

TITLE VII

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CHAPTER 1

Nuisances

Sec. 7-1-1. Definitions; acts; omissions.

(a) *Nuisance* is hereby defined as any act or condition which endangers the public health or results in annoyance or discomfort to the public.

(b) It shall be unlawful for any person to commit or do any act constituting a nuisance.

(c) It shall be unlawful for any person to create, continue or suffer the existence of any nuisance on any property under his or her control.

(d) It shall be unlawful and a nuisance for any person to permit any condition to remain or exist on any property under his or her control which shall result in the emission of objectionable smoke, odor, vibration, dust, glare, sound, noxious gases or heat beyond the confines of his or her property which endangers the public health or results in annoyance or discomfort to the public. (1957 Code, §17-60.01)

Sec. 7-1-2. Abatement.

The City Manager and the Health Officer are each hereby authorized to abate or enjoin any nuisance existing in the City, whether or not such nuisance is specifically recognized by ordinance. (1957 Code, §17-60.02)

Sec. 7-1-3. Cost of abatement.

(a) Whenever any nuisance shall be found, the City Manager or the Health Officer shall order the owner or occupant of the property upon which the nuisance shall exist, or such person who shall have caused or permitted such nuisance, at his or her own expense, to remove or correct the same within twenty-four (24) hours. If the owner, occupant or person who shall have caused or permitted such nuisance shall not comply with the order of the City Manager or the Health Officer, the City Manager or Health Officer may cause the nuisance to be removed or corrected and all expense incurred thereby shall be paid by said owner or occupant or by such other person who shall have caused or permitted the same, and may be recovered by the City in an action against the person or occupant.

(b) In all cases where the City Manager or the Health Officer shall incur any expense for abating any nuisance found upon any lot or premises, the expense of such abatement plus twenty-five percent (25%) for incidental costs may be charged against the lot or premises upon or on account of which such expense was incurred, or from which such nuisance was removed or abated. A bill for such expense shall be mailed to the owner or the person who shall have caused or permitted the condition to exist, and if the same shall not be paid on or before September 1 next following, the City Manager shall add another twenty-five percent (25%) as penalty and shall cause the same to be brought before the City Council for assessment upon such lot or premises upon which the nuisance existed or from which the nuisance emanated, and collection as provided in the case of weed removal.

(c) All remedies classified herein are cumulative, and the exercise of one (1) shall not be deemed to prevent the exercise of another or to bar or abate any prosecution or petition for injunction hereunder. (1957 Code, §17-60.03)

Sec. 7-1-4. Duties of Health Officer and Police Department.

(a) The Health Officer, and such employees of the Health Department as he or she shall designate as Environmental Health Specialists or Technicians, and Police Support Technicians are and shall be deemed to be, duly appointed law enforcement officers of the City authorized by this Section to enforce the provisions of this Title, Chapter 4 of Title IX, Section 9-10-91 of Title IX, Section 10-1-17 of Title X and Sections 11-1-204, 11-1-405, 11-1-603, 11-1-607 and 11-4-23 of Title XI of this Code, including the authority to issue summons and complaint for violations thereof.

(b) The Health Officer and the Chief of Police are directed and authorized to adopt on or before March 1, 2003, administrative procedures, subject to the approval of the City Manager, relating to the enforcement of those provisions of this Code specified in Subsection (a), which allocate, assign and identify their respective enforcement responsibilities to the extent that enforcement activities will not be duplicative or overlap and will fully utilize the Police Support Technicians' services in code enforcement. (Ord. No. 4955, 4-12-82; Ord. No. 5541, 5-8-89; Ord. No. 5633, 9-24-90; Ord. No. 6939, 1-27-03)

CHAPTER 3

Solid Wastes

Article I
Litter

Sec. 7-3-1. Definitions.

For the purpose of this Article, the following words shall have the meanings herein set forth:

(1) *Litter* means garbage, refuse and rubbish, as defined herein, and all other waste material which, if thrown or deposited as herein prohibited, tends to create a danger to public health, safety and welfare.

(2) *Garbage* is putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

(3) *Refuse* is all putrescible or nonputrescible waste, including garbage, rubbish, ashes, street cleanings, dead animals, offal, droppings, abandoned appliances, nonoperational vehicles or parts therefrom.

(4) *Rubbish* is nonputrescible waste consisting of both combustible and noncombustible wastes, such as paper, wrappings, cigarettes, cardboard, tin cans, yard clippings, leaves, branches, wood, waste building materials, glass, bedding, crockery, household furnishings and similar materials.

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

(6) *Container or receptacle* means: (a) a watertight container of a solid and durable metal or nonabsorbent, fire-resistant plastic with a tightly fitting, insect- and rodent-proof cover of metal or plastic; or (b) a plastic bag securely tied or sealed of a material impenetrable by liquid or greases and of sufficient thickness and strength to contain the litter enclosed without tearing or ripping under normal handling.

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

(8) *Qualified recycling facility* means a facility that arranges for or causes the recovery of useful materials from one (1) or more specified recyclable materials, including items for reuse, and shall be deemed to include only a facility that meets any federal or state standards that may be established to regulate or designate such recycling facilities. (1957 Code, §13-1(c), (d); Ord. No. 7939 §1, 12-8-08)

Sec. 7-3-2. Litter.

It shall be unlawful and a municipal offense for any person to throw or deposit litter, or to accumulate or permit the accumulation of litter, on occupied or vacant private or public property within the City, except that the owner or occupant of private property may maintain receptacles for collection in such a manner that litter shall be contained in the receptacle. (1957 Code, §13-10, Ord. No. 4569, 2-12-79; Ord. No. 7939 §1, 12-8-08)

Sec. 7-3-3. Litter in public places.

It shall be unlawful for any person to throw, sweep or deposit litter in or upon any street, sidewalk, alley or other public place within the City except in public receptacles or in authorized private receptacles for collection. The accumulation of litter in any street, sidewalk area, alley or other public place shall be presumed to have been caused or permitted by the owner or occupant of the abutting land. Litter thrown from a vehicle shall be presumed to have been thrown by the occupant if there is but one (1). If there is more than one (1) occupant, it shall be presumed to have been thrown by the driver of said vehicle. (1957 Code, §13-12; Ord. No. 7939 §1, 12-8-08)

Sec. 7-3-4. Placement of litter in receptacles so as to prevent scattering.

Persons placing litter in public or private receptacles shall do so in such a manner as to prevent it from being carried or deposited by the elements upon any street, sidewalk or other public place or upon private property. (1957 Code, §13-6(c); Ord. No. 7939 §1, 12-8-08)

Sec. 7-3-5. Unlawful not to remove, charges, lien.

(a) It shall be unlawful for any person owning or occupying real property in the City or his or her agent or representative to fail or refuse to remove all litter, trash, rubbish and debris from such property, including litter in the gutter in the front, on the sides of and to the center of the alley behind such real property. All litter shall be removed from such real property immediately upon the accumulation of the same.

(b) If the owner or occupant of such real property is given notice of not less than ten (10) days, and shall fail or refuse to remove all such debris, trash, litter and rubbish from such property and dispose of the same, the City Manager is authorized to cause the removal of such litter, debris, trash and rubbish from said real property. The cost of such removal plus twenty-five percent (25%) for incidental costs plus interest at the rate of ten percent (10%) per annum shall be charged against the property or the owner of such property. Upon recording a verified statement by the City Manager in the office of the County Clerk and Recorder to show such costs and describing the property, such charge shall be and constitute a perpetual lien on the property. Such lien shall have priority over all other liens except general tax liens and shall remain in effect until such charges and interest have been paid in full.

(c) Notwithstanding the provisions of Subsection (a) above and as an additional obligation to remove litter, trash, rubbish and debris from real property, the occupant and the owner of any real property wherein or whereon litter, trash, rubbish or debris is produced or accumulated shall be jointly and severally responsible to provide collection services and removal of litter, trash, rubbish and debris at least every seven (7) days. Collection services shall not be contracted or arranged except with solid waste collectors licensed by the City. An individual may dispose of his or her own litter, trash, rubbish and debris, provided that it is properly disposed of at a disposal site which is certified and approved by any state.

