

CHAPTER 7

Health, Sanitation and Animals

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ARTICLE I

Administration and Abatement of Nuisances

Sec. 7-1. Definitions.

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

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

Inoperable vehicle means any automobile, truck, tractor, motorcycle or self-propelled vehicle which is in a condition of being junked, wrecked, wholly or partially dismantled, discarded, abandoned or unable to perform the functions or purpose for which it was originally constructed. The existence of any of the following conditions shall raise the presumption that a vehicle is inoperable:

- a. Absence of an effective registration plate upon such vehicle.
- b. Placement of the vehicle or parts thereof upon jacks, blocks, chains or other supports.
- c. Absence of one (1) or more parts of the vehicle necessary for the lawful operation of the vehicle upon the streets and highways.

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

Public nuisance is a thing, act, failure to act, occupation or use of property which:

- a. Shall unlawfully interfere with, obstruct or tend to obstruct, or render dangerous for passage, a lake, pond, stream, creek, ditch, public park, street, alley, pedestrian trail, bikepath or highway, or the common areas of any private property which is open for public use;
- b. Shall have been declared a nuisance by ordinance, federal or state law, or by any court;
or
- c. Shall interfere with or prevent, or attempt to interfere with or prevent, the abatement of any nuisance by an official designated herein.

Rubbish means any type of debris, trash, waste or rejected matter.

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

Weed means an unsightly, useless, troublesome or injurious growing herbaceous plant, and shall include all rank vegetable growth which exhales unpleasant and noxious odors and also high and rank vegetable growth that may conceal filthy deposits. (Ord. 96-O-4 §1, 1996)

Sec. 7-2. Common law nuisances.

Any nuisance which has been declared to be such by state courts or statutes or known as such at common law shall constitute a nuisance in the Town, and any person causing or permitting any such nuisance shall be in violation of this Article. (Ord. 96-O-4 §1, 1996)

Sec. 7-3. Author of nuisances.

Any state of things prohibited by this Article shall be deemed to be a nuisance, and any person who shall hereafter make or cause or allow such nuisance to exist shall be deemed to be the author thereof and may be cited therefor. (Ord. 96-O-4 §1, 1996)

Sec. 7-4. Prohibition of nuisances.

No person being the owner, agent or occupant, or having under his or her control any building, lot or premises or unimproved real estate within the limits of the Town, shall maintain or allow any nuisance to be or remain therein. (Ord. 96-O-4 §1, 1996)

Sec. 7-5. Ascertaining nuisances.

Whenever the pursuit of any trade, business or manufacture or the maintenance of any substance or condition of things shall, upon investigation, be considered by the Town Manager dangerous to the health of any of the inhabitants of the Town, the same shall be considered a nuisance and shall be abated. (Ord. 96-O-4 §1, 1996)

Sec. 7-6. Constitution of separate offense.

In the case of any nuisance in or upon any street, alley or other public or private grounds, the author thereof shall be guilty of a separate offense for every period of forty-eight (48) hours' continuance thereof after notice given to abate the same. (Ord. 96-O-4 §1, 1996)

Sec. 7-7. Filing complaint.

In addition to or in lieu of any procedure for abatement, a direct complaint may be filed by any person or police officer against any person who violates any provision of this Chapter. (Ord. 96-O-4 §1, 1996)

Sec. 7-8. Notice of abatement.

(a) Notice of abatement. The authorized inspector, upon the discovery of any nuisance on public or private property in the Town, shall notify the owner or occupant of such property in writing, requiring the owner or occupant of the property to remove and abate from the property the thing or things therein described as a nuisance within the time specified in the notice.

(1) The time for abatement of a nuisance posing an imminent danger of damage or injury to or loss of life, limb, property or health shall not exceed one (1) day.

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

(3) If the owner or occupant shall fail to comply with the requirements for a period longer than that named in the notice, then the authorized inspector shall proceed to have the nuisance described in the notice removed or abated from the property described in the notice without delay; and the authorized inspector shall have the authority to call for any necessary assistance. In no event shall the notice described by this Section be required prior to issuance of a summons and complaint.

(b) Service of notice. The written notice to abate shall be served by an authorized inspector of the Town by:

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

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

(3) Mailing a copy of the notice by certified mail, return receipt requested, to the last known address of the owner of the property described in the notice as reflected in the Boulder County real estate records if the property is unoccupied and by posting a copy of the notice in a conspicuous place at the unoccupied premises.

(c) Contents of notice. Any notice issued pursuant to the provisions of this Section to the owner, agent or occupant of property in which a nuisance is discovered shall describe the condition that is a nuisance; the time in which the condition is to be removed and abated from the property; and contain a statement that if the nuisance is not abated within seven (7) days, an action may be brought in the Municipal Court to abate the nuisance and that the costs of abatement, plus fifteen percent (15%) of such cost for inspection, and other additional administrative costs may be assessed against the person found by the Court to have caused, allowed to be caused or allowed to continue the public nuisance and may become a lien upon any property on which the abatement was performed. (Ord. 96-O-4 §1, 1996)

Sec. 7-9. Emergency abatement.

Upon the discovery of any nuisance on public or private property within the Town that poses an imminent danger of damage or injury to or loss of life, limb, property or health, the authorized inspector shall give notice, in writing, signed by the authorized inspector or code enforcement officer that it shall be abated by the Town, unless properly abated by the owner or occupant, within twenty-four (24) hours or such less time as the inspector believes is reasonable. (Ord. 96-O-4 §1, 1996)

Sec. 7-10. Abatement of nuisance.

(a) Should any such nuisance, within or upon any public or private premises or as aforesaid, not be abated forthwith after the notice herein provided shall be given, the Town Manager may declare the same to be a nuisance and order the authorized law enforcement official to abate the same, which order shall be executed without delay, and the official shall have the authority to call for the necessary assistance therefor.

