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**HEALTH AND ENVIRONMENT**

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**ARTICLE I.  
IN GENERAL**

**Secs. 12-1—12-15. Reserved.**

**ARTICLE II.  
COLLECTION AND DISPOSAL OF REFUSE, RUBBISH AND RECYCLABLES\***

**Sec. 12-16. Definitions.**

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section:

*At the curb* shall mean at or near the perimeter of the premises, whether or not there is a curb, but does not mean or permit placement on the sidewalk or in the street. If the curb and any sidewalk are of unitary construction, the term means behind the sidewalk.

*Electronic equipment* shall mean any electronic device or electronic component as those terms are defined in the Colorado Hazardous Waste Regulations, 6 Code of Colorado Regulations 1007-3, Section 260.10.

*Hazardous waste* shall mean any chemical, compound, substance or mixture that state or federal law designates as hazardous because it is ignitable, corrosive, reactive or toxic, including but not limited to solvents, degreasers, paint thinners, cleaning fluids, pesticides, adhesives, strong acids and alkalis and waste paints and inks.

*Occupant* shall mean a person entitled to possession of the property or premises, whether or not the owner.

*Owner* shall mean the owner of record, as shown by any records of the City, County or State or any other record available to the City, whether an individual, individuals or entity, any agent or representative of the record owner, and any person or persons entitled to possession of the premises by easement, lease or tenancy.

*Property* shall mean in addition to the owner's lot or tract of land, whether improved or vacant, the area to the center of an alley abutting the lot or tract of land; any easements on or under the lot or tract of land; and the sidewalk, curb, gutter and parking area of any street abutting such lot or tract of land.

*Qualified recycling facility* shall mean a facility that arranges for or causes the recovery of useful materials from one (1) or more specified recyclable materials, including items for reuse, and shall be deemed to include only a facility that meets any federal or state standards that may be established to regulate or designate such recycling facilities.

*Refuse* shall mean solid or liquid wastes, except hazardous wastes, whether putrescible or nonputrescible, combustible or noncombustible, organic or inorganic, including by way of illustration and not limitation, wastes and materials commonly known as trash, garbage, debris or litter, animal carcasses, offal or manure, paper, ashes, cardboard, cans, yard clippings, glass, rags, discarded clothes or wearing apparel of any kind, or any other discarded object not exceeding three (3) feet in length, width or breadth.

*Refuse container* shall mean a watertight receptacle of a solid and durable metal or nonabsorbent, fire-resistant plastic with a tightly fitting, insect and rodent-proof cover of metal or plastic or a tightly secured plastic bag.

*Rubbish* shall mean nonputrescible solid wastes of a large size, including by way of illustration and not limitation, large brush wood, large cardboard boxes or parts thereof, large or heavy yard trimmings, discarded fence posts, crates, vehicle tires, junked or abandoned motor vehicle bodies or parts, scrap metal, bedsprings, water heaters, discarded furniture and all other household goods or items, demolition materials, used lumber and other discarded or stored objects three (3) feet or more in length, width or breadth. As used in this definition, the term *discarded furniture* shall include, without limitation, upholstered furniture that is designed, manufactured and intended primarily for

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\* **Charter reference**—Municipal public utilities, Art. XII.

**Cross-reference**—License required for any persons hauling refuse, § 15-411.

indoor use but is used or stored outdoors in any unroofed area, whether the upholstered furniture is actually discarded or not.

(Code 1972, § 54-15; Ord. No. 183, 1986, § 1, 11-18-86; Ord. No. 140, 1990, § 1, 1-15-91; Ord. No. 155, 1997, § 1, 11-4-97; Ord. No. 51, 2000, § 1, 5-16-00; Ord. No. 198, 2006, § 5, 12-19-06; Ord. No. 024, 2007, § 2, 2-20-07)

**Cross-reference**—Definitions and rules of construction generally, § 1-2.

### **Sec. 12-17. Purpose and policy.**

The purpose of this Article is to protect the public health, safety and welfare by regulating the accumulation, storage, transportation and disposal of refuse and rubbish to prevent conditions that may create fire, health or safety hazards, harbor undesirable pests or impair the aesthetic appearance of the neighborhood, and to further the volume-based service requirements for collection of solid waste set forth in Article XV of Chapter 15 of this Code. The City Council shall use every means at its disposal, including its police powers, for the enforcement of this Article.

(Code 1972, § 54-14; Ord. No. 183, 1986, § 1, 11-18-86; Ord. No. 140, 1990, § 2, 1-15-91; Ord. No. 053, 2004, § 1, 4-20-04)

### **Sec. 12-18. Collection and disposal of refuse and rubbish.**

(a) The occupant and the owner of any premises wherein any refuse or rubbish is produced or accumulated shall be jointly and severally responsible to provide for collection service and removal of refuse and rubbish to the degree of service necessary to maintain the premises in a clean and orderly condition. They shall not contract or arrange for such collection and removal except with solid waste collectors licensed by the City under §§ 15-411 through 15-421. An individual may dispose of his or her own refuse and rubbish, provided that it is properly disposed of at the Larimer County Landfill or at any other disposal site which is approved by the State, in conformity with all City and county regulations.

(b) All moveable refuse containers and recyclable materials shall be kept in the storage area except on collection day, or within twelve (12) hours preceding the time of regularly scheduled collection from the premises, when they may be placed at the curb or upon the edge of the alley. Following collection, they shall be returned to the storage area the same day. Refuse containers and recyclable materials shall not, at any time, be placed on the sidewalk or in the street, or in such a manner as to impair or obstruct pedestrian, bicycle or vehicular traffic.

(c) If plastic bags are used as refuse containers, they must be securely tied or sealed to prevent emission of odors, be of a material impenetrable by liquids and greases, and be of sufficient thickness and strength to contain the refuse enclosed without tearing or ripping under normal handling.

(Ord. No. 183, 1986, § 1(54-9), 11-18-86; Ord. No. 140, 1990, § 4, 1-15-91; Ord. No. 51, 2000, § 5, 5-16-00)

### **Sec. 12-19. Group accounts for collection.**

(a) Any person who solicits solid waste collection services from a solid waste collector for residential customers through a group account shall arrange for such services in a manner that offers residential customers:

- (1) Choices from amongst volume capacity categories of the containers of solid waste that are placed for collection by the residential customer; and
- (2) Charges to residential customers that are based upon such volume capacity categories.

(b) Any person who is subject to the requirements of Subsection (a) above shall provide written notice of such volume capacity categories and volume-based rates to all residential customers served through the group account. Said notice shall be given to all such residential customers no more than thirty (30) days after such volume capacity categories and related rates have been provided by a solid waste collector. In addition, written notices shall be sent to all new residential customers who join the group account after the date of the original notice. Said additional notices shall be given to each new member no more than ten (10) days after the new member joins the group account. A copy of the form of each such notice, a list of recipients of the notice, and a record of the date and manner of distribution shall be retained by the person providing the notice for a period of five (5) years from the date each notice was provided, and shall be made available to the City for inspection upon request during said period of time.