(d) All movable containers and recyclable materials shall be kept in a storage area, except upon collection day, when they may be placed for collection at the curb or upon the edge of the alley. Following collection, all containers shall be returned to the storage area the same day. Containers and recyclable materials shall not, at any time, be placed on the sidewalk, in the street, or in such a manner as to impair or obstruct pedestrian, bicycle or vehicular traffic. (1957 Code, §13-11; Ord. No. 5527, 1-23-89; Ord. No. 7939 §1, 12-8-08)

Sec. 7-3-6. Disposal at designated facilities.

(a) All rubbish, trash, litter and garbage shall be disposed of only by delivery to duly designated solid waste disposal facilities or qualified recycling facilities. It shall be unlawful and a municipal offense for any person to dump, deliver or dispose of rubbish, trash, litter and garbage anywhere within the City except at a duly designated solid waste disposal facility or qualified recycling facilities.

(b) Containers which are provided in any public place or facility for the disposal of litter are provided only for the purpose of disposal of litter and trash produced or generated upon or within said public place or facility or by activities lawfully conducted therein. It shall be unlawful and a municipal offense for any person to deposit or dispose of litter which is produced or generated off the

site of any public place or facility in any containers provided in any public place or facility for the disposal of litter.

(c) It shall be unlawful and a municipal offense for any person to dispose of litter in any container maintained by another person for disposal of litter unless the person has been granted permission to so use said container or unless the person is a business invitee of the person maintaining the container and is disposing of litter generated on the premises where the container is located. (1957 Code, §13-8(c); Ord. No. 5540, 5-8-89; Ord. No. 5633, 9-24-90; Ord. No. 7939 §1, 12-8-08)

Sec. 7-3-7. Transport of litter, garbage and trash.

(a) It shall be unlawful and a municipal offense for any person to transport litter, garbage, rubbish or trash in a vehicle operated on any street or highway within the City:

(1) In a manner which permits litter, garbage, rubbish or trash to spill, leak, drop or be deposited from the vehicle; or

(2) Without the load being adequately secured and enclosed or covered to prevent litter, garbage, rubbish or trash from dropping, spilling, leaking or otherwise escaping from the vehicle.

(b) It shall be unlawful and a municipal offense for any person collecting or transporting litter, garbage, rubbish or trash to fail to immediately pick up all litter, garbage, rubbish or trash which drops, spills, leaks or is blown from the collecting or transporting container or vehicle. (1957 Code, §13-3(c); Ord. No. 5540, 5-8-89; Ord. No. 5633, 9-24-90; Ord. No. 7939 §1, 12-8-08)

Sec. 7-3-8. Jurisdiction of City Manager.

The commercial and noncommercial collection and transportation of trash and waste materials shall be supervised by the Health Department under the general supervision of the City Manager, and the Health Department shall have the authority to make additional rules and regulations not inconsistent with the terms and provisions of this Chapter, requiring that the collection and transportation of rubbish materials shall be conducted in such manner as not to endanger the public health, and not to become a nuisance to the inhabitants of the City. (1957 Code, §13-16; Ord. No. 7939 §1, 12-8-08)

Sec. 7-3-9. Burning material; transportation.

It shall be unlawful to transport burning material through, over and across the streets and alleys of the City or to dispose of the same at an approved disposal site. (1957 Code, §13-17; Ord. No. 7939 §1, 12-8-08)

Sec. 7-3-10. Hours of hauling.

There shall be no collecting or transporting of litter, garbage, refuse or rubbish through, over and across the streets and alleys designated by the City as "local residential" or "residential collector" after the hour of 7:00 p.m. or before the hour of 6:00 a.m. (1957 Code, §13-18; Ord. 7939 §1, 12-8-08)

Sec. 7-3-11. Sweeping litter into gutters prohibited.

No person shall sweep into or deposit in any gutter, street or other public place within the City the accumulation of litter from any building or lot, or from any public or private sidewalk or driveway. Persons owning or occupying property shall keep the sidewalk in front of their premises free of litter. (Ord. No. 4569, 2-12-79; Ord. No. 7939 §1, 12-8-08)

Sec. 7-3-12. Merchants' duty to keep sidewalks free of litter.

No person owning or occupying a place of business shall sweep into or deposit in any gutter, street or other public place within the City the accumulation of litter from any building or lot or from any public or private sidewalk or driveway. Persons owning or occupying places of business within the City shall keep the sidewalk in front of their business premises free of litter. (Ord. No. 4569, 2-12-79; Ord. No. 7939 §1, 12-8-08)

Sec. 7-3-13. Littering in places of public assemblage; duty to provide receptacles.

(a) The owner or person in control of any property which is held out to the public as a place for assemblage, the transaction of business, recreation or as a public way and including but not limited to shopping centers, fast-food outlets, convenience stores, stores, hotels, restaurants, bars, motels, industrial establishments, office buildings, apartment buildings, housing projects, loading and unloading docks, gas stations, churches and other places of worship, hospitals and clinics shall keep the premises clean of all litter thrown or left on said premises and shall take measures, including daily cleanup of the premises, to prevent litter from drifting or blowing to adjoining premises.

(b) Receptacles of sufficient size and number shall be placed on all premises, public and private, referred to in Subsection (a) of this Section, for the disposition of litter.

(c) The owner or person in control of any property which is held out to the public as a place for assemblage, the transaction of business, recreation or as a public way shall conspicuously identify receptacles for the disposal of litter. (Ord. No. 4569, 2-12-79; Ord. No. 7939 §1, 12-8-08)

Sec. 7-3-14. Construction sites to be maintained.

All construction and demolition contractors shall be responsible for maintaining their work sites in a reasonably clean and litter-free condition, including the removal of all litter blown or deposited upon the site. The contractor shall provide a sufficient number of refuse receptacles or bulk containers for the disposal of all loose debris, building material waste and other refuse produced by those working on the site. All such waste, refuse and debris shall be securely contained in such receptacles and bulk containers by the end of each working day. (Ord. No. 4569, 2-12-79; Ord. No. 7939 §1, 12-8-08)

Sec. 7-3-15. Hazardous waste and electronic equipment.

No persons shall place hazardous waste or electronic equipment in a container for collection or bury or otherwise dispose of hazardous waste or electronic equipment in or on private or public property in the City. Residents may contact the Pueblo City-County Health Department for recommendations on disposal of hazardous waste. Highly flammable or explosive materials shall be

stored and disposed of in accordance with the Fire Department regulations at the expense of the owner or possessor of such materials. All electronic equipment must either be stored and presented or delivered to a licensed solid waste collector for recycling, or delivered to a qualified recycling facility for electronic equipment. (Ord. 7939 §1, 12-8-08)

Sec. 7-3-16. Penalties for violation.

The following provisions shall apply to a violation of any of the provisions of this Chapter:

(1) It is unlawful and a municipal offense for any person to violate any of the provisions of this Chapter.

(2) Every person convicted of a violation of any of the provisions of this Chapter shall be punished by a fine not exceeding one thousand dollars (\$1,000.00) or by imprisonment not exceeding one (1) year, or both by such fine and imprisonment.

(3) In addition to the penalties provided herein, any person convicted of a violation of the provisions of this Chapter shall be assessed a fee to be known as the *Community Solid Waste Clean-up Surcharge* in the amount of five dollars (\$5.00). The community solid waste clean-up surcharge shall be imposed at the time of conviction and may not be suspended or waived by the Court. For purposes of this Subsection, *conviction* shall include all guilty pleas, findings of guilt and deferred sentences entered on any violation of this Chapter. The community solid waste clean-up surcharge shall be collected by the Municipal Court and paid into the City's general fund.

(4) Every real property owner remains liable for violations of obligations imposed upon an owner by this Chapter even though an obligation is also imposed on the occupant of the property and even though the owner has by agreement imposed on the occupant the duty of maintaining the property or furnishing required containers and collection.