(b) Any officer who shall be duly authorized to abate any nuisance specified in this Article shall have the authority to engage the necessary assistance and incur the necessary expense therefor.

(c) Should any such nuisance on or from a construction site not be abated in accordance with the notice given, the Town Manager or his or her designee may declare the same to be a nuisance and issue a stop work order until the nuisance is abated and all costs incurred by the Town paid.

(d) The expense incurred by the Town in abating any nuisance may be recovered by any appropriate action including a lien on the property as provided in Section 7-16. (Ord. 96-O-4 §1, 1996; Ord. O-19 §2, 2001)

Sec. 7-11. Right of entry.

The Town Manager, Building Official or any other authorized person may enter upon or into any lot, house or other building or premises, with the proper respect of the occupant's constitutional rights, to examine the same and to ascertain whether any such nuisance exists, and shall be free from any action of liability on account thereof. (Ord. 96-O-4 §1, 1996)

Sec. 7-12. Notice to cut weeds, brush and remove rubbish; enforcement.

(a) The Town shall give written notice to the property owner of said property of any violation of this Article and shall give notice that said owner has two (2) days to cut or remove the weeds, brush and rubbish, and comply with the requirements of this Article.

(b) In case of the failure of any owner of such lots, tracts or parcels of land to cut or remove the weeds, brush or rubbish as set forth in this Article within the time and in the manner prescribed herein, the Town Manager may order the cutting and removal from such lots, alleys and sidewalk areas of such weeds, litter, brush and rubbish. (Ord. 96-O-4 §1, 1996)

Sec. 7-13. Report of costs.

Upon the completion of the work, the costs therefor and the work performed shall be provided in written form to the Town. (Ord. 96-O-4 §1, 1996)

Sec. 7-14. Assessment of property for costs.

After considering the report of costs to the Town, the Town Manager shall determine and assess the whole cost for the removal thereof, including five percent (5%) for the inspection and other incidental costs in connection therewith, upon the lots and tracts of land from which the weeds, litter, brush or rubbish are removed. (Ord. 96-O-4 §1, 1996)

Sec. 7-15. Notice of assessment.

The Town Clerk or his or her designee, as soon as may be reasonably possible after such assessment is made, shall send, by certified mail with return receipt requested, addressed to the owner of such lots or tracts of land at the reputed post office address, a notice of such assessment, which notice shall contain a description of the lots or parcels of land, the name of the owner and the amount of the assessment. (Ord. 96-O-4 §1, 1996; Ord. O-12 §17, 2000)

Sec. 7-16. Payment of assessment.

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

(b) The amount of such assessment may be made payable to the Town and submitted to the Town Clerk or his or her designee at any time before the tax list is placed in the hands of the County Treasurer, but thereafter must be paid only to the County Treasurer. (Ord. 96-O-4 §1, 1996; Ord. O-12 §18, 2000)

Sec. 7-17. Objection to assessment; hearing.

In the event any owner desires to object to said assessment, he or she shall, within thirty (30) days after the receipt of said notice, file a written objection thereto with the Town Clerk, who shall thereupon designate the next regular meeting of the Board of Trustees as the date when said objector may appear and have a hearing before the Board of Trustees. (Ord. 96-O-4 §1, 1996)

Sec. 7-18. Certified assessment.

In case the owner shall fail to pay such assessment or object thereto within the required time as provided above, then it shall be the duty of the Town Clerk to certify the amount of the assessment to the County Treasurer, who shall collect the assessment as provided for by state law for the collection of delinquent general taxes. (Ord. 96-O-4 §1, 1996)

Sec. 7-19. Cumulative remedies.

No remedy provided herein shall be exclusive, but the same shall be cumulative, and the taking of any action hereunder, including charge or conviction or violation of this Chapter in the Municipal Court of the Town, shall not preclude or prevent the taking of other action hereunder to abate or enjoin any nuisance found to exist. (Ord. 96-O-4 §1, 1996)

Sec. 7-20. Concurrent remedies.

Whenever a nuisance exists, no remedy provided for herein shall be exclusive of any other charge or action, and when applicable the abatement provisions of this Chapter shall serve as and constitute a concurrent remedy over and above any charge or conviction of any municipal offense or any other provision of law. Any application of this Chapter that is in the nature of a civil action shall not prevent the commencement or application of any other charges brought under the municipal ordinances or any other provision of law. (Ord. 96-O-4 §1, 1996)

Sec. 7-21. Violations and penalties.

Any person who shall violate any of the provisions of this Article shall be subject to the provisions of Section 1-72 of this code. (Ord. 96-O-4 §1, 1996)

Secs. 7-22—7-40. Reserved.

ARTICLE II

Nuisances

Sec. 7-41. Accumulation to constitute nuisances.

Whenever there shall be in or upon any lot or piece of ground within the limits of the Town any damaged merchandise, litter, trash, rubbish, garbage, wrecked car, inoperable cars or other wrecked vehicles or an accumulation of junk vehicles or junk of any type upon any private or public property, except in areas specifically zoned by the Zoning Ordinance of the Town for said purposes or otherwise designated by the Town for such purposes, the existence of any such material or items shall constitute a nuisance and shall be in violation of this Article. (Ord. 96-O-4 §1, 1996)

Sec. 7-42. Discharge of nauseous liquids.

No person shall, himself or herself or by another in the Town, discharge out of or from or permit to flow from any house or place any foul or nauseous liquid or substance of any kind whatever into or upon any adjacent ground or lot or into any street, alley or public place. (Ord. 96-O-4 §1, 1996)

Sec. 7-43. Littering.

