

**TOWN OF LOCHBUIE, COLORADO
COUNTIES OF WELD AND ADAMS, COLORADO**

ORDINANCE NO. 2023-683

AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF LOCHBUIE, COLORADO, AMENDING THE LOCHBUIE MUNICIPAL CODE BY THE ADDITION OF A NEW ARTICLE 5 OF CHAPTER 11 ENTITLED “STREET ACCESS CODE” TO ESTABLISH A PROGRAM FOR STREET ACCESS AND IMPOSE FEES FOR PROCESSING STREET ACCESS PERMIT APPLICATIONS, MAKING IT UNLAWFUL TO ACCESS TOWN STREETS EXCEPT AT A PERMITTED OR TOWN APPROVED STREET ACCESS POINT, AND SETTING PENALTIES FOR A VIOLATION THEREOF

WHEREAS, the Town of Lochbuie, Colorado is a municipality authorized generally pursuant to C.R.S § 31-15-702 and § 43-2-147(1) to regulate vehicular access to and from public streets located within the Town of Lochbuie; and

WHEREAS, the Board of Trustees of the Town of Lochbuie hereby determines that it is necessary for the public health, safety and welfare of the Town and its citizens to maintain smooth traffic flow and drainage on public streets and highways within the Town and to protect the functional level of those highways so that access thereto from any adjacent lands and by other persons is restricted to the circumstances and by the standards set forth in this Ordinance; and

WHEREAS, the management of public streets and the evaluation and approval of access to a public street or highway within the Town is an administrative decision to be rendered by the Town in consideration of the health, safety, and welfare of the public; and

WHEREAS, the Town Board of Trustees desires to ensure that accesses that are not legally authorized are not opened or used which impedes control of the streets and safe flow of traffic within the Town.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF LOCHBUIE, WELD AND ADAMS COUNTIES, COLORADO, AS FOLLOWS:

Section 1. Adoption of Street Access Code. A new Article 5 of Chapter 11 of the Municipal Code for the Town of Lochbuie is hereby adopted to read in full as follows:

CHAPTER 11

Article V

Street Access Code

Section 11-5-10. - Short Title

This Article shall be known as the Town of Lochbuie Street Access Code.

Section 11-5-20. - General Purpose

This Street Access Code is necessary to protect the public health, safety and welfare by maintaining the smooth flow of traffic and drainage on Town-owned and maintained streets and highways within the Town of Lochbuie, and to protect the functional level of those streets and highways.

Section 11-5-30. - Authority

Pursuant to Article XX of the Colorado Constitution and Sections 31-15-702 and 43-2-147(1), C.R.S., as amended, the Town is authorized to regulate vehicular access to or from any public street or highway under its jurisdiction from or to property adjoining any public street or highway in order to protect the public health, safety, and welfare, to maintain smooth traffic flow, to maintain highway right-of-way drainage, and to protect the functional level of public highways.

Section 11-5-40. - Definitions

Applicant shall mean a person who has applied for or will apply for an access permit in accordance with this Article. Customarily, the applicant shall be the land owner of record of the property to be served by the proposed access, a contract purchaser of the owner of record, or a representative of the owner with authority to bind the land owner of record.

Town street shall mean any road, street, highway, or right-of-way, regardless of name, under the ownership, jurisdiction, or control of the Town of Lochbuie.

Permittee shall mean an applicant who has received approval or issuance of an access permit.

Person shall mean an individual, corporation, governmental or quasi-governmental agency, or any legally recognized organization.

Street shall mean any road, street, highway, or public right-of-way, regardless of name.

Town Administrator shall mean the appointed Town Administrator or his or her designee.

Section 11-5-50. - Applicability and Exemptions

- A. This Street Access Code shall apply to all owners, lessees, tenants, or other users of property proposing access to a Town street as defined below including, but not limited to, the state of Colorado and its departments and agencies, political subdivisions of the state of Colorado, counties, municipalities, special districts, school districts, airport authorities, county library districts, county park or recreation districts, governmental and quasi-governmental authorities and agencies, and public utilities. This Street Access Code shall apply notwithstanding any exemption or exception from local land use approvals or requirements as may be otherwise recognized by state law, including but not limited to any provision of Article 23 of Title 31, C.R.S. and specifically including Section 31-23-209

Unless otherwise exempted pursuant to this section, an access permit is required for any access to a Town street. Access to a Town street shall mean and include:

