

ORDINANCE NO. 2009-4

REPEALING AND RE-ENACTING ARTICLE XIV OF THE TOWN OF OPHIR LAND USE CODE ENTITLED "LAND USE CODE AMENDMENTS AND ZONING CHANGES"

WHEREAS, pursuant to Colorado Revised Statutes § 31-15-401 and 31-23-301, as a Colorado municipality, the Town of Ophir has the power to enact regulations as necessary to provide for the public health, safety and welfare of the community; and

WHEREAS, the Town of Ophir Planning and Zoning Commission through its duly designated advisory purpose as set forth in the Town Charter has recommended adoption of the following amendments; and

WHEREAS, the Town of Ophir General Assembly wishes to substantially follow these recommendations in order to clarify the necessary procedural and substantive requirements an applicant must follow in order to properly petition to amend the Town Land Use Code ("LUC") and/or official zoning, hazard, or other land use standards; and

WHEREAS, the General Assembly recognizes the importance in eliminating all ambiguity in this Article to the extent practicable in order to properly account and care for limited Town resources.

NOW, THEREFORE, BE IT ORDAINED BY THE GENERAL ASSEMBLY OF THE TOWN OF OPHIR:

Article XIV of the Ophir Land Use Code is hereby repealed in its entirety and re-enacted as follows:

ARTICLE XIV LAND USE CODE AMENDMENTS AND ZONING CHANGES

§1401. INTENT AND PURPOSE

This section shall govern amendments, supplements, additions, revisions, or repeals of this LUC or any portion thereof, or any changes to the Official Zoning Map, Hazards Map, or Source Water Protection Areas Map of the Town of Ophir.

§1402. INITIATION

1402.1 LUC Amendments. An application for LUC amendments may be initiated by qualified electors of the Town of Ophir, any property owner within the Town of Ophir, the Planning and Zoning Commission of the Town of Ophir, the Town Staff or any elected official of the Town of Ophir.

1402.2 Changes to Official Mapping. An application for zoning map changes may be initiated by three qualified electors of the Town of Ophir, the owner of property within the zone district for which rezoning or zone district map amendment is sought, the Planning

and Zoning Commission of the Town of Ophir, or any elected official of the Town of Ophir.

§ 1403. SUBMISSION PROCEDURE AND PRELIMINARY REVIEW

An applicant seeking approval of an amendment to the LUC or the Official Town Zoning Map or other Maps shall follow the process outlined below.

1403.1. Pre-Application Conference. The applicant shall attend a pre-application conference prior to submission of an application. In addition to the applicant and/or any of those agents he or she desires be in attendance, such conferences may include the Town Manager, the Town Attorney, and the Chair of the Planning and Zoning Commission. The participation of Town Mayor, other members of the Planning and Zoning Commission, or other such individuals as may be determined necessary or beneficial to the review process may be requested by the Town Manager on a case by case basis.

1403.2. Submit Application. The applicant shall submit a complete application to the Town Manager or his/her designee containing those materials listed in Section 1404.

1403.3. Staff Review and Referral. The Town Manager or his/her designee shall review the application to determine whether it is complete and complies with the requirements of this Article.

- (a) If the Town Manager or his/her designee finds the application is complete and complies with all applicable requirements, the application shall be assigned an agenda date and referred to the Planning and Zoning Commission for its review and recommendation to the General Assembly.
- (b) If the application is incomplete or does not comply with all applicable requirements, it shall be returned to the applicant and shall not be assigned an agenda date. No further action shall be taken until its defects are remedied, or in the alternative, until it is dismissed pursuant to Section 1408.2 below for the applicant's failure to remedy the identified application deficiencies.

§1404. APPLICATION PACKAGE

At the minimum, an application for approval of an amendment to the Land Use Code, the Official Zone District Map, or any other map as the Town may adopt pursuant to this Article shall contain ten (10) copies of the following information:

1404.1. Contact Information. The applicant's name, address (both physical and mailing) and telephone number. If the applicant is to be represented by an agent, a letter signed by the applicant shall be submitted authorizing the agent to submit and process the development application on the applicant's behalf. The letter shall state the representative's name, address and phone number. Proof of ownership or agency shall be updated prior to execution or recordation of final approval documents upon request of the Town Manager or his/her designee, or the Town Attorney.