(a) It shall be unlawful for any person to throw or cause to be thrown or permit anyone in his or her employ to throw onto any public highway, thoroughfare, street, sidewalk or other place any kind of wire or scrap paper; any ashes, cans or glass of any character; old clothes; cloth of any kind; boots; shoes; hats; leather; hair; straw or hay; animal, vegetable or any other substance whatever; or any type of advertising matter; or to distribute or cause to be distributed or permit anyone in his or her employ to distribute any type of advertising matter in such a manner so as to cause the littering of any public highway, thoroughfare, park, open space, pedestrian trail, street, sidewalk or public place. It shall further be unlawful for any person to sweep or cause to be swept, or cause anyone in his or her employ to sweep, from any store, office, warehouse, factory, hotel or any other building, occupied in whole or in part for commercial purposes, any refuse or dirt from such building onto any public

highway, thoroughfare, park, open space, pedestrian trail, street, sidewalk or other public place in the Town.

(b) It shall be unlawful for any person to drive, move or propel a vehicle or to allow a vehicle owned by such person to be driven, moved or propelled in such a manner so as to cause to be spilled, dropped or jostled onto any street, highway, thoroughfare, park, open space, pedestrian trail, sidewalk or other public place in the Town any trash or rubbish; or to load or allow a vehicle to be so loaded so that the contents or any portion of the contents of such vehicle shall be spilled, dropped or jostled from such vehicle. Vehicles, including trucks loaded with or transporting any construction material, dirt, earth, clay, stone, macadam, brick, cement, sand, fuel, coal, wood, refuse or garbage, shall be loaded and the vehicle shall be in such condition so that none of the contents shall be loosed or spilled along the route which the vehicle is traveling.

(c) It shall be unlawful for any person operating a vehicle or being a passenger in any vehicle to throw or cause to be thrown from such vehicle onto any public highway, thoroughfare, park, open space, pedestrian trail, street, sidewalk or other public place in the Town any rubbish or trash, fruit or fruit particles, wrappers, containers, paper, paper products, bottles, glass, cans, hulls, handbills, confetti, shavings, shells, stalks, animals, cloth or any other material of any kind which would render such public highway, thoroughfare, park, open space, pedestrian trail, street, sidewalk or other public place unsightly, unsafe, unclean or unsanitary.

(d) The owner or person in control of any private property shall at all times maintain the premises free of litter. No person shall throw or deposit litter on any private property in the Town, whether owned by such person or not; provided, however, that the owner or person in control of private property may maintain authorized private receptacles for the deposit of rubbish or other waste materials in such a manner that waste materials will be prevented from being carried or deposited onto any public or private property. (Ord. 96-O-4 §1, 1996)

Sec. 7-44. Use of property for dumping unlawful.

It shall be unlawful for any person to use any land, premises or property within the Town for the dumping or disposal of any garbage, trash, litter, rubbish, offal, filth, excrement, discarded building materials or combustible materials of any kind. (Ord. 96-O-4 §1, 1996)

Sec. 7-45. Nuisances enumerated.

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

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

(c) Transporting of garbage; manure. Every cart or vehicle used to transport manure, garbage, swill or offal in any street in the Town shall be fitted with a substantial tight box thereon so that no portion of such filth will be scattered or thrown into such street.

(d) Dead animal; removal. When any animal shall die in the Town, it shall be the duty of the owner or keeper thereof to properly bury or dispose of such animal forthwith. If such body shall not forthwith be removed, the same shall be deemed a nuisance, and such owner or keeper will be the author of the nuisance. When the body of any such dead animal shall be in any street, highway or public grounds in the Town, it shall be the duty of the Town Manager to cause such body to be removed forthwith and properly buried or disposed of.

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

(f) Removal of inoperable vehicle. It is unlawful for any person, partnership, corporation or other agent, either as owner, lessee, tenant or occupant of any lot or land within the Town to park, store or deposit or permit to be parked, stored or deposited thereon an inoperable vehicle unless such vehicle is enclosed in a garage or other building. The provisions of this subsection shall not apply to any person, partnership or corporation or their agent with one (1) vehicle inoperable for a period of less than thirty (30) consecutive days, or to any person or his or her agent who is conducting a business enterprise in compliance with existing zoning regulations.

(g) Vacant residential dwellings. All broken windows in each vacant dwelling shall be replaced by the owner or agent within seventy-two (72) hours after notice is given by the Town Manager or his or her appointed deputies.

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

(i) Unauthorized posting of handbills, posters and placards. Any handbill, poster, placard or painted or printed matter which shall be stuck, posted or pasted upon any public or private house, store or other building or upon any fence, power pole, telephone pole or other structure without the permission of the owner, agent or occupant of the house shall be deemed a nuisance and may be abated as provided in this Chapter.

(j) Barking, yelping, howling, mewing or other public disturbance by animals. The keeping or harboring of any animal which by loud, frequent or habitual barking, yelping, howling, mewing or other public disturbance shall cause a serious annoyance to the neighborhood or to persons passing to and fro upon the streets or sidewalks is hereby declared a nuisance and is prohibited.

(k) Noise. Any three (3) convictions for violation of the noise provisions contained in Chapter 10 of this Code from the same location within a one-year period on different dates is hereby declared to be a nuisance and is prohibited by the terms of this Chapter.

(l) Accumulation of mud in public rights-of-way or public property. Causing, or allowing the migration, tracking or dragging of mud, dirt or soil by the tires of machinery from any parcel of property to any public rights-of-way or public property is hereby declared to be a nuisance, and it is unlawful to cause or allow such nuisance to exist within the Town. For purposes of this subsection,

public rights-of-way shall include areas that are not yet dedicated to the Town, but are open to the public.

