

TITLE 6

Health and Safety

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CHAPTER 6.01

Nuisances

Article I. In General

6.01.010 Purpose of Chapter.

It shall be the policy of the Town to promote the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of the Town; and, therefore, the Town Council declares that every public nuisance shall be unlawful and shall be restrained, prevented, abated and enjoined. (Ord. 5.68 §1, 2008)

6.01.020 Construction of terms; definitions.

As used in the provisions of this Chapter:

(1) Construction of terms.

- a. References in masculine terminology shall include the feminine, and vice versa.
- b. References in singular terminology shall include the plural, and vice versa.

(2) Definitions.

Agent means and includes any person acting on behalf of or in place of the owner.

Evicted property means and includes the personal property and effects, including, without limitation, furniture, clothes and appliances belonging to a person or persons lawfully evicted from any premises within the Town resulting from the execution of a writ of restitution pursuant to Section 13-20-122, C.R.S.

Illicit discharge means any discharge to a municipal separate storm sewer system that is not composed entirely of stormwater, except discharges pursuant to a Colorado Discharge Permit System permit and described in the Town of Parker Illicit Discharge Detection and Elimination Manual and discharges resulting from firefighting activities.

Inoperable vehicle means any vehicle that does not display current, valid license plates; lacks any part necessary for legal operation on a public street; or lacks glazing, lights or indicators, body sheet metal or paint on any part of the vehicle.

Junk means trash, waste, rubbish and other discarded things and salvage materials, including, without limitation, scrap copper, brass, iron, steel or other metals, tires, wheels, household appliances, furniture, rope, rags, batteries, glass, rubber debris, plastic debris, construction debris, remnants of wood, plumbing fixtures, port-o-potties, paint, concrete, cinderblock, bricks, asphalt or any discarded, dismantled, wrecked or scrapped motor vehicle or other machinery or parts thereof.

Litter means any and every rubbish, waste material, refuse, garbage, trash, debris, excrement, urine, dead bird, dead fish, fishing line, bait, chemical compound, petroleum product or compound, paper, cardboard, can, lid, bottle, cap, carton, wrapper, box, wooden object, plastic object, clothing, cloth, metal object, rubber object, leather object, hide, feathers, grass clippings, leaves, cut weeds, tree branches, bush clippings, sand, dirt, mud, gravel, stone, glass, ashes, cigarette, cigar, food or food product, solvent, dye, beverage, liquid except clean water, offal composed of animal matter or vegetable matter, or both, or any noxious or offensive matter whatsoever.

Neighborhood Services refers to the Neighborhood Services Division of the Planning Department or its designees, which may include officers of the Police Department or the Public Works Department.

Occupant means and includes any person who occupies the whole or a part of a building, premises or land, whether alone or with others.

Owner means and includes:

1. Any owner or holder of any legal or equitable estate in real property, including a dominant or servient tenement, except a future or reversionary interest and except the interest of a public trustee, lien holder, mortgagee or beneficiary of a deed of trust; or
2. The owner of record, as reflected by the records of the office of the County Clerk and Recorder.

Person means and includes any individual, partnership, corporation or association; and the agent, servant or employee of any individual, partnership, corporation or association.

Public nuisance includes, but is not limited to:

1. The conducting or maintaining of any business, occupation or activity prohibited by statute or by ordinance;
2. The continuous or repeated conducting or maintaining of any business, occupation, operation, activity, building, land or premises in violation of statute or ordinance;
3. Any building, structure or land open to or used by the general public, the condition of which presents a substantial danger or hazard to public health or safety;
4. Any illicit discharge or other unlawful pollution or contamination of any surface or subsurface waters in the Town, of the air or of any water, substance or material intended for human consumption;
5. Any activity, operation or condition which, after being ordered abated, corrected or discontinued by a lawful order of a department or officer of the Town or the County, continues to be conducted or continues to exist in violation of statute or ordinance or in violation of any regulation of the Town, the County or the State;

6. Any activity, operation, condition, building, structure, place, premises or thing which is injurious to the health or safety of the citizens of the Town, or which is indecent or offensive to the senses so as to interfere with the comfortable enjoyment of life or property; and

7. Any nuisance defined or declared as such by statute or ordinance.

Public or private property includes, but is not limited to, the real property, building or structure thereon of any person, state, county, city, public or private corporation or the United States; the right-of-way of any street, road, railroad or highway; and any body of water, irrigation ditch or watercourse, including frozen areas thereof and the shores and beaches thereof; any park, playground, building or recreation area; and any school grounds, school building or property used for school purposes.

Public place means and includes:

1. Any street, highway, public right-of-way, sidewalk, driveway, alley, church, school building, school grounds, public building, library, fire station, park, parking lot or vacant land;

2. The entire premises of any shopping center, restaurant, bar, store, service establishment, service station, theater, auditorium or place of amusement, except any portion of the premises reserved for the use of the owner or operator thereof or the employees of such owner or operator, and except any portion of the premises from which the general public is excluded; and

3. Any lobby, corridor, elevator, stairway, public room, common room or recreation room in a hotel, motel, office building or apartment building.

Statute means the statutes of the State of Colorado.

Trees and shrubs include all trees, shrubs, bushes and all other woody vegetation. (Ord. 5.68 §1, 2008)

6.01.030 Acts constituting a nuisance.

(a) It shall be a violation of this Chapter for any person:

(1) To create, operate, maintain or conduct any nuisance as defined in this Chapter; or

(2) To interfere with or prevent, or attempt to interfere with or prevent, the abatement of any nuisance by Neighborhood Services, pursuant to the provisions of this Chapter.

(b) Any person who makes or causes any nuisance to exist shall be deemed the author of the nuisance. Moreover, any person who has possession or control of any private ground or premises, whether he or she is the owner of the property or not, where any nuisance exists or is found shall be deemed the author of the nuisance.

(c) Each and every day during which any nuisance continues shall be deemed a separate offense and shall be prosecutable and punishable as a separate offense. (Ord. 5.68 §1, 2008)

6.01.040 Inspection of properties.

(a) Authorized inspector. Neighborhood Services shall have the power and authority to appoint and authorize any police officer, building inspector, code enforcement officer, Public Works Department employee or other officer of the Town to inspect and examine any public or private property in the Town for the purpose of ascertaining the nature and existence of any nuisance.

(b) Right of entry generally. Whenever it is necessary to make an inspection under this Chapter, or whenever an authorized inspector has reasonable cause to believe that a nuisance exists in any building or upon any premises, the authorized inspector may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed on him or her, provided that:

(1) If such building or premises is occupied, the authorized inspector shall first present proper credentials and request entry; or

(2) If such building or premises is unoccupied, the authorized inspector shall first make a reasonable effort to locate the owner or occupant or other person or persons having charge or control of the building or premises, and upon locating the owner, occupant or other person or persons, shall present proper credentials and request entry.

(c) Refused entry. If entry is refused, or if the owner or occupant cannot be located after a reasonable effort, the authorized inspector shall leave at the building a written notice of intention to inspect not sooner than twenty-four (24) hours after the time specified in the notice. The notice given to the owner or occupant or left on the premises shall state that the property owner has the right to refuse entry and that, in the event such entry is refused, inspection may be made only upon issuance of a search warrant by the Municipal Judge, or by a judge of any other court having jurisdiction.

(d) Public property. The requirements of this Section shall not apply to public places, including privately owned vacant land, as defined in Section 6.01.020 above, which may be inspected by an authorized inspector at any time without notice.

(e) Search warrants. After the expiration of the twenty-four-hour period from the giving or leaving of such notice, the authorized inspector may appear before the Municipal Judge and, upon a showing of probable cause by written affidavit, shall obtain a search warrant entitling Neighborhood Services to enter the building or upon the premises. Upon presentation of the search warrant and proper credentials, or possession of the same in the case of an unoccupied building or premises, the authorized inspector may enter into the building or upon the premises using such reasonable force as may be necessary to gain entry.

(f) Probable cause for issuance of search warrant. For purposes of this Section, a determination of probable cause will be based upon reasonableness. If a valid public interest and reasonable suspicion of violation justify the intrusion contemplated, there is probable cause to issue a search warrant. The person applying for such warrant shall not be required to demonstrate specific knowledge of the condition of the particular structure or premises at issue in order to obtain a search warrant, but must show some factual or practical circumstances that would cause an ordinary prudent

person to act. It is unlawful for any owner or occupant of the building or premises to deny entry to any authorized inspector or to resist reasonable force used by an authorized inspector, acting pursuant to this Section.

