

Town of Marble
Ordinance Number 1
Series of 2017

AN EMERGENCY ORDINANCE AMENDING THE ZONING CODE WITH RESPECT TO
FEES AND EXPENSES

WHEREAS:

- A. The Town of Marble (the "Town") is a statutory town organized pursuant to Colorado Law; C.R.S. §31-1-101 *et seq.*;
- B. The Town is authorized to regulate land use matters within its boundaries, *see* C.R.S. § 31-23-101 *et seq.*, and has adopted land use regulations known as the Zoning Code;
- C. The current fees specified by the Zoning Code are generally inadequate to fully cover the Town's expenses in considering an application submitted pursuant to the Zoning Code;
- D. The Board of Trustees of the Town (the "Board") believes that the applicant is the party that should properly bear the costs of application, review, consideration and inspection associated with land use activities; and
- E. The Board desire to create a framework by which applicants for land use activities in the Town are required to cover the full cost of review, consideration and inspection of such activities.

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

- 1. Section 7.4.40 of the Zoning Code shall be amended to read in its entirety as shown on the attached Exhibit A.
- 2. Appendix A of the Zoning Code shall be amended to include the attached Exhibit B.
- 3. The Schedule of Fees, Expenses and Deposits attached as Exhibit C is hereby adopted.
- 4. Section 7.2.40.K.5.d of the Zoning Code is amended to read: "At the time the application is made, the Town Clerk shall collect a fee from the property owner in an amount shown on the Schedule of Fees, Expenses and Deposits."
- 5. Section 7.3.50.B of the Zoning Code is amended to read: "No request for a variance shall be considered prior to receipt of each fee or deposit required by the Schedule of Fees, Expenses and Deposits.
- 6. Section 7.5.50 of the Zoning Code is amended to read: "Upon receipt of a complete application and each fee or deposit required by the Schedule of Fees, Expenses and Deposits, the Board of Trustees shall consider the application for amendment of the zoning map, which application shall have followed the procedures set forth in foregoing sections of this Chapter."
- 7. Section 7.5.60 of the Zoning Code is amended to read:

A. Before any action shall be taken, the applicant proposing or recommending a change in the District regulations or District boundaries shall deposit with the Town Clerk each fee or deposit required by the Schedule of Fees, Expenses and Deposits.

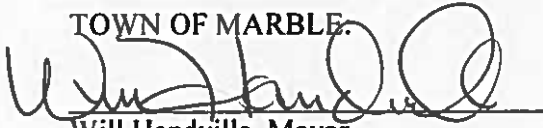
B. Before any action shall be taken, the applicant seeking an annexation shall deposit with the Town Clerk each fee or deposit required by the Schedule of Fees, Expenses and Deposits.

8. Section 7.7.150.A of the Zoning Code is amended to read: "Independent and Dependent Camping Units. To defray the cost of increased services, permit fees for temporary parking, occupation and use of camping units for each fourteen (14) day period shall be as shown on the Schedule of Fees, Expenses and Deposits. A permit will be issued, valid only for the dates of issue."

9. Emergency Certification. It is hereby found and declared by the Town of Marble that effective review of applications submitted pursuant to the Zoning Code is necessary to preserve and protect public health, and with the current fee system in place, the Town is unable to effectively complete such review. Therefore, an emergency is hereby declared to exist, and this ordinance, being necessary for the immediate preservation of public health, shall be in full force and effect from and after its passage and approval.

INTRODUCED, READ, ADOPTED AND ORDERED PUBLISHED BY TITLE ONLY this 19TH day of APRIL, 2017, by a vote of 4 in favor and 0 opposed.

TOWN OF MARBLE.



Will Handville, Mayor

ATTEST:



Ron Leach, Clerk

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7.4.40 Fee Schedule; Fee Reimbursement

A. Establishment and Payment of Fees.

1. The Board of Trustees shall, by resolution or ordinance, establish a schedule of fees, expenses and deposits, for matters pertaining to this Zoning Code. The schedule shall be posted on the Town website and may be amended only by resolution or ordinance of the Board of Trustees.
2. At the time of submission of an application for any type approval described in this Zoning Code, the applicant shall pay to the Town the established fees and deposits for the purpose of the Town's review and processing of the application.
3. No action shall be taken on any application unless the applicant is in compliance with the requirements of this Section 7.4.40. Failure to comply with this Section shall be cause for the Town to cease processing the application and/or deny approval of the application.