(m) Placement of construction or landscaping material on public rights-of-way or public property. Causing or allowing the placement or storage of construction or landscaping materials, including but not limited to debris, trash, trash bins, dumpsters, roll-offs, san-o-lets, spoils, chunks of concrete, lumber, rebar, nails, rocks, dirt, plantings or equipment, on public-rights-of-way or public property is hereby declared to be a nuisance, and it is unlawful to cause or allow such nuisance to exist within the Town, except as specifically permitted by ordinance of the Town. For purposes of this Subsection, public rights-of-way shall include areas that are not yet dedicated to the Town, but are open to the public.

(n) Failure to comply with erosion control plan. Causing or allowing a development to be maintained in a condition that is contrary to the erosion control plan described in Chapter 16, Article XXXIX of this Code, or any amendment to such plan which may be necessary to accomplish the purposes of said Code provisions is hereby declared to be a nuisance, and it is unlawful to cause or allow such nuisance to exist within the Town.

(o) Landscaping. Failure to maintain landscaping in a thriving condition, or failure to replace dead trees, bushes, grasses or other plantings listed in the approved landscaping plan is hereby declared a nuisance and is prohibited.

(p) Exterior improvements. Failure to install or maintain exterior improvements contained in approved plans, including but not limited to curbs, gutters, sidewalks, traffic control devices, fences or screening devices is hereby declared a nuisance and is prohibited. (Ord. 96-O-4 §1, 1996; Ord. 97-O-9 §1, 1997; Ord. O-11, §1, 2000; Ord. O-19 §1, 2001; Ord. O-23 §1, 2001; Ord. O-8 §1, 2006)

Secs. 7-46—7-60. Reserved.

ARTICLE III

Animals

Sec. 7-61. Definitions.

For purposes of this Article, the following terms shall have the following meanings:

Abandon means the leaving of an animal without adequate provisions for the animal's proper care by its owner or any person having custody or possession of such animal.

Bodily injury means physical pain, illness or any impairment of physical condition, any physical injury that requires professional medical treatment, including severe bruising, muscle tears, skin lacerations or fracture of any bone, or injury that requires corrective or cosmetic surgery.

Current, as used in connection with a rabies inoculation, means in compliance with applicable Boulder County regulations.

Injure means to do harm to, hurt, damage, impair or wound.

Leash control means firmly attached to a secured tether or leash which is being held and controlled by a person.

Minimum care includes food of sufficient quality and quantity to allow for normal growth and body weight, access to water, access to an enclosed structure with adequate bedding for animals, consistent with the species, breed and type of animal, and veterinary care necessary to relieve distress from injury, neglect or disease.

Mistreat means every act or omission that causes or unreasonably permits the continuation of abuse or pain or suffering.

Neglect means failure to provide food, water, protection from the elements or other care generally considered to be normal, usual and accepted for an animal's health and well-being consistent with the species, breed and type of animal.

Owner means the owner, possessor or keeper of a dog or the agent or servant of such person.

Park ranger means an individual appointed by the Town and authorized by the Boulder County Sheriff's Department to enforce the provisions of this Article; provided that such individual shall have no authority to issue Municipal Court summonses and citations, detain individuals, make arrests or impound animals.

Peace officer means any persons acting as peace officers as defined in Sections §§18-3-201(2) and 30-15-105, C.R.S., who are empowered by the Town to enforce this Article. Peace officers have sole authority to impound animals, detain and arrest individuals and issue Municipal summonses and citations.

Premises means the area of land surrounding the residence of the owner of the animal which is owned, occupied or under the control of the owner, or any other confined area or locality like a room, shop, vehicle or building. *Premises* does not mean the unenclosed property of a condominium or townhouse or the common passageway, parking facility or unenclosed common yard of an apartment building or shopping center, or any public right-of-way.

Running at large means a dog which is off of or away from the premises of its owner and not under leash control as more specifically set forth in Section 7-65 of this Article; provided that a dog not under leash control but on private property with the permission of the property owner shall not be considered at large.

Vicious animal means any animal which at any place within the Town injures or causes bodily injury to any person or animal, or which repeatedly charges against a fence in an attempt to attack or charges to the end of its lead or leash in an attempt to attack, or otherwise demonstrates vicious propensities; provided, however, that no animal shall be deemed vicious solely by reason of having attacked or bitten:

- a. A person who attacked such animal or who engaged in conduct reasonably calculated to provoke such animal to attack or bite such person or another person;

- b. A person engaged in attacking or molesting another person;
- c. A person engaged in the unlawful entry into or upon the fenced or enclosed portion of a premises upon which such animal is kept, or into or upon any automobile or other vehicle parked or stored in, upon such premises;
- d. An animal engaged in the unauthorized entry into or upon the fenced or enclosed portion of the premises upon which the accused animal is kept; or
- e. A person engaged in the unlawful or unauthorized entry into any automobile or other vehicle in which such animal is kept or confined. (Ord. O-12 §1, 2007)

Sec. 7-62. Rabies inoculation and tag required.

- (a) The owner of each dog or cat in the Town shall have such animal inoculated against rabies as required by Boulder County.
- (b) Every owner of a dog or cat in the Town shall at all times have proof of a current rabies inoculation as required by Boulder County, including but not limited to a tag firmly affixed to the animal's collar. (Ord. O-12 §1, 2007)

Sec. 7-63. Public disturbance by animals.

- (a) It is unlawful for any person owning or keeping an animal to fail to prevent such animal from disturbing the peace of any other person by loud, persistent and habitual barking, howling, yelping, mewing or making any other loud, persistent and habitual noise whether the animal is on or off the owner's premises.
- (b) Provocation of the animal whose noise is complained of is a defense to any complaint brought hereunder. (Ord. O-12 §1, 2007)

Sec. 7-64. Dogs running at large.

