



CITY OF IDAHO SPRINGS
1711 MINER STREET
P.O. BOX 907
IDAHO SPRINGS, CO 80452

NOTICE AND AGENDA
SPECIAL MEETING
IDAHO SPRINGS CITY COUNCIL
Monday, June 01, 2020
6:00 P.M

I. CALL TO ORDER

II. ROLL CALL

III. PLEDGE OF ALLEGIANCE

IV. AGENDA APPROVAL

- a) Move to approve the agenda for the June 01, 2020 meeting.

V. RESOLUTIONS

- a) Resolution #15, Series 2020; Discussion and possible action on Resolution #15, Series 2020; A resolution authorizing the temporary closure of City streets to be used for pedestrian travel and outdoor business operations during the Covid-19 reopening period under certain circumstances.

VI. ADJOURN

The Public will be able to view and hear this meeting remotely at the following address:

<https://www.colorado.gov/pacific/idahosprings/city-council-live>

The public will be able to sign up for Unscheduled Public Comment by emailing the City Clerk at cityclerk@idahospringsco.com contact information including name and phone number by 5 PM on the day of the scheduled meeting.

CITY OF IDAHO SPRINGS
Clear Creek County, Colorado

Resolution No. 15, Series 2020

A RESOLUTION AUTHORIZING THE TEMPORARY CLOSURE OF CITY STREETS TO BE USED FOR PEDESTRIAN TRAVEL AND OUTDOOR BUSINESS OPERATIONS DURING THE COVID-19 REOPENING PERIOD UNDER CERTAIN LIMITED CIRCUMSTANCES

WHEREAS, on March 10, 2020, the Governor of the State of Colorado declared a statewide state of emergency in response to coronavirus (COVID-19); and

WHEREAS, on March 14, 2020, the President of the United States declared a national emergency in response to the coronavirus (COVID-19); and

WHEREAS, on March 23, 2020, the City of Idaho Springs ("City"), acting by and through its City Council, declared a local state of disaster emergency with respect to the outbreak of COVID-19; and

WHEREAS, on May 26, 2020, in response to a progression of Governor's Executive Orders and CDPHE Public Health Orders slowly lifting the restrictions on public travel, social interactions and business operations, the City Council adopted Resolution No. 14, Series 2020, authorizing temporary outdoor business operations and the associated use of City property for the same; and

WHEREAS, the City Council finds and determines that it would further promote and facilitate local businesses' COVID-19 recovery efforts to allow local businesses to temporarily occupy and use certain City streets for outdoor operations during the period of COVID transition; and

WHEREAS, the City Council finds that allowing such use of City streets on a temporary basis would promote the overall public health, safety and welfare of City residents by stimulating the local economy and sales tax revenues, which fund the vast majority of the City's general fund revenues that provide such basic and essential City services as police department, public works and utility operations; and

WHEREAS, the City Council therefore desires to authorize the temporary closure of certain City streets for a limited duration and under limited circumstances, all as further set forth herein.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Idaho Springs, Colorado as follows:

Section 1. The above and foregoing recitals are hereby incorporated herein as specific findings of the City Council.

Section 2. Temporary Street Closures Authorized - Conditions.

As authorized by C.R.S. § 31-15-702, the City Council hereby authorizes the temporary closure of certain City streets to vehicular traffic and the use of such closed streets by pedestrians and City businesses, upon a finding by the City Administrator that each of the following required conditions are met:

1. The street block, or portion thereof, proposed for closure is within a Commercial (C) zone district or the Historic Downtown (HD) zone district.

2. The City has received at minimum of two (2) applications from City businesses within the closed area to temporarily locate their business operations outdoors.

3. After consultation with the Police Department, Public Works and Community Development (Planning) Departments, the proposed street closure can be conducted in such a manner as to:

A. Ensure that public safety and first responder services can continue to be safely and adequately provided to all persons and property within the street closure area;

B. Mitigate the potential adverse impacts on traffic circulation and parking within and around the area to the greatest extent practicable;

C. Allow an alternative vehicular access route for all properties within the closed area to the public street system – e.g., back/rear yard access, side yard access, alley routes, etc.

D. Provide a specific plan to effectively re-route vehicular traffic around the closure area and guarantee that vehicular traffic cannot enter the area when it is being used for pedestrian and business use;

E. Ensure that the closure area is inspected by Public Works and determined safe for pedestrian use and travel or, alternatively, clearly marked and closed off with sufficient barrier(s) to prevent pedestrian access to any areas unsafe for such use;

F. Provide thorough advanced notice of any street closure to the public and to vehicular traffic in and around the closure area at least forty-eight (48) hours prior to the first period of closure and on an on-going basis on the City's web site.

