

TITLE 6

HEALTH, SAFETY AND SANITATION

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TITLE 6

Health, Safety and Sanitation

Chapter 1 Animals¹

6-1-1. Legislative Intent and Purpose.

(a) The purpose of this chapter is to protect the public health, safety and welfare of the residents of the City by prescribing the types of animals that can be kept in the City and the conditions under which they can be kept, limitations on keeping animals that create a nuisance by being safety or health hazards, and the procedures by which the city manager or an authorized agent may impound and dispose of animals kept in violation of the chapter.

(b) The city council intends to protect persons and property in the City from animals running at large and to abrogate the requirements of the Colorado fence law.²

(c) Notwithstanding the use of words such as "guardian," "keeper," "owner" or "title" in this chapter, the city council intends to reflect the common law view that the property rights of owners in their animals are qualified by the City's exercise of its police power over such animals, and that summary impoundments and dispositions of animals are two such qualifications of such rights.³

(d) Further purposes of this chapter are to:

- (1) Protect unique elements of the local environment;
- (2) Protect biodiversity and overall health of natural ecosystems within this community;
- (3) Recognize the important contribution of wildlife to the local environment;
- (4) Advance local community values by encouraging humane means of wildlife control;
- (5) Avoid collateral harm to wildlife that is protected under state, federal and local law;
- (6) Manage conflicts between wildlife and human land uses;
- (7) Foster preservation of animal and bird species native to the local community; and
- (8) Legislate in a manner that satisfies important issues of local concern while also being consistent with applicable state and federal regulations.

(e) The following priorities shall guide the City's policies and regulations with regard to the interface between people and wildlife:

- (1) Efforts should be made to minimize conflicts between human beings and wildlife;
- (2) When unsustainable conflicts between wildlife and human beings exist on a particular property, efforts should be made, where appropriate, to maintain wildlife on portions of such property in order to minimize such conflicts;
- (3) Where resolution of conflicts between human uses and wildlife habitat cannot be achieved on a particular property, relocation alternatives should be explored and encouraged;

¹ Adopted by Ordinance No. 4719. Amended by Ordinance Nos. 4730, 7062. Derived from Ordinance Nos. 1734, 1941, 2208, 2257, 2843, 2866, 3080, 3467, 3679, 4040, 4242, 4350, 4387, 4656, 1925 Code.

² § 35-46-101, 102, C.R.S. See *SaBell's Inc. v. Flens*, 599 P.2d 950 (Colo. App.1979) Berman, J., dissenting, aff'd, 627 P.2d 750 (1980).

³ *Thiele v. City and County of Denver*, 312, P.2d 786 (Colo.1957).

- (4) Where relocation alternatives are not feasible, capture and transportation of wildlife for use in animal recovery programs should be explored and encouraged;
- (5) Where lethal control measures for wildlife are required, the use of live trapping and individual euthanization should be considered and encouraged in order to minimize suffering;
- (6) When lethal control measures are employed, action should be taken to mitigate the negative community-wide impacts associated with the loss of local wildlife and wildlife habitat; and
- (7) When lethal control measures are utilized, notice should be provided to the city manager so that habitat preservation and environmental impacts can be monitored.

(f) The City intends to exercise its legislative authority and power to require action in compliance with this chapter by landowners, residents, visitors, employers and employees pursuant to its local home rule authority. To the extent any landowner is a person permitted by the State of Colorado to use pesticides, this chapter shall not be construed to regulate that person's handling, mixing, loading, application, administration, control or disposal of a pesticide or its container, and shall be construed only to regulate land use and the management of wildlife on local land.

(g) The city council finds that the regulation of local wildlife, wildlife habitat and any conflicts between human land uses and local wildlife constitutes an area of valid local concern and regulation and is therefore subject to the valid exercise of the City's police power. The various provisions of this chapter bearing upon those subjects reflect an appropriate exercise of the City's police powers, except to the extent that any such provision may be contradicted and overridden by a controlling provision of state law.

(h) The city council finds that the use of poison to control wildlife is having an adverse and cumulative effect upon the local environment, and upon the health and safety of human beings and local wildlife. Residents and visitors to the City are urged to avoid using poisons as a mechanism for wildlife control, especially when other less ecologically damaging control strategies are available.

Ordinance Nos. 4935 (1985); 7321 (2005)

6-1-2. Definitions.

The following words and phrases used in this chapter have the following meanings unless the context clearly indicates otherwise:

Guardian means owner.

Keeper means a person who has custodial or supervisory authority or control over an animal.

Landowner means the owner or manager of land or any other person who has control over the management of the land.

Leash means a chain, rope, cord or strap with a clip or snap for rapid attachment to a choke chain, collar or harness, all the parts of which are of sufficient strength to hold at least four times the weight of the dog and are suitable for walking the dog and controlling it.

Leg-hold trap means a spring-powered device or trap that captures or holds an animal by exerting a lateral force with fix-mounted steel or other metal jaws on the leg, toe, paw or any other part of the animal's body.

Lethal control means methods of wildlife control that rely for their effectiveness upon the killing of individual animals or upon the extermination of groups of animals.

Mall has the meaning prescribed by section 5-1-1, "Definitions," B.R.C. 1981.

Owner means each person who owns an animal. If an animal has more than one owner, all such persons are jointly and severally liable for the acts or omissions of an animal owner under this chapter, even if the animal was in possession and control of a keeper at the time of an offense.

Peace officer has the meaning prescribed by section 5-1-1, "Definitions," B.R.C. 1981.

Prairie dog burrow means any burrow actually occupied by one or more prairie dogs and any burrow of which any entrance is surrounded by a mound.

Premises of the guardian or keeper of an animal means only that property over which the guardian or keeper has full possession and control, and from which the guardian or keeper has the authority to exclude, and does exclude, the public.

- (a) Private property which is fenced or otherwise enclosed so that dogs within it cannot escape, and which is set aside by the owner of the property for use as a dog exercise or play area, and through which persons who are authorized to use the property are not required to pass in order to get to their destination, shall be deemed the premises of any guardian or keeper who has the express permission of the owner of such area to use it with the dog for such purposes.
- (b) Places which are not "premises of the guardian or keeper of an animal" within the meaning of this definition include, without limitation, the following:
 - (1) All public property; or
 - (2) On private property:
 - (A) Any common sidewalk or walkway, any common unenclosed yard or any other common unenclosed exterior space;
 - (B) Any common parking facility (whether or not spaces are reserved); or
 - (C) Any common interior room, hallway, stair or passageway.
 - (D) For the purposes of this definition, *common* means any part of a residential condominium, townhouse development, apartment building, shopping center, business condominium, office building, business center or industrial park which residents, owners, tenants, employees, customers or visitors of more than one unit or space may use.

Protected birds includes any bird protected by the Migratory Bird Treaty Act, 16 U.S.C. §§ 703-712. Protected birds do not include members of bird species listed in a United States treaty, law or Executive Order as an invasive species.

Service animal means any guide dog, signal dog or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including but not limited to guiding individuals with impaired vision, alerting individuals with impaired hearing to sounds, pulling a wheelchair or fetching dropped items.

Unnecessary suffering means suffering resulting from reckless or negligent practices causing avoidable lacerations, suffocation, broken bones, amputations or the infliction of pain on animals that could have been avoided by the use of reasonable, practical and humane practices.

Voice and sight control means the ability of a guardian or keeper to adequately control a dog by using voice commands and sight commands (such as hand gestures). In order for a guardian or keeper to have voice and sight control over a dog, the guardian or keeper must: (1) be able to see the dog's actions; and (2) be able to prevent the dog from engaging in the following behaviors, using voice and sight commands, without regard to circumstances or distractions:

- (a) Charging, chasing or otherwise displaying aggression toward any person or behaving toward any person in a manner that a reasonable person would find harassing or disturbing;
- (b) Charging, chasing or otherwise displaying aggression toward any dog;
- (c) Chasing, harassing or disturbing wildlife or livestock; or
- (d) Failing to come to and stay with the guardian or keeper immediately upon command by such person.

Wild birds means birds that are living in a state of nature and that are not tame or domesticated.

Ordinance Nos. 5377 (1991); 5393 (1991); 5858 (1997); 7133 (2001); 7321 (2005); 7722 (2010)

6-1-3. Limitation on Keeping of Domesticated Animals.

(a) No person shall own or keep a domesticated cat over four months of age unless such cat is currently inoculated against rabies.

(b) No person shall own or keep any swine, hogs or pigs.

(c) No person shall own or keep any horse, goat, sheep, cow, llama, burro or other equine or bovine animal unless such person has a total lot area on the lot of one-half acre per animal plus its young under six months of age.

6-1-4. Limitation on Possession of Exotic Animals.

(a) No person shall own or keep any animal for which a state license is required¹ unless such person possesses the appropriate license from the Colorado Division of Wildlife.

(b) No person shall place on public display, own or keep any of the following animals:

(1) Ursids (e.g., bears);

(2) Felids other than ordinary domesticated house cats;

(3) Mustalids other than ferrets (e.g., skunks, weasels, otters or badgers);

(4) Venomous reptiles;

(5) Procyonides (e.g., raccoons or coatis);

(6) Elephants;

(7) Marine mammals (e.g., seals, sea lions, dolphins or sea otters);

(8) Hyenas;

(9) Edentates (e.g., anteaters, sloths or armadillos);

(10) Viverrids (e.g., mongooses, civets or genets);

(11) Canids, but not including ordinary domesticated dogs, wolves or wolf hybrids;

(12) Marsupials (e.g., kangaroo or opossum);

(13) Ungulates (e.g., deer, hippopotamus, rhinoceros, giraffe, camel, zebra, but not including any domesticated species);

(14) Any species of nonhuman primate or prosimian (e.g., monkey or chimpanzee), but excluding animals imported under authority of state or federal law so long as they are not displayed; or

(15) Crocodylians (e.g., alligators and crocodiles).

(c) No person shall feed any wild animal. For the purposes of this subsection, to feed shall mean all provision of edible or drinkable material, including, without limitation:

(1) Bones;

¹ § 33-6-114, C.R.S.

(2) Salt licks; and

(3) Water.

(d) It is a specific defense to a charge of violating subsection (c) of this section that a person is feeding only wild squirrels or birds or fish.

(e) It is a specific defense to a charge of violating subsection (b) of this section that the person is a governmental agency or a nonprofit corporation or an employee or agent of such agency or corporation acting within the course and scope of the employment or agency, and is displaying an animal prohibited from display under this chapter, lawfully in such entity's or person's custody without charge for educational purposes.

(f) It is a specific defense to a charge of violating subsection (b) of this section that the person holds a state wildlife rehabilitation license for the animal and is acting in accordance with the license.

Ordinance Nos. 4884 (1985); 7133 (2001)

6-1-5. Animal Fighting Prohibited.

(a) No person shall cause, sponsor, arrange, hold or encourage a fight between animals other than dogs¹ for the purpose of monetary gain or entertainment.

(b) For the purposes of this section, a person encourages a fight between such animals if the person:

(1) Is knowingly present at such fight;

(2) Owns, trains, transports, possesses or equips such an animal with the intent that the animal will be engaged in such a fight; or

(3) Knowingly allows such a fight to occur on any property owned or controlled by such person.

Ordinance No. 4935 (1985)

6-1-6. Subjecting Animals to Unnecessary Suffering.

(a) No person shall:

(1) Overdrive, overload, drive when overloaded or overwork any animal;

(2) Cause unnecessary suffering to any animal or take actions likely to cause unnecessary suffering to any animal;

(3) Needlessly shoot at, wound, capture or in any other manner needlessly molest, injure or kill any animal;

(4) Keep any animal in a manner that causes the animal to endure unnecessary suffering; or

(5) Confine any animal in a vehicle in such a manner that it places the animal in a life or health threatening situation by exposure to heat or cold without sufficient protection from such heat or cold.

(b) It is specific defense to a charge of violating paragraph (a)(3) of this section, that the action was necessary to avoid injury to a person or that the animal was not a domesticated animal and the action was necessary to avoid injury to a person or property.

(c) This section shall not apply to injuries suffered by prairie dogs as a result of trapping or relocation practices. Regulation of such conduct will be pursuant to sections 6-1-11, "Limitation On Lethal Means of Control for Prairie Dogs and Birds," and 6-1-37, "Procedures Affecting the Relocation of Prairie Dogs," B.R.C. 1981.

(d) In order to protect the health and safety of an animal, an animal control officer, code enforcement officer, police officer or any other peace officer under this code who has probable cause to believe that paragraph (a)(5) of this

¹ Dog fighting is a felony, § 18-9-204, C.R.S.

section is being violated shall have the authority to enter such vehicle by any means reasonable under the circumstances and take custody of the animal pursuant to section 6-1-28, "Emergency Impoundment of Animal," B.R.C. 1981, or as otherwise may be provided in the code.

Ordinance Nos. 7321 (2005); 7595 (2008)

6-1-7. Improper Care of Animals Prohibited.

No person owning or keeping an animal shall fail to provide it with minimum care and to keep it under conditions under which its enclosure is not overcrowded, unclean or unhealthy.

(a) An animal is deprived of minimum care if it is not provided with care sufficient to preserve the health and well-being of the animal considering the species, breed and type of animal and, except for emergencies or circumstances beyond the reasonable control of the guardian, minimum care includes, but is not limited to, the following requirements:

- (1) Food of sufficient quantity and quality to allow for normal growth or maintenance of body weight.
- (2) Open or adequate access to potable water in sufficient quantity to satisfy the animal's needs. Snow or ice is not an adequate water source. Fowl shall at all times be provided receptacles kept constantly filled with clean water.
- (3) In the case of pet or other domestic animals other than livestock or poultry, access to a barn, doghouse or other enclosed structure sufficient to protect the animal from wind, rain, snow or sun and which has adequate bedding to protect against cold and dampness.
- (4) Veterinary care deemed necessary by a reasonably prudent person to relieve distress from injury, neglect or disease.

(b) An enclosure is overcrowded unless its area is at least the square of the following sum for each animal confined therein: the sum of the length of the animal in inches (tip of nose to base of tail) plus six inches.

(c) An enclosure is unclean when it contains more than one day's elimination of each animal enclosed therein.

(d) An enclosure is unhealthy when it is likely to cause illness of the animal.

Ordinance No. 5866 (1997)

6-1-8. Abandoning Animals Prohibited.

No person shall abandon any animal.

6-1-9. Use of Certain Traps Prohibited.

(a) No person shall use, set, place, maintain or tend any leg-hold trap. The city manager shall confiscate any leg-hold trap found in violation of this subsection and dispose of it as the manager deems appropriate.

(b) No person shall use, set, place, maintain or tend any mechanical trap which is designed or used to capture or kill any animal and does not require the presence of a human operator to so capture or kill. It is a specific defense to a charge of violating this subsection that the person had the express permission of the owner of the land on which the trap was set. This subsection does not apply to public officials in the exercise of their duties.

Ordinance Nos. 4821 (1984); 7019 (2000)

6-1-10. Poisoning Domestic Animals Prohibited.

No person shall knowingly poison any domestic animal. It is a specific defense to this section that the person was the guardian of the animal or a veterinarian acting at the direction of the guardian or an employee of an animal shelter and the poison was administered directly to the animal to euthanize it.

6-1-11. Limitation on Lethal Means of Control for Prairie Dogs and Birds.

(a) Except as authorized by other provisions of this chapter, no person shall utilize lethal means of control for prairie dogs or wild birds or remove prairie dogs from the ground with the intent to kill them.

(b) It shall be an affirmative defense to a violation of this section that behaviors described in subsection (a) of this section:

- (1) Were undertaken by a person who owns, or is responsible for operating, an airport facility or a person who acted at the direction of the owner of an airport facility, where such action is necessary in order to promote human safety or in order to comply with Federal Aviation Administration standards or regulations;
- (2) Were undertaken by a person who owns or is responsible for operating a dam or other existing structure where structural integrity or safety is threatened by the activities of prairie dogs or birds;
- (3) Resulted from public or utility-related projects conducted in conformity with management practices designed to minimize avoidable harm to animals located within an area containing prairie dog habitat;
- (4) Were undertaken by a permitted academic investigator or by a city or state employee while in the process of bona fide research related to animal control or protection issues;
- (5) Were required in order to resolve immediate and verified health or safety hazards pursuant to a permit issued in conformity with section 6-1-39, "Special Permit," B.R.C. 1981; or
- (6) Were undertaken as part of an ongoing and continuous program approved and permitted by the city manager that was designed to prevent recolonization of lands from which prairie dogs had previously been lawfully removed, but only where such program had been initiated immediately following the lawful removal.

Ordinance Nos. 7133 (2001); 7321 (2005)

6-1-11.5. Causing Death of a Prairie Dog or Wild Bird for Humanitarian Reasons.

Notwithstanding any other provision of this chapter, the following persons are authorized to cause the death of a prairie dog or wild bird for humanitarian reasons: Humane Society of Boulder Valley employees, veterinarians, Colorado Division of Wildlife employees, City Park Rangers, City Wildlife Managers or persons permitted under state or federal law as wildlife rehabilitators.

Ordinance No. 7321 (2005)

6-1-12. Damaging Prairie Dog Burrows Prohibited.

- (a) Except as authorized by other provisions of this chapter, no person shall damage any prairie dog burrow.
- (b) It shall be an affirmative defense to a violation of this section that:
 - (1) The burrow was uninhabited when it was damaged;
 - (2) A state permitted relocater had, within the twelve previous months, attempted to relocate all prairie dogs utilizing that burrow, whether or not all those prairie dogs were successfully captured and relocated;
 - (3) The burrow was damaged by a person who owned, or was responsible for operating, an airport facility or by a person who was acting at the direction of the owner of an airport facility and the activity that damaged the burrow was necessary in order to promote human safety or in order to comply with Federal Aviation Administration standards or regulations;
 - (4) The burrow was damaged in connection with temporary disturbances caused by public or utility-related projects where such activities were conducted in conformity with best management practices within an area containing prairie dog habitat;

- (5) The burrow was damaged by a person who owned, or was responsible for operating, a dam or other existing structure where the structural integrity or the safety of the dam or structure was threatened by the burrow or by burrowing;
- (6) The burrow was on the property of a single-family residence in which the person who destroyed the burrow, or authorized its destruction, was residing;
- (7) Activities were undertaken by a permitted academic investigator or by a city or state employee while in the process of bona fide research related to animal control or protection issues;
- (8) The burrow was damaged during the process of utilizing lethal means of control in conformity with the provisions of this chapter; or
- (9) The burrow was damaged in connection with an ongoing and continuous program approved by the city manager that was designed to prevent recolonization of lands from which prairie dogs had previously been lawfully removed, but only where such program had been initiated immediately following the lawful removal.

(c) If the manager has reason to believe that work pursuant to any permit or other approval will damage any prairie dog burrow not subject to the defenses set forth in this chapter, the manager shall deny the permit or approval or condition its exercise on lawful relocation of the animals. Appeal from such a denial or conditional approval shall be in accordance with the provisions for denials of such permits or approvals.

Ordinance Nos. 7133 (2001); 7321 (2005)

6-1-12.5. Limitation on Lethal Means of Control for Prairie Dogs and Birds, and Requirement for Use of Humane Methods of Relocation for Prairie Dogs.

Repealed.

Ordinance Nos. 7379 (2004); 7424 (2005)

6-1-13. Killing Wild Animals Prohibited.

No person shall knowingly kill any wild animal protected by federal or state constitution (e.g., article XVII, section 12(b) of the Colorado Constitution), law or regulation. This prohibition shall not apply where the applicable state law makes such killing a felony. "Protected" in this section means those animals which may not be killed under applicable law, and also means killing animals in a time, place or manner prohibited under such law, or by a person not authorized to do so.

6-1-14. Dyeing Fowl and Rabbits Prohibited; Selling Dogs, Cats and Fowl Limited.

(a) No person shall dye or color live fowl, rabbits or any other animals or have in possession, display, sell or give away such dyed or colored animals.

(b) No person shall sell, offer for sale or give away dogs or cats under eight weeks old or any other warm-blooded animals under the normal weaning period for the animal.

(c) No person shall sell, offer for sale or give away any fowl under six weeks old. It is a specific defense to a charge of violating this subsection that the fowl are sold or given away in lots of ten or more for commercial, agricultural or scientific purposes.

6-1-15. Animals Running at Large Prohibited.

(a) No person owning or keeping any animal in the city, except a dog or domestic cat, shall fail to prevent the animal from being off the premises of the guardian or keeper and beyond such person's supervision and control.

(b) The maximum penalty for a first or second conviction within two years, based on date of violation, is a fine of \$500.00. For a third and each subsequent conviction, the general penalty provisions of section 5-2-4, "General Penalties," B.R.C. 1981, shall apply.

6-1-16. Dogs Running at Large Prohibited.

(a) No person owning or keeping any dog shall fail to keep the dog on the premises of the guardian or keeper unless the dog is:

- (1) On a leash held by a person; or
- (2) Within a vehicle or similarly physically confined and without access to passers-by.

(b) The maximum penalty for a first or second conviction within two years, based on the date of violation, is a fine of \$500.00. For a third and each subsequent conviction within two years based upon the date of the first violation, the general penalty provisions of section 5-2-4, "General Penalties," B.R.C. 1981, shall apply. The maximum penalty for a first conviction occurring on land owned by the city and constituting park land or open space land is a fine of \$50.00. For a second conviction within two years, based upon the date of violation, the maximum penalty shall be a fine of \$100.00. For a third and each subsequent conviction, the maximum penalty shall be a fine of not less than \$200.00.

(c) It is an affirmative defense¹ to a charge of violation of this section that the dog was:

- (1) (A) Outside of the corporate limits of the City; or
- (B) Inside the City limits within any of the following areas on land owned by the City and constituting park land or open space land:
 - (i) The areas annexed by Ordinance Nos. 4166, 4167, 4177, 4178, 4179, 4180, 4181, 4182, 4183, 4184 and 4577²;
 - (ii) The following portions of open space land lying along the North Foothills Trail, as that trail is shown on the City's most recent official trails map, which runs north from Lee Hill Road from approximately one mile west of Broadway and turns east to cross U.S. 36: the entire width between the trail fences from Lee Hill Road north and west along the eastern and northern boundary of the area annexed by Ordinance Nos. 4143 and 4163, and, at the end of the trail fencing, the area starting one hundred feet west of the trail and extending east across it to the eastern boundary fence of the land annexed by Ordinance Nos. 4143, 4147, 4163 and 4164, also including the area within one hundred feet northerly of the trail as it goes east toward its juncture with U.S. 36;
 - (iii) The part of Heuston Park constituting roughly the eastern one-third of the park and lying west of the base of the slope north and west of the path along the north side of the ditch, as defined by signs and markers erected by the city manager delineating it as a voice (as defined in Section 6-1-2 "Definitions," B.R.C. 1981) and sight control area;
 - (iv) A parcel of land containing one hundred twenty acres, more or less, in Section 12, T1S R71W of the 6th P.M., as described in the deed recorded February 28, 1973, at reception number 055946, Boulder County records. Said parcel is commonly known as "NCAR Park" and lies north of Bear Creek, east of the North-South centerline of said Section 12, and west of the western boundary of the National Center for Atmospheric Research property; and a portion of the parcel commonly known as "Batchelder" described as: the E ½ of the NE ¼ of Section 1, T1S R71W of the 6th P.M. lying outside the boundary of Chautauqua Park. Said parcel is described in the deed recorded May 5, 1898, at Book 206, Page 24, Boulder County records along with a portion of the parcel commonly known as "Austin-Russell" described as the eastern portion of the W ½ of the NE ¼ of Section 1, T1S R71W of the 6th P.M., described in the deed recorded April 21, 1903, at Book 270, Page 40, Boulder County records, located within the city limits of Boulder, Colorado; and a parcel of land located in the SE ¼ of the NW ¼ of Section 25, T1S R71W of the 6th P.M., as described in the deed recorded October 11, 1995, at reception number 01554297, Boulder County records. Said parcel is commonly known as "Seventh Day Adventist" along with a parcel of land located in the SE ¼ of the NW ¼ of Section 25, T1S

¹ Ordinance No. 5811, adopted by the voters on November 5, 1996, authorized city council to "provide site-specific exceptions to the dog leash law in parks and open space areas within the city limits, after a recommendation by the city manager and a favorable vote of a majority of the parks and recreation advisory board or the open space board of trustees, as applicable."

² This area covers the strip of land generally running east from U.S. 36 through Boulder Valley Ranch and the Boulder Reservoir and Coot Lake to 63rd Street which constitutes park land on the east and open space land on the west.

R71W of the 6th P.M., as described in the deed recorded March 9, 2001, at reception number 2126152, Boulder County records. Said parcel is commonly known as "Community Hospital" along with a portion of a parcel commonly known as "Boulder Memorial Hospital" described as that part of the N ½ of the NW ¼ of the SW ¼ of Section 25, T1S R71W of the 6th P.M., located N of County Road 52 (Sunshine Road) and including Lot 15, Block 11, Mount Sanitas Heights subdivision, as recorded in the Boulder County records; and Outlot D, Shanahan Ridge Six, a part of the NW ¼ of Section 17, T1S R70W of the 6th P.M., as shown on plat recorded July 13, 1977, as Plan File P-6-F-1-21, at reception number 232114, film 969, Boulder County records; and a parcel of land located in the SE ¼ of the NE ¼ of the NW ¼ of Section 36, T1N R71W of the 6th P.M., as described in the deed recorded September 13, 1990, at reception number 01063953, Boulder County records. Said parcel is commonly known as "St. Germain" along with a portion of a parcel commonly known as "Moore, Ann & Donald" described as: the northern portion of a parcel in the NE ¼ of Section 36, T1N R71W of the 6th P.M., described in the deed recorded April 17, 1987, at reception number 00842349, Boulder County records, located within the city limits of Boulder, Colorado. Said parcel is referred to as "Parcel 8" along with a portion of a parcel commonly known as "Moore, Ann & Donald" described as: the eastern portion of a parcel located in the NE ¼ of Section 36, T1N R71W of the 6th P.M., described in the deed recorded April 8, 1986, at reception number 00751339, Boulder County records, located within the city limits of Boulder, Colorado. Said parcel is referred to as "Parcel 7" along with a portion of a parcel commonly known as "Overlook" described as: the eastern portion of Tracts 437 and 438 as shown on the Boulder County Assessor parcel map for Section 36, T1N R71W of the 6th P.M., located within the city limits of Boulder, Colorado;

(v) A portion of a parcel of land commonly known as the "NCAR Mesa Site" described as: Parcel 1: the West 650' of the North 260' of the E ½ of the NE ¼ of Section 12, T1S R71W of the 6th P.M., and Parcel 2: the North 260' of the W ½ of the NE ¼ of Section 12, T1S R71W of the 6th P.M. less that portion described in the deed recorded February 28, 1973, at reception number 55946, Boulder County records. Said Parcels 1 and 2 contain a section of the Skunk Canyon Trail, north of Skunk Creek; or

(vi) A portion of a parcel of land commonly known as "Burke II," described as a portion of the E ½ of the SW ¼ of Section 34, T1N R70W of the 6th P.M., as described in the deed recorded February 6, 1980, at reception number 00382786, Boulder County records; and

- (2) In an area which had not been posted by the city manager to require a leash; and
- (3) Accompanied by a guardian or keeper, provided that the dog is:
 - (A) Within voice and sight control of such person; and
 - (B) Visibly wearing a Voice and Sight Control Evidence Tag that has been lawfully obtained pursuant to chapter 6-13, "Voice and Sight Control Evidence Tags," B.R.C. 1981; and
- (4) The accompanying guardian or keeper had a leash in such person's immediate possession in a condition to be attached to the dog without undue delay.
- (5) This affirmative defense is not applicable if the accompanying guardian or keeper has more than two dogs simultaneously unleashed or unrestrained.