- (a) It is unlawful for the owner of any dog to fail to prevent the dog from running at large in the Town. Any dog off the owner's premises or not on private property with the permission of the property owner shall be under leash control or within a vehicle or similarly physically confined so said dog is without access to passersby.
- (b) It is unlawful for a dog owner to fail to prevent such dog from attacking any domestic animal or fowl or any species of wildlife.
- (c) Penalty assessments issued for dogs running at large that are not spayed or neutered shall be double the penalty assessment for a spayed or neutered dog running at large. (Ord. O-12 §1, 2007)

Sec. 7-65. Vicious animal.

- (a) A vicious animal may be deemed a public nuisance. Upon appropriate complaint and court order, a vicious animal may be humanely destroyed or otherwise disposed of, as the court determines,

to abate the nuisance and protect the public safety. It shall be an affirmative defense to prosecution under this Section:

(1) If the animal is a dog, the dog is under the control of a law enforcement agency or is a trained guard dog, which is kept for the protection of property and restrained by adequate means from contact with the public or with any person who enters the premises with the actual or implied permission of the owner or occupant, provided that the premises are posted in a manner sufficient to give reasonable notice to the public and visitors of the presence of the guard dog. Nothing in this Section shall be construed to prevent the immediate killing of a vicious animal if, under the circumstances, such action is required to protect the public safety.

(2) The animal is provoked by a person or attacked (actual or threatened) by a domestic or wild animal if the actions of any person or animal provoke the animal to such an extent that an animal of normal temperament would react viciously.

(b) It is unlawful to harbor a vicious animal within the Town.

(c) It is unlawful for the owner of a vicious animal to fail to prevent such animal from attacking any domestic animal, fowl or wildlife. (Ord. O-12 §1, 2007)

Sec. 7-66. Confinement during estrus.

It is unlawful for the owner of a female dog in the pro-estrus or estrus state to fail to confine such dog either in a building, secure enclosure or a kennel so as to prevent it from attracting by scent or coming into contact with male dogs and creating a nuisance, except for planned breeding. (Ord. O-12 §1, 2007)

Sec. 7-67. Animal feces.

(a) It is unlawful for any property owner to allow excessive animal feces to accumulate on property. The accumulation of animal feces shall be deemed to be excessive if there is sufficient quantity to generate odors off the property.

(b) It is unlawful for any animal owner to fail to remove from any public or private property feces deposited by such animal. (Ord. O-11 §4, 2000; Ord. O-5 §2, 2001; Ord. O-12 §1, 2007)

Sec. 7-68. Limit on household pets.

(a) It is unlawful for any resident in the Town to have more than the following number of each type of household pet unless the residence is licensed as a kennel as provided in this Code, or unless the maximum number is exceeded by household pets of less than three (3) months of age.

(b) It is unlawful to keep, own or harbor any exotic animal within the Town. For purposes of this Section, household pets and exotic animals shall have the same definition as in Chapter 16 of this Code.

(1) Dogs: three (3).

- (2) Cats: three (3).
- (3) Rabbits: six (6).
- (4) Pot-bellied pigs: three (3).
- (5) Ferrets: three (3).
- (6) Reptiles (not exotic animals): three (3). (Ord. O-12 §1, 2007)

Sec. 7-69. Cruelty to animals.

(a) It is unlawful for any person to knowingly or with criminal negligence:

(1) Overdrive, overload, overwork, torture, torment, deprive of necessary sustenance, unnecessarily or cruelly beat, needlessly mutilate, needlessly kill, carry in or upon any vehicle in a cruel manner or otherwise mistreat or neglect any animal or cause or procure it to be done; or

(2) Having the charge and custody of any animal, fail to provide it with proper food, drink or protection from the weather, or abandon it.

(b) Any animal the subject of such cruelty may be impounded if, in the opinion of the peace officer, impoundment is necessary for the protection of the animal. If it is determined by a peace officer that an animal is in need of medical/veterinary care, the officer may require that the owner provide the care within twenty-four (24) hours; if care is not provided in that time, the animal may be impounded so as to receive the necessary care and released only upon payment by the owner of these and all impoundment costs.

(c) The owner of the animal may additionally be charged with cruelty under this Section. (Ord. O-12 §1, 2007)

Sec. 7-70. Treatment of animals.

(a) Extreme temperature exposure. It shall be unlawful for any person who owns or has control of any animal to confine the animal in a vehicle such that it is exposed to extreme temperatures, or fail to provide adequate shelter, as to cause signs of distress to the animal.

(b) Improper care and treatment. It shall be unlawful for a person to fail to provide any livestock or domestic animal with minimum care or to neglect, mistreat or abandon such animal.

(c) Unsafe tethering. It shall be unlawful for the owner or keeper of any animal to tether any animal in such manner that it may become entangled and unable to reach shelter, water or food or in such manner that the animal may be injured, strangled or otherwise caused to suffer.

(d) Unsafe transporting. It shall be unlawful for any person who owns or has control of any animal to allow it to ride in or upon any motor vehicle in such a manner as to permit injury or endanger the life of such animal. This Subsection shall not apply if the animal is confined to a cage or enclosure.

(e) If it is determined by an animal control officer that an animal is in need of medical/veterinary care, the officer may require that the owner provide the care within twenty-four (24) hours; if care is not provided in that time, the animal may be impounded so as to receive the necessary care and released only upon payment by the owner of these and all impoundment costs. (Ord. O-12 §1, 2007)

Sec. 7-71. Reasonable control required.

It is unlawful for the owner of any animal to not maintain reasonable control over such animal. For purposes of this Section, it shall be prima facie evidence that an animal is not under reasonable control when such animal inflicts damage or injury to other animals, the person or property of anyone other than the owner or when such animal is in violation of Section 7-63 of this Chapter. (Ord. O-12 §1, 2007)

Sec. 7-72. Seizure and impoundment.