(c) No person who is subject to the provisions of Subsection (a) above shall in any way discourage or provide disincentives to any current or prospective residential customer served through a group account who wishes to select a volume capacity category that is different from that selected by other residential customers served through such account.

(d) For the purposes of this Section, the terms *contained herein* shall have the same meanings as in § 15-411. (Ord. No. 053, 2004, § 2, 4-20-04)

**Sec. 12-20. Tampering with refuse or rubbish container prohibited.**

(a) No person other than the owner or the agents or employees of such owner or a person holding a license from the City for the collection and disposal of refuse and rubbish shall tamper with any refuse container or its contents or remove the contents of any refuse container, or remove a refuse container from the location where the same has been placed by the owner.

(b) No owner of any dog, cat or other pet shall permit, whether by act or omission, that pet to damage or open any refuse container or scatter the contents. (Ord. No. 183, 1986, § 1(54-10), 11-18-86; Ord. No. 140, 1990, § 5, 1-15-91; Ord. No. 51, 2000, § 5, 5-16-00; Ord. No. 053, 2004, § 3, 4-20-04)

**Sec. 12-21. Hazardous waste disposal.**

No person shall place hazardous waste in refuse containers for collection or bury or otherwise dispose of the hazardous waste in or on private or public property within the City. Residents may contact the County Health Department for recommendations on disposal of hazardous waste. Highly flammable or explosive materials shall be stored and disposed of in accordance with Poudre Fire Authority regulations at the expense of the owner or possessor of such materials. Except in response to an emergency and under order and direction of the Poudre Fire Authority, in no event shall toxic or flammable liquids or any waste liquid containing crude petroleum or its products be disposed of by discharge into or upon any gutter, street, alley, highway, or stormwater facility as defined in § 26-491, lake, or other watercourse or upon the ground unless such liquid has undergone suitable treatment in accordance with § 26-498 of the Code.

(Ord. No. 183, 1986, § 1(54-11), 11-18-86; Ord. No. 21, 1992, § 1, 3-3-92; Ord. No. 51, 2000, § 5, 5-16-00; Ord. No. 053, 2004, § 3, 4-20-04)

**Cross-reference**—Hazardous materials transportation, Ch. 11.

**Sec. 12-22. Recycling of electronic equipment.**

No person shall place electronic equipment in refuse containers for collection or bury or otherwise dispose of electronic equipment in or on private or public property within the City. All electronic equipment must either be stored and presented or delivered to a licensed solid waste collector for recycling in accordance with the provisions of Subsection 15-413(e), or delivered directly to a qualified recycling facility for electronic equipment. (Ord. No. 024, 2007, § 3, 2-20-07)

**Sec. 12-23. Refuse containment in transit.**

No person shall collect, transport or receive any refuse or rubbish within or upon any public streets in the City or anywhere in the City except in leak-proof containers or vehicles so constructed that no refuse or rubbish can leak or sift through, fall out or be blown from such container or vehicle. Any person collecting or transporting any refuse or rubbish shall immediately pick up all refuse and rubbish which drops, spills, leaks or is blown from the collecting or transporting container or vehicle and shall otherwise clean the place onto which any such refuse or rubbish was so dropped, spilled, blown or leaked.

(Code 1972, § 54-6; Ord. No. 183, 1986, § 1(54-12), 11-18-86; Ord. No. 51, 2000, § 5, 5-16-00; Ord. No. 053, 2004, § 3, 4-20-04; Ord. No. 024, 2007, § 3, 2-20-07)

**Sec. 12-24. Owners have ultimate responsibility for violations**

Every owner remains liable for violations of responsibilities imposed upon an owner by this Article even though an obligation is also imposed on the occupant of premises and even though the owner has by agreement imposed on the occupant the duty of maintaining the premises or furnishing required refuse containers and collection. (Ord. No. 183, 1986, § 1(54-14), 11-18-86; Ord. No. 053, 2004, § 3, 4-20-04; Ord. No. 024, 2007, § 3, 2-20-07)

**Sec. 12-25. Implementation.**

The City Manager may adopt such other rules and regulations concerning the collection, removal and hauling of refuse and rubbish as may be necessary to implement the provisions of this Article not in conflict with such provisions.

(Code 1972, § 54-19; Ord. No. 183, 1986, § 1(54-16), 11-18-86; Ord. No. 053, 2004, § 3, 4-20-04; Ord. No. 024, 2007, § 3, 2-20-07)

**Sec. 12-26. Violations and penalties.**

Any person who violates § 12-18 of this Article commits a civil infraction and is subject to a civil penalty, costs and fees as provided for in § 1-15. If a person violates any provision of this Code that is classified as a civil infraction three (3) or more times in twelve (12) consecutive months, the third such violation and any subsequent violations committed within said twelve-month period shall constitute a misdemeanor criminal offense. Any person who violates any other provision of this Article also commits a misdemeanor. All such misdemeanor violations are subject to a fine or imprisonment in accordance with § 1-15. A separate offense shall be deemed committed on each day during or on which a civil or criminal violation occurs or continues.

(Code 1972, § 54-20; Ord. No. 183, 1986, § 1(54-15), 11-18-86; Ord. No. 053, 2004, § 3, 4-20-04; Ord. No. 198, 2006, § 6, 12-19-06; Ord. No. 024, 2007, § 3, 2-20-07)

**Cross-reference**—General penalty, § 1-15.

**Secs. 12-27—12-55. Reserved.**

**ARTICLE III.  
SMOKING IN PUBLIC AREAS\***

**Sec. 12-56. Definitions.**

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section:

*Employee* shall mean any person who is employed by any employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services without wages or other compensation.

*Employer* shall mean any person, organization or entity employing the services of any person, whether or not such employed person is compensated for those services.

*Enclosed area* shall mean all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) that extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, office landscaping or similar structures.

*Establishment* shall mean the buildings or facilities in which a business, enterprise or undertaking, whether or not for profit, is conducted. In the event that a single business or undertaking is conducted in two (2) or more adjacent buildings, those buildings together shall comprise the *establishment* for the purpose of this Article.

*Independently ventilated* shall mean ventilated so as to prevent the mixing of air between any area in which smoking is allowed and any smoke-free area.

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\* **Cross-reference**—Fire protection and prevention, Ch. 9.

*Physically separated* shall mean separated by physical barriers, such as walls and doors extending from floor to ceiling, so as to prevent the mixing of air between any area in which smoking is allowed and any smoke-free area.

