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CHAPTER 1

General Offense Code

Article I *General Provisions*

Sec. 11-1-101. Purpose.

This Chapter is enacted for the purpose of defining the general offenses of the City, prohibiting the commission of offenses deemed detrimental to the health, safety and welfare of the community, and preventing the occurrence of such offenses by appropriate punishment.

Sec. 11-1-102. Construction.

Except as may otherwise be provided in this Chapter, the provision of this Chapter, supplemented by general law where not inconsistent, shall govern the construction and punishment for any offense defined in this Chapter (or elsewhere in this Code).

Sec. 11-1-103. Penalties for violation.

(a) Unless otherwise specified, the punishment for violation of an offense described in this Chapter shall be a fine of not more than one thousand dollars (\$1,000.00) or imprisonment for not more than one (1) year, or both such fine and imprisonment, provided that, if the person found guilty of a violation of an offense was under eighteen (18) years of age at the time of the offense, the court shall not impose a jail sentence.

(b) The punishment for violation of an offense defined as a Class 1 municipal offense shall be a fine of not more than one thousand dollars (\$1,000.00) or imprisonment for not more than one (1) year, or both such fine and imprisonment, provided that, if the person found guilty of a violation of a Class 1 municipal offense was under eighteen (18) years of age at the time of the offense, the court shall not impose a jail sentence.

(c) The punishment for violation of an offense defined as a Class 2 municipal offense shall be a fine of not more than one thousand dollars (\$1,000.00).

(d) In addition to the penalties provided herein, any person convicted of a violation of Sections 11-1-201, 11-1-207, 11-1-301, 11-1-302, 11-1-602 or 11-1-608 of this Code shall be assessed a fee to be known as the Pueblo Metro D.A.R.E. Surcharge in the amount of five dollars (\$5.00). The Pueblo Metro D.A.R.E. Surcharge shall be imposed at the time of conviction and may only be waived by the court upon a finding that the defendant or in the case of a minor the defendant's parent is indigent. For purposes of this Subsection (d), *conviction* shall include all guilty pleas, findings of guilt and deferred sentences. The Pueblo Metro D.A.R.E. Surcharge shall be collected by the Municipal Court and paid into the City's general fund. (Ord. No. 6060, 2-26-96; Ord. No. 6235, 8-25-97; Ord. No. 7937 §20, 12-8-08)

Sec. 11-1-104. Definitions.

The following definitions are applicable to all offenses prescribed under this Chapter:

- (1) *Act* means a bodily movement, and includes words and possession of property.
- (2) *Conduct* means an act or omission and its accompanying state of mind or, where relevant, a series of acts or omissions.
- (3) *Omission* means a failure to perform an act as to which a duty of performance is imposed by law.
- (4) *Deadly weapon* means any firearm, knife, bludgeon or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or intended to be used is capable of producing death or serious bodily injury.
- (5) *Knowingly*. A person acts knowingly with respect to conduct or to a circumstance when he or she is aware, or reasonably should be aware, that his or her conduct is of such nature or that such circumstance exists. A person acts knowingly with respect to the result of his or her conduct when he or she is aware, or reasonably should be aware, that his or her conduct is practically certain to cause the result.
- (6) *Recklessly*. A person acts recklessly when he or she consciously disregards a substantial and unjustifiable risk that a result will occur or that a circumstance exists.
- (7) *Intentionally*. A person acts intentionally when his or her conscious object is to cause that result or when his or her actions are such as to give rise to a substantial certainty that such results will be produced.
- (8) *Bodily injury* means physical pain, illness or any impairment of physical or mental conditions.
- (9) *Firearm* means any handgun, revolver, pistol, rifle, shotgun or other instrument or device capable or intended to be capable of discharging pellets, bullets, cartridges or other explosive charges.
- (10) *Public place* means, unless otherwise defined, a place to which the public or a substantial number of the public has access, and includes but is not limited to highways, streets, sidewalks, transportation facilities, schools, places of amusement, parks, playgrounds and the common areas of public and private buildings, facilities and parking areas.
- (11) *Serious bodily injury* means bodily injury which involves a substantial risk of death, serious permanent disfigurement or protracted loss or impairment of the functions of any part or organ of the body.
- (12) *Minor* means a real person under the age of eighteen (18) years.

Sec. 11-1-105. Severability.

In the event that any word, phrase, paragraph, section or subsection of this Chapter shall at any time be found unconstitutional or void, such finding shall not affect the remainder thereof which shall remain in full force and effect.

Sec. 11-1-106. Attempt.

(a) A person commits criminal attempt of an offense defined by the ordinances of the City if, acting with the kind of culpability otherwise required for commission of an offense, he or she engages in conduct constituting a substantial step toward the commission of the offense. A substantial step is any conduct, whether act, omission or possession, which is strongly corroborative of the firmness of the actor's purpose to complete the commission of the offense.

(b) Attempt to commit a municipal violation is a Class 2 municipal offense.

Sec. 11-1-107. Conspiracy.

(a) A person commits conspiracy to commit an offense if, with the intent to promote or facilitate its commission, he or she agrees with another person or persons that they, or one (1) or more of them, will engage in conduct which constitutes an offense defined by the ordinances of the City or which constitutes an attempt to commit an offense defined by the ordinances of the City, or he or she agrees to aid the other person or persons in the planning or commission of such an offense or of an attempt to commit such offense.

(b) Conspiracy to commit an offense is a Class 1 municipal offense.

Sec. 11-1-108. Complicity.

A person is legally accountable as a principal for the behavior of another constituting an offense if, with the intent to promote or facilitate the commission of the offense, he or she aids, abets or advises the other person in planning or committing the offense.

Sec. 11-1-109. District Attorney.

The District Attorney of the Tenth Judicial District and any Deputy District Attorney or Assistant District Attorney of the Tenth Judicial District, when acting in such capacity, are duly appointed law enforcement officers of the City authorized to issue and serve summons and complaints for violations of this Chapter. (Ord. No. 7114 §1, 3-22-04)

Sec. 11-1-110. Honor Farm.

Chapter 1 of Title XI (General Offense Code), except Section 11-1-607 thereof, and Chapter 1 of Title XV (Model Traffic Code) are expressly declared to be applicable to and in full force and effect in and upon that area of the County of Pueblo, State of Colorado owned by the City in Sections 16, 17, 18, 19, 20, 21 and 28, Township 20 South, Range 65 West of the 6th Principal Meridian, commonly known as the *Honor Farm*. (Ord. 7483 §1, 7-10-06)

Article II
Offenses Relating to Public Peace, Order and Decency

Sec. 11-1-201. Disorderly conduct.

(a) A person commits disorderly conduct if he or she knowingly or recklessly:

(1) Makes loud or unreasonable noise in a public place or near a private residence which he or she has no right to occupy;

(2) Insults, taunts or challenges another in a manner likely to provoke and with the intention of provoking a breach of peace or violence;

(3) Fights with another in a public place except as part of an authorized amateur or professional contest of athletic skill;

(4) Disturbs the peace and quiet of any apartment, building, condominium, townhouse or neighborhood by loud or unreasonable noise between the hours of 10:00 p.m. and 7:00 a.m., or, as owner or person in possession or control of any building or premises, permits or allows, when it is in such person's power to prevent, loud or unreasonable noises in or upon such building or premises between the hours of 10:00 p.m. and 7:00 a.m. which disturbs the peace and quiet of the neighborhood in which such building or premises is situate; or

(5) Discharges a firearm within the City or within one-fourth ($\frac{1}{4}$) mile of the corporate boundary of the City or causes an explosion of powder or other combustible material, unless licensed or authorized to do so by the Chief of Police or Fire Chief.

(b) Disorderly conduct is a Class 1 municipal offense. (Ord. No. 5167, 7-23-84; Ord. No. 6060, 2-26-96)

Sec. 11-1-202. Loitering.

(a) Definitions. When used in this Section:

(1) *Loitering* or *loiter* shall mean remaining idle in essentially one (1) location, to be dilatory or to tarry and shall include but not be limited to standing around, sitting, kneeling, sauntering or prowling.

(b) It shall be unlawful for any person to loiter:

(1) In a manner which obstructs any public street, highway or sidewalk or entrance to a public facility by hindering, impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians;

(2) In or upon any public street, public highway, public sidewalk or any other public place and engage in any act which obstructs or interferes with the free and uninterrupted use of the property or with any business lawfully conducted in or upon or facing or fronting on any such public street,

public highway, public sidewalk or any other public place or building, all of which prevents the free and uninterrupted ingress, egress and regress herein, thereon and thereto; or

(3) With the intent to interfere with or disrupt the school program or with the intent to interfere with or endanger school children, in a school building or on school grounds, not having any reason or relationship involving custody of, or responsibility for, a pupil or any other specific legitimate reason for being there, and having been asked to leave by a school administrator or his or her representative or by a peace officer.

(c) Loitering is a Class 2 municipal offense. (Ord. No. 5459, 2-22-88; Ord. No. 6254, 9-8-97)

Sec. 11-1-203. Indecent exposure.

(a) Definition. When used in this Section: *Sexual act* means any act of masturbation, fellatio, cunnilingus, sexual intercourse, bestiality, sodomy, insertion of one (1) or more fingers or objects into the vagina or anus, and caressing or fondling of the genitals of oneself or another.

(b) It is unlawful for any person to perform or engage in any sexual act in a public place or where the conduct may reasonably be expected to be viewed by members of the public.

(c) It is unlawful for any person to expose his or her genitals or buttocks in a public place or where the conduct may reasonably be expected to be viewed by members of the public, or for any female person over the age of twelve (12) years to expose that portion of her breasts consisting of the nipple or areolae in a public place or where the conduct may reasonably be expected to be viewed by members of the public.

(d) Subsection (c) of this Section shall have no application to showers or dressing or locker rooms associated with athletic facilities.

(e) Indecent exposure is a Class 1 municipal offense.

Sec. 11-1-204. Littering.

(a) Definition. For the purpose of this Section, the following definition shall apply: *Litter* means all or any rubbish, waste material, garbage, paper, trash, debris, cinders or noxious foreign substances, whether solid or liquid, of every form, size and description.

(b) It shall be unlawful for any person to dump, deposit, throw, drop, place or leave, or to cause, allow or permit the dumping, depositing, throwing, dropping, placing or leaving of any litter in or upon any public street, sidewalk, alley or other public place.

(c) It shall be unlawful for any person operating a motor vehicle to dump, deposit, throw, drop, place or leave litter from said vehicle, or to permit, allow or suffer such litter to be dumped, deposited, thrown, dropped, placed or left from said vehicle.

(d) Littering is a Class 2 municipal offense.

Sec. 11-1-205. Urinating or defecating in public.

(a) It shall be unlawful for any person to urinate or defecate upon the walls, floors, stairs or any other portion of any public building or on any street, alley, sidewalk, park, golf course or other public place within the City, other than a toilet facility provided for such purpose.

(b) Urinating in public is a Class 2 municipal offense.

Sec. 11-1-206. Invasion of privacy.

(a) It shall be unlawful for any person to intentionally peer, peep or look through doors or windows of any residence, apartment, dwelling unit, lodging house, hotel, motel or similar place of another, while on another's premises, or from a place of hiding or concealment, with the intent or purpose to spy on or watch such other person, or to invade his or her privacy.

(b) Invasion of privacy is a Class 1 municipal offense.

Sec. 11-1-207. Unlawful possession of an alcoholic beverage.

(a) Definitions. When used in this Section:

(1) *Alcoholic beverage* means any substance which is or contains ethyl alcohol except those substances which are manufactured, designed or intended primarily for a purpose other than oral human ingestion and those substances which are manufactured, designed or intended solely for medicinal or hygienic purposes.

(2) *To possess an alcoholic beverage* means that a person has or holds any amount of an alcoholic beverage anywhere on his or her person, that a person owns or has custody of an alcoholic beverage, or that a person has an alcoholic beverage within his or her immediate presence and control.

(3) *Public place within the City* means and includes public buildings and adjacent land, parks, streets, alleys, roads or highways, sidewalks, parking lots, and private parking areas and shopping centers open to the public. *Public place within the City* shall not include those areas of a licensed premises which are permitted under law to sell alcoholic beverages for consumption thereon.

(b) It is unlawful and a strict liability offense for any person under twenty-one (21) years of age to possess or consume an alcoholic beverage anywhere within the City, except:

(1) It shall be an affirmative defense to a violation of this Subsection (b) where such person was legally upon private property with the knowledge and consent of the owner or legal possessor of such property and such person possessed or consumed an alcoholic beverage with the consent and in the actual immediate presence of his or her parent or legal guardian.

(2) The possession or consumption of an alcoholic beverage shall not constitute a violation of this Subsection (b) if such possession or consumption takes place for religious purposes protected by the First Amendment to the United States Constitution.

(3) The possession of an alcoholic beverage by an employee of a premises licensed to sell alcoholic beverages for consumption on the premises shall not constitute a violation of this Subsection (b) if the licensed premises serves meals and the employee is supervised by another employee on the premises who is at least twenty-one (21) years of age.

(c) It is unlawful for any person twenty-one (21) years of age or older to consume or to possess an alcoholic beverage in an open container in any public place within the City or inside any vehicle while upon any public place within the City.

(d) It is unlawful for any person twenty-one (21) years of age or older to consume or to possess an alcoholic beverage in an open container on any private property within the City without the knowledge and consent of the owner or legal possessor of such property.

(e) Except as permitted under Subsection (b) of this Section, it is unlawful and a Class 1 municipal offense for any person to sell, serve, give away, dispose of, exchange, deliver or permit the sale, serving, giving or procuring of any alcoholic beverage to or for any person under the age of twenty-one (21) years; provided, however, that this subsection shall not apply to any conduct which results, directly or indirectly, in death or serious bodily injury to any person.

(f) During any trial for a violation of any provision of this Section, any bottle, can or other container with labeling indicating the contents of such bottle, can or other container shall be admissible into evidence and shall not constitute hearsay. A jury or a judge, whichever is appropriate, may consider the information upon such label in determining whether the contents of the bottle, can or other container were composed in whole or in part of an alcoholic beverage. A label which identifies the contents of any bottle, can or other container as "beer," "ale," "malt beverage," "fermented malt beverage," "malt liquor," "wine," "champagne," "whiskey" or "whisky," "gin," "vodka," "tequila," "schnapps," "brandy," "cognac," "cordial," "alcohol" or "liquor" shall constitute prima facie evidence that the contents of the bottle, can or other container were composed in whole or in part of an alcoholic beverage.

(g) A violation of any provision of Subsections (a) through (d) of this Section shall constitute a Class 2 municipal offense. A violation of any provision of Subsection (e) of this Section shall constitute a Class 1 municipal offense. (Ord. No. 5590, 3-26-90; Ord. No. 6062, 3-25-96; Ord. No. 7401 §1, 11-28-05)

Sec. 11-1-208. Tobacco vending machines.

(a) It shall be unlawful for any person to sell or dispense cigarettes or other tobacco products through a vending machine or other coin-operated machine, or to possess or maintain any vending machine or other coin-operated machine containing cigarettes or other tobacco products within the City except:

(1) On premises licensed under the Colorado Liquor Code or Colorado Beer Code for on-premises consumption of alcoholic beverages or fermented malt beverages;

(2) Within private residences or private clubs; or

(3) On other premises which are not legally open or generally accessible to persons under the age of eighteen (18) years.

(b) Violation of any provision of this Section shall be a Class 2 municipal offense.

(c) Nothing contained in this Section shall be construed to permit the purchase, sale or furnishing of cigarettes or other tobacco products by or to any person under the age of eighteen (18) years. (Ord. No. 5658, 1-28-91)

Sec. 11-1-209. Sale, possession and use of tobacco products.

(a) Definitions. As used in this Section:

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

(2) *Tobacco product* means any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, smokeless tobacco and dipping tobacco.

(b) It shall be unlawful and a Class 2 municipal offense for any minor to possess, consume or use any tobacco product.

(c) It shall be unlawful and a Class 2 municipal offense for any minor to purchase, obtain or attempt to purchase or obtain any tobacco product by misrepresentation of age or by any other method.

(d) It shall be rebuttably presumed that the substance within a package or container is a tobacco product if the package or container has affixed to it a label which identifies the package or container as containing a tobacco product.

(e) It shall be unlawful and a Class 2 municipal offense for any person to knowingly furnish to any minor, by gift, sale or any other means, any tobacco product. It shall be an affirmative defense to a prosecution under this Subsection that the person furnishing the tobacco product was presented with and reasonably relied upon a document which identified the minor receiving the tobacco product as being eighteen (18) years of age or older.

(f) Notwithstanding any provision of this Section, it shall not be unlawful for any minor employed by any retail or wholesale commercial enterprise to handle tobacco products in connection with such minor's assigned job duties for such enterprise.

(g) Notwithstanding the provisions of this Section, it shall be unlawful and a Class 2 municipal offense for a person under eighteen (18) years of age to be admitted to or be on the premises of a retail tobacco store as defined in Section 7-6-3(15) of this Code when the retail tobacco store is open for business.

(h) The owner, operator, manager or other person who controls a retail tobacco store shall display a warning sign as specified in this Subsection. The warning sign shall be displayed in a

prominent place in the retail tobacco store at all times, shall have a minimum height of three (3) inches and a width of six (6) inches, and shall read as follows:

WARNING

**IT IS ILLEGAL FOR ANY PERSON UNDER EIGHTEEN YEARS OF AGE
TO BE ON THE PREMISES OF THIS RETAIL TOBACCO STORE AND, UPON
CONVICTION, A \$300.00 FINE MAY BE IMPOSED.**

(i) The owner, operator, manager or other person who controls a retail tobacco store shall display a sign as specified in this Subsection. The sign shall be displayed in a prominent place in the retail tobacco store at all times, shall have a minimum height of three (3) inches and a width of six (6) inches, and shall read as follows:

SURGEON GENERAL'S WARNING

**SMOKING CAN CAUSE LUNG CANCER, HEART DISEASE, EMPHYSEMA, AND
MAY COMPLICATE PREGNANCY.**

(Ord. No. 6268, 11-10-97; Ord. No. 7834 §1, 7-14-08)

Sec. 11-1-210. Vehicles used in drive-by crimes; nuisance; abatement; violation.

(a) Declaration. Drive-by crimes render City residents, visitors, businesses and neighborhoods insecure in life and in the use of property. Such crimes and the instrumentalities used to commit such crimes constitute a continuing threat to the comfort, safety and health of the public. It is expressly declared that the use of vehicles for the commission of drive-by crimes constitutes a public nuisance within the City that should be eliminated or hindered, and thereby abated, by the means set forth in this Section.

(b) Definitions. As used in this Section:

(1) *Chief of Police* means the Chief of the Pueblo Police Department or his or her authorized representative.

(2) *Drive-by crime* shall have the same meaning as set forth in Section 16-13-301(2.2), C.R.S. (2008), as amended.

(3) *Innocent owner* means a record owner who neither participated in the commission of a drive-by crime, nor knew or reasonably should have known that the vehicle would be used in the commission of a drive-by crime.

(4) *Nuisance vehicle* means a vehicle which is used for concealment or transportation in the commission of a drive-by crime within the City; provided, however, that *nuisance vehicle* shall not include a vehicle with respect to which the record owner is an innocent owner.

(5) *Record owner* means the owner with respect to a vehicle as identified in the records of application and registration maintained by the Colorado Department of Revenue or, if the vehicle is registered outside the State, the records of application and registration maintained by the state in which the vehicle is registered. If such record owner establishes that the vehicle was transferred to

a bona fide transferee before the occurrence of the related drive-by crime, the *record owner* shall mean and include said transferee.

(6) *Vehicle* means any self-propelled device which is capable of moving itself from place to place upon wheels, 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.

(c) Abatement. If the Chief of Police finds and determines upon probable cause that a vehicle is a nuisance vehicle, the Chief of Police shall serve written notice and order upon the record owner, which notice and order shall provide:

- (1) A description of the vehicle, including make, model and vehicle identification number.
- (2) A statement that the vehicle has been used in the commission of a drive-by crime and identification of the approximate date and location of said crime.
- (3) Notice that the vehicle has been determined to be a nuisance vehicle pursuant to this Section.
- (4) An order prohibiting the record owner from using or operating or permitting the use or operation of the nuisance vehicle for a period of six (6) months other than such use or operation which is necessary to deliver possession of such vehicle to the Chief of Police.
- (5) An order directing the record owner to deliver immediate possession of the vehicle to the Chief of Police, unless such vehicle has otherwise been lawfully seized.
- (6) That violation of a final notice and order is a criminal offense subject to fine and/or jail sentence.
- (7) That the owner may appeal such notice and order as provided in this Section.

A courtesy copy of said notice and order shall be mailed by first-class mail, postage prepaid, to all lienholders of record.

(d) Appeals; stay; release of vehicle.

(1) The record owner of a nuisance vehicle may appeal a notice and order by filing written notice of such appeal with the Municipal Court Clerk within ten (10) days after service of the notice and order.

(2) The timely filing of an appeal shall stay the notice and order until such time as a hearing may be held. Any notice and order which is not timely appealed shall be a final notice and order.

(3) Any vehicle which is the subject matter of a final notice and order shall not be released to the record owner except upon the following conditions:

- a. Compliance with the notice and order and expiration of the six-month period set forth in the notice and order; and

b. Payment of all storage fees incurred by the City with respect to the vehicle. Such fees shall be commensurate with, but shall not exceed, the maximum rate that a towing carrier may charge for a nonconsensual tow of a motor vehicle as set forth in Rule 6511, 4 Code of Colorado Regulations 723-6 (2008), as amended.

c. Any vehicle which remains unclaimed after the six-month period set forth in the notice and order may be sold by the City pursuant to the procedure set forth in Paragraph 15-1-8(a)(25) of this Code, for sale of abandoned and impounded vehicles. All unpaid storage fees owed pursuant to Subparagraph b. above shall constitute a lien upon the vehicle and superior to all other liens of any nature.

(e) Hearing on appeal. The hearing officer, with respect to any appeal filed pursuant this Section, shall be the Municipal Court Judge. Such hearings shall be conducted as quasi-judicial hearings in accordance with the provisions of Title I of this Code.

(1) Time and notice of hearing. A hearing shall be set within ten (10) business days of filing the notice of appeal. Notice of the hearing date shall be served personally or by mailing the same by first-class mail, postage prepaid, to the record owner at his or her address set forth in the appeal.

(2) Burden of proof. The City shall have the burden of proof by a preponderance of the evidence with respect to establishing that the vehicle is a nuisance vehicle.

