shall constitute a criminal traffic offense and shall be punishable by a fine not exceeding \$2,650, as shall be adjusted for inflation from time to time pursuant to C.R.S. § 13-10-113, or by imprisonment of not more than 364 days, or by both such fine and imprisonment:

- (A) Section 607 of the Model Traffic Code, interference with official devices;
- (B) Section 705 of the Model Traffic Code, operation on approach of emergency vehicles;
- (C) Section 1101 of the Model Traffic Code, where the speed as driven is 24 mph or more over the lawful speed limit;
- (D) Section 1105 of the Model Traffic Code, speed contest;
- (E) Section 1401 of the Model Traffic Code, reckless driving;
- (F) Section 1402(2) of the Model Traffic Code, careless driving, if the person's actions are the proximate cause of bodily injury or death to another;
- (G) Section 1409 of the Model Traffic Code, compulsory insurance;
- (H) Section 1413 of the Model Traffic Code, eluding or attempting to elude a police officer;
- (I) Section 1703 of the Model Traffic Code, parties to a crime; and
- (J) Section 1903 of the Model Traffic Code, stopping for school buses.

§ 70.06 Violations; Traffic Infractions (Chapter 70, Model Traffic Code)

(A) (1) It shall be unlawful for any person to violate any of the provisions of this chapter and the Model Traffic Code as adopted herein. Except as set forth in § 70.07, violations of the Model Traffic Code are hereby deemed non-criminal traffic infractions.

(2) A traffic infraction shall be a civil matter for which punishment by imprisonment shall not be available, for which a penalty assessment notice may be issued and for which is punishable by a maximum fine of \$500.

(B) For any violation of any provision of this chapter and the Model Traffic Code as adopted hereby which is a traffic infraction, no trial by jury shall be available, no arrest warrant shall issue for failure to appear or to pay, no privilege of 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) The Municipal Court shall, in addition to any other notice, by published order to be prominently posted in a place where fines are to be paid, specify by suitable schedules the number of fines to be imposed for violations, designating each violation specifically in the schedules. Such fines will be within the limits set by ordinance.

(D) For any violation of any provision of this chapter and the Model Traffic Code as adopted herein 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 penalties, together with such court costs and surcharges, as are established by law.

§ 70.99 Penalty (Chapter 70, Model Traffic Code)

Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

§ 71.99 Penalty (Chapter 71, Recreational Vehicles, Golf Carts)

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) (1) It shall be unlawful for any person to violate §§ 71.01 through 71.05. A violation of §§ 71.01 through 71.05 is hereby deemed a non-criminal traffic infraction. A traffic infraction shall be a civil matter for which punishment by imprisonment shall not be available, for which a penalty assessment notice may be issued and for which is punishable by a maximum fine of \$999.

(2) For any violation of §§ 71.01 through 71.05, no trial by jury shall be available, no arrest warrant shall issue for failure to appear or to pay, no privilege of 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.

(3) For any violation of §§ 71.01 through 71.05, the court may enter a judgment of liability by default against the defendant for failure to appear or to pay, and may assess such penalties, together with such court costs and surcharges, as are established by law.

(4) Upon a third violation of §§ 71.01 through 71.05 within 12 consecutive months, the registration for that golf cart shall be revoked for a period of 12 months and shall not be reinstated until court costs have been paid and a reinstatement fee of \$10 has been paid, which such reinstatement fee may be adjusted in the future by a resolution of the Board of Trustees.

§ 90.99 Penalty (Chapter 90, Animals)

(A) Any person convicted of a violation of this chapter shall be punished as provided in § 10.99 of this code.

(B) In addition to the foregoing penalties, any person who violates this chapter shall pay all expenses, including shelter, food, handling, veterinary care and expert testimony fees necessitated by enforcement of this chapter.

§ 91.999 Penalty (Chapter 91, Health and Safety, Nuisances)

Any person convicted of a violation of this chapter shall be punished as provided in § 10.99 of this code.

§ 92.99 Penalty (Chapter 92, Abandoned and Junk Vehicles)

Any person convicted of a violation of this chapter shall be punished as provided in § 10.99 of this code.