4. The periods of street closure authorized hereby are temporary in nature only and are expressly intended to facilitate COVID-19 recovery efforts for the duration of the State and County's Public Health Orders related to said recovery and transition efforts unless otherwise extended or modified by express action and vote of the City Council. Nothing in this Resolution shall constitute a waiver of the City's right to subsequently declare any City street or right-of-

way immediately necessary for vehicular travel and to re-open the same for such purpose after it is closed pursuant to this Resolution.

5. Nothing in this Resolution constitutes a waiver, modification or abrogation of any of the provisions, limitations or immunities belonging to the City under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*

RESOLVED, APPROVED, and ADOPTED this 1st day of June, 2020.

Michael Hillman, Mayor

ATTEST:

Diane Breece, City Clerk



**NOTICE AND AGENDA OF A
WORK SESSION
Idaho Springs City Council
June 01, 2020
6:15 p.m.**

- ❖ Letter of support-County Collaborative Care Center
- ❖ Visitor Center/Historical Society update-Genevieve Palmer
- ❖ Argo Public Improvement Agreement (PIA)
- ❖ Downtown Marketplace update
- ❖ Nuisance ordinance-attracting wildlife by garbage and rubbish
- ❖ City website update-Jon Cain

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<https://www.colorado.gov/pacific/idahosprings/city-council-live>

PUBLIC IMPROVEMENTS AGREEMENT

THIS PUBLIC IMPROVEMENTS AGREEMENT ("Agreement") is hereby made and entered into this day of May/June, 2020 (the "Effective Date"), by and between the City of Idaho Springs, Colorado, a Colorado statutory municipality (the "City"), Mary Jane Loevlie, an individual ("Loevlie"), and Argo Holdings, LLC, a Colorado limited liability company, or its assigns (the "Developer"). City, Loevlie, and Developer may hereinafter be referred to individually as a "Party" and collectively as the "Parties".

RECITALS

A. The Parties have entered into that certain Public-Private Development Agreement dated ("Master Agreement") relating to the development of Virginia Canyon Mountain Park ("Park") and an aerial gondola system, associated improvements, utilities, and infrastructure ("Gondola") (collectively, the "Project"), as part of and as more particularly described in that certain Final Development Plan ("FDP") for the Properties (as more particularly described in the Master Agreement) in and near Idaho Springs, Colorado.

B. The City and Developer and the City and Loevlie have each entered into or intend to enter into those certain Annexation Agreements related to the annexations of the Developer Property and Loevlie Property (collectively, the "Annexation Agreements").

C. Pursuant to that certain Annexation Agreement dated November 8, 2016 by and between the City and Developer, that certain Annexation Agreement dated by and between the City and Loevlie, approved PD Zoning, the Master Agreement and as part of the FDP the Parties are required to execute an agreement that will define certain benefits, liabilities, and impacts on the City, the general public at large, as well as the Developer and Loevlie.

D. The Parties agree to enter into this Agreement which will satisfy such FDP requirement.

E. The Parties desire to enter into this Agreement to set forth their respective rights and obligations regarding the development of the Properties, including certain benefits, liabilities, costs, and expenses related to the development of the Park and Gondola, and the general development of the Properties.

F. Any capitalized terms not otherwise defined in this Agreement shall have the meanings given to them in the Master Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Error! Unknown document property name.

1. **INCORPORATION OF RECITALS.** The above Recitals are true and correct and incorporated herein.

2. **CITY, DEVELOPER, AND LOEVLIE COOPERATION.**

2.1 Cooperation. The Parties mutually agree to coordinate the design, development, construction, operations, and cost sharing as described below. Developer's initial estimation regarding its Budget and contribution for the following actions is set forth on the attached Exhibit A. The Budget is a preliminary estimation and Developer shall be permitted to revise the Budget as-necessary. Any Budget revision that reduces the total projected Budget or any categorical Budget item by more than fifteen percent (15%) shall require the express consent of the City Council, which consent may be rendered by motion of the Council made and adopted during a public meeting of the Council. Notwithstanding the Developer's intention to fund the private and public items described in Exhibit A, the Parties agree that there is no cost-sharing for this Phase 1, but agree to discuss cost-sharing on a case-by-case basis as necessary on future Phases.