(3) Decision on appeal. If the hearing officer determines that the vehicle is not a nuisance vehicle, the hearing officer shall reject and rescind the notice and order. If the hearing officer determines that the vehicle is a nuisance vehicle, the hearing officer shall sustain the notice and order, and, for the purposes of this Section and unless otherwise stayed by the District Court, the notice and order shall be final.

(f) Judicial review. The decision of the hearing officer may be appealed to the District Court pursuant to Section 1-7-14 of this Code. The hearing officer shall not stay the decision pending any such appeal.

(g) Violation. It shall be unlawful and a municipal offense for any person to fail to comply with a properly served and final notice and order. Any person convicted of violating this Section shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) or by imprisonment not to exceed one (1) year, or by both such fine and imprisonment.

(h) Limitations.

(1) No notice and order shall be served upon a record owner who does not reside within the City, unless such record owner participated in the drive-by crime.

(2) This Section is not intended to authorize any act expressly prohibited by state law or to forbid any conduct expressly authorized by state law. The provisions of this Article shall be construed to avoid any such direct and express conflict. (Ord. No. 7867 §1, 8-25-08; Ord. No. 8089 §1, 10-13-09)

Article III
Offenses Against Persons

Sec. 11-1-301. Battery.

(a) A person commits the offense of battery in violation of this Section if he or she knowingly causes bodily injury to another person; provided, however, that this Section shall have no application where there is serious bodily injury, where a deadly weapon is used, where the victim is sixty (60) years of age or older, or where the victim is disabled because of the loss of or permanent loss of use of a hand or foot or because of blindness or the permanent impairment of vision in both eyes to such a degree as to constitute virtual blindness.

(b) Battery is a Class 1 municipal offense. (Ord. No. 5351, 10-14-86)

Sec. 11-1-302. Menacing.

(a) A person commits the offense of menacing in violation of this Section if, by any threat or physical action, but without the use of a deadly weapon, he or she intentionally places or attempts to place another person in fear of imminent bodily injury.

(b) Menacing is a Class 1 municipal offense.

Sec. 11-1-303. Harassment.

(a) A person commits the offense of harassment if, with intent to harass, annoy or alarm another person, he or she:

(1) In a public place directs obscene language or makes an obscene gesture to or at another person;

(2) Follows a person in or about a public place;

(3) Initiates communication with a person, anonymously or otherwise, by telephone, computer, computing network or computer system, in a manner intended to harass or threaten bodily injury or property damage, or makes any comment, request, suggestion or proposal by telephone, computer, computing network or computer system which is obscene;

(4) Makes a telephone call or causes a telephone to ring repeatedly, whether or not a conversation ensues, with no purpose of legitimate conversation; or

(5) Makes repeated communications at inconvenient hours that invade the privacy of another and interfere in the use and enjoyment of another's home or private residence or other private property.

(b) As used in this Section, unless the context otherwise requires, *obscene* means a patently offensive description of ultimate sexual acts or solicitation to commit ultimate sexual acts, whether or not said ultimate sexual acts are normal or perverted, actual or simulated, including masturbation, cunnilingus, fellatio, anilingus or excretory functions.

(c) Any act prohibited by Paragraph (a)(3) of this Section may be deemed to have occurred or to have been committed at the place at which the telephone call, electronic mail or other electronic communication was either made or received. Any acts prohibited by Paragraph (a)(4) of this Section may be deemed to have occurred or to have been committed at the place at which the telephone call was either made or received.

(d) Harassment is a Class 1 municipal offense. (Ord. No. 6152, 11-25-96; Ord. No. 7873 §1, 9-8-2008)

Article IV
Offenses Against Property

Sec. 11-1-401. Theft from a merchant.

(a) It shall be unlawful for any person to obtain or exercise control over any meals, goods, services or accommodations having a value of less than one thousand dollars (\$1,000.00) which are the property of another exposed or available for sale or available to rent or for hire, with the intent to convert the same to his or her own use without payment of the purchase price or rent therefor.

(b) Theft from a merchant is a Class 1 municipal offense. (Ord. No. 5351, 10-14-86; Ord. No. 5763, 7-27-92; Ord. No. 6462, 8-9-99; Ord. No. 7643 §1, 8-27-07)

Sec. 11-1-402. Damaging, defacing or destruction of property.

(a) It shall be unlawful for any person to knowingly damage, deface, destroy or injure the real or personal property of one (1) or more other persons in the course of a single episode where the aggregate damage to the real or personal property is less than one thousand dollars (\$1, 000.00).

(b) Damaging, defacing or destruction of property is a Class 1 municipal offense, provided that if the person found guilty of violating Subsection (a) was under eighteen (18) years of age on the date of violation, the court shall not impose a jail sentence. (Ord. No. 5351, 10-14-86; Ord. No. 5763, 7-27-92; Ord. No. 5975, 6-12-95; Ord. No. 6236, 8-25-97; Ord. No. 6350, 9-28-98; Ord. No. 7643 §2, 8-27-07)

Sec. 11-1-403. Damaging, defacing or destruction of City property.

(a) It shall be unlawful for any person to knowingly damage, deface, destroy or injure the real or personal property of the City in the course of a single episode where the aggregate damage to the real or personal property is less than one thousand dollars (\$1, 000.00).

(b) Damaging, defacing or destruction of City property is a Class 1 municipal offense, provided that if the person found guilty of violating Subsection (a) was under eighteen (18) years of age on the date of violation, the court shall not impose a jail sentence. (Ord. No. 5351, 10-14-86; Ord. No. 5763, 7-27-92; Ord. No. 5975, 6-12-95; Ord. No. 6236, 8-25-97; Ord. No. 6350, 9-28-98; Ord. No. 7643 §3, 8-27-07)

Sec. 11-1-404. Throwing stones or missiles.

(a) It shall be unlawful for any person to throw any stone or other missile upon or at any vehicle, building, tree or other public or private structure, or upon or at any person in any vehicle, building or other public or private structure.

(b) Throwing stones or missiles is a Class 2 municipal offense.

Sec. 11-1-405. Nuisances.

(a) Definitions. As used in this Section:

(1) *Nuisance* shall mean any substance, condition or activity which results in a condition detrimental to the health or safety of any of the inhabitants of the City, and includes but is not limited to those substances, conditions and activities specifically deemed to be nuisances either by this Chapter or by any other ordinance of the City.

(2) *Wild or dangerous animal* shall mean and include any and all species of: (i) poisonous reptiles; (ii) lizards belonging to the family *Varanidae*; (iii) crocodilians with a length greater than one (1) foot; (iv) all species of nonhuman mammals excepting the: (A) domestic cat (*Felis catus*); (B) Chinchilla (*Chinchilla laniger*); (C) domestic dog (*Canus familiaris*); (D) domestic ferret (*Mustelaputoris furo*); (E) Mongolian gerbil (*Meriones unguicularus*); (F) guinea pig (*Cavia porcellus*); (G) hamster (*Mesocricetus auratus*); (H) domestic mouse (*Mus domesticus*); (I) domestic rabbit (*Orycholagus cuniculus*); (J) domestic rat (*Rattus rattus* albino strain); (K) squirrel monkey (*Saimiri scuirous*); (L) owl monkey (*Aotus trivirgatus*); (M) wooley monkey (*Lagothrix lagothrica*); (N) horse; (O) mule; (P) donkey; (Q) burro; (R) cow or bull; (S) sheep; (T) goat; (U) pig; (V) chicken; (W) goose; (X) duck; (Y) turkey; or (Z) honeybee, provided, however, that the number of honeybees does not exceed the number contained in two (2) beehives located on the same property. For purposes of subparagraph (Z), a beehive shall mean any container housing no more than one (1) colony of honeybees including one (1) queen bee.

(b) Specific nuisances. The following substances, activities or conditions are hereby expressly deemed to be detrimental to the health or safety of the inhabitants of this City and are nuisances:

(1) Any pool, pond or other accumulation of stagnant water.

(2) The keeping or maintenance of harmful biological, radiological or chemical agents in such a manner or condition that they constitute a danger to human, animal or plant life.

(3) The accumulation of manure, feces or other organic matter if offensive odors are emitted or if it attracts insects or rodents or otherwise creates a hazard to the public health or safety.

(4) The keeping or harboring of any wild or dangerous animals except for use or display in connection with the City zoo or any circus, rodeo, livestock show or scientific exhibition, when approved in writing by the City Manager.

(5) The construction, installation, erection, keeping or maintenance of a barbed wire, electrically charged, sheet metal or corrugated metal fence or fences on any property located within a residential zone district.

(6) Any private property or premises on or in which three (3) or more offenses defined in Section 11-1-201(a)(2) or (4) have occurred within one hundred eighty (180) days.

(c) Unlawful acts.

(1) It shall be unlawful and a Class 2 municipal offense for any person to create, maintain, permit or suffer any nuisance to exist or remain within the City.

(2) Each continuance of a nuisance for twenty-four (24) hours shall be considered a separate and distinct violation of this Chapter.

(d) Abatement. The City Manager and the Health Officer are each hereby authorized to abate or enjoin any nuisances found to exist in the City, whether or not such nuisance is specifically recognized by ordinance.

(e) Abatement Procedure.

(1) 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 or 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 expenses 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.

(2) 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.

(3) 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. (Ord. No. 5045, 4-25-83; Ord. No. 5340, 8-25-86; Ord. No. 6339, 8-10-98)

Sec. 11-1-406. Trespass.

(a) It is unlawful and a Class 2 municipal offense for any person to enter or remain upon the premises of another when consent to enter or remain is absent, denied or withdrawn by the owner, occupant or person having lawful control thereof.

(b) It shall be prima facie evidence that consent is absent, denied or withdrawn to enter or remain upon the premises of another when:

(1) Any person fails or refuses to remove himself or herself from said premises when requested to leave by the owner, occupant or person having lawful control thereof;

(2) Such premises are locked, boarded up or fenced or otherwise enclosed in a manner designed to exclude intruders; or

(3) Such premises are not open to the public and are posted with conspicuous signs that give notice that entrance therein is forbidden. *Conspicuous signs* means signs that are at least one (1) square foot in size and sufficiently lighted to be clear and visible and posted in a conspicuous location.

(c) For the purpose of this Section, *premises* means any privately or publicly owned real property, buildings, structures and other improvements thereon, but shall not include motor vehicles or dwellings. (Ord. No. 6308, 4-27-98; Ord. No. 7482 §1, 7-10-06)

Sec. 11-1-407. Theft.

It shall be unlawful and a Class 1 municipal offense for any person to knowingly obtain or exercise control over any thing of value of another without authorization and with the intent to permanently deprive the other person of the use or benefit of the thing of value; provided, however, that this Section shall have no application:

(1) Where the thing of value has a value of one thousand dollars (\$1, 000.00) or more or is intangible personal property;

(2) Where the other person (victim) is sixty (60) years of age or older and the offense is committed in such person's presence;

(3) Where the other person (victim) is disabled because of the loss of or permanent loss of use of a hand or foot or because of blindness or the permanent impairment of vision in both eyes to such a degree as to constitute virtual blindness and the offense is committed in such person's presence; or

(4) Where the thing of value is a motor vehicle part which has a value of one thousand dollars (\$1,000.00) or more removed from a motor vehicle during the theft. (Ord. No. 5351, 10-14-86; Ord. No. 5763, 7-27-92; Ord. No. 6462, 8-9-99; Ord. No. 7643 §4, 8-27-07)

Article V
Crimes Relating to Government Operations

Sec. 11-1-501. Resisting arrest.

(a) It is unlawful for any person to knowingly prevent or attempt to prevent a police officer, acting under color of his or her official authority, from effecting an arrest of the actor or another by:

(1) Using or threatening to use physical force or violence against the police officer or another;
or

(2) Using any other means which creates a risk of causing bodily injury to the police officer or another.

(b) It is no defense to a charge under Subsection (a) of this Section that the police officer was attempting to make an unlawful arrest.

(c) Resisting arrest is a Class 1 municipal offense.

Sec. 11-1-502. Interference.

(a) It is unlawful for any person to knowingly obstruct, hinder or interfere with a police officer or fireman or any member of the police or fire or health departments, acting under color of his or her official authority, in the discharge or apparent discharge of his or her duties:

(1) By means of physical force or violence or by threats of imminent physical force or violence; or

(2) By means of harassing conduct after being warned by a police officer or fireman that such conduct is unlawful and may result in the arrest of the person if such conduct is not discontinued.

(b) Interference is a Class 2 municipal offense; except that interference by means of physical force or violence or by threats of physical force or violence is a Class 1 municipal offense.

Sec. 11-1-503. Escape from custody.

(a) It shall be unlawful for any person, while in the custody or confinement of any police officer or any member of the Police Department, while confined in the City jail, or while serving a sentence imposed by the Municipal Court to any community corrections facility, to escape or attempt to escape from such custody or confinement.

(b) Escape is a Class 1 municipal offense. (Ord. No. 5645, 11-26-90)

Sec. 11-1-504. False reporting.

(a) It shall be unlawful for any person to knowingly:

(1) Make or cause to be made a false alarm of a fire or other emergency; or

(2) Make or cause to be made a false, misleading or unfounded report to the Police Department concerning the commission or alleged commission by another person of any offense or violation of any City ordinance; or

(3) Give false or misleading information to an officer or employee of the City when such officer or employee is acting in his or her official capacity and the information (i) relates to a matter within the official concern of the officer or employee and (ii) materially interferes with the discharge of such officer's or employee's official duty.

(b) False reporting is a Class 1 municipal offense.

Sec. 11-1-505. Impersonating a City officer or employee.

It shall be unlawful and a Class 1 municipal offense for any person to falsely represent himself or herself to be an officer or employee of the City.

Sec. 11-1-506. Curfews in public parks.

(a) It shall be unlawful and a Class 2 municipal offense for any person except an employee of the City acting in the discharge of his or her duties to be or remain in any public park of the City between the hours of 10:00 p.m. and 6:00 a.m. according to the official time standard which is then in effect.

(b) It shall be an affirmative defense to any prosecution under this Section that the person possesses a permit issued by the Director of Parks and Recreation granting permission to remain in a public park during curfew hours.

Sec. 11-1-507. Unlawfully riding public conveyances.

It shall be unlawful and a Class 2 municipal offense for any person to ride or attempt to ride in or upon any public conveyance without payment of the fare therefor unless authorized to do so by the owner of said public conveyance.

Article VI
Miscellaneous Offenses

Sec. 11-1-601. Carrying weapons.

(a) Definitions. As used in this Section:

(1) *Firearm* means any instrument or device capable of discharging bullets, cartridges or other projectiles by explosive charge, excluding handguns as defined herein, but specifically including and not limited to rifles, shotguns or other guns whose barrel, not including any revolving, detachable or magazine breech, exceeds twelve (12) inches in length.

(2) *Handgun* shall have the same meaning as set forth in Section 18-12-202(4), C.R.S.

(3) *Private property* means any building or specific area not owned, possessed, managed or controlled by the City.

(4) *Weapon* means any instrument or device commonly and generally known to be capable of inflicting serious bodily injury, excluding firearms and handguns as defined herein, but specifically including and not limited to:

a. Any dagger, dirk, knife or stiletto with a blade over three and one-half (3½) inches in length; or any other dangerous instrument capable of inflicting cutting, stabbing or tearing wounds;

b. Any bludgeon, blackjack, billy club, sand club, sandbag or other hand operated striking weapon consisting, at the striking end, of any encased piece of lead or other heavy substance and, at the handle end, a strap or springy shaft which increases the force of impact;

c. Any cross knuckles, or knuckles of lead, brass or other metal; and

d. Any stun gun or device capable of temporarily immobilizing a person by the infliction of an electrical charge.

(b) It shall be unlawful and a Class 1 municipal offense for any person, within the City, to carry a firearm, handgun or weapon concealed on or about his or her person.

(c) It shall be unlawful and a Class 1 municipal offense for any person to openly carry any firearm, handgun or weapon in a building or specific area owned, possessed, managed or controlled by the City at which the City has posted signs at the public entrances to the building or specific area prohibiting the open carrying of firearms, handguns or weapons.

(d) It shall be unlawful and a Class 1 municipal offense for any person to carry any firearm, handgun or weapon upon the private property of another where signs have been posted at the entrance to the private property prohibiting the carrying of firearms, handguns or weapons.

(e) It shall not be a violation of any provision of this Section if, at the time of the act of carrying the firearm, handgun or weapon, the defendant was:

(1) A person in his or her own dwelling or place of business or on property owned by him or her or under his or her control; or

(2) A person in a private automobile or other private means of conveyance who carried the firearm, handgun or weapon for hunting or lawful protection of his, her or another's person or property while traveling; or

(3) A sheriff, undersheriff, deputy sheriff, police officer, coroner, marshal, any officer, guard or supervisory employee of any institution within the Colorado Department of Corrections, a district attorney, assistant district attorney or deputy district attorney, an authorized investigator of a district attorney or the attorney general, a probation or parole officer, an officer or member of the Colorado National Guard while acting under call of the Governor in cases of emergency or civil

disorder, an agent of the Colorado Bureau of Investigation, a wildlife conservation officer, a parks and recreation officer or a security guard employed by this State.

(f) It shall not be a violation of Subsection (b) of this Section, which prohibits the carrying of a concealed handgun, if the defendant, at the time of the act of carrying the concealed handgun, held a valid written permit to carry a concealed handgun pursuant to Section 18-12-105, C.R.S. (Ord. No. 7020, §1, 7-28-03)

Sec. 11-1-602. Substance abuse.

(a) No person shall knowingly smell or inhale the fumes of toxic vapors for the purpose of causing a condition of euphoria, excitement, exhilaration, stupefaction or dulled senses of the nervous system. No person shall knowingly possess, buy or use any such substance for the purposes described in this Subsection, nor shall any person knowingly aid any other person to use any such substance for the purposes described in this Subsection. This Subsection shall not apply to the inhalation of anesthesia or other substances for medical or dental purposes.

(b) Any person who knowingly violates the provisions of Subsection (a) of this Section commits the offense of abusing toxic vapors. Abusing toxic vapors is a Class 1 municipal offense, except that no person shall receive a sentence to confinement in jail for being convicted of a first offense pursuant to this Subsection. Any person convicted of a second or any subsequent offense pursuant to this Subsection may receive a sentence to confinement in jail.

(c) For the purposes of this Section, the term *toxic vapors* means the following substances or products containing such substances:

- (1) Alcohols, including methyl, isopropyl, propyl or butyl;
- (2) Aliphatic acetates, including ethyl, methyl, propyl or methyl cellosolve acetate;
- (3) Acetone;
- (4) Benzene;
- (5) Carbon tetrachloride;
- (6) Cyclohexane;
- (7) Freons, including Freon 11 and Freon 12;
- (8) Hexane;
- (9) Methyl ethyl ketone;
- (10) Methyl isobutyl ketone;
- (11) Naphtha;

- (12) Perchloroethylene;
- (13) Toluene;
- (14) Trichloroethane; or
- (15) Xylene.

(d) In a prosecution for a violation of this Section, evidence that a container lists one (1) or more of the substances described in Subsection (c) of this Section as one (1) of its ingredients shall be prima facie evidence that the substance in such container contains toxic vapors and emits the fumes thereof. (Ord. No. 5521, 12-27-88; Ord. No. 6059, 2-26-96)

Sec. 11-1-603. Unused refrigerators.

It shall be unlawful and a Class 2 municipal offense for any person to store, maintain, abandon or place any unused icebox or refrigerator in any place or location whatsoever which is accessible to children, without first removing the lids, covers or doors of any such icebox or refrigerator.

Sec. 11-1-604. Sunday auto sales.

It shall be unlawful and a Class 2 municipal offense for any person, whether owner, proprietor, agent or employee, to keep open, operate or assist in keeping open or operating any place or premises or residences, whether open or enclosed, for the purpose of selling, bartering or exchanging or offering for sale, barter or exchange, any motor vehicle, whether new, used or secondhand, on the first day of the week, commonly called Sunday.

Sec. 11-1-605. Fortune-telling.

(a) It shall be unlawful and a Class 2 municipal offense for any person to solicit or receive any compensation, gratuity or reward for practicing fortune-telling, palmistry or clairvoyance without a valid license therefor issued by the City; provided, however, that the provisions of this Section as it relates to clairvoyance shall not be applicable to bona fide participation in religious worship of any legally constituted religious body which has been exempted by the United States Treasury Department under the Internal Revenue Code from paying federal income tax.

(b) Fortune-telling licenses shall be subject to the provisions of Chapter 1 of Title IX of this Code and issued by the License Officer. In addition to the information to be submitted for licenses required by Section 9-1-6, an applicant for a fortune-telling license shall submit a complete statement of all convictions of the applicant for any felony or misdemeanor, except misdemeanor traffic offenses.

(c) The annual nonrefundable fee for a fortune-telling license shall be twenty-five dollars (\$25.00) and shall be paid at the time an application is filed. The annual license fee may be modified by resolution adopted by the City Council. (Ord. No. 6710, 7-23-01)

Sec. 11-1-606. Smoking in elevators and in public conveyances.

Within the City, it shall be unlawful and a Class 2 municipal offense for any person to smoke or possess any lighted or burning pipe, cigar or cigarette in or upon any elevator or in or upon any motor bus or other means of public conveyance operating under established schedules.

Sec. 11-1-607. Noise.

(a) The making and creating of an excessive or unusually loud noise, or a noise which is unreasonable and objectionable because it is impulsive, continuous, rhythmic, periodic or shrill within the City as heard and measured in the manner prescribed by Subsection (b) of this Section is hereby declared to be a public nuisance, unlawful and a Class 2 municipal offense.

(b) Classification and Measurement of Noise. For purposes of determining and classifying any noise as excessive or unusually loud as declared to be unlawful and prohibited by this Section, the following test measurements and requirements shall be applied.

(1) Noise occurring within the jurisdiction of the City shall be measured at a distance of at least twenty-five (25) feet from a noise source located within the public right-of-way, and if the noise source is located on private property or property other than the public right-of-way, at least twenty-five (25) feet from the property line of the property on which the noise source is located.

(2) The noise shall be measured on the "A" weighing scale on sound level meter of standard design and quality and having characteristics established by the American National Standards Institute.

(3) For purposes of this Section, measurements with sound level meters shall be made when the wind velocity at the time and place of such measurement is not more than five (5) miles per hour, or twenty-five (25) miles per hour with a wind screen.

(4) In all sound level measurements, consideration shall be given to the effect of the ambient noise of the environment from all sources at the time and place of such level measurement.