- (1) Any new access to a Town street;
- (2) Any relocated access to a Town street;
- (3) Any modification of an existing access to a Town street in size or shape;
- (4) Any modification of access to accept different or additional turning movements to a Town street;
- (5) Any change in the frequency or intensity of use of an existing access to a Town street by vehicular traffic as the result of new development, redevelopment, or change in use of property adjacent to the Town street;
- (6) Any change in the intensity of use of an existing access to a Town street as the result of a change in the form, mode, or types of vehicles predominately accessing the site (e.g., conversion of property from retail business use with passenger vehicles as the predominate type of vehicle accessing the site to a warehouse and distribution use with trucks as the predominate type of vehicle accessing the site);
- (7) Any change in the intensity of use of an existing access to a Town street of property adjacent to a Town street resulting from temporary or seasonal uses such as but not limited to Christmas tree vendors, fireworks stands, and food markets; or

- (8) With regard to a street for which the Town owns or controls less than the entire width or less than all travel lanes, any change or modification of access within the vicinity that will result in new, different, or additional turning movements onto the Town owned or controlled street segment.

- B. This Street Access Code shall not apply when access to a Town street is proposed in connection with a land development application over which the Town has final approval authority, including but not limited to applications for annexations, rezonings, development plan, and subdivision plats.

- C. This Street Access Code shall not apply to access to a Town street from property owned or leased by the Town of Lochbuie and used for a public municipal purpose.

- D. This Street Access Code shall not apply to access to a Town street from property owned or leased by a person obligated to provide public municipal services to the Town pursuant to a contract with a term or duration of more than one (1) year.

- E. Notwithstanding the foregoing, the applicability of this Street Access Code shall be subject to any specific rights granted to any landowner under any right-of-way or other agreement between such landowner and the Town.

Section 11-5-60. - Permit Required Prior to Access; Unlawful Access; Penalties

- A. It shall be unlawful and a violation of this Article for any person to open, create, establish, continue, construct, use, including drive upon, or otherwise permit or provide access to a Town street unless a permit is first obtained from the Town if required by this Article or the access has been previously approved through the Town's land use approval process.

- B. It shall be unlawful and a violation of this Article for any person to violate any term or condition of an approved access permit issued in accordance with this Article.

- C. Any person who violates the provisions of this Article or the terms or conditions of an access permit shall, upon conviction or plea of no contest, be subject to a fine of not less than five hundred (\$500.00) dollars for each violation thereof. Each day of violation shall constitute a separate offense.

Section 11-5-70. - Applications and Application Requirements

The Town Administrator, in cooperation with the Public Works Director, shall administratively promulgate applications and forms for administration of this Article deemed reasonably necessary by the Town Administrator to evaluate a request for access to a Town street. Such application forms may require, but need not be limited to, submission by an applicant of designs, plans, drawings, cross sections, studies, models, cost estimates, project schedules, and specifications prepared by a registered Colorado professional engineer or other professional acceptable to the Town. The Town Administrator may provide for waivers from submission of application requirements when determined by the Administrator that the requirement will not substantially aid in the review and evaluation of an access permit application.

Section 11-5-80. - Application for access to a Town street -- administrative process

Each application for an access permit submitted in accordance with this Article shall be processed administratively in the following manner:

- (1) Pre-Application Meeting. An Applicant seeking access to a Town street and subject to this Article shall first contact, schedule, and attend a pre-application meeting with representatives of the Public Works Department for a preliminary determination of application requirements. The pre-application meeting will determine the necessary documentation to accompany the access application.
- (2) Application Submission. Within one hundred eighty (180) days following the pre-application meeting, an applicant shall submit to the Town a completed access application in the form required by the Town Administrator pursuant to Section 11-5-70. Such submittal shall include all documentation determined as required at the pre-application meeting. Incomplete applications shall not be processed.
- (3) Application Fee. An applicant shall provide at the time of submission of an access application a non-refundable processing fee of at least five hundred (\$500.00) dollars to cover the direct and indirect costs and expenses associated with the Town's review and processing of the application. The Town Administrator may administratively increase such fee annually to ensure recovery of direct and indirect costs and expenses of the Town. For access permit applications seeking access of more than a temporary nature, the Town may require the Applicant to enter into an agreement to compensate the Town for any third party professional review costs associated with processing and approving the application.