*Place of employment* shall mean any area under the control of a public or private employer that employees normally frequent or use during the course of employment, including but not limited to work areas, employee lounges and rest rooms, conference and class rooms, employee cafeterias and hallways. *Place of employment* shall not include a private club or a private residence unless the residence is used as a child care, adult day care or health care facility.

*Public place* shall mean any enclosed area to which the public is invited or in which the public is permitted, including but not limited to attached and freestanding bars, banks, commercial bingo facilities, convention halls, education facilities, child care, adult day care or medical or health care facilities, guest rooms in any lodging establishment, Laundromats, performance halls, polling places, professional offices, public transportation facilities and vehicles, reception areas, restaurants, retail food production and marketing/grocery establishments, retail service establishments, retail stores, service lines and sports arenas. Every room, chamber, place of meeting or public assembly shall be considered a *public place* during the period of time that a public meeting is in progress. All areas of an establishment that are open to, or customarily used by, the general public, including but not limited to elevators, rest rooms, lobbies, reception areas, hallways, waiting rooms and other common areas, are *public places*. A private residence shall be considered a *public place* only when in use as a child care, adult day care or health care facility. Common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes and other multiple unit residential facilities are *public places*. A private nursing home room shall be considered to be the equivalent of a private residence, but a nonprivate nursing home room shall be considered to be a public place.

*Retail tobacco business* shall mean an establishment utilized primarily for the retail sale of tobacco products and accessories for offsite use and consumption, and in which the sale of other products and nonsales activities are merely incidental. In order for an establishment to be considered a *retail tobacco business* for purposes of this definition:

- (1) The revenues of the business must be generated primarily from the on-site sale of tobacco products, and from the sale of tobacco consumption accessories. The sale of incidental goods other than tobacco products or tobacco consumption accessories may generate limited revenues of no more than eight (8) percent of the total on-site revenues of the retail tobacco business.
- (2) The business shall not operate under a liquor license or other license associated with sale or consumption of other than tobacco products.
- (3) The business shall not exceed two thousand five hundred (2,500) square feet of gross floor area in size, and no more than twenty (20) percent of the business may be utilized as a seating area, lounge or other area intended to accommodate smoking for the purpose of sampling tobacco products that are offered for sale.
- (4) An establishment in operation as of July 1, 2006, that as of that date was an establishment utilized primarily for the retail sale or promotion of tobacco products and accessories and that met the requirements in Paragraphs (1) and (2) above, shall be deemed to constitute a retail tobacco business for so long as the establishment:
  - a. Continues to meet the requirements in Paragraphs (1) and (2), above; and
  - b. Does not expand the size of the area in which smoking is allowed from the size of said area as it existed on July 1, 2006; and
  - c. At all times after December 31, 2006, operates in compliance with the requirements of Paragraph 12-62(a)(2) below.

*Smoke or smoking* shall mean:

- (1) Carrying or placing of a lighted cigarette or lighted cigar or lighted pipe or any other lighted smoking equipment in one's mouth for the purpose of inhaling or exhaling smoke or blowing smoke rings;

- (2) Placing of a lighted cigarette or lighted cigar or lighted pipe or any other lighted smoking equipment in an ash-tray or other receptacle, and allowing smoke to diffuse in the air;
- (3) Carrying or placing of a lighted cigarette or lighted cigar or lighted pipe or any other lighted smoking equipment in one's hands or any appendage or device and allowing smoke to diffuse in the air; or
- (4) Inhaling or exhaling smoke from a lighted cigarette or lighted cigar or lighted pipe or any other lighted smoking equipment.

*Smoke-free* shall mean that an establishment or the premises controlled by that establishment has been declared to be a place in which smoking is prohibited, whether by the terms of this Article or by the owner or operator of said establishment.

*Tobacco* shall mean cigarettes, cigars, cheroots, stogies and periques; granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco; snuff and snuff flour, cavendish, plug and twist tobacco; fine-cut and other chewing tobacco; shorts, refuse scraps, clippings, cuttings, and seepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for both chewing or for smoking in a cigarette, pipe, or otherwise, or both for chewing and smoking. *Tobacco* also includes cloves and any other plant matter or product that is packaged for smoking.

(Code 1972, § 91-2; Ord. No. 181, 2002, § 1, 12-17-02; Ord. No. 039, 2004, § 1, 3-16-04; Ord. No. 122, 2006, §§ 1, 2, 10-17-06)

**Cross-reference**—Definitions and rules of construction generally, § 1-2.

#### **Sec. 12-57. Findings; purposes.**

- (a) The City Council has found and determined as follows:
  - (1) Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease, including lung cancer, in non smokers. At special risk are children, elderly people, individuals with cardiovascular disease and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and
  - (2) Secondhand smoke has been classified as a Class A carcinogen like asbestos by the Environmental Protection Agency;
  - (3) Secondhand smoke contains almost five thousand (5,000) chemicals, sixty (60) which are known toxins and carcinogens, including arsenic, formaldehyde, hydrogen cyanide and radioactive elements; and
  - (4) There is no safe level of exposure to secondhand smoke; and
  - (5) Health hazards induced by breathing secondhand smoke include lung cancer, heart disease, respiratory infection and decreased respiratory function, including bronchoconstriction and broncho-spasm.

(b) Based on the foregoing, the City Council finds and declares that the purposes of this Article are: (i) to protect the public health and welfare by prohibiting smoking in public places and places of employment; (ii) to advance the right of all persons to breathe smoke-free air; and (iii) to recognize that the need to breathe smoke-free air shall have priority in public places and work places over the desire to smoke.

(Ord. No. 181, 2002, § 1, 12-17-02)

#### **Sec. 12-58. Smoking prohibited in City buildings and vehicles.**

All enclosed facilities of the City, including but not limited to all City-owned buildings and vehicles owned by the City, shall be subject to the provisions of this Article.

(Ord. No. 181, 2002, § 1, 12-17-02)

**Sec. 12-59. Smoking prohibited in public places.**

Smoking shall be prohibited in all public places within the City, except as otherwise expressly permitted under this Article.

(Ord. No. 181, 2002, § 1, 12-17-02)

**Sec. 12-60. Smoking prohibited in places of employment.**

(a) It shall be the responsibility of employers to provide a smoke-free workplace for all employees, but employers may comply with this requirement through the implementation of policies and practices and are not required to incur any expense to make structural or other physical modifications, unless such modifications are otherwise required under § 12-63.

(b) Each employer having a place of employment located within the City shall adopt, implement, make known and maintain a written smoking policy which shall prohibit smoking in all smoke-free areas within such place of employment. All common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, rest rooms, vehicles and all other enclosed facilities that are, or are within, places of employment shall be smoke-free areas, whether or not they are public places, except those areas identified in Subsection 12-62(a). An employer having a place of employment that includes both smoke-free areas and areas in which smoking is allowed under this Article shall accommodate any employee who requests a smoke-free work area by assigning the employee to such an area.