(c) Definitions: As used in this Section, unless the context otherwise requires, the following words and phrases shall have the meanings ascribed to them in this Section:

(1) *Decibel* is a unit used to express the magnitude of a change in sound level. The difference in decibels between two (2) sound pressure levels is twenty (20) times the common logarithm of their ratio. In sound pressure measurements, sound levels are defined as twenty (20) times the common logarithm of the ratio of that sound pressure level to a reference level of 2×10^{-5} N/m² (Newton's/meter squared). As an example of the effect of the formula, a three-decibel change is a one-hundred-percent increase or decrease in the sound level, and a ten-decibel change is a one-thousand-percent increase or decrease in the sound level.

(2) *db(A)* means sound levels in decibels measured on the "A" scale of a standard sound level meter having characteristics defined by the American National Standards Institute, publication S.4 - 1970 and approved by the Industrial Commission of Colorado.

(3) *Residential zone* means an area of single-family or multifamily dwellings where businesses may or may not be conducted in such dwellings. The zone includes areas where multiple unit dwellings, high-rise apartment districts and redevelopment districts are located. A residential zone may include areas containing accommodations for transients such as motels and hotels and residential areas with limited office development, but it may not include retail shopping facilities. *Residential zone* includes hospitals, nursing homes and similar institutional facilities.

(4) *Commercial zone* means:

- a. An area where offices, clinics and the facilities needed to serve them are located;
- b. An area with local shopping and service establishments located within walking distances of the residents served;
- c. A tourist-oriented area where hotels, motels and gasoline stations are located;
- d. A large integrated regional shopping center;
- e. A business strip along a main street containing offices, retail businesses and commercial enterprises;
- f. A central business district; or
- g. A commercially dominated area with multiple unit dwellings.

(5) *Light industrial and commercial zone* means:

- a. An area containing clean and quiet research laboratories;
- b. An area containing light industrial activities which are clean and quiet;
- c. An area containing warehousing; or
- d. An area in which other activities are conducted where the general environment is free from concentrated industrial activity.

(6) *Industrial zone* means an area in which noise restrictions on industry are necessary to protect the value of adjacent properties for other economic activity, but shall not include agricultural operations.

(7) *Motor vehicle sound system* means any radio, tape player, CD player, amplifier, speakers or other electronic components located in or upon any motor vehicle and used or capable of being used for the production of sound.

(d) Maximum Permissible Noise Levels:

(1) Every activity to which this Section is applicable shall be conducted in a manner so that any noise produced is not objectionable due to intermittence, beat, frequency or shrillness. Sound

levels of noise radiating from the property line at a distance of twenty-five (25) feet or more therefrom, in excess of the db(A) established for the time period and zones listed in this Section, shall constitute prima facie evidence that such noise is a public nuisance.

<i>Zone</i>	<i>7:00 a.m. to next 7:00 p.m.</i>	<i>7:00 p.m. to next 7:00 a.m.</i>
Residential	55 db(A)	50 db(A)
Commercial	60 db(A)	55 db(A)
Light Industrial	70 db(A)	65 db(A)
Industrial	80 db(A)	75 db(A)

(2) In the hours between 7:00 a.m. and the next 7:00 p.m., the noise levels permitted in Subsection (a) of this Section may be increased by ten (10) db(A) for a period not to exceed fifteen (15) minutes in any one-hour period.

(3) Periodic, impulsive or shrill noises shall be considered a public nuisance when such noises are at a sound level of five (5) db(A) less than those listed in Subparagraph (1) of this Subsection.

(4) This Section is not intended to apply to the operation of aircraft, or to other activities which are subject to federal law with respect to noise control.

(5) Construction projects shall be subject to the maximum permissible noise levels specified for industrial zones for the period within which construction is to be completed pursuant to any applicable construction permit issued by proper authority, or if no time limitation is imposed, then for a reasonable period of time for completion of the project.

(6) All railroad rights-of-way shall be considered as industrial zones for the purposes of this Section, and the operation of trains shall be subject to the maximum permissible noise levels specified for such zone.

(7) This Section is not applicable to the use of property for purposes of conducting speed or endurance events involving motor or other vehicles, but such exception is effective only during the specific period or periods of time within which such use of the property is authorized by the political subdivision or governmental agency having lawful jurisdiction to authorize such use.

(8) This Section is not applicable to the Colorado State Fair grounds or the use thereof when duly authorized by the Colorado State Fair Authority.

(9) This Section is not applicable to six hundred (600) or more megawatt electric power generation facilities which are operated and maintained in compliance with the noise levels and standards set forth in the state noise regulations, currently codified as Section 25-12-103, C.R.S. (as now or hereafter adopted).

(e) Motor Vehicle Noise Levels:

(1) It shall be unlawful and a Class 2 municipal offense for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved, within the City, any motor vehicle which emits a sound pressure level in excess of the db(A) established in Table I of this Subsection. Noise from a motor vehicle within the public right-of-way shall be measured at a distance at least

twenty-five (25) feet from the near side of the nearest traffic lane being monitored and at a height of at least four (4) feet above the immediate surrounding surface on a sound level meter of standard design and quality and having characteristics established by the American National Standards Institute.

(2) Noise from a motor vehicle which is located other than within the public right-of-way shall be measured at a distance at least twenty-five (25) feet from said motor vehicle and at a height of at least four (4) feet above the immediate surrounding surface on a sound level meter of standard design and quality and having characteristics established by the American National Standards Institute.

(3) Table I.

Vehicle class	Maximum permissible sound pressure levels	
	25 ft. (7.5 m)	
Any vehicle greater than 10,000 lbs. manufacturer's gross vehicle weight other than an Interstate Motor Carrier		88
Any motorcycles		80
Any other motor vehicle		80

(4) Mufflers - Prevention of Noise: It shall be unlawful and a Class 2 municipal offense for any person to operate, or for the owner to cause or knowingly permit the operation of any vehicle, within the City, which is not equipped with an adequate muffler and in constant operation and properly maintained to prevent any unnecessary noise, and no muffler or exhaust system shall be modified or used with a cutoff, bypass or similar device. No person shall modify the exhaust system of a motor vehicle in a manner which will amplify or increase the noise emitted by the motor of such vehicle above that which is specified in Table I above.

(f) Vehicle Sound Systems.

(1) Notwithstanding any other provision in this Section or in Section 11-1-201 of this Chapter, and in addition thereto, it shall be unlawful and a Class 2 municipal offense for any person to operate or use, or cause or suffer to be operated or used, any motor vehicle sound system in such a manner as to be plainly audible at a distance of twenty-five (25) feet from the motor vehicle, unless a permit therefor has first been obtained in accordance with Subsection (f)(2) of this Section and is in effect. The driver of any vehicle upon which is located a motor vehicle sound system which is plainly audible at a distance of twenty-five (25) feet from the motor vehicle shall be presumed to be operating, using or causing the operation of such motor vehicle sound system.

(2) Any persons desiring to operate any motor vehicle sound system for either commercial or noncommercial purposes in such a manner as to be plainly audible at a distance of twenty-five (25) feet from the motor vehicle shall first obtain a permit therefor from the City License Officer in accordance with this Subsection and Chapter 1 of Title IX of this Code. The permit may authorize such use or operation of motor vehicle sound system between the hours of 7:00 a.m. and 10:00 p.m. for not more than three (3) days in any one (1) calendar year. In addition to the

information required by Chapter 1 of Title IX of this Code, the application for a permit shall provide the following information:

- a. The name, address and telephone number of the owner and user of the motor vehicle sound system;
- b. The license number of the motor vehicle which is to be used and proof of motor vehicle insurance for such vehicle;
- c. A general description of the sound amplifying equipment which is to be used;
- d. A statement whether the use of the motor vehicle sound system will be used for commercial or noncommercial purposes; and
- e. The date or dates, not exceeding three (3), during which the system is proposed to be operated. (Ord. No. 5935, 2-13-95; Ord. No. 7373 §1, 9-12-05)

Sec. 11-1-608. Possession of cannabis.

(a) As used in this Section, *cannabis* means and includes: all parts of the plant *Cannabis sativa* L., whether growing or not, the fertile seeds thereof, the resin extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its fertile seeds or resin. The term shall not include the mature stalks of such plant, fiber produced from its stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparations of its mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination.

(b) Any person who possesses or openly and publicly displays or consumes not more than one (1) ounce of cannabis shall be guilty of a Class 2 municipal offense.

(c) This Section shall not be applicable to any person licensed or authorized to possess cannabis pursuant to the laws of Colorado or the United States.

Sec. 11-1-609. Possession of drug paraphernalia.

(a) Definition. As used in this Section, *drug paraphernalia* means all equipment, products and materials of any kind which are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of the laws of the State. *Drug paraphernalia* includes, but is not limited to:

(1) Testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances under circumstances in violation of the laws of the State;

(2) Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances;

(3) Separation bins and sifters used, intended for use or designed for use in removing twigs and seeds from or in otherwise cleaning or refining marijuana;

(4) Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances;

(5) Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances;

(6) Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances; or

(7) Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

a. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;

b. Water pipes;

c. Carburetion tubes and devices;

d. Smoking and carburetion masks;

e. Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand;

f. Miniature cocaine spoons and cocaine vials;

g. Chamber pipes;

h. Carburetor pipes;

i. Electric pipes;

j. Air-driven pipes;

k. Chillums;

l. Bongs; or

m. Ice pipes or chillers.

(b) Evidentiary consideration.

(1) In determining whether an object is drug paraphernalia, a court, in its discretion, may consider, in addition to all other relevant factors, the following:

- a. Statements by an owner or by anyone in control of the object concerning its use;
- b. The proximity of the object to controlled substances;
- c. The existence of any residue of controlled substances on the object;
- d. Instructions, oral or written, provided with the object concerning its use;
- e. Descriptive materials accompanying the object which explain or depict its use;
- f. The existence and scope of legal uses for the object in the commodity; and
- g. Expert testimony concerning its use.

(2) In the event a case brought pursuant to this Section is tried before a jury, the Court shall hold an evidentiary hearing on issues raised pursuant to this Section. Such hearing shall be conducted in camera.

(c) Possession prohibited. It is unlawful and a Class 2 municipal offense for any person to possess drug paraphernalia when said person knows or reasonably should know that the drug paraphernalia could be used under circumstances in violation of the laws of the State. (Ord. 7276 §2, 2-28-05)

Article VII
Offenses Relating to Minors

Sec. 11-1-700. Life jackets required in the White Water Park.

It shall be unlawful and a Class 2 municipal offense for any person to enter on or be in the Arkansas River within the Arkansas River Legacy White Water Park without a U.S. Coast Guard approved type 1, 2, 3 or 5 personal flotation device being securely attached to his or her body. For purposes of this Section *Arkansas River Legacy White Water Park* means that portion of the Arkansas River commencing where the Arkansas River flows beneath the northerly edge of the Fourth Street Bridge downstream to one hundred (100) feet south of the location where the Arkansas River flows beneath the Santa Fe Bridge, provided, however, that it shall not be unlawful for any person to fish in or upon the Arkansas River without a personal flotation device in that portion of the Arkansas River Legacy White Water Park lying between the northerly edge of the Union Avenue Bridge and the location one hundred (100) feet south of the Santa Fe Bridge. (Ord. No. 7374 §1, 9-26-05)

Sec. 11-1-701. Misrepresentation of age.

(a) It shall be unlawful and a Class 2 municipal offense for any person under the age of twenty-one (21) years to exhibit false or fictitious identification or documents or otherwise misrepresent his or her true age or identity for the purpose of gaining entry to any place prohibited to minors of his or her true age or for the purpose of obtaining possession of any article or item prohibited to minors of his or her true age.

(b) Nothing in this Section shall be construed as relieving the proprietor of any place prohibited to minors from his or her legal responsibility with respect thereto or of relieving the vendor of articles or items prohibited to minors from his or her legal responsibility with reference to such sales.

Sec. 11-1-702. Regulation of airguns.

(a) Definitions. As used herein:

(1) *Airgun* means any gun, rifle or pistol capable of discharging metal pellets or BB shot which is powered by compressed air or by the action of a spring or elastic.

(2) *Dealer* means any person engaged in whole or in part in the business of selling at retail or renting any airguns.

(3) *Required warning* means a printed card with a minimum height of fourteen (14) inches and a width of eleven (11) inches, with lettering of at least one-half (1/2) inch in height, which states as follows:

WARNING: IT IS ILLEGAL TO SELL OR RENT AIRGUNS TO ANY PERSON UNDER THE AGE OF EIGHTEEN YEARS OR FOR ANY PERSON UNDER EIGHTEEN YEARS OF AGE TO POSSESS OR ATTEMPT TO PURCHASE SAME. IT IS ILLEGAL IF YOU ARE OVER EIGHTEEN YEARS OF AGE FOR YOU TO PURCHASE AN AIRGUN FOR A PERSON UNDER EIGHTEEN YEARS OF AGE UNLESS YOU ARE THE PARENT OR LEGAL GUARDIAN OF SUCH PERSON. FINES MAY BE IMPOSED FOR VIOLATION OF THESE PROVISIONS.

(b) Regulation of Dealers.

(1) Display of warning. Every dealer shall prominently display the required warning at all times in the place where airguns are sold or rented.

(2) Records to be maintained. Every dealer shall keep a record of each airgun sold, rented, exchanged or given away. Such record shall be made at the time of the transaction in a book kept for that purpose and shall include the name of the person to whom the airgun is sold, rented or given to or with whom exchanged; his or her age, occupation and residence address; the make, model and serial number of said airgun; the date of the transaction; and the name of the employee or agent of the dealer conducting the transaction for the dealer. Said record book shall be kept available at the place of business and shall be open to inspection by any duly authorized police officer at all times.

(c) Unlawful Acts.

(1) It shall be unlawful for any person to sell, rent, loan or give an airgun to a minor unless such person is the parent, legal guardian or authorized instructor of such minor.

(2) It shall be unlawful for any dealer to sell, lend, rent, give or otherwise transfer an airgun to a person whom the dealer knows or has reason to believe is a minor.

(3) It shall be unlawful for any minor to carry any airgun in any public place or in or upon any vehicle within the City unless said gun is unloaded and the minor is accompanied by a parent, legal guardian or authorized instructor.

(4) It shall be unlawful for any person to discharge an airgun except in any shooting gallery or on private property or within a building under circumstances where such airgun can be fired, discharged or operated in such a manner as not to endanger persons or property and also in such manner as to prevent any projectile from transversing any grounds or space outside the limits of such gallery, grounds or building.

(5) Unlawful acts pursuant to this Subsection (c) shall constitute Class 2 municipal offenses.

Sec. 11-1-703. Loitering by minors after curfew.

(a) Definitions. As used in this Section, *loitering* or *loiter* shall mean remaining idle in essentially one (1) location, to be dilatory, to tarry or to dawdle, and shall include but not be limited to standing around, hanging out, sitting, kneeling, sauntering or prowling. The term shall also include such activity by the driver or a passenger in a motor vehicle which is parked, standing or being driven upon any City street, alley or parking lot.

(b) It shall be unlawful and a Class 2 municipal offense for any person under the age of eighteen (18) years to loiter on or about any street, sidewalk, curb, gutter, parking lot, alley, vacant lot, park, playground or yard, whether public or private, without the consent or permission of the owner or occupant thereof, during the hours between 10:00 p.m. Sunday through Thursday and 6:00 a.m. the following day, and during the hours between 11:59 p.m. on Friday and Saturday and 6:00 a.m. the following day, according to the applicable time standard then in effect for the City, unless accompanied by a parent, guardian or other adult person over the age of twenty-one (21) years.

(c) This Section shall not apply, and no person shall be charged with a violation of this Section or arrested therefor, if such person was:

(1) Not loitering;

(2) In a parked, standing or moving motor vehicle while accompanied by a parent, guardian or other adult person over the age of twenty-one (21) years;

(3) In a motor vehicle in interstate travel;

(4) Engaged in any employment, school, religious or athletic activity or going to or returning from any such activity or going to or from any other activities of any kind which are supervised or directed by a parent or adult person over the age of twenty-one (21) years;

(5) Exercising rights protected by the first amendment of the United States Constitution such as the free exercise of religion, freedom of speech or the right of assembly; or

(6) Married or an emancipated minor. (Ord. No. 5904, 9-26-94)

Sec. 11-1-704. Sale or exhibition of matter harmful to minors.

(a) Definitions. As used in this Section:

(1) *Hard core sexual conduct* means patently offensive acts, exhibitions, representations, depictions or descriptions of:

a. Intrusion, however slight, actual or simulated, by any object, any part of an animal's body or any part of a person's body into the genital or anal openings of any person's or animal's body; or

b. Cunnilingus, fellatio, anilingus, masturbation, bestiality, lewd exhibition of genitals or excretory functions, actual or simulated.

(2) *Material* means any physical object, facsimile, recording, transcription, pictorial representation, motion picture or reproduction, whether mechanical, electrical or chemical, which is used as a means of communicating sensation or emotion to human beings to or through the visual, aural or tactile senses, but does not include the printed or written word.

(3) *Matter harmful to minors* means that material as defined in Subsection (2) of this Section which:

a. Taken as a whole, appeals to the prurient interest of the average person, applying contemporary state-wide standards;

b. Depicts or describes sadomasochistic conduct or hard-core sexual conduct; and

c. Taken as a whole, lacks serious literary, artistic, political or scientific value.

(4) *Person* means any individual, partnership, firm, association, corporation or other legal entity, or any agent or servant thereof.

(5) *Sadomasochistic conduct* means patently offensive acts, exhibitions, representations, depictions or descriptions of flagellation, mutilation or torture, actual or simulated, in a sexual context.

(6) A person acts knowingly with respect to conduct or to a circumstance described by an ordinance defining an offense when he or she is aware that his or her conduct is of such a nature or that such circumstance exists.

(7) *Minor* means a real person under the age of eighteen (18) years.

(8) *Visibly displayed* means that the material or performance is visible on a billboard, viewing screen, marquee, newsstand, display rack, window, show case, display case or other similar display area that is visible from any part of the premises where a juvenile is or may be allowed, permitted or invited as part of the general public or otherwise, or that is visible from a public street, sidewalk, park, alley, residence, playground, school or other place to which a juvenile, as

part of the general public or otherwise has unrestrained and reasonably anticipated access and presence.

(b) No person shall knowingly engage in the business of selling, lending, giving away, showing, advertising for sale or distributing to any minor, nor shall any person knowingly have in his or her possession with the intent to engage in said business or to otherwise offer for sale or commercial distribution to any minor, nor shall any person knowingly permit to be visibly displayed to minors any matters harmful to minors, as defined in this Section.

(c) It shall be an affirmative defense to a charge under this Section that such material or matter was so possessed, furnished or displayed to a minor for a bona fide medical, scientific, educational, governmental or judicial purpose by a physician, psychologist, sociologist, scientist, teacher, librarian, clergyman, judge, prosecutor, parent or legal guardian.

(d) Violation of any provision of this Section shall be a Class 1 municipal offense.

Sec. 11-1-705. Carrying knives by minors.

(a) It shall be unlawful and a Class 2 municipal offense for any person under eighteen (18) years of age to carry any knife with a blade over two and one-half (2¹/₂) inches in length on or about his or her person, whether concealed or not.

(b) It shall be an affirmative defense to charges brought under this Section that the knife is or was carried by a person on his or her own property or in his or her own dwelling or for use in the course of a bona fide hunting or fishing trip.

Sec. 11-1-706. Reserved.

Sec. 11-1-707. Tattooing of minors.

It shall be unlawful and a Class 1 municipal offense for any person to tattoo any minor without prior written consent of the parent, guardian or other person having legal care or custody of such minor. (Ord. 6002, 8-14-95)

Article VIII

Arrest

Sec. 11-1-801. General policy.

(a) The general policy relating to arrest shall favor issuances of a summons and complaint instead of the arrest of a person; therefore, all persons who may be lawfully charged with an offense constituting a violation of a municipal ordinance shall be issued a summons and complaint and released without bond upon executing a written promise to appear at the time and place indicated on the summons and complaint, except in the following cases:

(1) When a person refuses to give a written promise to appear in court as provided on the summons and complaint after being advised such refusal will result in the arrest of the person.

(2) When the person refuses to disclose his or her identity after being advised such refusal will result in the arrest of the person.

(3) When the officer has reasonable and probable grounds to believe that the person will disregard the notice or summons to appear. In determining the likelihood that the person will disregard the notice, the officer shall consider:

- a. The person's length of residence in the City or the County;
- b. The person's employment in the City or the County; and
- c. The person's past history of response to legal process and past criminal history.

(4) When the officer has reasonable and probable grounds to believe that:

- a. The person will continue in a breach of peace; or
- b. The immediate safety of the person or other persons would be best served by arresting the person.

(b) The intentional disregard of the general policy relating to arrest set forth in this Section by any officer or employee of the City shall constitute grounds for disciplinary action. (Ord. No. 4949, 3-22-82)

Sec. 11-1-802. Enforcement.

As provided in Section 10-2 of the Charter, the Police Department shall enforce all ordinances of the City, including, without limitation, Chapter 1 of Title XI of this Code, except where the enforcement thereof has been specifically assigned by ordinance to another department or agency of the City or entity created by intergovernmental agreement. (Ord. No. 7374 §2, 9-26-05)

CHAPTER 2

Jails and Prisoners

Sec. 11-2-1. Definitions.

As used in this Chapter, the phrase:

(1) *Chief of Police* shall mean the Chief of Police of the City personally or his or her authorized designee for the care, custody or control of any or all persons subject to this Chapter.

(2) *City jail or lockup* shall mean that facility or facilities operated by the Chief of Police for the detention or confinement of municipal prisoners.

(3) *Work release or work release program* shall mean any formal or informal work program operated by the Chief of Police as an alternative to imprisonment in the City jail or lockup.

(4) *Community corrections facility* shall mean any community based program conducted by any unit of local government, the Department of Corrections, a private nonprofit agency or any corporation which provides residential accommodations and correctional programs for persons convicted of crimes and which has entered into a contract with the City to provide such services with respect to persons sentenced for municipal offenses. (1957 Code, §21-1; Ord. No. 4977, 6-28-82; Ord. No. 5645, 11-26-90)

Sec. 11-2-2. Sentencing alternatives.

Any person over the age of eighteen (18) years who is convicted of a violation of a City ordinance or Charter provision and sentenced to imprisonment shall be confined in the City jail or lockup or in the County jail, or may, in the discretion of the Municipal Judge, be sentenced to a community corrections facility or be granted work release for all or a portion of such sentence. All persons confined in the City jail or lockup or serving in a work release program shall at all times be under the care, custody and control of the Chief of Police or such other person as he or she may designate during the period of their confinement. All persons confined in the County jail shall at all times be under the care, custody and control of the Sheriff or his or her designee. All persons confined in or sentenced to a community corrections facility shall at all times be under the care, custody and control of the administrator of the facility and such other correctional personnel as he or she may designate during the period of their confinement. (1957 Code, §21-2; Ord. No. 4977, 6-28-82; Ord. No. 5645, 11-26-90)

Sec. 11-2-3. Prisoner work; reduction of sentence; work release.