(a) A peace officer, whenever possible, shall apprehend any dog found running at large, any dog required to be inoculated against rabies which is not inoculated or is not wearing a current rabies tag, any vicious animal not properly confined or any animal being kept or maintained contrary to this Article.

(b) Upon apprehension, the peace officer may return the animal to its owner, impound the animal and/or issue an administrative citation, penalty assessment notice or summons and complaint.

(c) Impounded animals shall be held and released pursuant to applicable Boulder County regulations. (Ord. O-12 §1, 2007)

Sec. 7-73. Enforcement.

(a) Park rangers may issue warnings and administrative citations for violations of this Article; provided that park rangers shall have no authority to issue criminal summonses, detain persons, make arrests or impound animals.

(b) Peace officers may issue warnings, impound animals and issue administrative citations or criminal summonses for violations of this Article and shall have all other enforcement authority authorized by law, including but not limited to detaining and arresting violators. (Ord. O-12 §1, 2007)

Sec. 7-74. Penalties.

(a) Violations of this Article shall be subject to the penalties set forth in Section 1-72 of this Code. In addition to such general penalties, a court may order the humane destruction of a vicious animal pursuant to Section 7-65 of this Chapter.

(b) In lieu of a summons and complaint, an administrative citation or penalty assessment may be issued for first and second violations of Sections 7-62, 7-63, 7-64, 7-66 and 7-67 of this Chapter not involving bodily injury, pursuant to the following schedule:

- (1) Failure to inoculate or wear tag (Section 7-62): any offense — \$35.00.

- (2) Public disturbance (Section 7-63):
 - a. First offense — \$45.00.
 - b. Second offense — \$80.00.
- (3) Dog at large (Section 7-64):
 - a. First offense:
 - 1. Spayed or neutered — \$45.00.
 - 2. Not spayed or neutered — \$90.00
 - b. Second offense:
 - 1. Spayed or neutered — \$80.00.
 - 2. Not spayed or neutered — \$160.00.
- (4) Failure to confine (Section 7-66):
 - a. First offense — \$25.00.
 - b. Second offense — \$50.00.
- (5) Animal feces (Section 7-67):
 - a. First offense — \$25.00.
 - b. Second offense — \$50.00. (Ord. O-12 §1, 2007)

Secs. 7-75—7-90. Reserved.

ARTICLE IV

Regulation of Smoking

Sec. 7-91. Definitions.

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

Auditorium means the part of a public building where an audience gathers to attend a performance, and includes any corridors, hallways or lobbies adjacent thereto.

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

Cigar-tobacco bar means a bar that generated at least five percent (5%) or more of its total annual gross income or fifty thousand dollars (\$50,000.00) in annual sales from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines.

Employee means any person who:

- a. Performs any type of work for the benefit of another in consideration of direct or indirect wages or profit; or
- b. Provides uncompensated work or services to a business or nonprofit entity; and
- c. Includes every person described in this definition, regardless of whether such person is referred to as an "employee," "contractor," "independent contractor" or "volunteer" or by any other designation or title.

Employer means any person, partnership, association, corporation or nonprofit entity that employs one (1) or more persons, and includes, without limitation, the legislative, executive and judicial branches of state government; any county, city and county, city or town or instrumentality thereof, or any other political subdivision of the State, special district, authority, commission or agency and any other separate corporate instrumentality or unit of state or local government.

Entryway means the outside of the front or main doorway leading into a building or facility that is not exempted under Section 7-93 below, and includes the area of public or private property within a fifteen-foot radius outside of the doorway.

Environmental tobacco smoke or *secondhand smoke* means the complex mixture formed from the escaping smoke of a burning tobacco product, also known as *sidestream smoke*, and smoke exhaled by the smoker.

Food service establishment means any building or portion thereof in which the principal business is the sale of food for on-premises consumption, including, without limitation, restaurants, cafeterias, coffee shops, diners, sandwich shops and short-order cafes.

Indoor area means any enclosed area or portion thereof; provided that the opening of windows or doors or the temporary removal of wall panels does not convert an indoor area into an outdoor area.

Place of employment means any indoor area or portion thereof under the control of an employer in which employees of the employer perform services for, or on behalf of, the employer.

Proprietor means the owner, operator or person in charge of any place regulated by this Chapter.

Public building means any building owned or operated by:

- a. The State, including the legislative, executive and judicial branches of state government;
- b. The Town or an instrumentality there-of; or
- c. Any other separate corporate instrumentality or unit of state or local government.

Public meeting means any meeting open to the public pursuant to state law.

Smoke-free work area means an indoor area in a place of employment where smoking is prohibited.

Smoking means the burning of a lighted cigarette, cigar, pipe or any other matter or substance that contains tobacco.

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

Tobacco business means a sole proprietorship, corporation, partnership or other enterprise engaged primarily in the sale, manufacture or promotion of tobacco, tobacco products or smoking devices or accessories, either at wholesale or retail, and in which the sale, manufacture or promotion of other products is not merely incidental.

Work area means an area in a place of employment where one (1) or more employees are routinely assigned and perform services for or on behalf of their employer. (Ord. O-6 §1, 2006)

Sec. 7-92. General smoking restrictions.

(a) Except as provided in Section 7-93 below, and in order to reduce the levels of exposure to environmental tobacco smoke, smoking shall not be permitted and no person shall smoke in any indoor area, including but not limited to:

- (1) Public meeting places.
- (2) Elevators.
- (3) Government-owned or -operated means of mass transportation, including but not limited to buses, vans and trains.
- (4) Taxicabs and limousines.
- (5) Grocery stores.

