

CHAPTER 6

Business Licenses and Regulations

Article I Business Licenses

- Sec. 6-1-10 License required
- Sec. 6-1-20 Term of license
- Sec. 6-1-30 Issuance of license
- Sec. 6-1-40 License display
- Sec. 6-1-50 Revocation of license
- Sec. 6-1-60 Charitable organizations
- Sec. 6-1-70 Businesses requiring licenses

Article II Sales Tax Licenses

- Sec. 6-2-10 License required
- Sec. 6-2-20 License fee
- Sec. 6-2-30 Multiple locations
- Sec. 6-2-40 License contents; nontransferable
- Sec. 6-2-50 Exemptions
- Sec. 6-2-60 Revocation
- Sec. 6-2-70 Transient merchant licenses
- Sec. 6-2-80 Special event licenses

Article III Adult Entertainment Establishments

- Division 1 Licenses*
- Sec. 6-3-10 Definitions
- Sec. 6-3-20 License required
- Sec. 6-3-30 License for adult entertainment establishments
- Sec. 6-3-40 Application and conditions of license
- Sec. 6-3-50 Duty to supplement application
- Sec. 6-3-60 Investigation of application
- Sec. 6-3-70 Issuance of license
- Sec. 6-3-80 Expiration of license
- Sec. 6-3-90 Suspension of license
- Sec. 6-3-100 Revocation of license
- Sec. 6-3-110 Transfer of license
- Sec. 6-3-120 Judicial review of license denial, suspension or revocation
- Sec. 6-3-130 Employee general requirements
- Sec. 6-3-140 Employee license required
- Sec. 6-3-150 Application for employee's license
- Sec. 6-3-160 Inspection
- Sec. 6-3-170 Promulgation of records and reports
- Division 2 Regulations*
- Sec. 6-3-210 General requirements
- Sec. 6-3-220 Adult bookstores, adult novelty stores and adult video stores
- Sec. 6-3-230 Adult motion picture theaters
- Sec. 6-3-240 Adult cabarets, adult theaters and adult motels
- Sec. 6-3-250 Exhibitions of sexually explicit films or videos in peep booths
- Sec. 6-3-260 Massage parlors and certified or licensed massage therapists
- Sec. 6-3-270 Admission of minors unlawful
- Sec. 6-3-280 Sale to minors unlawful
- Sec. 6-3-290 Cleaning of premises

Sec. 6-3-300	Self-inspection of licensed premises
Sec. 6-3-310	Sealing of unsanitary or unsafe conditions
<i>Division 3</i>	<i>Miscellaneous Provisions</i>
Sec. 6-3-410	Display of entertainment or performances and supply of liquor prohibited
Sec. 6-3-420	Abatement as sanitary nuisance
Sec. 6-3-430	Interference with inspectors
Sec. 6-3-440	Tampering with notices, etc.
Sec. 6-3-450	False statements prohibited
Sec. 6-3-460	Alterations prohibited
Sec. 6-3-470	Immunity from prosecution
Sec. 6-3-480	Violations
Sec. 6-3-490	Civil penalties
Sec. 6-3-500	Assessment and recovery of civil penalty
Sec. 6-3-510	Criminal penalties

Article IV Alarm Systems

Sec. 6-4-10	Audible alarm requirements
Sec. 6-4-20	User fees for false alarms
Sec. 6-4-30	Direct connection systems
Sec. 6-4-40	Violations and penalties

Article V Liquor Licenses

Sec. 6-5-10	Definitions
Sec. 6-5-20	Applicability of provisions
Sec. 6-5-30	Designation of Liquor Licensing Authority and duties of City Clerk
Sec. 6-5-40	Filing of applications
Sec. 6-5-50	Application procedures; hearings
Sec. 6-5-60	License renewals; hearing
Sec. 6-5-70	Change of location; hearing
Sec. 6-5-80	Change of ownership; hearing
Sec. 6-5-90	Temporary licenses
Sec. 6-5-100	Suspension and revocation of licenses; hearings
Sec. 6-5-110	Optional premises license
Sec. 6-5-120	Special event permit application
Sec. 6-5-130	Alcohol beverage tastings authorized
Sec. 6-5-140	Issuance of licenses
Sec. 6-5-150	Application fees
Sec. 6-5-160	Appeals; cost of transcript
Sec. 6-5-170	Education requirements for licensees

Article VI Oil and Gas Exploration and Production

Sec. 6-6-10	Scope
Sec. 6-6-20	Purpose
Sec. 6-6-30	Definitions
Sec. 6-6-40	Special use permit requirements and procedures
Sec. 6-6-50	Site plan application requirements
Sec. 6-6-60	Application review criteria
Sec. 6-6-70	Notice to proceed
Sec. 6-6-80	Building permits required
Sec. 6-6-90	Well and production facility location and setbacks
Sec. 6-6-100	Compliance with environmental regulations
Sec. 6-6-110	Environmental impacts and mitigation
Sec. 6-6-120	Access roads
Sec. 6-6-130	Geologic hazard, floodplain, floodway restrictions

Sec. 6-6-140	Disposal of drilling mud and exploration and production waste
Sec. 6-6-150	Injection wells and aquifers
Sec. 6-6-160	Seismic operations
Sec. 6-6-170	Signage
Sec. 6-6-180	Abandonment and plugging of wells; notification requirement
Sec. 6-6-190	Reclamation
Sec. 6-6-200	Emergency response costs
Sec. 6-6-210	Unauthorized construction prohibited
Sec. 6-6-220	Violation and enforcement
Sec. 6-6-230	Conflicting provisions
Sec. 6-6-240	Severability

Article VII

Refuse Haulers

Sec. 6-7-10	Definitions
Sec. 6-7-20	Registration and licensing of refuse haulers
Sec. 6-7-30	Collection system established
Sec. 6-7-40	Initiation and termination of service
Sec. 6-7-50	Assessment for costs
Sec. 6-7-60	Rates, charges and requirements
Sec. 6-7-70	Payment and interest
Sec. 6-7-80	Collection; perpetual lien
Sec. 6-7-90	Delinquency; revocation of service
Sec. 6-7-100	Termination of service
Sec. 6-7-110	Placement of containers
Sec. 6-7-120	Requirements for City trash containers
Sec. 6-7-130	Special requirements for City system
Sec. 6-7-140	Appeal procedure
Sec. 6-7-150	Licensed refuse haulers
Sec. 6-7-160	Collection vehicles
Sec. 6-7-170	Contracts with City
Sec. 6-7-180	Residential contracts in annexed areas

ARTICLE I

Business Licenses

Sec. 6-1-10. License required.

No person shall conduct, carry on or engage in any business, avocation or calling for which a license is required by this Code, without first obtaining a license and paying the fee therefor. (Prior code 5.04.010; Ord. 4 §1, 2005)

Sec. 6-1-20. Term of license.

Business licenses shall be issued for the period of January 1 to December 31 of each year, unless the City Clerk is authorized to issue licenses for a shorter period of time. Any business license applied for after January 1 of each year shall be prorated by the City Clerk for the number of months remaining in the license. No license may be assigned or transferred, nor may any licensee authorize any other person to do business or act under the terms of the license herein granted, except as specifically authorized. (Prior code 5.04.020)

Sec. 6-1-30. Issuance of license.

Any person desiring to obtain a license or permit to conduct or carry on any business for which a license is required shall apply for a license on forms prescribed by the City Clerk. (Prior code 5.04.030)

Sec. 6-1-40. License display.

All business licenses shall be prominently displayed at the place where the licensee is conducting his or her business, and shall be visible to the general public. (Prior code 5.04.040)

Sec. 6-1-50. Revocation of license.

The City Clerk may conduct a hearing for the purpose of revoking any license issued under the provisions of this Article when it appears that the licensee has failed to comply with the ordinances of the City or the laws of the State, or is guilty of fraud or misrepresentation. Such hearing shall be held, as nearly as practical, in accordance with the provisions of the Colorado Administrative Procedures Act. Any person aggrieved by the decision of the City Clerk may appeal the same in writing to the City Council, by filing a written demand therefor, within fifteen (15) days after the City Clerk announces his or her decision; provided, however, that the process for revocation of adult entertainment establishment license shall occur as set forth in Article III of this Chapter. (Prior code 5.04.050)

Sec. 6-1-60. Charitable organizations.

The City Council may, in its discretion, reduce or waive any license fee for any activity conducted under the auspices of any charitable, governmental or religious organization. (Prior code 5.04.060)

Sec. 6-1-70. Businesses requiring licenses.

In addition to any other license required by state statutes or ordinances of the City, the following specific licenses shall be obtained, and the fees set forth in this Section shall be paid:

(1) Coin-operated amusement devices, including but not limited to billiard tables, pool tables, pinball machines, video and electronic games and amusement devices: the amount set forth in Appendix A to this Code for the first such device, and the amount set forth in Appendix A to this Code for each additional such device owned by the same person.

(2) Coin-operated or currency-operated vending machines for the sale of merchandise, when the owner thereof does not have a City sales tax license; and in lieu of said sales tax license: the amount set forth in Appendix A to this Code.

(3) Auctioneers who auction goods, chattels, wares, merchandise or livestock, except those conducting such avocation by specific court order: the amount set forth in Appendix A to this Code.

(4) Transient carnivals: the amount set forth in Appendix A to this Code.

(5) Peddler, solicitor or transient merchant, whether principal or agent: the amount set forth in Appendix A to this Code.

(6) Operating a massage parlor in the City: the amount set forth in Appendix A to this Code. Each location shall be considered a separate business for the purpose of imposing the occupational license fee.

(7) Annual license fees for adult entertainment establishments shall be as referenced in Article III of this Chapter.

(8) Pawnbrokers, as defined by Section 12-56-101, C.R.S., the amount set forth in Appendix A to this Code. (Prior code 5.04.070; Ord. 4 §1, 2005)

ARTICLE II

Sales Tax Licenses

Sec. 6-2-10. License required.

It shall be unlawful for any person to engage in the business of selling at retail without obtaining a City sales tax license. Sales tax licenses shall be issued by the Finance Director upon forms prepared by him or her, which shall require the applicant to disclose such information as the Finance Director may require to allow him or her to efficiently administer this Article. All licenses shall be issued on an annual basis, and shall expire on the last day of each year. Sales tax license holders are subject to the regulations contained in this Article and in Chapter 4, Article II of this Code. (Prior code 3.04.200; Ord. 4 §1, 2005)

Sec. 6-2-20. License fee.

The fee for a sales tax license shall be the amount set forth in Appendix A to this Code for each license renewal and for each license issued between January 1 and June 30; and a fee as set forth in Appendix A to this Code for each license issued after July 1; or the fee which may be established by the City by ordinance in a uniform fee schedule. (Prior code 3.04.200; Ord. 4 §1, 2005)

Sec. 6-2-30. Multiple locations.

If business is transacted at two (2) or more separate locations, a separate license is required for each. (Prior code 3.04.200)

Sec. 6-2-40. License contents; nontransferable.

(a) Licenses shall be numbered and shall show the name, residence, place and character of business of the license, and must be posted in a conspicuous place in the place of business for which it is issued.

(b) Licenses are not transferable. (Prior code 3.04.200)

Sec. 6-2-50. Exemptions.

(a) Individuals or nonprofit organizations who conduct no more than three (3) rummage, garage or yard sales in a twelve-month period, selling primarily previously owned personal property, are exempt from the requirements of this Article and Chapter 4, Article II of this Code, do not need to obtain a sales tax license and do not need to collect sales tax on transactions.

(b) No license shall be required for any person engaged exclusively in the business of selling commodities which are exempt from taxation under Chapter 4 of this Code. (Prior code 3.04.200)

Sec. 6-2-60. Revocation.

(a) The City Council, on a reasonable notice and after full hearing, may revoke the license of any person found by the Finance Director to have violated any provision of this Article.

(b) Any hearing dealing with the revocation of a sales tax license shall be held in accordance with the provisions of Chapter 1, Article VII and the provisions of Section 4-2-310 of this Code. (Prior code 3.04.210)

Sec. 6-2-70. Transient merchant licenses.

All transient merchants not participating in a special event must apply for and obtain a City sales tax license and post a bond. The bond amount shall be determined by the Finance Director, but in no event less the amount set forth in Appendix A to this Code, which amount shall be applied to the sales tax liability of the transient merchant. If the transient merchant indicates on the final sales tax return that he or she does not intend to do further business within the City during the year, the Finance Director shall mail a refund of the balance of the bond to the transient merchant. (Prior code 3.04.220; Ord. 4 §1, 2005)

Sec. 6-2-80. Special event licenses.

(a) A *special event* is any event such as a fair, exhibition or bazaar held on a single premises and is no longer than ten (10) consecutive days. The sponsoring organization of any special event shall apply for and obtain a special event license at least fourteen (14) days prior to the event. This license will cover all participating merchants in the event. The special event license fee is set forth in Appendix A to this Code

(b) The sponsoring organization of a special event will be responsible for collecting the City sales tax from each merchant and remitting it in its entirety to the City. An "Event Sales Tax Worksheet" will be completed for each merchant and returned to the City with the sales tax remittance. (Prior code 3.04.220; Ord. 4 §1, 2005)

ARTICLE III

Adult Entertainment Establishments

Division 1

Licenses

Sec. 6-3-10. Definitions.

Definitions relevant to this Article are incorporated herein as follows:

Adult arcade means any place to which the public is permitted or invited wherein coin-operated, slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one (1) time, and where the images so displayed are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas.

Adult bookstore, adult video store or adult novelty store means a business having as a substantial and significant portion of its stock and trade, revenues, space or advertising budget resulting from the sale, rental or viewing of one (1) or more of the following: books, magazines, periodicals or other printed matter, photographs, films, motion picture, video cassettes or video reproductions, slides or other visual representations which depict or describe specified sexual activities or specified anatomical areas.

Adult cabaret means a nightclub, bar, restaurant or similar business, whether alcoholic beverages are served or not, which regularly features:

- a. Live performances which are characterized by the exposure of specified anatomical areas; or
- b. Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

Adult motel means a hotel, motel or similar business which offers accommodations to the public for any form of consideration and provides patrons live performances characterized by the exposure of specified anatomical areas, or with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic or electronic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas and which advertises the availability of this sexually oriented type of material by means of a sign visible from the public right-of-way or any off-premises advertising, including but not limited to newspapers,

magazines, pamphlets, leaflets, radio or television, or which offers a sleeping room for rent for a period of time less than ten (10) hours.

Adult motion picture theater means a business where films, motion pictures, video cassettes, slides or similar photographic or electronic reproductions are regularly shown in a room or area designed to accommodate a minimum of twenty (20) viewers and which films, motion pictures, video cassettes, slides or similar photographic or electronic reproductions are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

Adult theater means a theater, concert hall, auditorium or similar business which regularly features live performances characterized by the exposure of specified anatomical areas.

Church means a church or place of religious worship and institution that people regularly attend to participate in or hold religious services, meetings and other activities. The term *church* shall not carry a secular connotation and shall include buildings in which the religious services of any denomination are held.

Employee means a person who works or performs in and/or for a business, regardless of whether or not said person is paid a salary, wage or other compensation by the operator of said business.

Good moral character, as used within the provisions of this Article, means one who has not engaged in a specified criminal act within the times set forth in this Article.

Licensing Officer, when used in conjunction with licensees of adult entertainment establishments, means the City Manager, whose function is to review adult entertainment establishment license applications and either issue a license or deny the license based upon the licensing provisions set forth in this Article. For these purposes, *Licensing Officer* shall also include his or her designee.

Manager means an operator, other than a licensee, who is employed by a business to act as a manager or supervisor of employees or is otherwise responsible for the operation of the business.

Massage means a method of treating the body with pressure or friction, including but not limited to rubbing, stroking, kneading, tapping, pounding, vibrating or stimulating the external soft parts of the body with the hands, with the aid of any mechanical instrument or both, with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointments or other similar preparation to be used in this practice.

Massage parlor means an establishment where, for any form of consideration, massage, alcohol rub, fomentation, electric or magnetic treatment, or similar treatment or manipulation of the human body is administered. *Massage parlors* shall not include:

- a. Establishments where treatment is administered by a medical practitioner, chiropractor, acupuncturist, physical therapist, nurse or similar health care professional licensed by the State, while performing services within the scope of their usual and ordinary vocation;
- b. Establishments where treatment is administered by a certified massage therapist licensed by the State or certified through successful completion of an accredited massage therapy institution curriculum; or

c. Establishments where treatment is administered by a licensed professional or supervised staff of a licensed health care facility, athletic club, health club, school, gymnasium, training room of a recognized athletic team, reducing salon, spa or similar establishment where massage or similar manipulation of the human body is offered as an incidental or accessory service.

Provided, however, that certified or licensed massage therapists must comply with the requirements contained in Section 6-3-260 of this Article.

Material means any physical object, facsimile, recording, transcription, pictorial representation, motion picture or reproduction, whether mechanical, electrical or chemical, which is used as a means of communicating sensation or emotion to human beings to or through the visual, aural or tactile senses.