(a) Any person sentenced to and confined in the City jail or lockup for violation of a municipal ordinance or Charter provision may be required to perform any reasonable labor by the Chief of Police for a period of eight (8) hours per day. Any person who so labors diligently and whose behavior is otherwise good may have his or her sentence reduced by the Chief of Police one (1) day for each day that he or she so conducts himself or herself, so that each two (2) days of his or her sentence may be served as one (1) day.

(b) Any person granted work release, in lieu of confinement, may be required to perform up to eight (8) hours labor per day for municipal or public benefit in the work release program. Each day spent performing labor in the work release program shall be credited against only one (1) day of such prisoner's work release sentence. During the periods of time during each day in which a work release participant is not required to labor or report for labor, such participant shall be granted his or her liberty, subject to such reasonable restrictions as the Chief of Police may deem necessary.

(c) Any person sentenced to a community corrections facility shall observe all rules and directives of the facility and perform all work and tasks assigned by the administrator of the facility and by other correctional personnel. (1957 Code, §21-3; Ord. No. 4977, 6-28-82; Ord. No. 5645, 11-26-90)

Sec. 11-2-4. Failure to pay fine; daily credit.

(a) Any person convicted of a municipal ordinance or Charter violation who receives a fine or penalty and who is able to pay the fine but shall fail or refuse to pay the same when demanded, shall be committed in default thereof to confinement in the City jail or lockup, County jail or community

corrections facility, or may be granted work release until such penalty or fine is satisfied as set forth below.

(b) Any person so confined for failure to pay a fine shall be allowed forty dollars (\$40.00) credit against his or her fine for each day so confined. Any person so confined, and any person who is granted work release, who diligently and satisfactorily performs such labor as is directed by the Municipal Judge and whose behavior is otherwise good may be allowed by the Municipal Judge a credit against his or her fine of twenty-five dollars (\$25.00) for each day he or she so works and conducts himself or herself. Thus, a work release participant may satisfy his or her fine at the rate of twenty-five dollars (\$25.00) per day, while a confined prisoner who labors may be allowed sixty-five dollars (\$65.00) for each day in jail. (1957 Code, §21-4; Ord. No. 4036, 6-9-75; Ord. No. 4977, 6-28-82; Ord. No. 5645, 11-26-90; Ord. No. 6911 §1, 11-25-02)

Sec. 11-2-5. Obedience to orders.

(a) It shall be unlawful and a Class 1 municipal offense for any person confined or detained in the City jail or lockup to fail to obey all reasonable lawful orders and directions of the Chief of Police.

(b) It shall be unlawful and a Class 1 municipal offense for any person confined or sentenced to a community corrections facility to fail to obey all reasonable, lawful orders and directions of the administrator of such facility or his or her authorized representatives. (1957 Code, §21-5; Ord. No. 4977, 6-28-82; Ord. No. 5645, 11-26-90)

Sec. 11-2-6. Introducing contraband.

It shall be unlawful and a Class 1 municipal offense for any person to introduce any spirituous or malt liquors or drugs, weapons or other contraband to any person confined in the City jail or lockup or in any community corrections facility, or to any person while the same is performing work release duties. Drugs or other medication prescribed by a physician must be controlled and administered by the person in charge of such place of confinement or work release labor. (1957 Code, §17-11; Ord. No. 4977, 6-28-82; Ord. No. 5645, 11-26-90)

Sec. 11-2-7. Resentencing of offenders sentenced to community corrections facilities.

If the administrator of a community corrections facility or the Chief of Police has cause to believe that an offender placed in a community corrections facility has violated any rule or condition of his or her placement in that facility, or cannot be safely housed in that facility, or for any other reason cannot remain at that facility, the administrator or Chief of Police shall certify that fact to the presiding Municipal Judge, who shall thereupon resentence the offender to jail or other facilities; provided, however, that in no case upon resentencing shall the length of confinement be increased beyond the length of the original sentence. Nothing in this Section is intended to nor should be construed to impair the Municipal Court's authority to sentence an offender upon conviction of any new or additional offenses committed by any offender while in the custody of a community corrections facility. (Ord. No. 5645, 11-26-90)

CHAPTER 3

Alcoholic Beverages

Article I Alcoholic Beverages

Sec. 11-3-1. Exercise of police powers.

This Chapter shall be deemed an exercise of the police powers of the City for the protection of the economic and social welfare, and health and peace and morals of the people of this City, and shall further be deemed to be those other reasonable restrictions, terms and conditions which are placed upon licenses for the sale or dispensing of alcoholic beverages and 3.2% beer which may be granted by the Liquor and Beer Licensing Board as the Local Licensing Authority for the City as provided in Articles 46 and 47 of Title 12, C.R.S. (1957 Code, §4-18; Ord. No. 3656, 1-22-73)

Sec. 11-3-2. Definitions.

(a) For the purposes of this Chapter, all words shall receive the meaning placed upon them in Articles 46 and 47 of Title 12, C.R.S., as amended.

(b) In addition thereto, the following words shall have the meanings assigned thereto:

(1) *Local Licensing Authority* or *City Licensing Authority* shall mean the Liquor and Beer Licensing Board.

(2) *Licensee* shall mean any person licensed to sell or dispense malt, vinous or spirituous liquor or fermented malt beverage, or any agent or employee of such person.

(3) *Premises* shall include all or any part of the physical boundaries of any establishment duly licensed for the sale of beer or liquor under the provisions of this Chapter.

(4) *Board* shall mean the Liquor and Beer Licensing Board. (1957 Code, §4-9; Ord. No. 3656, 1-22-73)

Sec. 11-3-3. Licensing.

Malt, vinous and spirituous liquor and fermented malt beverages shall be sold only by the persons and parties licensed as provided by state law and this Code. (Ord. No. 3656, 1-22-73)

Article II Liquor and Beer Licensing Board

Sec. 11-3-4. Licensing authority.

The Liquor and Beer Licensing Board shall be the local licensing authority in the City for the licensing of a location to sell beer and alcoholic liquors as authorized by Articles 46 and 47 of Title 12, C.R.S., as amended, and the rules and regulations of the State Licensing Authority, and shall

possess all powers given to local licensing authorities by the provisions of said statute and rules and regulations. (Ord. No. 3656, 1-22-73)

Sec. 11-3-5. Members.

(a) The Liquor and Beer Licensing Board shall consist of five (5) members to be appointed by the City Council by resolution. Four (4) members shall be initially appointed for staggered terms expiring on the first day of August as follows: one (1) member for a one-year term, one (1) member for a two-year term, one (1) member for a three-year term, and two (2) members for four-year terms, or in lieu of one (1) member for a four-year term, a member of the City Council may be appointed for an indefinite term. Thereafter, each member shall be appointed for a term of four (4) years. At the Board's first regular meeting in August 1978 and in August each year thereafter, the Board shall appoint one (1) of its members to act as Chairman of the Board. The City Council shall make an appointment for any unexpired term in the event a vacancy arises.

(b) Any member of the Board may be removed by the City Council for nonattendance to duty or for cause. Any member who fails to attend three (3) consecutive meetings of the Board shall be removed from the Board, unless the City Council excuses any such absences. (Ord. No. 3656, 1-22-73; Ord. No. 3986, 2-24-75; Ord. No. 4514, 8-14-78; Ord. No. 7830 §1, 7-14-08)

Sec. 11-3-6. Board to prescribe terms, conditions or provisions.

The Liquor and Beer Licensing Board may prescribe terms, conditions or provisions as it may deem necessary to carry out its exercise of police powers, provided that these terms, conditions or provisions do not conflict with the laws of the State or rules and regulations provided by the State Licensing Authority or ordinances and resolutions of the City. (Ord. No. 3656, 1-22-73)

Sec. 11-3-7. Granting or denial of license.

(a) Before entering any decision approving or denying an application, the Liquor and Beer Licensing Board shall consider the facts and evidence adduced as a result of its investigation, as well as any other facts, the reasonable requirements of the neighborhood for the type of license for which application has been made, the number, type and availability of liquor outlets located in or near the neighborhood under consideration and any other pertinent matters affecting the qualifications of the applicant for the conduct of the type of business proposed; provided that the reasonable requirements of the neighborhood shall not be considered in the issuance of a club liquor license.

(b) All hearings of the Liquor and Beer Licensing Board shall be conducted pursuant to and in accordance with the provisions of Articles 46 and 47 of Title 12, C.R.S., and Section 1-7-7 of this Code, and if such provisions are in conflict, the statute's provision shall prevail.

(c) Any decision of the Liquor and Beer Licensing Board approving or denying an application shall be in writing stating the reasons therefor and made within thirty (30) days after the date of the public hearing, and a copy of such decision shall be sent by certified mail to the applicant at the address as shown in the application.

(d) No license shall be issued by the Liquor and Beer Licensing Board after approval of an application until the building in which the business is to be conducted is ready for occupancy, with such furniture, fixtures and equipment in place as is necessary to comply with the provisions of this

Article, and then only after inspection of the premises has been made to determine that the applicant has complied with the architect's drawing and plans and specifications submitted with the application.

(e) After approval of any application, the Liquor and Beer Licensing Board shall notify the state licensing authority of such approval. (Ord. No. 3656, 1-22-73)

Sec. 11-3-8. Suspension and revocation of license.

(a) The Liquor and Beer Licensing Board shall have the power to suspend or revoke any license issued by the Board on its own motion or on complaint for any violation by the licensee or by any of the agents, servants or employees of such licensee of the provisions of the Colorado Liquor Code, the Colorado Beer Code or any of the rules and regulations authorized pursuant to such codes, or any of the terms, conditions or provisions of the license issued by the Board, after investigation and public hearing at which the licensee shall be afforded an opportunity to be heard.

(b) The Board shall have the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books and records necessary to the determination of any hearing which it is authorized to conduct.

(c) Notice of suspension or revocation, as well as any required notice of such hearing, shall be given by mailing same in writing to the licensee at the address contained in such license. No such suspension shall be for a longer period than six (6) months.

(d) Any license may be summarily suspended by the Board without notice pending any prosecution, investigation or public hearing. Nothing in this Section shall prevent the summary suspension of such license for a temporary period of not more than fifteen (15) days.

(e) If any license is suspended or revoked, no part of the fees paid therefor shall be returned to the licensee.

(f) The Board shall have the power to implement the optional procedures set forth in Subsections (3) to (6) of Section 12-47-601 of the Colorado Liquor Code, which the City Council hereby accepts and adopts. (Ord. No. 3656, 1-22-73; Ord. No. 6415, §1, 3-22-99)

Sec. 11-3-9. Appeal of Board decisions.

Actions taken by the Board are subject to review by the Courts pursuant to Rule 106 of the Colorado Rules of Civil Procedure. Review must be applied for within thirty (30) days after the date of decision. Any person applying to the Court for review shall be required to pay the cost of preparing a transcript of proceedings before the Board whenever such a transcript is demanded by the person taking the appeal or when such a transcript is furnished by the Board pursuant to the Court order. (Ord. No. 3656, 1-22-73)

Sec. 11-3-10. Quorum and majority vote.

A majority of the Liquor and Beer Licensing Board shall constitute a quorum for the conduct of its business. All decisions of the Liquor and Beer Licensing Board shall be by majority vote of the entire Board. (Ord. No. 3656, 1-22-73)

Sec. 11-3-11. License applications.

All applications for licenses and fees shall be filed with the City Clerk, on forms to be approved by the City Clerk, together with such other information and documents as may be required by the rules of the Liquor and Beer Licensing Board. The City Clerk shall act as Secretary to the Liquor and Beer Licensing Board. (Ord. No. 3656, 1-22-73)

Sec. 11-3-12. Distance from schools or colleges.

(a) Pursuant to authority granted to the City Council by the Colorado Liquor Code, the five-hundred-foot distance limitation contained in Section 12-47-313(1)(d)(I), C.R.S., is hereby reduced to two hundred (200) feet, provided that this distance reduction shall apply only to bona fide hotel and restaurant businesses, which maintain at least five (5) sleeping rooms for the accommodation of guests and have meals available for consumption at all times when the facility is open to the public.

(b) Pursuant to authority granted to the City Council by the Colorado Liquor Code, the five-hundred-foot distance limitation contained in Section 12-47-313(1)(d)(I), C.R.S., is hereby reduced to three hundred (300) feet, provided that this distance reduction shall apply only to bona fide hotel and restaurant businesses located within the downtown business district bounded by the center line of Interstate Highway 25 on the east, the center line of Elizabeth Street on the south and west and the center line of Thirteenth Street on the north.

(c) Pursuant to authority granted to the City Council by the Colorado Liquor Code, the five-hundred-foot distance limitation contained in Section 12-47-313(1)(d)(I), C.R.S., is hereby eliminated for a Hotel and Restaurant Class Liquor License to serve the Occhiato University Center located upon the Pueblo Campus of Colorado State University, 2200 Bonforte Boulevard, Pueblo, CO 81001.

(d) Pursuant to authority granted to the City Council by the Colorado Liquor Code, the five-hundred-foot distance limitation contained in Section 12-47-313(1)(d)(I), C.R.S., is hereby eliminated for a Tavern Class Liquor License to serve the College Center Building including curtilage up to one hundred (100) feet from said building located upon the campus of Pueblo Community College, 900 W. Orman Avenue, Pueblo, CO 81004.

(e) Any license granted under the provisions of this Section shall also be subject to all other applicable provisions of state and local law.

(f) The grant or denial of any application under this Section shall remain within the authority and discretion of the Liquor and Beer Licensing Board. (Ord. No. 5661, 2-11-91; Ord. No. 5920, 11-14-94; Ord. No. 7688, 11-26-07; Ord. No. 7831 §1, 7-14-08; Ord. No. 7824 §1, 6-9-2008)

Sec. 11-3-13. Optional premises licenses.

(a) The Board may accept applications either for an optional premises license or for a hotel and restaurant license with optional premises.

(b) The specific types of outdoor sports and recreational facilities which may be licensed hereunder shall be limited to golf courses, and such other facilities as may be designated by ordinance.

(c) No alcoholic beverages may be served on the optional premises unless the licensee has provided to the state and local licensing authorities at least forty-eight (48) hours' prior written notice of the specific days and hours on which the optional premises are to be so used.

(d) In addition to the requirements of Sections 11-3-13 through 11-3-15 herein, optional premises applications, licenses and licensees shall be subject to all other applicable requirements of the Colorado Liquor Code and City ordinances. (Ord. No. 5825, 8-23-93)

Sec. 11-3-14. Applications.

Each application for an optional premises license or for a hotel and restaurant license with optional premises shall include the following:

(1) All license and application fees required by the Colorado Liquor Code and City ordinances;

(2) A detailed scale drawing or diagram of the entire outdoor sports or recreation facility on which the optional premises are to be located, showing all significant architectural or topographical features of the facility and including the location and description of each of the following:

- a. Secured areas for storage of alcohol;
- b. Optional premises to be licensed;
- c. Bars or serving areas within each optional premises;
- d. Movable carts or vehicles for the service of alcohol, if any;
- e. Seating facilities;
- f. Rest room facilities;
- g. Controls on access to optional premises;

(3) Evidence that the optional premises will be operated in compliance with all other requirements of state and local law;

(4) All information required by the state or local licensing authority for liquor license applications; and

(5) Any other information reasonably required by the local licensing authority or state licensing authority. (Ord. No. 5825, 8-23-93)

Sec. 11-3-15. Hearing required.

(a) The Board shall hold a public hearing on each application for an optional premises license or for a hotel and restaurant license with optional premises.

(b) In addition to all other standards applicable to the issuance of licenses under the Colorado Liquor Code, the applicant shall have the burden of justification of the following requirements for issuance of an optional premises license:

- (1) Need and desirability of the optional premises requested;
- (2) Need and desirability of the number and size of service areas or facilities requested;
- (3) Adequate security and control over the optional premises by the licensee;

(4) That the health, safety and welfare of the inhabitants of the neighborhood and the users of the outdoor sports and recreation facility will not be adversely affected by issuance of such license.

(5) That the state licensing authority has approved the location proposed for optional premises as required by the Colorado Liquor Code. (Ord. No. 5825, 8-23-93)

Secs. 11-3-16—11-3-20. Reserved.

Article III
Municipal Offenses

Sec. 11-3-21. Disorderly conduct; permitting.

It shall be unlawful for any licensee to permit any disturbance or unlawful or disorderly act or conduct to be committed by any person or group of persons upon his or her premises. (1957 Code, §4-10; Ord. No. 3656, 1-22-73)

Sec. 11-3-22. Participation; exceptions.

It shall be unlawful for a licensee, in any manner, to encourage or participate in any disturbance or unlawful or disorderly act or conduct upon his or her premises; provided, however, that such licensee may use such lawful means as may be proper to protect his or her person or property from damage or injury. (1957 Code, §4-11; Ord. No. 3656, 1-22-73)

Sec. 11-3-23. Report to police.

A. licensee shall immediately report to the Police Department any unlawful or disorderly act or conduct or any disturbance committed on his or her premises. (1957 Code, §4-12; Ord. No. 3656, 1-22-73)

Sec. 11-3-24. Absence no defense.

It shall not be a defense that the licensee was not personally present on his or her premises at the time such unlawful or disorderly act, conduct or disturbance took place. However, an agent, servant

or employee of the licensee shall not be liable hereunder when absent from the premises while not on duty. (1957 Code, §4-14; Ord. No. 3656, 1-22-73)

Sec. 11-3-25. Securing credit by pledge.

It shall be unlawful for any licensee in the City engaged in the sale and dispensation of malt, vinous or spirituous liquors, or fermented malt beverages, to, in any manner, accept any personal property as a pledge, pawn or loan for any sum of money advanced by such licensee or for any credit extended by such licensee. (1957 Code, §4-15; Ord. No. 3656, 1-22-73)

Sec. 11-3-26. Penalty.

Any licensee violating any of the provisions of Sections 11-3-21 to 11-3-25, inclusive, of this Article shall, upon conviction thereof, be fined in a sum not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000.00), or shall be imprisoned in the City jail for a period of not less than ten (10) days nor more than one (1) year, or shall be both so fined and imprisoned. (1957 Code, §4-17; Ord. No. 3656, 1-22-73; Ord. No. 7937 §21, 12-8-08)

Sec. 11-3-27. Weapons prohibited in premises.

(a) It shall be unlawful and a municipal offense for any person to carry on or about his or her person a weapon in or upon any premises licensed for the sale of fermented malt beverages or malt, vinous or spirituous liquors.

(b) It shall be unlawful and a municipal offense for any licensee to knowingly permit any person, other than a policeman or other certified peace officer, to carry a weapon on or about his or her person while in or upon a licensed premises.

(c) It shall be an affirmative defense to a charge of violating this Section that the person carrying the weapon was:

(1) A person in his or her own place of business or on property owned or under his or her control at the time of the act of carrying the weapon; or

(2) A person who was a policeman or other certified peace officer at the time of the act of carrying the weapon.

(d) As used in this Section, *weapon* shall have the same meaning as that term is defined in Section 11-1-601(a)(4) of this Code but shall in addition specifically include:

(1) A battery-powered flashlight containing more than two (2) "D"-size batteries or which is more than eight (8) inches in length; and

(2) Any club or baton longer than eight (8) inches in length, provided, however, that this Paragraph (2) is not intended to cover any pool or billiards stick. (Ord. No. 4473, 4-24-78; Ord. No. 6735, 9-24-01; Ord. No. 7020, §2, 7-28-03)

Secs. 11-3-28—11-3-40. Reserved.

Article IV
Special Event Permits

Sec. 11-3-41. Liquor and Beer Licensing Board; local authority.

The Liquor and Beer Licensing Board as local authority may issue a special event permit for the sale, by the drink only, of malt beverages, or the sale of malt, spirituous or vinous liquors to organizations qualifying under this Article, subject to the provisions of this Chapter and to the limitations imposed by this Article. (Ord. No. 3460, 7-1-71; Ord. No. 3656, 1-22-73)

Sec. 11-3-42. Organizations who qualify.

A special event permit issued under this Article may be issued only to an organization, whether or not presently licensed under this Chapter, which has been incorporated under the laws of this State for purposes of a social, fraternal, patriotic, political or athletic nature, and not for pecuniary gain, or which is a regularly chartered branch, lodge or chapter of a national organization or society organized for such purposes and being nonprofit in nature, or which is a regularly established religious or philanthropic institution. (Ord. No. 3460, 7-1-71)

Sec. 11-3-43. Organization must supply proof.

A special event permit may be issued only upon a satisfactory showing by an organization that:

(1) Its existing licensed facilities are inadequate for the purposes of serving members or guests of the organization and that additional facilities are necessary by reason of the nature of the special event being scheduled;

(2) The organization is temporarily occupying premises other than its regular premises during such special events as civic celebrations or county fairs, and that members of the general public will be served during such special events; and

(3) Other existing facilities are not available or are inadequate for the needs of the organization. (Ord. No. 3460, 7-1-71)

Sec. 11-3-44. Fees.

(a) The fee for investigation and issuance of a special event permit is one hundred dollars (\$100.00) per permit.

(b) All such fees are payable at the time application for a special event permit is made. The Liquor and Beer Licensing Board as local authority may require any applicant to post a performance bond to assure compliance with the provisions of this Article. (Ord. No. 3460, 7-1-71; Ord. No. 3656, 1-22-73; Ord. No. 5192, 12-10-84; Ord. No. 7722 §1, 1-28-08)

Sec. 11-3-45. Permit issued for specific location.

Each special event permit shall be issued for a specific location and is not valid for any other location. (Ord. No. 3460, 7-1-71)

Sec. 11-3-46. Opening hours.

A special event permit authorizes sale of the beverage or the liquors specified only during the following hours:

- (1) Between the hours of 5:00 a.m. of the day or days specified in a malt beverage permit and until 12:00 midnight on the same day or days;
- (2) Between the hours of 7:00 a.m. of the day or days specified in a malt, vinous and spirituous liquor permit and until 2:00 a.m. of the day or days immediately following. (Ord. No. 3460, 7-1-71)

Sec. 11-3-47. Issuance of permit; limitation.

A special event permit may not be issued to any organization for more than two (2) consecutive days, or for a maximum total time in one (1) calendar year of eight (8) days. No issuance of a special event permit shall have the effect of requiring the Liquor and Beer Licensing Board as local authority to issue such a permit upon any subsequent application by an organization. (Ord. No. 3460, 7-1-71; Ord. No. 3656, 1-22-73)

Sec. 11-3-48. Denial of permit.

