

CHAPTER 7

Health, Sanitation and Animals

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ARTICLE I

Administration and Abatement of Nuisances

Sec. 7-1-10. Definitions.

As used in this Chapter, the following terms shall have the meanings indicated:

Brush means voluntary growth of bushes and such as are growing out of place at the location where growing, and shall include all cuttings from trees and bushes; and also high and rank shrubby growth which may conceal filthy deposits.

Inoperable vehicle means any motor vehicle or trailer that is apparently inoperable due to being wrecked, damaged, dismantled or partially dismantled. Any of the following conditions shall raise the presumption that the motor vehicle or trailer is inoperable:

- a. Absence of a current license plate and any required validation sticker lawfully affixed thereto;
- b. Placement of the motor vehicle or trailer or parts thereof upon jacks, blocks, chains or other supports; or
- c. Absence of one (1) or more parts of the motor vehicle or trailer necessary for lawful operation thereof, including but not limited to the absence of one (1) or more wheels.

Litter means the scattering or dropping of rubbish, trash or other matter, organic or mineral.

Nuisance means anything which is injurious to health or morals, or indecent or offensive to the senses or an obstruction to the free use of property which would interfere with the comfortable enjoyment of life or property.

Refuse means and includes any grass clippings, leaves, hay, straw, manure, shavings, excelsior, paper, ashes, rubbish containers, boxes, glass, cans, bottles, garbage, waste and discarded building and construction materials, including but not limited to plaster, broken concrete, bricks, cinder blocks, stones, wood, roofing material, wire or metal binding, sacks or loose, discarded or unused material; all rubbish of any kind or nature whatsoever and any other materials commonly known as *rubbish* or *refuse* of any kind or character or by any means known.

Rubbish means any type of debris, trash, waste, refuse or rejected matter and material, whether animal, vegetable or mineral, manufactured or natural.

Trash means any worn out, broken up or used refuse, rubbish, toppings, twigs, leaves of trees or worthless matter or material.

Travel under its own power means a vehicle must be able to be started, stopped, driven forward and backward, and all tires inflated.

Weed means an unsightly, useless, troublesome or injurious growing herbaceous plant, and shall include all rank vegetable growth which emits unpleasant and noxious odors and also high and rank vegetable growth that may conceal filthy deposits. (Prior code 7-6-1, 7-7-1, 7-9-1; Ord. 526 §1, 2005)

Sec. 7-1-20. Common law nuisances.

Any nuisance which has been declared to be such by state courts or statutes or is known as such at common law shall constitute a nuisance in the Town, and any person causing or permitting any such nuisance shall be in violation of this Article. (Ord. 526 §1, 2005)

Sec. 7-1-30. Prohibition of nuisances.

No person being the owner, agent or occupant of, or having under his or her control, any building, lot, premises or unimproved real estate within the limits of the Town shall maintain or allow any nuisance to be or remain therein. (Ord. 526 §1, 2005)

Sec. 7-1-40. Ascertaining nuisances.

Whenever the pursuit of any trade or business or the manufacture or maintenance of any substance or condition of things shall, upon investigation, be considered by the Town Administrator to be dangerous to the health of any of the inhabitants of the Town, the same shall be considered a nuisance and shall be abated. (Ord. 526 §1, 2005)

Sec. 7-1-50. Constitution of separate offense.

In the case of any nuisance in or upon any street, alley or other public or private grounds, the author thereof shall be guilty of a separate offense for every period of twenty-four (24) hours' continuance thereof after notice has been given to abate the same. (Ord. 526 §1, 2005)

Sec. 7-1-60. Filing complaint.

In addition to or in lieu of any procedure for abatement, a direct complaint may be filed by any person or police officer against any person who violates any provision of this Chapter. (Ord. 526 §1, 2005)

Sec. 7-1-70. County Health Department powers.

The Tri-County Health Department has the full power to take all measures necessary to promote the health and cleanliness; to abate all nuisances of every description on public and private property; to prevent the introduction or spreading within the Town of malignant, contagious and infectious diseases, and to remove, detain, isolate or quarantine any person attacked by or having any such disease, or having been exposed thereto; and to promulgate such rules and regulations as may be necessary to perform its functions. The Tri-County Health Department shall have the authority to enforce such rules of the state Department of Public Health and Environment as are applicable to particular situations. (Prior code 7-6-2; Ord. 526 §1, 2005)

Sec. 7-1-80. Abatement of nuisance.

Any state of things prohibited by this Chapter shall be deemed a nuisance, and any person who shall hereafter make or cause such nuisance to exist shall be deemed the author thereof. However, the owner of any private ground or premises, and any person who shall have possession or control of any private ground or premises, whether he or she is the owner thereof or not, in or upon which any such nuisance shall exist or may be found, whether such nuisance has been theretofore or shall be thereafter created, shall be deemed guilty of a separate offense, as the author of a nuisance, for every period of twenty-four (24) hours' continuance of such nuisance after due notice has been given to abate the same. The written notice of twenty-four (24) hours may be given and served by the Chief of Police or other officers as he or she may designate. (Prior code 7-6-3; Ord. 526 §1, 2005)

Sec. 7-1-90. Declaration of nuisance by Board.

(a) In the event that any such nuisance within or upon any public or private premises or grounds is not abated forthwith after the notice herein provided shall be given, the Board of Trustees may declare the same to be a nuisance and order the Chief of Police to abate the same, which order shall be executed without delay; and the Chief of Police shall have the authority to call for necessary assistance therefor.

(b) Notwithstanding the foregoing, the Public Works Director shall have the authority to declare nuisances and order abatement of nuisances when the cost of abatement is less than five hundred dollars (\$500.00) and the abatement concerns weeds, junk, litter, trash, rubbish, garbage and refuse. In no event shall the Public Works Director authorize abatement of property where hazardous materials are present. (Prior code 7-6-4; Ord. 533 §1, 2006)

Sec. 7-1-100. Abatement without notice.

In case of any such nuisance in or upon any street, avenue, alley, sidewalk, highway or public grounds in the Town, the Chief of Police may abate the same forthwith, without such notice being given. (Prior code 7-6-5)

Sec. 7-1-110. Assistance to abate authorized.