(5) In addition to the penalties provided herein, any person convicted of violating any provision of this Chapter shall be assessed a surcharge for each count of such conviction, to be known as the Keep Pueblo Beautiful Surcharge, in the amount of Twenty-Five Dollars (\$25). In the case of an unemancipated minor, the parents or guardians of the minor shall be jointly and severally liable for this surcharge and shall be ordered to pay the same. This surcharge may only be waived by the Court upon a bona fide finding that the Defendant is indigent, or in the case of a minor, that the minor's parents or guardians are indigent. This surcharge shall be collected by the Municipal Court and paid into the City's general fund. (Ord. No. 6072, 4-8-96; Ord. 7937 §15, 12-8-08; Ord. No. 7939 §1, 12-8-08; Ord. No. 8194, 5-10-10)

Sec. 7-3-17. Community solid waste clean-up program.

The City Manager shall annually recommend to the City Council, as part of the City budget process, any fees that may be assessed under Paragraph 7-3-15(3), and the appropriation of such fees to fund any community clean-up program for reduction or disposal of solid waste from areas located within the City. (Ord. No. 6072, 4-8-96; Ord. No. 7939 §1, 12-8-08;)

Secs. 7-3-18—7-3-20. Reserved.

Article II
Handbills

Sec. 7-3-21. Throwing or distributing commercial handbills in public places.

It shall be unlawful for any person to throw or deposit any commercial or noncommercial handbill, circular, advertisement or other literature in or upon any sidewalk, street or other public place within the City. It shall be unlawful for any person to hand out or distribute or sell any commercial handbill in any public place; provided, however, that it shall not be unlawful on any sidewalk, street or other public place within the City for any person to hand out or distribute, without charge to the receiver thereof, any noncommercial handbill to any person willing to accept it.

Sec. 7-3-22. Placing commercial and noncommercial handbills on vehicles.

It shall be unlawful for any person to throw or deposit any commercial or noncommercial handbill in or upon any vehicle; however, it shall not be unlawful for a person to hand out or distribute in any public place, without charge to the receiver thereof, a noncommercial handbill to any occupant of a vehicle who is willing to accept it.

Sec. 7-3-23. Depositing commercial and noncommercial handbills on uninhabited or vacant premises.

It shall be unlawful for any person to throw or deposit any commercial or noncommercial handbill in or upon any private premises which are temporarily or continuously uninhabited or vacant.

Sec. 7-3-24. Prohibiting distribution of handbills where properly posted.

It shall be unlawful for any person to throw, deposit or distribute any commercial or noncommercial handbill upon any private premises, if requested by anyone thereon not to do so, or if there is placed on said premises in a conspicuous position near the entrance thereof a sign bearing the words "No Trespassing," "No Peddlers or Agents," "No Solicitors," "No Advertisement" or any similar notice, indicating in any manner that the occupants of said premises do not desire to have their privacy disturbed, or to have any such handbills left upon such premises.

Sec. 7-3-25. Distributing commercial and noncommercial handbills at inhabited private premises; exemption for mail and newspapers.

(a) It shall be unlawful for any person to throw, deposit or distribute any commercial or noncommercial handbill or other literature in or upon private premises which are inhabited, except by handing or transmitting any such handbill directly to the owner, occupant or other person then present in or upon such private premises; provided, however, that in case of inhabited private premises which are not posted as provided in the preceding Section, such person, unless requested by anyone upon premises not to do so, may place or deposit any such handbill in or upon such inhabited private premises, if such handbill is so placed or deposited as to secure or prevent such handbill from being blown or drifted about such premises or sidewalks, streets or other public places, and except that mailboxes may not be so used when so prohibited by federal postal law or regulations.

(b) The provisions of this Section shall not apply to the distribution of mail by the United States, nor to newspapers of general distribution in the City, except that newspapers shall be placed on private property in such a manner as to prevent their being carried or deposited by the elements upon any street, sidewalk or other public place or upon private property.

Sec. 7-3-26. Dropping litter from aircraft.

It shall be unlawful for any person in an aircraft to throw out, drop or deposit within the City any litter, handbill or any other object.

Sec. 7-3-27. Posting notices prohibited.

It shall be unlawful for any person to post or affix any notice, poster or other paper or device, calculated to attract the attention of the public, to any lamppost, public utility pole or shade tree, or upon any public structure or building, except as may be authorized or required by law. (Ord. No. 7119 §1, 4-12-04)

Editor's Note: Subsection 7-3-27(b) was automatically repealed effective April 12, 2006, per Ordinance No. 7119.

Secs. 7-3-28—7-3-38. Reserved.

Article III
Junked and Abandoned Vehicles

Sec. 7-3-39. Unlawful to keep junked vehicles.

It shall be unlawful for any owner or occupant of any real property to permit a junked vehicle to remain thereon. (1957 Code, §13-28)

Sec. 7-3-40. Definitions.

(a) As used in this Chapter, the following definitions shall apply:

(1) *Junked vehicle* means any motor vehicle which, because of a legal or mechanical condition or defect, cannot be operated on a public street or highway. It shall be prima facie evidence that a vehicle is mechanically inoperable if its motor, axle, wheel or similar necessary parts have been removed from the vehicle. It shall be prima facie evidence that a vehicle is legally inoperable if, after ten (10) days' written notice given pursuant to this Chapter, a vehicle fails to possess and display current license plates.

(2) *Motor vehicle* means any self-propelled vehicle which is designed primarily for travel on the public highways and which is generally and commonly used to transport persons and property over the public highways.

(b) *Junked vehicle* as defined in this Section shall not include vehicles within the properly screened portion of the premises of a licensed junk or salvage dealer, vehicles on the premises of any licensed business dealing in the selling, repairing or servicing of vehicles, vehicles within a fully enclosed building, or vehicles enclosed by fencing which is constructed of such material and in

sufficient height so that vehicles are not visible from a height of five (5) feet along the property line. (1957 Code, §13-29; Ord. No. 4918, 11-23-81)

Sec. 7-3-41. Junked vehicle; notice; deemed nuisance.

(a) The City Manager shall designate one (1) or more City employees who shall inspect all premises and places within the City as often as practicable to determine whether a junked vehicle exists. Such employee shall have the right to enter upon private premises for the purpose of carrying out said duties assigned to him or her. Upon finding that a junked vehicle exists, such employee shall issue and serve a written notice to the owner or occupant of the property upon which the vehicle is found that such junked vehicle should be disposed of within ten (10) days from the date of such notice.

(b) If a junked vehicle is not made legally and/or mechanically operable or disposed of in a lawful manner within ten (10) days from the date of such notice, the vehicle shall be deemed a nuisance and such nuisance shall be abated as herein set forth. (1957 Code, 13-30; Ord. No. 4918, 11-23-81)

Sec. 7-3-42. Removal procedure; expense.

If the owner or occupant of any premises upon which a junked vehicle exists fails to have such vehicle lawfully disposed of within ten (10) days after the date of said notice, the City Manager is authorized to remove and store said vehicle, by contract or otherwise, in such a manner as he or she may deem in the best interest of the City. Any expense incurred by the City in so doing shall be a charge and lien upon the property upon which said vehicle exists and shall be collected as a special assessment in the same manner as other special assessments. (1957 Code, §13-31; Ord. No. 4918, 11-23-81)

Sec. 7-3-43. Disposal procedure.

The City Manager is authorized to dispose of junked vehicles in storage by contract or otherwise in such manner as he or she may deem in the best interests of the City after ten (10) days' storage. (1957 Code, §13-32)

Sec. 7-3-44. Abandoned vehicles.

(a) It shall be unlawful for any person to abandon any vehicle on any public right-of-way, public parking lot or other public property, or upon any private property without the consent of the owner or occupant of said property.