The Liquor and Beer Licensing Board as local authority may deny the issuance of a special event permit upon the grounds that such issuance would be injurious to the public welfare by reason of the nature of the special event or its location within the community. (Ord. No. 3460, 7-1-71; Ord. No. 3656, 1-22-73)

Sec. 11-3-49. Forms.

Applications for a special event permit shall be made on forms provided by the City Clerk, and shall be verified by oath or affirmation of an officer of the organization making application. Upon approval of any application, the City Clerk shall notify the state licensing authority of such approval. (Ord. No. 3460, 7-1-71)

Article V
Massage Parlors

Sec. 11-3-50. Licensing authority.

The Liquor and Beer Licensing Board shall be the local licensing authority in the City for the licensing of massage parlors as authorized by the Colorado Massage Parlor Code and shall possess all powers given to local licensing authorities by the provisions of said code. (Ord. No. 4412, 1-23-78)

Editor's Note: Ord. No. 3656 was passed and approved by the City Council on 1-22-73 and becomes effective 3-1-73.

Sec. 11-3-51. Applications.

All applications and fees for massage parlors shall be filed with the City Clerk together with such other information and documents as may be required by the Liquor and Beer Licensing Board. (Ord. No. 4412, 1-23-78)

Sec. 11-3-52. Hearings.

All proceedings and hearings of the Liquor and Beer Licensing Board relating to massage parlors shall be conducted to and in accordance with the Colorado Massage Parlor Code and Section 1-7-7 of this Code; and if such provisions are in conflict, the Colorado Massage Parlor Code shall control. No massage parlor license shall be granted unless approved by a majority of the entire Board. (Ord. No. 4412, 1-23-78)

Secs. 11-3-53—11-3-60. Reserved.

Article VI
Alcohol Beverage Tastings

Sec. 11-3-61. Authority.

A retail liquor store or liquor-licensed drugstore licensee may conduct alcohol beverage tastings within the City only following approval of an application for an alcohol beverage tastings permit by the Liquor and Beer Licensing Board and subject to the limitations set forth in this Article and Section 12-47-301(10), C.R.S. (Ord. No. 7911 §1, 11-10-08)

Sec. 11-3-62. Application.

(a) A retail liquor store or liquor-licensed drugstore licensee desiring to conduct alcohol beverage tastings must submit a permit application or permit application renewal for that purpose in accordance with this Article.

(b) An alcohol beverage tastings permit shall be valid for the period of the then-existing liquor license, and the permit may be renewed at the time of any liquor license renewal.

(c) An application for alcohol beverage tastings permit must be submitted to the Liquor and Beer Licensing Board no later than thirty (30) days prior to the date of the first alcohol beverage tasting requested in the application or at the time of license renewal, whichever occurs first.

(d) At a minimum, the application must include the following information:

(1) The name of the licensee and location of the premises of the retail liquor store or liquor-licensed drugstore;

(2) Schedule of the specific dates and times of requested alcohol beverage tastings for the period of the permit. Following approval of a tastings permit and the tastings schedule by the Liquor and Beer Licensing Board, the licensee may amend such schedule by delivering to the

Liquor and Beer Licensing Board, at least fourteen (14) days prior to an unscheduled event, a notice of amendment of the approved schedule;

(3) A copy of a certificate of training for individuals who will conduct beverage tastings; and

(4) Any other information requested by the Liquor and Beer Licensing Board reasonably necessary to ensure compliance with the requirements of this Article and Section 12-47-301(10), C.R.S. (Ord. No. 7911 §1, 11-10-08)

Sec. 11-3-63. Decision on application.

(a) The Liquor and Beer Licensing Board may deny an application for issuance of an alcohol beverage tastings permit upon the following grounds:

(1) The applicant has failed to establish that the applicant is able to conduct alcohol beverage tastings in compliance with this Article or Section 12-47-301(10), C.R.S.;

(2) The alcohol beverage tastings requested by applicant create or threaten to create a public safety risk to the neighborhood; or

(3) The Licensee has violated the Colorado Liquor Code or any rules and regulations authorized pursuant to such code during the one (1) year immediately preceding the date of the application.

(b) If an application for an alcohol beverage tastings permit is denied, the Liquor and Beer Licensing Board shall give notice in writing and shall state grounds upon which the application was denied. The licensee shall be entitled to a hearing on the denial if a request in writing is made to the Liquor and Beer Licensing Board within fifteen (15) days after the date of notice. (Ord. No. 7911 §1, 11-10-08)

Sec. 11-3-64. Operation.

Alcohol beverage tastings shall be conducted in compliance with and subject to the conditions and requirements set forth in this Article and Section 12-47-301(10), C.R.S. (Ord. No. 7911 §1, 11-10-08)

CHAPTER 4

Animals

Article I

Animal Control

Sec. 11-4-1. Definitions.

As used in this Chapter, the term:

(1) *Owner* shall mean any person who owns, keeps or harbors any animal or any person who permits or suffers any animal to remain on or about his or her premises for a period of thirty (30) days.

(2) *Animal* shall mean all warm-blooded domesticated mammals including both male or female, whether sterilized or not sterilized.

(3) *Vicious animal* shall mean any animal that without provocation bites or attacks a human being or another animal, either on public or private property, or any animal that, in a vicious or terrorizing manner, approaches any person in apparent attitude of attack upon the streets, sidewalks or public grounds or places.

(4) *At large* shall mean off the fenced premises of the owner. An animal within the automobile or an enclosed portion of any other motor vehicle of its owner or other authorized person shall not be deemed to be at large. An animal which is not restrained or tethered and is left unattended in an unenclosed portion of a motor vehicle shall be deemed to be at large.

(5) *Harboring or keeping* shall mean the act of keeping or caring for an animal or the act of providing a premises to which an animal returns for food, shelter or care for a period of three (3) days or more.

(6) *Vaccination* shall mean the inoculation of an animal with a vaccine approved by the Colorado Department of Health for use in prevention of rabies.

(7) *Person* shall mean any individual, firm, corporation, limited liability company, partnership or association. All members of one (1) household shall be considered as one *person* for the purposes of this Chapter.

(8) *License officer* shall mean the Shelter Operator or, if none, the Director of Finance or his or her designee.

(9) *Manure* shall mean the excrement of any domestic animal or fowl and all stable bedding.

(10) *Lot or parcel of land* shall mean any area of land in the City under one (1) ownership as shown on the last assessor's roll of the County, or any area of land under legal control of any person.

(11) *Improved lot* shall mean any lot or parcel of land on which is located a dwelling house, occupied or unoccupied.

(12) *Property line* shall mean the boundary of any lot or parcel of land as the same is described in the conveyance to the owner of such lot or parcel, and shall not include the street or any portion thereof upon which said lot or parcel may abut; provided, however, that for purposes of this Chapter, the property line of a lot or parcel abutting on an alley shall be deemed to extend to the centerline of such alley.

(13) *Fence* shall mean an enclosing structure of any construction with sufficient strength, durability and dimensions to prevent an animal from straying from within.

(14) *Wild animal* shall mean any species of animal which exists in a natural unconfined state and is not commonly domesticated or suitable for domestication. The term specifically includes, without limitation, all species of poisonous reptiles, lizards belonging to the family *Varanidae* and crocodilians.

(15) *Domesticated pot-bellied pig* shall mean a domesticated porcine animal of the species *Sus scrofa bittatus* which meets both of the following criteria: (i) the animal shall not exceed one hundred (100) pounds in weight, and (ii) if over four (4) months of age, the animal shall be spayed or neutered.

(16) *Neglect* or *neglecting* 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.

(17) *Mistreatment* means neglect and every other act or omission which creates a substantial probability of causing injury to or unnecessary suffering by an animal.

(18) *Abandon* or *abandoning* shall mean the leaving of an animal by a person having possession or custody of the animal under circumstances where the animal will not likely be provided with adequate food, water or protection from the elements.

(19) *Shelter Operator* shall mean the Animal Control Division of the Police Department, except that if the City has entered into a management agreement with a nonprofit corporation which assigns and delegates to such entity the authority and responsibility to enforce this Chapter and to manage and operate the Animal Shelter and the administration of the vaccination and licensing system provisions of this Chapter, the term shall instead mean such entity. (Ord. No. 4860, 4-13-81; Ord. No. 5912, 11-14-94; Ord. No. 6056, 2-12-96; Ord. No. 6600, 10-10-00; Ord. No. 7806 §1, 5-27-08)

Sec. 11-4-2. Vaccinations.

(a) Every owner of a dog four (4) months old or older shall have such dog vaccinated by a licensed veterinarian. If a dog four (4) months old or older, whose owner is a nonresident, shall remain within the City for more than thirty (30) days, it shall be vaccinated in accordance with the provisions of this Chapter.

(b) Every owner of a cat four (4) months old or older shall have such cat vaccinated against rabies by a licensed veterinarian. If a cat four (4) months old or older, whose owner is a nonresident, shall remain within the City for more than thirty (30) days, it shall be vaccinated in accordance with the provisions of this Chapter.

(c) It shall be unlawful and a municipal offense for any dog or cat owner required by this Section to have his or her animal vaccinated to fail to have said animal so vaccinated. (Ord. No. 4860, 4-13-81; Ord. No. 5537, 4-24-89; Ord. No. 5773, 9-28-92; Ord. No. 5912, 11-14-94; Ord. No. 6600, 10-10-00; Ord. No. 7274 §1, 2-14-05)

Sec. 11-4-3. Certificate of vaccination.

Upon vaccination, the veterinarian administering the vaccine shall execute in triplicate a signed vaccination certificate upon forms approved by the Shelter Operator and License Officer. The certificate shall contain the following information:

- (1) The name, address and telephone number of the owner of the vaccinated dog or cat;
- (2) The date of vaccination;
- (3) The breed, age, color and sex of the vaccinated dog or cat;
- (4) The expiration date of vaccination;
- (5) A statement indicating whether the animal has been surgically sterilized;
- (6) The number of the vaccination tag issued.

The veterinarian shall deliver a copy of the certificate to the owner, retain the original for his or her files, and send a copy to the Shelter Operator. It shall be unlawful and a municipal offense for any owner of any dog or cat to fail or refuse to exhibit his or her copy of the vaccination certificate upon demand to any person charged with enforcement of this Chapter. (Ord. No. 5537, 4-24-89; Ord. No. 5912, 11-14-94; Ord. No. 6600, 10-10-00; Ord. No. 6902 §1, 11-11-02)

Sec. 11-4-4. Vaccination tags.

(a) Upon vaccination of any dog or cat, the vaccinating veterinarian shall issue to the owner of each vaccinated dog or cat a vaccination tag. Such tags shall be serially numbered, and the number of the tag shall be noted on the vaccination certificate.

(b) Every owner of a dog four (4) months old or older shall securely cause the vaccination tag to be attached to a collar, harness or other device worn by the vaccinated dog, and shall thereafter maintain the vaccination tag upon such dog. It shall be unlawful and a municipal offense for the owner of any dog four (4) months old or older to permit or tolerate his or her dog not to wear a vaccination tag.

(c) It shall not be required of the owner of any cat to affix the vaccination tag to the vaccinated cat; provided that the owner exhibit a certificate of vaccination as provided in Section 11-4-3 of this Chapter. (Ord. No. 5537, 4-24-89; Ord. No. 5773, 9-28-92; Ord. No. 6600, 10-10-00; Ord. No. 6902 §1, 11-11-02)

Sec. 11-4-5. Lost tags; reissuance.

In the event of a loss of a dog vaccination tag, the owner shall return to the vaccinating veterinarian and, upon application for a replacement tag and payment of a reissuance fee, obtain a new vaccination tag and vaccination certificate. In the event of a loss of a cat vaccination tag, the owner may, but is not required, to obtain a new vaccination tag from the vaccinating veterinarian upon application and payment of a reissuance fee. Any such reissued tag and certificate shall be valid

only for the unexpired remainder of the lost tag's term. The vaccination certificate issued hereunder shall state "Reissued" upon the face but shall otherwise conform to the requirements of this Chapter. (Ord. No. 5537, 4-24-89; Ord. No. 6600, 10-10-00; Ord. No. 6902 §1, 11-11-02)

Editor's Note: Section 11-4-6 was repealed in its entirety by Ord. No. 6902, passed and approved 11-11-02.

Sec. 11-4-7. Restrictions on use of vaccination tags and certificates.

(a) Only the vaccination certificates approved by the Shelter Operator and License Officer may be issued through veterinarians. Possession or use of any other form or facsimile of certificate, or of any altered, counterfeit or forged certificate, shall be unlawful and a municipal offense.

(b) Vaccination certificates may only be used for, and vaccination tags worn by, the animal for which the tag and certificate were issued. It shall be unlawful and a municipal offense for any person: (1) to use or attempt to use any certificate as proof of vaccination of any animal other than the one for which it was issued; (2) to affix a vaccination tag to any animal other than the one for whom it was issued; or (3) as owner, to permit or tolerate his or her animal to wear any vaccination tag other than the one validly issued for that animal. (Ord. No. 5537, 4-24-89; Ord. No. 6600, 10-10-00; Ord. No. 6902 §1, 11-11-02)

Sec. 11-4-8. Impoundment of stray cats.

In addition to the authority granted to Animal Control Officers elsewhere in this Chapter, any Animal Control Officer shall have authority to trap or apprehend, and to impound, any cat found at large or off of its owner's property if the Animal Control Officer has cause to believe that one (1) or more cats in an area are presenting, or may contribute to creation or existence of, a public nuisance. (Ord. No. 5537, 4-24-89; Ord. No. 6600, 10-10-00)

Sec. 11-4-9. Kennel and cattery licenses.

(a) As used in this Section, the term:

(1) *Dog* shall include both mature and immature dogs, except that the term shall not include puppies which have not yet been weaned from their bitch.

(2) *Cat* shall include both mature and immature cats, except that the term shall not include kittens which have not yet been weaned from their queen nor shall the term include kittens less than twelve (12) weeks of age.

(b) It is hereby declared to be a nuisance and it shall be unlawful and a municipal offense for any person to have more than four (4) dogs on a premises at any one time without having a kennel license. It is also hereby declared to be a nuisance and it shall be unlawful and a municipal offense for any person to have more than four (4) cats on a premises at any one time, except upon land zoned agricultural, or for any person to operate a shelter for cats, without having obtained a cattery license.

(c) Application for a kennel or cattery license shall be submitted to the City-County Health Department, together with a petition signed by not less than seventy-five percent (75%) of the residents living within three hundred (300) feet of the premises proposed to be licensed. At the time

of submission of the application, a nonrefundable fee in the amount of one hundred dollars (\$100.00) shall be paid. The Health Department shall thereafter conduct a hearing, upon not less than fifteen (15) days' public notice posted upon the premises and published in a newspaper of general circulation. The Health Department shall grant the license only upon finding each of the following:

(1) That the applicant has demonstrated it will operate the kennel or cattery in compliance with all applicable laws, including having any required state licensure and the requirements of this Chapter;

(2) That the operation of a kennel or cattery on the premises will not result in undue disturbance of the neighborhood or a public nuisance; and

(3) That the operation of a kennel or cattery on the premises would be compatible with existing uses of property in the neighborhood.

(d) An animal kennel or cattery license renewal fee of thirty-five dollars (\$35.00) shall be due and payable to the License Officer on the first day of January of each year.

(e) This Section shall have no application to the Pueblo Animal Shelter provided under Section 11-4-17 of this Chapter. (Ord. No. 4860, 4-13-81; Ord. No. 5537, 4-24-89; Ord. No. 6600, 10-10-00)

Sec. 11-4-10. Animal Control Officers; powers, superior.

(a) All Animal Control Officers employed by the City are hereby designated and appointed Animal Control Officers and peace officers authorized and vested with the power to enforce the provisions of this Chapter. Such Animal Control Officers shall act under the direction and supervision of the Chief of Police or his or her designee and shall be responsible to him or her for the carrying out of their duties as Animal Control Officers.

(b) If the City contracts with an entity to enforce this Chapter, the Chief of Police may appoint employees of such contracting entity, after appropriate training, as Animal Control Officers vested with the authority to enforce this Chapter, investigate violations of this Chapter, issue and serve summonses and complaints enforcing this Chapter and impound animals as provided in this Chapter. The appointed Animal Control Officers shall not have the power of arrest or be authorized to carry weapons. Individuals appointed Animal Control Officers may be known as Animal Welfare Officers and shall, pursuant to Section 30-15-105, C.R.S., be included within the definition of "peace officer or firefighter engaged in the performance of his or her duties" in Section 18-3-201(2), C.R.S. Animal Control Officers who are employees of the contracting entity and appointed pursuant to this Subsection shall not be under the direction and supervision of the Chief of Polices and shall not be responsible to the Chief of Police for the carrying out of their duties as Animal Control Officers. (Ord. No. 5723, 12-23-91; Ord. No. 6600, 10-10-00; Ord. No. 6722, 8-27-01; Ord. No. 6850 §1, 6-24-02)

Sec. 11-4-11. Animal Control Officers, equipment.

Animal Control Officers shall be furnished with a truck and such other necessary equipment, including humane dog and cat traps, restraining sticks, cages, leashes, ropes, collars, flashlights, blankets and protective equipment. (Ord. No. 6600, 10-10-00)

Sec. 11-4-12. Duty to report animal bites.

Any person having knowledge of an animal bite shall immediately report the incident to the City-County Health Department, Shelter Operator, Police Department or the Sheriff. (Ord. No. 6600, 10-10-00; Ord. No. 6902 §1, 11-11-02)

Sec. 11-4-13. Quarantine of animals.

(a) Any animal which has bitten a person shall be confined and observed for a period of not less than ten (10) days from the date of the bite. The procedure and place of observation shall be designated by the investigating officer. If the animal is not confined on the owner's premises, confinement shall be in the Pueblo Animal Shelter or at any veterinary hospital of the owner's choice. Such confinement shall be at the expense of the owner. Stray animals whose owners cannot be located shall be confined in the Pueblo Animal Shelter. The owner of any animal that has been reported as having inflicted a bite on any person shall, on demand, produce said animal for quarantine as prescribed in this Section. Refusal to produce such animal constitutes a violation of this Section and a municipal offense, and each day of such refusal shall constitute a separate and individual violation.

(b) It shall be unlawful and a municipal offense for any person to remove from any place of isolation or quarantine any animal which has been isolated or quarantined as authorized, without consent of the impounding agency. (Ord. No. 4860, 4-13-81; Ord. No. 6600, 10-10-00)

Sec. 11-4-14. Vicious animals.

(a) Definitions. As used in this Section, the following words have the following meanings:

(1) *Bodily injury* means any physical injury that results in severe bruising, muscle tear or skin laceration or any physical injury that requires corrective or cosmetic surgery.

(2) *Vicious animal* means any animal that:

a. Has inflicted bodily injury upon a person or has inflicted bodily injury upon or caused the death of a domestic animal; or

b. Has demonstrated tendencies that would cause a reasonable person to believe that the animal may inflict bodily injury upon or cause the death of any person or domestic animal; or

c. Has engaged in or been trained for animal fighting as described and prohibited in Section 18-9-204, C.R.S.

(b) Violation, ownership of vicious animal. It shall be unlawful and a Class I municipal offense for any person to own, possess, harbor, keep or control a vicious animal.

(c) Affirmative defense. The affirmative defenses set forth herein shall not apply to any vicious animal that has engaged in or been trained for animal fighting as said term is described in Section 18-9-204, C.R.S. Except as otherwise noted, the following circumstances shall constitute an affirmative defense to a violation of the foregoing Subsection (b) in the following manner:

(1) At the time of the attack by the vicious animal which causes injury to a domestic animal, the domestic animal was at large, was an stray and entered upon the property of the owner and the attack began, but did not necessarily end, upon such property;

(2) At the time of the attack by the vicious animal which causes injury to a domestic animal, said domestic animal was biting or otherwise attacking the vicious animal or its owner;

(3) At the time of the attack by the vicious animal which causes injury to a person, the victim of the attack was committing or attempting to commit a criminal offense, other than a petty offense, against the dog's owner, and the attack did not occur on the owner's property;

(4) At the time of the attack by the vicious animal which causes injury to a person, the victim of the attack was committing or attempting to commit a criminal offense, other than a petty offense, against a person on the owner's property or the property itself, and the attack began, but did not necessarily end, upon such property; or

(5) The person who was the victim of the attack by the vicious animal tormented, provoked, abused or inflicted injury upon the vicious animal in such an extreme manner which resulted in the attack.

(d) Protective order. Upon entry of sentence pursuant to a plea of or finding of guilt for a violation of Subsection (b), the Municipal Court shall order the defendant to:

(1) Confine such vicious animal in a building or enclosure designed to be escape-proof and, whenever such vicious animal is outside of such building or enclosure, the vicious animal shall be securely muzzled and restrained by a secure collar and leash.

(2) Display in a prominent place on the defendant's premises a sign easily readable by the public from the public street using the words "Beware of Vicious Dog," if the vicious animal is a dog, and the words "Beware of Vicious Animal," if the vicious animal is not a dog.

(3) Immediately report to the Shelter Operator any material change in the vicious animal's situation, including but not limited to a change of address, escape or death.

(4) At the defendant's expense, permanently identify the vicious animal through the implantation of a microchip by a licensed veterinarian or a licensed shelter. The owner shall file the veterinary record of the microchip implantation with the Shelter Operator.

(5) Prior to the implantation of the microchip, pay a nonrefundable vicious dog microchip license fee of fifty dollars (\$50.00) to the Shelter Operator.

(e) Violation, failure to comply. It shall be unlawful and a strict liability offense for any person convicted of violating Subsection (b) who has been personally served with a copy of the protective order issued under Subsection (d) to continue to own, possess, harbor, keep or control the vicious animal which was the subject of such conviction in violation of the provisions of the protective order.

(f) Violation, breeding of vicious animal. It shall be unlawful and a Class 1 municipal offense for any person to possess with intent to sell, offer for sale, breed, buy or attempt to buy within the

City any animal which has been adjudicated to be a vicious animal pursuant to a conviction under Section 18-9-204.5, C.R.S.

(g) Violation, animal fighting. It shall be unlawful and a Class 1 municipal offense for any person to own or harbor any animal for the purpose of animal fighting or to train, torment, badger, bait or use any animal for the purpose of causing or encouraging said animal to unprovoked attacks upon human beings or domestic animals.

(h) Impoundment and euthanization.

(1) It shall be the duty of the Animal Control Officer to impound an animal whose acts form the basis for issuance of a complaint for violation of Subsection (b) if the animal presents a continuing threat of serious harm to persons or domestic animals.

(2) It shall be the duty of the Animal Control Officer to impound an animal, which has been adjudicated to be a vicious animal pursuant to a conviction under Subsection (b) or to be a dangerous dog pursuant to a conviction under Section 18-9-204.5, C.R.S., where such animal is found beyond the premises of its owner and not securely muzzled and restrained by a secure collar and leash.