(g) Right of entry – emergencies. Whenever an emergency situation exists in relation to the enforcement of any of the provisions of this Chapter, an authorized inspector may enter into any building or upon any premises within the jurisdiction of the Town, after presenting proper credentials.

(1) In the case of an occupied building or premises, an authorized inspector shall present his or her credentials to the owner or occupant of the building or premises. In the case of an unoccupied building or premises, the authorized inspector must possess the requisite credentials prior to entry.

(2) In an emergency situation, an authorized inspector may use such reasonable force as is necessary to gain entry into the building or upon the premises.

(3) An emergency situation includes any situation where there is imminent danger of loss of, or injury or damage to, life, limb or property, or where there is an illicit discharge. It is unlawful for any owner or occupant of a building or premises to deny entry to any authorized inspector or to resist reasonable force used by the authorized inspector in gaining such entry.

(h) Search warrants – jurisdiction of the Municipal Court. Any Municipal Judge shall have power to issue search warrants upon a showing of probable cause as provided in Subsection (f) above. (Ord. 5.68 §1, 2008)

6.01.050 Abatement of nuisances.

(a) Notice of abatement. Upon the discovery of any nuisance on public or private property within the Town, Neighborhood Services shall notify the owner or occupant of the property to remove and abate from the property the thing or things herein described as a nuisance within the time specified in the notice.

(1) The time for abatement of a nuisance posing an imminent danger of damage or injury to or loss of life, limb, property or health or where there is an illicit discharge shall not exceed twenty-four (24) hours.

(2) The reasonable time for abatement for all other nuisances shall not exceed seven (7) days unless it appears from the facts and circumstances that compliance could not reasonably be made within seven (7) days or that a good-faith attempt at compliance is being made.

(3) If the owner or occupant fails to abate the nuisance within the time stated in the notice, Neighborhood Services may proceed to have the nuisance removed or abated from the property without delay.

(4) In no event shall the notice described by this Section be required prior to the issuance of a summons and complaint for a criminal nuisance violation, for nuisances found on public property or for nuisances created by the placement of evicted property.

(b) Service of notice. Neighborhood Services may serve written notice to abate by one (1) of the following methods:

(1) Personally delivering a copy of the notice to the owner of the property described in the notice;

(2) Personally delivering a copy of the notice to the nonowner occupant or resident of the property described in the notice and mailing a copy of the notice by certified mail, return receipt requested, to the last known address of the owner as reflected in the county real estate records; or

(3) Mailing one (1) copy of the notice by certified mail, return receipt requested, and a second copy of the notice by regular mail to the last known address of the owner of the property described in the notice as reflected in the County real estate records. If the property is unoccupied, a copy of the notice shall also be posted in a conspicuous place at the unoccupied premises.

Personal service shall be deemed complete upon the date of personal delivery or three (3) business days after the date of mailing as required herein.

(c) Any written notice issued pursuant to Subsection (b) above shall include:

(1) A description of the nuisance;

(2) A date by which the nuisance must be abated;

(3) A statement informing the owner or occupant that, if the nuisance is not abated within the time specified, the nuisance may be abated by the Town and the individual may be charged in Municipal Court for violating the provisions of this Chapter.

(4) A statement that, if Neighborhood Services abates the nuisance, the Town is entitled to recover the actual cost of abatement, which shall be based upon a schedule of costs prepared by Neighborhood Services, plus an administrative fee of fifteen percent (15%) of the abatement costs.

(5) A statement that, if the cost of abatement is not paid, a lien may be placed upon any property on which the abatement was performed. Failure to substantially comply with this notice shall not invalidate the proceedings.

(6) A statement that the owner or occupant of the property, within the period of notice, may protest the findings of the authorized inspector pursuant to Section 6.01.080 below. (Ord. 5.68 §1, 2008)

6.01.060 Action to abate a public nuisance.

Neighborhood Services may abate a public nuisance by any of the following procedures:

(1) Abatement after notice. If, after written notice has been given, the owner or occupant of the building or premises refuses or fails to abate the nuisance in the time specified in the notice, Neighborhood Services may enter upon such property for the purposes of abating the nuisance.

(2) Abatement by civil action. If, after written notice has been given, the owner or occupant of the building or premises refuses or fails to abate the nuisance in the time specified in the notice, and if Neighborhood Services elects not to summarily abate the nuisance under Paragraph (1) above, Neighborhood Services may initiate a civil action in Municipal Court to have the nuisance declared as such by the Court and for an order enjoining the nuisance and authorizing its restraint, removal, termination or abatement.

a. An action to declare and abate a public nuisance shall be brought by Neighborhood Services in the name of the people of the Town, by the filing of a complaint, which shall be verified or supported by an affidavit.

b. A summons and complaint shall be issued to the owner, agent, occupant or the person who allowed the nuisance to be caused or to continue (hereinafter the respondent) by:

1. Personally delivering a copy of the summons and complaint to the owner of the property described in the complaint;

2. Personally delivering a copy of the summons and complaint to the nonowner occupant or resident of the property described in the complaint and mailing a copy of the summons and complaint by certified mail, return receipt requested, to the last known address of the owner as reflected in the county real estate records; or

3. Mailing one (1) copy of the summons and complaint by certified mail, return receipt requested, and a second copy of the summons and complaint by regular mail, to the last known address of the owner of the property described in the complaint, as reflected in the county real estate records. If the property is unoccupied, a copy of the summons and complaint shall also be posted in a conspicuous place at the unoccupied premises.

Personal service shall be deemed complete upon the date of personal delivery or three (3) business days after the date of mailing as required herein.

c. Any employee of the Town, who is over the age of eighteen (18), may serve the summons and verified complaint upon the respondent. Trial shall be to the court, and the Colorado Municipal Court Rules shall apply.

d. A notice of appearance shall be served with the summons and complaint. The appearance date shall be not less than ten (10) days from the date of service of the summons and complaint. The trial shall be held upon the appearance date, unless the Court grants a continuance for good cause shown.

e. The respondent shall file a response on or before the appearance date set forth in the notice of appearance.

f. Upon the date and at the time set for appearance and trial, if the respondent has filed no response and fails to appear, and if Neighborhood Services proves that proper service was made on the respondent at least ten (10) days prior to the appearance date, the Court may grant such orders as are requested by Neighborhood Services, except that the Court shall order that enforcement by Neighborhood Services be stayed for ten (10) days and that a copy of the

Court's order be mailed to the respondent at his or her last known address. Failure to appear on any date set for trial shall be grounds for entering a default and judgment thereon against a nonappearing party. For good cause shown, and prior to enforcement, the Court may set aside an entry of default and the judgment entered thereon.

g. Any violation of any injunction or order issued by the Municipal Court in an action to abate a public nuisance may be punished as a contempt of court or by a fine not to exceed four hundred ninety-nine dollars (\$499.00). Unless the violation by its nature cannot be corrected, each day's failure to comply with an injunction or order to abate shall constitute a separate violation for which an additional penalty may be imposed.

h. The judgment of the Municipal Court may be appealed to the district court.