(b) An *abandoned vehicle* is any motor vehicle left standing for more than seventy-two (72) hours upon any portion of a highway right-of-way, public parking lot or other public property, or upon any private property without the consent of the owner or occupant of such property. (1957 Code, §13-33; Ord. No. 4918, 11-23-81)

Sec. 7-3-45. Notice by mail.

In addition to those methods of service set forth in Section 1-1-11 of this Code, any notice required by any provision of this Article may be served by certified mail, return receipt requested, delivered to the addressee only. Service shall be complete on the date the addressee signs the return receipt or refuses to accept delivery of the letter. The addressee's refusal shall be presumed from the return of the letter evidencing a notation by the postal authorities that service was refused. (1957 Code, §13-34)

Editor's Note: Sections 7-3-46 through 7-3-49 were repealed effective 5-1-91, by Ordinance No. 5682, passed and approved 5-28-91.

CHAPTER 4

Weeds

Sec. 7-4-1. Definitions.

As used in this Chapter, the following definitions shall apply:

(1) *Weed* shall mean weeds, grass, brush or other rank or noxious vegetation and shall specifically include: bindweed (*Convolvulus*), leafy spurge (*Euphorbia esula*), Canada thistle (*Cirsium Arvense*), Russian knapweed (*Centaurea pieris*), diffuse knapweed (*Centaurea diffusa*), Russian knapweed (*Centaurea repens*), spotted knapweed (*Centaurea maculosa*), perennial sowthistle (*Sonchus arvense*), puncture vine (*Tribulus terrestris*), silverleaf poverty weed (*Franseria discolor*), mouse-ear poverty weed (*Iva axillaris*), fanweed (*Thlaspi arvense*), mustard (*Brassica*), purple-flowered ground-cherry (*Quincula lobata*), Russian thistle (*Salsola pestifer*), fireweed (*Kochia scoparia*), redroot pigweed (*Amaranthus retroflexus*), sandbur (*Cenchrus tribuloides*), hairy stickweed (*Lappula Occidentalis*), buffaloburs (*Solanum rostratum*), common ragweed (*Ambrosia elatior*), cocklebur (*Xanthium commurie*), common sunflower (*Helianthus centicularis*), dandelion (*Leontodore taraxacum*) or other plant or offending vegetation which is regarded as a common nuisance. This list is not intended to be exclusive, but rather is intended to be indicative of those types of plants which are considered noxious and a detriment to the public health and safety, but shall not include flower gardens, plots of shrubbery, vegetable gardens and small grain plots (wheat, barley, oats and rye).

(2) *Owner* shall mean the person who is the record owner, person in possession or person in control of any land.

(3) *Land* shall mean all real property located within the jurisdictional boundaries of the City, except natural wildlife land areas, including the river trails system along the floodway of the Fountain and Arkansas Rivers, the Wild Horse and Dry Creek Arroyos, and land located within two hundred (200) feet of the high-water marks of Lake Minnequa.

(4) *Ownership of land* shall be deemed to extend from the center of the alley behind the lot or tract of land to and including the curb and gutter area of the street in front or on the side of such lot or tract of land. (1957 Code, §13-20; Ord. No. 4222, 8-9-76; Ord. No. 4389, 11-28-77)

Sec. 7-4-1.5. Administration.

(a) The City Council shall serve as the Undesirable Plant Management Advisory Commission for the real property within the City, to pursue the stated objectives and intent of the Colorado Weed Management Act, Sections 35-5.5-101, et seq., C.R.S.

(b) The president and secretary for the City Council shall annually serve as chairperson and secretary of the Undesirable Plant Management Advisory Commission. A majority of the members of the Commission shall constitute a quorum to conduct business.

(c) The Undesirable Plant Management Advisory Commission shall use this Chapter as the Undesirable Plant Management Plan. Such plan shall be reviewed at least once every three (3) years. (Ord. No. 5728, 12-23-91)

Sec. 7-4-2. Destruction and removal of weeds.

It shall be unlawful for any owner of land to permit weeds in excess of ten (10) inches in height to grow, lie or be located upon such land. It shall be unlawful for the owner of land not to cut, destroy or remove from such land all weeds in excess of ten (10) inches in height. (1957 Code, §13-21; Ord. No. 4222, 8-9-76; Ord. No. 4389, 11-28-77)

Sec. 7-4-3. Notice to destroy.

(a) Whenever the City Manager or his or her authorized representative shall find growing, lying or located on any land within the City weeds in excess of ten (10) inches in height, he or she shall cause to be served upon the owner of said land a notice directing said owner to cut, destroy or remove such weeds from the land within ten (10) days of the date of service of said notice.

(b) A notice to cut, destroy or remove weeds may be served by personal service on the owner or by certified mail addressed to the owner and mailed to the owner's last known address, or if the land is vacant and unimproved by posting such notice on the land. If service of a notice is by mail, such service shall be complete three (3) days from the date of mailing such notice. If service is by posting the land, such service shall be complete ten (10) days from the date of posting such notice. (1957 Code, §13-22; Ord. No. 4222, 8-9-76; Ord. No. 4389, 11-28-77; Ord. No. 5249, 9-9-85)

Sec. 7-4-4. Removal or destruction by City.

The City Manager may cut, cause to be cut or destroyed and remove weeds in excess of ten (10) inches in height from any land within the City if the owner of said property has failed to cut, destroy or remove said weeds within ten (10) days of service of a notice directing him or her to do so. The cost of such cutting or removal, together with twenty-five percent (25%) thereof, or one hundred dollars (\$100.00), whichever is greater, for administrative and incidental costs, plus interest at the rate of ten percent (10%) per annum, shall be charged against the owner of such land, and upon recording in the County Clerk and Recorder's office of a statement under oath of the City Manager showing the cost thereof and describing the land, such charge shall be and constitute a perpetual lien on the land having priority over all other liens, except general tax liens, and such lien shall remain in full force and effect until such charges and interest have been paid in full. In addition to the lien created hereunder, such charges are a charge against the owner of such land and, as such, the City may pursue all civil

collection remedies and recover the amount of such charges together with all collection expenses, including reasonable attorney fees, from the owner of such land. All remedies provided in this Chapter are cumulative. (1957 Code, §13-23; Ord. No. 4222, 8-9-76; Ord. No. 4389, 11-28-77; Ord. No. 5249, 9-9-85; Ord. No. 6730, 9-10-01; Ord. 7320 §1, 6-27-05)

Sec. 7-4-5. Penalty.

(a) Any person convicted of violating any provision of this Chapter shall be punished by a fine of not more than one thousand dollars (\$1,000.00) nor less than fifty dollars (\$50.00) and shall be required to repay to the City all costs incurred by the City for cutting and removing weeds from the land of such person.

(b) In addition to the penalties provided herein, any person convicted of violating any provision of this Chapter shall be assessed a surcharge for each count of such conviction, to be known as the Keep Pueblo Beautiful Surcharge, in the amount of Twenty-Five Dollars (\$25). In the case of an unemancipated minor, the parents or guardians of the minor shall be jointly and severally liable for this surcharge and shall be ordered to pay the same. This surcharge may only be waived by the Court upon a bona fide finding that the Defendant is indigent, or in the case of a minor, that the minor's parents or guardians are indigent. This surcharge shall be collected by the Municipal Court and paid into the City's general fund. (Ord. No. 4389, 11-28-77; Ord. No. 6730, 9-10-01; Ord. 7937 §16, 12-8-08; Ord. No. 8194, 5-10-10)

CHAPTER 5

Fugitive Dust and Other Air Pollution Emissions

Sec. 7-5-1. Definitions.

Unless specifically defined below, words or phrases used in this Chapter shall be interpreted to give them the meaning they have in common usage and to give this Chapter its most reasonable application:

(1) *Air pollutant* shall mean any fume, smoke, particulate matter, vapor, gas or combination thereof which is emitted into or otherwise enters the atmosphere, including, but not limited to any physical, chemical, biological, radioactive (including source material, special nuclear material and by-product materials) substance or material, but does not include water vapor or steam condensate.