Any officer who shall be duly authorized to abate any nuisance specified in this Article, shall have authority to engage the necessary assistance and incur the necessary expenses thereof. (Prior code 7-6-6)

Sec. 7-1-120. Right of entry.

The Town Administrator, Mayor, Chief of Police, Board of Trustees or any other authorized person who may be directed or deputized by the Board of Trustees may enter upon or into any lot, house or other building or premises, with the proper respect for the occupant's constitutional rights, to examine the same and to ascertain whether any such nuisance exists, and shall be free from any action of liability on account thereof. (Prior code 7-6-8; Ord. 526 §1, 2005)

Sec. 7-1-130. Notice to abate nuisance.

(a) The Town shall give written notice to the property owner and/or occupant of said property of any violation of this Chapter and shall give notice that said owner and/or occupant has fourteen (14) days to abate the nuisance and comply with the requirements of this Chapter.

(b) In case of the failure of any owner of such lots, tracts or parcels of land to abate the nuisance as set forth in this Chapter within the time and in the manner prescribed herein, the Town Administrator or the Board of Trustees may order the Director of Public Works to abate the nuisance. The Director of Public Works shall then proceed at once to have the work done accordingly. (Ord. 526 §1, 2005)

Sec. 7-1-140. Recovery of expenses.

The expense incurred by the Town in abating any nuisance may be recovered from the author thereof as set forth in this Chapter. (Prior code 7-6-7; Ord. 526 §1, 2005)

Sec. 7-1-150. Report of costs.

Upon the completion of any work by the Town contemplated by this Chapter, the Director of Public Works shall report, in writing, to the Board of Trustees, a clear statement of the work done by the Town and the expense incurred in so doing, so that the Town Administrator or the Board of Trustees may determine the cost of such work. The Director of Public Works shall make a separate report for each lot or parcel of land. (Ord. 526 §1, 2005)

Sec. 7-1-160. Assessment of property.

After considering the report of the Director of Public Works, the Board of Trustees shall determine and assess the whole cost for the abatement thereof, including five percent (5%), or twenty percent (20%) in the case of noxious plant abatement, for the inspection and other incidental costs in connection therewith, upon the lots and tracts of land from which the nuisance was abated. (Ord. 526 §1, 2005)

Sec. 7-1-170. Notice of assessment.

The Town Clerk, as soon as may be after such assessment is made, shall send by certified mail, return receipt requested, addressed to the owner of such lots or tracts of land at the reputed post office address, a notice of such assessment, which notice shall contain a description of the lots or parcels of land, the name of the owner and the amount of the assessment. (Ord. 526 §1, 2005)

Sec. 7-1-180. Payment of assessment.

(a) It shall be the duty of the owner to pay such assessment or object thereto, in writing, within thirty (30) days after the receipt of such notice, and in case of his or her failure to do so, he or she shall be liable personally for the amount of the assessment. The same shall be a lien upon the respective lot or parcel of land from the time of such assessment, and the Town shall have all remedies for collection thereof provided by state statutes, for the purpose of having the same placed upon the tax list and collected in the same manner as taxes are now collected. The assessment shall be a lien against each

lot or tract of land until it is paid and shall have priority over all other liens except general taxes and prior special assessments.

(b) The amount of such assessment may be paid to the Town Clerk at any time before the tax list is placed in the hands of the County Treasurer, but thereafter only to the County Treasurer. (Ord. 526 §1, 2005)

Sec. 7-1-190. Objection to assessment; hearing.

In the event any owner desires to object to said assessment, he or she shall, within thirty (30) days after the receipt of said notice, file a written objection thereto with the Town Clerk, who shall thereupon designate a meeting of the Board of Trustees, held within twenty-one (21) days of receipt of such objection, as the date when said objector may appear and have a hearing before the Board of Trustees. (Ord. 526 §1, 2005)

Sec. 7-1-200. Certified assessment.

In case the owner shall fail to pay such assessment or object thereto within the required time as provided above, then it shall be the duty of the Town Clerk to certify the amount of the assessment to the proper county officers, who shall collect the assessment as provided for by state law for the collection of delinquent general taxes. (Ord. 526 §1, 2005)

Sec. 7-1-210. Cumulative remedies.

No remedy provided herein shall be exclusive, but the same shall be cumulative, and the taking of any action hereunder, including charge, conviction or violation of this Chapter in the Municipal Court, shall not preclude or prevent the taking of other action hereunder to abate or enjoin any nuisance found to exist. (Ord. 526 §1, 2005)

Sec. 7-1-220. Concurrent remedies.

Whenever a nuisance exists, no remedy provided for herein shall be exclusive of any other charge or action, and when applicable the abatement provisions of this Chapter shall serve as and constitute a concurrent remedy over and above any charge or conviction of any municipal offense or any other provision of law. Any application of this Chapter that is in the nature of a civil action shall not prevent the commencement or application of any other charges brought under this Code or any other provision of law. (Ord. 526 §1, 2005)

Sec. 7-1-230. Violations and penalties.

Any person who violates any of the provisions of this Chapter shall be subject to the provisions of Section 1-4-20 of this Code. (Ord. 526 §1, 2005)

ARTICLE II

Nuisances

Sec. 7-2-10. Accumulation to constitute nuisances.

Whenever there shall be in or upon any lot or piece of ground within the limits of the Town any damaged merchandise, litter, trash, rubbish, garbage, inoperable cars or other wrecked vehicles or an accumulation of junk vehicles or junk of any type upon any private or public property, except in areas specifically zoned in Chapter 16 of this Code for said purposes or otherwise designated by the Town for such purposes, the existence of any such material or items shall constitute a nuisance and shall be in violation of this Article. (Prior code 7-9-1; Ord. 526 §1, 2005)

Sec. 7-2-20. Posting handbills, posters and placards.

Any handbill, poster, placard or painted or printed matter which shall be stuck, posted or pasted upon any public or private house, store or other building or upon any fence, power pole, telephone pole or other structure without the permission of the owner, agent or occupant thereto shall be deemed a nuisance and may be abated as provided in this Chapter. (Prior code 7-9-3; Ord. 526 §1, 2005)

Sec. 7-2-30. Streets, streams and water supply.