(3) Abatement by criminal action/penalty assessment. If Neighborhood Services elects not to summarily abate the nuisance under Paragraph (1) above or file a civil suit to abate the nuisance under Paragraph (2) above, Neighborhood Services may initiate a criminal action in Municipal Court to have the nuisance declared as such by the Court and for an order enjoining the nuisance and authorizing its restraint, removal, termination or abatement, or, at its sole discretion, Neighborhood Services may utilize the penalty assessment procedures provided by Section 3.03.400 of this Code, while adhering to the fine schedules set forth in Subparagraph (3)d. below, which are based on the number of violations within a twelve-month period. No notice shall be necessary prior to the issuance of a summons and complaint under this Section.

a. The following nuisances, as defined by Article II of this Chapter, shall constitute criminal violations under this Code:

1. Junkyards and dumping grounds, pursuant to Paragraph 6.01.200(1) of this Chapter;
2. Construction sites, pursuant to Paragraph 6.01.200(3) of this Chapter;
3. Storage operations, pursuant to Paragraph 6.01.200(4) of this Chapter;
4. Littering on public or private property, pursuant to Section 6.01.210 of this Chapter;
5. Blowing dust, pursuant to Section 6.01.230 of this Chapter;
6. Stagnant ponds, pursuant to Subsection 6.01.240(a) of this Chapter;
7. Stale matter, pursuant to Subsection 6.01.240(c) of this Chapter;
8. Offensive and illicit discharge, pursuant to Section 6.01.250 of this Chapter;
9. Weed control, pursuant to Section 6.01.260 of this Chapter;
10. Overgrown, diseased and prohibited vegetation and other landscapes, pursuant to Section 6.01.270 of this Chapter;
11. Noxious plants, pursuant to Section 6.01.280 of this Chapter; and

12. Inoperable vehicles, pursuant to Section 6.01.290 of this Chapter;

b. Procedure. A criminal action to declare and abate a public nuisance shall be brought by Neighborhood Services in the name of the people of the Town as follows:

1. A summons and complaint shall be issued to the owner, agent, occupant or the person who allowed the nuisance to be caused or to continue (hereinafter the defendant) by:

a) Personally delivering a copy of the summons and complaint to the owner of the property described in the complaint;

b) Personally delivering a copy of the summons and complaint to the nonowner occupant or resident of the property described in the complaint and mailing a copy of the summons and complaint by certified mail, return receipt requested, to the last known address of the owner as reflected in the County real estate records; or

c) Mailing one (1) copy of the summons and complaint by certified mail, return receipt requested, and a second copy of the summons and complaint by regular mail, to the last known address of the owner of the property described in the complaint, as reflected in the County real estate records. If the property is unoccupied, a copy of the summons and complaint shall also be posted in a conspicuous place at the unoccupied premises.

Personal service shall be deemed complete upon the date of personal delivery or three (3) business days after the date of mailing as required herein.

2. A summons and complaint shall be issued to the defendant not less than five (5) days prior to the time the defendant is required to appear.

3. If the defendant fails to appear in person or by counsel on the date and time set for appearance, a bench warrant may be issued for the defendant's arrest.

4. Trial shall be to the court, and the Colorado Municipal Court Rules shall apply.

c. Any summons and complaint issued as a result of a violation of this Section shall be treated as a criminal offense under Title 8 of this Code, whereby:

1. Any person who violates this Section shall be guilty of a misdemeanor and, upon conviction, be punished by a fine of not more than four hundred ninety-nine dollars (\$499.00) for each separate offense. Each day a violation of this Section continues shall constitute a separate offense.

2. The judgment of the Municipal Court may be appealed to the district court.

d. Neighborhood Services may, at its sole discretion, within the time period for the issuance of a summons and complaint, determine to issue a penalty assessment notice for the nuisances set forth below which could otherwise be enforced through the issuance of a summons and complaint, and based on the following fine schedule:

1. Junkyards and dumping grounds, pursuant to Paragraph 6.01.200(1) of this Chapter:
 - a) First violation: One hundred dollars (\$100.00).
 - b) Second violation: Two hundred dollars (\$200.00).
 - c) Third violation: Court appearance.
2. Construction sites, pursuant to Paragraph 6.01.200(3) of this Chapter:
 - a) First violation: One hundred dollars (\$100.00).
 - b) Second violation: Two hundred dollars (\$200.00).
 - c) Third violation: Court appearance.
3. Storage operations, pursuant to Paragraph 6.01.200(4) of this Chapter:
 - a) First violation: Fifty dollars (\$50.00).
 - b) Second violation: One hundred dollars (\$100.00).
 - c) Third violation: Court appearance.
4. Littering on public or private property, pursuant to Section 6.01.210 of this Chapter:
 - a) First violation: Thirty dollars (\$30.00).
 - b) Second violation: Sixty dollars (\$60.00).
 - c) Third violation: Court appearance.
5. Blowing dust, pursuant to Section 6.01.230 of this Chapter:
 - a) First violation: Thirty dollars (\$30.00).
 - b) Second violation: Sixty dollars (\$60.00).
 - c) Third violation: Court appearance.
6. Stagnant ponds, pursuant to Subsection 6.01.240(a) of this Chapter:
 - a) First violation: Fifty dollars (\$50.00).
 - b) Second violation: Seventy-five dollars (\$75.00).
 - c) Third violation: Court appearance.
7. Stale matter, pursuant to Subsection 6.01.240(c) of this Chapter:

- a) First violation: Fifty dollars (\$50.00).
 - b) Second violation: Seventy-five dollars (\$75.00).
 - c) Third violation: Court appearance.
8. Weed control, pursuant to Section 6.01.260 of this Chapter:
- a) First violation: Fifty dollars (\$50.00).
 - b) Second violation: One hundred dollars (\$100.00).
 - c) Third violation: Court appearance.

9. Overgrown, diseased and prohibited vegetation and other landscapes, pursuant to Section 6.01.270 of this Chapter:

- a) First violation: Fifty dollars (\$50.00).
- b) Second violation: Seventy-five dollars (\$75.00).
- c) Third violation: Court appearance.

10. Inoperable vehicles, pursuant to Section 6.01.290 of this Chapter:

- a) First violation: One hundred dollars (\$100.00).
- b) Second violation: Two hundred dollars (\$200.00).
- c) Third violation: Court appearance. (Ord. 5.68 §1, 2008)

6.01.070 Nuisance created by evicted property.

When a public nuisance created by the placement of evicted property in any public right-of-way within the Town has occurred, the following procedures shall apply:

(1) Neighborhood Services shall abate the nuisance by immediately removing any and all evicted property from any public right-of-way within the Town and transport such property to any site designated as a repository for solid waste and/or rubbish.

(2) No later than the close of the next business day following the removal of the evicted property, Neighborhood Services shall provide notice, by first-class mail, postage prepaid, to the last known address of the owner of the evicted property as indicated in the County records. Such notice shall state that the evicted property constituted a nuisance and that such property has been removed, and the notice shall identify by street address and telephone number the repository where the evicted property was disposed.

(3) The landlord and/or owner of the premises from which the evicted property was removed shall be responsible for reimbursing the Town for the cost of disposal of the evicted property. If

the landlord or owner fails within thirty (30) days after billing to pay such costs, such costs may be collected by the Town in a civil action, or assessed and filed as a lien against the property.

(4) Neighborhood Services is authorized to abate any nuisance caused by the placement of evicted property onto any public right-of-way within the Town and to dispose of such evicted property as provided herein. The procedures contained herein shall not constitute a bailment, and Neighborhood Services shall not be considered the bailee of any evicted property. No person shall maintain any claim or suit against the Town, its officers, officials, employees or agents responsible for disposing of any property or possession under this Section. (Ord. 5.68 §1, 2008)

6.01.080 Protest of notice of abatement; civil action.

(a) The owner, his or her agent or the occupant of the property subject to a notice of abatement, within the time stated in such notice for removal of the thing or things or abatement of the conditions described therein, may protest the findings of the authorized inspector with respect to any matter stated in the notice, by filing a written notice of protest with the Municipal Court. The Municipal Court shall deliver a copy of the protest to the authorized inspector who issued the notice. Upon receipt of a notice of protest, the authorized inspector shall file with the Municipal Court the notice to abate and the written notice of protest.

(b) Within ten (10) days after receipt of the protest by the Town, the Municipal Court shall schedule and conduct a hearing on the protest. At the hearing, the protesting party and representatives of the Town shall appear in person. Both parties may be represented by legal counsel. The parties shall have the right to present evidence and arguments, to confront and cross-examine any witness and to oppose any testimony or statement relied upon by an adverse party. The Municipal Court may receive and consider any evidence that has probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.

(c) Once the Municipal Court has scheduled a hearing on the protest, written notice of such hearing shall be mailed to the protesting party and given to the authorized inspector who signed the notice of abatement. Such notice of hearing shall be mailed to the protesting party and given to the authorized inspector not less than seven (7) days prior to the scheduled hearing.

(d) Upon the filing of a written protest as provided herein, the period of time for removal of the thing or things or abatement of the condition described in the original notice of abatement shall be extended until final disposition of the protest by the Municipal Court, plus the amount of time granted in the original notice, or as otherwise ordered by the Municipal Court. (Ord. 5.68 §1, 2008)

6.01.090 Assessment and collection of costs of abatement.

(a) In the event that Neighborhood Services chooses to summarily abate a nuisance under Paragraph 6.01.060(1) of this Chapter, the author of the nuisance, the owner or the occupant of the property shall be liable for the actual cost of abatement, which shall be calculated based upon a schedule of costs prepared by Neighborhood Services, plus an administrative fee equaling fifteen percent (15%) of the abatement cost.