Ordinance Nos. 4862 (1984); 4879 (1985); 5497 (1992); 5858 (1997); 5890 (1997); 5926 (1997); 5988 (1998); 7443 (2006); 7669 (2009); 7744 (2010)

6-1-17. Animals on Mall Prohibited.

(a) No person shall bring an animal onto the mall or possess an animal on the mall, regardless of whether the animal is on a leash or is confined. But a person with an animal may cross the mall in a northbound or southbound direction at 11th Street, Broadway, 13th Street, 14th Street or 15th Street.

(b) It is a specific defense to a charge of violating this section that the person is blind or deaf or otherwise has a significant physical disability and the animal is a service animal specifically trained to aid the mobility of such person.

(c) Notwithstanding the provisions of subsection (a) of this section, an animal may be present on the mall in accordance with the terms of a permit issued under this subsection.

- (1) Upon application in accordance with the procedure prescribed in section 4-11-19, "Application Procedures," B.R.C. 1981, the city manager may issue such a permit, not exceeding three days in length, if the manager finds that:
 - (A) The animal will be kept under control at all times so as not to endanger persons or property;
 - (B) The proposed activity of the animal will not unreasonably interfere with pedestrian movement on the mall nor with other permitted activities;
 - (C) Neither the animal nor any enclosure for it will physically damage the mall in a manner that cannot be immediately repaired by the permittee;
 - (D) The animal will be present on the mall only during the daylight hours;
 - (E) The animal will be provided with food, water, shade and space in any enclosure in which it might be contained that are sufficient in light of the anticipated weather conditions and duration of the animal's appearance on the mall to assure the animal's welfare;
 - (F) The animal's appearance will occur in connection with a public special event or other event of community-wide interest;
 - (G) The applicant provides a certificate of public liability and public property damage insurance meeting the requirements of section 4-1-8, "Insurance Required," B.R.C. 1981;
 - (H) The applicant shall pay the permit fee prescribed by section 4-20-11, "Mall License and Permit Fees," B.R.C. 1981; and
 - (I) None of the grounds for denial of a license under section 4-1-9, "Authority to Deny Issuance of Licenses," B.R.C. 1981, exists.
- (2) The city manager shall prescribe the form of the application and may require such information as is reasonably necessary to make the required findings. The manager may waive the insurance requirement of subparagraph (c)(1)(G) of this section if the manager finds that the animal would not present a risk of injury to persons or property. The manager shall place in the permit such restrictions on time, place and manner as the manager finds are reasonably necessary to meet the requirements of this subsection and to protect the public interest, the welfare of the animal, and the physical integrity of the mall. Permittees are in any case restricted to operating within the terms of their own application.
- (3) A permittee shall pay, and by its acceptance of a permit specifically agrees to pay, any and all damages or penalties that the city incurs itself or may be legally required to pay as a result of the presence of the permittee's animal on the mall, whether or not the acts or omissions complained of are authorized, allowed or prohibited by the city and including, without limitation, repair of physical damage to the mall.
- (4) A permittee shall also pay all expenses incurred by the city in defending itself with regard to any and all damages and penalties mentioned in paragraph (c)(3) of this section. These expenses include all out-of-pocket expenses, including reasonable attorney's fees and the reasonable value of services rendered by any employee of the city.
- (5) A permittee shall comply with all applicable health and sanitation laws and regulations of the city, county and state, and further shall meet at least the following specific sanitation conditions:
 - (A) The permittee immediately removes any excrement that falls on the mall at the permittee's expense; and
 - (B) All animal waste for disposal is promptly transported to sites or facilities legally empowered to accept it for treatment or disposal.

- (6) A permit may be revoked by the city manager for a breach of any of its conditions under the procedure prescribed by section 4-1-10, "Revocation of Licenses," B.R.C. 1981.
- (7) A person wishing to use any of the following very small birds: dove, love bird, cockatiel, conure, parakeet or finch, as part of an entertainment act on the mall may obtain a permit to do so under this subsection without having to comply with subparagraphs (c)(1)(D), (c)(1)(F) and (c)(1)(H) of this section. A permit issued under this paragraph shall be on a calendar-year basis. The city manager is authorized to designate, by regulation, additional species of very small animals whose guardians may be issued a permit under this paragraph if the manager determines that the likelihood of such animals causing injury or annoyance to persons, damage to property or interruption of the mall's function as a primarily pedestrian place is, in the manager's reasonable opinion, insignificant, but such a regulation may not designate dogs, cats, any animal for which a state license from the Colorado Division of Wildlife or a federal license from the United States government is required, or any wild or exotic animal prohibited by section 6-1-4, "Limitation on Possession of Exotic Animals," B.R.C. 1981.
- (d) The maximum penalty for a first or second conviction within two years, based on date of violation, is a fine of \$500.00. For a third and each subsequent conviction, the general penalty provisions of section 5-2-4, "General Penalties," B.R.C. 1981, shall apply.

Ordinance Nos. 5313 (1990); 5913 (1997); 7133 (2001)

6-1-18. Removal of Animal Excrement Required.

- (a) No person owning or keeping any animal shall fail to prevent such animal from defecating upon any property other than the premises of the guardian or keeper.
- (b) It is a specific defense to a charge of violating this section that the defecation occurred on private property with express permission of the owner or all tenants thereof.
- (c) It is a specific defense to a charge of violating this section that the defecation was from an ungulate or camelid within any park, recreation area or open space.
- (d) It is a specific defense to a charge of violating this section that the guardian or keeper immediately removed or cleaned up such deposit and disposed thereof by depositing it in a toilet or a receptacle ordinarily used for garbage and covered by a lid or in an otherwise lawful and sanitary manner.
- (e) The maximum penalty for a first conviction is a fine of \$500.00. For a second conviction within three years, based upon date of violation, the maximum penalty shall be a fine of \$500.00, with the municipal court strongly urged to impose community service hours cleaning up dog waste in public areas as a condition of a suspended sentence or probation pursuant to paragraph 2-6-37(f)(4), B.R.C. 1981, where appropriate in the judgment of the court. For a third and each subsequent conviction within three years, based upon the date of the first violation, the general penalty provisions of section 5-2-4, "General Penalties," B.R.C. 1981, shall apply.

Ordinance Nos. 5858 (1997); 7102 (2000); 7443 (2006)

6-1-19. Barking, Howling or Other Unreasonable Animal Noise Prohibited.

- (a) No person owning or keeping any animal shall fail to prevent such animal from disturbing the peace of any other person by loud and persistent or loud and habitual barking, howling, yelping, braying, whinnying, crowing, calling or making any other loud and persistent or loud and habitual noise, whether the animal is on or off the guardian's or keeper's premises.
- (b) No person shall be charged with violating this section unless a written warning was given to the person by an agent or employee of the city within twelve months preceding the first date alleged as a date of violation in the complaint. Such warning is sufficient if it recites subsection (a) of this section and states that a complaint has been received that an animal of which the defendant is a guardian or keeper is disturbing the peace of an individual. A warning is given under this subsection if it is personally given to the person owning or keeping the animal or if it is mailed first class to such

person. The city manager shall keep records of all warnings given, and such records are prima facie evidence that such warnings were given.

(c) No person shall be convicted at trial of violating this section unless two or more witnesses testify to the loud and persistent or loud and habitual nature of the noise, or unless there is other evidence corroborating the testimony of a single witness on this element.

(d) The provisions of subsections (b) and (c) of this section do not apply when the animal is a cat and it is proven beyond a reasonable doubt that the cat was off the premises of its guardian or keeper at the time of the disturbance.

6-1-20. Aggressive Animals Prohibited.

(a) No person shall own or keep any vicious animal. A vicious animal is one that bites, claws or attempts to bite or claw any person; bites or injures another animal; or in a vicious or terrorizing manner approaches any person in an apparent attitude of attack, whether or not the attack is consummated or capable of being consummated.

(b) It is a specific defense to the charge of owning or keeping a vicious animal that the person or animal that was bitten, clawed, injured or approached by the vicious animal or another person was:

- (1) Other than in self-defense or defense of its young attacking the animal or engaged in conduct reasonably calculated to provoke the animal to attack, bite or injure;
- (2) Unlawfully engaging in 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;
- (3) Engaging in unlawful entry into or unlawfully in or upon a vehicle in which the animal was confined;
- (4) Attempting to assault another person;
- (5) Attempting to stop a fight between the animal and any other animal; or
- (6) Attempting to aid the animal when it was injured.

(c) For the purposes of this section, a person is lawfully upon the premises of a guardian or keeper when such person is on said 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.

Ordinance No. 5374 (1991)

6-1-21. Animals as Nuisance Prohibited.

(a) No person shall own or keep any animal that constitutes a nuisance by violating any of sections 6-1-5, "Animal Fighting Prohibited," 6-1-6, "Subjecting Animals to Unnecessary Suffering," and 6-1-7, "Improper Care of Animals Prohibited," B.R.C. 1981, being a safety or health hazard, damaging the property of another or creating offensive odors, any of which materially interferes with or disrupts another individual in the conduct of lawful activities at such individual's home.

(b) No person shall be charged with violating this section unless a written warning was given to the person by an agent or employee of the city within twelve months preceding the first date alleged as a date of violation in the complaint. Such warning is sufficient if it recites subsection (a) of this section and states that a complaint has been received that an animal of which the defendant is the guardian or keeper is disturbing the peace of another individual. A warning is given under this subsection if it is personally given to a person owning or keeping an animal or if it is mailed first class to such person. The city manager shall keep records of all warnings given, and such records are prima facie evidence that such warnings were given.

(c) If the city manager finds that a nuisance exists in violation of this chapter, in addition to any other remedies available under this code the manager may request that the guardian or keeper of the animal correct the violation by notifying the guardian or keeper, or both the guardian and keeper, that such person has twenty-four hours from the date of

the notice to correct the violation or such longer period as the manager determines is reasonably necessary to correct the violation. Notice under this subsection is sufficient if it is delivered to the guardian or keeper or mailed first class to the address of the owner of property on which the animal is kept on the records of the Boulder County Assessor.

- (1) If the person notified fails to correct the violation as required by the notice, the manager may correct the violation by taking any necessary and reasonable means to do so and charge the costs thereof, plus an additional amount of \$25.00 for administrative costs, to the owner of the property and jointly and severally to the guardian and keeper of the animal.
- (2) If any property owner fails or refuses to pay when due any charge imposed under this subsection, the manager may, in addition to taking other collection remedies, certify due and unpaid charges, including interest, to the Boulder County Treasurer as provided in section 2-2-12, "City Manager May Certify Taxes, Charges and Assessments to County Treasurer for Collection," B.R.C. 1981.

6-1-22. Nuisance Cat Prohibited.

No person owning or keeping any domestic house cat shall fail to prevent the cat from damaging the property of another.

6-1-23. Disposition of Dead Animals.

When any animal dies in the city, no person owning or keeping it shall fail to remove the body of such animal from the city or dispose of it in a lawful and sanitary manner.

6-1-24. Impoundment and Confinement of Animals.

(a) The city manager shall seek to impound or confine to a veterinary hospital, for a period of at least ten days for rabies observation, any dog or cat that has bitten any person. Any dog or cat licensed by the city and inoculated against rabies may, in the alternative, be confined to the premises of the guardian or keeper for a period of ten days unless discovered off such premises during such time or unless the records of the city show that the animal has been found within the city unattended and off the premises of its guardian or keeper within the preceding year. The city manager shall seek to impound or order confined any other animal that has bitten any person for a period of time determined by the Boulder County Health Department to be necessary for rabies observation for the particular animal.

(b) A peace officer, if probable cause exists to believe that a violation of any provision of this chapter other than section 6-1-17, "Animals On Mall Prohibited," 6-1-18, "Removal of Animal Excrement Required," or 6-1-23, "Disposition of Dead Animals," B.R.C. 1981, has occurred, may impound any animal involved in such violation.

(c) A peace officer may impound for its own protection any animal which is under the control of a person at the time of that person's incarceration if it reasonably appears to the peace officer that such person is unable to provide immediately a responsible alternative keeper for the animal.

(d) A peace officer may impound any domestic animal on city mountain park or open space property which is outside the supervision and control of its guardian or keeper.

Ordinance No. 4935 (1985)

6-1-25. Disposition of Impounded Animals.

(a) As soon as practicable after the date of impoundment of an animal pursuant to this chapter, the city manager shall notify the animal's guardian or keeper, if such person is known to the manager, of the fact and place of impoundment. The notification shall be given by a method calculated to reach the guardian or keeper promptly, and may be made in person, by telephone, by facsimile, by electronic mail or by regular or certified mail if more direct methods are unavailable or have failed. If the guardian or keeper of an impounded animal is not known, or if such person's address cannot be determined, the manager shall promptly place a description of the animal on its website or on a website linked to the city's website.

(b) The guardian or keeper of any animal impounded under this chapter shall pay the impoundment and feeding and keeping fees prescribed by section 4-20-39, "Animal Impoundment Fee," B.R.C. 1981, and no person may reclaim any animal until such fees are paid. If the guardian or keeper fails or refuses to pay when due any charge imposed under this subsection, the manager may, without limitation, certify the charge to the Boulder County Treasurer as provided in section 2-2-12, "City Manager May Certify Taxes, Charges and Assessments to County Treasurer for Collection," B.R.C. 1981.

(c) If an animal was impounded solely on the basis of a violation of any provision of sections 6-1-5, "Animal Fighting Prohibited," 6-1-6, "Subjecting Animals to Unnecessary Suffering," 6-1-7, "Improper Care of Animals Prohibited," and 6-1-8, "Abandoning Animals Prohibited," B.R.C. 1981, then the notice required by subsection (a) of this section shall also include a statement that, if the guardian or keeper does not request a hearing within five days of the date of the notice, the animal will be disposed of by the manager. If a hearing is requested, the manager shall schedule it to occur within three city business days and shall give notice of same to the person requesting the hearing. Such hearing shall be conducted in accordance with section 1-3-5, "Hearings and Determinations," B.R.C. 1981. If the manager determines that the animal was being kept in violation of any provision of sections 6-1-5, "Animal Fighting Prohibited," 6-1-6, "Subjecting Animals to Unnecessary Suffering," 6-1-7, "Improper Care of Animals Prohibited," and 6-1-8, "Abandoning Animals Prohibited," B.R.C. 1981, the manager may dispose of the animal in the manner provided in subsection (d) of this section and not return it to its guardian or keeper, or may order it returned to its guardian or keeper upon payment of impoundment and shelter fees if the manager determines that, due to changed circumstances, the animal's health and the public health, safety or welfare will not be endangered thereby. If the manager determines that the animal was wrongfully impounded, the manager shall order the animal returned without payment of accrued impoundment and shelter fees. If no hearing is requested, the manager may dispose of the animal in the manner provided in subsection (d) of this section.

(d) The city manager is authorized to dispose of any impounded animal by selling it at auction under the procedures prescribed by section 2-4-6, "Disposition of Property Other Than Motor Vehicles," B.R.C. 1981, or otherwise as the city manager may direct, putting it up for adoption through an animal adoption agency, or destroying it, if the guardian or keeper of the animal has not reclaimed it within:

- (1) One day of the end of bite confinement pursuant to subsection 6-1-24(a), B.R.C. 1981;
- (2) Two days of notification of the guardian or keeper as provided in subsection (a) of this section, or after holding the animal for at least the minimum period required by the state laws governing licensed animal shelters¹ if the animal's owner is unknown or cannot be notified;
- (3) Three days of notification to the person incarcerated and the guardian or keeper, if known to the manager, that the animal has been impounded solely pursuant to subsection 6-1-24(c), B.R.C. 1981;
- (4) One day of an order returning the animal after a hearing conducted pursuant to subsection (c) of this section; or
- (5) Five days of notification of the guardian or keeper as provided in subsection (c) of this section.

(e) An animal adoption agency shall spay or neuter an unneutered dog or cat before releasing the animal to a person adopting the animal and shall require such person to pay for such procedure. If the adoption agency determines that it is medically inadvisable to spay or neuter the dog or cat before the time of adoption, the adoption agency shall enter into a conditional contract of sale, on a form approved by the city manager, which shall provide, without limitation, that the adopter is given temporary custody of the animal, but title to the animal remains in the city until a date certain. If the affidavit of a veterinarian that the animal has been spayed or neutered is not delivered to the adoption agency on or before such date, the adopter shall surrender the animal to the adoption agency on or before such date and shall be subject to prosecution for failure to do so.

(f) If, in the opinion of a veterinarian, or the animal shelter supervisor, if a veterinarian is not available, a pet animal is experiencing extreme pain or suffering, the city manager may euthanize the animal as soon as the manager has

¹ § 35-80-106.3, C.R.S.

exhausted reasonable efforts to contact the owner, but if the animal has identification, the animal shall not be euthanized for twenty-four hours¹.

Ordinance Nos. 4935 (1985); 5377 (1991); 7326 (2003)

6-1-26. Court May Order Forfeiture of Animal Pursuant to Criminal Conviction.

(a) Forfeiture of Animal As Consequence of Conviction of Specified Violations:

- (1) The provisions of this section shall apply in addition to all other penalty provisions applicable to violations of section 6-1-20, "Aggressive Animals Prohibited," B.R.C. 1981, or neglected or abused pursuant to section 6-1-6, "Subjecting Animals to Unnecessary Suffering," or 6-1-7, "Improper Care of Animals Prohibited," B.R.C. 1981.
- (2) Upon conviction of any of the provisions listed in paragraph (a)(1) of this section, and as a part of the sentencing process, the court shall have authority to order the forfeiture of any animal involved in the violation or violations proven if the animal has not already been forfeited pursuant to some other provision of this chapter. Any such forfeiture shall be accomplished by transfer of the animal involved in the incident for which a defendant is being sentenced to the city manager, and no guardian or keeper of the animal shall fail to comply with the court's order.
- (3) Upon receipt of a forfeited animal, the city manager may dispose of the animal in any manner other than by return to its former guardian. Such disposition may include, without limitation, placement of the animal with a new guardian, or destruction of the animal.

(b) Standards for Forfeiture of Animal Pursuant to Criminal Prosecution: In determining whether an animal shall be forfeited pursuant to the provisions of this section, the court shall balance and evaluate factors relating to the health and safety of the community and the best interests of the involved animal.

- (1) In making forfeiture determinations based upon convictions of violations of section 6-1-20, "Aggressive Animals Prohibited," B.R.C. 1981, the court may consider, without limitation, the following factors:
 - (A) Whether or not the animal attacked a human being;
 - (B) Whether or not there existed any provocation or other extenuating circumstances relevant to animal's behavior;
 - (C) Any aggravating factors relating to the violation for which a defendant is being sentenced;
 - (D) The number and severity of any prior attacks on human beings committed by the animal;
 - (E) Any factors relating to probability of future attacks by the animal;
 - (F) The nature and number of prior incidents of aggressive behavior other than attacks on human beings which involved the animal;
 - (G) The existence or nonexistence of prior animal at large incidents involving the animal;
 - (H) Evidence that corrective action on the part of the guardian of the animal will lessen the chances of future violations of the law involving the animal; and
 - (I) Any expert evaluation of the animal which is placed before the court for evaluation.
- (2) In making forfeiture determinations based upon convictions of violations of section 6-1-6, "Subjecting Animals to Unnecessary Suffering," or 6-1-7, "Improper Care of Animals Prohibited," B.R.C. 1981, the court may consider, without limitation, the following factors:

¹ § 35-80-106.3, C.R.S.

- (A) Any past convictions or other evidence establishing that the animal was subject to cruelty or improper care;
 - (B) Any evidence that corrective action on the part of the guardian of the animal will prevent inadequate treatment of the animal in the future, and the probability that such action will occur;
 - (C) Any evidence concerning the capacity of the guardian to prevent cruelty or inadequate treatment of the animal in the future, and the probability that the guardian will change past behaviors;
 - (D) The contents of any expert evaluation of the animal which is placed before the court for evaluation; and
 - (E) Any other evidence relevant to the probability that the animal will continue to be mistreated in the future if not forfeited.
- (c) Procedures Applicable to Forfeiture of Animal Pursuant to Criminal Prosecution:
- (1) Following conviction for any of the provisions listed in paragraph (a)(1) of this section, the court shall announce whether or not it will consider forfeiture of the involved animal.
 - (A) Such determination shall be based upon the evidence received by the court in conjunction with the conviction or upon any other evidence or argument which may have been placed before the court at any stage of the criminal proceedings in the matter.
 - (B) Neither a forfeiture nor a forfeiture hearing shall occur based upon the entry of a plea of guilty or no contest to any of the provisions listed in paragraph (a)(1) of this section, unless, as a part of the plea proceedings, the court has informed the defendant that forfeiture of an animal is a potential consequence of the entry of plea.
 - (2) If the court determines that forfeiture should be considered, the defendant (and the guardian of the animal, if different than the defendant), the victim (if the offense was owning an aggressive animal) and the prosecuting attorney shall have the right to request an evidentiary hearing regarding whether or not the animal involved in the incident should be forfeited.
 - (3) The court shall grant a continuance of no less than three days following conviction of any of the provisions listed in paragraph (a)(1) of this section, if such continuance is requested by any party for the purpose of marshaling evidence relevant to the issue of forfeiture of an animal.
 - (4) The subpoena power of the court shall be available to a defendant, guardian and prosecuting attorney in order to facilitate the presentation of evidence at an animal forfeiture hearing. The court may accept evidence at such hearing in any form which is properly considered at a sentencing hearing.
 - (5) If the court feels a need for the presentation of particular evidence at the forfeiture hearing, it may issue its own subpoenas for the production of such evidence. The court may also order a convicted defendant or guardian to have the affected animal evaluated by an expert selected from a list maintained by the court for that purpose. Such an evaluation shall be conducted at the defendant's or guardian's expense. The failure of a defendant or guardian to obtain such an expert evaluation may be considered adversely to the defendant or guardian by the court when it makes its forfeiture determination.
 - (6) At an animal forfeiture hearing held pursuant to this section, the defendant, guardian, victim or the prosecuting attorney may present evidence relevant to forfeiture in addition to that which was presented at the trial or plea stage of the proceedings concerning the facts of the offense. However, neither the prosecution, the defendant, nor the victim, if any, shall be required to present such additional evidence. Following the receipt of any such additional evidence, the court shall make its decision based upon the facts of the violation as proven or admitted at trial or plea stage of the proceedings, any additional evidence which may have been presented at the forfeiture stage of the proceedings, and any relevant information contained in the court's records relating to the affected animal.

- (7) At a forfeiture proceeding held pursuant to the provisions of this section, the prosecuting attorney may urge the court to order forfeiture of an animal, urge the court to avoid forfeiting an animal or take no position with regard to such forfeiture.

6-1-27. Administrative Forfeiture of Animal Deemed to Constitute a Nuisance or to be Abused.

(a) The provisions of this section constitute an independent method of forfeiture of aggressive or abused animals in addition to other methods of forfeiture and impounding.

(b) Whenever the city manager determines that any animal is vicious as provided in section 6-1-20, "Aggressive Animals Prohibited," B.R.C. 1981, or neglected or abused pursuant to section 6-1-6, "Subjecting Animals to Unnecessary Suffering," or 6-1-7, "Improper Care of Animals Prohibited," B.R.C. 1981, the manager, through the city attorney, may apply to the municipal court for an order to impound the animal and remove it permanently from its guardian. Such application shall:

- (1) Identify the animal;
- (2) Identify the guardian and keeper, if known, or the residence of the animal if the guardian or keeper is not known;
- (3) Identify the date and location of occurrence of one or more acts of viciousness, neglect or abuse; and
- (4) Request that the guardian and keeper be required to show cause why the animal should not be permanently removed from its guardian and forfeit to the city.

(c) Upon receipt of such an application, the court shall set a date for a hearing thereon, and in the manner provided in chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, cause to be served on the guardian and keeper, 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.

(d) If the city can show by a preponderance of evidence at the hearing, conducted under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, that the animal was vicious within the meaning of section 6-1-20, "Aggressive Animals Prohibited," B.R.C. 1981, or was treated or used in a manner prohibited by section 6-1-6, "Subjecting Animals to Unnecessary Suffering," or 6-1-7, "Improper Care of Animals Prohibited," B.R.C. 1981, the judge may order the animal forfeit to the city. The judge shall use the standards of subsection 6-1-26(b), B.R.C. 1981, in exercising this discretion. Any such forfeiture shall be accomplished by transfer of the animal involved to the city manager, and no guardian or keeper of the animal shall fail to comply with the court's order.

6-1-28. Emergency Impoundment of Animal.

(a) When, in the opinion of the city manager, an animal constitutes an immediate danger to the community, or an animal is itself in immediate danger due to improper care or treatment, the city manager may cause that animal to be impounded subject to the following conditions:

- (1) If at the time of impoundment, there exists a pending criminal case or a pending administrative forfeiture action pursuant to the provisions of this chapter involving the impounded animal, the city manager shall, within seventy-two hours, attempt to notify the parties in such actions by written notice or other means of the interim internment of the animal.
- (2) If, at the time of emergency impoundment, there does not exist a pending criminal case or a pending administrative forfeiture action pursuant to the provisions of this chapter involving the impounded animal, such action shall be filed within seventy-two hours of the emergency impoundment of the animal.
- (3) Within seventy-two hours of emergency impoundment, the city manager shall submit written reports to the court and the court shall review those reports to determine whether interim impoundment is appropriate. However, the city manager may submit such reports prior to impounding an animal in order to obtain a court determination.