B. Reimbursement of review costs.

1. With respect to an application for any type of land use change approval described in this Zoning Code (e.g. variance, use by review, rezoning, subdivision, subdivision exemption, planned unit development, annexation), but not including applications for basic permits or licenses authorized by or mentioned in the Zoning Code (e.g. building permit, OWTS permit, camping license, special event permit), the applicant shall be responsible for the Town's cost associated with review and processing of the application.
2. At the time of submission of any application for any type of land use change approval described in the preceding paragraph, the applicant shall execute an Agreement for Payment of Development Review Expenses ("Agreement") in a form substantially similar to that included in Appendix A to this Zoning Code. The terms, conditions and obligations of the Agreement are incorporated as requirements of this Zoning Code as if set forth herein. The final form of an Agreement shall be subject to review, revision and approval by the Town Attorney based on the particular circumstances of the proposed development and, following such approval, shall be presented to the Board of Trustees for its consideration. No application shall be deemed complete until a fully executed Agreement is on file with the Town.
3. Accounting. The Town shall maintain a separate accounting of all monies deposited and expended with respect to each application. Statements shall be made available to the applicant upon reasonable request.
4. Waivers and Modification of Fees and Expenses. Upon written request by an applicant, the Board of Trustees may administratively waive, modify, adjust or refund any fee or expense associated with the processing of any application where the Board of Trustees determines that: (a) Payment of all fees and expenses would impose a unique and substantial hardship on the Applicant; or (b) The project provides a significant and substantial public benefit to the Town (i.e. will substantially advance the health, safety and welfare of the Town) not otherwise required by the Zoning Code.

TOWN OF MARBLE

AGREEMENT FOR PAYMENT OF DEVELOPMENT REVIEW EXPENSES PURSUANT TO SECTION 7.4.40 OF THE TOWN OF MARBLE ZONING CODE

THIS AGREEMENT, is made and entered into by and between the TOWN OF MARBLE, COLORADO, a Colorado statutory town, (the "Town") and _____, hereinafter referred to as the "Applicant." The Applicant and the Town shall collectively be referred to as the "Parties." This Agreement shall be effective following execution by the Parties.

RECITALS AND REPRESENTATIONS:

WHEREAS, the Applicant is the owner of, or represents that he or she is the authorized agent of the owner of, certain property situated in the Town of Marble, Gunnison County, State of Colorado, (the "Property") which is described as:

[Insert Legal Description.]

WHEREAS, the Applicant has made an application ("Application") to the Town of Marble, with respect to the Property, for the review and consideration of [Insert Description of Land Use Change.]

WHEREAS, the Parties hereto recognize that the Town is expected to incur expenses in considering the Applicant's application and project, including but not limited to expenses incurred for legal and notice publications, engineering services, attorney fees, consultant fees, reproduction and photocopying of materials, public hearing expenses, recording costs and inspections by Town staff to ensure the Applicant's compliance with the requirements of the approved plans and specifications;

WHEREAS, the Zoning Code requires the Applicant to execute an agreement for the payment of Town expenses incurred in the processing and review of the Applicant's application and that this requirement is based on the policy that the applicant is the party that should properly bear the costs of application, review, consideration and inspection associated with development; and

WHEREAS, the Applicant understands that the review and processing fees incurred by the Town are independent, separate and apart from the Town's decision to approve or deny the submitted application and that such fees are owed by the Applicant regardless of the Town's decision on the application or the Applicant's decision to postpone, abandon or terminate processing of the application.

NOW THEREFORE, in consideration of the premises and of the mutual promises and conditions hereinafter contained and the requirements of the Zoning Code, it is hereby agreed as follows:

1. APPLICANT SHALL PAY ALL EXPENSES. The Applicant shall pay in accordance with this Agreement, all expenses which are directly related to the Town's review, processing,

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consideration, and inspection of the Application. The Board of Trustees may waive, modify, adjust or refund any fee or expense, in its sole subjective discretion, in accordance with Section 7.4.40. of the Zoning Code.