1404.2. Legal Description/Address. The legal description and street address, if such exists, of the parcel or parcels of land which the proposed amendments or changes will affect.

1404.3. Proof of Ownership. A disclosure of ownership of the lot or lots the proposed amendments or changes will affect, including a list of the names of all owners of the property, and all owners of mineral estates of record in the records of the San Miguel County Clerk and Recorder, mortgages, judgments, liens, easements, contracts, and agreements affecting the parcel. The disclosure of ownership may be in the form of a current commitment from a title insurance company, deed, ownership and encumbrance report from a title insurance company, attorney's opinion, tax assessment record, or other documentation acceptable to the Town Manager. The disclosure of ownership shall demonstrate to the satisfaction of the Town Manager, after consultation with the Town Attorney, if necessary, that the applicant has the right to submit the application.

1404.4. Map. An eight and one-half inch by eleven inch (8 1/2" x 11") vicinity map, locating the subject parcel within the Town of Ophir.

1404.5. Written Description. A written description of the proposal and an explanation in written, graphic, or model form of how the proposed amendments or changes satisfy the review standards below and are applicable to the application.

1404.6. Fee. An application fee of \$500 for each affected lot, or as may be established from time to time by the General Assembly by resolution. In the event that the applicant withdraws the application prior to the first hearing before the Planning and Zoning Committee, the application fee may be refunded whole or in part less any administrative review costs incurred at the discretion of Town Manager.

§1405. PASS-THROUGH REVIEW COST AGREEMENT

A signed agreement, in a form acceptable to the Town Attorney and approved by the Town Manager, binding the applicant to pay all of The Town of Ophir's application review fees, regardless of whether the application is approved, denied, approved with conditions, suspended, withdrawn, or dismissed shall be executed between the applicant and the Town upon receipt of a complete application. Such payments shall be in addition to application fees. Applications shall be processed using a pass-through account system whereby the Applicant shall be responsible for all costs borne by the Town of Ophir to review, analyze, comment upon and process the application.

- (a) From time to time the Town Manager or his/her designee shall provide a written notice of estimated application review costs. The Applicant shall advance such costs to the Town within ten (10) days of receipt of notice from Town Manager.
- (b) The Town Manager may choose to withhold further processing of an application until payment of estimated fees is advanced.
- (c) Review costs shall be reasonably related to review of the application in the context of compliance with the requirements and standards of this Article.
- (d) Costs may include, but are not limited to: attorney and/or or planner's fees and charges, expert consultant's fees and charges, cost to review, analyze, comment upon the application or review technical reports submitted with the application, Town Manager's time at a rate of \$75 an hour, or as shall be determined by the General Assembly by resolution, copies, and costs to prepare or amend maps.

§1406. CONSOLIDATION

The review process is designed to encourage the simultaneous review of multiple aspects of a code amendment or zoning change request. Applicants may request, and the Town Manager or his/her designee may permit, the consolidated review of more than one (1) application pertaining to the same parcel of land, or the consolidation of separate applications involving more than one parcel of land. The Town Manager or his/her designee is authorized to waive any overlapping application requirements in the consolidated submission, but such waiver shall in no way be interpreted as a waiver of the per-lot application fee as established by resolution.

§ 1407. CODE AMENDMENTS

If the application requests an amendment to the text of the Land Use Code, the precise wording of the proposal shall be provided along with an explanation of why the amendment should be adopted.

§ 1408. MAP AMENDMENTS

If the application requests an amendment of the Official Zone District Map or other Maps, the application shall also include:

1408.1 A legal description of land area to be rezoned along with a sketch to scale indicating the boundaries of the area to be rezoned;

1408.2 A description of the current zoning for all areas within and adjacent to the area proposed to be rezoned;

1408.3 A statement of the requested new zone district classification and justification for the rezoning;

1408.4 A description and conceptual sketches indicating elevations of buildings or uses proposed or which could be built in the area proposed to be rezoned, along with a description of land and building uses within two hundred feet (200') of the subject property in all directions;

1408.5 A time schedule for any contemplated new construction or uses;

1408.6 A description of the effect that the rezoning would have on uses of adjacent properties in the neighborhood of the area proposed to be rezoned and on the Town generally. The determination of the "neighborhood of the area proposed to be rezoned" shall be made solely by the P&Z and/or by the General Assembly; and

§ 1409. STAFF REVIEW OF APPLICATION

1409.1. Certification of Completeness and Compliance. Following receipt of the application, the Town Manager or his/her designee shall determine whether the application is complete and whether the application complies with the requirements of the underlying zone district.