- (4) After evaluation of all reports and information submitted to it in support of interim impoundment, the court shall order the animal released unless it makes both of the following findings:
 - (A) There is probable cause to believe that following trial or hearing pursuant to the provisions of this chapter, forfeiture of the animal will be justified; and
 - (B) There is probable cause to believe that the impounded animal constitutes an immediate danger to the community, or is itself in immediate danger due to improper care or treatment.
- (5) Upon making findings justifying interim impoundment, the court shall order the animal detained by the city manager pending outcome of a pending criminal case or a pending administrative forfeiture action, or may order the animal released to any person upon such conditions as may satisfy the court that the safety of the community and of the animal will be adequately protected.
- (6) Interim impoundment shall be terminated upon the completion of a pending criminal case or a pending administrative forfeiture action at such point as an order for the disposition of the animal is made pursuant to the orders entered in such action.

6-1-29. Procedure Upon Entry of Judgment for Forfeiture of an Animal.

(a) Whenever, pursuant to the provisions of this chapter, the court determines that forfeiture of an animal is warranted, the court shall order that the animal be delivered to the city manager on a date certain.

(b) In entering an order of forfeiture, the court shall ensure that the record includes the following information and that such information is made available to the city manager:

- (1) A sufficient identification of the animal to be forfeited such as to allow the city manager to identify the animal accurately;
- (2) Identifying information regarding the guardian and any keeper of the animal, if known, or the residence of the animal if the guardian or keeper is not known;
- (3) A description of the date and circumstances of acts of viciousness, neglect or abuse which gave rise to the order of forfeiture; and
- (4) A copy of all reports, documentary evidence or other information which was introduced at trial or at the forfeiture hearing which might assist the city manager in determining the appropriate disposition of the animal.

(c) No person shall fail to deliver possession of an animal ordered forfeited pursuant to the provisions of this section. However, the existence of this provision shall not restrict the court from using all lawful enforcement procedures to ensure compliance with a duly entered order of forfeiture.

6-1-30. Peace Officer may Destroy Dog.

A peace officer or other duly authorized agent of the manager may destroy any dog observed by such person to be in violation of section 6-1-16, "Dogs Running At Large Prohibited," B.R.C. 1981, and running, worrying, menacing, threatening or endangering persons, domestic livestock or wildlife if the dog is a threat to the safety of any person, domestic livestock or wildlife.

Ordinance No. 5497 (1992)

6-1-31. Police Dogs.

The provisions of this chapter do not apply to police officers using dogs as part of official police business.

6-1-32. Enforcement of Chapter.

The city manager shall enforce the provisions of this chapter and operate an animal pound for the city. The manager may delegate all or part of one or both of these duties to a private person or organization by contract. But all peace officers may enforce the provisions of this chapter.¹

6-1-33. Bird Protection Sanctuary Created.

- (a) The following are legislative findings of fact:
 - (1) Protected birds are essential to the city's local ecosystem and their presence contributes to the quality of life of city residents and visitors;
 - (2) The city's open space and parks programs are enriched by the presence of protected birds;
 - (3) The humane treatment of wild birds and other wildlife reflects a core value for city residents;
 - (4) Utilization of some methods of lethal control for wild birds can have adverse impacts upon nontarget species of birds, upon bird species protected by federal, state and local regulations and upon other nontarget wildlife species; and
 - (5) Lethal control methods are often ineffective because birds tend to perch or nest at sites at which such measures have been previously utilized. The use of mechanical and structural methods of control to make perching or nesting sites unattractive is often more effective and causes less ecological damage.

(b) The area within the city is declared to be a sanctuary for the refuge of protected birds. All persons are urged to safeguard protected birds and their refuges within such sanctuary and to take reasonable steps to prevent unnecessary molestation of any wild birds within the city. Wildlife management practices and other activities conducted within the city should be designed to avoid unnecessary suffering on the part of wild birds.

Ordinance Nos. 7227 (2002); 7321 (2005)

6-1-34. Use of Poison Restricted for Lethal Control of Birds.

No person shall poison any wild bird or distribute poison with the intent to poison any wild bird.

Ordinance Nos. 7227 (2002); 7321 (2005)

6-1-35. Injuring or Capturing Wild Birds Restricted.

(a) Except as authorized by provisions of this chapter, it shall be unlawful for any person in the city knowingly to shoot at, wound, kill, capture, ensnare, net, trap or injure any wild bird, or for any person to damage the eggs or nest of any protected bird. It shall also be unlawful for any landowner within the city knowingly to permit another to engage in any of the actions forbidden by this subsection.

- (b) It shall be an affirmative defense to a charge of violating this section that the following circumstances existed:
 - (1) The capture of, or injury to, a bird was incidental to removing that bird or its nest from a structure, including, without limitation, any covering over a sidewalk;
 - (2) The capture of, or injury to, a bird was required in order to protect the safety of existing structures, or to deal with a verified health or safety hazard pursuant to a permit issued in conformity with section 6-1-39, "Special Permit," B.R.C. 1981;
 - (3) The capture and release of the bird was accomplished for purely humanitarian purposes;

¹ § 30-15-105, C.R.S.

- (4) The capture of, or injury to, a bird occurred in conjunction with official activities of any of the following persons while engaged in professional activities of animal treatment, rehabilitation or removal: Humane Society of Boulder Valley employees, veterinarians, Colorado Division of Wildlife employees, City Park Rangers, City Wildlife Managers or persons permitted under state or federal law as wildlife rehabilitators;
- (5) The capture of, or injury to, a bird occurred in conjunction with authorized activities of a city employee, Humane Society of Boulder Valley employee, veterinarian or any person permitted by state or federal law to act in the capacity of a wildlife rehabilitator or of a permitted researcher engaged in the capture and banding of birds; or
- (6) The capture of, or injury to, a bird occurred in conjunction with activities authorized by a depredation permit issued by the United States Fish and Wildlife Service.

Ordinance Nos. 7227 (2002); 7321 (2005)

6-1-36. Procedures for Obtaining Prairie Dog Lethal Control Permits.

(a) Except as otherwise provided in this chapter, no person shall utilize lethal control measures for prairie dogs without first having obtained a lethal control permit from the city manager.

(b) An applicant for a lethal control permit shall file an application with the manager on forms supplied by the manager for that purpose.

(c) Each lethal control application shall include or be accompanied by:

- (1) Proof that the applicant is the landowner on which the lethal means of control will be employed;
- (2) Payment of a processing fee as prescribed by section 4-20-58, "Prairie Dog Lethal Control Permit Fees," B.R.C. 1981;
- (3) The name, address and telecommunications numbers of:
 - (A) The applicant;
 - (B) The property manager of such property (if any);
 - (C) Any consultants retained or consulted with regard to proposed lethal control measures; and
- (4) All information required by the forms supplied by the city manager in subsection (b) of this section;
- (5) A description of:
 - (A) The reasons why lethal control measures are required;
 - (B) A description of any projected development that makes use of lethal control necessary;
 - (C) The proposed lethal control measures;
 - (D) The date and time on which the lethal control measures will be initiated; and
 - (E) The steps that will be taken in order to preclude recolonization following the utilization of lethal control methods;
- (6) Authorization to the city manager or to a designee to be present during all extermination activities;
- (7) Documentation that the following options were considered and the reason that they were not utilized:
 - (A) Nonlethal control measures;
 - (B) Minimizing on-site conflicts between desired land uses and wildlife;

- (C) Relocation alternatives;
 - (D) Where no reasonable relocation options exist, participation in an animal recovery program for the preservation of endangered species; and
 - (E) Trapping and individual euthanization as a method of lethal control;
- (8) A description of steps considered in order to minimize potential negative impacts upon nontarget species;
 - (9) A map of the property on which lethal control measures will be employed that includes the address or legal description of the property and the general location of prairie dog burrows on that property;
 - (10) The number of acres of prairie dog habitat on the property;
 - (11) An estimate of the number of live prairie dogs inhabiting the site and an explanation of the methodology utilized for developing that estimate; and
 - (12) Demonstration, to a high degree of probability, that:
 - (A) The land on which the prairie dogs are located will be developed within fifteen months of the date of the application and the continued presence of prairie dogs would make such development impractical or impossible;
 - (B) A principal use of the land will be adversely impacted in a significant manner by the presence of prairie dogs on the site; or
 - (C) Established landscaping or an open space feature established and installed prior to any prairie dog colonization will be adversely impacted by the establishment of new prairie dog colonies;
 - (13) The application shall establish that the applicant has adopted an adequate plan to protect, to the extent possible, nonprairie dog wildlife during the process of utilizing lethal control measures for prairie dogs;
 - (14) If pesticides are going to be used, the application shall establish that the applicant will utilize any measures required by state or federal regulations to protect, to the extent possible, nonprairie dog wildlife during the process of utilizing lethal control measures;
 - (15) The application shall establish an adequate plan designed to prevent the reentry of prairie dogs onto the land on which lethal control measures are to be utilized. No person shall fail to comply with the provisions of such a plan after having utilized lethal control measures based upon an application containing it;
 - (16) The application shall establish that reasonable efforts will be made to avoid utilizing lethal means of control for prairie dogs during prairie dog birthing periods;
 - (17) If the applicant is proposing to poison prairie dogs, the application shall establish that the applicant has:
 - (A) Identified and employed a person approved for that purpose by the State of Colorado; and
 - (B) Submitted a plan to comply with chapter 6-10, "Pesticide Use," B.R.C. 1981, relating to the regulation of pesticide use and required notice.

(d) The city manager shall, within sixty days, review any application for completeness and shall accept the application upon determination that it is complete. An application shall only be deemed complete if it includes an adequate showing that the applicant has demonstrated reasonable efforts to identify and use relocation alternatives in lieu of lethal control measures. Factors to be considered by the manager in determining whether the showing is adequate shall include, without limitation, the following:

- (1) Whether or not the manager has determined that city lands are available for relocation. Such determination shall be based upon the wildlife carrying capacity of city lands and upon the manager's consideration of the policies set forth in the Boulder Valley Comprehensive Plan bearing upon natural ecosystem management and

the management of wildlife-human conflicts. The manager's determination in this regard shall be final and not subject to appeal or review;

- (2) Whether or not there are non-city lands available or feasible for relocation; and
- (3) Additional information relied upon by an applicant to determine that relocation is unavailable, not feasible or otherwise inappropriate.

(e) A property owner of a site on which burrow fumigation measures will be utilized shall post signs on the affected property designed to give reasonable notice to neighbors and passers by. Such signs shall be posted within one day of submission of an application and shall remain posted until two days after the use of lethal control measures is completed.

(f) Not less than fifteen days after accepting an application as complete, the manager shall commence a sixty day public comment period on the application, soliciting public comment on relocation alternatives for prairie dogs that would otherwise be lethally controlled under the permit application. The only information from the permit that the city manager shall make available to the public for purposes of this subsection shall be information that is submitted by the applicant pursuant to paragraphs (c)(7), (c)(10) and (c)(11) of this section.

(g) Not less than fifteen days after the close of the public comment period, the city manager shall determine whether or not to issue the permit.

- (1) If the city manager determines that relocation alternatives exist, the city manager shall delay issuing the permit for an additional twelve months to allow for relocation to occur.
- (2) If the city manager determines that relocation alternatives do not exist, the city manager may issue the permit.

(h) Owners or occupants of residential lots containing a single residence may, at any time, obtain a lethal control permit to exterminate prairie dogs on their property. No fee shall be charged for such a lethal control permit and no waiting period longer than that period of time reasonably required to process an application shall be required.

- (1) The intent of the permit process for such residential lots is to provide a mechanism for the city to monitor prairie dog populations and related ecological issues within its boundaries while allowing owners or occupants of small residential lots to respond to the presence of unwanted wildlife.
- (2) Applications for a lethal control permit for such residential lots shall be approved upon receipt of the following information:
 - (A) Address of the subject property;
 - (B) The name and telephone number of the applicant;
 - (C) The date of application;
 - (D) A demonstration of compliance with any applicable state and federal regulations pertaining to the utilization of lethal control measures; and
 - (E) Such other information as the manager may require to adequately evaluate such requests, their purposes, and the expected outcomes of the use of lethal control measures.

(3) Lots containing multi-family residential structures shall not qualify for treatment under this subsection.

(i) The city manager may impose upon the exercise of the permit any conditions reasonably related to the purposes of this chapter.

(j) A permit issued under this chapter is specific to the property for which application is made and is not transferable.

(k) The requirements of this section apply to all private lands within the city limits of Boulder, all lands owned or managed by the city, and all city activities affecting prairie dogs inside or outside of the city limits.

(l) Any applicant for a lethal control permit aggrieved by a decision of the city manager concerning an application may appeal such decision to a hearing officer appointed by the manager by filing an appeal with the manager within fourteen days of the issuance or final denial of a permit. After giving notice to all interested parties, the hearing officer shall hear the appeal within thirty days of the notice of appeal, or at such other time to which the applicant and the city may agree, and the hearing shall be held pursuant to the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. The hearing officer shall determine whether the permit meets the requirements of this chapter and shall grant or deny the application with conditions, as appropriate.

(m) The manager shall specify the term of each permit, which shall be a reasonable amount of time under the circumstances.

(n) The manager may revoke a permit issued under this chapter for the grounds and under the procedures prescribed by section 4-1-10, "Revocation of Licenses," B.R.C. 1981, and also for failure to abide by any provision of this chapter or condition of the permit.

(o) The manager may suspend any portion of this chapter in the event of an emergency situation which threatens irreparable harm to the health, safety or welfare of the inhabitants of the city or to the city's planning area or to the city's environment.

Ordinance Nos. 7227 (2002); 7321 (2005)

6-1-37. Procedures Affecting the Relocation of Prairie Dogs.

(a) The landowner from whose land any relocation of prairie dogs is to be made shall provide the manager with at least twenty days' advance written notice of the initiation of relocation of prairie dogs, which notice shall include:

- (1) The name, address and telecommunications numbers of the applicant;
- (2) The name, address and telecommunications numbers of the owner of the property from which prairie dogs will be relocated and the name, address and telecommunications numbers of the owner of the property to which the prairie dogs will be relocated;
- (3) The name, address and telecommunications numbers of the property manager of property from which prairie dogs will be relocated, if any, and the name, address and telecommunications numbers of the property manager of property to which the prairie dogs will be relocated, if any;
- (4) The name, address and telecommunications numbers of any consultants retained or consulted with regard to the proposed relocation measures;
- (5) A description of the reasons why relocation measures are required;
- (6) The date and time on which the physical relocation measures will be initiated;
- (7) A plan detailing those steps that will be taken in order to prevent or discourage the re-entry of prairie dogs onto the land from which relocation is to take place. No person shall fail to comply with the provisions of such a plan after having conducted relocation activities based upon an application containing it;
- (8) Seven days' written additional notice if relocation is not initiated on the date provided pursuant to the terms of a preceding notice; and
- (9) Copies of all required state and federal permits, including any required permits from the Colorado Division of Wildlife.

(b) The city manager or a designee shall be allowed to be present on the land from which relocation is being made and on the land to which relocation is being made during the relocation procedure.

(c) No person shall relocate prairie dogs unless the property owner of the land from which relocation is to take place, or that person's agent, has obtained all required state and federal permits, including any required permits from the Colorado Division of Wildlife.

(d) Relocation shall not be permitted during the birthing, nursing and early rearing period of March 1 through June 1.

(e) No person shall trap or relocate prairie dogs in a way that results in unnecessary suffering to the animals.

(f) No person engaged in the relocation of prairie dogs shall maintain such prairie dogs in his or her possession for more than forty-eight hours, unless such animals are sick or injured, in which case the animals shall be turned over to a state permitted animal rehabilitator.

Ordinance No. 7321 (2005)

6-1-38. Fees and Requirements for Issuance of Prairie Dog Lethal Control Permits.

Private landowners seeking lethal control permits shall be required to pay a fee to mitigate the loss of prairie dog habitat as a consequence of the use of lethal control measures.

(a) The fee as prescribed in section 4-20-58, "Prairie Dog Lethal Control Permit Fees," B.R.C. 1981, shall be required on a prorated basis for each acre of active prairie dog habitat lost as a consequence of the use of lethal control measures. There shall be an offset against this fee for any costs incurred by a property owner in connection with the lawful relocation of prairie dogs from the property on which lethal control measures are to be utilized in order to avoid subjecting the relocated animals to lethal control measures.

(b) A processing fee shall be paid by an applicant for a lethal control permit for birds or prairie dogs in an amount prescribed by section 4-20-58, "Prairie Dog Lethal Control Permit Fees," B.R.C. 1981.

(c) No fee, other than processing fees, shall be charged to the city or its departments which obtain lethal control permits made necessary by city projects or programs.

(d) No fee, other than processing fees, shall be charged to any property owner who captures prairie dogs for the purpose of supplying them, either after euthanization or live, to wildlife recovery programs.

(e) The manager may adopt regulations allowing for the waiver of fees, or any portion of such fees, in situations in which a landowner establishes to the manager's satisfaction that the landowner would be entitled to utilize pesticides to poison prairie dogs but chooses instead to capture individual animals and subject them to euthanasia in order to minimize their suffering.

(f) Fees collected pursuant to this section may be utilized for the following purposes:

(1) Offsetting administrative costs associated with operating the lethal control permit system;

(2) Acquiring additional public land to accommodate uses displaced by relocation of prairie dogs;

(3) Conducting relocation activities of wildlife;

(4) Creating new habitat for wildlife by converting selected parcels of public lands to conditions suitable for future relocation or habitat development;

(5) Enhancing the habitat quality of public land prior to relocation of prairie dogs, such as through weed management and supplemental seeding programs;

(6) Monitoring the success of wildlife relocation programs;

(7) Constructing and maintaining wildlife areas, such as by erecting fences and establishing natural barriers, to minimize impacts of existing or future wildlife on city residents, and monitoring the effectiveness of such barriers;

- (8) Producing educational signs, brochures or other materials related to wildlife conservation and management;
- (9) Retaining consultant services to assist with wildlife management and to monitor prairie dog or bird population sizes that might be affected by city or private development projects;
- (10) Offsetting ecological losses associated with the use of lethal control measures by enabling the city to provide new or enhanced habitat elsewhere or by allowing the city to preserve wildlife through relocation or other activities;
- (11) Funding prairie dog-related research; or
- (12) Funding other programs that are determined by the manager to be consistent with the wildlife protection policy objectives set forth in this chapter.

Ordinance No. 7321 (2005)

6-1-39. Special Permit.

(a) The city manager may grant or deny a special permit for the killing or the capturing and releasing of birds or prairie dogs when it is shown in writing that:

- (1) The birds or prairie dogs constitute a health hazard in a particular location in the city and that the specific actions are needed in order to eliminate the health hazard; or
- (2) The birds or prairie dogs must be removed in order to permit completion or maintenance of a public improvement project approved by the city council, but only after the city council has been provided with notice that bird or prairie dog removal will be required.

An applicant for special permit pursuant to this subsection must show in writing that he or she has taken reasonable steps to control the situation by exclusion devices, noninjurious repellants or other nonlethal means. Where such steps are not feasible, the applicant shall provide the reasons why such alternative measures are not feasible.

(b) The city manager may grant or deny a special permit to allow a landowner to damage prairie dog burrows on that landowner's property where that landowner produces proof satisfactory to the manager that the following conditions exist:

- (1) The legal parcel or lot on which burrows may be damaged had no prairie dog habitation for a period of at least three hundred sixty five consecutive days;
- (2) Following the period without prairie dog habitation, at least one but not more than five new burrows were established;
- (3) The landowner wants to be allowed to damage the new prairie dog burrows as part of an ongoing program to halt new colonization; and
- (4) No permit shall be issued pursuant to this subsection between March 1 and June 1.

Ordinance No. 7321 (2005)

6-1-40. City Manager may Issue Regulations.

The city manager may adopt reasonable interpretive and administrative rules and regulations as deemed necessary to administer and enforce the provisions of this chapter.

Ordinance Nos. 7133 (2001); 7227 (2002); 7321 (2005)

Chapter 2 Weed Control¹

6-2-1. Legislative Intent.

The purpose of this chapter is to protect the public health, safety and welfare and preserve neighborhood environments by regulating the type and height of weeds and brush that are allowed in the city and to exempt certain areas of the city from the restrictions of this chapter, particularly mountain parks, streams and watercourses, open space and stream rights-of-way, that should be allowed to remain in a natural-appearing state.

6-2-2. Definitions.

(a) For purposes of this chapter, *weeds* means grass and herbaceous plants, but does not include plants in flower or vegetable gardens; small plots of wheat, barley, oats or rye; and planned and maintained shrubs and woody plants.

(b) For purposes of this chapter, *brush* means woody shrubs not part of a planned and maintained landscape of either a highly structured manicured type or a natural appearance.

6-2-3. Growth or Accumulation of Weeds Prohibited.

No owner, lessee, agent, occupant or person in possession or control of any occupied or unoccupied lot or tract of land or any part thereof in the city shall permit or maintain on any such lot or tract of land or along the sidewalk, street or alley adjacent thereto any growth of weeds to a height greater than twelve inches.

6-2-4. Growth and Accumulation of Brush Prohibited.

No owner, lessee, agent, occupant or person in possession or control of any occupied or unoccupied lot or tract of land or any part thereof in the city shall permit or maintain on any such lot or tract of land or along the sidewalk, street or alley adjacent thereto any growth of brush.

6-2-5. Growth of Weeds or Brush as Nuisance Prohibited.

No owner, lessee, agent, occupant or person in possession or control of any occupied or unoccupied lot or tract of land or any part thereof in the city shall permit any growth of brush or weeds that does any of the following things:

- (a) Constitutes a nuisance by collecting trash, debris or rubble;
- (b) Creates a fire hazard;
- (c) Harbors wildlife or pests that are hazards to public health or safety;
- (d) Contains Canadian Thistle or Russian Knapweed; or
- (e) Contains any other weed adopted pursuant to section 6-2-9, "City Manager Authorized to Issue Rules," B.R.C. 1981.

Ordinance Nos. 5036 (1987); 7081 (2000)

6-2-6. City Manager May Cut and Remove Weeds or Brush.

(a) If the city manager finds that any weeds or brush exist on any property in violation of this chapter, the manager shall request that the owner and the lessee, agent, occupant or other person in possession or control of the property correct the violation and bring the property into conformity with the standards of this chapter.

(b) The city manager shall notify the owner and the lessee, agent, occupant or other person in possession or control of the property that such persons have seven days from the date of the notice to make such corrections, or such longer time as the manager finds appropriate in view of the nature and extent of the violation. Notice under this subsection is

¹ Adopted by Ordinance No. 4683. Derived from Ordinance Nos. 678, 1935, 3253.

sufficient if it is deposited in the mail first class to the last known owner of property on the records of the Boulder County Assessor and to the last known address of the lessee, agent, occupant or person in possession or control of the property.

(c) If the person notified fails to correct the violation as required by the notice prescribed by subsection (b) of this section, the city manager may correct the violation by cutting or removing the weeds or brush and charge the costs thereof, plus an additional amount of \$25.00 for administrative costs, to the owner and to the lessee, agent, occupant or other person in possession and control of the property.

(d) If any property owner fails or refuses to pay when due any charge imposed under this section, the city manager may, in addition to taking other collection remedies, certify due and unpaid charges, including interest, to the Boulder County Treasurer to be levied against the person's property for collection by the county in the same manner as delinquent general taxes upon such property are collected as provided by section 2-2-12, "City Manager May Certify Taxes, Charges and Assessments to County Treasurer for Collection," B.R.C. 1981.

6-2-7. Defenses.

(a) It is a specific defense to a charge of violating section 6-2-3, "Growth or Accumulation of Weeds Prohibited," or 6-2-4, "Growth and Accumulation of Brush Prohibited," B.R.C. 1981, that the lots on which the growth occurs is one-half acre or more in size and is a nonbuildable outlot designed and restricted to remain as open space.

(b) It is a specific defense to a charge of violating section 6-2-3, "Growth or Accumulation of Weeds Prohibited," B.R.C. 1981, that the part of the weed exceeding twelve inches is a seed head, the seeds have not yet matured, and the weed is a part of a maintained landscape.

6-2-8. Exceptions to Chapter.

(a) In order to retain certain city properties in their natural states, city-owned parks, open space, street rights-of-way and stream beds or banks are exempt from the requirements of sections 6-2-3, "Growth or Accumulation of Weeds Prohibited," and 6-2-4, "Growth and Accumulation of Brush Prohibited," B.R.C. 1981.

(b) Wetlands are exempt from the requirements of this chapter.

Ordinance No. 5036 (1987)

6-2-9. City Manager Authorized to Issue Rules.

The city manager may adopt rules and regulations that the manager determines are reasonably necessary to implement the requirements of this chapter.

6-2-10. Advisory Board.

City council shall be the local advisory board for all state and local noxious weed statutes ordinances and regulations. The mayor shall be the chair and the deputy mayor shall be the secretary. A majority of the members of the board shall constitute a quorum.

Ordinance No. 7081 (2000)

Chapter 3 Trash, Recyclables and Compostables¹

6-3-1. Legislative Intent.

The purpose of this chapter is to protect the public health, safety and welfare by regulating the accumulation and storage of trash, recyclables and compostables; and to prevent conditions that may create fire, health or other safety hazards; harbor pests; or impair the aesthetic appearance of neighborhoods. The provisions of this chapter are intended to

¹ Adopted by Ordinance No. 4686. Amended by Ordinance No. 7145. Derived from Ordinance No. 3015.

help ensure that trash, recyclables and compostables are disposed of in an appropriate and timely manner, that such materials are properly screened and to support waste reduction programs that promote recycling and composting.

Ordinance No. 7585 (2008)

6-3-2. Definitions.

The definitions in chapter 1-2, "Definitions," B.R.C. 1981, shall apply to this chapter, including, without limitation, the definitions of *Compostables*, *Hauler*, *Recyclable materials*, *Trash*, *Trash container*, *Visible to the public* and *Wildlife-resistant container*.

The following terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

Person shall have the meaning set forth in chapter 1-2, "Definitions," B.R.C., and shall also include, without limitation, owner of any property or vacant land; occupant, owner, operator or manager of any single unit dwelling, multi unit dwelling, mobile home, mobile home park, private club or other similar property; or owner, operator, manager or employee of any business or business property.

Ordinance Nos. 5293 (1990); 7078 (2000); 7172 (2001); 7585 (2008)

6-3-3. Accumulation of Trash, Recyclables and Compostables Prohibited.