2. DEFINITIONS. For purposes of this Agreement:

a. "Application" shall mean any application, petition, or similar request for approval subject to Section 7.4.40.B of the Zoning code, together with all documentation, data and information submitted to the Town in order to seek such approval.

b. "Expenses" shall include all expenses, costs, fees, assessments and other charges incurred by the Town and directly related to the Town's processing, review, consideration and inspection (both pre- and post-application approval) of the Application. Such expenses may include, but shall not be limited to: legal and notice publication(s); engineering services; land use planning services; inspections and inspection services fees and charges billed to the Town by other agencies and entities statutorily or legally required to review the Applicant's documentation and development (including state and federal regulatory agencies); attorneys' fees and charges (for the Town Attorney only, unless otherwise pre-approved by the Applicant); specialized consultant fees necessary to ensure Application or development conformance with federal, state or local laws (e.g., water, wetlands, biological and geo-technical consultants); reproduction and photocopying of the Application and other supporting or necessary materials; and public hearing, public meeting and administrative meeting expenses (including all costs of conducting a special meeting if requested by the Applicant). Expenses shall *not* include any expenses that are recovered through another fee payment program, such as OWTS permit inspections or building permit inspections.

i. Salaried Staff Time: Expenses shall include a charge for time spent by salaried "in-house" Town staff (e.g. the Town Clerk) on the Application, at the rate set forth on the most recent Schedule of Fees adopted by the Town.

ii. Hourly Staff Time: Expenses shall include a charge for time spent by hourly "in-house" Town staff on the Application, at a rate equal to the hourly rate paid by the Town to such staff.

iii. Expenses shall not include time spent by Town staff in attendance at regularly scheduled meetings of the Board of Trustees where the Application is discussed.

iv. It is the express intent of this Paragraph that the Applicant shall bear and pay in full all expenses and costs of the Town in the processing of the Application and, if such Application is approved, for the Town's inspection and review of the development until such time that the development is complete in accordance with the approved Application.

3. FULL AND SEPARATE ACCOUNTING OF REVIEW EXPENSES. The Town shall maintain a separate accounting of all monies deposited and expended with respect to this Agreement. Statements shall be made available to the Applicant upon reasonable request. The Parties understand that, due to customary delays in billing by the Town's outside consultants, a current statement may only include expenses billed to the Town as of the date of the Applicant's request.

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4. **RESOLUTION OF DISAGREEMENT CONCERNING EXPENSES.** The Applicant may contest an expense billed to the Applicant pursuant to this Agreement by delivering written notice of the contested expense(s) to the attention of the Town Clerk. The Town Clerk shall use his or her best efforts to review a timely written contest within 14 days and to promptly respond in writing to the Applicant by: (1) affirming the expense as appropriate under this Agreement; (2) deleting or rescinding the expense as inappropriate under the Agreement; or (3) modifying or reducing the expense with reasons for the modification or reduction. The Applicant may appeal the Town Clerk's decision to the Board of Trustees by delivering a written request for appeal to the Town Clerk within 7 days after the Applicant's receipt of the Town Clerk's decision. Such appeal shall be considered by the Board of Trustees at the next regularly scheduled Board meeting that is at least 14 days after the Town's receipt of the written request for appeal. The Board of Trustees, after providing the Applicant an opportunity to be heard, shall: (1) affirm the expense as appropriate under this Agreement; (2) delete or rescind the expense as inappropriate under the Agreement; or (3) modify or reduce the expense. The Board of Trustees' decision shall be final. Review and processing of an Applicant's timely written contest shall not be an expense within the meaning of this Agreement.

5. **DEPOSIT ACCOUNT.**

a. The Applicant shall deposit the amount of money required by the Schedule of Fees in effect at the time of Application submittal and shall maintain a deposit account with the Town ("Deposit Account") in accordance with this paragraph.

b. The Town shall credit the Deposit Account for amounts deposited by the Applicant and shall debit payment of the Expenses from the Deposit Account. At such time that the Expenses charged against the Deposit Account exceed ninety percent (90%) or more of the initial required deposit, and within 14 days of the Applicant's receipt of notice by the Town, the Applicant shall supplement the Deposit Account by making an additional deposit with the Town Clerk of an amount of at least fifty percent (50%) of the amount of the initial deposit for land use fees and expenses. The Town Clerk may reduce the amount of, or may waive, the Applicant's making of an additional deposit where the Clerk finds that the estimated or anticipated additional Expenses for the processing of the Application will not likely exceed the remaining balance held in the Deposit Account by the Town.

c. The Applicant shall be obligated to maintain a positive balance in the Deposit Account at all times. Failure by the Applicant to maintain a positive balance in the Deposit Account and to timely make an additional deposit within 14 days of notice by the Town in accordance with this Section shall constitute a material breach of this Agreement.