- (6) Gymnasiums.
- (7) Jury waiting and deliberation rooms.
- (8) Courtrooms.
- (9) Child day care facilities.
- (10) Health care facilities, including hospitals, health care clinics, doctors' offices and other health care-related facilities.
- (11) Any place of employment that is not exempted; provided that in the case of employers who own facilities otherwise exempted, each such employer shall provide a smoke-free work area for each employee requesting not to have to breathe environmental tobacco smoke, so that every employee shall have a right to work in an area free of environmental tobacco smoke.
- (12) Food service establishments.
- (13) Bars.
- (14) Indoor sports arenas.
- (15) Restrooms, lobbies, hallways and other common areas in public and private buildings, condominiums and other multiple-unit residential facilities.
- (16) Restrooms, lobbies, hallways, and other common areas in hotels and motels, and in at least seventy-five percent (75%) of the sleeping quarters within a hotel or motel that are rented to guests.
- (17) Bowling alleys.
- (18) Billiard or pool halls.
- (19) Facilities in which games of chance are conducted.
- (20) The common areas of retirement facilities, publicly owned housing facilities and nursing homes, not including any resident's private residential quarters.
- (21) Public buildings.
- (22) Auditoria.
- (23) Theaters.
- (24) Museums.
- (25) Libraries.

(26) To the extent not otherwise provided in Section 25-14-103.5, C.R.S., public and nonpublic schools.

(27) Other educational and vocational institutions.

(28) The entryways of all buildings and facilities listed in Paragraphs (1) to (27) of this Subsection.

(b) A cigar-tobacco bar shall not expand its size or change its location from the size and location in which it existed at the time this Article was enacted. A cigar-tobacco bar shall display signage in at least one (1) conspicuous place and at least four (4) inches by six (6) inches in size, stating:

SMOKING ALLOWED, CHILDREN UNDER EIGHTEEN (18) YEARS OF AGE MUST BE
ACCOMPANIED BY A PARENT OR GUARDIAN.

(c) Smoking shall not be permitted and no person shall smoke in the outdoor eating area of any food service establishment. (Ord. O-6 §1, 2006)

Sec. 7-93. Exceptions.

The following are exempt from the smoking prohibitions in Section 7-92 above:

(1) Private homes, private residences and private automobiles; except that this exception shall not apply if any such home, residence or vehicle is being used for child care or day care or if a private vehicle is being used for the public transportation of children or as part of health care or day care transportation.

(2) Limousines under private hire.

(3) A hotel or motel room rented to one (1) or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed twenty-five percent (25%).

(4) Any retail tobacco business.

(5) A cigar-tobacco bar.

(6) The outdoor area of any business; however, pursuant to Subsection 7-92(c) above, smoking shall not be permitted in the outdoor eating area of a food service establishment;

(7) A place of employment that is not open to the public and that is under the control of an employer that employs three (3) or fewer employees.

(8) A private, nonresidential building on a farm or ranch, as defined in Section 39-1-102, C.R.S., with annual gross income of less than five hundred thousand dollars (\$500,000.00). (Ord. O-6 §1, 2006)

Sec. 7-94. Additional prohibitions.

(a) The owner or manager of any place not specifically listed in Section 7-92 above, including a place otherwise exempted under Section 7-93 above, may post signs prohibiting smoking or providing smoking and nonsmoking areas. Such posting shall have the effect of including such place, or the designated nonsmoking portion thereof, in the places where smoking is prohibited or restricted pursuant to Section 7-92 above.

(b) If the owner or manager of a place not specifically listed in Section 7-92 above, including a place otherwise exempted under Section 7-93 above, is an employer and receives a request from an employee to create a smoke-free work area as provided by Paragraph 7-92(a)(11), the owner or manager shall post a sign or signs in the smoke-free work area as provided in Subsection (a) above. (Ord. O-6 §1, 2006)

Sec. 7-95. Signs.

(a) To advise persons of the existence of "no smoking" or "smoking permitted" areas, the proprietor or person in charge of any place specifically listed in Section 7-92 above shall post a sign with letters not less than one (1) inch high or symbols not less than three (3) inches high, using the words "No Smoking" or the international "No-smoking" symbol, conspicuously at eye level, either at all public entrances or in a position clearly visible on entry into the public place.

(b) Other signs may be used upon approval by the Town Manager or designee. (Ord. O-6 §1, 2006)

Sec. 7-96. Restrictions on the sale of tobacco.

(a) No person shall furnish to any person who is under eighteen (18) years of age, by gift, sale or any other means, any cigarette or tobacco product.

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

(c) It is an affirmative defense to a charge of violating Subsection (a) above that the person furnishing the cigarette or tobacco product was presented with and reasonably relied upon a document which identified the person receiving the prohibited items as being eighteen (18) years of age.

(d) It is a specific defense to a charge of violating Subsection (b) above of this Section that the vending machine was located in a place of work not open to the public where persons under eighteen (18) years of age are not permitted. (Ord. O-6 §1, 2006)

Sec. 7-97. Unlawful acts; penalty.

(a) It is unlawful for a person who owns, manages, operates or otherwise controls the use of a premises subject to this Article to violate any of its provisions.

(b) It is unlawful for a person to smoke in an area where smoking is prohibited pursuant to this Article.

(c) Any person who is convicted of violating any provision of this Article shall, upon conviction, be punished by a fine of not more than four hundred ninety-nine dollars (\$499.00) for each separate offense and may be enjoined from any further or continued violation thereof. Each day of violation shall constitute a separate offense. (Ord. O-6 §1, 2006)

Secs. 7-98—7-110. Reserved.

ARTICLE V

Fireworks

Sec. 7-111. Definitions.