(a) No person shall throw or deposit, or cause or permit to be thrown or deposited, any motor oil, automotive fuels or liquids, any offal composed of animal or vegetable substance or both, or any dead animal, excrement, garbage or other offensive matter upon any street, avenue, alley, sidewalk or public or private grounds.

(b) No person shall throw or deposit or cause or permit to be thrown or deposited in the Town anything specified in any foregoing part of this Section or any other substance that would tend to have a polluting effect into the water of any stream, ditch, pond, well, cistern, trough or other body of water, whether artificially or naturally created, or so near any such place as to be liable to pollute the water. (Ord. 526 §1, 2005)

Sec. 7-2-40. Stagnant ponds.

The permitting of stagnant water on any lot or piece of ground within the Town limits is hereby declared to be a nuisance, and every owner or occupant of a lot or piece of ground within the Town is hereby required to drain or fill up said lot or piece of ground whenever the same is necessary so as to prevent stagnant water or other nuisances from accumulating thereon. It is unlawful for any such owner or occupant to permit or maintain any such nuisance. (Ord. 526 §1, 2005)

Sec. 7-2-50. Sewer inlet.

No person shall, in the Town, deposit in or throw into any sewer (sanitary or storm), sewer inlet or privy vault that shall have a sewer connection any article that might cause such sewer, sewer inlet or privy vault to become nauseous to others or injurious to public health. (Ord. 526 §1, 2005)

Sec. 7-2-60. Erection or maintenance of privies.

No person shall erect or maintain or allow the erection or maintenance of an outdoor privy not connected with the public sanitary sewer system of the Town; provided, however, that privies which have chemical elimination systems used by construction personnel on job sites or by the public at events sponsored or approved by the Town are not prohibited under the provisions of this Section. (Prior code 7-9-2; Ord. 526 §1, 2005)

Sec. 7-2-70. Nauseous liquids.

No person shall discharge or permit to be discharged out of or from or permit to flow from any house or property any foul or nauseous liquid or substance of any kind into or upon any adjacent ground or lot or into any street, alley or public place. (Ord. 526 §1, 2005)

Sec. 7-2-80. Stale matter.

No person shall keep, collect or use, or cause to be kept, collected or used, in the Town any stale, putrid or stinking fat or grease or other stale matter, other than normal weekly trash accumulation. (Ord. 526 §1, 2005)

Sec. 7-2-90. Transporting garbage, manure.

Every cart or vehicle used to transport manure, garbage, swill or offal in any street in the Town shall be fitted with a substantial tight lid thereon so that no portion of such filth will be scattered or thrown into such street. (Ord. 526 §1, 2005)

Sec. 7-2-100. Dumping on property.

It is unlawful for any person to use any land, premises or property within the Town for the dumping or disposal of any garbage, trash, litter, rubbish, offal, filth, excrement, discarded building materials or combustible materials of any kind. (Ord. 526 §1, 2005)

Sec. 7-2-110. Dead animal removal.

When any animal dies in the Town, it shall be the duty of the owner or keeper thereof to remove the body of such animal forthwith beyond the limits of the Town. If such body is not forthwith removed, the same shall be deemed a nuisance, and such owner or keeper will be the author of the nuisance. When the body of any such dead animal is in any street, highway or public grounds in the Town, it shall be the duty of the Chief of Police to cause such body to be removed forthwith beyond the limits of the Town. (Ord. 526 §1, 2005)

Sec. 7-2-120. Noisemakers.

The use of music, noisemakers or loudspeakers on the streets of the Town for the sale or vending of products, advertising or other commercial purposes is hereby declared to be a nuisance and is prohibited by the terms of this Chapter. (Ord. 526 §1, 2005)

Sec. 7-2-130. Vacant residential dwellings.

All broken windows in a vacant dwelling shall be replaced by the owner or agent within seventy-two (72) hours after notice is given by the Chief of Police. (Ord. 526 §1, 2005)

Sec. 7-2-140. Unsanitary dangerous conditions in buildings.

It is hereby declared a nuisance to permit any building or structure or part thereof to be in an unsanitary, unsafe or dangerous condition, or to be in a condition which in any manner endangers or is detrimental to the health, property or safety of any person. (Prior code 7-9-4)

ARTICLE III

Refuse

Sec. 7-3-10. Accumulation prohibited.

No person shall deposit or place any refuse in such a manner that the same is or tends to become a nuisance or in such a manner as endangers or tends to endanger the public health. No person having the occupancy, control or management of any new premises shall cause or permit any refuse to be accumulated thereon in such a manner that the same is or tends to become a nuisance or in such a manner as endangers or tends to endanger the public health. No garbage or trash cans or bags shall be allowed in front yards, except on trash pickup day. (Prior code 7-7-2)

Sec. 7-3-20. Discarded refuse.

No refuse of any kind or nature whatsoever shall be thrown or swept into any street, sidewalk, gutter, sewer, intake, alley, vacant lot or other property. (Prior code 7-7-3)

Sec. 7-3-30. Responsibility of owners.

It shall be the duty of every person, whether owner, lessee or renter of a vacant lot, building or premises, including any place or business, hotel, restaurant, dwelling house, apartment, tenement or any other establishment, at all times to maintain the premises in a clean and orderly condition, permitting no deposit or accumulation of refuse or materials other than those ordinarily attendant upon the use for which such premises are legally intended. Any such accumulation shall constitute a nuisance and shall be conforming in the use of such premises. (Prior code 7-7-4)

Sec. 7-3-40. Removal from construction sites.

All plaster, broken concrete, bricks, cinder blocks, stones, wood, roofing material, wire or metal binding, sacks or loose discarded or unused material of any kind resulting from the wrecking, constructing or reconstructing of any room, basement, wall, fence, sidewalk or building shall be promptly removed or discarded in such a manner as not to be scattered about by the wind or otherwise, and as soon as possible be removed by the person responsible for such work. Such person shall be held liable for any scattering of such refuse upon adjacent property. (Prior code 7-7-5)

Sec. 7-3-50. Manure.