~~Construction, reimbursement, acceptance by the City and all other matters generally governing any public~~Public improvements that are required to be dedicated to the City shall be governed by Article V of Chapter 24 of the Idaho Springs Municipal Code ("Code"). ~~including the construction, reimbursement, acceptance by the City and all related matters.~~

2.1.1 Amenities (e.g. restrooms, bike racks, community spaces, street and parking lighting and multi-use trail). Developer shall construct certain amenities including public restrooms, bike racks, and similar features designed for public comfort and convenience for the Project at its cost and expense, as more particularly shown in the FDP.

2.1.2. Shared Infrastructure and Utilities. Developer shall be responsible for the construction of infrastructure related to the Gondola, parking deck, Upper Landing facilities, and development of the Argo site. The water and wastewater improvements constructed by Developer pursuant to this initial FDP, intended to serve only the Gondola and Upper Landing amenities (not the larger Argo Mine site redevelopment), shall be private utility systems and, as such, shall be perpetually maintained and operated by the Developer unless otherwise later agreed upon by the Parties.

2.1.3 Parking, Connectivity, and Mobility Solutions. Developer intends to construct a 143 space parking deck, 12 employee parking spaces and resurface 36 existing surface parking spaces along Riverside Drive related to the use and operation of the Gondola and the Argo Mill & Tunnel. Developer agrees to provide ten (10) dedicated parking spaces to increase local access to the Park. These spaces shall be used by City and County residents and employees at no charge, at a location as reflected in the FDP.

2.1.4. Signage. The costs and expenses for signage relating to the Gondola shall be the responsibility of Developer. The costs and expenses for signage relating to the Park shall be the responsibility of the City. Any signage applicable to both projects or for community spaces may be shared by the City and Developer.

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2.1.5. Emergency Services/Access. As part of the Gondola project, Developer will provide emergency access at the Upper Landing in accordance with applicable law.

2.1.6. Community Spaces and Open Space Dedication. Developer intends to construct community spaces as part of the Project at its cost and expense. In addition, the Developer shall dedicate 2.76 acres of open space to the City to fulfill the required open space dedication described in the approved PD zone for the Properties and the Code.

2.1.7. Public Multi-Use Trail. The developer is constructing a multi-use trail that connects the Upper Landing to the Argo property at a cost of approximately \$200,000 as outlined in Exhibit A.

2.1.8. Rock Fall Mitigation/Related Safety Actions. Developer shall be responsible for rock fall mitigation related to the construction of the Gondola as well as on-going rock fall mitigation and safety related to maintenance of the Gondola. Upon any recreational construction or grading in VCMP, the City shall be responsible for rock fall mitigation in the Park and along the trails within the Park.

2.1.9. Tree Clearance and Management. Developer shall be responsible for tree clearance and management within the recorded 30 foot utility and access easement for the Gondola. The City shall be responsible for tree clearance and management in the Park and along the trails, except as otherwise provided in the Budget by Developer.

2.1.10. General Maintenance. Developer shall be responsible for general maintenance of the Gondola. The City shall be responsible for general maintenance of the Park and along the trails.

2.1.11. Security. Developer shall be responsible for the safety and security of the Gondola and Upper Landing improvements/amenities.

2.1.12. Financial Assurance. Developer shall provide to the City proof of funding of Budget items to be constructed prior to issuance of the building permit via a letter or notice from its lender ("Financial Assurance").

2.2. Trail System. At such time as the City notifies the Developer that the City intends to advertise for bids for the first phase of construction of the trail system within the Park, the Developer shall advance \$400,000 to the City, as indicated in the Budget, to the construction of the trail system within the Park ("Developer Trail Advance"). The Developer Trail Advance shall be deposited with the City not later than sixty (60) days from the City's notice. The Developer Trail Advance shall be reimbursed by the City on an interest-free basis via a dollar-for-dollar deferral of the Gondola Ticket Contribution described in Section 2.3 below. The City shall be responsible for all other construction costs of the Park and trail system.