§ 93.99 Penalty (Chapter 93, Streets and Sidewalks)

Any person convicted of a violation of this chapter shall be punished as provided in § 10.99 of this code.

§ 94.99 Penalty (Chapter 94, Fire Prevention)

Any person convicted of a violation of this chapter shall be punished as provided in § 10.99 of this code.

§ 95.99 Penalty (Chapter 95, Alarm Systems)

Any person convicted of a violation of this chapter shall be punished as provided in § 10.99 of this code.

§ 110.99 Penalty (Chapter 110, Licensing Regulations)

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) Any person convicted of violating any of the provisions of §§ 110.01 through 110.14 shall be punished by a fine of not more than \$2,650, as shall be adjusted for inflation from time to time pursuant to C.R.S. § 13-10-113. Each act or omission in violation of one or more of the provisions of §§ 110.01 through 110.14 shall be deemed a separate violation for each and every day that such act(s) or omission(s) occur.

(C) (1) It shall be unlawful for any contractor to fail to obtain a permit of inspection services when required.

(2) It shall be unlawful for any contractor licensed under §§ 110.25 through 110.34 to, without good cause, abandon any contract or undertaking, or to make material departure from the town-approved plans and specifications for any contract or undertaking.

(3) It shall be unlawful for any contractor licensed under the provisions of §§ 110.25 through 110.34 to violate any provision of §§ 110.25 through 110.34; or to refuse to obey any order issued, or neglect to pay any fee assessed, under authority of §§ 110.25 through 110.34.

(4) It shall be unlawful for any person to erect, construct, enlarge, alter, repair, move, improve, convert, demolish, equip, use, occupy or maintain any building or structure in the town, or to cause such work to be done, contrary to or in violation of any provision of §§ 110.25 through 110.34.

(5) It shall be unlawful for a contractor to be careless or negligent in obtaining minimum safety measures, including appliances, apparatus and equipment, to protect workers and the public.

(6) Any person convicted of violating any of the provisions of §§ 110.25 through 110.34 shall be punished by a fine of not more than \$2,650, as shall be adjusted for inflation from time to time pursuant to C.R.S. § 13-10-113 or by imprisonment for not more than one year or by both such fine and imprisonment. Each act or omission in violation of one or more of the provisions of §§ 110.25 through 110.34 shall be deemed a separate violation for each and every day that such act(s) or omission(s) occur.

§ 111.99 Penalty (Chapter 111, Peddlers, Solicitors and Vendors)

Any person convicted of a violation of this chapter shall be punished as provided in § 10.99 of this code.

§ 113.99 Penalty (Chapter 113, Marijuana)

(A) Any person violating any provision of this chapter shall be subject to § 10.99 of this code of ordinances.

(B) The operation of a medical marijuana business or a retail marijuana business may be enjoined by the town in an action brought in a court of competent jurisdiction.

§ 130.99 Penalty (Chapter 130, Offenses Against Property)

Any person convicted of a violation of this chapter shall be punished as provided in § 10.99 of this code.

§ 131.99 Penalty (Chapter 131, Offenses Against Public Authority)

Any person convicted of a violation of this chapter shall be punished as provided in § 10.99 of this code.

§ 132.99 Penalty (Chapter 132, Offenses Against Persons)

Any person convicted of a violation of this chapter shall be punished as provided in § 10.99 of this code.

§ 133.99 Penalty (Chapter 133, Offenses Against Peace)

Any person convicted of a violation of this chapter shall be punished as provided in § 10.99 of this code.

§ 134.99 Penalty (Chapter 134, Offenses Involving Minors)

Any person convicted of a violation of this chapter shall be punished as provided in § 10.99 of this code.

§ 151.99 Penalty (Chapter 151, Building Regulations)

Any person, firm, building superintendent, building manager, contractor, contractor's superintendent, corporation or other entity who violates any of the provisions of this Chapter shall be deemed guilty of a misdemeanor and of a separate offense for each and every day or portion thereof during which any violation continues, and shall be punished by a fine of not more than the maximum fine set forth in § 10.99 of this code.