Other than a light spread of manure which may be applied on lawns or gardens for fertilizing purposes, manure shall not be kept on any property for any purpose or kept in any place for later use, but shall be either plowed under or removed by the owner, occupant or agent. (Prior code 7-7-6)

ARTICLE IV

Salvage and Junkyard Regulations

Sec. 7-4-10. Purpose.

The intent of this Article is to provide salvage yard and junkyard operations with minimum standards so as to be compatible with uses in the surrounding area; and to regulate the nature, character and circumstances of each salvage operation as it relates to the effect on the future development of the compatibility with the area, and the effect on the health, safety and welfare of the inhabitants of the Town. (Prior code 7-10-1)

Sec. 7-4-20. Definitions.

For the purpose of this Article, the following words and phrases shall have the meanings ascribed to them in this Section:

Hedge means at least one (1) row of trees, shrubs or vines of the height prescribed and planted as determined by the Board of Adjustment to be for the public health, safety and welfare. The following trees and shrubs are prohibited from being used as a hedge:

a. American elm (*Ulmus americana*), aspen (*Populus* species), boxelder (*Acer negundo*), cottonwood (*Populus* species), ginkgo (*Ginkgo biloba*), poplar (*Populus* species), willows (*Salix* species).

b. Any plant species which is recommended as a possible hazard as a result of insects or disease by the State Department of Agriculture.

Junk includes but is not limited to, scrap lumber, scrap metals and materials, discarded furniture, fixtures, appliances, motor vehicles, parts and tires and all wrecked, abandoned, demolished, dismantled, and inoperable motor vehicles, machinery, trailers and other goods that are so worn or deteriorated as to make them unusable in their existing condition.

Junk dealer means every person who buys, exchanges, collects, receives, stores or sells any article hereinabove defined as *junk*.

Junkyard means any outside area in the Town at which any person shall store or accumulate *junk* as defined herein.

Salvage means any personal property which is or may be stored or accumulated, salvaged for resale, reduction or similar disposition, or which is possessed, transported, owned, collected,

accumulated, dismantled or assorted for any of the aforesaid purposes. Without limiting the aforesaid definition of *salvage*, the term shall include used or salvaged iron, brass, lead, copper and other base metal of metals, and their compounds or combination, used or salvaged rope, lumber, appliances, brick, tile, plumbing fixtures, rags, glass, rubber and similar articles, and used motor vehicles or machinery used, owned or possessed for the purpose of wrecking or salvaging parts therefrom.

Salvage dealer means every person who buys, exchanges, collects, receives, stores or sells any article hereinabove defined as *salvage*.

Salvage yard means any outside area in the Town at which any person shall store or accumulate salvage as defined herein. (Prior code 7-10-1; Ord. 526 §1, 2005)

Sec. 7-4-30. Salvage and junkyard requirements.

(a) Salvage and storage premises to be enclosed.

(1) No permit shall be issued by the Board of Adjustment for any salvage yard or junkyard in the Town unless the premises on which such business or storage is carried is entirely enclosed by a solid fence at least six (6) feet in height. Such fence shall be a masonry wall, a wooden fence, a steel fence or concealing chain link as approved by the Board of Adjustment. Such fence shall be maintained in a neat, substantial, safe condition. All gates shall open inward and shall be kept closed when the premises are not open for business.

(2) Such wall, fence or the gates thereof shall not contain any advertising sign or poster other than that needed to identify the enclosed business.

(3) Salvage or junk operations, including storage, shall not encroach upon or use any area outside the enclosure.

(4) No screening shall be required in the following instances:

a. The common boundary between adjacent salvage yards and junkyards.

b. That portion of the boundary to be enclosed which is contiguous to a view-obscuring topographic feature rendering screening unnecessary.

c. That portion of the boundary to be enclosed which is contiguous to an industrial use of similar nature to a salvage yard or junkyard which is of such a view-obscuring arrangement, topographic or otherwise, as to render screening unnecessary.

Any dispute as to the need for enclosure in the foregoing instances shall be determined by the Board of Adjustment. The Board of Adjustment shall have the authority to grant a variance as part of the permit allowing an alternate method of enclosure in substitution for the wall or fence, provided that the alternative method of enclosure shall fulfill the intent to keep out children; to keep out persons attempting to enter salvage yards and junkyards illegally; to keep such areas free from rodents; and to effectively screen such yards from public view.

(b) Passageways between stored salvage and junk. Salvage and junk in an enclosed yard shall be so piled or placed that adequate passageways are open to permit the unobstructed passage of firefighting vehicles. Such passageways within the yard shall be approved in writing by the Fire Chief, Bennett Fire Protection District.

(c) Cleanliness. It shall be the duty of the person operating a salvage yard or junkyard to maintain the premises so used in a clean, sanitary, and neat condition, and in such a manner as to eliminate and exclude rodents. (Prior code 7-10-2; Ord. 526 §1, 2005)

Sec. 7-4-40. Permits and inspections.

(a) Permit required. It is unlawful for any person to maintain or operate a salvage yard or junkyard or engage in the business of salvage or junk collection without first having obtained a permit therefor. Applications for permits shall be made to the Board of Adjustment. In addition to such permit, the facility and property shall comply with all provisions of Chapter 16 of this Code.

(b) Inspections. It shall be the duty of the Director of Environment to inspect or cause to be inspected, at least once each year, all salvage yards and junkyards in the Town. Such inspections are for the purpose of determining that the salvage yards and junkyards are operated in conformity herewith and are kept in a clean, neat and sanitary condition. (Prior code 7-10-3; Ord. 526 §1, 2005)

ARTICLE V

Weeds and Brush

Sec. 7-5-10. Undesirable Plant Management Advisory Commission designated.

The Board of Trustees is appointed to act as the Undesirable Plant Management Advisory Commission for the Town and shall have the duties and responsibilities as provided by state statute. (Ord. 526 §1, 2005)

Editor's Note: Section 35-5.5-101, C.R.S., establishes the requirements for undesirable plant management in the State.

