

ORDINANCE NO. 2024-17

AN ORDINANCE AMENDING CERTAIN SECTIONS OF TITLE 17 OF THE FRUITA MUNICIPAL CODE CONCERNING CONDITIONAL USES IN THE DOWNTOWN MIXED-USE ZONE, CALL-UP PROVISIONS, APPEALS, AND THE SIGN CODE

WHEREAS, Title 17 of the City of Fruita (the “City”) Municipal Code (the “Code”) sets forth Land Use and Zoning policies commonly referred to as the Fruita Land Use Code;

WHEREAS, the Land Use Code has been established for the purpose of promoting the health, safety and welfare of the present and future inhabitants of the community;

WHEREAS, City staff has proposed amendments to the Land Use Code for consideration; and

WHEREAS, the Planning Commission will review the amendments set forth below on September 10, 2024.

WHEREAS, this Ordinance was introduced at first reading on September 3, 2024, pursuant to Section 2.13(B) of the City Charter; and

WHEREAS, approval of this Ordinance on first reading is intended only to confirm that the City Council desires to comply with the requirement of Section 2.13(B) of the City Charter by setting a public hearing in order to provide the public an opportunity to present testimony and evidence and that approval of this Ordinance on first reading does not constitute a representation that the City Council, or any member of the City Council, has determined to take final action on this Ordinance prior to concluding the public hearing on second reading.

NOW, THEREFORE, IT IS ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO, THAT:

Section 1. Recitals Incorporated. The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the City Council.

Section 2. Amendments to Chapter 17.05.090. Chapter 17.05.090, more specifically the Land Use Table concerning Fuels Sales in the DMU Zone, is hereby amended to read as follows:

Table 17.05.090 - LAND USE TABLE												
	RE	LLR	CR	SFR	MP	DMU	C-1	C-2	I	CSR	NCO	FLU
COMMERCIAL												
Retail Sales & Service												
Fuel Sales, Automotive/Appliance (not including Drive-Up/Drive-Through uses)	*	*	*	*	*	C	A	A	A	*	*	*
Fuel Sales, Heavy Vehicle (not including Drive-Up/Drive-Through uses)	*	*	*	*	*	C	A	A	A	*	*	*

Section 3. Amendments to Chapter 17.21.030 (2) and Chapter 17.07.040. Chapter 17.21.030 (2) is removed and relocated to Chapter 17.07.040 and is hereby amended to read as follows:

G. Call Up Provisions. All Preliminary Plan and Site Design Review applications are subject to the City of Fruita's Call Up procedures, which shall be completed according to the following procedures.

- 1. Notice to City Council. The Community Development Director may decide to notify the City Council following the administrative approval of a Preliminary Plan or a Site Design Review. If the Community Development Director decides in the affirmative to notify the City Council, the City Council shall be promptly notified of the action to allow the City Council an opportunity to avail itself of the call-up procedure outlined herein. Notification shall consist of the Community Development Director providing a written description and associated mapping or graphics to illustrate the location and characteristics of the subdivision. The notification shall be included on a work session agenda within thirty (30) days of approval, or as soon thereafter as is practical under the circumstances. This notification shall be included in a City Council work session (not a public hearing) to enable the Council to review and discuss if they would like to formally review the Community Development Director's decision in a public hearing, as outlined in subsection 3. A simple majority vote shall determine if the Preliminary Plan or Site Design Review shall be called up, and the decision to do so is at the sole discretion of City Council.*
- 2. Call-up. The City Council may order call-up of the Preliminary Plan or Site Design Review application approval within thirty (30) days of the written notification. Consequently, applications for Final Plat may not be accepted by the City and no associated reviews or permits shall be completed or issued during the notice and call-up period. If City Council exercises this call-up provision, no applications for Final Plat or any associated reviews or permits shall be accepted or approved until City Council takes action as described in subsection 3. If the City Council does not call-up the Preliminary Plan or Site Design Review within the call-up period, the Community Development Director's approval shall be the final decision on the matter.*
- 3. Required actions upon call-up. If City Council decides to call-up the Preliminary Plan or Site Design Review approval, the matter shall be referred to the Planning Commission within thirty (30) days, or as soon as is practicable, and shall be reviewed in a public hearing, pursuant to Public Notice requirements outline in section 17.07.040. The Planning Commission shall be a recommending body to City Council. Within thirty (30) days, or as soon as is practicable, the matter shall be scheduled at a regular City Council meeting for a public hearing, with notice provided pursuant to section 17.07.040. The City Council decision shall be final and conclude the call up procedure.*

- a. *All reviews completed by the Planning Commission and City Council as part of the call-up shall be de novo. The Planning Commission and City Council may, at their sole discretion, consider evidence included in the record, or supplement the record with additional evidence or testimony as they deem necessary. They shall complete their reviews pursuant to the applicable review criteria outlined in the Fruita Land Use Code. The Council may impose conditions on any approval granted.*
 - b. *If the City Council approves the Preliminary Plan, the applicant may proceed to Final Plat. Any conditions imposed by Council for Final Plat shall be met.*
-

Section 4. Amendments to Chapter 17.25.040. Chapter 17.25.040 is hereby amended to read as follows:

17.25.040. - APPEAL PROCEDURES.