(a) No owner of any vacant land or property; occupant, owner or manager of any single family dwelling or similar property; owner, manager or operator of any multiple family dwelling, private club or similar property; or owner, operator, manager or employee of any commercial or industrial establishment or similar property shall fail to:

- (1) Prevent the accumulation of trash, recyclables and compostables that are visible to the public on such property and on the public right of way adjacent to the property;¹
- (2) Remove trash, recyclables and compostables located on such property and on the public right of way adjacent to the property;
- (3) Remove trash frequently enough so that it does not cause putrid odors on the property.
- (4) Remove or repair broken or damaged windows located on such property. However, it shall be an affirmative defense to a violation of this provision that a person is a tenant who, under the terms of the tenancy, is not responsible for the maintenance of that property and who failed to address a particular maintenance issue for that reason;
- (5) Remove accumulated newspapers or other periodical publications from such property when such accumulated newspapers or publications are visible to the public and remain so for a period of more than twenty-four hours. It shall be an affirmative defense to any alleged violation of this provision that no more than three such newspapers or periodicals were accumulated for each residential unit or each business entity located on the property and that no newspaper or periodical more than three days old is located on the property; and
- (6) Sufficiently bundle or contain recyclable materials so that those materials are not scattered onto the public right of way or onto other properties.

(b) No owner of any property containing one or more rental dwelling units shall fail to maintain in effect a current and valid contract with a hauler providing for the removal of accumulated trash from the property, which contract shall provide for sufficient trash hauling to accommodate the regular accumulation of trash from the property no less frequently than on a biweekly basis.

(c) No property owner or contractor in charge of any construction site or responsible for any construction activity shall fail to:

- (1) Prevent trash from being scattered onto the public right of way or onto other properties; and

¹ See Section 5-4-13, "Littering," B.R.C. 1981, for additional provisions relating to litter and littering.

- (2) Ensure that all trash generated by construction and related activities or located on the site of construction projects is picked up at the end of each workday and placed in containers sufficient to prevent such trash from being scattered onto the public right of way or onto other properties.

Ordinance No. 7585 (2008)

6-3-4. Containers Required.

No owner or occupant of any single family dwelling; owner or manager of any multiple family dwelling or private club; or owner, operator or manager of any business; or any similar property shall fail to provide at all times one or more trash containers on such property. Such containers shall be of a size sufficient to accommodate the regular accumulation of trash from the property.

Ordinance No. 7585 (2008)

6-3-5. Storage, Disposal and Screening of Trash, Recyclables, Compostables and Specified Other Materials.

- (a) No person shall:
 - (1) Store trash, recyclables and compostables except in containers in a manner so that they are not overflowing, their contents are not 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. However, large and unusual items may be stored for collection in the manner set forth in subparagraph (6) below.
 - (2) Store trash, recyclables and compostables except in containers that are in a location so as to have the minimum possible impact on nearby properties.
 - (3) Store or locate trash in plastic bags in alleys.
 - (4) Store trash, recyclables and compostables in a manner that allows putrid odors to emanate from the property.
 - (5) Store liquids, animal or vegetable oils, gasoline or other petroleum products other than water, unless such liquids are stored in a manner that prevents leakage and are not conspicuously visible from a public street.
 - (6) Store brush, fence posts, crates, vehicle tires, vehicle bodies or parts, bed mattresses or springs, water heaters or other household appliances, damaged or stored or discarded furniture and other household goods or items, materials recovered from demolition and other stored or discarded objects three feet or more in length, width or breadth, unless such materials are stored in a manner reasonably calculated to prepare them for collection or to conserve them for use on the premises with the minimum possible impact on nearby properties.
 - (7) Store piles of soil or rocks unless such materials are stored in a manner reasonably calculated to conserve such materials for use on the premises and with the minimum possible impact on nearby properties and in a manner that is not conspicuously visible from a public street.
 - (8) Place a trash, recycling or composting container on the sidewalk or in the city right of way unless it is placed so as not to impair or obstruct pedestrian, bicycle or vehicular traffic. However, this provision shall not apply to trash, recycling or composting containers placed in a public alley with the authorization of the city manager in order to accommodate efficient collection of trash, recyclables or compostables.
 - (9) Place a trash, recycling or composting container in a front yard setback or in the public right of way, excepting public alleys, any earlier than 5:00 a.m. on the day on which such materials are scheduled to be collected. All such containers shall be removed from those locations by 9:00 p.m. of the same day.
 - (10) Place any refrigerator, freezer or other unused appliance in or upon nonsecured portions of a property, including, without limitation, a location awaiting trash or recycling pickup, unless all doors of such appliances are secured or removed so that children cannot be trapped within.

- (11) Store trash, recyclables or compostables in such a manner as to constitute or create a fire, health or other safety hazard or harborage for wildlife or pests, including, without limitation, rodents, insects or other animals.
- (12) In a RM or RH zone, store any materials intended to be discarded, recycled or composted in a place visible to the public, other than materials contained within trash, recycling or composting containers.
- (13) In a RM or RH zone, fail to screen from view from the street, all trash, compostable and recyclable containers, stored on the property that such person owns or occupies, except on collection day. However, it shall not be a violation of this provision if containers for these materials are located in an alley and are visible to the public from a street at the point at which that street intersects with the alley.

(b) Nothing in this section shall be deemed to prohibit any person from keeping building materials on any premises before or during the period of active construction pursuant to a city building permit under chapter 10-5, "Building Code," B.R.C. 1981, nor to prohibit any person from storing any materials used in the operation of a business located in a zone allowing such use. Nor shall this section prohibit any person from maintaining building or landscaping materials on any premises during the period of active use of those materials for a building or landscaping project that does not require a building permit so long as such materials are secured or contained during periods when they are not in use.

Ordinance No. 7585 (2008)

6-3-6. Compost Piles Permitted if Not Nuisance.

(a) Any person may maintain compost piles. Such compost piles shall be in a segregated area and shall contain alternate layers of plant materials maintained to facilitate decomposition and produce organic material to be used as a soil conditioner.

(b) No person who maintains a compost pile shall fail to prevent it from becoming a nuisance due to putrid odors or attraction of wildlife or pests, including, without limitation, rodents, insects or other animals.

Ordinance No. 7585 (2008)

6-3-7. Defenses.

(a) It shall be an affirmative defense to a charge of violating section 6-3-3(a)(1) and (2), and section 6-3-5(a)(1), (2) and (6), B.R.C. 1981, that:

- (1) The trash, recyclables or compostables were set out in the vicinity of the curb or the alley for collection by a hauler, and were securely bundled or otherwise securely contained so that they would not be scattered by the wind; or
- (2) The compostables were bundled in compliance with section 6-12-4(b)(4), B.R.C. 1981.

(b) It shall be an affirmative defense to a charge of violating section 6-3-3(a), B.R.C. 1981, that such accumulation existed for twelve hours or less and that the person asserting the affirmative defense took affirmative steps to eliminate the accumulated trash, recyclables or compostables as soon as he or she became aware of the existence of the accumulation.

(c) It shall be an affirmative defense to a charge of violating section 6-3-5(a)(1) and (2), B.R.C. 1981, if the person was maintaining a compost pile in conformance with section 6-3-6, "Compost Piles Permitted if Not a Nuisance," B.R.C. 1981.

(d) It shall be an affirmative defense to a charge of violating section 6-3-5(a)(3), B.R.C. 1981 that:

- (1) The trash was stored in hauler provided prepaid bags between the hours of 5:00 a.m. and 9:00 p.m. on the day of a regularly scheduled collection from the premises; or

- (2) The trash is grass clippings stored for a period of no more than one week prior to the regularly scheduled collection; or
- (3) The trash, recyclables or compostables were set out for collection between the hours of 5:00 am and 9:00 pm on the day of a regularly scheduled collection from the premises.

(e) It shall be an affirmative defense to a charge of violating section 6-3-5(a)(7), B.R.C. 1981, that the city manager has failed to give notice for removal of such piles of soil or rocks. Such notice shall allow for a thirty day time period for such removal.

(f) It shall be an affirmative defense to a charge of violating section 6-3-5(a)(8) and (9), B.R.C. 1981, that the trash was set out for collection by the city during an annual or other specially scheduled refuse collection program, and that the trash was of the sort eligible for such collection in accordance with the city's publicized standards for such collection, but only if the trash is set out in the vicinity of the curb for no more than one week before the scheduled collection date, and only if it is contained such that it cannot be scattered, and is not scattered, onto other properties by the elements or by animals.

Ordinance No. 7585 (2008)

6-3-8. City Manager May Require Property Occupant or Owner to Remove Trash, Recyclables or Compostables.

(a) If the city manager finds that any trash, recyclables or compostables exist on any property in violation of this chapter, the manager may, in addition to any other action permitted under this code, request that an owner, occupant, manager, operator or employee responsible for compliance comply with the requirements of this chapter.

(b) The city manager may notify the owner and the occupant, manager, operator, employee or other person responsible for compliance that a violation of the provisions of this chapter is occurring on property for which that person has responsibility. Such notice shall specify a time within which corrections shall be made. Notice under this subsection is sufficient if it is hand delivered or deposited in the mail first class to the last known owner of the property on the records of the Boulder County Assessor and to the last known address of the occupant, manager, operator or employee responsible for compliance.

(c) If the violation is not corrected as required by the notice prescribed by subsection (b) of this section, the city manager may correct the violation by removing the trash, recyclables or compostables and thereafter charge the cost thereof, plus additional administrative costs not to exceed \$100.00, to the property owner. A copy of such charge shall be mailed to any other person given notice pursuant to subsection (b) of this section.

(d) If any property owner fails or refuses to pay when due any charge imposed under this section, the city manager may, in addition to taking other collection remedies, certify due and unpaid charges, including interest, to the Boulder County Treasurer to be levied against the person's property for collection by the county in the same manner as delinquent general taxes upon such property are collected as provided by section 2-2-12, "City Manager May Certify Taxes, Charges and Assessments to County Treasurer for Collection," B.R.C. 1981.

Ordinance No. 7585 (2008)

6-3-9. Special Trash Service Requirements on Certain Residential Rental Properties at Certain Times.

(a) The city manager may, by regulation, designate a period of time up to sixteen consecutive days in the second quarter of the calendar year, and up to thirty-five consecutive days in the third quarter of the calendar year, as the periods during which this section is in effect in the special trash service zone.

(b) The special trash service zone constitutes the area included within Ninth Street, Baseline Road, Broadway and Arapahoe Avenue, and the area included within Fifteenth Street, Folsom Avenue, Arapahoe Avenue and Canyon Boulevard.

(c) Within the special trash service zone and during a designated period, no owner of property required to be licensed by section 10-3-2, "Rental License Required Prior to Occupancy and License Exemptions," B.R.C. 1981, shall

fail to maintain in effect a current and valid contract with a commercial trash hauler providing for the removal of accumulated trash from the property, which contract provides for trash hauling:

- (1) The hauler will check the regular trash containers for the property every day, excluding Sundays and holidays.
- (2) Any trash container which is full Monday through Friday will be emptied by the hauler. On Saturdays, containers will be emptied if more than half full.
- (3) Any trash which is on the ground or otherwise near the container is picked up by the hauler.

(d) Compliance with this section shall constitute an affirmative defense to a charge of violation of paragraph 6-3-3(a)(1) or (a)(2) and/or subsection 6-3-5(a), B.R.C. 1981, concerning the storage of trash.

(e) It shall be an affirmative defense to a charge of violation of this section that trash hauling service meeting the requirements of this section was not commercially available. This defense shall not apply if the asserted unavailability was due to refusal by a commercial hauler to provide such services based on legitimate business reasons concerning the property owner, including, without limitation, being in arrears on payments or refusing to sign a commercially reasonable contract.

Ordinance Nos. 7078 (2000); 7273 (2003); 7585 (2008)

6-3-10. Hazardous Waste Disposal.

No person exempt from regulation of hazardous waste disposal under state law¹ shall bury any hazardous waste (as defined by state law²) upon property in the city or owned by the city.

6-3-11. City Manager Authorized to Issue Rules.

The city manager may adopt rules and regulations that the manager determines are reasonably necessary to implement the requirements of this chapter.

Chapter 4 Regulation of Smoking³

6-4-1. Legislative Intent.

The purpose of this chapter is to protect the public health, safety and welfare by prohibiting smoking in buildings open to the public or serving as places of work, except in certain buildings or parts of buildings where the council has determined that smoking should not be prohibited, and fixing the requirements of property owners in this regard. In addition, this chapter regulates access of minors to tobacco products.

Ordinance No. 7650 (2009)

6-4-2. Definitions.

The following terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

Bar means any indoor area that is operated and licensed as a tavern liquor license under Article 47 of Title 12, C.R.S., primarily for the sale and service of alcohol beverages for on premises consumption and where the service of food is secondary to the consumption of such beverages.

Building means any structure enclosed for protection from the weather, whether or not windows or doors are open. If a person leases or possesses only a portion of a building, the term *building* applies to the leasehold or possessory interest as well.

¹ § 25-15-101(3), C.R.S.

² § 25-15-101(6), C.R.S.

³ Adopted by Ordinance No. 5754. Derived from Ordinance Nos. 4023, 4661, 4898, 4969, 4994, 5176, 5248.

Cigar-tobacco bar means a bar that, in the calendar year ending December 31, 2005, generated at least five percent or more of its total annual gross income or fifty thousand dollars in annual sales from both the onsite sale of tobacco products and the rental of onsite humidors. In any calendar year after December 31, 2005, a bar that fails to generate at least five percent of its total annual gross income or fifty thousand dollars in annual sales both from the onsite sale of tobacco products and the rental of onsite humidors, shall not be defined as a *cigar-tobacco bar* and shall not thereafter be included in the definition, regardless of sales figures.

Dwelling, as used in this chapter, means any place used primarily for sleeping overnight and conducting activities of daily living, not including a hotel or motel room or suite or bed and breakfast.

Enclosed area, as used in this chapter, means an area which contains a structure made up of a roof and two or more walls regardless of the composition of the walls or roof. This includes, but is not limited to, the following: park shelters, event tents, bus shelters, patio awnings and canopies.

Entryway means the outside of any doorway leading into and exiting from a building or enclosed area. *Entryway* also includes the area of public or private property within fifteen feet of the doorway.

Public conveyance means any motor vehicle or other means of conveyance licensed by the Public Utilities Commission of the state for the transportation of passengers for hire and includes, without limitation, busses, taxicabs, limousine services and airport passenger services.

Smoke or *smoking* means the lighting of any cigarette, cigar or pipe or the possession of any lighted cigarette, cigar or pipe, regardless of its composition.

Tobacco product means cigarettes, cigars, cheroots, stogies, periques and other products containing any measurable amount of tobacco, granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco.

Tobacco store means a retail business open to the public where alcohol is not sold if more than eighty-five percent of its gross revenue from that location is from the retail sale of cigarettes and tobacco products or products related to the use of cigarettes and tobacco products.

Ordinance Nos. 6088 (1999); 7650 (2009); 7681 (2009)

6-4-3. Smoking Prohibited Within Buildings and Enclosed Areas.

- (a) No person shall smoke within any building or enclosed area except in one of the following locations:
- (1) In any dwelling. This exception does not extend to a lobby, common elevator, common hallway or any other common area of a building containing attached dwelling units;
 - (2) In a hotel/motel room or bed and breakfast guest room rented to one or more guests if the total percentage of such smoking rooms in such hotel/motel or bed and breakfast does not exceed twenty-five percent. This exception does not extend to a lobby, common elevator, common hallway or any other common area of a hotel/motel or bed and breakfast;
 - (3) In a tobacco store;
 - (4) In a cigar-tobacco bar which existed as of December 31, 2005, provided that it does not expand its size or change its location from the size and location in which it existed as of December 31, 2005;
 - (5) In a building or on property which is occupied by the state of Colorado, the United States government, Boulder County or the Boulder Valley School District which was not designated as a smoke free area by the manager of such area. The city council urges such governmental entities to designate smoke free areas in order to promote full access by the public and protect the health of employees;

(6) In private homes, private residences and private automobiles; not to include any such home, residence or vehicle being used for child care or day care or a private vehicle being used for the public transportation of children or as part of health care or day care transportation; or

(7) In a limousine under private hire.

(b) Unless excepted under subsection (a) of this section, the prohibitions of this chapter apply to all buildings or enclosed areas which serve as places of work, but this subsection (b) neither enlarges nor diminishes the meaning of subsection (a) of this section.

(c) Nothing in this chapter shall prevent an owner, lessee, principal manager or person in control of any place, including, without limitation, any motor vehicle, outdoor area or dwelling from prohibiting smoking completely in such place, and no person shall fail to abide by such a private prohibition.

Ordinance Nos. 5797 (1996); 7650 (2009)

6-4-4. Smoking Prohibited in Public Conveyances.

No person shall smoke in any public conveyance.

Ordinance No. 7650 (2009)

6-4-5. Smoking Areas in Cigar-Tobacco Bars.

(a) The owner, lessee, principal manager or person in control of a cigar-tobacco bar may designate one smoking area of no more than fifty percent of the square footage of the floor area of the establishment which is open to the public so long as it meets all of the following criteria:

(1) It is independently ventilated from the nonsmoking areas;

(2) It is physically separated from the nonsmoking areas;

(3) A designated smoking area under this section may not include any waiting area, lobby, hallway, elevator, restroom or area adjacent to a self service food line or cash register, and such areas shall also be excluded from the calculation of the square footage of floor area under this subsection;

(4) Any service or amenity which the establishment chooses to provide to patrons, other than smoking, shall at all times be at least as available in the nonsmoking majority portion of the establishment as in the designated smoking area. This requirement includes, without limitation, live entertainment and games; and

(5) The city manager may make reasonable rules interpreting the terms "independently ventilated" and "physically separated" and specifying ventilating and construction measures which will accomplish these goals.

(b) No owner, lessee, principal manager or person in control of a cigar-tobacco bar which designates a smoking area shall fail to maintain it in accordance with the requirements of this chapter.

(c) *Independently ventilated* means that the ventilation system for the area in which smoking is permitted and the ventilation system for any nonsmoking area do not have a connection which allows the mixing of air into the smoking and nonsmoking areas.

(d) *Physically separated* means that there are physical barriers such as walls and doors extending from floor to ceiling that prohibit smoke from entering a nonsmoking area.

Ordinance No. 7650 (2009)

6-4-6. Signs Required to be Posted.

To advise persons of the existence of "No Smoking" or "Smoking Permitted" areas, no owner, lessee, principal manager or person in control of a building, an enclosed area or an establishment within a building shall fail to post signs with letters no less than one inch high or symbols no less than three inches high as follows:

- (a) Where smoking is prohibited in the entire establishment, a sign using the words "No Smoking" or the international no-smoking symbol shall be posted conspicuously either on all public entrances or in a position clearly visible on entry into the building, enclosed area or establishment.
- (b) Where certain areas are designated as smoking areas pursuant to this chapter, a sign using the words "No Smoking Except in Designated Areas" shall be posted conspicuously either on all public entrances or in a position clearly visible on entry into the building or establishment.
- (c) In tobacco stores, a sign shall be posted conspicuously either on all public entrances or in a position clearly visible on entry into the building or establishment using the words "Smoking Permitted: children under eighteen years of age must be accompanied by a parent or guardian."
- (d) A sign using the words "No Smoking within fifteen feet of the entryway" shall be posted conspicuously on all entryways of buildings, enclosed areas or establishments.
- (e) The requirements of this section do not apply to an exempt dwelling.

Ordinance No. 7650 (2009)

6-4-7. Additional Responsibilities of Proprietors.

- (a) No owner, lessee, principal manager or person in control of a building or establishment shall fail to:
 - (1) Ask smokers to refrain from smoking in any smoke free area;
 - (2) In a cigar-tobacco bar, affirmatively direct smokers to designated smoking areas; and
 - (3) Use any other means which may be appropriate to further the intent of this chapter.

(b) No owner, principal manager, proprietor or any other person in control of a business shall fail to ensure compliance by subordinates, employees and agents with both the restrictions on sale and display of tobacco products contained in section 6-4-8, "Restrictions on Sale and Display of Tobacco Products," B.R.C. 1981, and the restrictions on smoking within fifteen feet of any entryway contained in section 6-4-9, "Entryway," B.R.C. 1981.

Ordinance Nos. 6088 (1999); 7650 (2009)

6-4-8. Restrictions on Sale and Display of Tobacco Products.

(a) No person shall furnish to any person who is under eighteen years of age, by gift, sale or any other means, any tobacco product. Before selling to any individual any cigarette or tobacco product, a person shall request from the individual and examine a government issued photographic identification that establishes that the individual is eighteen years of age or older; except that, in face to face transactions, this requirement shall be waived if the individual appears older than thirty years of age.

(b) No person shall sell or offer to sell any tobacco product by use of a vending machine.

(c) No person shall stock or display or sell from a stock or display, tobacco products in a business which sells such products at retail in a manner which makes them accessible to customers without the assistance of an employee. This subsection requires a direct, face to face exchange of the tobacco product from an employee to the customer.

(d) No person shall distribute any tobacco product without charge in any public place or at any event open to the public for the purpose of promotion or advertising. No person shall, in any public place or at any event open to the public,

distribute any coupon or similar writing which purports to allow the bearer to exchange the same for any tobacco product, either free or at a discount.

(e) No person shall sell tobacco products except cigars or pipe tobacco in any form or condition other than in the packaging provided by the manufacturer.

(f) No person shall sell cigarettes except in packs of twenty or more cigarettes per pack.

(g) It is an affirmative defense to a charge of violating subsection (a) of this section that the person furnishing the tobacco product was presented with and reasonably relied upon a document which identified the person receiving the prohibited items as being eighteen years of age or older.

(h) It is a specific defense to a charge of violating subsection (b) of this section that the vending machine was located in a place of work not open to the public where persons under eighteen years of age are not permitted access.

(i) It is a specific defense to a charge of violating subsection (c) of this section that the store was a tobacco store and no person under the age of eighteen years was within the premises unless actually accompanied by a parent or legal guardian. A tobacco store may use self-service displays of tobacco products so long as it is within the terms of this specific defense.

(j) It is a specific defense to a charge of violating subsection (c) of this section that the tobacco product was a cigar or pipe tobacco in a locked walk-in humidor, entry into which by the customer required the assistance of an employee and no person under eighteen years of age was in the humidor.

(k) Monitoring by employee.

(1) It is a specific defense to a charge of violating subsection (c) of this section that the tobacco product was a cigar or pipe tobacco in a walk-in humidor which was visually monitored by an employee and no person under eighteen years of age was in the humidor.

(2) This defense shall not apply if there have been three convictions of violation of subsection (c) of this section involving the business within any thirty-six-month period, based on the dates of the offenses, and the most recent conviction became final no more than five years before the pending violation.

Ordinance Nos. 6088 (1999); 7650 (2009)

6-4-9. Entryway.

(a) No person shall smoke within any entryway of a building, enclosed area or common entrance to a multifamily dwelling, except a single family dwelling.

(b) No owner, principal manager, proprietor or any other person in control of a business shall fail to ensure compliance of this Section by subordinates, employees and agents.

Ordinance No. 7650 (2009)

6-4-10. City Manager May Issue Rules.

(a) The city manager may adopt rules regarding the prohibition of smoking pursuant to Chapter 1-4, "Rulemaking," B.R.C. 1981.

(b) The city manager may adopt rules and regulations that the manager determines are reasonably necessary to implement the requirements of this chapter.

Ordinance No. 7650 (2009)

Chapter 5 Rodent Control¹

6-5-1. Legislative Intent.²

The purpose of this chapter is to protect the public health, safety and welfare by requiring owners and occupants of buildings and watercourses in the city to eradicate rats residing in and around such locations, eliminate rat harborage, and rat-proof structures in order to eliminate the serious health hazard presented by rats. It is also the purpose of this chapter to require measures to eliminate rodent harborage and infestation in commercial establishments where food is stored and to rodent-proof animal feed containers. Nothing in this chapter shall be deemed to limit the authority of the city manager or any designate of the manager to exercise authority under state or federal law to eradicate severe health hazards created by rodents other than rats.

6-5-2. Definitions.

The following terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

Building means any structure built for the support, shelter or enclosure of persons, animals or property of any kind.

Occupant means any person living in, sleeping in, possessing or otherwise using any building or part thereof.

Owner means any person who, alone or jointly or severally with others, or in a representative capacity, including, without limitation, an authorized agent, executor or trustee, has legal or equitable title to any building with or without actual possession thereof.

Rat eradication means the elimination or extermination of rats within and adjacent to buildings by any accepted measure, including, without limitation, poisoning, fumigating or trapping.

Rat harborage means any plant growth, object or structure that provides rats with shelter from the weather, protection from predators or sites for nest building and rearing of young.

Rat-proofing means any form of construction to prevent the ingress of rats into buildings from the outside or from one building to another and consists of treatment with material impervious to rat gnawing of all actual or potential openings in exterior walls, ground or first floors, basements, roofs and foundations that may be reached by rats from the ground, by climbing or by burrowing.

Rodent means members of the order rodentia, including rats and mice in the family muridae, any other introduced rodents and various native species such as field mice, voles, wood rats, ground and tree squirrels, chipmunks and prairie dogs.

6-5-3. Buildings to be Rat-Proofed; Removal Prohibited; Rat Harborage Prohibited.

(a) No owner or occupant of a building shall fail to rat-proof it or to maintain such building and its adjacent premises free of rats or fail to repair all breaks or leaks in rat-proofing material.

(b) No owner of a ditch, drainage pond, lake or other watercourse or body of water shall fail to eliminate harborage or food sources for rats or to eradicate rat infestation when it occurs on such property.

(c) No occupant or owner of any building or any contractor or other person shall remove ratproofing from any building and fail to restore it in a satisfactory condition, shall damage it without restoring it, or shall make any new openings that are not closed or sealed effectively against the entrance of rats.

(d) No person shall construct, repair or remodel any building unless such construction, repair or remodeling renders the building rat-proof as required by this chapter.

¹ Adopted by Ordinance No. 4687. Derived from Ordinance No. 1697.

² For regulation of accumulations of trash and rubble that attract animals or harbor rodents, see chapter 6-3, "Trash," B.R.C. 1981.

6-5-4. Enforcement.

(a) The city manager may inspect the interior and exterior of buildings and their premises and ditches, drainage ponds and other bodies of water and watercourses to determine whether they comply with the requirements of this chapter.

(b) If the city manager finds that any person has failed to rat-proof a building or maintain it in a rat-free condition, the manager shall notify the owner or occupant of the duty to rat-proof or to eradicate a rat infestation and that the owner or occupant has fifteen days in which to complete required rat-proofing measures or five days to complete rat eradication measures. The manager may extend the time limit if the owner or occupant shows good cause. Notice under this subsection is sufficient if it is deposited in the mail first class to the last known address of the property owner on the records of the Boulder County Assessor or to the occupant at the address of the subject property.

(c) If the person so notified fails to correct the violation as required by the notice prescribed by subsection (b) of this section, the city manager may cause the violation to be corrected and charge the costs thereof, plus an additional amount thereof up to \$25.00 for administrative costs, to the person so notified.

(d) If a property owner fails or refuses to pay when due any charge imposed under this section, the city manager may, in addition to taking other collection remedies, certify due and unpaid charges, including interest, to the Boulder County Treasurer to be levied against the person's property for collection by the county in the same manner as delinquent general taxes upon such property are collected as provided by section 2-2-12, "City Manager May Certify Taxes, Charges and Assessments to County Treasurer for Collection," B.R.C. 1981.