Sec. 7-5-20. Declaration of nuisance.

Any uncut weeds or brush found growing in any lot or tract of land in the Town are hereby declared to be a nuisance, and it is unlawful to permit any such weeds or brush to grow or remain in any such place. (Ord. 526 §1, 2005)

Sec. 7-5-30. Duty of property owner to cut.

It shall be the duty of each and every person owning, occupying or possessing any lots, tracts or parcels of land within the Town to cut to the ground all weeds and brush when said weeds and brush grow to a height of six (6) inches or more. (Prior code 7-8-1; Ord. 526 §1, 2005)

Sec. 7-5-40. Removal from Town.

All weeds and brush cut in accordance with Section 7-5-30 hereof shall, immediately upon being cut, be removed from the Town or otherwise entirely destroyed by the owner of the lot upon which the weeds and brush have been cut. (Ord. 526 §1, 2005)

ARTICLE VI

Trees

Sec. 7-6-10. Prohibited trees.

(a) It is unlawful to sell or import into the Town, or to plant or cause to be planted within the corporate limits of the Town, any female box elder tree (*Acer negundo*).

(b) The owner of any property within the Town, upon which any female box elder tree has been planted after the effective date of this Article, shall cut and remove such tree from his or her property after being given two (2) days' written notice to do so by the Town.

(c) In case of the failure of any owner of such property to cut and remove such box elder tree planted after the effective date of this Article, the Town shall cut and remove such box elder tree.

(d) It is unlawful and deemed a public nuisance to sell, import into the Town or plant or cause to be planted any female cottonwood trees (*Populus spices*), Siberian elm (*Ulmus pumila*) or other undesirable plants as designated by ordinance upon any property within the Town, and the planting or setting out of these certain plants is declared to be a menace to public health, safety and welfare. (Ord. 526 §1, 2005)

Sec. 7-6-20. Trees and limbs in public right-of-way.

It shall be the duty, jointly or severally, of the owner and the occupant of any property adjacent to the public right-of-way to remove any trees or limbs located in or above the public right-of-way when such trees or limbs constitute a danger to public safety. Such trees and limbs shall constitute a nuisance. For the purposes of this Section, a *danger to public safety* shall include all trees and limbs which hinder visibility or which may otherwise affect public health, safety and welfare, and trees and limbs which present a structural defect which may cause the tree or limb to fall on a person or on property of value. (Ord. 526 §1, 2005)

Sec. 7-6-30. Control of trees and shrubs.

(a) Trees, shrubs and other vegetation which are dead, broken, diseased or infested by insects so as to endanger the well-being of other trees, shrubs or vegetation or constitute a potential threat or hazard to people or property within the Town are hereby declared a nuisance.

(b) The Town shall give written notice to the owner or occupant of any property abutting Town rights-of-way or other public property of any condition deemed unsafe caused by trees and other vegetation overhanging or projecting from such abutting property and onto or over such right-of-way

or other public property with such unsafe condition. The Town shall correct any such unsafe condition immediately upon the expiration of the notice period specified in the notice of abatement. The rights and remedies of the Town as provided in this Subsection shall be cumulative with the provisions of Section 7-6-20.

(c) It is unlawful and deemed a nuisance for any person to cut, trim, spray, remove, treat or plant any tree, vine, shrub, hedge or other woody plant upon access-controlled arterials or other public parks and greenbelts within the Town, unless authorized or directed by the Town.

(d) It is unlawful and deemed a nuisance for any person to injure, damage or destroy any tree, shrub, vine, hedge or other vegetation in or upon public rights-of-way or other public property within the Town, except any person who notifies the Town of such injury, damage or destruction and makes arrangements to repair or replace such vegetation or pay for the cost of such repair or replacement. (Ord. 526 §1, 2005)

ARTICLE VII

Animal Control

Sec. 7-7-10. Definitions.

As used in this Article, the following terms shall have the meanings indicated:

Aggressive animal means any animal that, without provocation, threatens a person or another domestic animal by encroaching onto public property or property of another (or wherever) in an apparent attitude of attack, or in terrorizing manner, whether or not the attack is completed or able to be completed.

Animal Control Center means the Adams County Shelter and Adoption Center.

Animal Control Officer means any employee of the Town, including the Code Enforcement Officer, any employee of the Adams County Animal Shelter and Adoption Center or any member of the County Sheriff's Office whose job duties include the enforcement of the terms of this Article.

Animals means every non-human species of the animal kingdom, both domestic and nondomestic.

Cat means any animal of the species *Felis domesticus*.

Certified K-9 dog means a currently registered and certified canine police dog that is either in training or on active duty status with a law enforcement agency within the State.

Dog means any animal of the species *Canis familiaris*.

Domestic animal means any dog, cat, pot-belly pig, rabbit, hare, guinea pig, hamster, mouse, rat, ferret, bird, fish, reptile, amphibian or other small species of animal kept as a pet.

Guard dog means any dog trained or used to protect persons or property by attacking or threatening to attack any person found within the area patrolled by the dog that is either securely enclosed within the area at all times or under the continuous control of a trained handler.

Livestock means any chickens, duck, geese or other domestic fowl, hogs, pigs (except pot-belly pigs), swine, sheep, goats, cattle, horses, mules, llamas or other animals raised or kept for profit or production.

Own means to own, possess, harbor, keep, have a financial or property interest in or have control or custody of an animal.

Owner means any person owning, possessing, harboring, keeping, having a financial or property interest in or having control or custody of an animal.

Running at large means an animal off or away from the premises of the owner, possessor or keeper thereof, and not under the control of such owner, possessor or keeper, or an agent, servant or member of the immediate family, either by leash, cord or chain.

Vicious animal means any animal that, without provocation, bites or attacks a person or another domestic animal, either on public or private property.

Wildlife means any animal that exists in a natural wild state in its place of origin, presently or historically, except those species determined to be domestic animals or livestock by this Article. (Ord. 300 §1, 1992; Ord. 526 §1, 2005; Ord. 559 §1, 2006)

Sec. 7-7-20. General regulations.

(a) It is unlawful to own any dog or cat within the Town without complying with the licensing provisions of this Article.