Nudity or *state of nudity* means the appearance of more than two-thirds ($\frac{2}{3}$) of the human bare buttocks, or the anus, male genitals, female genitals or female breasts below the top of the nipple; or a state of dress which fails to opaquely cover more than two-thirds ($\frac{2}{3}$) of the human buttocks, or the anus, male genitals, female genitals, pubic region or aureole or the female breast below the top of the nipple.

Obscene material means that material which:

- a. Taken as a whole, appeals to the prurient interest of the average person, applying a contemporary state-wide standard;
- b. Depicts or describes hard-core sexual conduct; and
- c. Taken as a whole, lacks serious literary, artistic, political or scientific value.

Obscene performance means that performance which:

- a. Taken as a whole, appeals to the prurient interest of the average person, applying a contemporary state-wide standard;
- b. Presents or shows hard-core sexual conduct; and
- c. Taken as a whole, lacks serious literary, artistic, political or scientific value.

Operator means the owner, permit or license holder, custodian, manager, operator or person in charge of any permitted or licensed premises.

Peep booth means a viewing room of less than one hundred fifty (150) square feet of floor space.

Performance means a presentation or exhibition, whether live or recorded, in a public place or place open to the public or to a segment thereof.

Permittee and/or *licensee* means a person in whose name a permit and/or license to operate a sexually oriented business has been issued, as well as the individual listed as the applicant on the application for a permit and/or license.

Principal owner means any person owning, directly or beneficially, twenty percent (20%) or more of the ownership interest in any legal entity.

Private room means a room in an adult motel that is not a peep booth, has a bed and bath in the room or adjacent room, and is used primarily for lodging.

Promote means to produce, direct, manufacture, sell, provide, distribute, present or exhibit for consideration, to offer or agree to do any of these things for consideration, or to have a financial interest in any of these things.

Sadomasochistic material or *sadomasochistic performance* means that material or performance which:

- a. Taken as a whole, appeals to the prurient interest of the average person, applying a contemporary state-wide standard;
- b. Depicts, presents, shows or describes flagellation, mutilation or torture, actual or simulated, in a sexual context; and
- c. Taken as a whole, lacks serious literary, artistic, political or scientific value.

Sexual encounter establishment means a business or commercial establishment which, as one (1) of its primary business purposes, offers a place where two (2) or more persons may congregate, associate or consort for the purpose of the exposure of specified anatomical areas, or when one (1) or more of the persons exposes any specified anatomical area.

Specified anatomical areas means:

- a. Less than completely and opaquely covered human genitals, pubic region, buttocks and female breast below a point above the top of the nipple.
- b. Human male genitals in a discernible turgid state even if completely and/or opaquely covered.
- c. Areas included within the definition of *nudity*.

Specified criminal acts means acts which include sexual crimes against children, sexual abuse, rape or crimes connected with another sexually oriented business, including but not limited to distribution of obscenity; sale, distribution or display of harmful material to a minor; prostitution, promotion of prostitution, aggravated promotion of prostitution or compelling prostitution; sexual performance by a child, possession of child pornography; public lewdness, indecent exposure or indecency with a child; engaging in organized criminal activity as defined by state statutes; sexual assault or aggravated sexual assault as defined by state statutes; incest, solicitation of a child or harboring a runaway child as defined by state statutes; kidnapping or aggravated kidnapping as defined in state statutes; robbery or aggravated robbery as defined in the state statutes, bribery or retaliation as described in state statutes in violation of the Colorado Controlled Substances Act or Dangerous Drugs Act punishable as a felony, Class A Misdemeanor or Class B Misdemeanor; criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses; pandering or tax violations associated with sexually oriented

businesses; crimes involving the use of or trafficking narcotic drugs; or violent acts against persons or property.

Specified sexual activities means acts, simulated acts, exhibitions, representations, depictions or descriptions of:

- a. Human male genitals in a discernable and evident state of sexual stimulation or arousal.
- b. Fondling or other erotic touching of human genitals, pubic region, buttocks or female breast.
- c. Intrusion, however slight, actual or simulated, by any object, any part of an animal's body or any part of a person's body into the genital or anal openings of any person's body.
- d. Cunnilingus, fellatio, anilingus, masturbation, bestiality, lewd exhibition of genitals or excretory function, actual or simulated, buggery, coprophagy, coprophilia, necrophilia, pederasty, pedophilia, piquerism, sapphism and zoerasty.
- e. Flagellation, mutilation or torture, actual or simulated, including sadomasochism, in a sexual context.

Transfer of ownership or control of a sexually oriented business means any business arrangement, gift or other similar legal devise which transfers ownership or control of the business, except for transfer by bequest or other operation of law upon the death of a person possessing the ownership or control.

Zoning Administrator means the City Manager or his or her designee. (Prior code 5.28.010; Ord. 4 §1, 2005)

Sec. 6-3-20. License required.

(a) No adult entertainment establishment shall be permitted to operate within the City except as herein provided, and any said operation without a license is unlawful. A person commits a misdemeanor offense if he or she operates or causes to be operated a sexually oriented business and/or adult entertainment establishment and said person knows or reasonably should know that the business:

- (1) Does not have a sexually oriented business and/or adult entertainment establishment license;
- (2) Has a license which is under suspension;
- (3) Has a license which has been revoked; or
- (4) Has a license which has expired.

(b) Any applicant must first obtain zoning approval prior to the issuance of a license, which zoning approval is subject to relevant zoning regulations contained in Chapter 16 of this Code, and said decision of the applicant's zoning request shall be processed in the same manner and course as any other zoning request. (Prior code 5.28.010; Ord. 4 §1, 2005)

Sec. 6-3-30. License for adult entertainment establishments.

(a) The Licensing Officer is responsible for granting, denying, revoking, renewing, suspending and canceling sexually oriented business licenses for proposed or existing sexually oriented businesses.

(b) The Zoning Administrator is responsible for ascertaining whether a proposed sexually oriented business for which a license application has been submitted complies with all locational requirements of Section 16-3-820 of this Code and for processing the zoning application request through conditional use review pursuant to Chapter 16, Article V of this Code.

(c) The Police Department is responsible for providing information on whether an applicant has been convicted of a specified criminal act during the time periods set forth in Subsection 6-3-40(a)(5) of this Article.

(d) The Building Inspection Department is responsible for inspecting a proposed sexually oriented business in order to ascertain whether it is in compliance with applicable statutes and ordinances.

(e) No later than thirty (30) days after the effective date of the initial ordinance codified herein, all adult entertainment establishments lawfully operating within the City on or before the effective date of the initial ordinance codified herein shall apply for an adult entertainment establishment license. If an application is not received within thirty (30) days of the passage of the initial ordinance codified herein, such existing adult entertainment establishment must cease operations. Subject to Section 16-3-830 of this Code, the applicant is permitted a six-month amortization period from the effective date of the initial ordinance codified herein. After the expiration of said amortization period, the Licensing Officer shall approve or deny the license subject to the provisions contained in Section 6-3-70 of this Article.

(f) The annual license fee for new adult entertainment establishments, the fee for transfer of location or ownership, and the fee for the renewal of a license shall be the amounts set forth in Appendix A to this Code.

(g) A license may be issued only for one (1) adult entertainment establishment located at a fixed and certain place. Any person desiring to operate more than one (1) adult entertainment establishment must have a license for each. (Prior code 5.28.010; Ord. 4 §1, 2005)

Sec. 6-3-40. Application and conditions of license.

(a) The completed application shall contain the following information and shall be accompanied by the following documents:

(1) If the applicant is an individual, the individual shall state his or her legal name and any aliases and submit satisfactory proof that he or she is at least eighteen (18) years of age;

(2) If the applicant is a legal entity, the application shall state its complete name; the date and place of its organization; evidence that it is in good standing under the laws of the state in which it is organized and, if it is organized under the laws of a state other than Colorado, that it is registered to do business in Colorado; the names and capacity of all officers, directors, managers and principal owners; and the name of the registered agent and address of the registered office for service of process.

(3) If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, he or she must state the sexually oriented business's fictitious name.

(4) The applicant's driver's license number, social security number and his or her state or federally issued tax identification number.

(5) Whether the applicant or any of the other individuals listed pursuant to Subsection (1) or (2) above has been convicted of a specified criminal activity for which:

a. Less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the latter date, if the conviction is a misdemeanor offense;

b. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the latter date, if the conviction is a felony offense; or

c. Less than five (5) years have elapsed since the date of the last conviction and the date of release from confinement for the last conviction, whichever is the latter date, if the convictions are of two (2) or more misdemeanor offenses or a combination of misdemeanor offenses occurring within any twenty-four-month period.

The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

(6) Whether the applicant or any of the other individuals listed pursuant to Subsection (1) or (2) above has had a previous license under this or other similar sexually oriented business ordinances from another town or county denied, suspended or revoked; and, if so, the name and location of the sexually oriented business for which the license was denied, suspended or revoked, as well as the date of the denial, suspension or revocation.

(7) Whether the applicant or any of the other individuals listed pursuant to Subsection (1) or (2) above has been a principal owner of a legal entity whose license has previously been denied, suspended or revoked; and, if so, the name and location of the sexually oriented business for which the license was denied, suspended or revoked, as well as the date of denial, suspension or revocation.

(8) Whether the applicant or any of the other individuals listed pursuant to Subsection (1) or (2) above holds any other permits and/or licenses under this Article or other similar sexually oriented business ordinance from another town or county; and, if so, the names and locations of such other permitted businesses.

(9) The location of the proposed sexually oriented business, including a legal description of the property, the name of the property owner, including the information required by Subsection (2) above if the property owner is a legal entity, street address and telephone numbers, if any, and a copy of any lease agreement or document evidencing the right to use the property for its intended purpose for the term of the license requested.

(10) The single adult entertainment establishment classification of license for which the applicant is filing.

(11) The mailing address and residential address of the applicant or any other individual listed pursuant to Subsection (1) or (2) above.

(12) A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be oriented to the north or to some designated street or object and shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. The Licensing Officer may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared. If the sexually oriented business has or will have a peep booth subject to the provisions of Section 6-3-160 of this Article, the sketch shall show the locations of each manager's station and designate any portion of the premises in which patrons will not be permitted.

(13) A current certificate and straight-line drawing, prepared within thirty (30) days prior to an initial application, by a Colorado registered land surveyor depicting:

a. The property lines and the structures of the property to be certified;

b. The property lines of any residential zone district, church, public or private school, child care center, public community center, park, fairground, recreation center, alcoholic beverage establishment located in the City at which alcoholic beverages are offered for sale for consumption on the premises, area designated as an urban renewal project area pursuant to Section 31-25-107, C.R.S., within five hundred (500) feet of the property to be certified;

c. The property lines of any arterial or major or collector roadway within two hundred feet (200) feet of the property to be certified; and

d. The property lines and structures of any other sexually oriented business within one thousand (1,000) feet of the property to be certified. For purposes of this Section, a use shall be considered existing or established if it is in existence at the time an application is submitted.

(14) If a person who wishes to operate a sexually oriented business is an individual, he or she must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each principal owner of the applicant must sign the application for a license as applicant.

(b) In the event the Licensing Officer determines or learns at any time that the applicant has improperly or inaccurately completed the application for a proposed sexually oriented business, he or she shall promptly notify the applicant of such fact and allow the applicant ten (10) days to properly or accurately complete the application. The time period for granting or denying a license shall be stayed during the period in which the applicant is allowed an opportunity to properly complete the application. The failure to correct the application in a timely manner shall be grounds for denial.

(c) The fact that a person possesses other types of state or City permits and/or licenses does not exempt him or her from the requirement of obtaining a sexually oriented business license. (Prior code 5.28.020; Ord. 4 §1, 2005)

Sec. 6-3-50. Duty to supplement application.

Applicants for a license under this Article shall have a continuing duty to promptly supplement application information required by this Article in the event that said information changes in any way from what is stated on the application. The failure to comply with said continuing duty within thirty (30) days from the date of such change shall be grounds for suspension of a license. (Prior code 5.28.030)

Sec. 6-3-60. Investigation of application.

(a) Upon receipt of an application for a sexually oriented business license properly filed with the Licensing Officer and upon payment of the nonrefundable application fee, the Licensing Officer shall immediately stamp the application as received and send photocopies of the application to the Zoning Department, Police Department, Building Inspection Department and any other agency responsible under law for investigating compliance, such as health inspection services or fire department. Each department or agency shall promptly conduct an investigation of the applicant, application and proposed sexually oriented business in accordance with its responsibilities under law. Said investigations shall be completed by the Zoning Department, Police Department, Building Inspection Department and any other agency within forty-five (45) days of receipt of the application by the Licensing Officer. At the conclusion of its investigation, each department or agency shall indicate on the photocopy of the application its approval or disapproval of the application, date it, sign it and, in the event it disapproves, state the reasons therefor. The Police Department shall only be required to provide the information specified herein and in Section 6-3-70 of this Article, and shall not be required to approve or disapprove applications.

(b) The Building Inspector, Zoning Department or other agency shall disapprove an application if it finds that the proposed sexually oriented business will be in violation of any provision of any statute, code, ordinance, regulation or other law in effect in the City. After its indication of approval or disapproval, said departments or agency shall immediately return the photocopy of the application to the Licensing Officer. (Prior code 5.28.040)

Sec. 6-3-70. Issuance of license.

(a) The Licensing Officer shall grant or deny an application for a license within sixty (60) days from the date of its proper filing. Upon the expiration of the sixtieth day, unless the applicant requests and is granted a reasonable extension of time, the application shall be deemed granted unless the Licensing Officer notifies the applicant of a denial of the application in writing and states the reason for that denial.

(b) Grant of application for license.

(1) The Licensing Officer shall grant the application unless one (1) or more of the criteria set forth in Subsection (c) below are present.

(2) The license, if granted, shall state on its face the name of the person to whom it is granted, the expiration date and the address of the sexually oriented business. The license shall also indicate that sexually oriented businesses are subject to prohibitions against public indecency pursuant to Sections

18-7-208 and 18-7-301, C.R.S. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it can be easily read at any time.

(c) Denial of application for license.

(1) The Licensing Officer shall deny the application for any of the following reasons:

- a. An applicant is under eighteen (18) years of age.
- b. An applicant is overdue on his or her payment to the City of taxes, fees, fines or penalties assessed against him or her or imposed upon him or her in relation to a sexually oriented business.
- c. An applicant has failed to provide information required by this Section for the issuance of the license or has falsely answered a question or request for information on the application form.
- d. The premises to be used for the sexually oriented business have been disapproved by an inspecting agency pursuant to the provisions of Sections 6-3-150 and 6-3-160 of this Article.
- e. The application or license fees have not been paid.
- f. An applicant or the proposed business is in violation of, or is not in compliance with, any of the provisions of this Article or any pertinent provisions of this Code, including but not limited to the zoning locational requirements for a sexually oriented business set forth in Section 16-3-820 of this Code.
- g. The granting of the application would violate a statute, ordinance or court order.
- h. The applicant has a license under this Article which has been suspended or revoked within the previous twelve (12) months.
- i. An applicant has been convicted of a specified criminal act within the times set forth in Section 6-3-40(a)(5) above.
- j. An applicant knowingly has in his or her employ an employee who does not have a valid license as required in this Article.
- k. An applicant is not of good moral character, as defined in Section 6-3-10 above.
- l. The applicant has not demonstrated a legal right to use the premises for the term of the proposed license.

(2) If the Licensing Officer denies the application, he or she shall notify the applicant of the denial and state the reason for the denial pursuant to the time periods set forth in this Section and Section 6-3-60 above.

(3) Whenever an application is denied, the City Clerk shall advise the applicant in writing of the reasons for such action. The applicant must appeal any adverse decision of a Licensing Officer by requesting a hearing before the City Council within ten (10) days of receipt of notification of the denial if the applicant disagrees with the denial. A public hearing on said denial shall be held by the

City Council within fourteen (14) days thereafter or at the next City Council meeting, whichever first occurs, unless the applicant agrees in writing to an extension of the time on said public hearing.

(4) Failure or refusal of the applicant to give any information relevant to the investigation of the application, his or her refusal or failure to appear at any reasonable time and place for examination under oath regarding said application, or his or her refusal to submit to or cooperate with any investigation required by this Article shall constitute an admission by the applicant that he or she is ineligible for such license and shall be grounds for denial thereof by the Licensing Officer. (Prior code 5.28.050; Ord. 4 §1, 2005)

Sec. 6-3-80. Expiration of license.

(a) Each license shall expire one (1) year from the date of issuance, unless suspended or revoked, and may be renewed only by making application as provided in this Article (for renewals, filing of original survey may be sufficient). Application for renewal of a license shall be made at least thirty (30) days before the expiration date of the license. If a renewal application is made fewer than thirty (30) days before the expiration date of a license, the expiration of the license will not be affected.