(2) *Air pollution* shall mean any concentration of one (1) or more air pollutants in the ambient air that has caused, is causing or, if unabated, may cause injury to human, plant or animal life or injury to property, or which unreasonably interferes with the comfortable enjoyment of life or property or with the conduct of business.

(3) *Ambient air* shall mean that portion of the atmosphere, external to the source, to which the general public has access.

(4) *Asbestos* shall mean fibrous forms of actinolite, amosite, anthophyllite, chrysolite, crocidolite or tremolite.

(5) *Asbestos material* shall mean asbestos or any material containing asbestos.

(6) *Board* shall mean the Pueblo City-County Health Department Board of Directors.

(7) *Construction activity* shall mean, but not be limited to, demolitions, excavations, grading, overlotting and mechanical processes which may result in particulates being released into the ambient air.

(8) *Department* shall mean the Pueblo City-County Health Department.

(8.5) *Director* shall mean the Director of the Environmental Health Division of the Department.

(9) *Emission* shall mean the discharge or release into the atmosphere (ambient air) of one (1) or more air pollutants.

(10) *Emission permit* shall mean that instrument issued by the Department upon application by a person for either a building, demolition or construction activity approval which attests to ordinance compliance.

(11) *Existing source* shall mean any source which has received a valid emission permit prior to the effective date of the ordinance codified herein, and any construction activity which has been in operation at a particular site within one (1) year prior to the effective date of the ordinance codified herein.

(12) *Dismantle* shall mean the demolition of a structure by means of hand tools, such as: hammer, crow bar or cutting torch, with the loading of debris by hand.

(13) *Fugitive particulates* shall mean solid airborne particulate matter emitted from any source other than an opening which channels the flow of air pollutants directly into the atmosphere. Fugitive particulates released into the atmosphere by natural forces or by mechanical processes such as crushing, grinding, milling, drilling, demolishing, shoveling, conveying, covering, bagging or sweeping.

(14) *Fugitive emissions* shall mean emissions which cannot be reasonably collected and passed through a stack, chimney, vent or other equivalent opening.

(15) *Haul roads* shall mean roads which are used for commercial, industrial or governmental hauling of materials.

(16) *Hazardous air pollutant* shall mean an air pollutant to which no National Ambient Air Quality Standard is applicable and which causes or contributes to air pollution which may reasonably be anticipated to result in an increase in serious irreversible or incapacitating reversible illness or injury.

(17) *New source* shall mean any construction activity, other than an existing source, or any construction activity which resumes operation after being inactive for more than one (1) year.

(18) *Opacity* shall mean the degree to which an air pollutant obscures the view of an observer, expressed in percentage of obscuration or the degree (expressed in percent) to which transmittance of light is reduced by the air pollutant.

(18.5) *Operator* shall mean any person who conducts, operates, controls or supervises any construction activity.

(19) *Owner* shall mean any person who owns, leases or otherwise exercises control over any real property upon which there exists or occurs any construction activity.

(20) *Overlotting* shall mean earth moving used in land development prior to the construction of structures.

(21) *Particulate matter* shall mean any material, except uncombined water, that exists in finely divided form as a liquid or solid.

(22) *Person* shall mean any individual, public or private corporation, partnership, association, firm, trust estate, the State or any department, institution or agency thereof, any municipal corporation, County, City and County, or other political subdivision of the State, Federal government or any other legal entity whatsoever which is recognized by law as the subject of rights and duties. (Ord. No. 5151, 5-29-84; Ord. 6444, 6-28-99)

Sec. 7-5-2. Purpose and applicability.

The purpose of this Chapter is to require the application of selected, reasonably available control measures devised for reducing fugitive particulate emissions into the ambient air from certain open activities and facilities identified in the following sections of this Chapter. (Ord. No. 5151, 5-29-84)

Sec. 7-5-3. Emission limitation standards.

(a) No person shall operate a new or existing source or activity which will emit or cause to be emitted visual emissions in excess of twenty percent (20%) opacity. The method of measuring opacity is specified by Appendix A of Colorado Air Quality Control Commission's Regulation No. 1, 5 C.C.R. 1001-3, P.77-81 (© 1997 Public Record Corporation) which is adopted and incorporated herein by reference.

(b) No person shall operate a new or existing source or activity which will emit or cause to be emitted visual emissions that are being transported off the property on which the source is located. The method of measuring off-property transport is specified by Appendix B of Colorado Air Quality Commission's Regulation No. 1, 5 C.C.R. 1001-3, P.82 (© 1997 Public Record Corporation) which is adopted and incorporated herein by reference.

(c) No person shall operate a new or existing source or activity which will allow dirt, mud or construction materials to be deposited on improved streets and roads.

(d) No person shall operate a new or existing source or activity which will allow or create emissions that will constitute or cause a nuisance to exist as defined in Section 7-1-1 of this Code.

(e) No owner shall suffer or permit to exist upon his or her property, or property under his or her control, the operation of a new or existing source or activity which is contrary to the requirements of Subsections (a), (b), (c) or (d) above. (Ord. No. 5151, 5-29-84; Ord. 6444, 6-28-99)

Sec. 7-5-4. Emission control plans.

(a) Abatement and preventive measures shall be selected and applied on a case-by-case basis to formulate and implement an overall control plan designed to achieve compliance with Section 7-5-3 of this Chapter. The control measures shall be specifically designed to mitigate adverse impact upon other property within a one-thousand-foot radius of the property where the source is located, and shall otherwise bear a reasonable relationship to the economic, environmental and energy impacts, and costs of such measures.

(b) The control plan shall be subject to approval by the Department, including the abatement and preventive measures to be applied and the frequency, duration and method of their application. The control measures shall be specifically designed to mitigate adverse impact upon other property within a one-thousand-foot radius of the property where the source is located, and shall otherwise bear a reasonable relationship to the economic, environmental and energy impacts, and costs of such measures. The Department may impose additional control measures as a condition of approval of the control plan, if deemed necessary in the Department's best professional judgment, in order to avoid adverse impact upon nearby property or to provide reasonable assurance that the control plan will achieve compliance with Section 7-5-3 of this Chapter.

(c) The control plan as approved by the Department shall become an enforceable requirement of the emission permit.

(d) As provided in Section 7-5-2 of this Chapter, the control plan shall be effective in the control of fugitive particulates at all times, including periods when actual construction is not being conducted, including weekends and holidays.

(e) Any source required to submit a control plan may ask for a "control plan conference" with the Department, and if so requested, the Department shall hold such a conference for the purpose of advising what types of control measures and/or operating procedures will meet the requirements of this Section. No information provided in any such conference shall estop or otherwise limit the Department from imposing any control measures in accordance with Subsection (b) above. (Ord. No. 5151, 5-29-84; Ord. 6444, 6-28-99)

Sec. 7-5-5. Construction activities.

(a) Any person engaged in overlotting, excavating, grading, cutting, filling or other dirt moving or construction activity involving or which will involve a disturbance to more than one thousand (1,000) square feet of land area but less than twenty-five (25) acres, and the owner of the property where any such activity occurs, shall be required to comply with the requirements of Sections 7-5-3, 7-5-4 and 7-5-9 of this Chapter.

(b) Control measures and operating procedures for construction activities may include, but are not limited to, planting vegetative cover, providing synthetic cover, watering, chemical stabilization, furrows, compacting, minimizing disturbed area, wind breaks, on-site vehicle speed control and delayed surface opening until demand. (Ord. No. 5151, 5-29-84; Ord. 6444, 6-28-99)

Sec. 7-5-6. Demolition, dismantling or renovation activities.

(a) Any person undertaking any demolition, dismantling or renovation activity shall be required to comply with the requirements of Sections 7-5-3, 7-5-4 and 7-5-9 of this Chapter.

(b) Control measures or operational procedures may include, but are not limited to:

- (1) Wetting down, including prewatering of work surface;
- (2) Removal of dirt and mud deposited on improved streets and roads; or
- (3) Wetting down, washing or covering haulage equipment when necessary to minimize particulate emissions during loading and transit.