(3) Any animal impounded pursuant to the requirements of this Section shall not be released pending disposition of any euthanization hearing or related criminal charges under this Section except on order of the Municipal Court who may direct the owner to pay all impounding fees. Subject to the foregoing limitation and the exception noted herein, an impounded vicious animal shall be handled and processed according to the requirements set forth in Section 11-4-16 of this Code and, if applicable, Section 11-4-13 of this Code, except that no vicious animal shall be sold or put up for adoption. Any vicious animal which is deemed abandoned under Section 11-4-16 shall be humanely euthanized.

(4) The Municipal Court is authorized to order the released of any animal impounded pursuant to this Section when, in the Municipal Court's judgment, said animal does not represent a continuing threat of serious harm to persons or domestic animals. If, in the Municipal Court's judgment, the animal represents a continuing threat of serious harm to persons or domestic animals, the Municipal Court may order said animal to be humanely euthanized.

(i) Application. Subsection (b) shall have no application to the following:

(1) To any dog that is used by a peace officer while the officer is engaged in the performance of the peace officer's duties;

(2) To any dog which causes the death of a person;

(3) To any dog that inflicts injury upon any veterinary health care worker, dog groomer, humane agency personnel, professional dog handler, trainer or dog show judge, each acting in the performance of his or her respective duties; or

(4) To any dog that inflicts injury upon or causes the death of a domestic animal while the dog was working as a hunting dog, herding dog or predator control dog on the property of or under the

control of the dog's owner and the injury or death was to a domestic animal naturally associated with the work of such dog. (Ord. No. 4860, 4-13-81; Ord. No. 5494, 9-12-88; Ord. No. 5762, 7-27-92; Ord. No. 6150, 11-25-96; Ord. No. 6600, 10-10-00; Ord. 7273 §1, 2-14-05)

Sec. 11-4-15. Restraining.

(a) It shall be unlawful and a municipal offense for any person owning or having charge of any dog or other animal except a domestic cat to permit such animal to be at large. A dog or other animal shall be deemed to be at large when it is off or away from the premises of its owner or person having charge thereof, and not under the control of such person or another by either leash, cord or chain. An animal found at large and not in the charge of such a person shall be impounded by an Animal Control Officer. Animals injured on public property shall be impounded and given adequate veterinary medical treatment pending notification of the owner.

(b) Any unspayed female dog in the stage of estrus (heat) shall be confined during such period of time in a house, building or secure structure or enclosure of sufficient construction so as to prevent other dogs from gaining access to the confined animal; provided, however, that this Subsection (b) shall not operate to prohibit the controlled breeding of such animal with another dog if the owner of such other dog consents to the breeding of the animals. The owner of any such dog who fails to confine the same as required by this Section may be ordered by an Animal Control Officer to have the animal confined in a boarding kennel, veterinary hospital or animal shelter; provided that, upon the failure of the owner to do so within three (3) days, such dog may be impounded by an Animal Control Officer. All expenses of such confinement shall be the sole responsibility of the dog owner. (Ord. No. 4860, 4-13-81; Ord. No. 5644, 11-26-90; Ord. No. 6600, 10-10-00)

Sec. 11-4-16. Disposition of impounded animals.

(a) As soon as practical after the impoundment of any animal, notice of impoundment shall be posted in a conspicuous place at the Pueblo Animal Shelter for five (5) consecutive days. If the owner of the impounded animal can be determined by examination of the animal's vaccination tag or from other identifying tags or markings, immediate notice shall be given to said owner.

(b) Any impounded animal may be redeemed by the owner upon payment of the impound fee, care and feeding charges, veterinary charges, if any, and such other charges as periodically established by the City or designated Shelter Operator. If the animal has not been vaccinated for rabies and is required by the provisions of this Chapter to be so vaccinated, the owner shall not be given custody of the animal until steps are taken to so vaccinate the animal. Unless otherwise modified by resolution of the City Council or by the designated Shelter Operator, the redemption amounts identified herein shall be charged.

(1) Redemption amounts; impoundment. The redemption amount for charges associated with the impoundment of an animal is twenty dollars (\$20.00), and with respect to any animal which has been impounded more than once in a twelve- month period, the redemption amount shall also include an additional charge of ten dollars (\$10.00) for each subsequent impoundment.

(2) Redemption amounts; daily care and feeding. The redemption amount for charges associated with the daily care and feeding of an impounded animal shall be as follows:

- a. Impounded but not quarantined dog, seven dollars (\$7.00) per day;
- b. Impounded but not quarantined cat, five dollars (\$5.00) per day;
- c. Impounded and quarantined dog, ten dollars (\$10.00) per day;
- d. Impounded and quarantined cat, seven dollars (\$7.00) per day; and
- e. All other animals, five dollars (\$5.00) per day.

(c) If an animal is not redeemed within five (5) days after the receipt of notice by the owner or within five (5) days after impoundment if the owner cannot be determined, it shall be deemed abandoned and become the property of the Shelter Operator. Upon adoption of any animal eligible for adoption from the Shelter Operator, and payment of the adoption fee therefor, the animal shall be either spayed or neutered by a licensed veterinarian at the animal shelter or the person adopting the animal shall execute a written agreement that the animal will be spayed or neutered within thirty (30) days of adoption and release. No animal adopted from the animal shelter shall be released without first having been spayed or neutered or before the written agreement is filed with the Shelter Operator.

(1) Where an adopted animal is released pursuant to a written agreement to spay or neuter the animal, the person adopting the animal shall file, within thirty (30) days of the animal's release, proof of the fact that the animal has been spayed or neutered by submitting to the Shelter Operator a certification from the appropriate spay-neuter clinic, veterinarian or other provider of such services.

(2) In the event a person signs an agreement to spay or neuter an animal pursuant to this Subsection (c), it shall be unlawful and a Class 1 municipal offense for such person to fail to timely spay or neuter the animal pursuant to the agreement or to fail to timely file proof of such fact with the Shelter Operator.

(3) In the event a person signs an agreement to spay or neuter an animal pursuant to Paragraph (2) above and such person fails to timely file proof of the fact that the animal has been spayed or neutered, the Animal Control Officer may petition the Municipal Court to order the seizure and impoundment of the animal.

(d) The Shelter Operator and its employees may humanely euthanize any abandoned animals not sold or adopted within a reasonable time. If it is found that any impounded animal is infected with rabies or other infectious or contagious disease, such animal shall be humanely euthanized upon the recommendation of a licensed veterinarian.

(e) The Shelter Operator shall establish a spay/neuter program in order to implement the spaying or neutering of animals from the Shelter Operator in accordance with Subsection (c) of this Section. The program shall provide for the following minimum requirements:

(1) Any licensed veterinarian shall be permitted to participate in the program by agreeing to perform spay/neuter procedures upon animals adopted from the Shelter Operator.

(2) Spay/neuter procedures shall be performed in accordance with recognized practice of veterinarians and according to the standard of care in effect for such procedures in this region.

(3) No participating veterinarian shall have any claim against the City for compensation for services, fees, equipment or supplies, or for damages or injury to persons or property, arising from or related to the performance of spay/neuter procedures upon animals located at or transported or adopted from the Pueblo Animal Shelter unless such veterinarian has a duly authorized contract therefor with the City and such claim is made in accordance with the terms of said contract. For purposes of this Subsection, the Shelter Operator shall not be deemed an agent of the City. Nothing in this Subsection is intended to prohibit, impair, affect or modify any provision in any agreement between a veterinarian and any nonprofit corporation acting as Shelter Operator.

(f) Nothing in this Section shall be construed so as to hold the City, the Shelter Operator, nor the officers or agents of either, responsible for any damage to persons or property for any action taken in connection with the administration and enforcement of this Chapter.

(g) No person, or group of persons residing in the same household, may adopt from the Pueblo Animal Shelter more than four (4) animals in any one (1) calendar year. (Ord. No. 4591, 4-9-79; Ord. No. 4860, 4-13-81; Ord. No. 5677, 5-13-91; Ord. No. 6600, 10-10-00; Ord. No. 7275 §1, 2-14-05)

Sec. 11-4-17. Pueblo Animal shelter; interference; false reports.

(a) An animal shelter to be known as the Pueblo Animal Shelter shall be provided for the purpose of boarding and caring for any animal impounded under the provisions of this Chapter, and such shelter shall be constructed to facilitate cleaning and sanitizing and shall provide fenced runs and adequate heating, food and water supply.

(b) It shall be unlawful and a Class 1 municipal offense for any person to remove or attempt to remove any impounded animal from the animal shelter without having first obtained authorization to do so from the Animal Control Officer, Shelter Operator or other person then in charge of said shelter.

(c) It shall be unlawful for any person to knowingly obstruct, hinder or interfere with an Animal Control Officer acting under color of his or her official authority, in the discharge or apparent discharge of his or her duties:

(1) By means of physical force or violence or by threats of imminent physical force or violence; or

(2) By means of harassing conduct after being warned by an Animal Control Officer that such conduct is unlawful and may result in the arrest of the person if such conduct is not discontinued.

(d) A violation of paragraph (c) above is a Class 2 municipal offense; except that if the violation is committed by means of physical force or violence or by threats of physical force or violence, the violation is a Class 1 municipal offense.

(e) It shall be unlawful and a Class 2 municipal offense for any person to knowingly make or cause to be made a false, misleading or unfounded report to an Animal Control Officer concerning the

commission or alleged commission by another person of any offense or violation of any City ordinance; or to knowingly give false or misleading information to an officer or employee of the Shelter Operator when such officer or employee is acting in his or her official capacity and the information (1) relates to a matter within the official concern of the officer or employee and (2) materially interferes with the discharge of such officer's or employee's official duty. (Ord. No. 6600, 10-10-00)

Sec. 11-4-18. Spread of rabies.

Whenever the City Manager, upon recommendation of the Health Department or the City Council, shall apprehend the danger of rabies in the City, the City Manager shall issue a proclamation requiring every person owning an animal to confine it securely on his or her premises unless such animal shall be leashed and shall have a muzzle of sufficient strength to prevent its biting any person or animal. Any dog or other animal at large during the pendency of such proclamation shall be seized and impounded by the proper authorities. Upon issuance of said proclamation, the owners of all cats shall henceforth have said cats vaccinated in the same manner as provided by this Chapter for the vaccination of dogs. (Ord. No. 6600, 10-10-00)

Sec. 11-4-19. Poisoning of animals.

It shall be unlawful and a Class 1 municipal offense for any person to poison any wild or domesticated animal, including dogs and other household pets, or to distribute any poison in any manner whatsoever with the intent or for the purpose of poisoning any wild or domesticated animal; provided, however, that this Section shall have no application to the use of poisons by licensed veterinarians, nor to the use of poisons designed to kill insects or wild prairie dogs, rats and mice. The distribution of any poisons or poisoned meats or foods, other than those designed to kill insects, rats, prairie dogs and/or mice, shall constitute prima facie evidence of a violation of this Section. (Ord. No. 4592, 4-9-79; Ord. No. 6600, 10-10-00)

Sec. 11-4-20. Penalties.

(a) Unless otherwise specified, the punishment for violation of an offense described in this Chapter shall be a fine of not more than one thousand dollars (\$1,000.00).

(b) The punishment for violation of an offense defined as a Class 1 municipal offense shall be a fine of not more than one thousand dollars (\$1,000.00) or imprisonment for not more than one (1) year, or both such fine and imprisonment, provided that, if the person found guilty of a violation of a Class 1 municipal offense was under eighteen (18) years of age at the time of the offense, the court shall not impose a jail sentence.

(c) The punishment for violation of an offense defined as a Class 2 municipal offense shall be a fine of not more than one thousand dollars (\$1,000.00).

(d) Any person found guilty of violating Section 11-4-14 of this Chapter shall pay all expenses, including shelter, food, veterinary expenses for identification or certification of the breed of the dog or boarding and veterinary expenses necessitated by the seizure of any dog for the protection of the public, and such other expenses as may be required for the destruction of any such dog. (Ord. No.

3953, 12-23-74; Ord. No. 4593, 4-9-79; Ord. No. 4860, 4-13-81; Ord. No. 5494, 9-12-88; Ord. No. 6600, 10-10-00; Ord. No. 7937 §22, 12-8-08)

Article II
General

Sec. 11-4-21. Animals; cruelty to.

It shall be unlawful and a Class 1 municipal offense for any person to commit or to assist another in committing any act of cruelty, harassment, abandonment or torture to any animal, or to cause such animal to be wounded, mutilated, strangled or inhumanely killed. For the purpose of this Section, *act of cruelty* shall include but not be limited to beating, mistreating, tormenting, overloading, overworking, neglecting, failing to adequately feed or otherwise abusing any animal. Ownership of an animal shall not constitute a valid affirmative defense to a charge of violating any of the provisions of this Section. It shall also be unlawful and a Class 1 municipal offense for any person to cause, instigate or permit any dog fight or combat between animals or between animals and humans. (Ord. No. 4594, 4-9-79; Ord. No. 6056, 2-12-96; Ord. No. 6600, 10-10-00)

Sec. 11-4-22. Crating and cooping fowls; construction; cleanliness.

(a) Height. All coops, crates or cages in which live fowls, poultry or other birds are received for transportation or are kept confined or exposed for sale on wagons or stands, or by the owners of grocery stores, commission houses or other market houses or by other persons, shall be sufficiently high so that fowls or other birds confined therein can stand erect and hold their heads upright without touching the top.

(b) Wire, troughs. Such coops, crates or cages shall be made of open slats or wire on at least three (3) sides and shall have troughs or other receptacles with easy access all times by the birds confined therein, but so placed that their contents cannot be befouled by the birds. Said troughs shall constantly contain clean water and suitable food.

(c) Cleanliness, room for birds. Such coops, crates or cages shall be kept in a clean and wholesome condition. Fowls or other birds confined therein shall not be overcrowded, but shall have room to move about, and shall not be exposed to undue heat or cold.

(d) Removing dead or unhealthy birds; transfer. Dead, injured or diseased fowls shall be at once removed. Whenever live fowls or poultry shall be received for sale or storage, they shall immediately be transferred to such coops, crates or cages as are herein described. (1957 Code, §5-2; Ord. No. 6600, 10-10-00)

Sec. 11-4-23. Manure; accumulation; disposition.

(a) The accumulation or failure to dispose of animal droppings and manure is hereby declared to be a nuisance and detrimental to the health and welfare of the people of the City. All animal droppings and manure shall be removed and disposed of by the owners, tenants or occupants of the premises where produced, at such frequent and regular intervals as shall be prescribed by the Health Department. It shall be unlawful and a municipal offense for any person to permit animal droppings

or manure to remain for such a time or to accumulate in such quantity as to attract flies or other insects or to generate noisome odors.

(b) It shall be unlawful and a municipal offense for any person owning or having the control of any animal to permit such animal to defecate on private property or public property within the City, other than upon property owned by or under the control of said owner or person having control of the animal, without immediately cleaning or removing the excrement to a proper receptacle.

(c) All manure shall be disposed of by delivery to a designated dump site or to such other places only as shall be designated from time to time by the Health Department, and it shall be unlawful for any person to deliver or dump manure within the limits of the City or within one (1) mile of the outer boundaries thereof, except at such designated dump sites. This Section shall not prohibit the use of manure composting or soil conditioning, provided that the same shall be completely covered by earth. Nor shall this Section prohibit the use of manure as fertilizer, provided that manure used for such purpose shall be well rotted, ground or pulverized and shall be worked into the lawn or garden area without unreasonable delay. (1957 Code, §§13-5(b), 13-8(b) ; Ord. No. 6600, 10-10-00)

Sec. 11-4-24. Disposition of animal carcasses.

It is hereby declared to be a nuisance and it shall be unlawful and a municipal offense for any person to permit the carcass of any animal to remain upon property owned, controlled or occupied by such person in the City for a period of more than twenty-four (24) hours following the death of such animal, or to bury the carcass of any animal upon any property within the City. (1957 Code, §5-2.5; Ord. No. 6600, 10-10-00)

Sec. 11-4-25. Storage of grain feeds in rodent-proof containers.

All grain feeds for all animals and fowls shall be stored and kept in a rodent-proof container or room which shall be kept securely closed at all times while not being used to take feed therefrom or replenish same. (1957 Code, §5-2.7; Ord. No. 6600, 10-10-00)

Sec. 11-4-26. Maiming; abandoning; rendering aid.

It shall be unlawful and a municipal offense for any person to abandon any dog or other small animal or to fail to stop and attend to such animal if such person strikes it with a vehicle, or to in any way maim or harm any such animal. (1957 Code, §5-18; Ord. No. 6600, 10-10-00)

Sec. 11-4-27. Picketing and grazing animals forbidden.

It shall be unlawful and a municipal offense for any person to picket or tie any animal on or along any street, alley or sidewalk in such manner that such animal may graze or browse upon the grass, herbage or trees growing upon or along such street, alley or sidewalk, or in such manner as to obstruct or impede the full use thereof. (1957 Code, §24-8; Ord. No. 6600, 10-10-00)

Sec. 11-4-28. Driving or herding animals forbidden.

It shall be unlawful and a municipal offense for any person to herd or graze any livestock or cause such animals to be herded or grazed within the City except upon land zoned for agricultural use, or

upon land where permitted as a nonconforming use, provided that such grazing or herding shall be done in compliance with all applicable ordinances of the City. (Ord. No. 3688, 4-9-73; Ord. No. 6600, 10-10-00)

Secs. 11-4-29--11-4-30. Reserved.

Article III
Nuisances

Sec. 11-4-31. Keeping of animals and fowl which disturb comfort, peace, etc., of neighborhood.

(a) It is hereby declared to be a nuisance, and it shall be unlawful and a municipal offense for any person to keep or permit upon any parcel of land within the City any animal or fowl which by any sound, cry or offensive odor shall disturb the peace and comfort of any neighborhood, or interfere with any person in the reasonable and comfortable enjoyment of life or property, or in any other manner present an unreasonable hazard to the public health, safety or welfare.

(b) For the purpose of this Section, it shall be presumed that the barking, whining, howling, baying or crying of any dog continuously for a period of time in excess of five (5) minutes or intermittently for a period of time in excess of one (1) hour, which is plainly audible from a distance of twenty-five (25) feet from the property line of the premises where the dog is kept, constitutes a nuisance. The presumption may be rebutted by evidence that such barking, whining, howling, baying or crying was caused, at that relevant time, by either taunting of the dog by a person or persons other than the owner or person in control of the dog, injury to the dog which is not the result of neglect or abuse by the owner or person in control of the dog, or trespass upon the premises where the dog is kept. (1957 Code, §5-2.4; Ord. No. 6600, 10-10-00)

Sec. 11-4-32. Nuisances; certain fowl and animals.

(a) It is hereby declared to be a nuisance, and it shall be unlawful and a municipal offense for any person to suffer or permit any chicks, chickens, geese, ducks or turkeys, or any hare or hares, rabbit or rabbits, or cavy or cavies owned or controlled by such person to run at large or to go upon the premises of any other person in the City.

(b) It is hereby declared to be a nuisance, and it shall be unlawful and a municipal offense for any person to keep or maintain any chicks, chickens, geese, ducks, turkeys, pigeons, doves or squabs in an enclosed structure or building within eight (8) feet of the property line of any adjacent improved lot or parcel of land or in an unenclosed structure or open pen or run within fifteen (15) feet of such property line or, whether enclosed or unenclosed, within fifty (50) feet of any dwelling other than that occupied by such person.

(c) It is hereby declared to be a nuisance, and it shall be unlawful and a municipal offense for any person to keep or maintain any hare or hares, rabbit or rabbits, or cavy or cavies in any structure, enclosed or unenclosed, within ten (10) feet of the property line of any adjoining improved lot or parcel of land or within forty (40) feet of any dwelling other than that occupied by such person.

(d) It is hereby declared to be a nuisance, and it shall be unlawful and a municipal offense for any person to keep or maintain in the City more than ten (10) "standard" chickens or ten (10) "bantam" chickens over the age of four (4) months. A "bantam" chicken is one which weighs less than thirty (30) ounces at maturity. A "standard" chicken is any chicken other than a "bantam" chicken as herein defined.

(e) It is hereby declared to be a nuisance, and shall be unlawful and a municipal offense for any person to keep or maintain in the City more than forty (40) adult pigeons or doves over the age of three (3) months and their young.

(f) It is hereby declared to be a nuisance, and it shall be unlawful and a municipal offense for any person to keep or maintain in the City more than ten (10) rabbits, hares or cavies over the age of eight (8) months, and the offspring of such rabbits, hares or cavies.

(g) It is hereby declared a nuisance, and it shall be unlawful and a municipal offense for any person to keep or maintain in the City more than ten (10) units of animals, fowls or animals and fowls mentioned in this Section, mixed or otherwise, except as hereinabove provided. It shall be unlawful for any person to keep or maintain in the City more than two (2) units of animals or fowls or animals and fowls mentioned in this Section as pets. For purposes of computation, each adult rabbit over the age of eight (8) months shall be considered as one (1) unit, each adult chicken over the age of four (4) months shall be considered one (1) unit, and four (4) adult pigeons or doves over the age of three (3) months shall be considered as one (1) unit.

(h) Nothing contained in Subsections (d), (e), (f) and (g) of this Section shall be construed to limit the number of animals kept or maintained upon land zoned for agricultural use, provided that said animals are kept or maintained in compliance with all applicable ordinances of the City. (1957 Code, §5-2.1; Ord. No. 3688, 4-9-73; Ord. No. 6600, 10-10-00)

Sec. 11-4-33. Prohibited animals.

(a) It is hereby declared to be a nuisance, and it shall be unlawful and a municipal offense for any person to keep, pasture or maintain in the City any wild animals, poisonous snakes, constricting snakes over twelve (12) feet in length, hogs, pigs, swine, sheep, horses, emus, rheas, ostriches, llamas, cattle, pea fowl, guinea hens or goats, except in a public zoo; except that hogs, pigs, swine, sheep, horses, cattle, pea fowl, guinea hens or goats may be kept upon land zoned for agricultural use, provided that said animals are kept, pastured and maintained in compliance with this Chapter and all applicable ordinances of the City.

(b) Notwithstanding anything to the contrary in Subsection (a) of this Section, it shall not be unlawful for any person to possess, harbor, keep or maintain not more than one (1) domesticated pot-bellied pig upon any premises within the City, provided that said person complies with all other provisions of this Chapter. (1957 Code, §5-2.3; Ord. No. 3688, 4-9-73; Ord. No. 4860, 4-13-81; Ord. No. 5912, 11-14-94; Ord. No. 6600, 10-10-00)

Secs. 11-4-34—11-4-42. Reserved.