2.3 Gondola Ticket Contribution. In the event the ~~net~~Net Operating Income (which shall be defined as gross revenues minus operating expenses and principle/interest expense) from

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the operation of the Gondola areis "profitable" on an annual basis ("Profit Hurdle"), Developer agrees to contribute fifty cents (\$0.50) to the City for each ticket sold above the Profit Hurdle ("Gondola Ticket Contribution") in such fiscal year. For purposes of this Section 2.3, "profit" shall be defined as when gross revenues exceed operating expenses and principle/interest expense in a fiscal year. For purposes of this Subsection 2.3 "operating expenses" shall include but are not limited to: expenses related to Gondola operations and maintenance, parking operations, wastewater treatment plant/improvements operations and maintenance, food and beverage, labor and goods, utilities including electrical, propane and water purchased from the City, marketing and advertising, security and snow removal; "principle/interest expense" shall mean principle and interest payable on the construction loan; and "gross revenues" shall include all revenues received by Developer associated with the Gondola operations contributing to "operating expenses" hereunder (e.g., Gondola revenues, parking revenues, and food and beverage revenues, etc.-)-). Notwithstanding the foregoing and without durational limitation, Developer shall not be responsible for the payment of any Gondola Ticket Contribution until it has fully been reimbursed for the Developer Trail Advance via a dollar-for-dollar offset of the Gondola Ticket Contribution (i.e. as a result of the payment of the Developer Trail Advance, the Developer shall be first required to make a Gondola Ticket Contribution after 800,000 Gondola tickets have been sold above and beyond the Profit Hurdle). Provided the Profit Hurdle is reached and the Developer Trail Advance has been recovered, the Gondola Ticket Contribution shall be paid once per year on an annual basis, no later than sixty (60) days after the conclusion of the Developer's fiscal year. City shall be permitted to request that Developer report ticketing revenue once per year to confirm the Gondola Ticket Contribution described herein.

2.4 Development and Construction. The Parties agree to abide by all requirements of the Master Agreement in the performance of the obligations described herein and the development of the Properties.

2.5 Notice. The Parties shall provide written notification to the other Parties prior to commencement of any activities or undertaking any obligations described herein.

2.6 Termination. In the event the City ultimately fails to approve the Gondola FDP/Argo Project or the Developer fails to complete construction of the Gondola within two (2) years after commencement of the Gondola construction, this Agreement shall terminate and the Parties shall be released from all further obligations under this Agreement except those that expressly survive termination. The Parties agree that the City Council may extend the two (2) year construction timeline set forth herein, in its reasonable discretion and acting by motion in a duly-noticed public meeting, upon a showing of good cause for the delay by the Developer.

3. **LIABILITY LIMITATIONS – HOLD HARMLESS**

3.1. Non-Liability. Developer acknowledges that the City's review and approval of the plans for the development of the Properties is done in furtherance of the general public health, safety, and welfare and that no specific relationship with, or duty of care to the Developer or third parties is assumed by such review approval, and nothing herein shall be deemed or construed as a waiver by the City of any rights, immunities, limitations, or protections afforded to it under the

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Colorado Governmental Immunity Act (§ 24-10-101, C.R.S., *et seq.*), as now or hereafter amended.

3.2 **Hold Harmless.** Developer agrees to save, defend and hold the City harmless from any claims brought by any third party against the City which are attributable to any act or omission of the Developer, its employees, agents, contractors, subcontractors, and consultants with respect to the Gondola Construction. This indemnification does not extend to claims of willful misconduct or negligence brought by any third party against the City which is attributable to any act or omission of the City. To the extent permitted under applicable law, if permitted at all, the City agrees to save, defend, and hold the Developer and Loevlie harmless from any claims brought by any third party against the Developer or Loevlie which are attributable to any act or omission of the City, its employees, agents, contractors, subcontractors, and consultants with respect to the design, construction, or use of the Park. This indemnification does not extend to claims of willful misconduct or negligence brought by any third party against the Developer or Loevlie which is attributable to any act or omission of the Developer or Loevlie.

3.3 **Insurance.** Developer and its contractors performing the Gondola Construction shall at all times hereunder have and maintain in full force and effect comprehensive liability insurance, providing general liability, and comprehensive automobile liability insurance. Developer and contractors shall at all times fully comply with the Colorado Workmen's Compensation Act, and shall ensure that each of its contractors and subcontractors are in full compliance with the Act. Nothing herein shall be construed to relieve or discharge Developer of its liability to the City under the terms of this Agreement should Developer for any reason fail to procure and maintain any required insurance in sufficient amounts. The City agrees to maintain commercially reasonable insurance for its work in constructing improvements to the Properties. The Parties agree to work together to obtain appropriate insurance to address public use of the Properties upon completion of the same.