(e) In addition to other remedies prescribed by this chapter, when the city manager finds a violation of the requirements of this chapter, the manager may:

- (1) Order commercial buildings or watercourses or bodies of water that are providing extensive harborage and food sources for rats closed until such conditions are abated by rat-proofing, rat eradication and removal of harborage and food sources;
- (2) If violations are not corrected within a period of thirty days or such additional time as the manager for good cause provides, institute proceedings to condemn and destroy the building in order to abate the nuisance;
- (3) Seek such injunctive relief to eliminate the nuisance as the manager deems appropriate;
- (4) In the case of a public health emergency, summarily abate the condition without prior notice to the owner or occupant; or
- (5) Require that firewood, lumber, boxes, barrels, bottles, cans and other containers and similar materials creating rat harborage be elevated at least eighteen inches above the ground.

(f) Before the city manager may take any of the steps provided in subsection (e) of this section, the manager shall notify the property owner or occupant of the duty to correct the violation. Notice under this subsection is sufficient if it is deposited in the mail first class to the last known address of the owner of property on the records of the Boulder County Assessor or to the occupant at the address of the subject property.

6-5-5. Rodent-Proofing of Food Storage Establishments and Animal Feed Containers.

(a) No person shall occupy any commercial building wherein food is to be stored, kept, handled, sold or offered for sale unless such person takes construction measures to prevent the ingress of rodents into the building from the exterior or from one building to another by treating with material impervious to rodent gnawing all actual or potential openings in exterior walls, ground or first floors, basements, roofs and foundations that may be reached by rodents from the ground, by climbing or by burrowing.

(b) No person shall fail to store feed for chickens, cows, pigs, horses and other animals in rodent-free and rodent-proof containers or rooms or a rodent-proof building.

6-5-6. City Manager Authorized to Issue Rules.

The city manager may adopt rules and regulations that the manager determines are reasonably necessary to implement the requirements of this chapter.

Chapter 6 Protection of Trees and Plants¹

6-6-1. Legislative Intent.

(a) The purpose of this chapter is to protect the public health, safety and welfare by prescribing requirements for the protection of trees and plants within the City, including, without limitation, trees, shrubs, lawns and all other landscaping.

(b) The city council finds that all trees, plants and other landscaping, located, standing or growing within or upon city property, including, without limitation, any city-owned or controlled street, alley, rights-of-way or other public place or city or mountain park, recreation area or open space, belong to the City and are a community asset comprising a part of the public infrastructure.

(c) The city councils finds that the requirements of this chapter are necessary to ensure the continued protection, maintenance, replacement and management of city-owned trees, plants and other landscaping.

6-6-2. Removal of Dead, Diseased or Dangerous Trees.

(a) The city manager may enter upon any premises without a warrant to inspect all trees and plants in the City.

(b) If the city manager finds that there exist on any private property in the City dead trees or overhanging limbs that pose a danger to persons or property, the manager will notify the owner, lessee, agent, occupant or other person in possession or control of the property upon which the condition exists of the duty to remedy the condition within fifteen days from the date of the notice or such shorter time as the manager finds appropriate in view of the nature and extent of the condition.

(c) If the city manager determines that any tree growing on private property within the City is afflicted with any dangerous or infectious insect infestation or disease, the manager will notify the owner, lessee, agent, occupant or other person in possession and control of the property of the condition and order such person to take specific prescribed measures that the manager determines are reasonably necessary to cure the infestation or disease and to prevent its spread, within fifteen days from the date of the notice or such time as the manager finds appropriate in view of the nature and extent of the condition. If necessary to address a dangerous or infectious insect infestation or disease, the city manager may require that work shall be completed under the supervision of a certified arborist that has a valid contractor license pursuant to chapter 4-28, "Tree Contractor License," B.R.C. 1981.

(d) If the person notified pursuant to subsection (b) or (c) of this section fails to correct the condition as required by the notice prescribed in such subsection, except in cases of extreme emergency, the city manager may enter the property, pursuant to an administrative warrant issued by the municipal court, and correct the condition and charge the costs of such correction, plus an additional amount of \$25.00 for administrative costs, to the owner and to the lessee, agent, occupant or other person in possession and control of the property. If any property owner fails or refuses to pay when due any charge imposed under this section, the city manager may certify due and unpaid charges, including interest, to the Boulder County Treasurer for collection, as provided in section 2-2-12, "City Manager May Certify Taxes, Charges and Assessments to County Treasurer for Collection," B.R.C. 1981.

(e) Notice under this section is sufficient if it is deposited in the mail first class to the address of the last known owner of property on the records of the Boulder County Assessor or to the last known address of the lessee, agent, occupant or other person in possession or control of the property.

¹ Adopted by Ordinance No. 4731. Amended by Ordinance No. 5986. Derived from Ordinance Nos. 3511, 4335, 1925 Code

(f) Nothing in this section shall be deemed to prohibit the city manager from taking such steps to correct an immediate threat to the public health, safety or welfare that the manager determines is posed by such diseased, dead or dangerous trees.

(g) The city manager may prune, spray or remove any diseased or infested tree on private property upon the written request of the property owner or a lessee, agent, occupant or other person in possession or control of the property if such person agrees in writing to pay for the costs of such service.

Ordinance No. 7712 (2011)

6-6-3. City Manager Will Supervise Planting.

The city manager will supervise reforestation; regulate the preservation, culture and planting of plants on city property; prune, spray, cultivate and otherwise maintain such plants; prune or direct the time and method of pruning such plants; and take such measures as the manager deems necessary to prevent, control and exterminate weeds, insects and other pests and plant diseases.

6-6-4. Planting in Public Areas.

(a) No person shall plant in or remove from any city property any plant or tree without first obtaining written permission from the city manager to do so.

(b) No person shall plant in or remove from any public right-of-way or public easement any plant or tree without complying with the requirements set forth in chapter 8-5, "Work in the Public Right-of-Way and Public Easements," B.R.C. 1981.

(c) The planting, maintaining, relocating or removing of any tree or plant located within any public right-of-way or public easement shall conform with the standards in the City of Boulder Design and Construction Standards.

(d) A property owner may plant trees along the streets of the City, fronting on such person's property, if the person plants the trees of the species, in the places, and in the manner set forth in the City of Boulder Design and Construction Standards or as designated by the city manager, between the gutter line and the property line.

6-6-5. Spraying and Pruning.

(a) No person except the city manager shall spray, mulch, fertilize or otherwise treat, remove, destroy, break, cut or prune any living plant or any part thereof growing on city property without first having obtained permission from the manager.

(b) No person authorized by the city manager to cut or prune a plant on city property shall do so except in the manner prescribed by the manager.

6-6-6. Protection of Trees and Plants.

(a) No person shall remove, damage or destroy any tree or plant growing within or upon any city-owned or controlled property, except for public rights-of-way, without first having obtained written permission from the city manager.

(b) No person shall remove, damage or destroy any tree or plant growing within or upon any public right-of-way without first having obtained a permit pursuant to chapter 8-5, "Work in the Public Right-of-Way and Public Easements," B.R.C. 1981.

(c) No person shall attach to or install on any tree or plant growing within or upon any city-owned or controlled property, including public rights-of-way, without first having obtained approval from the city manager, any metal material, sign, cable, wire, nail, swing or other material foreign to the natural structure of the tree, except materials used for standard tree care or maintenance, such as bracing and cabling, installed by tree professionals.

(d) No person shall attach any electric insulator or any device for holding electric wires to any tree or plant growing or planted upon any city property. No person owning any wire charged with electricity running through public property shall fail to fasten such wire securely to a post or other structure so that it will not contact any plant. If the city manager determines it is necessary to prune or cut down any plant growing on city property in the City across which electric wires run, no person owning such wires shall fail to remove any such wire or to discontinue electric service within twenty-four hours after being notified by the manager of the scheduled pruning or cutting of the trees.

(e) No person owning or operating a gas pipe or main within a radius of forty feet of any tree or plant shall fail to repair the same immediately if a leak occurs and stop such leak in order to protect the plant and the public health, safety and welfare.

(f) No person shall perform any work or construction within or upon any city-owned property, public right-of-way or public easement without providing tree protection in conformance with the City of Boulder Design and Construction Standards.

(g) No person shall engage in the business of cutting, pruning, removing or applying pesticides to any trees on public or private property within the City for commercial gain or profit without first obtaining from the city manager a license under this chapter.

Ordinance No. 7712 (2011)

6-6-7. Mitigation of Trees or Plants Removed or Destroyed.

No person shall remove or destroy any tree or plant in the public right-of-way without first having a plan approved by the city manager for the mitigation of the loss of such tree or plant. The removed or destroyed tree or plant shall be replaced in an amount equivalent to the value, as determined by the city manager, of the tree, shrub or plant that existed prior to loss, by:

(a) Planting or transplanting an approved tree or plant of the same species and size as previously existed in a location approved by the city manager;

(b) Planting one or more approved trees or plants where the combined value equals or exceeds that which previously existed in terms of species, condition and size, in a location approved by the city manager; or

(c) Reimbursement of the City for the value of the tree or plant removed or destroyed subject to a determination by the city manager that the trees or plants lost could not be adequately replaced at or near the location where the loss occurred.

(d) All tree plantings required for the mitigation of a tree removed or destroyed from the public right of way shall be completed under the supervision of a certified arborist that has a valid contractor license pursuant to chapter 4-28, "Tree Contractor License," B.R.C. 1981.

Ordinance No. 7712 (2011)

6-6-8. City Manager Authorized to Issue Rules.

The city manager is authorized to adopt rules, pursuant to chapter 1-4, "Rulemaking," B.R.C. 1981, that are reasonably necessary to implement the requirements of this chapter.

Ordinance No. 7712 (2011)

Chapter 7 Hazardous Material Transportation¹

6-7-1. Legislative Intent.

(a) It is the intent of the city council in enacting this chapter to regulate the transportation of hazardous material and hazardous waste in the City in order to preserve the health, safety and welfare of its inhabitants. The city council finds that there are federal and state laws that regulate hazardous material transportation and that those laws do not exclude local government regulation when such local regulation is not inconsistent therewith.² The city council further finds that the provisions of this chapter address the City's local concerns, including, without limitation, the establishment of appropriate transportation routes in the City and the implementation of effective enforcement. The city council finds that the provisions of this chapter are not inconsistent with federal and state law.

(b) The city council finds that the routes designated in this chapter minimize the risk of transportation of hazardous material and hazardous waste in the City, provide for reasonable accessibility to places of pickup and delivery, provide routes that are continuous with the commonly used commercial routes outside the City, do not produce a discontinuity of routes between jurisdictions, do not prevent through traffic and do not result in unnecessary delay in the transportation of hazardous material or hazardous waste.

(c) The city council finds that existing federal laws contain extensive standards for the safe transportation of hazardous material and hazardous waste, and the city council intends in this chapter to adopt those standards as the requirements for the transportation of such material in the City. The city council finds that such adoption will decrease the extreme risk to public health and safety posed by the transportation of hazardous material and hazardous waste in the City and promote more effective enforcement by creating such a capability at the local level.

6-7-2. Definitions.

The following terms are defined as follows:

C.F.R. means the United States Code of Federal Regulations.

DOT means the United States Department of Transportation.

Hazardous material means any material that is a hazardous material for purposes of the federal Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 through 1812 and regulations promulgated thereunder that is transported in the City.

Hazardous waste means any material that is subject to the hazardous waste manifest requirements of the United States Environmental Protection Agency specified in 40 C.F.R. part 262 or would be subject to these requirements absent an interim authorization to a state under 40 C.F.R., part 123, subparagraph F.

Ordinance No. 5039 (1987)

6-7-3. Adoption of Federal and State Laws and Regulations Affecting Transportation of Hazardous Material.

The requirements of the federal Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 through 1812, and regulations promulgated thereunder, 49 C.F.R. parts 171 through 179 for transportation of hazardous material or hazardous waste, are hereby adopted by reference as the requirements for transportation of hazardous material and hazardous waste in the City. These regulations also incorporate other federal hazardous material transportation requirements including, without limitation, the Federal Motor Carrier Safety regulations, 49 C.F.R. parts 390 through 397 and Federal Nuclear Regulatory Commission regulations concerning spent nuclear fuel and high-level radioactive waste, 10 C.F.R. parts 71 and 73.

¹ Adopted by Ordinance No. 4967.

² See, e.g., 49 U.S.C. § 1811(a).

6-7-4. Violations of Hazardous Material Transportation Chapter.

(a) No person shall fail to transport hazardous material or hazardous waste in the city in conformity with the requirements of section 6-7-3, "Adoption of Federal and State Laws and Regulations Affecting Transportation of Hazardous Material," B.R.C. 1981.

6-7-5. Operating Requirements.

(a) No person transporting hazardous material or hazardous waste in the city shall fail to operate the transport vehicle at all times with its headlights illuminated.¹

6-7-6. Inspections.

(a) Peace officers of the city and personnel of the city's fire department may inspect any vehicle transporting hazardous material or hazardous waste in the city to determine whether the vehicle is in compliance with the requirements of this chapter.²

(b) No person transporting hazardous material in the city shall fail to submit to any inspection conducted under subsection (a) of this section.

Ordinance No. 5039 (1987)

6-7-7. Notification to Emergency Response Authority.

(a) No person transporting hazardous material or hazardous waste in the city shall fail to notify the city's fire department of any hazardous material incident at the earliest practicable moment after occurrence of the incident. An incident shall be reported if it is one that is required to be reported to DOT under the provisions of 49 C.F.R. § 171.16 including, without limitation, any incident involving the unintentional release of any quantity of any hazardous material or the discharge of hazardous waste.³

Ordinance No. 5039 (1987)

6-7-8. Transport Routes Established.

Repealed.

Ordinance Nos. 5039 (1987); 5071 (1987); 5382 (1991)

6-7-9. Authority to Impound.

Peace officers of the city or personnel of the city's fire department are authorized to immobilize, impound or otherwise direct the disposition of a motor vehicle transporting hazardous material in the city if such person deems that the motor vehicle or the operation thereof is unsafe and when such immobilization, impoundment or disposition is appropriate under or required by rules and regulations promulgated by the Colorado Public Utilities Commission pursuant to § 40-2.1-103, C.R.S., including, without limitation, when there is any deficiency in the vehicle's steering, brake, lighting, tire, wheel, exhaust, fuel or suspension system or cargo-carrying capability or in case of leakage of a hazardous material or hazardous waste.⁴

Ordinance No. 5039 (1987)

6-7-10. Route Extensions.

Repealed.

Ordinance No. 5382 (1991)

¹ DOT Inconsistency Ruling IR-3, 46 Fed. Reg. 18919, at 18923 (discussion of section 7.1.5).

² DOT Inconsistency Ruling IR-8, 49 Fed. Reg. 46637, at 46644 (discussing Rule 9).

³ DOT Inconsistency Ruling IR-3, 46 Fed. Reg. 18918, at 18924 (discussing section 9).

⁴ See § 40-2.1-105(2), C.R.S.

Chapter 8

Nuclear Free Zone¹

6-8-1. Legislative Intent.

(a) The city council finds the citizens of the City of Boulder have expressed their strong concern about nuclear weapons work or research within the city by the passage of an initiative in November 1985 directing the city council to enact an ordinance making Boulder a nuclear free zone.

(b) The purpose of this chapter is to prohibit, within the city, the production, storage, processing or disposal of nuclear weapons or their components, or research or development thereof, since the council finds that such actions are inimical to the public peace, health, safety, welfare and morals of the people of the city in light of the special needs and conditions of the city.

6-8-2. Definitions.

The following words have the following meanings as used in this chapter unless the context clearly indicates otherwise:

Component of a nuclear weapon means any device, radioactive or nonradioactive, designed to be installed in and contribute to the explosive operation of a nuclear weapon, but not a delivery device or any component thereof.

Nuclear weapon means any bomb or warhead, the purpose of which is use as a weapon, a weapon prototype or a weapon test device, the intended detonation of which results from the energy released by fission or fusion reactions involving atomic nuclei.

6-8-3. Prohibition of Nuclear Weapons.

After December 1, 1986, no person shall knowingly produce, store, process or dispose of a nuclear weapon or component of a nuclear weapon within the city.

6-8-4. Prohibition of Nuclear Weapons Facilities and Materials.

After December 1, 1986, no person shall knowingly possess or allow within the city any facility, equipment or substance used primarily for the production, storage, processing or disposal of a nuclear weapon or component of a nuclear weapon.

6-8-5. Prohibition of Nuclear Weapons Research.

After December 1, 1986, no person shall knowingly engage in research within the city intended for the production, storage, processing or disposal of a nuclear weapon or component of a nuclear weapon.

6-8-6. Affirmative Defenses.

It is an affirmative defense to a charge of violation of this chapter that the person was:

(a) An agency of the United States or the State of Colorado, or an employee thereof acting within the scope of such employment;

(b) Engaged solely in basic research in physics or chemistry; or

(c) Engaged in work otherwise violative of this section which was in progress under a contractual obligation binding on the person or the person's employer as of December 1, 1986, but this defense shall not apply to violations occurring after December 1, 1988.

¹ Adopted by Ordinance No. 5002.

6-8-7. Private Right of Action.

Any resident of the city may maintain an action for declaratory, injunctive, or any other appropriate equitable relief in the District Court in and for the County of Boulder against a person violating any provision of this chapter. Nothing in this title authorizes the city or any of its employees or agents to be named as a defendant in such litigation.

Chapter 9 Air Quality¹

6-9-1. Legislative Intent.

(a) It is the intent of the city council to regulate activities contributing to the degradation of the air quality within the city limits in order to preserve the health, safety and welfare of its inhabitants.

(b) The city council finds that air pollution presents a threat to the health of the inhabitants of the city. As of March 3, 1978, the city was classified as a nonattainment area in carbon monoxide, ozone and particulates. Federal standards must be met or various federal funding programs may be cut back. It is the intent of the city council to implement requirements that will enable the city to meet federal standards by reducing the total amount of hazardous materials in the atmosphere. The city council finds that there now exist woodstoves which have emissions that are ninety-five percent less than the emissions of conventional devices.

(c) It is the intent of city council to preserve and improve visibility, particularly scenic vistas.

(d) It is the intent of city council to allow low income persons to heat their homes if wood is the primary source of heat for their homes.

(e) City council finds that the burning of solid fuel has been determined to be a cause of air pollution and that regulations concerning the installation of solid fuel burning devices are necessary for the protection of the health, safety and welfare of its inhabitants.

(f) The city council finds that there are federal and state laws that regulate certain activities that affect the quality of the air, but those laws do not exclude local government regulation, if such local regulation is not inconsistent therewith. The city council further finds that the provisions of this chapter address the city's local concerns, including, without limitation, certain limitations on activities that have an impact on the quality of the air and the implementation of effective enforcement. The city council finds that the provisions of this chapter are not inconsistent with federal and state law.

Ordinance No. 5445 (1992)

6-9-2. Definitions.

(a) The following words and phrases have the following meanings unless the context clearly indicates otherwise:

Barbecue device means a device that is used solely for the purpose of cooking food.

Phase II certified device means a solid fuel burning device which meets the emission standards set forth in subsection II, A, 1, Regulation No. 4, Colorado Air Quality Control Commission, 5 CCR 1001-6, for wood stoves.

Phase III certified device means a solid fuel burning device which meets the emission standards set forth in section II, paragraph B of Regulation No. 4, Colorado Air Quality Control Commission, 5 CCR 1001-6, for wood stoves.

Primary source of heat means that source of heat which heats more than fifty percent of the space heating load in any building.

Sole source of heat means one or more woodstoves which constitute the only source of heating in a building. No woodstove shall be considered to be the sole source of heat if the building is equipped with a permanently installed

¹ Adopted by Ordinance No. 5007.

furnace or heating system utilizing oil, natural gas, electricity or propane, whether connected or disconnected from its energy source.

Solid fuel burning device means a burning device designed for solid fuel combustion so that usable heat is derived for the interior of a building, and includes, without limitation, solid fuel-fired stoves, woodstoves of any nature, fireplaces, pellet stoves, solid fuel-fired cooking stoves, combination fuel furnaces or boilers which burn solid fuel, or any other device used for the burning of solid combustible material. Solid fuel burning devices do not include barbecue devices, natural gas-fired fireplaces or electrical appliances.

(b) Words defined in chapter 1-2, "Definitions," B.R.C. 1981, have the meanings there expressed if not differently defined by this chapter.

Ordinance No. 5445 (1992)

6-9-3. No-Burn Days.

(a) No-burn days shall be in effect on such days as the Colorado Department of Health designates no-burn days for the Denver metropolitan area.

(b) In addition, the city manager may designate no-burn days when monitoring indicates actual or potential violations within the city of air quality standards established by either the United States Environmental Protection Agency ("EPA") or the Colorado Department of Health, or when meteorological conditions warrant such designation.

(c) No person shall use any solid fuel burning device during a no-burn day except as provided in subsection (f) of this section.

(d) No-burn days shall last for a twenty-four-hour period. Such days may be declared to be over at any time during that period. Such days may be renewed at the end of that twenty-four-hour period if violations still exist, or if meteorological conditions are such that it is likely that violations will continue to occur.

(e) At the time of the declaration of a no-burn day, the city manager shall allow three hours for the burndown of existing fires prior to the initiation of enforcement.

(f) It is a specific defense to a charge of burning on a no-burn day that:

(1) The burning occurred in a Phase III certified device or in a solid fuel burning device that meets the same emission standards as are required for a Phase III certified wood stove and is tested by an EPA accredited laboratory; or

(2) The person had obtained a temporary exemption demonstrating both an economic need to burn solid fuel for building space heating purposes and a reliance on a solid fuel burning device as the primary source of heat. The city manager may grant such exemptions according to the following standards:

(A) A person applying for an exemption shall demonstrate economic need by certifying eligibility for energy assistance according to economic guidelines established by the United States Office of Management and Budget under the Low-income Energy Assistance Program (L.E.A.P.), as administered by Boulder County.

(B) A person applying for an exemption must sign a verified affidavit demonstrating reliance on a solid fuel burning device as the primary source of heat.

(C) An exemption obtained under this section shall be effective for one year from the date it is granted; or

(3) A power outage, interruption of natural gas supply or temporary equipment failure existed at the time and location of the violation that did not result from any action of the person charged with the violation.

Ordinance Nos. 5145 (1988); 5445 (1992)

6-9-4. Solid Fuel Burning Device Installation and Retrofit.

(a) No person shall repair, alter, move or install a solid fuel burning device without having first obtained a building permit in accordance with title 10, "Structures," B.R.C. 1981.

(b) No person shall replace a solid fuel burning device which is substantially destroyed, demolished or in need of replacement with another solid fuel burning device, unless the replacement is a Phase III certified device. Solid fuel burning devices lawfully existing and installed as of the date of enactment of this ordinance may be repaired to the extent that such repair, in the reasonable judgment of the city manager, is necessary to prevent the existence of an unsafe condition.

(c) No person shall install a solid fuel burning device in any building unless at the time of installation it meets the most stringent emission standards for that particular type of device established by the Colorado Air Quality Control Commission in effect as of such date. If there are no standards established for that device, then it shall meet the most stringent emission standards in effect as of such date for wood stoves as demonstrated by testing at an EPA accredited laboratory.

Ordinance No. 5445 (1992)

6-9-5. Limit on Coal Burning.

No person shall burn coal in a solid fuel burning device.

Ordinance No. 5445 (1992)

6-9-6. Non-Owner Occupied Dwelling Units.

No person shall rent a building if a solid fuel burning device is the sole source of heat. In such a case, the owner, and not the tenant, shall be liable for any penalty imposed.

Ordinance No. 5445 (1992)

6-9-7. Enforcement.

(a) Every person convicted of a violation of any provision of this chapter shall pay a fine according to the following schedule:

- (1) First conviction, no more than \$100.00;
 - (2) Second conviction, no more than \$200.00; and
 - (3) Third conviction, no more than \$300.00.
- (b) The date when the actual violation occurred will control regardless of the date of conviction.
- (c) The record of the violator for two years prior to the date of the current violation will be considered.

Ordinance No. 5445 (1992)

**Chapter 10
Pesticide Use¹**

6-10-1. Legislative Intent.

(a) It is the intent of the city council in enacting this chapter to prescribe requirements concerning pesticides in order to preserve the health, safety and welfare of the inhabitants of the city. The council finds that there are federal and state laws that regulate pesticides, but that those laws do not exclude local government regulation not inconsistent

¹ Adopted by Ordinance No. 5083. Amended by Ordinance Nos. 5084, 5129, 5187. Readopted by Ordinance No. 5250.

therewith. The council finds that this chapter is not inconsistent with federal and state laws, and is not preempted by any such laws. The city council finds that the provisions of this chapter address the city's local and municipal concerns of storage, disposal, spill, water and sewer system, landlord-tenant, employee notification, trespass and nuisance concerns not addressed by federal and state law.

(b) The city council finds that the unique wind conditions in the city cause drift to occur during airborne applications of pesticides and that absent pre-application notification, airborne applications of pesticides constitute a nuisance. It is the intent of the city council in enacting this chapter to prescribe requirements concerning the notification of the public of the outdoor use of pesticides. The city council finds that this objective is not inconsistent with federal and state laws, and is not preempted by any such laws. The city council further finds that notification of outdoor pesticide use is a matter of local and municipal concern.

Ordinance No. 5266 (1990)

6-10-2. Definitions.

(a) As used in this chapter, the following terms shall have the following meanings unless the context clearly indicates that a different meaning is intended:

Airborne application means the application of pesticides by misting or spraying plant materials greater than five feet in height, or by use of a fogger.

Anti-siphon device means any device that prevents pesticides from flowing back into the city's water system.

Commercial applicator means a person which owns or manages any business activity in which pesticides are applied upon the lands of another for hire or which receives, directly or indirectly, any compensation for such activity. This definition does not include maintenance personnel hired by commercial establishments, if such personnel have a variety of maintenance duties.

Commercial property means property owned or leased by a business, industry, church, school or government on which goods or services are provided to the public.

Contracting party means a person which hires a commercial applicator or other person to apply pesticides.

Defoliant means any substance or mixture of substances intended to cause leaves or foliage to drop from a plant, with or without causing abscission.

Desiccant means any substance or mixture of substances intended to accelerate artificially the drying of plant tissues.

FIFRA means the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §136 et seq., as amended.

Fogger means a piece of equipment that breaks some pesticides into very fine droplets (aerosols or smokes) and blows or drifts the fog onto the target area.

Mist blower means spray equipment in which hydraulic atomization of the liquid at the nozzle is aided by an air blast past the source of spray.