Sec. 11-4-43. Licenses.

(a) It shall be unlawful and a Class 2 municipal offense for any person to own, keep or harbor a dog or cat over the age of six (6) months within the City without obtaining a license for such dog or cat.

(b) This Section shall not apply to dogs or cats:

(1) Temporarily within the City for not more than thirty (30) days;

(2) Located in licensed pet shops or at licensed dog racing facilities; or

(3) Held for redemption or sale by a licensed animal shelter. (Ord. No. 6799 §1, 3-25-02; Ord. No. 7005 §1, 7-14-03)

Sec. 11-4-44. License application; issuance.

(a) Applications for licenses shall be made on forms furnished by the License Officer.

(b) Upon presentation of an application together with a copy of the vaccination certificate issued for the dog or cat pursuant to Section 11-4-3 to the License Officer, or a veterinarian or licensed animal shelter, designated in writing by the License Officer, and payment of the appropriate license fee, a license receipt for the dog or cat and a tag bearing a number corresponding to that of the receipt shall be issued. If an application is made to license a spayed/ neutered dog or cat, the applicant shall in addition furnish satisfactory evidence that the dog or cat has been spayed/neutered, which evidence may consist of a certificate signed by a veterinarian or the affidavit of the owner that the dog or cat has been spayed/neutered. Without such evidence, the license issued and fee paid shall be for a dog or cat which has not been spayed/neutered.

(c) The person issuing the license shall complete a license receipt on forms furnished by the License Officer, file the original with the License Officer and deliver a copy to the owner.

(d) Licenses may be renewed upon payment of the necessary fees and presentation of a current vaccination certificate issued pursuant to Section 11-4-3. If a license is not renewed within sixty (60) days after the license expires, a completed application for a new license must be made pursuant to Subsection (b) above.

(e) Applications for licenses may be made in person or by mail or electronically, if available.

(f) Licenses and tags are not transferable. (Ord. No. 6799 §1, 3-25-02; Ord. No. 6919 §1, 12-9-02; Ord. No. 7806 §3, 5-27-08)

Sec. 11-4-45. Licenses; expiration; fees.

(a) Licenses and tags may be issued and be valid for one (1) year or three (3) years from the date of issuance.

(b) The license fee for one (1) year shall be twenty dollars (\$20.00) for each dog or cat which has not been spayed/neutered or ten dollars (\$10.00) for each dog or cat which has been spayed/neutered.

(c) The license fee for three (3) years shall be fifty-six dollars (\$56.00) for each dog or cat which has not been spayed/neutered or twenty-six dollars (\$26.00) for each dog or cat which has been spayed/neutered.

(d) License fees shall not be prorated or refunded.

(e) If a license tag or license receipt issued in accordance with Section 11-4-44 is lost or destroyed, a duplicate tag or receipt may be reissued for the payment of five dollars (\$5.00).

(f) Veterinarians issuing a license under this Section shall retain one dollar (\$1.00) for each one-year license issued and three dollars (\$3.00) for each three-year license issued and shall surrender the balance of all license fees collected as the License Officer may direct.

(g) No license fee shall be required for:

- (1) Guide dogs for the blind or deaf;
- (2) Service dogs used by the handicapped; or
- (3) Law enforcement service and rescue dogs.

(h) The City Council may by resolution increase or decrease the license fees and litter registration fees.

(i) All license fees and litter registration fees shall be paid to and collected by the License Officer. If the License Officer is the Shelter Operator, the Shelter Operator shall hold such fees in trust for the use and benefit of the City and pay and disburse such fees as directed in writing by the City Manager of the City after deducting therefrom an administrative fee of twenty-five percent (25%) of the fees collected as compensation for the Shelter Operator's services. (Ord. No. 6799 §1, 3-25-02; Ord. No. 7806 §3, 5-27-08)

Sec. 11-4-46. License tags.

(a) It shall be unlawful and a Class 2 municipal offense for an owner of a dog over the age of four (4) months or older to fail to cause the license tag to be attached to the collar, harness or other device worn by the licensed dog and to thereafter maintain the license tag upon such dog. If any dog is found not wearing a collar with the license tag attached, the owner of the dog shall be deemed in violation of this Section.

(b) It shall not be required of the owner of any cat to affix the license tag to the licensed cat; however, it shall be unlawful and a Class 2 municipal offense for the owner of a cat to fail or refuse to exhibit the tag issued for the cat and his or her copy of the license receipt upon demand of any person enforcing this Chapter. (Ord. No. 6799 §1, 3-25-02)

Sec. 11-4-47. Litter permits.

(a) All litters, or a portion thereof, of puppies or kittens that are to be whelped, queened, sold, traded, bartered, given away or otherwise transferred within the City shall have a litter permit and a registration number.

(b) The owner of a litter shall obtain a litter permit and registration number within one (1) week after obtaining possession of any litter, or portion thereof, of puppies or kittens.

(c) The registration fee for each litter, or portion thereof, shall be twenty dollars (\$20.00).

(d) Litter permits and registration shall be made and issued in the same manner as licenses are issued under Section 11-4-44, except that no vaccination certificate shall be required.

(e) The litter permit and registration requirements of this Section shall not apply to licensed pet shops or licensed animal shelters.

(f) It shall be unlawful and a Class 2 municipal offense for any person to violate any provision of this Section. (Ord. No. 6799 §1, 3-25-02)

Sec. 11-4-48. Sale in public places.

(a) No person shall display any dog or cat for the purpose of selling or giving the dog or cat away:

(1) On any street, highway, alley, sidewalk, public place or park; or,

(2) In an open area where the public is invited by the owner or person controlling such area, including, but not limited to, areas exterior to shops or businesses, carnivals and flea markets.

(b) Subsection (a)(2) above shall not be applicable to the display of any dog or cat for adoption by the Shelter Operator or by a tax-exempt nonprofit organization whose purpose is to protect dogs and cats, including the humane treatment and disposition of dogs and cats; provided, however, that such organization:

(1) Holds a current license issued under the Colorado Pet Animal Care and Facilities Act for a pet animal facility located in Pueblo County, Colorado,

(2) Does not engage in the business of breeding or raising dogs or cats, and

(3) Does not coax or cajole any person to adopt a dog or cat.

(c) It shall be unlawful and a Class 2 municipal offense for any person to violate any provision of this Section. (Ord. No. 6799 §1, 3-25-02; Ord. No. 6919 §2, 12-9-02; Ord. No. 7005 §2, 7-14-03)

CHAPTER 5

Civil Emergencies

Sec. 11-5-1. Declaration of policy.

The City declares that the purpose of this Chapter is to protect and preserve the public health, safety and welfare and protect property from the existing possibility or threat of a riot; unlawful assembly accompanied by the use of actual force or violence or any threat to use force if accompanied by immediate power to exercise such force; natural disaster or man-made calamity, including but not limited to flood, conflagration, cyclone, tornado, earthquake or explosion; or any public disorder, by providing a procedure whereby immediate action can be taken by the City administration to protect the public health, safety and welfare and to protect property. (1957 Code, §9A-1)

Sec. 11-5-2. Definitions.

(a) A *civil emergency* is hereby defined to be:

(1) A riot, civil disturbance or unlawful assembly characterized by the use of actual force or violence or any threat to use force if accompanied by immediate power to execute such force by three (3) or more persons acting together without authority of law.

(2) Any natural disaster or man-made calamity, including but not limited to flood, conflagration, cyclone, tornado, earthquake, explosion or public disorder within the corporate limits of the City resulting in the death or injury of persons or the destruction of property to such an extent that extraordinary measures must be taken to protect the public health, safety or welfare, and to protect public or private property.

(b) *Curfew* is hereby defined as a prohibition against any person walking, running, loitering, standing, being upon or motoring upon any alley, street, highway, public property or vacant premises within the corporate limits of the City. *Curfew* shall not apply to persons officially assigned to carry out duties with reference to said civil emergency. (1957 Code, §9A-2)

Sec. 11-5-3. Declaration of emergency.

The City Manager is authorized if, in his or her judgment, he or she finds that the City or any part thereof is suffering from any civil emergency as herein defined, to declare a state of civil emergency by proclaiming in writing the existence of same. (1957 Code, §9A-3)

Sec. 11-5-4. Curfew.

After proclamation of a civil emergency by the City Manager, he or she may order a general curfew applicable to such geographical areas of the City or to the City as a whole, as he or she deems advisable, and applicable during such hours of the day or night as he or she deems necessary in the public safety and welfare. (1957 Code, §9A-4)

Sec. 11-5-5. Powers during civil emergency.

After the proclamation of a civil emergency and during its continued existence, the City Manager may also make any or all of the following orders:

- (1) Order the closing of all retail liquor establishments and retail beer outlets and order the discontinuance of the sale or service of alcoholic beverages and 3.2% beer in any hotel, restaurant, club or other establishment.
- (2) Order the closing of gasoline stations and other establishments the chief activity of which is the sale, distribution or dispensing of liquid flammable or combustible products, and order the discontinuance of selling, distributing or giving away gasoline or other liquid flammable or combustible products in any container other than a gasoline tank properly affixed to a motor vehicle.
- (3) Order the discontinuance of selling, distributing, dispensing or giving away of any firearms or ammunition of any character whatsoever.
- (4) Order the closing of any or all establishments or portions thereof, the chief activity of which is the sale, distribution, dispensing or giving away of firearms and/or ammunition.
- (5) Prohibit the sale, carrying or possession on the streets, sidewalks, alleys, parks or playgrounds, of weapons including, but not limited to, firearms, bows and arrows, air rifles, slingshots, knives, razors or missiles of any kind.
- (6) Issue such other orders as are imminently necessary for the protection of life and property. (1957 Code, §9A-5; Ord. No. 3180, §1, 3-25-68)

Sec. 11-5-6. Duration.

The state of civil emergency declared by the City Manager shall exist for a period of two (2) weeks, unless sooner rescinded, and may be extended for an additional period of two (2) weeks. (1957 Code, §9A-6; Ord. No. 3180, §1, 3-25-68)

Sec. 11-5-7. Penalty.

Any person violating any executive orders issued pursuant to this Chapter shall be punished as provided by Section 1-2-1 of this Code. (1957 Code, §9A-7; Ord. No. 3180, §1, 3-25-68)

CHAPTER 6

Regulated Business Practices

Sec. 11-6-1. Definitions.

(a) *Auctioneer* shall mean any person who sells, or offers to sell, any goods, wares or merchandise, or any personal property of any kind by public outcry to induce bidding, for his or her own gain or profit or for the account of any other person, or who shall advertise or in any other way

hold himself or herself out as an auctioneer for public patronage, or shall receive fees or commissions for his or her services as auctioneer.

(b) *Auction house* shall mean any place of business where goods, wares, merchandise or chattels of any kind are regularly sold at auction. (1957 Code, §6-1)

Sec. 11-6-2. License, auctioneer's; required; term; fee; investigation; qualifications.

It shall be unlawful for any person to act as an auctioneer at any auction sale within the City without first securing a license therefor. Application for such license shall be made to the City Clerk who shall refer it to the City Manager for investigation, and it shall be issued only after approval by the City Manager. The applicant shall furnish such information and references as the City Manager shall require concerning his or her qualifications and character. The license fee shall be ten dollars (\$10.00) a year for each year or fraction thereof. All licenses shall expire on June 30 next following the date of issuance. An applicant for an auctioneer's license must be a person of good moral character and over the age of twenty-one (21) years. (1957 Code, §6-2)

Sec. 11-6-3. Auction house; required; term; fee; investigation; qualifications.

(a) It shall be unlawful for any person to conduct or operate an auction house within the City without first securing a license therefor. Any person desiring such license shall make application therefor to the City Clerk who shall thereupon refer such application to a special committee for its investigation and approval. The membership of this committee shall consist of the following City officials: the City Manager, the Chief of Police and the City Clerk. This committee shall make full investigation as to an applicant's (or if a corporation, its officers') qualifications and fitness to conduct and operate such business in an ethical and legitimate manner and consistent with the public interest. The committee shall have authority to require the applicant (or if the applicant is a corporation, its officers) to furnish character references, evidence of prior transactions either in the City or elsewhere, and such other information deemed necessary to properly determine the applicant's eligibility for a license; and if the applicant (or its officer if a corporation) shall refuse or fail to cooperate with such committee and to furnish such information and documents as requested by the committee, the application shall forthwith be denied, and any application shall be denied after investigation unless it affirmatively appears to the committee that the applicant (or its officers if a corporation) possesses all qualifications necessary to properly conduct such business.

(b) The license fee to operate an auction house within the City shall be one hundred fifty dollars (\$150.00) for each year or fraction thereof and all licenses issued hereunder shall expire on June 30 next following the issuance of same. Once issued, all auction house licenses shall be renewable each year without additional investigation; provided, however, that the aforesaid committee may at any time, in its discretion, refuse to renew any auction house license pending a further investigation, and shall do so upon complaint being made; and provided, further, that the committee shall have power to suspend or revoke any auction house license for cause. (1957 Code, §6-3)

Sec. 11-6-4. Revocation; suspension.

Any license issued hereunder shall be revoked, after notice and hearing, by the City Manager or committee if:

- (1) Any material statement in the application for the license shall be untrue;
- (2) In case of any fraudulent act or neglect of the holder of the license causing injury to any person; or
- (3) In case of any violation of this Chapter by the holder of the license; or in lieu of revocation, the license may be suspended by the City Manager or committee if the violation is of a minor nature and not intentional. (1957 Code, §6-4)

Sec. 11-6-5. Bond required; amount; conditions; maintaining.

Any applicant for an auction house license shall, at or before approval and issuance of the same, file with the City Clerk a bond in the sum of five thousand dollars (\$5,000.00) payable to the City for the use and benefit of each purchaser at auctions thereafter conducted and supervised by such auction house during the terms of such licenses. Such bond shall be conditioned for the full and prompt payment by the applicant of all damages, loss, costs and attorney fees resulting to, sustained by or accruing to the purchaser of any article at such auction by reason of any false representations of any material fact by any person conducting or aiding in conducting any auction under such auction house license, or which shall accrue or be incurred by reason of any violation of any of the provisions of this Chapter. Such bond shall be duly executed by the applicant and by a surety company duly authorized to do business in the State, or in lieu of such surety company, by two (2) owners of real property, the real property of each owner being of the value of twice the amount of such bond. Such bond shall recite that it is executed pursuant to this Chapter and shall be in form approved by the City Manager. Such bond or undertaking shall also provide that the sureties may be sued directly either by the City or by any person injured as aforesaid without joining the auction house in such suit. Such bonds or undertakings shall be continuing and shall cover not only the original period of the auctioneer's license but also the period of any subsequent renewals of such license. A new bond or undertaking may be required in the case of death or insolvency of any surety thereon. Such undertaking or bond shall contain an endorsement requiring fifteen (15) days' written notice to the City Manager in the event of the cancellation thereof. The auction house license shall become forfeited if the bond is cancelled without substitution of a new one. (1957 Code, §6-5)

Sec. 11-6-6. Sale; places conducted; auction house responsibility.

No auction sale shall be conducted within the City unless it is conducted by an auctioneer duly licensed hereunder and is held within the premises of an auction house duly licensed hereunder; provided, however, that an auction sale may be held elsewhere within the City if it is conducted by an auctioneer, licensed as aforesaid, and is also conducted under the supervision and authority of a duly licensed auction house which thereby accepts full responsibility for the proper conduct of the same. (1957 Code, §6-6)

Sec. 11-6-7. Permit; when required; application; information; inventory.

Any auction house desiring to sell at public auction within the City any of the articles mentioned in Subsection 11-6-8(10) shall first make and file with the City Clerk an application in writing, in form approved by the City Manager, for a special permit to hold such public auction, which application shall state:

(1) If a person, the name and place of residence and place of business of the applicant; if a corporation, the name and place of residence and place of business of such corporation and the names and places of residence of the officers of such corporation; if a partnership, the name and place of residence and place of business of such partnership, and the name and places of residence of all of the members of such partnership;

(2) The place where the proposed auction is to be held, giving the number and street of such place.

(3) The date when such auction is to begin and the number of days the applicant proposes to continue such auction.

(4) If the applicant has conducted or aided in or caused any such auction sale to be held at any place within or without the City within two (2) years next prior to such application, the application must also state the time when and the place where such previous sale or sales were held by him or her.

(5) The applicant in such application shall furnish such other information as the City Manager may deem necessary and demand, in order to enable him or her to investigate and verify the truth of the statements contained in such application or in the inventory hereinafter provided for.

a. Attached to such application the applicant shall file an inventory of all articles proposed to be sold by him or her at such auction, which inventory shall set out and describe the quality, quantity and kind or grade of each item thereof and the invoiced cost of each item. To such inventory there shall be attached an affidavit that the inventory is in all respects true and correct. When the applicant is an individual, the affidavit shall be made by him or her; when a copartnership, the affidavit shall be made by one (1) of the partners; and when the applicant is a corporation, the affidavit shall be made by its president, general manager, secretary or treasurer.

b. Such application, inventory and affidavit shall be kept on file in the office of the City Clerk and shall be open to inspection at any time during the business hours of each day by the purchaser of any article at such auction or by the City Manager or Chief of Police.

c. No article of property mentioned in Subsection 11-6-8(10) shall be sold or offered for sale at any auction for which a special permit shall be granted unless it shall be included and described in the inventory. No charge shall be made for such permit; provided, however, that it shall be unlawful to conduct such sale without first obtaining such permit. (1957 Code, §6-7)

Sec. 11-6-8. Prohibited practices.

It shall be unlawful:

(1) For any person not possessing the qualifications required of an applicant to in any manner participate in or assist in conducting an auction;

(2) For any licensee to conduct an auction except between the hours of 8:00 a.m. and 11:00 p.m.;

(3) For any auctioneer to sell prize packages at any auction or dispose of any article or thing in any form by chance;

(4) For any auctioneer or auction house to fail to make available for inspection by one interested in bidding thereon all lots of goods, wares, merchandise or personal property to be offered for sale at auction;

(5) For any auctioneer knowingly to misrepresent the quantity or quality of any goods, wares, merchandise or personal property which he or she may sell or offer for sale;

(6) For any auctioneer directly or indirectly to engage, employ or knowingly permit any person to make fictitious bids or act as an "encourager" or "capper" to induce bona fide bidders to bid or to increase their bids on any lot or items which may be offered for sale;

(7) To conduct any auction sale except for the purpose of disposing of such goods, wares, merchandise, personal or real property to the highest bidder unless terms otherwise or to the contrary are publicly announced immediately before beginning the sale;

(8) To offer any item in unusual lots for the purpose of restricting bidders, except with the written permission of the owner of such goods;

(9) To conduct any auction sale upon any public street or alley in the City;

(10) At any such auction sale, to sell or offer for sale any clocks, gold, sterling or silver-plated ware; china, porcelain, antique furniture, pictures, paintings, bric-a-brac, rugs, furs, laces or linens without first making application for and obtaining the permit herein provided, and without complying in full with all the provisions of this Chapter, and any sale of the aforesaid articles is restricted to the stock on hand of any bona fide wholesale or retail dealers engaged in handling such items except where such items are offered and sold as incidental to the sale of lots of used household furnishings, clothing and wearing apparel;

(11) To sell at auction any watches, diamonds, jewelry or silverware except where such items are offered and sold as incidentals to the sale of lots of used household furnishings, clothing and wearing apparel, or under court order. (1957 Code, §6-8)

Sec. 11-6-9. Registry required; information; special record.

(a) Every person engaged in the business of conducting an auction house or conducting sales for an auction house shall keep a permanent bound book or register containing an itemized list of all articles or lots which such person or such auction house may sell at any auction including the name of the owner or for whom or for whose account they were sold, the selling price and the date of the sale. Such book or register shall be kept current and shall be available for inspection by any duly authorized representative of the City or the State at reasonable hours.

(b) All auction houses shall also keep a special record of certain specified articles on cards furnished by the Chief of Police in the manner and form as specified by the Chief of Police. (1957 Code, §6-9)

Sec. 11-6-10. Exemptions; permits.

The provisions of this Chapter shall not apply to sales made by public officials under authority of statutes or to auction sales of 4-H clubs or charitable organizations; provided, however, that the latter two (2) groups shall first obtain a permit from the City Manager for any auction conducted by them within the City. (1957 Code, §6-10)

CHAPTER 7

Lost or Abandoned Property

Sec. 11-7-1. Custodian; appointment; duties; sale of perishables.

(a) Appointment. The Chief of Police shall appoint, according to law, an employee of the Police Department to act as custodian of all property seized or taken by the police.

(b) Title. The person so appointed shall be designated and known as the custodian of unclaimed property.

(c) Records. It shall be the duty of such custodian to keep a record of all property which may be seized or otherwise taken possession of by the Police Department.

(d) Sale. If such property so seized or taken possession of shall not be claimed by the rightful owner thereof and possession surrendered to such owner, such property, excluding guns, shall be disposed of as provided by this Chapter; provided that if any property so seized or taken possession of by the Police Department shall be of a perishable nature or so bulky or of such a nature as to make it dangerous or inadvisable to retain possession thereof for the length of time herein specified, the custodian, upon certifying such fact to the City Manager, setting forth his or her reasons why such property should not be retained for the period fixed herein before selling the same, may, with the approval of the City Manager, cause such property to be forthwith advertised once in the official newspaper, and sell such property at public auction at any time after three (3) days shall have elapsed from the seizure or taking possession thereof. Nothing in this Section shall be held to require the custodian to take possession of, or make a disposition of, any lost or stolen property, the disposition or possession of which is otherwise provided for in this Code or by ordinance. (1957 Code, §21-6; Ord. No. 3791, 11-26-73; Ord. No. 7121 §1, 4-12-04)

Sec. 11-7-2. Place for safekeeping.

It shall be the duty of the City Manager to provide for the custodian of unclaimed property a suitable place for the safekeeping of such lost or stolen property recovered by any officer, and the same shall be under his or her entire control. (1957 Code, §21-7; Ord. No. 7121 §1, 4-12-04)

Sec. 11-7-3. Delivery to owner.

In case any lost or stolen property shall come into the custody of the custodian of unclaimed property and the same shall be claimed by any person, it shall be the duty of the Chief of Police to make such inquiry and examination as to the ownership of such property as he or she may deem

necessary, and if the Chief of Police shall be satisfied that such property belongs to the person claiming the same, he or she is hereby authorized to direct the custodian to deliver such property to him or her upon his or her giving a proper receipt therefor. (1957 Code, §21-8; Ord. No. 7121 §1, 4-12-04)

Sec. 11-7-4. Annual report; contents.