1409.2. Deficient Applications. If the application is not complete or does not comply with the requirements of the underlying zone district, the Town Manager or his/her designee shall inform the applicant in writing and within a reasonable period not to exceed thirty (30) days what the specific deficiencies are and instructing the applicant to correct them.

(a) The Town Manager or his/her designee shall take no further action on the application until the deficiencies are remedied by resubmittal. Upon request from the applicant, the Town Manager or his/her designee may grant or deny waiver of missing application contents, subject to subsequent ratification by the Planning and Zoning Commission.

(b) Once the deficiencies are remedied or waived, the Town Manager or his/her designee shall proceed to the next step in the review process as applicable.

(c) In the event that the deficiencies are not corrected by the applicant within sixty (60) days after the date of the Town Manager or his/her designee's notice, then the application, less any portion of the application fees necessary to reimburse the Town for its review costs, may be dismissed and returned as incomplete.

1409.3. Certification and Referral to the Planning and Zoning Commission. If the application is complete and complies with the requirements of the underlying zone district, the Town Manager or his/her designee shall certify it as complete and shall affix the date of the application acceptance thereon and shall assign the application an agenda date and refer it to the Planning and Zoning Commission for consideration at its next regularly scheduled meeting which will occur following the publication of notice of such meeting.

1409.4. Reservation of Authority to Issue Completeness Determination. A determination that an application is complete and complies with the requirements of the underlying zone district shall not preclude the Town from determining, at any subsequent review step, that the application actually is not complete, or does not comply with any other application requirement of this Article.

1409.5 Anticipatory Submission to Planning and Zoning Commission. Should the Town Manager or his/her designee determine the application is incomplete or does not comply with the requirements of the underlying zone district in an insubstantial manner, the Town Manager or his/her designee may nevertheless assign the application to the Planning and Zoning Commission for its next scheduled meeting and request the applicant to correct the deficiencies prior to the meeting date.

1409.6. Right to Appeal. The applicant may appeal a determination that the application is not complete or does not comply with the requirements of the underlying zone district to the Mayor. Such an appeal must be submitted in writing within ten (10) days of the Town Manager or his/her designee's determination. The Mayor may grant or deny the appeal or may refer it to the Planning and Zoning Commission.

§1410. RECOMMENDATION BY P&Z, ADOPTION BY ORDINANCE.

All applications for changes to the Land Use Code, the Official Zone District Map, the Official Hazard Zone Map, or other such official land use mapping or regulation the Town has adopted pursuant to this Article shall, after the Town Manager or his/her designee has reviewed the application for completeness and thereafter referred it to the Planning and Zoning Commission for recommendation, shall be referred to the General Assembly for final action. In turn, the

General Assembly shall: a) approve the application b) approve the application with conditions; c) deny the application; d) remand the application to the Commission for further review; or e) dismiss the application pursuant to Section 1409.2(c). Should the General Assembly elect to adopt any Land Use Code amendments or official zone district map amendments as advanced through this process, such adoption shall be by a simple majority vote and shall be by ordinance.

§1411. PROVISION OF PUBLIC NOTICE

1411.1. Notice Required. Prior to conducting a public hearing as called for under the provisions of this Article, public notice of the hearing shall be provided pursuant to the terms of this Section.

1411.2. Manner of Notice. Public notice of public hearing shall be given through publication, mailing of notice to all owners of property within two hundred feet (200') of the subject property and all owners of mineral estates of record in the records of the San Miguel County Clerk and Recorder, and posting of notice on the property, unless a different notice is specifically authorized under a separate provision of this Title.

1411.3. Publication. Publication of notice of public hearing shall be accomplished by the Town Manager or his/her designee by placing a legal notice in the Town's newspaper of record. The legal notice shall be published at least ten (10) days prior to the public hearing, except that publication of notice of a public hearing before the General Assembly concerning the determination, establishment, enforcement, amendment, or supplementation of any zone district boundary shall occur at least fifteen (15) days prior to such hearing.

1411.4. Mailing, Service of Notice. Mailing of notice of public hearing shall be accomplished by the applicant, who shall obtain a copy of the form of written notice from the Town Manager or his/her designee.