3.4 **Recreational Liability Act.** To the extent applicable to any portion or all of this Agreement, Developer and Loevlie are entitled to the benefits, protections, and limitations on liability available under the Colorado Recreational Liability Act, C.R.S. Section 33-41-101, *et. Seq.*

4. OWNERSHIP OF IMPROVEMENTS

All Gondola Construction completed shall be and remain the sole and exclusive property of the Developer.

5. ENFORCEMENT AND REMEDIES

5.1 **Breach of Agreement.** In the event any Party should fail to comply with any of the terms, conditions, covenants, and undertakings hereof, such non-compliance shall be cured and brought into compliance within 30 days of written notice of breach by the other Party. Such notice will specify the conditions of default. If such default is not of a type that can be cured within such 30-day period and the defaulting Party gives written notice to the non-defaulting Party within such 30-day period that it is actively and diligently pursuing such cure, the defaulting Party will have a

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reasonable period of time given the nature of the default following the end of such 30-day period to cure such default, provided that such defaulting Party is at all times within such additional time period actively and diligently pursuing such cure. For any default that is not cured as described above, the non-defaulting Party may pursue any other remedy at law or in equity which may be appropriate under the City Regulations, the applicable laws and legal standards of the State of Colorado or the United States before any court of competent jurisdiction. Such remedies shall be cumulative.

5.2 Legal Expenses. In the event it is necessary to initiate legal proceedings to enforce the provisions of this Agreement, the non-prevailing Party shall be responsible for all reasonable legal expenses and costs incurred by the prevailing Party.

5.3 Venue. Venue for any legal proceedings shall be in the County of Clear Creek, State of Colorado.

6. MISCELLANEOUS PROVISIONS

6.1 Recordation. This Agreement shall be recorded with the Clear Creek County Clerk and Recorder.

6.2 No Waiver. Nothing herein shall constitute or be interpreted as a waiver or repeal of existing codes or ordinance or the City's legislative, governmental or police powers, nor shall this Agreement prohibit the enactment by the City of any fees or any other ordinances which are of uniform or general application

6.3 Third Party Beneficiaries. This Agreement will not be construed as or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties will have any right of action hereunder for any cause whatsoever

6.4 Successors and Assigns. This Agreement will be binding upon each Party, its successors and assigns, and will be deemed a covenant running with the Properties. The Developer shall be permitted to (i) convey the entire Argo Property at its discretion and assign this Agreement to such successor developer/owner, and (ii) to assign this Agreement to an affiliate or other entity substantially controlled by Developer at its sole discretion. Following any such assignment of this Agreement and delivery to the City of written evidence of such assignment and an express assumption of the obligations and liabilities by the assignee, Developer will be relieved from any obligations and liabilities so assumed by such assignee, and the City will accept performance by such assignee.

6.5 Notice. All notices, demands or other communications required or permitted to be given hereunder will be in writing and any and all such items will be deemed to have been duly delivered upon personal delivery; or as of the third business day after mailing by United States mail, certified, return receipt requested, postage prepaid, addressed as follows; or as of the immediately following business day after deposit with Federal Express or a similar overnight courier service that provides evidence of receipt, addressed as follows:

Developer:

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Argo Holdings, LLC
P.O. Box 1201
Idaho Springs, CO 80452
c/o Mary Jane Loevlie
copy to: Robert T. Bowland; Janice A. Bowland; Kristian Loevlie

City:
City of Idaho Springs, Colorado
c/o City Administrator
1711 Miner Street
P.O. Box 907
Idaho Springs, CO 80452

With a copy to:
Carmen Beery
Murray Dahl Beery & Renaud, LLP
710 Kipling St., Suite 300
Lakewood, CO 80215

Loevlie:
c/o Mary Jane Loevlie
P.O. Box 218
Idaho Springs, CO 80452

A Party may change the address to which notice is to be sent by providing notice set forth in this section.

6.6 Section Headings. The section of headings are inserted herein only for convenience or reference, and in no way shall be defined to limit or describe the scope or intent of any of the provisions in this Agreement.

6.7 Severability. If any part, term, or provision of this Agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term, or provision, and the rights of the Parties will be construed as if the part, term, or provision was never part of this Agreement.

6.8 Applicable Law. This Agreement will be governed by and construed in accordance with the laws of the State of Colorado, without reference to its conflict of laws provisions.