(a) Except as otherwise provided in Subsection (b) hereof, *fireworks* means any article, device or substance prepared for the primary purpose of producing a visual or auditory sensation by combustion, explosion, deflagration or detonations, including, without limitation the following:

- (1) Display fireworks;
- (2) Articles pyrotechnic;
- (3) Blank cartridges;
- (4) Aerial devices or audible ground devices such as firecrackers;
- (5) Illuminating torches and colored fire in any form with a total pyrotechnic composition exceeding two hundred (200) grams each.

(b) For purposes of this Article, *fireworks* does not include any of the following:

- (1) Cylindrical fountains with a total pyrotechnic composition not exceeding seventy-five (75) grams each for a single tube or, when more than one (1) tube is mounted on a common base, a total pyrotechnic composition of no more than two hundred (200) grams.
- (2) Cone fountains with a total pyrotechnic composition not exceeding fifty (50) grams each for a single cone or, when more than one (1) cone is mounted on a common base, a total pyrotechnic composition of no more than two hundred (200) grams.
- (3) Wheels with a total pyrotechnic composition not exceeding sixty (60) grams for each driver unit or two hundred (200) grams for each complete wheel.
- (4) Ground spinners containing not more than twenty (20) grams of pyrotechnic composition venting out of an orifice usually in the side of the tube, similar in operation to a wheel, but intended to be placed flat on the ground.
- (5) Illuminating torches and colored fire in any form with a total pyrotechnic composition not exceeding two hundred (200) grams each.

(6) Dipped sticks and sparklers with a total pyrotechnic composition not exceeding one hundred (100) grams, of which the composition of any chlorate or perchlorate shall not exceed five (5) grams.

(7) Any of the following that do not contain more than fifty (50) milligrams of explosive composition:

- a. Explosive auto alarms;
- b. Toy propellant devices;
- c. Cigarette loads;
- d. Strike-on-box matches; or
- e. Other trick noise makers.

(8) Snake or glow worm pressed pellets of not more than two (2) grams of pyrotechnic composition and packaged in retail packages of not more than twenty-five (25) units;

(9) Multiple tube devices with:

- a. Each tube individually attached to a wood or plastic base;
- b. The tubes separated from each other on the base by a distance of at least one-half (0.5) of one inch;
- c. The effect limited to a shower of sparks to a height of no more than fifteen (15) feet above the ground;
- d. Only one (1) external fuse that causes all of the tubes to function in sequence; and
- e. A total pyrotechnic composition not exceeding five hundred (500) grams.

(10) Toy caps, party poppers and items similar to toy caps and party poppers that do not contain more than sixteen (16) milligrams of pyrotechnic composition per item.

(11) Snappers that do not contain more than one (1) milligram of explosive composition per item.

(12) Highway flares, railroad fuses, ship distress signals, smoke candles and other emergency signal devices.

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

(14) Fireworks which are used in testing or research by a licensed explosives laboratory. (Ord. O-18 §1, 2001; Ord. O-7 §1, 2007)

Sec. 7-112. Prohibited acts.

It is unlawful for any person within the Town to sell, offer for sale or possess with intent to offer for sale, or to use or explode any fireworks or pyrotechnic special effects material, except as provided in Section 7-113 herein. (Ord. O-18 §1, 2001)

Sec. 7-113. Public display; permit required; Board of Trustees authority.

(a) Permits are required to conduct a fireworks display. The Town may grant a permit for the supervised public display of fireworks within the Town conducted by the Town, fair associations, amusement parks, individual businesses and other organizations and groups and may adopt reasonable rules and regulations in association with the granting of any such permit. Application for a permit shall be made in writing and submitted to the Town Manager at least thirty (30) days in advance of the date of such display.

(b) All displays shall comply with all applicable provisions of this Code and NFPA Standard 1123. The Town Manager may revoke a permit at any time for cause. Any related use of public property or right-of-way will require separate application and permit to/from the affected agencies.

(c) Every display shall be handled by competent operators and shall be of such character and so located, discharged and fired as not to be hazardous to property or endanger any person. (Ord. O-18 §1, 2001)

Sec. 7-114. Permit; application; contents.

Any person desiring to conduct a supervised public display of fireworks shall submit to the Town Manager a written application for a permit to conduct such fireworks display. The application shall be submitted to the Town Manager not less than thirty (30) days in advance of the date of the fireworks display and shall be accompanied by a nonrefundable application fee of fifty dollars (\$50.00). The application shall contain the following information:

- (1) The name and address of the person or organization sponsoring the display, together with the names and addresses of the persons who will actually be in charge of the display;
- (2) The date and time of day at which the display is to be held;
- (3) The address and description of the exact location planned for the display;
- (4) A diagram of the grounds on which the display is to be held, showing the point at which the fireworks are to be discharged; the location of buildings and highways within the vicinity and the location of all nearby trees, telephone and utility lines or any other overhead obstructions;
- (5) The names and addresses of the competent fireworks operators who are to supervise the discharge of the fireworks, and written evidence regarding their competency as fireworks operators. At least two (2) competent fireworks operators are to be provided;

(6) The type and class of fireworks to be discharged and the number of set pieces, shells (specifying single or multiple break), and other items, including experimental or model rockets or missiles;

(7) The manner and place of storage of such fireworks prior to and during the display;

(8) Proof that satisfactory compensation insurance is carried by the applicant for all of the applicant's employees who will be working at the display; and

(9) Proof that the applicant has public liability insurance with the limits and coverage as set forth in the Colorado Governmental Immunity Act, protecting the Town, the fire district, applicant, manufacturer, wholesaler, seller, supplier, property owner and operators of the display from any liability or claims of damages arising out of or as a result of or related to the fireworks display. (Ord. O-18 §1, 2001)

Secs. 7-115—7-120. Reserved.