(a) Notice shall be mailed to all property owners within two hundred feet (200') of the subject property (excluding streets, right-of-ways, and river courses) by first (1st) class mail at least ten (10) days prior to the public hearing.

(b) Notice shall be mailed to all owners of mineral estates of record as reflected in the records of the San Miguel County Clerk and Recorder and San Miguel County Assessor by first class mail at least twenty (20) days prior to the public hearing.

(c) The list of property owners' names and addresses shall be created by the applicant using the current list of landowners as maintained by the San Miguel County Assessor, or as compiled through a licensed title insurance company.

(d) Mailed notice may also be effectuated by hand-delivery so long as such delivery is accomplished by leaving notice with an adult property owner, as may be required, at any given address no later than the deadlines for mailed notice described above.

(e) Upon completion of service of notice on all necessary parties, the applicant or his/her agent shall provide to the Town Manager a Certificate of Service indicating the names and addresses of each property owner served and indicating the manner of service. The Town Manager shall include this Certificate as part of the application record.

1411.5. Posting. Posting of notice shall be accomplished by the applicant, who shall obtain the form of the notice from the Town Manager or his/her designee. The posted notice shall be at least 24"x36" in size. The applicant shall post the notice in a conspicuous location on the subject property at least ten (10) days prior to the public hearing. The materials to which the notice form is affixed shall be sturdy and waterproof, or shall have a waterproof covering.

1411.6. Content of Notice. Each notice of public hearing shall contain:

- (a) the name of the owner and the applicant;
- (b) the property's legal description and, if available, street address;
- (c) the type of approval(s) sought and a brief summary of the proposal;
- (d) the date, time and location of the public hearing and name of the reviewing body; and
- (e) The notice shall also indicate that more complete information about the application is available at the Town Hall and shall provide the Town Hall telephone number where inquiries may be answered.

1411.7. Affidavit. The applicant shall, at least five (5) days prior to a public hearing, submit to the Town Manager or his/her designee for the public record an affidavit or other acceptable evidence certifying that public notice was provided in accordance with the requirements of this Section.

1411.8. Adequacy of Notice. The applicant and the Town Manager or his/her designee shall make every reasonable effort to comply with the notice provisions set forth in this Section. Notice shall be deemed adequate if, in accordance with Section 1411.4, notice was mailed to all property owners as listed on the current San Miguel County Assessor's list of landowners, and, with respect to the owners of mineral estates, to the owners shown in the records of the San Miguel County Clerk and Recorder's Office and Assessor's office, and if, pursuant to Sections 1411.3 and 1411.5, publication and posting has occurred. Notice shall not be considered insufficient because of unrecorded or subsequent transfers of title, or uncertainties concerning ownership not discernible from the tax rolls or, with respect to the owners of mineral estates, absence of records from the County Clerk and Recorder. No new provision or service of notice shall be required for public hearings which are continued to another date, place or time.

§1412. PUBLIC ACTION BY GENERAL ASSEMBLY

Following the designated public hearing on the application, the General Assembly shall act upon the recommendations of the Planning & Zoning Commission in one of the five prescribed manners enumerated in Section 1410 of this Article. Should the Assembly remand a proposed code amendment or amendment to the zone district or other maps to the Planning & Zoning Commission for additional study, the Planning & Zoning Commission shall conduct a public hearing on any such remanded matter at its next scheduled meeting. Such hearing shall be noticed in the Planning and Zoning Commission's agenda as routinely published in the Town's newspaper of record.

§1413. ACTIONS FOLLOWING APPROVAL

Upon the approval of an amendment to the Official Zone District Map, the Official Hazard Map, or any other such mapping the Town may adopt under this Article, the Town Manager or his/her designee shall have the revised designation incorporated into such instrument.

§1414. TEMPORARY SUSPENSION OF BUILDING PERMITS AND DEVELOPMENT APPLICATIONS; EXCEPTIONS.

1414.1. Suspension Due to Pending Amendments. Whenever the General Assembly has directed the preparation of an amendment to the text of this Article or to the Town's official land use maps, the Town shall issue no building permit for development or construction activity that would be prohibited by, or otherwise subject to, the proposed amendment. Similarly, no pending application seeking amendments to the Town LUC or land use maps shall be processed or approved during the pendency of such amendment if the proposed amendments would be prohibited by or subject to the General Assembly-proposed changes. If upon receipt of a complete application, the Town Manager or his/her designee determines either that the proposed changes would be in conformance with both the existing LUC provisions or land use maps *as well as* the Town-proposed amendment, or that the changes sought would not be subject to the LUC section(s) and/or maps under consideration, the Town shall proceed with the processing of such applications.