(c) Any demolition, dismantling or renovation activity involving a structure that has friable asbestos material is subject to the following procedures which shall be used to prevent emissions of particulate asbestos material into the ambient air.

(1) Friable asbestos materials shall be wetted and removed before wrecking of load-supporting structural members is commenced.

(2) The friable asbestos debris shall be adequately wetted to insure that such debris remains wet during all stages of demolition and related handling operations.

(3) No pipe or load-supporting structural member that is covered with friable asbestos material shall be dropped or thrown to the ground from any building, structure, facility or installation but shall be carefully lowered or taken to ground level.

(4) No friable asbestos debris shall be dropped or thrown to the ground from any building, structure, facility or installation or from any floor to any floor below.

(d) Any owner or operator of a demolition operation who intends to demolish a building, structure, facility or installation which has been declared by the City Manager to be structurally unsound and in danger of imminent collapse is exempt from the requirements of this Section other than Subsection (c)(2). (Ord. No. 5151, 5-29-84)

Sec. 7-5-7. Haul trucks and haulage equipment.

(a) Any person undertaking any construction, demolition, dismantling or earth moving activities shall prevent the deposit of dirt, mud or debris on improved streets and roads; and should such deposition occur, it shall be removed as quickly as possible by the person undertaking the activities.

(b) Haulage equipment shall be washed, and its load wetted down, treated or covered as necessary to minimize the amount of particulates emitted in transit. (Ord. 5151, 5-29-84)

Sec. 7-5-8. Sandblasting operations.

(a) Any person undertaking a sandblasting activity shall comply with the requirements of Subsections 7-5-3(a), (c) and (d), and Sections 7-5-4 and 7-5-9 of this Chapter.

(b) Control measures and operating procedures may include, but are not limited to, the use of enclosures with necessary dust collecting equipment and using wet sandblasting methods. (Ord. No. 5151, 5-29-84)

Sec. 7-5-9. Emission permit requirements.

(a) No person subject to the provisions of Sections 7-5-3, 7-5-4, 7-5-5, 7-5-6 or 7-5-9 of this Chapter shall commence any activity which will or may create a source of particulates without first obtaining a valid emission control plan and emission permit from the Department.

(b) Any person dismantling a structure shall be exempt from obtaining an emission permit, however, all reasonable care shall be exercised to prevent excessive particulate emissions.

(c) No person shall be required to obtain a permit under this Chapter when the source being created is that for which a permit from the Colorado Department of Health is required and has been obtained. (Ord. No. 5151, 5-29-84)

Sec. 7-5-10. Hearings.

(a) The Board shall hear and decide appeals from any aggrieved person as a result of any emission permit issuance or modification, or issuance of any cease and desist order or other order issued by the Department, provided that such appeal is taken within thirty (30) days of the action complained of. The Board shall also hear and determine all administrative proceedings for suspension or revocation of any permit issued pursuant to this Chapter in accordance with Section 7-5-13 of this Chapter.

(b) Not less than fifteen (15) days after a hearing has been requested, the Board shall grant a hearing and set a time and place therefor. Every such hearing shall be conducted pursuant to the provisions of this Chapter and Chapter 7 of Title I of this Code.

(c) The Department shall appear as a party in any hearing before the Board and shall have the same rights to judicial review as any other party.

(d) All testimony taken at any such hearing before the Board shall be under oath or affirmation. A full and complete record of all proceedings and testimony presented shall be preserved by a stenographer or tape recording and shall be filed with the Board. The stenographer or secretary of the Board shall furnish, upon payment and receipt of any fees allowed therefor, a certified transcript of the whole or any part of the record to any party in such hearing requesting the same.

(e) At any hearing, any person who will be affected by the proceeding and whose interests are not already adequately represented shall have the opportunity to be a party thereto upon prior application to and approval by the Board, and such person shall have the right to be heard and to cross-examine any witness.

(f) After due consideration of the written and oral statements, the testimony and the arguments presented at any such hearing, the Board shall enter its findings and final order, based upon evidence in the record, or make such final determination of the matter as it shall deem appropriate. (Ord. No. 5151, 5-29-84; Ord. 6444, 6-28-99)

Sec. 7-5-11. Reserved.

Sec. 7-5-12. Judicial review.

Judicial review of any final decision of the Board issuing, modifying, suspending or revoking any permit, or of any final decision of the Board upon any administrative appeal of a cease and desist order or other order issued by the Department, may be taken pursuant to and in accordance with C.R.C.P. 106(a)(4). Review in such case shall be limited to whether the final permit decision or order was in excess of the Department's jurisdiction or authority. (Ord. No. 5151, 5-29-84; Ord. 6444, 6-28-99)

Sec. 7-5-13. Enforcement procedures.

(a) In the event any person violates any provision of this Chapter or Section 7-1-1 of this Title, the City or the Department may exercise any one (1) or more of the following remedies, which are hereby expressly declared to be cumulative, the exercise of any one (1) or more not constituting any bar or limitation to the exercise of any other:

- (1) Suspension or revocation of a permit;
- (2) Issuance of an administrative notice of violation with or without an accompanying cease and desist order;
- (3) Imposition of civil penalties as provided in any section of this Chapter;
- (4) Initiation of an action for injunctive relief in any court of competent jurisdiction to compel compliance with the terms of this Chapter or any permit, or any cease and desist order;
- (5) Municipal offense prosecution for any violation of the City Charter or ordinances which have been declared to be unlawful or a municipal offense.

(b) Emission permits may be revoked or suspended by the Department for any of the following reasons:

- (1) Misrepresentation of material fact or concealment of material fact;
- (2) Disregard or violation of any of the provisions of this Chapter;
- (3) Failure to comply with any notice of violation or cease and desist order issued by the Department;
- (4) Significant noncompliance with any terms and conditions in the approved emissions control plan;
- (5) Violation of state or federal clean air laws or regulations.

(c) If the Director has received information causing him or her to have reason to believe that revocation or suspension of the permit may be appropriate, he or she shall provide notice to the permittee and initiate the revocation or suspension process as follows:

(1) Written notice of the basis for suspension or revocation shall be provided to the permittee. It shall be given by either personal service or by first class mail, postage prepaid, to the permittee's last known address as shown in the Department's permit files.

(2) The notice shall generally state the grounds for suspension or revocation and state the proposed action being considered. The notice shall advise the permittee that the permittee may request a hearing on the matter at which the permittee may submit information and evidence relevant to the matter, provided that the permittee files a request for hearing with the Board not later than a date specified in the notice, which shall be not less than ten (10) days from the date the notice is personally served or mailed. The notice shall also advise the permittee that if a request for hearing is not timely submitted, the suspension or revocation may be imposed by the Director without further notice.

(3) If a hearing is timely requested, the hearing shall be conducted before the Board and a record kept. At the hearing, the permittee may be represented by counsel and may offer relevant testimony and evidence bearing on the grounds for suspension or revocation as well as any mitigating factors which may bear upon the duration of any suspension. The Board shall also receive relevant testimony and evidence from any person who wishes to be heard on the matter.

(4) Except to the extent in conflict herewith, the hearing shall be conducted as nearly as practicable in accordance with the procedures specified in Title I of this Code; provided, however, that no procedural infirmity in the hearing process shall invalidate the Board's decision unless substantially prejudicial to the permittee.

(5) The decision of the Board to suspend or revoke shall be made in writing and contain findings of fact. The decision shall become final and conclusive unless judicial review is sought in accordance with Section 7-5-12 of this Chapter.

(d) Whenever the Director finds that any person has violated any provision of this Chapter, or any prohibition, limitation or requirement contained therein, or in any permit issued thereunder, the Director shall serve, by personal service or by first class mail, upon such person a written notice stating the nature of the violation. At the discretion of the Director, the notice may be accompanied with a cease and desist order prohibiting further violations and requiring corrective measures to be taken. Within thirty (30) days of the date of the notice, or such greater or lesser period as the Director may otherwise specify in the notice, the person shall submit to the Director a plan for the satisfactory correction thereof.