(b) If, subsequent to denial of renewal, the Licensing Officer finds that the basis for denial of the renewal of the license has been corrected, the applicant shall be granted a license if at least ninety (90) days have elapsed since the date denial became final. (Prior code 5.28.060)

Sec. 6-3-90. Suspension of license.

(a) The Licensing Officer shall suspend a license for a period not to exceed thirty (30) days if he or she determines that a licensee or an employee of a licensee has:

(1) Violated or is not in compliance with any section of this Article;

(2) Refused to allow an inspection of the sexually oriented business premises as authorized by this Article;

(3) Operated the sexually oriented business in violation of a building, fire, health or zoning statute, code, ordinance or regulation, whether federal, state or local, said determination being based on investigation by the division, department or agency charged with enforcing said rules or laws. In the event of such a statute, code, ordinance or regulation violation, the Licensing Officer shall promptly notify the licensee of the violation and shall allow the licensee a seven-day period in which to correct the violation. If the licensee fails to correct the violation before the expiration of the seven-day period, the Licensing Officer shall forthwith suspend the license and shall notify the licensee of the suspension;

(4) Engaged in a license transfer contrary to Section 6-3-110 below. In the event that the Licensing Officer suspends a license on the grounds that a licensee engaged in a license transfer contrary to Section 6-3-110 below, the Licensing Officer shall forthwith notify the licensee of the suspension. The suspension shall remain in effect until the applicable section of this Article has been satisfied;

(5) Operated the sexually oriented business in violation of the hours of operation provisions of Section 16-3-860 of this Code; or

(6) Knowingly has in his or her employ an employee who does not have a valid license as required in this Article.

(b) Where the Licensing Officer has reason to believe that a violation of this Article has occurred in a deliberate or willful manner or that the public health, safety and welfare require immediate action on the part of the Licensing Officer, the Licensing Officer may summarily suspend the license of an adult use establishment or adult use employee, and said notice of suspension shall contain notice that the adult use establishment or adult use employee may request a hearing to contest the suspension. Should the adult use establishment or adult use employee, within ten (10) days after service of the suspension notice, request in writing a hearing on the suspension, the Licensing Officer shall set a hearing date within fourteen (14) days or at the next City Council meeting, whichever first occurs. No suspension shall exceed thirty (30) days unless, prior to expiration of the thirty-day suspension, a revocation proceeding is commenced.

(c) The Licensing Officer may impose a civil penalty against the licensee for any violations meriting a suspension or revocation, as provided in Section 6-3-490 of this Article. If the licensee fails to pay the civil penalty, the Licensing Officer may provide that, at the end of the period of suspension, if the civil penalty remaining at the time is still unpaid, the license shall be revoked.

(d) The suspension shall remain in effect until the violation of the statute, code, ordinance or regulation in question has been corrected. (Prior code 5.28.070; Ord. 4 §1, 2005)

Sec. 6-3-100. Revocation of license.

(a) The Licensing Officer shall revoke a sexually oriented business license upon determining that:

(1) A cause of suspension in Section 6-3-90 above occurs and the license has been suspended within the preceding twelve (12) months.

(2) A licensee gave false or misleading information in the material submitted during the application process that enhanced the applicant's opportunity to obtain a license.

(3) A licensee or employee has knowingly allowed possession, use or sale of controlled substances (as defined in Part 3 of Article 22 of Title 12, C.R.S.) on the premises.

(4) A licensee or an employee has knowingly allowed prostitution on the premises.

(5) A licensee or an employee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended.

(6) A licensee has been convicted of a specified criminal act for which the time period set forth in Section 6-3-40(a)(5) above has not elapsed.

(7) On two (2) or more occasions within a twelve-month period, a person committed an offense, occurring in or on the licensed premises, constituting a specified criminal act for which a conviction has been obtained, and the person was an employee of the sexually oriented business at the time the

offense was committed. The fact that a conviction is being appealed shall have no effect on the revocation of the license.

(8) A licensee is delinquent in payment to the City or State for any taxes or fees.

(9) A licensee or employee has knowingly allowed any specified sexual activity to occur in or on the licensed premises or personally engaged in the same.

(10) The licensee has operated more than one (1) sexually oriented business within the same building, structure or portion thereof.

(b) When the Licensing Officer revokes a license, the revocation shall continue for one (1) year, and the licensee shall not be issued a sexually oriented business license for one (1) year from the date revocation became effective. (Prior code 5.28.080; Ord. 4 §1, 2005)

Sec. 6-3-110. Transfer of license.

(a) A licensee shall not operate a sexually oriented business under the authority of a license at any place other than the address designated in the application for license.

(b) A licensee shall not transfer his or her license to another person unless and until such other person satisfies the following requirements:

(1) Obtains an amendment to the license from the Licensing Officer which provides that he or she is now the licensee, which amendment may be obtained only if he or she has completed and properly filed an application with the Licensing Officer, setting forth the information called for under Sections 6-3-40 through 6-3-70 above in the application; and

(2) Pays a transfer fee of twenty percent (20%) of the annual license fee.

(c) No license may be transferred when the Licensing Officer has notified the licensee that suspension or revocation proceedings have been or will be brought against the licensee.

(d) A licensee shall not transfer his or her license to another location.

(e) Any attempt to transfer a license either directly or indirectly in violation of this Section is hereby declared void, and the license shall be deemed revoked. (Prior code 5.28.090)

Sec. 6-3-120. Judicial review of license denial, suspension or revocation.

After denial of an application, denial of a renewal of an application or suspension or revocation of a license and a hearing before the City Council as set forth in Subsection 6-3-90(b) of this Article, the applicant may seek prompt judicial review of such administrative action in any court of competent jurisdiction. (Prior code 5.28.100)

Sec. 6-3-130. Employee general requirements.

(a) Qualifications. An employee of an adult use establishment shall be not less than eighteen (18) years of age. Every employee shall be of good moral character as defined in Section 6-3-10 above.

(b) Approval for employment. Before any person may work on a licensed premises, he or she shall first obtain a sexually oriented business employee license as set forth in Section 6-3-140 below.

(c) Prohibitions. Notwithstanding any other applicable prohibitions as set forth in this Article and at Chapter 16, Article III, Division 7 of this Code, employees shall not be permitted to mingle with patrons in a nude state and are prohibited from kissing or touching patrons. Further, it shall be unlawful for any employee of a sexually oriented business to receive tips from patrons other than through the receipt of such tips from one (1) or more tip boxes or other containers designed to receive said tips. All tips for such employee shall be placed by the patron of the sexually oriented business into the tip box.

(d) Violation of the provisions of this Code or the rules and regulations of the Licensing Officer shall subject an employee to suspension or revocation of his or her license. (Prior code 5.28.110; Ord. 4 §1, 2005)

Sec. 6-3-140. Employee license required.

It shall be unlawful, and a person commits a misdemeanor, if he or she works as an employee of a sexually oriented business without first obtaining an employee's license. (Prior code 5.28.120)

Sec. 6-3-150. Application for employee's license.

(a) An employee shall submit an application for an employee's license on a form to be provided by the Licensing Officer. The application shall contain the applicant's name, address, date of birth, phone number and the information required in Sections 6-3-40 through 6-3-70 above.

(b) The Licensing Officer shall refer the employee license application to the Police Department for investigation to be made of such information as is contained on the application. The application process shall be completed within ten (10) days from the date the completed application is filed. After the investigation, the Licensing Officer shall issue a license unless:

(1) The applicant has knowingly made any false, misleading or fraudulent statement of a material fact in the application for a license, or in any report or record required to be filed with the Police Department or other department of the City;

(2) The applicant is under the age of eighteen (18);

(3) The applicant has failed to provide the information required by this Section;

(4) The license fee has not been paid;

(5) The applicant has been convicted of a specified criminal act within the times set forth in Subsection 6-3-40(5) of this Article;

(6) The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by particular provisions of this Article; or

(7) The applicant has had a sexually oriented business employee license revoked by the City within two (2) years of the date of the current application.

(c) A license granted pursuant to this Section shall be subject to annual renewal by the Licensing Officer upon the written application of the applicant and a finding by the Licensing Officer and the Police Department that the applicant has not been convicted of any specified criminal act or committed any act during the existence of the previous license period which would be grounds to deny the initial permit application.

(d) The employee license and renewal thereof shall be subject to the fees set forth in Appendix A to this Code. (Prior code 5.28.130; Ord. 4 §1, 2005)

Sec. 6-3-160. Inspection.

(a) An applicant or licensee shall permit representatives of the Police Department, Licensing Officer, Building Inspection Department, Health Department and Fire Department to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business or at other time by mutual agreement.

(b) A person who operates a sexually oriented business or his or her agent commits a misdemeanor if he or she refuses to permit such lawful inspection of the premises at any time that it is occupied or open for business. (Prior code 5.28.140)

Sec. 6-3-170. Promulgation of records and reports.

(a) Each licensee shall keep such records and make such reports as may be required by the Licensing Officer and the Fire Chief to implement this Article and carry out its purpose. By applying for a license under this Article, the applicant shall be deemed to have consented to the provisions of this Article and to the exercise by the Licensing Officer of the powers given herein in the manner herein specified.

(b) The Licensing Officer is authorized to promulgate rules and regulations not inconsistent with this Article or this Code as are necessary to carry out the provisions of this Article. (Prior code 5.28.150; Ord. 4 §1, 2005)

*Division 2
Regulations*

Sec. 6-3-210. General requirements.

(a) In addition to the special requirements contained in Sections 16-1-220, 16-3-420 and Chapter 16, Article III, Division 7 of this Code, each licensed premises shall meet the following requirements:

(1) The licensed premises shall conform to the requirements of the Building Code adopted by the City, unless a requirement in the Building Code conflicts with a special requirement contained within this Article.

(2) The licensed premises shall conform to the requirements of the Fire Code adopted by the City, except to the extent that a requirement in the Fire Code conflicts with a special requirement contained in this Article.

(3) In all cases wherein the occupant capacity, as determined by the Fire Chief, is at least fifty (50) persons, exclusive of attendants and assistants, such structure shall have electric, battery-operated, emergency lights using reliable type storage batteries provided with suitable maintenance in properly charged condition; provided that dry batteries shall not be used; and further provided that electric storage batteries shall be approved by the Fire Chief for their intended use and shall comply with the National Electrical Code as adopted by the City.

(4) The licensed premises shall conform to the requirements of Chapter 16 of this Code.

(5) The licensed premises shall conform to all other ordinances of the City.

(b) For purposes of this Section, the City staff, including any health, building or fire officials, shall render a decision regarding conformance to the general and special requirements noted in Sections 6-3-220 through 6-3-250 below, within forty five (45) days of an application for a license. (Prior code 5.28.160; Ord. 4 §1, 2005)

Sec. 6-3-220. Adult bookstores, adult novelty stores and adult video stores.

In addition to the general requirements noted in Section 6-3-210 above, an adult bookstore, adult novelty store and adult video store shall observe the following special requirements:

(1) All materials and novelties shall be so displayed that they cannot be seen by anyone other than customers who have entered the licensed premises.

(2) If recordings are offered for sale or viewing on the premises and customers may listen to them while on the licensed premises, soundproof booths or rooms (peep booths) shall be available for use by customers who desire to listen or view such recordings, and each such booths or rooms on the premises are also subject to all requirements set forth in Section 6-3-250 below.

(3) It is unlawful for anyone to distribute for commercial purposes, sell or offer for sale any device, instrument or paraphernalia designed or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others. Such devices include but are not limited to phallic-shaped vibrators, dildos, muzzles, whips, chains, bather restraints, racks, nonmedical enema kits, body-piercing implements (excluding earrings or other decorative jewelry) or other tools of sadomasochistic abuse. (Prior code 5.28.170)

Sec. 6-3-230. Adult motion picture theaters.

In addition to the general requirements contained in Section 6-3-210 above, an adult motion picture theater shall observe the following special requirements; and any peep booths located on or in the premises of any adult motion picture theatre are also subject to the requirements set forth in Section 16-2-250:

(1) An adult motion picture theater having only a hall or auditorium for the showing of film material shall be considered a "place of assembly" within the meaning of the Building Code and shall conform to the requirements therefor.

(2) An adult motion picture theater having both adult motion picture booths and a hall or auditorium shall conform to the special requirements for both facilities provided for in this Section and Section 6-3-250 below; provided that where the special requirements allow common elements to be utilized or constructed, this may be done with the approval of the Building Inspector.

(3) There shall be provided, within or adjacent to the common corridor, passageway or area in adult motion picture theaters having adult motion picture booths, adequate lavatories equipped with running water, hand-cleansing soap or detergent and sanitary towels or hand-drying devices. Common towels are prohibited. (Prior code 5.28.180; Ord. 4 §1, 2005)

Sec. 6-3-240. Adult cabarets, adult theaters and adult motels.

In addition to the general requirements contained in Section 6-3-210 above, an adult cabaret, adult theater and adult motel establishment shall observe the following special requirements:

(1) Any person employed or working in the licensed premises as a dancer shall, while dancing, perform upon a stage or similar structure specially designed for such dancing. Stages shall conform to the requirements of the Building Code and shall be a minimum of fifty (50) square feet in size, including the requirements for appurtenant rooms if such appurtenant rooms are used by the establishment; provided that the dancers shall be provided with dressing rooms that are not part of or used by the public as rest rooms.

(2) Where a dancer performs upon a platform or other small structure designed to hold a small number of persons, which is not a stage nor equipped to be a stage for theatrical presentations, the platform shall be level, of sturdy construction, securely fastened to the floor or wall during performances and a minimum of seven (7) feet from patrons to be seated. Steps and handrails shall be provided so that the dancer may ascend to the top of the platform safely under the normal operating conditions of the establishment in all cases wherein the top of the platform is more than eight (8) inches from the surface upon which the platform rests.

(3) It shall be unlawful for any employee of a sexually oriented business to receive tips from patrons except as set forth herein. A licensee that desires to provide for tips from its patrons shall establish one (1) or more boxes or other containers to receive tips. All tips for such employees shall be placed by the patron of the sexually oriented business into the tip box. A sexually oriented business that provides tip boxes for its patrons as provided for in this Section shall post one (1) or more signs to be conspicuously visible to the patrons of the premises in letters at least one (1) inch high, to read as follows:

"All tips are to be placed in the tip box and not handed directly to employees. Any physical contact between a patron and employees is strictly prohibited."

(Prior code 5.28.190; Ord. 4 §1, 2005)

Sec. 6-3-250. Exhibitions of sexually explicit films or videos in peep booths.

In addition to the general and special requirements noted in Sections 6-3-210 through 6-3-240 above, a person who operates or causes to be operated a sexually oriented business which exhibits on the premises

in a peep booth a film, video cassette or other video reproduction which depicts specified sexual activities or specified anatomical areas shall comply with the requirements of this Article as follows:

(1) Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one (1) or more manager's stations and the location of all overhead lighting fixtures, and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area with no dimension greater than eight (8) feet. The diagram shall also designate the place at which this license will be conspicuously posted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale with marked dimensions sufficient to show the various internal dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. The Licensing Officer may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared. The application shall be sworn to be true and correct by the applicant.

(2) At least one (1) employee must be on duty and situated at each manager's station at all times that any patron is present inside the premises.

(3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the City.

(4) It is the duty of the owners and operators of the premises to ensure that at least one (1) employee is on duty and situated at each manager's station at all times that any patron is present inside the premises.

(5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding rest rooms. Rest rooms may not contain video display equipment. If the premises have two (2) or more manager's stations designated, the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one (1) of the manager's stations. The view required in this Subsection must be by direct line of sight from the manager's station. The view area shall remain unobstructed by any doors, walls, merchandise, display racks or other materials at all times, and no patron shall be permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Sections 6-3-50 through 6-3-70 of this Article.

(6) No door, screen or other covering shall be placed or allowed to remain on any peep booth, and no holes or openings shall be placed or allowed to remain in the wall between any two (2) adjacent peep booths. The door opening into the booth or room shall be incapable of being locked or otherwise fastened so that it will freely open from either side. Partitions between peep booths shall be considered nonbearing partitions; however, they shall be so constructed as to have a fire-resistance rating of not less than one (1) hour, or shall have approved sprinklers.

(7) It shall be the duty of the owners and operators, and it shall also be the duty of any agents and employees present on the premises, to ensure that the view area specified in Subsection (5) above

remains unobstructed by any doors, walls, merchandise, display racks, other materials or persons at all times and to ensure that no patron is permitted access to any area of the premises which has not been designated as an area in which patrons will not be permitted in the application filed pursuant to this Section.

(8) One (1) clear window, facing the major portion of the licensed premises, covering not less than one-fourth ($\frac{1}{4}$) of the wall area into which the window is set or a minimum size of two (2) feet by two (2) feet, whichever is greater, which window shall not be covered or obscured in any manner while the booth or room is in use.

(9) No peep booth may be occupied by more than one (1) person at any one (1) time. No holes shall be allowed in the walls or partitions which separate each viewing room from an adjoining viewing room or rest room.

(10) A person having a duty under this Section commits a misdemeanor if he or she knowingly fails to fulfill the duties imposed by this Section.