§ 152.99 Penalty (Chapter 152, Flood Damage Prevention)

No structure or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this chapter and other applicable regulations. Violation of the provisions of this chapter, by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions), shall constitute a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be punished as set forth in § 10.99 of this code. Nothing herein contained shall prevent the town from taking such other lawful action as is necessary to prevent or remedy any violation.

§ 153.999 Penalty (Chapter 153, Land Development Code)

(A) Any person convicted of violating the provisions of this chapter in the Town Municipal Court may be fined an amount not to exceed \$1,000.

(B) Any person, firm, building superintendent, building manager, contractor, contractor's superintendent, corporation or other entity who violated any of the provisions of § 153.017, including, but not limited to, failing to obtain a building permit, shall be deemed guilty of a misdemeanor and of a separate offense for each and every day or portion thereof during which any violation continues, and shall be punished by a fine of not more than \$2,650.

(C) Violations of the provisions of this chapter or failure to comply with any of its requirements, including violations of any conditions and safeguards established in

connection with grants of variances or special use or conditional use permits, shall constitute a misdemeanor, punishable by a fine of up to \$1,000. Any agreement to sell or transfer lots in a subdivision before the final plat is approved by the town will constitute a separate violation for each lot sold or agreed to be sold. Each day of violation will constitute a separate offense.

(3) (a) Any act constituting a violation of the provisions of this chapter or a failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with the grants of variances or special use or conditional use permits, shall also subject the offender to a civil penalty of \$25.

(b) If the offender fails to pay this penalty within ten days after being cited for a violation, the penalty may be recovered by the town in a civil action in the nature of debt. A civil penalty may not be appealed to the Board of Adjustment if the offender was sent a final notice of violation and did not take an appeal to the Board of Adjustment within the prescribed time.

(4) This chapter may also be enforced by any appropriate equitable action.

(5) Each day that any violation continues after notification by the Administrator that such violation exists shall be considered a separate offense for purposes of the penalties and remedies specified in this section.

(6) In addition to any other penalty imposed by this chapter for a violation of the provisions of this chapter, the town reserves and maintains the continued right to abate violations of this chapter.

(7) Any one, all or any combination of the foregoing penalties and remedies may be used to enforce this chapter.

(D) (1) Whoever, being the owner or agent of the owner of any land located within a subdivision, transfers or sells, or agrees to sell or negotiates to sell, any land by reference to or exhibition of or by use of a plat of a subdivision within the town before such plat has been approved by the Planning Commission and recorded or filed in the office of the County Clerk and Recorder shall pay a penalty of \$1,000 to the town for each lot or parcel so transferred, or sold, or agreed or negotiated to be sold.

(2) The description of such lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties or from the remedies provided in this section. The town may enjoin such transfer or sale or agreement by action for injunction brought in any court of competent jurisdiction and may recover the penalty by civil action in any court of competent jurisdiction.

(E) Violation of § 153.018 is a misdemeanor with a possible fine of up to \$1,000.

(F) Violations of the provisions of § 153.069 or failure to comply with any of its requirements, shall constitute a misdemeanor, punishable by a fine of up to \$1,000.

§ 154.99 PENALTY (Chapter 154, Trees)

Any person violating any provision of this chapter shall be, upon conviction or a plea of guilty, subject to a fine not to exceed \$300.

Section 6. Additions or amendments to the Code, when passed in the form as to indicate the intention of the Town 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 7. 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 8. If any paragraph, section, sub-section, sentence, clause or phrase of this Ordinance is, for any reason, held to be invalid, unconstitutional and/or unenforceable, such provisions shall be deemed to be separate, distinct and independent and the remaining provisions of this Ordinance shall continue in full force and effect.

Section 9. This Ordinance shall become effective thirty (30) days after publication thereof as provided by Colorado Revised Statutes § 31-16-105.

INTRODUCED, READ, ADOPTED ON FIRST READING THIS ____ day of _____, 2024.

READ, ADOPTED ON SECOND READING, APPROVED, SIGNED, AND ORDERED PUBLISHED BY TITLE ONLY this ____ day of _____, 2024.