(b) It is unlawful for any dog or cat owner to knowingly permit a tag evidencing licensing and rabies inoculation for one (1) dog or cat to be affixed to the collar or harness of another dog or cat.

(c) It is unlawful for any owner's animal to run at large within the Town.

(d) It is unlawful for any person to own more than a total of four (4) dogs or cats or a combination thereof within the Town, except for litters below the age of six (6) months, and except for a lawfully operated commercial kennel, veterinary clinic or hospital or pet store.

(e) It is unlawful for any owner to fail to exercise proper care and control of any animal to prevent it from becoming a public nuisance. For the purposes of this Article, a *public nuisance* includes an animal which is a safety or health hazard, damages or destroys the property of another, creates offensive odors or other unsanitary condition or otherwise causes harm, disturbance or undue annoyance to the health, welfare or safety of another person or the public in general.

(f) It is unlawful for the owner of an animal impounded for violations of this Article to fail to reclaim his or her animal and pay all applicable fees and deposits to the Town and to the Animal Control Center within five (5) days of being notified of impoundment of his or her animal.

(g) It is unlawful to own any domestic animal which, by frequent, habitual or continued barking, yelping, or howling, meowing, squawking, clucking or otherwise, causes annoyance or disturbs the peace of a neighbor or people passing to and from upon the public streets or sidewalks, and the same is hereby declared to be a public nuisance and a violation of this Article. The Animal Control Officer shall have the authority to use all reasonable means to abate such public nuisance, including but not limited to, impoundment of the animal for a violation of this Section. The Animal Control Officer shall attempt to locate and notify an absent owner of such nuisance by any reasonable means as readily as possible. No summons and complaint shall be issued nor shall there be a conviction for violation of this Section unless there are at least two (2) or more complaining witnesses from separate households who have signed such complaint and have testified at trial if held. An Animal Control Officer who has personally investigated the complaint of a single complainant and observed the behavior of the dog complained of, with regard to its frequent, habitual and continued barking, yelping or howling, may satisfy the requirement for the second complaining witness and may testify to his or her observations at trial. (Ord. 339 §1, 1996; Ord. 526 §1, 2005; Ord. 559 §1, 2006)

Sec. 7-7-30. Prohibited animals.

(a) It is unlawful for any person to own livestock within the Town, except in areas zoned agricultural.

(b) The owner of any chickens, ducks, geese or other domestic fowl on December 31, 2006, keeping such animal within areas of the Town not zoned for agricultural use, shall be exempt from this Section, provided that such owner provides written notice of ownership of such animals to the Town Clerk on or before January 1, 2007.

(c) It is unlawful for any person to own any wildlife within the Town. (Ord. 339 §1, 1996; Ord. 559 §1, 2006)

Sec. 7-7-40. Domestic animal pens.

It is unlawful for any person who owns chickens, ducks, geese or other domestic fowl, or any hare or rabbits within the Town, to fail to keep them securely enclosed in a pen or other proper building in the rear or back yard of a residence. The pen or other proper building shall only be large enough to adequately house the animals, and in no event shall it consist of the entire back yard of a person's residence. In no event shall this Section permit the keeping of domestic fowl in any area not permitted pursuant to Subsection 7-7-30(a) above. (Ord. 339 §1, 1996; Ord. 559 §1, 2006)

Sec. 7-7-50. Enforcement.

Any Animal Control Officer is hereby authorized to issue a summons and complaint to any person when said officer personally observes a violation of the provisions of this Article, or when information is received from any person who has personal knowledge that an act or acts which are made unlawful by the provisions of this Article have occurred. The penalty assessment procedure provided in the Colorado Municipal Court Rules of Procedure (mail-in fines) may be followed, as permitted by law, by the Animal Control Officer, provided that a mandatory court appearance will be required of the owner whenever an animal is impounded as provided in this Article. (Ord. 339 §1, 1996; Ord. 559 §1, 2006)

Sec. 7-7-60. Impoundment of animals.

(a) Any Animal Control Officer may go upon private property to capture and take into custody and impound at the Animal Control Center any animal, or to investigate any report of, a violation of this Article if:

- (1) The Animal Control Officer has obtained the consent of the person in possession of the property;
- (2) The Animal Control Officer has obtained a search warrant;
- (3) The Animal Control Officer is in pursuit of an animal which is or has been running at large;
- (4) The Animal Control Officer is in pursuit of an animal which the officer has probable cause to believe has bitten or attacked a person or another domestic animal; or
- (5) The Animal Control Officer is attempting to abate a continuing violation when the owner of the property is not available.

Nothing in Paragraphs (3), (4) or (5) above shall be deemed to authorize entry into any enclosed building on the private property. In addition to all other defenses and immunities provided by law, an Animal Control Officer making entry upon private property for the purpose of enforcing this Article is immune from suit or liability, criminal or civil, caused by or arising out of such entry.

(b) Any Animal Control Officer may take into custody and impound, pursuant to Subsection (a) above, any vicious animal found within the Town, whose owner has been issued a summons and complaint for the violation, or immediately if the animal has bitten or otherwise injured any person or another domestic animal.

(c) Upon serving of the third summons and complaint following two (2) convictions within one (1) year for public nuisance violations pursuant to Subsection 7-7-20 of this Article, or aggressive animal pursuant to Section 7-7-80 of this Article, against the same animal, an Animal Control Officer may immediately take into custody and impound said animal pursuant to Subsection (a) above.

(d) When any animal has been taken up and impounded, the Animal Control Officer or party authorized by the Town to take up and impound such animal shall give notice of such impoundment to the owner, if known, who may thereupon recover possession of such animal upon payment of a minimum impound fee in the amount of the actual costs incurred by the Town for the collection, impoundment and care during the impoundment of such animal, plus all license fees, rabies deposits and other fees and costs of impoundment as established by the Animal Control Center or the Town. If no owner appears to claim any such animal and to pay all applicable fees and costs incurred by impoundment within five (5) days of receipt of notice of impoundment, or within five (5) days after such animal is impounded, the animal shall be placed for adoption or destroyed in a humane manner.