(11) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to eliminate every place to which patrons are permitted access and an illumination of not less than two (2) foot-candles as measured at the floor level. It shall be the duty of the owners and operators, and it shall also be the duty of any agents and employees present on the premises, to ensure that the illumination described above is maintained at all times that any patron is present on the premises. (Prior code 5.28.200; Ord. 4 §1, 2005)

Sec. 6-3-260. Massage parlors and certified or licensed massage therapists.

The City, in acknowledging Title 12, Article 48.5, C.R.S., the Massage Parlor Code, and pursuant to Section 12-48.5-118, C.R.S., mandates that each massage parlor and all certified or licensed massage therapists shall observe the following special requirements; and, for massage parlors only, these are in addition to the general requirements contained in Section 6-3-210:

(1) All instruments or devices used for direct application to the skin shall be sanitized and the treated portion of the body or the instrument shall be covered with a clean cloth.

(2) No massage instruments or devices shall be directly applied to an abrasion of the skin or to any cut or wound.

(3) No person providing massage shall treat any individual afflicted with any skin eruption or other disease unless such person has furnished a written certificate from a physician directing such treatment and stating that the eruption or disease is not of a contagious character.

(4) No massage parlor licensee may operate an X-ray, fluoroscope or similar radiation instrument for any purpose unless licensed by the State. Such radiation equipment may only be operated by persons properly licensed to use the instrument.

(5) No massage parlor licensee shall engage in any activity which falls within the realm of licensed medical practice or nursing care.

(6) No massage parlor licensee may permit any person to work on the premises who is infected with any disease in a communicable form or who has open lesions or sores.

(7) All surfaces of the massage parlor premises, including floors, walls, ceilings and equipment, must be smooth and constructed with surface material that is easily cleaned. All devices or fixtures, including but not limited to tables, lounges, chairs, steam rooms, towels and robes, which come into contact with any part of a patron's body, must be cleaned and sterilized after each use and before use with a different patron. Each treatment room shall be equipped with individual hand-washing lavatories provided with hot and cold running water. Each establishment shall provide toilet facilities and shower facilities where patrons of both sexes are accommodated separately. Each establishment shall have an approved first aid kit available for use. All treatment providers shall wear clean, washable uniforms, and all used linen items shall be stored in an approved container prior to sanitization.

(8) Violation or noncompliance with any provisions of this Section subjects the operator to the license suspension provisions of Section 6-3-90 above. (Prior code 5.28.205)

Sec. 6-3-270. Admission of minors unlawful.

It shall be unlawful for a licensee to admit or to permit the admission of minors under the age of eighteen (18) years within a licensed premises. (Prior code 5.28.210)

Sec. 6-3-280. Sale to minors unlawful.

It shall be unlawful for any person to sell, barter or give, or to offer to sell, barter or give, to any minor any service, material or thing sold or offered for sale by an adult bookstore, adult motion picture theater, adult massage parlor, adult dancing establishment, or other adult entertainment facility. (Prior code 5.28.220)

Sec. 6-3-290. Cleaning of premises.

Each licensed premises shall be maintained in a clean and sanitary condition and shall be cleaned at least once daily and more frequently when necessary. This activity shall be supervised by the person in charge of the licensed premises. There shall be provided adequate facilities, equipment and supplies on the licensed premises to meet this requirement, and adequate ventilation and illumination shall be provided to permit thorough, complete cleaning of the entire licensed premises. Trash and garbage shall not be permitted to accumulate or to become a nuisance on or in the immediate vicinity of the licensed premises, but shall be disposed of daily or as often as necessary. (Prior code 5.28.230)

Sec. 6-3-300. Self-inspection of licensed premises.

The licensee of a licensed premises or his or her designated representative shall make sanitary inspections of the licensed premises at least once a month and shall record his or her findings on a form supplied by the Licensing Officer. Each licensed premises shall post and maintain in a readily accessible place a schedule for maintaining the sanitation of the premises. (Prior code 5.28.240)

Sec. 6-3-310. Sealing of unsanitary or unsafe conditions.

A licensed premises, or any part thereof, may be sealed by order of the Licensing Officer on his or her finding of a violation of this Article resulting in an unsanitary or unsafe condition. Prior to sealing, the Licensing Officer shall serve on the licensee, by personal service on him or her or by posting in a conspicuous place on the licensed premises, a notice of the violation and an order to correct it within twenty-four (24) hours after service. If the violation is not so corrected, the Licensing Officer may physically seal that portion of the licensed premises causing the violation and order the discontinuance of use thereof until the violation has been corrected and the seal removed by the Licensing Officer. The Licensing Officer shall affix to the sealed premises a conspicuous sign labeled "Unclean" or "Unsafe," as the case may be. (Prior code 5.28.250)

*Division 3
Miscellaneous Provisions*

Sec. 6-3-410. Display of entertainment or performances and supply of liquor prohibited.

(a) No retail licensee for on-premises consumption shall suffer or permit any person to appear on said licensed premises displaying specified anatomical areas or nonlive performance or entertainment exhibiting specified sexual activities, as defined in Section 6-3-10 of this Article.

(b) Any person who violates any provision of this Section shall be guilty of an offense against the City, punishable as provided in Section 6-3-510 of this Article.

(c) If the owner, operator, licensee, lessor, lessee, manager, employee or any other person participating in the operation of a commercial establishment located within the City at which alcoholic beverages are offered for sale for consumption on the premises shall be convicted of any of the offenses herein, the City Clerk shall revoke the occupational license for said establishment after giving a reasonable notice thereof to the holder of said license and affording the holder an opportunity to be heard at the next City Council meeting on as to why the revocation should not be issued. (Prior code 5.28.360)

Sec. 6-3-420. Abatement as sanitary nuisance.

A licensed premises, or any part thereof, may be abated as a sanitary nuisance. (Prior code 5.28.260)

Sec. 6-3-430. Interference with inspectors.

No person shall interfere with or obstruct inspectors in the performance of their official duties. (Prior code 5.28.270)

Sec. 6-3-440. Tampering with notices, etc.

No person shall mutilate, obstruct, tear down, remove or otherwise tamper with any official notice, seal or poster unless authorized to do so by the Licensing Officer. (Prior code 5.28.280; Ord. 4 §1, 2005)

Sec. 6-3-450. False statements prohibited.

No person shall knowingly make, induce or cause to be made by another a false, untrue or misleading statement or a signature of another on a certificate, application, registration, report or other document required to be prepared pursuant to this Article. No person shall knowingly make a false, untrue or misleading oral statement to the Licensing Officer as to any matter investigated by the Licensing Officer. (Prior code 5.28.290)

Sec. 6-3-460. Alterations prohibited.

Alteration is the evasion or violation of a provision of this Article or any other law. No person shall reproduce, alter or cause to be reproduced or altered a license, report, certificate or other document issued by the Licensing Officer if the purpose of the reproduction. (Prior code 5.28.300)

Sec. 6-3-470. Immunity from prosecution.

All officers and employees of the City who are acting within the scope of their authority and duties under this Article shall be immune from prosecution, civil and criminal, for trespass upon real property. (Prior code 5.28.310)

Sec. 6-3-480. Violations.

(a) It is a violation of this Code for any person to knowingly and willfully:

(1) Operate, procure or acquiesce in the operation of an unlicensed premises contrary to the relevant requirements of this Code;

(2) Admit, procure or acquiesce in the admission of a minor within a licensed premises;

(3) Sell, barter, give, or offer to sell, barter or give to any minor any service, device or thing sold or offered for sale by an adult bookstore, adult cabaret, adult motel, adult arcade, adult motion picture theater, massage parlor, adult theater or peep booth;

(4) Maintain, procure or acquiesce in the maintaining of a licensed premises in an unsanitary or unsafe condition contrary to the provisions of this Article;

(5) Having a duty to conduct the self-inspection required herein, fail, refuse, procure or acquiesce in a failure or refusal to conduct said self-inspection;

(6) Interfere with, procure or acquiesce in an interference with an inspector contrary to relevant provisions of this Code; or

(7) Maintain, procure or acquiesce in the maintenance of a nuisance on a licensed premises.

(b) Such person shall be punished in accordance with the provisions of Section 1-4-20 of this Code. (Prior code 5.28.320; Ord. 4 §1, 2005)

Sec. 6-3-490. Civil penalties.

In addition to or in lieu of the penalties that may be otherwise imposed, the Licensing Officer may assess the following civil penalties:

(1) A person who operates or attempts to operate an adult bookstore, adult cabaret, adult motel, adult arcade, massage parlor, adult motion picture theater, adult theater or peep booth without having first obtained a license under this Article may be assessed a civil penalty of up to three hundred dollars (\$300.00).

(2) An applicant for a license under this Article, and any officer, director, partner, agent or attorney of such an applicant, who knowingly makes a false statement or provides false information on any document or paper accompanying and forming a part of such application, shall be assessed a civil penalty of up to two hundred dollars (\$200.00) for each such false statement or false item of information.

(3) A licensee or employee who fails or refuses to renew his or her license within the period granted herein may be assessed a civil penalty of up to fifty dollars (\$50.00) for each day beyond said period that said refusal or failure continues, but not to exceed three hundred dollars (\$300.00) for each refusal or failure.

(4) A licensee and any agent, officer, servant or employee of a licensee who maintains a nuisance on the licensed premises or permits the licensed premises to be unsanitary or unsafe may be assessed a civil penalty of up to one hundred dollars (\$100.00) for each day that the nuisance or unsafe or unsanitary condition continues.

(5) A licensee who moves his or her licensed premises without approval by the Licensing Officer or who changes the name of his or her business without notifying the Licensing Officer may be assessed a civil penalty up to three hundred dollars (\$300.00).

(6) A licensee or employee who does not keep the records and make the reports required by any of the agencies herein may be assessed a civil penalty of up to fifty dollars (\$50.00) for each violation.

(7) A licensee and any agent, officer, servant or employee of a licensee who fails to correct violations of the general and applicable special requirements for the licensed premises may be assessed a civil penalty of up to two hundred dollars (\$200.00) for each violation observed and not corrected within the period prescribed by the Licensing Officer, the Building Official or the Fire Chief, as the case may be.

(8) Any person who aids or participates in a violation for which a civil penalty may be assessed under this Article shall be considered a principal in the violation and may be assessed a civil penalty of up to the maximum amount prescribed for that violation.

(9) Nothing herein contained shall prevent or restrict the City from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any violation or noncompliance. Such other lawful actions shall include but shall not be limited to an equitable action for injunctive relief or an action at law for damages. All remedies and penalties provided for herein

shall be cumulative and independently available to the City, and the City shall be authorized to pursue any and all remedies set forth in this Section to the full extent allowed by law. (Prior code 5.28.330)

Sec. 6-3-500. Assessment and recovery of civil penalty.

Civil penalties shall be assessed by the Licensing Officer, based upon findings certified by the Building Official, Police Department, Health Inspection Services or Fire Chief. (Prior code 5.28.340; Ord. 4 §1, 2005)

Sec. 6-3-510. Criminal penalties.

If any person fails or refuses to obey or comply with or violates any of the criminal provisions contained in this Article, such person, upon conviction of such offense, shall be guilty of a misdemeanor and shall be punished in accordance with the provisions of Section 1-4-20 of this Code. (Prior code 5.28.350; Ord. 4 §1, 2005)

ARTICLE IV

Alarm Systems

Sec. 6-4-10. Audible alarm requirements.

Every person maintaining an audible alarm shall post a notice containing the names and telephone numbers of the persons to be notified to render repairs or service and secure the premises during any hour of the day or night if the alarm is actuated. Such notice shall be posted near the alarm or the front door in such a position as to be legible from the ground outside the building where the alarm is located. This requirement does not apply to audible automobile alarms. (Prior code 5.20.010; Ord. 4 §1, 2005)

Sec. 6-4-20. User fees for false alarms.

(a) For the purpose of this Section, *alarm* means a signal from a system requiring the dispatch of a police officer, and *false alarm* means a signal from an alarm system which is determined by the Chief of Police to have been made in error, as the result of electrical or electronic malfunction, or deliberately made by the person in control of said alarm system.

(b) Any person using an alarm system shall pay to the City a fee as set out in Appendix A to this Code, for response to a place of business or home by members of its Police Department, occasioned by a false alarm from the system, if and when the number of false alarms from the system exceed one (1) in any calendar quarter.

(c) No false alarm shall be counted under the provisions of this Section if the owner or user of the alarm system has promptly notified the Police Department of the false alarm, if the alarm is occasioned by any criminal activity or if the alarm occurs within thirty (30) days after the installation of the system.

(d) Failure to pay such fee shall result in a summons and complaint being issued in Municipal Court. (Prior code 5.20.020; Ord. 4 §1, 2005)

Sec. 6-4-30. Direct connection systems.

(a) No person may connect a direct dial alarm system to any telephone without the express permission of the person to whose telephone it is to be coded.

(b) No alarm system shall be coded to any telephone owned, operated or maintained by the City, or connected to or on any premises owned by the City, except under the terms of a written agreement between the City and the installer. The City Council, upon recommendation of the City Manager and the Chief of Police, may enter into a contract with a private person for the purpose of installing a centralized alarm system unit in premises owned and operated by the City; and may require that all alarms be connected to this centralized system. The fees and charges for these devices, and for false alarms generated by these devices, shall be as set forth by contract.

(c) Nothing contained within this Article shall obligate the City to permit the installation of any direct dial or direct line alarm system to the Police Department. (Prior code 5.20.030)

Sec. 6-4-40. Violations and penalties.

Any person violating any of the provisions of this Chapter shall be deemed guilty of a Class B misdemeanor offense, as defined in Section 10-1-40 of this Code, and shall be punished as provided therein. (Prior code 5.20.040; Ord. 4 §1, 2005)

ARTICLE V

Liquor Licenses

Sec. 6-5-10. Definitions.

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

Land used for school purposes means any land owned by the school district, the state or a private educational institution, and used for the purpose of carrying out the academic, athletic or other programs of the school, college or university, but does not include vacant land owned by such entity or land used solely for maintenance or storage purposes where no student activities are conducted.

License means a grant of a license to dispense or sell fermented malt beverages or malt, vinous or spirituous liquors pursuant to Sections 12-46-101 et seq., 12-47-101 et seq., or 12-48-101 et seq., C.R.S., or 1 C.C.R. §§203-2 and 203-3.

Licensee means a natural, legal person selling malt, vinous and spirituous beverages pursuant to and authorized by a license issued pursuant to Sections 12-46-101 et seq., 12-47-101 et seq., or 12-48-101 et seq., C.R.S., or 1 C.C.R. §§203-2 and 203-3 by the City and/or the State.

Liquor Licensing Authority means the City Council.

Manager or owner/operator means any person who manages or is the owner/operator preparing, serving, selling or otherwise providing alcoholic beverages pursuant to licenses issued therefor. The *manager or owner/ operator* shall not include persons who sell, serve or dispense alcoholic beverages

in the capacity of volunteer, or persons employed as clerks or checkout persons in an establishment licensed as a retail liquor store.

Server means any person who is employed by a licensee to prepare, serve, sell or otherwise provide alcoholic beverages pursuant to the licensee's license. *Server* shall not include persons who sell, serve or dispense alcoholic beverages in the capacity of volunteer, or persons employed as clerks or checkout persons in an establishment licensed as a retail liquor store or 3.2 beer retail store.

Special events permits statute means Section 12-48-101 et seq., C.R.S. (Prior code 7.08.010; Ord. 4 §1, 2005)

Sec. 6-5-20. Applicability of provisions.

In addition to any other rules or laws which may be applicable, this Article shall govern all licensing proceedings before the Liquor Licensing Authority. Unless superseded by this Article, the provisions of Sections 12-46-101 et seq., 12-47-101 et seq., and 12-48-101 et seq., C.R.S., and 1 C.C.R. §§203-2 and 203-3 shall apply to fermented malt and alcoholic beverage licenses. (Prior code 7.08.020)

Sec. 6-5-30. Designation of Liquor Licensing Authority and duties of City Clerk.

(a) The Liquor Licensing Authority for the City shall be the City Council and shall be known as the "Liquor Licensing Authority."

(b) The City Clerk shall assist the Liquor Licensing Authority by receiving all applications, coordinating with other City officers and departments when relevant, scheduling required public hearings and exercising his or her discretion in forwarding renewals, change of ownership, special event permits, change of manager notices and temporary licenses/ permits to the Liquor Licensing Authority. (Prior code 7.08.030; Ord. 4 §1, 2005)

Sec. 6-5-40. Filing of applications.

(a) All applications for liquor and fermented malt beverage licenses, including new, renewal, temporary, change of location or change of ownership licenses, as well as modification of premises, temporary and special event permits shall be filed with the City Clerk. All applications shall be made under oath on forms provided by the City.

(b) The following information shall be filed with the City:

(1) A completed state license application form. Incomplete application forms will be rejected.

(2) A completed local license application form. Incomplete application forms will be rejected.