TOWN OF WIGGINS

Christopher Franzen, Mayor

ATTEST:

Nichole Seiber, Town Clerk

I, Nichole Seiber, Town Clerk of the Town of Wiggins, Colorado, hereby certify and attest that the foregoing Ordinance No. 04-2023 was introduced, read, adopted and ordered published by title only, at a regular meeting of the Board of Trustees of the Town of Wiggins, Colorado on the ____ day of _____, 2023. This Ordinance was published by title only in The Fort Morgan Times on _____, 2023.

Dated _____.



STAFF SUMMARY

Board of Trustees Work Session

April 10, 2024

DATE: April 3, 2024

AGENDA ITEM NUMBER: 2

TOPIC: Discussion of Kiowa Park Maintenance Agreement

STAFF MEMBER RESPONSIBLE: Hope Becker, Planning & Zoning Administrator

BACKGROUND:

The Kiowa Park Home Owner's Association (HOA) has requested permission to assist the Town with maintenance and upkeep of Town owned areas adjacent to Kiowa Park. Staff has determined that a revocable license maintenance agreement with the Kiowa Park Home Owner's Association is the best way to coordinate activities with the HOA. The agreement provides guidance on what maintenance activities are allowed. The agreement also places limitations on maintenance of the retention ponds, the Town levee, and structures. .

SUMMARY:

The Town can benefit from the HOA's involvement to maintain the area adjacent to the Kiowa Park Subdivision. The agreement provides a guidance on what work the HOA does and where they can do work. The HOA has agreed to meet with Town Staff each fall to plan work activities for the following year. The license agreement would remain active until either party terminates the agreement by giving a 30 days' written notice to the other.

FISCAL IMPACT:

Approving the resolution will not have a negative impact on the Town's budget.

APPLICABILITY TO TOWN OBJECTIVES AND GOALS TO PROVIDE SERVICES:

This agreement supports the Town's goal of providing attractive parks and open space for its residents.

QUESTIONS/INFORMATION REQUESTED FROM THE BOARD OF TRUSTEES

- Does the Board of Trustees have any questions of staff?
- Does the Board of Trustees want staff to bring the agreement to the Board of Trustees at the next meeting?

**TOWN OF WIGGINS
RESOLUTION NO. XX-2024**

**A RESOLUTION APPROVING A REVOCABLE LICENSE AGREEMENT BETWEEN THE TOWN OF
WIGGINS AND KIOWA PARK HOMEOWNER’S ASSOCIATION OF THE KIOWA PARK
SUBDIVISION**

WHEREAS, the Kiowa Park Home Owner’s Association desires to help maintain the Town’s open spaces surrounding the Kiowa Park Subdivision; and

WHEREAS, the Town desires to protect the Town owned properties and structures surrounding the Kiowa Park Subdivision; and

WHEREAS, a Revocable License Agreement for the Kiowa Park Homeowner’s Association has been proposed; and

WHEREAS, the Board of Trustees by this resolution desires to approve the Revocable License Agreement for the Kiowa Park Homeowner’s Association and authorize its execution.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF WIGGINS, COLORADO AS FOLLOWS:

Section 1. The Revocable License Agreement between the Town of Wiggins and Kiowa Park Homeowner’s Association (the “Agreement”) is hereby approved in substantially the same form as the copy of such Agreement (exhibit A) accompanying this Resolution.

Section 2. The Town Manager and Town Clerk are authorized to execute the Agreement in substantially the same form as the copy attached hereto; further, the Town Manager is hereby granted the authority to negotiate and approve such revisions to the Agreement as the Mayor, Town Manager, and legal counsel for the Town determine are necessary or desirable for the protection of the Town, so long as the material terms and conditions of the Agreement are not altered.

Section 3. The Mayor, Town Manager, Town Clerk and Town Staff are further authorized to do all things necessary on behalf of the Town to perform the obligations of the Town under the Agreement and are further authorized to execute and deliver any and all documents necessary under the terms and conditions of said Agreement.

INTRODUCED, READ, AND ADOPTED THIS _____ DAY OF _____, 2024.