6.9 Modification. This Agreement may be amended or modified only by written instrument executed by the Parties.

6.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original instrument, but all of which together will constitute but one and the same instrument.

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6.11 Communication and Cooperation. The Parties agree to timely communicate and cooperate with one another throughout the duration of this Agreement.

[signature pages to follow]

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CITY OF IDADO SPRINGS, COLORADO,
a Colorado statutory municipality

BY: _____
Michael Hillman, Mayor

ATTEST:

APPROVED AS TO FORM:

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MARY JANE LOEVLIE

By: _____

STATE OF COLORADO)
) ss.
COUNTY OF)

Subscribed before me this _____ day of _____, 2020, by Mary Jane Loevlie, an individual.

Notary Public

My commission expires: _____

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DEVELOPER
ARGO HOLDINGS, LLC
a Colorado limited liability company

By: _____
Name: Mary Jane Loevlie
Its: Manager

STATE OF COLORADO)
) ss.
COUNTY OF _____)

Subscribed before me this _____ day of _____, 2020, Mary Jane Loevlie as
Manager of Argo Holdings, LLC, a Colorado limited liability company.

Notary Public

My commission expires: _____

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EXHIBIT A
ESTIMATED BUDGET

[to be attached]

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CITY OF IDAHO SPRINGS
Clear Creek County, Colorado

Ordinance No. _____, Series 2020

AN ORDINANCE AMENDING CHAPTER 16 OF THE IDAHO SPRINGS MUNICIPAL CODE, CONCERNING NUISANCES, TO ADDRESS THE ATTRACTION OF WILDLIFE BY GARBAGE AND RUBBISH

WHEREAS, pursuant to C.R.S. § 31-15-401 and its general police powers, the City of Idaho Springs, Colorado ("City"), acting by and through its City Council ("Council"), possesses the authority to enact ordinances for the preservation of the public health, safety, and welfare, including the elimination of nuisances; and

WHEREAS, the Council has received evidence that the condition of trash and rubbish containers and disposal methods within the City have been attracting wildlife to the City, in particular bears, sometimes resulting in dangerous and undesirable encounters between wildlife and people; and

WHEREAS, the Council has previously adopted Chapter 16 of the Idaho Springs Municipal Code ("Code") concerning nuisances; and

WHEREAS, the Council wishes to amend that Chapter to address the issues created by the attraction of wildlife to unsecured garbage and rubbish.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF IDAHO SPRINGS, COLORADO, AS FOLLOWS:

Section 1. Section 16-5 of the Idaho Springs Municipal Code, concerning definitions related to the regulation of nuisances, is hereby amended by the addition of the following new definitions, to be inserted in alphabetical order:

Dumpster. A movable waste container designed to be brought and taken away by a special collection vehicle, or to a bin, usually metal, that a specially designed garbage truck lifts, empties into its hopper, and lowers, on the spot.

Person. Any individual, resident, or occupant of a Premises. The term *Person* includes a firm, corporation, or organization under circumstances where a group of individuals, residents, or occupants appoints or has appointed such firm, corporation, or organization to assume the responsibility for collecting or accumulating for that group's Premises all waste, garbage, and rubbish for pick-up by a commercial waste hauler for delivery to a City-authorized depository or landfill. The term *Person* shall not include any commercial waste haulers.

Premises. Any real property, whether vacant or not, located within the City limits of the City of Idaho Springs that is owned, occupied, leased or used for residential or commercial purposes.

Wildlife. Any undomesticated and unrestrained animal, including but not limited to elk, deer, sheep, lynx, bears, skunks, squirrels, raccoons, magpies, crows, coyotes, bobcats, foxes, mountain lions, or unrestrained livestock.

Wildlife Disturbance. An incident in which an animal herein defined as *Wildlife* upsets, knocks over, enters or otherwise disturbs a waste, rubbish or garbage container such that any of the container's contents is removed or falls out of the container and becomes scattered in the immediate vicinity of the container.

Wildlife-Resistant Dumpster Enclosure (WRDE). A fully enclosed structure consisting of either four sides and a roof or cover, or four sides of sufficient height, design and construction to prevent access by wildlife. *WRDEs* must meet the standards of testing by the Living with Wildlife Foundation. The door or cover must have a latching mechanism sufficient to prevent entry by wildlife

Wildlife-Resistant Refuse Container (WRRC). A fully enclosed container, including a tight-fitting lid designed for that specific container, which may be constructed of pliable materials but must be reinforced, or contain a locking mechanism, to deter access by wildlife.