(3) If the applicant is a corporation, copies of the articles of incorporation, certificate of incorporation and corporate minutes showing current officers, directors and shareholders. In the case of a foreign corporation, the applicant shall also provide the name and address of the registered agent and proof of authority to transact business in the State. If the applicant is a limited liability company, copies of the articles of organization and operating agreement, and a list of managers and members. If the applicant is a partnership, a copy of the partnership agreement.

(4) A description of the kind of business and the nature of the proposed establishment.

(5) The name and address of the person who will manage and operate the establishment after the license has been issued, a copy of the management agreement, if any, and the names of other liquor or fermented malt beverage establishments managed by that person.

(6) Evidence showing that the proposed location will not violate any City zoning laws.

(7) Evidence showing all financial interests in the proposed license, including but not limited to copies of documents governing the contract for purchase, promissory notes, shares of stock, mortgages, leases, insurance binders, recorded and unrecorded security interests and assignments of any of the above. (Prior code 7.08.040)

Sec. 6-5-50. Application procedures; hearings.

(a) Upon receipt of a complete application for a new license and/or a change of location of a license, the City Clerk shall notify the Liquor Licensing Authority of the application at a regularly scheduled meeting within the next thirty (30) days, set a hearing date and provide notice of the hearing pursuant to Section 12-47-311, C.R.S. The application form shall be accompanied by an application fee, and successful applicants shall be subject to license fees as set forth in Appendix A to this Code.

(b) Preliminary investigation; findings.

(1) Prior to the date set for hearing, the City Clerk shall, on behalf of the Liquor Licensing Authority, investigate the following matters:

a. Whether any of the prohibitions contained in Section 12-46-104 or 12-47-313, C.R.S., apply to the applicant.

b. The number and type of outlets of a nature similar to the applicant's within one (1) mile in any direction of the proposed location.

(2) The Chief of Police shall, on behalf of the Liquor Licensing Authority, investigate the following matters:

a. All pertinent matters affecting the qualifications of the applicant for the conduct of the type of business proposed.

b. Any financial interests, including notes, mortgages, leases, etc., in other licenses.

c. The applicant's criminal records, if any, including all partners, principals or stockholders holding over ten percent (10%) of the outstanding and issued stock.

d. Good moral character and reputation of the applicant, as set forth in Sections 12-47-307 and 24-5-101, C.R.S.

e. Other matters as the Liquor Licensing Authority shall direct.

(3) A written report setting out the results of the investigations performed by the City Clerk and the Chief of Police shall be prepared and mailed by certified mail, return receipt requested, by the City Clerk to the applicant and, upon request, to other parties in interest, as defined by Section 12-47-311(5)(b), C.R.S., not less than five (5) days prior to the date of the hearing upon the application. The original report shall be filed as a public record in the City Clerk's office.

(c) Petitions, reports, and statements prior to hearing.

(1) Petitions may be circulated by the applicant or any person opposing or supporting the issuance of the license. Each person signing a petition may sign only his or her own name and his or her address. The date when the signature is affixed to the petition shall be put on the petition by the party signing the same. No person may sign more than one (1) petition.

(2) All other petitions, remonstrances, surveys or statements in writing offered by the proponents, opponents or others interested in any application for a licensed outlet shall be filed in the office of the City Clerk by 12:00 p.m. of the Wednesday preceding the day on which the hearing upon the application is held before the Liquor Licensing Authority. All notices of such hearings shall contain a statement that said petitions, remonstrances, surveys and statements in writing should be filed by 12:00 p.m. of the Wednesday preceding the hearing.

(d) Public hearing.

(1) On the date scheduled, a public hearing shall be held on the application. The hearing may be continued from time to time, not to exceed thirty (30) days, upon the request of any party in interest, as defined by Section 12-47-311(5)(b), C.R.S., or upon motion of the Liquor Licensing Authority.

(2) All hearings before the Liquor Licensing Authority shall be public and shall be conducted in accordance with this Article and so as to ascertain facts affecting the substantial rights of the parties to the proceedings. The conduct of the hearing and the information to be presented shall be as set forth in Sections 12-47-311 and 12-47-312, C.R.S. The Liquor Licensing Authority shall consider the information contained in the report of the investigations of the City Clerk and the Chief of Police. Evidence and requirements of proof shall conform, to the extent practicable, with those in civil nonjury cases in the district courts; however, evidence not admissible under such rules will be admitted if such evidence possesses significant probative value.

(3) Applicants or parties in interest, as defined in Section 12-47-311(5)(b), C.R.S., may appear in person or be represented by counsel.

(4) The City Council shall consider all evidence presented relating to the following standards:

a. The character, record, or reputation of the applicant as set forth in Section 12-47-307, C.R.S.

b. The neighborhood surrounding the proposed establishment and the existing licensed premises located in or near the neighborhood under consideration.

c. The reasonable requirements of the neighborhood and the desires of the adult inhabitants for the type of license for which application has been made.

d. The financial resources of the application for the acquisition and outfitting of the establishment sought to be licensed.

e. Any pertinent matters affecting the qualifications of the applicant for the conduct and the type of business proposed.

f. Evidence which would indicate that the building or location proposed for the operation of the license is not suited for the intended purpose.

(5) The applicant and a party in interest, as defined in Section 12-47-311(5)(b), C.R.S., may introduce evidence at the public hearing on the matters set forth above.

(6) All testimony given at a public hearing shall be sworn. The City Clerk or other hearing officer shall have the power to administer oaths and issue subpoenas on behalf of the Liquor Licensing Authority. A subpoena shall be served in the same manner as a subpoena issued by the District Court of the State. Upon failure of any witness to comply with such subpoena, the City Attorney shall, at the direction of the Liquor Licensing Authority, petition the Municipal Court setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena. The Court, after hearing evidence in support of or contrary to the petition, shall enter its order compelling the witness to attend and testify or produce books, records or other evidence under penalty of punishment for contempt in case of willful failure to comply with such order of the Court.

(e) Decision by Liquor Licensing Authority.

(1) At the conclusion of the presentation of all the evidence, the Liquor Licensing Authority shall enter its decision granting or denying the license, or it may take the application under advisement for a maximum of thirty (30) days, during which time it shall consider all the evidence. For purposes of this Section, good cause for refusing or denying an initial license application shall be as defined in Section 12-47-103(9), C.R.S., in effect or as hereafter amended.

(2) When the decision is made, the motion shall contain such findings of facts and conclusions of law as are relevant and necessary to support the decision. As appropriate for the type of license under consideration, the motion should specifically describe the neighborhood under consideration, the needs of the neighborhood for the outlet, the desires of the adult inhabitants and the qualifications of the applicant. The motion may be made orally or in writing. Upon making of the motion and the reasons therefor, a vote shall be taken and entered into the minutes of the Liquor Licensing Authority. (Prior code 7.08.050; Ord. 1 §4, 2005; Ord. 4 §1, 2005)

Sec. 6-5-60. License renewals; hearing.

(a) All applications for renewal of fermented malt beverage, malt, vinous and spirituous liquor licenses shall be on forms provided by the State Licensing Authority and the Liquor Licensing Authority, and must be submitted to the City Clerk not less than forty-five (45) days prior to the license expiration date, together with the required renewal application fee, as referenced in Section 6-5-150 of this Article and set forth in Appendix A to this Code.

(b) Upon receiving the renewal application, the City Clerk shall assemble the applicant's file containing reports from staff regarding the applicant or the premises for the preceding year. Unless there

is evidence to the contrary in the applicant's file or otherwise, it will be presumed that the occupied premises are in compliance with the provisions of state statutes and City regulations, and that the character of the applicant continues to be satisfactory. If these presumptions apply, the application for renewal shall be recommended for approval by the City Clerk and set for Liquor Licensing Authority consent at the next City Council meeting. All successful applicants shall be subject to license fees as referenced in Section 6-5-150 of this Article and set forth in Appendix A to this Code.

(c) If there is evidence to rebut the presumptions in Subsection (b) above which otherwise arise, the City Clerk shall immediately notify the licensee in writing of the objections to the renewal application and set a public hearing date to be held not less than ten (10) nor more than thirty (30) days after the date of such notice. The written notice shall be mailed by certified mail to the applicant, shall state generally the grounds for staff's recommendation of nonrenewal, and shall provide the date, time and place of the hearing to show cause for nonrenewal. Notice of the hearing must also be conspicuously posted on the premises for a period of ten (10) days prior to the hearing. The hearing shall be conducted in the same manner as provided for hearings on revocation or suspension of the type of license involved. (Prior code 7.08.060; Ord. 4 §1, 2005)

Sec. 6-5-70. Change of location; hearing.

(a) To request a change of location of premises under an existing license, the licensee shall submit an application to the City Clerk on forms provided by the State Licensing Authority and the Liquor Licensing Authority. An application fee, as referenced in Section 6-5-150 and set forth in Appendix A to this Code, shall accompany the application.

(b) All applications for a change of location of premises under an existing license shall be subject to Section 6-5-50 above, except that the character of the applicant shall not be considered.

(c) The scheduling and notice of the hearing on a change of location shall be as provided in Section 12-47-311, C.R.S. (Prior code 7.08.070)

Sec. 6-5-80. Change of ownership; hearing.

(a) All applicants for the issuance of a license by reason of transfer of ownership of the business, or of possession of the licensed premises, shall file with the City Clerk an application on forms provided by the State Licensing Authority and the Liquor Licensing Authority. The application form shall be accompanied by an application fee, and successful applicants shall be subject to license fees as set forth in Appendix A to this Code.

(b) The Chief of Police shall conduct an investigation of the character of the applicant, pursuant to the process set forth in Section 6-5-50(b)(2) above.

(c) If the City Clerk recommends approval of the change of ownership after the investigation, no hearing is necessary, and the change of ownership shall be scheduled for Liquor Licensing Authority consent within thirty (30) days.

(d) If the City Clerk does not recommend approval of the change of ownership after the investigation, the Liquor Licensing Authority shall schedule a public hearing and provide notice pursuant to Section 12-47-311, C.R.S. The Liquor Licensing Authority shall hold a public hearing in accordance with Section 6-

5-100 below, and it shall consider only the character of the applicant. The applicant shall be required to submit information concerning good moral character, the applicant's ability to conduct the business according to law and the applicant's source of funding.

(e) Pending approval by the Liquor Licensing Authority of a change in ownership, a temporary permit may be issued upon application, pursuant to Section 12-47-303, C.R.S. (Prior code 7.08.080; Ord. 1 §5, 2005; Ord. 4 §1, 2005)

Sec. 6-5-90. Temporary licenses.

A licensee who allows a liquor license to expire can obtain a temporary license pursuant to the terms of Section 12-47-303, C.R.S. The application form shall be accompanied by an application fee, and successful applicants shall be subject to license fees, as referenced in Section 6-5-150 of this Article and set forth in Appendix A to this Code. The Liquor Licensing Authority shall have the authority to issue temporary licenses only to the extent set forth in Section 12-47-303, C.R.S. If a temporary license is issued to an applicant, such temporary license shall contain the name of the licensee, the address of the licensed premises and the date of issuance, and it shall be posted conspicuously on the licensed premises. (Prior code 7.08.090; Ord. 4 §1, 2005)

Sec. 6-5-100. Suspension and revocation of licenses; hearings.

(a) Proceedings for suspension or revocation of a liquor license shall be commenced in either of the following manners: (1) upon the filing of a complaint with the Liquor Licensing Authority by a third party which is supported by probable cause; or (2) upon the request of the Chief of Police or City Clerk based on a determination that there is probable cause to believe a violation has occurred or is occurring after a full investigation. The Liquor Licensing Authority shall set a time and place for a hearing on the matter, and the City Clerk shall give the licensee timely written notice of the date, time and place of the hearing. The notice shall describe generally the alleged violations and the grounds showing probable cause for suspension or revocation of a license. The notice shall be served on the licensee by certified mail to the last address furnished to the City at least forty-eight (48) hours prior to the hearing.

(b) The Liquor Licensing Authority or a hearing officer appointed by the Liquor Licensing Authority shall conduct the hearing. The hearing officer may be a designated City Council member or Municipal Judge.

(c) The City Clerk and the hearing officer shall have the power to administer oaths, issue subpoenas and, when necessary, grant continuances.

(d) In all such hearings, the City Attorney shall act on behalf of and advise the City Council. The Liquor Licensing Authority shall appoint special counsel to conduct an investigation and prosecute the licensee on behalf of the City.

(e) All hearings before the Liquor Licensing Authority or the hearing officer shall be conducted in accordance with the procedures set forth in Chapter 1, Article VII of this Code.

(f) If the Liquor Licensing Authority conducts a hearing, it shall render a decision in accordance with Section 1-7-60 of this Code. If the hearing is held before a hearing officer, the hearing officer shall make a recommendation in writing to the Liquor Licensing Authority within thirty (30) days after the close of

the hearing. The written recommendation shall contain findings of fact and conclusions of law based on the evidence presented at the hearing. A copy of this summary and recommendation shall be transmitted to the licensee. At the next regular Council meeting following the submission of the hearing officer's recommendation, the Liquor Licensing Authority shall consider the same. In its discretion, the Liquor Licensing Authority may reject the hearing officer's recommendation, refer the matter back for further proceedings, adopt the recommendation or order a new hearing, either before the original hearing officer or before the entire Liquor Licensing Authority or a committee or member thereof.

(g) The Liquor Licensing Authority may suspend any license for a period up to six (6) months, or revoke a license permanently, based on evidence of good cause therefor presented at the hearing.

(h) In the event of revocation, suspension or cessation of business, no portion of the license fee or occupation tax shall be refunded.

(i) The licensee shall have the right to appeal or seek judicial review of a decision of the Liquor Licensing Authority as provided in Section 1-7-70 of this Code. (Prior code 7.08.100; Ord. 1 §§6, 7, 2005; Ord. 4 §1, 2005)

Sec. 6-5-110. Optional premises license.

Pursuant to Section 12-47-310, C.R.S., the City adopts the following standards for issuance of an optional premises license:

(1) The application for an optional premises license shall include all the requirements of Section 6-5-40 of this Article.

(2) The application for an optional premises license shall include a legal description of the premises on which liquor is to be served.

(3) If the standards set forth in Subsections (1) and (2) above are met, the City Clerk is authorized to issue an optional premises license. (Prior code 7.08.110)

Sec. 6-5-120. Special event permit application.

Pursuant to Section 12-48-101 et seq., C.R.S., the City may issue special event permits for the sale of fermented malt and alcoholic beverages to those organizations set forth in the special event permit statute and on the grounds set forth therein. (Prior code 7.08.120)

Sec. 6-5-130. Alcohol beverage tastings authorized.

Pursuant to Section 12-47-302(10)(a), C.R.S., the City authorizes alcohol beverage tastings for licensed retail liquor stores and liquor-licensed drug stores within the City. The City shall not require a further application prior to allowing retail liquor licensees to conduct alcohol beverage tastings, and elects not to impose additional limitations on such tastings beyond those limitations set forth in Chapter 47 of Title 12, C.R.S. (Ord. 18 §2, 2004)

Sec. 6-5-140. Issuance of licenses.

All licenses shall be issued in accordance with the laws of the State and the ordinances of the City. Licenses may issue after the applicable requirements have been met for posting and publication of notice, the preliminary investigation has been conducted, a public hearing has been held before the Liquor Licensing Authority when required, and approval is granted by the State Licensing Authority. In no event shall any license be issued until it is satisfactorily established that:

(1) All requirements and conditions of licensure set forth in Sections 12-47-307 and §12-47-313, C.R.S., have been met or found to exist; provided, however, that the restrictions on the location of buildings in which liquor is sold within five hundred (500) feet of land used for school purposes, set forth in Section 12-47-313(d), C.R.S., may be eliminated or reduced by the Liquor Licensing Authority on a case-by-case basis only for hotel, restaurant and brewery/restaurant licenses, or special event permits, upon the request of the license holder. Any waiver or modification of the distance requirements otherwise applicable to such licenses shall only be granted after review and comment by the governing body of the applicable school or university. A request to waive or modify the statutory distance requirements will be reviewed based on the following criteria:

- a. Type of school property and uses involved;
- b. Schedules of school operation;
- c. Type of liquor license involved;
- d. Hours of operation of the proposed establishment or event;
- e. Potential for disruption of school activities; and
- f. Likelihood of increase in liquor-related violations by minors.

(2) The applicant or any principal, partner, officer, director or stockholder holding over ten percent (10%) of the issued and outstanding stock, if any change since initial approval, has good moral character and reputation.

(3) The applicant remains or will be entitled to possession of the premises for which the application is made under a lease, or by virtue of ownership thereof, and that the use of the premises at the proposed location does not violate the zoning laws or any other laws of the City or the State.

(4) After approval of an application by the Liquor Licensing Authority and after the building in which the license is sought to be exercised has been made ready for occupancy with such furniture, fixtures and equipment as is necessary to comply with the provisions of these rules and the laws of the State, an inspection of the premises has been made to determine that the application has complied in every material detail with the plans and specifications submitted at the time of the filing of the application.