TOWN OF WIGGINS, COLORADO

Christopher Franzen, Mayor

ATTEST:

Nichole Sieber, Town Clerk

EXHIBIT A
Maintenance Agreement

REVOCABLE LICENSE AGREEMENT

THIS REVOCABLE LICENSE AGREEMENT is made and entered into this _____ day of _____, 20____, by and between the TOWN OF WIGGINS, a Colorado municipal corporation, (the “Town”) and KIOWA PARK HOMEOWNERS’ ASSOCIATION, INC., a Colorado non-profit corporation (the “Association”).

WHEREAS, the Town is the owner of certain public open spaces, common areas, trails, disc golf course, stormwater detention areas, flood levee, sprinkler systems, and entrance areas within the Kiowa Park Subdivision as depicted on Exhibit A, attached hereto and incorporated herein by reference (collectively, the “Premises”); and

WHEREAS, the Association has requested a license from the Town for the purpose of maintaining the Premises; and

WHEREAS, the Town is willing to grant such a license as provided herein, upon the terms and conditions hereof.

NOW, THEREFORE, in consideration of the foregoing, the parties hereto promise, covenant and agree as follows:

1. Incorporation of Recitals. The matters recited above are hereby incorporated into and made a part of this Agreement.

2. Annual Meeting. The Town and the Association shall meet annually in the fall, for budgeting purposes, to coordinate projects and activities that will be undertaken by the Association for the following year.

3. License. The Town hereby grants to the Association, its agents, employees and contractors a revocable license to occupy and use the Premises for the purpose of maintaining the Premises. For purposes of this Agreement, “maintenance” includes, but is not limited to maintenance and upkeep of the landscaped, open, and irrigated areas; watering, weeding, pruning, and control of insect pests; trash pick-up and removal; graffiti removal; snow removal from public sidewalks and mowing. The Association shall not place, build, expand, add, or commence repairs to any structures, including sprinkler systems and park equipment, or other items on the Premises without the written permission of the Town.

- a. Activities that require prior communications with the Town.
 - i. Mowing of and other activities in and around the stormwater detention areas.
- b. Strictly Prohibited Activities.
 - i. Mowing on and other activities near the Town Levee.

4. No Property Interest. The Association agrees that it does not have or claim, and shall not at any time in the future have or claim, any ownership interest or estate in the Premises,

or any other interest in real property included in the Premises, by virtue of this Agreement or by virtue of the Association's occupancy or use of the Premises.

5. **Responsibility for Damage.** In the exercise of its rights pursuant to this Agreement, the Association shall avoid any damage or interference with any Town installations, structures, utilities, or improvements on, under, or adjacent to the Premises.

6. **Personal Property.** The Town shall have no responsibility, liability, or obligation with respect to the safety or security of any personal property placed or located on, at, or in the Premises, it being acknowledged and understood by the Association that the safety and security of any such property is the sole responsibility and risk of the Association.

7. **Town's Right of Entry.** The Town shall have the right to enter into the Premises at any time during the term of this Agreement for any purpose of the Town. The Association hereby releases the Town, its officers and employees from any and all claims of damage or liability for any disturbance of or damage to the Premises resulting from the Town's use of the Premises, excepting only liability arising from willful or wanton conduct.

8. **Compliance.** The Association further agrees to comply at all times with the ordinances, resolutions, rules, and regulations of the Town in the Association's use and occupancy of the Premises.

9. **Prior Rights.** The Association understands that the license granted hereunder is granted subject to prior franchise agreements and subject to all easements and other interests of record applicable to the Premises. The Association shall be solely responsible for coordinating its activities hereunder with the holders of such franchise agreements or of such easements or other interests of record, and for obtaining any required permission for such activities from such holders if required by the terms of such franchises or easements or other interests.

10. **Indemnification.** Except for liability resulting from Town's gross negligence or willful or wanton misconduct, the Association shall be solely responsible for all damages to persons or property which may in whole or in part be caused by the Association, or its agents, employees or contractors, or which may result or arise in whole or in part from their activities on the Premises, and the Association shall indemnify and hold harmless the Town, its elected and appointed officials, and its employees, agents and representatives, from any and all liability, damage, loss, cost or expense, including but not limited to reasonable attorney fees, which the Town, its elected and appointed officials, and its employees, agents and representatives may suffer as a result of any and all claims, demands, actions, costs or judgments made or brought against them by any person or entity, and which arise either in whole or in part from, or are in any way connected with, the Association's use and occupancy of the Premises, or with this Agreement or the rights and obligations of the Association hereunder. By demanding this right to indemnification, the Town in no way waives or intends to waive the limitations on liability or other protections which are provided to the Town and its employees under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq.