(e) Any summons served for violation of this Article resulting in the impoundment of an animal shall require a mandatory court appearance of such animal's owner. Provided that the Town has evidence of outstanding costs incurred by the Town for the impound of animals pursuant to this

Article, the Municipal Judge shall order restitution in such amount to cover the Town's outstanding costs, regardless of whether the owner claimed the animal from impoundment.

(f) The Town, Mayor, Board of Trustees, any Town officers, assistants and employees, or any other person authorized to enforce the provisions of this Article, shall not be held responsible for any accident or subsequent disease that may occur to the animal in connection with the administration of the provisions of this Article. (Ord. 300 §1, 1992; Ord. 352 §1, 1997; Ord. 559 §1, 2006)

Sec. 7-7-70. Licensing of dogs and cats.

(a) Each dog and cat over the age of six (6) months located within the Town shall be required to be licensed by the Town. Each registration or license application shall contain the dog or cat owner's name, address and telephone number, a description of the dog or cat, its breed, color, age, sex and the registration or license number issued for the dog or cat. No registration permit or license shall be issued unless and until the owner of a dog or cat shall exhibit a current valid rabies vaccination certificate indicating that the dog or cat has been vaccinated against rabies by a licensed veterinarian. Every owner of each dog or cat within the Town shall register each dog or cat over six (6) months of age and pay the appropriate fee as set forth in the Town of Bennett Schedule of Fees.

(b) Such registration or licensing shall be renewable annually. Licensing fees shall be waived for any dog or cat being fostered for an animal rescue organization licensed by the State pursuant to the Pet Animal Care and Facilities Act. Any person requesting a fee waiver on such basis shall submit documents supporting such request at the time of licensing.

(c) Any person convicted of violating this Section shall be subject to the general penalty provisions set forth in Section 1-4-20 of this Code. (Ord. 300 §1, 1992; Ord. 510 §1, 2004; Ord. 526 §1, 2005; Ord. 559 §1, 2006; Ord. 610-10 §3)

Sec. 7-7-80. Aggressive animals.

(a) No person shall own an aggressive animal within the Town. Where there is more than one (1) owner of an aggressive animal, such owners shall be jointly and severally liable for violations of this Section. Certified K-9 dogs or those in training or guard dogs, as defined in Section 7-7-10 of this Article and kept in compliance with Section 7-7-110 of this Article, shall not be included under this definition.

(b) An Animal Control Officer may take into custody and impound at the Animal Control Center any aggressive animal when reasonably necessary to protect his or her person or members of the public from injury or damage.

(c) It is a specific defense to the charge of owning an aggressive animal that the threatened person or animal:

(1) Provoked, tormented, abused or inflicted injury upon the animal in such a manner as to result in the attack.

(2) Made unlawful entry into a vehicle in which the animal was confined.

(3) Attempted to assault another person.

(d) Any person convicted of violating this Section shall be punished by a minimum fine of one hundred fifty dollars (\$150.00). Second and subsequent offenses shall be punished by a fine of three hundred dollars (\$300.00); or by fine and/or imprisonment in accordance with the general penalty provisions set forth in Section 1-4-20 of this Code. (Ord. 300 §1, 1992; Ord. 526 §1, 2005; Ord. 559 §1, 2006)

Sec. 7-7-90. Vicious animals.

(a) No person shall own a vicious animal within the Town. Where there is more than one (1) owner of a vicious animal, such owners shall be jointly and severally liable for violations of this Section. Certified K-9 dogs or those in training or guard dogs, as defined in Section 7-7-10 of this Article and kept in compliance with Section 7-7-110 of this Article, shall not be included under this definition.

(b) An Animal Control Officer may take into custody and impound at the Animal Control Center any animal that is vicious, and may take whatever action is reasonably necessary to protect his or her person or members of the public from injury or damage, including immediate destruction of any vicious animal without notice to the owner.

(c) It is a specific defense to the charge of owning a vicious animal that the injured or threatened person or animal:

(1) Provoked, tormented, abused or inflicted injury upon the animal in such a manner as to result in the attack or bite.

(2) Made unlawful entry into or upon a fenced or enclosed portion of the premises upon which the animal was lawfully kept or upon a portion of the premises where the animal was lawfully chained with the intent to commit a crime other than trespass.

(3) Made unlawful entry into a vehicle in which the animal was confined.

(4) Attempted to assault another person.

(d) For the purposes of this Section, a person is lawfully upon the premises of an owner when such person is on the premises in the performance of any duty imposed by law or by the express or implied invitation of the owner of such premises or the owner's agent. (Ord. 559 §1, 2006)

Sec. 7-7-100. Keeping of vicious animals.

(a) Upon a plea of guilty or conviction by the Municipal Court that an animal is vicious, if such animal is not ordered destroyed, the owner shall comply with each of the following requirements. Any failure of the owner of an animal found to be vicious to comply with the requirements of this Section may result in prosecution under this Section and may subject the owner to possible impound and destruction of the animal.

(b) The owner of the animal must be eighteen (18) years of age or older and shall, within ten (10) days of the finding that the animal is vicious, register the animal with the Town Clerk as a vicious animal. At that time, the owner must provide evidence of the following in a form acceptable to the Town Clerk or designee thereof:

(1) That the animal has been spayed or neutered;

(2) That an identification microchip has been implanted in the animal; and

(3) That the owner has procured liability insurance in a minimum amount of one hundred thousand dollars (\$100,000.00) to cover any damages caused or which may be caused by the vicious animal during the calendar year or during the period covered by the license required by this Article.

(c) When the animal is not under the direct control of the owner, the owner shall cause the vicious animal to be confined indoors or placed and kept in a proper secure enclosure. At all times when the vicious animal is away from the property of the owner, the owner shall keep the vicious animal muzzled and securely leashed with a leash no greater than four (4) feet in length and held by a person capable of restraining the animal or in a secure temporary enclosure.

(d) The owner shall post at each possible entrance to the property where the vicious animal is kept a conspicuous and clearly legible sign warning there is a vicious animal on the property. Such sign must be at least eight (8) inches by ten (10) inches and shall contain only the words "vicious animal" not less than two (2) inches in height.