(e) The Director is authorized to request the City Attorney to bring a civil action to enforce the requirements of this Chapter. The City Attorney may commence an action in the name of the City for appropriate relief, including injunctive relief, in any court of competent jurisdiction. In addition to the remedies provided in this Chapter, the City may also recover damages against any person who is found to have violated this Chapter or any orders or permits issued hereunder. Such damages shall include, but are not limited to, any costs incurred by the City in abating any nuisance, mitigating the impacts caused by any violation, and for damage to the environment, if any. (Ord. No. 5151, 5-29-84; Ord. No. 6444, 6-28-99)

Sec. 7-5-14. Unlawful conduct.

(a) It shall be unlawful and a Class 1 municipal offense for any person:

(1) To own or operate any new or existing source required to be permitted under this Chapter without a valid permit;

(2) To own or operate any new or existing source required to be permitted under this Chapter during a period when the permit therefor is under suspension or has been revoked;

(3) To refuse to comply with the requirements of any cease and desist order issued by the Director, unless the order has been stayed by action of the Board or a court of competent jurisdiction during any administrative or judicial appeal;

(4) To knowingly violate any of the provisions of this Chapter.

(b) Any person convicted of any offense defined in this Section or elsewhere in this Chapter shall be punished as provided in Section 11-1-103 of this Code.

(c) In addition to the penalties provided herein, any person convicted of violating any provision of this Chapter shall be assessed a surcharge for each count of such conviction, to be known as the Keep Pueblo Beautiful Surcharge, in the amount of Twenty-Five Dollars (\$25). In the case of an unemancipated minor, the parents or guardians of the minor shall be jointly and severally liable for this surcharge and shall be ordered to pay the same. This surcharge may only be waived by the Court upon a bona fide finding that the Defendant is indigent, or in the case of a minor, that the minor's parents or guardians are indigent. This surcharge shall be collected by the Municipal Court and paid into the City's general fund. (Ord. 6444, 6-28-99; Ord. No. 8194, 5-10-10)

Sec. 7-5-15. Permit fees.

The Board may establish reasonable permit fees for emission permits as required by Section 7-5-9 of this Chapter. (Ord. No. 5151, 5-29-84)

CHAPTER 6

Smoking in Places of Public Accommodation and Places of Employment *

Sec. 7-6-1. Title.

This Chapter shall be known as the Pueblo Smoke-Free Air Act of 2002. (Ord. No. 6921 §2, 12-9-02)

* Editor's Note: Ord. No. 6921 was approved by vote of the people at a special municipal election on May 20, 2003, by a vote of 11,602 for the ordinance to 7,935 against the ordinance.

Sec. 7-6-2. Findings and purpose.

(a) It is hereby found that studies have determined that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke is a cause of disease. At special risk are children, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Secondhand smoke has been classified as a Class A carcinogen by the Environmental Protection Agency. Secondhand smoke contains known toxins and carcinogens. Health hazards induced by breathing secondhand smoke include lung cancer, heart disease, respiratory infection, and decreased respiratory function, including bronchoconstriction and bronchospasm.

(b) It is hereby declared that the purpose of this Chapter is to protect the public health and welfare by prohibiting smoking in public places and places of employment. (Ord. No. 6921 §2, 12-9-02)

Sec. 7-6-3. Definitions.

The following words and phrases, whenever used in this Chapter, shall be construed as defined in this Section:

(1) *Attached bar* means a bar area of a restaurant. An *attached bar*, for the purposes of this Chapter, shall not include any area where full meals are served, but may include the service of appetizers and snacks. Although a restaurant may contain a bar, the term *bar* shall not include the restaurant dining area.

(2) *Business* means a sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

(3) *Commercial bingo facility* means premises used for the purposes of conducting bingo and related games of chance.

(4) *Employee* means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a nonprofit entity.

(5) *Employer* means a person, business, partnership, association, corporation, including a municipal corporation, trust or nonprofit entity that employs the services of one (1) or more individual persons.

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

(7) *Freestanding bar* means an establishment that is devoted to the serving of malt, vinous and/or spirituous liquors for consumption on the premises and in which the serving of food is not

more than twenty-five percent (25%) of the gross income of the business of the licensed premises, including but not limited to taverns, nightclubs, cocktail lounges and cabarets.

(8) *Indoor service line* means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

(9) *Place of employment* means an enclosed area under the control of a public or private employer that employees normally frequent during the course of employment, including but not limited to work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways and vehicles. A private residence is not a *place of employment* unless it is used as a child care, adult day care or health care facility.

(10) *Place of public accommodation* means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to public buildings, banks, educational facilities, health care facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing/grocery establishments, retail service establishments, retail stores, theaters and waiting rooms. A private club is considered a *place of public accommodation* when functions are held at the club which are open to the general public and are not restricted to the members of the club and their guests. A private residence is not a *place of public accommodation*.

(11) *Private club* means any establishment which restricts admission to members of the club and their guests.

(12) *Private function* means any activity which is restricted to invited guests in a nonpublic setting.

(13) *Private residence* means single- and multiple-family dwelling units, including dwelling units located in apartments, condominiums and common-interest communities.

(14) *Restaurant* means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria and any other eating establishment which gives or offers for sale food to the public, guests or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities, except that the term *restaurant* shall not include a cocktail lounge, nightclub, cabaret or tavern if said cocktail lounge, nightclub, cabaret or tavern is a *freestanding bar* as defined in Section 7-6-3(7). A facility other than a *freestanding bar* shall conclusively be considered to be a *restaurant* for the purposes of this Chapter, regardless of the category of liquor license under which the facility operates, if such facility:

- a. Serves malt, vinous and/or spirituous liquors; and
- b. Includes a restaurant, as defined by Section 12-47-103(30), C.R.S.

(15) *Retail tobacco store* means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

(16) *Smoke-free* means that air in an establishment is not contaminated by tobacco smoke.

(17) *Smoking* means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, plant or other combustible substance in any manner or in any form.

(18) *Sports arena* means sports, pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition or witness sports or other events.

(19) *Flow line* means the face of the curb and gutter or, if no curb and gutter, the edge of the pavement.

(20) *Hospital* has the same meaning as set forth in Paragraph 17-2-1(25.1) of this Code. (Ord. No. 6921 §2, 12-9-02; Ord. No. 7938 §2, 12-8-08)

Sec. 7-6-4. Application to City-owned facilities.

All enclosed facilities, including buildings and vehicles owned or leased by the City, shall be subject to the provisions of this Chapter. (Ord. No. 6921 §2, 12-9-02)

Sec. 7-6-5. Prohibition in places of public accommodation.

(a) Smoking shall be prohibited in all enclosed places of public accommodation within the City, including but not limited to the following places:

- (1) Elevators;
- (2) Restrooms, lobbies, reception areas, hallways and any other common-use areas;
- (3) Buses and other means of public transit under the authority of the City and ticket, boarding and waiting areas of public transit depots;
- (4) Indoor service lines;
- (5) Retail stores;
- (6) All areas available to and customarily used by the general public in all businesses and nonprofit entities patronized by the public, including but not limited to professional offices and other offices, banks, Laundromats, hotels and motels;
- (7) Restaurants;
- (8) Freestanding and attached bars;
- (9) Public areas of aquariums, galleries, libraries and museums;
- (10) Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance, except performers when smoking is part of a stage production;

(11) Sports arenas and convention halls, including bowling facilities;

(12) Every public room, chamber, place of meeting or assembly, including school buildings under the control of any board, council, commission, committee, joint committee or agency of the City or any political subdivision of the State during such time as a public meeting is in progress, to the extent that such place is subject to the jurisdiction of the City;

(13) Waiting rooms, hallways, wards and semiprivate rooms of health facilities, including but not limited to hospitals, clinics, physical therapy facilities, doctors' offices and dentists' offices;

(14) Lobbies, hallways, elevators and other common areas in apartment buildings, condominiums, mobile home and manufactured home parks, retirement facilities, nursing homes and other multiple-unit residential facilities;

(15) Polling places; and

(16) Commercial bingo facilities.