It shall be the duty of the Chief of Police to make a report to the City Manager at least once during each and every year, at a date to be determined by the Chief of Police, which report shall show all of the stolen or lost property which has come into the hands of the custodian of unclaimed property during the preceding year, and also all of such property which has been turned over to any person claiming the same, to whom the same was delivered, and the date when the same was so turned over. Such report shall also show the date when each and every article of such property was received by the custodian, and shall also show whether or not any person has made claim to any of such property which has been turned over to him or her by the custodian and by whom such claim was made, and what article or articles he or she claimed and when the claim was made. (1957 Code, §21-9; Ord. No. 7121 §1, 4-12-04)

Sec. 11-7-5. Final public notice.

(a) As soon as practicable after such report shall be received by the City Manager from the Chief of Police, the City Clerk shall prepare a notice, which notice shall be published in an official paper published in the City on two (2) different occasions, which notice shall be directed to the public and shall contain a statement of the following matters:

- (1) A general description of the property which is in the hands of the custodian of unclaimed property and which has remained unclaimed for a period of ninety (90) days prior to the filing of the report identified in Section 11-7-4 above;
- (2) A statement that a detailed list of such property is available for inspection at the office of the custodian of unclaimed property, including the address and the hours during which such list may be inspected; and
- (3) A statement that such property will be deemed abandoned and become the property of the City and disposed of by the City unless the owner reclaims the property within ten (10) days after the last publication of the notice.

(b) If no person establishes a right to such property by the expiration of the time period set forth in the notice, the property shall escheat to the City, become the sole property of the City and any claim of the owner to such property shall be deemed forever extinguished and forfeited. (1957 Code, §21-10; Ord. No. 3791, 11-26-73; Ord. No. 7121 §1, 4-12-04)

Sec. 11-7-6. Claim to property; notice to Director of Finance.

In case any person shall make claim to any of such property mentioned in the notice to the City Manager, it shall be the duty of the City Manager to notify at once the Director of Finance of such claim and the disposition made of the property claimed. (1957 Code, §21-11; Ord. No. 7121 §1, 4-12-04)

Sec. 11-7-7. Distribution to charity.

The Director of Finance is hereby authorized to donate any and all property unclaimed as aforesaid, at any time, to local organizations which by written petition have shown that such property will be distributed by such organization to the needy or deserving citizenry of the City. (1957 Code, §21-12; Ord. No. 7121 §1, 4-12-04)

Sec. 11-7-8. Unclaimed property; disposition by sale or otherwise; proceeds.

(a) All unclaimed property, except guns, which has escheated to the City pursuant to Section 11-7-5 above shall be disposed of as follows:

(1) Any such property which is of use or benefit to the City or any department of the City shall be delivered to the Purchasing Agent;

(2) All remaining property shall be sold at the discretion of the Director of Finance in either of the following two (2) ways:

a. The property will be sold at public auction by the Director of Finance for the highest and best price the same will bring in cash or certified funds; or

b. The property will be sold under consignment pursuant to contract with a third party consignee and approved by the City Council. The third party consignee shall be nationally or regionally recognized and shall be required to list the property and use its best effort to sell the property by auction to the public on the Worldwide Web of the Internet.

(b) The manner of auction sale held pursuant to Subsection 11-7-8(a)(2)a shall be as follows:

(1) First, the articles shall be offered in lots as small as practicable in order to afford individuals the opportunity to bid thereon;

(2) Second, all articles that are not thus disposed of shall be offered in wholesale lots; and

(3) Third, any articles then remaining shall be returned to the City Manager who may give such remaining articles to charitable organizations or have them destroyed, saved or retained for the City's use, at his or her discretion.

(c) It shall be the duty of the Director of Finance to make an annual report to the City Manager, giving in detail a description of the articles disposed of pursuant to this Section and the amount of money received for each of the articles. Such money shall be placed in the general fund. (1957 Code, §21-13; Ord. No. 3791, 11-26-73; Ord. No. 5979, 7-10-95; Ord. No. 7121 §1, 4-12-04)

Sec. 11-7-9. Sale of guns prohibited; confiscation, destruction.

(a) The sale of guns under this Chapter is hereby prohibited.

(b) All guns seized or taken possession of by the Police Department shall be disposed of as follows:

(1) Any gun which is determined by the custodian of unclaimed property and the Chief of Police to be of beneficial use to the Police Department shall be made part of its weapon inventory.

(2) All other guns shall be destroyed by melting said guns in a smeltery, said smelting to be witnessed by the custodian of unclaimed property and a member of the Finance Department.

(c) When such disposition is completed, it shall be the duty of the custodian of unclaimed property to make a report to the Chief of Police, giving in detail a description of the guns placed in Police Department inventory or destroyed by smelting. (Ord. No. 3791, 11-26-73; Ord. No. 7121 §1, 4-12-04)

Sec. 11-7-10. Applicability.

This Chapter shall apply only to unclaimed personal property coming into the hands of the custodian of unclaimed property as provided herein, and shall not apply to money, funds, certificates of deposit, negotiable instruments, intangible property or other property subject to the provisions of Chapter 10 of Title XIV of this Code, nor to any abandoned vehicles subject to Chapter 1 of Title XV of this Code and the Model Traffic Code for Colorado Municipalities, as adopted and amended by Title XV of this Code. (Ord. No. 5979, 7-10-95; Ord. No. 7121 §1, 4-12-04)

CHAPTER 8

Reserve Police Officers

Sec. 11-8-1. Establishment of police reserve.

There is hereby created the police reserve corps which shall consist of such number of persons as shall, from time to time, be determined by the Chief of Police. (Ord. No. 5794, 4-12-93)

Sec. 11-8-2. Appointment; compensation.

(a) The Chief of Police shall appoint all reserve police officers and may adopt rules and regulations concerning the functions and conduct of such reserve police officers.

(b) Reserve police officers shall serve as volunteers without compensation or other benefits; provided, however, that reserve police officers shall be deemed to be unclassified employees of the City for the sole purpose and within the meaning of Section 8-40-202(1)(a), C.R.S. (Ord. No. 5794, 4-12-93)

Sec. 11-8-3. Authority of police reserve officers.

(a) In case of need, the Chief of Police may call into duty any or all of said reserve police officers. Such reserve police officers shall be empowered to act only while on duty and the authority of said reserve police officers shall be governed by the provisions of Sections 18-1-901(3)(1)(IV.5), 16-3-201 and 16-3-202, C.R.S.

(b) Reserve police officers shall act only at the express direction or under the direct supervision of a regular full-time police officer in accordance with the requirements of law applicable to reserve police officers, including those set forth in Section 18-1-901(3)(l)(IV.5), C.R.S. (Ord. No. 5794, 4-12-93)

Sec. 11-8-4. Oath of office.

Before becoming a member of the police reserve corps, each reserve police officer shall take an oath to support the Constitution of the United States and the Constitution of the State, and to lawfully and faithfully perform the duties and assignments of a reserve police officer. (Ord. No. 5794, 4-12-93)

Sec. 11-8-5. Observance of regulations.

Reserve police officers shall observe all applicable Police Department rules and regulations and all special rules and regulations adopted concerning reserve police. Reserve police officers shall be subject to discipline or discharge from the police reserve corps for violation of any such rule or regulation, violation of federal, state or local law or any conduct deemed unbecoming a member of the police reserve corps. (Ord. No. 5794, 4-12-93)

Sec. 11-8-6. Resignation and removal.

Any reserve police officer may resign upon forty-eight (48) hours' prior written notice to the Chief of Police. The Chief of Police may remove any reserve police officer at any time without cause, without notice and without appeal. (Ord. No. 5794, 4-12-93)

Sec. 11-8-7. Uniforms and equipment.

(a) The uniform and equipment to be worn by reserve police officers while on duty shall be determined by the Chief of Police and shall be readily distinguishable from the uniform worn by regular police officers.

(b) Each reserve police officer shall purchase and maintain, at his or her own expense, the official uniform and equipment required for reserve police officers. Such uniform and equipment shall be worn by each reserve police officer only while on duty and while commuting to and from the Police Department or duty assignment. All badges, patches and identification cards, whether purchased by the City or the reserve police officer, shall be and remain the property of the City. (Ord. No. 5794, 4-12-93)

Sec. 11-8-8. Firearms restricted; training.

(a) Reserve police officers may not carry or use a firearm unless each of the following requirements are satisfied:

(1) The reserve police officer has been trained in firearm use and safety and has been certified for firearms proficiency with the same frequency and subject to the same requirements as regular peace officers;

(2) The Chief of Police has expressly authorized the reserve police officer to carry and use a firearm while on duty;

(3) The reserve police officer has been called into duty and is carrying the firearm while on duty in the manner prescribed by police regulations.

(b) Reserve police officers shall not carry a concealed firearm or other concealed weapon at any time when not on duty; nor shall any reserve police officer carry a concealed firearm or other concealed weapon while on duty unless specifically authorized in writing by the Chief of Police to do so.

(c) Before a reserve police officer may be called into duty, he or she must have received task-specific training that meets standards approved by the peace officers standards and training board, in accordance with the provisions of Sections 18-1-901(3)(1)(IV.5) and 24-31-303, C.R.S.

(d) Any violation of paragraph (b) of this Section shall be a Class 1 municipal offense punishable as provided in Section 11-1-103 of this Title. (Ord. No. 5794, 4-12-93)

CHAPTER 9

Graffiti

Sec. 11-9-1. Purpose and intent.

(a) The City Council finds and determines that graffiti is a public nuisance and destructive of the rights and values of property owners as well as the entire community. Graffiti promotes blight in the neighborhoods in which it occurs and encourages similar acts of vandalism. Unless the City acts to remove graffiti from public and private property, the graffiti tends to remain. Without prompt and immediate removal of graffiti, other properties become the target of graffiti, and entire neighborhoods are affected and become less desirable places in which to be, all to the detriment of the City and its citizens.

(b) The City Council further finds and declares that, to be truly effective in the deterrence, eradication and removal of graffiti, it is necessary to implement a comprehensive anti-graffiti ordinance. (Ord. No. 6236, 8-25-97)

Sec. 11-9-2. Definitions

(a) *Aerosol paint container* means any aerosol container that is adapted or made for the purpose of applying spray paint or other substances capable of defacing property.

(b) *Broad-tipped marker* means any felt tip indelible marker or similar implement with a flat or angled writing surface that, at its broadest width, is greater than one-fourth ($\frac{1}{4}$) of an inch, containing ink or other pigmented liquid that is not water soluble.

(c) *Etching equipment* means any tool, device or substance that can be used to make permanent marks on any natural or man-made surface.

(d) *Graffiti* means any unauthorized inscription, word, figure, painting or other marking that is written, etched, scratched, sprayed, drawn, painted or engraved on or otherwise affixed to any surface of public or private property by any graffiti implement, to the extent the graffiti was not authorized in advance by the owners or occupants of the property or, despite advance authorization, is otherwise deemed a public nuisance by the City Council.

(e) *Graffiti implement* means an aerosol paint container, broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush or any other device capable of scarring or leaving a visible mark on any natural or man-made surface.

(f) *Minor* means any person under the age of eighteen (18) years.

(g) *Paint stick* or *graffiti stick* means any device containing a solid form of paint, chalk, wax, epoxy or other similar substance capable of being applied to a surface by pressure and leaving a mark of at least one-eighth ($1/8$) of an inch in width.

(h) *Person* means any individual, partnership, association, corporation, limited liability company, personal representative, receiver, trustee, assignee or any other legal entity.

(i) *Responsible party* means a person other than the owner of property who has primary responsibility for control of the property or for repair or maintenance of the property. (Ord. No. 6236, 8-25-97)

Sec. 11-9-3. Prohibited acts.

(a) *Graffiti*. It shall be unlawful for any person to apply graffiti to any natural or man-made surface on any City-owned property or on any nonCity-owned property. It shall be an affirmative defense to a violation of this Subsection (a) that the graffiti was applied with the permission of the owner or occupant on any nonCity-owned property.

(b) *Possession*. It shall be unlawful for any minor to buy or carry on his or her person any graffiti implement. It shall be an affirmative defense to a violation of this Subsection (b) that the minor was carrying or possessing the graffiti implement with the consent of the minor's parent, guardian or school teacher, or that the minor was using or applying any graffiti implement under the direct supervision of such minor's parent, guardian or school teacher. (Ord. No. 6236, 8-25-97)

Sec. 11-9-4. Prohibition on display and sale.

(a) *Sale*. It shall be unlawful for any person, other than a parent, legal guardian or school teacher, to sell, exchange, give, loan or otherwise furnish, or cause or permit to be exchanged, given, loaned or otherwise furnished, any aerosol paint container, broad-tipped marker or paint stick to any minor without the written consent of the parents or guardian of the minor.

(b) *Display and storage*.

(1) Every person who owns, conducts, operates or maintains a retail commercial establishment selling aerosol paint containers, paint sticks or broad-tipped markers shall store the containers, sticks or markers in an area continuously observable, through direct visual observation

or surveillance equipment, by employees of the retail establishment during the regular course of business.

(2) In the event that a commercial retail establishment is unable to store the aerosol paint containers, paint sticks or broad-tipped markers in an area as provided above, the establishment shall store the containers, sticks and markers in an area not accessible to the public in the regular course of business without employee assistance.

(c) Required sign. Every person who operates a retail commercial establishment selling graffiti implements shall:

(1) Place a sign with a minimum height of fourteen (14) inches and a width of eleven (11) inches, with lettering of at least one-half (½) inch in height which is in clear public view at or near the display of such products and which states: "WARNING: IT IS ILLEGAL TO SELL OR DISTRIBUTE AEROSOL PAINT, PAINT STICKS OR BROAD-TIPPED MARKERS TO ANY PERSON UNDER THE AGE OF EIGHTEEN YEARS OR FOR ANY PERSON UNDER THE AGE OF EIGHTEEN YEARS OF AGE TO POSSESS OR TO ATTEMPT TO PURCHASE SAME. IT IS ILLEGAL IF YOU ARE OVER EIGHTEEN YEARS OF AGE FOR YOU TO PURCHASE AEROSOL PAINT, PAINT STICKS OR BROAD-TIPPED MARKERS FOR A PERSON UNDER EIGHTEEN YEARS OF AGE IF YOU ARE NOT SUCH PERSON'S PARENT OR GUARDIAN. FINES OF UP TO \$1,000.00 MAY BE IMPOSED FOR VIOLATION OF THESE PROVISIONS." (Ord. No. 6236, 8-25-97; Ord. 7937 §23, 12-8-08)

Sec. 11-9-5. Penalty.

(a) Any violation of Subsection 11-9-3(a) of this Chapter is a Class 1 municipal offense, provided that, if the person was under eighteen (18) years of age on the date of violation, the court shall not impose a jail sentence. Any person found guilty of violating Subsection 11-9-3(a) shall, in addition to any sentence of jail time, pay a fine of not less than one hundred dollars (\$100.00) for the first offense, two hundred dollars (\$200.00) for the second offense and five hundred dollars (\$500.00) for the third or any subsequent offense.

(b) Any violation of any provision other than Subsection 11-9-3(a) of this Chapter is a Class 2 municipal offense.

(c) Restitution. In addition to any punishment imposed for violation of Section 11-9-3(a) of this Chapter, the court shall order any violator to make restitution to the victim for damages or loss caused by the violator's offense in the amount or manner determined by the court. In the case of an unemancipated minor, the parents or legal guardian shall be ordered jointly and severally liable with the minor to make restitution, but such liability shall not exceed the damages set forth in Section 13-21-107(1), C.R.S.

(1) Within ten (10) days after entry of any order for restitution any persons ordered to pay such restitution may file written objections to the amount of restitution including evidence that the amount of restitution exceeds the damages or loss caused by the violator's offense. The court may, based upon such objections and evidence or after hearing at the court's discretion, reduce the amount of restitution.

(2) Upon an application and finding of indigence, the court may decline to order restitution.

(d) Seizure of graffiti implement. The Chief of Police or his or her authorized agent may seize, take and remove any graffiti implement used in violation of Section 11-9-3(a) of this Chapter or in the possession of a minor in violation of Section 11-9-3(b) of this Chapter.

(e) Community service. In lieu of, or as part of, any punishment imposed for violation of either Section 11-9-3(a) or (b) of this Chapter, a minor or adult may be required to perform community service as described by the court based on the following minimum requirements:

(1) The minor or adult shall perform at least thirty (30) hours of community service.

(2) At least one (1) parent or guardian of the unemancipated minor shall be in attendance a minimum of fifty percent (50%) of the period of assigned community service.

(3) The entire period of community service shall be performed under the supervision of a community service provider approved by the Chief of Police.

(4) Reasonable effort shall be made to assign the minor or adult to a type of community service that is reasonably expected to have the most rehabilitative effect on the minor or adult, including community service that involves graffiti removal. (Ord. No. 6236, 8-25-97; Ord. No. 7937 §24, 12-8-08)

Sec. 11-9-6. Rewards and reimbursements for information.

(a) The City may offer a reward in an amount to be established by resolution of the City Council for information leading to the identification and conviction of any person who violated Section 11-9-3(a) of this Chapter. In the event of multiple contributors of information, the reward amount shall be divided by the City in the manner it shall deem appropriate.

(b) Claims for rewards under this Section shall be filed with the Chief of Police.

(c) No claim for a reward shall be allowed unless the City investigates and verifies the accuracy of the claim and determines that the requirements of Section 11-9-6 of this Chapter have been satisfied. (Ord. No. 6236, 8-25-97)

Sec. 11-9-7. Graffiti as nuisance.

(a) The existence of graffiti on public or private property in violation of this Chapter is expressly declared to be a public nuisance and, therefore, is subject to the removal and abatement provisions specified in this Chapter.

(b) It is the duty of both the owner and responsible party of property to which graffiti has been applied to at all times keep the property clear of graffiti. (Ord. No. 6236, 8-25-97)

Sec. 11-9-8. Removal of graffiti.

(a) Property owner responsibility. It is unlawful for the owner or responsible party of property upon which graffiti exists or has been applied in the City to permit such graffiti to remain for a period of ten (10) days after service by certified mail of notice of the graffiti. The notice shall contain the following information:

(1) The street address and legal description of the property sufficient for identification of the property;

(2) A statement that the property is a potential graffiti nuisance property with a concise description of the conditions leading to the findings;

(3) A statement that the graffiti must be removed within ten (10) days after receipt of the notice and that if the graffiti is not abated within that time the property will be declared to be a public nuisance, subject to the abatement procedures contained within Section 11-9-8(d) of this Chapter; and

(4) An information sheet identifying any graffiti removal assistance programs available through the City and private graffiti removal contractors.

(b) Exceptions to responsibility. The removal requirements of Section 11-9-8(a) of this Chapter shall not apply if the property owner or responsible party can demonstrate that the property owner or responsible party lacks the financial ability to remove the graffiti.

(c) Right of City to remove.

(1) Use of public funds. Whenever the City becomes aware or is notified and determines that graffiti is located on publicly or privately owned property viewable from a public or quasi-public place, the City shall be authorized to use public funds for the removal of the graffiti, or for the painting or repairing of the graffiti, but shall not authorize or undertake to provide for the painting or repair of any more extensive an area than that where the graffiti is located, unless the City Manager, or the designee of the City Manager, determines in writing that more extensive area is required to be repainted or repaired in order to avoid an aesthetic disfigurement to the neighborhood or community, or unless the property owner or responsible party agrees to pay for the costs of repainting or repairing the more extensive area.

(2) Right of entry on private property. Prior to entering upon private property or property owned by a public entity other than the City for the purpose of graffiti removal, the City shall attempt to secure the consent of the property owner or responsible party and a release of the City from liability for property damage or personal injury. If the property owner or responsible party fails to remove the graffiti within the time specified by this Chapter, or if the City has requested consent to remove or paint over the graffiti and the property owner or responsible party has refused consent for entry on terms acceptable to the City and consistent with the terms of this Chapter, the City shall commence abatement and cost recovery proceedings for the graffiti removal according to the provisions specified below.

(d) Abatement and cost recovery proceedings.

(1) Notice of hearing. The City Manager, or the designee of the City Manager, serving as the Hearing Officer, shall provide the property owner of record and the responsible party, if a person different than the owner, not less than forty-eight (48) hours' notice of the City's intent to hold a hearing, at which the property owner or responsible party shall be entitled to present evidence and argue that the property does not constitute a public nuisance. Notice shall be served by mail, pursuant to and in accordance with Section 1-1-11(6) of this Code. If the owner of record cannot be found after a diligent search, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten (10) days.

(2) Determination of Hearing Officer. The determination of the Hearing Officer after the hearing shall be final and not appealable. If, after the hearing, regardless of the attendance of the owner or the responsible party or their respective agents, the Hearing Officer determines that the property contains graffiti viewable from a public or quasi-public place, the Hearing Officer shall give written notice, served in the manner specified in Section 11-9-8(d)(1) of this Chapter, that, unless the graffiti is removed within ten (10) days, the City shall enter upon the property, cause the removal, painting over (in such color as shall meet with the approval of the Hearing Officer), or such other eradication thereof as the Hearing Officer determines appropriate.

(3) Eradication effort. Not sooner than the time specified in the order of the Hearing Officer, the City Manager, or the designee of the City Manager, shall implement the eradication order and shall provide an accounting to the owner and the responsible party of the costs of such eradication.

(4) Lien. If all or any portion of the cost of such eradication remains unpaid after thirty (30) days, the amount thereof shall be charged against the owner of the property that was the subject of the eradication effort. Upon recording in the office of the County Clerk and Recorder of a statement under oath of the City Manager showing the amount of the unpaid cost of such eradication and describing the property, the unpaid cost of such eradication plus interest at the rate of ten percent (10%) per annum from the date such costs were incurred, shall be and constitute a perpetual lien on the property having priority over all other liens and encumbrances except general ad valorem tax liens, and such lien shall remain in full force and effect until paid in full. (Ord. No. 6236, 8-25-97)

Sec. 11-9-9. Local improvement fund.

The City Council hereby creates the City of Pueblo Anti-Graffiti Local Improvement Fund. Penalties assessed against violators of this Chapter shall be placed in the Fund, along with any monetary donations received from persons wishing to contribute to the Fund. The Council shall direct the expenditures of monies in the Fund. Such expenditures, in discretion of the City Council, may be appropriated to the payment of the cost of graffiti removal, the payment of records for information leading to the conviction of violation of this Chapter, the costs of administering this Chapter and such other purposes as the Council may determine. (Ord. No. 6236, 8-25-97)

Sec. 11-9-10. Severability.

Severability is intended throughout and within the provisions of this Chapter. If any section, subsection, sentence, clause, phrase or portion of this Chapter is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Chapter. (Ord. No. 6236, 8-25-97)