(5) The applicant has not applied for and been denied a liquor license for an establishment located within five hundred (500) feet of the proposed location within the preceding two (2) years. (Prior code 7.08.130)

Sec. 6-5-150. Application fees.

(a) An application fee shall be paid to the City in connection with all applications for liquor and fermented malt beverage licenses, including new, renewal, temporary, change of location or change of ownership licenses, modification of premises permits, temporary permits and special event permits. City application fees shall be set out in Appendix A to this Code, a copy of which is available in the office of the City Clerk. The application fee shall be collected to cover the costs of the preliminary investigation made by the City, administrative time, publication and posting costs and other necessary and incidental expenses.

(b) An application fee payable to the State Department of Revenue shall also be paid by all applicants in an amount as provided by the State Licensing Authority.

(c) An annual license fee shall also be paid to the City by the owners of all licensed premises. Such City license fee shall be as set forth in Sections 12-46-107(2) and 12-47-505, C.R.S.

(d) Annual license fees shall also be paid to the State Department of Revenue for particular state licenses, as set forth in Sections 12-46-104 and 12-47-501, C.R.S. (Prior code 7.08.140; Ord. 4 §1, 2005)

Sec. 6-5-160. Appeals; cost of transcript.

Any party aggrieved by a decision of the Liquor Licensing Authority may appeal said decision or seek judicial review thereof in accordance with Section 1-7-70 of this Code. An administrative fee as set forth in Appendix A to this Code shall be charged, together with the cost of preparing a transcript of the proceedings, whenever a transcript is demanded by the person seeking the review or furnished by the City pursuant to an order of court. The cost of preparing a transcript of testimony before the Liquor Licensing Authority shall be charged at rates ordinarily charged by certified shorthand reporters. (Prior code 7.08.150; Ord. 4 §1, 2005)

Sec. 6-5-170. Education requirements for licensees.

(a) Education requirements.

(1) All managers or owners/operators registered with the State and the Liquor Licensing Authority are required to attend an educational liquor seminar approved by the Liquor Licensing Authority and receive a certificate of completion within two (2) months after the date the license is approved by the Liquor Licensing Authority. Such certificate may take the form of a card or any other form decided upon by the Liquor Licensing Authority. Successful completion of the educational liquor seminar must be recorded with the Liquor Licensing Authority. The certificate of completion shall be valid for a period of four (4) years.

(2) Except for volunteers serving alcoholic beverages pursuant to a special events permit, every licensee, including club licensees, shall ensure that seventy-five percent (75%) of all servers employed or engaged by the licensee, and one hundred percent (100%) of those servers employed or engaged by the licensee for at least six (6) months, shall have successfully completed within six (6) months of the effective date of the initial ordinance codified herein, and at all times thereafter, an educational liquor serving seminar approved by the Liquor Licensing Authority. When a new server is hired or begins to serve alcoholic beverages pursuant to a club license, the licensee shall have a two-month grace period

to ensure that the new server has successfully completed an approved educational liquor serving seminar. The certificate received by servers who successfully complete the educational liquor serving seminar shall be valid for a period four (4) years.

(3) At every event for which a special event liquor license is issued, the licensee shall ensure that at least one (1) server, manager or owner/operator, including volunteers, who has successfully completed an approved educational liquor serving seminar, is present at all times and is supervising the dispensing of alcoholic beverages.

(4) At the time an applicant files an application for issuance, renewal or transfer of a liquor or fermented malt beverages license, or to change the location or corporate structure of the licensed premises or entity, the applicant shall submit to the City Clerk information to prove that the requisite percentage of servers, managers and/or owners/operators required to be certified under this Section have certificates in full force and effect as a condition of approval of the application. Required information shall include the names of all servers, the date of hire of all servers, the date each server attended training and the date of expiration of each server's certification. All licensees shall maintain a file of certificates on all managers and owners/operators employed by said licensee and shall exhibit said copies of certificates when requested to do so by the City Clerk, the Chief of Police, police employees or other appropriate officials of the City.

(b) Course requirements.

(1) Every agency offering a course of instruction approved by the Liquor Licensing Authority shall issue a certificate to those enrollees who successfully complete the liquor educational seminar. The certificate shall be dated to show the date of completion of the training and the date of certificate expiration, and shall be evidence that the person has been in actual attendance a minimum number of hours at the course and has achieved a reasonable mastery of the theories and facts presented. No agency approved by the City Council to provide manager or owner/operator training shall issue a certificate unless the person has actually attended and achieved a reasonable mastery of the materials.

(2) The Liquor Licensing Authority shall establish by resolution the general criteria for courses and qualifications of instructors which shall satisfy the liquor educational requirements of this Section. These requirements shall be available in the office of the City Clerk. Any qualified person may submit to the City Clerk a request that a particular seminar be deemed to meet the educational requirements. The City Clerk or Liquor Licensing Authority may make such determination.

(c) Costs. All persons enrolled in an educational liquor seminar presented by the City pursuant to this Section must pay to the City Clerk the actual cost of attending the seminar.

(d) Penalties for noncompliance.

(1) Failure to comply with this Section shall be considered a violation of the conditions for the issuance of a license and a violation of this Code and may be punished accordingly.

(2) Failure to maintain continuous compliance with the educational requirements of Subsection (b) above may subject a licensee to suspension or revocation of a license as provided for in Section 12-47-601, C.R.S. (Prior code 7.08.160)

ARTICLE VI

Oil and Gas Exploration and Production

Sec. 6-6-10. Scope.

Unless otherwise stated in this Article, this Article shall apply to any and all exploration, development or production of oil and/or gas within the City limits, notwithstanding any provisions to the contrary as stated in Chapter 16 of this Code pertaining to zoning. The provisions of these regulations shall apply to the construction, alteration, repair, erection, location and maintenance of any gas and/or oil well or related structures within the City limits. (Prior code 5.24.010; Ord. 40 §2, 2006)

Sec. 6-6-20. Purpose.

The purpose of this Article is to provide for exploration and development of oil and gas within the City, to protect the health, safety and welfare of the residents of the City, to provide for sound environmental and safety practices for oil and gas operations within the City, and to prevent damage to City streets and bridges. It is recognized that under state law the surface and mineral estates are separate and distinct interests in land and that one may be severed from the other. Owners of subsurface mineral interests have certain legal rights and privileges, including the right to use that portion of the surface estate reasonably necessary to extract and develop their subsurface mineral rights. The State has a recognized interest in fostering the efficient development, production and utilization of oil and gas resources, and particularly in the prevention of waste and protection of the correlative rights of mineral interest owners and producers to a fair and equitable share of production profits. Similarly, owners of the surface estate have certain legal rights and privileges, including the right to be accommodated by the mineral lessee, which includes the right to require the lessee to use reasonably available alternatives, if the lessee's operation would impair or preclude uses by the surface estate owner. Municipal governments have a statutory and judicially recognized authority and responsibility to regulate land use within their jurisdiction. These regulations are intended to be an exercise of that land use authority of the City in a manner that upholds the balance between municipal and state interests. Nothing in this Article shall be construed as giving the City authority to enforce state or federal laws, rules or regulations. (Prior code 5.24.020; Ord. 40 §2, 2006)

Sec. 6-6-30. Definitions.

All terms used in this Article that are defined in the Act or in Commission regulations and are not otherwise defined in this Section, are defined as provided in the Act or in such regulations as of the effective date of the ordinance codified herein. All other words used in this Article are given their usual, customary and accepted meaning, and all words of a technical nature, or peculiar to the oil and gas industry, shall be given that meaning which is generally accepted in said oil and gas industry. When not clearly otherwise indicated by the context, the following words and phrases used in this Article have the following meanings:

Act means the Oil and Gas Conservation Act of the State of Colorado.

Applicant means that person, corporation or other legal entity possessing the legal right to develop the mineral resource or any other use proposed in connection thereof for the site in question; generally, the applicant will be the owner or lessee of the mineral estate.

Building units means a building or structure intended for human occupancy. Every guest room in a hotel/motel or bed-and-breakfast facility is equal to one (1) building unit, and every five thousand (5,000) square feet of building floor area in commercial facilities is equal to one (1) building unit.

Commission or *OGCC* means the Oil and Gas Conservation Commission of the State of Colorado.

Day means a period of twenty-four (24) consecutive hours.

Injection well means any hole drilled into the earth into which fluids are injected for the purposes of secondary recovery, storage or disposal, pursuant to authorizations granted by the Commission.

Oil and gas well means any hole drilled into the earth for the purpose of exploring for or extracting oil, gas or other hydrocarbon substances, including but not limited to directionally drilled wells.

Operating plan means a general description of a facility identifying purpose, use, typical staffing pattern, seasonal or periodic considerations, routine hours of operating, source of services, infrastructure and any other information related to regular functioning of such facility.

Operator means the person designated by the working interest owners as operator and named in Commission Form 2 or a subsequently filed Commission Form 10.

Owner means any person with a working interest ownership in the oil and gas or leasehold interest therein.

Production site means the area surrounding proposed or existing production pits or other accessory equipment required for oil and gas production, at which may also be located tanks and tank batteries, exclusive of transmission and gathering pipelines.

Re-entering means accessing an existing well bore for either the original or amended purpose, provided that such well has not been abandoned.

Sidetracking means entering the same well head from the surface, but not necessarily following the same well bore, throughout its subsurface extent when deviation from such well bore is necessary to reach the objective depth because of an engineering problem.

Twinning means the drilling of a well within a radius of fifty (50) feet from an existing well bore when the well cannot be drilled to the objective depth or produced because of an engineering problem, such as a collapsed casing or formation damage.

Use tax means the tax paid by a consumer for using, storing, distributing or otherwise consuming tangible personal property or taxable services inside the City.

Well means an oil and gas well or an injection well, including but not limited to directional drilling wells (for example, any well hole drilled into the ground).

Well site means that area surrounding a proposed or existing well or wells and accessory structures and equipment necessary for drilling, completion, recompletion, work over, development and production activities. (Ord. 40 §2, 2006)

Sec. 6-6-40. Special use permit requirements and procedures.

(a) Proposed new wells, redrilling certain wells and other specific enhancements.

(1) Within all zone districts, it shall be unlawful for any person to drill a well, reactivate a plugged or abandoned well or perform initial installation of accessory equipment or pumping systems unless a use by special use permit has first been granted by the City in accordance with the procedures prescribed herein.

(2) When such permit has been approved for a well, the twinning, sidetracking or re-entering of such well for the purposes of deepening, recompleting or reworking shall not require a subsequent approval under this Article. If any twinning, sidetracking, deepening, recompleting or reworking of a well, or relocation of accessory equipment or gathering and transmission lines occurs, then the operator shall submit a revised site plan to the City depicting any changes from the approved special use permit. After review of the revised site plan, the City shall issue a Notice to Proceed as provided in Section 6-6-70. The approval of such permit does not relieve the operator from otherwise complying with all applicable regulatory requirements of the City, state and federal governments.

(3) The special use permit is limited to the current proposed facilities as shown on the approved plan. To the extent the applicant desires, after initial completion of a well, to place additional equipment on a tank battery or wellhead location which was not shown in the approved plan, the applicant must, except in a situation where additional equipment is necessary for a period of fourteen (14) days or less, notify the City of installation of such additional equipment.

(4) Within thirty (30) days after completion of operations, the applicant shall provide to the City as-built drawings showing all facilities, pipelines, flow lines and gathering lines which the applicant has placed on the land subject to this permit.

(b) Inspections. In recognition of the potential impacts associated with oil and gas drilling and well operation in an urban setting, all wells and accessory equipment and structures may be inspected by the City at reasonable times to determine compliance with the applicable provisions of this Article, the City's building and fire codes and all other applicable City health or safety standards. For the purpose of implementing and enforcing the provisions of this Article, City personnel have the right to enter upon private property after reasonable notification to the operator, which provides the operator an opportunity to be present.

(c) Inspection fee.

(1) The inspection fee set forth in Appendix A to this Code shall be payable per well for each year or part of a year during which such well has not been plugged and abandoned. No inspection fee shall be due for any year following the year in which a well is plugged or abandoned, unless a special use permit is granted with respect to such well. No inspection fee shall be due for any calendar year in which the fee for an application for special use permit, as provided in Subsection (e) below, is paid. Any inspection fee which becomes due and payable after January 1 of each year shall be paid by the operator within thirty (30) days after receipt of an invoice from the City. An operator contesting the amount of the invoice may, upon payment of the invoice under protest, appeal directly to the City Council.

(2) If the operator fails to pay the inspection fee imposed by this Section when due, a penalty of ten percent (10%) shall be added to the amount of the fee due, together with interest on the amount due at a rate of one percent (1%) for each month or portion thereof for which the fee is unpaid. The City Manager may, in his or her sole discretion, waive the penalty for good cause shown.

(3) The City may recover in an action at law the amount of the inspection or other fees and costs imposed by the provisions of this Section and penalty and interest due and unpaid under this Section, as well as all costs, including attorney fees, incurred by the City if it prevails in enforcement of this Article.

(d) Use tax. All operators must conform to applicable provisions of this Article and this Code concerning taxation.

(e) Application fee. A nonrefundable fee as established in Appendix A shall be payable for each separate well shown on the site plan which shall accompany the application. The oil and gas special use permit application fee is in addition to any other fees charged by the City.

(f) Additional fees. In addition to the above, the applicant for an oil and gas special use permit shall be responsible for all fees and charges incurred by the City in connection with such application, including but not limited to legal fees, planning fees, engineering fees and filing or recording fees. (Ord. 40 §2, 2006)

Sec. 6-6-50. Site plan application requirements.

An application for a special use permit pursuant to this Article shall be filed with the City Clerk and shall include the following information:

(1) Site plan requirements. The site plans for a well site submitted with an application for an oil and gas special use permit shall be submitted on one (1) or more plats or maps, at a scale not less than one inch equals fifty feet (1" = 50'), showing the following information:

a. The proposed location of production site facilities or well site facilities associated with the well in the event production is established, if applicable. Future development of the resource shall be considered in the location of the tank battery. Existing tank batteries and transmission and gathering pipelines within six hundred sixty (660) feet of the well site shall be shown.

b. The location of layout, including without limitation the position of the drilling equipment and related facilities and structures, if applicable.

c. True north arrow.

d. Existing improvements, if any, within a radius of six hundred sixty (660) feet of the proposed well.

e. Existing utility easements and other rights-of-way of record, if any, within a radius of six hundred sixty (660) feet of the proposed well.

f. Existing irrigation or drainage ditches within four hundred (400) feet of the well site or production site, if any.

g. Drainage and erosion control plans for the well site or production site and the area immediately adjacent to such site, if applicable.

h. Location of access roads.

i. Well site or production site and existing lease boundaries.

j. The names of abutting subdivisions or the names of owners of abutting, unplatted property within four hundred (400) feet of the well site or production site.

k. A legal description of the property and evidence of title or contractual right to the mineral estate in the form of a copy of a deed or contract of sale, including the legal description of the property.

l. If indicated on OGCC Form 2A, a copy of the wetland permit obtained from the Army Corps of Engineers.

(2) Vicinity map requirements. The vicinity maps for a well site submitted with an application for an oil and gas special use permit shall be submitted on one (1) or more plats or maps showing the following information:

a. Location of all existing water bodies and watercourses, including direction of water flow. This information shall be submitted on USGS 7.5-minute series or assessor base maps which indicate topographic detail and show all existing water bodies and watercourses with a physically defined channel within a four-hundred-foot radius of the proposed well.

b. Location of existing oil and gas wells or injection wells as reflected in OGCC records. This information shall be submitted on a map and shall include any and all wells within a one-thousand-foot radius of the proposed location for the well.

c. Location of all building units within a one-thousand-foot radius of the wellhead or production facility.

d. Location of drill site and access from one (1) or more roads. The information to be submitted shall be on OGCC Form 2 and shall include the parcel tax identification number.

e. Surface and mineral lease ownership within two hundred (200) feet of the wellhead.

(3) Narrative requirements. In addition to the site plans and the vicinity maps required in Paragraphs (1) and (2) above, the application shall also include the following:

a. The operator's and surface owner's names and addresses, copies of any required OGCC Form 2 and, if applicable, Form 2A, and designation of agent, if applicable.

b. An operating plan, including the method of and schedule for the drilling, completion, production, abandonment and reclamation of the operation.

c. A list of all permits or approvals obtained or to be obtained from local, state or federal agencies other than the OGCC.

d. An emergency response plan that is mutually acceptable to the operator and the appropriate emergency response network that includes, but is not limited to, the location of the well, provisions for access by emergency response entities and a list of local telephone numbers of public and private entities and individuals to be notified in the event of an emergency.

e. A plan for weed control at the well site.

f. A fire protection plan that is mutually acceptable to the operator and the appropriate fire district that includes planned actions for possible emergency events and other pertinent information. Prior to the application to the City, a proposed fire protection and emergency response plan shall be submitted to and reviewed by the fire district.

g. To the extent applicable, sources of water to be used in drilling operations of a proposed well, including the legal basis for the right to use such water.

h. Proposed sanitary facilities that must comply with Section 602(f) of the OGCC rules.

i. A noise, odor and dust abatement plan, if applicable, to control impacts on adjacent properties.

j. An access and transportation route plan. (Ord. 40 §2, 2006)

Sec. 6-6-60. Application review criteria.