(e) The owner shall notify the Town Clerk within (5) five calendar days of any change in address or in the event that the vicious animal is lost, stolen, otherwise missing or dies. The owner of a vicious animal who transfers ownership of the animal must notify the Town Clerk of the same and provide the name, address and telephone number of the new owner. The owner additionally is required to inform the new owner that the animal has been found to be a vicious animal and that the new owner must comply with the requirements of this Section within ten (10) days of acquiring the animal. It shall be unlawful for the new owner to fail to comply with the requirements of this Section within ten (10) days of receipt of the animal, even if such notification by the prior owner has not been made. (Ord. 559 §1, 2006)

Sec. 7-7-110. Guard dogs.

(a) No person shall own or employ a guard dog in any area of the Town unless the following conditions are met:

(1) All guard dogs within the Town shall be registered with the Town Clerk and meet all requirements of this Code.

(2) The owner or other person in control of the premises upon which a guard dog is maintained shall post warning signs on, over or next to all exterior doors stating that such a dog is on the premises. Such signs shall be visible from the curblineline or at a distance of fifty (50) feet, whichever is less, and shall contain a telephone number where some person responsible for controlling such guard dog can be reached twenty-four (24) hours a day.

(3) Prior to placing any guard dog on any property within the Town, the person responsible for such placement shall in writing inform the Town, the Sheriff's Department and the Fire Department of his or her intention to post the dog; the number of dogs to be posted; the approximate length of time the dog will be guarding the area; the daily hours the dog will be guarding the area; the breed, sex and age of the dog; and the rabies tag number of the dog. Such notice must be renewed every six (6) months.

(b) Any failure to comply with the requirements of this Section may result in prosecution for prohibited ownership of an aggressive or vicious animal pursuant to Sections 7-7-80 or 7-7-90 of this Article. (Ord. 559 §1, 2006)

Sec. 7-7-120. Vicious animals; penalty.

Any person convicted of violating Section 7-7-90, 7-7-100 or 7-7-110 of this Article shall, upon conviction, be punished by a minimum fine in the amounts set forth in the schedule of fines listed in Appendix 2-A to Chapter 2 of this Code; or by fine and/or imprisonment in accordance with the general penalty provisions set forth in Section 1-4-20 of this Code. (Ord. 559 §1, 2006; Ord. 591 §3, 2009)

Sec. 7-7-130. Destruction of vicious animals.

(a) Whenever a determination has been made that any vicious animal is owned as prohibited in this Article, the prosecutor for the Town may apply to the Municipal Court for an order to destroy the animal. Such application shall:

- (1) Identify the animal;
- (2) Identify the owner, if known, or the residence of the animal if the owner is not known;
- (3) Identify the date and location of occurrence of one (1) or more acts of viciousness; and
- (4) Request that the owner be required to show cause why the animal should not be impounded and destroyed.

(b) Upon receipt of such an application, the Court shall set a date for a hearing thereon and cause to be served on the owner, if known and if not known, delivered to or posted on the residence of the animal, a copy of the application and a notice of the hearing at least ten (10) days prior to the date of the hearing.

(c) If the Town can show by a preponderance of evidence at the hearing that the animal was vicious within the meaning of this Article, the Municipal Judge may order the animal impounded and destroyed or may make such other order as in the Municipal Judge's discretion will provide adequate protection to other persons or animals. Before making such order, the Municipal Judge may request any report at his or her discretion concerning the appropriate disposition of the animal.

(d) Any trial for violation of this Article also constitutes a hearing under this Section and, upon a showing sufficient to support a conviction for violation of Section 7-7-90 of this Article, the Municipal Judge may make orders authorized by this Section. (Ord. 559 §1, 2006)

Sec. 7-7-140. Cruelty to animals.

(a) It shall be unlawful for any person to commit or cause to be committed any intentional act of cruelty to, abandonment of, harassment of or torture to any animal, or intentionally cause any animal to be wounded, mutilated, strangled or inhumanely killed. Ownership of said animal shall not be a defense to such acts or to a violation of this Section.

(b) No owner shall fail to provide the animal with sufficient wholesome and nutritious food, water in sufficient quantities, proper air, shade or shelter space, protection from the weather, veterinary care as needed to maintain health and prevent suffering, and other humane care and treatment.

(1) *Shade* means protection from the direct rays of the sun during the months of May through October.

(2) *Shelter* means a moisture-proof structure of suitable size to accommodate the animal and allow retention of body heat, made of durable material with a solid floor. Such structure shall be provided with a sufficient quantity of suitable bedding to provide insulation and protection against cold and dampness.

(c) No person shall abandon any animal which he or she owns. In this context, *abandon* means to leave the animal unattended for more than forty-eight (48) consecutive hours, or without food, water or shelter for more than twelve (12) hours.

(d) No person shall expose any known poisonous substance, whether mixed with food or not, so that a reasonable person would or should know that such substance would probably cause animals to be attracted thereto, eat thereof and be poisoned thereby; provided, however, that this Section does not make unlawful the poisoning of rats or mice, or the activities of any person, business or other entity regulated by the Colorado Department of Agriculture under the Pesticide Applicators Act, Section 35-10-101 through 123, C.R.S., and engaged in activities regulated by that Act.

(e) No person shall crop a dog's ears or dock a cat's or dog's tail other than a licensed veterinarian.

(f) No person shall give away any live animal, fish, reptile or bird as a prize for, or as an inducement to enter, any contest, game or other competition, as an inducement to enter any place of amusement, or as an incentive to enter into any business agreement.

(g) No person shall confine an animal within a parked, closed vehicle without allowing cross-ventilation. Under no circumstances shall a person confine any animal in any parked, closed vehicle on any public street or way for more than thirty (30) minutes, or when the temperature in the vehicle may create an adverse condition to the animal.

(h) An Animal Control Officer observing an animal in violation of this Section may enter the property or vehicle and take into custody and impound the animal in accordance with Section 7-7-60 of this Article, with the expense of such impoundment to be assessed against the owner pursuant to this Article. (Ord. 559 §1, 2006)