(b) The costs of abatement may be recovered by:

- (1) A claim for restitution in a Municipal Court proceeding;
- (2) The institution of a civil action for damages; or
- (3) If the costs of abatement have not been otherwise collected, Neighborhood Services may prepare a statement enumerating the actual costs of abatement and any other administrative fee and costs and file a first and prior lien upon the property relating back to the date upon which the abatement was performed.
 - a. A copy of the Neighborhood Service's statement shall be deposited in the United States mail or personally hand delivered to the owner. The owner may request, in writing, a hearing before the Municipal Court to contest the amount of the costs.
 - b. The written request must be made within thirty (30) days of the date of mailing or service of the first statement to the owner.
 - c. The property owner shall be given written notice at least two (2) weeks prior to the date, time and place of any hearing scheduled before the Municipal Court. (Ord. 5.68 §1, 2008)

6.01.100 Penalties.

- (a) Any person convicted of violating any provision of this Chapter shall, upon conviction, be punished by a fine of not more than four hundred ninety-nine dollars (\$499.00) for each separate offense and may be enjoined from any further or continued violation. The Town also may seek an injunction, abatement, restitution or any other remedy to prevent, enjoin, abate or remove the violation. Each day a violation of this Chapter continues shall constitute a separate offense.
- (b) Any remedies provided for herein shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law. (Ord. 5.68 §1, 2008)

6.01.110—6.01.190. Reserved

**Article II.
Specified Nuisances**

6.01.200 Offensive trade or business.

Whenever the pursuit of any trade, business or manufacture or maintenance of any substance or condition of things results in a condition detrimental to the health, safety or general welfare of the inhabitants of the Town, such pursuit shall be deemed a nuisance and shall be abated. By way of illustration, but not limitation, the pursuit of the following trades or businesses within the Town shall constitute unlawful nuisances:

- (1) Junkyards and dumping grounds. All places used, maintained or permitted to be used or maintained as junkyards or dumping grounds, or for the wrecking or disassembling of automobiles, trucks, tractors or machinery of any kind, or for the storing or leaving of worn out, wrecked or abandoned automobiles, machinery of any kind or for any of the parts thereof, or for the storing or leaving of any machinery or equipment used by contractors or builders or by other persons, when such places are kept in such manner as to interfere with the comfortable enjoyment

of life or property by others. Nothing in this Section shall be deemed or construed to prevent the Town from acquiring, operating or maintaining a facility for the storage of motor vehicles, vehicles, boats, machinery or equipment.

(2) Slaughterhouses and rendering plants. All places used, maintained or permitted to be used or maintained for slaughtering animals, for bone crushing, bone boiling, bone rendering, bone burning, fat boiling, fat rendering, fat drying, gut cleaning or the making of glue, or the manufacture of fertilizing materials of any kind or description from any dead animal or part thereof, or any boiling of offal, swill, fat or grease of any description when such places are operated in an unclean or offensive manner, or when such places are operated so as to interfere with the comfortable enjoyment of life or property by others.

(3) Construction sites. All places at which construction or excavation operations occur and from which trucks or other vehicles emerge from the site and carry onto or deposit in any street or other public place any mud, dirt, sticky substance or other litter which causes a hazard to automobile traffic or which otherwise causes a detriment to the health, safety or welfare of the inhabitants of the Town.

(4) Storage operations. All places at which the owner or occupant keeps, stores or permits to be kept or stored any building materials, construction materials, paper, trash, waste material or litter upon any property in such a manner as to cause a fire hazard or other detriment to the health, safety or general welfare of the inhabitants of the Town, or in such a manner that the stored materials may be blown or deposited upon any other public or private property. (Ord. 5.68 §1, 2008)

6.01.210 Littering public or private property.

(a) It is unlawful and deemed a nuisance for any person to deposit, throw or place any litter upon any street, alley, sidewalk or public property or place in the Town, except in public receptacles or authorized private receptacles.

(b) It is unlawful and deemed a nuisance for any person, while an operator or passenger in any vehicle, to deposit, throw or place any litter in or upon any street, alley, sidewalk or public property or place in the Town, except in public receptacles and authorized private receptacles.

(c) It is unlawful and deemed a nuisance to operate any truck, trailer or vehicle in such a manner that the load or any portion of the content of such vehicle is blown or deposited in or upon any street, alley, sidewalk or public property or place in the Town.

(d) It is unlawful and deemed a nuisance for any person to deposit, throw or place any papers, newspapers, handbills, letters, samples or political literature in or upon any public street, alley, sidewalk or public property or place in the Town.

(e) It is unlawful and deemed a nuisance for any person, except an authorized public employee or officer or a person who has previously obtained a permit, to:

(1) Post, place, glue, staple, nail, affix or attach any handbill, poster, placard, sign, announcement or other painted or printed material upon or to any street, alley, sidewalk, lawful

sign, telephone pole, power pole or any public or private dwelling, store or other building or fence within the Town without the permission of the owner or occupant of such property; or

(2) Post, place, glue, affix or attach any handbill, poster, placard, announcement or other painted or printed material in or upon any passenger automobile within the Town without permission of the owner of such automobile.

(f) It is unlawful and deemed a nuisance for any person to deposit, throw or place any litter on any public or private property or in any water in the Town, unless:

(1) Such property is an area designated by law, ordinance or regulation for the disposal of such material and such person is authorized by the proper public authority to so use such property;

(2) The litter is placed in a receptacle or container installed on such property for such purpose; or

(3) Such person is the owner or occupant in lawful possession of such property, or has first obtained written consent of the owner or tenant in lawful possession, or unless the act is done under the personal direction of said owner or occupant and does not create a public nuisance as that term is defined in Section 6.01.020 of this Chapter.

(g) It is unlawful and deemed a nuisance for any person to obstruct, litter or damage any street, avenue, alley, sidewalk, highway, public right-of-way, public grounds, park, recreation facility or public property in the Town. (Ord. 5.68 §1, 2008)

6.01.220 Unclean stable or stall; manure fertilizer offensive in odor; building offensive in odor or to sight.

(a) Any animal or fowl enclosure in which any animal or fowl shall be kept, or in any other place within the Town in which manure or liquid discharges of such animals or fowls shall accumulate, and which is maintained in an unsanitary condition, allowing an offensive odor to escape therefrom, or providing an insect or rodent attractant, shall be deemed a nuisance.

(b) Manure or any other organic material used on premises within the Town for fertilizing purposes shall not be allowed to become offensive in odor, to sight, an attraction to insects or rodents or otherwise create an unsanitary condition.

(c) Whenever manure or any other organic material shall accumulate and affect the health of the public, it may be forbidden and designated a nuisance under the provisions of this Chapter.

(d) It is unlawful and constitutes a nuisance for any person in the Town to allow any building or premises, or appurtenance thereof, to become offensive in odor, offensive to sight or to create an unsanitary or hazardous health condition. (Ord. 5.68 §1, 2008)

6.01.230 Blowing dust.

(a) It is unlawful and deemed a nuisance for a person to maintain any lot or lots or vacant land within the Town so as to allow the blowing of dust, soil or sand from such property to the detriment

of the health, safety and general welfare of the inhabitants of the Town or to cause damage to the real or personal property of any person or of the Town.

(b) It is unlawful and deemed a nuisance for the owner or occupant of any lot or lots or vacant land within the Town to maintain lots or vacant land in such a manner that permits dust or blowing soil or blowing sand to be deposited on other property, or to be deposited upon or within any public street, public highway or public way. (Ord. 5.68 §1, 2008)

6.01.240 Offensive locations.

(a) Stagnant ponds. Any cellar, vault, drain, sewer, pond of water or other place in the Town that shall be noxious or offensive to others, or injurious to public health, through an accumulation or deposition of noxious, offensive or foul water or other substances, or be conducive to the breeding of mosquitoes, is unlawful and deemed a nuisance.

(b) Open wells, cisterns or excavations. It is declared that excavations exceeding five (5) feet in depth, cisterns and wells or an excavation used for storage of water within the Town are public nuisances unless the same are adequately covered with a locked lid, or other covering weighing at least sixty (60) pounds or are securely fenced with a solid fence to a height of at least five (5) feet; and it is unlawful for any person to permit such nuisance to remain on premises owned or occupied by him or her.