The City Council shall approve an application for an oil and gas special use permit for a well site if the application submitted by the applicant conforms to the following requirements:

(1) The site plans for a well site application comply with the requirements of Paragraph 6-6-50(1) of this Article.

(2) The vicinity maps for a well site application comply with the requirements of Paragraph 6-6-50(2) of this Article.

(3) The narrative for a well site application complies with the requirements of Paragraph 6-6-50(3) of this Article.

(4) The well location and setbacks comply with Section 6-6-90 of this Article, unless such setback requirements have been waived by the OGCC.

(5) When applicable, compliance with the provisions for mitigation of environmental impacts as required in Section 6-6-110 of this Article.

(6) When applicable, compliance with the provisions for geologic hazards, floodplains or floodway required in Section 6-6-130 of this Article. (Ord. 40 §2, 2006)

Sec. 6-6-70. Notice to proceed.

Prior to commencement of construction, drilling, redrilling or enhanced recovery operations for which a use by special use permit has been previously granted, a Notice to Proceed shall be obtained from the

City. A copy of any necessary state or federal permit issued for the operation shall be provided to the City. (Ord. 40 §2, 2006)

Sec. 6-6-80. Building permits required.

Building permits shall be obtained as required by the City's adopted building and fire codes and all other applicable codes and regulations then in effect. (Ord. 40 §2, 2006)

Sec. 6-6-90. Well and production facility location and setbacks.

In all areas of the City, unless such requirements are otherwise waived by the OGCC, the following apply:

(1) A well site or production facility shall be set back not less than three hundred fifty (350) feet from any occupied building or occupied building permitted for construction and shall be set back not less than one hundred fifty (150) feet from any public road, major aboveground utility or railroad and one hundred fifty (150) feet from any surface property line, unless an exception has been granted by the OGCC.

(2) Production sites shall be set back not less than three hundred fifty (350) feet from any occupied building or occupied building permitted for construction and not less than five hundred (500) feet from an educational facility, assembly building, hospital, nursing home, board and care facility or jail and shall be set back not less than one hundred fifty (150) feet from any public right-of-way.

(3) If requested by the City, and if feasible, production tanks shall be located five hundred (500) feet from an educational facility, assembly building, hospital, nursing home, board and care facility, jail or designated outside activity area. (Ord. 40 §2, 2006)

Sec. 6-6-100. Compliance with environmental regulations.

The approval of an oil and gas special use permit shall not relieve the operator from complying with all current applicable City, county, state and federal regulations and standards concerning air quality, water quality and waste disposal. (Ord. 40 §2, 2006)

Sec. 6-6-110. Environmental impacts and mitigation.

(a) Noise impacts and mitigation.

(1) State law and regulations concerning noise abatements (Title 25, Article 12, C.R.S.) shall apply to all operations, together with applicable City ordinances, rules and regulations.

(2) To the extent practicable, exhaust from all engines, motors, coolers and other mechanized equipment associated with such operations shall be vented in a direction away from occupied buildings.

(b) Visual impacts and aesthetics.

(1) Facilities shall be painted as follows:

- a. Uniform, noncontrasting, nonreflective color tones.
- b. Color matched to land, not sky, slightly darker than adjacent landscape.
- c. Exposed concrete colored to match soil color.

(2) To the maximum extent practicable, oil and gas facilities shall be located away from prominent natural features such as distinctive rock and land forms, river crossings and other landmarks.

(3) To the maximum extent practicable, oil and gas facilities shall be located to avoid crossing hills and ridges or silhouetting.

(4) To the maximum extent practicable, the applicant shall use structures of minimal size to satisfy present and future functional requirements.

(5) At all times, the applicant shall minimize removal of existing vegetation.

(6) To the maximum extent practicable, the applicant shall locate facilities at the base of slopes to provide a background of topography and/or natural cover.

(7) The applicant shall replace earth adjacent to water crossings at slopes at an angle which ensures stability for the soil type of the site, to minimize erosion.

(8) Storage tanks and other facilities shall be kept clean, well-painted and otherwise properly maintained, so that signs are legible and all flammable material is removed from the site.

(9) Where a well or tank battery does not comply with the required setback or other portions of this Article, or in areas of increased visual sensitivity determined by the City, the applicant shall submit a visual mitigation plan which shall include but not be limited to one (1) or more of the following standards:

- a. Exterior lighting shall be directed away from residential areas or shielded from said areas to eliminate glare.

- b. Construction of buildings or other enclosures may be required where facilities create noise or visual impacts which cannot be mitigated because of proximity, density and/or intensity of adjacent residential land use.

(10) One (1) or more of the following landscaping practices may be required, where practical, on a site-specific basis:

- a. Establishment and proper maintenance of adequate ground covers, shrubs and trees.
- b. Shaping cuts and fills to appear as natural forms.
- c. Cutting rock areas to create irregular forms.
- d. Designing the facility to utilize natural screens.

e. Construction of fences or walls, such as woven wood or rock, for use with or instead of landscaping.

(c) Safety impacts and mitigation.

(1) Adequate precautions shall be taken and necessary wellhead safety devices used at all times during the drilling, completion, recompletion, reworking, production, repair and maintenance of the well.

(2) Adequate firefighting apparatus and supplies, approved by the Fire Department or appropriate fire district, shall be maintained on the drilling site at all times during drilling, completion and repair operations. All machinery, equipment and installations on all drilling sites within the City limits shall conform with such requirements as may be issued by the Fire Department or appropriate fire district.

(3) Any well located less than three hundred fifty (350) feet from an occupied building or in high density areas shall be equipped with blowout preventers during drilling.

(d) Wildlife impacts and mitigation.

(1) When oil and gas operations are located within a wildlife habitat area, the applicant shall consult with the Colorado Division of Wildlife and City staff to obtain recommendations for appropriate site-specific and cumulative impact mitigation procedures. The operator shall implement such mitigation procedures as are recommended by the Colorado Division of Wildlife after consultation with the City.

(2) Endangered species. The applicant shall not engage in activities which, in the opinion of the Colorado Division of Wildlife, threaten endangered species.

(3) The following mitigation measures shall be included in the site-specific mitigation procedures as required under Paragraph (1) above, as appropriate:

a. Avoid conducting drilling and construction activities during critical use periods (for example, near heron nests during nesting or wildlife winter ranges during winter).

b. Avoid conducting on-site operations and maintenance activities during critical use hours.

c. Confine vehicular access to established roads except under emergency circumstances.

d. Forbid use of firearms in project areas.

e. Install gates which can be locked at the first property boundary crossed when accessing the facility from the closest public road.

f. Conduct work near watercourses in a manner that minimizes siltation and erosion and at a period of little or no flow.

g. Place pipes below channel scour depths in water courses to avoid partial diversion of channel discharges.

h. Stabilize excess material at watercourse crossings in place or remove off site.

i. Complete fueling and lubrication of construction equipment or vehicles away from the well site.

(4) Multiple sites. In lieu of a site-specific mitigation review for each oil and gas operation facility, the applicant may submit to the City Planning Department a multi-site plan addressing cumulative impacts to wildlife from the total facilities.

(e) Weed control. In addition to all other applicable local, state and federal regulations, the applicant shall comply with the provisions of Chapter 7, Article IV of this Code regarding management of weeds and brush. (Ord. 40 §2, 2006)

Sec. 6-6-120. Access roads.

(a) Tank battery access roads. Access roads to tank batteries shall be subject to review and approval by the City Engineer in accordance with the following minimum standards:

(1) A graded gravel roadway having a prepared subgrade and an aggregate base course surface a minimum of six (6) inches thick compacted to a minimum density of ninety-five percent (95%) of the maximum density determined in accordance with generally accepted engineering sampling and testing procedures approved by the Public Works Department. The aggregate material, at a minimum, shall meet the requirements for Class 6, Aggregate Base Course as specified for aggregate base course materials in the Colorado Department of Transportation's *Standard Specifications for Road and Bridge Construction*, latest edition. This standard may be waived by the City Engineer and the Fire Chief for good cause and if the spirit and intent of this Section are otherwise met.

(2) Graded so as to provide drainage from the roadway surface and constructed to allow for cross drainage of waterways (i.e., roadside swales, gulches, rivers, creeks and the like) by means of an adequate culvert pipe. Adequacy of the pipe is subject to approval of the City Engineer.

(3) Maintained so as to provide a passable roadway reasonably free of ruts and meeting the requirements of Paragraph (1) above at all times.

(b) Wellhead access roads. Access roads to wellheads shall be subject to review by the City Engineer in accordance with the following minimum standards:

(1) A graded gravel roadway having a prepared subgrade and an aggregate base course surface a minimum of six (6) inches thick compacted to a minimum density of ninety-five percent (95%) of the maximum density determined in accordance with generally accepted engineering sampling and testing procedures approved by the Public Works Department.

(2) Graded so as to provide drainage from the roadway surface and constructed to allow for cross drainage of waterways (i.e., roadside swales, gulches, rivers, creeks and the like) by means of an adequate culvert pipe. Adequacy of the pipe is subject to approval of the City Engineer.

(3) Maintained so as to provide a passable roadway reasonably free of ruts and meeting the requirements of Paragraph (1) above at all times.

(c) Public access roads. An extra-legal vehicle or load permit shall be required for all extra-legal vehicles or loads as defined in Sections 42-4-501 through 42-4-512, C.R.S., which use City streets. Said permit, if required, shall be obtained from the City prior to such use. The applicant shall comply with all City and state regulations regarding weight limitations on streets within the City, and the applicant shall minimize extra-legal truck traffic on streets within the City.

(d) All tank battery and wellhead access roads which intersect a paved City street or alley shall be paved to standards determined by the Public Works Director from the existing paved roadway to the edge of the public right-of-way. Such standards shall protect public streets, sidewalks and curbs and gutters. No mud or gravel, except minor or nominal amounts, shall be carried onto City streets or sidewalks. If mud or gravel is carried onto City streets or sidewalks, the owner or operator shall ensure that the streets are properly cleaned.

(e) No public facilities such as curbs, gutters, pavement, water or sewer lines, etc., shall be damaged by vehicles entering or leaving the site. In the event of damage, the owner and operator, jointly and severally, shall indemnify the City for any reasonable repair costs. (Ord. 40 §2, 2006)

Sec. 6-6-130. Geologic hazard, floodplain, floodway restrictions.

All equipment at oil or gas well drilling and production sites in geological hazard, floodplain and floodway areas shall be anchored to the extent necessary to resist flotation, collapse, lateral movement or subsidence and to the extent necessary to comply with the Federal Emergency Management Act. (Ord. 40 §2, 2006)

Sec. 6-6-140. Disposal of drilling mud and exploration and production waste.

All exploration and production waste, including drilling mud or other drilling fluids, shall be stored, handled, transported, treated, recycled or disposed of in accordance with OGCC regulations, to prevent any significant adverse environmental impact on air, water, soil or biological resources. (Ord. 40 §2, 2006)

Sec. 6-6-150. Injection wells and aquifers.

All use of aquifers for injection of water or other materials must comply with applicable OGCC application requirements and all applicable state and federal environmental laws. (Ord. 40 §2, 2006)

Sec. 6-6-160. Seismic operations.

All persons shall comply with all OGCC rules with respect to seismic operations. Seismic operations shall occur within the City only between the hours of 7:00 a.m. and 7:00 p.m. In addition, the owner or operator shall provide a notice of intent to conduct seismic exploration at least seven (7) days prior to commencement of the data-recording operations to the Planning Director and Fire Chief. Said notice shall include the following:

- (1) Method of exploration.
- (2) Map showing the proposed seismic lines, at a scale of at least one-half (½) inch to the mile.
- (3) Name and permanent address of the seismic contractor.

(4) Name, address and telephone number of the seismic contractor's local representative. (Ord. 40 §2, 2006)

Sec. 6-6-170. Signage.

The well and tank battery owner or operator shall comply with all OGCC rules with respect to signage. In addition, the owner or operator shall maintain all signs in readable condition. Signs shall comply with Chapter 16, Article VIII of this Code and any applicable policies adopted by the Fire Department, except when any variations from these codes are required by OGCC regulations. (Ord. 40 §2, 2006)

Sec. 6-6-180. Abandonment and plugging of wells; notification requirement.

(a) The operator shall comply with all OGCC rules with respect to abandonment and plugging of wells.

(b) Operators of wells which are to be abandoned upon the completion of drilling and not put into production shall notify the Fire Department not less than two (2) hours prior to commencing plugging operations.

(c) Operators of formerly producing wells shall notify the Fire Department not less than two (2) working days prior to removing production equipment or commencing plugging operations.

(d) The operator shall provide copies of all OGCC plugging and abandonment reports to the City at the same time they are filed with the OGCC. (Ord. 40 §2, 2006)

Sec. 6-6-190. Reclamation.

The operator shall comply with all OGCC rules with respect to site reclamation. The OGCC drill site reclamation notice shall be filed with the City at the same time it is sent to the surface owner. (Ord. 40 §2, 2006)

Sec. 6-6-200. Emergency response costs.

The operator shall reimburse the City or the appropriate fire district for any emergency response costs incurred by the City or the Fire District in connection with activity at the well site or production site. (Ord. 40 §2, 2006)

Sec. 6-6-210. Unauthorized construction prohibited.

Except as otherwise provided in this Chapter, it is unlawful to construct, install or cause to be constructed or installed any oil and gas facility within the City unless approval has been granted by the City. The unlawful drilling or redrilling of any well or the production therefrom is a violation of this Article. (Ord. 40 §2, 2006)

Sec. 6-6-220. Violation and enforcement.

(a) Except as otherwise provided in this Article, it is unlawful to construct, install or use, or cause to be constructed, installed or used, any oil, gas or injection well, production site or well site in violation of any provision of this Article or of the conditions and requirements of the oil and gas special use permit

unless approval has been granted by the City Council. The unlawful drilling or redrilling of any well or the production therefrom is a violation of this Article.

(b) Penalty. Any person, firm, corporation or legal entity which constructs, installs, uses or causes to be constructed, installed or used any oil, gas or injection well, well site or production site, or commits any act or omission in violation of any provision of this Article or of the conditions and requirements of the oil and gas special use permit, may be punished by a fine of not more than one thousand dollars (\$1,000.00), by imprisonment for not more than one (1) year, or by both such fine and imprisonment. Each day of such unlawful operation constitutes a separate violation.

(c) Civil action. In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered or used, or any land is or is proposed to be used in violation of any provision of this Article or the conditions and requirements of the oil and gas special use permit, the City Attorney, in addition to the other remedies provided by law, ordinance or resolution, may institute an injunction, mandamus, abatement or other appropriate action or proceeding to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alteration or use.

(d) False or inaccurate information. The City Council may revoke approval of an oil or gas special use permit if it is determined after a public meeting, held on at least ten (10) days' notice to the applicant, that the applicant provided information or documentation upon which approval was based, which the applicant, its agents, servants and employees, knew, or reasonably should have known, was materially false, misleading, deceptive or inaccurate.

(e) Prospective application. Unless specifically provided otherwise, this Article shall apply only to wells that are drilled in the City on and after the date this Article is adopted. The reentering of a well in existence prior to the date of adoption of this Article, for purposes of deepening, recompleting or reworking, shall not require approval of an oil and gas special use permit as required by this Article.

(f) Recovery of fees. The City shall be entitled to recover from any party that violates or fails to comply with any provision of this Article, in addition to any other penalties or remedies which may be available, all damages, costs, expenses, expert witness fees and attorney fees incurred by the City for enforcement of the provisions of this Article. (Ord. 40 §2, 2006)

Sec. 6-6-230. Conflicting provisions.

In the event of a conflict between the provisions of this Article and any other provision of this Code, the provisions of this Article shall control. (Ord. 40 §2, 2006)

Sec. 6-6-240. Severability.

If any provision of this Chapter is found by a court of competent jurisdiction to be invalid, the remaining provisions of this Chapter will remain valid, it being the intent of the City Council that the provisions of this Chapter are severable. (Ord. 40 §2, 2006)

ARTICLE VII

Refuse Haulers

Sec. 6-7-10. Definitions.

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

Ashes means the residue from the burning of wood, coal, coke, paper or other combustible materials.

Garbage means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food for human or animal consumption.

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

Rubbish means nonputrescible solid wastes, excluding ashes, consisting of both combustible and noncombustible wastes such as bedding, crockery and similar materials and any type of debris, trash, waste or rejected matter.

Toxic refuse means refuse which is dangerous to health, or defined as *hazardous* or *toxic* by any state or federal regulation, including used motor oil, gasoline, medical wastes, chemicals or pesticides, or which is unsanitary or putrid. (Prior code 6.04.010; Ord. 4 §1, 2005)

Sec. 6-7-20. Registration and licensing of refuse haulers.