(c) This smoking policy shall be communicated by each such employer to all employees within three (3) weeks of its adoption, and all employers shall supply a written copy of the same upon request, to any existing or prospective employee.

(Ord. No. 181, 2002, §§ 1, 2, 12-17-02)

**Editor's note**—The original Section 12-63, referenced in Subsection (a) above, was repealed by Ord. No. 122, 2006.

**Sec. 12-61. Smoke-free perimeter.**

In order to prevent smoke from entering any smoke-free area, no person shall smoke within a distance of twenty (20) feet from any entrance, passageway, operable window or ventilation system of any smoke-free establishment or area, unless such person is passing through such area, without stopping, en route to another destination.

(Ord. No. 181, 2002, § 1, 12-17-02)

**Sec. 12-62. Where smoking is not prohibited.**

(a) Notwithstanding any other provision of this Article to the contrary, the following areas shall be exempt from the smoking prohibition set forth in § 12-59 above:

- (1) Up to twenty-five (25) percent of guest rooms in lodging establishments, including but not limited to bed and breakfasts, hotels, motels and inns; and
- (2) Retail tobacco businesses, provided that the following conditions shall apply:
  - a. The business must be designed, constructed and operated in such fashion as to prevent smoke originating on its premises from entering any smoke-free area. It must be also physically separated from other establishments and independently ventilated as prescribed by the most current building and mechanical codes adopted by the City and as administered by the Building Official.
  - b. The business must, prior to allowing smoking on the premises, first obtain a certificate of occupancy from the Building Official allowing such smoking in or on the premises of the store depicting floor space used for retail sales and floor space used for other purposes. Any certificate of occupancy allowing smoking shall be conditioned upon compliance with these regulations and conformance to the floor plan approved by the Building Official as the basis for issuance of the certificate of occupancy. Failure to comply with these regulations and any other laws applicable to the sale and consumption of tobacco products shall be cause for revocation of the certificate of occupancy.

- c. A violation of any of the conditions or limitations of a certificate of occupancy for a retail tobacco business, whether by the store owner, proprietor, manager, employee, agent or otherwise, or violation of the requirements for operation of a retail tobacco business set forth in this Article, shall be the responsibility of the business owner and shall be grounds for revocation of the certificate of occupancy, in addition to any other penalties imposed by the provisions of § 12-67.
- d. Persons under eighteen (18) years of age shall not be permitted on the premises of the business, and proof of age shall be required for all persons entering the business. The retail tobacco business shall be responsible for providing adequate staffing and training so as to ensure an effective system for preventing persons under eighteen (18) years of age from entering the business.
- e. In addition to other signs required to be posted pursuant to this Article, any retail tobacco business shall post and maintain a sign at all public entrances thereto, in a conspicuous position clearly visible upon entry, stating the phrase "*Persons under the age of 18 not permitted*". In addition, the sign, or another similarly posted sign, shall state the phrase "*Surgeon General's Warning: Smoking Can Cause Lung Cancer, Heart Disease, Emphysema, and May Complicate Pregnancy*". Any sign required hereunder shall meet the size and location requirements of Subsection 12-63(b).

(Ord. No. 181, 2002, § 1, 12-17-02; Ord. No. 039, 2004, § 2, 3-16-04; Ord. No. 122, 2006, § 3, 10-17-06)

**Editor's note**—The original Section 12-63, referenced in Subsection (e) above, was repealed by Ord. No. 122, 2006.

### **Sec. 12-63. Posting of signs.**

(a) The owner, operator, manager and other persons in control of an establishment shall be responsible for posting and maintaining the following signs in said establishment, as applicable:

- (1) "*No Smoking*" signs or the international "*No Smoking*" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a circle with a bar across it) shall be clearly and conspicuously posted at every entrance of every establishment required or declared to be smoke-free under this Article.
- (2) In an establishment in which certain areas are designated as smoking areas pursuant to this Article, a sign using the words "*No Smoking Except in Designated Areas*" shall be posted conspicuously at all public entrances and in a position clearly visible upon entry into the establishment.
- (3) In an establishment in which smoking is allowed throughout pursuant to this Article, a sign using the words "*Smoking Permitted*" and/or the international smoking symbol shall be posted conspicuously at all public entrances and in a position clearly visible upon entry into the establishment.

(b) All signs referred to in this Section shall be a minimum size of twenty (20) square inches and shall be placed at a height of between four (4) and six (6) feet above the floor.

(c) All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited under this Article by the owner, operator, manager or other person in control of the establishment, except that, where the provisions of § 12-61 dealing with smoke-free perimeters would otherwise preclude the installation of an ashtray for disposal of cigarettes, cigars or other tobacco products in the general vicinity of the establishment, such an ashtray shall be allowed, provided that any such ashtray is:

- (1) Placed as far as practicable from the entrance, passageway, operable window or ventilation system of any smoke-free establishment; and
- (2) Prominently marked with a sign declaring as follows: "*Smoking Not Permitted Within 20 Feet of Any Smoke-Free Establishment*".

(d) The owner or person in control of any vehicle in which smoking is prohibited under this Article shall clearly and conspicuously post in the interior of the vehicle decals or signs stating or indicating that no smoking is permitted in the vehicle.

(Ord. No. 181, 2002, § 1, 12-17-02; Ord. No. 122, 2006, §§ 4, 5 10-17-06)

**Sec. 12-64. Enforcement.**

(a) Enforcement of this Article shall be implemented by the City Manager or his or her designee.

(b) Notice of the provisions set forth in this Article shall be given to all applicants for a sales/use tax license in the City pursuant to Chapter 25 of this Code.

(c) Any citizen may register a complaint of alleged violation of this Article by filing a sworn complaint with the City Manager or his or her designee.

(d) Any owner, manager, operator or agent of any establishment regulated by this Article shall inform persons violating this Article in such establishment of the appropriate provisions thereof and request their compliance.

(e) The City Manager may make such rules and regulations as he or she deems necessary and beneficial for the interpretation and enforcement of the terms of this Article. Any such rules and regulations shall become effective upon the filing of the same with the office of the City Clerk and the publication in a newspaper of general circulation published in the City of a notice stating the general subject matter and the availability of the same in the office of the City Clerk.

(Ord. No. 181, 2002, § 1, 12-17-02; Ord. No. 118, 2003, § 2, 9-2-03; Ord. No. 122, 2006, 10-17-06)

**Editor's note**—The City Manager has established regulations as of September 24, 2003. A copy is on file at the City Clerk's office.