(c) Stale matter. It is unlawful and deemed a nuisance to keep, collect, use or cause to be kept, collected or used in the Town, or permit to be kept or used, any stale, putrid or stinking fat or grease or other matter.

(d) Sewer inlet. It is unlawful and deemed a nuisance to deposit in or throw into, or permit to be deposited in or thrown into, any sewer, sewer inlet or privy vault that shall have a sewer connection, any article whatsoever that might cause such sewer, sewer inlet or privy vault to overflow, back up or otherwise become noxious or offensive to others, or to become injurious to public health, safety or general welfare of the residents of the Town. (Ord. 5.68 §1, 2008)

6.01.250 Offensive and illicit discharges.

(a) Noxious liquids. It is unlawful and deemed a nuisance to discharge out of or from, or permit to flow from any house or place in the Town, any foul or noxious liquid or substance of any kind whatsoever into or upon any adjacent ground or lot, into any street, alley or public place or into any municipal storm sewer system in the Town, except discharges described in the Town of Parker Illicit Discharge Detection and Elimination Manual.

(b) Liquid fuel products. Neighborhood Services finds and declares that the leakage of twenty-five (25) gallons or more of liquid fuel products into the environment of the Town from any tank, line or delivery vehicle constitutes a danger to the health, safety and welfare of the general public and the citizens of the Town and is, therefore, a public nuisance.

(1) To aid in preventing the leakage of liquid fuel products, the owner, station manager or leaseholder, as operator of each underground liquid fuel installation located in the Town, shall

cause to be posted in a conspicuous place at such installation a true copy of the Colorado Oil Inspection Regulations concerning Instruction Requirements for Leak Detection.

(2) Such owner, station manager or leaseholder, as operator, shall also maintain and reconcile accurate daily inventory records on all underground liquid fuel tanks for indication of possible leakage from tanks or piping.

(c) Leaking receptacles – offensive channels. Any unclean, leaking, foul, unsafe or dangerous, defective or filthy drain, ditch, trail or gutter, or any leaking or broken sloop, garbage or manure box or receptacle of like character, whenever or wherever found in the Town, is deemed a nuisance.

(d) Harmful chemicals. It is unlawful and deemed a nuisance for any property owner to apply or use any herbicide, pesticide, insecticide, rodenticide, disinfectant, fumigant or other harmful chemical, gas or vapor upon his or her property in such a manner that the harmful chemical, gas or vapor leaches, escapes, migrates or flows from his or her property and deposits in or on any other public or private property. (Ord. 5.68 §1, 2008)

6.01.260 Weed control.

(a) Developed property. Developed property, for the purpose of this Section, includes land that has been substantially improved, with structures, landscaping and/or hardscape on areas zoned for residential and nonresidential uses, except areas zoned and used for agricultural purposes. All owners, agents and occupants of land in the Town shall prevent developed property owned or occupied by them from becoming overgrown in weeds. Weeds shall include noxious weeds listed on the Federal and Colorado Noxious Weed Lists, copies of which may be obtained from the Public Works Department during normal business hours, and other vegetation grown in a rank or unsightly fashion and shall also include, without limitation, common ragweed, fireweed, milkweed, mustard, Russian thistle, sandburs and other similar plants and vegetation. The foregoing enumeration is not intended to be all-inclusive, but rather is intended to be indicative of those types of plants which are considered a nuisance. Brush or grass on developed properties in excess of twelve (12) inches in height shall also be deemed a violation of this Code. This Subsection does not apply to natural grasses in open space and passive common areas; landscape or decorative grasses; flower or vegetable gardens, cultivated or tended shrubbery, xeriscape plants and materials; or agricultural crops on land zoned for agriculture, including, but not limited to, hay or grass grown for feed, fodder or forage.

(b) Undeveloped property. It is unlawful and deemed a nuisance for the owner, agent or occupant of any undeveloped property to permit weeds to grow on such property. Undeveloped property, for the purpose of this Section, is property that is not "developed property" under Subsection (a) above or property that has been overlot graded, but not improved, shall also be considered undeveloped. Weeds shall include noxious weeds listed on the Federal and Colorado State Noxious Weed Lists, copies of which may be obtained from the Public Works Department during normal business hours, and other vegetation grown in a rank or unsightly fashion and shall also include, without limitation, common ragweed, fireweed, milkweed, mustard, Russian thistle, sandburs and other similar plants and vegetation. The foregoing enumeration is not intended to be all-inclusive, but rather is intended to be indicative of those types of plants which are considered a nuisance. Undeveloped property shall be allowed to grow native and other acceptable vegetation to their naturally occurring heights, as this practice is essential for accepted erosion control practices,

wildlife habitat and natural suppression of weeds. This Subsection does not apply to agricultural crops on land zoned for agriculture, including, but not limited to, hay or grass grown for feed, fodder or forage.

(c) Weeds shall be controlled by cutting, spraying or other lawful and suitable methods of weed control. Suitable control may include reseeding of bare areas with desirable grass species as defined in the Storm Drainage and Environmental Criteria Manual adopted by the Town. Maintaining property in a "bare ground" state does not constitute acceptable weed control. Mowing property, as a sole practice, for control of unwanted weeds is not deemed a suitable method for weed control. Control of unwanted weeds requires an integrated weed management program which may include any number of, but is not limited to, the following: over-seeding with desirable grasses, appropriate herbicide application, mowing and mechanical removal of weeds.

(d) The Town Council may, by resolution, exempt certain areas in the Town, whether publicly or privately owned, from the prohibitions contained in this Section, if the Town Council determines that such areas are: natural open space, passive common areas, conservation areas, erosion control areas, agricultural zoned property or irrigation or drainage ditch rights-of-way. (Ord. 5.68.1 §1, 2010; Ord. 5.68 §1, 2008)

6.01.270 Overgrown, diseased and prohibited vegetation and other landscapes.

(a) Overgrown trees and shrubs. No person shall allow:

(1) Any branch of any tree, shrub or other vegetation to overhang streets or alleys in such a manner that the branches interfere with the safe and unobstructed movement of vehicles on any street or alley;

(2) Any branch of any tree, shrub or other vegetation to overhang the first eight (8) feet of space above any public sidewalk; or

(3) Any branch of any tree, shrub or other vegetation to overhang public rights-of-way in such a manner as to visually obstruct a motorist's view of traffic signs and traffic signals.

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

(c) Neighborhood Services shall give written notice to the owner or occupant of any property abutting Town rights-of-way or other public property of any condition deemed unsafe caused by trees and other vegetation overhanging or projecting from such abutting property and onto or over such right-of-way or other public property with such unsafe condition. It shall be the duty of the Town Arborist to correct any such unsafe condition immediately upon the expiration of the notice periods specified in the notice of abatement.

(d) It is unlawful and deemed a nuisance for any person, firm or corporation to cut, trim, spray, remove, treat or plant any tree, vine, shrub, hedge or other woody plants upon access-controlled

arterials or other public parks and greenbelts within the Town, unless authorized or directed by Neighborhood Services.

(e) It is unlawful and deemed a nuisance for any person to injure, damage or destroy any tree, shrub, vine, hedge or other vegetation in or upon public rights-of-way or other public property within the Town, except any person who notifies Neighborhood Services of such injury, damage or destruction and makes arrangements to repair or replace such vegetation or pay for the cost of such repair or replacement. (Ord. 5.68 §1, 2008)

6.01.280 Removal and control of noxious plants.

(a) It shall be unlawful and a nuisance for any landowner, lessee, agent, occupant or person in possession or control of any occupied or unoccupied lot or tract of land within the Town, or any part thereof, including the sidewalk, alley or street adjacent to the same, to permit the growth of noxious plants.

(b) The following words, terms and phrases, when used in this Section, will have the following meanings:

Alien plant means a plant species which is not indigenous to the State nor to the native plant community in which it is found.

Biological management means the use of an organism to disrupt the growth of undesirable plants.

Chemical management means the use of herbicides or plant growth regulators to disrupt the growth of undesirable plants.

Control means preventing a plant from forming viable seeds or vegetative propagules.

Cultural control means those methodologies or management practices conducted to favor the growth of desirable plants over undesirable plants, including, but not limited to, maintaining an optimum fertility and plant moisture status in an area, planting at optimum density and spatial arrangement in an area, and planting species most suited to an area.