11. **Insurance.** The Association shall at its expense obtain, carry and maintain during

the term of this Agreement a policy of comprehensive general liability insurance insuring Town and the Association against any liability arising out of or in connection with the Association's use or occupancy of the Premises. Such insurance shall be at all times in an amount of not less than \$1,000,000 combined single limit for bodily injury and property damage. Such insurance shall include the Association, its officers, employees and volunteers as named insureds, and shall also name Town, its officers and employees as additional insureds. A certificate of insurance shall be completed by the Association's insurance agent(s) as evidence that a policy or policies providing the coverages, conditions, and minimum limits required herein are in full force and effect, and shall be subject to review and approval by Town prior to commencement of the Association's use of Premises. As between the parties hereto, the limits of such insurance shall not limit the liability of the Association.

12. Immunity. The Town is relying on and does not waive or intend to waive by any provision of this Agreement the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. §24-10-101 et seq., as from time to time amended, or otherwise available to the Town, and its officers and employees.

13. Hazardous Materials. The Association shall not keep any hazardous materials in or about the Premises without prior written consent of the Town, which will be granted or denied in the Town's sole discretion. "Hazardous material" includes but is not limited to asbestos, other asbestosis material (which is currently or may be designated in the future as a hazardous material), any petroleum base products, pesticides, paints and solvents, polychlorinated biphenyl, lead, cyanide, DDT, acids, ammonium compounds, and other chemical products (excluding commercially used cleaning materials in ordinary quantities) and any substance or material defined or designated as a hazardous or toxic substance, or similar term, by any federal, state, or local law.

14. Termination. Either party may terminate this Agreement by giving 30 days' written notice to the other.

15. Notice. Any notices or communications required or permitted under this Agreement to be given to the Association shall be deemed effective and valid if given and shall be sent by United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

Town:

Town of Wiggins
Attn: Town Manager
304 Central Avenue
Wiggins, CO 80654
Email: tacre@wigginsco.com

Association:

Kiowa Park Homeowners' Association, Inc.
Attn: Theresa Martinson, CMCA
2619 Canton Court, Ste A
Fort Collins, CO 80525
Email: kiowapark@ccgcolorado.com

16. Waiver. Waiver by the Town of any breach of any term or provision of this

Agreement shall not be deemed a waiver of any subsequent breach of the same or any other term or provision thereof.

17. No Assignment. This Agreement is personal to the parties hereto. The Association shall not transfer or assign any rights hereunder without the prior written approval of the Town, which approval shall be at the Town’s sole option and discretion.

18. Survival of Terms. All of the terms and conditions of this Agreement concerning release, indemnification, termination, remedies and enforcement shall survive the expiration of the term of the license granted herein and any termination of this Agreement.

19. No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Town and the Association, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the parties that any person other than the Town and the Association receiving benefits under this Agreement shall be deemed to be an incidental beneficiary only.

20. Authority. The Association and its undersigned representative represent and warrant that such representative has been duly authorized by the Association to sign this Agreement and to bind the Association to the terms and conditions hereof.

TOWN OF WIGGINS,
a Colorado municipal corporation

ATTEST:

By: _____
Chritopher Franzen, Mayor

By: _____
Nichole Seiber, Town Clerk

KIOWA PARK HOMEOWNERS’ ASSOCIATION, INC.
a Colorado non-profit corporation

By: _____

Title: _____

ACKNOWLEDGEMENT

STATE OF COLORADO)
)ss
COUNTY OF MORGAN)

The above and foregoing signature of _____, as
_____ of Kiowa Park Homeowners' Association, Inc. was subscribed
and sworn to before me this ____ day of _____, 2024.

Witness my hand and official seal.

My commission expires on: _____

(SEAL)

Notary Public