6. **APPLICATION TERMINATION.** Except as otherwise precluded or prohibited by law or an agreement with the Town, the Applicant may terminate the processing of an Application at any time by delivering written notice to the Town. The Town shall immediately take all reasonable steps necessary to terminate the accrual of additional and continuing Expenses to the Applicant. In no event shall the Applicant be obligated to pay an Expense associated with work or service performed on the Application which is more than forty-eight (48) hours after the date and time of the delivery of the Applicant's notice of termination.

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7. **LIEN AGAINST PROPERTY.** To the extent permitted by law, expenses incurred by the Applicant in accordance with this Agreement, together with the cost of collection, shall constitute a lien against the Property described in this Agreement and described in the Application. By this Agreement, the Applicant consents to the imposition of a lien and the cost of collection against the Property and represents that the Applicant is authorized to so consent as the owner of the Property or as the authorized agent of the owner.

8. **ENFORCEMENT AND COLLECTION OF EXPENSES.** In the event of the Applicant's breach of this Agreement, all amounts owing shall be due and payable immediately and such amount shall accrue interest at an amount equal to 12% per annum until paid in full. In such event, the Town shall be entitled to and may invoke one or more of the following remedies following the Town's mailing of a letter demanding payment in full to the Applicant:

- a. Postponement, cessation and/or termination of the processing of the Application or any other land use application or approval related to the Property;
- b. Denial of the Application;
- c. Imposition of a condition upon approval that the Applicant pay all Expenses prior to issuance of further approvals, including building permits, for all or any portion of the Property;
- d. Withholding, postponing and/or denying: (1) any building permits for any part or portion of the Property or for any improvement which serves or will provide service to the Property; (2) construction documentation review or approval; (3) grading, road cut or other construction or permit approval; and/or (4) the submission, receipt, processing or approval of any application or request by the Applicant or the Applicant's affiliates for any form of land use or construction application related in any way to the Property;
- e. Refusal or denial of the acceptance of any other application for land use approval or development of any kind for the Property submitted by the Applicant or any other person;
- f. Commencement of any remedy provided by law or equity, including an action for declaratory judgment, injunction and/or damages; and/or
- g. Certification of the lien for collection to the appropriate officials for Gunnison County.

9. **NO IMPLICATION OF APPROVAL.** The Applicant agrees to pay all Expenses, regardless of whether the Town approves or denies the Application. The Applicant understands that the approval of the Application is not, and shall not constitute, consideration for the Applicant's payment in accordance with this Agreement. The Town shall not be estopped or otherwise limited or precluded from denial or conditional approval of the Application by the terms, conditions or obligations of this Agreement.