Landowner or owner means any owner of record of any land, including an owner of record of any easement, right-of-way or other estate in land.

Mechanical control means those methodologies or management practices that physically disrupt plant growth, including, but not limited to, tilling, mowing, burning, flooding, mulching, hand-pulling and hoeing.

Native plant means a plant species which is indigenous to the State.

Noxious plant means an alien plant or parts thereof, which meets one (1) or more of the following additional criteria:

- a. It aggressively invades or is detrimental to economic crops or native plant communities;

b. It is poisonous to livestock;

c. It is a carrier of detrimental insects, diseases or parasites;

d. The direct or indirect effect of the presence of such plant is detrimental to the environmentally sound management of natural or agricultural ecosystems; or

e. It is a plant commonly known as leafy spurge (*Euphorbia esula*); diffuse knapweed (*Centaurea diffusa*); Russian knapweed (*Centaurea repens*); or spotted knapweed (*Centaurea maculosa*).

Noxious plant infestation means the direct or indirect presence of a noxious plant on any land that has a detrimental effect on the environmentally sound management of the natural or agricultural ecosystem of the land and the surrounding area.

Occupant or *person* means an individual, partnership, corporation or association which owns, occupies or controls any land, easement or right-of-way.

Plant growth regulator means a substance used for controlling or modifying plant growth processes without appreciable phytotoxic effect at the dosage applied.

(c) It shall be unlawful and a nuisance for any landowner, lessee, agent, occupant or person in possession or control of any occupied or unoccupied lot or tract of land within the Town, or any part thereof, including the sidewalk, alley or street adjacent to the same, to permit the growth of noxious plants.

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

(e) Neighborhood Services shall have the right to enter upon any premises, lands or places, whether public or private, for the purpose of inspecting for the existence of noxious plant infestations, when at least one (1) of the following circumstances has occurred:

(1) The landowner or occupant has requested an inspection;

(2) A neighboring landowner or occupant has reported a noxious plant infestation and requested an inspection; or

(3) Neighborhood Services has made a visual observation from any public place and has reason to believe that an infestation exists.

(f) No entry upon any premises, lands or places shall be permitted by Neighborhood Services until the landowner or occupant has been notified, either orally, by certified mail or by the posting of a notice in a conspicuous place on such premises, land or place that such inspection is pending. Whenever possible, Neighborhood Services shall schedule and conduct inspections with the permission of the landowner or occupant.

(g) If, after receiving notice that an inspection is pending, the landowner or occupant denies access to Neighborhood Services, Neighborhood Services may petition the Municipal Court for a search warrant pursuant to Section 6.01.040 of this Chapter. It shall be unlawful and a violation of this Section for a landowner or occupant to deny access for an inspection to Neighborhood Services who presents a search warrant.

(h) Neighborhood Services shall give notice to the landowner or occupant of any premises, lands or places upon which any noxious plants are discovered and advise such owner or occupant of the presence of such noxious plants. The notice shall name the noxious plants, advise the landowner or occupant to control the noxious plants and specify the best available control methods, including, but not limited to, biological management, chemical management, mechanical control or cultural control. Whenever possible, Neighborhood Services shall discuss the development of a management plan for the control of noxious plants with the affected landowner or occupant. The notice shall be served upon the landowner or occupant either by personal service, certified mail or posting in a conspicuous place on the affected premises, lands or places.

(i) Within a reasonable time after receipt of the notice regarding the presence of noxious plants, not to exceed ten (10) days, the landowner or occupant shall either:

(1) Comply with the best available control methods as specified in the notice; or

(2) Acknowledge the terms of the notice and submit an acceptable alternative management and control plan and schedule for complying with the notice.

(j) In the event the landowner or occupant fails to comply with the notice to control the identified noxious plants or the management plan, Neighborhood Services shall have the authority to:

(1) Provide for and compel the control of such noxious plants at such time, upon such notice and in such manner as the Town chooses; and

(2) To assess the whole cost thereof, including an additional fifteen percent (15%) for inspection and other incidental costs in connection therewith, upon the lot or tract of land where the noxious plants are located. Such assessment shall be a lien against each lot or tract of land until paid and shall have priority over all other liens except general taxes and prior special assessments. Such assessment may be certified to the County Treasurer and collected and paid over in the same manner as provided for the collection of taxes. Any amount remaining unpaid may be carried over and charged on the tax roll of the succeeding year, and any unpaid balance so carried over shall bear interest at the rate established by the commissioner of banking pursuant to Section 39-21-110.5, C.R.S., until paid. In addition, it shall be unlawful and a violation of this Section for any landowner or occupant to fail or refuse to comply with a notice to control or a management plan.

(k) Neighborhood Services shall have the right to enter upon any premises, lands or places, whether public or private, for the purpose of ensuring compliance with requirements of a notice to control or a management plan.

(l) The Town Council may, by resolution, exempt certain areas in the Town, whether publicly or privately owned, from the prohibitions contained in this Section, if the Town Council determines that

such areas are: natural open space, natural park, conservation areas, erosion control areas, agricultural zoned property or irrigation or drainage ditch rights-of-way. (Ord. 5.68 §1, 2008)

6.01.290 Inoperable vehicles.

No person shall permit any inoperable vehicle to remain on public or private property for more than ten (10) consecutive days. This Section shall not apply to any vehicle completely enclosed within a building or structure and shall not apply to any vehicle on the premises of a lawfully operating motor vehicle repair business. (Ord. 5.68 §1, 2008)

6.01.300 Offensive or unhealthy uses.

(a) No building, vehicle, structure, receptacle or other thing used or to be used, for any purpose whatsoever, shall be used, made, kept, maintained or operated in or retained within the Town, if the use, keeping, maintaining or operation of the same shall be the occasion of any nuisance or danger or detriment to the public health.

(b) Every other act or thing done or made, committed or allowed or continued on any public or private property or place by any person, which is detrimental to health, offensive to sight, smell or hearing or causes damage or injury to any of the inhabitants of the Town, and not otherwise specified in this Chapter, shall be deemed a nuisance. (Ord. 5.68 §1, 2008)

CHAPTER 6.02

Smoking Regulations

6.02.010 Legislative intent.

(a) The Surgeon General of the United States has concluded that there is medical evidence to support protection of the nonsmoker against the irritation and potential harm that comes from other peoples' smoke.

(b) Secondhand smoke has been linked to acute and chronic lung disease, as well as carcinoma of the lung in nonsmokers, and certain medical conditions may be aggravated by the presence of environmental tobacco smoke.

(c) Indoor smoke pollution in offices, worksites and public places can reach levels that exceed health standards established under environmental and occupational health regulations.

(d) The smoking of tobacco or any other weed or plant is a cause of material annoyance and discomfort to those present in confined areas.

(e) In order to serve the public safety and general welfare, it is the declared purpose of this Chapter to prohibit smoking in areas which are used by or open to the public unless such areas are designated as smoking areas pursuant to this Chapter. (Ord. 5.26 §1(1), 1989)

6.02.020 Definitions.

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

Independently ventilated means the situation in which the ventilation system for any area in which smoking is permitted and the ventilation system for any nonsmoking area do not have a connection which allows for the mixing of air from the smoking and nonsmoking areas.

Public meeting includes all meetings open to the public. *Public place* means any enclosed, indoor area open to and frequented by the public or serving as a place of work, including, but not limited to, restaurants, retail stores, theaters, banks, commercial establishments, public conveyances, educational facilities, recreational facilities, hospitals, nursing homes, auditoriums, arenas, meeting rooms and grocery stores.

Recognized device or system means a device or system which prevents the mixing of air from smoking and nonsmoking areas.

Smoke-free is the condition determined by not being able to see and smell the smoke.

Smoking means the carrying of a lighted pipe, lighted cigarette or lighted cigar of any kind and includes the lighting of a pipe, cigar or cigarette of any kind.

Smoking instrument means any cigar, cigarette, pipe or other smoking equipment.

Taverns and bars means those establishments whose primary source of revenue derives from the sale of alcoholic beverages for on-premises consumption.