Misting means the production of a cloud-like mass or layer of minute globules of pesticide in the air through use of a mist blower or similar device.

Pest means any insect, snail, slug, rodent, nematode, fungus, weed or any other form of terrestrial or aquatic plant or animal life or virus, bacterium or other microorganism which is declared by the Colorado State Department of Agriculture to be a pest or which is considered a pest under FIFRA, except those on or in the human body or on or in other living animals.

Pesticide means any substance or mixture of substances intended for destroying or repelling any pest. This includes, without limitation, fungicides, insecticides, nematocides, herbicides and rodenticides and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant. The following products are not pesticides:

- (1) Deodorizers, bleaching agents, disinfectants and cleaning agents for which no pesticidal claims are made in the sale or distribution thereof; and
- (2) Fertilizers and plant nutrients.

Pesticide Act means the Colorado Pesticide Act, § 35-9-101 et seq., C.R.S., as amended.

Pesticide Applicators' Act means the Colorado Pesticide Applicator's Act, § 35-10-101 et seq., C.R.S., as amended.

Pesticide regulations means 40 C.F.R. § 162 et seq., and 8 C.C.R. section 1203-2.

Plant regulator means any substance or mixture of substances intended to accelerate or retard, through physiological action, the rate of growth or maturation or otherwise to alter the behavior of plants or their produce, but does not include a plant nutrient, trace element, nutritional chemical, plant inoculant or soil amendment.

Spill means the introduction of any pesticide into the environment in a manner other than that prescribed by the label.

Spray means a mixture of a pesticide with water or other liquid applied in fine droplets.

User of pesticides means any person which applies or causes the emission of a pesticide into the environment, whether by spraying, misting, fogging, dusting, dragging or other means. Users of pesticides include, without limitation, commercial applicators, contracting parties, property owners and governmental entities.

(b) Words defined in chapter 1-2, "Definitions," B.R.C. 1981, have the meanings there expressed if not differently defined by this chapter.

6-10-3. Licensing of Commercial Applicators.

No commercial applicator shall engage in the use or application of pesticides without a valid current state license as required by the Pesticide Applicators' Act and the regulations promulgated thereunder.

6-10-4. Maintenance of Records.

(a) Each commercial applicator shall maintain a record of information concerning each pesticide application. The record shall be consistent with state record keeping requirements, as set forth in § 35-10-111, C.R.S., as amended.

(b) Immediately following any pesticide application, each commercial applicator shall provide a full copy of the record set forth in subsection (a) of this section to the contracting party.

Ordinance No. 5266 (1990)

6-10-5. Reports of Spills.

No user of pesticides which spills a pesticide or applies a pesticide in violation of any state or city law or regulation shall fail to report such event to the city manager immediately. In addition, no such person shall fail to notify all property owners and tenants who are or may be directly affected by the spill or improper application by making an immediate reasonable attempt at personal or written notification of all such property owners and tenants.

Ordinance No. 5266 (1990)

6-10-6. Storage, Disposal and Use.

(a) No person shall transport, store, dispose of or use any pesticide or pesticide container in such a manner as to cause injury to human beings, vegetation, crops, livestock, wildlife or other animals or so as to contaminate any surface water or groundwater.

(b) No person shall fail to comply with the safety precautions recommended by the manufacturer of the pesticides in using, storing or disposing of a pesticide container.

(c) No person shall use city water to fill any tank or for any other purpose except for application in accordance with subsection (d) of this section, without keeping a six-inch space between any connection to the city water supply and any pesticide.

(d) No person shall fail to use an anti-siphon device for any pesticide application method which connects to the city water system.

(e) No person shall flush, dump or dispose of any pesticide into any city sanitary sewer, storm sewer, ditch, lake or any other area that may flow into such a sewer, ditch or lake. No person shall fail to dispose of pesticides pursuant to any applicable state statutes and regulations.

Ordinance No. 5266 (1990)

6-10-7. Notification to Tenants and Employees of Indoor Application.

(a) Unless all affected tenants agree that an emergency exists and consent in writing to a shorter period, no property owner or contracting party shall fail to provide written notification to tenants not less than forty-eight hours and not more than seven days before the application of a pesticide to rental residential property owned by such property owner or contracted for by such contracting party or any common area associated with such property. Such notice may be accomplished by mail, by personal delivery, by doorknob hangers or by putting notices under doors. Such notice shall contain, at a minimum, the proposed date and time when the application is to occur, the dwelling or rooming unit number where the application is to occur, the pesticide to be used, and the names and telephone numbers of the property owner or manager and the applicator. All tenants of each dwelling unit in which pesticides are to be applied must be given written notice. For applications to common areas, it is sufficient to post a notice at a common point of entry to that area.

(b) Except for manufacturing businesses regulated under the Occupational Safety and Health Hazard Communication Standard, 29 C.F.R. § 1910, as amended, in SIC codes 20-39, no employer or contracting party which causes pesticides to be applied shall fail to provide reasonable notification of such application sufficient to allow an opportunity to avoid exposure to all persons having their principal place of employment at a work site prior to any pesticide application to any part of the work site where such employee would, upon reasonable inquiry, be expected to work within twenty-four hours following the pesticide application.

(c) Subsections (a) and (b) of this section apply only to indoor applications of pesticides.

Ordinance No. 5358 (1991)¹

6-10-8. Enforcement.

(a) For the purpose of carrying out the provisions of this chapter, the city manager or the manager's designee may enter upon any public or private land in a reasonable and lawful manner during reasonable business hours for the purposes of inspection and observation.

(b) If denied access to any land or building, the city manager may apply to the municipal court for a search warrant or other appropriate court order.

¹ Ordinance No. 5358, effective 1-15-1991.

6-10-9. Federal and State Statutes and Regulations.

Repealed.

6-10-10. Emergency Suspension.

The city manager or the manager's designee may suspend any portion of this chapter in the event of an emergency situation which threatens irreparable harm to the health, safety or welfare of the inhabitants of the city or to the city's environment.

6-10-11. Pre-Application Notification of Airborne Application.

(a) Prior to airborne application of any pesticide, no contracting party or other user of pesticides, shall fail to give notice to all occupants of all adjacent properties. For purposes of this section, properties located diagonally from the affected property and touching only on a property corner or other point shall be considered to be adjacent, and rights-of-way shall be disregarded in such determinations.

(b) The notice shall be given at least twenty-four hours prior to application.

(c) The notice shall be valid for seven days after it is given.

(d) The notice may be given by posting signs on the property to be treated or by giving verbal or written notice.

(e) The notice shall contain at a minimum the following information:

(1) Date notice given;

(2) Indication that pesticides will be applied and the approximate date of application;

(3) The name and telephone number of the contracting party or other user of pesticides; and

(4) Date notice expires.

(f) If notice is given by posting signs on the property to be treated, such signs shall conform to the following criteria:

(1) There shall be a minimum of one water-resistant sign along the principal street frontage of the property.

(2) Signs shall be placed so that the warning is conspicuous from the public right-of-way. All required information shall be on one face of the sign.

(3) For property surrounding commercial buildings or attached dwelling units, signs shall be posted at common access points.

(4) For city park or open space property, signs shall be posted at each trailhead, street access or sidewalk entry point, and any additional common access points.

(5) Signs shall be a minimum of one foot by one foot in area, and a maximum of two square feet in area per face.

(6) Signs shall be placed at a maximum height of six feet.

(7) There shall be no greater size of letters for identification of the applicator than for any other information on the sign.

(8) Signs shall be dark lettering on a bright yellow background.

(g) If a commercial property or an attached (i.e., multi-family) residential dwelling is located adjacent to property on which an airborne application of any pesticide is to occur as set forth above, no contracting party or other user of pesticides shall fail to make a reasonable attempt to notify the owner or manager of the property at least forty-eight hours

prior to the pesticide application. Upon receipt of such notice, such owner or manager shall not fail to post in a prominent place the information that the adjacent property will be treated.

Ordinance No. 5358 (1991)

6-10-12. Post-Application Notification of Outdoor Application.

(a) No contracting party or other user of pesticides which applies pesticides outdoors shall fail to display at least one warning sign for at least twenty-four hours following each pesticide application, or longer if suggested or required by the manufacturer's label. All signs shall be posted at the time of the pesticide application.

(b) Signs shall conform to the following criteria:

(1) Signs shall include the following statement:

"WARNING, PESTICIDES APPLIED.

Name: _____ Phone: _____ .

Remove sign after 24 hours, or per label requirements."

(2) The name and telephone number shall be either the contracting party or other user of pesticides.

(3) Signs shall be at a minimum of four inches by five inches in area per face, and a maximum of two square feet in area per face.

(c) Signs shall comply with all other criteria set forth in subsection 6-10-11(f), B.R.C. 1981, except subparagraph 6-10-11(f)(5), B.R.C. 1981.



Ordinance Nos. 5358 (1991); 5393 (1991)

6-10-13. Exceptions.

No notice of outdoor application is required pursuant to section 6-10-12, "Post-Application Notification of Outdoor Application," B.R.C. 1981, under the following circumstances:

(a) Individual spraying of weeds if the spraying distance is less than three feet; and

(b) Spot treatment of areas that are less than a total area of one hundred square feet on a lot.

6-10-14. Post-Application Notification of Lake Application.

(a) In addition to the notice required pursuant to section 6-10-11, "Pre-Application Notification of Airborne Application," B.R.C. 1981, no contracting party or other user of pesticides which applies pesticides to a lake or other open

body of water shall fail to post the shoreline of that body of water with a warning sign. Such signs shall be placed every three hundred feet for the period of time during which the manufacturer's label warns against reentering the lake or using its water, but under no circumstances shall such time be less than twenty-four hours.

(b) Signs shall include at a minimum the following information:

(1) The statement:

"THIS LAKE TREATED WITH PESTICIDES. STAY OUT.

Name: Phone: .

Remove sign after 24 hours, or per label requirements."

(2) The name and telephone number shall be either the contracting party or other user of pesticides.

(3) Signs shall be a minimum of four inches by five inches in area per face, and a maximum of two square feet in area per face.

(c) Signs shall comply with all other criteria set forth in subsection 6-10-11(f), B.R.C. 1981, except subparagraph 6-10-11(f)(5), B.R.C. 1981.

(d) The requirements of this section shall not apply to commercial applicators, unless they voluntarily assume such duty on behalf of the contracting party.

Chapter 11 Ozone-Depleting Compounds¹

6-11-1. Legislative Intent.

(a) It is the intent of the city council in enacting this chapter to prohibit the manufacture, sale and distribution of certain products made of or with an ozone-depleting compound; to reduce significantly the release of such compounds into the earth's atmosphere; and to prescribe requirements concerning use of such products in order to preserve the health, safety and welfare of the inhabitants of the city.

(b) The Montreal Protocol on Substances That Deplete the Ozone Layer (an international pact) which was revised June 29, 1990, calls for an end to chlorofluorocarbon and halon production by the year 2000.

(c) The city council finds that available scientific evidence indicates that chlorofluorocarbons, halons and certain other compounds, when discharged into the atmosphere, deplete the earth's protective ozone layer, allowing increased amounts of ultraviolet radiation to penetrate the earth's atmosphere, thereby posing a long-term danger to human health, life and the environment by increasing such harms as skin cancers, cataracts, suppression of the immune system, damage to crops and to aquatic life and related harms.

(d) The city council finds that the release of halons in testing fire extinguishing systems is a significant source of the release of halons into the earth's atmosphere.

(e) The city council finds that in light of the current and future limitations on the production of chlorofluorocarbons both nationally and internationally, the development and utilization of environmentally safe alternatives to chlorofluorocarbons at this time will create a competitive advantage to those businesses electing to utilize such alternatives prior to the effective date of any comprehensive international, federal or state regulation banning the use of chlorofluorocarbons and halons.

(f) The city council finds that the release of chlorofluorocarbons and halons into the atmosphere is a global danger to the environment. Any reduction in the release of said materials within the city will not only reduce the global danger,

¹ Adopted by Ordinance No. 5361, effective July 1, 1991.

but will also benefit the city by reducing the long-term danger to human health, life and the environment associated with such releases.

(g) The city council finds that chlorofluorocarbons are widely used in refrigeration and air conditioning systems and that the recapturing and recycling of chlorofluorocarbons from auto air conditioning units could eliminate approximately twenty percent of all chlorofluorocarbons released in the United States.

(h) It is the intent of the city council to encourage the research and development of environmentally safe alternative technologies and products to replace the use of chlorofluorocarbons and halons.

(i) It is the intent of the city council to support the adoption of international, national and state bans on the use of chlorofluorocarbons; however, until such bans have been adopted by the appropriate agencies, responsible action on the part of the city is necessary to reduce chlorofluorocarbon and halon use in order to promote the long-term health, safety and welfare of the general public and the environment.

6-11-2. Definitions.

(a) The following words and phrases have the following meanings unless the context clearly indicates otherwise:

Approved motor vehicle refrigerant recycling equipment means equipment models which have been certified by Underwriters Laboratories to meet the Society of Automotive Engineers (SAE) standard for the extraction and reclamation of refrigerant from motor vehicle air conditioners (SAE standard J-1990).

Food packaging means any bag, sack, wrapping, container, bowl, plate, tray, carton, cup, glass, straw or lid, but specifically excludes knives, forks and spoons.

Ozone-depleting compound means those substances identified by the federal Environmental Protection Agency as contributing to depletion of the stratospheric ozone layer. Those substances currently identified are: CFC-11 (trichloromonofluoromethane), CFC-12 (dichlorodifluoromethane), CFC-113 (trichlorotrifluoroethane), CFC-114 (dichlorotetrafluoroethane), CFC-115 (chloropentafluoroethane), Halon-1211 (bromochlorodifluoromethane), Halon-1301, (bromotrifluoromethane), Halon-2402 (dibromoetrafluoroethane), Methyl chloroform and Carbon tetrachloride.

Refrigerant means CFC-11 (trichloromonofluoromethane), CFC-12 (dichlorodifluoromethane, also known as chlorofluorocarbon-12 or R-12) or any other refrigerant used in motor vehicle air conditioning equipment, refrigerators, air conditioners or refrigeration systems, which contains an ozone-depleting compound.

Refrigeration system means, without limitation, refrigerators, freezers, cold storage warehouse refrigeration systems, chillers and air conditioners.

(b) Words defined in chapter 1-2, "Definitions," B.R.C. 1981, have the meanings there expressed if not differently defined in this chapter.

6-11-3. Motor Vehicle Air Conditioners.

(a) No person who owns or operates a facility which installs, services, repairs or disposes of motor vehicle air conditioners shall:

- (1) Fail to prevent any service involving the release or recharge of refrigerant on a motor vehicle air conditioner from being performed unless approved motor vehicle refrigerant recycling equipment is used in a proper manner; or
- (2) Intentionally vent or negligently release refrigerants from a motor vehicle air conditioner.

(b) No person who owns or operates a facility which accepts motor vehicles for dismantling, scrap metal or permanent disposal shall:

- (1) Fail to prevent a motor vehicle from being dismantled or wrecked unless any air conditioner refrigerant has first been recovered by an approved motor vehicle refrigerant recycling equipment used in a proper manner; or

(2) Intentionally vent or negligently release refrigerants from a motor vehicle air conditioner.

(c) De minimis releases associated with good faith attempts to recapture and recycle or safely dispose of any such substance shall not be subject to the prohibition set forth in this section.

(d) It shall be unlawful for any person to sell or distribute or offer for sale or distribution to any person any refrigerant capable of being used to charge motor vehicle air conditioners in a container which contains less than twenty pounds of such refrigerant, except to a person that performs service for consideration on motor vehicle air conditioning systems in compliance with this section.

Ordinance No. 5462 (1992)

6-11-4. Refrigeration Systems.

(a) No person who owns, operates, manufactures, installs, services, repairs or disposes of refrigeration systems shall:

(1) Fail to prevent the installation, service, repair or disposal of a refrigeration system which involves the removal or recharge of refrigerant from being performed unless refrigerant reuse or recycling equipment is used in a proper manner; or

(2) Intentionally vent or negligently release refrigerants from a refrigeration system.

(b) No person destroying any ozone-depleting compound shall fail to prevent its release into the atmosphere.

(c) De minimis releases associated with good faith attempts to recapture and recycle or safely dispose of any such substance shall not be subject to the prohibition set forth in this section.

6-11-5. Manufacture and Sale of Products Which Use an Ozone-Depleting Compound as A Propellant or Energy Source Banned.

No person shall manufacture or sell any aerosol container that uses an ozone-depleting compound as a propellant or source of energy. This section shall not apply to the manufacture or sale of products used for medical purposes.

6-11-6. Prohibition on the Manufacture, Sale, Distribution or Installation of Certain Material for Padding or Building Insulation.

(a) Effective January 1, 1994, no person shall manufacture, sell, distribute or install any material for padding or building insulation that contains an ozone-depleting compound.

(b) The city manager may prohibit, prior to January 1, 1994, such manufacture, sale, distribution or installation if a commercially viable chemical substitution for such ozone-depleting compounds is available. The provisions of this section shall not apply to any existing building or structure if such building was issued a building permit on or before December 31, 1993 or the date of the regulations adopted by the city manager, whichever is earlier.

6-11-7. Prohibition on Certain Packaging Materials.

No person shall manufacture, distribute, sell or use any material or product containing an ozone-depleting compound for the purpose of packaging, wrapping or containing edible or nonedible products. This section shall not apply to the package, wrapping or container of any product imported into the City where such packaging, wrapping or containment was applied to the product prior to importation.

6-11-8. Fire Extinguishing Systems or Units Which Utilize Halon.

(a) No person shall release halon during the training of personnel or in the testing of any fire extinguishing system unless so required by statute, rule or regulation.

(b) No person who owns or operates a facility that repairs, services or performs maintenance on a fire extinguishing system or unit shall fail to recapture and recycle any halon used as an extinguishing agent in the system or unit.

(c) De minimis releases associated with good faith attempts to recapture and recycle or safely dispose of any such substance shall not be subject to the prohibition set forth in this section.

6-11-9. Permit Required for Sales of Certain Fire Extinguishers.

(a) No person shall sell at retail and no person shall purchase at retail a fire extinguisher which contains Halon-1301 or Halon-2402 unless at the time of purchase the purchaser presents a valid permit for the purchase from the city manager. No person shall purchase such fire extinguisher without such a permit.

(b) The city manager shall issue such permits for aviation use, use in protecting electrical equipment and for other uses where the applicant demonstrates that there is no technically feasible, economically sound and environmentally safe substitute or alternative available.

6-11-10. Maintenance of Records.

By July 1 of each year, industrial and commercial users of one thousand pounds or more of any combination of ozone-depleting compounds annually shall submit a report to the city manager containing information on emissions of CFCs from their facilities and emission reduction plans for the reduction of CFCs from their facilities from the previous year on forms provided by the city manager.

6-11-11. Regulations.

The city manager may from time to time issue regulations for the implementation and enforcement of this ordinance.

6-11-12. Enforcement.

(a) For the purpose of carrying out the provisions of this chapter, the city manager may enter upon any public or private land in a reasonable and lawful manner during reasonable business hours for the purposes of inspection and observation.

(b) If denied access to any land or building, the city manager may apply to the municipal court for a criminal search warrant, administrative search warrant or other appropriate court order.

Chapter 12 Trash, Recyclables and Compostables Hauling

6-12-1. Legislative Intent.

The city council finds that a significant reduction of the volume of solid waste and a corresponding increase in the volume of recyclables and compostables generated by citizens and businesses in the city would benefit the public welfare. The city council finds that it would do so by reducing the consumption of important, nonrenewable natural resources, as well as the amount of land required for disposal of solid waste in landfills, thereby helping to extend the longevity of these valuable nonrenewable natural resources and allowing land to be used for purposes other than the disposal of solid wastes. The intent of the city council in enacting this chapter is to decrease the amount of solid waste and increase waste reduction, recycling and composting practices by the citizens and businesses located in the city.

Ordinance Nos. 7078 (2000); 7585 (2008)

6-12-2. Definitions.

The definitions in chapter 1-2, "Definitions," B.R.C. 1981, shall apply to this chapter, including, without limitation, the definitions of *Compostables*, *Hauler*, *Recyclables*, *Trash*, *Trash Container* and *Wildlife-resistant container*.

The following terms used in this chapter have the following meanings, unless the context clearly indicates otherwise.

Multifamily customer means the occupants, taken together, of a residential building or set of residential buildings that uses a collective, common system for the collection of trash generated by the occupants.

Periodic trash collection means the regular collection of trash on a schedule of not less than once every calendar month.

Recyclables processing center means a facility that sorts, packages and otherwise prepares recyclable materials for sale.

Residential customer means every occupant of a residential building or set of residential buildings who receives periodic trash collection service, and who does not use a collective, common system for the collection of trash generated by the occupants.

Ordinance Nos. 7078 (2000); 7172 (2001); 7585 (2008)

6-12-3. Exemptions.

The following persons are exempt from the provisions of this chapter:

- (a) Any person who transports only the trash which that person generates.
- (b) A property owner or agent thereof who transports trash, recyclables or compostables left upon such owner's property, so long as such property owner does not provide such collection service for compensation for tenants on a regular or continuing basis.
- (c) Landscaping contractors that produce and transport trash, recyclables or compostables in the course of their occupations where the production of trash, recyclables or compostables is merely incidental to the particular landscaping work being performed by the contractors.
- (d) Any person who transports only liquid wastes (including, without limitation, sewage, sewage sludge, septic tank or cesspool pumpings), discarded or abandoned vehicles or parts thereof, discarded home or industrial appliances, materials used as fertilizers or for other productive purposes, household hazardous wastes and hazardous materials as defined in the rules and regulations adopted pursuant to the United States Hazardous Materials Transportation Act, 49 USC § 5101, et seq.

Ordinance Nos. 7078 (2000); 7172 (2001); 7585 (2008)

6-12-4. Hauler Requirements.

(a) Each hauler shall submit an annual report to the city manager of the weight in tons of trash, recyclables and compostables collected by commodity within the city. For loads that contain trash, recyclables or compostables originating in part from within the city, and in part from outside the city, the reported quantity may be estimated by the hauler. Reports shall be submitted for each year by January 31 of the succeeding year using forms provided by the city manager. All information that is confidential pursuant to the provisions of the Colorado Open Records Act, § 24-72-201, et seq., C.R.S., shall be treated as such.

(b) Each hauler that provides residential trash collection shall provide for the collection of the following no less frequently than every other week:

- (1) Unlimited recyclables;
- (2) A minimum of thirty-two gallons of compostables;
- (3) Three paper or compostable bags of leaves; and
- (4) Three bundles of branches no larger than three feet by six feet, tied by twine or compostable materials.

(c) Bags and bundles of compostables shall be placed adjacent to the compost container on collection day. The collection of compostables and recyclables shall occur either curbside or in alleys, whichever the hauler utilizes for trash collection.

(d) Each hauler shall provide each residential customer with a base unit of service which shall include a maximum of thirty-two gallons of trash collection service and which shall also include the collection of recyclables and compostables consistent with subparagraphs (b) and (c) above.

- (1) A hauler may charge any amount for the base unit of service.
- (2) A hauler may charge, in addition, a flat periodic fee. This flat periodic fee may not exceed the charge for the base unit of service and shall be itemized separately on customer billing statements.
- (3) No hauler may charge less than a prorated portion of the charge for the base unit of service for each additional volume of trash that may be collected from a customer during one or more collection periods.
- (4) Haulers may charge for compostables collection in excess of that set forth in subparagraph (b) above at a rate of no more than seventy-five percent of an equivalent volume of trash service.

(e) Haulers providing trash collection service to multifamily customers shall also provide collection service of all their recyclables at no additional charge beyond that agreed for trash collection service. The city manager may require each hauler that is providing trash and recyclables collection to multifamily customers to also provide compostables collection.

(f) Nothing in this section shall be construed as prohibiting any hauler from establishing rules regarding safety. Haulers may also set special pricing for large or unusual items.

Ordinance Nos. 7078 (2000); 7585 (2008)

6-12-5. Containers for Recycling or Composting Collection.

(a) Haulers providing trash collection service to multifamily customers through centralized collection areas shall provide containers for recyclable materials at no additional charge. Containers shall be of a sufficient size to accommodate the regular accumulation of recyclables from that customer, but at a minimum, such containers shall be of a volume equal to one-half of the volume of the trash collection service. If the city manager requires the collection of compostables, haulers shall provide containers for that service of a sufficient size to accommodate the regular accumulation of compostables from that customer.

(b) Haulers providing trash collection service to residential customers are not required to provide recyclables or compostables containers. However, if the hauler requires a specific type of container, then the hauler shall deliver such container at no cost to the residential customer.

Ordinance Nos. 7078 (2000); 7585 (2008)

6-12-6. Disposition of Recyclable or Compostable Materials.

(a) No person other than the person placing the recyclables or compostables for collection or that person's designated hauler shall take physical possession of any recyclables or compostables separated from trash, set out in the vicinity of the curb or alleys, and plainly marked for recyclables or compostables collection.

(b) Each residential customer or multifamily customer shall relinquish recyclable materials to a hauler only on the condition that the hauler deliver the recyclable materials only to a recyclables processing center as set forth in subparagraph (c) below.

(c) In the absence of an express written designation to the contrary initiated by the customer, it shall be presumed that each residential customer or multifamily customer has designated recyclable materials to be hauled to the recyclables processing center owned by Boulder County or its successor in interest. However, each customer may designate another

recyclables processing center by notifying the hauler of that designation in writing. This written notification must be given at the initiative of the customer, not the hauler, and may not be written on a form furnished by the hauler.

(d) Haulers shall take all compostable materials collected to a state permitted compost facility that can certify that the material is processed into a compost product. Haulers shall maintain receipts and records for a period of five years. Upon request by any customer or the city manager, haulers shall produce receipts from the facility utilized.

Ordinance Nos. 7078 (2000); 7585 (2008)

6-12-7. Educational Materials.

At the city's sole discretion, including but not limited to times when there are pending changes to the city's waste reduction programs, the city will provide each hauler with educational brochures. These brochures shall be distributed by the haulers to all of their affected customers on or before a date specified by the city manager or, in the event of changes to the city's waste reduction programs, before the effective date of those changes. There shall be no charge to the city for the distribution of the educational brochures and the city will consult with the haulers before the brochures are printed.

Ordinance Nos. 7078 (2000); 7585 (2008)

6-12-8. Audits, Enforcement and Penalties.

(a) Each hauler shall make its records available for audit by the city manager at a location within the Denver metropolitan area during regular business hours when requested by the city manager in order to allow the city to verify hauler compliance with the provisions of this chapter. Among other records, each hauler shall make available for review all customer invoices and similar documents reflecting actual pricing to customers. All information that is confidential pursuant to the provisions of the Colorado Open Records Act, § 24-72-201, et seq., C.R.S., shall be treated as such.