**Sec. 12-65. Inspection of books and records.**

The owner of each establishment operating as an enclosed public place shall keep a complete set of books of account, invoices, copies of orders, shipping instructions, bills of lading, correspondence and all other records necessary to show fully the business transactions of such establishment, all of which records shall be available at all times during business hours for inspection and examination by the City Manager or his or her authorized representatives for use in determining the applicability of the provisions of this Article to such establishment. The City Manager may require the owner of any such establishment to furnish such information as he or she considers necessary for such a determination, and may require that the owner of such establishment cause an audit to be made of such books of account and records on such occasions as he or she may consider necessary.

(Ord. No. 181, 2002, § 1, 12-17-02; Ord. 039, 2004, § 3, 3-16-04; Ord. No. 122, 2006, § 6, 10-17-06)

**Sec. 12-66. Nonretaliation.**

No person or employer shall discharge, refuse to hire or serve, or retaliate in any manner against any employee, applicant for employment or customer because such employee, applicant or customer exercises any right to a smoke-free environment afforded by this Article.

(Ord. No. 181, 2002, § 1, 12-17-02; Ord. No. 039, 2004, § 4, 3-16-04; Ord. No. 122, 2006, § 7, 10-17-06)

**Sec. 12-67. Violations and penalties.**

(a) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this Article to fail to comply with any of its provisions.

(b) It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this Article.

(c) Any person who violates any provision of this Article shall be guilty of a misdemeanor, punishable by a fine or imprisonment in accordance with § 1-15.

(d) Each day of continuing violation shall be deemed to be a separate violation.

(Ord. No. 181, 2002, § 1, 12-17-02; Ord. No. 039, 2004, § 4, 3-16-04; Ord. No. 122, 2006, § 7, 10-17-06)

**Sec. 12-68. Public education.**

The City Manager shall engage in a continuing program to explain and clarify the purposes and requirements of this Article to citizens affected by it, and to guide owners, operators and managers in their compliance with it. Such

program may include publication of a brochure for affected businesses and individuals explaining the provisions of this Article.

(Ord. No. 181, 2002, § 1, 12-17-02; Ord. No. 039, 2004, § 4, 3-16-04; Ord. No. 122, 2006, § 7, 10-17-06)

**Sec. 12-69. Other applicable laws.**

This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

(Ord. No. 181, 2002, § 1, 12-17-02; Ord. No. 039, 2004, § 4, 3-16-04; Ord. No. 122, 2006, § 7, 10-17-06)

**Sec. 12-70. Severability.**

If any provision, clause, sentence or paragraph of this Article or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable.

(Ord. No. 181, 2002, § 1, 12-17-02; Ord. No. 039, 2004, § 4, 3-16-04; Ord. No. 122, 2006, § 7, 10-17-06)

**Secs. 12-71—12-74. Reserved.**

**ARTICLE IV.  
OZONE-DEPLETING COMPOUNDS\***

**Sec. 12-75. Administration and enforcement.**

(a) The City Manager shall establish such rules and regulations as are reasonable and necessary to enforce §§ 12-75 through 12-80 and 12-83 and 12-84 of this Article.

(b) The Chief of the Poudre Fire Authority shall establish such rules and regulations as are reasonable and necessary to enforce §§ 12-81 and 12-82 of this Article, including rules required to implement the permit program authorized in § 12-82.

(c) Before adopting any rule or regulation pursuant to this Article, the City Manager and the Chief of the Poudre Fire Authority shall:

- (1) Provide public notice of the proposed rule or regulation and of the time and place of the public hearing thereon; and
  - (2) Hold a public hearing on the proposed rule or regulation at the time and place stated in the public notice.
- (d) The City Manager or his or her designee shall oversee and be responsible for:
- (1) The enforcement and administration of this Article; except that the Chief of the Poudre Fire Authority shall be responsible for the enforcement and administration of §§ 12-81 and 12-82 of this Article;
  - (2) Providing informational assistance to persons seeking to implement a recycling program for ozone-depleting compounds used in air conditioning and refrigeration systems;
  - (3) Creating and implementing an educational program to provide information to local establishments, industry and residents regarding the dangers and hazards associated with products made from or utilizing ozone-depleting compounds;
  - (4) Consulting and cooperating with other local, state and federal governmental agencies regarding the regulation of ozone-depleting compounds and other matters affecting the environment and the health, safety and general welfare of the public;

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\* **Editor's note**—Article IV, §§ 12-75—12-85, was added by Ord. No. 93, 1990, adopted Aug. 21, 1990. The ordinance declared §§ 12-75, 12-76 effective Aug. 31, 1990; §§ 12-77—12-82 effective Mar. 1, 1991; and §§ 12-83, 12-84 effective July 1, 1991.

(5) Coordinating and consulting with other agencies and departments within the City to facilitate the administration, application and enforcement of this Article.

(e) The City Manager shall establish a Science Advisory Committee for the purpose of assisting and providing information concerning the effects of ozone-depleting compounds and other matters regarding this Article. This committee may be jointly established with other cities and counties which have adopted ordinances regulating ozone-depleting compounds.

(f) In the event that the State of Colorado or the United States enacts any law (complete with all rules or regulations necessary for effective implementation) regulating ozone-depleting compounds for the purpose of protecting the stratospheric ozone layer of the planet and such law contains provisions which regulate emissions generated by the same sources as are regulated by provisions of this Article, the provisions of such law shall, upon the commencement of regulation thereunder, control over the provisions of this Article, to the extent only of such overlapping regulation. (Ord. No. 93, 1990, 8-21-90)

### **Sec. 12-76. Definitions.**

As used in this Article, unless the context otherwise requires:

*Approved motor vehicle refrigerant recycling equipment* shall mean 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* shall mean any bag, sack, wrapping, container, bowl, plate, tray, carton, cup, glass, straw or lid, but shall specifically exclude knives, forks and spoons.

*Major refrigeration system* shall mean refrigerators, freezers, cold storage warehouse refrigeration systems and air conditioners which hold more than one hundred (100) pounds of refrigerant or more than one hundred (100) pounds total if more than one (1) refrigeration unit or system exists at the same location.

*Ozone-depleting compound* shall mean those substances identified by the United States Environmental Protection Agency as contributing to depletion of the stratospheric ozone layer. Those substances currently identified are: CFC-11 (trichlorofluoromethane), CFC-12 (dichlorodifluoromethane), CFC-113 (trichlorodifluoroethane), CFC-114 (dichlorotetrafluoroethane), CFC-115 (monochloropentafluoroethane), Halon-1211 (bromochlorodifluoroethane), Halon-1301 (bromotrifluoroethane), Halon-2402 (dibromotetrafluoroethane) Methyl chloroform, and Carbon tetrachloride.

*Refrigerant* shall mean CFC-11 (trichlorofluoromethane), CFC-12 (dichlorodifluoromethane, also known as chlorofluorocarbons or R-12), or any substitute refrigerant used in motor vehicle air conditioning equipment, refrigerators, air conditioners or refrigeration systems, which contains an ozone-depleting compound.