Workplace means an enclosed area in which three (3) or more persons are employed. (Ord. 5.26 §1(2), 1989)

6.02.030 Smoking prohibited except in permitted areas.

It is unlawful for any person to smoke or carry any lighted smoking instrument in a public place or at a public meeting except in permitted smoking areas. (Ord. 5.26 §1(3), 1989)

6.02.040 Permitted smoking areas.

Smoking may be permitted in the following places:

(1) Taverns or bars in which malt, vinous and/or spirituous liquors are sold for consumption on the premises pursuant to a license other than a temporary "special events" license, except for those areas within such establishments which are utilized primarily for restaurant purposes;

(2) Fully enclosed offices or rooms occupied exclusively by smokers, even though the offices or rooms may be visited by nonsmokers, but only if at least one (1) of the following conditions is met:

a. Each such office or room contains a recognized device which removes tobacco or tobacco product particulates from the air contained within that office or room and such device

is in operation, according to the manufacturer's instructions, every time smoking occurs in that office or room;

b. Each such office or room contains a recognized system which will exhaust the air from that office or room directly to the outside of the building and such system is in operation, according to the manufacturer's instructions, every time smoking occurs in that office or room, or

c. Each such office or room is independently ventilated;

(3) Rooms or halls being used by a person or group for a social function where the seating arrangements are under the control of the sponsor of the function;

(4) Retail businesses primarily engaged in the sale of tobacco or tobacco products;

(5) Restaurants with a seating capacity of thirty (30) or fewer persons, who are nevertheless encouraged to establish a nonsmoking section;

(6) Smoking areas designated by the proprietor or person in charge of a public place or public meeting pursuant to Section 6.02.050 below. (Ord. 5.26 §1(4), 1989)

6.02.050 Designation of smoking areas.

The proprietor or person in charge may designate no more than fifty percent (50%) of a public place or public meeting as a smoking area except as follows:

(1) In places of work in which smokers and nonsmokers work in the same office or room, it shall be the responsibility of employers to provide smoke-free work areas to accommodate employees who request such areas. In making such provisions, employers shall give priority to the health, welfare and safety of nonsmokers and shall make reasonable efforts to provide a smoke-free work area for all employees who request such areas.

(2) In no event shall lobbies, hallways or other common areas typically shared by smokers and nonsmokers be designated as smoking areas, except that lobbies, hallways and other common areas which exceed five thousand (5,000) square feet in area may have within them designated smoking areas, provided that no more than twenty-five percent (25%) of the total area of such lobby, hallway or common area is so designated and further provided that such designated smoking areas are located such that it is not necessary for nonsmokers to pass through areas affected by these smoking areas to reach other smoke-free areas.

(3) In restaurants with a seating capacity over thirty (30) persons, the proprietor or person in charge shall provide contiguous nonsmoking areas of sufficient size to accommodate patrons who request to be seated in such an area, without unreasonable delay. The delay shall be deemed reasonable if it is not greater for nonsmokers than it is for smokers. The common waiting area shall be designated as a nonsmoking area. Patrons must be advised orally and through signs that such no-smoking areas are available.

(4) In no event shall public restrooms, elevators, museums, galleries, libraries, hallways or meeting rooms be designated as smoking areas. (Ord. 5.26 §1(5), 1989)

6.02.060 Signs.

To advise persons of the existence of "no smoking" or "smoking permitted" areas, signs with letters not less than one (1) inch in height or the international smoking or no-smoking symbol not less than three (3) inches in height shall be posted as follows:

(1) The owner, lessee, principal manager or person in control of a public place where smoking is prohibited in the entire establishment shall post a sign using the words "no smoking" or the international no-smoking symbol within eye level at all public entrances or clearly visible and within ten (10) feet of every entry into the public place.

(2) The owner, lessee, principal manager or person in control of a public place where certain areas are designated as smoking areas pursuant to this Chapter shall post a sign using the words "no smoking except in designated areas" within eye level at all public entrances or clearly visible and within ten (10) feet of every entry into the public place.

(3) The owner, lessee, principal manager or person in control of a public place where smoking is permitted in the entire establishment shall post a sign using the words "smoking permitted" or the international smoking symbol conspicuously either on all public entrances or in a position clearly visible on entry into the public place. (Ord. 5.26 §1(6), 1989)

6.02.070 Areas where smoking is permitted.

Smoking shall not be permitted and smoking areas will not be designated in those areas where smoking is prohibited by the Parker Fire Protection District, the Town's Building Department or by state statutes, ordinances or regulations of the Town or other applicable laws. (Ord. 5.26 §1(7), 1989)

6.02.080 Responsibilities of proprietors.

The proprietor or person in charge of a public place or public meeting place shall make reasonable efforts to obtain compliance with this Chapter in such places by:

- (1) Posting appropriate signs;
- (2) Arranging seating and work areas to provide a nonsmoking area;
- (3) Refraining from the placement of ashtrays or other receptacles for extinguishing smoking materials in an area designated as a "no smoking" area, except that there may be ashtrays or other receptacles for extinguishing smoking materials at the entrance of a public place;
- (4) Asking smokers to refrain from smoking in no-smoking areas and upon the request of a client or employee suffering discomfort from the smoke;
- (5) Affirmatively directing smokers to designated smoking areas;

(6) Using existing physical barriers and ventilation systems to minimize the toxic effect of the transient smoke in adjacent nonsmoking areas; and

(7) Any other means which may be appropriate. (Ord. 5.26 §1(8), 1989)

6.02.090 Nondiscrimination clause.

It is unlawful for any employer to discipline or terminate an employee for requesting a smoke-free area in the workplace. (Ord. 5.26 §1(9), 1989)

6.02.100 Violation; penalty.

(a) The following acts constitute violations of this Chapter:

(1) Smoking in an area where smoking is prohibited under this Chapter;

(2) Failure to post a no-smoking sign as required by this Chapter;

(3) Failure to make reasonable efforts to obtain compliance with this Chapter as provided herein;

(4) Willful destruction or defacement of a sign posted as required by this Chapter; and

(5) Failure to designate smoking as provided herein.

(b) The Mayor or the Mayor's designee may enforce the provisions of this Chapter by either of the following actions:

(1) Serving notice requiring correction of any violation of this Chapter; or

(2) Requesting the Town Attorney to initiate appropriate enforcement proceedings, including, without limitation, the initiation of a complaint in Municipal Court or the institution of injunctive, abatement or other appropriate action to prevent, enjoin, abate or remove such violation.

(c) Any person convicted of violating any provision of this Chapter shall, upon conviction, be punished by a fine of not more than four hundred ninety-nine dollars (\$499.00) for each separate offense, and may be enjoined from any further or continued violation thereof. Each day any violation of this Chapter shall continue shall constitute a separate offense.

(d) Any remedies provided for herein shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law. (Ord. 5.30.1 §11, 1993; Ord. 5.26 §1(10), 1989)

6.02.110 Exceptions or modification to Chapter.

Any owner or manager of a business or other establishment subject to this Chapter may apply to the Town Council for an exception or modification of the provisions of this Chapter due to unique or unusual circumstances or conditions, provided that it will be the burden of the applicant to show either that the provisions of this Chapter cannot be complied with without incurring expenses for structural or other physical modifications other than posting signs, or that due to unique or unusual

circumstances, the failure to comply with the provision for which the exception is requested will not result in a danger to health or annoyance, inconvenience or discomfort. (Ord. 5.26 §1(11), 1989)

CHAPTER 6.03

Noise Regulations

6.03.010 Purpose.

(a) Excessive sound and vibration are a serious hazard to the public health and welfare, safety and the quality of life.

(b) A substantial body of science and technology exists by which excessive sound and vibration may be substantially abated.

(c) The people have a right to and should be ensured an environment free from excessive sound and vibration that may jeopardize their health, welfare or safety or degrade the quality of life.

(d) It is the policy of the Town to prevent excessive sound and vibration which may jeopardize the health and welfare or safety of its citizens or degrade the quality of life. (Ord. 5.59 §1, 2001)

6.03.020 Definitions.

For the purposes of this Chapter, certain words and phrases are defined as follows:

Construction means any site preparation, assembly, erection, substantial repair, alteration, demolition or similar action.

Demolition means any dismantling, intentional destruction or removal of structures, utilities, public or private right-of-way surfaces or similar property.

Noise means any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological effect on humans and which is the subject of a complaint made by any person.

Person means any individual, association, partnership or corporation.

Public right-of-way means any street, avenue, boulevard, highway, sidewalk or alley or similar place which is owned or controlled by a governmental entity.

Public space means any real property or structures thereon which are owned or controlled by a governmental entity.