(b) No person shall violate or permit to be violated any of the requirements of this chapter.

(c) In addition to any other remedies prescribed by this chapter or by this code or other ordinance of the city, the city attorney, acting on behalf of the city council, may maintain an action for an injunction to restrain or correct any violation of this chapter.

Ordinance Nos. 7078 (2000); 7585 (2008)

6-12-9. Authority to Issue Regulations.

The city manager is authorized to adopt rules and regulations necessary in order to interpret or implement the provisions of this chapter.

Ordinance No. 7078 (2000)

Chapter 13
Voice and Sight Control Evidence Tags¹

6-13-1. Legislative Intent.

The purpose of this chapter is to protect the public health, safety and general welfare by establishing a requirement and process for dog guardians to obtain a Voice and Sight Control Evidence Tag that permits the dog to accompany the guardian without a leash held by a person on certain open space and mountain parks lands. Voice and Sight Control Evidence Tags are intended to assure the public that the dog is capable of being adequately controlled by voice and sight commands without a leash held by a person.

¹ Adopted by Ordinance No. 7443.

6-13-2. Voice and Sight Control Evidence Tag Required.

(a) In addition to and in conjunction with the requirements of section 6-1-16, "Dogs Running At Large Prohibited," B.R.C. 1981, any dog guardian who desires to accompany a dog without a leash held by a person shall apply for and obtain a Voice and Sight Control Evidence Tag pursuant to the procedures and requirements established by this chapter.

(b) Any dog guardian who accompanies a dog without a leash held by a person shall cause such dog to wear and visibly display a lawfully obtained and displayed Voice and Sight Control Evidence Tag at all times when the dog is present on open space and mountain parks lands where voice and sight control is permitted under section 6-1-16, "Dogs Running At Large Prohibited," B.R.C. 1981.

(c) The city manager may promulgate guidelines, forms or informational materials that are necessary or desirable to assist with implementation of this chapter or its legislative intent.

(d) The maximum penalty for a first conviction is a fine of \$50.00. For a second conviction within two years, based upon the date of the first violation, the maximum penalty shall be a fine of \$100.00. For a third and each subsequent conviction, within two years based upon the date of the first violation, the maximum penalty shall be a fine of not less than \$200.00.

6-13-3. Voice and Sight Control Evidence Tag Application.

The applicant for a Voice and Sight Control Evidence Tag shall apply on forms furnished by the city manager and pay the fee, if any, prescribed by section 4-20-60, "Voice and Sight Control Evidence Tag Fees," B.R.C. 1981.

6-13-4. Voice and Sight Control Evidence Tag Requirements.

(a) Before a Voice and Sight Control Evidence Tag shall be issued, the applicant shall certify, under penalty of perjury, the following facts:

- (1) The applicant has watched (or listened to if visually impaired) a video presentation on voice and sight control of a dog, prepared by the city and provided to the applicant by the city or its designated agents; and
- (2) The applicant agrees to control any dog accompanying the applicant without a leash held by a person on certain open space and mountain parks lands in the manner described in the video presentation on voice and sight control of a dog.

6-13-5. Revocation and Reinstatement of Voice and Sight Control Evidence Tags Upon Violations.

(a) Upon a third conviction for violation of section 6-1-16, "Dogs Running at Large Prohibited," B.R.C. 1981, occurring on land owned by the City and constituting park land or open space land within two years of the date of the first violation, the right to display any Voice and Sight Control Evidence Tag shall be revoked automatically, but may be reinstated through the following procedures:

- (1) Payment of a supplemental fee established in subsection 4-20-60(b), B.R.C. 1981, in addition to the fees established by section 6-13-3, "Voice and Sight Control Evidence Tag Application," B.R.C. 1981, and prescribed by subsection 4-20-60(a), B.R.C. 1981, for an initial application (and in addition to any fines imposed under section 6-1-16, "Dogs Running at Large Prohibited," or subsection 6-13-2(d), B.R.C. 1981);
- (2) Providing written proof of attendance at a City of Boulder sanctioned and monitored showing of the video presentation on voice and sight control of a dog;
- (3) Providing written proof of attendance at and successful completion of a voice and sight control certification course approved by the City of Boulder; and
- (4) Certification by the applicant for reinstatement that he or she agrees to control any dog accompanying the guardian without a leash held by a person on certain open space and mountain parks lands in the manner described in the video presentation on voice and sight control of a dog.

Chapter 14

Medical Marijuana

6-14-1. Legislative Intent and Purpose.

(a) Legislative Intent. The city council intends to regulate the use, acquisition, production and distribution of medical marijuana in a manner that is consistent with Article XVIII, Section 14 of the Colorado Constitution (the "Medical Marijuana Amendment.")

- (1) The Medical Marijuana Amendment to the Colorado Constitution does not provide a legal manner for patients to obtain medical marijuana unless the patient grows the marijuana or the marijuana is grown by the patient's primary caregiver.
- (2) Use, sale, production, possession and transportation of medical marijuana remains illegal under federal law, and marijuana remains classified as a "controlled substance" by both Colorado and federal law.
- (3) The regulations for medical marijuana uses are not adequate at the state level, making it appropriate for local regulation of the impacts of medical marijuana uses.
- (4) Nothing in this chapter is intended to promote or condone the production, distribution or possession of marijuana in violation of any applicable law or to be more restrictive than the Medical Marijuana Amendment.

(b) Purpose. The purpose of this chapter is to implement the Medical Marijuana Amendment and to protect the public health, safety and welfare of the residents and patients of the City by prescribing the manner in which medical marijuana businesses can be conducted in the City. Further, the purpose of this chapter is to:

- (1) Provide for the safe sale and distribution of marijuana to patients who qualify to obtain, possess and use marijuana for medical purposes under the Medical Marijuana Amendment.
- (2) Protect public health and safety through reasonable limitations on business operations as they relate to noise, air and water quality, food safety, neighborhood and patient safety, security for the business and its personnel and other health and safety concerns.
- (3) Promote lively street life and high quality neighborhoods by limiting the concentration of any one type of business in specific areas.
- (4) Impose fees to cover the cost to the City of licensing medical marijuana businesses in an amount sufficient for the City to recover its costs of the licensing program.
- (5) Adopt a mechanism for monitoring compliance with the provisions of this chapter.
- (6) Create regulations that address the particular needs of the patients and residents of the City and coordinate with laws that may be enacted by the state regarding the issue.
- (7) Facilitate the implementation of the Medical Marijuana Amendment without going beyond the authority granted by it.
- (8) Support Boulder's Sustainability and Climate Action Plan goals by requiring renewable sources for energy use to grow medical marijuana.

(c) Relationship to State Law. The provisions in this chapter that are different from the State Law are consistent with the City's responsibility to protect the public health, safety and welfare as authorized by § 12-43.3-305, C.R.S., and by the home rule authority granted to the City by Article XX of the Colorado Constitution and the Charter of the City. The City intends that both State Law and this chapter apply within the City. Where this chapter conflicts with the State Law, this chapter shall apply on all matters authorized in § 12-43.3-101, et seq., C.R.S. and all matters of local concern.

(d) Adoption of this chapter 6-14 is not intended to waive or otherwise impair any portion of the local option available under § 12-43.3-106, C.R.S.

Ordinance Nos. 7716 (2010); 7780 (2011)

6-14-2. Definitions.

The following words and phrases used in this chapter have the following meanings unless the context clearly indicates otherwise:

Business manager means the individual designated by the owner of the medical marijuana business as the person responsible for all operation of the business in the absence of the owner from the business premises.

Cultivation facility or *optional premises* means a licensed medical marijuana business that is owned by the same owner as a medical marijuana center and produces and harvests medical marijuana plants for a medical use for distribution by such medical marijuana center.

Distribute or *distribution* means the actual, constructive or attempted transfer, delivery, sale or dispensing to another, with or without remuneration.

Financier means any person who lends money to any person licensed under this chapter. *Financier* shall not include a bank, savings and loan association, credit union or industrial bank supervised and regulated by an agency of the state or federal government.

Licensed premises means the portion of a licensed medical marijuana business location within which the licensee is authorized to distribute, possess or produce medical marijuana and which premises are clearly identified as the licensed premises on the floor plan submitted with the medical marijuana business license application for the business.

Licensee means the medical marijuana business named on the medical marijuana business license, and all individuals named in the medical marijuana business license application or later reported to the City, including, without limitation, owners, business managers, financiers and individuals owning any part of an entity that holds a financial or ownership interest in a medical marijuana business.

Marijuana shall have the same meaning as the term "usable form of marijuana," as set forth in Article XVIII, Section 14(1)(i) of the Colorado Constitution, or as may be more fully defined in any applicable state law or regulation.

Medical marijuana means any marijuana intended for medical use which meets all requirements for medical marijuana contained in this chapter, Article XVIII, Section 14, and any other applicable law.

Medical marijuana business means any person that cultivates, produces, sells, distributes, possesses, transports or makes available marijuana in any form to a patient or to a primary caregiver for medical use, or a primary caregiver that cultivates, produces, sells, distributes, possesses, transports or makes available medical marijuana in any form to more than one patient. Possession of more than six marijuana plants and two ounces of a usable form of marijuana by a patient or primary caregiver shall be considered a *medical marijuana business*. The term *medical marijuana business* shall not include the private possession, production and medical use of marijuana by an individual patient or the private possession, production, distribution and medical use of marijuana by an individual caregiver for one patient in the residence of the patient or caregiver to the extent permitted by Article XVIII, Section 14 of the Colorado Constitution.

Medical marijuana center means a licensed medical marijuana business that distributes medical marijuana to patients or primary caregivers or to medical marijuana-infused product manufacturers or to another medical marijuana center.

Medical marijuana-infused product means a product infused with medical marijuana that is intended for use or consumption other than by smoking, including, without limitation, edible products, ointments and tinctures.

Medical marijuana-infused product manufacturer means a licensed medical marijuana business that produces medical marijuana-infused products.

Medical Marijuana Local Licensing Authority means the city manager. The city manager shall be the local licensing authority for the purpose of any state law that requires the City to designate a local licensing authority.

Medical marijuana plant means a marijuana seed that is germinated and all parts of the growth therefrom including, without limitation, roots, stalks and leaves. For purposes of this chapter, the portion of a medical marijuana plant harvested from the plant or converted to a usable form of medical marijuana for medical use is not considered part of the plant upon harvesting.

Medical use shall have the same meaning as is set forth in Article XVIII, Section 14(1)(b) of the Colorado Constitution, or as may be more fully defined in any applicable state law or regulation.

Patient shall have the same meaning as is set forth in Article XVIII, Section 14(1)(d) of the Colorado Constitution, or as may be more fully defined in any applicable state law or regulation.

Possess or possession means having physical control of an object, or control of the premises in which an object is located, or having the power and intent to control an object, without regard to whether the one in possession has ownership of the object. Possession may be held by more than one person at a time. Use of the object is not required for possession. The owner of a medical marijuana business shall be considered in possession of the medical marijuana business at all times. The business manager of a medical marijuana business shall be considered in possession of the medical marijuana business at all times that the business manager is on the premises of the business or has been designated by the owner as the business manager in the absence of the owner in accordance with this chapter.

Primary caregiver shall have the same meaning as is set forth in Article XVIII, Section 14(1)(f) of the Colorado Constitution, or as may be more fully defined in any applicable state law or regulation.

Produce or production means (i) all phases of growth of marijuana from seed to harvest; (ii) combining marijuana with any other substance for distribution, including storage and packaging for resale; or (iii) preparing, compounding, processing, encapsulating, packing or repackaging, labeling or relabeling of marijuana or its derivatives, whether alone or mixed with any amount of any other substance.

Ordinance Nos. 7716 (2010); 7780 (2011)

6-14-3. License Required.

(a) License Required. It shall be unlawful for any person to operate a medical marijuana business without obtaining a license to operate pursuant to the requirements of this chapter. This licensing requirement applies to all medical marijuana businesses regardless of whether the business was established before or after the City adopted laws regarding medical marijuana.

- (1) Any medical marijuana business that commenced operation prior to August 2, 2010, and had obtained a valid sales and use tax license from the City may continue in operation pending final action by the city manager on the application submitted pursuant to this chapter, provided that an application for a medical marijuana business was submitted to the City by 5:00 p.m. November 1, 2010.
- (2) Any existing medical marijuana business that does not or cannot meet the licensing requirements set forth in this chapter shall terminate its operation upon the effective date of this chapter.

(b) Additional Licenses and Permits May Be Required. The license requirement set forth in this chapter shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other federal, state or local law, including, by way of example, a retail sales and use tax license, a retail food establishment license or any applicable zoning or building permit.

(c) License Does Not Provide Any Exception, Defense or Immunity From Other Laws. The issuance of any license pursuant to this chapter does not create an exception, defense or immunity to any person in regard to any potential criminal liability the person may have for the production, distribution or possession of marijuana.

(d) Separate License Required for Each Location. A separate license shall be required for each location from which a medical marijuana business is operated. Provided, however, that in the event that a medical marijuana business has more than one location, a medical marijuana business license shall not be required for the location at which:

- (1) No medical marijuana is produced, dispensed or possessed;

- (2) Neither patients nor caregivers other than the licensee go to the location for purposes related to the medical marijuana business;
- (3) No employees go to the location on a regular basis; and
- (4) Only peripheral operations of the business, including, without limitation, bookkeeping, administrative services or deliveries that do not include medical marijuana, occur at the location.

(e) **License Non-Transferable; Exceptions.** A medical marijuana business license is not transferable or assignable, including without limitation, not transferable or assignable to a different location, to a different type of business, or to a different owner or licensee. A medical marijuana business license is valid only for the owner named thereon, the type of business disclosed on the application for the license, and the location for which the license is issued. The licensees of a medical marijuana business license are only those persons disclosed in the application or subsequently disclosed to the City in accordance with this chapter. A transfer of a medical marijuana business shall be permitted in the following circumstance:

- (1) The new owner and all licensees of the business have previously been approved by the City as part of another medical marijuana business license application; and
- (2) The license transfer location is permitted without the exceptions of subsection 6-14-7(c) or (f) of this chapter.

Ordinance Nos. 7716 (2010); 7780 (2011); 7814 (2011)

6-14-4. General Provisions.

(a) **General Licensing Provisions.** The general procedures and requirements of licenses, as more fully set forth in Chapter 4-1, "General Licensing Provisions," B.R.C. 1981, shall apply to medical marijuana business licenses. To the extent there is any conflict between the provisions of this chapter and Chapter 4-1, the provisions of this chapter shall control for medical marijuana business licenses.

(b) **Defense to Criminal Prosecutions.** Compliance with the requirements of this chapter shall not provide an exception, immunity or defense to criminal prosecution under any applicable law, except in the Boulder Municipal Court for a violation of this chapter as specifically provided herein.

(c) **Insurance Required.** The insurance specified in section 4-1-8, "Insurance Required," B.R.C. 1981, is required for a license under this chapter.

(d) **Costs of Inspection and Clean-Up.** In the event the City incurs costs in the inspection or clean-up of any medical marijuana business, or any person producing, distributing or possessing marijuana, the business and responsible person shall reimburse the City all actual costs incurred by the City for such inspection or clean-up.

(e) **Decisions on Application or Revocation Final.** The decision of the city manager on an application for a medical marijuana business license or revocation thereof pursuant to this chapter shall be the final decision of the City subject only to judicial review pursuant to Colorado Rule of Civil Procedure 106(a)(4), unless the notice of the decision includes an opportunity for a hearing as provided in section 1-3-3, "Notice of Agency Action," B.R.C. 1981. No defense or objection may be presented for judicial review unless it is first presented to the city manager prior to the decision.

Ordinance Nos. 7716 (2010); 7780 (2011); 7814 (2011)

6-14-5. Application.

(a) **Application Requirements.** An application for a medical marijuana business license shall be made to the City on forms provided by the city manager for that purpose. The applicant shall use the application to demonstrate its compliance with this chapter and any other applicable law, rule or regulation. In addition to the information required by chapter 4-1, "General Licensing Provisions," B.R.C. 1981, the application shall include the following information:

- (1) Name and address of the owner or owners of the medical marijuana business in whose name the license is proposed to be issued.

- (A) If the owner is a corporation, the name and address of any officer or director of the corporation and of any person holding issued and outstanding capital stock of the corporation.
 - (B) If the owner is a partnership, association or company, the name and address of any person holding an interest therein and the managing members. If a managing member is an entity rather than an individual, the same disclosure shall be required for each entity with an ownership interest until a managing member that is a natural person is identified.
 - (C) If the owner is not a natural person, the organizational documents for all entities identified in the application, identification of the natural person that is authorized to speak for the entity and contact information for that person.
- (2) Name and address of:
- (A) Any business managers of the medical marijuana business, if the business manager is proposed to be someone other than the owner.
 - (B) All financiers of the medical marijuana business.
 - (C) All primary caregivers that will consult with patients or distribute medical marijuana at the medical marijuana business.
- (3) A statement of whether or not any of the named owners, members, business managers, financiers, primary caregivers or persons named on the application have been:
- (A) Denied an application for a medical marijuana business license pursuant to this chapter or any similar state or local licensing law, rule or regulation, or had such a license suspended or revoked.
 - (B) Denied an application for a liquor license pursuant to Title 12, Article 47 or Article 46, C.R.S., or any similar state or local licensing law, or had such a license suspended or revoked.
 - (C) Convicted of a crime, other than a traffic offense, or completed any portion of a sentence due to a criminal conviction.
 - (D) Convicted of driving or operating other machinery under the influence of alcohol, drugs or medication, driving while impaired or driving with excessive alcohol content in violation of § 42-4-1301, C.R.S., or any comparable law, or a misdemeanor related to abuse of alcohol or a controlled substance.
- (4) Proof of ownership or legal possession of the licensed premises for a medical marijuana business for the term of the proposed license.
- (5) Proof of insurance as provided in Section 4-1-8, "Insurance Required," B.R.C. 1981.
- (6) An operating plan for the proposed medical marijuana business including the following information:
- (A) A description of the products and services to be provided by the medical marijuana business.
 - (B) A dimensioned floor plan, clearly labeled, showing:
 - (i) The layout of the structure and the floor plan in which the medical marijuana business is to be located;
 - (ii) The principal uses of the floor area depicted on the floor plan, including but not limited to the areas where nonpatients will be permitted, private consulting areas, storage areas, retail areas and areas where medical marijuana will be distributed;
 - (iii) Areas where any services other than the distribution of medical marijuana are proposed to occur on the licensed premises; and

(iv) The separation of the areas that are open to persons who are not patients from those areas open to patients.

(C) A neighborhood responsibility plan that demonstrates how the business will fulfill its responsibilities to the neighborhood, including neighborhood outreach, methods for future communication and dispute resolution.

(D) For cultivation facilities and medical marijuana-infused product manufacturers, a plan that specifies the methods to be used to prevent the growth of harmful mold and compliance with limitations on discharge into the wastewater system of the City as set forth in chapter 11-3, "Industrial and Prohibited Discharges," B.R.C. 1981.

(7) A security plan indicating how the applicant will comply with the requirements of this chapter and any other applicable law, rule or regulation. The security plan includes specialized details of security arrangements and will be protected from disclosure as provided under the Colorado Open Records Act, § 24-72-203(2)(a)(VIII), C.R.S. If the City finds that such documents are subject to inspection, it will attempt to provide at least twenty-four-hour notice to the applicant prior to such disclosure.

(8) A lighting plan showing the lighting outside of the medical marijuana business for security purposes and compliance with applicable city requirements.

(9) A zoning confirmation form from the City, to ascertain within a radius of one-quarter mile from the boundaries of the property upon which the medical marijuana business is located, the proximity of the property to any school or state licensed child care center, to any other medical marijuana business or to any residential zone district.

(10) Fingerprints and personal histories as may be specified on forms provided by the city manager. This requirement shall apply to all owners, business managers, financiers and caregivers employed by or under contract to provide services to the medical marijuana business, including all individuals who have an interest as described herein of any portion of the medical marijuana business, directly or as a member, partner or officer of a corporation, partnership, association or company.

(11) A plan for disposal of any medical marijuana or medical marijuana-infused product that is not sold to a patient or primary caregiver in a manner that protects any portion thereof from being possessed or ingested by any person or animal.

(12) A plan for ventilation of the medical marijuana business that describes the ventilation systems that will be used to prevent any odor of medical marijuana off the premises of the business. For medical marijuana businesses that grow medical marijuana plants, such plan shall also include all ventilation systems used to control the environment for the plants and describe how such systems operate with the systems preventing any odor leaving the premises.

(13) A description of all toxic, flammable or other materials regulated by a federal, state or local government with authority over the business that will be used or kept at the medical marijuana business, the location of such materials and how such materials will be stored.

(b) Evidence of Rehabilitation May Be Submitted. In the event the criminal history of an owner, member, business manager, financier, primary caregiver or other person named on the application contains information regarding conviction of a crime or previous denial or revocation of a license, that person may include with the license application any information regarding such conviction, denial or revocation. Such information may include, but is not limited to, evidence of rehabilitation, character references and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the date of the application.

(c) Fee Required. Any application for a medical marijuana business permit shall be accompanied by the application fee, criminal background check fee, the annual license fee as required by section 4-20-64, "Medical Marijuana Businesses," B.R.C. 1981, and any other applicable fees.

(d) Inspection. An inspection of the proposed medical marijuana business by the City shall be required prior to issuance of a license. Except for medical marijuana businesses operating as allowed by subsection 6-14-3(a), "License Required," B.R.C. 1981, such inspection shall occur after the licensed premises are ready for operation, but prior to the stocking of the business with any medical marijuana, and prior to the opening of the business to any patients or the public. The inspection is to verify that the business facilities are constructed and can be operated in accordance with the application submitted and the applicable requirements of the code and any other applicable law, rule or regulation.

(e) Investigation. For purposes of section 12-43.3-303(2), C.R.S., the investigation of the application by the City is not complete until the city manager has (i) determined the application is complete, (ii) determined the medical marijuana business is prepared and able to operate in compliance with all applicable laws, (iii) conducted an inspection of the business, (iv) obtained all other information the city manager determines necessary to make a decision whether to approve or deny the license application, or approve it with conditions, and (v) prepared the documentation necessary to support the decision made by the manager on the application.

(f) Approval Requirements. The city manager may issue a medical marijuana business license if the inspection, background checks and all other information available to the City verify that the applicant has submitted a full and complete application, has made improvements to the business location consistent with the application and is prepared to operate the business with other owners and managers as set forth in the application, all in compliance with this code and any other applicable law, rule or regulation. The city manager will deny any application that does not meet the requirements of this chapter or any other applicable law, rule or regulation or that contains any false or incomplete information. The conditions of an approval of a medical marijuana business license shall include, at a minimum, operation of the business in compliance with all of the plans and information made part of the application.

Ordinance Nos. 7716 (2010); 7780 (2011)

6-14-6. Persons Prohibited as Licensees and Business Managers.

(a) It shall be unlawful for any of the following persons to have a financial interest in or manage a medical marijuana business, and no license provided by this chapter shall be issued to or held by, and no medical marijuana business shall be managed by:

- (1) Any person until the annual fee for the license has been paid;
- (2) Any person not of good moral character;
- (3) Any corporation, any of whose officers, directors or stockholders holding an ownership interest are not of good moral character;
- (4) Any partnership, association or company, any of whose officers or members holding an interest therein, or a managing member, are not of good moral character;
- (5) Any person employing, assisted by or financed in whole or in part by any other person who is not of good moral character;
- (6) Any person, unless such person's character, record and reputation are satisfactory to the city manager;
- (7) Any natural person who is under twenty-one years of age; or
- (8) Any person who operates or manages a medical marijuana business contrary to the provisions of this chapter, any other applicable law, rule or regulation or conditions imposed on land use or license approvals, or contrary to the terms of the plans submitted with the license application, as such plans may be amended as provided in this chapter.
- (9) A licensed physician making patient recommendations;
- (10) A person licensed pursuant to this article who, during a period of licensure, or who, at the time of application, has failed to remedy an outstanding delinquency for taxes owed, or an outstanding delinquency for judgments owed to a government.

- (11) A sheriff, deputy, police officer, or prosecuting officer, or an officer or employee of the state licensing authority or a local licensing authority;
- (12) A person whose authority to be a primary caregiver as defined in § 25-1.5-106(2), C.R.S. has been revoked by the state health agency; or
- (13) A person that is a licensee for a location that is currently licensed as a retail food establishment or a wholesale food registrant.

(b) In making the evaluation of the good moral character of an individual identified on an application or amendment thereof, the city manager shall consider the following:

- (1) A criminal conviction shall not, by itself, be grounds for denying an application;
- (2) Verification of or lack of ability to verify items disclosed by the individual;
- (3) When an individual has a criminal history or a history including denial, revocation or suspension of a license, the types and dates of violations; the evidence of rehabilitation, if any, submitted by the individual; whether the crimes are related to moral turpitude, substance abuse or other crimes that may directly affect the individual's ability to operate a medical marijuana business; or whether the crimes are unrelated to the individual's ability to operate such a business;
- (4) The evidence or lack of evidence regarding the ability of the individual to refrain from being under the influence of intoxicating or controlled substances while performing regular tasks and operating a medical marijuana business;
- (5) Rules adopted by the city manager to implement this chapter;
- (6) Law, rules and regulations applicable to evaluation of other types of licenses issued by governments that consider the good moral character of the applicants; and
- (7) Any additional information the city manager may request of the individual if the individual has a criminal history, an administrative or judicial finding of violation of laws regarding use of alcohol or controlled substances or items disclosed by the individual which require additional information in order for the city manager to make a determination regarding issuance of the license.

Ordinance Nos. 7716 (2010); 7780 (2011)

6-14-7. Locations of Medical Marijuana Businesses.

(a) Fixed Location Required. It shall be unlawful to operate a medical marijuana business, or to grow medical marijuana, outside of an enclosed building. All medical marijuana business licenses shall be issued for a specific fixed location within an enclosed building. The portion of such premises upon which the floor plan shows medical marijuana may be produced, dispensed or possessed shall be considered the "licensed premises" portion of the business.

(b) Location – Permitted Use in Zoning District. A medical marijuana business license may be issued only if the business qualifies as a use permitted as a matter of right in the zone district where it is proposed to be located as follows:

- (1) as "personal services" for a medical marijuana center; or
- (2) as "greenhouse/nursery" for a cultivation facility; or
- (3) as "manufacturing" for a cultivation facility or for a medical marijuana-infused product manufacturer.