*Science Advisory Committee* shall mean the committee created pursuant to Subsection 12-75(e). (Ord. No. 93, 1990, 8-21-90)

### **Sec. 12-77. 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 allow:

- (1) Any service involving the release or recharge of refrigerant on a motor vehicle air conditioner to be performed without properly using approved motor vehicle refrigerant recycling equipment; or
- (2) The intentional venting or avoidable release of 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 allow:

- (1) A motor vehicle to be dismantled, sold as scrap metal or permanently disposed of unless any air conditioner refrigerant has first been recovered by using approved motor vehicle refrigerant recycling equipment; or
- (2) The intentional venting or avoidable release of refrigerants from a motor vehicle air conditioner.

(c) All sales of refrigerant capable of being used to charge a motor vehicle air conditioner shall be prohibited except in containers with a capacity of at least fifteen (15) pounds.  
(Ord. No. 93, 1990, 8-21-90)

**Sec. 12-78. Major refrigeration systems.**

(a) No person who owns or operates a facility which installs, services, repairs or disposes of major refrigeration systems shall allow:

- (1) The installation, service, repair or disposal of a major refrigeration system in a manner involving the release or recharge of refrigerant without using refrigerant recycling equipment; or
- (2) The intentional venting or avoidable release of refrigerants from a major refrigeration system.

(b) No person who owns or operates a retail store, cold storage warehouse or commercial or industrial building shall allow the intentional venting or avoidable release of any refrigerant from a major refrigeration system without recovering and recycling such refrigerant. The provisions of this subsection (b) shall apply to any alteration, renovation or demolition of the building or structure which contains the major refrigeration system.

(c) Recovered refrigerant which cannot be reused or recycled shall be destroyed by a method which does not allow the release or escape of any ozone-depleting compound into the atmosphere.

(d) If the Science Advisory Committee advises the City Manager that substantive provisions of the regulations promulgated by the Colorado Air Quality Control Commission pursuant to C.R.S. Section 25-7-105(11) are sufficient to implement this Section, the rules and regulations adopted by the City Manager to implement this Section shall, to the extent possible, conform to those adopted by the Colorado Air Quality Control Commission pursuant to C.R.S. Section 25-7-105(11).  
(Ord. No. 93, 1990, 8-21-90)

**Sec. 12-79. Refrigerators and portable air conditioning units.**

(a) Any person that manufactures, repairs, services or maintains a refrigerator or air conditioning unit shall adopt and implement a recycling system whereby any ozone-depleting compound used as a refrigerant in such refrigerator or air conditioning unit shall not be released into the environment, but will be recovered and recycled.

(b) No person who owns or operates a facility which accepts refrigerators or air conditioning units for dismantling, scrap metal or permanent disposal shall allow:

- (1) A refrigerator or air conditioning unit to be dismantled, sold as scrap metal or permanently disposed of unless any refrigerant has first been recovered and recycled; or
- (2) The intentional venting or avoidable release of refrigerants from a refrigerator or air conditioner.

(c) Recovered refrigerant which cannot be reused or recycled shall be destroyed by a method which does not allow the release or escape of any ozone-depleting compound into the atmosphere.  
(Ord. No. 93, 1990, 8-21-90)

**Sec. 12-80. 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.  
(Ord. No. 93, 1990, 8-21-90)

**Sec. 12-81. Fire extinguishing systems which use Halon.**

(a) No person shall release Halon from a fire extinguishing system during the training of personnel or in the testing of such fire extinguishing system, unless the Halon extinguishing agent is recovered in an approved manner.

(b) Any person who owns or operates a facility that repairs, services or performs maintenance on a fire extinguishing system or unit shall recover and recycle any Halon used as an extinguishing agent in the system or unit.  
(Ord. No. 93, 1990, 8-21-90)

**Sec. 12-82. Permit required for sales of certain fire extinguishers and installation of certain fire extinguishing systems.**

No person shall sell at retail any fire extinguisher which contains an ozone-depleting compound unless at the time of purchase the purchaser presents a valid permit issued by the Poudre Fire Authority authorizing the purchase. No person shall install a fire extinguishing system which contains an ozone-depleting compound without first obtaining a valid permit from the Poudre Fire Authority authorizing the installation. Permits shall not be required for aviation or military uses. The Chief of the Poudre Fire Authority shall issue such permits if the Chief determines that there is not a technically feasible, economically sound and environmentally safe substitute or alternative available for the proposed use of an ozone-depleting compound. The Chief shall base his or her determination upon the guidelines as contained in "Best and Essential Halon Use—A Methodology," published by the National Fire Protection Association.

(Ord. No. 93, 1990, 8-21-90)

**Sec. 12-83. Material for padding or building insulation.**

Effective January 1, 1994, no person shall manufacture or install any material for padding or building insulation that contains an ozone-depleting compound or with respect to which an ozone-depleting compound is used as a blowing agent during the manufacturing process. The City Manager may issue regulations prohibiting, prior to January 1, 1994, such manufacture or installation if he or she finds, on the advice of the Science Advisory Committee, that a commercially viable chemical substitution for such ozone-depleting compounds is available. The provisions of this Section shall not apply to any building or structure permanently attached to real estate if such building is issued a building permit on or before December 31, 1993, or the date of the regulations adopted by the City Manager, whichever is earlier.

(Ord. No. 93, 1990, 8-21-90)

**Sec. 12-84. Packaging materials.**

No person shall manufacture, distribute, sell or use for commercial purposes any material or product containing an ozone-depleting compound or for which an ozone-depleting compound has been used as a blowing agent for the purpose of packaging, wrapping or containing 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.

(Ord. No. 93, 1990, 8-21-90)

**Sec. 12-85. Reports.**

The City Manager shall annually report to the City Council on the progress made in carrying out provisions of this Article, the status of state and federal regulation of ozone-depleting compounds, and, to the extent available, information on emission trends and emission reduction plans of industrial and commercial users of one thousand (1000) pounds or more of any combination of ozone-depleting compounds annually. In order to obtain information on emission trends and emission reduction plans, the City Manager shall prepare and disseminate to such industrial and commercial users forms to be utilized on a voluntary basis for the purpose of reporting such information.

(Ord. No. 93, 1990, 8-21-90)

**Secs. 12-86—12-95. Reserved.**

**ARTICLE V.**  
**SALE AND USE OF TOBACCO PRODUCTS\***

**Sec. 12-96. Definitions.**

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section:

*Minor* shall mean any natural person who is under eighteen (18) years of age.

*Public place* shall mean any area or premises open to the public, including, but not limited to, restaurants, retail stores, Laundromats, theaters, banks, public conveyances, educational facilities, recreational facilities, hospitals, nursing homes, auditoriums, arenas, malls, meeting rooms, bars, taverns, hotels, motels, grocery stores, convenience stores, gas stations, department stores and office buildings.