- (4) Administrative Decision. Within thirty (30) days of receipt of a completed access application, the Town Administrator shall render a decision in writing to:
 - a. Require additional information from the applicant necessary to fully evaluate the need for and impacts of the requested access;
 - b. Deny the application for failure to meet the criteria for approval of the access permit provided by Section 11-5-90; or
 - c. Administratively issue an access permit upon a finding that the application and requested access complies with the criteria for approval of the access permit and subject to any conditions of approval as provided by Section 11-5-90.
- (5) Extension of Review and Decision. The Town Administrator may extend the processing time for an access permit application for not more than an additional thirty (30) days in order to refer the access application to other governmental or quasi-governmental agencies, authorities, special districts, school districts, fire protection districts, homeowner associations, or others for review and comment. The absence of any timely response by a referral entity shall not preclude the Town Administrator, in his or her discretion, from later seeking or considering such comment during the review process.

Section 11-5-90. - Criteria for Access Permit Issuance

The Town Administrator may issue a permit for access to a Town street following administrative evaluation of an access application where the Town Administrator finds that:

- (1) The access application is complete;
- (2) All fees for processing have been paid in full;
- (3) The requested access will meet all land use, design, and construction standards of the Town of Lochbuie;
- (4) The design of the requested access will result in minimum impact to the Town street system; there shall exist a presumption that a right-in/right-out access will result in minimum impact and is sufficient unless an alternative design for access will clearly and substantially benefit the existing and anticipated traffic patterns and use of the Town street system; and
- (5) One or more of the following criteria are satisfied:

- a. The requested access presents the only physically possible legal access to the site and there exists no other alternatives for access. The cost of obtaining and constructing an alternative access shall not be a factor in determining whether alternative access is physically possible.
 - b. The requested access presents the most rational and logical access given the public health, safety, and welfare; provided, however, neither the relative cost of obtaining and constructing an alternative access nor relative inconvenience resulting from a less visible or more circuitous route shall be a determinative factor.
 - c. If the site is currently accessible from an existing point of access, the requested access will in the opinion of the Town: (i) substantially improve the existing level of service upon streets within the vicinity of the property to be served by the proposed access; (ii) substantially improve traffic flows, turning movements, and public safety currently experienced upon Town streets within the vicinity of the property to be served by the proposed access; or (iii) result in direct and substantial benefits to the Town such as but not limited to delivery of necessary or desired new or upgraded transportation system improvements, new or improved signalization, or extension of roadways to other properties located within the Town of Lochbuie.
 - d. The existing or proposed land uses of the property to be served by the requested access will provide a direct and substantial benefit to the citizens of the Town of Lochbuie.
 - e. The Town requested that the property owner annex into the Town of Lochbuie and the property owner has unconditionally committed by submission of a complete, sufficient, and irrevocable petition for annexation of the property to be served by the requested access.
- (6) The Town Administrator may require as a condition of issuance of an access permit any one or more of the following:
- a. Execution of a development agreement or other documentation to ensure that the circumstances, assumptions, and representations of the applicant upon which permit issuance is based are satisfied and maintained. The Town Administrator is authorized to execute on behalf of the Town any development agreement or other documentation implementing conditions of permit issuance;

- b. Posting of a letter of credit or other surety acceptable to the Town to guarantee performance of representations or obligations associated with the approval of the permit such as but not limited to installation of public improvements;
- c. Payment of fees or charges to defray impacts resulting from the permitted access to the Town streets and street system;
- d. Upgrading or improvement of Town streets and street system impacted by the proposed access;
- e. Limitations on the type and intensity of the use of the property to be served by the access in order to minimize impacts resulting from the access; and/or
- f. Submission of an irrevocable annexation petition by the record owner of the property served by the permitted access to the Town street.

Section 11-5-100. - Access Permit -- Effectiveness

An access permit issued by the Town Administrator shall be effective upon conformance of all conditions of approval stated in such permit and when signed by both the Town Administrator and the applicant.

Section 11-5-110. - Access Permit -- Expiration

An access permit issued by the Town Administrator shall expire upon the first anniversary of the date of issuance unless the permit provides for an alternate expiration. The Town Administrator may administratively extend the expiration in writing for not more than two (2) additional one (1) year periods upon written request of the permittee where the Administrator finds that: (a) the permittee was reasonably delayed in completing development associated with the approved access; and (b) vehicular traffic conditions and development of properties within the vicinity have not appreciably changed.