Weekday means any day, Monday through Friday, which is not a legal holiday. (Ord. 5.59 §2, 2001)

6.03.030 General prohibitions.

It shall be unlawful for any person to make, continue or cause to be made or continued, any noise disturbance, including, but not limited to, the specific prohibitions described in Section 6.03.040 below. Noncommercial public speaking and public assembly activities conducted on any public space or public right-of-way, public events held on Town property with the consent of the Town, and the operation of emergency vehicles are exempt from the operation of this Chapter. (Ord. 5.59 §3, 2001)

6.03.040 Specific prohibitions.

The following acts and the causing thereof are declared to be in violation of this Chapter:

(1) Outdoor loudspeakers/public address systems.

a. Using or operating for any noncommercial purpose any loudspeaker or similar device between the hours of 10:00 p.m. and 7:00 a.m. the following day.

b. Using or operating for any commercial purpose any loudspeaker, public address system or similar device.

(2) Construction. Operating or permitting the operating of any tools or equipment in connection with construction, drilling or demolition work between the hours of 7:00 p.m. and 7:00 a.m. the following day on weekdays, between the hours of 7:00 p.m. and 8:00 a.m. on Saturdays, and between the hours of 7:00 p.m. and 10:00 a.m. on Sundays or holidays, except for emergency work on public service utilities or emergency work by Town personnel or by special variance issued by the Public Works Director or designee. (Ord. 5.59 §4, 2001)

6.03.050 Violations; penalty.

It is unlawful to violate the provisions of this Chapter. Any person who is convicted of a violation of the provisions of this Chapter shall be punished by a fine of not more than four hundred ninety-nine dollars (\$499.00). (Ord. 5.59 §5, 2001)

CHAPTER 6.04

Fireworks

6.04.010 Authority and applicability.

The Town of Parker, as a home rule municipality organized under Article XX of the Colorado Constitution, has the authority to adopt this Chapter both under the Colorado Constitution and under the express statutory language of Section 12-28-107, C.R.S. (Ord. 1.210 §1, 2002; Ord. 5.60 §1, 2002)

6.04.020 Definitions.

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

Fireworks means any article, device, or substance prepared for the primary purpose of producing a visual or auditory sensation by combustion, explosion, deflagration or detonation which meets the description of fireworks as set forth in the United States Department of Transportation hazardous materials regulations, Title 49, Code of Federal Regulations, Parts 173.88 and 173.100, and including, but not limited to, the following articles and devices commonly known and used as fireworks:

- a. Toy cannons or toy canes in which explosives are used;
- b. Blank cartridges;
- c. Firecrackers;
- d. Torpedoes;
- e. Skyrockets;
- f. Rockets;
- g. Roman candles;
- h. Cylindrical fountains, whether or not defined as a permissible firework pursuant to Section 12-28-101, C.R.S.;
- i. Cone fountains, whether or not defined as a permissible firework pursuant to Section 12-28-101, C.R.S.;
- j. Wheels, whether or not defined as a permissible firework pursuant to Section 12-28-101, C.R.S.;
- k. Ground spinners, whether or not defined as a permissible firework pursuant to Section 12-28-101, C.R.S.;
- l. Illuminating torches and colored fire in any form, whether or not defined as a permissible firework pursuant to Section 12-28-101, C.R.S.;
- m. Day-Glo bombs and torches; and
- n. Any other fireworks of like construction and any fireworks containing any explosive or flammable compound, or any tablets or other device containing any explosive substance.

Fireworks does not include:

- a. Toy caps which do not contain more than twenty-five hundredths (.025) of a grain of explosive compound per cap;
- b. Highway flares, railroad fuses, ship distress signals, smoke candles, and other emergency signal devices;

c. Educational rockets and toy propellant device type engines used in such rockets when such rockets are nonmetallic construction and utilize replaceable engines or model cartridges containing less than two (2) ounces of propellant and when such engines or model cartridges are designed to be ignited by electrical means.

Person means and includes subdivision any individual, partnership, firm, company, association or corporation.

Public display of fireworks means one of the following types of displays:

a. A display presented as part of a show for the enjoyment of the general public, provided the display is performed in accordance with the requirements of the national fire protection association as stated in NFPA-1123, code for the outdoor display of fireworks; or

b. A display presented by a community or homeowners' association, or a nonprofit organization, in which the display is limited to permissible fireworks, as that term is defined in Section 12-28-101(8), C.R.S., as amended.

Public land means and includes any publicly owned real property which includes, but is not limited to: real property owned by the State or a political subdivision of the State; any special district as that term is defined in Section 32-1-103(2), C.R.S., as amended; Douglas County, Colorado; any school district as defined in Title 22, C.R.S., as amended; the Urban Drainage Flood Control District; and the United States Government, but excludes any public right-of-way.

Vacant land means and includes any real property that is publicly or privately owned, that is in excess of one (1) acre, for which no certificate of occupancy exists for any structure located on such property. (Ord. 1210 §1, 2002; Ord. 5.60 §2, 2002)

6.04.030 Use of fireworks prohibited on public and vacant land.

It is unlawful for any person to possess, use, explode or have in his or her possession with intent to use or explode, any fireworks on vacant land or public land, except as provided in this Chapter. (Ord. 1210 §1, 2002; Ord. 5.60 §3, 2002)

6.04.040 Public display of fireworks on vacant land or land that is owned by a public entity.

No person shall conduct a public display of fireworks on vacant land or public land within the Town without having first obtained a permit to do so from the Parker Fire Protection District. A copy of the permit shall be filed with the Police Department prior to the commencement of the fireworks display. (Ord. 1210 §1, 2002; Ord. 5.60 §4, 2002)

6.04.050 Notice of fireworks ordinance.

No person shall sell any fireworks at retail, without providing a notice to the person purchasing such fireworks, which shall be in the following form:

(1) "WARNING! It is unlawful for any person to use or explode, or have in his or her possession with intent to use or explode any fireworks on vacant land or public land and located in the Town of Parker."

(2) "WARNING! A fine of Six Hundred Dollars (\$600.00) may be levied on any person that uses or explodes, or has in their possession with intent to use or explode any fireworks on vacant land or public land located in the Town of Parker." (Ord. 1210 §1, 2002; Ord. 5.60 §5, 2002)

6.04.060 Violations; penalty.

It is unlawful to violate any of the provisions of this Chapter. Any person who is convicted of a violation of any provisions of this Chapter shall be punished by a fine of not more than six hundred dollars (\$600.00). (Ord. 1210 §1, 2002; Ord. 5.60 §6, 2002)

CHAPTER 6.05

Prohibition on Restrictive Covenants Requiring Turf Grasses

6.05.010 Legislative purpose.

The water demand of traditional landscaping can result in an extraordinary burden on the future water resources of the Parker Water and Sanitation District and the Cottonwood Water and Sanitation District. Traditional landscapes, improperly installed and maintained over unimproved soils and requiring irrigation systems that are often inefficient and poorly managed, have been documented as using between twenty (20) and fifty (50) gallons of water per square foot each year. This is far beyond the recommended eighteen (18) gallons of water per square foot of landscaping (or twenty-nine [29] inches of applied irrigation water) each growing season. By using water-wise principles in landscaping, Town residents could reduce water use by at least twenty percent (20%). (Ord. 563 §1, 2003)

6.05.020 Prohibition.

Any restrictive covenant or any amendment to a restrictive covenant that becomes effective on or after April 1, 2003, and that requires cultivated vegetation on property maintained by an individual property owner, shall not specify that any portion of the vegetation must be turf grass. (Ord. 563 §1, 2003)

6.05.030 Unenforceable covenant.

Any *restrictive covenant* adopted in violation of Section 6.05.020 above shall be invalid *ab initio* and shall be unenforceable in a court of law. (Ord. 563 §1, 2003)

6.05.040 Definitions.

(a) *Restrictive covenant* shall mean and include any form of declaration of covenants, conditions and restrictions or similar nongovernmental mechanisms for controlling land use on private property, including rules, regulations or guidelines implemented under the authority of restrictive covenants.

(b) *Turf* or *turf grass* shall mean continuous plant coverage consisting of hybridized grasses that, when regularly mowed, form a dense growth of leaf blades and roots. (Ord. 563 §1, 2003)

6.05.050 Construction.

This Chapter shall not be construed as to restrict the voluntary use of turf grass on individually owned residential property. (Ord. 5.63 §1, 2003)