*Smoking* shall mean the holding or carrying of a lighted pipe, lighted cigar or lighted cigarette of any kind and includes the lighting of a pipe, cigar or cigarette of any kind.

*Tobacco products* shall mean any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, smokeless tobacco and dipping tobacco.

*Vending machine* shall mean any mechanical, electrical or electronic self-service device which, upon insertion of money, tokens or any other form of payment, dispenses products.  
(Ord. No. 35, 1991, 4-16-91; Ord. No. 7, 1997, § 1, 2-18-97)

**Sec. 12-97. Sale of tobacco products.**

(a) No person shall sell, offer for sale, distribute, dispense or give away tobacco products in a public place by or from a vending machine.

(b) No person shall permit a vending machine that dispenses tobacco products to be located, installed, kept or maintained in any public place owned or leased by such person.

(c) Notwithstanding the provisions of Subsections (a) and (b) of this Section, tobacco products may be sold through a vending machine located in a public place where access by minors is prohibited.

(d) No person shall furnish to a minor, by gift, sale or any other means, any tobacco product. It shall be an affirmative defense to prosecution under this Subsection, however, that the person furnishing the tobacco product to the minor was presented with and reasonably relied upon a document which identified the minor receiving the product as being eighteen (18) years of age or older.

(e) Every person in charge or control of a retail business of any kind shall stock and display all tobacco products in such business in a manner so as to make all such tobacco products reasonably inaccessible to customers, thereby requiring a direct, face-to-face exchange of the tobacco product from an employee of the business to the customer. The foregoing sentence shall not go into effect until September 1, 1997. The provisions of this Subsection shall not apply to vending machines and to self-service displays of tobacco products that are located in a public place where access by minors is prohibited.

(f) Any person who sells or offers for sale at retail any tobacco product, including by means of a vending machine, shall display a warning sign as specified in this Subsection. If the tobacco product is sold or offered for sale by use of a vending machine, said warning sign shall be displayed visibly and prominently on the front of the vending machine at all times. If the tobacco product is sold or being offered for sale in any other manner, said warning sign shall be displayed in the premises at all times in a visible and prominent place within close proximity to the point of sale of the tobacco product. Such warning sign, whether displayed on a vending machine or otherwise, shall have a

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\* **Editor's note**—Ord. No. 35, 1991, adopted Apr. 16, 1991, added Art. IV, §§ 12-75—12-77, which the editor has redesignated Art. V, §§ 12-96—12-98, since Ord. No. 93, 1990, adopted Aug. 21, 1990, had previously added Art. IV, §§ 12-75—12-85.

minimum height of five (5) inches and a minimum width of seven (7) inches, and in large, bold type shall read as follows:

**WARNING**

IT IS ILLEGAL FOR ANY PERSON UNDER 18 YEARS OF AGE TO PURCHASE, POSSESS OR USE TOBACCO PRODUCTS AND, UPON CONVICTION, A FINE MAY BE IMPOSED.

IT IS ILLEGAL FOR ANY PERSON TO SELL OR GIVE TOBACCO PRODUCTS TO A PERSON UNDER 18 YEARS OF AGE AND, UPON CONVICTION, A FINE AND IMPRISONMENT MAY BE IMPOSED.

(Ord. No. 35, 1991, 4-16-91; Ord. No. 7, 1997, § 2, 2-18-97)

**Sec. 12-98. Minors prohibited from purchasing, possessing or using tobacco products.**

(a) No minor shall purchase, possess, consume or use any tobacco product. For purposes of this Subsection, *to possess a tobacco product* shall mean that the minor has or holds any amount of tobacco product anywhere on his or her person, or owns or has custody of a tobacco product, or has a tobacco product within his or her immediate presence and control. *To consume or use a tobacco product* shall mean, for purposes of this Subsection, to smoke, ingest, absorb, inhale or chew any tobacco product.

(b) No minor shall obtain or attempt to obtain any tobacco product by misrepresentation of age or by any other method.

(Ord. No. 7, 1997, § 3, 2-18-97)

**Sec. 12-99. Violations, penalties, presumptions and accountability.**

(a) Each day that a person violates any section of this Article shall be considered as a separate and distinct violation.

(b) Any person who violates any section of this Article shall, upon conviction, be subject to the penalties in § 1-15 of this Code; provided, however, that a fine of at least one hundred dollars (\$100.) shall be imposed for any violation of Subsection 12-97(d). In addition, the Municipal Court Judge may require any minor convicted of a violation under § 12-98 to complete up to twenty-four (24) hours of court-approved public service and at such cost to the minor as may be established by resolution of the City Council.

(c) Proof that a package or container has affixed to it a label which identifies the package or container as containing a tobacco product shall raise the evidentiary presumption and constitute prima facie evidence in any prosecution of a violation under any section of this Article of the fact that the substance within such package or container at the time of the violation was a tobacco product. Such presumption, however, may be rebutted by the presentation at trial of any probative and competent evidence that the substance within the package or container was not a tobacco product.

(d) Proof that Subsection 12-97(d) has been violated three (3) times or more within a one-year period by one (1) or more employees at a particular location of a retail business that sells or offers for sale tobacco products shall raise the evidentiary presumption and constitute prima facie evidence in any prosecution of the owner or manager of such business under Subsection 12-97(d), that such owner or manager, with intent to promote or facilitate the violation, aided, abetted or advised the employee in planning or committing the third and subsequent violations of Subsection 12-97(d) within such one-year period or, in the case where the owner of the business is a corporation, that the conduct constituting the third and subsequent violations was engaged in, authorized, solicited, requested, commanded or knowingly tolerated by the corporate owner's board of directors or by a high managerial agent acting within the scope of his or her employment on behalf of the corporate owner. For purposes of this Section, *high managerial agent* shall mean an officer of the corporate owner or any other employee of the corporate owner in a position of comparable authority with respect to the formulation of corporate policy or the supervision in a managerial capacity of subordinate employees. These presumptions shall not arise with respect to an owner who did not own or a manager who did not manage such business for any period of time within the one-year period during which the three (3) or more viola-

tions of Subsection 12-97(d) occurred. Further, these presumptions may be rebutted at trial by the presentation of any probative and competent evidence.

(Ord. No. 35, 1991, 4-16-91; Ord. No. 7, 1997, § 4, 2-18-97; Ord. No. 113, 2003, § 3, 9-2-03)

**Secs. 12-100—12-109. Reserved.**

## **ARTICLE VI. RADON**

### **Sec. 12-110. Definitions.**

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section.

*Contract* shall mean the complete and fully executed sales/purchase agreement, option to purchase agreement, lease-purchase agreement, right of first refusal, memorandum of understanding or any other offer and acceptance that is sufficient to form an enforceable contract under law, between a buyer and a seller of residential real property in the City.