(b) Notwithstanding any other provisions of this Section, any owner, operator, manager or other person who controls any establishment or facility may declare that entire establishment, facility or grounds as smoke-free. (Ord. No. 6921 §2, 12-9-02)

Sec. 7-6-6. Prohibition in places of employment.

(a) It shall be the responsibility of employers to provide a smoke-free place of employment for all employees, but employers are not required to incur any expense to make structural or other physical modifications.

(b) Within ninety (90) days of the effective date of this Chapter, each employer having an enclosed place of employment located within the City shall adopt, implement, make known and maintain a written smoking policy which shall contain the following requirements:

Smoking shall be prohibited in all enclosed areas that employees normally frequent during the course of employment. This includes, but is not limited to, common work areas, auditoriums, classrooms, conference and meeting rooms, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and vehicles.

(c) The smoking policy shall be communicated to all employees within three (3) weeks of its adoption.

(d) All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee. (Ord. No. 6921 §2, 12-9-02)

Sec. 7-6-6.1. Prohibition in public right-of-way adjoining hospitals.

(a) Smoking is prohibited on the public right-of-way (including, without limitation, sidewalks, lawns, tree lawns and alleys) adjoining hospitals or other hospital-owned properties or properties leased by any hospital, up to the closest flow line. This prohibition does not apply to persons in moving vehicles in alleys.

(b) Hospitals shall post "No Smoking" or "Smoke Free," or the international "No Smoking" symbol described in Subsection 7-6-9(a) of this Article, or both, in conspicuous places on their property(ies) sufficient to provide public notice of this smoking prohibition. Failure to post signage under this Section is not punishable under this Code.

(c) Notwithstanding a hospital's responsibility to post signs, the presence or absence of signs shall not be a defense to a violation of any provision of this Section.

(d) It shall be unlawful and a Class 2 municipal offense for any person to violate the provisions of Subsection (a) above. (Ord. 7938 §3, 12-8-08)

Sec. 7-6-7. Smoke-free entrances.

Smoking is prohibited within a distance of twenty (20) feet of an entrance to an enclosed area where smoking is prohibited to ensure that tobacco smoke does not enter the area through entrances. (Ord. No. 6921 §2, 12-9-02)

Sec. 7-6-8. Where not regulated.

(a) Notwithstanding any other provision of this Chapter to the contrary, the following areas shall be exempt from the provisions of this Chapter:

(1) Private residences, except when used as a licensed child care, adult day care or health care facility;

(2) No more than twenty-five percent (25%) of hotel and motel rooms rented to guests;

(3) Retail tobacco stores;

(4) Restaurants; attached bars; freestanding bars; apartment, condominium, hotel and motel conference or meeting rooms; and public and private assembly rooms, when these places are being used for private functions;

(5) Outdoor areas of places of employment except those covered in Section 7-6-6 of this Chapter; and

(6) Private and semiprivate rooms in nursing homes, retirement facilities and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers and who have requested in writing to be placed in a room where smoking is permitted.

(b) Notwithstanding any other provision of this Section, any owner, operator, manager or other person who controls any establishment described in this Section may declare that entire establishment, facility or grounds as smoke-free. (Ord. No. 6921 §2, 12-9-02)

Sec. 7-6-9. Posting of signs.

(a) Within ninety (90) days of the effective date of this Chapter, "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every

place of public accommodation and place of employment where smoking is prohibited by this Chapter, by the owner, operator, manager or other person having control of such building or other area.

(b) Every place of public accommodation where smoking is prohibited by this Chapter shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

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

(d) All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this Chapter by the owner, operator, manager or other person having control of such area. (Ord. No. 6921 §2, 12-9-02)

Sec. 7-6-10. Enforcement.

(a) This Chapter shall be enforced by the Director of the Health Department or his or her designee.

(b) Notice of the provisions of this Chapter shall be given to all applicants for a business license in the City.

(c) Any person who desires to register a complaint under this Chapter may file such complaint in such person's name with the Health Department.

(d) The Health Department shall inspect for compliance with this Chapter while an establishment is undergoing otherwise mandated inspections.

(e) An owner, manager, operator or employee of an establishment regulated by this Chapter shall inform persons violating this Chapter of the appropriate provisions thereof and request their compliance. (Ord. No. 6921 §2, 12-9-02)

Sec. 7-6-11. Nonretaliation.

No person or employer shall discharge, refuse to hire or in any manner retaliate against an employee, applicant for employment or customer because that employee, applicant or customer exercises any rights to a smoke-free environment afforded by this Chapter. (Ord. No. 6921 §2, 12-9-02)

Sec. 7-6-12. Violations and penalties.

(a) It shall be unlawful and a Class 2 municipal offense for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this Chapter to fail to comply with any of its provisions.

(b) It shall be unlawful and a Class 2 municipal offense for any person to smoke in any area where smoking is prohibited by the provisions of this Chapter.

(c) Each day of continuing violation shall be deemed to be a separate violation. (Ord. No. 6921 §2, 12-9-02)

Sec. 7-6-13. Public education.

The Health Department shall engage in a continuing program to explain and clarify the purposes and requirements of this Chapter to citizens affected by it, and to guide owners, operators and managers in their compliance with it. Such programs may include publication of a brochure for affected businesses and individuals explaining the provisions of the ordinance codified herein. (Ord. No. 6921 §2, 12-9-02)

Sec. 7-6-14. Other applicable laws.

This Chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable ordinances. (Ord. No. 6921 §2, 12-9-02)

CHAPTER 7

Solid Waste Service Charges

Sec. 7-7-1. Definitions.

(a) *Certificate of designation* means a certificate to operate a solid waste disposal site and facility issued pursuant to Chapter 12 of Title IV of this Code.

(b) *Facility* means and includes both a solid waste disposal site and facility for which a certificate of designation has been issued and a solid waste transfer station.

(c) *Operator* means the person owns or operates a facility.

(d) *Service charge* means fifty cents (\$0.50) for each cubic yard of solid waste or two dollars (\$2.00) per ton of compacted or baled solid waste delivered to a facility for disposal.

(e) *Solid waste transfer station* means a location, structure or building at which solid waste, awaiting transportation to a disposal site, is transferred from one (1) type of containerized collection receptacle and placed into another or is processed for compaction.

(f) *User* means a person who delivers solid waste to a facility for disposal. (Ord. No. 6859 §2, 7-22-02; Ord. No. 6933 §§2, 3, 11-23-02; Ord. No. 8195, 5-10-10)

Sec. 7-7-2. Payment of service charges.

On and after October 1, 2002, each user shall pay the service charge at the time the user delivers solid waste to a facility. (Ord. No. 6859 §2, 7-22-02)

Sec. 7-7-3. Collection of service charge.

(a) The operator of a facility shall collect the service charge from each user at the time solid waste is delivered to the facility.

(b) The operator shall by the last day of the calendar month following the end of each calendar quarter transmit and deliver all service charges collected during such calendar quarter, less two percent (2%) of the service charges collected as a fee to defer the cost of collection, to the Director of Finance together with such reporting forms as the Director of Finance shall prescribe.

(c) In addition to any fine imposed for violations of this Chapter, any operator who fails to collect or transmit service charges within the time specified in Subsection (b) above shall be liable for payment of a civil penalty of ten percent (10%) of the total amount of service charges uncollected or untransmitted. An action to collect the uncollected or untransmitted service charges and civil penalty may be instituted in any court of competent jurisdiction. The court in any such action shall award the City all its costs of collection, including reasonable attorney fees. (Ord. No. 6859 §2, 7-22-02)

Sec. 7-7-4. Penalties.

Any person who shall violate any provision of this Chapter shall be guilty of a Class 2 municipal offense and punished as provided by Section 11-1-103(c) of this Code. (Ord. No. 6859 §2, 7-22-02)