- A. *Appeal Application Submittal. A Notice of appeal is required to be filed in writing with the Community Development Department within fourteen (14) days of the decision that is being appealed. The Community Development Director may prescribe a specific form that is required for an application for an Appeal. The appeal shall state the specific grounds upon which the appeal is based and shall have attached to it any documentary evidence.*
- B. *Burden of Proof on Appellant. The party making the appeal (the appellant) shall have the burden of proving that the decision being appealed should be reversed based upon the standard of review set forth herein below. The appeal shall be based solely on the record established in the decision-making process.*
- C. *Scheduling and Notice of Public Hearings. The appeal shall be scheduled for a public meeting before the appropriate appellate body within forty-five (45) days of the date of the filing of the appeal. Public notice shall be provided in accordance with Subsection 17.07.040.E.*
- D. *Standard of review. Unless otherwise specifically stated in this Title, the decision-making body authorized to hear the appeal shall decide the appeal based solely upon the record established by the body from which the appeal is taken. A decision or determination shall not be reversed or modified unless there is a finding that there was a denial of due process or the administrative body has acted arbitrarily and capriciously, exceeded its jurisdiction or abused its discretion.*
- E. *Action by the decision-making body hearing the appeal. The decision-making body hearing the appeal may reverse, affirm or modify the decision or determination appealed from and,*

if the decision is modified, shall be deemed to have all the powers of the officer, board or commission from whom the appeal is taken, including the power to impose reasonable conditions to be complied with by the applicant of the original application. The decision-making body may also elect to remand an appeal to the body that originally heard the matter for further proceedings consistent with that body's jurisdiction and directions given, if any, by the body hearing the appeal. The decision shall be approved by written resolution. All appeals shall be public meetings.

- F. Post-Decision Actions and Limitations. Any further appeals of a decision of the City Council shall be made to the courts in accordance with state law.*
-

Section 5. Amendments to Chapter 17.15.040 Exempt Signs. Certain Sections in Chapter 17.15.040 Exempt Signs, more specifically Section 17.15.040 (P) is hereby repealed and other Sections referenced below are hereby amended to read as follows:

- K. Flags.*
- Q. Religious Symbols.*
- X. Temporary Yard Signs. Yard signs are allowed without a sign permit pursuant to the following:*
- 1. In Residential Zoning Districts:*
 - a. Total square footage of all yard signs shall not exceed 24 square feet total on any property;*
 - b. Shall not exceed a height of 42 inches; and*
 - c. Shall not be located in the public right-of-way.*
 - 2. In All Other Zoning Districts:*
 - a. Total square footage of all yard signs shall not exceed 24 square feet total on any property;*
 - b. Shall not exceed a height of six feet, or 42 inches if placed within a sight distance triangle; and*
 - c. Shall not be located in the public right-of-way.*

Section 6. Codification of Amendments. The codifier of the City's Code is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this Ordinance within the Code. The City Clerk is authorized to correct, or approve the correction by the codifier, of any typographical error in the enacted regulations, provided that such correction shall not substantively change any provision of the regulations adopted in this Ordinance. Such corrections may include spelling, reference, citation, enumeration, and grammatical errors.

Section 7. Severability. If any provision of this Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable. The City Council hereby declares that it would have passed this Ordinance and each provision thereof, even though any one of the provisions might be declared unconstitutional or invalid. As used in this Section, the term “provision” means and includes any part, division, subdivision, section, subsection, sentence, clause or phrase; the term “application” means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the City.

Section 8. Effective Date. This Ordinance shall take effect thirty (30) days after final adoption in accordance with Section 2.13(G) of the Fruita Home Rule Charter.

Section 9. Safety Clause. The City Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the City, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 10. Publication. The City Clerk is ordered to publish this Ordinance in accordance with Chapter 2.13(F) of the Code.

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL ON THIS
1ST DAY OF OCTOBER 2024.**

CITY OF FRUITA

Matthew Breman, Mayor

ATTEST:

Deb Woods, City Clerk