*Radon information* shall mean that information produced and disseminated by the City's Department of Natural Resources for provision by sellers to buyers prior to execution of a contract.

*Seller* shall mean the seller of any residential real property located within the City and/or any person, firm, corporation or other lawfully constituted entity acting on behalf of such seller whether as attorney-in-fact, attorney-at-law, trustee, realtor, title company or any other agent or representative of the seller in the making of the contract.

(Ord. 45, 1997, 3-4-97)

### **Sec. 12-111. Regulation.**

Commencing June 4, 1997, every seller shall provide radon information to the party purchasing seller's property prior to the execution of any contract for such property.

(Ord. 45, 1997, 3-4-97)

### **Sec. 12-112. Violations, penalties, remedies.**

Any person who violates any provision of § 12-111, upon conviction, shall be subject to the penalties in § 1-15 of this Code. This Article shall not create any civil remedy or contract right.

(Ord. 45, 1997, 3-4-97)

**Secs. 12-113—12-119. Reserved.**

## **ARTICLE VII. RESOURCE CONSERVATION DIVISION 1. GENERALLY**

### **Sec. 12-120. Definitions.**

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section.

*Restrictive covenant* shall mean any covenant, restriction or condition applicable to real property for the purpose of controlling land use, but shall not include any covenant, restriction or condition imposed on such real property by any governmental entity.

*Xeriscape landscaping* shall mean any or all of the following:

- (1) Grouping plants with similar water requirements together on the same irrigation zones;

- (2) Limiting high-irrigation turf and plantings to appropriate high-use areas with high visibility and functional needs;
- (3) Use of low-water demanding plants and turf;
- (4) Use of efficient irrigation systems;
- (5) Incorporation of soil improvements; and/or
- (6) Use of mulches.

*Xeriscape landscaping* shall not include artificial turf or plants; mulched (including gravel) beds or areas without landscape plant material; paving of areas not required for walkways, patios, or plazas or parking areas; bare ground; or weed covered or infested surfaces.

(Ord. No. 83, 2003, § 1, 6-3-03)

**Sec. 12-121. Purpose.**

The purpose of this Division is to promote the conservation of water, soil, electric and natural gas resources.

(Ord. No. 83, 2003, § 1, 6-3-03)

**Sec. 12-122. Promotion of conservation.**

No person shall create, cause to be created, enforce or seek to enforce any provision contained in any restrictive covenant which has the effect of prohibiting or limiting the installation or use of Xeriscape landscaping, solar/ photovoltaic collectors (if mounted flush upon any established roof line), clothes lines (if located in back yards), or odor-controlled compost bins, or which has the effect of requiring that a portion of any individual lot be planted in turf grass.

(Ord. No. 83, 2003, § 1, 6-3-03)

**Secs. 12-123—12-129. Reserved.**

DIVISION 2. SOIL AMENDMENT

**Sec. 12-130. Purpose.**

The provisions of this Section are intended to enhance soil water storage capacity, improve conditions for plant growth and reduce water runoff.

(Ord. No. 84, 2003, § 2, 6-3-03)

**Sec. 12-131. Definitions.**

The following words, terms and phrases, when used in this Section, shall have the meanings ascribed to them in this Section:

*Certificate of occupancy* shall mean a certificate of occupancy as described in the building code of the City as adopted in Chapter 5, Article II, Division 2, or any other document issued by the City to authorize occupation of new improvements constructed pursuant to a building permit.

*General Manager* shall mean the General Manager of Utility Services or his or her designee.

*Soil amendments* shall mean compost, peat, aged manure or such other organic or inorganic material as may be approved by the General Manager as appropriate to meet the objectives of this Section.

*Top soil* shall mean a friable mixture of sand, silt and clay particles, each within the following limits:

Sand (0.05- 2.00 mm)	Maximum 75%	Minimum 20%
Silt (0.002–0.05 mm)	Maximum 60%	Minimum 5%
Clay (less than 0.002 mm)	Maximum 30%	Minimum 5%

*Top soil* shall have an organic matter content of greater than five (5) percent and a pH between 6.0 and 8.0, and shall be free from noxious weeds and roots, salts, clay lumps, any nonsoil materials such as rock, concrete, brick chips, or building materials, foreign matter, and any chemical, biological or radiological contaminants.  
(Ord. No. 84, 2003, § 2, 6-3-03)

**Sec. 12-132. Regulations.**

(a) Except as otherwise provided below, the holder of any building permit shall, as a condition of the issuance of a certificate of occupancy, prepare any area in which any plant materials, including but not limited to grass, seed, flowers, shrubs or trees, are expected or intended to be installed, prior to installation of any plant materials in that area, as follows:

- (1) The soil in such areas shall be thoroughly loosened to a depth of not less than eight (8) inches; and
- (2) Soil amendments shall be thoroughly incorporated into the soil of such areas to a depth of at least six (6) inches by tilling, discing or other suitable method, at a rate of at least three (3) cubic yards of soil amendment per one thousand (1,000) square feet of area to be planted, unless at least four (4) inches of loose top soil has been placed on the area after completion of construction activity on top of not less than four (4) inches of loosened subgrade soils. Documentation of the content and quantity of the soil amendments and top soil placed in an area, prepared by the commercial source of the material or a qualified soils testing laboratory, shall be submitted in connection with the certification required in Subsection 12-132(b) below.

(b) Prior to the issuance of any certificate of occupancy, the prospective recipient of such certificate of occupancy shall submit written certification to the General Manager that all planted areas, or areas to be planted, have been thoroughly loosened and the soil amended, consistent with the requirements set forth in this Section.

(c) In the event that the General Manager determines that compliance with this Section is rendered unreasonably difficult by weather or seasonal conditions, the General Manager may temporarily suspend the application of this requirement, contingent upon the provision by the prospective recipient of such arrangements, guaranties or assurances as the General Manager determines to be adequate to ensure compliance.

(d) In the event that the General Manager determines that compliance with this Section in a specific area is unreasonably difficult as a result of site conditions such as, for example, an excessively steep gradient or a very narrow side lot, the General Manager may waive the application of this requirement for such area.

(e) The General Manager or City Manager may inspect any property in order to determine compliance with the requirements of this Section as a condition of issuance of any certificate of occupancy.

(f) Payment of any administrative fee established by the City Manager for the purpose of recovering the costs of administering and enforcing the requirements of this Section shall be required as a condition of issuance of any building permit, excluding any building permit where it can be shown that no areas within the project limits will be disturbed by construction activities and planted with vegetation.

(Ord. No. 84, 2003, § 2, 6-3-03)

**Cross-reference**—Soil Amendments, 3.8.21, Fort Collins Land Use Code.