10. **MISCELLANEOUS PROVISIONS**

- a. **No Waiver:** A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

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- b. **No Waiver of Governmental Immunity:** Nothing in this Agreement shall be construed to waive, limit or otherwise modify any governmental immunity that may be available by law to the Town, its officials, employees, contractors or agents, or any other person acting on behalf of the Town and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.
- c. **Binding Effect:** The parties hereto agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives and assigns thereof and shall constitute covenants running with the described Property. To the extent permitted by law, the Applicant and all future successors, heirs, legal representatives and assigns of the Applicant shall be jointly and severally responsible for all terms, conditions and obligations set forth in this Agreement. The Town may, at its discretion, record this Agreement with the Clerk and Recorder for Gunnison County.
- d. **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 Applicant, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third person on such Agreement.
- e. **Governing Law, Venue and Enforcement:** This Agreement shall be governed by the laws of the State of Colorado. Venue for any action arising from this Agreement shall lie with any appropriate court within Gunnison County, Colorado.
- f. **Attorneys' Fees:** If the Applicant breaches this Agreement, the Applicant shall pay the Town's reasonable costs of collection and costs and attorneys' fees incurred in the enforcement of the terms, conditions and obligations of this Agreement, whether or not legal proceedings are instituted.
- g. **Assignment and Release:** All or part of the rights, duties, obligations, responsibilities or benefits set forth in this Agreement shall not be assigned by the Applicant without the express written consent of the Board of Trustees for the Town of Marble. Any such written assignment shall expressly refer to this Agreement, specify the particular rights, duties, obligations, responsibilities or benefits so assigned, and shall not be effective unless approved by resolution or motion of the Board of Trustees. No assignment shall release the Applicant from performance of any duty, obligation or responsibility unless such release is clearly expressed in such written document of assignment. Prior to approving any release of the Applicant, the Town may, at its sole discretion, require the party assuming any duty, obligation or responsibility of the Applicant to provide to the Town written evidence of financial or other ability or capability to meet the particular duty, obligation or responsibility being assumed by the party.
- h. **Severability:** Invalidation of any of the provisions of this Agreement or any paragraph sentence, clause, phrase or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.

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i. **Integration and Amendment:** This Agreement represents the entire agreement between the parties regarding the subject matter hereof. This Agreement may be amended only by an instrument in writing signed by the Parties.

j. **Incorporation of Exhibits:** Unless otherwise stated in this Agreement, exhibits, applications or documents referenced in this Agreement shall be incorporated into this Agreement for all purposes.

k. **Applicant Includes Agents:** For purposes of incurring expenses, such as but not limited to requesting meetings and submitting reports and studies for Town review, the term "Applicant" shall include any authorized agent, consultant or other person acting on behalf of the Applicant.

l. **Notices:** Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth below, or at such other address as has been previously furnished in writing to the other party or parties. Such notice shall be deemed to have been given when deposited in the United States Mail.

If to the Town:
 Town of Marble
 Attn: Town Clerk
 322 W. Park St., Marble, CO 81623

If to Applicant:

IN WITNESSES WHEREOF, the Town and the Applicant have caused this Agreement to be duly executed as of the dates set forth below.

APPLICANT

By: _____
 Date: _____
 Print Name: _____
 Position/Title: _____

STATE OF _____)
) ss.
 COUNTY OF _____)

Acknowledged before me this _____ day of _____, 20____, by _____.
 My Commission Expires: _____.

 Notary Public

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Town of Marble

Schedule of Fees, Expenses and Deposits

(Effective APRIL 19, 2017)

Zoning Code

Matter	Non-Refundable Application Fee*	Deposit	Reimbursement Agreement Required
Use by Review (7.2.20)	\$250	\$1,000	Yes
Keeping Livestock (7.2.40.K.5)	\$50	\$200	Yes
Variance (7.2.70; 7.3.50.B; 7.7.160; 7.9.80)	\$50	\$500	Yes
Annexation / Initial Zoning (7.5.60)	\$500	\$1,000	Yes
Rezoning (7.5.60)	\$500	\$1,000	Yes
Development Permits (7.6.70)	\$100	\$200	Yes
Camping Permit (7.7.150)	\$20	N/A	No
Subdivision (7.8.20)	\$500	\$1000	Yes
Subdivision Exemption (7.8.50)	\$100	\$200	Yes
Any other matter not specifically included above	\$50	\$250	Yes

*Where a Non-Refundable Application Fee and Deposit are required, the total amount to be deposited by the Applicant shall be the Deposit, and the Non-Refundable Application Fee shall be that portion of the amount deposited that is non-refundable. When an application process is completed (by approval, denial, withdrawal, or otherwise), the amount of the Deposit returned to the Applicant shall equal the Deposit minus the greater of the Non-Refundable Application Fee or the Town's Expenses.

Hourly rate to be charged for salaried staff time pursuant to Reimbursement Agreements: \$30.

Building Codes

Fees shall be charged in accordance with the applicable building code
No Reimbursement Agreement Required

OWTS Regulations

Application Fee: \$100
Permit Fee (new installation): \$900
Permit Fee (repairs and alterations): \$200
Surcharge: \$23
No Reimbursement Agreement Required

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Other

Applications for easements across Town property require a \$200 deposit and execution of a Reimbursement Agreement.