(c) No Medical Marijuana Business in Building with Residences or Residential Zone Districts. A medical marijuana business license shall not be issued for a business in a building which contains a residence, or within a dwelling unit within any zone district, or within a residential zone district, as described in Table 5-1 of section 9-5-2, "Zoning Districts," B.R.C., 1981. This restriction shall not apply to a medical marijuana business that is located within a building with a residence, or within a residential zone district, under the following circumstances:

- (1) The medical marijuana business and its licensees have been operating in compliance with all provisions of this code, including, without limitation, submitting a complete medical marijuana business application on or before November 1, 2010; and
- (2) The medical marijuana business obtained a sales and use tax license from the City prior to November 5, 2009; and
- (3) The medical marijuana business was legally established in compliance with Title 9 of this code prior to November 5, 2009.

(d) No Retail Sales in Cultivation Facilities or Manufacturing. It shall be unlawful for any person to permit retail sales within a medical marijuana business that is a cultivation facility or medical marijuana-infused product manufacturer.

(e) Distribution by Primary Caregiver. All distribution of medical marijuana to a patient or primary caregiver shall be made directly to a patient or a primary caregiver upon the licensed premises or via personal delivery of the medical marijuana by the primary caregiver from the licensed premises to the patient at the patient's residence as provided in this chapter.

(f) Separation From Schools, Day Care Centers or Other Medical Marijuana Uses. No medical marijuana business license shall be issued for the following locations:

- (1) Within 500 feet of any elementary, junior high, middle or high school or state licensed day care center. Distances shall be measured by the City on official maps as the radius from the closest points on the perimeter of the applicant's property to the closest point of the property of the school or day care center. This restriction shall not apply to any applicant who applied for a sales and use tax license for a medical marijuana business prior to November 5, 2009, such license was approved and the business has continuously operated such business since December 1, 2009. In the discretion of the city manager, a medical marijuana business license may be issued for a location where either the medical marijuana business or the school or licensed day care center is located within a parcel with several different users; and
 - (A) the distance between the applicant's property and the property of the school or day care center is less than 700 feet, and
 - (B) the distance between the buildings in which the medical marijuana business and the school or licensed day care are located is more than 750 feet apart, and
 - (C) the city manager finds that the location of parking lots, sidewalks, streets, landscaping and other appurtenances between the medical marijuana business and the school or day care provide practical separation of at least 500 feet between the use and the medical marijuana business.
- (2) Within 500 feet of three other medical marijuana businesses, except that this limitation shall not apply in Industrial zones.
 - (A) Distances shall be measured by the City on official maps as the radius from the closet points on the perimeter of the applicant's property to the closest point of the property of any other medical marijuana business.
 - (B) This restriction shall not apply to any applicant who submits an application for a license for a medical marijuana business prior to September 1, 2010, in any location where the same applicant had obtained a sales and use tax license for the business on or before January 1, 2010, regardless of whether the actual sale or other distribution of medical marijuana had commenced at that location as of January 1, 2010.
 - (C) To determine the proximity to other medical marijuana businesses and the priority of applications, businesses shall have priority in the following order:
 - (i) Businesses that are open and operating;
 - (ii) Businesses whose applications have been approved; and

(iii) Applications for medical marijuana business licenses that have been submitted by the applicant and declared complete by the City.

(iv) No other applications shall be considered "businesses" for this determination.

(g) Limitations on Dual Licenses. A medical marijuana business license may not be issued for any location which also is a part of the licensed premises of a business holding a beverages license pursuant to Section 4-2-3, "Authority to Issue City Licenses," B.R.C. 1981, or a medical marijuana business license under this chapter.

(h) Limitations on Medical Marijuana Centers. The following shall be the minimum requirements for a medical marijuana center:

- (1) The area of the business is three thousand square feet or less;
- (2) The business does not distribute medical marijuana only, but provides other caregiver services consistent with a wellness center, including but not limited to health treatments or therapy generally not performed by a medical doctor or physician, such as physical therapy, massage, acupuncture, aromatherapy, yoga, audiology or homeopathy or knowledgeable consultation on the effects of amount and forms of ingestion of different types of marijuana for medical use;
- (3) The business includes one or more private rooms for consultation on the medical use of marijuana or other services.

Ordinance Nos. 7716 (2010); 7780 (2011); 7814 (2011)

6-14-8. Requirements Related to Operation of Medical Marijuana Businesses.

(a) Onsite Use Prohibited. No marijuana shall be smoked, eaten or otherwise consumed or ingested within the medical marijuana business.

(b) Age Limitations. No person under eighteen years of age shall be on the licensed premises, unless the person is accompanied by a parent or guardian.

(c) Display of Licenses Required. The name and contact information for the owner or owners and any business manager of the medical marijuana business, the medical marijuana business license and the sales tax business license shall be conspicuously posted in the business.

(d) Business Conducted Within Building. Any and all production, distribution, possession, storage, display, sales or other distribution of marijuana shall occur only within the licensed premises of a medical marijuana business and shall not be visible from the exterior of the business.

(e) Owner or Business Manager Required on Premises. No licensed premises shall be managed by any person other than the licensee or the business manager listed on the application for the license or a renewal thereof. Such licensee or business manager shall be on the premises and responsible for all activities within the licensed business during all times when the business is open or in the possession of another person. In the event the licensee intends to employ a business manager that was not identified on the license or renewal application, the licensee shall report the name of such business manager to the City, and such business manager shall submit to the City, at least thirty days prior to commencing serving as the business manager, an application containing all of the information required by this chapter and on the license application. Such licensee shall report to the City any change in business managers at least thirty days prior to employing an additional business manager, and no more than five days after a business manager is released from such position.

(f) Hours of Operation. The medical marijuana business shall be closed to the public, and no sale or other distribution of marijuana shall occur upon the licensed premises or via delivery from the licensed premises, between the hours of 7:00 p.m. and 8:00 a.m.

(g) Use of Pesticides. No pesticides, insecticides or noxious substances which are prohibited by applicable law for fertilization or production of edible produce shall be used on any marijuana produced, possessed or dispensed by a

medical marijuana business. A medical marijuana business shall comply with all applicable law regarding use of pesticides, including, without limitation, chapter 6-10, "Pesticide Use," B.R.C. 1981.

(h) Ventilation Required. A medical marijuana business shall be properly ventilated to filter the odor from marijuana so that the odor cannot be detected by a person with a normal sense of smell at the exterior of the medical marijuana business or at any adjoining use or property.

(i) Renewable Energy Usage Required. A medical marijuana cultivation facility shall directly offset one hundred percent of its electricity consumption through the purchase of renewable energy in the form of Windsource, a verified subscription in a Community Solar Garden or renewable energy generated onsite, or an equivalent that is subject to approval by the City.

(j) Limitations on Inventory. The medical marijuana business shall not maintain any more marijuana within the licensed premises than is permitted under applicable law for the patients which have designated the business as primary caregiver. No plants shall be located in a medical marijuana center or a medical marijuana-infused product manufacturer. The medical marijuana business shall maintain current records evidencing the status as patients of those who have designated the business as the patient's primary caregiver.

(k) Reporting Requirements. A medical marijuana business shall report each transfer or change of financial interest, business manager, financier and primary caregiver in the license to the City at least thirty days before the transfer or change. A medical marijuana business shall report sales and taxable transactions and file sales and use tax reports to the City monthly.

(l) Delivery to Patients. In the event a primary caregiver personally delivers medical marijuana to one or more patients, at all times any medical marijuana is outside of the licensed premises:

- (1) The medical marijuana shall be packaged, sealed and labeled as provided in this chapter. The label shall include the name of the patient to whom it is being delivered.
- (2) The primary caregiver delivering the medical marijuana shall have in the primary caregiver's possession documents evidencing: (i) the patient identified on each package of medical marijuana has designated the person as the patient's primary caregiver; (ii) the patient requested delivery of medical marijuana by the primary caregiver; (iii) the amount of the requested delivery; (iv) the date of the requested delivery; and (v) if more than two ounces is being delivered to a patient, a copy of the doctor's recommendation for that patient specifying the additional amount of medical marijuana medicinally necessary for that patient.
- (3) In no event shall the primary caregiver be in possession of more than eight ounces of a usable form of medical marijuana for delivery outside of the licensed premises.

(m) Delivery Between Medical Marijuana Businesses. It shall be unlawful for any person to transport medical marijuana, except as specifically allowed by applicable law, unless the medical marijuana being transported meets the following requirements:

- (1) All medical marijuana-infused products are hand-packaged, sealed and labeled as provided in this chapter and the products stored in closed containers that are labeled as provided in this section.
- (2) All medical marijuana in a usable form for medicinal use is packaged and stored in closed containers that are labeled as provided in this section.
- (3) Each container used to transport medical marijuana is labeled with the amount of medical marijuana or medical marijuana-infused products, or the number and size of the plants, in the container. The label shall include the name and address of the medical marijuana business that the medical marijuana is being transported from and the name and address of the medical marijuana business that the medical marijuana is being transported to. The label shall be shown to any law enforcement officer that requests to see the label.
- (4) Unless otherwise specifically allowed by applicable law, medical marijuana may be transported only:
 - (A) From a cultivation facility to a medical marijuana business; and

- (B) Which medical marijuana business is owned by the same person as owns the cultivation facility; or
- (C) Between one medical marijuana center to another center.

(n) Disposal of Medical Marijuana and Marijuana Byproducts. All medical marijuana and any product containing a usable form of marijuana shall be disposed of in a manner that prevents any person or animal from being able to ingest any marijuana.

(o) Possession of Mature Flowering Plants. No more than one-half of the medical marijuana plants within a medical marijuana business or possessed by a patient may be mature, flowering plants producing a usable form of marijuana.

(p) Advertisement. A medical marijuana business may not advertise in a manner that is inconsistent with the medicinal use of medical marijuana. A medical marijuana business may not advertise in a manner that is misleading, deceptive, false or designed to appeal to minors. Advertisement that promotes medical marijuana for recreational or any use other than for medicinal purposes shall be a violation of this code.

Ordinance Nos. 7716 (2010); 7780 (2011); 7814 (2011)

6-14-9. Right of Entry – Records to Be Maintained.

(a) Records to Be Maintained. Each licensee shall keep a complete set of books of account, invoices, copies of orders and sales, shipping instructions, bills of lading, weigh bills, correspondence, bank statements including cancelled checks and deposit slips and all other records necessary to show fully the business transactions of such licensee. Receipts shall be maintained in a computer program or by pre-numbered receipts and used for each sale. The records of the business shall clearly track medical marijuana product inventory purchased and sales and disposal thereof to clearly track revenue from sales of any medical marijuana from other paraphernalia or services offered by the medical marijuana business. The licensee shall also maintain inventory records evidencing that no more marijuana was within the medical marijuana business than allowed by applicable law for the number of patients who designated the medical marijuana business owners as their primary caregiver. All such records shall be open at all times during business hours for the inspection and examination of the City or its duly authorized representatives. The City may require any licensee to furnish such information as it considers necessary for the proper administration of this chapter. The records shall clearly show the source, amount, price and dates of all marijuana received or purchased, and the amount, price, dates and patient or caregiver for all medical marijuana sold.

(b) Separate Bank Accounts. The licensee shall maintain a separate bank account in the name of the business for the entire operation of each medical marijuana business, including all deposits and disbursements. The revenues and expenses of the medical marijuana business shall not be commingled in a checking account with any other business or individual person's deposits or disbursements.

(c) Disclosure of Records. By accepting the medical marijuana business license, the licensee is providing consent to disclose the information required by this chapter, including information about patients and caregivers. Any records provided by the licensee that includes patient or caregiver confidential information may be submitted in a manner that maintains the confidentiality of the documents under the Colorado Open Records Act, § 24-72-201, et seq., C.R.S., or other applicable law. Any document that the applicant considers eligible for protection under the Colorado Open Records Act shall be clearly marked as confidential, and the reasons for such confidentiality shall be stated on the document. In the event that the licensee does appropriately submit documents so as not to be disclosed under the Colorado Open Records Act, the City shall not disclose it to other parties who are not agents of the City, except law enforcement agencies. If the City finds that such documents are subject to inspection, it will provide at least twenty-four-hour notice to the applicant prior to such disclosure.

(d) Audits. The City may require an audit to be made of such books of account and records on such occasions as it may consider necessary. Such audit may be made by an auditor to be selected by the City that shall likewise have access to all books and records of such licensee. The expense of any audit determined necessary by the City shall be paid by said licensee.

(e) Consent to Inspection. Application for a medical marijuana business license from the City constitutes consent by the licensee, owners, managers and employees to permit the city manager to conduct routine inspections of the licensed medical marijuana business to ensure compliance with this chapter or any other applicable law, rule or regulation.

(f) Reporting of Source, Quantity and Sales. The records to be maintained by each licensee shall include the source and quantity of any marijuana distributed, produced or possessed upon the licensed premises. Such reports shall include, without limitation, for both acquisitions from wholesalers and transactions to patients or caregivers, the following:

- (1) Name and address of seller or purchaser;
- (2) Date, weight, type of marijuana and dollar amount or other consideration of transaction; and
- (3) For wholesale transactions, the state and City, if any, sales and use tax license number of the seller.

(g) Reporting of Energy Use and Renewable Energy Credit (REC) Purchases. The records to be maintained by each licensee that grows medical marijuana shall include, without limitation, records showing on a monthly basis the use and source of energy and the number of certified Renewable Energy Credits (RECs) purchased, or the subscription level for another renewable energy acquisition program approved by the city manager. Such records shall include all statements, reports or receipts to verify the items included in the report of the licensee. By acceptance of the medical marijuana business license from the City, the licensee grants permission to providers of the energy or point of origin of the RECs or other renewable energy acquisition program to disclose the records of the licensee to the City.

Ordinance Nos. 7716 (2010); 7780 (2011); 7814 (2011)

6-14-10. Requirements Related to Security of Licensed Premises and Inventory.

The licensed premises shall contain all components in good working order of the security plan submitted with the application, as it may be amended, and shall be monitored and secured twenty-four hours per day, including, at a minimum, the following security measures:

(a) Cameras. The medical marijuana business shall install and use security cameras to monitor all areas of the licensed premises and where persons may gain or attempt to gain access to marijuana or cash maintained by the medical marijuana business. Recordings from security cameras shall be maintained for a minimum of seven days in a secure off-site location.

(b) Use of Safe for Storage. The medical marijuana business shall install and use a safe for overnight storage of any processed marijuana and cash on the licensed premises, with the safe being incorporated into the building structure or securely attached thereto.

(c) Alarm System. The medical marijuana business shall install and use a monitored alarm system.

(d) Report of Criminal Activity. Reports of all criminal activities or attempts thereof shall be reported to the police department within twelve hours of occurrence.

Ordinance Nos. 7716 (2010); 7780 (2011)

6-14-11. Requirements for Public Health and Labeling.

(a) Medical Marijuana-Infused Products. The production of any medical marijuana-infused product shall be at a medical marijuana-infused product manufacturer that meets all requirements of a retail food establishment as set forth in § 25-4-1601, et seq., C.R.S., the Food Protection Act. The production of any product containing medical marijuana shall comply with all health and safety standards thereof. The licensee shall comply with all applicable state and local health regulations related to the production, preparation, labeling and sale of prepared food items.

(b) Labeling and Packaging Requirements. All medical marijuana sold or otherwise distributed by the licensee shall be packaged and labeled in a manner that advises the purchaser that it contains marijuana and specifies the amount

of marijuana in the product, that the marijuana is intended for medical use solely by the patient to whom it is sold, and that any resale or redistribution of the medical marijuana to a third person is prohibited. The label shall include all ingredients contained in the product, in order from most abundant to least abundant. The label shall identify potential food allergy ingredients, including milk, eggs, fish, shellfish, tree nuts, peanuts, wheat and soybeans. The label shall identify all chemical additives, including, without limitation, pesticides, herbicides and fertilizers that were used in the production of the medical marijuana used in the product. The product shall be packaged in a sealed container that cannot be opened without obvious damage to the packaging. The label shall contain the following warning:

**THIS PRODUCT IS MANUFACTURED WITHOUT ANY REGULATORY OVERSIGHT
FOR HEALTH, SAFETY OR EFFICACY. THERE MAY BE HEALTH RISKS
ASSOCIATED WITH THE INGESTION OR USE OF THIS PRODUCT.**

(c) Additional Requirements for Extracts. For products containing medical marijuana extracted from the plant, including, without limitation, tinctures, balms, oils, butters or candies, the label shall also include the name of the extraction fluid used, the strength of the medical marijuana in the extraction fluid and the amount of extract in the sealed product.

Ordinance Nos. 7716 (2010); 7780 (2011)

6-14-12. Compliance With Other Applicable Law.

(a) Application of State Law. Except as may be provided otherwise in this chapter, or rules adopted pursuant to this chapter or interpretations by the City, any law or regulation adopted by the state governing the production, possession or distribution of marijuana for medical use shall also apply to medical marijuana businesses in the City. Provided however, if a state law or regulation permits what this chapter prohibits, this chapter shall prevail. Compliance with any applicable state law or regulation that does not permit what this chapter prohibits shall be deemed an additional requirement for issuance or denial of any license under this chapter, and noncompliance with any applicable state law or regulation shall be grounds for revocation or suspension of any license issued under this chapter. No medical marijuana business shall continue operations in violation of an additional state law or regulation, which does not permit what this chapter prohibits, applicable within the City after the effective date of the state law or regulation.

(b) Revocation of License Upon Denial or Revocation of State License or Applicable Federal Prohibition. A medical marijuana business license is a revocable privilege, and no holder thereof shall be deemed to have acquired any property interest therein. If the state prohibits the production, possession or other distribution of marijuana through medical marijuana businesses, or if a medical marijuana business is denied a medical marijuana business license or has such license revoked pursuant to § 12-43.3-101, et seq., C.R.S. or if a court of competent jurisdiction determines that the federal government's prohibition of the production, possession or other distribution of marijuana through medical marijuana businesses supersedes state law, any license issued pursuant to this chapter shall be deemed to be immediately revoked by operation of law, with no ground for appeal or other redress on behalf of the licensee.

Ordinance Nos. 7716 (2010); 7780 (2011)

6-14-13. Prohibited Acts.

- (a) Prohibited Acts. It shall be unlawful for any person to:
- (1) Violate any provision of this code or any condition of an approval granted pursuant to this code or any law, rule or regulation applicable to the use of medical marijuana or the operation of a medical marijuana business;
 - (2) Permit any other person to violate any provision of this code or any condition of an approval granted pursuant to this code, or any law, rule or regulation applicable to the use of medical marijuana or the operation of a medical marijuana business;
 - (3) Distribute medical marijuana without a medical marijuana business license or outside of the licensed premises of the medical marijuana business;
 - (4) Obtain marijuana from a person who is not licensed as a medical marijuana business;

- (5) Take marijuana for medical use in any form in plain view of, or in a place open to, the general public. Places open to the general public include without limitation any property owned, leased or used by a public entity, retail malls, businesses open to the public, common areas of a building or in vehicles visible from a place open to the general public.
- (6) Smoke, use or ingest marijuana, alcoholic beverages or a controlled substance on the premises of the medical marijuana business.
- (7) Produce, distribute or possess more medical marijuana than allowed in this chapter or other applicable law.
- (8) Produce, distribute or possess medical marijuana, or own or manage a medical marijuana business in which another produces, distributes or possesses medical marijuana, in violation of this chapter or any other applicable law.
- (9) Make any changes, or for the licensee to allow any changes, to the items included in the plans submitted with the license application and approved by the City, or the individuals identified in the application, without prior approval of the City.
- (10) Own, manage or possess a medical marijuana business where medical marijuana is outside of the licensed premises of such business. It shall be an affirmative defense to a violation of this section if the medical marijuana outside of the licensed premises was: (i) in the custody and control of a patient; (ii) purchased by that patient from the business and the patient has not left the business since purchase; and (iii) the amount of medical marijuana in the custody and control of the patient does not exceed the amount the patient may possess lawfully;
- (11) Possess more than six marijuana plants and two ounces of a usable form of marijuana without a medical marijuana business license for a cultivation facility. It shall be an affirmative defense to this charge if a legitimate recommendation from a qualified physician of the patient for whom the marijuana is being grown includes a recommendation for a specific amount of marijuana in excess of six marijuana plants or two ounces of a usable form of marijuana as being medically necessary to address the patient's debilitating medical condition;
- (12) Possess medical marijuana that is not in a sealed package in a place where the possessor is not authorized to possess or consume medical marijuana.
- (13) Dispose of medical marijuana or any byproduct of medical marijuana containing marijuana in a manner contrary to this chapter;
- (14) Distribute a medical marijuana plant to any person that is not licensed as a medical marijuana cultivation facility;
- (15) Possess a number of mature, flowering plants producing a usable form of marijuana that is more than one-half of the medical marijuana plants that are lawfully possessed by the person;
- (16) Distribute, or own or manage a medical marijuana business where distribution occurs, from a medical marijuana business of a medical marijuana-infused product that was produced in a manner that is not in compliance with this chapter;
- (17) Possess medical marijuana, or own or manage a medical marijuana business where there is possession of medical marijuana, by a person who is not a patient, a primary caregiver or a licensee of a medical marijuana business.
- (18) Possess or operate a medical marijuana business in violation of this chapter;
- (19) Possess or operate a medical marijuana business in a location or in a manner for which a medical marijuana business license is prohibited by the terms of this chapter;

- (20) Attempt to use or display a medical marijuana business license at a different location or for a different business entity than the location and business entity disclosed on the application for the issued license;
- (21) Manufacture, distribute or possess any medical marijuana at a location without a medical marijuana business license prior to passing the inspection required by this chapter; provided however, this subparagraph shall not apply to medical marijuana businesses qualifying for the exception of subsection 5-14-3(a) "License Required," B.R.C. 1981).
- (22) Deliver medical marijuana to a patient or between medical marijuana businesses except in strict compliance with section 6-14-8;
- (23) Operate a medical marijuana business in a manner that is not consistent with the items disclosed in the application for the medical marijuana business license.
- (24) Possess or use medical marijuana:
 - (A) on the grounds of a school, university or in a school bus; or
 - (B) in a vehicle, aircraft or motorboat;
- (25) Operate or be in physical control of any medical marijuana business, liquor establishment, vehicle, aircraft or motorboat while under the influence of medical marijuana.
- (26) Refuse to allow inspection of a medical marijuana business upon request of a city employee.
- (27) Advertise or publish materials or display signs that are in violation of this code.

(b) Affirmative Defense. It shall be an affirmative defense to any violation of this chapter that the prohibited act is specifically authorized by the Medical Marijuana Amendment.

Ordinance Nos. 7716 (2010); 7780 (2011); 7814 (2011)

6-14-14. Suspension or Revocation of License.

- (a) A medical marijuana business license may be suspended or revoked for any of the following violations:
 - (1) Conviction of the business, a licensee or any owner, business manager, financier or primary caregiver of any violation of this chapter or any other law, rule or regulation applicable to the use of medical marijuana or operation of a medical marijuana business;
 - (2) Misrepresentation or omission of any material fact, or false or misleading information, on the application or any amendment thereto, or any other information provided to the City related to the medical marijuana business;
 - (3) Conviction of any licensee of a crime which, if occurring prior to submittal of the application, could have been cause for denial of the license application;
 - (4) Distribution of medical marijuana, including, without limitation, delivery to a patient, in violation of this chapter or any other applicable law, rule or regulation;
 - (5) Operation of a medical marijuana business in violation of the specifications of the license application, any conditions of approval by the City, or any violation of this chapter or any other law, rule or regulation applicable to the use of medical marijuana or operation of a medical marijuana business;
 - (6) Failure to maintain, or provide to the City upon request, any books or records required by this chapter;
 - (7) Failure to timely notify the City and to complete necessary city forms for changes in financial interest, business managers, financier or primary care giver;

- (8) Temporary or permanent closure, or other sanction of the business, by the City, or by the county or State Public Health Department or other governmental entity with jurisdiction, for failure to comply with health and safety provisions of this chapter or otherwise applicable to the business or any other applicable law;
- (9) Revocation or suspension of another medical marijuana business license.

Ordinance Nos. 7716 (2010); 7780 (2011)

6-14-15. Term of License – Renewals – Expiration of License.

(a) **Term of License.** A medical marijuana business license shall be valid for one year. The license shall expire on the last day of the month in which the license is issued of the year following issuance or renewal of the license. For the first license issued for a medical marijuana business, the city manager may designate an expiration date in excess of one year, but no more than twenty-four months, to facilitate the administration by the City of renewals of such licenses.

(b) **Renewal of License.** The licensee shall apply for renewal of the medical marijuana business license at least forty-five days before the expiration of the license. The licensee shall apply for renewal using forms provided by the City.

- (1) The renewal license fee shall accompany the renewal application. Such fee is nonrefundable.
- (2) In the event there has been a change to any of the plans identified in the license application which were submitted to and approved by the City with the application or an earlier renewal, the renewal application shall include specifics of the changes or proposed changes in any of such plans.
- (3) In the event any person who has an ownership interest as described in the disclosures made to the City pursuant to this chapter, or any business manager, financier, caregiver or employee has any criminal violations since such disclosure, the renewal application shall include the name of the violator, the date of the violation, the court and case number where the violation was filed and the disposition of the violation with the renewal application.
- (4) The renewal application shall include a summary report for the previous twelve months showing the amount of marijuana purchased, the amount of marijuana sold, the forms in which marijuana was sold, the number of patients and the number of primary caregivers who received marijuana, the police report numbers or case numbers of all police calls to the medical marijuana business and for calls resulting in criminal charges, the charge, case number and disposition of any of the charges.
- (5) The City shall not accept renewal applications after the expiration of the license.
- (6) In the event there have been allegations of violations of this code by any of the licensees or the business submitting a renewal application, the City may hold a hearing pursuant to chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, prior to approving the renewal application. The hearing shall be to determine whether the application and proposed licensees comply with this chapter and whether the operation of the business has been in compliance with this code. If the City does not hold a hearing and the application and the licensees do not meet the requirements of this chapter, or the business has been operated in the past in violation of this code, the renewal application may be denied or issued with conditions, and the decision shall be final subject to judicial review as provided in subsection 16-4-4(e).

(c) **Nonpayment of Tax.** In the event a medical marijuana business that has been open and operating and submitting sales and use tax returns to the City monthly ceases providing sales and use tax returns to the City for a period of three months or longer, the medical marijuana business license shall be deemed to have expired and a new license required prior to reopening at the location of the business.

(d) **Expiration of License.** Expiration of a medical marijuana business license for any reason including without limitation, pursuant to subsection (c) above shall be considered an inactive local license as described in § 12-43.3.312, C.R.S.

Ordinance Nos. 7716 (2010); 7780 (2011); 7814 (2011)

6-14-16. City Manager Authorized to Issue Rules.

The city manager may adopt rules and regulations that the city manager determines are reasonably necessary to implement the requirements of this chapter.

Ordinance Nos. 7716 (2010); 7780 (2011)