If the General Assembly by motion or resolution directs the abandonment of a proposed text or map amendment, or should an ordinance adopting such amendment, or an amendment substantially similar to the proposed amendment, fail to pass General Assembly within a reasonable period of time from the date it was first proposed, then all building permits and land use development approvals applied for and/or pending shall be issued or permitted to proceed to approval in accordance with the provisions of this Title then in effect.

1414.2. Exception. The General Assembly may by resolution and within its discretion grandfather building permits or land use development applications pending or submitted during the period of time a text or map amendment is being processed as provided for in this Section upon a finding that exempting such application would not seriously impair the purpose, intent, or effectiveness of the proposed text or map amendment after its adoption, and is otherwise in the best interest of the public health, safety and welfare.

1414.3. Grandfathered Applications. Notwithstanding any other provision in this section, if the Town has received a complete and acceptable LUC/land use map change application and such application has been subject to a public hearing before the General Assembly prior to such time as the General Assembly has directed or initiated amendments to the provisions thereof, such applications shall continue to be processed and reviewed in accordance with the standards and procedures in place at the time the application was received.

§1415. REVIEW STANDARDS FOR CODE AND MAP AMENDMENTS.

The Planning and Zoning Commission may recommend approval, and the General Assembly may approve or conditionally approve an amendment to the Land Use Code, the Official Zone District Map, the Official Hazards Map, or other such maps as the Town has adopted under this Article, when it finds that any three of the following criteria have been met:

- A. There has been a substantial change in conditions in the neighborhood or area proposed to be rezoned since the date of approval of the existing zoning map designation which justifies the proposed amendment;
- B. There has been a substantial change in the circumstances or conditions of the Town at large which justifies the proposed amendment;
- C. There is demonstrated to be a material and substantial error in the existing zoning map or LUC text, the correction of which justifies the proposed amendment;
- D. The proposed amendment is in conformance with or would implement the Ophir Master Plan, as amended;
- E. The area proposed to be rezoned or reclassified with regard to a hazard overlay is peculiarly suitable for the uses permitted in the proposed new zone district or districts; or
- F. There exists a substantial and compelling public interest in adopting such proposed amendment.

§1416. PROSECUTION AND RE-APPLICATION

1416.1. Expediency Standard. All proposed Code and Map amendments shall be deliberately processed, reviewed, heard and acted upon in a reasonable and timely fashion so as to minimize unwarranted delays in the review of new or pending land use code or map amendments applications.

1416.2. Dismissal for Failure to Prosecute. In the event that an applicant fails to prosecute an application with reasonable diligence or takes no action in furtherance thereof for a period of 3 months, then the application may be summarily dismissed for non-prosecution by the reviewing body before which the application is pending, following ten days prior notice to the applicant.

1416.3. Prohibition on Resubmission. In the event that a map or code amendment application is dismissed and returned for incompleteness, withdrawn, or denied, no identical or similar application may be resubmitted within six months following the effective date thereof, unless the General Assembly authorizes such resubmittal by Resolution. In assessing whether a subsequent application is "similar" for the purposes of this subsection, the reviewing body shall consider, but is not fully bound, by the following:

- (a) the identity of the property owners/applicants;
- (a) the land at issue in the prior and subsequent applications;
- (b) the nature of the LUC amendment or change in mapping designation sought through the application process; and
- (d) any changes in circumstances between the dates of submission of the applications that may have in any way changed the nature and/or effect of the two otherwise similar applications.

§ 1417. EFFECTIVE DATE

This Ordinance shall take effect immediately upon final adoption.

Introduced, Read and Approved on First Reading by the General Assembly on the
15th day of September, 2009.

**Approved and Adopted on Second and Final Reading as amended by the General
Assembly of the Town of Ophir on the** 17th **day of** November,
2009.

By: Randy Barnes
Randy Barnes, Mayor

Attest: Rhonda Claridge
Rhonda Claridge, Town Clerk

Stephen B. Johnson
Approved as to Form: Town Attorney