Section 11-5-120. - Access Permit -- Revocation

An access permit issued by the Town Administrator may be administratively revoked by the Town Administrator where the Administrator finds that:

- (1) The permittee failed to comply with any term or condition of the approved access permit, this Street Access Code, or the Town of Lochbuie Municipal Code.

- (2) The access authorized by the access permit fails to conform to the approved design.

Section 11-5-130. - Authority to Block Unapproved Access

In addition to any other action for enforcement of this Article, the Town Administrator is authorized to order and cause to be made the closing, through installation of barricades, signage, or otherwise, any access to a Town street for which a permit is required in accordance with this Article and for which a permit has not been issued, has expired, or has been revoked.

Section 11-5-140. - Appeal of Denial of Access Permit

- A. Appeal. Any applicant or permittee aggrieved by any decision of the Town Administrator made pursuant to this Article may request in writing an appeal to be considered by the Board of Trustees. An appeal shall be made in writing delivered to the Town Administrator with a copy to the Town Attorney within fifteen (15) calendar days from the date of mailing of the Administrator's decision addressed to the applicant as such address is shown on the application. Untimely appeals shall not be considered or processed. Where a deadline for appeal falls on a Saturday, Sunday, or Town-recognized holiday, the appeal deadline shall be the first business day after the deadline date.
- B. Appeal Documentation. An Applicant's request for appeal shall include the following information to be reviewed and considered by the Board of Trustees:
 - (1) A written letter of appeal containing specific reasons, grounds, and justification cited by the applicant to reverse or modify the Town Administrator's decision;
 - (2) A non-refundable appeal fee of not less than five hundred (\$500.00) dollars which fee may be administratively increased by the Town Administrator annually to ensure recovery of direct and indirect costs and expenses of the Town; and
 - (3) Any other written documentation deemed relevant to the applicant to support the applicant's appeal.
- C. Administrator to Promptly Act. Upon receipt of a written appeal, the Town Administrator shall promptly confer with the Mayor and schedule the matter on the next available agenda of the Board of Trustees considering all the business then pending or scheduled before the Board of Trustees. The Town Administrator shall submit to the Board of Trustees

the documentation supporting the Administrator's decision concerning the access application.

- D. **Board of Trustees Appeal Process.** The Board of Trustees shall meet and shall render a decision following a review of the applicant's appeal and the Town Administrator's decision and supporting documentation. The Board of Trustees shall endeavor to meet and decide an appeal within thirty (30) calendar days following the timely submission of the request for appeal considering all the business then pending or scheduled before the Board of Trustees. The considering all the business then pending or scheduled before the Board of Trustees may request the participation of the Town Attorney to assist in preparation of the considering all the business then pending or scheduled before the Board of Trustees' written opinion.
- E. **Board of Trustees Decision.** The Board of Trustees shall consider the appeal to determine if the Town Administrator's decision concerning the application was reasonable based on the information made available to the Board of Trustees. For purposes of this section, "reasonable" shall mean supported or justified by reason or rationale. The Board of Trustees shall issue a written opinion following review which opinion shall either: (1) remand the application to the Town Administrator for further consideration and the re-issuance of the Administrator's decision in accordance with the Board of Trustees' opinion or instruction; or (2) affirm the Town Administrator's decision as reasonable. The Board of Trustees shall not be authorized to direct or order the repayment or reimbursement by the Town of any fees, charges, or expenses paid or incurred by an applicant. The decision of the Board of Trustees shall be final.

Section 2. Severability. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the intent being that the same are severable.

Section 3. Safety Clause. The Board of Trustees hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Lochbuie, 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 Board of Trustees further determines that the Ordinance bears a rational relationship to the proper legislative object sought to be obtained.

Section 4. Repealer. All ordinances or resolutions, or parts thereof, in conflict with this Ordinance are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such ordinance nor revive any ordinance thereby.

Section 5. Effective Date. This Ordinance shall take effect thirty days after publication by title hereof is published.

ADOPTED by a vote of the Board of Trustees with 5 in favor, 0 against and 0 abstaining, AND ORDERED PUBLISHED by title only, this 18 day of July, 2023.

TOWN OF LOCHBUIE, COLORADO

Jamie Jeffery
Jamie Jeffery, Mayor Pro Tem

I hereby certify that the above Ordinance was adopted by the Board of Trustees of the Town of Lochbuie at its meeting of July 18, 2023, and ordered published by title only one time by *The Brighton Blade* newspaper on July 27, 2023.

[SEAL]

Heather Bowen
Heather Bowen, Town Clerk