Section 2. Article III of Chapter 16 of the Idaho Springs Municipal Code, concerning specified nuisances, is hereby amended by the addition of a new Section 16-46, to read in its entirety as follows:

Sec. 16-46. Waste, Garbage, Rubbish and Wildlife; Specific Abatement Process and Administrative Penalties.

(A) No person shall:

(1) Store waste, garbage, or rubbish except in rigid containers, in such a manner so as to preclude their contents from overflowing or being scattered by animals, wind, or other elements and so that the containers remain closed except when being filled or when opened in order to allow for collection.

(2) Fail to remove and properly dispose of any spillage or scattered waste, garbage or rubbish resulting from its dispersal by animals, wind, or other elements.

(3) Fail to keep the person's premises or property free of waste, garbage or rubbish. For purposes of this section, the term "property" includes adjacent private property or public rights-of-way if the rubbish, garbage or solid waste has been scattered to such locations from a waste container on the person's property.

(4) Permanently store a waste container in the public rights-of-way without approval of the City Administrator or his designee.

(5) Place an unsecured waste container outside for collection before 5 a.m. on the day scheduled for such collection, unless such container is a WRRC in which case it may be placed outside for collection on the preceding day.

(6) If storing waste, garbage, or rubbish in a dumpster, fail to secure the dumpster in a WRDE or, if not enclosed, fail to use a bear-resistant locking dumpster.

(B) Abatement Process; Administrative Penalties.

(1) Whenever the City Administrator or his designee shall be informed or otherwise determines that any premises or property within the City is covered or partially covered with rubbish, garbage, trash or solid waste or reflects the scattering thereof on such premises or property, he shall cause an investigation to be made into the spilling or scattering of refuse and shall make findings with reference to such investigation. If, as a result of such investigation, the City Administrator finds, based on competent evidence, that the condition of the premises or property violates the provisions of this Section, the owner or occupant of the premises or property, if the premises/property is not occupied by the owner, shall be issued a notice to abate the violation and will subject the owner or occupant to the following procedures and penalties:

(a) First Violation. The first violation of this Section shall result in the issuance of a notice to abate as a courtesy. In addition, the owner or occupant shall be required to comply with the requirement that future waste, garbage, or rubbish at the offending address must be secured and stored in a WRRC, or stored in an enclosed area sufficient to prevent wildlife from accessing the waste, garbage, or rubbish.

Failure to correct the initial violation within a reasonable time, not to exceed 48 hours, constitutes a continuing violation and shall be grounds for the issuance of a subsequent citation for a violation of this Section. The owner or occupant of the premises/property shall be deemed to have been issued an appropriate notice of violation if such notice or citation is personally served upon the owner and/or occupant, or placed in the U.S. Mail, postage prepaid and addressed to the occupant at property address and to the property owner, if the property owner is not the occupant, at the last known address given to any City of Idaho Springs or Clear Creek County government department.

(b) Subsequent Violations. Persons who continue to violate this Section or fail to achieve timely compliance as set forth in any previous notice of abatement or violation shall, upon a subsequent finding pursuant to the afore-described process, be subject to a graduated fine schedule as set forth below.

i. A second violation of this Section shall result in the imposition of a fine of \$50.00.

ii. A third or subsequent violation of this Section shall result in the imposition of a fine of \$250.00 for each such violation.

Section 3. Any and all Ordinances or Codes or parts thereof in conflict or inconsistent herewith are, to the extent of such conflict or inconsistency, hereby repealed; provided, however, that the repeal of any such Ordinance or Code or part thereof shall not revive

any other section or part of any Ordinance or Code provision heretofore repealed or superseded.

Section 4. Should any one or more sections or provisions of this Ordinance or of Code provisions enacted hereby be judicially determined invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining provisions of this Ordinance or of such Code provisions, the intention being that the various sections and provisions are severable.

INTRODUCED, READ AND ORDERED PUBLISHED at a Regular Meeting of the City Council of the City of Idaho Springs, Colorado, held on the ____ day of _____, 2020.

Michael Hillman, Mayor

ATTESTED AND CERTIFIED:

Diane Breece, City Clerk

PASSED, ADOPTED AND APPROVED at a Regular Meeting of the City Council of the City of Idaho Springs, Colorado, held on the ____ day of _____, 2020.

Michael Hillman, Mayor

ATTESTED AND CERTIFIED:

Diane Breece, City Clerk