(a) Only the following may collect, transport or remove refuse, garbage, rubbish or toxic refuse from any location within the City:

- (1) An individual removing refuse from his or her own property, using his or her own equipment.
- (2) The City, utilizing the collection system hereinafter established.
- (3) Licensed refuse haulers.

(b) No other person shall collect, transport or remove refuse, garbage, rubbish or toxic refuse from or over any of the streets or alleys of the City. (Prior code 6.04.030; Ord. 4 §1, 2005)

Sec. 6-7-30. Collection system established.

A system for the collection and disposal of refuse is established for the benefit of all persons residing within the City limits. This system shall serve all commercial, industrial and residential establishments within the City, except for customers of licensed refuse haulers. Refuse shall be collected at least once

per week by the City from all locations within the City limits, and more often when deemed necessary or appropriate by the City Manager. (Prior code 6.04.040)

Sec. 6-7-40. Initiation and termination of service.

(a) Any commercial or industrial customer desiring to initiate or terminate City trash collection service shall apply to the City on forms provided by the City.

(b) Initiation of service shall be effective upon the customer's receipt of a City-provided container. Containers will not be delivered until issuance of a certificate of occupancy. Upon initiation, the customer shall be billed for the portion of the billing cycle in which trash collection services were provided. (Prior code 6.04.045)

Sec. 6-7-50. Assessment for costs.

(a) All water or sewer service customers situated within the City who are subject to the minimum water and sewer billing requirements of Section 13-1-400(f) and Chapter 13, Article III, Division 5 of this Code shall also be assessed the cost of the City refuse collection system in at least the minimum rate set forth in Appendix A to this Code. This charge shall be for the operation and maintenance of the City refuse collection system. This charge will be billed to each customer as part of the combined municipal utility bill which is sent to each utility customer. This charge will be assessed and become due and payable against each municipal utility customer, regardless of whether the City refuse collection system is used except as provided in Subsection (b) below. This minimum charge shall not be assessed in the event the premises are physically disconnected from the City water and/or sewer service lines serving the premises. This minimum charge shall not be assessed against those industrial or commercial establishments or multi-family residential buildings containing eight (8) or more units exempted by the provisions of Section 30-15-401(7), C.R.S. This minimum charge shall be assessed against those residential establishments consisting of single-family residences or multi-family residential buildings containing seven (7) or fewer units as provided in Section 6-7-180 of this Article.

(b) The City Manager shall determine the rate classification for each customer, and may modify a customer's rate classification as often as he or she deems necessary, depending upon the amount of refuse generated by the customer. The City Manager may also deviate from the schedule of refuse collection rates and charges listed in Appendix A to this Code when negotiating with any industrial or commercial establishment or multi-family residence of eight (8) or more units exempted by the provisions of Section 30-15-401(7), C.R.S., in order for the City's refuse collection system to remain competitive. The City Manager may determine the costs and charges for special pickup requests by individual customers, and may waive or modify these costs and charges in the event of a City-wide clean-up program. Any such actions shall be promptly reported to the City Council.

(c) The rates and charges set forth in Appendix A to this Code shall not be construed to constitute a limitation upon the amount of refuse that may be deposited, but merely as intended for the purpose of determining the rates or charges to be assessed.

(d) Any two (2) or more commercial customers may agree with each other to share the use of a dumpster or other commercial trash receptacle. Any such agreement shall be subject to the approval of the City Manager, shall be in writing and shall specify the customer who shall be solely responsible to the City for the payment of the refuse removal charges. (Prior code 6.04.050; Ord. 4 §1, 2005)

Sec. 6-7-60. Rates, charges and requirements.

- (a) Rates and charges for the City refuse system shall be as set forth in Appendix A to this Code.
- (b) Except as provided in Section 6-7-180 of this Article, each residential dwelling unit shall pay a minimum of the charge set forth in Appendix A to this Code for the smallest container offered by the City.
- (c) The City Manager has the authority to adopt written rules and regulations concerning collection and disposal of refuse and/or relating to the hauling of refuse in and over the streets of the City, as he or she may deem necessary. The types and quantities of items that the City shall collect through special services shall be determined from time to time by the City Manager, who shall provide notice to City trash customers of such special services. A copy of all written rules and regulations shall be available for inspection at the City Clerk's office during regular business hours. (Prior code 6.04.060; Ord. 4 §1, 2005)

Sec. 6-7-70. Payment and interest.

- (a) Statements for refuse collection service shall be provided to customers at intervals established by the City Manager and ratified by resolution of the City Council; however, billing intervals shall not be more frequent than monthly nor less frequent than quarterly. Statements shall include any additional charges, tolls, fees and assessments related to refuse collection service, such as late payment penalties, duplicate bill fees and other charges. Whenever possible, statements for refuse collection service charges will be directed to the owner of premises served rather than the occupant. In no event shall the City bill the owners of individual units within a multiple-unit building unless each unit has separate refuse collection service.
- (b) Statements shall be mailed before the specified billing period and shall be payable by the twenty-fifth day of the month. Amounts outstanding after the twenty-sixth day of the month shall accrue interest at the rate of one and one-quarter percent (1¼%) per month. (Prior code 6.04.065; Ord. 4 §1, 2005)

Sec. 6-7-80. Collection; perpetual lien.

- (a) All rates, charges, tolls, fees and assessments for City refuse collection service shall be paid by the owner of the premises served. The City shall not be bound by any agreement between an owner and occupant concerning refuse collection service payments, irrespective of whether the City has been notified of the agreement. Until paid, all refuse collection rates, charges, tolls, fees and assessments shall become and remain a first and perpetual lien on or against the premises served. This lien on the premises may be foreclosed by an action at law or in equity in the name of the City in any court having jurisdiction thereof. The City shall have the right to collect from any customer delinquent on his or her account all legal, court and other costs necessary or incidental to collection of any delinquent amount, including reasonable attorneys' fees, filing fees and recording fees.
- (b) In the event any rates, charges, tolls, fees and assessments are not paid when due, the City Treasurer may certify the amount to the County Treasurer, to be placed on the tax list for the current year and collected in the same manner as other taxes are collected, with ten percent (10%) added to defray the costs of collection. All laws of the State for the assessment and collection of general taxes, including the laws for the sale of property for taxes and redemption of the same, shall apply. (Prior code 6.04.065)

Sec. 6-7-90. Delinquency; revocation of service.

If any rates, charges, tolls, fees or assessments for City refuse collection service remain unpaid for forty-five (45) days, the City may at any time thereafter give written notice of such delinquency to the owner of the premises served. The City shall assess an additional charge as set forth in Appendix A to this Code for processing and preparation of any delinquency notice provided to an owner; provided, however, that the City shall not deliver to an owner more than one (1) delinquency notice per month. If any amount is delinquent more than seventy-five (75) days, the City at any time thereafter may give written notice to the owner that City refuse collection service shall be terminated if the delinquent amounts are not paid in full within ten (10) days of the postmark on the notice. However, the City shall not provide a termination notice to an owner unless, at the time the notice is sent, the total amount due on the owner's account exceeds one hundred dollars (\$100.00), including amounts past due and amounts not yet due and payable. If an owner does not pay all delinquent charges within the ten-day period provided in a termination notice, the City may terminate the refuse collection service to the premises served, as provided in Section 6-7-100 below. (Prior code 6.04.065; Ord. 4 §1, 2005)

Sec. 6-7-100. Termination of service.

In addition to having a first and perpetual lien on the premises served for unpaid refuse collection rates, charges, fees, tolls and assessments, the City shall have the right to terminate refuse collection service to the premises served for nonpayment or for failure to comply with any ordinances or rules and regulations of the City concerning refuse collection service. In the event of such nonpayment or noncompliance with the City's ordinances, rules or regulations, the owner shall be given written notice of a hearing to terminate service. The City may combine the seventy-five-day delinquency notice permitted under Section 6-7-90 above and the hearing notice required under this Article. The hearing notice shall specify the date, time and place of the hearing, as well as the reason for proposed termination of City refuse collection service, and shall be sent by certified mail, return receipt requested. If the owner cannot be located for personal service, it shall be lawful to post the notice on the front door of any building upon the premises served. The hearing shall be held before an Administrative Law Judge ("ALJ") appointed by the City. At such hearing, the owner shall have an opportunity to present testimony and evidence to the ALJ. Following said hearing, the ALJ shall render a decision concerning termination of service and any matter related thereto, and the ALJ's decision shall be final. If the ALJ renders a decision that service may be terminated, the City may immediately thereafter terminate service to the property. (Prior code 6.04.065)

Sec. 6-7-110. Placement of containers.

(a) For the City collection system, containers and all other authorized bags, cans, bundles or other items shall be placed on the street at the edge of the curb or in alleys in the areas marked by City staff. No containers or other authorized bags, cans, bundles or other items shall be placed in a manner which may present a pedestrian or vehicle traffic hazard.

(b) Containers and all other authorized bags, cans, bundles or other items shall be so placed no earlier than 4:00 a.m. and no later than 7:00 a.m. on the day of collection. Containers shall be removed from the street by the customer following collection on the same day the trash is collected.

(c) Containers and all other authorized bags, cans, bundles or other items may be placed in other locations accessible to City sanitation trucks if approved by the City Manager. (Prior code 6.04.070; Ord. 4 §1, 2005)

Sec. 6-7-120. Requirements for City trash containers.

(a) Unless specifically authorized by the City Manager, the City shall collect trash only from those trash containers meeting City specifications compatible with City collection equipment.

(b) The City will initially provide one (1) sixty-four-gallon, ninety-six-gallon or three-hundred-gallon container to each residential or commercial customer at the time the dwelling unit is first served. Thereafter, the customer shall be responsible to maintain it in good condition. However, the City may perform minor repairs to the containers as appropriate in the City's discretion. Replacement of the container, if required due to user neglect or loss of the container for any reason, shall be at the customer's expense. All containers are owned by the City and shall not be removed from the property served.

(c) Upon termination of service, any City-supplied commercial container must be in good condition or the customer will be charged for the cost of repair or replacement.

(d) Each customer shall request and pay for a sufficient number of complying containers adequate to accommodate the amount of trash normally generated by the customer. The City shall collect from its customers a designated volume of refuse not to exceed the volume of the container during the collection period for a specified charge. Extra accumulations or nonrefuse items may be collected upon request. The City has the authority to refuse to collect extra accumulations of refuse and/or nonrefuse items, or it may require additional charges for such amounts.

(e) Containers and all other authorized bags, cans, bundles or other items which are overfilled, overweight or dangerous shall not be serviced by the City. (Prior code 6.04.080; Ord. 4 §1, 2005)

Sec. 6-7-130. Special requirements for City system.

(a) Animal waste and disposable diapers shall be contained in plastic or sealed containers in a manner to prevent exposure of contents to the collection person or others.

(b) Except as permitted through a duly noticed and implemented special service, special pickup or spring cleanup, the following materials will not be accepted for collection: tree limbs or branches; material and debris produced by building construction, remodeling or demolition; toxic refuse; dead animal carcasses; bulk liquids; automobile and truck parts, bodies or chassis; abandoned appliances or furniture; any material which exceeds the capacity of the City's trash removal equipment; or any material which may constitute a danger or hazard, or cause injury to any of the City's employees or the City's trash removal equipment. (Prior code 6.04.090; Ord. 4 §1, 2005)

Sec. 6-7-140. Appeal procedure.

(a) Except where addressed by specific procedures, any customer aggrieved by a determination of the City with regard to rates, charges, tolls, fees or assessments for refuse collection service may appeal such determination to the City Manager. The customer shall furnish the City Manager with any factual information which the customer believes will show that the City's determination was in error. Upon

review of the evidence submitted by the customer, but in no event more than thirty (30) days after the submission, the City Manager shall issue a decision concerning the customer's grievance.

(b) Any customer may appeal an adverse decision of the City Manager to a hearing officer, who shall be appointed by the City Council and who shall have the power to make adjustments as set forth in this Subsection. The City Council may appoint itself to act as a hearing officer and, when so acting, shall act by majority vote. The customer shall file a request for appeal with the City Manager within fifteen (15) days of the decision of the City Manager. The matter shall then be set for a hearing before the hearing officer, and the City shall provide the customer with ten (10) days' written notice of the time, date and place of the hearing. At the hearing, the customer and City shall have the opportunity to present testimony and evidence to the hearing officer. Within fifteen (15) days of the close of the hearing, the hearing officer shall issue a decision. The hearing officer shall have the power to make an adjustment of charges if the customer has demonstrated, by a preponderance of the evidence, one (1) or more of the following:

- (1) That the customer has been charged the incorrect refuse collection rate.
- (2) That the refuse collection rates, fees or interest charges are in excess of the amount prescribed by ordinance.
- (3) That payments were received by the City and not properly credited to the customer's account.
- (4) That a City determination as to excess volume billed to the customer was in error.
- (5) That the utility statement was incorrectly calculated.

(c) The decision of the hearing officer shall be final. The pendency of any grievance to the City Manager or any appeal to a hearing officer shall not affect the obligation of the customer to pay any rates, charges, fees, tolls and assessments as the same become due and payable. (Prior code 6.04.100; Ord. 4 §1, 2005)

Sec. 6-7-150. Licensed refuse haulers.

Only those refuse haulers who have obtained current authority from the Colorado Public Utilities Commission and have registered such authority with the City Manager may collect, transport or remove refuse, garbage, rubbish or toxic refuse within the City. (Prior code 6.04.110)

Sec. 6-7-160. Collection vehicles.

Every licensed refuse hauler shall use a packer-type truck or vehicle, or a truck or vehicle equipped with a tight metal lining or side frames and a flameproof cover attached to such lining or side frames to prevent the loss of any contents thereof. Every licensed trash hauler shall identify such truck or vehicle in the manner required by law, rule or regulation of the Colorado Public Utilities Commission. A description of every truck or vehicle so used, together with the state registration number thereof, as well as the Public Utilities Commission identification, shall be filed with the City by every licensed refuse hauler. (Prior code 6.04.120; Ord. 4 §1, 2005)

Sec. 6-7-170. Contracts with City.

Any industrial or commercial establishment or multi-family residence of eight (8) or more units exempted by the provisions of Section 30-15-401(7), C.R.S., from the payment of the rates and charges for the City refuse system shall file with the City Manager a valid contract for refuse removal services with a licensed refuse hauler at least thirty (30) days before the beginning of the quarter in which the customer intends to cease using the City refuse system. Failure of the customer to so file the contract shall make the customer responsible for payment of the refuse removal fees set forth herein. (Prior code 6.04.130; Ord. 4 §1, 2005)

Sec. 6-7-180. Residential contracts in annexed areas.

(a) All single-family residences or multi-family residential buildings within the City limits containing seven (7) or fewer units existing and located in areas of the City annexed on or before April 19, 1994, shall be subject to the City refuse collection system assessment as set forth in Section 6-7-50 of this Article.

(b) Owners of all single-family residences or multi-family residential buildings containing seven (7) or fewer units located in areas of the City annexed after April 19, 1994, shall be required to demonstrate to the City that they have contracted with either the City or a private entity lawfully providing waste services within the City to provide residential refuse collection service. Compliance with the provisions of this Subsection (b) shall be as follows:

(1) Owners of existing single-family residences or existing multi-family residential buildings containing seven (7) or fewer units shall elect a residential refuse collection service by notifying the City Manager of their intent to utilize the City service or by filing with the City Manager a valid contract for refuse collection service with a private refuse hauler no later than ninety (90) days following the effective date of the initial ordinance codified herein. Failure to elect City or private refuse collection service within ninety (90) days of said effective date shall result in a default election to utilize the City service.

(2) Owners of single-family residences or multi-family residential buildings containing seven (7) or fewer units who receive a building permit from the City after the effective date of the initial ordinance codified herein shall elect a refuse collection service provided by the City or a private entity which lawfully provides waste services within the City no later than the time at which a building permit is obtained, and failure to elect City or private refuse collection service at the time of building permit approval shall result in a default election to utilize the City service.

(3) An owner of any single-family residence or multi-family residential buildings containing seven (7) or fewer units may elect to utilize an alternative refuse collection service, including City service and any private entity which lawfully provides waste services within the City by notifying the City Manager at least ninety (90) days before the beginning of the quarter in which the owner intends to utilize the alternative refuse collection service. Should the owner elect to terminate use of the City refuse collection service, the owner shall provide the City Manager with a valid contract for refuse collection service with a private entity which lawfully provides waste services within the City no later than ninety (90) days prior to the beginning of the quarter in which the owner intends to cease using the City service. Failure of the owner to file the contract shall make the customer responsible for payment of the refuse removal fees set forth in Section 6-7-50 of this Article.

(c) The intent of this Section is to comply with the statutory provisions identified in Section 30-15-401(7.5), C.R.S., which concerns municipal impositions of use requirements or fees for residential waste services in municipal areas annexed after April 19, 1994. (Prior code 6.04.140; Ord. 4 §1, 2005)